

**STAFF REPORT
C02**

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12/03/18
PRC 4856.1
S. Avila

**WAIVER OF RENT, PENALTY, AND INTEREST; TERMINATION
AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

9898 Lake, LLC, a California limited liability company

APPLICANT:

SF Pacific, LLC, a California limited liability company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 9898 Lake Street, near Kings Beach, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier previously authorized by the Commission; and use and maintenance of an existing floating boat dock not previously authorized by the Commission.

LEASE TERM:

10 years, beginning December 3, 2018.

CONSIDERATION:

\$1,179 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.

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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 June 19, 2014, the Commission authorized a General Lease - Recreational Use, to 9898 Lake, LLC, a California limited liability company for an existing pier ([Item C47, June 19, 2014](#)). That lease will expire on March 31, 2024. On January 10, 2018, ownership of the upland parcel transferred to SF Pacific, LLC, a California limited liability company. The Applicant has submitted an application for a General Lease – Recreational Use for the continued use and maintenance of the existing pier previously authorized by the Commission and an existing floating dock not previously authorized by the Commission.

Staff sent an annual rent invoice to the Lessee for the 2017-2018 lease period and for the 2018-2019 lease period. The Lessee did not pay these invoices. 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 April 1, 2017, through December 2, 2018, since the Lessee filed for bankruptcy and was no longer the upland owner as of January 10, 2018, and the Applicant has already agreed to be responsible for the rent dating back to the transfer of ownership.

Therefore, staff recommends waiving the rent, penalty, and interest due from the Lessee under invoice numbers 41553 and 44219. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,056 for the period beginning January 10, 2018, through December 2, 2018, the day before the new lease becomes effective.

The Lessee did not execute a lease quitclaim deed releasing their interest in the lease, therefore staff recommends termination of the lease 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 and floating boat dock 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

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as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. It is unclear why the floating boat dock was not covered by the prior lease. On February 14, 2018, the Tahoe Regional Planning Agency issued a permit for repair of the floating boat dock. The waterward end of the pier is built on a rock crib and the immediate area of the existing pier is rocky with large boulders. The landward portion of the pier is built on pilings, which allows the public to navigate or walk next to and, at lower water levels under the pier, including the Public Trust easement. The floating dock occupies a small area of the lakebed. The owners use the floating boat dock to safely moor boats and protect them from boulders along the shoreline. The floating boat dock does 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.

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. 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.

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3. Termination of the lease 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).

4. 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 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 a lease; waiver of rent, penalty, and interest; 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, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Waive rent, penalty, and interest due for the period of April 1, 2017, through December 2, 2018, and void annual rent invoice numbers 41553 and 44219 issued to 9898 Lake, LLC, a California limited liability company.

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2. Authorize termination, effective December 2, 2018, of Lease No. PRC 4856.1, a General Lease – Recreational Use, issued to 9898 Lake, LLC, a California limited liability company.
3. Authorize acceptance of compensation from the Applicant in the amount of \$1,056 for unauthorized occupation of State land for the period beginning January 10, 2018, through December 2, 2018.
4. 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 previously authorized by the Commission, and an existing floating boat dock 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 \$1,179, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4856.1

LAND DESCRIPTION

A parcel of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 30, Township 16 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved January 2, 1875, County of Placer, State of California, more particularly described as follows:

All those lands underlying an existing rock crib pier and floating dock lying adjacent to that parcel described in Grant Deed recorded January 10, 2018 as Document Number 2018-0001315-00 in Official Records of said county.

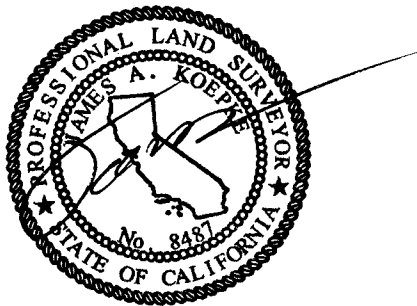
TOGETHER WITH and applicable Impact Area(s).

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

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared 10/5/2018 by the California State Land Commission Boundary Unit.



