

**CALENDAR ITEM
C16**

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S 1

06/19/14
PRC 4970.9
M.J. Columbus

GENERAL LEASE - RECREATIONAL USE

APPLICANTS:

Michael C. Buckley and Caroline A. Buckley, Trustees of The Buckley Revocable Trust dated September 24, 2010; Roy Grant Deary, III, as Trustees of the Roy Grant Deary, III Revocable Trust Dated July 21, 1992; Shelley Lynn Deary, as Trustee of the Shelley Lynn Deary Trust dated November 15, 2005; Diane Deary Omand, as Trustee of the Omand Family Revocable Trust dated July 21, 1992; Donald R. Deary and Beverly B. Deary, Trustees of the Donald R. Deary Family Revocable Trust Dated May 31, 1989; Shannon Deary Bell; Timothy S. Deary; Timothy S. Deary and Juliane M. Deary, Trustees of the Timothy S. Deary and Juliane M. Deary 2013 Revocable Trust (as the Separate Property of Timothy S. Deary) dated April 10, 2013; Deborah Deary Orebaugh; Beverly B. Deary, Trustee of the Beverly B. Deary Qualified Personal Residence Trust No. 2, 3, 4, and 5; Michael P. Deary.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5900 and 5920 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing joint-use pier previously authorized by the Commission and use and maintenance of four existing mooring buoys not previously authorized by the Commission.

LEASE TERM:

10 years, beginning June 19, 2014.

CONSIDERATION:

No monetary consideration pursuant to Public Resources Code section 6503.5.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

CALENDAR ITEM NO. **C16** (CONT'D)

Other:

1. The proposed lease contains a provision requiring the Applicants to obtain authorization from the Tahoe Regional Planning Agency (TRPA) for the mooring buoys within two years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. This is a continuation of the process the Commission used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the FEIS. In September 2010, the U.S. District Court invalidated the FEIS and nullified the Amendments. When additional information is available, Commission staff will advise the Commission on any suggested modifications to the process used by the Commission pending resolution of the TRPA FEIS and amended ordinance issues.
2. 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.
3. The proposed lease contains a provision requiring the Applicants to remove all unauthorized buoys, including anchor and chain, from below elevation 6,223-feet, Lake Tahoe Datum no later than September 30, 2014.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland adjoining the lease premises. The property located at 5900 North Lake Boulevard, which is Assessor Parcel Number (APN) 116-060-004, is owned by the Dearys, et al. The property located at 5920 North Lake Boulevard, APN 116-060-003, is owned by the Buckleys.
2. On November 21, 1974, the Commission authorized a 10-year Recreational Pier Permit to Joseph J. and Betty Jane Yurosek. The permit was associated with APN 116-060-003 and expired on November 20, 1984. In the ensuing years, staff had no contact with the owners. Ownership of APN 116-060-003 transferred through the years and, on November 17, 2010, was deeded to Michael C. Buckley and Caroline A. Buckley, Trustees of The Buckley Revocable Trust dated September 24, 2010. On December 17, 2010, The Buckleys authorized a Joint Pier Agreement with the owners of APN 116-060-004, the Dearys et al.

CALENDAR ITEM NO. **C16** (CONT'D)

3. Applicants are applying for a General Lease – Recreational Use for the continued use and maintenance of an existing joint-use pier previously authorized by the Commission and use and maintenance of five existing mooring buoys not previously authorized by the Commission. Two buoys are adjacent to APN 116-060-003 and three buoys are adjacent to APN 116-060-004. The Applicants' buoys have been in Lake Tahoe for many years.
4. In the lease application, the Applicants provided a copy of the buoy permits for the third buoy adjacent to APN 116-060-004 issued by TRPA in March 2010 under the "grandfather clause" adopted by TRPA in 2008.
5. As background, Prior to 2008, TRPA ordinances allowed only two existing private mooring buoys per littoral parcel. TRPA adopted new shorezone ordinances in 2008 which allowed permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the third buoy had been placed in the lake prior to 1972, or had an existing valid lease for a third buoy from the Commission, or a valid permit from the U.S. Army Corps of Engineers. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition for previously unpermissible buoys. In 2010, the TRPA buoy permits issued under the 2008 TRPA ordinances were found to be invalid by the U.S. District Court. The invalidity of these buoy permits was upheld by the 9th Circuit U.S. Court of Appeals.
6. Because of the court decision, TRPA is now operating under the pre-2008 Code of Ordinances which does not have a third buoy grandfather clause. Recommending approval for a third, fourth, and fifth buoy would be in direct conflict with the current TRPA Code of Ordinances and the Commission's standard lease provision. On September 23, 2013, staff wrote to the Applicants advising that staff would not recommend more than two buoys in the new lease because of the conflict with TRPA's current code and the Commission's standard lease provisions. Staff requested that one of the three existing buoys adjacent to APN 116-060-004 be removed.
7. Staff recommends authorization of two existing mooring buoys adjacent to each parcel and the existing joint use pier as being consistent with the current TRPA Code of Ordinances and the Commission's standard lease provisions.

