CALENDAR ITEM

C55

A 4 03/29/12

WP 3879.9

S 1 B. Terry

TERMINATION OF A RECREATIONAL PIER LEASE AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE

LESSEES:

David Clinton DeForest and Stephen Kellogg DeForest, as Successor Co-Trustees, of the Restatement of the Donald S. DeForest and Jane C. DeForest Revocable Trust

APPLICANTS:

David Clinton DeForest and Laura Louise DeForest, Co-Trustees or Successor Trustee of The David Clinton DeForest and Laura Louise DeForest Revocable Living Trust under Trust Agreement dated December 4, 2000, as amended by a Second Restatement of Trust dated April 26, 2010; and Stephen Kellogg DeForest, Trustee of the Stephen Kellogg DeForest Trust under Article XIII of the Donald S. DeForest and Jane C. DeForest Revocable Trust dated February 12, 1990, as Amended by the Restatement of the Donald S. DeForest and Jane C. DeForest Revocable Trust dated November 4, 2004

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4230 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing mooring buoy previously authorized by the Commission, and the reconstruction and expansion of an existing pier onto sovereign land with 11 new steel pilings, an adjustable catwalk, and installation of a boat lift.

LEASE TERM:

10 years, beginning March 29, 2012.

CONSIDERATION:

No monetary consideration pursuant to Public Resources Code section 6503.5.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in the amount of no less than $1,000,000.

Other:

1. The proposed lease contains a provision requiring the Applicants to obtain authorization from the Tahoe Regional Planning Agency (TRPA) for the mooring buoys within two years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. This is a continuation of the process the Commission used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the FEIS. In September 2010, the U.S. District Court invalidated the FEIS and nullified the Amendments. When additional information is available, Commission staff will advise the Commission on any suggested modifications to the process used by the Commission pending resolution of the TRPA FEIS and amended ordinance issues.

2. The proposed project is located in an area identified as Tahoe Yellow Cress (TYC) habitat. The TYC is an endangered plant species statutorily protected by the California Endangered Species Act. TYC was not found during the site-specific survey performed during the 2010 growing season and staff determined that construction prior to June 14, 2012 would not have an effect on TYC. Should the demolition, construction, or continuation of construction on the site extend into a subsequent growing season after June 14, 2012, the Lessee is required to contact Commission staff to determine if the site should be re-surveyed (survey to be conducted between June 15-September 30, 2012) for the presence of TYC.

3. The lease provides that the public will be allowed to pass and re-pass over the pier via stairs on each side to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 Lake Tahoe Datum.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland adjoining the lease premises.

2. On December 3, 2008, the Commission approved a 10-year Recreational Pier Lease for the continued use and maintenance of an existing mooring

buoy, with the Lessees. The ownership of the upland parcel was transferred to the Applicants. Applicants have now applied for a new General Lease – Recreational Use for the continued use and maintenance of an existing mooring buoy, the proposed expansion of an existing pier onto sovereign land, and installation of a boat lift.

3. On October 8, 2011, Chapter 585, Statues of 2011 became law. The law is effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission "shall charge rent for a private recreational pier constructed on state lands." The law provides for two exceptions to the imposition of rent. Those exceptions are for:

   A. A lease in effect on July 1, 2011, through the remaining term of that lease. If a lease in effect on July 1, 2011, expires or is otherwise terminated, any new lease will be subject to rent; and

   B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

   Because the application and fees were submitted to the Commission prior to March 31, 2011, the lease meets the statutory requirements for an exception to recently-enacted changes to Section 6503.5 of the Public Resources Code for the term of this lease. Staff recommends approval of the existing mooring buoy, the proposed reconstruction and expansion of an existing pier onto sovereign land with 11 steel pilings and an adjustable catwalk, and installation of a boat lift.

4. The existing 55-foot pier does not extend past the low water mark, elevation 6,223 feet, Lake Tahoe Datum, and, therefore, does not occupy State sovereign land. The Applicants are proposing to reconstruct and expand the pier to a length of 115 feet with an adjustable catwalk and a boat lift which will extend the pier past the low water mark and onto State sovereign land.

5. The removal of the existing pier and pilings and the reconstruction of the pier are to be performed by amphibious vehicle with pile driver or crane, portable equipment, and manual labor. Construction will take place between October 1 and May 1. In order to provide continuous shoreline public access to the Public Trust Easement between high and low water

mark in Lake Tahoe, stairs will be constructed on each side of the reconstructed pier for access over the pier along the easement.

