

**STAFF REPORT
C09**

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11/29/17
PRC 4063.1
K. Connor

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Joe Massolo and Sons Trucking Company, Inc., a California Corporation

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8751 Rubicon Drive, near Rubicon Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse, and two mooring buoys.

LEASE TERM:

10 years beginning June 24, 2017.

CONSIDERATION:

\$2,058 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 within 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 buoys within 2 years after the 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

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authorization within the time limit, they may be required to remove the buoys.

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 August 22, 2008, the Commission authorized a General Lease – Recreational Use for a pier, boathouse, and two mooring buoys to Joe Massolo and Sons Trucking Company, Inc., a California Corporation ([Item C14, August 22, 2008](#)). That lease expired on June 23, 2017. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier, boat house, and two mooring buoys.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boathouse, and two mooring buoys 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 that 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 cobble and the occasional boulder. The two buoys are located directly lakeward of the upland parcels and occupy 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

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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 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. 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

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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, and for the foreseeable term of the lease; 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 June 24, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse, and two mooring buoys, 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 \$2,058, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4063.1

LAND DESCRIPTION

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 32, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved October 4, 1907, County of El Dorado, State of California and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, walkway, boathouse and two catwalks lying adjacent to that parcel as described in that Exhibit “A” of that Grant Deed recorded July 18, 1977 as Document Number 32009 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

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

PARCEL 2 & 3– BUOYS (2)

Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared November 29, 2016 by The California State Lands Commission Boundary Unit.



