

**STAFF REPORT
C19**

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08/17/17
PRC 5787.1
M. Schroeder

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST,
ACCEPTANCE OF A QUITCLAIM DEED AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Evelyn H. Hyatt, Trustee of the Albert M. Hyatt Credit Shelter Trust dated July 10, 1997

APPLICANT:

Adon A. Panattoni, Tara E. McCarty, and Justin D. McCarty

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8415 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat hoist, and one mooring buoy.

LEASE TERM:

10 years, beginning August 17, 2017.

CONSIDERATION:

\$688 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.

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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 23, 2015, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, boat hoist, and one mooring buoy to Evelyn H. Hyatt, Trustee of the Albert M. Hyatt Credit Shelter Trust dated July 10, 1997 ([Item C27, April 23, 2015](#)). That lease will expire on January 23, 2025.

The Lessee paid annual rent through January 23, 2017. Commission staff sent an annual rent invoice to the Lessee for the 2017-2018 lease period. The Lessee did not pay this invoice.

On August 4, 2016, the upland was deeded to Adon A. Panattoni, Tara E. McCarty, and Justin D. McCarty. Staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of January 24, 2017, through January 23, 2018, since the Lessee was no longer the upland owner at this time, and the Applicant has already agreed to be responsible for rent during this time.

Therefore, staff recommends waiving the rent, penalty, and interest due from Lessee under invoice number 41123. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$384 for the period beginning January 24, 2017, through August 16, 2017, the day before the new lease becomes effective.

The Applicant is applying for issuance of a new lease for the continued use and maintenance of the existing pier, boat hoist, and one mooring buoy. The Tahoe Regional Planning Agency (TRPA) issued a permit for the mooring buoy adjacent to the upland parcel on August 5, 1977. The TRPA permit is currently valid.

The subject facilities are privately owned and maintained. The pier, boat hoist, and one mooring buoy 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).

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The subject facilities have existed for many years at this location. The pier is built on pilings, meaning the public may navigate or walk next to and, at lower water levels, under the pier. The area around the existing pier is steeply sloped with boulders, cobblestones, and a sandy portion of the shore. The buoy is located directly lakeward of the upland property and occupies a relatively small area 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, 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.

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, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State. The Lessee executed a lease quitclaim deed releasing their interest in the lease. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

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. Acceptance of a 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).

3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project.

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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.

4. 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 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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of a lease quitclaim deed; waiver of rent, penalty and interest; 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, or for the foreseeable term of the lease, and 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:

1. Waive annual rent, penalty and interest due for the period of January 24, 2017 through January 23, 2018, and void annual rent

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invoice number 41123 issued to Evelyn H. Hyatt, Trustee of the Albert M. Hyatt Credit Shelter Trust dated July 10, 1997.

2. Authorize acceptance of a quitclaim deed, effective August 16, 2017, of Lease No. PRC 5787.1, a General Lease – Recreational Use, issued to Evelyn H. Hyatt, Trustee of the Albert M. Hyatt Credit Shelter Trust dated July 10, 1997.
3. Authorize acceptance of compensation in the amount of \$384 for unauthorized occupation of State lands for the period beginning January 24, 2017, through August 16, 2017, from the Applicant.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 17, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier, boat hoist, and one mooring buoy, 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 \$688, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5787.1

LAND DESCRIPTION

Two (2) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 29, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, one boat hoist and one catwalk adjacent to those parcels as described in that Grant Deed recorded August 4, 2016 in Document Number 2016-0036033 of said County.

TOGETHER WITH any applicable impact area(s).

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

PARCEL 2 - BUOY

One (1) circular parcel of land being 50 feet in diameter, underlying one (1) existing buoy adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared May 3, 2017 by the California State Lands Commission Boundary Unit.

