

**CALENDAR ITEM
C09**

A 5
S 1

06/22/17
PRC 3526.1
K. Connor

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST,
ACCEPTANCE OF A LEASE QUITCLAIM DEED, AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Lake Tahoe Villa, LLC, a Delaware limited liability company

APPLICANT:

Ari Birger and Irit Birger

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3077 Jameson Beach Road near South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and one mooring buoy.

LEASE TERM:

10 years beginning June 22, 2017.

CONSIDERATION:

\$947 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses.
3. If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoy within 2 years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake

CALENDAR ITEM NO. C09 (CONT'D)

Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they may be required to remove the buoy.

4. Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On June 21, 2013, the Commission authorized a General Lease – Recreational Use for an existing pier and one mooring buoy to Lake Tahoe Villa, LLC, a Delaware limited liability company ([Calendar Item 49, June 21, 2013](#)). That lease expires on June 20, 2023. On December 22, 2015, ownership of the upland parcel was deeded to Ari Birger and then transferred to Ari Birger and Irit Birger on January 10, 2017. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier and mooring buoy.

The Lessee paid annual rent through June 20, 2016. Therefore, staff recommends that the Commission accept compensation for the unauthorized occupation of State land, from the Applicant, in the amount of \$948 for the period beginning June 21, 2016, through June 21, 2017, the day before the new lease becomes effective.

Commission staff sent annual rent invoices to the Lessee for the 2016-2017 and 2017-2018 lease periods. The Lessee did not pay these invoices. Staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of June 21, 2016, through June 21, 2017, since they were no longer the upland owners at this time, and the Applicant already agreed to payment of compensation for the unauthorized occupation of State land during this time. The Lessee executed a lease quitclaim deed releasing their interest in the lease. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

CALENDAR ITEM NO. **C09** (CONT'D)

The subject facilities are used for recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The pier is built on rock cribs with the immediate area of the pier being lightly sloped and sandy. The topography and the location of upland structures provides access for the pier and allows the public to walk or navigate along the pier within the Public Trust easement. However, lateral public access is limited within the Public Trust easement because the pier is built on rock cribs which restrict public access from crossing underneath. The buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Acceptance of the quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

CALENDAR ITEM NO. **C09** (CONT'D)

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of a lease quitclaim deed; waiver of rent, penalty and interest; and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time or for the foreseeable term of the lease, and is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

CALENDAR ITEM NO. **C09** (CONT'D)

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Waive annual rent, penalty, and interest due for the period of June 21, 2016, through June 21, 2017, and void annual rent invoices #41973 and #39436 issued to Lake Tahoe Villa, LLC.
2. Authorize acceptance of a lease quitclaim deed, effective June 21, 2017, for Lease No. PRC 3526.1, a General Lease – Recreational Use, issued to Lake Tahoe Villa, LLC.
3. Authorize acceptance of compensation in the amount of \$948 for unauthorized occupation of State land for the period beginning June 21, 2016, through June 21, 2017.
4. Authorize issuance of a General Lease – Recreational Use to Ari Birger and Irit Birger, beginning June 22, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier and one mooring buoy as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$947, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3526.1

LAND DESCRIPTION

Two (2) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 fractional Section 6, Township 12 North, Range 18 East, MDM., as shown on Official Government Township Plat approved November 9, 1866, County of El Dorado, State of California and more particularly described as follows:

PARCEL 1 - PIER

All those lands underlying an existing pier and three (3) catwalks lying adjacent to those parcels as described in Exhibit A of that Grant Deed recorded February 16, 2016 as Document Number 2017-0001115 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCEL 2 – BUOY

One circular parcel of land, being 50 feet in diameter underlying one (1) existing buoy lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared April 6, 2017, by the California State Lands Commission Boundary Unit.