CALENDAR ITEM NO. **C16** (CONT'D)

8. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law took effect on January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission "shall charge rent for a private recreational pier constructed on state lands." The law provides for two exceptions to the imposition of rent. Those exceptions are for:
- A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
 - B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

Because the application was submitted to the Commission prior to March 31, 2011, the lease meets the statutory requirements for an exception to recently-enacted changes to section 6503.5 of the Public Resources Code for the term of this lease.

9. The 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.

10. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

CALENDAR ITEM NO. **C16** (CONT'D)

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).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational Use to Michael C. Buckley and Caroline A. Buckley, Trustees of The Buckley Revocable Trust dated September 24, 2010 and Roy Grant Deary, III, as Trustees of the Roy Grant Deary, III Revocable Trust Dated July 21, 1992; Shelley Lynn Deary, as Trustee of the Shelley Lynn Deary Trust dated November 15, 2005; Diane Deary Omand, as Trustee of the Omand Family Revocable Trust dated July 21, 1992; Donald R. Deary and Beverly B. Deary, Trustees of the Donald R. Deary Family Revocable Trust Dated May 31, 1989; Shannon Deary Bell; Timothy S. Deary; Timothy S. Deary and Juliane M. Deary, Trustees of the Timothy S. Deary and Juliane M. Deary 2013 Revocable Trust (as the Separate Property of Timothy S. Deary) dated April 10, 2013; Deborah Deary Orebaugh; Beverly B. Deary, Trustee of the Beverly B. Deary Qualified Personal Residence Trust No. 2, 3, 4, and 5; Michael P. Deary beginning June 19, 2014, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier previously authorized by the Commission and four existing mooring buoys 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; no monetary consideration pursuant to Public Resources Code Section 6503.5 and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4970.9

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 15, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 - PIER

All those lands underlying an existing pier lying adjacent to that parcel as described in that Grant Deed recorded November 17, 2010 in Document Number 2010-0095357 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

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

PARCELS 2, 3, 4 & 5 - BUOYS

Four (4) circular parcels of land, each being 50 feet in diameter, underlying four (4) existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared May 7, 2014 by the California State Lands Commission Boundary Unit.



