

# Staff Report 09

## **LESSEE:**

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Edward R. Frazer, Trustee of the Edward R. Frazer Family Trust (E.R.F's S.P.), dated October 2, 2002

## **APPLICANT:**

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MAC3K investments, L.P.

## **PROPOSED ACTION:**

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Termination and Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Lake Tahoe, adjacent to 4796 North Lake Boulevard, Carnelian Bay, Placer County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier, two catwalks, portion of a cabin, boat lift, and two mooring buoys.

## **TERM:**

10 years, beginning June 30, 2021.

## **CONSIDERATION:**

\$2,747 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 expressly acknowledges that a permit from the Tahoe Regional Planning Agency (TRPA) is required for the Authorized Improvements and failure to obtain

a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of this lease.

- Lessee shall not store any personal items or construct any additional improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing, and lake-related recreational uses.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 August 19, 2015, the Commission authorized a 10-year General Lease – Recreational Use to Edward R. Frazer, Trustee of the Edward R. Frazer Family Trust (E.R.F's S.P.), dated October 2, 2002, for an existing pier, portion of a cabin, boat lift, and two mooring buoys ([Item C03, August 19, 2015](#)). That lease will expire on June 29, 2025. On September 16, 2020, the upland property was deeded to Andrew J. Moley and Catherine B. Crane Moley, Trustees of the Andrew and Catherine Moley Family Trust dated March 13, 1998. On December 19, 2020, the Moley trustees executed a Quitclaim Deed releasing interest in the upland parcel to MAC3K Investments, L.P. The Applicant is applying for a General Lease – Recreational Use for use and maintenance of an existing pier, two catwalks, portion of a cabin, boat lift, and two mooring buoys in Lake Tahoe. The two catwalks have existed at this location for many years, as shown on prior lease exhibits. The subject facilities have been registered with TRPA (Registration No. 10891).

Staff recommends termination of the existing lease because the Lessee sold the upland property without submitting a lease quitclaim deed, application for assignment, and notification to staff. The Commission's accounting records show the annual rent is paid through June 29, 2021. Staff further recommends a provision in the lease applying the indemnity provision to the entire period of unauthorized occupation, beginning December 19, 2020, when the ownership was transferred to the Applicant, through June 29, 2021, the day before the proposed lease begins.

The subject facilities are privately owned and maintained 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). A portion of the cabin extends

over State sovereign land and is not associated with traditional Public Trust uses. The Commission has issued leases on a limited basis for portions of existing residential structures and decks that encroach onto sovereign land, where such encroachments do not significantly interfere with the Public Trust needs and values. The cabin minimally encroaches onto sovereign land, without presenting an obstacle to public navigation of the lake. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or the foreseeable future.

The subject facilities have existed at this location for many years. The facilities 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 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:**

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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 Lessee and Applicant may be required to remove the pier, two catwalks, cabin, boat lift, and two mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of a lease, the lessee also 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. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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:

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- A. Land Description
- B. Site and Location Map

## RECOMMENDED ACTION:

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It is recommended that the Commission:

### CEQA FINDING:

Find that issuance of the lease 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:

**Termination of the lease and issuance of lease:** Find that the termination of the lease and issuance of 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; and

**Pier, two catwalks, boat lift, and two mooring buoys:** Find that the existing and continuing use and maintenance of the existing pier, two catwalks, boat lift, and two mooring buoys is consistent with the common law Public Trust Doctrine; and

**Cabin:** Find that the existing and continuing use and maintenance of the portion of the cabin is not consistent with the Public Trust Doctrine, but the current use does not and is not anticipated to substantially interfere with Public Trust needs and values at this location for the approved term; and

Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Terminate, effective June 29, 2021, Lease 5177, a General Lease – Recreational Use, issued to Edward R. Frazer, Trustee of the Edward R. Frazer Family Trust (E.R.F's S.P.), dated October 2, 2002.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 30, 2021, for a term of 10 years, for the use and maintenance of an existing pier, two catwalks, portion of a cabin, 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 \$2,747, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 5177**

**LAND DESCRIPTION**

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 22, Township 16 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, more particularly described as follows:

**PARCEL 1 - PIER**

All those lands underlying an existing pier, two catwalks, cabin and boat lift lying adjacent to that parcel described in Quitclaim Deed recorded December 18, 2020 as Document Number 2020-0148926 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 that parcel described in Quitclaim Deed recorded December 18, 2020 as Document Number 2020-0148926 in Official Records of said County.

Accompanying plat is hereby made part of this description.

