

**CALENDAR ITEM
C17**

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02/07/17
PRC 1828.1
M. Schroeder

**TERMINATION AND ISSUANCE OF A
GENERAL LEASE – RECREATIONAL USE**

LESSEE:

David Michael Bowman, as Trustee, or his Successor, of the David Michael Bowman Trust Agreement dated April 13, 1989

APPLICANT:

FAUPS LLC, a Delaware Limited Liability Company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8401 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of a pier and two mooring buoys; removal of a boat hoist and secondary catwalk; and construction, use and maintenance of a boat lift, and replacement of a portion of the primary catwalk with stairs within the existing footprint of the catwalk.

LEASE TERM:

10 years, beginning February 7, 2017.

CONSIDERATION:

\$1,320 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

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

2. Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses.

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3. If Lessee does not have valid a Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the adoption of a Final Environmental Impact Statement (FEIS) 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.
4. 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.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On September 20, 2013, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, boat hoist, and two mooring buoys to David Michael Bowman, as Trustee, or his Successor, of the David Michael Bowman Trust Agreement dated April 13, 1989 ([Calendar Item C48, September 20, 2013](#)). On October 14, 2014, the Commission authorized an amendment of lease ([Calendar Item C43, October 14, 2014](#)). That lease will expire on February 28, 2022. On October 30, 2015, the upland was deeded to FAUPS LLC, a Delaware Limited Liability Company. The Applicant is applying for issuance of a new lease for the continued use and maintenance of the pier and two mooring buoys; removal of a boat hoist and catwalk; construction of a boat lift; and replacement of a portion of the primary catwalk with stairs.

Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property, pier, and mooring buoys without notifying Commission staff and executing a lease quitclaim deed. The Lessee paid annual rent up through February 28, 2016. Therefore, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,272 for the period beginning March 1, 2016 through February 6, 2017, the day before the new lease becomes effective.

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Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier and two mooring buoys are used for the docking and mooring of boats. 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 pier and buoys have existed for many years at this location. The pier is built on pilings. The immediate area of the existing pier is gently sloped and dominated by cobbles and large boulders, which limits public access along the Public Trust easement. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The existing boat hoist on the southern side of the pier will be removed and replaced with a boat lift on the northern side of the pier. The secondary catwalk on the northern side of the pier will be removed to allow for installation of the boat lift. A portion of the primary catwalk on the southern side of the pier will be removed and replaced with stairs within the footprint of the catwalk. The removal of the boat hoist and secondary catwalk, and the installation of the boat lift will be performed on site with most of the work occurring above the water. The existing secondary catwalk and boat hoist will be dismantled by manual labor. The pile driving for the boat lift is to be performed by an amphibious vehicle with pile driver and/or crane, portable equipment, and manual labor.

Construction will take place after all required approvals have been obtained. On September 26, 2016, a Tahoe Yellow Cress (TYC) survey was performed by TRPA staff who determined no presence of TYC at the site. Tahoe Yellow Cress is a small native plant that only grows on the sandy shoreline of Lake Tahoe and nowhere else in the world. The TYC Survey Form is included in the lease file and on record with TRPA.

The proposed facilities will not significantly alter the land, 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 and restore the lease premises to their original condition.

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

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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 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. Termination of the lease 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).

3. The staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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.

4. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

Tahoe Regional Planning Agency
U.S. Army Corps of Engineers
Lahontan Regional Water Quality Control Board

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FURTHER APPROVALS REQUIRED:

California Department of Fish and Wildlife

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the termination of the prior lease and issuance of 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 time, or for the foreseeable term of the lease, and 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:

1. Authorize termination, effective February 6, 2017, of Lease No. PRC 1828.1, a General Lease – Recreational Use, issued to David Michael Bowman, as Trustee, or his Successor, of the David Michael Bowman Trust Agreement dated April 13, 1989.
2. Authorize acceptance of compensation from the Applicant in the amount of \$1,272 for the unauthorized occupation of State land for the period beginning March 1, 2016 through February 6, 2017.
3. Authorize issuance of a General Lease – Recreational Use to FAUPS LLC, a Delaware Limited Liability Company beginning February 7, 2017, for a term of 10 years, for the continued use and maintenance of a pier and two mooring buoys; removal of a boat

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hoist and secondary catwalk; construction, use, and maintenance of a boat lift; and replacement of a portion of the primary catwalk with stairs within the existing footprint of the catwalk, 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 \$1,320, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 1828.1

LAND DESCRIPTION

Three (3) 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 an existing pier, and appurtenant facilities lying adjacent to those parcels as described in that Grant Deed recorded October 30, 2015 in Document 2015-0050602 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.

PARCELS 2 & 3 – BUOYS (2)

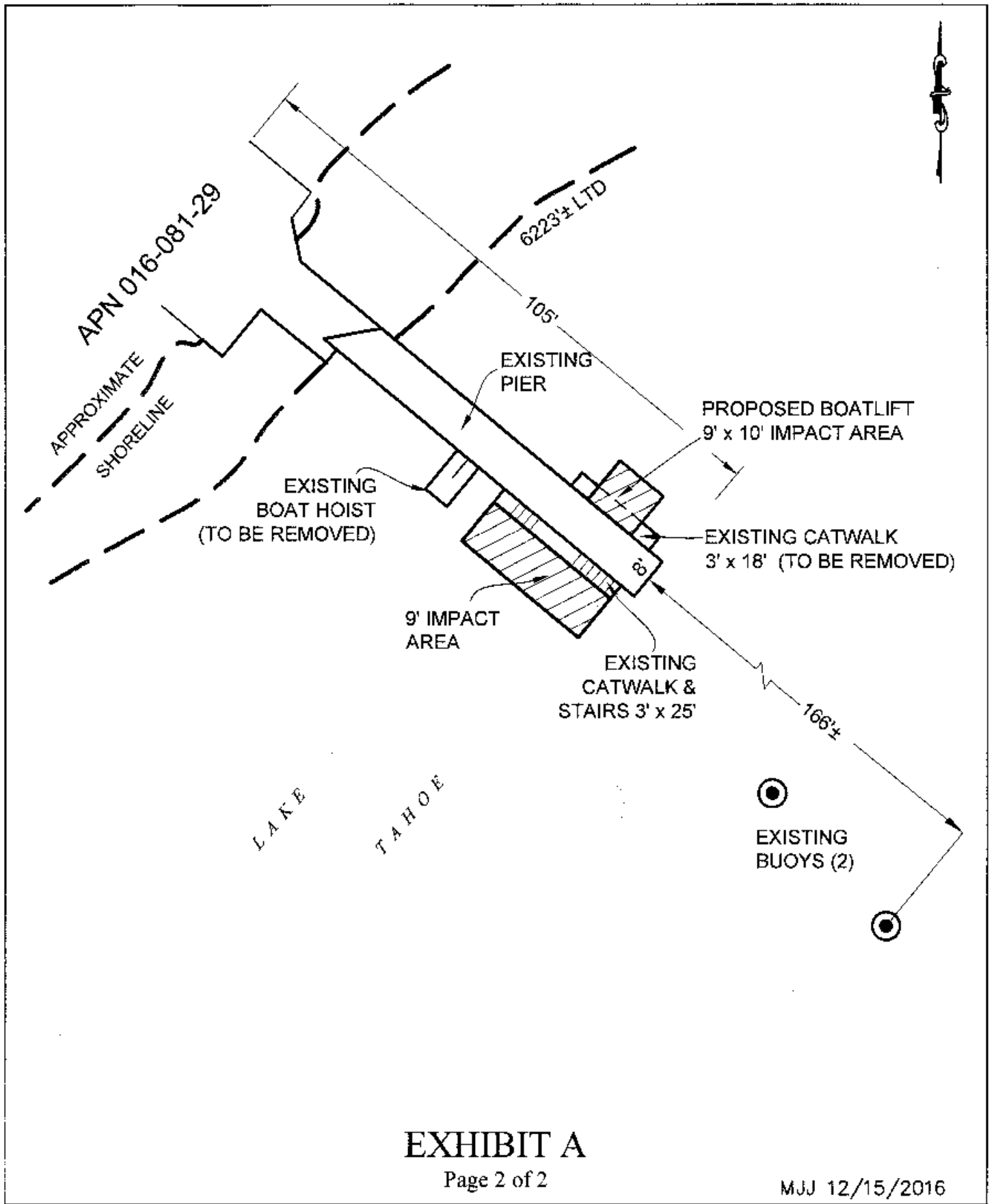
Two (2) circular parcels of land, being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared December 15, 2016 by the California State Lands Commission Boundary Unit.