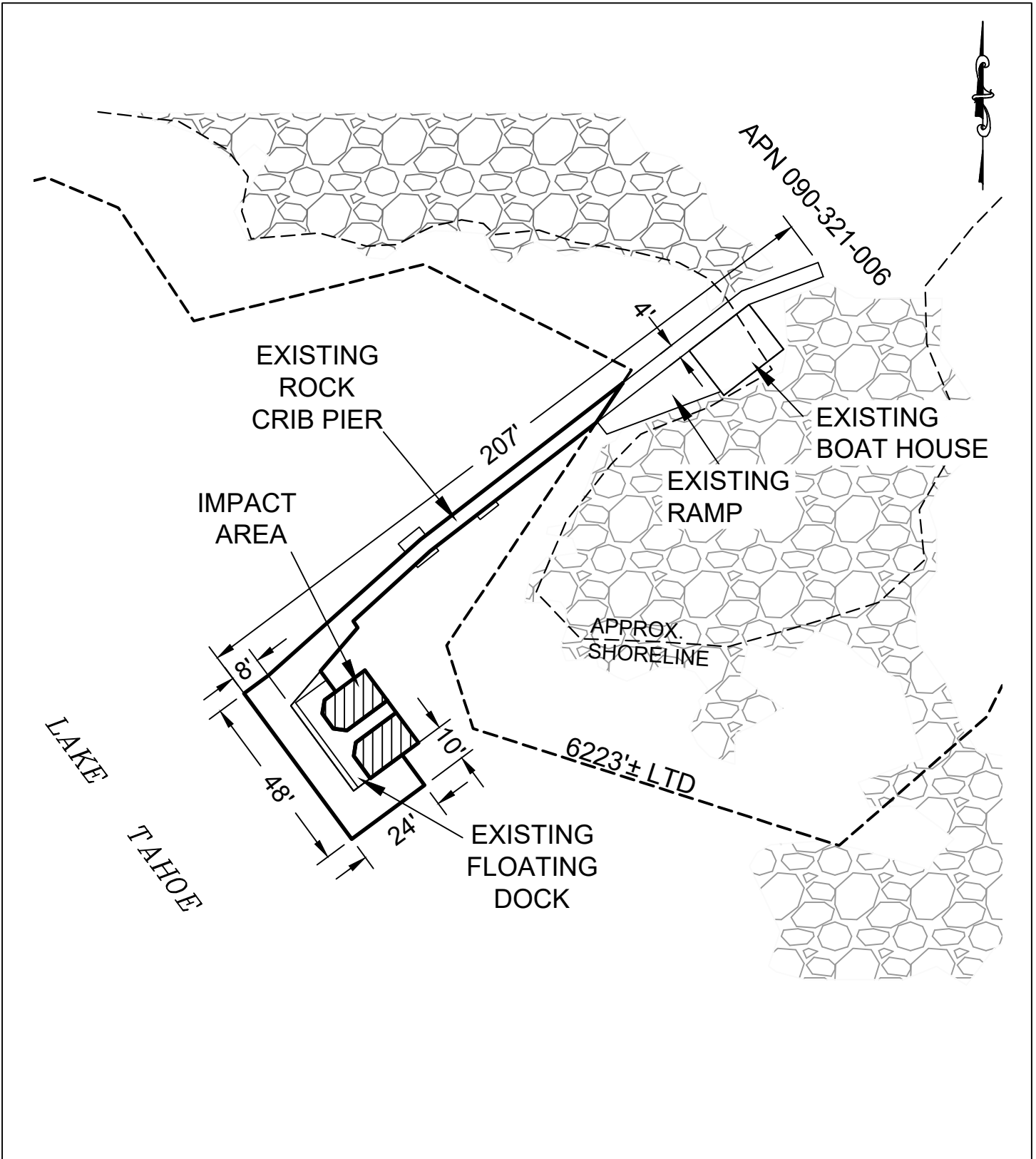
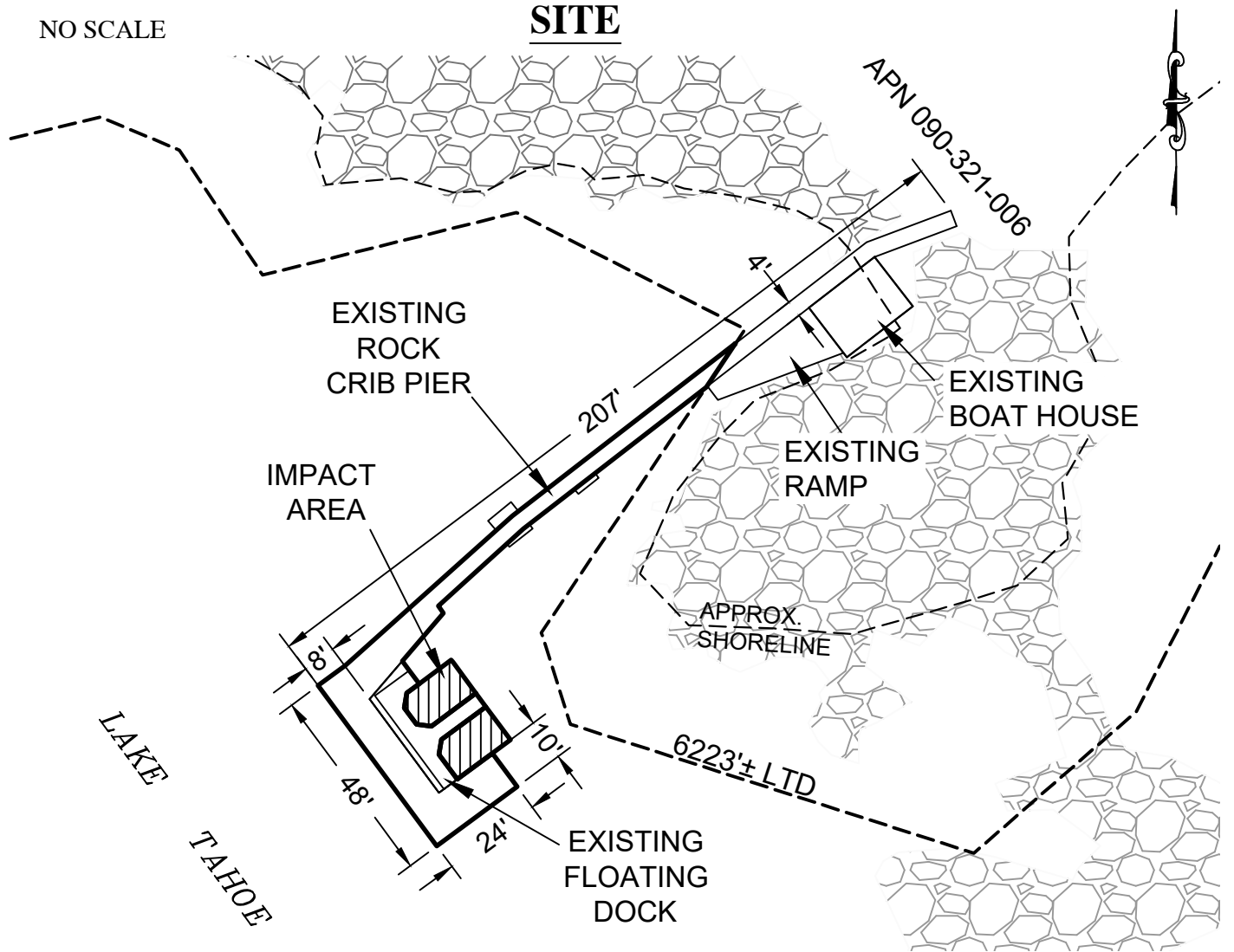