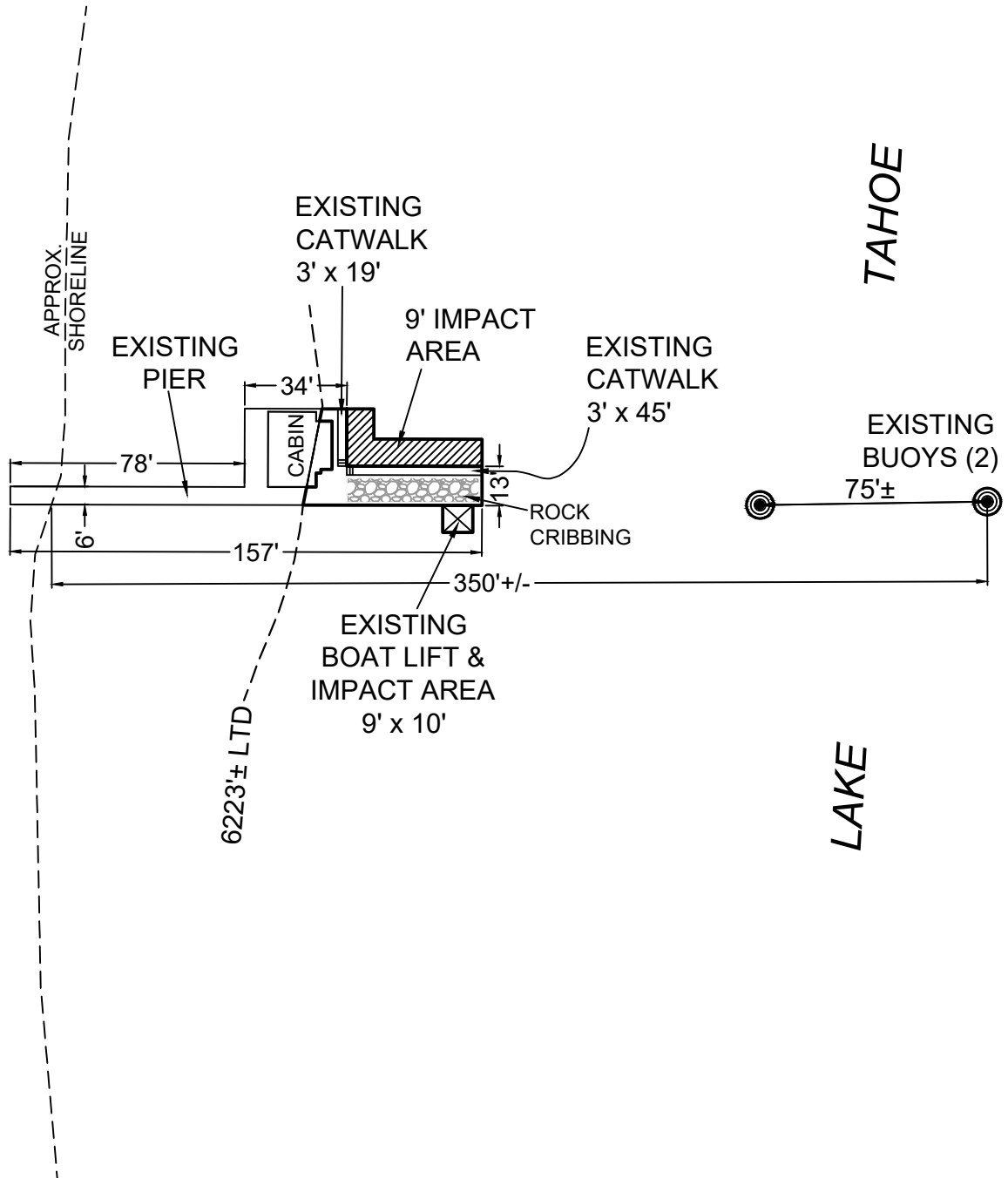
**END OF DESCRIPTION**

Prepared 04/12/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

APN 115-060-020



## EXHIBIT A

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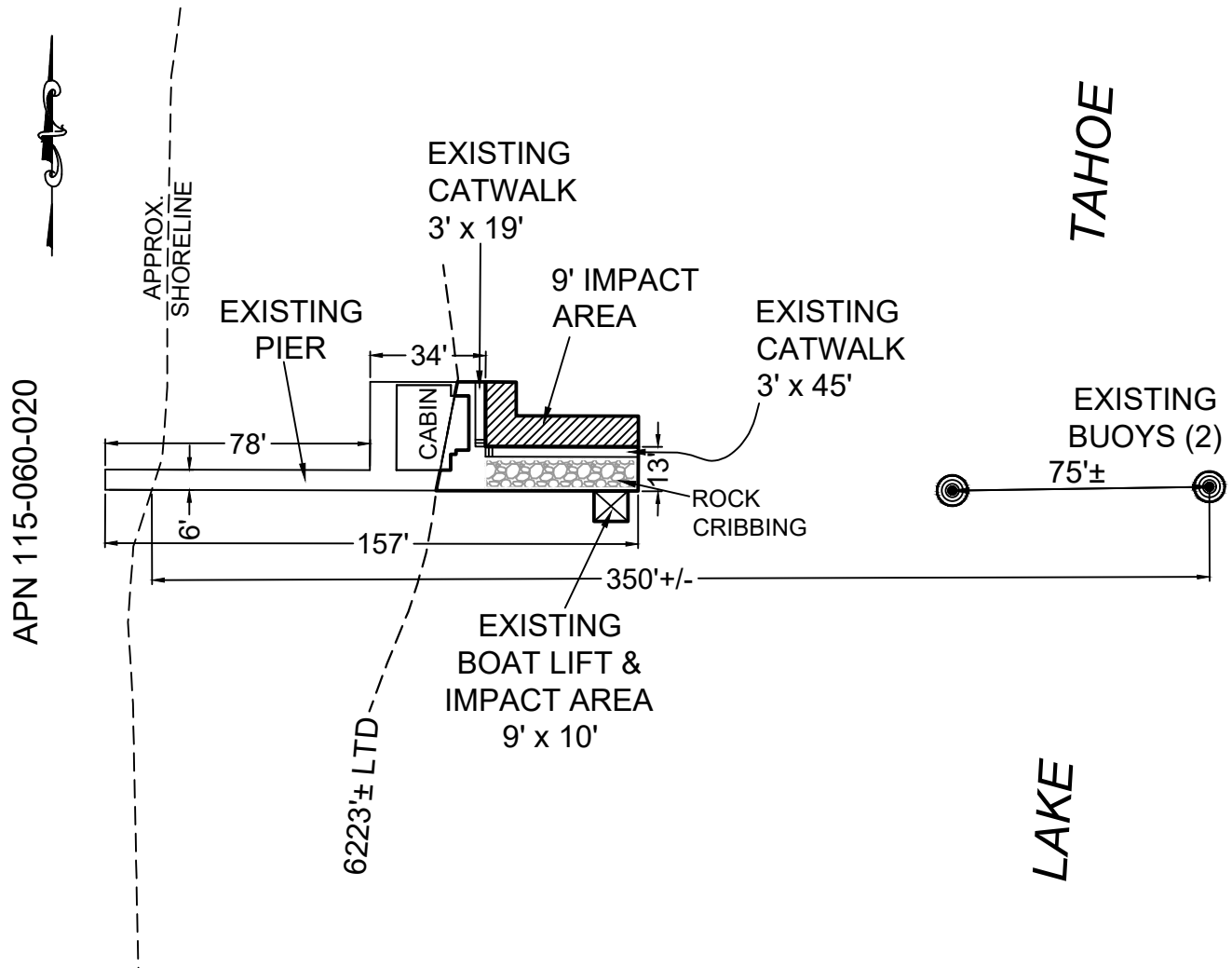
LAND DESCRIPTION PLAT  
LEASE 5177, MAC3K INVESTMENTS, L.P.  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

