

**STAFF REPORT
C16**

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12/03/18
PRC 4226.1
S. Avila

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

LESSEE:

Lloyd A. Lundstrom, III; Nancy Gill; Margy Lundstrom; Geraldine M. Lundstrom, Trustee of the Geraldine M. Lundstrom Survivor's Trust UDT Dated December 21, 1991 as amended and successor trustees thereunder; Geraldine M. Lundstrom, Trustee of the Lloyd A. Lundstrom, Jr. Bypass Trust UDT Dated December 21, 1991 as amended and successor trustees thereunder

APPLICANT:

Theodore Schuman and Jocelyn Schuman

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4920 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse with sundeck and stairs, and two mooring buoys; removal of an existing boat hoist and installation of boat lift; and reconstruction of an existing catwalk.

LEASE TERM:

10 years, beginning December 3, 2018.

CONSIDERATION:

\$2,988 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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- 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.
- 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.
- The lease contains provisions that the existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs of any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck with stairs must be removed from the lease premises.

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 February 21, 2014, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, boathouse, boat hoist, sundeck with stairs, and two existing mooring buoys to Lloyd A. Lundstrom, III; Nancy Gill; Margy Lundstrom; Geraldine M. Lundstrom, Trustee of the Geraldine M. Lundstrom Survivor's Trust UDT Dated December 21, 1991 as amended and successor trustees thereunder; Geraldine M. Lundstrom, Trustee of the Lloyd A. Lundstrom, Jr. Bypass Trust UDT Dated December 21, 1991 as amended and successor trustees thereunder ([Item C15, February 21, 2014](#)). That lease will expire on February 20, 2024.

On September 28, 2017, the upland was deeded to Theodore Schuman and Jocelyn Schuman. The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of an existing pier, boathouse with sundeck and stairs, and two mooring buoys; removal of an existing boat hoist and installation of a new boat lift; and reconstruction of an existing catwalk.

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The Lessee paid annual rent through February 20, 2018. Staff sent an annual rent invoice to the Lessee for the 2018-2019 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 beginning February 21, 2018, through December 2, 2018, because the Lessee was no longer the upland owner at this time, and the Applicant has already agreed to be responsible for the rent during this time.

Staff recommends issuance of a new lease beginning December 3, 2018. Therefore, staff recommends waiving the rent, penalty, and interest due from the Lessee under invoice number 43895, and that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$2,334 for the period beginning February 21, 2018, the day when rent went unpaid, through December 2, 2018, the day before the new lease becomes effective.

Staff attempted to obtain a lease quitclaim deed from the Lessee releasing their interest in the lease but was unsuccessful. Staff recommends termination of the lease because the Lessee abandoned the lease by selling the upland without notifying staff and without executing a lease quitclaim deed.

The proposed pier repairs include removal of the boat hoist, installation of a boat lift, and reconstruction of the catwalk. The proposed project will be performed on-site with access to the site from the lake. The repair work will be completed by a marine contractor. All materials will be brought in by barge and stored on the barge. No disturbance to the existing shoreline is allowed. The work is expected to commence as soon as all permits are obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boathouse, boat lift, 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).

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The subject facilities have existed for many years at this location. There will be four fewer pilings driven into the lake bottom with a reduction of 66 square inches of lake bottom disturbance. The immediate area of the pier is flat with cobbles. The existing pier design allows public access laterally across the shoreline. The public may navigate around or walk next to and under the pier within the Public Trust easement. The buoys are located directly lakeward of the upland parcel and occupy a relatively small area of the lake.

The existing sundeck with stairs is not associated with traditional Public Trust uses. While sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as is the case in this instance, they do not significantly interfere with trust activities. However, the lease contains provisions that the sundeck with stairs may not be expanded nor rebuilt if substantially destroyed. The sundeck with stairs has been in place for many years and occupies a small area of the lakebed. The sundeck with stairs 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 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

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Lake Tahoe Shorezone Ordinance Amendments. These Amendments are anticipated to take effect on December 23, 2018.

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. **Existing Pier, Boathouse with Sundeck and Stairs, and Mooring Buoys:** Staff recommends that the Commission 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).

5. **Removal of Boat Hoists, Installation of Boat Lift, and Rebuilding of Catwalk:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project Class 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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:

1. **Existing Pier, Boathouse with Sundeck and Stairs, and Mooring Buoys:** Find that the activity 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).

