

**STAFF REPORT
C14**

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12/03/18
PRC 3661.1
J. Toy

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Marilyn Jane Kennedy, as Trustee of the MJK Trust, dated February 17, 2006;
and Kyle P. Kennedy

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5058 West Lake Boulevard,
near Homewood, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and one mooring
buoy.

LEASE TERM:

10 years, beginning March 20, 2018.

CONSIDERATION:

\$1,052 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 buoy within 2 years after the certification of a Final Environmental Impact Statement for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If the Lessee is unable to obtain such

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authorization within the time limit, they may be required to remove the buoy.

- 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 August 22, 2008, the Commission authorized a Recreational Pier Lease for an existing pier and one mooring buoy to Barbara I. McConnell, Trustee of the George R. and Barbara I. McConnell 1992 Revocable Living Trust, dated June 12, 1992, and Marilyn J. Kennedy ([Item C03, August 22, 2008](#)).

On April 26, 2013, the Commission authorized an amendment to remove Barbara I. McConnell, Trustee of the George R. McConnell Revocable Living Trust, dated June 12, 1992, and add Kyle P. Kennedy as Lessee along with Marilyn J. Kennedy ([Item C21, April 26, 2013](#)).

On November 13, 2012, Marilyn J. Kennedy transferred her interest in the property to Marilyn Jane Kennedy, as Trustee of the MJK Trust, dated February 17, 2006. The lease expired on March 19, 2018. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier and one mooring buoy.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier and one 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, which allows the public to navigate or walk next to and, at lower water levels, under the pier. The immediate area of the existing

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pier is covered with pebbles and is gently sloped. The 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.

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. 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.

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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 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:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 20, 2018, 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 \$1,052, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3661.1

LAND DESCRIPTION

Two (2) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 1, Township 14 North, Range 16 East, MDM., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 - PIER

All those lands underlying an existing pier lying adjacent to that portion of Lot 83 as described in Exhibit "A" of that Grant Deed recorded April 1, 2011 as Document Number 2011-0026165-00 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

One (1) circular parcel of land, being 50 feet in diameter, underlying one (1) existing buoy lying adjacent to that portion of said Lot.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared September 12, 2018 by the California State Lands Commission Boundary Unit.



