

**CALENDAR ITEM
C03**

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02/09/16
PRC 5491.1
S. Kreutzburg

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Richard Ghilotti, Trustee of the Richard and Nancy Ghilotti Family Trust under declaration of Trust dated July 11, 1997; Michelle Ghilotti Mandel, Trustee of the Joseph and Stella May Residence Trust dated May 18, 1992; and Dale L. Marcellini and Jill A. Marcellini, Co-Trustees, or any successor Trustee, of the Dale L. Marcellini and Jill A. Marcellini Revocable Living Trust, executed on November 1, 2005

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to Assessor's Parcel Number (APN) 085-344-008, near Homewood, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and three mooring buoys.

LEASE TERM:

10 years, beginning December 1, 2015.

CONSIDERATION:

\$1,837 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.

PUBLIC TRUST AND STATE INTEREST ANALYSIS:

Statutory Authority:

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, Title 2, section 2000, subdivision (b)

Public Trust and State's Best Interests Analysis:

The subject facilities are used for the docking and mooring of boats. Recreational boating is a water-dependent use that is generally consistent

CALENDAR ITEM NO. **C03** (CONT'D)

with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of public trust land (Public Resources Code § 6503.5). The subject structures are privately owned and maintained.

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 pier is built on pilings, meaning the public may navigate next to, and at certain water levels, under the pier. This construction also permits lateral access across the beach area. The proposed lease will allow the public to walk or otherwise use the beach and shore area below high water for uses consistent with the public trust easement.

The subject facilities have existed for many years at this location. The subject facilities do not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. Upon termination of the lease, the Lessee may be required to remove all improvements and restore the lease premises to their original conditions. Based on the foregoing, Commission staff believes that the pier will not substantially interfere with public trust needs at this location, at this time, and for the foreseeable term of the proposed lease. Commission staff believe the mooring buoys do not substantially interfere with public trust needs at this time and at this location.

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, Commission 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. The Applicant owns the adjoining upland parcel.
2. On December 8, 2005, the Commission authorized a 10-year Recreational Pier Lease to Richard and Nancy Ghilotti, and Dale L. Marcellini and Jill A. Marcellini, Co-Trustees, or any successor Trustee, of the Dale L. Marcellini and Jill A. Marcellini Revocable Living Trust, executed on November 1, 2005. The lease expired on November 30, 2015.

CALENDAR ITEM NO. **C03** (CONT'D)

3. In 2013, the Ghilotti's interest in the upland parcel was transferred to Richard Ghilotti and Nancy Ghilotti, Trustees of the Richard and Nancy Ghilotti Family Trust under declaration of Trust dated July 11, 1997, and Michelle Ghilotti Mandel and Nancy Ghilotti, Trustees of the Joseph and Stella May Residence Trust dated May 18, 1992. In 2015, Nancy Ghilotti died. The Applicant is now applying for a General Lease - Recreational Use.
4. On March 21, 1978, TRPA issued a permit for the construction of the pier and placement of three mooring buoys adjacent to the upland parcel. The facilities came under lease and have remained under lease since that time.
5. This proposed action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest level 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 protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
6. The 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.

7. 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

CALENDAR ITEM NO. **C03** (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's public trust needs and values at this location, 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 Richard Ghilotti, Trustee of the Richard and Nancy Ghilotti Family Trust under declaration of Trust dated July 11, 1997; Michelle Ghilotti Mandel, Trustee of the Joseph and Stella May Residence Trust dated May 18, 1992; and Dale L. Marcellini and Jill A. Marcellini, Co-Trustees, or any successor Trustee, of the Dale L. Marcellini and Jill A. Marcellini Revocable Living Trust, executed on November 1, 2005, beginning December 1, 2015, for a term of 10 years, for the continued use and maintenance of an existing pier and three 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 \$1,837, with an annual Consumer Price Index adjustment; and liability insurance in the amount of \$1,000,000 per occurrence.

EXHIBIT A

PRC 5491.1

LAND DESCRIPTION

Four (4) parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 36, Township 15 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved December 20, 1865, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and catwalk lying adjacent to those parcels described in Grant Deed recorded July 8, 2013 as Document Number 2013-0067263-00 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.

PARCEL 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 July 8, 2013 as Document Number 2013-0067263-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 10/02/2015 by the California State

Lands Commission Boundary Unit.



