

**STAFF REPORT  
C18**

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10/19/17  
PRC 7857.1  
M. Schroeder

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

**LESSEE:**

Smalls Creek, LLC, a Nevada Limited Liability Company

**APPLICANT:**

Twin Pines, LLC, a Delaware Limited Liability Company

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 853 Stateline Avenue, city of South Lake Tahoe, El Dorado County.

*AUTHORIZED USE:*

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

*LEASE TERM:*

10 years, beginning October 19, 2017.

*CONSIDERATION:*

\$1,079 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.
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

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certification of a Final Environmental Impact Statement for the Lake 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 December 2, 2013, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, boat lift, and one mooring buoy to Smalls Creek, LLC, a Nevada Limited Liability Company ([Item C47, December 2, 2013](#)). That lease will expire on October 31, 2023.

On September 1, 2016, the upland was deeded to Twin Pines, LLC, a Delaware Limited Liability Company. The Applicant is applying for issuance of a new lease for the continued use and maintenance of the existing pier, boat lift, and one mooring buoy.

The Lessee paid annual rent through October 31, 2016. 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 November 1, 2016, through October 18, 2017, since the Lessee was no longer the upland owner at this time, and the Applicant has already agreed to be responsible for rent during this time.

Therefore, staff recommends waiving the rent, penalty, and interest due from Lessee under invoice numbers 40661 and 43127. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,039 for the period beginning November 1, 2016, through October 18, 2017, the day before the new lease becomes effective.

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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.

The subject facilities are privately owned and maintained. The pier, boat lift, and one mooring buoy are used for the docking and mooring of boats and 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 land (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The pier is built on pilings, meaning the public may navigate or walk next to and, at lower water levels, under the pier. The area around the existing pier is gently sloped with a sandy portion of the shore. 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 is 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.

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2. Acceptance of the quitclaim deed and waiver of rent, penalty, and interest are not projects 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.

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 the Public Trust needs and values at this location, at this time, or for

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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.

**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 November 1, 2016, through October 18, 2017, and void annual rent invoice numbers 40661 and 43127 issued to Smalls Creek, LLC, a Nevada Limited Liability Company.
2. Authorize acceptance of a quitclaim deed, effective October 18, 2017, of Lease No. PRC 7857.1, a General Lease – Recreational Use, issued to Smalls Creek, LLC, a Nevada Limited Liability Company.
3. Authorize acceptance of compensation from the Applicant in the amount of \$1,039 for unauthorized occupation of State lands for the period beginning November 1, 2016, through October 18, 2017.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant; beginning October 19, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier, boat lift, 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 \$1,079, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 7857.1**

**LAND DESCRIPTION**

Two (2) parcels of submerged lands, situate in the bed of Lake Tahoe, lying adjacent to fractional Section 27, Township 13 North, Range 18 East, MDM, as shown on the Official Township Plat, approved July 8<sup>th</sup>, 1875, County of El Dorado, State of California, and more particularly described as follows:

**PARCEL 1 – PIER**

All those lands underlying an existing pier, catwalk and boatlift adjacent to "Parcel 2" as described in Exhibit A of that Grant Deed recorded September 1<sup>st</sup>, 2016 in Document Number 20160041235 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

