

STAFF REPORT

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06/28/19

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PRC 8728.1
M.J. Columbus

AMENDMENT OF LEASE

LESSEE:

Babbage, LLC, a California Limited Liability Company

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 1530 North Lake Boulevard, near Tahoe City, Placer County.

AUTHORIZED USE:

Removal, reconstruction and expansion of an existing pier with adjustable catwalk; installation of a boat lift; removal of one existing mooring buoy; and continued use and maintenance of one existing mooring buoy.

LEASE TERM:

10 years, beginning April 19, 2018.

CONSIDERATION:

\$1,671 per year, with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

Amend the lease to:

- Authorize the reduction in the length of the pier design from 225 feet to 195 feet.
- Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).
- Include a special lease provision that requires Lessee to provide proof of a Tahoe Regional Planning Agency (TRPA) buoy permit or proof that unpermitted buoys have been removed by October 23, 2020.
- Revise rent from \$1,671 per year to \$1,528 per year with an annual Consumer Price Index adjustment, effective April 19, 2020.

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All other terms and conditions of the lease shall remain in effect without amendment.

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 April 19, 2018, the Commission authorized a General Lease – Recreational Use to Babbage, LLC, a California Limited Liability Company, for removal, reconstruction and expansion of an existing pier with adjustable catwalk; installation of a boat lift; removal of one existing mooring buoy; and continued use and maintenance of an existing mooring buoy ([Item C14, April 19, 2018](#)). The lease will expire on April 18, 2028. The authorized construction has commenced and will be completed by June 30, 2019. However, TRPA Permit No. ERSP2018-0162 requires a reduction in the pier length and permanent retirement of one mooring buoy for authorization of the boat lift. The buoy will be removed during construction and evidence to verify the removal of the buoy will be provided. The Lessee is now applying to amend the lease to reduce the length of the pier from 225 feet to 195 feet.

The subject improvements 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 proposed pier design will allow public access laterally across the shoreline and the immediate area of the pier is rocky with large boulders. The topography and the location of upland structures provide access for the pier and the public may navigate or walk next to and, at certain water levels, under the pier within the Public Trust easement. With the proposed design, there will be approximately 7 feet of clearance to pass under the pier at low water.

The lease includes a provision protecting the public's use of the lease area by requiring the Lessee to obtain necessary permits. The lease requires the Lessee to conduct all construction and maintenance work safely and to indemnify the Commission in the event of any liability resulting from the proposed action. The lease also has a limited term of 10

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years, which allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time.

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 amendment does not substantially interfere with the common law Public Trust Doctrine at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application to amend the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. 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.
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 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

EXHIBITS:

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

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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 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment 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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 8728.1, a General Lease – Recreational Use, effective June 28, 2019, to approve the reduction in the length of the pier design from 225 feet to 195 feet; to revise rent from \$1,671 to \$1,528 per year, with an annual Consumer Price Index adjustment, effective April 19, 2020; to include a special lease provision related to buoy permitting; and to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 8728.1

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 5, Township 15 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying a proposed pier, adjustable catwalk, and boat lift lying adjacent to that parcel described in Grant Deed recorded August 24, 2016 as Document Number 2016-0070126 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.

PARCEL 2 – BUOY

One circular parcel of land, being 50 feet in diameter, underlying one existing buoy lying adjacent to that parcel described in Grant Deed recorded August 24, 2016 as Document Number 2016-0070126 in Official Records of said County.

This description is based on Applicant provided design plans for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 6/5/2019 by the California State Lands
Commission Boundary Unit.