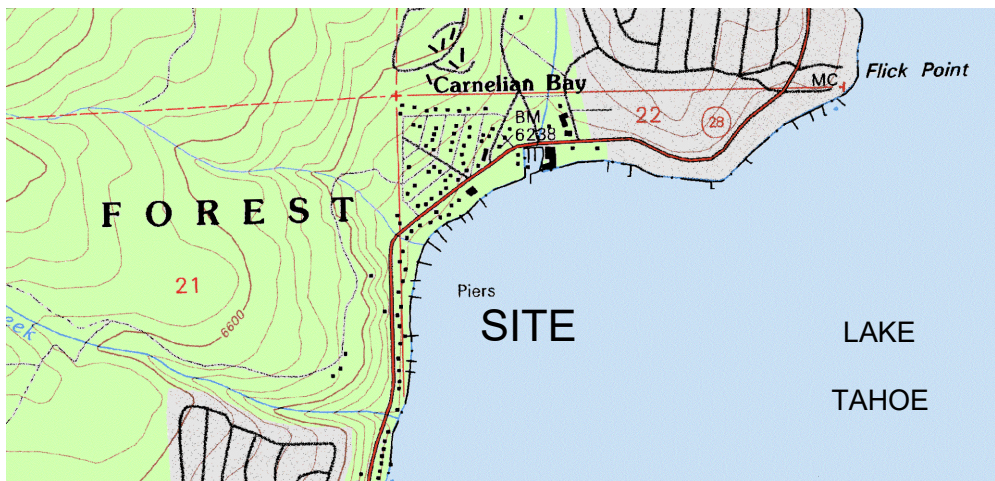
## SITE



4796 NORTH LAKE BLVD, CARNELIAN BAY

NO SCALE

## LOCATION



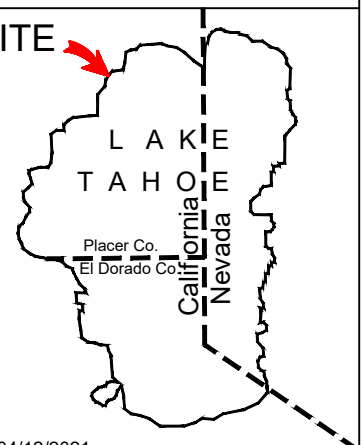
MAP SOURCE: USGS QUAD

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**

LEASE 5177  
MAC3K INVESTMENTS, L.P.  
APN 115-060-020  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY

## **SITE**



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