

**STAFF REPORT
C12**

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08/17/17
PRC 8757.1
K. Connor

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

John M. Nivinski and Brenda Allen Nivinski

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Donner Lake, adjacent to 14630 South Shore Drive, near the town of Truckee, Nevada County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier.

LEASE TERM:

10 years, beginning September 1, 2017.

CONSIDERATION:

\$393 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

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

2. 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.

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 September 13, 2007, the Commission authorized the issuance of a Recreational Pier Lease to John M. Nivinski and Brenda Allen Nivinski ([Item C12, September 13, 2007](#)). The lease expires on August 31, 2017.

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The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier.

The pier is used for 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 and the immediate area of the pier is made up of gravel and cobbles. The topography and the location of upland structures provide access for the pier and allow the public to walk or navigate under the pier within the Public Trust easement.

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 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 is consistent with the common law Public Trust Doctrine and 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. 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).

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Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

3. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

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:

Find that 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 or 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.

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:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning September 1, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier 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 \$393, with

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

EXHIBIT A

PRC 8757.1

LAND DESCRIPTION

A parcel of submerged land situated in the bed of Donner Lake, lying adjacent to Lot 5 of fractional Section 13, Township 17 North, Range 15 East, M.D.B.&M., as shown on Official Government Township Plat approved April 10, 1867, County of Nevada, State of California, more particularly described as follows:

All those lands underlying an existing pier lying adjacent to that parcel described in Grant Deed recorded August 29, 2003 as Document Number 2003-0046551-00 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of the low water mark elevation of 5933.8 feet of said Donner Lake.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 05/15/2017 by the California State Lands Commission Boundary Unit.





