

**STAFF REPORT  
15**

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06/23/20  
Lease 8792.1  
A2203  
L. Anderson

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**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Brian C. McCosker and Jacqueline S. McCosker

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 3051 Jameson Beach Road, near South Lake Tahoe, El Dorado County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing pier and two mooring buoys.

*LEASE TERM:*

10 years beginning June 23, 2020

*CONSIDERATION:*

\$1,475 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 the 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

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public uses of access, navigation, fishing, and lake-related recreation.

- The lease provides that the public is allowed to pass and re-pass around the landward end of the pier with signs posted on each side of the pier to provide continuous shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe datum.

### **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 June 28, 2010, the Commission authorized a 10-year Recreational Pier Lease for the continued use and maintenance of an existing pier and two mooring buoys to Brian C. McCosker and Jacqueline S. McCosker ([Item C13, June 28, 2010](#)). That lease expired on September 14, 2019. The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier and two mooring buoys.

Staff recommends issuance of a new lease beginning June 23, 2020. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,139 for the period beginning September 15, 2019, the day after the prior lease expired, through June 22, 2020, the day before the proposed new lease becomes effective.

The pier and mooring buoys have existed for many years at this location. The pier is built on pilings with the immediate area of the pier being flat and sandy. The topography and location are easy to navigate, public access for pedestrians and lake-related activities is available at varying water levels underneath the pier and by passing around the landward end of the pier through the upland parcel within the Public Trust easement. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The pier and two mooring buoys are used for water-related recreational activities including swimming and the docking and mooring of boats. Recreational swimming and boating are water-dependent activities that are generally consistent with the common law Public Trust Doctrine. The California Legislature has

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identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

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; is consistent with the Public Trust Doctrine; 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, as the prior lessee, may be required to remove the pier 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's 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:**

1. Authorize acceptance of compensation from the Applicant in the amount of \$1,139 for unauthorized occupation of State land for the period beginning September 15, 2019 through June 22, 2020.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 23, 2020, for a term of 10 years, for the continued use and maintenance of an existing pier 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 \$1,475 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 8792.1**

**LAND DESCRIPTION**

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 fractional Section 32, Township 12 North, Range 18 East, MDM., as shown on Official Government Township Plat approved May 16, 1863, County of El Dorado, State of California, and more particularly described as follows:

**PARCEL 1 – PIER**

All those lands underlying an existing pier and catwalk lying adjacent to those parcels as described in that Grant Deed recorded February 4, 2005 as Document Number 2005-0009778 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 (2)**

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared October 8, 2019 by  
the California State Lands Commission Boundary Unit.

