

STAFF REPORT

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10/24/19

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Lease 3368.1
M.J. Columbus

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

APPLICANT:

Bruck-McLain Properties, a General Partnership; Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Jennifer B. Lavis 2010 Irrevocable Trust u/a/d June 25, 2010; and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Matthew M. Sitzmann 2010 Irrevocable Trust u/a/d June 25, 2010

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6960 West Lake Boulevard, Assessor's Parcel Numbers 098-210-026 and 098-210-027, near Tahoma, Placer County.

AUTHORIZED USE:

Proposed modification of an existing pier; installation of a boat lift; removal of one existing mooring buoy; and continued use and maintenance of three existing mooring buoys.

LEASE TERM:

10 years, beginning August 4, 2019.

CONSIDERATION:

\$1,992 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 public uses for access, navigation, fishing, and lake-related recreational uses.
- Lessee shall provide proof of a Tahoe Regional Planning Agency (TRPA) permit and registration for all moorings, or proof that any

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unregistered and unpermitted mooring(s) have been removed on or before October 23, 2020.

- 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.
- The lease provides that the public will be allowed to pass and re-pass under the pier at varying lake levels and steps and signage will be installed to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum.

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 April 6, 2011, the Commission authorized a 10-year General Lease – Recreational Use to Bruck-McLain Properties, a General Partnership; Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Jennifer B. Lavis 2010 Irrevocable Trust u/a/d June 25, 2010; and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Matthew M. Sitzmann 2010 Irrevocable Trust u/a/d June 25, 2010, for an existing pier and four mooring buoys ([Item C49, April 6, 2011](#)). On August 17, 2017, the Commission authorized an Amendment of Lease to revise the rent and replace the existing exhibits ([Item C01, August 17, 2017](#)). The lease will expire on August 3, 2020.

The Applicant is applying for a General Lease – Recreational Use for the proposed modification of an existing pier; installation of a boat lift; removal of one existing mooring buoy; and continued use and maintenance of three existing mooring buoys. The Applicant has a current TRPA permit authorizing the proposed pier modification, driving of the I-beam, and removal of a catwalk and mooring buoy for the installation of a boat lift. The Applicant has requested issuance of a new lease and has executed a quitclaim deed releasing their interest in the current lease. Staff recommends that the Commission accept the lease quitclaim deed and approve a new lease effective August 4, 2019.

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The proposed pier modification includes removal of a catwalk and installation of a low-level boat lift, which will require the driving of a 10-inch steel I-beam. The Applicant also proposes to remove one mooring buoy with an anchor and tackle in exchange for the proposed installation of the boat lift. The mooring buoy will be removed during construction, and evidence to verify the removal of the mooring buoy will be provided.

The proposed project will be performed on-site with access to the site from a barge or amphibious vehicle on the lake. The existing pier and portion of the existing rock crib will be removed by barge and transported by dump trucks for disposal at an approved disposal site. Depending on the lake level, a turbidity curtain will be installed around the perimeter of the construction site. Caissons will be installed around the new piling. If pile driving is not feasible at the proposed location the pilings may be pinned onto large existing boulders on the lakebed. The storage and staging areas for the pier material will be on the primary or a secondary barge. No construction materials will be stored on the shoreline.

The proposed project 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 approved TRPA Permit No. ERSP2018-0810 authorizes modifying the existing pier, driving of the I-beam, and removal of a catwalk and mooring buoy for the installation of a boat lift.

The subject improvements 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 construction of the proposed pier design will allow public access laterally across the shoreline. The topography and the location of upland structures provide access at varying lake levels underneath the pier and the public may navigate or walk on steps on each side of the pier within the Public Trust easement. In exchange for approval to install the boat lift, the lessee will remove one existing mooring buoy. The remaining mooring 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,

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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, Commission staff believes the issuance of this lease does not substantially interfere with the common law Public Trust Doctrine at this location, at this time, and for the foreseeable term of the lease; 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 and existing mooring buoys 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 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.
3. Acceptance of the quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an 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. **Three Mooring Buoys:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically

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exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

5. **Pier Demolition and Removal of Buoy:** 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.
6. **Pier Construction with Boat Lift:** 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 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.

APPROVALS OBTAINED:

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

FURTHER APPROVALS REQUIRED:

California Department of Fish and Wildlife
Lahontan Regional Water Quality Control Board

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Three 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).

Pier Demolition and Removal of Buoy: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of

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Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Pier Construction with Boat Lift: 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).