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2. **Removal of Boat Hoists, Installation of Boat Lift, and Rebuilding of Catwalk:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited period, continuing use and maintenance of the pier, boathouse, boat lift, and two mooring buoys will not substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and,
2. Find that the existing and, for a limited period, continuing use and maintenance of the sundeck with stairs is 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 February 21 18, 2018, through December 2, 2018, and void annual rent invoice number 43895 issued to the Lessee.
2. Termination, effective December 2, 2018, of Lease No. PRC 4226.1, a General Lease – Recreational Use, issued to the Lessee.
3. Authorize acceptance of compensation from the Applicant in the amount of \$2,334 for unauthorized occupation of State lands for the period beginning February 21, 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, boathouse with sundeck and stairs, and two mooring buoys; removal of two existing boat hoists and installation of a boat lift; and reconstruction of an existing 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 \$2,988

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with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4226.1

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 22, 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, boathouse with sundeck, stairs, boat lift and catwalk lying adjacent to that parcel described in Grant Deed recorded September 28, 2017 as Document Number 2017-0075455 in Official Records of said County.

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

PARCELS 2 & 3 – BUOYS

Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded September 28, 2017 as Document Number 2017-0075455 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 07/31/2018 by the California State Lands Commission Boundary Unit.



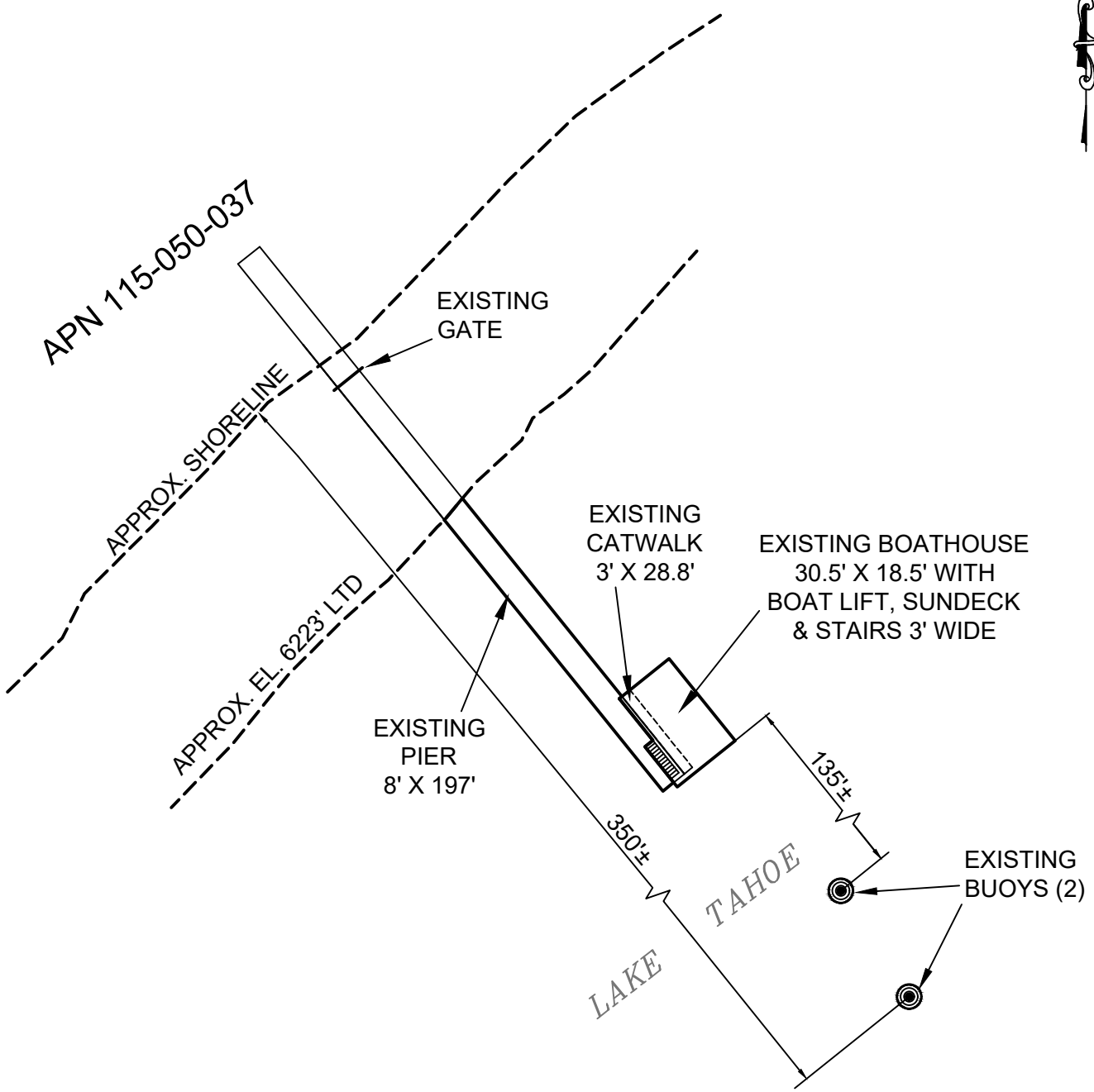


EXHIBIT A

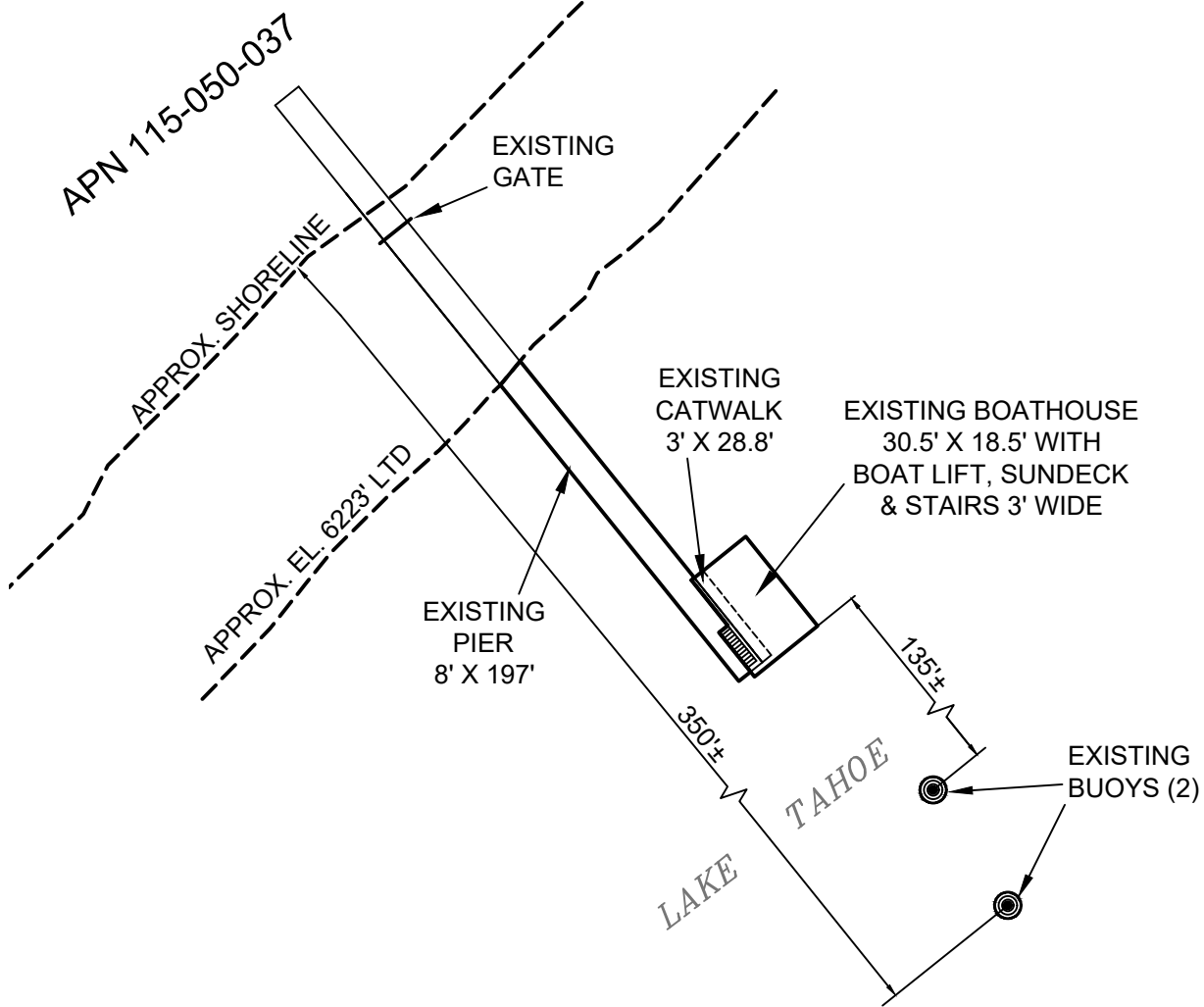
LAND DESCRIPTION PLAT
 PRC 4226.1, SCHUMAN
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



4920 NORTH LAKE BLVD., CARNELIAN BAY

NO SCALE

LOCATION

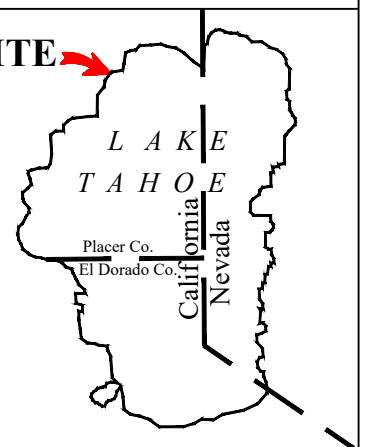


MAP SOURCE: USGS QUAD

Exhibit B

PRC 4226.1
 SCHUMAN
 APN 115-050-037
 GENERAL LEASE-
 RECREATIONAL USE
 PLACER COUNTY

SITE



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.