

Staff Report 08

LESSEE:

Drum Lodge, LLC, a Delaware limited liability company

PROPOSED ACTION:

Amendment of Lease

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 15 Chinkapin Cove, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Use and maintenance of a pier, marine rail, three freshwater intake pipelines, and two mooring buoys.

TERM:

10 years, beginning August 23, 2018.

CONSIDERATION:

\$1,921 per year, with an annual Consumer Price Index adjustment; accept compensation from the Lessee in the amount of \$1,129 for the unauthorized occupation of State land for the additional mooring buoy for the period of August 23, 2018 to August 22, 2021.

SPECIFIC LEASE PROVISIONS:

- Authorize the use and maintenance of a third existing mooring buoy not previously authorized by the Commission; the removal of the existing pier; and the construction, use, and maintenance of a proposed pier, catwalk, and ramp.
- Include special provisions related to construction.
- Include a special provision that construction cannot begin until after August 23, 2021.

- Include a special provision requiring the public be allowed to pass and re-pass around the pier using a designated area on the upland, 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.
- Include special provisions related to protection of Tahoe Yellow Cress (TYC) requiring that, prior to construction, a current TYC survey must be conducted between June 15 and September 30 of the year in which construction is planned to commence and must be submitted to the Commission. If TYC is present, a Construction Impact Avoidance Plan must be submitted to the Commission for approval prior to construction to demonstrate no impact to the plant. The Plan must identify the location of TYC stems and include measures for ensuring no impact to the plant, including potential relocation of pilings, pier location, and construction and staging areas; use of protective fencing surrounding TYC stems; signage for no work zones; etc. Revision of the pier design may also require submittal of updated site plans illustrating pier design revisions.
- Revise the annual rent from \$1,921 with an annual Consumer Price Index adjustment to \$2,892 with an annual Consumer Price Index adjustment, effective August 23, 2021.
- Accept compensation from the Lessee in the amount of \$1,129 for the unauthorized occupation of State land for the additional mooring buoy for the period of August 23, 2018 to August 22, 2021.
- Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

All other terms and conditions of the lease to remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On August 23, 2018, the Commission authorized a 10-year General Lease – Recreational Use, Lease No. PRC 4266, for continued use and maintenance of an existing pier, marine rail, three freshwater intake pipelines, and two mooring buoys in Lake Tahoe to Drum Lodge, LLC, a Delaware limited liability company ([Item C24, August 23, 2018](#)). The lease will expire on August 22, 2028.

The Lessee owns the upland parcel (Assessor's Parcel Number 016-300-038). The existing lease describes the upland address as 7701 Highway 89, near Meeks Bay. In March 2017, the upland address was changed from 7701 Highway 89 to 15 Chinkapin Cove. The proposed lease amendment reflects this change in the upland address.

On August 19, 2019, the Tahoe Regional Planning Agency (TRPA) registered three mooring buoys under Permit No. 11308. The Lessee states that the mooring buoys have existed at this location for many years. Staff was unaware of the existence of the third mooring buoy until the lease application was received. The third mooring buoy was not registered with TRPA until their 2019 mooring registration program opened. Staff recommends the Commission accept compensation from the Lessee in the amount of \$1,129 for the unauthorized occupation of State land by the third mooring buoy for the period of the lease term prior to the effective date of the proposed amendment.

On May 19, 2020, under ERSP2019-1036, TRPA authorized the Lessee's removal and reconstruction of a single-use pier. The Lessee is now applying for an amendment to authorize use and maintenance of one existing mooring buoy not previously authorized by the Commission; removal of the existing pier; and the construction, use, and maintenance of a proposed pier, catwalk, and ramp. The new pier will originate from the same landward point as the existing pier had originated and extend lakeward at a westerly angle from the previous pier's location.

The existing pier is supported by eight 11-inch-diameter steel pilings. The proposed pier will be 116 feet long and 10 feet wide at the pierhead. The pier will include an adjustable 30-foot-long catwalk and a ramp on the eastern side of the pier. Eleven steel pilings are proposed to support the new pier. No new or additional buoys,

boat lifts, slips or any other shorezone structures are approved. It is anticipated that construction will occur between October 1, 2021 and May 1, 2022.