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:

1. Authorize acceptance of a quitclaim deed, effective August 3, 2019, for Lease No. PRC 3368.1, a General Lease – Recreational Use, issued to Bruck-McLain Properties, a General Partnership; Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Jennifer B. Lavis 2010 Irrevocable Trust u/a/d June 25, 2010; and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Matthew M. Sitzmann 2010 Irrevocable Trust u/a/d June 25, 2010.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant; beginning August 4, 2019, for a term of 10 years, for the proposed modification of an existing pier; installation of a boat lift; removal of one existing mooring buoy; and continued use and maintenance of three existing 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 \$1,992, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 3368.1

LAND DESCRIPTION

Four (4) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 8, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of Placer, State of California and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, catwalk, and boat lift lying adjacent to those parcels as described in Exhibit A of that Grant Deed recorded August 4, 2010 as Document Number 2010-0059468-00 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.

PARCELS 2 thru 4 – BUOYS (3)

Three (3) circular parcels of land, being 50 feet in diameter, underlying three (3) existing buoys lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared September 4, 2019 by the California State Lands Commission Boundary Unit.



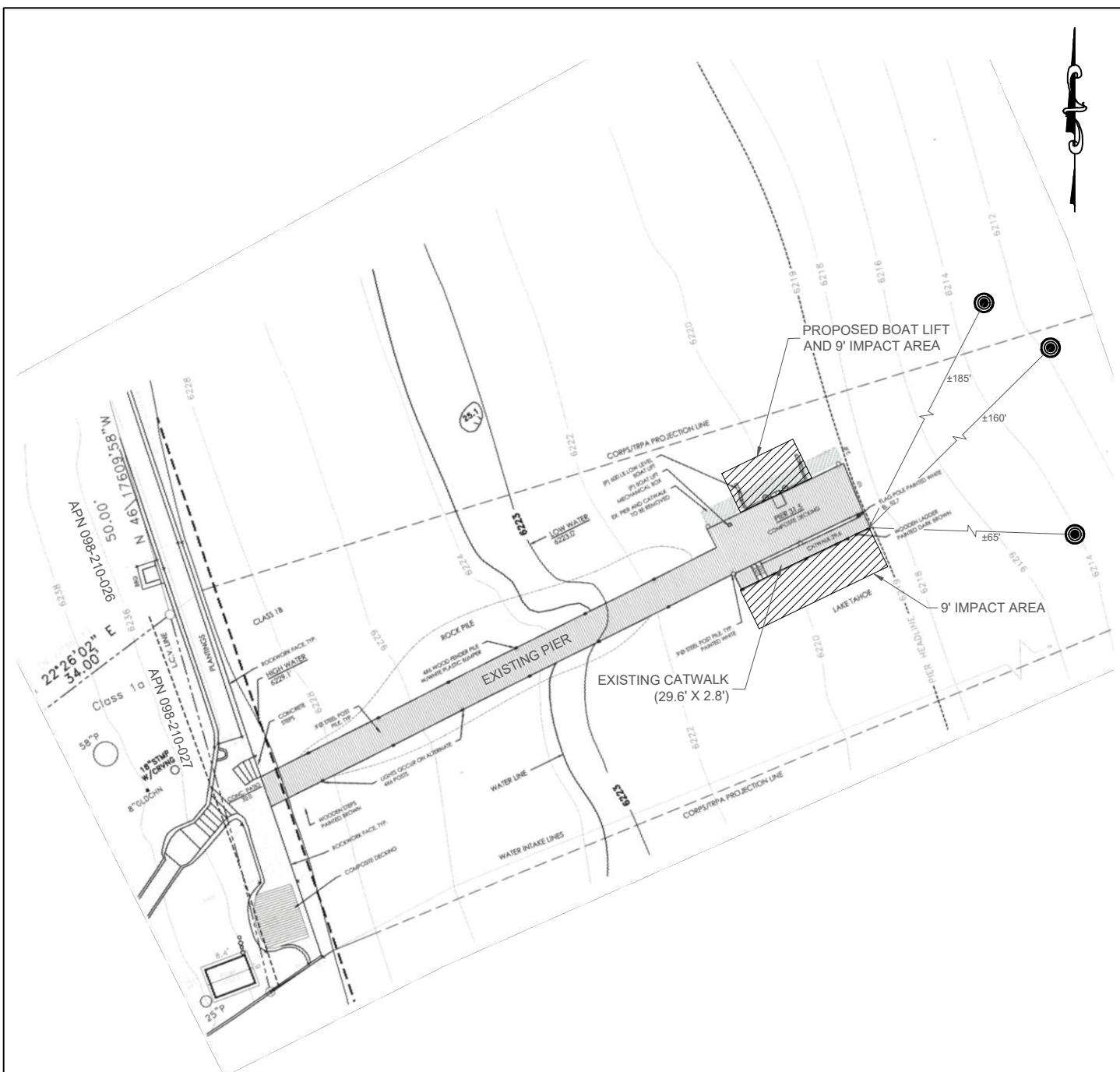


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 3368.1
BRUCK-MCLAIN PROPERTIES AND SITZMANN
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



SITE



LOCATION



MAP SOURCE: USGS QUAD

EXHIBIT B

RECREATIONAL USE
PLACER COUNTY