

STAFF REPORT

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08/23/19

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PRC 6819.1

M.J. Columbus

**RESCISSION OF PRIOR APPROVAL TO AMEND THE LEASE AND
CONSIDER AMENDMENT OF LEASE**

LESSEE:

Sienna Partners, LLC; Lee J. Schweichler, Trustee of the Ann W. Schweichler Qualified Personal Residence Trust, dated September 10, 2009; and Ann W. Schweichler, Trustee of the Lee J. Schweichler Qualified Personal Residence Trust, dated September 10, 2009

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 8375 and 8381 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of four existing mooring buoys, and proposed removal, relocation, and reconstruction of an existing pier with a ramp, boat lift, and catwalk that will become a joint-use structure for both properties, and an existing sundeck with safety railings.

LEASE TERM:

10 years, beginning October 19, 2017.

CONSIDERATION:

\$2,778 per year, with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

Amend the lease to:

1. Authorize the proposed reconstruction to extend the length of the pier by 16 feet.
2. Revise annual rent from \$2,778 per year with an annual Consumer Price Index adjustment to ~~\$3,043~~ \$3,070 per year, with an annual Consumer Price Index adjustment, effective October 19, 2019.
3. Amend the lease to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A,

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Land Description, and Exhibit B, Site and Location Map (for reference purposes only).

All other terms and conditions of the lease shall remain in effect without amendment.

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 the State's Best Interests Analysis:

On October 19, 2017, the Commission authorized a 10-year General Lease – Recreational Use to Sienna Partners, LLC; Lee J. Schweichler, Trustee of the Ann W. Schweichler Qualified Personal Residence Trust, dated September 10, 2009; and Ann W. Schweichler, Trustee of the Lee J. Schweichler Qualified Personal Residence Trust, dated September 10, 2009. That lease authorized the continued use and maintenance of an existing pier with a ramp, boat lift, and catwalk and four existing mooring buoys previously authorized by the Commission and an existing sundeck with safety railings not previously authorized by the Commission. The Lessee proposed to remove, relocate, and reconstruct the existing pier with a ramp, boat lift, and catwalk and convert the structures to joint use between Assessor Parcel Numbers 016-081-45 and 016-081-46. ([Staff Report C03, October 19, 2017](#)). That lease will expire on October 18, 2027. On December 3, 2018, the Commission authorized an Amendment of Lease PRC 6819.1 to extend the joint-use pier by 6 feet from the existing landward end of the pier towards the sundeck ([Staff Report C24, December 3, 2018](#)). After the Commission authorized the lease amendment, the Lessee informed staff that the pier will be extended by 16 feet rather than 6 feet. The prior lease amendment was not fully executed. The Lessee is now seeking to rescind the previous approval to amend the lease in favor of a new approval authorizing the proposed revised amendment.

The proposed construction will be performed on-site from the lake with a rubber-tired amphibious vehicle. Most of the construction will be above the water. No additional supports or piles will be required for the 16-foot extension of the pier. No materials or supplies will be stored on the shoreline.

The proposed construction will take place after all required approvals have been obtained. The lessee will follow all construction methods and

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timeframes provided by the Tahoe Regional Planning Agency, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

The pier, catwalk, buoys, boat lift and sundeck were all previously authorized. Accordingly, the Public Trust impacts being analyzed are those attributable to the modification of adding extra length to the pier. The pier is 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 lease includes certain provisions protecting the public use of the proposed lease area, including a lease term limited to 10 years, a non-exclusive use provision, and a reservation to the people of the State of an easement for access to and across the lease area. The Lessee agreed to allow public passage around the landward end of the sundeck to provide lateral public access. The proposed facilities will not significantly alter the land, alienate the State's fee simple interest, or permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Therefore, staff believes that the proposed modification of the prior authorization, extending the pier by 16 feet, will not substantially interfere with Public Trust needs, at this location, at this time, and for the foreseeable term of the lease.

The 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 amendment is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application to amend the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

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2. 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.
3. Staff recommends that the Commission find that the amendment of the lease is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 2, replacement or reconstruction of existing structures; California Code of Regulations, title 14, section 15302.

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

4. Rescission of a lease amendment approval is not a project as defined by 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).

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
California Department of Fish and Wildlife
Lahontan Regional Water Quality Control Board
Tahoe Regional Planning Agency

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the amendment of lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment 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 the rescission of the approval to amend Lease No. PRC 6819.1, granted by the Commission on December 3, 2018.
2. Authorize the amendment of Lease No. PRC 6819.1, a General Lease – Recreational Use, effective August 23, 2019, to approve the proposed reconstruction to lengthen the pier by 16 feet; replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only) to reflect the newly approved pier configuration; and modify the rent to ~~\$3,043~~ \$3,070 per year, with an annual Consumer Price Index adjustment, effective October 19, 2019; all other terms and conditions of the lease shall remain in effect without amendment.

