

**STAFF REPORT**

**01**

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02/28/20

A2173

Lease 4483.1

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S. Avila

**CONSIDER WAIVER OF RENT, PENALTY,  
AND INTEREST; ACCEPTANCE OF LEASE QUITCLAIM DEED;  
AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

**LESSEE:**

John H. Bottomley III and Marion W. Bottomley, Trustees (and their successors in trust) of the Bottomley Residential Trust U/A/D September 24, 1997

**APPLICANT:**

David J. Moeller and Ann J. Moeller

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 4694 North Lake Boulevard, near Carnelian Bay, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing pier and two mooring buoys, and reconstruction of an existing boat lift.

*LEASE TERM:*

10 years beginning February 1, 2020.

*CONSIDERATION:*

\$1,203 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 expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.

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- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing, and lake-related recreation.

### **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 March 29, 2012, the Commission authorized a 10-year General Lease – Recreational Use for the continued use and maintenance of an existing pier, boat lift, and two mooring buoys to John H. Bottomley III and Marion W. Bottomley, Trustees (and their successors in trust) of the Bottomley Residential Trust U/A/D September 24, 1997 ([Item C54, March 29, 2012](#)). That lease will expire on January 31, 2022.

On December 6, 2016, the Commission authorized an amendment of the lease to revise the rent and replace the lease exhibits ([Item C15, December 6, 2016](#)).

On May 17, 2019, interest in the upland parcel transferred to David J. Moeller and Ann J. Moeller. The Applicant is applying for a General Lease – Recreational Use for the reconstruction of an existing boat lift and for the continued use and maintenance of the existing pier and two mooring buoys. The Applicant has registered the moorings with TRPA (Permit No. 10695). The Lessee executed a quitclaim deed releasing their interest in the General Lease – Recreational Use. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

Lessee paid rent through January 31, 2020 prior to transferring the upland property to the Applicant. On December 16, 2019, staff issued Invoice No. 49056 for annual rent covering the period of February 1, 2020, through January 31, 2021. Staff recommends voiding Invoice No. 49056 and waiving the rent, penalty, and interest for this invoice because rent is current through January 31, 2020. The Applicant's new lease will begin on February 1, 2020, and the Applicant will be responsible for rent going forward.

The proposed boat lift reconstruction includes removal of an existing boat lift on the south side of the pier; and the installation of a new boat lift within the same footprint. The proposed project will be performed on-site with

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access to the site primarily from the lake by a barge moored on the lake. Construction will take place after all required approvals have been obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, the Lahontan Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boat lift, and two mooring buoys are used for the docking and mooring of boats. 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, boat lift, and mooring buoys have existed for many years at this location. The pier is built on single pilings with the immediate area of the pier being flat with sand and pebbles. The topography and location of upland structures allow for public access for pedestrians and lake-related activities at varying water levels underneath the pier. The buoys are located directly lakeward of the upland property and occupy a minimal 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 and restore the lease premises to their original condition.

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 will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

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### **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, 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 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. 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).

5. **Existing Pier and Two 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).
6. **Reconstruction of 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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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 Two 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 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

#### **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 the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

#### **AUTHORIZATION:**

1. Waive annual rent, penalty, and interest due from the Lessee for the period of February 1, 2020, through January 31, 2021, and void annual rent invoice number 49056 created on December 12, 2019, issued to Lessee.
2. Authorize acceptance of a lease quitclaim deed, effective January 31, 2020, of Lease No. PRC 4483.1, a General Lease – Recreational Use, issued to the Lessee.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 1, 2020, for a term of 10 years, for

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the continued use and maintenance of an existing pier and two mooring buoys; and the reconstruction, use, and maintenance of a boat lift, 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 \$1,203, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 4483.1

### LAND DESCRIPTION

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 22, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

#### PARCEL 1 – PIER

All those lands underlying an existing pier, boat lift, and catwalk adjacent to that parcel described in that Grant Deed recorded May 17, 2019 as Document Number 2019-0032606 in Official Records of said County.

TOGETHER WITH any applicable impact areas.

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

Accompanying plat is hereby made part of this description.

