

**STAFF REPORT**

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10/24/19

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Lease 6540.1

S. Avila

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Michael R. Raftery and Georgianne Raftery

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to Assessor Parcel Number 092-180-008, near Carnelian Bay, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing pier and boat lift.

*LEASE TERM:*

10 years beginning June 22, 2019.

*CONSIDERATION:*

\$415 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 provide proof of a Tahoe Regional Planning Agency (TRPA) permit and registration for all moorings, or proof that any unregistered and unpermitted mooring(s) have been removed on or before October 23, 2020.
- 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.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing and lake-related recreational uses.

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- The lease contains a provision that the Applicant must obtain and maintain continuous authorization from the littoral property owner, Cedar Flat Improvement Association, to maintain and access the pier on the littoral property (APN 092-180-008) adjacent to the Lease Premises. The lease shall terminate if the Association's consent lapses or is revoked.

### **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 October 22, 2009, the Commission authorized a General Lease – Recreational Use, Lease 6540.1, for the continued use and maintenance of an existing pier and boat lift to Michael R. Raftery and Georgianne Raftery ([Item C46, October 22, 2009](#)).

On June 19, 2014, the lease was amended to revise the lease area and modify the rent ([Item C11, June 19, 2014](#)). The lease expired on June 21, 2019. The Applicant is applying for a General Lease – Recreational Use, for the continued use and maintenance of the existing pier and boat lift.

On October 24, 2018, the TRPA's Governing Board certified a new Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments. TRPA is now accepting permit applications for mooring structures such as the boat lift proposed under this lease. If the Applicant cannot obtain a TRPA permit for the boat lift, the boat lift must be removed.

The Applicant owns the parcel above the uplands adjoining the lease premises and is required to provide evidence of entitlement of use from the littoral parcel owner, Cedar Flat Improvement Association. The subject facilities are privately owned and maintained. The pier and boat lift are used for the docking and mooring of boats. 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 pier and boat lift have existed for many years at this location. The pier is built on single pilings with the immediate area of the pier surrounded by pebbles and small boulders. The topography and location of upland

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structures allow for public access for pedestrians and lake-related activities at varying water levels 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 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 will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the pier and boat lift and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.3 to promote, expand, and enhance appropriate public use and access to land along the State's inland and coastal waterways.
3. On October 24, 2018, the TRPA Governing Board certified a Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA)

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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 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, and for the foreseeable term of the lease; is consistent with the 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 June 22, 2019, for a term of 10 years, for the continued use and maintenance of an existing pier and boat lift, 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 \$415, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LAND DESCRIPTION**

**LEASE 6540.1**

One (1) parcel of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 28, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865 County of Placer, State of California, and more particularly described as follows:

All those lands underlying an existing pier, catwalk and boat lift adjacent to that parcel described in Exhibit "A" in that Grant Deed recorded April 3, 1997 as Document Number 97-0019216 of Official Records of said County.

TOGETHER WITH any applicable impact area(s).