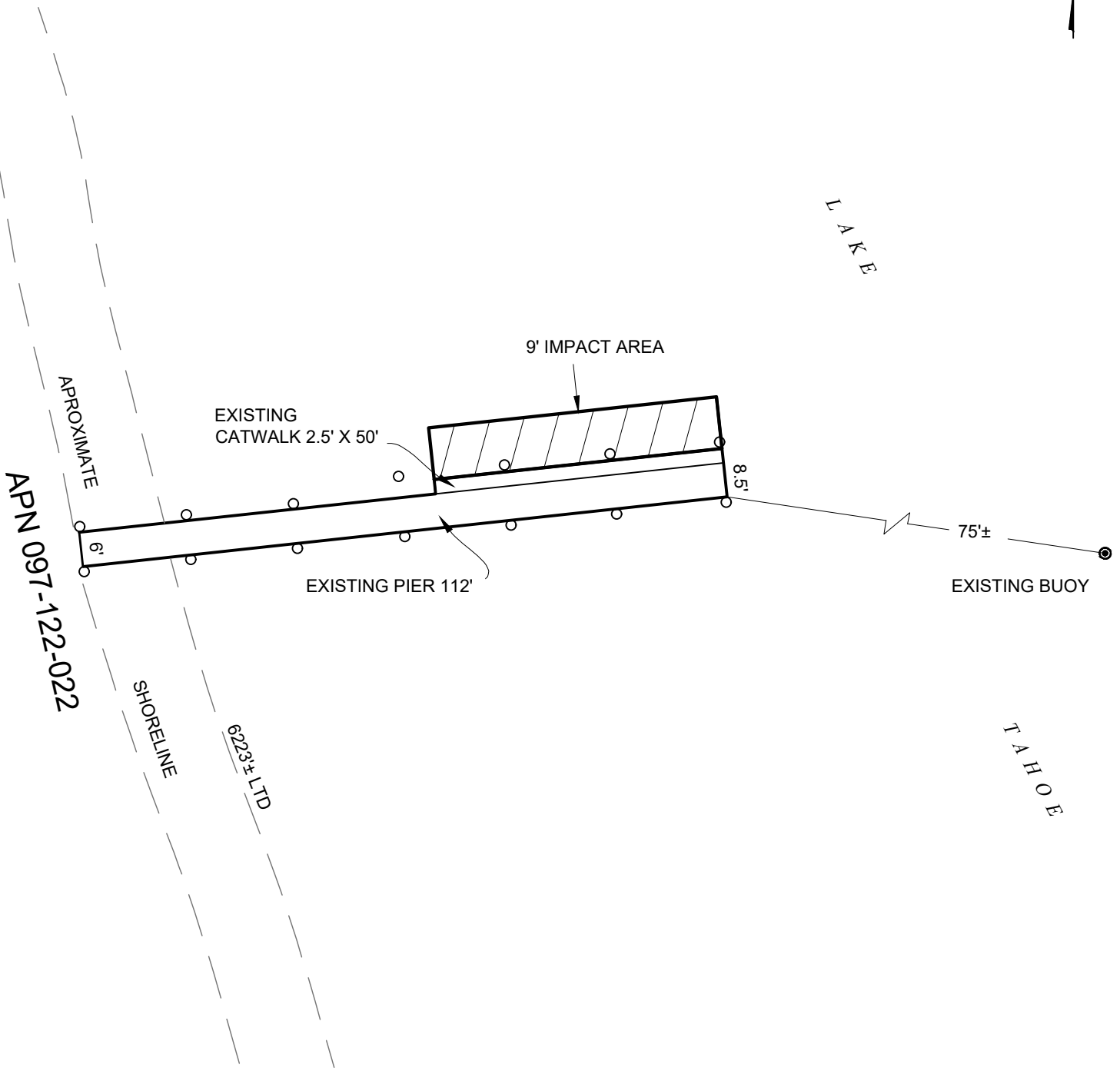


EXHIBIT A

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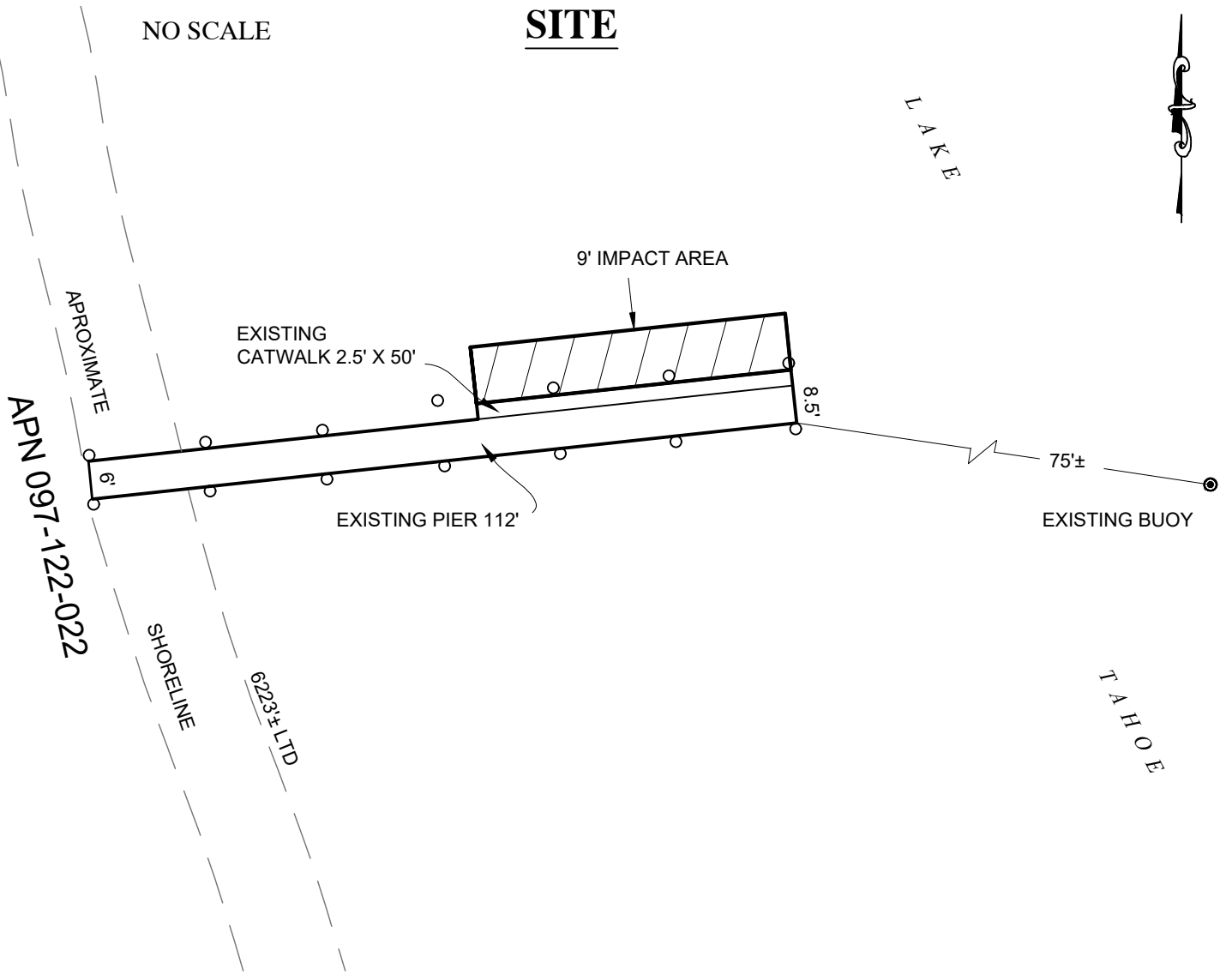
LAND DESCRIPTION PLAT
 PRC 3661.1, KENNEDY TRUSTEE
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



SITE

NO SCALE



5058 WEST LAKE BLVD., NEAR HOMEWOOD

LOCATION

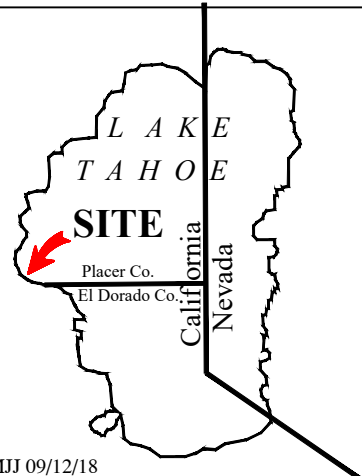
NO SCALE



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3661.1
 MJK TRUST ET. AL
 APN 097-122-022
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER 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.

MJJ 09/12/18