

Staff Report 09

APPLICANT:

Martin A. Gaehwiler, Jr.

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6668 West Lake Boulevard, near Tahoma, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and one mooring buoy.

TERM:

10 years, beginning December 1, 2019.

CONSIDERATION:

\$868 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 recreation.
- Lessee expressly acknowledges that issuance of this lease does not substitute for, or provide preference in, obtaining authorizations from Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the Authorized Improvements in this Lease.

- The lease provides that the public will be allowed shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum, by passing through the upland parcel.

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:

On December 17, 2009, the Commission authorized a Recreational Pier Lease for reconstruction of an existing pier and one mooring buoy to Martin A. Gaehwiler, Jr. ([Item C07, December 17, 2009](#)). The lease expired on November 30, 2019. 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.

The Applicant owns the upland adjoining the lease premises and entered into an Easement Agreement (Agreement) with Tahoma Meadows Property Owner's Association, Inc. (TMPOA). The Agreement grants TMPOA joint use of the Applicant's pier adjacent to Assessor's Parcel Number (APN) 098-180-023 and lakefront area accessed through the Applicant's adjacent parcel, APN 098-180-022. TMPOA owns three existing mooring buoys adjacent to the latter parcel and submitted an application which is also scheduled for consideration at the October 22, 2020 meeting.

The subject facilities are privately owned and maintained, 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-related activities at varying water levels underneath the pier. Signs that read "Public Passage Allowed Around Pier" will also be placed on both sides of the pier. The immediate area of the existing pier is gently sloped with small rocks. The mooring buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake. The Applicant registered the buoy with TRPA on August 5, 2019 (Registration #10637).

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 common law 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 one mooring buoy 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. 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:

1. Land Description
2. 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 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 December 1, 2019, for a term of 10 years, for the continued use and maintenance of an existing pier and one mooring buoy, 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 \$868, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8135

LAND DESCRIPTION

Two (2) parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to fractional Section 7, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 (PIER)

All those lands underlying an existing pier, and catwalk lying adjacent to Parcel No. 1 as described in Interspousal Transfer Grant Deed recorded March 24, 2006 as Document No. 2006-0032099 of 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 Lake Tahoe.

PARCEL 2 (BUOY)

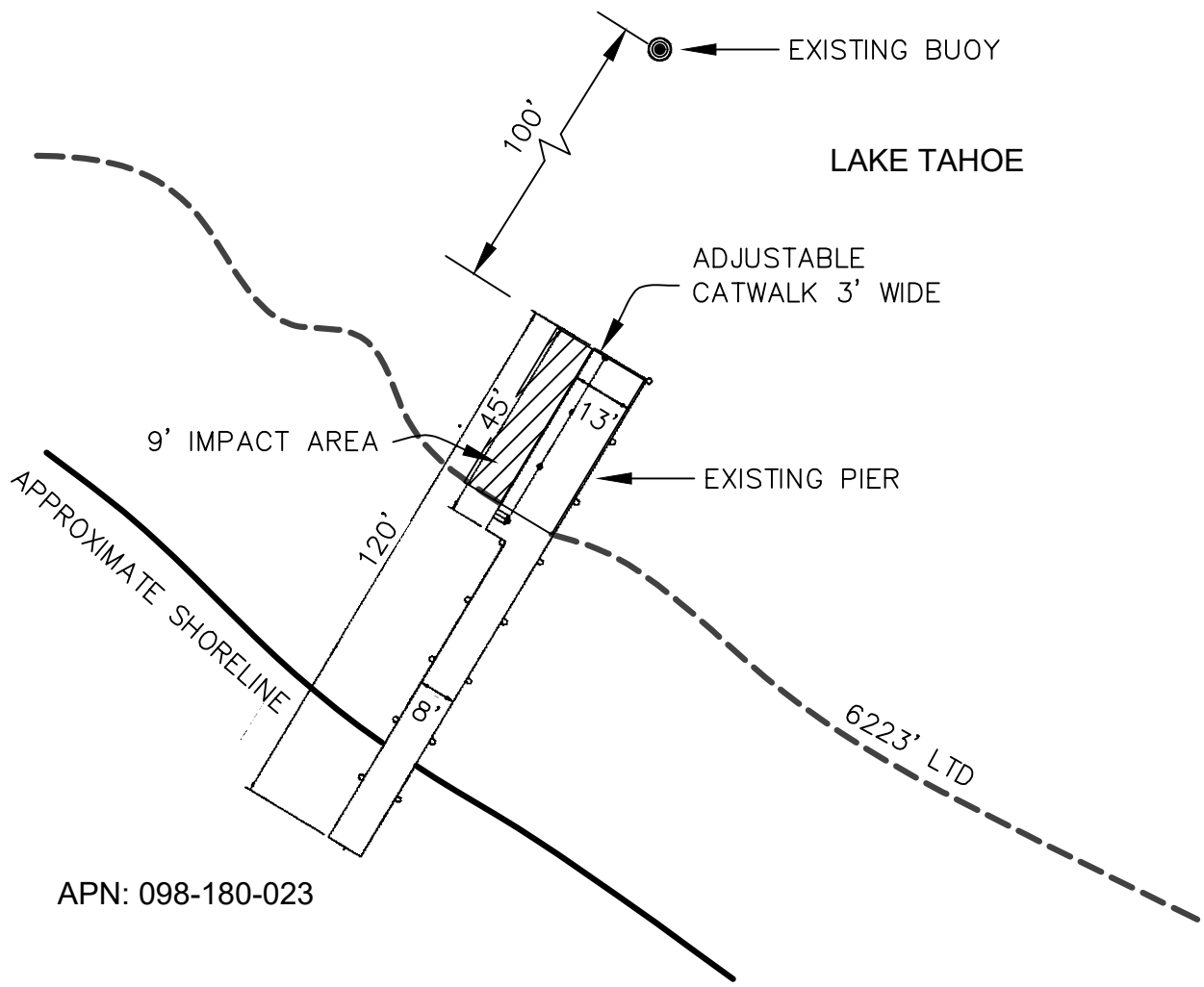
A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to Parcel No. 1 as described in Interspousal Transfer Grant Deed recorded March 24, 2006 as Document No. 2006-0032099 of Official Records of said County.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

Prepared 6/11/2020 by the California State Lands Commission Boundary Unit.





