

**STAFF REPORT
C24**

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08/23/18
PRC 4266.1
S. Avila

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST;
ACCEPTANCE OF A LEASE QUITCLAIM DEED; AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Michael E. Raney, Trustee of the Michael E. Raney Living Trust dated December 3, 2010

APPLICANT:

Drum Lodge, LLC, a Delaware limited liability company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 7701 State Highway 89, Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, marine rail, three freshwater intake pipelines, and two mooring buoys.

LEASE TERM:

10 years, beginning August 23, 2018.

CONSIDERATION:

\$1,921 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 of access, navigation, fishing, and lake-related recreational uses.

STAFF REPORT NO. **C24** (CONT'D)

3. 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.

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, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On August 9, 2016, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, marine rail, three freshwater intake pipelines, and two mooring buoys to Michael E. Raney, Trustee of the Michael E. Raney Living Trust dated December 3, 2010 ([Item C06, August 9, 2016](#)). That lease will expire on August 8, 2026.

On March 15, 2017, the upland was deeded to Drum Lodge, LLC, a Delaware limited liability company. The Applicant is applying for issuance of a new lease for the continued use and maintenance of the existing pier, marine rail, three freshwater intake pipelines, and two mooring buoys. This application is one of two applications appearing on this agenda submitted by Drum Lodge, LLC. The other application requests authorization for an existing pier, boat lift, and mooring buoy adjacent to 7741 State Highway 89, Meeks Bay, El Dorado County.

The Lessee paid rent through August 8, 2017. Commission staff sent an annual rent invoice to the Lessee for the 2017-2018 lease period. The Lessee did not pay this invoice.

Staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of August 9, 2017 through August 22, 2018, since the Lessee was no longer the upland

STAFF REPORT NO. **C24** (CONT'D)

owner at this time, and the Applicant has already agreed to be responsible for the rent during this time.

Staff recommends waiving the rent, penalty, and interest due from the Lessee under the Commission's invoice number 42571. Staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,995 for the period beginning August 9, 2017 through August 22, 2018, the day before the new lease would become effective.

The Lessee executed a lease quitclaim deed releasing its interest in the lease. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, marine rail, and 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 subject facilities have existed for many years at this location. The pier is built on pilings, meaning that the public may navigate or walk next to and, at lower water levels, under the pier. The marine rail extends from the upland property into the lake. The rail lies on the lakebed allowing the public to navigate or walk over it. The buoys are located directly lakeward of the upland parcel and occupy a relatively small area of the lake.

The freshwater intake pipelines are not generally associated with traditional Public Trust uses. However, these pipelines have been in place for many years, and occupy a small area of the lakebed. The owners use the pipelines to provide water to the upland property. The pipelines do not interfere with Public Trust activities at this location at this time.

The proposed lease does not 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.

STAFF REPORT NO. **C24** (CONT'D)

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 will not substantially impair Public Trust uses or values 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. Acceptance of the quitclaim deed and waiver of rent, penalty, and interest are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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. 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.

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

STAFF REPORT NO. **C24** (CONT'D)

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:

1. Find that the existing and, for a limited period, continuing use and maintenance of the pier, marine rail, and two mooring buoys will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,
2. Find that the existing and, for a limited period, continuing use and maintenance of the three freshwater intake pipelines are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Waive rent, penalty, and interest due for the period of August 9, 2017, through August 22, 2018, and void annual rent invoice number 42571 issued to Michael E. Raney, Trustee of the Michael E. Raney Living Trust dated December 3, 2010.
2. Authorize acceptance of a quitclaim deed, effective August 22, 2018, of Lease No. PRC 4266.1, a General Lease – Recreational Use, issued to Michael E. Raney, Trustee of the Michael E. Raney Living Trust dated December 3, 2010.
3. Authorize acceptance of compensation from the Applicant in the amount of \$1,995 for unauthorized occupation of State lands for the period beginning August 9, 2017 through August 22, 2018.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 23, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier, marine rail, three freshwater intake pipelines, 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 \$1,921, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4266.1

LAND DESCRIPTION

Seven (7) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 20, 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, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier adjacent to that parcel described in Exhibit "A" in that Grant Deed recorded December 10, 2010 in Document 2010-0060686 of Official Records of said County.

PARCEL 2, 3 & 4 – WATER INTAKE PIPES

All those lands underlying three existing water intake pipes adjacent to said parcel.

PARCEL 5 – MARINE RAIL

All those lands underlying an existing marine rail adjacent to said parcel.

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 6, 7 – BUOYS

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

Accompanying plat is hereby made part of this description

END OF DESCRIPTION

Prepared July 10, 2018 by the
California State Lands Commission Boundary Unit.



