

Staff Report 15

APPLICANT:

Richard Lee and Pamela Lee; and Anne C. Mahnken, Trustee under the Mahnken Trust Agreement dated April 6, 1995

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 8714 and 8716 Brockway Vista Avenue, near Kings Beach, Placer County.

AUTHORIZED USE:

Use and maintenance of an existing joint-use pier and four mooring buoys previously authorized by the Commission; and use and maintenance of two existing boat slips with one finger pier, not previously authorized by the Commission.

TERM:

10 years, beginning December 8, 2021

CONSIDERATION:

\$2,894 per year, with an annual Consumer Price Index adjustment, and \$7,181 to compensate for the unauthorized occupation of state sovereign land for the period beginning August 1, 2019 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.
- Lessee acknowledges that moorage of only two watercraft in the two boat slips are allowed under the TRPA registration and those limitations will be enforced by TRPA.

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 October 22, 2009, the Commission authorized a Recreational Pier Lease to Richard Lee and Pamela Lee; and Charles H. Mahnken and Anne C. Mahnken, Trustees under the Mahnken Trust Agreement dated April 6, 1995, for continued use and maintenance of an existing joint-use pier and four mooring buoys ([Item 12, October 22, 2009](#)).

On December 19, 2013, ownership interest in the Mahnken Trust parcel transferred from the Trust to Anne Mahnken as an unmarried woman. Then, on the same day, ownership of the subject parcel transferred to Anne C. Mahnken, Trustee under the Mahnken Trust Agreement dated April 6, 1995. The lessee did not notify the Commission of changes in ownership or seek an assignment of the lease. The lease expired on July 31, 2019.

The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of the existing joint-use pier and four mooring buoys. During application processing, staff discovered two existing removable finger piers attached to the joint-use pier that created three boat slips. The Applicant did not hold permits from Tahoe Regional Planning Agency (TRPA) for the boat slips, therefore the application went dormant while the Applicant applied to TRPA for permits for the boat slips.

On August 12, 2021, the Applicant provided Permit No. 10951 for two mooring buoys and two boat slips, and Permit No. 10959 for two mooring buoys issued by TRPA. Because TRPA could not permit three boat slips, staff recommends authorization for two boat slips. The Applicant provided evidence of removal of one of the two finger piers, leaving two boat slips and has agreed not to reinstall

any additional finger piers per the TRPA permit and proposed lease terms and conditions.

The Applicant has agreed to pay compensation for the unauthorized occupation of state land from August 1, 2019 through December 7, 2021. Staff recommends that the Commission accept compensation from the Applicant in the amount of \$7,181 for the unauthorized occupation of state land prior to the commencement of the proposed lease.

The subject facilities have existed for many years at this location. The landward end of the pier is built on pilings, providing public access for pedestrians and lake-related activities at varying water levels underneath the pier and over the pier within the Public Trust easement. The immediate area of the pier is gently sloped with sand under the pier and small boulders at the shoreline. The mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The joint-use pier, four mooring buoys, two boat slips, and one finger pier are 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 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. 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 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 may be required to remove the joint-use pier, single finger pier, and four mooring buoys 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 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:

- A. Land description
- B. 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 the 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:

1. Authorize acceptance of compensation from the Applicant in the amount of \$7,181 for the unauthorized occupation of State lands for the period beginning August 1, 2019 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 continued use and maintenance of an existing joint-use pier and four mooring buoys previously authorized by the Commission, and two existing boat slips and one finger pier, not previously authorized by the Commission, 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 \$2,894, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7050

LAND DESCRIPTION

Five parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 19, Township 16 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved January 29, 1875, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing joint-use pier with rock crib and seasonal finger pier lying adjacent to those parcels as described in Grant Deed recorded December 19, 2013 in Document Number 2013-0115623 and Grant Deed recorded April 22, 2002 in Document Number 2002-045450 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.

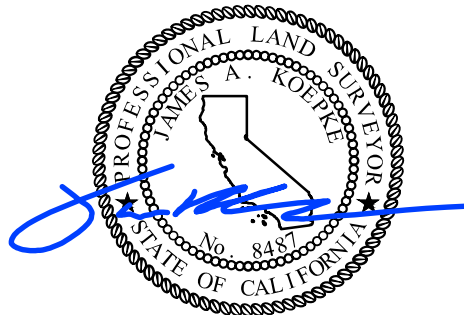
PARCELS 2 through 5 – BUOYS

Four circular parcels of land, each being 50 feet in diameter, underlying four existing buoys lying adjacent to those parcels as described in Grant Deed recorded December 19, 2013 in Document Number 2013-0115623 and Grant Deed recorded April 22, 2002 in Document Number 2002-045450 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 10/27/2021 by the California
State Lands Commission Boundary Unit.



