

**STAFF REPORT
C11**

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12/03/18
PRC 4184.1
M. Schroeder

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Ronald S. Files and Jennifer A. Files, Trustees of the Files Family Living Trust dated January 13, 1992; Douglas J. Valentine and Kirsten A. Valentine as Trustees of the Valentine Family Trust dated November 1, 2006; William D. Schmicker and Nathalie E. Schmicker, Trustees of the Schmicker Revocable Trust U/T/A dated October 17, 1994; Donn A. Moll and Gail L. Moll, Trustees of the Moll Living Trust dated 5/7/1998; Gary N. Coburn and Carol S. Coburn, Trustee of the Coburn Family Trust dated August 25, 2005; Ronald S. Files and Jennifer A. Files, Trustees of the Files Living Trust, dated January 13, 1992 as restated March 10, 2009; and William D. Schmicker and Nathalie E. Schmicker, Trustees of the Schmicker Revocable Trust U/R/T/A dated May 16, 2008.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 890 West Lake Boulevard, Tahoe City, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat lift, 10 remnant pier pilings, and two mooring buoys.

LEASE TERM:

10 years, beginning December 3, 2018.

CONSIDERATION:

\$1,540 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 the public uses of access, navigation, fishing and lake related recreational uses.

STAFF REPORT NO. C11 (CONT'D)

- 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.
- Lessor reserves the right to reevaluate the potential impacts of the 10 remnant pilings to navigation or the public if conditions at the site change or additional information becomes available.

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 November 21, 2006, the Commission authorized a 10-year Recreational Pier Lease for an existing pier, boat lift, 10 remnant pier pilings, and two mooring buoys to Ronald S. Files and Jennifer A. Files, Trustees of the Files Family Living Trust dated January 13, 1992; Gary Coburn and Carol Coburn; Douglas T. Valentine and Kirsten A. Valentine; William D. Schmicker and Nathalie E. Schmicker; Donn A. Moll and Gail L. Moll, Trustees of the Moll Living Trust dated May 7, 1998; Ronald U. Neveu and Diane E. Neveu, Trustees of the Neveu Family Trust dated March 5, 1998; Stephen W. Oshinsky and Carolyn S. Oshinsky; Max Lettween, Trustee and Carol Bookey Lettween, Trustee of the Lettween Living Trust dated March 29, 1976; Kenneth G. Sletten and Phyllis S. Sletten, Trustees under the Kenneth G. and Phyllis S. Sletten Trust Agreement dated January 10, 1996 ([Item C01, November 21, 2006](#)). That lease expired on September 30, 2016. Since issuance of the lease, there have been several transfers of interest in the property. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of an existing pier, boat lift, 10 remnant pier pilings, and two mooring buoys.

STAFF REPORT NO. C11 (CONT'D)

The Applicant has agreed to be responsible for rent from the time of the lease expiration. Therefore, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$3,346 for the period beginning October 1, 2016, through December 2, 2018, the day before the proposed new lease would become effective.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boat lift, 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 10 remnant pier pilings are left over from an older pier that staff believes was dismantled in the early 1980s. The pilings were cut off at the mudline rather than completely removed. Structural remnants are generally not favored. However, such structures are occasionally permitted if they do not pose a threat to public health and safety, their removal may cause significant environmental disturbance, or they do not significantly interfere with Public Trust activities. Based on available information, the remnants do not pose a hazard to navigation or the public. However, staff reserves the right to reevaluate potential impacts to navigation or the public if conditions at the site change or additional information becomes available.

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 relatively flat with sandy surroundings.

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 buoys have existed for many years at this location. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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. Based on

STAFF REPORT NO. C11 (CONT'D)

the foregoing, staff believes that the subject facilities will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

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. 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. 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.

EXHIBITS:

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

STAFF REPORT NO. **C11** (CONT'D)

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.

AUTHORIZATION:

1. Authorize acceptance of compensation in the amount of \$3,346 for unauthorized occupation of State lands for the period beginning October 1, 2016, through December 2, 2018, from the Applicant.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 3, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier, boat lift, 10 remnant pier pilings, 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 \$1,540, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4184.1

LAND DESCRIPTION

Four (4) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 18, Township 15 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 (Pier)

All those lands underlying an existing pier with catwalk, and boat lift lying adjacent to that parcel described in Exhibit "A" of Trust Transfer Deed recorded August 19, 2014 as Document Number 2014-0056999-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

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

PARCEL 2 (Remnant Pilings)

All those lands underlying ten remnant pier pilings lying adjacent to that parcel described in Exhibit "A".

TOGETHER WITH any applicable Impact Area(s).

PARCEL 3 & 4 (BOUYS)

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to that parcel described in Exhibit "A".

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/02/2018 by the California
State Lands Commission Boundary Unit.



