

STAFF REPORT

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02/28/20

Lease 6526

A2353

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L. Anderson

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Gail Cotton High, Trustee of The Gail Cotton High Trust under Agreement dated April 9, 2001; Robert L. Spence, as Trustee of the Trust fbo Alexander L. Spence under The Kristi Cotton Spence Qualified Personal Residence Trust; Robert L. Spence, as Trustee of the Trust fbo Brooksley Spence Wylie Under The Kristi Cotton Spence Qualified Personal Residence Trust; Robert L. Spence, as Trustee of the Trust fbo Kimberly Spence Shapiro under The Kristi Cotton Spence Qualified Personal Residence Trust; Kenneth G. High III, as Trustee of the Trust fbo Kenneth G. High III under The Gail Cotton High 2009 Tahoe Qualified Personal Residence Trust; and Tanya B. High Miller as Trustee of the Trust fbo Tanya B. High under The Gail Cotton High 2009 Tahoe Qualified Personal Residence Trust

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 9872 and 9880 Pilot Circle, near Brockway, Placer County.

AUTHORIZED USE:

Continued use and maintenance of existing joint-use pier, boathouse with boat hoist, boat lift, and two mooring buoys.

LEASE TERM:

10 years, beginning August 1, 2019.

CONSIDERATION:

\$2,573 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

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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 the Tahoe Regional Planning Agency (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 recreation.

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 10, 2010, the Commission authorized a Recreational Pier Lease to Gail Cotton High, as Trustee of the Gail Cotton High Trust Under Agreement Dated April 9, 2001; and Kristi Cotton Spence, as Trustee of the Kristi Cotton Spence Qualified Personal Residence Trust, for an existing joint-use pier, boat lift, boathouse with boat hoist, and two mooring buoys ([Item C04, December 10, 2010](#)). The lease expired July 31, 2019.

On May 13, 2019, ownership of the upland parcels transferred to the Applicant. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the joint-use pier, boat lift, boathouse with boat hoist, and two mooring buoys.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The facilities 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 pier is built on pilings, providing public access for pedestrians and for lake-

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related activities at varying water levels underneath the pier. The immediate area of the existing pier is sloped with many large 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. 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 joint-use pier, boathouse with boat hoist, boat lift, and two mooring buoys 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 1.1 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.
3. On October 24, 2018, the TRPA Governing Board certified a Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.

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4. 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

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 August 1, 2019, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier, boathouse with boat hoist, boat lift, 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 \$2,573, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 6526.1

LAND DESCRIPTION

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 30, Township 16 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved January 2, 1875, County of Placer, State of California, more particularly described as follows:

PARCEL 1 - Pier

All those lands underlying an existing joint-use pier with a catwalk, boathouse and boatlift lying adjacent to those parcels described in Affidavit by Successor Trustee recorded February 7, 2018 as Document Number 2018-0007829-00 and Affidavit by Successor Trustee recorded May 13, 2019 as Document Number 2019-0030859-00 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