EXHIBIT A

PRC 6819.1

LAND DESCRIPTION

Five parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 29, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying a proposed joint-use deck, ramp, pier, six pilings boat lift, and a catwalk with ramp lying adjacent to those parcels as described in that as Grant Deed recorded July 30 2015 as Document 2015- 0035758-00 and those parcels as described in Exhibit “A” in that Grant Deed recorded October 27, 2009 as Document 2009-0053647-00 of 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, 4, 5 – 4 BUOYS

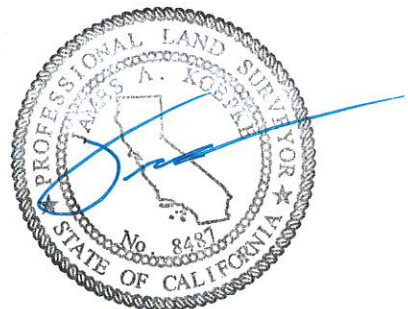
Four existing circular parcels of land, being 50 feet in diameter, underlying four existing buoys, lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

This description is based on Applicant provided design plans by Tahoe Basin Land Surveying dated March 8, 2019, for a proposed pier expansion and all appurtenances pertaining thereto, to be built at a later date within the lease time frame. This description is to be updated once final as-built plans are submitted.

END OF DESCRIPTION

Prepared July 18, 2019 by
The California State Lands Commission Boundary Unit.