The Lessee conducted a TYC survey for the subject property on June 16, 2020, with no TYC noted as being present. Prior to construction, a current TYC survey is required, pursuant to the Lease amendment.

Public access within the Public Trust easement will be provided by using a designated area to walk around the landward end of the pier through the upland. Signage reading "Public Passage Allowed Around Pier" located at the designated public access passageway will be required to be in place at all times.

Construction of the proposed pier, catwalk, and ramp will be performed primarily from a barge with mounted crane. To minimize lake bottom disturbance and suspended materials, caissons may be utilized during the pile-driving process. A total of 11 steel pilings will be imbedded into the lakebed to a depth of at least 6 feet. Pre-cut joists and decking will be stored on the barge and will not impact the lake.

The subject facilities are privately owned and maintained. The mooring buoy, proposed pier, catwalk, and ramp will be 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 marine rail is used in conjunction with recreational boating. It extends from the upland property into the lake. The rail lies on the lakebed allowing the public to navigate or walk over it. The freshwater intake pipelines are not generally associated with traditional Public Trust uses. However, these pipelines have been in place for many years, and occupy a small area of the lakebed. The owners use the pipelines to provide water to the upland property. The pipelines do not interfere with Public Trust activities at this location at this time.

The proposed amendment 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 amendment 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.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease amendment will not substantially impair Public Trust uses or values and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for a lease amendment 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 a trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the lessee could not construct the new proposed improvements or retain the third mooring buoy. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. **Existing Buoy:** 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).
4. **Reconstruction of Pier, Catwalk, and Ramp:** Staff recommends that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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:

Existing Buoy: 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).

Reconstruction of Pier, Catwalk, and Ramp: Find that the activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the existing, and for a limited period, continuing use and maintenance of an existing mooring buoy not previously authorized by the Commission; the removal of the existing pier; and the construction, use, and maintenance of the new pier, catwalk, and ramp will not substantially interfere with Public Trust needs and values at this location, at this time and for the term of the lease and are consistent with the common law Public Trust Doctrine; and that the proposed amendment is in the best interests of the State.

AUTHORIZATION:

1. Authorize the acceptance of compensation in the amount of \$1,129 from the Lessee for the unauthorized occupation of State land for the period of the lease term prior to the effective date of the lease amendment.
2. Authorize the amendment of Lease No. PRC 4266, a General Lease - Recreational Use, effective February 23, 2021, for use and maintenance of a third existing mooring buoy not previously authorized by the Commission; removal of an existing pier; construction, use, and maintenance of a pier, catwalk, and ramp; to include special lease provisions related to construction and public access; to revise rent from \$1,921 per year with an annual Consumer Price Index adjustment to \$2,892 per year, with an annual Consumer Price Index adjustment; and to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); all other terms and conditions of the lease shall remain in effect without amendment.

EXHIBIT A

PRC 4266

LAND DESCRIPTION

Eight parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 20, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880 County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier (to be removed) and proposed pier lying adjacent to that parcel described in Grant Deed recorded March 15, 2017 in Document 2017-0010472-00 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 & 4 – WATER INTAKE PIPES

All those lands underlying three existing water intake pipes lying adjacent to that parcel described in Grant Deed recorded March 15, 2017 in Document 2017-0010472-00 in Official Records of said County.

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

PARCEL 5 – MARINE RAIL

All those lands underlying an existing marine rail lying adjacent to that parcel described in Grant Deed recorded March 15, 2017 in Document 2017-0010472-00 in Official Records of said County.

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

PARCELS 6 through 8 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to that parcel described in Grant Deed recorded March 15, 2017 in Document 2017-0010472-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on an existing pier, together with any and all appurtenances pertaining thereto, at the date of this description. Said existing pier and appurtenances are to be removed and a new proposed pier and appurtenances are to be built per lease Applicant's provided design plans. This description is to be updated once final as-built plans are submitted.

Prepared January 20, 2021 by the California State Lands Commission Boundary Unit.



