

**STAFF REPORT
C12**

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12/03/18
PRC 4855.1
J. Toy

**ACCEPTANCE OF A LEASE QUITCLAIM DEED AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE/APPLICANT:

Sean J. Keene and Ammanda E. Keene, Trustees of the Sean and Ammanda Keene 2004 Trust dated August 19, 2008, as amended

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5820 North Lake Boulevard, near Agate Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and two mooring buoys; removal of two existing fixed catwalks to expand the pierhead and install an adjustable catwalk.

LEASE TERM:

10 years, beginning November 27, 2018.

CONSIDERATION:

\$1,348 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 shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing and lake-related recreational uses.
- If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the certification of a Final Environmental Impact Statement for the Lake Tahoe Shorezone Ordinance Amendments and approval of the

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amended ordinances. If the Lessee is unable to obtain such authorization within the time limit, they may be required to 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.

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 Analysis:

On September 20, 2013, the Commission authorized a General Lease – Recreational Use for an existing pier and two mooring buoys to Sean J. Keene and Ammanda E. Keene, Trustees of the Sean and Ammanda Keene 2004 Trust dated August 19, 2008, as amended ([Item C26, September 20, 2013](#)). On October 19, 2017, the Commission authorized an amendment of lease to revise the rent and replace the existing exhibits ([Item 31, October 19, 2017](#)). The lease will expire on November 27, 2022.

The Applicant is proposing a minor pier modification to replace the existing east-facing fixed catwalk with a longer adjustable catwalk and to raise the west-facing catwalk-to-deck elevation. The construction timeline has not been fixed, but work will be performed on-site with the use of a barge on the lake and no staging will occur along the shore.

Construction will take place after all required approvals have been obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

The Applicant has requested issuance of a new lease and has executed a quitclaim deed releasing their interest in the current lease. Staff recommends the Commission accept the lease quitclaim deed and approve the new lease, effective with the lease anniversary date on November 27, 2018.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained, are used for the docking and

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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 pier is built on pilings, which allows the public to navigate or walk next to and, at lower water levels, under the pier. The immediate area of the existing pier is a flat sandy beach. The two buoys are located directly lakeward of the upland property and occupy 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.

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 is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. 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 promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. On October 24, 2018, the Tahoe Regional Planning Agency's Governing Board certified a new Final Environmental Impact Report and adopted Lake Tahoe Shorezone Ordinance Amendments. These Amendments are anticipated to take effect on December 23, 2018.
3. Acceptance of a quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an

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administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Existing pier and mooring buoys:** 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).
5. **Reconstruction of the pierhead and extension of the catwalk:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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:

Existing pier and 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).

Reconstruction of the pierhead and extension of the catwalk: 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of a lease quitclaim deed and issuance of 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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective November 26, 2018, of Lease No. PRC 4855.1, a General Lease – Recreational Use, issued to Sean J. Keene and Ammanda E. Keene, Trustees of the Sean and Ammanda Keene 2004 Trust dated August 19, 2008, as amended.

2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning November 27, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier and two mooring buoys; removal of two existing fixed catwalks to expand the pierhead and install an adjustable catwalk 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 \$1,348, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4855.1

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 15, 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 an existing pier and proposed catwalk lying adjacent to that parcel described in Grant Deed recorded November 28, 2012 as Document Number 2012-0113873-00 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.

PARCELS 2 & 3 – BUOYS

Two circular parcels of land, being each 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded November 28, 2012 as Document Number 2012-0113873-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 10/22/2018 by the California State Lands Commission Boundary Unit.



