

**STAFF REPORT**

**08**

A 1

10/24/19

S 1

Lease 4866.1

J. Toy

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Max W. Day and Alvena V. Day as Trustees of The Day Family Trust established February 16, 1999; and Robert C. Marvin and Nancy K. Marvin, Trustees of The Marvin Family Trust dated May 1, 2000

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 4760 West Lake Boulevard, near Homewood, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing joint-use pier, boathouse with boat lift, and two mooring buoys.

*LEASE TERM:*

10 years, beginning May 28, 2019.

*CONSIDERATION:*

\$1,593 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.
- Lessee shall provide proof of a Tahoe Regional Planning Agency (TRPA) permit and registration for all moorings, or proof that any unregistered and unpermitted mooring(s) have been removed on or before October 23, 2020.

## STAFF REPORT NO. 08 (CONT'D)

- 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 11, 2009, the Commission authorized a General Lease - Recreational Use for an existing joint-use pier, boathouse with boat lift, and two mooring buoys to Max W. Day and Alvena V. Day as Trustees of The Day Family Trust established February 16, 1999; and John Keagy, Trustee of The Keagy Revocable Trust, dated February 22, 2007 (HSP) ([Item C25, August 11, 2009](#)).

The littoral parcel is owned by Max W. Day and Alvena V. Day as Trustees of The Day Family Trust established February 16, 1999. John Keagy, Trustee of The Keagy Revocable Trust, dated February 22, 2007 (HSP), owned an adjacent non-littoral parcel with an easement across the littoral parcel for access to the lease premises. On May 28, 2019, this non-littoral parcel was deeded to Robert C. Marvin and Nancy K. Marvin, Trustees of The Marvin Family Trust dated May 1, 2000. Each parcel owner owns and maintains one buoy and 50 percent of the pier; the littoral owner owns and maintains the boathouse and boat lift.

On April 23, 2014, the Commission authorized an amendment to the lease to revise the rent from \$1,352 to \$692 per year and replace the existing exhibits ([Item C30, April 23, 2014](#)). The lease expired on April 12, 2019. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing facilities that extend onto sovereign land.

Staff recommends issuance of a new lease beginning May 28, 2019, to coincide with the transfer of the non-littoral parcel. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$196 for the period beginning April 13, 2019, the day after the prior lease expired, through May 27, 2019.

## STAFF REPORT NO. 08 (CONT'D)

The facilities 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, providing public access for pedestrians and for lake-related activities at varying water levels underneath the pier. The immediate area of the existing pier is a gently sloped pebble 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. 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 joint-use pier, boathouse with boat lift, and two 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

STAFF REPORT NO. 08 (CONT'D)

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. On October 24, 2018, the TRPA Governing Board certified a Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
4. 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.

**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:**

1. Authorize acceptance of compensation from the Applicant in the amount of \$196 for unauthorized occupation of State land for the period beginning April 13, 2019, through May 27, 2019.

STAFF REPORT NO. **08** (CONT'D)

2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning May 28, 2019, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier, boathouse with boat lift, 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 \$1,593, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 4866.1**

**LAND DESCRIPTION**

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 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 — JOINT-USE PIER**

All those lands underlying an existing joint pier, catwalk, boathouse with catwalk and boat lift lying adjacent to that parcels described in that Grant Deed recorded February 25, 2008, Document Number 2008-0013641 and Grant Deed recorded May 28, 2019, Document 2019-0035462 in Official Records of said County.