NO SCALE

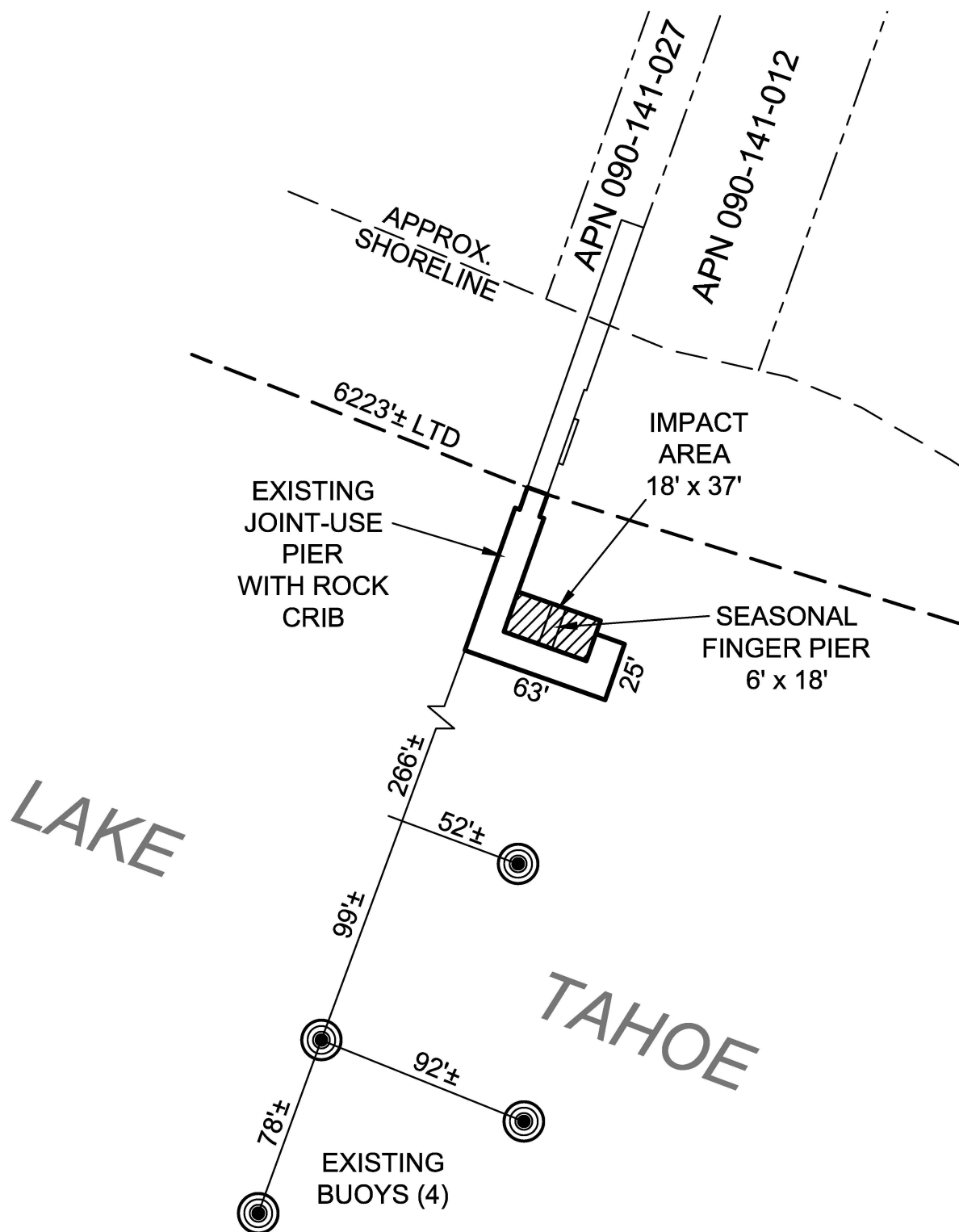


EXHIBIT A

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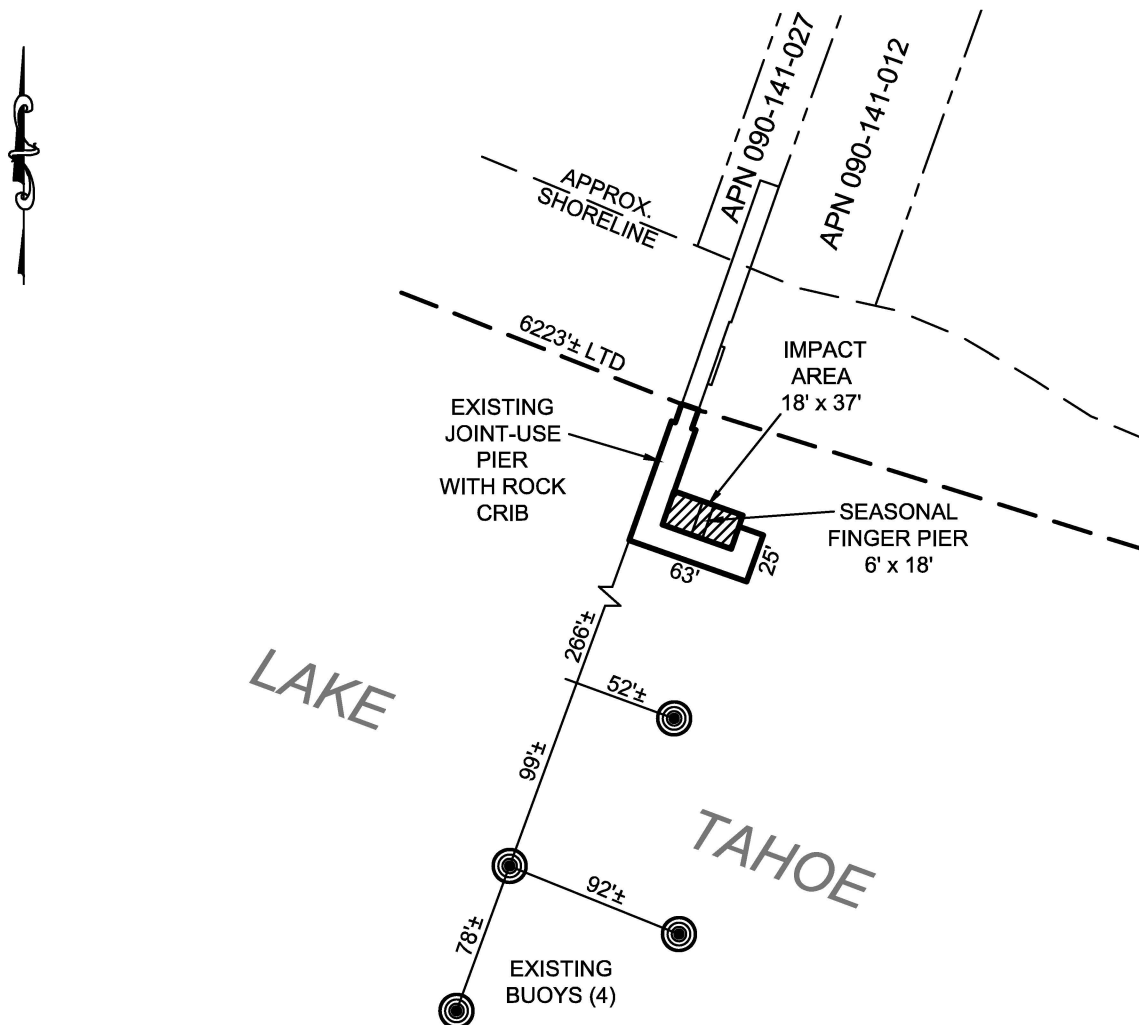
LAND DESCRIPTION PLAT
LEASE 7050, LEE & MAHNKEN
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



8714 & 8716 BROCKWAY VISTA AVENUE, NEAR KINGS BEACH

NO SCALE

LOCATION

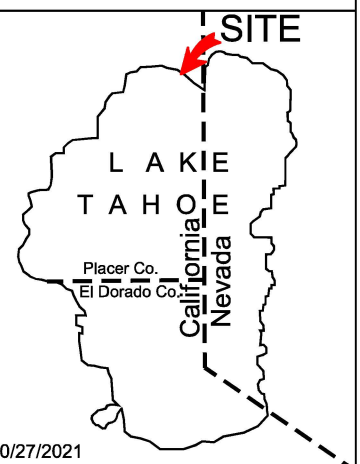


MAP SOURCE: USGS QUAD

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 7050
LEE & MAHNKEN
APNs 090-141-012 & -027
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



TS 10/27/2021