

STAFF REPORT

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10/24/19
Lease 8938.1

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S. Avila

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

LESSEE AND APPLICANT:

William A.S. Magrath II and Judith B. Magrath, as Trustees of the Magrath Family Trust (u/t/d 2/11/2008).

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8357 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Reconstruction of an existing pier; removal of a stairway and catwalk, installation of an adjustable catwalk and gangway; and the continued use and maintenance of two existing mooring buoys.

LEASE TERM:

10 years, beginning October 24, 2019.

CONSIDERATION:

\$1,047 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 unregistered and unpermitted mooring(s) have been removed on or before October 23, 2020.

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- 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 underneath the pier 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 September 1, 2011, the Commission authorized a Recreational Pier Lease to Jay L. Stone and Faye E. Stone, as Trustees of the 1991 Stone Trust, for an existing pier and two mooring buoys ([Item C22, September 1, 2011](#)). On October 16, 2015, the Commission authorized the assignment of the lease to William A.S. Magrath II and Judith B. Magrath, as Trustees of the Magrath Family Trust (u/t/d 2/11/2008) ([Item C20, October 16, 2015](#)). The lease will expire on August 31, 2021.

The Applicant is applying for a General Lease – Recreational Use for the proposed removal of an existing stairway, reconstruction of an existing pier, installation of an adjustable catwalk and gangway, and the continued use and maintenance of two existing mooring buoys. 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 October 24, 2019.

The proposed pier reconstruction includes removal of an existing stairway on the south side of the pier; removal of 3 feet of the lakeward end of the pier and the installation of a new landing with an adjustable catwalk within the same footprint; and installation of a gangway on the north side of the pierhead. This activity will include the removal and replacement of four steel piles at the lakeward end of the pier. The upland development limits public access in this area, as does the natural sharply sloped and rocky terrain. The public access within the Public Trust easement is continual under the pier; however, access is limited due to large boulders. In addition, the large boulders significantly limit navigability of the area.

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The proposed project will be performed on-site with access to the site primarily from the lake by barge or amphibious vehicle on the lake. 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 pilings. 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.

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 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 proposed construction is limited to the lakeward end of the pier and will not alter the existing structure above the low-water line and within the easement area. The existing pier is located along a rocky shoreline with steep slope. The topography does not provide significant access under the pier, but at varied lake levels the public may pass underneath the pier within the Public Trust easement. The proposed lease contains specific terms and conditions that signs shall be posted on both sides of the pier at the designated public access passageway that read "Public Passage Under Pier," and that the signs shall be in place at all times. The proposed construction will be within the existing pier footprint, allowing the public to navigate around the lakeward end of the pier. The 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, 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

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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. Staff recommends that the Commission find that issuance of the lease 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

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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:

Find that issuance of the lease 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 14, section 15301.

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 lease quitclaim deed, effective October 23, 2019, of Lease No. PRC 8938.9, a Recreational Pier Lease, issued to William A.S. Magrath II and Judith B. Magrath, as Trustees of the Magrath Family Trust (u/t/d 2/11/2008).
2. Authorize issuance of a General Lease – Recreational Use to the Applicant; beginning October 24, 2019, for a term of 10 years, for the reconstruction of an existing pier; removal of a stairway and catwalk, installation of an adjustable catwalk and gangway; and the continued use and maintenance of two 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 \$1,047, with an annual Consumer

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Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8938.1

LAND DESCRIPTION

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

PARCEL 1 — PIER

All those lands underlying an existing pier, catwalk, and gangway lying adjacent to that parcel as described in that Grant Deed recorded July 29, 2015 as Document Number 2015-0035585-00 of Official Records of said County.

TOGETHER WITH any applicable impact area(s).

EXCEPTING THEREFROM any portions lying landward of elevation 6223 feet LTD on the Shoreline of said Lake Tahoe.

PARCELS 2, 3 — 2 BUOYS

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared July 26, 2019 by the California State Lands Commission Boundary Unit.