Lake Tahoe

APN
094-160-006

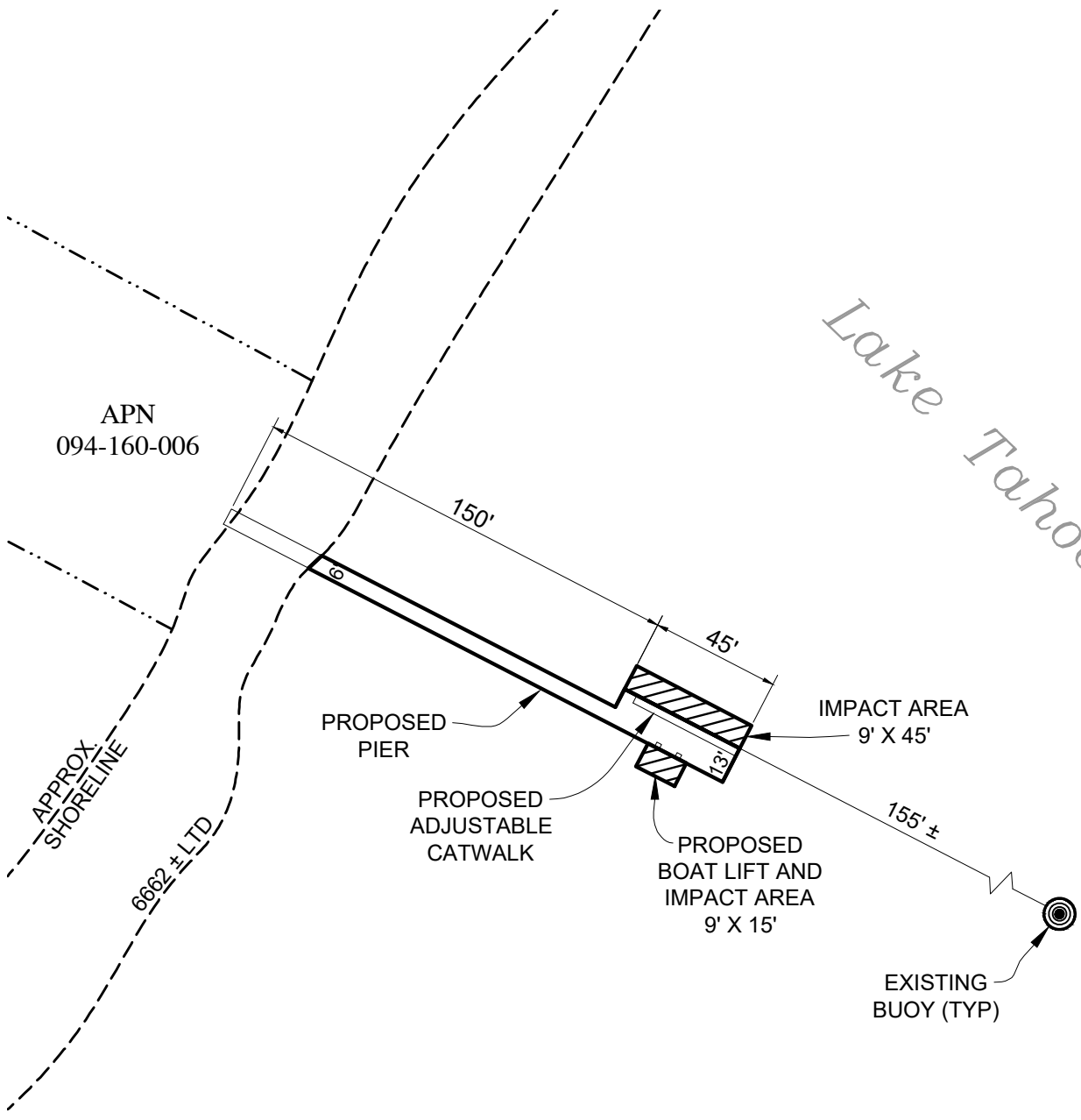


EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 8728.1, BABBAGE, LLC
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