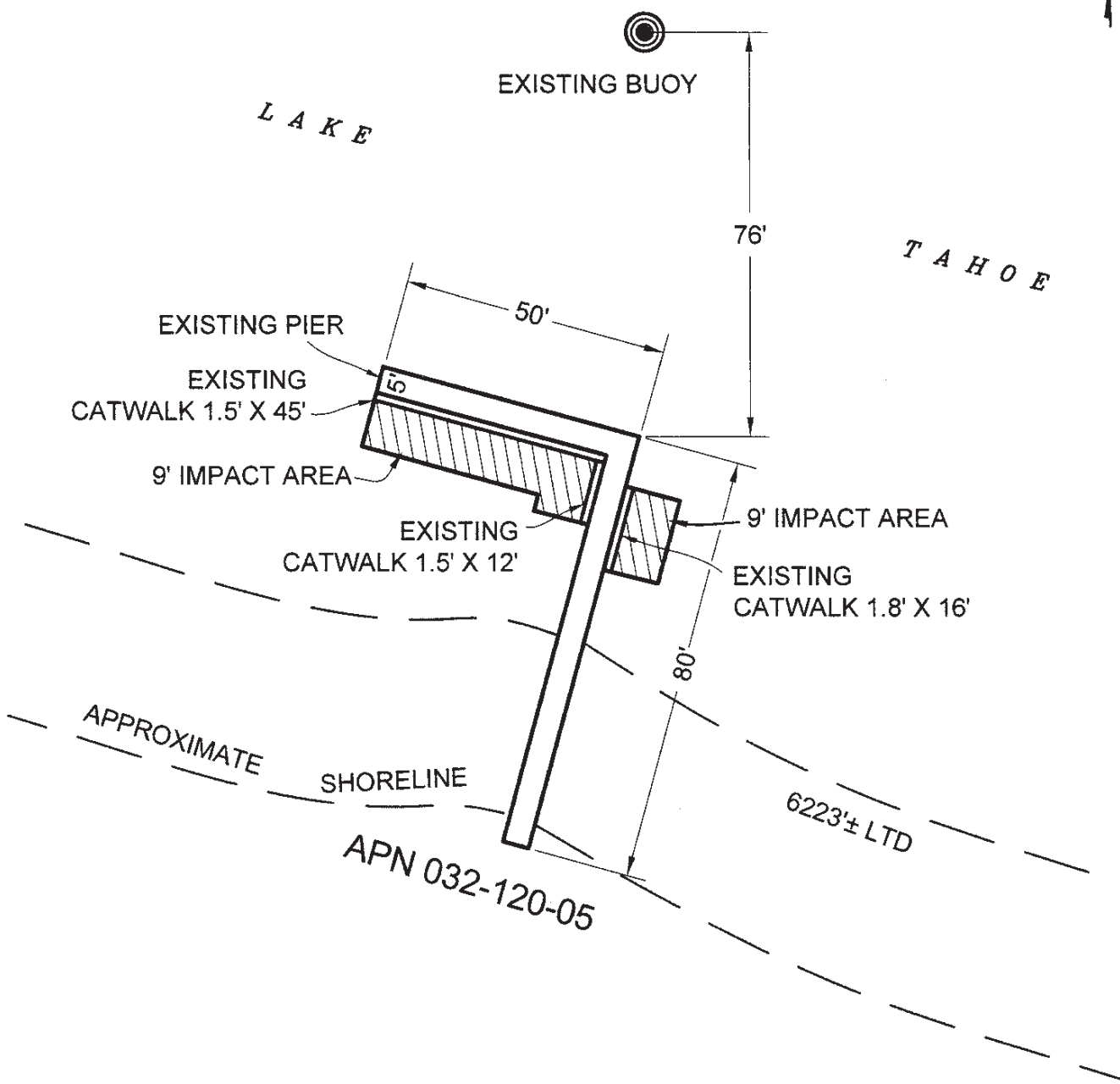


EXHIBIT A

Page 2 of 2

MJJ 04/05/17

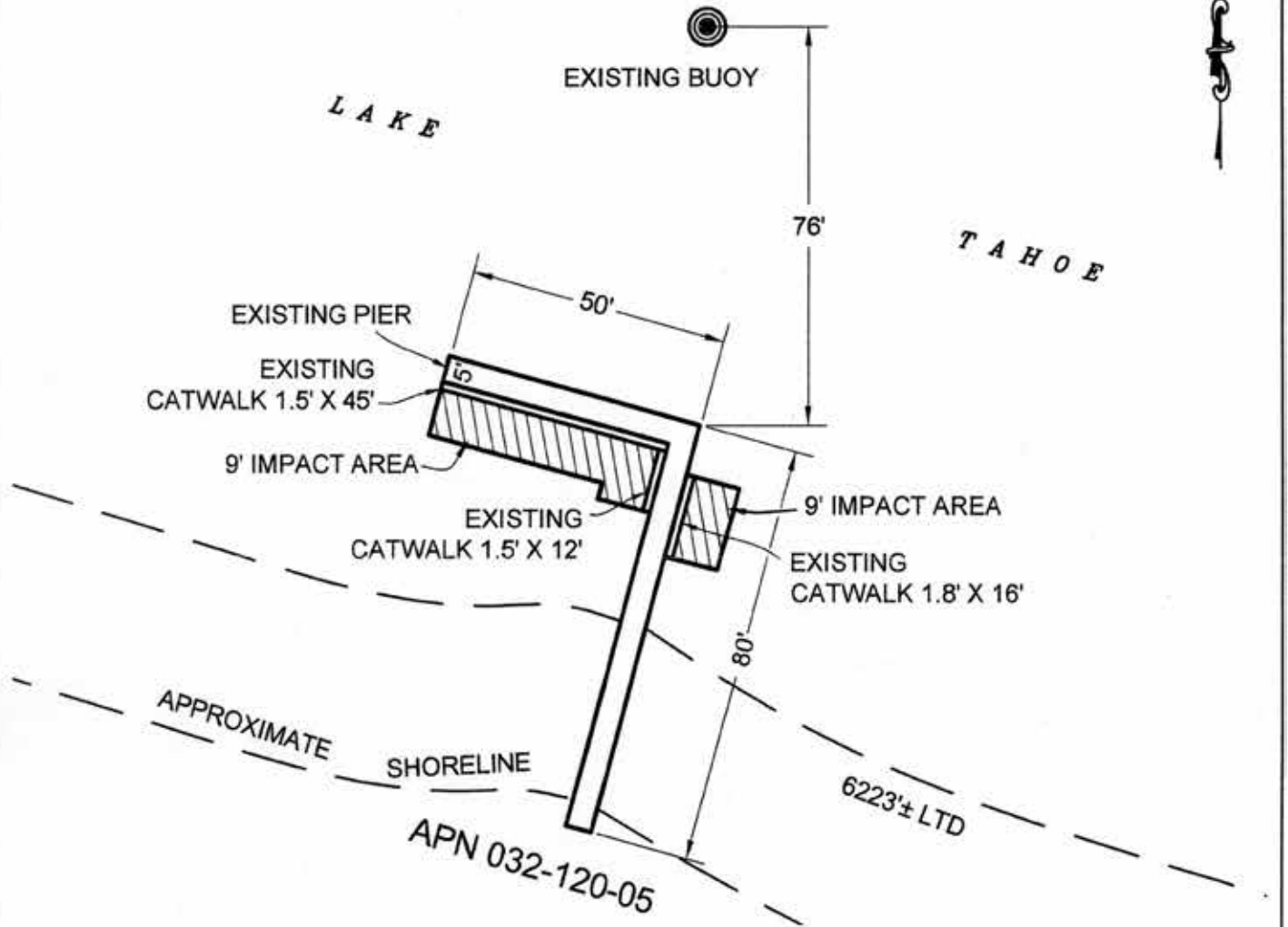
LAND DESCRIPTION PLAT
 PRC 3526.1, BIRGER
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



3077 JAMESON BEACH ROAD, NEAR CITY OF SOUTH LAKE TAHOE

NO SCALE

LOCATION

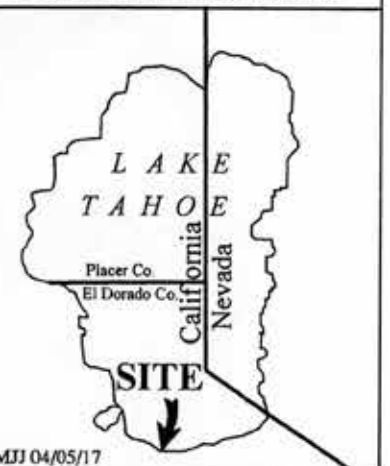


MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 3526.1
 BIRGER
 APN 032-120-05
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



MJJ 04/05/17