6. The Tahoe Yellow Cress (TYC) is listed under the provisions of the California Endangered Species Act as an endangered plant species subject to special protection. On October 1, 2002, the Commission authorized the Executive Officer on their behalf to sign a Memorandum of Understanding (MOU) to implement the Conservation Strategy For Tahoe Yellow Cress (*Rorippa subumbellata*) in conjunction with TRPA, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the Nevada Division of Forestry, the Nevada Division of State Lands, the Nevada Division of State Parks, the Nevada Natural Heritage Program, the California Department of Fish and Game, the California Department of Parks and Recreation, the California Tahoe Conservancy, the Tahoe Lakefront Owners' Association, and the League to Save Lake Tahoe.

   The project site was surveyed by Commission staff on September 28, 2010. The project site does not presently contain TYC, the habitat where the proposed construction project is located is very marginal, and there are no known TYC occurrences in the area. However, special provisions have been incorporated into the lease for the protection of TYC in the event TYC is identified within the construction site.

7. **Termination of Lease:** The staff recommends that the Commission find that the subject acceptance of a Quitclaim Deed does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

   Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

8. **Existing Buoy:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined 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 and California Code of Regulations, Title 2, section 2905.

9. **Reconstruction and Expansion of Pier:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

   Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

10. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

California Department of Fish and Game
California Regional Water Quality Control Board

FURTHER APPROVALS REQUIRED:

Tahoe Regional Planning Agency
U.S. Army Corps of Engineers

EXHIBITS:

A. Land Description
B. Map and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Termination of Lease: Find that the subject acceptance of a Quitclaim deed is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Existing Buoy: 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).

Reconstruction and Expansion of Pier: 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 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Acceptance of a Lease Quitclaim Deed and termination, effective March 28, 2012, of Lease No. PRC 3879.9, a Recreational Pier Lease, issued to David Clinton DeForest and Stephen Kellogg DeForest, as Successor Co-Trustees, of the Restatement of the Donald S. DeForest and Jane C. DeForest Revocable Trust, and authorized by the Commission on December 3, 2008.

2. Authorize issuance of a General Lease – Recreational Use to David Clinton DeForest and Laura Louise DeForest, Co-Trustees or Successor Trustee of the David Clinton DeForest and Laura Louise DeForest Revocable Living Trust under Trust Agreement dated December 4, 2000, as amended by a Second Restatement of Trust dated April 26, 2010; and Stephen Kellogg DeForest, Trustee of the Stephen Kellogg DeForest Trust under Article XIII of the Donald S. DeForest and Jane C. DeForest Revocable Trust dated February 12, 1990, as Amended by the Restatement of the Donald S. DeForest and Jane C. DeForest Revocable Trust dated November 4, 2004, beginning March 29, 2012, for a term of 10 years, for the continued use and maintenance of an existing mooring buoy previously authorized by the Commission, and the reconstruction and expansion of an existing pier onto sovereign land and installation of a boat lift as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; no monetary consideration pursuant to Public Resources Code section 6503.5; and liability insurance in the amount of no less than $1,000,000.

EXHIBIT A

PRC 3879.9

LAND DESCRIPTION

Two parcels of submerged lands situate in the bed of Lake Tahoe, 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:

PARCEL 1 – PIER

All those lands underlying a proposed pier lying adjacent to that parcel described as Parcel One in Grant Deed recorded September 23, 2008 as Document Number 2008-0075487 in Official Records of said County.

TOGETHER WITH a ten foot use area.

EXCEPTING THEREFROM any portion of land 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, the center of which underlies an existing buoy lying adjacent to that parcel described as Parcel One in Grant Deed recorded September 23, 2008 as Document Number 2008-0075487 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

This description is based on Applicant provided design plans, by Agan Consulting Corp. dated February 2011, for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

END OF DESCRIPTION

Prepared 12/06/2011 by the California State Lands Commission Boundary Unit.