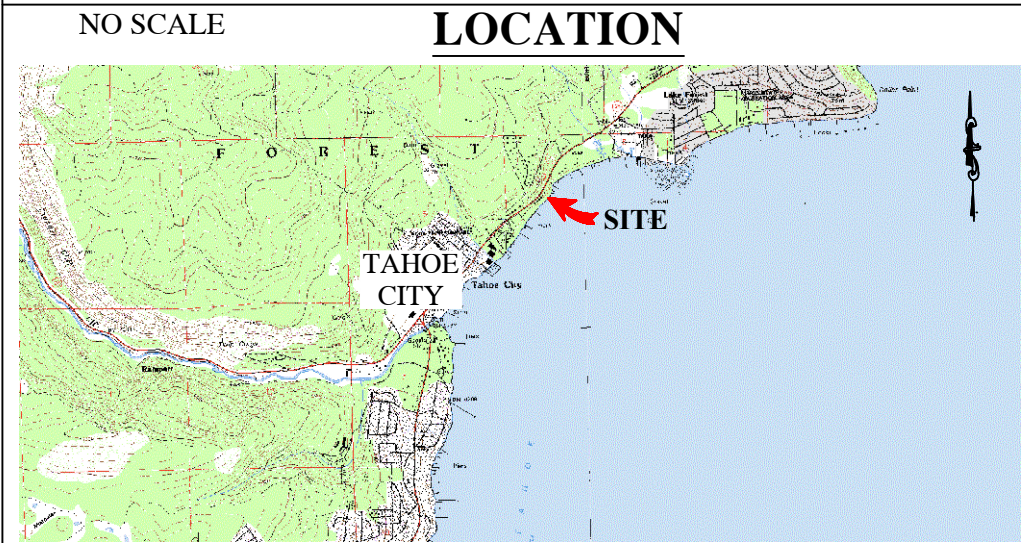
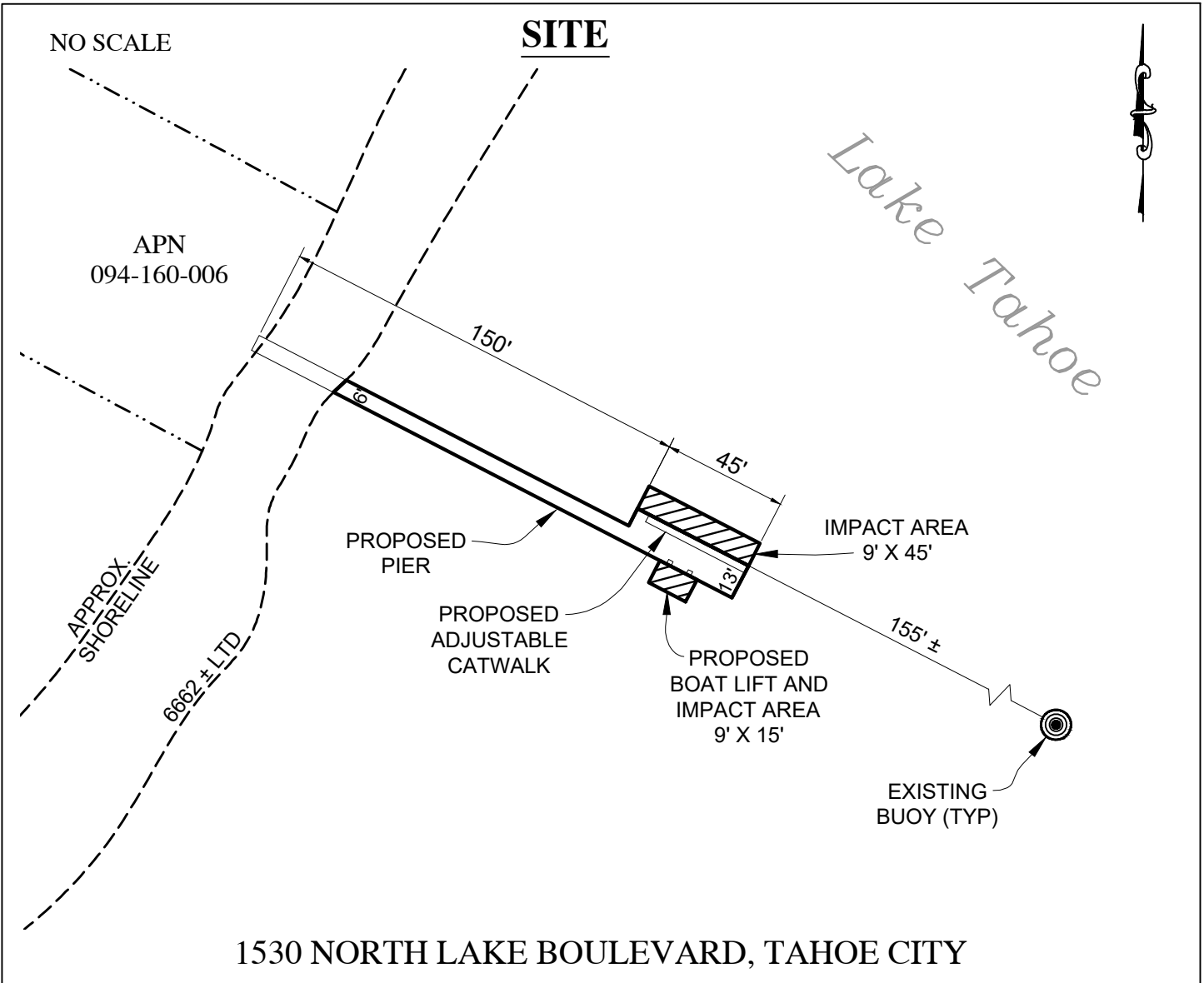
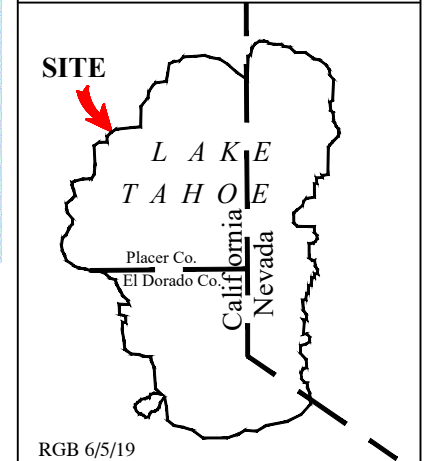


Exhibit B
 PRC 8728.1
 BABBAGE, LLC
 APN 094-160-006
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



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.