

**STAFF REPORT
C13**

A 1
S 1

04/19/18
PRC 9080.1
S. Avila

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

LESSEE:

Brian J. McCullough

APPLICANT:

Indika Charles Mendis and Quang Nhan Tin Lam

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Donner Lake, adjacent to 14976 South Shore Drive,
near Truckee, Nevada County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier.

LEASE TERM:

10 years, beginning April 19, 2018.

CONSIDERATION:

\$730 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 REPORT NO. **C13** (CONT'D)

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 20, 2013, the Commission authorized a 10-year General Lease – Recreational Use for reconstruction, use, and maintenance of an existing pier, to Brian J. McCullough ([Item C06, September 20, 2013](#)). This lease will expire on September 19, 2023. On September 26, 2017, ownership of the upland parcel was deeded to Indika Charles Mendis and Quang Nhan Tin Lam. The Applicant is applying for a new General Lease – Recreational Use for the continued use and maintenance of the existing pier.

Staff sent an annual rent invoice to the Lessee for the 2017-2018 lease period. The Lessee did not pay this invoice. This invoice was issued before Commission staff became aware of the transfer of the upland property. Because the Applicant agreed to be responsible for the rent dating back to the transfer of ownership on September 26, 2017, staff does not believe it is in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee. The Lessee executed a lease quitclaim deed releasing his interest in the lease. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

Staff recommends issuance of a new lease beginning April 19, 2018, and that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$410 for the period beginning September 26, 2017 (the date the property transferred to the Applicant), through April 18, 2018 (the date prior to the effective date of the new lease), for the pier. The Lessee is no longer the upland owner, therefore, staff recommends waiving the rent, penalty, and interest due from the Lessee under invoice number 42725.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier is used for the docking and mooring of boats and facilitates 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).

STAFF REPORT NO. C13 (CONT'D)

The subject facilities have existed for many years at this location. The pier is built on natural rock cribbing. The topography and location of upland structures provide access for the pier and allow the public to walk or navigate next to the end of the pier within the Public Trust easement. However, the lateral public access is limited within the Public Trust easement because the pier is built on a crib and restricts public access from walking or navigating underneath the pier.

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, 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.

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.
2. Acceptance of the quitclaim deed and waiver of rent, penalty, and interest are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

STAFF REPORT NO. **C13** (CONT'D)

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).

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, 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. Waive annual rent, penalty and interest due for the period of September 20, 2017, through September 19, 2018, and void annual rent invoice number 42725 issued to Brian J. McCullough.
2. Authorize acceptance of a quitclaim deed, effective April 18, 2018, of Lease No. PRC 9080.1, a General Lease – Recreational Use, issued to Brian J. McCullough.
3. Authorize acceptance of compensation in the amount of \$410 for unauthorized occupation of State lands for the period beginning September 26, 2017, through April 18, 2018, from the Applicant.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 19, 2018, 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

STAFF REPORT NO. **C13** (CONT'D)

the amount of \$730, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 9080.1

LAND DESCRIPTION

A parcel of land situated in the bed of Donner Lake, lying adjacent to Government Lot 8 of fractional Section 14, Township 17 North, Range 15 East, M.D.B.&M., as shown on Official Government Township Plat approved April 10, 1867, also being adjacent to Lot 1 of the Block 1 of the Donner Lake Villa Tract No. 1 Subdivision as shown on the map filed October 2, 1922 in Book 1 of Maps at Page 34, Records of Nevada County, 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 September 26, 2017 as Document Number 20170021311 in Official Records of said County, and as depicted on the Bathymetric Survey map by Terra Graphic Land Surveying, dated February 20, 2017.

TOGETHER WITH any applicable Impact Area(s).

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

Accompanying plat is hereby made part of this description.

