

# Staff Report 05

## **APPLICANT:**

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Jerome J. Bernal, Trustee of the Jerome J. Bernal Trust dated May 13, 1998

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land in Lake Tahoe, adjacent to 7097 State Highway 89, near Tahoma, El Dorado County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier, boat lift, boat hoist, and two mooring buoys.

## **TERM:**

10 years; beginning June 25, 2022.

## **CONSIDERATION:**

\$1,977, 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 recreation.

## 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 February 22, 2013, the Commission authorized a 10-year General Lease – Recreational Use to Jerome J. Bernal, Trustee of the Jerome J. Bernal Trust dated May 13, 1998, for an existing pier, boat lift, boat hoist, and two mooring buoys ([Item C49, February 22, 2013](#)). That lease will expire on June 24, 2022. On June 22, 2017, the Commission authorized an amendment of lease which modified the lease area and consideration ([Item C29, June 22, 2017](#)). The Applicant is applying for a General Lease – Recreational Use, for use and maintenance of an existing pier, boat lift, boat hoist, and two mooring buoys in Lake Tahoe. The subject facilities have existed at this location for many years, as shown on prior lease exhibits. The facilities have been registered with TRPA (Registration No. 10235). The Commission's accounting records show the annual rent is paid current through June 24, 2022.

The subject facilities are privately owned and maintained by the Applicant. The existing pier, boat lift, boat hoist, and two mooring buoys will 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 pier, appurtenant facilities, and two mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The entire pier is built on rock and therefore there is no public access underneath the pier. However, the public may traverse over the pier using steps located on either side. The public access is located close to the shore, landward of the pier. Staff does not believe the pier substantially interferes with Public Trust activities at this location at this time. 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 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:**

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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 Applicant may be required to remove the pier, boat lift, boat hoist, and two mooring buoys and restore the premises to their original condition. Upon expiration or prior to 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. 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:**

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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 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 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; 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 June 25, 2022, for a term of 10 years, for the use and maintenance of an existing pier, boat lift, boat hoist, 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 \$1,977, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## **EXHIBIT A**

**LEASE 5352**

### **LAND DESCRIPTION**

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

#### **PARCEL 1 – PIER**

All those lands underlying an existing pier, catwalk, boatlift and boat hoist lying adjacent to that parcel described in Grant Deed recorded June 25, 2012 as Document Number 2012-0030753-00 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 that parcel described in Grant Deed recorded June 25, 2012 as Document Number 2012-0030753-00 in Official Records of said County.

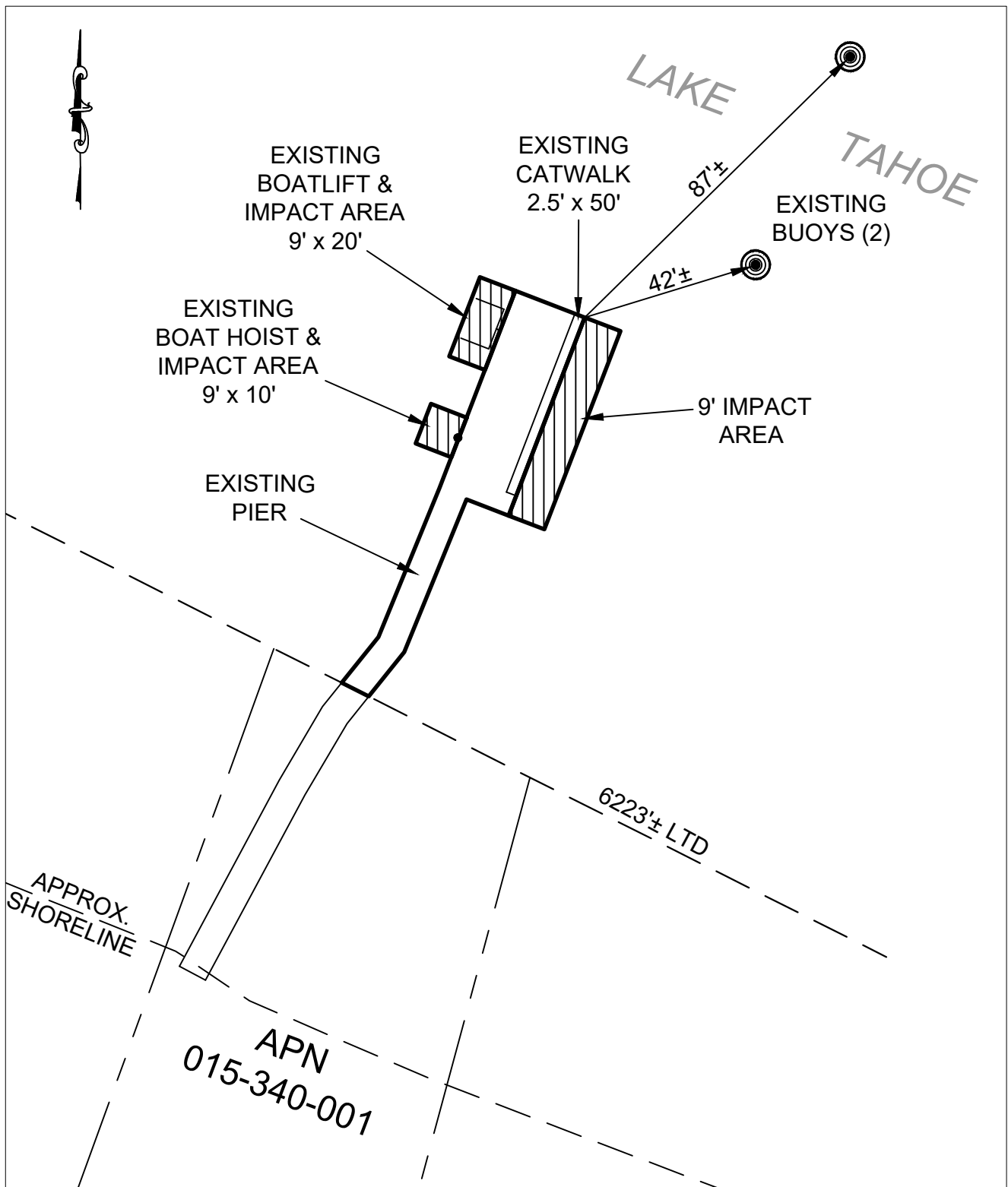
Accompanying plat is hereby made part of this description.

