

**STAFF REPORT
C09**

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12/03/18
PRC 5561.1
M.J. Columbus

**ACCEPTANCE OF A LEASE QUITCLAIM DEED AND ISSUANCE OF
A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Helio A. Fialho and Therese S. Fialho, Trustees of the Fialho Family Trust; and
Brian J. Mettler

APPLICANT:

Helio A. Fialho and Therese S. Fialho, Trustees of the Fialho Family Trust dated
July 3, 2002; and Brian J. Mettler

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 1600 and 1620 North Lake
Boulevard, near Tahoe City, Placer County.

AUTHORIZED USE:

Modification of an existing joint-use pier with expansion and two
adjustable catwalks; installation of two boat lifts; removal of one existing
mooring buoy; and continued use and maintenance of three existing
mooring buoys.

LEASE TERM:

10 years, beginning December 3, 2018.

CONSIDERATION:

\$3,361 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair public uses for access, navigation, fishing and lake-related recreational uses.

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- 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 authorization within the time limit, they may be required to remove the buoys.
- 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.
- The lease provides that the public will be allowed to pass and re-pass underneath the pier to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum.

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 April 26, 2013, the Commission authorized a General Lease – Recreational Use for an existing joint-use pier, boat lift, and four existing mooring buoys to Helio A. Fialho and Therese S. Fialho, Trustees of the Fialho Family Trust; and Brian J. Mettler ([Item C57, April 26, 2013](#)). On August 15, 2014, the Commission authorized an amendment of the lease to revise the annual rent and replace Exhibit A, Land Description and Exhibit B, Site and Location Map ([Item C07, August 15, 2014](#)). That lease expires on August 15, 2022. On June 30, 2016, the upland Assessor's Parcel Number 094-160-010 was deeded to Helio A. Fialho and Therese S. Fialho, Trustees of the Fialho Family Trust dated July 3, 2002.

The Applicant is applying for a General Lease – Recreational Use for the modification of an existing pier with expansion and two adjustable catwalks; installation of two boat lifts; removal of one existing mooring buoy; and continued use and maintenance of three existing mooring buoys. ~~The Applicant has executed a quitclaim deed releasing their interest in the General Lease – Recreational Use.~~ The Applicant has requested issuance of a new lease and has executed a quitclaim deed

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releasing their interest in the current lease. Staff recommends that the Commission accept the lease quitclaim deed and approve the new lease effective on December 3, 2018. Rent has been paid through August 15, 2019, and will be prorated effective December 3, 2018.

The proposed pier modification includes removal of the existing pierhead including a steel stairway and fender piles and constructing a new 10-foot-wide pierhead, construction of two adjustable catwalks, and installation of two boat lifts. The Applicant also proposes to remove one mooring buoy with all anchor and tackle in exchange for installation of the second boat lift. The length of the current pier will be extended from 275 feet to 365 feet. The proposed reconstruction will require the removal of 7 steel piles and installation of 15 steel piles along with four boat lift support steel piles.

The proposed project will be performed on-site with access to the site from the lake. The existing pier and structures will be dismantled and removed by manual labor utilizing an amphibious vehicle with a crane and hoist. The wood components of the pier and structures will be removed and disposed of at an approved site. The pile driving will be performed by amphibious vehicle with a pile driver and/or crane, portable equipment, and manual labor. Placement of girders and decking will be performed by manual labor and portable equipment. Turbidity curtains and caissons will be put in place to prevent the discharge of earthen materials and other pollutants to the waters of Lake Tahoe. A floating fine mesh, tarps and/or small boats will be placed underneath the pier structure, and above water, to prevent any equipment, tools, or other materials to discharge into the lake or onto the shoreline during construction. No construction materials will be stored on the shoreline.

Construction will take place after all required approvals have been obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

The subject 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 land (Pub. Resources Code, § 6503.5).

The Applicant proposes to modify an existing pier. The construction of the proposed pier design will allow public access laterally across the

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shoreline. The public may navigate or walk next to and under the pier within the Public Trust easement. With the proposed design, there will be clearance to pass under the pier within the easement. In exchange for approval to install the boat lift, the lessee will remove one existing mooring buoy. The remaining mooring buoys are located directly lakeward of the upland property 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 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 does not substantially interfere with the common law Public Trust Doctrine at this location, at this time, and for the foreseeable term of the lease; 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.
2. On October 24, 2018, the Tahoe Regional Planning Agency's Governing Board certified a new Final Environmental Impact Report and adopted Lake Tahoe Shorezone Ordinance Amendments. These Amendments are anticipated to take effect on December 23, 2018.
3. 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.

