

**STAFF REPORT
C15**

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10/19/17
PRC 3655.1
M. Schroeder

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Nancy L. D'Andrea, as Trustee of the Robert J. D'Andrea and Nancy L. D'Andrea Inter Vivos Trust Agreement, dated December 2, 1988

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 7149 Highway 89, near
Tahoma, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier previously authorized by the Commission and use and maintenance of an existing marine rail system not previously authorized by the Commission.

LEASE TERM:

10 years, beginning March 1, 2017.

CONSIDERATION:

\$497 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 of access, navigation, fishing and lake-related recreational uses.

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.

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Public Trust and State's Best Interests Analysis:

On October 30, 2007, the Commission authorized a 10-year Recreational Pier Lease for an existing pier to Robert J. D'Andrea and Nancy L. D'Andrea, as Trustees of the Robert J. D'Andrea and Nancy L. D'Andrea Inter Vivos Trust Agreement, dated December 2, 1988 ([Item C12, October 30, 2007](#)). That lease expired on February 28, 2017. Since issuance of the lease, Robert J. D'Andrea died. The Applicant is applying for a new lease for the continued use and maintenance of the existing pier previously authorized by the Commission and an existing marine rail system not previously authorized by the Commission.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The improvements facilitate 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 lands (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The pier is built on pilings, which allows the public to navigate or walk next to and, at lower water levels, under the pier. The immediate area of the existing pier is gently sloped with sandy surroundings. The marine rail system extends from the upland property into the lake. The rail lies on the lakebed allowing the public to navigate or walk over it depending on the water level.

The subject facilities do not significantly alter the land and the 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, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

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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. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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.

3. 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 the activity 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 proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, or for the foreseeable term

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of the lease, and is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

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:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 1, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier previously authorized by the Commission and use and maintenance of an existing marine rail system not previously authorized by the Commission 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 \$497, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3655.1

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 17, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved July 29, 1880 County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 - PIER

All those lands underlying an existing pier lying adjacent to that parcel described in the Affidavit of Death of Trustee recorded on September 2, 2016 in Document Number 2016-0041463-00 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 – MARINE RAILWAY

All those lands underlying an existing marine railway lying adjacent to that parcel described in the Affidavit of Death of Trustee recorded on September 2, 2016 in Document Number 2016-0041463-00 in Official Records of said County.

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Revised by the California State Lands Commission Boundary Unit 9/11/2017. Original description prepared by Daniel Frink on 12/7/2011 as found in PRC 3655 file.



LAKE TAHOE

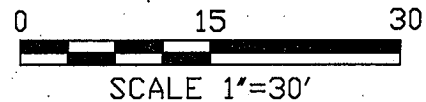
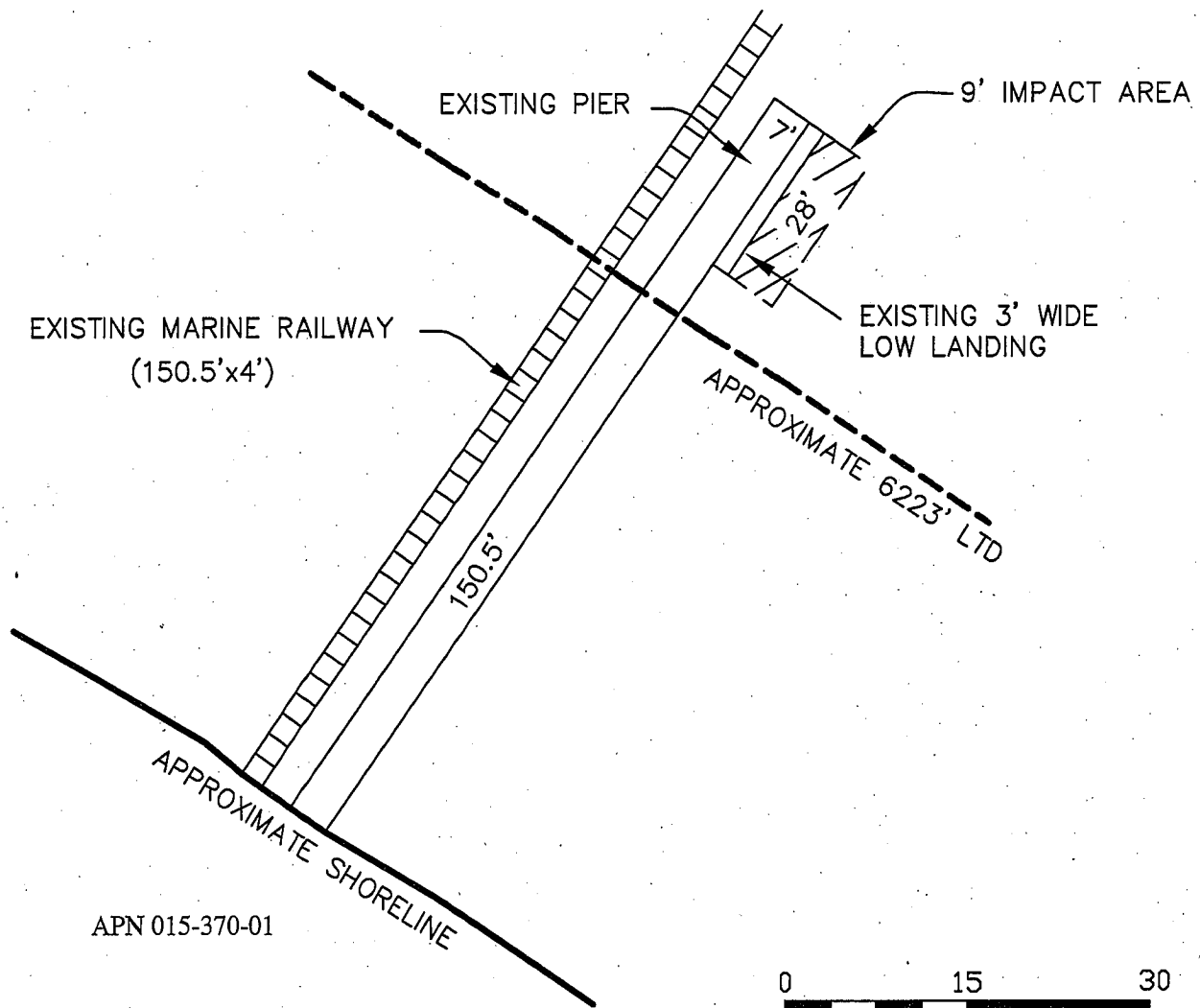