APN: 098-180-023

EXHIBIT A

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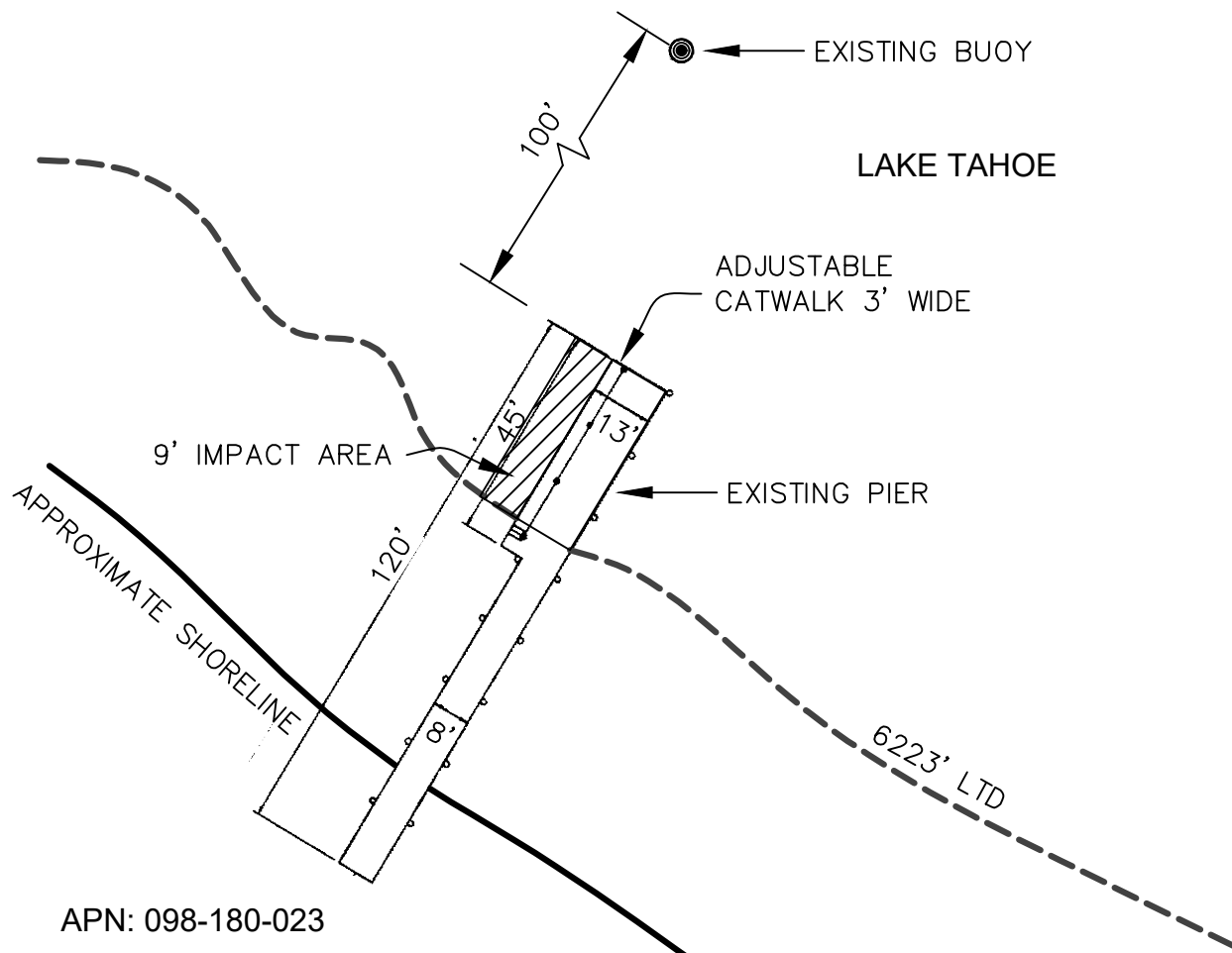
LAND DESCRIPTION PLAT
LEASE 8135, GAEHWILER
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



APN: 098-180-023

6668 WEST LAKE BOULEVARD, NEAR TAHOMA

NO SCALE

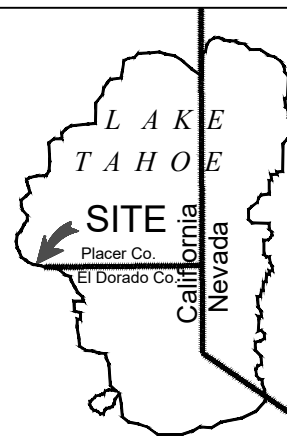
LOCATION



MAP SOURCE: USGS QUAD

EXHIBIT B

LEASE 8135
 GAEHWILER
 APN 098-180-023
 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.

DJF 9/22/2020