

**CALENDAR ITEM  
C03**

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06/28/16  
PRC 3654.1  
M. J. Columbus

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Barbara B. Corneille, Trustee of the Corneille Living Trust Dated March 19, 1990

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 135 Quiet Walk Road, near Tahoma, El Dorado County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing pier, boat hoist, sundeck with stairs, and two mooring buoys.

*LEASE TERM:*

10 years, beginning October 1, 2015.

*CONSIDERATION:*

\$2,779 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.

If Lessee does not have valid Tahoe Regional Planning Agency (TRPA) buoy permits, Lessee is required to obtain such authorization 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. If Lessee is unable to obtain such authorization within the time limit, they must remove the buoys.

Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

CALENDAR ITEM NO. **C03** (CONT'D)

The lease contains provisions stating that the existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck with stairs must be removed from the lease premises.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

**Public Trust and State's Best Interests Analysis:**

With the exception of the sundeck, the subject facilities are for the docking and mooring of boats. 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, meaning the public may navigate or walk next to and, at certain water levels, under the pier. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The sundeck with stairs is not generally associated with traditional public trust uses. While new sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as is the case in this instance, they do not significantly interfere with trust activities. The sundeck is built on top of the existing boathouse and does not expand the footprint of the pier. However, the lease contains provisions that the sundeck may not be expanded or rebuilt if substantially destroyed.

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.

CALENDAR ITEM NO. **C03** (CONT'D)

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, Commission staff believes the issuance of this lease is consistent with the common law public trust doctrine and in the best interests of the state.

**OTHER PERTINENT INFORMATION:**

1. Applicant owns the upland adjoining the lease premises.
2. On October 20, 2005, the Commission authorized a Recreational Pier Lease to Barbara B. Corneille, Trustee of the Corneille Living Trust Dated March 19, 1990. That lease expired on September 30, 2015. The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of an existing pier, boat hoist, sundeck with stairs, and two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission. The Applicant's mooring buoys have been in Lake Tahoe for many years, and in their current location since approximately 1965 as determined by the U.S. Army Corps of Engineers in a "grandfathered" status letter dated February 10, 2016.
3. The Applicant provided a copy of buoy permits for two buoys issued by TRPA in October 2009 under the "grandfather clause" of the now vacated TRPA Shorezone ordinances adopted by TRPA in 2008.
4. Prior to 2008, TRPA ordinances allowed only two existing private mooring buoys per littoral parcel. TRPA adopted new shorezone ordinances in 2008 which allowed permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the third buoy had been placed in the lake prior to 1972, or had an existing valid lease for a third buoy from the Commission, or a valid permit from the U.S. Army Corps of Engineers. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA shorezone ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition to previously unpermissible buoys. In 2010, the 2008 TRPA shorezone ordinances and the buoy permits issued under them were found to be invalid by the U.S. District Court. This decision was upheld by the 9<sup>th</sup> Circuit U.S. Court of Appeals.

CALENDAR ITEM NO. **C03** (CONT'D)

5. TRPA is now operating under the pre-2008 Code of Ordinances which does not have a third buoy grandfather clause. Recommending approval for a third buoy would be in direct conflict with the current TRPA Code of Ordinances. In March 2016, staff spoke to the Applicant advising staff would not recommend more than two buoys in the new lease because of the conflict with TRPA's current code.
6. Staff recommends the Commission authorize two existing mooring buoys and the existing pier with a boat hoist and sundeck with stairs to be consistent with the current TRPA Code of Ordinances. Staff recommends the Commission deny authorization for the third mooring buoy.
7. Applicant also has a separate lease (PRC 9056.1) for another pier on the same littoral parcel.
8. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
9. **Pier, Boat Hoist, Sundeck with Stairs, and Two Mooring Buoys:** The 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.

10. **Third Buoy:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, Title 14, section 15270, subdivision (a).

CALENDAR ITEM NO. **C03** (CONT'D)

11. 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.

**EXHIBITS:**

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

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Pier, Boat Hoist, Sundeck with Stairs, and Two Mooring Buoys:** 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).

**Third Buoy:** Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, Title 14, section 15270, subdivision (a), projects which a public agency rejects or disapproves.

**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, is consistent with the common law public trust doctrine, and is in the best interests of the state.