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

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4. **Three Mooring Buoys:** Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of the 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.

5. **Pier Modification:** On September 28, 2015, the Lahontan Regional Water Quality Control Board (RWQCB), determined that the project, as described above, was categorically exempt from CEQA pursuant to California Code of Regulations, title 14, section 15301, example (e)(1), under Class 1, Existing Facilities. A Notice of Exemption was filed to the State Clearinghouse on September 28, 2015 (SCH No. 2015098475).

Staff concurs with Lahontan RWQCB's determination and recommends that the Commission also find that this activity is exempt under the exemption listed above.

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

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Three Mooring Buoys: 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).

Pier Modification: 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 14, section 15301, example (e)(1).

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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 Public Trust needs and values at this location 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.

AUTHORIZATION:

1. Authorize acceptance of a quitclaim deed, effective December 2, 2018, for Lease No. PRC 5561.1, a General Lease – Recreational Use, issued to Helio A. Fialho and Therese S. Fialho, Trustees of the Fialho Family Trust; and Brian J. Mettler.

2. Authorize issuance of a General Lease – Recreational Use to the Applicant; beginning December 3, 2018, for a term of 10 years, for the modification of an existing joint-use pier with expansion and two adjustable catwalks; installation of two boat lifts; removal of one existing mooring buoy; and continued use and maintenance of three existing 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 \$3,361, with an annual Consumer Price Index adjustment; prorated pursuant to the rent paid through August 15, 2019; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5561.1

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 5, Township 15 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and proposed pier extension with two catwalks and two boat lifts lying adjacent to those parcels described in Grant Deed recorded September 28, 2006 as Document Number 2006-0103344 and Grant Deed recorded August 16, 2012 as Document Number 2012-0074778-00 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.

PARCELS 2 through 4 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to those parcels described in Grant Deed recorded September 28, 2006 as Document Number 2006-0103344 and Grant Deed recorded August 16, 2012 as Document Number 2012-0074778-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on an existing pier, together with any and all appurtenances pertaining thereto, at the date of this description. Said existing pier and appurtenances are to be modified and a new proposed extension to the pier and appurtenances are to be built per lease Applicant's provided design plans. This description is to be updated once final as-built plans are submitted.

Prepared 08/29/2018 by the California
State Lands Commission Boundary Unit.



