

**STAFF REPORT  
C19**

A 1  
S 1

06/21/18  
PRC 5575.1  
J. Toy

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Sally Bankofier Markstein as Trustee of the Sally Bankofier Markstein Trust dated March 11, 1997

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 3380 Edgewater Drive, near Dollar Point, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing pier and one mooring buoy previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission.

*LEASE TERM:*

10 years, beginning May 9, 2018.

*CONSIDERATION:*

\$1,148 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.
3. If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the one mooring buoy not previously authorized by the Commission within 2 years after the certification of a Final Environmental Impact Statement for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances.

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If the Lessee is unable to obtain such authorization within the time limit, they may be required to remove the buoy.

4. 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.

### **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 January 29, 2009, the Commission authorized a Recreational Pier Lease for an existing pier and one mooring buoy to Sally Bankofier Markstein as Trustee of the Sally Bankofier Markstein Trust dated March 11, 1997 ([Item C08, January 29, 2009](#)). That lease expired on May 8, 2018. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier and one mooring buoy previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission.

On May 24, 1977, TRPA issued a permit for a proposed pier and one mooring buoy to the previous owner of the upland property. The Applicant's TRPA permit is currently valid. However, the Applicant advised staff that a second mooring buoy was placed prior to her acquisition of the upland property. The Applicant was previously unaware that the additional mooring buoy could be brought under lease with the Commission and therefore did not include it in the prior lease application. Staff reviewed historic photographic evidence and it appears, based on the available evidence, the additional mooring buoy has existed for many years.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier and two mooring buoys 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, which allows the public to navigate or walk next to and, at lower water levels, under the pier. The immediate area of the existing pier is gently sloped with small and medium-sized rocks. The two buoys are located directly lakeward of the upland property and occupy 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, 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).

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

STAFF REPORT NO. **C19** (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).

**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 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 issuance of a General Lease – Recreational Use to the Applicant beginning May 9, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier and one mooring buoy previously authorized by the Commission and one existing mooring buoy 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; annual rent in the amount of \$1,148, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 5575.1**

**LAND DESCRIPTION**

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 33, Township 16 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, more particularly described as follows:

**PARCEL 1 – PIER**

All those lands underlying an existing pier and stairs lying adjacent to that parcel described in Grant Deed recorded March 13, 1997 in Document Number 97-0014613-00 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.

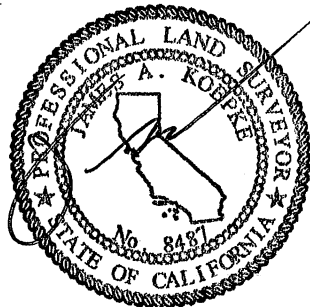
**PARCELS 2 & 3 – BUOYS**

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded March 13, 1997 in Document Number 97-0014613-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 04/06/2018 by the California State Lands Commission Boundary Unit.



NO SCALE



APN  
093-083-038

APPROX.  
SHORELINE

6223' LTD

EXISTING  
PIER  
(130' LONG)

EXISTING  
STAIRS  
(2' x 6')

IMPACT  
AREA  
(9' x 26')

IMPACT  
AREA  
(9' x 20')

100'±

TAHOE

LAKE

EXISTING  
BUOYS (2)