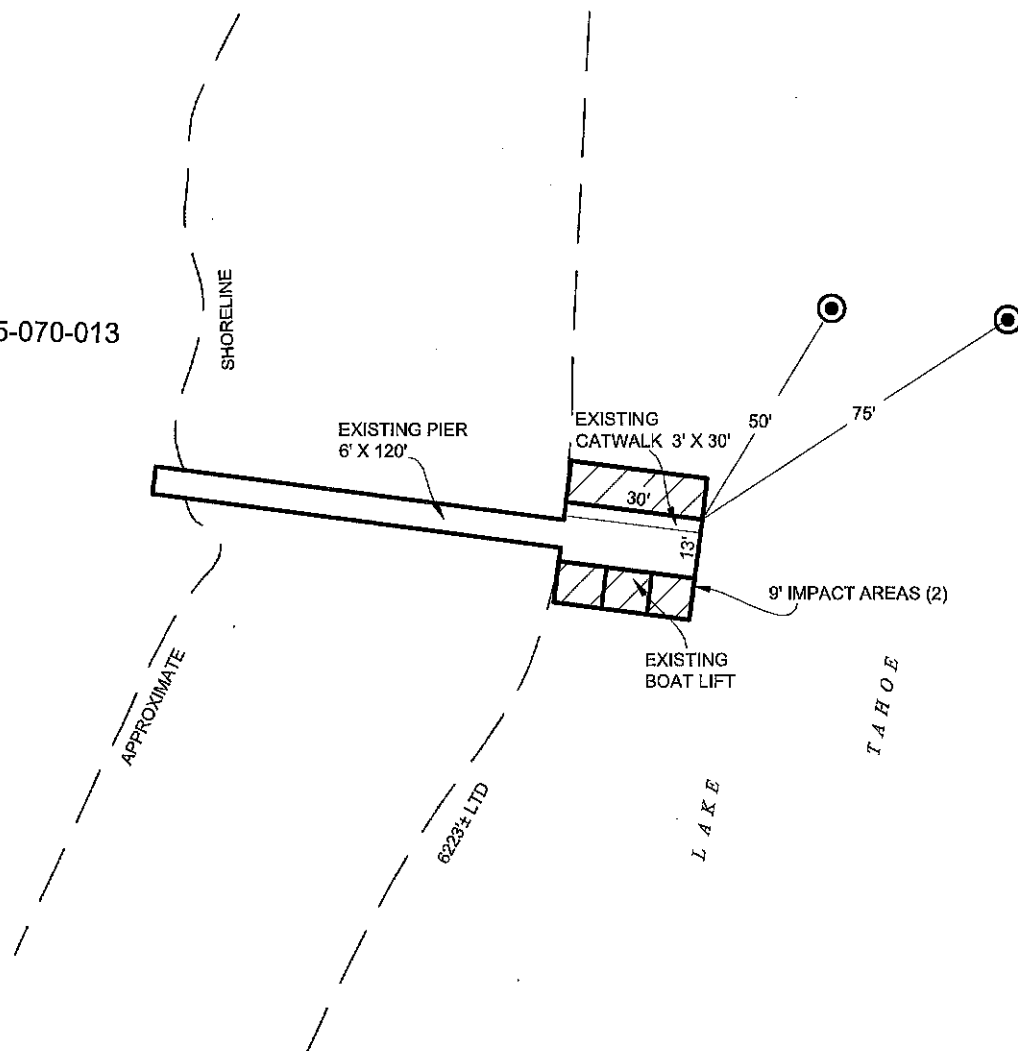
### END OF DESCRIPTION

Prepared October 10, 2019 by the California State Lands Commission Boundary Unit.