NO SCALE

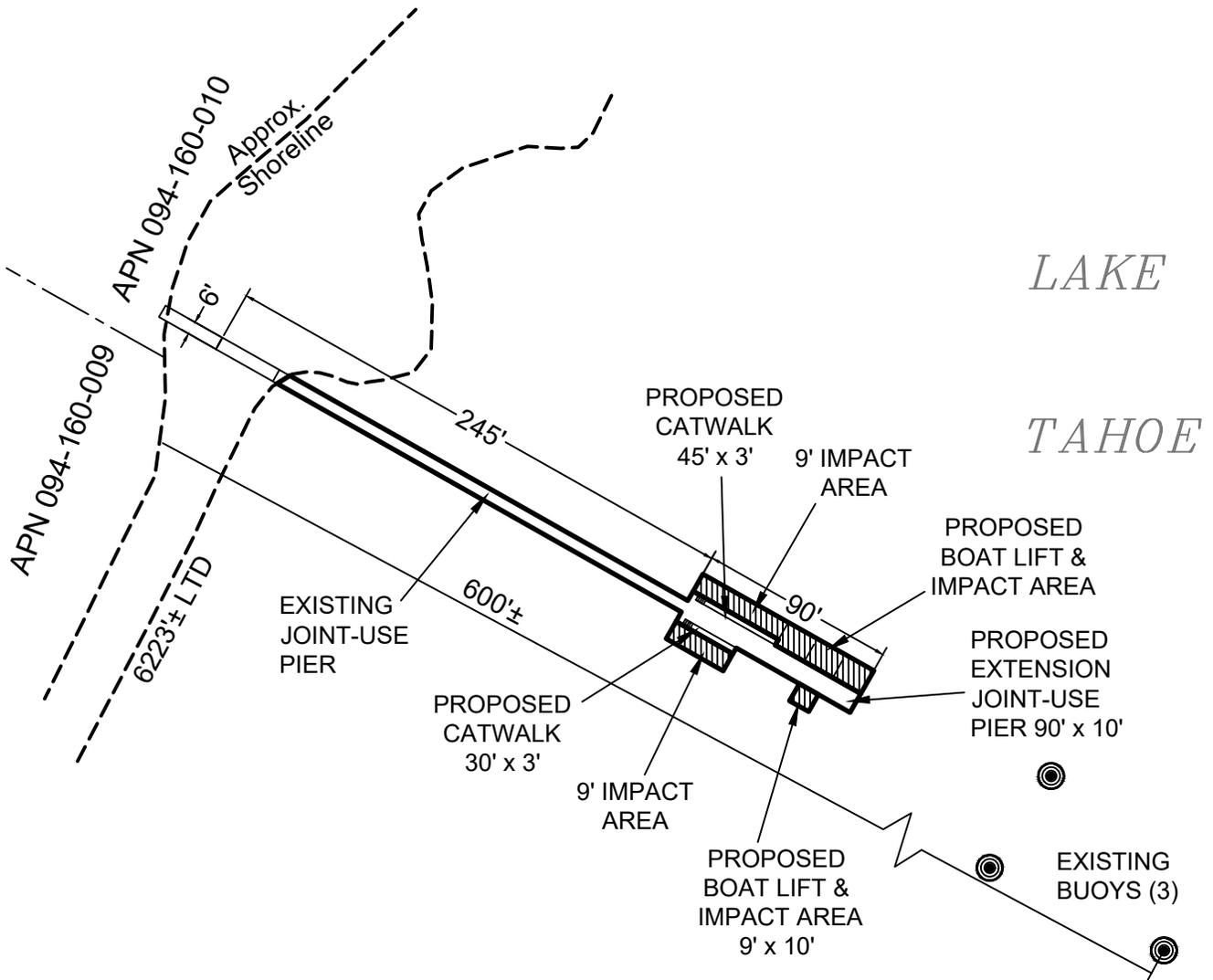


EXHIBIT A

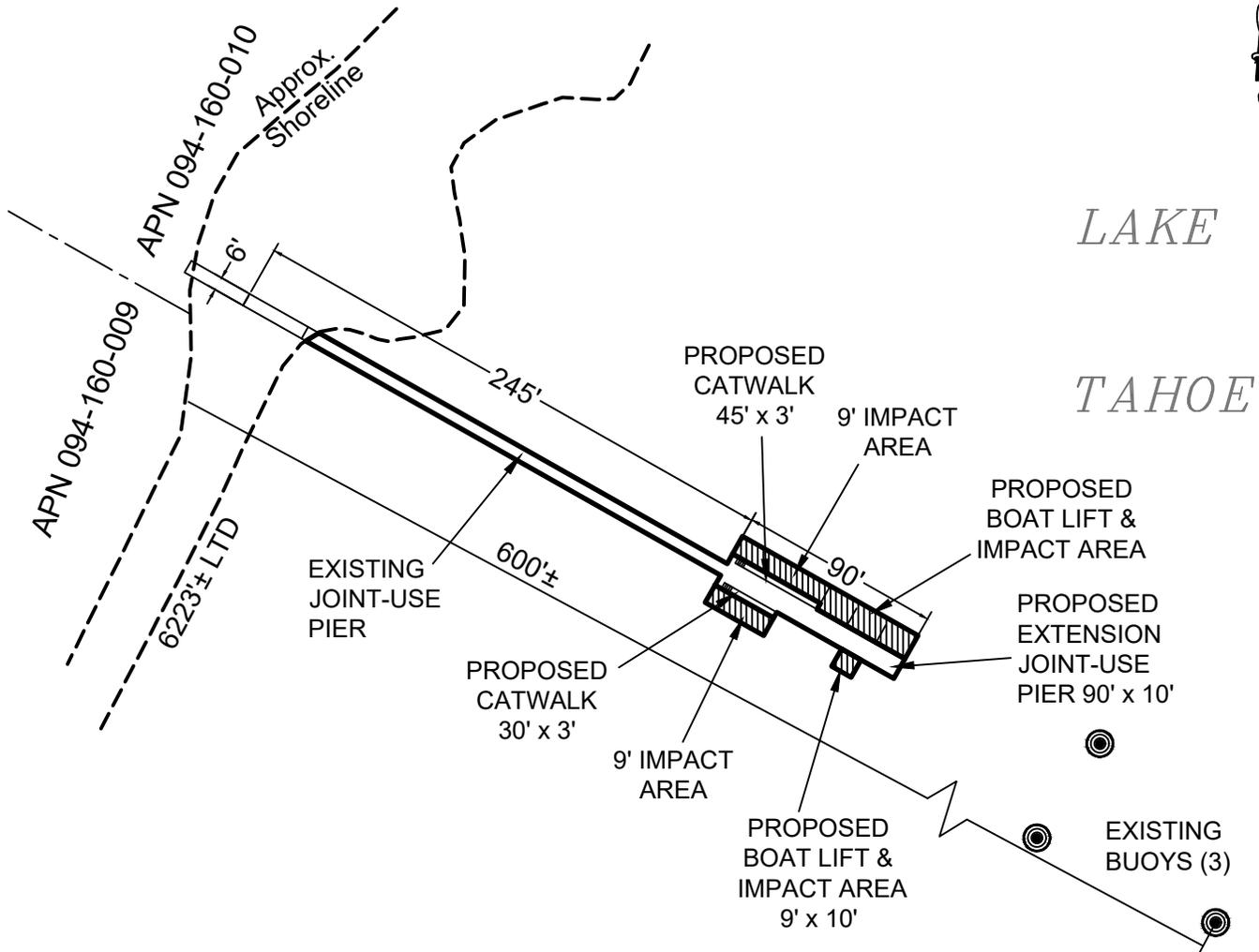
LAND DESCRIPTION PLAT
 PRC 5561.1, FIALHO/METTLER
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

