

**STAFF REPORT
C20**

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02/04/19
PRC 4272.1
S. Avila

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Robert T. Shepherd, Richard V. Shepherd, James K. Shepherd, and Mary Jo Shepherd, as Trustee of the William R. Shepherd III, 2004 Trust, dated April 29, 2004; and Mary Jo Shepherd, Trustee of the Mary Jo Shepherd Homewood Qualified Personal Residence Trust, dated December 31, 2008

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6210 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse with two boat lifts, sundeck with stairs, and two mooring buoys.

LEASE TERM:

10 years, beginning January 20, 2019.

CONSIDERATION:

\$2,508 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- 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.
- If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the certification of a Final Environmental Impact Statement for the Lake Tahoe Shorezone Ordinance Amendments and approval of the

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

- 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.
- The lease contains provisions that the existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs of any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck with stairs must be removed from the lease premises.

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 December 17, 2009, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, boathouse with two boat lifts, sundeck with stairs, and two existing mooring buoys to William R. Shepherd, Jr. and Mary Jo Shepherd, Trustees of the William R. Shepherd, Jr. Homewood Qualified Personal Residence Trust, dated December 31, 2008; and William R. Shepherd, Jr. and Mary Jo Shepherd, Trustees of the Mary Jo Shepherd Homewood Qualified Personal Residence Trust, dated December 31, 2008 ([Item C20, December 17, 2009](#)). That lease expired on January 19, 2019.

On June 5, 2017, ownership of the upland was transferred within the family members to Robert T. Shepherd, Richard V. Shepherd, James K. Shepherd, and Mary Jo Shepherd, as Trustee of the William R. Shepherd III, 2004 Trust, dated April 29, 2004; and Mary Jo Shepherd, Trustee of the Mary Jo Shepherd Homewood Qualified Personal Residence Trust, dated December 31, 2008. The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of an existing pier, boathouse with two boat lifts, sundeck with stairs, and two mooring buoys.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boathouse, boat

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lifts, and 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).

The subject facilities have existed for many years at this location. The immediate area of the existing pier is gently sloped with large boulders and cobblestone running along the shoreline. The existing pier design allows the public to navigate around or walk next to and, at lower water levels, under the pier within the Public Trust Easement. The buoys are located directly lakeward of the upland parcel and occupy a relatively small area of the lake.

The existing sundeck with stairs is not associated with traditional Public Trust uses. While sundecks are generally not favored, sundecks that have been in place for years are not required to be removed before the end of their economic life, as is the case in this instance, they do not significantly interfere with the trust activities. However, the lease contains provisions that the sundeck with stairs may not be expanded nor rebuilt if substantially destroyed. The sundeck with stairs has been in place for many years and occupies a small area of the lakebed. The sundeck with stairs does not interfere with Public Trust activities at this location at this time.

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 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

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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. On October 24, 2018, the TRPA Governing Board certified a new Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
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).

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:

1. Find that the existing and, for a limited period, continuing use and maintenance of the pier, boathouse, boat lift, and two mooring buoys will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,
2. Find that the existing and, for a limited period, continuing use and maintenance of the sundeck with stairs is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,

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3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning January 20, 2019, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse with two boat lifts, sundeck with stairs, and two mooring buoys; 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 \$2,508 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4272.1

LAND DESCRIPTION

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 8 Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, two (2) boat lifts, boathouse, sundeck and stairs lying adjacent to that Lot as described in Trust Transfer Deed recorded June 5, 2017 as Document Number 2017-0040884 in Official Records of said County.

ALSO 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.

PARCELS 2, 3, – 2 BUOYS

Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to said lot.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared December 8, 2018 by The California State Lands Commission Boundary Unit.