APN 115-070-013



## EXHIBIT A

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MJJ 10/04/2019

LAND DESCRIPTION PLAT  
PRC 4483.1, MOELLER  
PLACER COUNTY

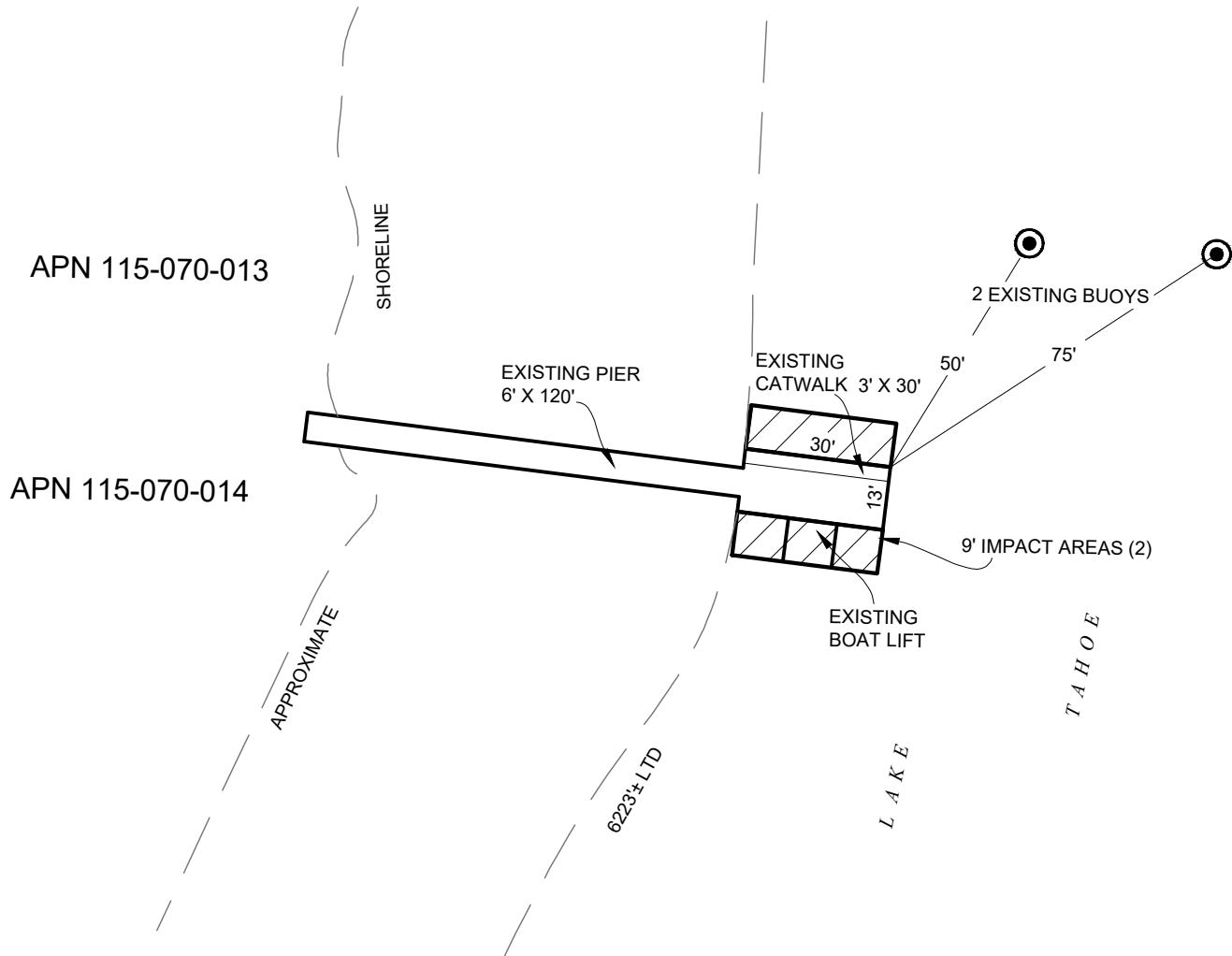
CALIFORNIA STATE  
LANDS COMMISSION





NO SCALE

## SITE



4694 NORTH LAKE BLVD., CARNELIAN BAY

NO SCALE

## LOCATION

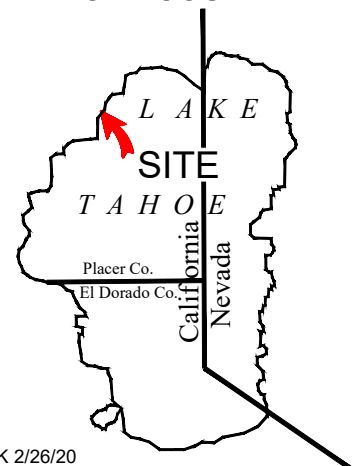


MAP SOURCE: USGS QUAD

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 4483.1  
MOELLER  
APN 115-070-013, 014  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY



JAK 2/26/20