DONNER LAKE

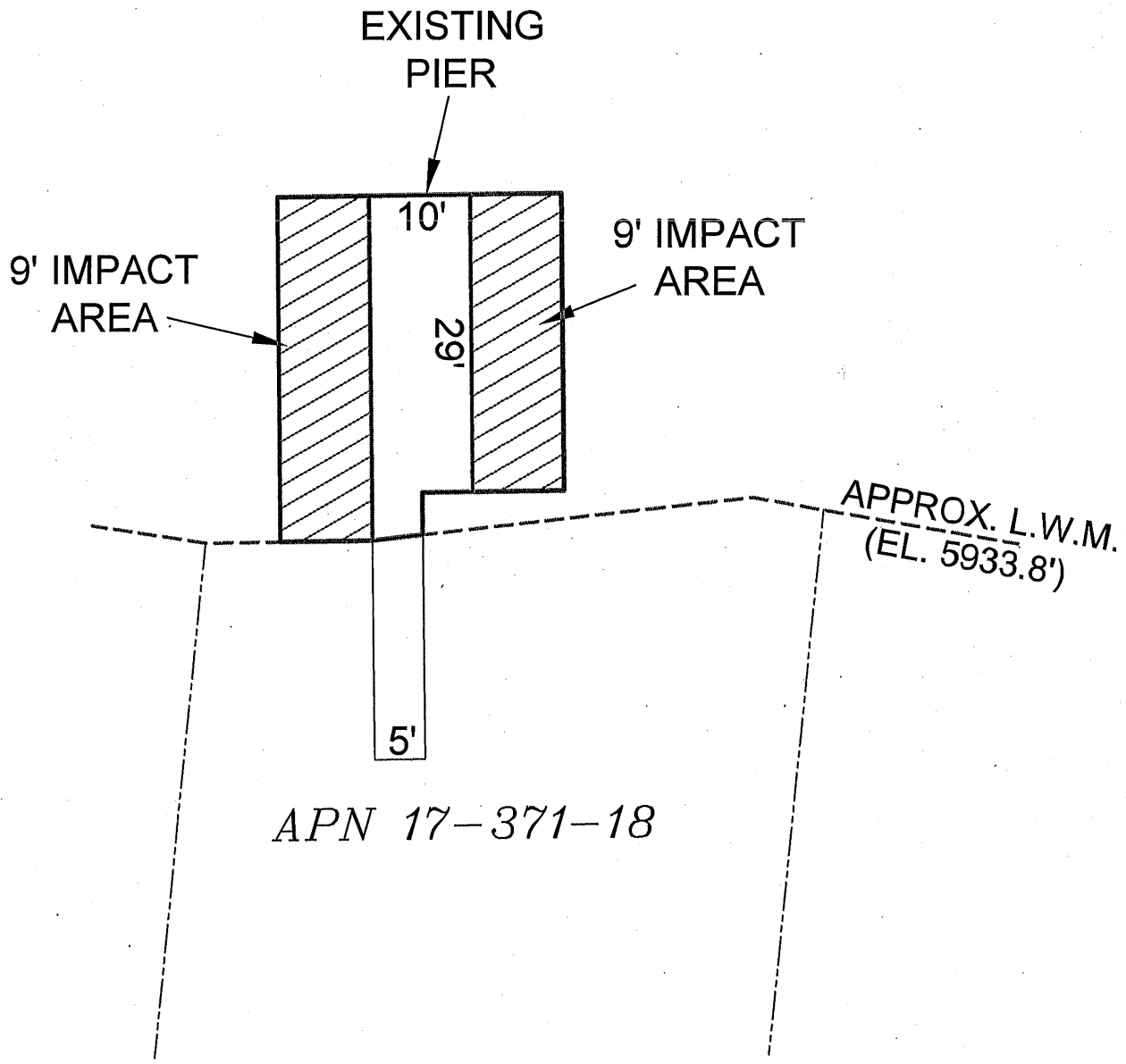


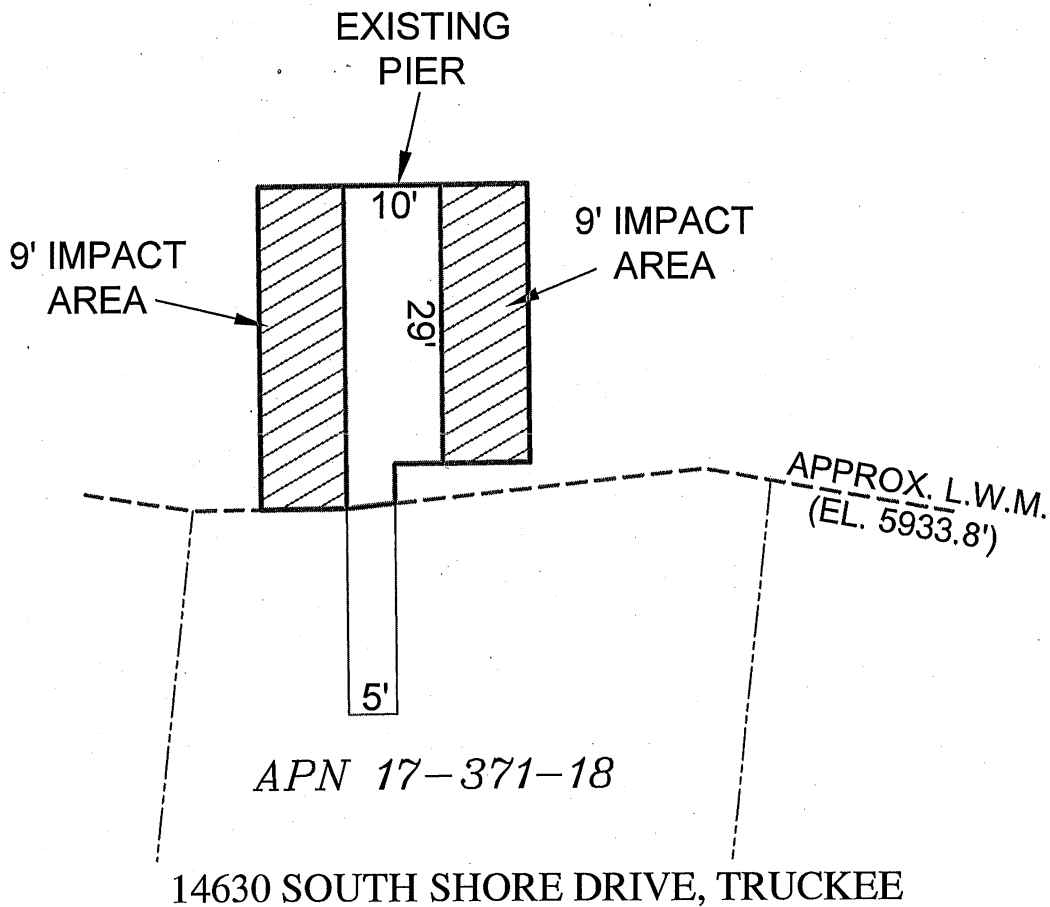
EXHIBIT A



NO SCALE

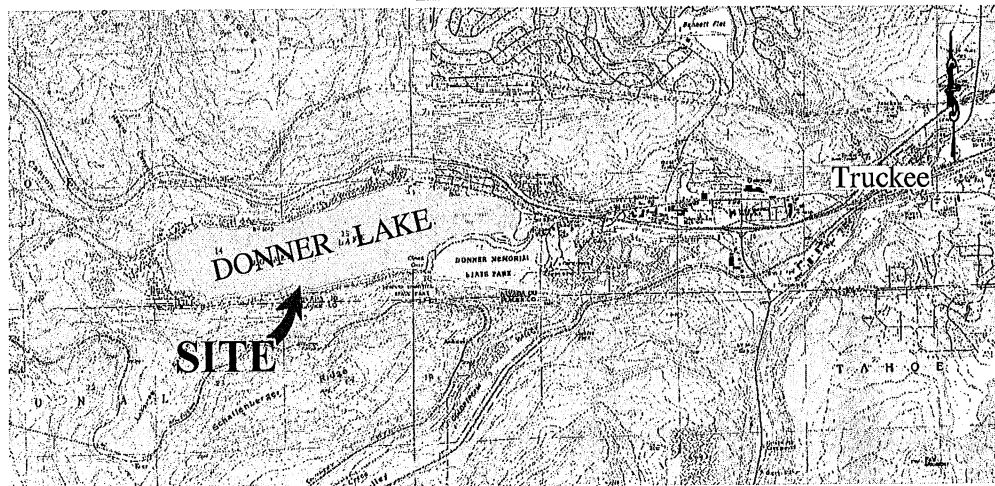
SITE

DONNER LAKE



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

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 NIVINSKI
 APN 17-371-18
 GENERAL LEASE -
 RECREATIONAL USE
 NEVADA COUNTY