50'±

# EXHIBIT A

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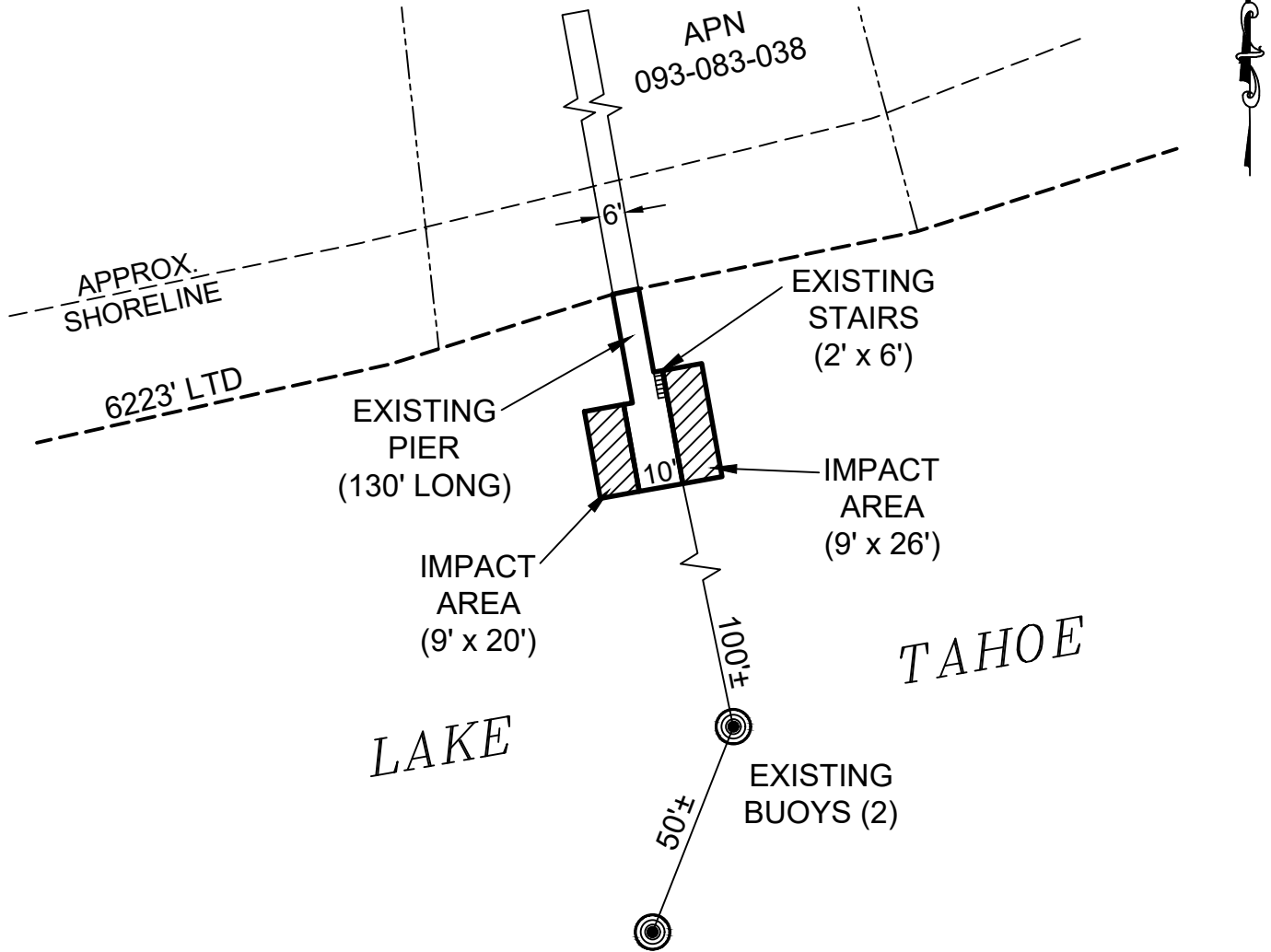
LAND DESCRIPTION PLAT  
PRC 5575.1, BANKOFIER MARKSTEIN TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

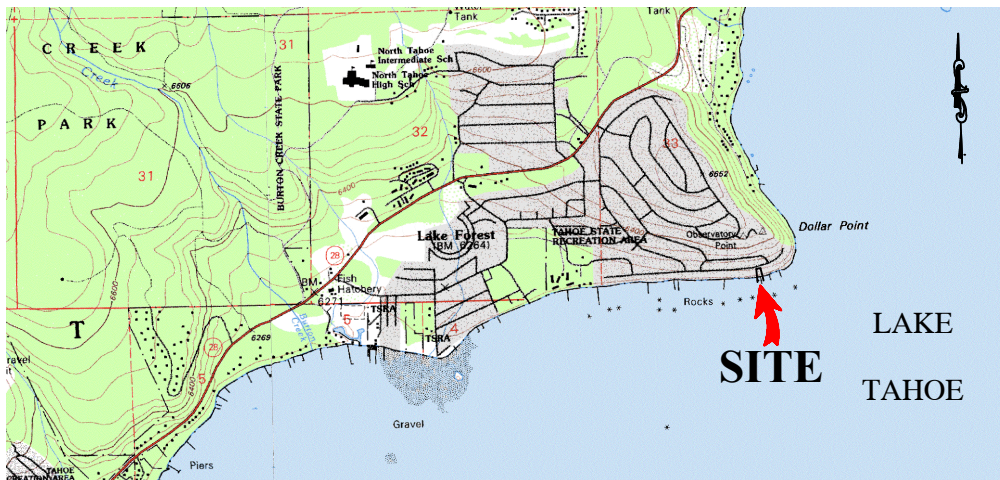
### SITE



3380 EDGEWATER DRIVE, NEAR DOLLAR POINT

NO SCALE

### LOCATION



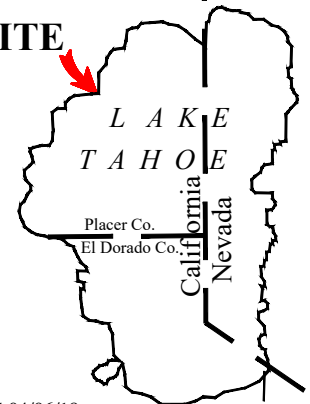
MAP SOURCE: USGS QUAD

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 5575.1  
 BANKOFIER  
 MARKSTEIN TRUST  
 APN 093-083-038 GENERAL  
 LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY

### SITE



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