

**CALENDAR ITEM
C29**

A 1
S 1

12/02/13
PRC 4315.1
W. Hall

GENERAL LEASE – RECREATIONAL USE

APPLICANTS:

Harold M. Messmer, Jr. and Marcia N. Messmer, Trustees of the Messmer Family Trust dated 10/1/9

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe adjacent to 4420 North Lake Boulevard, Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat lift and one mooring buoy previously authorized by the Commission, and use and maintenance of an existing wood marine rail, boat hoist and one mooring buoy not previously authorized by the Commission.

LEASE TERM:

10 years, beginning December 2, 2013.

CONSIDERATION:

\$1,728 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in the amount of no less than \$1,000,000 per occurrence.

Other:

1. The lease contains a provision requiring the Applicants remove all existing unauthorized mooring buoys by December 31, 2013, and provide proof of removal within 10 days of removal.
2. The proposed lease contains a provision requiring the Applicant to obtain authorization from the Tahoe Regional Planning Agency (TRPA) for the mooring buoy within two years of the adoption of a

CALENDAR ITEM NO. **C29** (CONT'D)

Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. This is a continuation of the process the Commission used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the FEIS. In September 2010, the U.S. District Court invalidated the FEIS and nullified the Amendments. When additional information is available, Commission staff will advise the Commission on any suggested modifications to the process used by the Commission pending resolution of the TRPA FEIS and ordinance issues.

3. Lessee expressly acknowledges and agrees that issuance of a Lease does not substitute for, or provide preference in, obtaining authorizations from the TRPA or any other regulatory agency for the improvements authorized by the Commission.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland parcel adjoining the lease premises.
2. On June 19, 1998, the Commission authorized a 10-year Recreational Pier Lease with John F. and Barbara M. Otto Family Trust Dated July 10, 1990, for an existing pier, boat lift and one mooring buoy. That lease expired on April 27, 2008.
3. On February 2, 2007, ownership of the littoral upland was conveyed to Harold M. Messmer, Jr. and Marcia N. Messmer, Trustees of the Messmer Family Trust dated 10/1/9. Applicants are now applying for a new General Lease - Recreational Use.
4. The Applicants' existing boat hoist, wood marine rail and two additional mooring buoys have been in Lake Tahoe for many years but have not been previously authorized by the Commission. Staff recommends including the existing boat hoist, wood marine rail and one additional mooring buoy as authorized improvements in the lease.
5. In the lease application submitted by the Applicants, they requested Commission authorization for three existing buoys and provided a copy of the buoy permits issued by TRPA in September 2009 permitting more than two buoys per littoral parcel under the then "grandfather clause" adopted by TRPA in 2008.

CALENDAR ITEM NO. **C29** (CONT'D)

As background, TRPA adopted new shorezone ordinances in 2008, which allowed for permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the buoy had been placed and had continually been in the lake since prior to 1972 or had an existing valid lease for a third buoy from the Commission or a valid permit from the U.S. Army Corps of Engineers.

Prior to 2008, TRPA ordinances allowed only two private mooring buoys per littoral parcel. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition for previously unpermissible buoys. In 2010, the TRPA buoy permits issued under the 2008 TRPA ordinances were found to be invalid by the U.S. District Court. The invalidity of these buoy permits was upheld by the 9th Circuit Court of Appeals.

6. The Commission's records indicate that the initial lease issued at this location was to a former Lessee for placement of a pier. Staff first became aware of a buoy offshore of this littoral parcel in 1993. The then Lessee submitted photographs and letters of acknowledgement by the TRPA and U.S. Army Corps of Engineers evidencing the existence of one buoy prior to 1976 and 1970 respectively. On April 28, 1993, the Commission authorized the reconstruction, use and maintenance of the pier and boat lift, and use and maintenance of one existing buoy not previously authorized.
7. Staff became aware of two additional buoys offshore of the Applicants' littoral parcel on June 30, 2011, with the submittal of an application requesting authorization of an existing pier, boat lift, boat hoist and three mooring buoys.
8. Because of the court decision, TRPA is now operating under the pre-2008 Code of Ordinances which does not have a third buoy grandfather clause. As determined in 1995, recommending approval for a third, fourth and fifth buoy would be in direct conflict with the current TRPA Code of Ordinances and the Commission's standard lease provision. On September 23, 2013, staff wrote to the Applicants advising that staff would not recommend including authorization for more than two buoys in the new lease because of the conflict with TRPA's current code and the Commission's standard lease provisions. Staff requested that one of the three existing buoys be removed.

