

**STAFF REPORT
C03**

A 1
S 1

02/04/19
PRC 4173.1
S. Avila

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Cedar Flat Improvement Association, Incorporated

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4370 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier with sundeck and stairs, and 21 existing mooring buoys.

LEASE TERM:

10 years beginning September 29, 2018.

CONSIDERATION:

\$10,139 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 per occurrence.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing and lake-related recreational uses
- If Lessee does not have 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.

STAFF REPORT NO. C03 (CONT'D)

- 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.
- Buoy Allotment Program: The use of the buoy field will be made available to all members of the Cedar Flat Improvement Association, Incorporated (Association), in a fair and equitable manner. A buoy allotment program must be maintained during the lease term that will identify how the buoys will be managed, maintained, and distributed for use by the Association's members.
- Applicant acknowledges that portions of the existing pier exists within the State-administered Public Trust easement, which exists between the locations of the ordinary high-water mark and low-water mark of Lake Tahoe. Applicant agrees to allow the public to pass and repass over the landward end of the pier to allow access to the Public Trust easement. Applicant agrees to not further block the Public Trust easement.

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 October 22, 2009, the Commission authorized a 10-year General Lease – Recreational Use, for an existing pier with sundeck and stairs, and 21 mooring buoys to Cedar Flat Improvement Association, Incorporated ([Item C47, October 22, 2009](#)). The lease expired on September 28, 2018.

The Applicant is applying for a General Lease – Recreational Use, for continued use and maintenance of the existing pier with sundeck and stairs, and 21 mooring buoys. The Applicant is a property owners association consisting of 131 members.

The existing sundeck is not associated with traditional Public Trust uses. While sundecks are generally not favored, sundecks that have been in place for years are not required to be removed before the end of their economic life if, as is the case in this instance, they do not significantly interfere with trust activities. However, the lease contains provisions that the sundeck may not be expanded nor rebuilt if substantially destroyed.

STAFF REPORT NO. C03 (CONT'D)

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The pier and mooring buoys are used for the docking and mooring of boats and facilitate recreational boating. Recreational boating and swimming are water-dependent uses that are 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 mooring buoys have been in Lake Tahoe for many years at this location. The pier is built on pilings with the immediate area of the pier being gently sloped with a pebbly shoreline. The topography and the location of upland structures provide access for the pier and allow the public to navigate under the pier within the Public Trust easement. In addition, stairs with signs advising of the public access are located on each side of the pier allowing the public to pass and re-pass over the pier along the Public Trust easement on either side of the pier. The 21 buoys are located directly lakeward of the upland property and occupy relatively small areas of the lake.

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 and does not grant the lessee exclusive rights to the lease premises and reserves an easement to the public for the Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements 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 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 interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; 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

STAFF REPORT NO. **C03** (CONT'D)

promote, expand, and enhance appropriate public use and access to land along the State's inland and coastal waterways.

2. On October 24, 2018, the TRPA Governing Board certified a new Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
3. 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.

EXHIBITS:

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

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:

1. Find that the existing and, for a limited period, continuing use and maintenance of the pier and 21 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 sundeck and 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.

STAFF REPORT NO. **C03** (CONT'D)

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant; beginning September 29, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier with sundeck and stairs, and 21 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 \$10,139 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$2,000,000 per occurrence.

EXHIBIT A

PRC 4173.1

LAND DESCRIPTION

A parcel of submerged lands situate in the bed of Lake Tahoe, adjacent to the N.E. ¼ SEC 28, Township 16 North, Range 17 East, M.D.M., as shown on the Official Township Plat approved November 10th, 1865, County of Placer, State of California, and more particularly described as follows:

BEGINNING at a point on the easterly prolongation of the northerly line of Lot 1, said Lot 1 shown on the subdivision map "CEDAR FLAT SUBDIVISION", filed for record in Book H of Maps, Page 82, Placer County Records, said point of beginning bearing S 89°53'34" E, 450.00 feet from the northeast corner of said Lot 1; thence S 01°47'18" E, 360.00 feet; thence S 22°22'54" W, 1027.77 feet to a point on the easterly prolongation of the southerly line of Lot 13, said Lot 13 shown on said subdivision map; thence along said line N 89°58'08" W, 244 feet more or less to the contour line having the elevation 6223.0 feet Lake Tahoe Datum (LTD); thence northerly, northwesterly, and northeasterly along said line 1500 feet more or less to the easterly prolongation of said Lot 1; thence S 89°53'34" E, 350 feet more or less to the point of beginning.