EXHIBIT A

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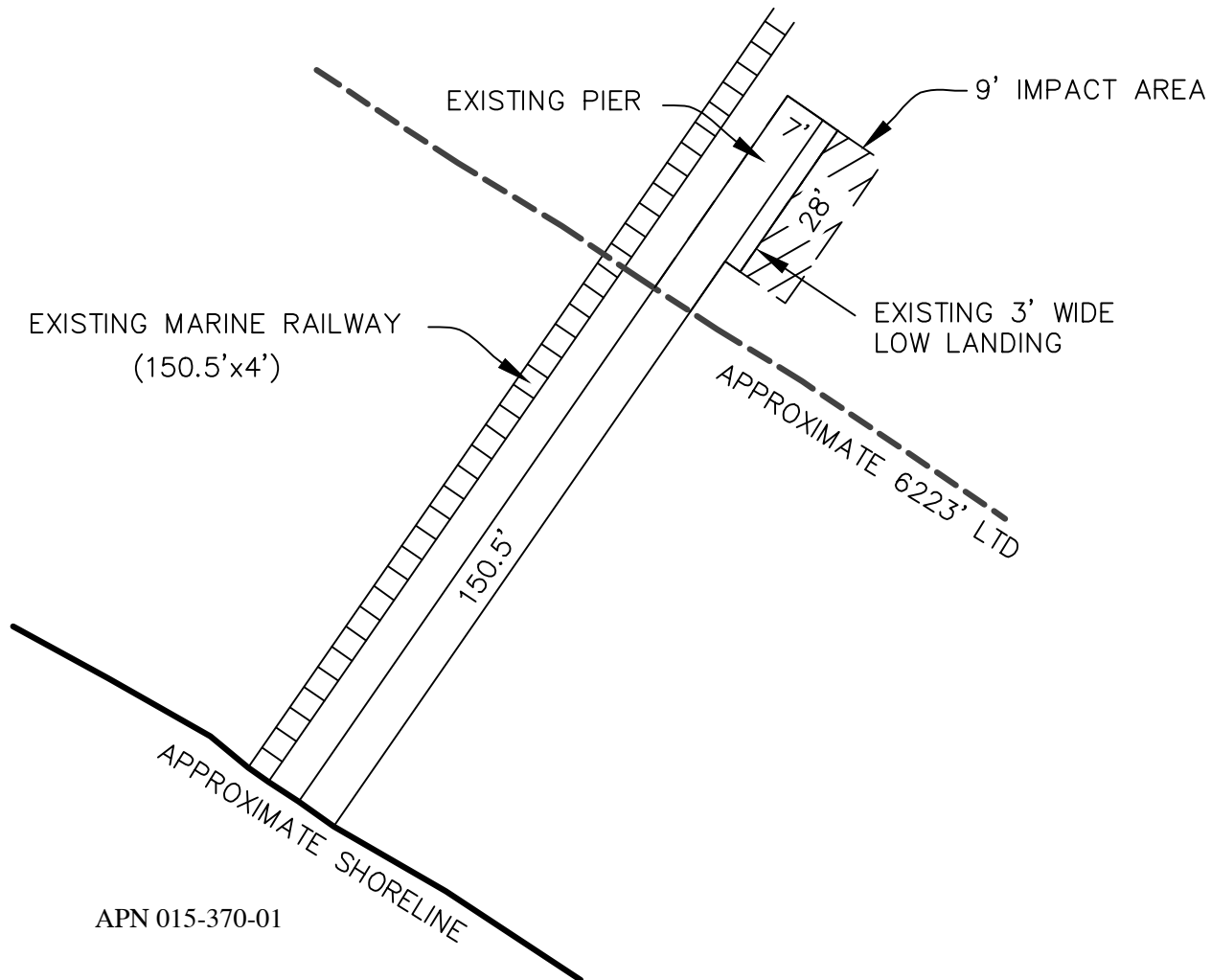
LAND DESCRIPTION PLAT
PRC 3655.1, D'ANDREA TRUST
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



7149 HIGHWAY 89, NEAR TAHOMA

NO SCALE

LOCATION

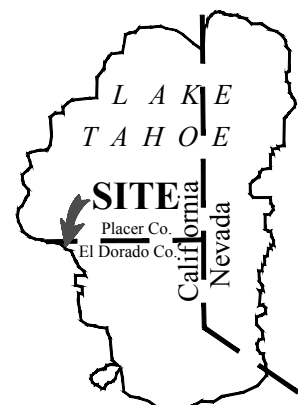


MAP SOURCE: USGS QUAD

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 3655.1
D'ANDREA TRUST
APN 015-370-01
GENERAL LEASE -
RECREATIONAL USE
EL DORADO COUNTY



DJF 1/5/2017