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

**PARCEL 2 – BUOY**

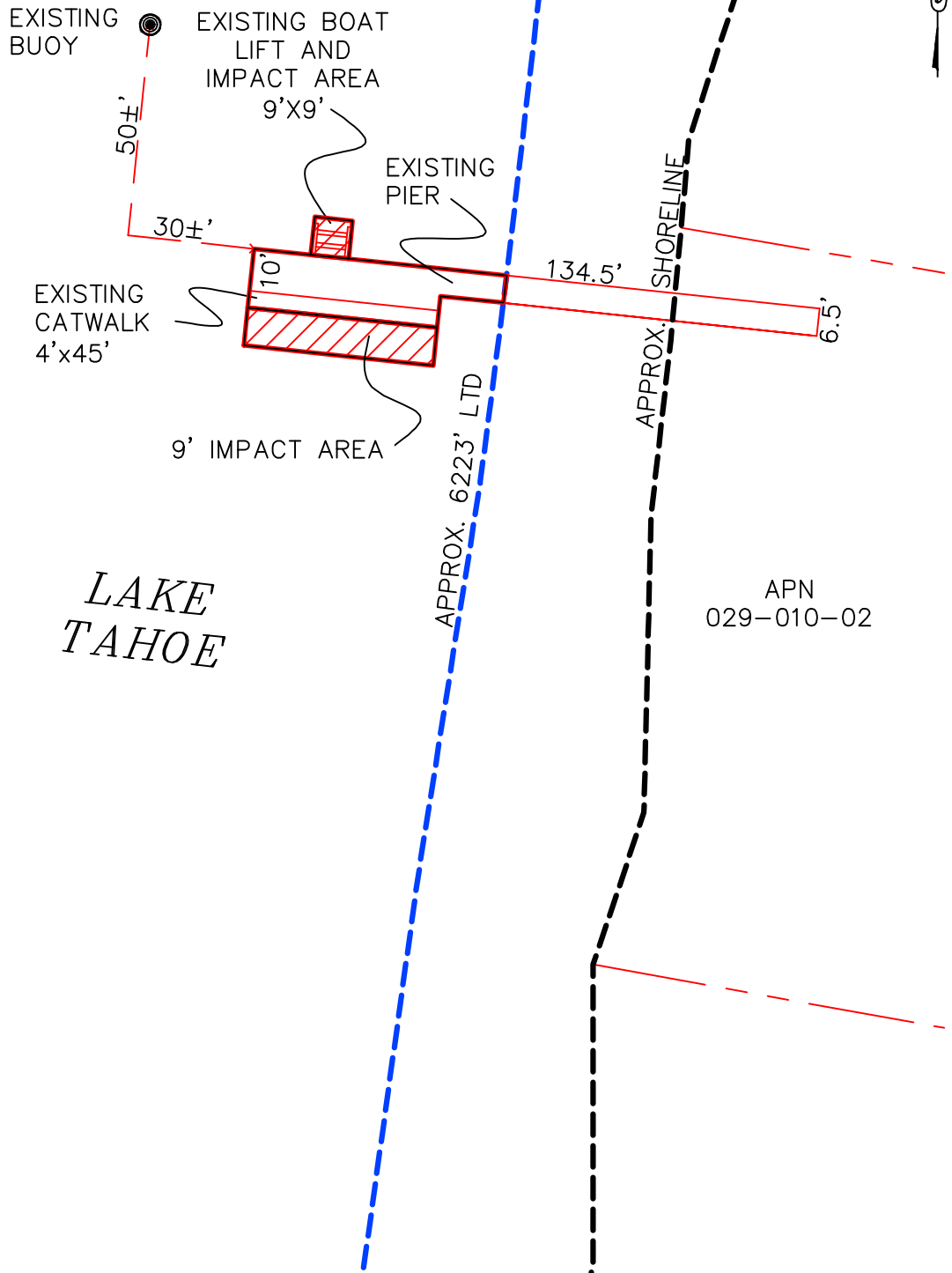
A circular parcel of land, being 50 feet in diameter, underlying an existing buoy, lying adjacent to "Parcel 2" as described in Exhibit A of that Grant Deed recorded September 1<sup>st</sup>, 2016 in Document Number 20160041235 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

