

# Staff Report 10

## **APPLICANT:**

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Deadwood, LLC, a California Limited Liability Company

## **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 8233 Meeks Bay Avenue, Meeks Bay, El Dorado County.

## **AUTHORIZED USE:**

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

## **TERM:**

10 years, beginning December 8, 2021.

## **CONSIDERATION:**

\$1,341 per year, with an annual Consumer Price Index adjustment, and \$2,012 to compensate for the unauthorized occupation of state sovereign land for the period of June 18, 2020, through December 7, 2021.

## **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 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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On August 20, 2010, the Commission authorized a Recreational Pier Lease to David Nathan McNary and Sharon Hormel McNary; Jane McNary O'Meara; Barbara McNary Spindler as Trustee of the John and Barbara Spindler Living Revocable Trust; Nancy McNary Leach; and Donald S. McNary and Louise W. McNary as Co-Trustees, and any successor Trustee, of the McNary Family Revocable Trust of 1992, for an existing pier, boat lift, and two mooring buoys ([Item C05, August 20, 2010](#)). That lease expired on April 27, 2018. On June 18, 2020, upland title was deeded to the Applicant. The Applicant is applying for a General Lease – Recreational Use, for the use and maintenance of an existing pier, boat lift, and two mooring buoys in Lake Tahoe. Based on the information provided and Commission records, the subject facilities have existed at this location for many years. The mooring facilities were registered with TRPA under registration number 10363, since at least May 20, 2019.

Staff recommends the Commission accept compensation from the Applicant in the amount of \$2,012, for the unauthorized occupation of State land for the period of June 18, 2020 through December 7, 2021, the day preceding issuance of the proposed lease. Further, Staff recommends that the starting date of the proposed new lease align with the authorization date, December 8, 2021, but that the terms of the lease, including the indemnity provision, apply to the entire period of occupation, ensuring the State is protected.

The subject facilities are privately owned and maintained by the Applicant 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 facilities reside lakeward of the upland property and occupy a relatively small area of the lake. The pier is built on pilings over the lake which allow for public access and lake-related activities at varying water levels underneath the pier. Therefore, the Public Trust easement is not impeded by the existing pier. The immediate area of the pier is gently sloped with large rocks. 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:**

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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, 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. 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 this 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. Accept compensation from the Applicant in the amount of \$2,012, for the unauthorized occupation of State land for the period of June 18, 2020, through December 7, 2021.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 8, 2021, for a term of 10 years, for the use and maintenance of an existing pier, 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 \$1,341, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 3713

### LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 29, 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 and boat lift lying adjacent to those parcels described in Grant Deed recorded June 18, 2020 in Document Number 2020-0029171-00 in Official Records of said El Dorado 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 parcel of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Grant Deed recorded June 18, 2020 in Document Number 2020-0029171-00 in Official Records of said El Dorado County.

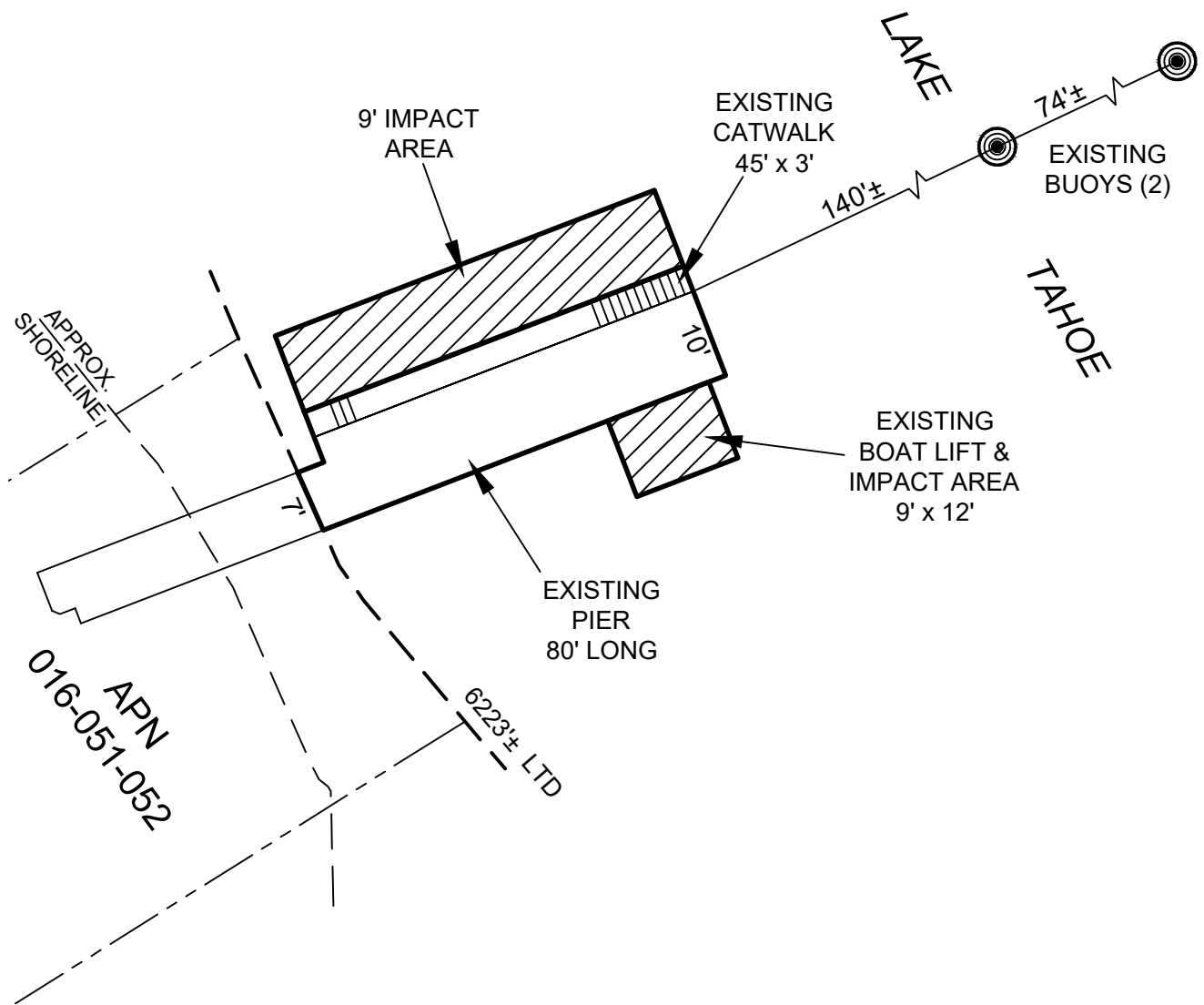
Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared 04/14/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