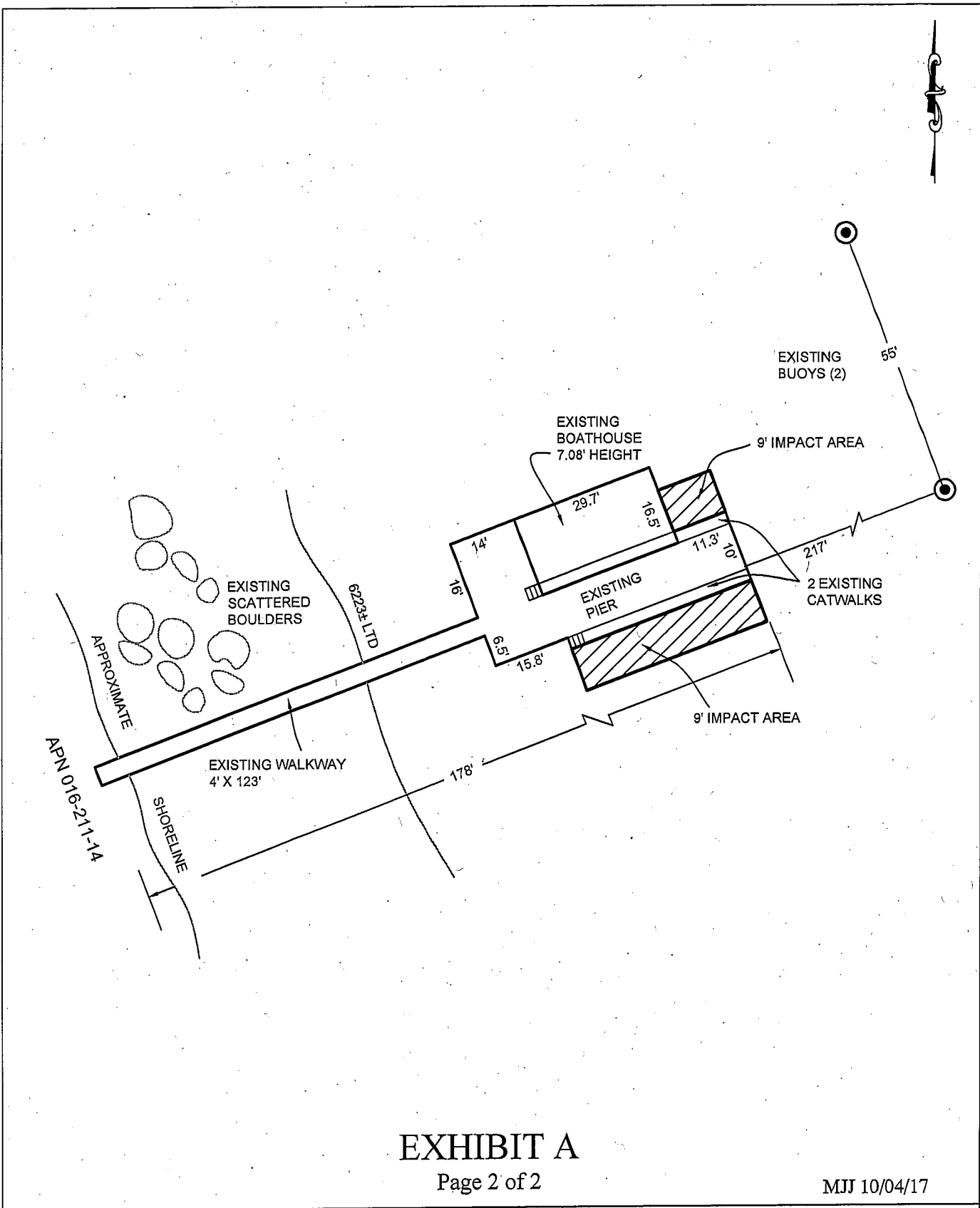


EXHIBIT A

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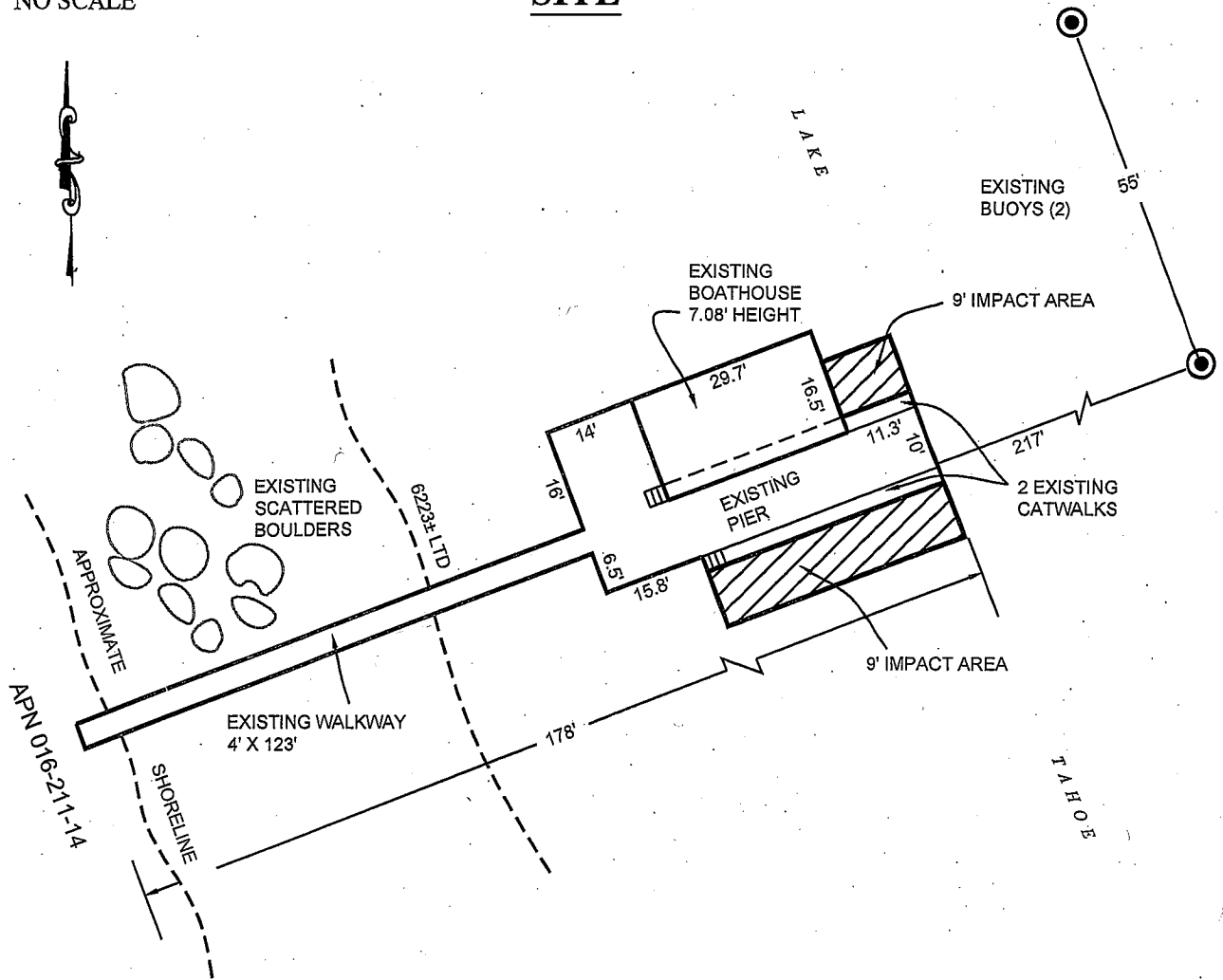
LAND DESCRIPTION PLAT
 PRC 4063.1, MASSOLO & SONS TRUCKING CO. INC.
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