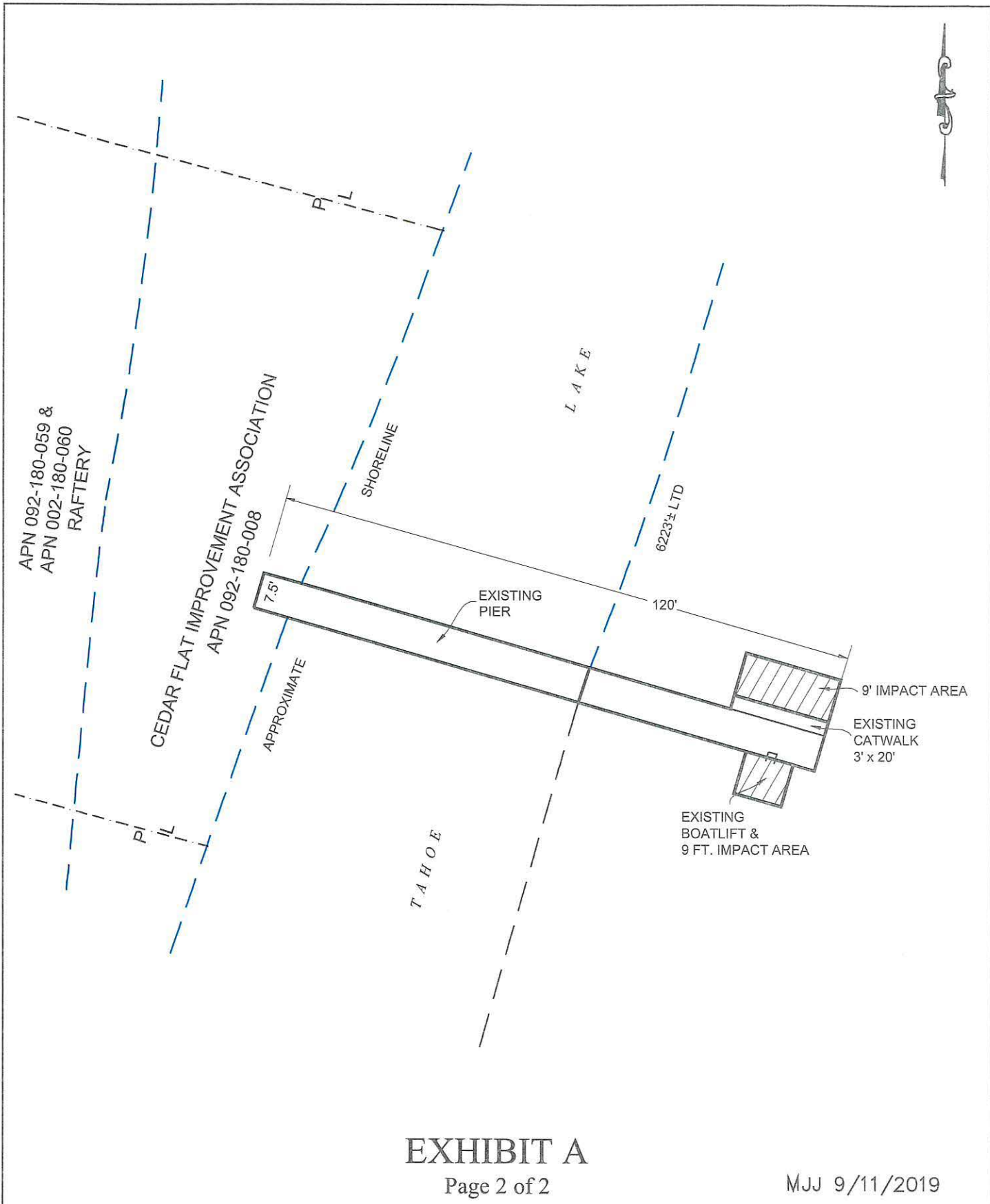
EXCEPTING THEREFROM any portion(s) lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared July 17, 2019 by The California State Lands Commission Boundary Unit.