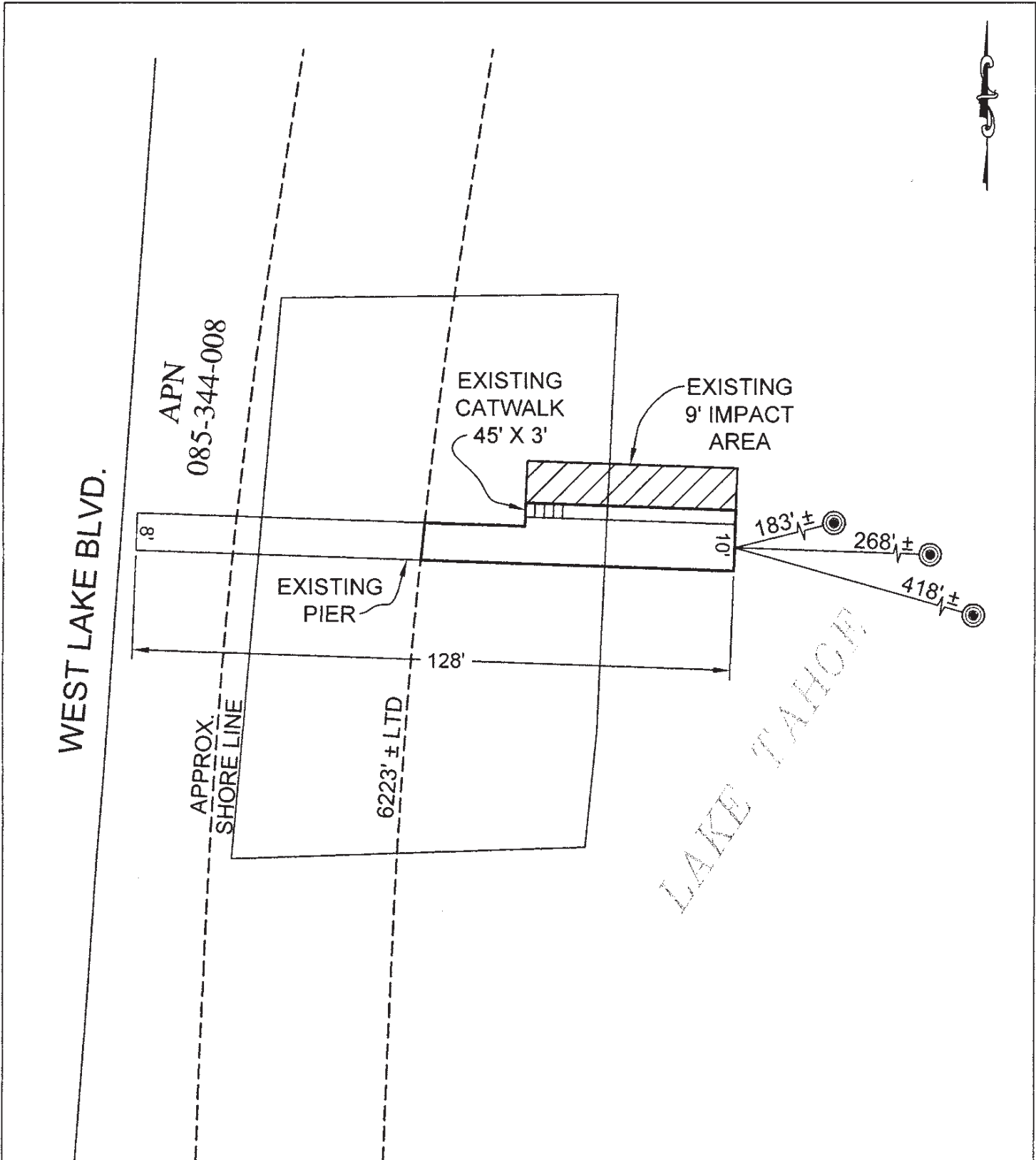


EXHIBIT A

LAND DESCRIPTION PLAT
 PRC 5491.1, GHILOTTI- MARCELLINI
 TRUSTS
 PLACER COUNTY

CALIFORNIA STATE LANDS
 COMMISSION





LOCATION

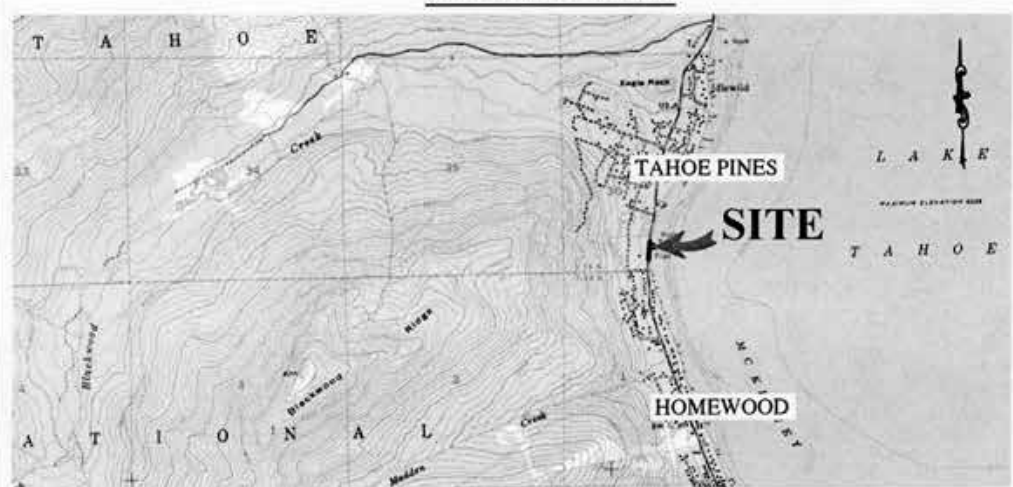


Exhibit B

PRC 5491.1
 GHILOTTI-MARCELLINI TRUSTS
 APN 085-344-008
 GENERAL LEASE - RECREATIONAL USE
 PLACER 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.