**END OF DESCRIPTION**

PREPARED 2/27/17 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





## EXHIBIT A

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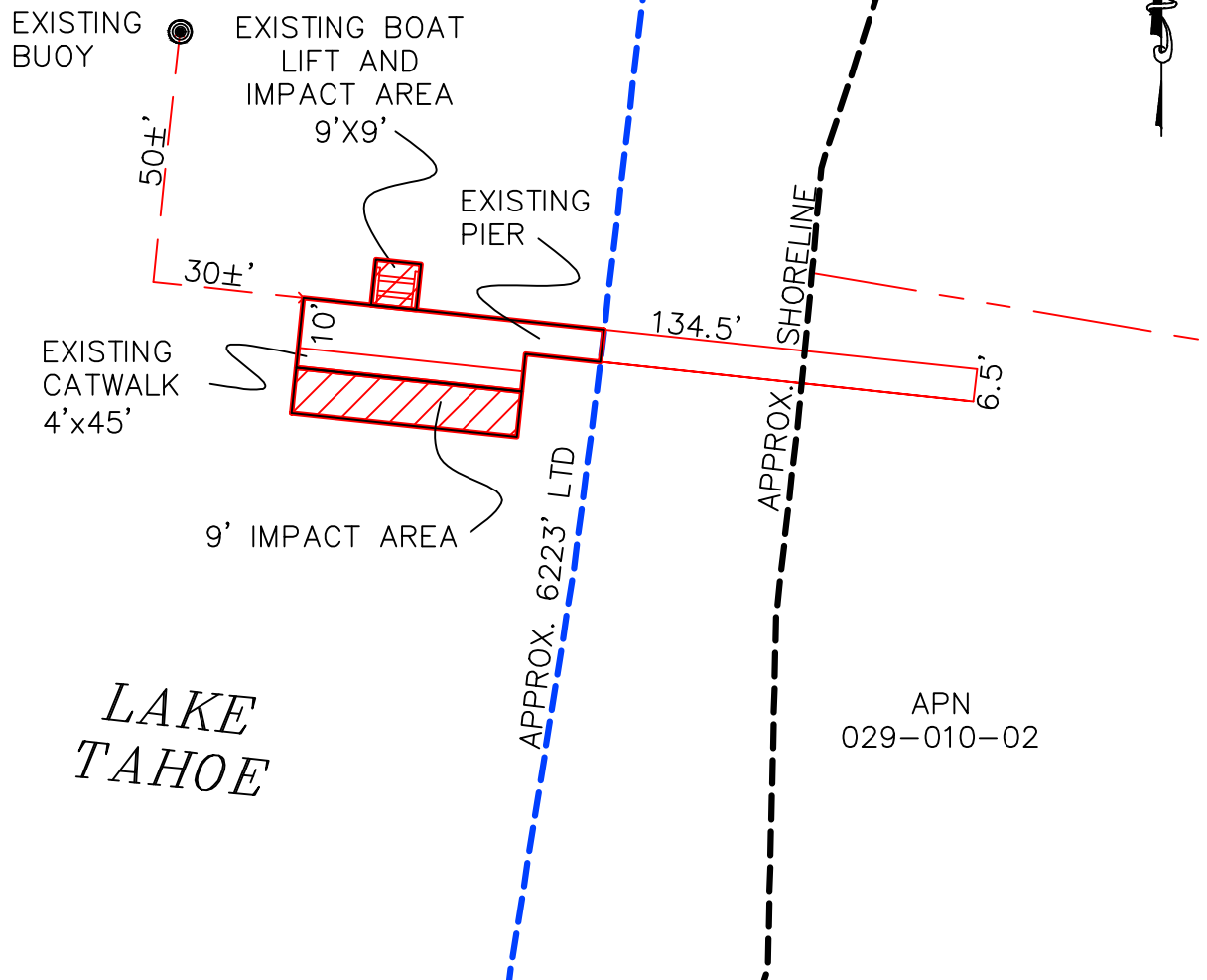
LAND DESCRIPTION PLAT  
PRC 7857.1, TWIN PINES, LLC  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

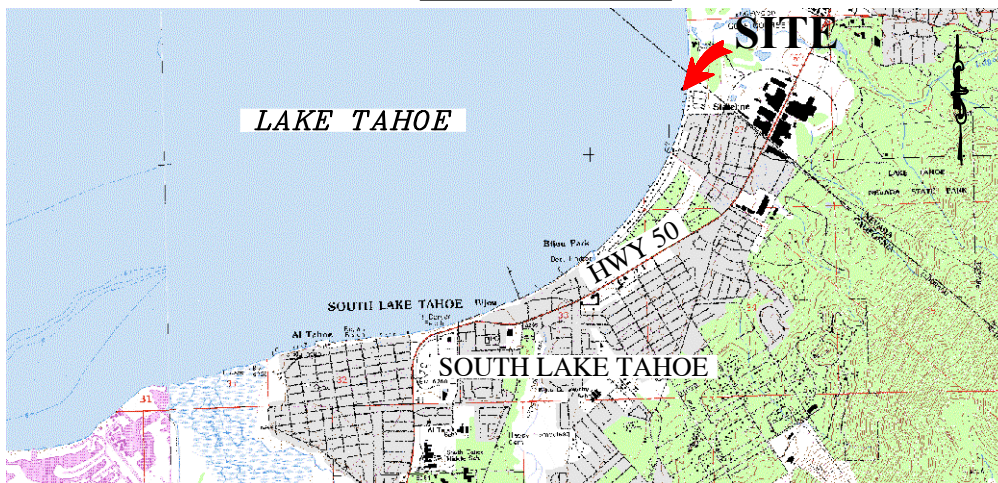
## SITE



853 Stateline Avenue, South Lake Tahoe

NO SCALE

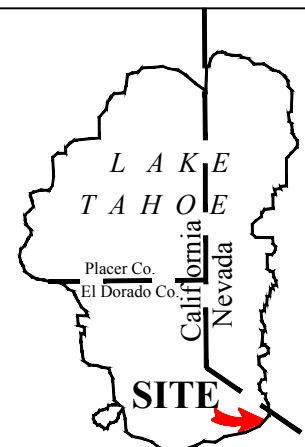
## LOCATION



MAP SOURCE: USGS QUAD

## **Exhibit B**

PRC 7857.1  
TWIN PINES, LLC  
APN 029-010-02  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY



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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.