CALENDAR ITEM NO. **C29** (CONT'D)

9. 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.

10. 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 the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the 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 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).

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.

CALENDAR ITEM NO. **C29** (CONT'D)

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Harold M. Messmer, Jr. and Marcia N. Messmer, Trustees of the Messmer Family Trust dated 10/1/9, beginning December 2, 2013, for a term of 10 years, for the continued use and maintenance of an existing pier, boat lift, and one mooring buoy previously authorized by the Commission and use and maintenance of an existing wood marine rail, boat hoist, and one mooring buoy not previously authorized by the Commission 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 \$1,728, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance in the amount of no less than \$1,000,000 per occurrence.

In the event Harold M. Messmer, Jr. and Marcia N. Messmer, Trustees of the Messmer Family Trust dated 10/1/9, do not comply with removal of one buoy, anchor and chain by December 31, 2013, authorize staff of the California State Lands Commission and the Office of the Attorney General to take all steps necessary, including litigation, to remove the unauthorized buoy, anchor and chain from State sovereign land in Lake Tahoe, adjacent to 4420 North Lake Boulevard, Carnelian Bay, Placer County; to restore the sovereign lands at this location in its condition prior to placement of the unauthorized improvements to the satisfaction of the Commission; and to recover the Commission's damages and costs.

EXHIBIT A

PRC 4315.1

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 21, Township 16 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, catwalk, boat lift and boat hoist lying adjacent to that parcel described in Grant Deed recorded February 2, 2007 as Document Number 2007-0011755-00 in Official Records of said County.

TOGETHER WITH a ten foot impact area.

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

PARCEL 2 & 3– BUOYS

Two circular parcel of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded February 2, 2007 as Document Number 2007-0011755-00 in Official Records of said County.

PARCEL 4– WOOD RAILS

All those lands underlying existing wood rails lying adjacent to that parcel described in Grant Deed recorded February 2, 2007 as Document Number 2007-0011755-00 in Official Records of said County.

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 08/08/2013 by the California
State Lands Commission Boundary Unit.