ALSO 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 — 2 BUOYS**

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

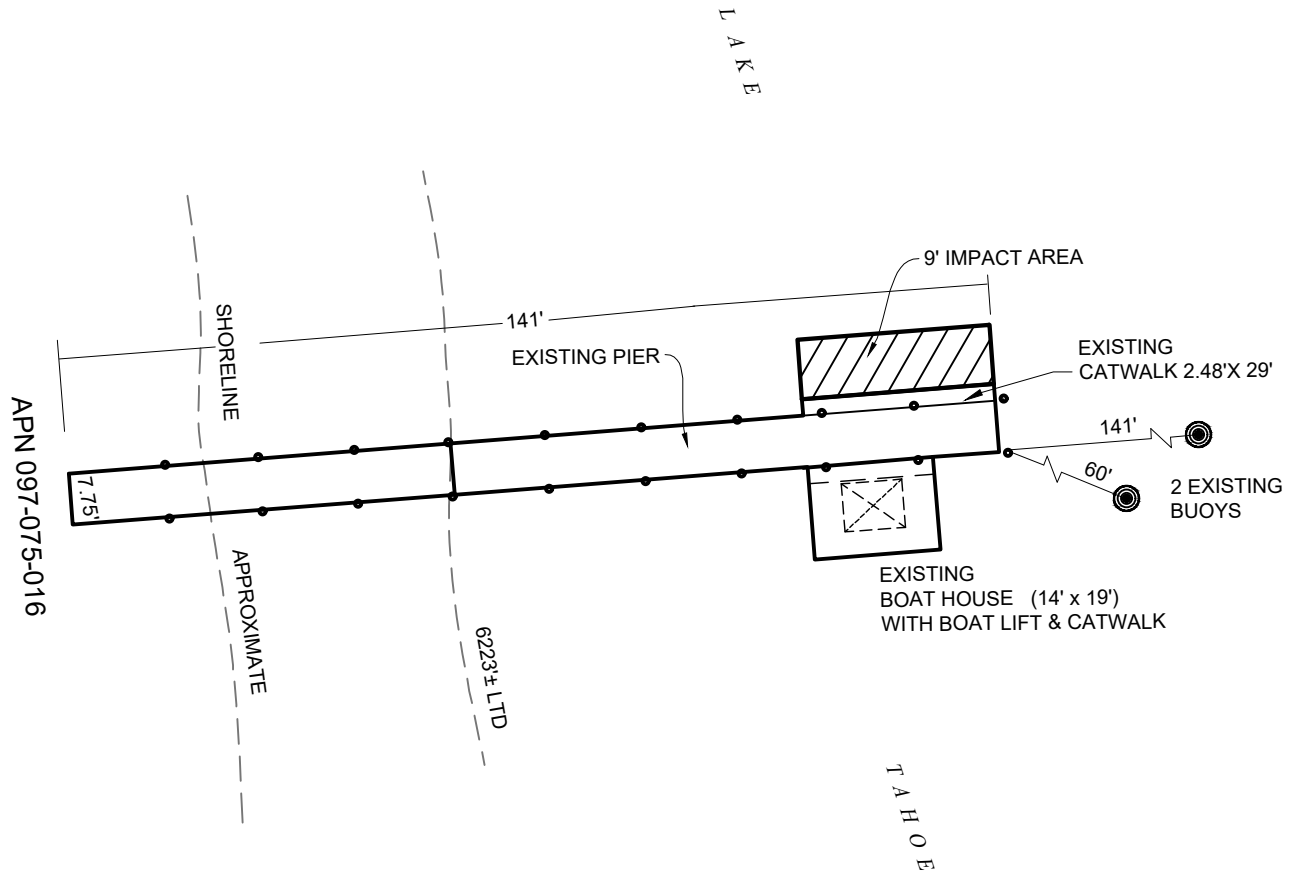
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared August 21, 2019 by  
The California State Lands Commission Boundary Unit.