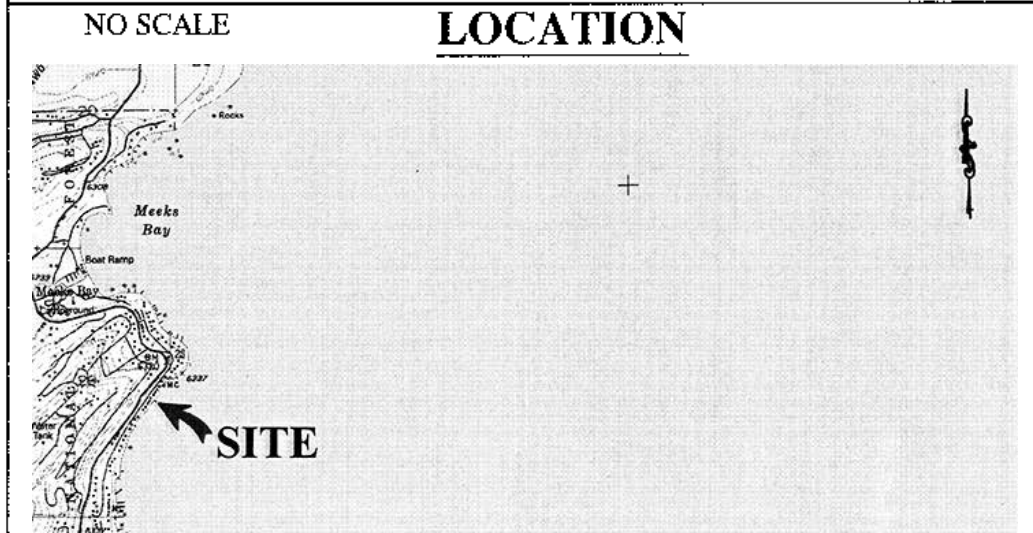
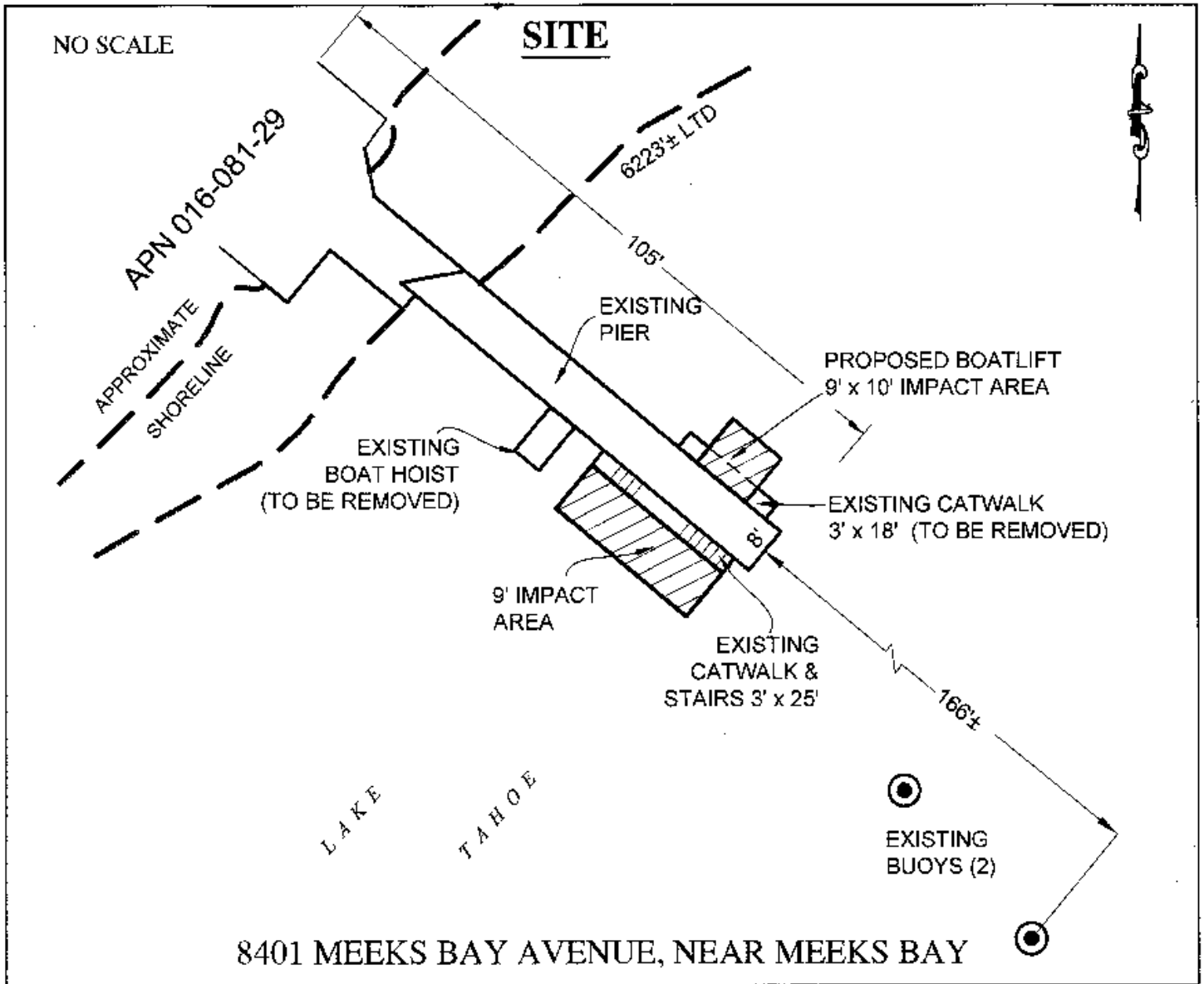




LAND DESCRIPTION PLAT
 PRC 1828.1 FAUPS, LLC
 EL DORADO COUNTY

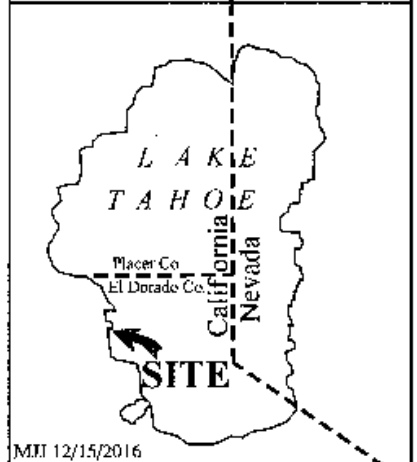
CALIFORNIA STATE
 LANDS COMMISSION





MAP SOURCE: USGS QUAD

Exhibit B
 PRC 1828.1
 FAUPS, LLC
 APN 016-081-29
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



MJJ 12/15/2016

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.