**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.

CALENDAR ITEM NO. **C03** (CONT'D)

**AUTHORIZATION:**

1. Authorize issuance of a General Lease – Recreational Use to Barbara B. Corneille, Trustee of the Corneille Living Trust Dated March 19, 1990, beginning October 1, 2015, for a term of 10 years, for the continued use and maintenance of an existing pier, boat hoist, sundeck with stairs, 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 \$2,779 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
  
2. Deny authorization for a third mooring buoy.

**EXHIBIT A**

**PRC 3654.1**

**LAND DESCRIPTION**

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 fractional Section 17, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 9, 1866 County of El Dorado, State of California, and more particularly described as follows:

**PARCEL 1 – PIER & SUNDECK**

All those lands underlying an existing pier, sundeck with stairs, boathouse, and one (1) boat hoist adjacent to that parcel described in Exhibit “A” of that Grant Deed recorded March 19, 1992 in Book 3743 Page 42 of 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.

**PARCELS 2, 3 – BUOYS (2)**

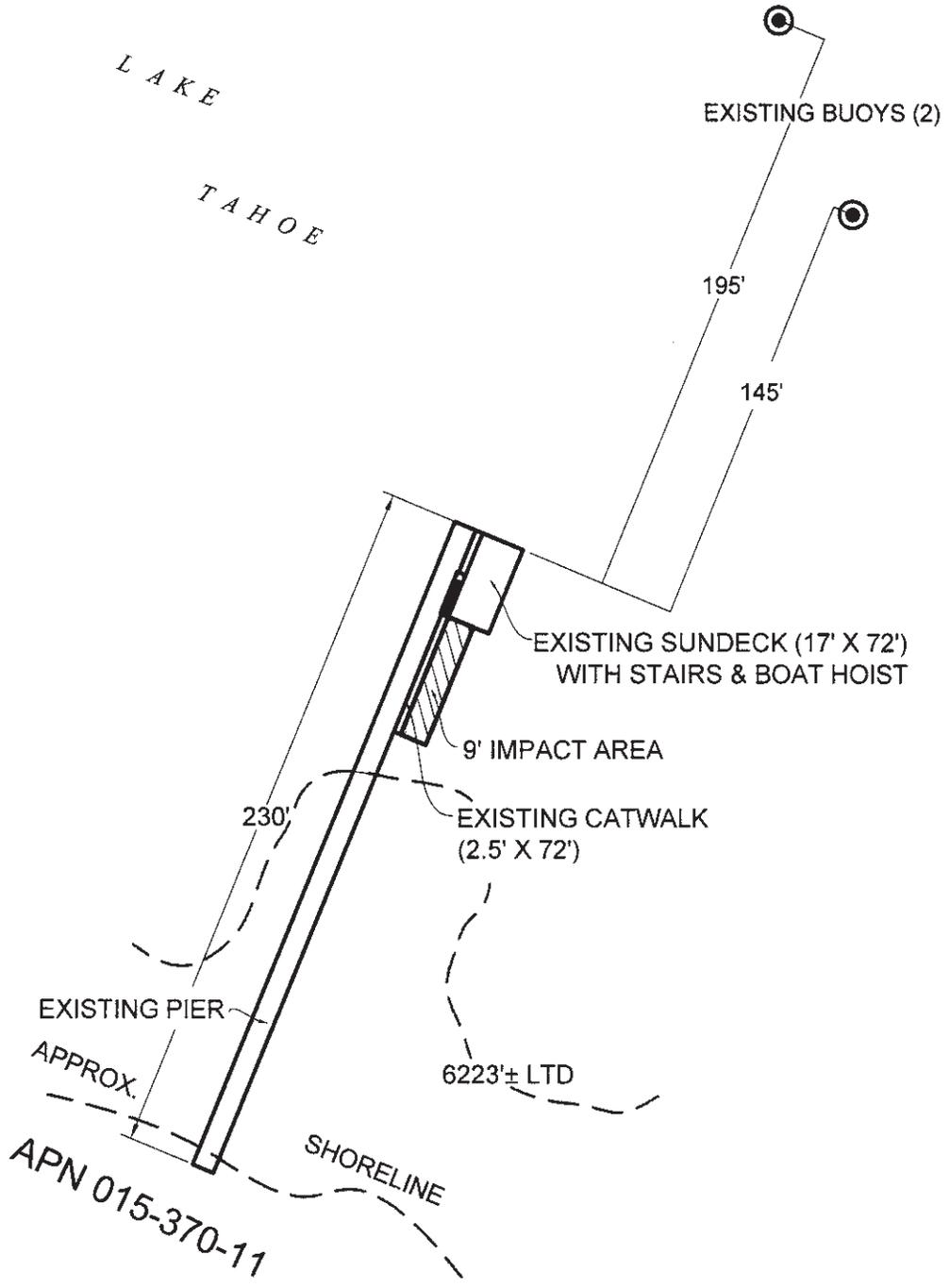
Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared March 3, 2016 by the California State Lands Commission Boundary Unit.



