

**STAFF REPORT
C13**

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02/04/19
PRC 7451.1
M. Schroeder

**ACCEPTANCE OF A LEASE QUITCLAIM DEED; AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

John I. Kessler, Trustee of the Burton Hancock Trust

APPLICANT:

Tony Weir Industries, LLC, a Texas Limited Liability Company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 226 Four Ring Road, near Rubicon Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat lift, and two mooring buoys.

LEASE TERM:

10 years, beginning February 4, 2019.

CONSIDERATION:

\$1,779 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.
- 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

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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.

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 March 29, 2012, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, boat lift, and two mooring buoys to John I. Kessler, Trustee of the Burton Hancock Trust ([Item C29, March 29, 2012](#)). That lease will expire on March 28, 2022. On December 30, 2014, ownership of the upland parcel was deeded to Tony Weir Industries, LLC, a Texas Limited Liability Company.

Shortly before Tony Weir Industries, LLC, (Weir) took ownership of the upland parcel, Weir also acquired two additional neighboring lakefront parcels. Upon Weir's purchase of the three parcels, staff understood Weir planned to consolidate the three parcels into one parcel. Therefore, staff kept the lease in holdover until the consolidation was complete. In 2015, the upland owners were made aware they would be responsible for compensation. The consolidation of the parcels is now complete. The pier, boat lift, and two mooring buoys are associated with one of the upland parcels. A second upland parcel has no facilities located waterward of the parcel. The third upland parcel is associated with a joint-use pier authorized under Lease No. PRC 4853.1.

The Lessee paid annual rent through March 28, 2015. The Applicant has agreed to be responsible for rent from March 29, 2015, to the day prior to the lease beginning date. Therefore, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$6,857 for the period beginning March 29, 2015, through February 3, 2019, the day before the proposed new lease would become effective.

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The Lessee executed a lease quitclaim deed releasing their interest in the lease. The Applicant is applying for a new lease for the continued use and maintenance of the existing pier, boat lift, and two mooring buoys. 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, boat lift, and two 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, which allows the public to navigate or walk next to and, at lower water levels, under the pier. The immediate area of the existing pier is relatively flat with sandy surroundings.

The subject facilities do not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. The buoys have existed for many years at this location. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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. Based on the foregoing, staff believes that the subject facilities will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

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 consistent with the common law Public Trust Doctrine and in the best interests of the State.

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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 TRPA Governing Board certified a new Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.

3. Acceptance of the quitclaim deed 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).

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).

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PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of the quitclaim deed; and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a quitclaim deed, effective February 3, 2019, for Lease No. PRC 7451.1, a General Lease – Recreational Use, issued to John I. Kessler, Trustee of the Burton Hancock Trust.
2. Authorize acceptance of compensation in the amount of \$6,857 for the unauthorized occupation of State land for the period beginning March 29, 2015, through February 3, 2019, from the Applicant.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 4, 2019, for a term of 10 years, for the continued use and maintenance of an existing pier, boat lift, 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 \$1,779, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7451.1

LAND DESCRIPTION

Three parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to fractional Section 4, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved April 11, 1884, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, boat lift and catwalk lying adjacent to those parcels described in Certificate of Merge recorded November 9, 2015 as Document Number 2015-0051846-00 in Official Records of said County.

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.

PARCELS 2 & 3 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Certificate of Merge recorded November 9, 2015 as Document Number 2015-0051846-00 in Official Records of said County.

Accompanying plat is hereby made a part of this description:

END OF DESCRIPTION

Prepared 11/21/2018 by the California State Lands Commission Boundary Unit.