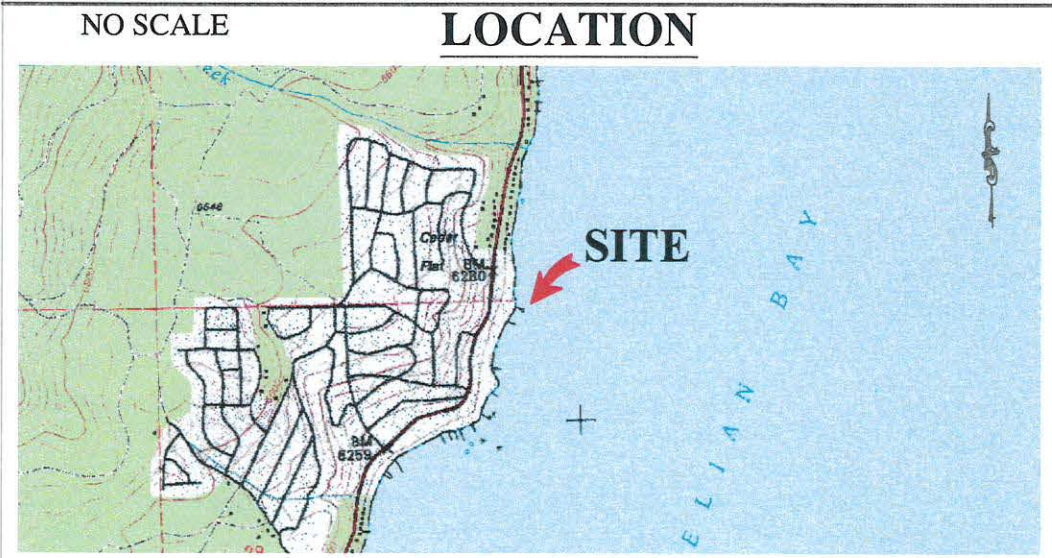
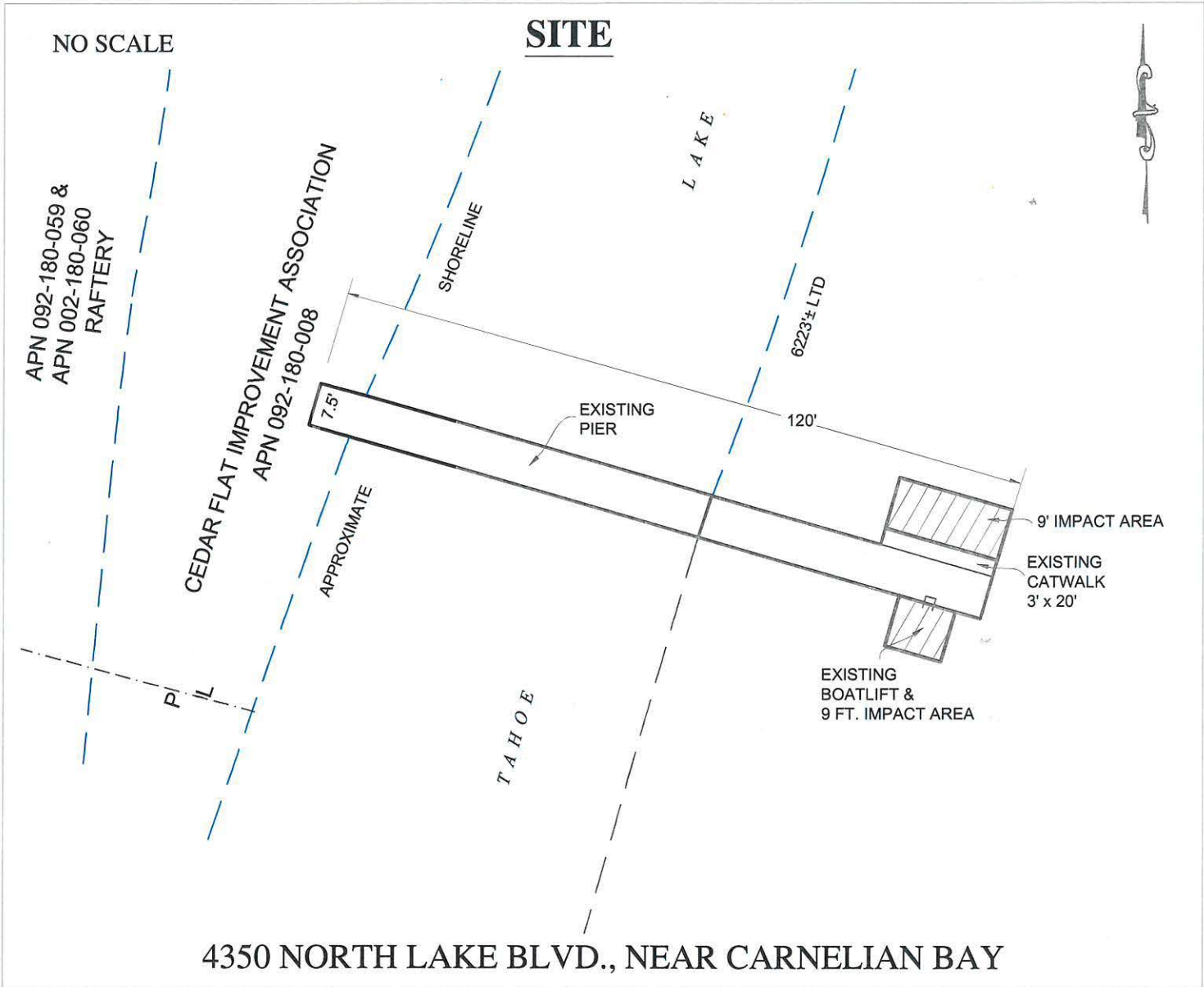
# EXHIBIT A

LAND DESCRIPTION PLAT  
LEASE 6540.1, RAFTERY  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION







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**  
 LEASE 6540.1  
 RAFTERY  
 APN 092-180-059 & 060  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY