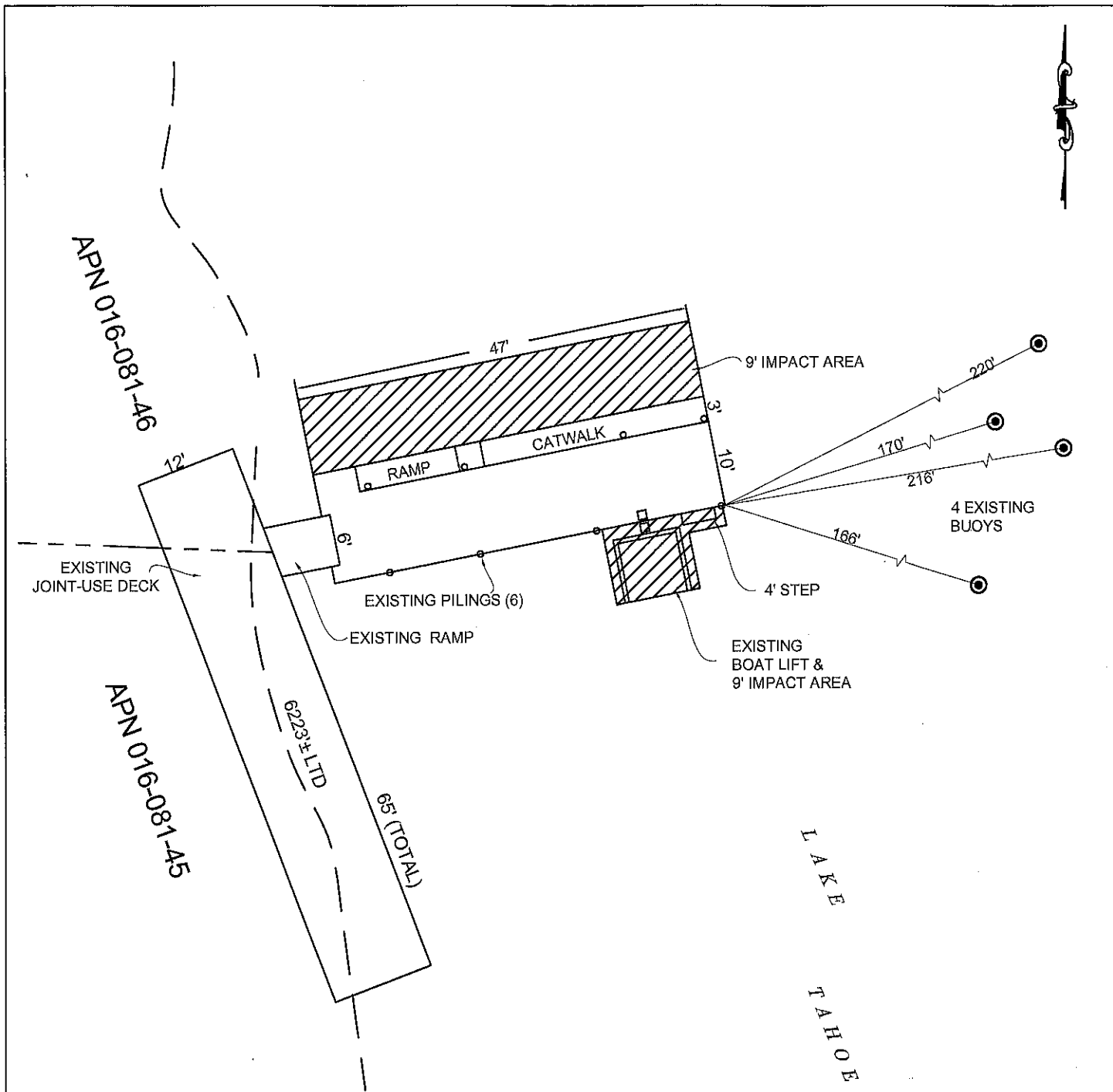


EXHIBIT A

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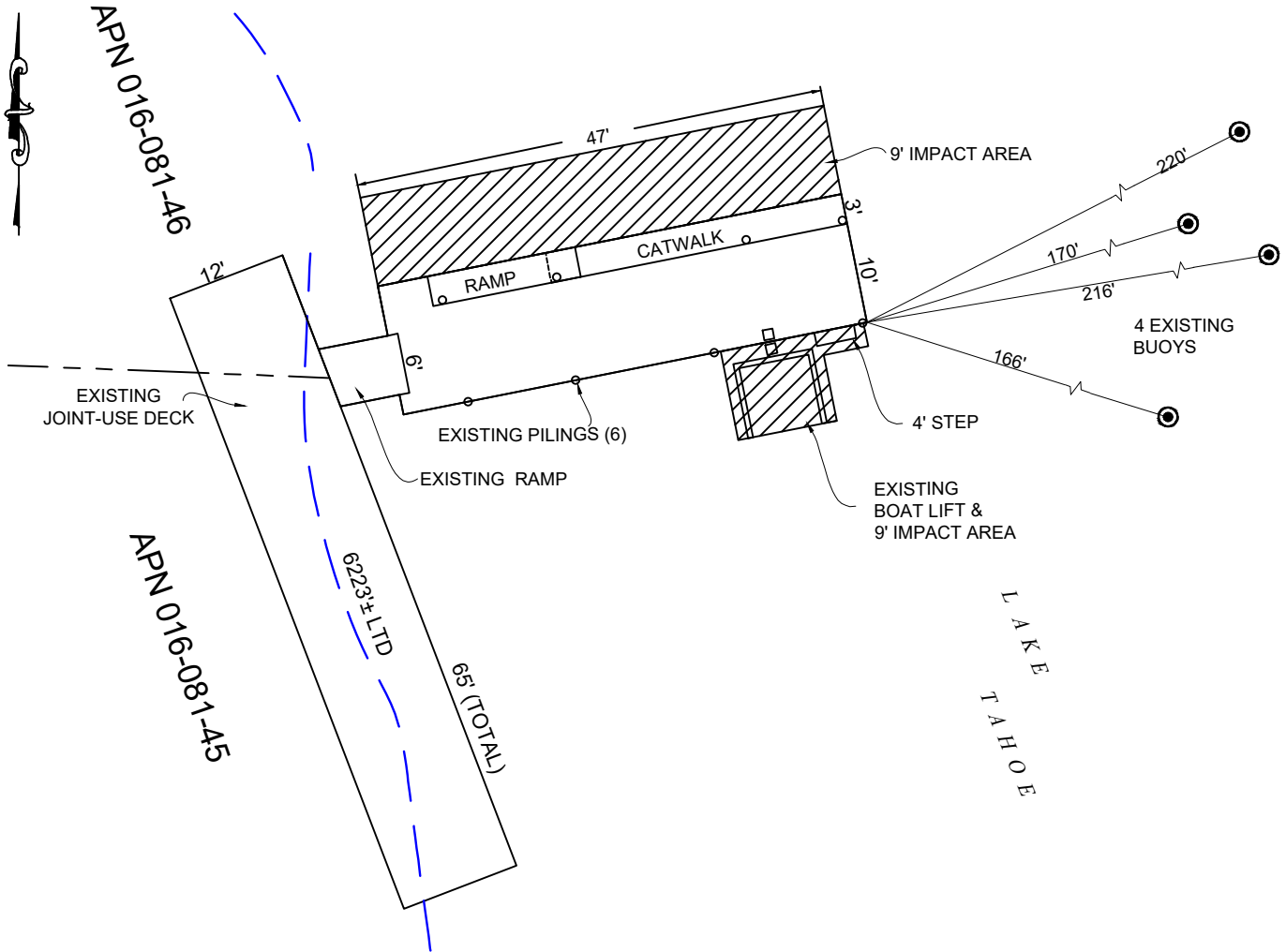
LAND DESCRIPTION PLAT
 PRC 6819.1, SIENNA PARTNERS, LLC. &
 SCHWEICHLER, TRUSTEES
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



8375 & 8381 MEEKS BAY AVENUE, NEAR MEEKS BAY

NO SCALE

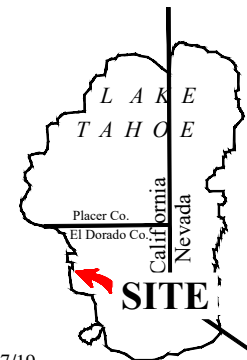
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6819.1
 SCHWEICHER, TRUSTEES &
 SIENNA PARTNERS, LLC
 APN 016-081-45 &
 APN 016-081-46
 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.