8751 RUBICON DRIVE, NEAR RUBICON BAY

NO SCALE

LOCATION

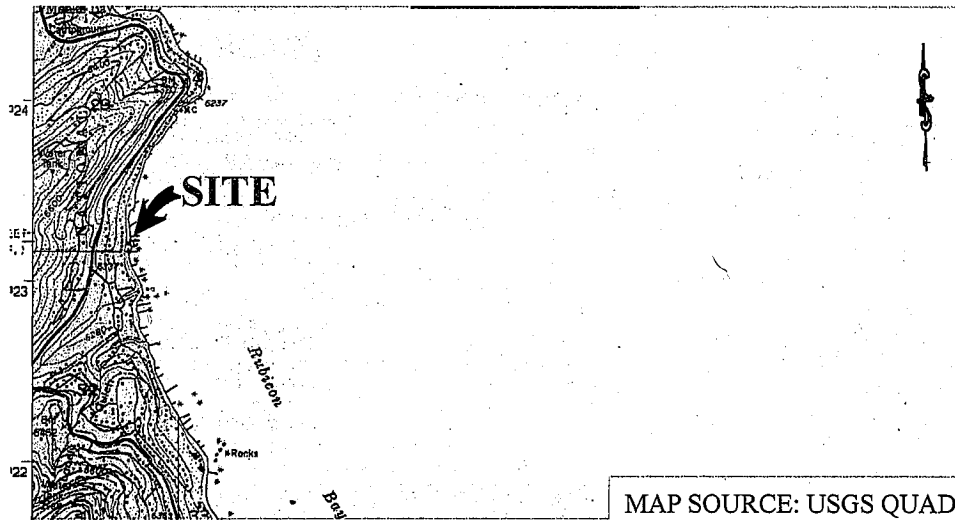
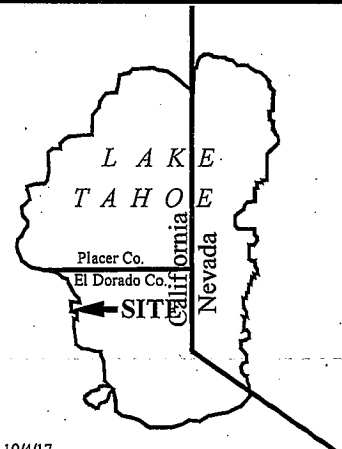


Exhibit B

PRC 4063.1
 APN 016-211-141
 MASSOLO & SONS
 GENERAL LEASE
 RECREATIONAL USE
 EL DORADO COUNTY



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.