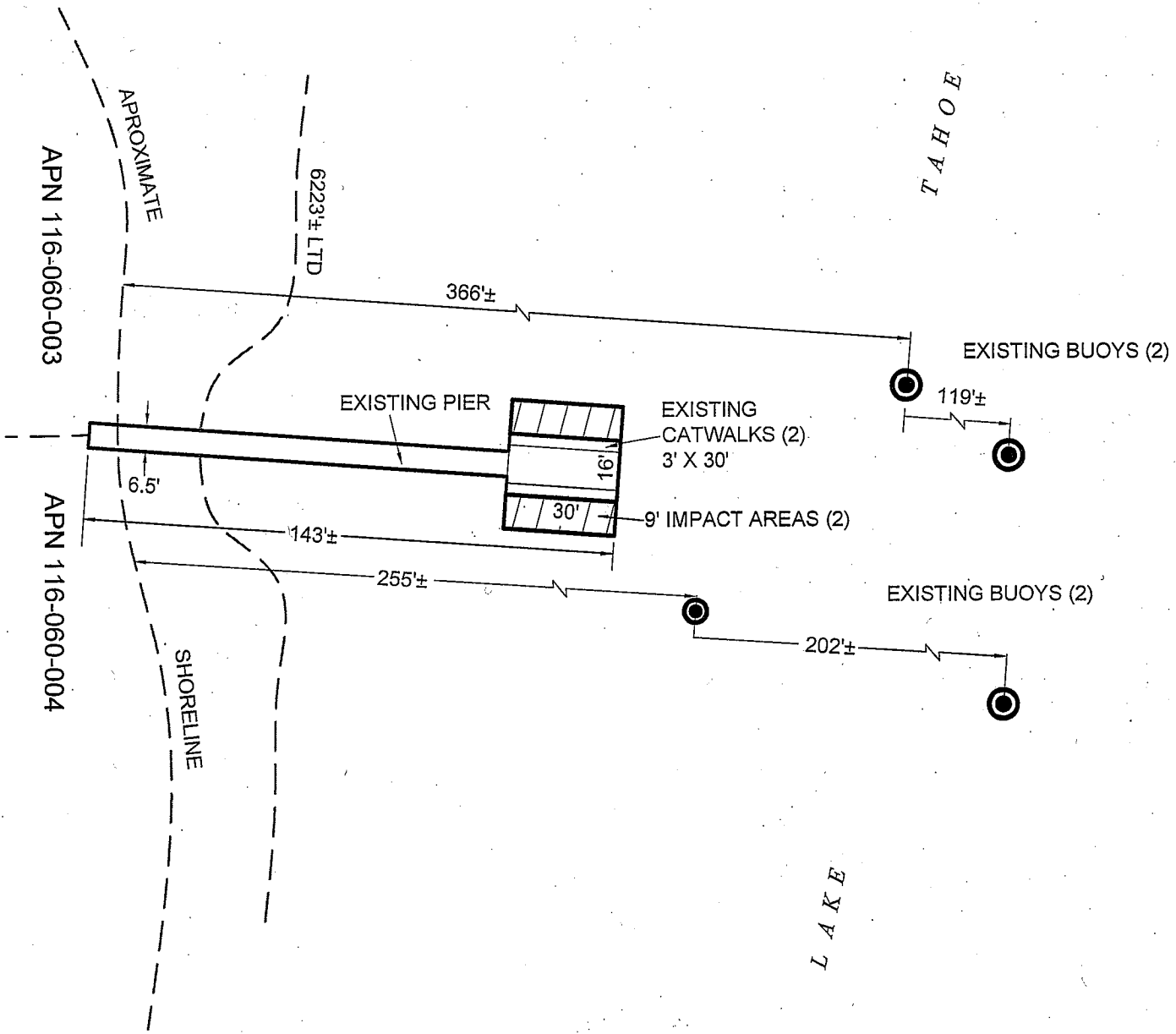
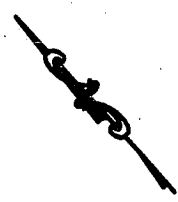