NO SCALE

L A K E

T A H O E

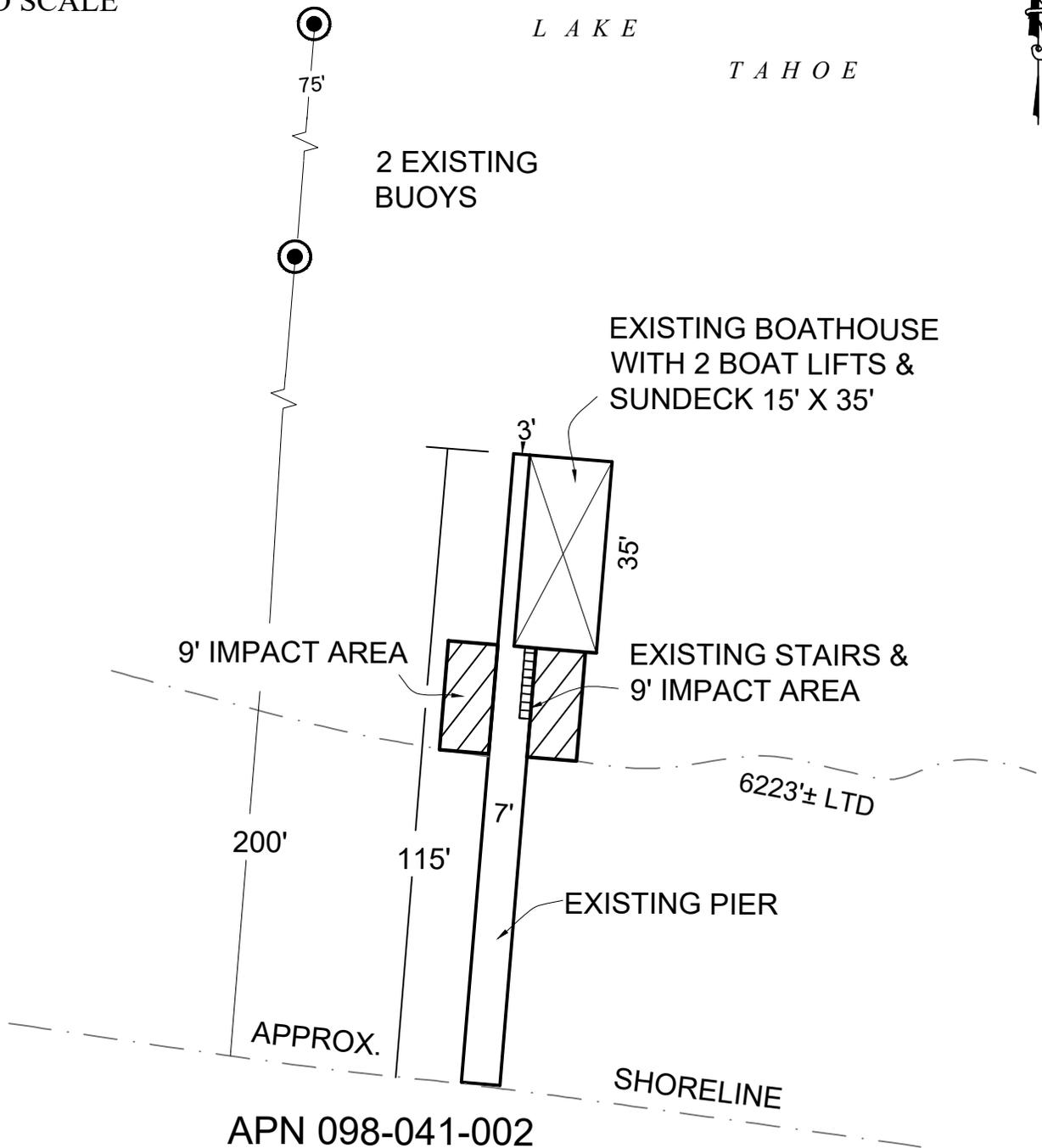


EXHIBIT A

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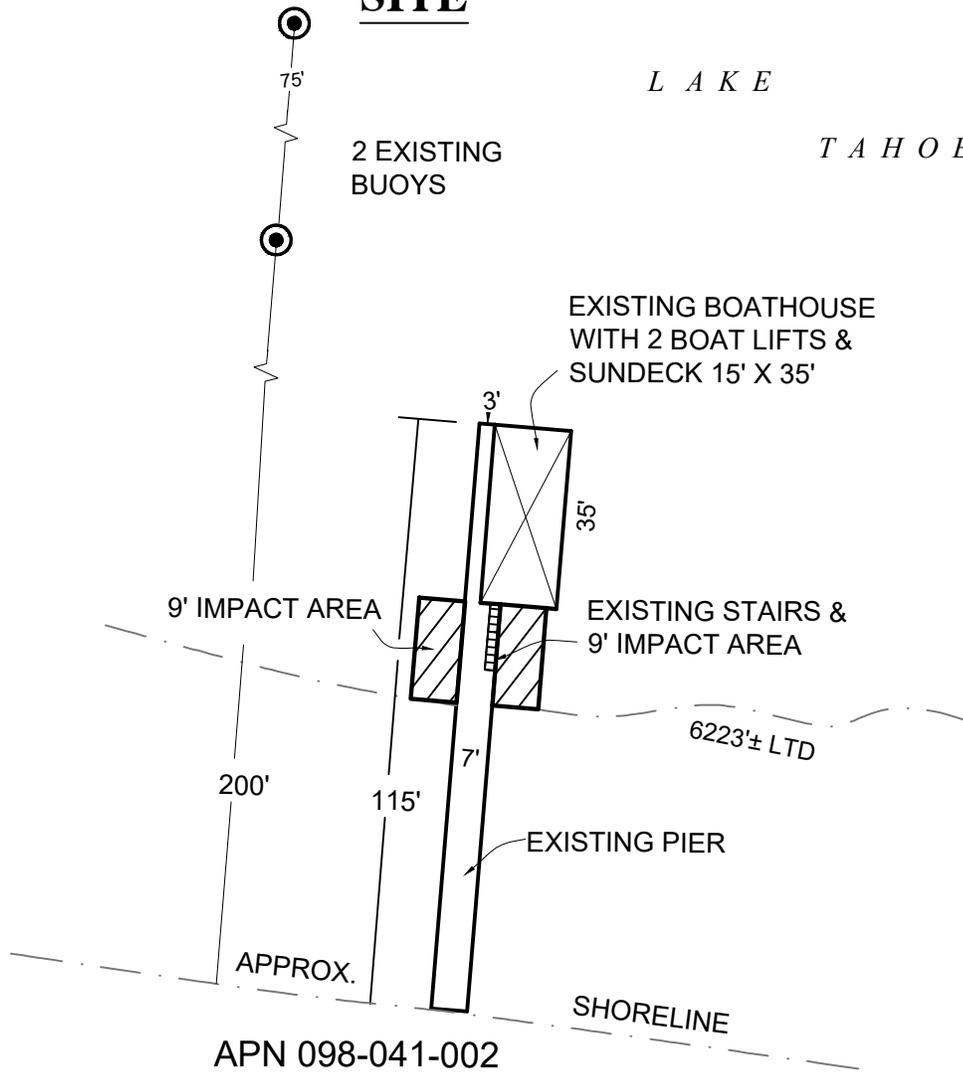
LAND DESCRIPTION PLAT
PRC 4272.1, SHEPHERD TRUST, ET AL
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

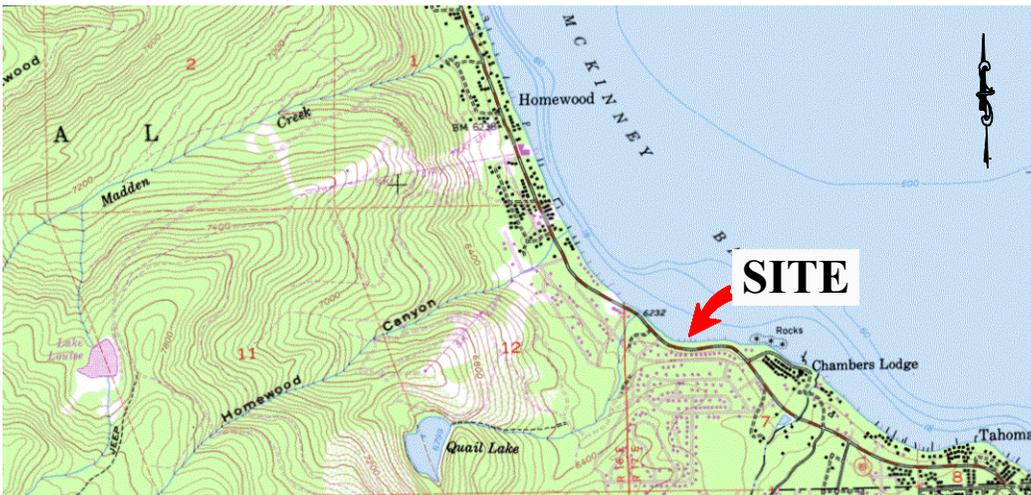
SITE



6210 WEST LAKE BLVD., NEAR HOMEWOOD

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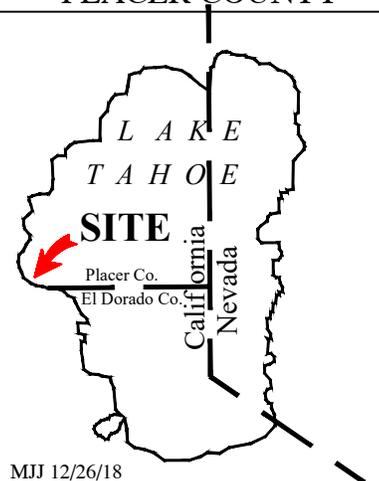
LOCATION



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 4272.1
 SHEPHERD TRUST, ET AL
 APN 098-041-002
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 12/26/18