END OF DESCRIPTION

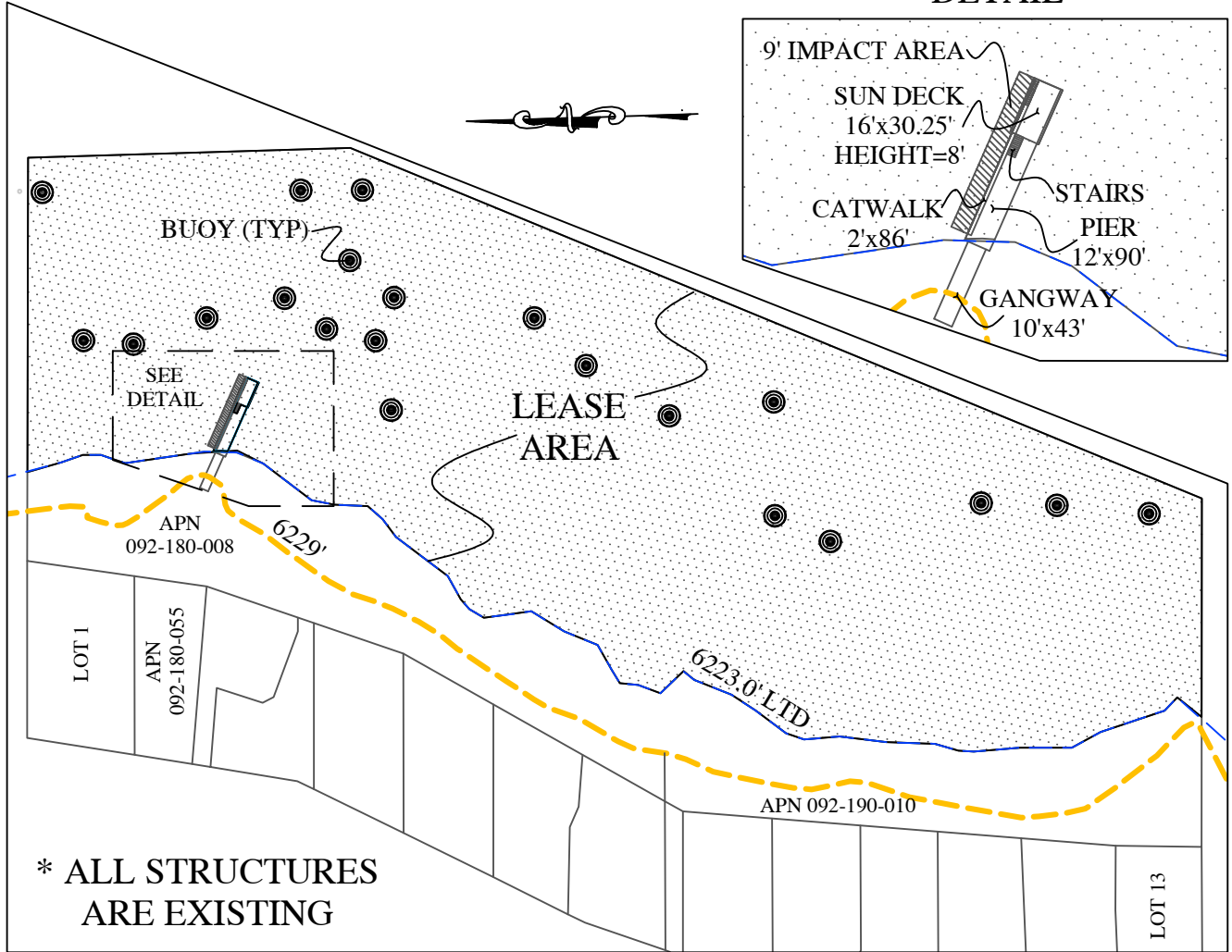
Prepared by the California State Lands Commission Boundary Staff
October 7th, 2009.



NO SCALE

SITE

DETAIL



4370 North Lake Blvd., near Carnelian Bay

NO SCALE

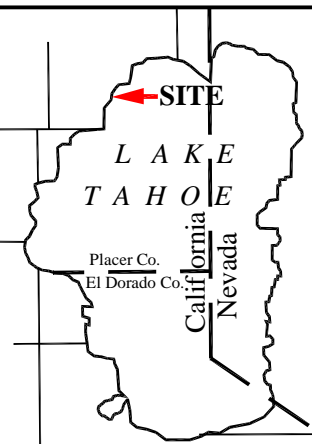
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4173.1
 CEDAR FLAT IMPROVEMENT
 ASSOCIATION
 APN 092-180-008, 055, 092-190-010
 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.