EXHIBIT A

Page 2 of 2

MJJ 05/22/14

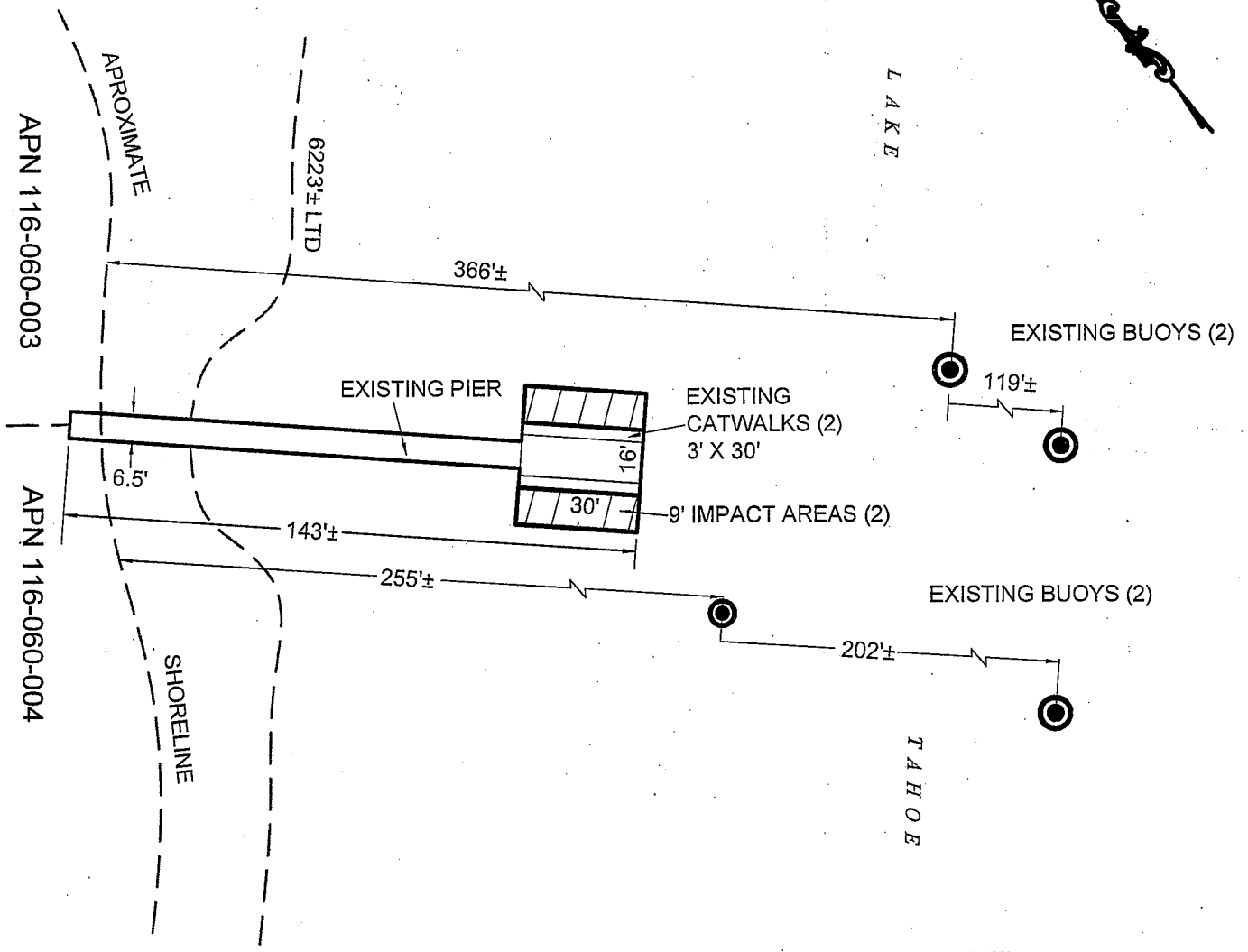
LAND DESCRIPTION PLAT
 PRC 4970.9, BUCKLEY & DEARY
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



SITE

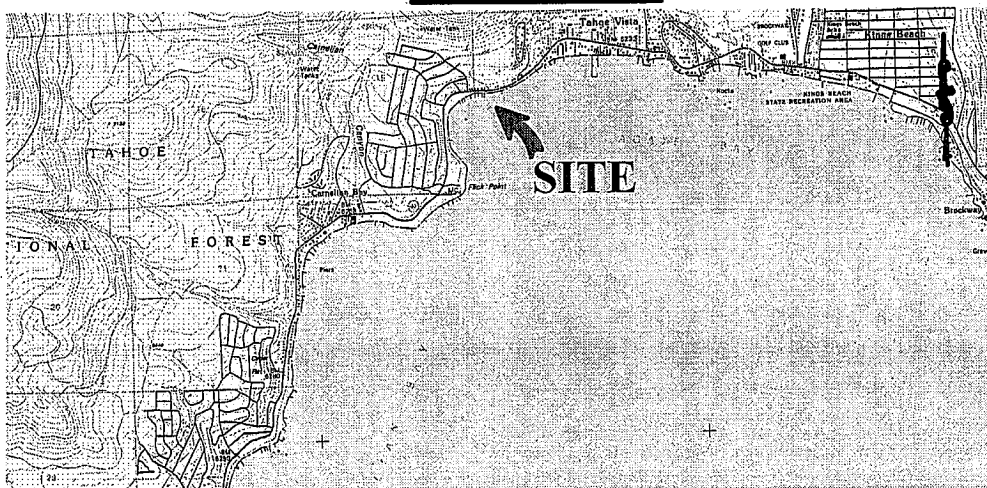
NO SCALE



5900 & 5920 NORTH LAKE BLVD., AGATE BAY

NO SCALE

LOCATION

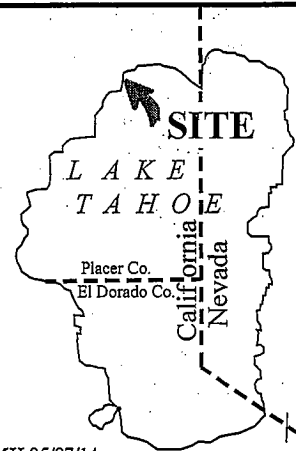


MAP SOURCE: USGS QUAD

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 4970.9
 BUCKLEY & DEARY
 APN 116-060-003 & 004
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 05/07/14