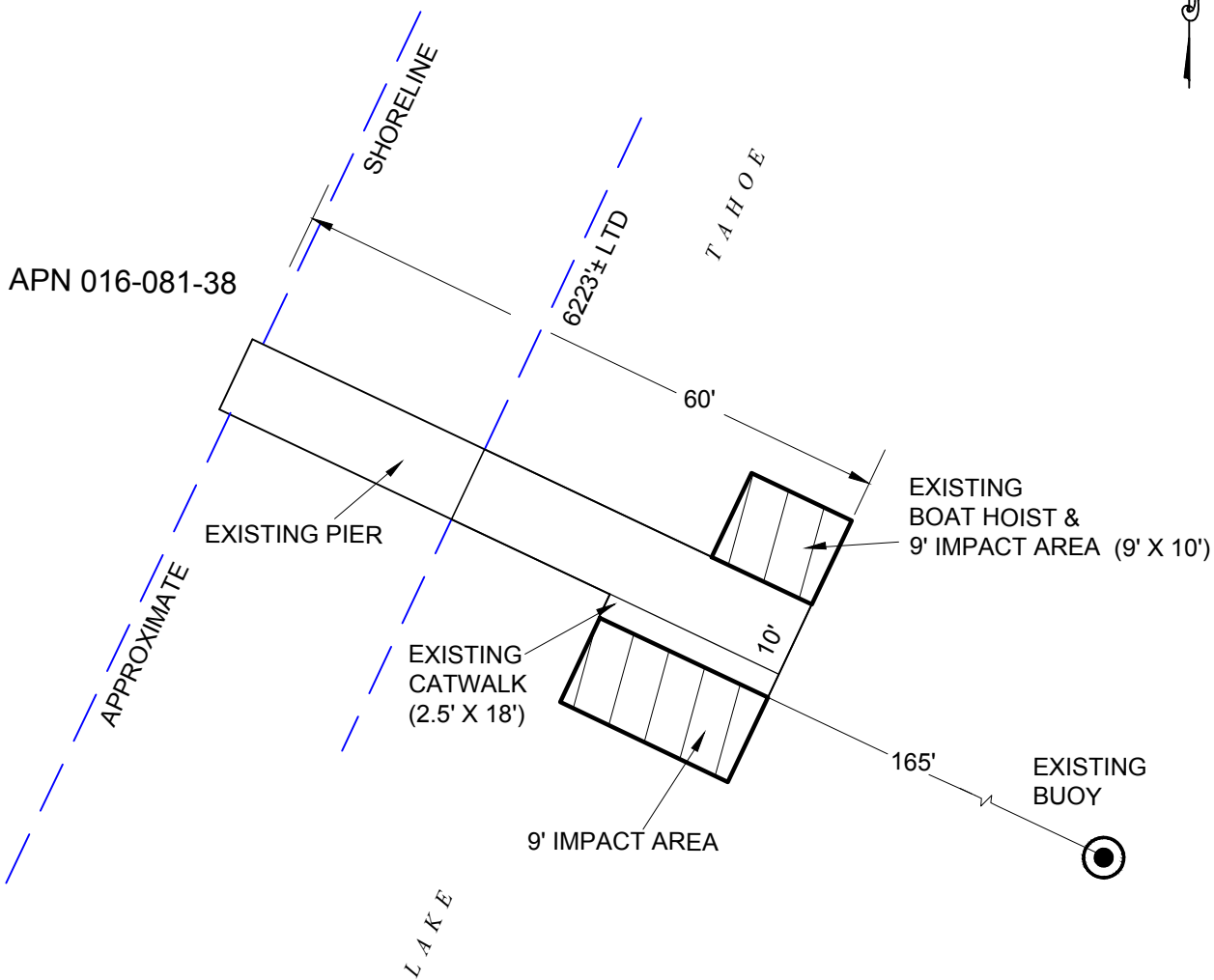


EXHIBIT A

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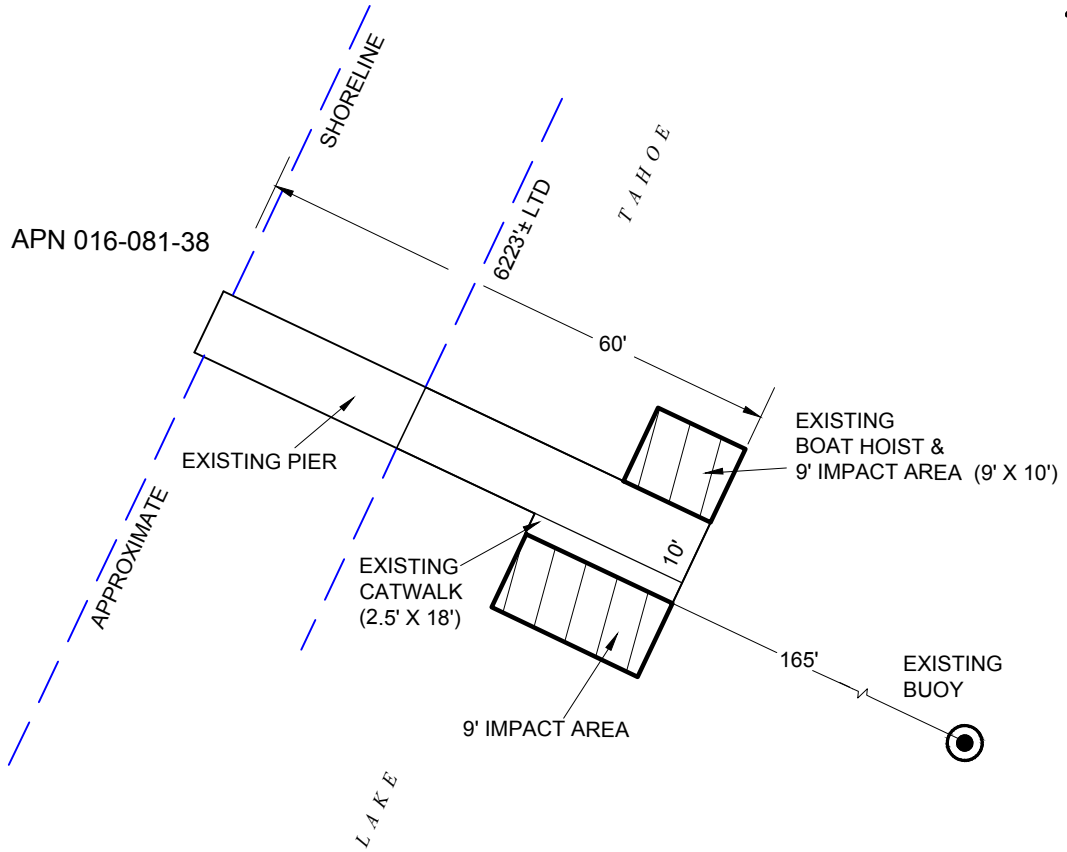
LAND DESCRIPTION PLAT
 PRC 5787.1, PANATONNI / McCARTY
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

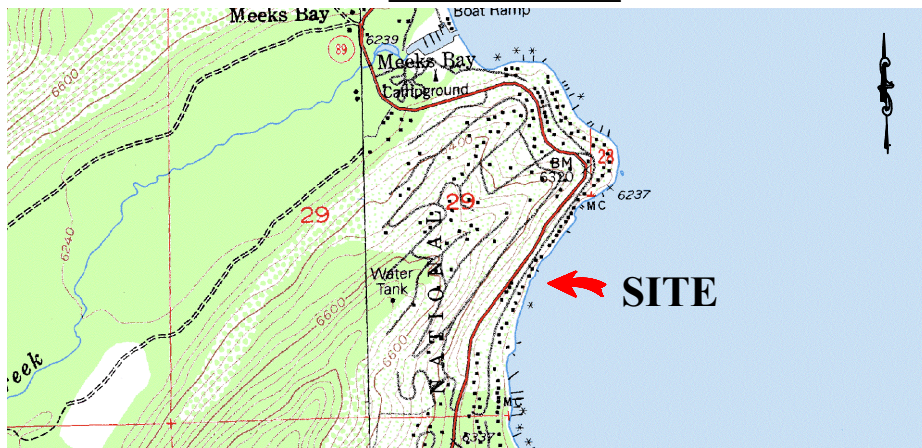
SITE



8415 MEEKS BAY AVENUE, NEAR MEEKS BAY

NO SCALE

LOCATION

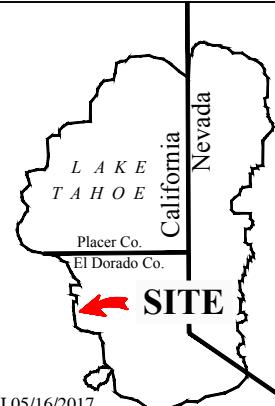


MAP SOURCE: USGS QUAD

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 5787.1
 PANATONNI / McCARTY
 APN 016-081-38
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



MJJ 05/16/2017