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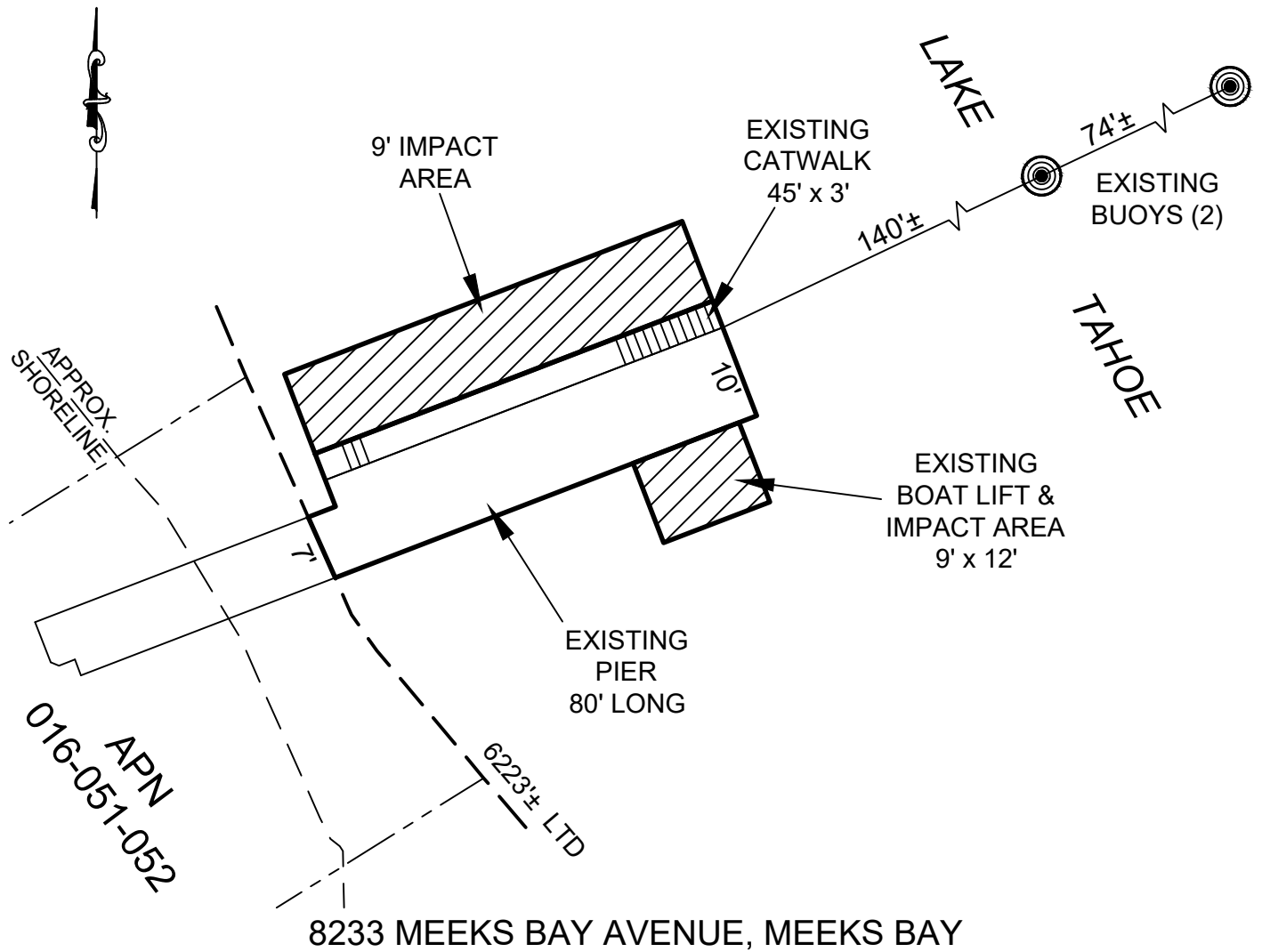
LAND DESCRIPTION PLAT  
LEASE 3713, DEADWOOD, LLC  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

## SITE



NO SCALE

## LOCATION

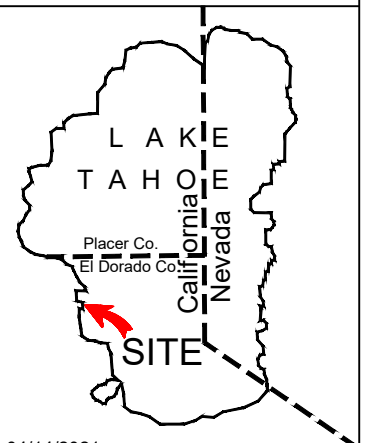


MAP SOURCE: USGS QUAD

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 3713  
DEADWOOD, LLC  
APN 016-051-052  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY



TS 04/14/2021