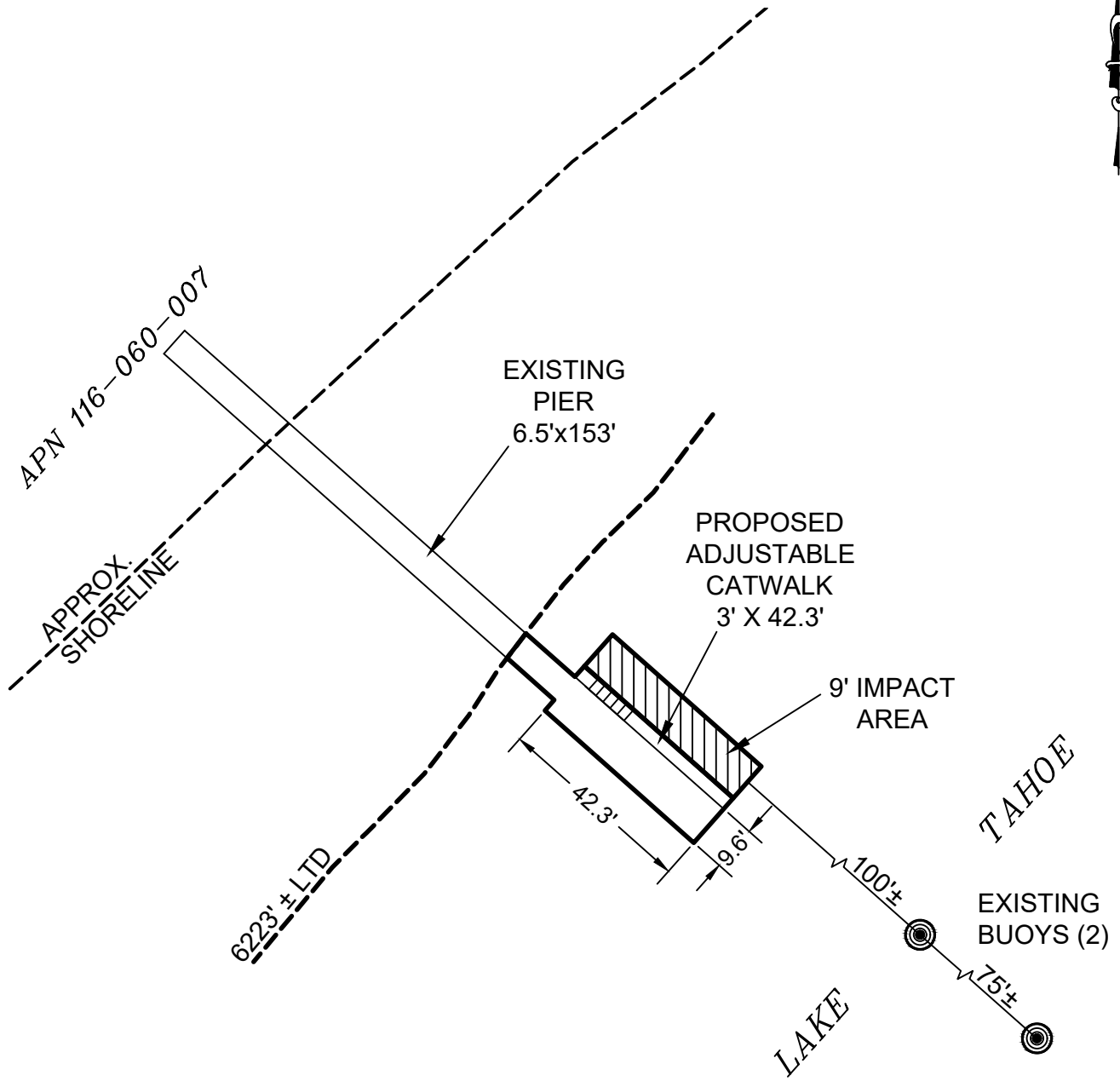
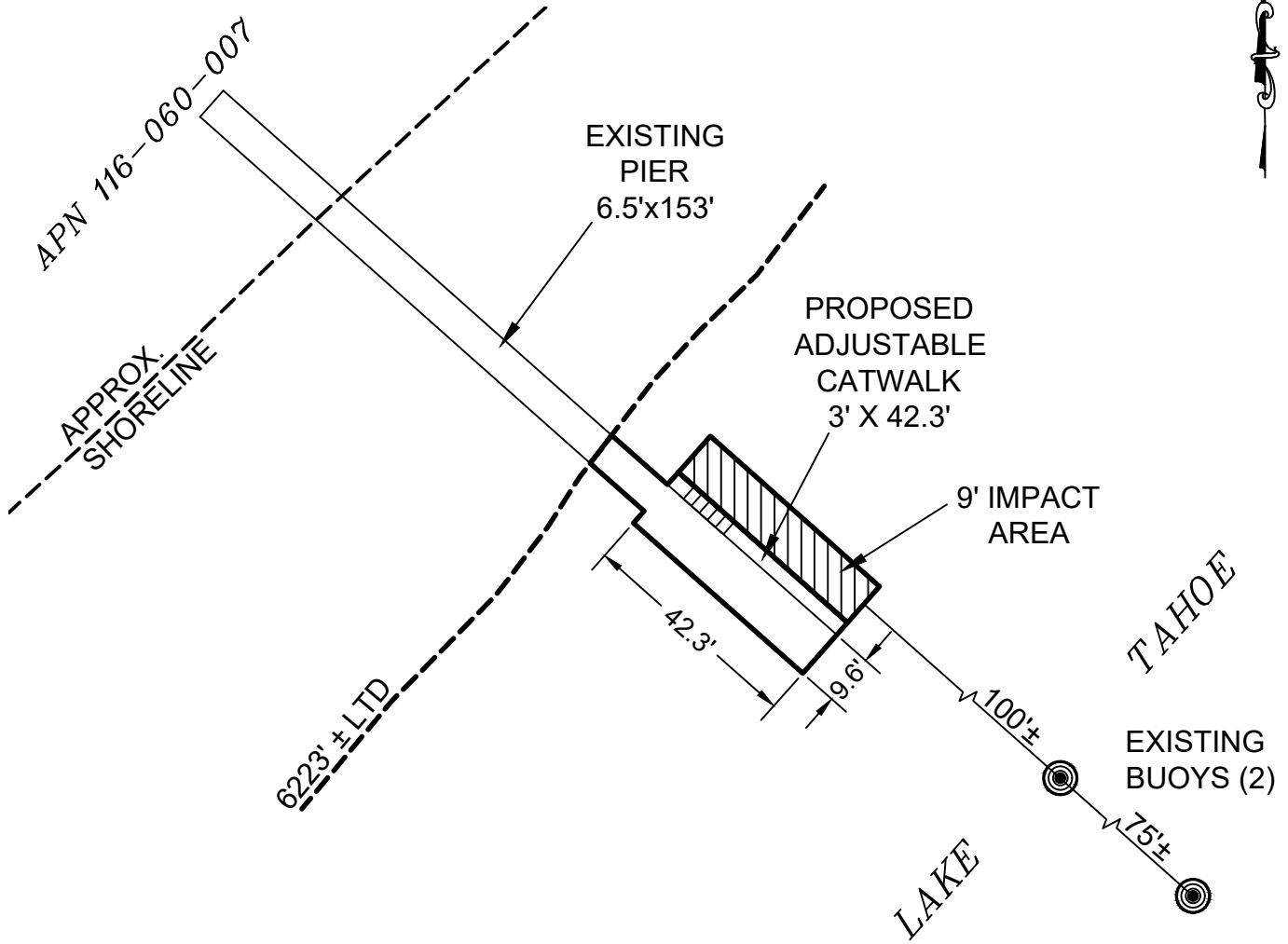


EXHIBIT A



NO SCALE

SITE



5820 NORTH LAKE BLVD., NEAR AGATE BAY

NO SCALE

LOCATION



Exhibit B

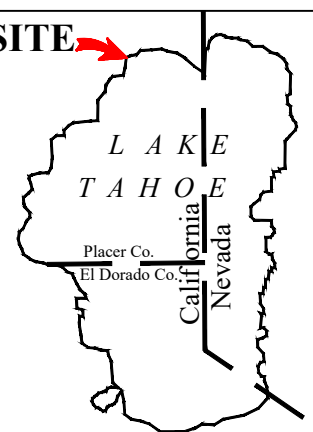
PRC 4855.1

KEENE

APN 116-060-007

GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY

SITE



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.