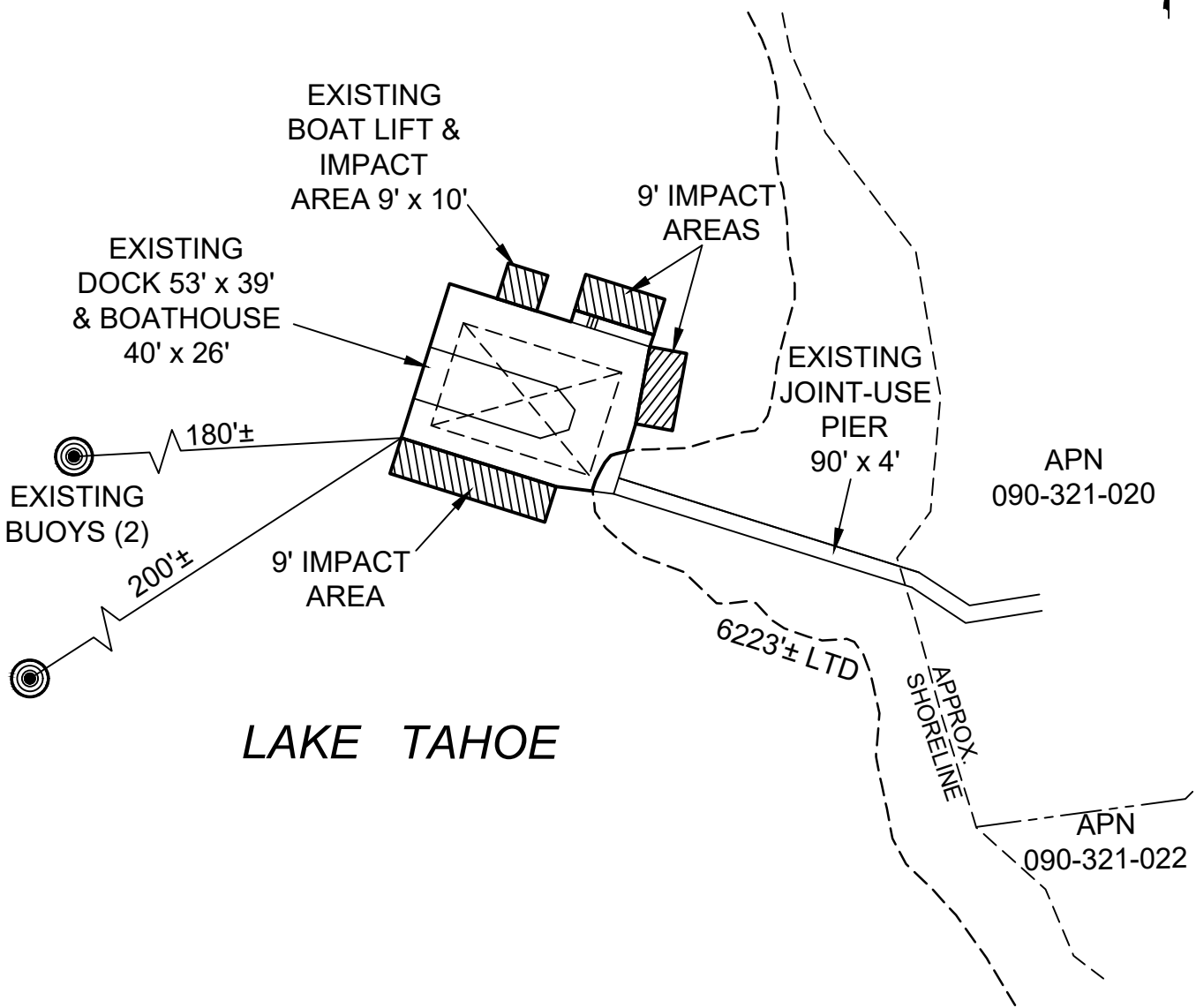
Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Affidavit by Successor Trustee recorded February 7, 2018 as Document Number 2018-0007829-00 and Affidavit by Successor Trustee recorded May 13, 2019 as Document Number 2019-0030859-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 12/05/2019 by the California
State Lands Commission Boundary Unit.