NO SCALE

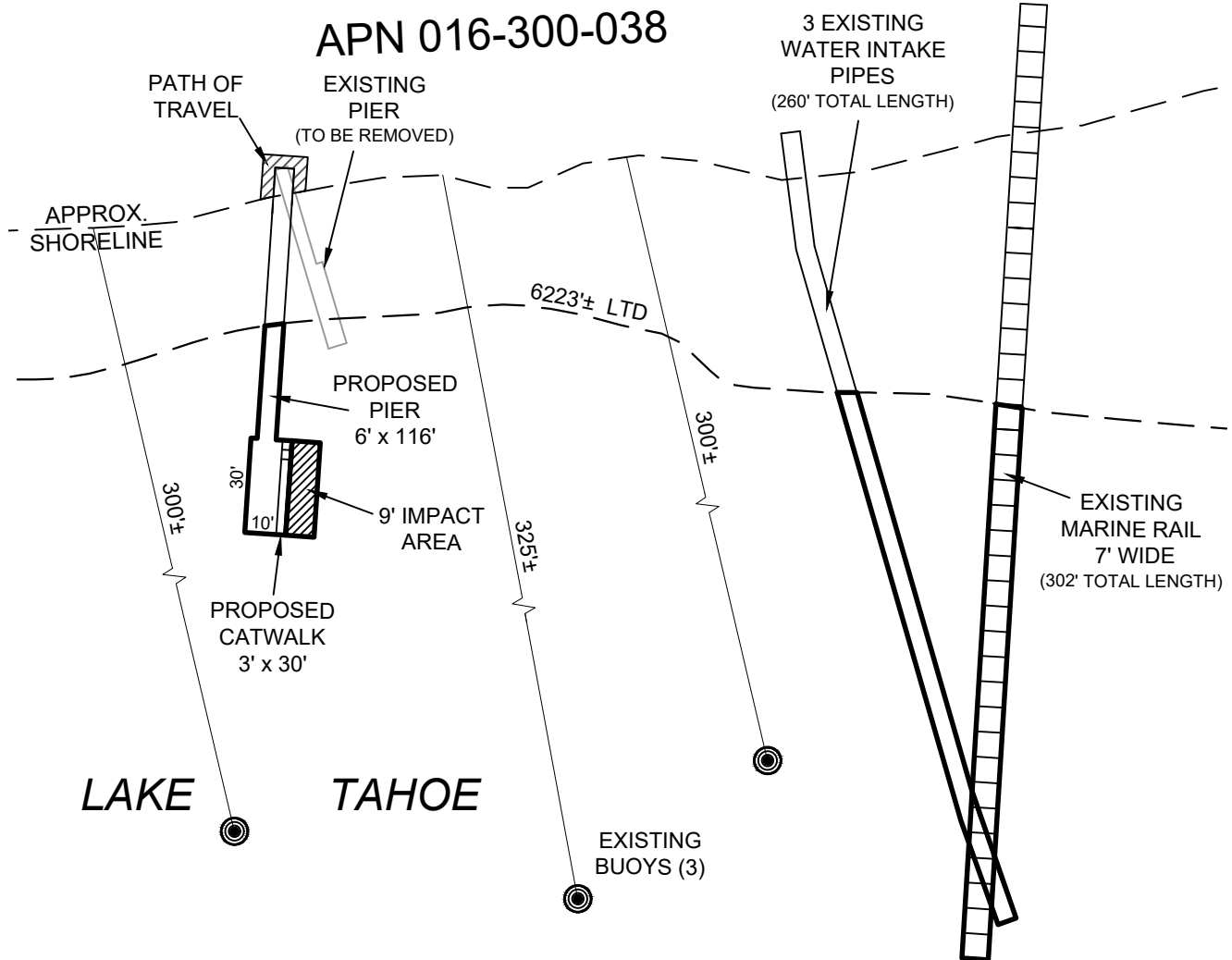


EXHIBIT A

Page 3 of 3

TS 01/20/2021

LAND DESCRIPTION PLAT
PRC 4266, DRUM LODGE, LLC
EL DORADO COUNTY

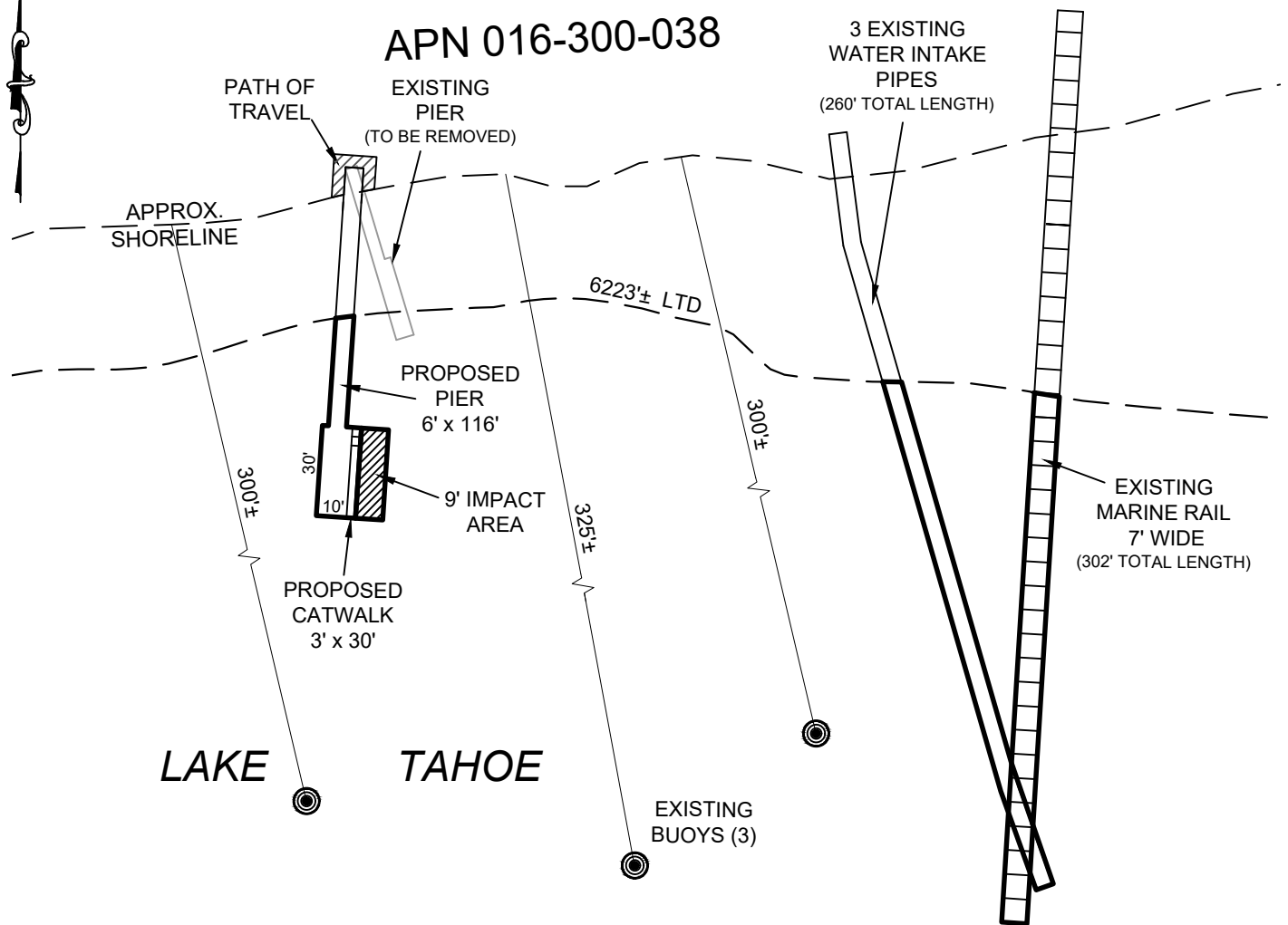
CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE

APN 016-300-038



15 CHINKAPIN COVE, NEAR MEEKS BAY

NO SCALE

LOCATION

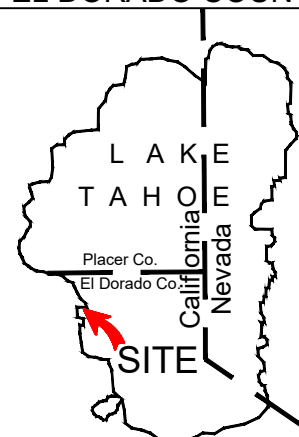


MAP SOURCE: USGS QUAD

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

PRC 4266
DRUM LODGE, LLC
APN 016-300-038
GENERAL LEASE -
RECREATIONAL USE
EL DORADO COUNTY



TS 01/20/2021