EXHIBIT A



NO SCALE

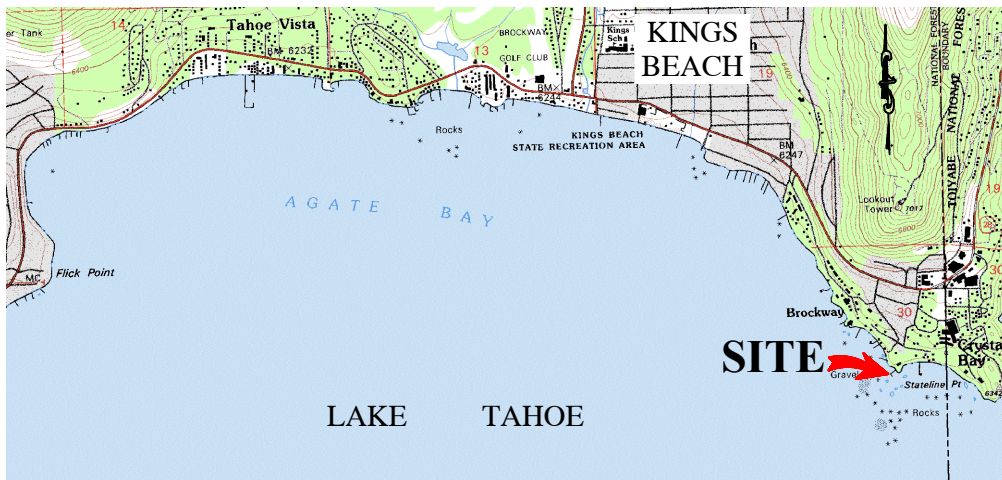
SITE



9898 LAKE STREET, NEAR KINGS BEACH

NO SCALE

LOCATION

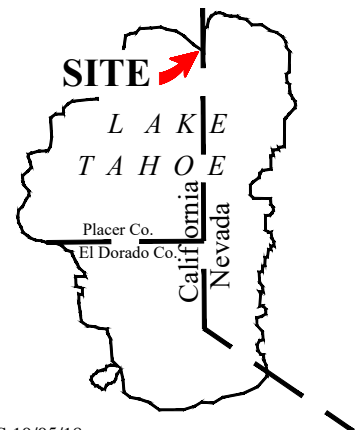


MAP SOURCE: USGS QUAD

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 4856.1
 SF PACIFIC, LLC
 APN 090-321-006
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



TS 10/05/18