NO SCALE

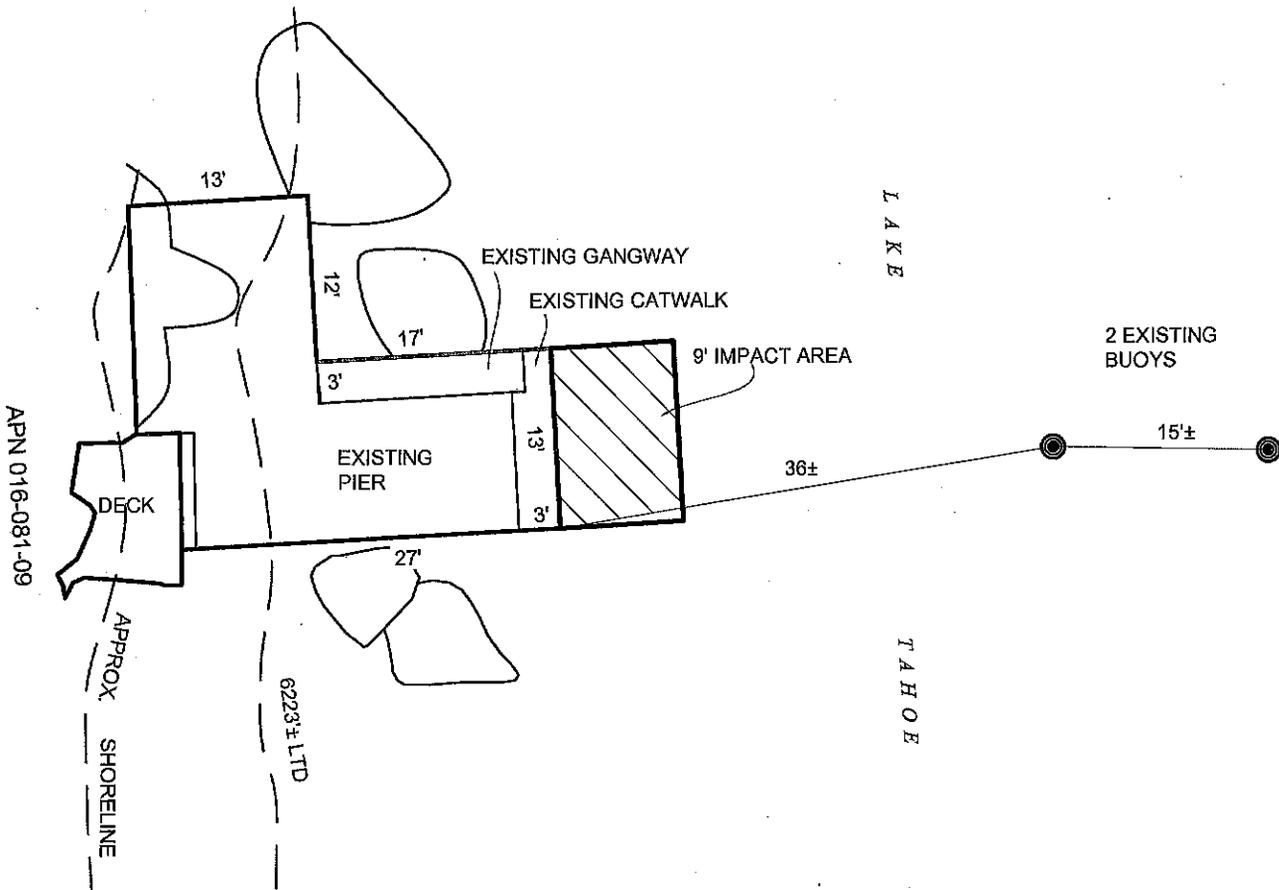


EXHIBIT A

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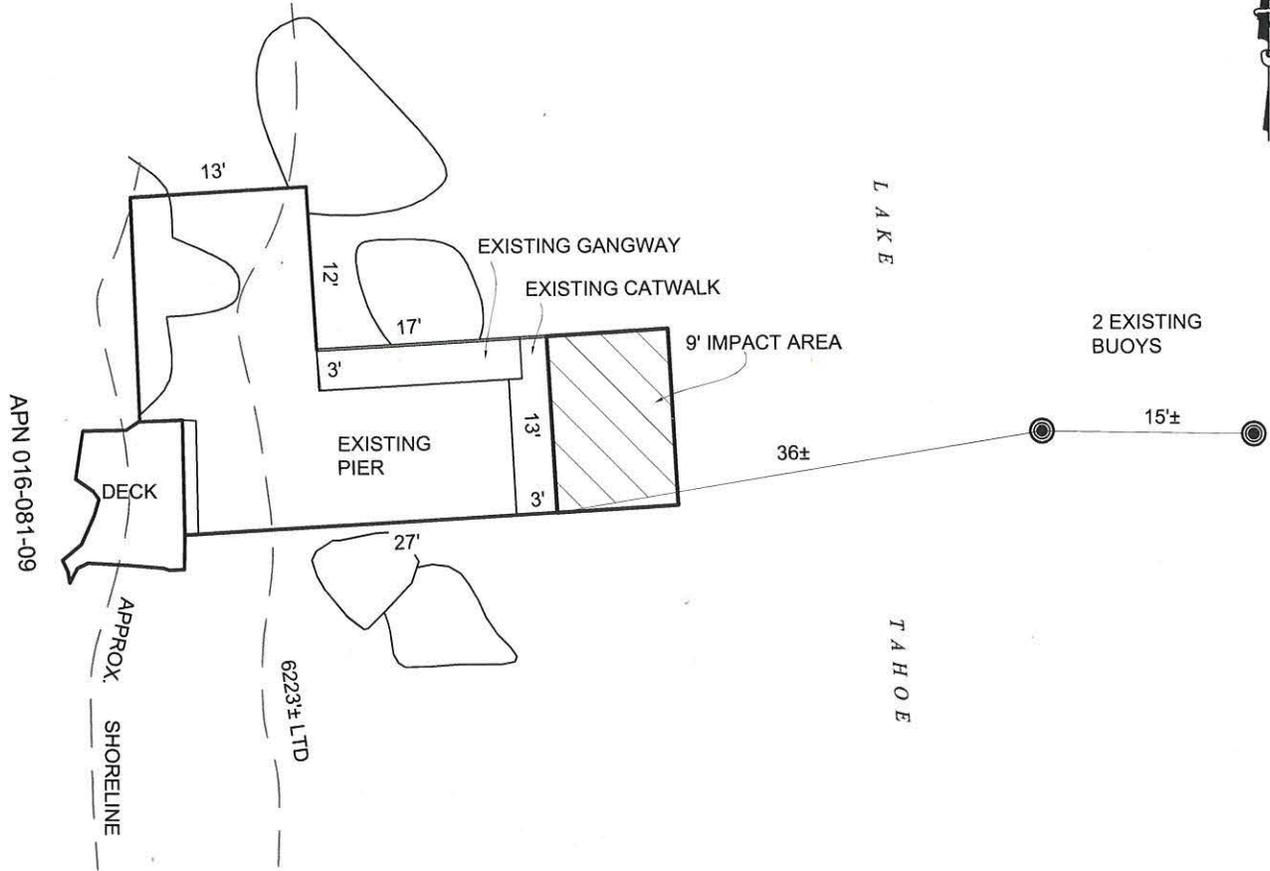
LAND DESCRIPTION PLAT
 LEASE 8938.1, MAGRATH TRUST
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



8357 MEEKS BAY AVENUE, NEAR MEEKS BAY

NO SCALE

LOCATION

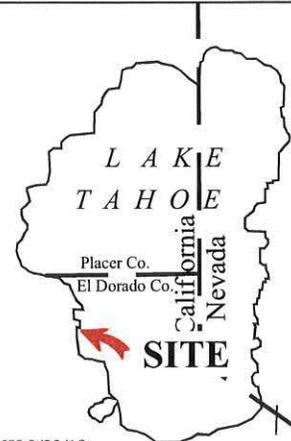


MAP SOURCE: USGS QUAD

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 8938.1
 MAGRATH TRUST
 APN 016-081-09
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



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