

Staff Report 22

APPLICANT:

Mark B. Nelson, Trustee of the Wilborn Children's Trust and Lorie L. Wilborn, Trustee of the Nelson Heritage Trust

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4200 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of a pier, boat lift, and boat hoist.

TERM:

10 years, beginning January 26, 2022.

CONSIDERATION:

\$743 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 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 the 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 January 26, 2012, the Commission authorized a Recreational Use Lease to Mark B. Nelson, Trustee of the Wilborn Children's Trust and Lorie L. Wilborn, Trustee of the Nelson Heritage Trust for an existing pier and two boat hoists ([Item C10, January 26, 2012](#)). The rent was revised on February 7, 2017 ([Item C02, February 7, 2017](#)). The lease will expire on January 25, 2022. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of a pier, boat lift, and boat hoist. The applicant has an up-to-date registration with TRPA, issued January 2, 2021 (Registration #10261).

The improvements have existed for many years at this location. The pier is built on pilings with the immediate area of the pier being steep and rocky, requiring a walkway to reach the pier from the upland. The topography and location are difficult to navigate, however public access for pedestrians and lake-related activities is available at varying water levels underneath the pier.

The subject pier, boat lift, and boat hoist 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).

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:

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 with boat lift and boat hoist 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 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 January 26, 2022, for a term of 10 years, for the use and maintenance of a pier, boat lift, and boat hoist, 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 \$743, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5353

LAND DESCRIPTION

A parcel of submerged lands situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 28, 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:

All those lands underlying an existing pier with a boat hoist and boat lift lying adjacent to those parcels described in Grant Deed recorded January 12, 2010 as Document Number 2010-0002161-00 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.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 04/07/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



APN 092-200-009

APPROX.
SHORELINE

EXISTING
PIER
105' LONG

EXISTING
BOAT LIFT

EXISTING
BOAT HOIST

9' IMPACT
AREA

9' IMPACT
AREA

LAKE
TAHOE

EXHIBIT A

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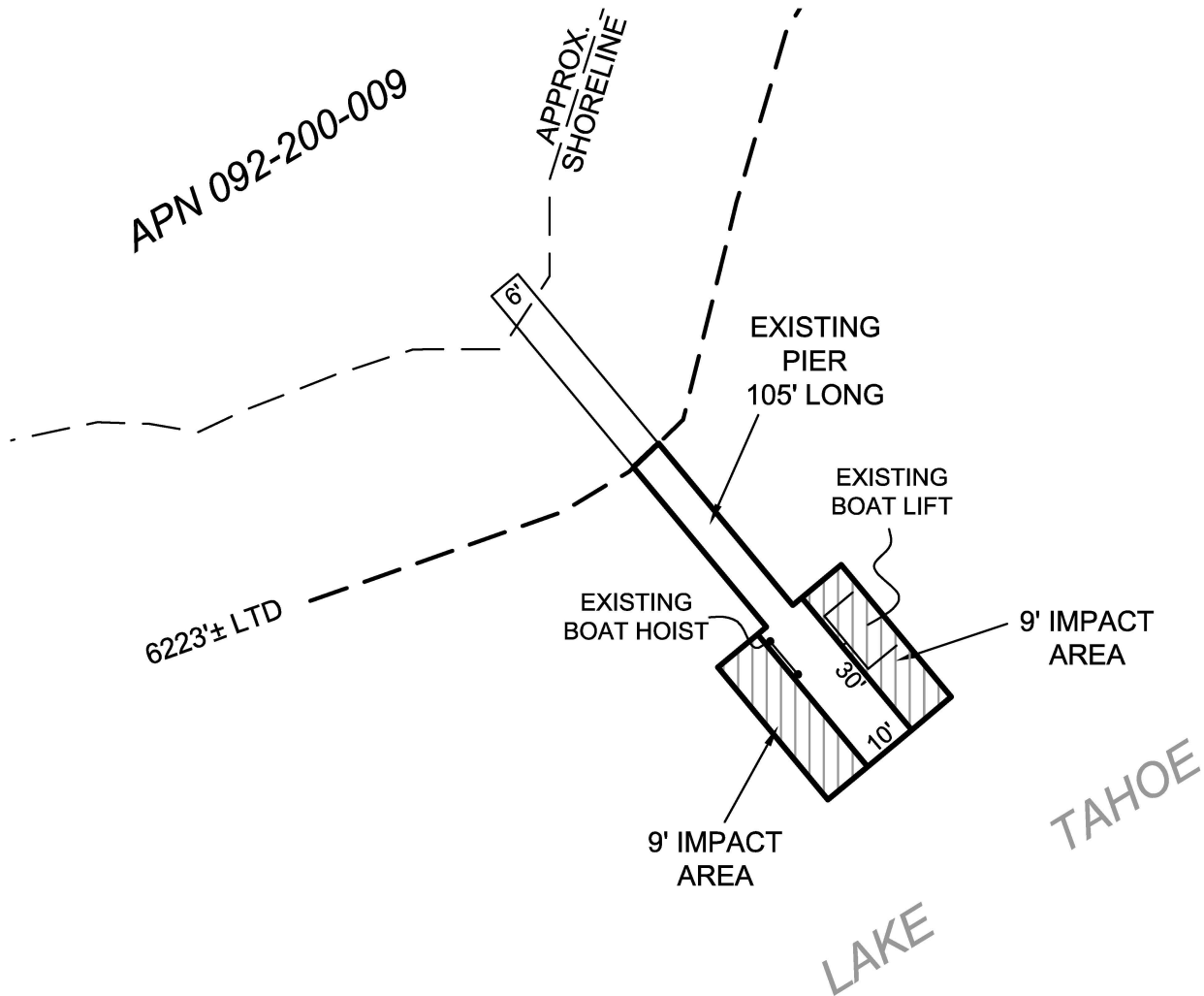
LAND DESCRIPTION PLAT
LEASE 5353, WILBORN CHILDREN'S TRUST
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



4200 NORTH LAKE BLVD., NEAR CARNELIAN BAY

NO SCALE

LOCATION



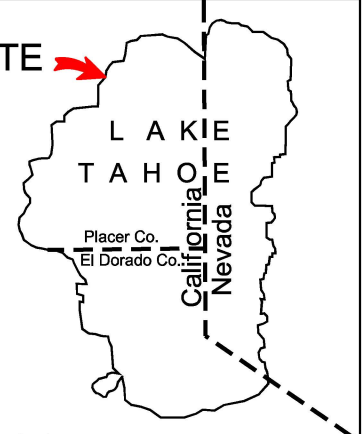
MAP SOURCE: USGS QUAD

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 5353
WILBORN CHILDREN'S
TRUST
APN 092-200-009
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY

SITE



TS 04/07/2021