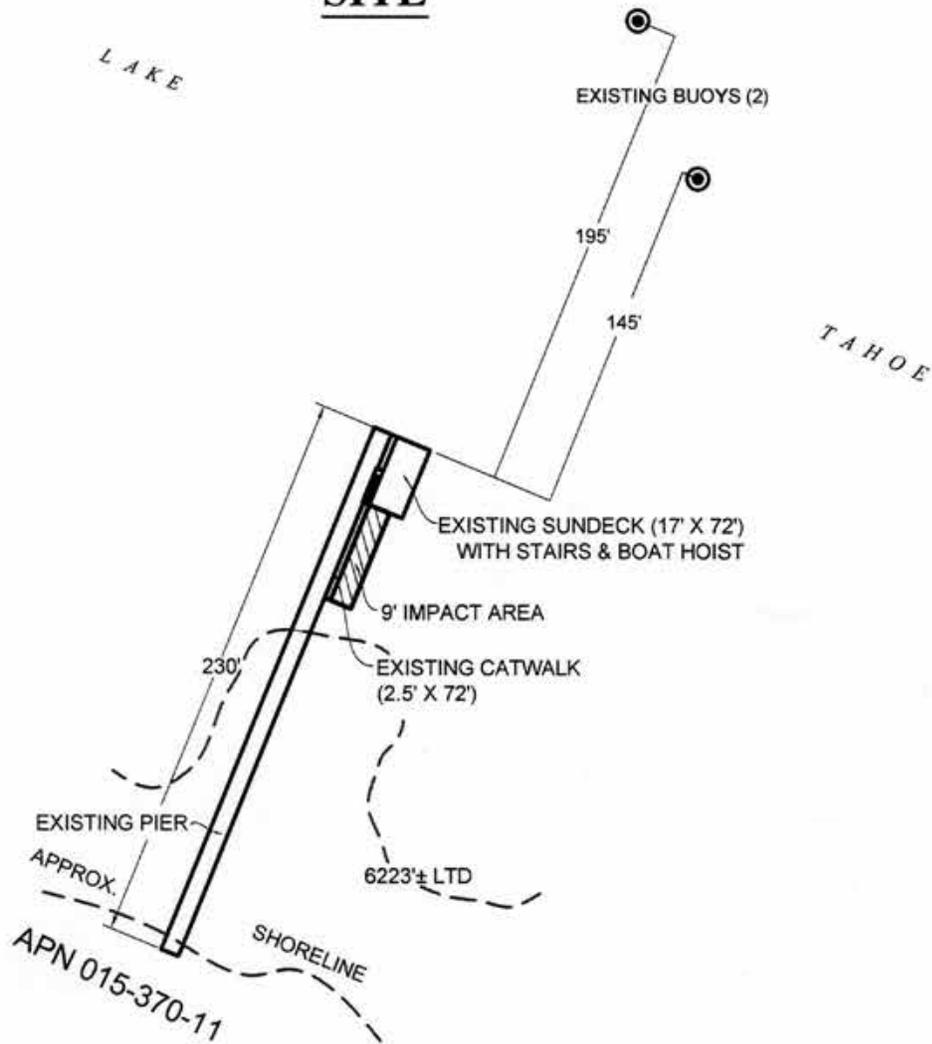


**EXHIBIT A**



NO SCALE

# SITE



135 QUIET WALK ROAD, TAHOMA

NO SCALE

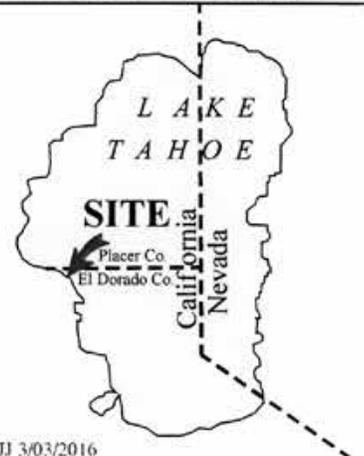
# LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B

PRC 3654.1  
 CORNEILLE  
 APN 015-370-11  
 GENERAL LEASE -  
 RECREATIONAL USE  
 EL DORADO COUNTY



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.