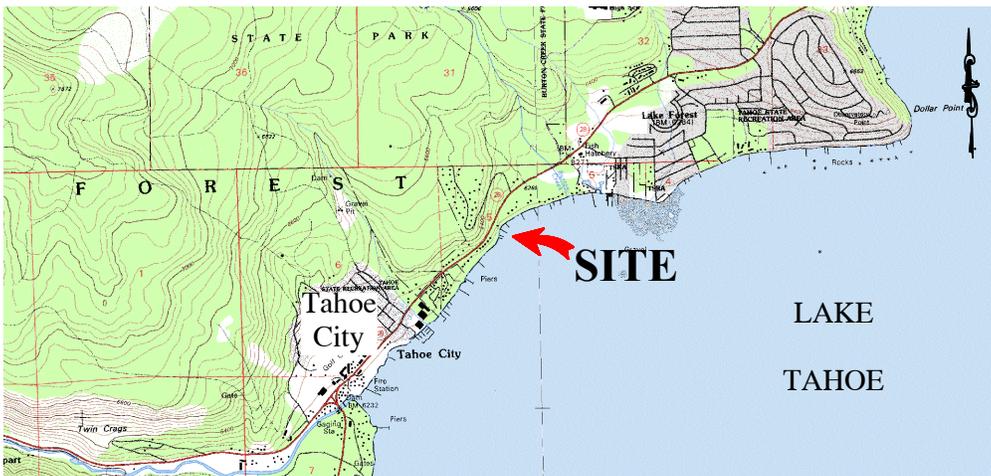
SITE



1600 & 1620 NORTH LAKE BLVD., TAHOE CITY

NO SCALE

LOCATION



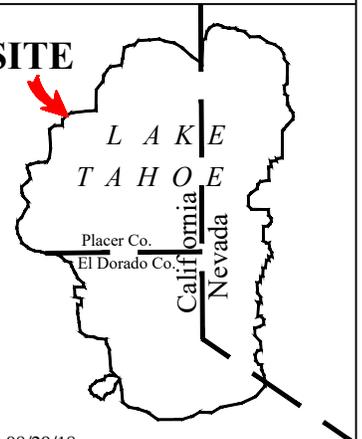
MAP SOURCE: USGS QUAD

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 5561.1
 FIALHO/METTLER
 APN 094-160-009; -010
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY

SITE



TS 08/29/18