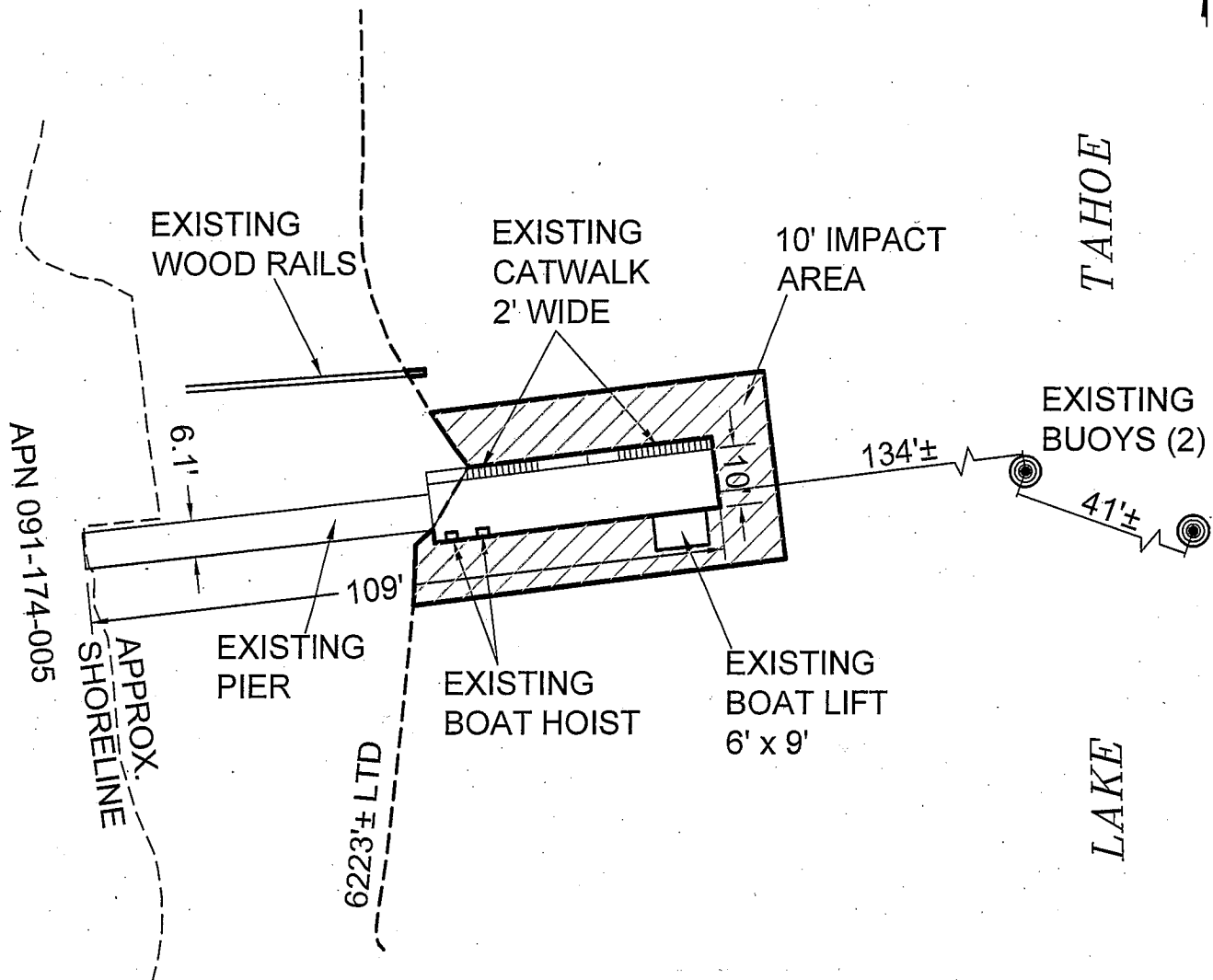


EXHIBIT A

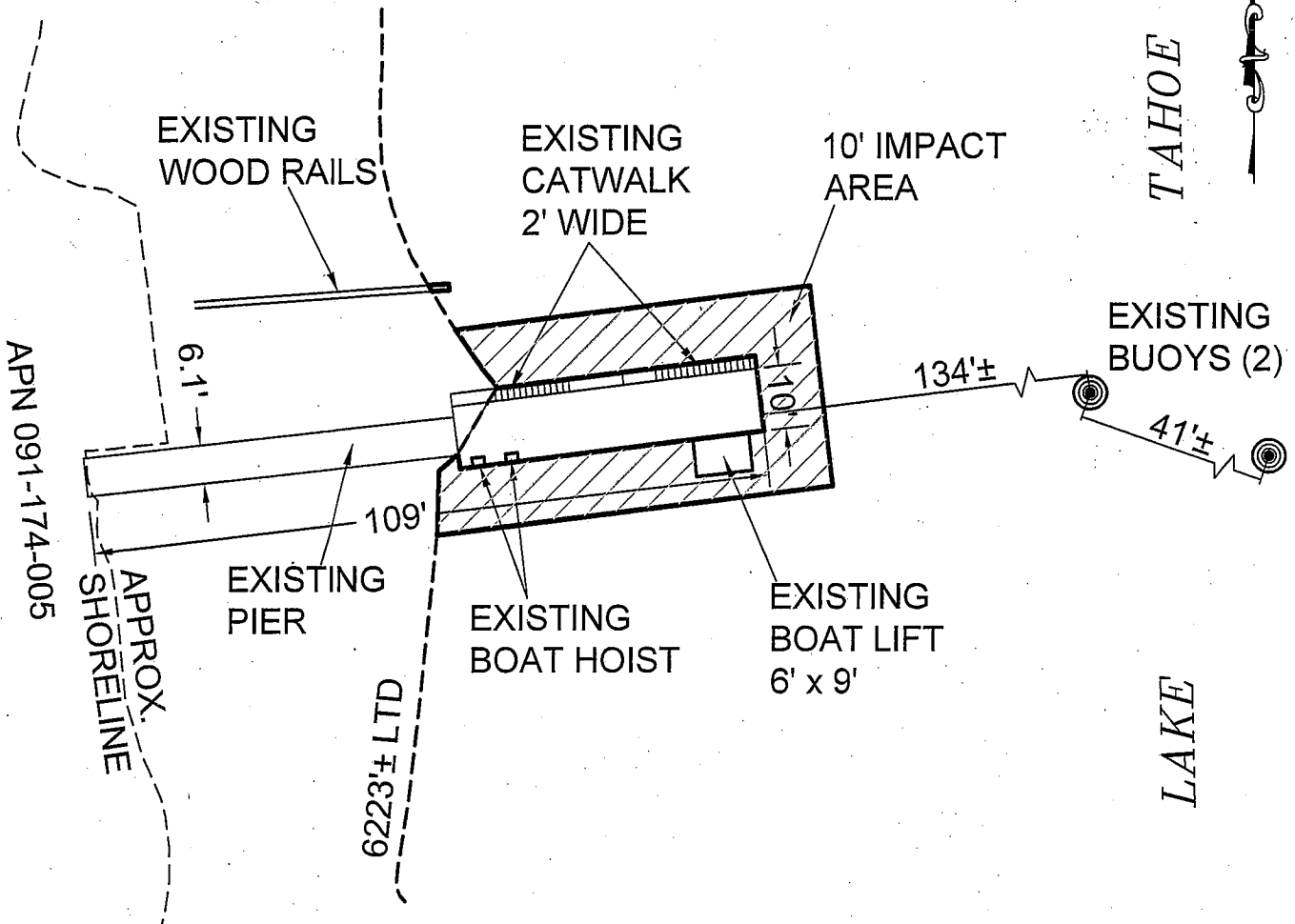
LAND DESCRIPTION PLAT
 PRC 4315.1, MESSMER TRUSTEES
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