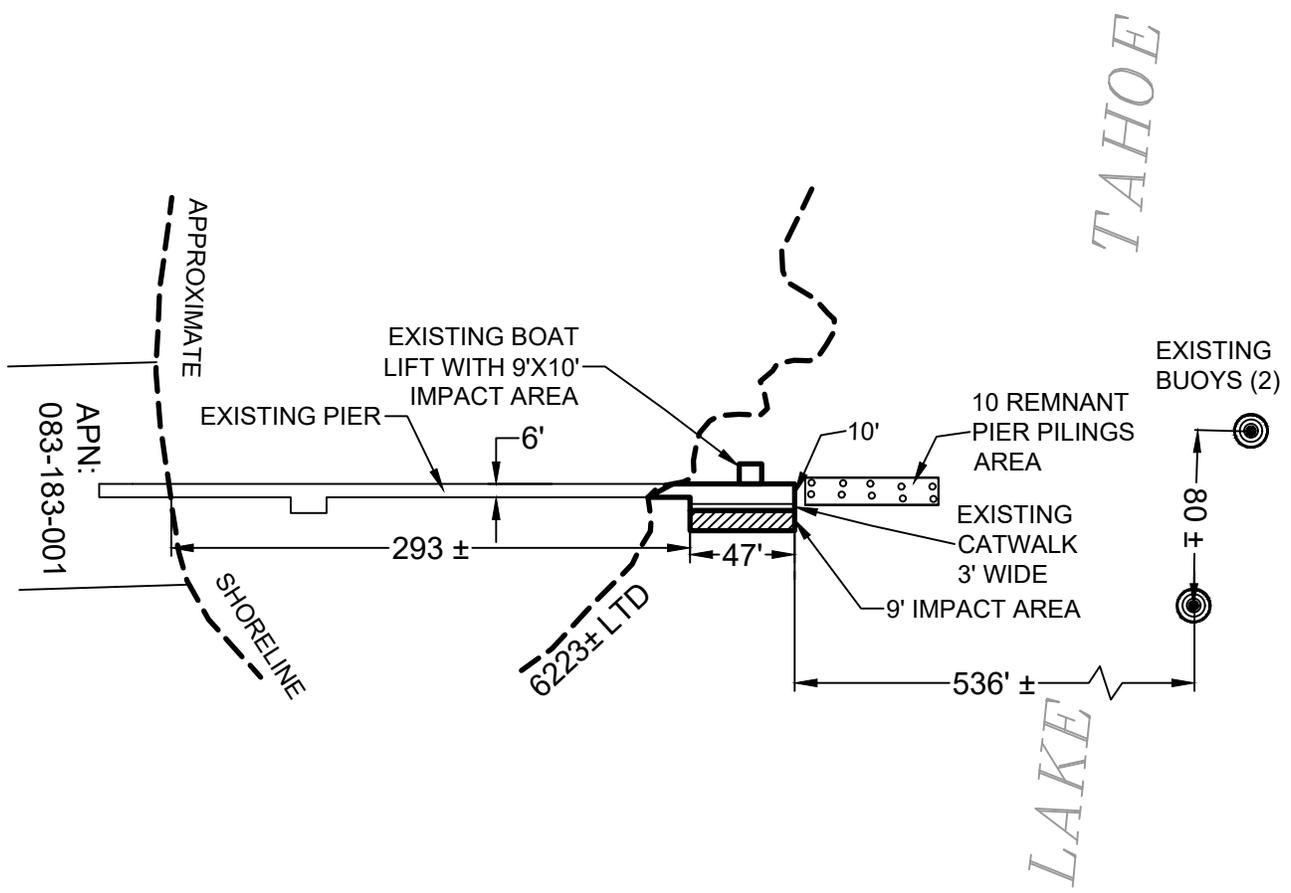
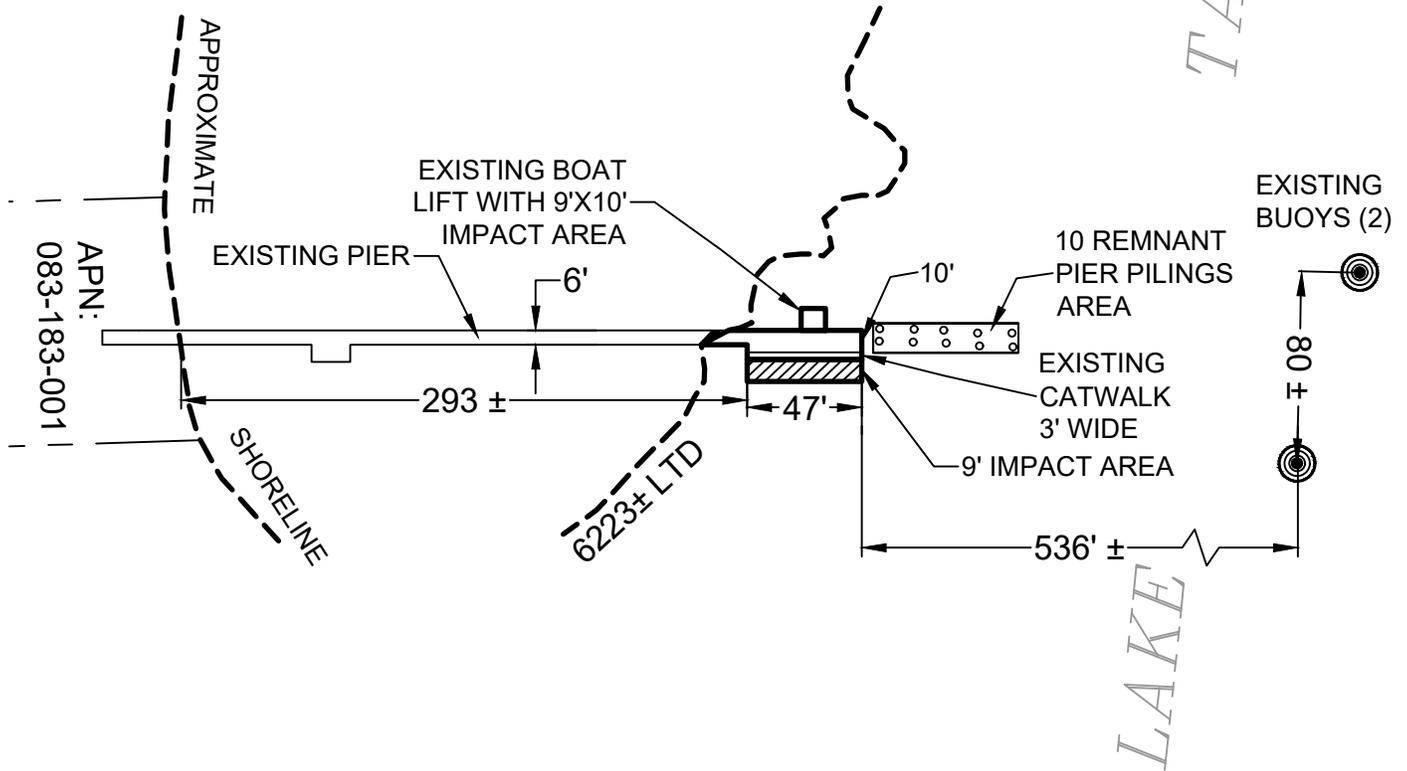


EXHIBIT A



NO SCALE

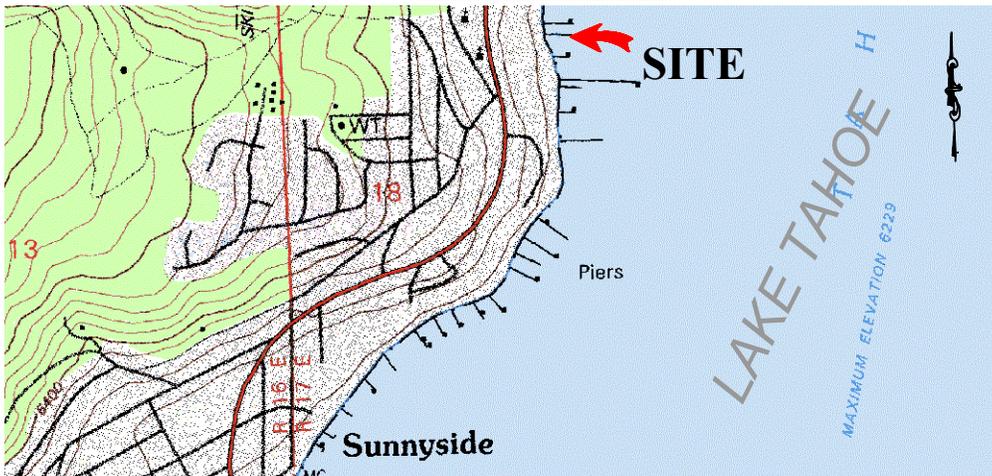
SITE



890 WEST LAKE BLVD., TAHOE CITY

NO SCALE

LOCATION



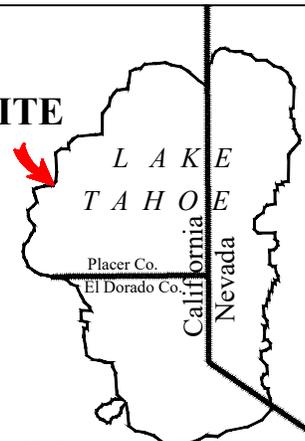
MAP SOURCE: USGS QUAD

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 4184.1
 VALENTINE/FILES, ET AL
 APN 083-183-001
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY

SITE



JAK 11/18