NO SCALE



# EXHIBIT A

Page 2 of 2

MJJ 9/18/19

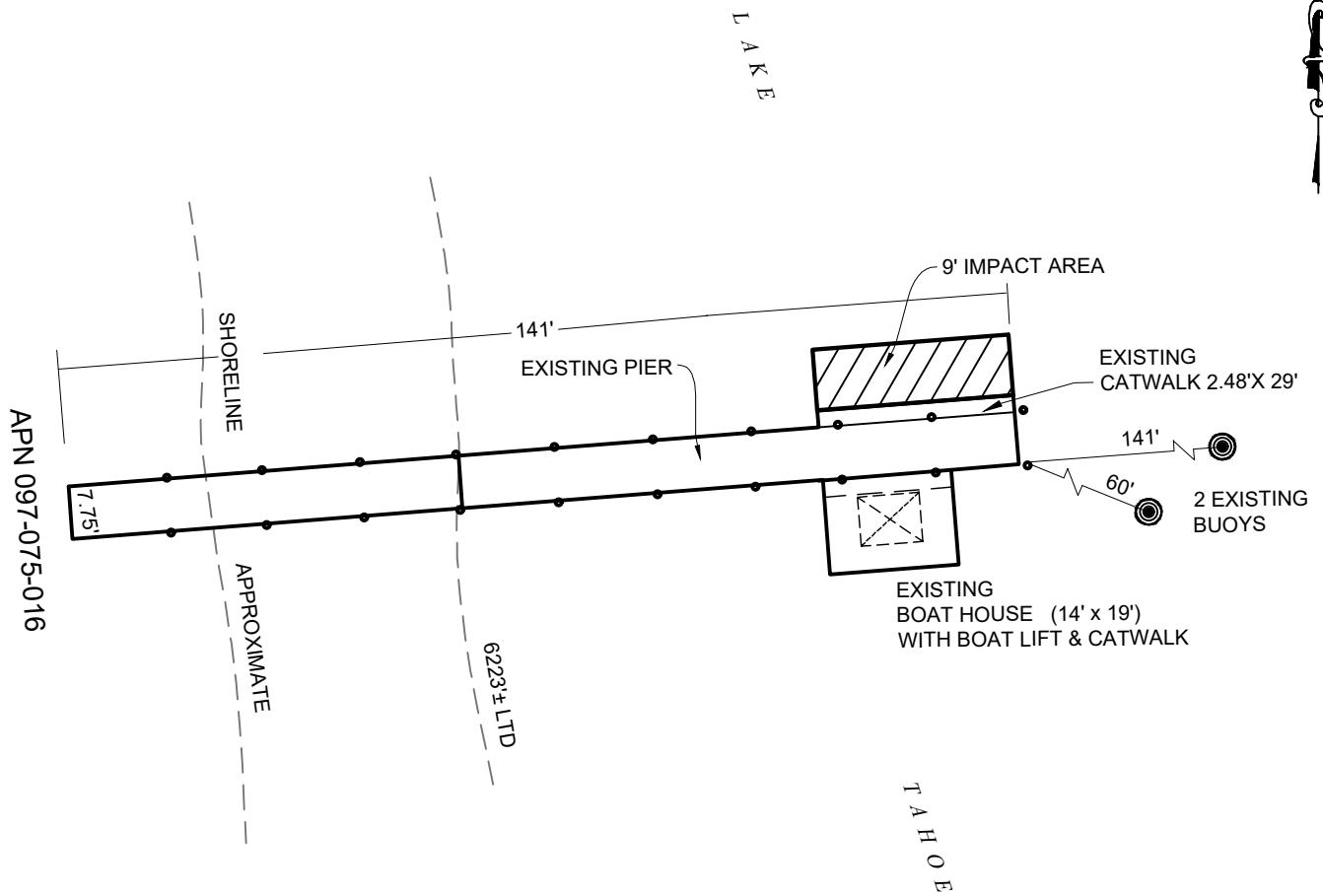
LAND DESCRIPTION PLAT  
LEASE 4866.1, DAY TRUST & MARVIN FAMILY TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE



4760 WEST LAKE BLVD., NEAR HOMEWOOD

NO SCALE

# LOCATION

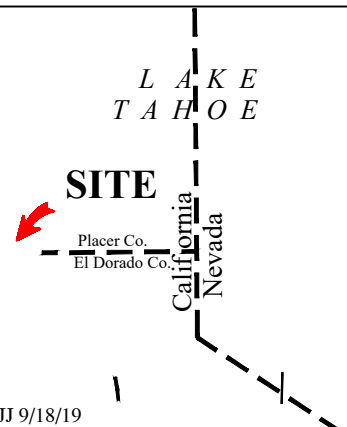


MAP SOURCE: USGS QUAD

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

LEASE 4866.1  
 DAY TRUST &  
 MARVIN FAMILY TRUST  
 APN 097-075-016  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY



MJ 9/18/19