LAKE TAHOE

EXHIBIT A



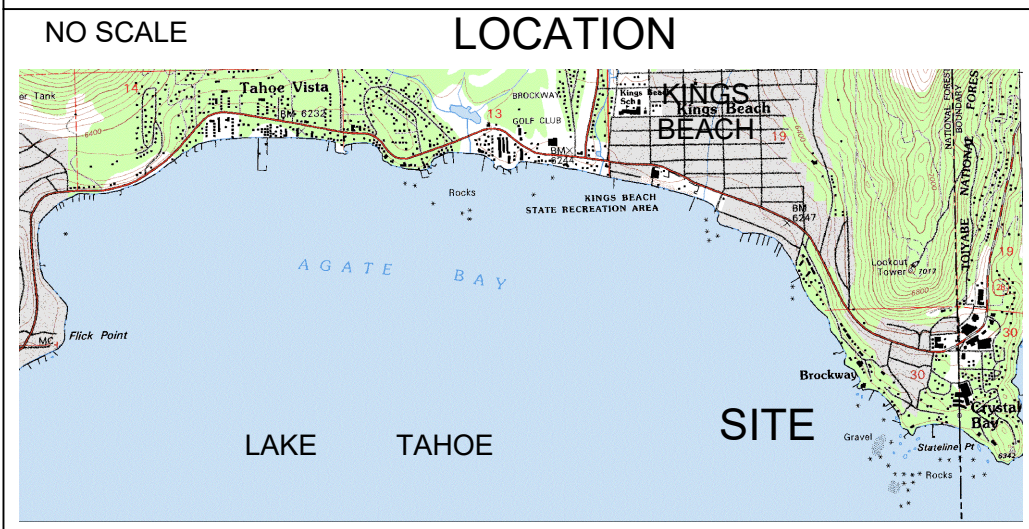
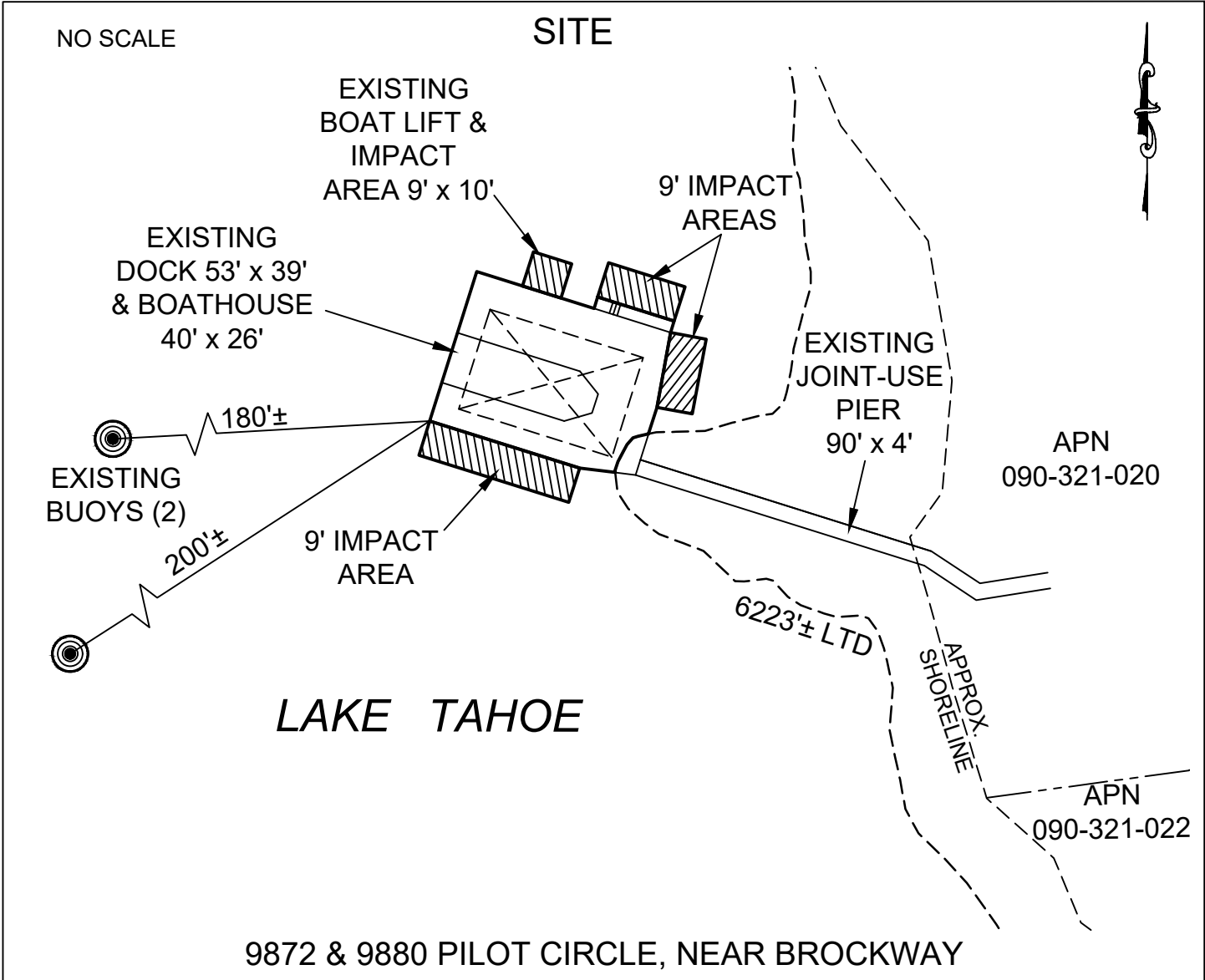
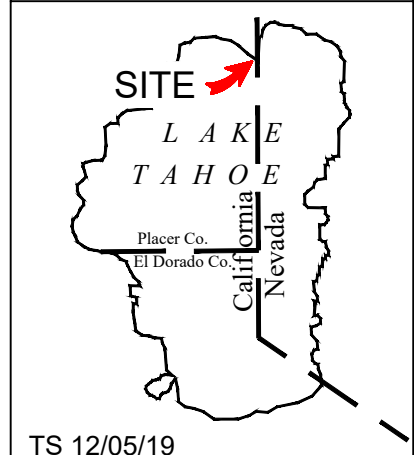


EXHIBIT B

LEASE 6526.1
 GAIL COTTON HIGH TRUST ET. AL.
 APNs: 090-321-020 & -022
 GENERAL LEASE - RECREATIONAL USE
 PLACER 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.