PROFESSIONAL LAND SURVEYOR
JAMES A. KOEPKE
Exp. 12/31/12
No. 8487
STATE OF CALIFORNIA

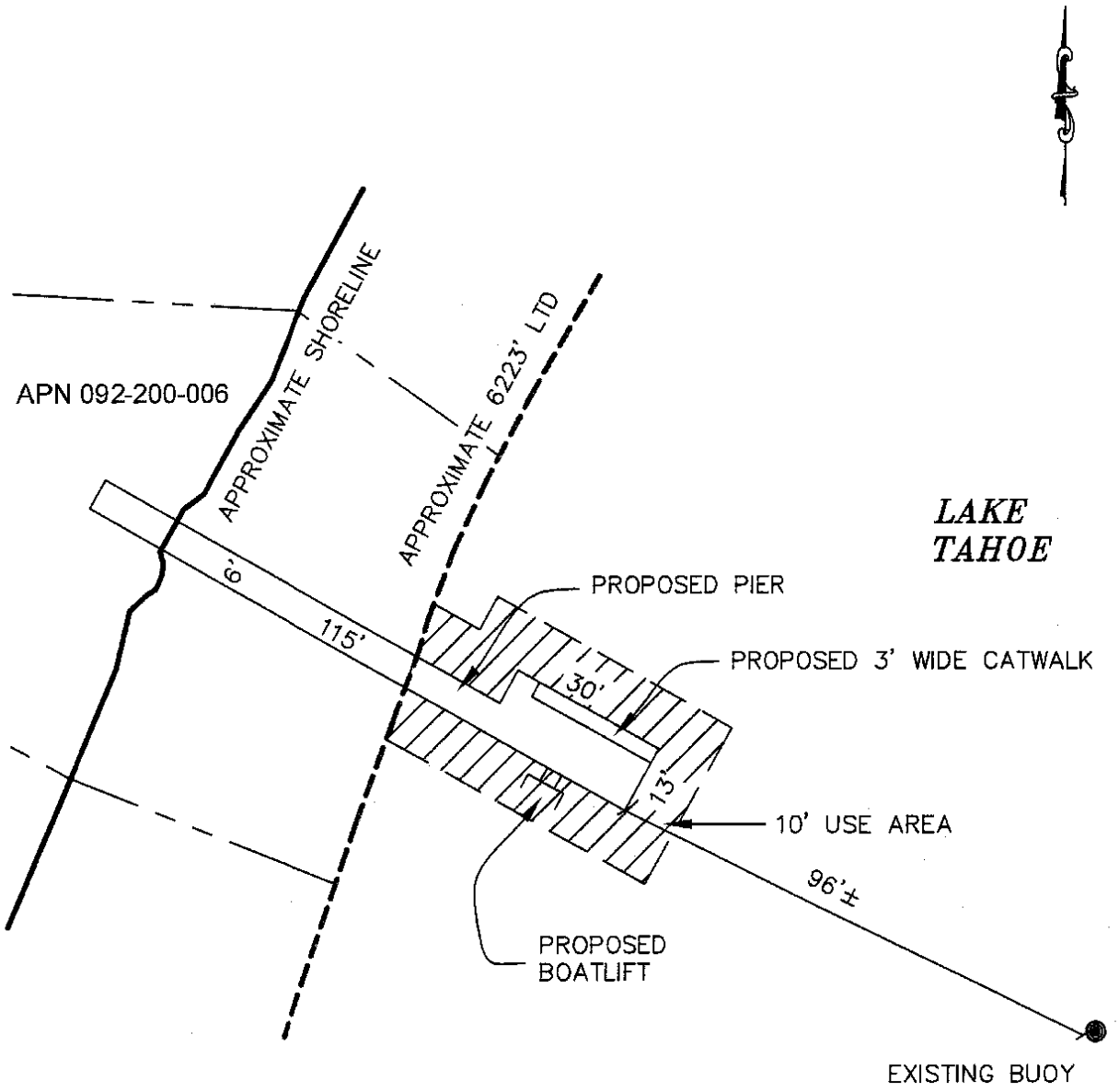

EXHIBIT A

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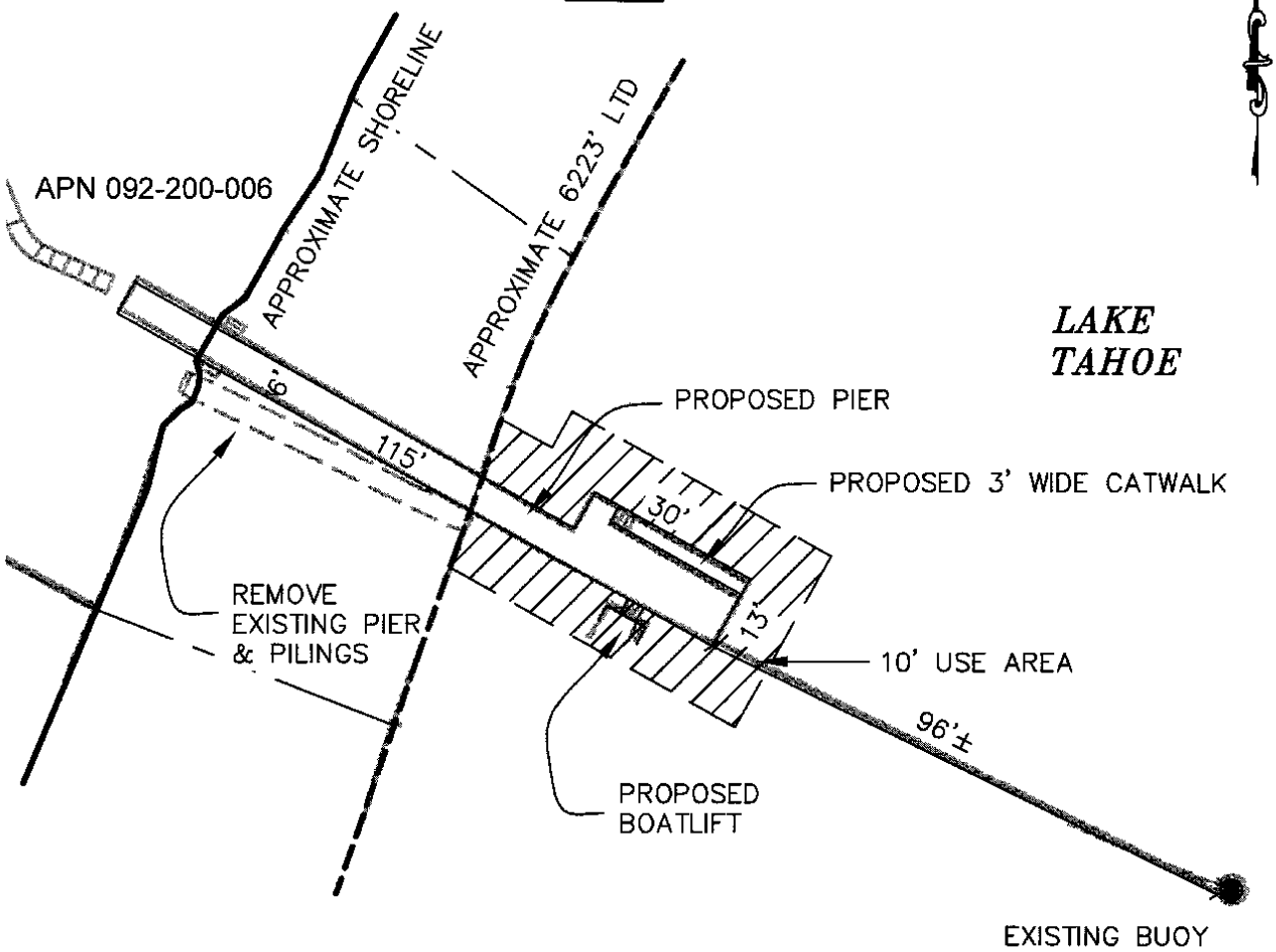
LAND DESCRIPTION PLAT PRC 3879.9, DEFOREST FAMILY TRUST PLACER COUNTY	CALIFORNIA STATE LANDS COMMISSION

NO SCALE