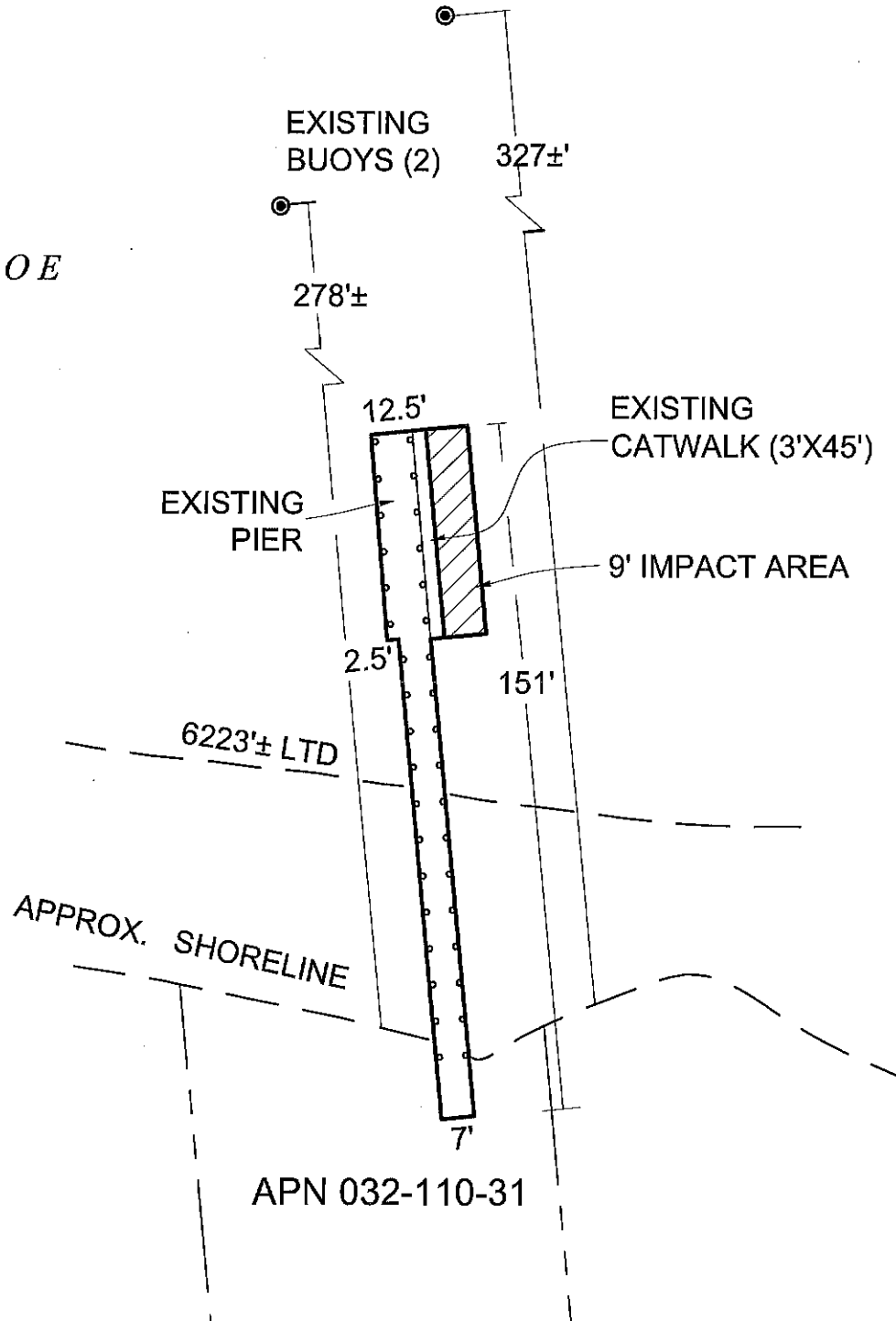


NO SCALE



L A K E

T A H O E



### EXHIBIT A

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LAND DESCRIPTION PLAT  
 LEASE 8792.1, McCOSKER  
 EL DORADO COUNTY

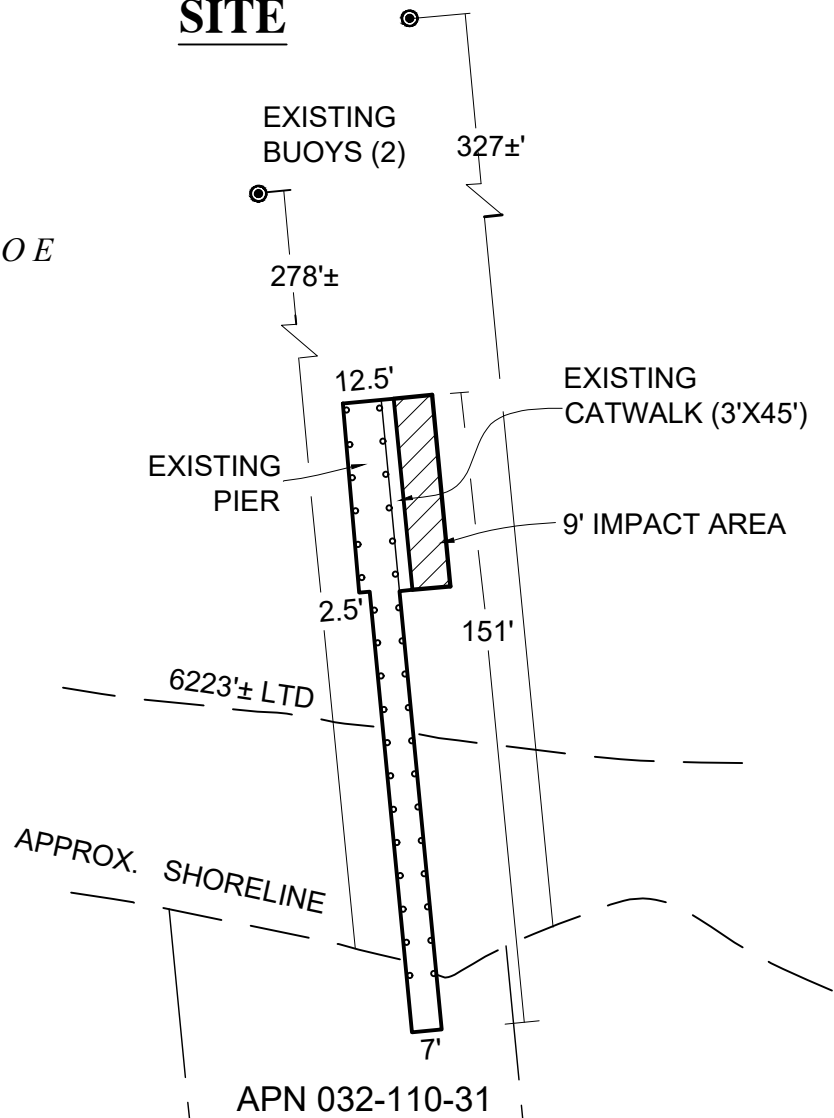
CALIFORNIA STATE  
 LANDS COMMISSION



NO SCALE

# SITE

L A K E  
T A H O E



3051 JAMESON BEACH ROAD, NEAR SOUTH LAKE TAHOE

NO SCALE

# LOCATION

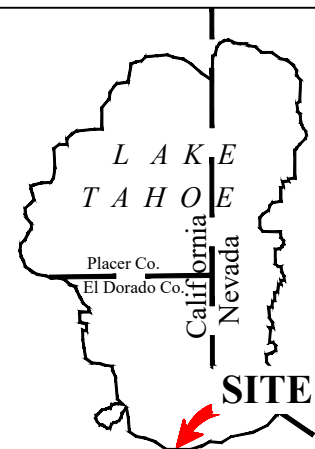


MAP SOURCE: USGS QUAD

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

LEASE 8792.1  
McCOSKER  
APN 032-110-031  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY



MJJ 10/08/19