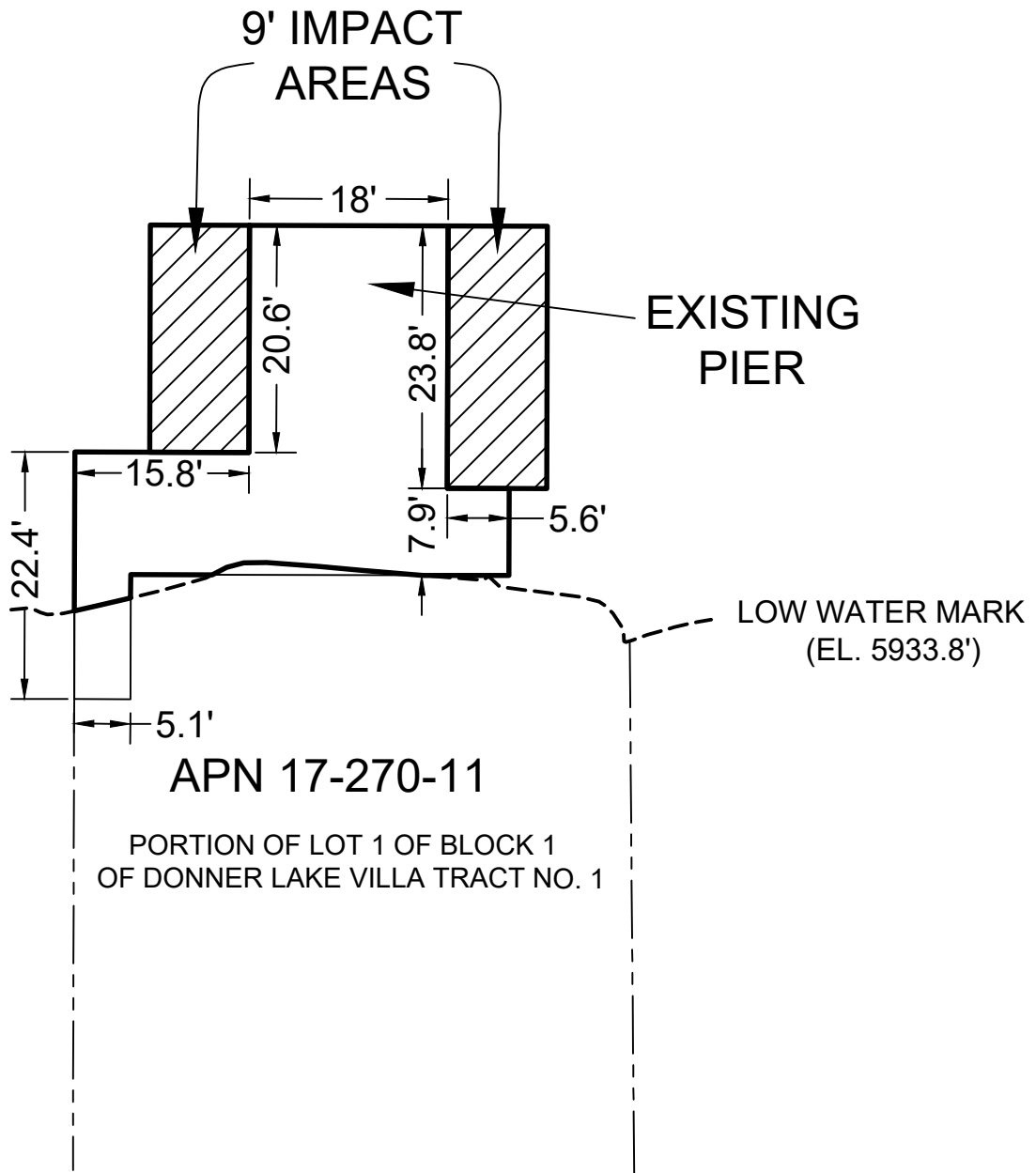
END OF DESCRIPTION

Prepared 02/28/2018 by the California State Lands Commission Boundary Unit.



DONNER LAKE

NO SCALE



* LOCATION OF 5933.8' SHOWN PER BATHYMETRIC SURVEY PERFORMED BY TERRA GRAPHIC LAND SURVEYING ON FEBRUARY 6, 2018.