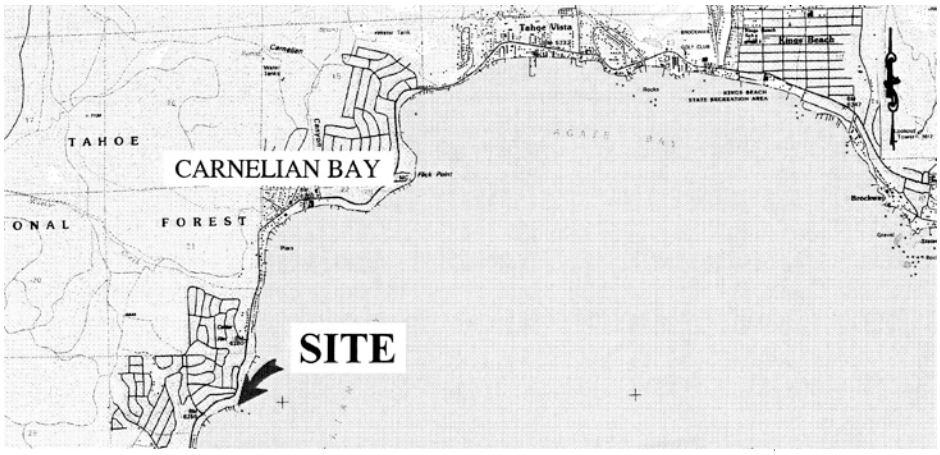
SITE



4230 NORTH LAKE BLVD., NEAR CARNELIAN BAY

NO SCALE

LOCATION

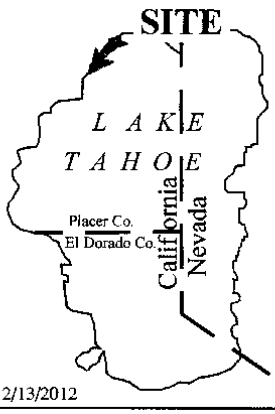


MAP SOURCE: USGS QUAD

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

PRC 3879.9
DEFOREST FAMILY TRUST
APN 092-200-006
GENERAL LEASE - RECREATIONAL USE
PLACER COUNTY



DJF 2/13/2012