

Staff Report 20

APPLICANT:

Nina Maria Mentges as Trustee of The Exemption Trust portion of the Peter Alfons Mentges and Nina Maria Mentges 1984 Family Trust (ART 5.03)

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2225 Cascade Road, near South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Use and maintenance of an existing pier and one mooring buoy.

TERM:

10 years, beginning December 8, 2021.

CONSIDERATION:

\$875 per year, with an annual Consumer Price Index adjustment, and \$100 to compensate for the unauthorized occupation of state sovereign land for the period beginning October 27, 2021 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:

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 October 27, 2011, the Commission authorized a 10-year Recreational Pier Lease to Peter Alfons Mentges and Nina Maria Mentges, Trustees of the Peter Alfons Mentges and Nina Maria Mentges 1984 Family Trust dated June 26, 1984, for the use and maintenance of an existing pier previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission ([Item C13, October 27, 2011](#)).

On January 10, 2020, ownership of the upland parcel transferred to Nina Maria Mentges as Trustee of The Exemption Trust portion of the Peter Alfons Mentges and Nina Maria Mentges 1984 Family Trust (ART 5.03) as the surviving spouse trustee. Because the deed transfer occurred within the Mentges family, the Lessee did not notify the Commission of changes in ownership or seek an assignment of the lease. Instead, the Lessee's family trust continued to fulfill the obligations of the lease. The lease expired on October 26, 2021.

The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing pier and one mooring buoy. The Applicant holds a current TRPA registration for the mooring buoy, as of June 30, 2019 (Registration No. 10529).

The Applicant has agreed to pay compensation for the unauthorized occupation of state land in the amount of \$100 for the period beginning October 27, 2021 through December 7, 2021, the day before the December Commission meeting when the proposed new lease begins. Staff recommends the Commission accept this compensation, and further recommends that the provisions of the lease, including the indemnity provision, be applied to the period of unauthorized occupation.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The pier and mooring buoy 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 subject facilities have existed for many years at this location. The pier is built on pilings, providing public access for pedestrians and lake-related activities at varying water levels underneath the pier. The immediate area of the pier is gently sloped with sand and small pebbles. The mooring buoy is located directly lakeward of the upland property and occupies 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; 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 pier and mooring buoy 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.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity 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, section 2905.

EXHIBITS:

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

RECOMMENDED ACTION:

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:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with 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. Authorize acceptance of compensation from the Applicant in the amount of \$100 for unauthorized occupation of State lands for the period beginning October 27, 2021 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 pier and one mooring buoy, 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 \$875 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5278

LAND DESCRIPTION

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 26, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1874, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and catwalk lying adjacent to that parcel described in Trust Transfer Deed recorded January 10, 2020 as Document Number 2020-0001107-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

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

PARCEL 2 – BUOY

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to that parcel described in Trust Transfer Deed recorded January 10, 2020 as Document Number 2020-0001107-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/16/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