APN 016-300-38

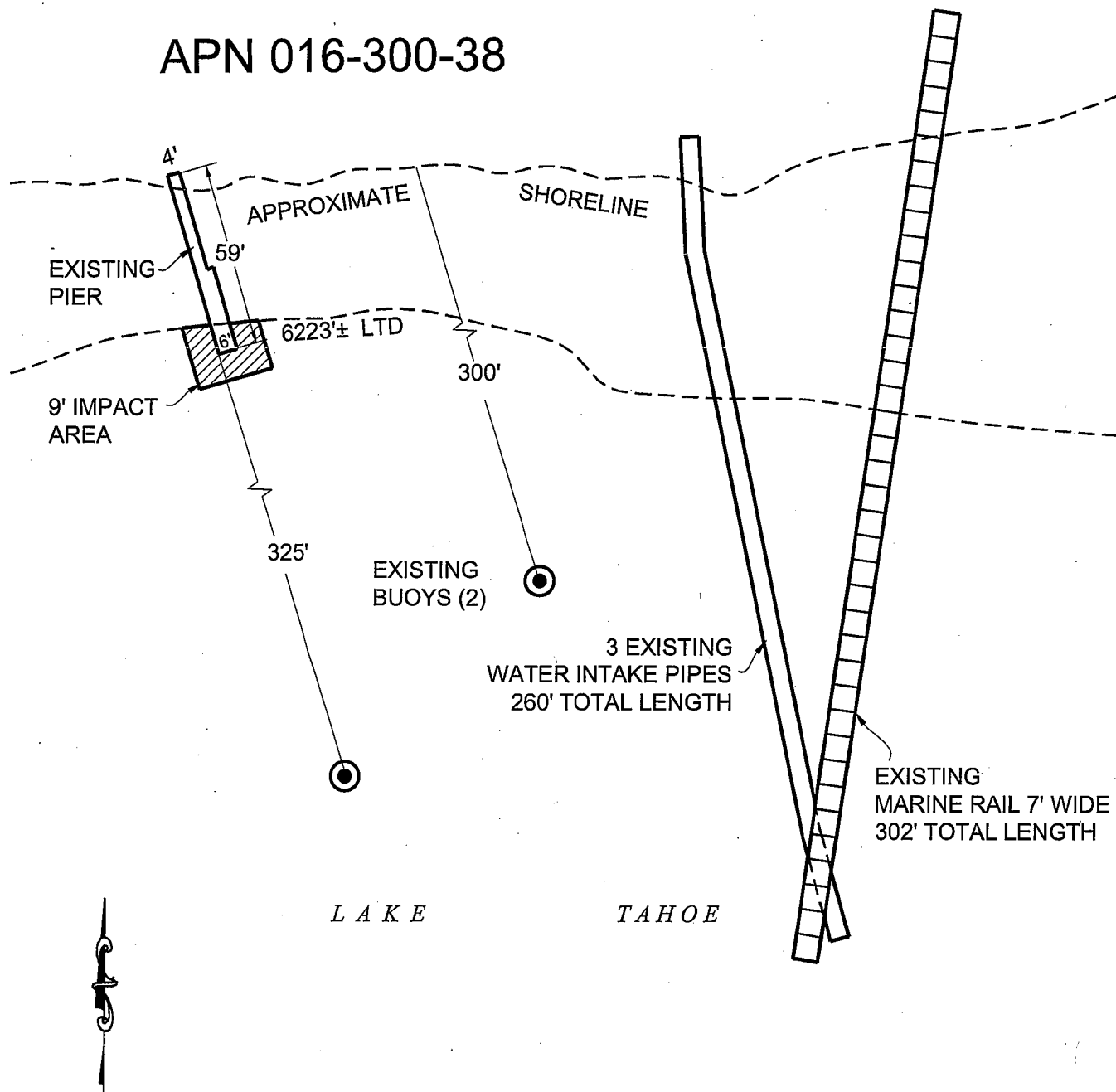


EXHIBIT A

Page 2 of 2

MJJ 6/04/2018

LAND DESCRIPTION PLAT
PRC 4266.1, DRUM LODGE, LLC
EL DORADO COUNTY

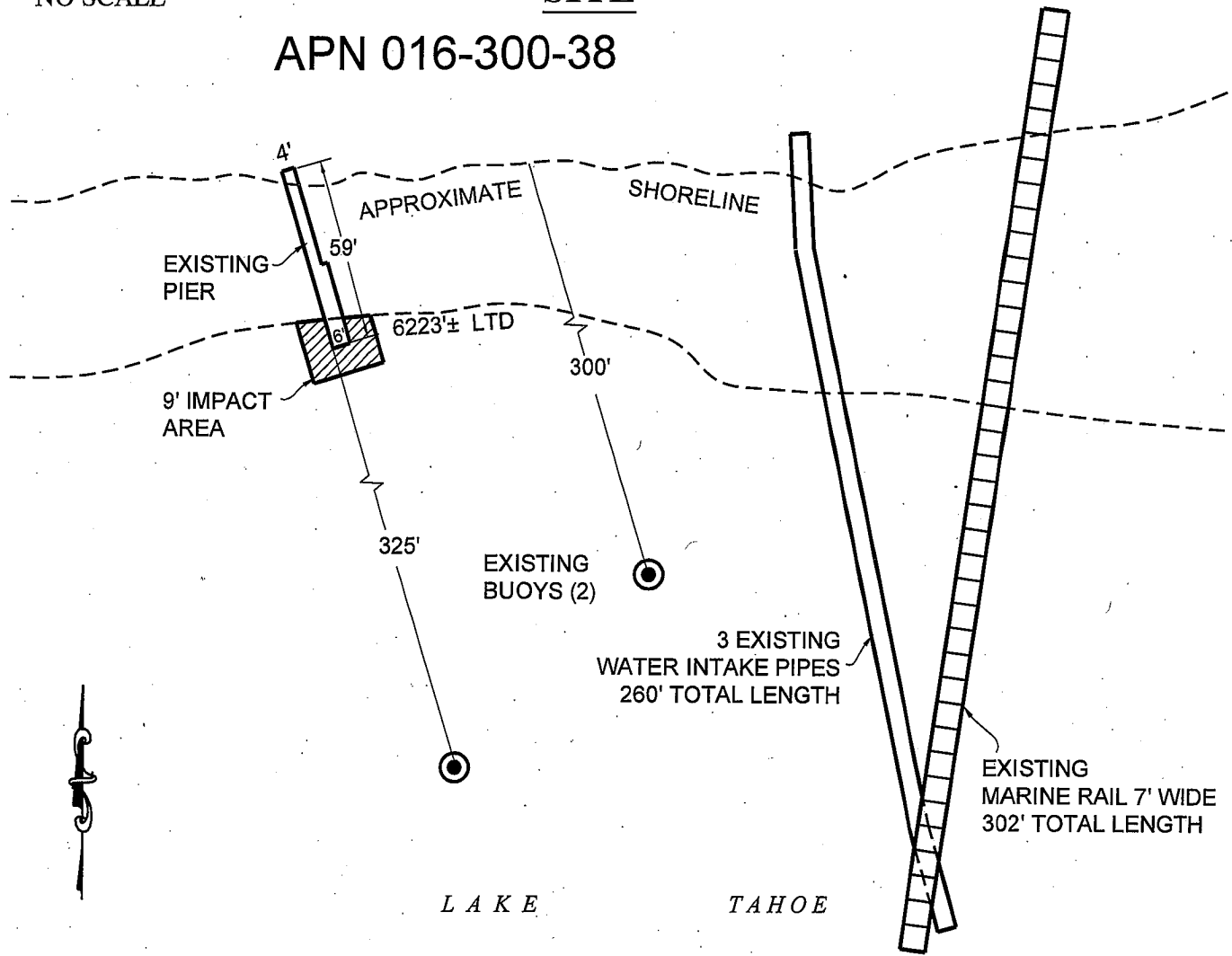
CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

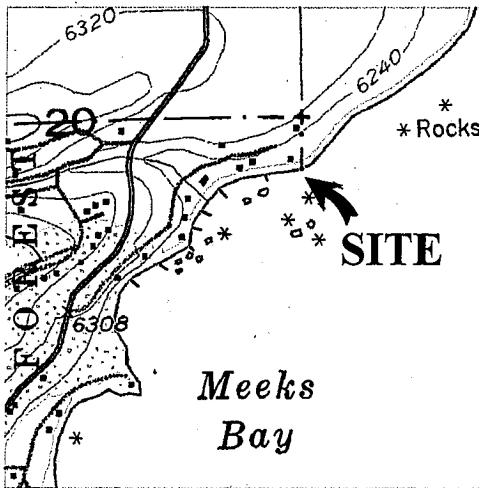
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7701 STATE HIGHWAY 89, NEAR MEEKS BAY

NO SCALE

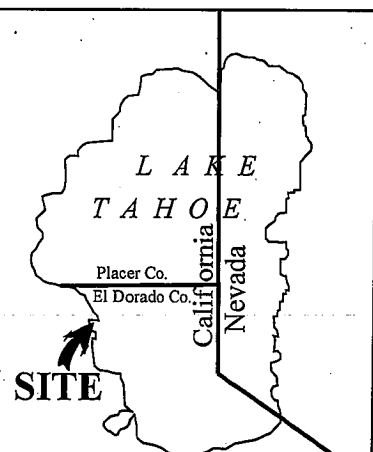
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4266.1
 DRUM LODGE, LLC
 APN 016-300-38
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO 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.

MJJ 03/23/2018