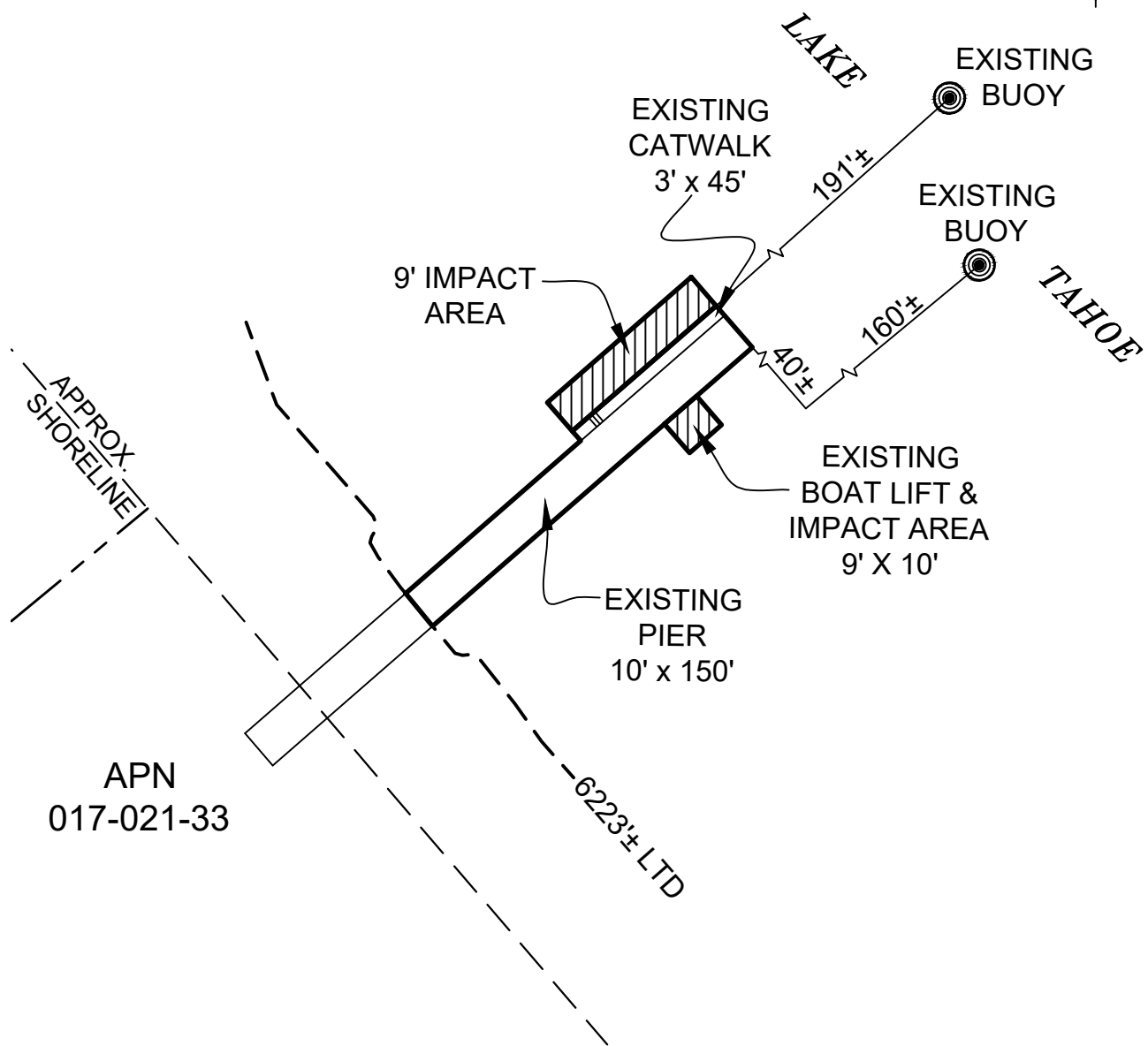
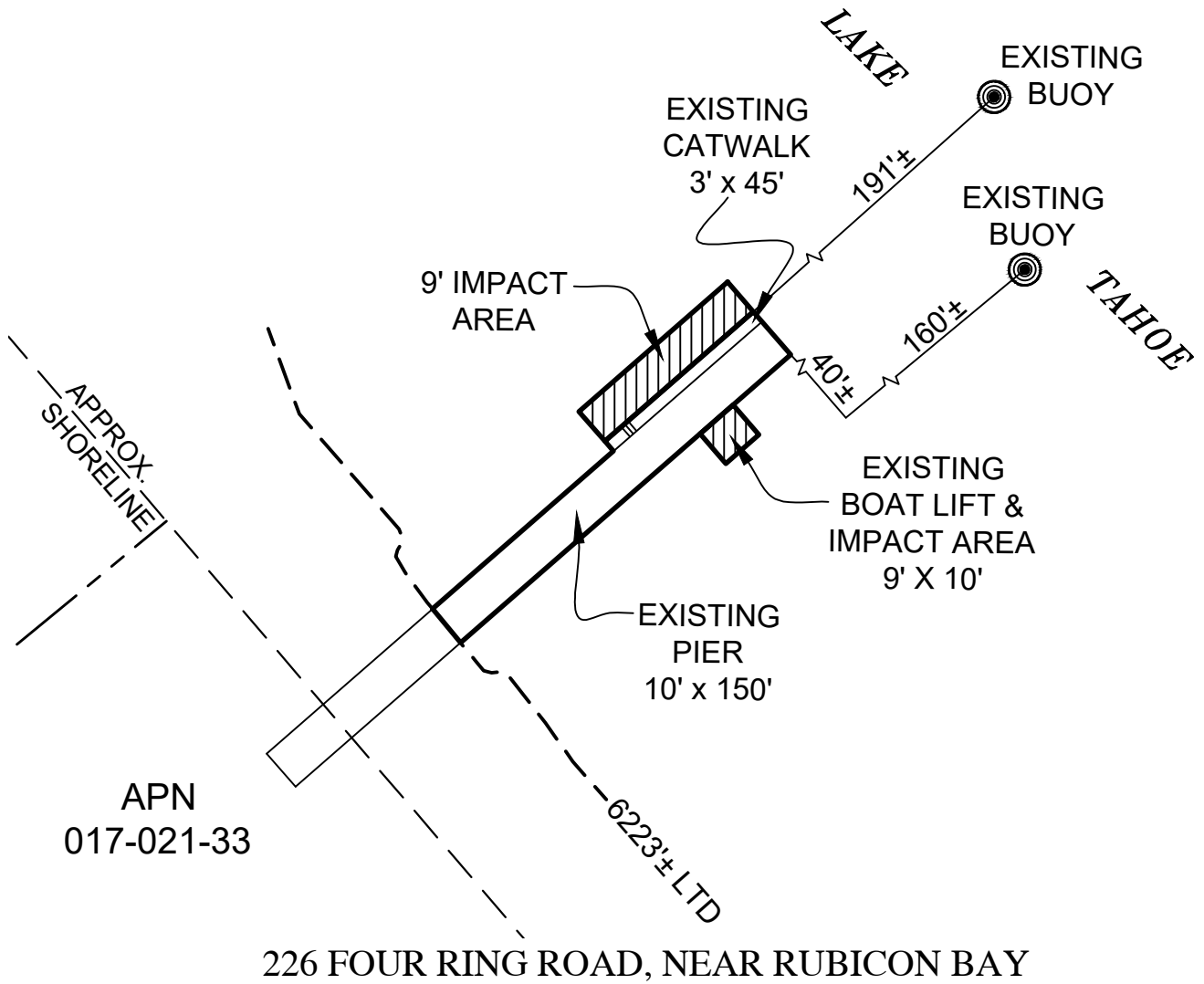


EXHIBIT A



NO SCALE

SITE



NO SCALE

LOCATION

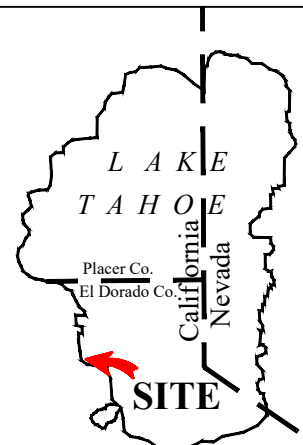


MAP SOURCE: USGS QUAD

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 7451.1
 TONY WEIR INDUSTRIES, LLC
 APN 017-021-33
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



TS 11/21/18