EXHIBIT A

Page 2 of 2

TS 02/28/18

LAND DESCRIPTION PLAT
PRC 9080.1, MENDIS / LAM
NEVADA COUNTY

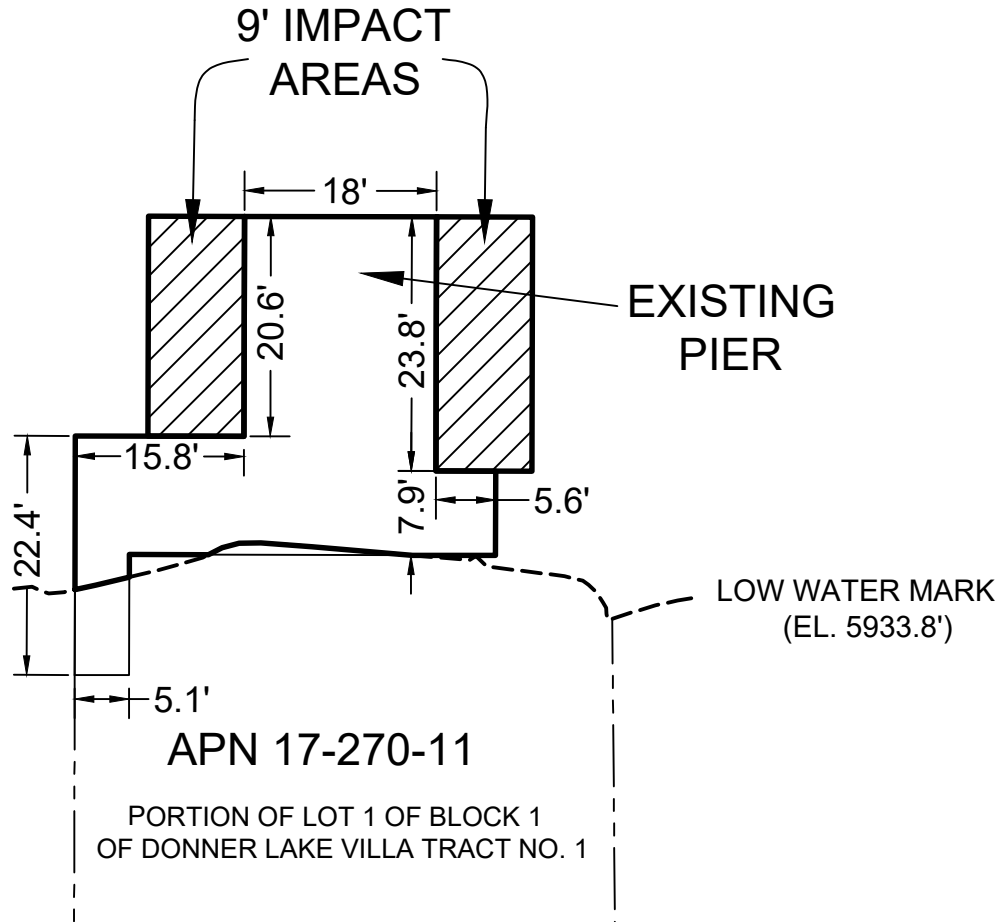
CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

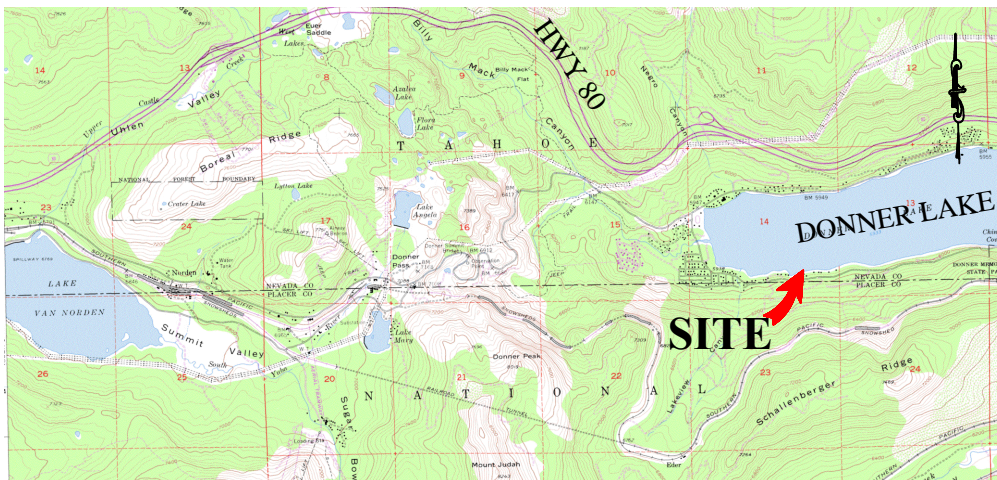
DONNER LAKE



14976 SOUTH SHORE DRIVE, TRUCKEE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9080.1
 MENDIS / LAM
 APN 17-270-11
 GENERAL LEASE -
 RECREATIONAL USE
 NEVADA 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.