### **END OF DESCRIPTION**

Prepared 07/27/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

Page 2 of 2

TS 07/27/2021

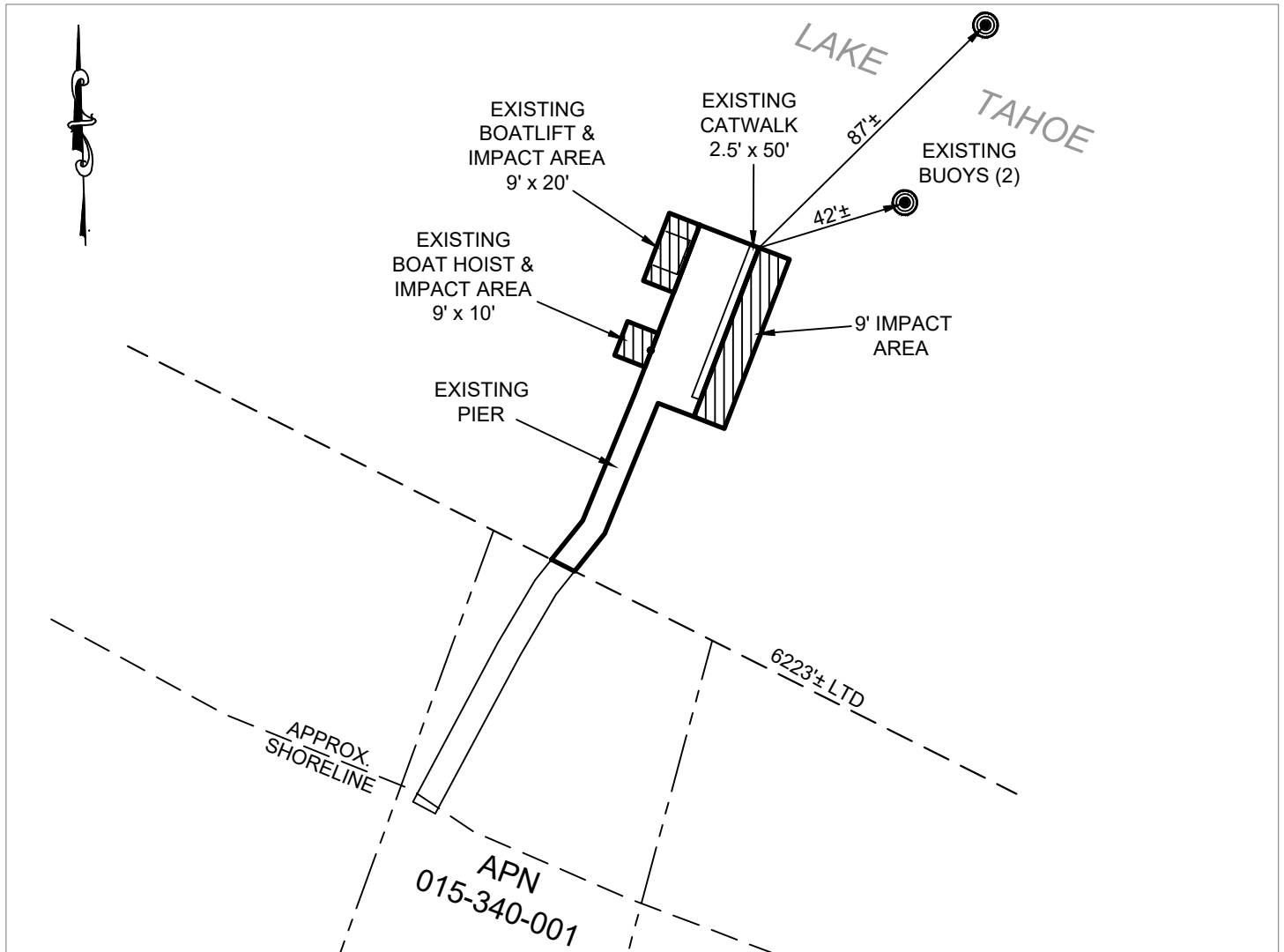
LAND DESCRIPTION PLAT  
LEASE 5352, BERNAL TRUST  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

## SITE



7097 STATE HIGHWAY 89, NEAR TAHOMA

NO SCALE

## LOCATION



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 5352  
BERNAL TRUST  
APN 015-340-001  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY