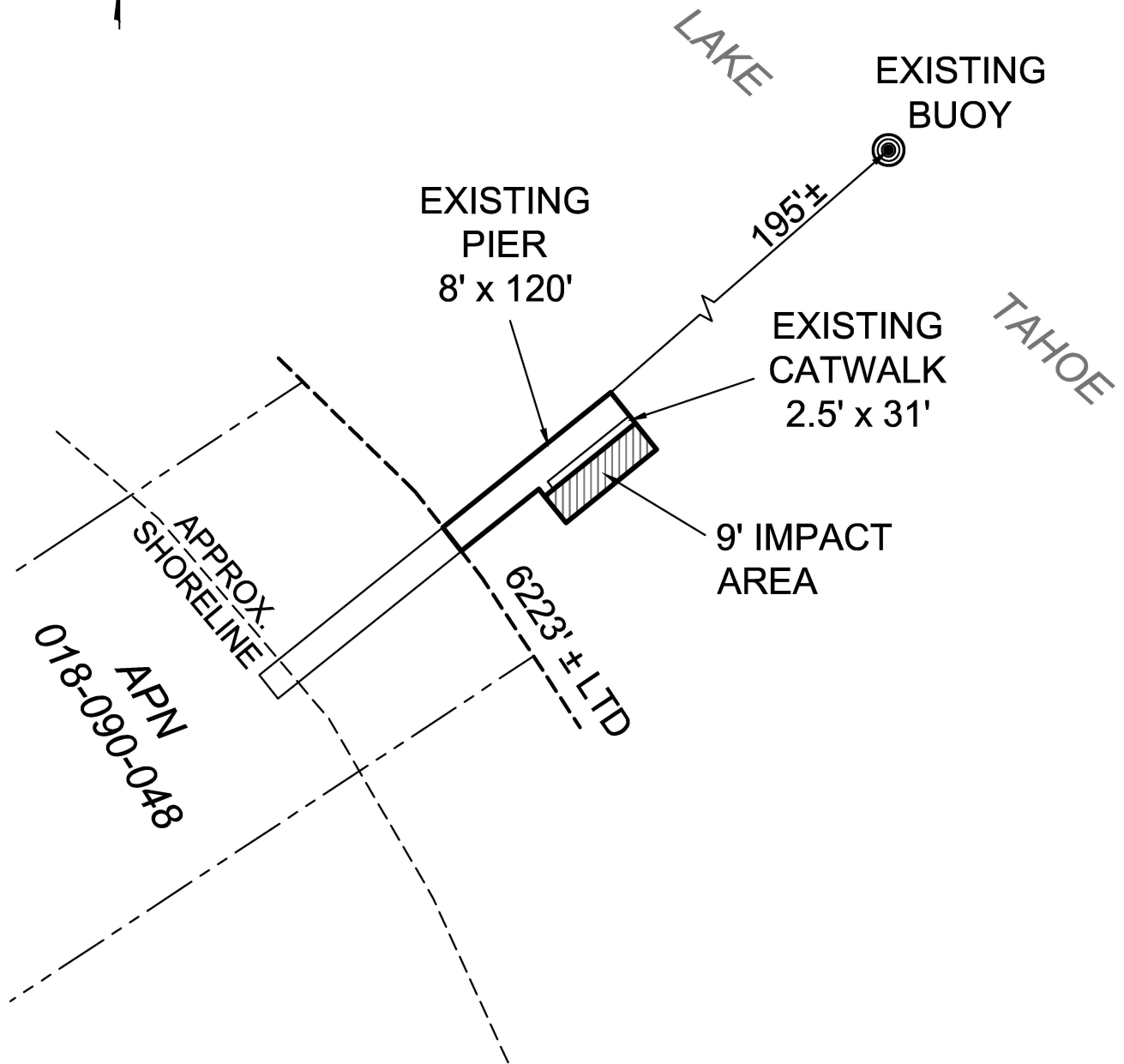


EXHIBIT A

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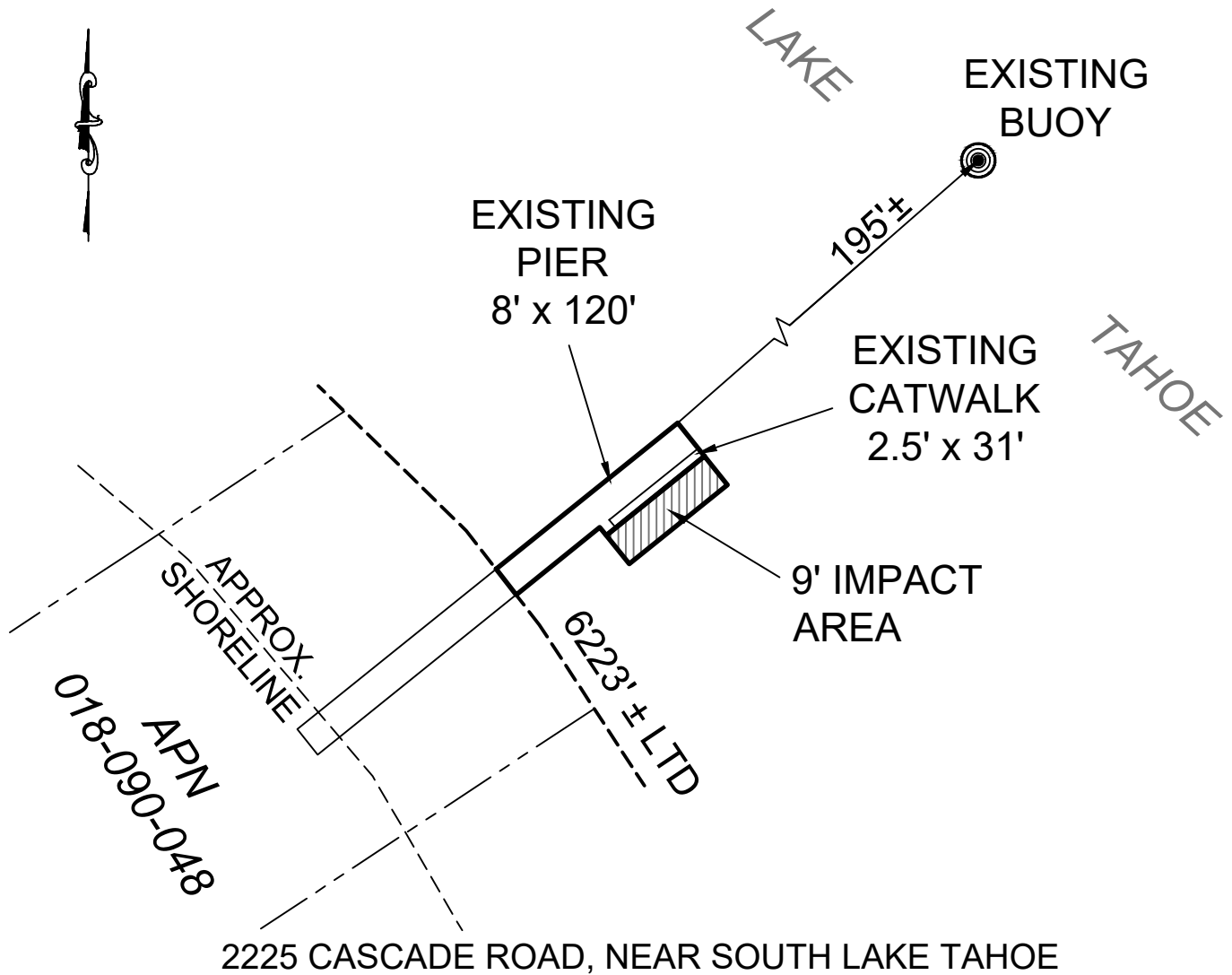
LAND DESCRIPTION PLAT
LEASE 5278, MENTGES FAMILY TRUST
EL DORADO COUNTY

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 5278
 MENTGES FAMILY TRUST
 APN 018-090-048
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY