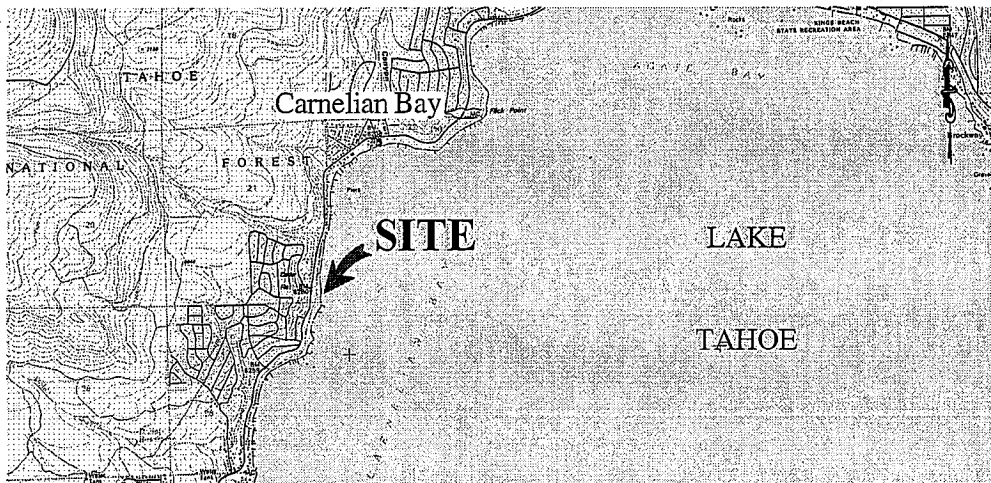
SITE



4420 NORTH LAKE BOULEVARD, CARNELIAN BAY

NO SCALE

LOCATION

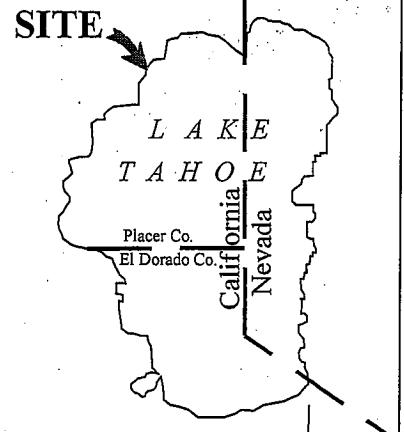


MAP SOURCE: USGS QUAD

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 4315.1
 MESSMER TRUSTEES
 APN 091-174-005
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



TS 08/08/13