

STAFF REPORT

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04/29/20

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Lease 8623.1

N. Lee

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Charles B. Ebright and Mary C. Ebright, as Trustees of The Charles B. Ebright and Mary C. Ebright Revocable Trust Dated July 17, 2001

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2285 Cascade Road, South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and two mooring buoys.

LEASE TERM:

10 years, beginning April 29, 2020.

CONSIDERATION:

\$1,149 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 recreation.
- 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.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining

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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 8, 2005, the Commission authorized a Recreational Pier Lease to Charles B. Ebright II and Mary Ebright for removal of pier remnants, construction of a pier, and retention of two mooring buoys ([August 8, 2005, Item C08](#)). The lease expired on July 31, 2015. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of an existing pier and two mooring buoys. The Lessee submitted an application for a new lease in 2015. This application lacked information necessary to process and was determined to be incomplete. Staff sent multiple letters requesting the information needed to process the application. The Applicant did not submit the requested items until December 2019. Upon review of the application, staff determined the upland property had been deeded to Charles B. Ebright and Mary C. Ebright, Trustees of the Charles B. Ebright and Mary C. Ebright Revocable Trust dated July 17, 2001, in 2004.

Staff recommends issuance of a new lease beginning April 29, 2020. Therefore, staff recommends that the Commission accept compensation for the unauthorized occupation of State land from the Applicant in the amount of \$4,596 for the period beginning August 1, 2015, through April 28, 2020, the day preceding the effective date of the proposed lease.

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 subject facilities have existed for many years at this location. The immediate area of the existing pier is a flat beach with sand and pebbles. The pier is built on pilings. The topography of the upland provides access for the pier and allows the public to navigate in front of the pier and pass and re-pass under the pier. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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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 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; is consistent with the Public Trust Doctrine; 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 existing pier 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.

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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 \$4,596 for the unauthorized occupation of State lands for the period beginning August 1, 2015, through April 28, 2020.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 29, 2020, for a term of 10 years, for the continued use and maintenance of an existing pier 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 \$1,149, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8623.1

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 26, Township 13 North , Range 17 East, MDBM., as shown of Official Government Township Plat approved January 17, 1866, County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier lift lying adjacent to that parcel described in that Individual Grant Deed recorded March 24, 2004 as Document Number 2004-0021792-00 in Official Records of said County.

TOGETHER WITH an applicable Impact Area(s).

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

PARCELS 2 & 3 – 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 December 27, 2019 by the California State Lands Commission Boundary Unit.



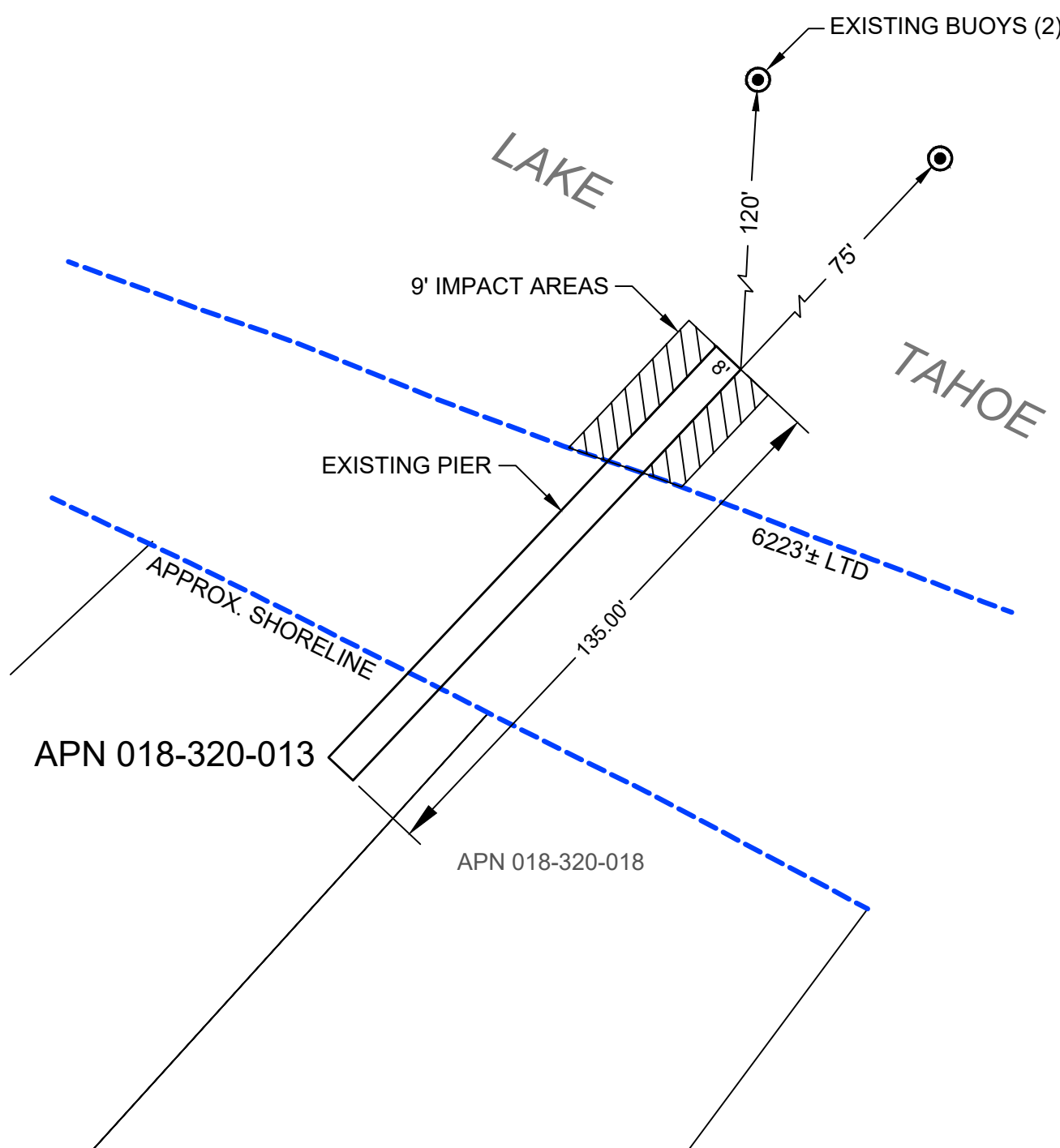


EXHIBIT A

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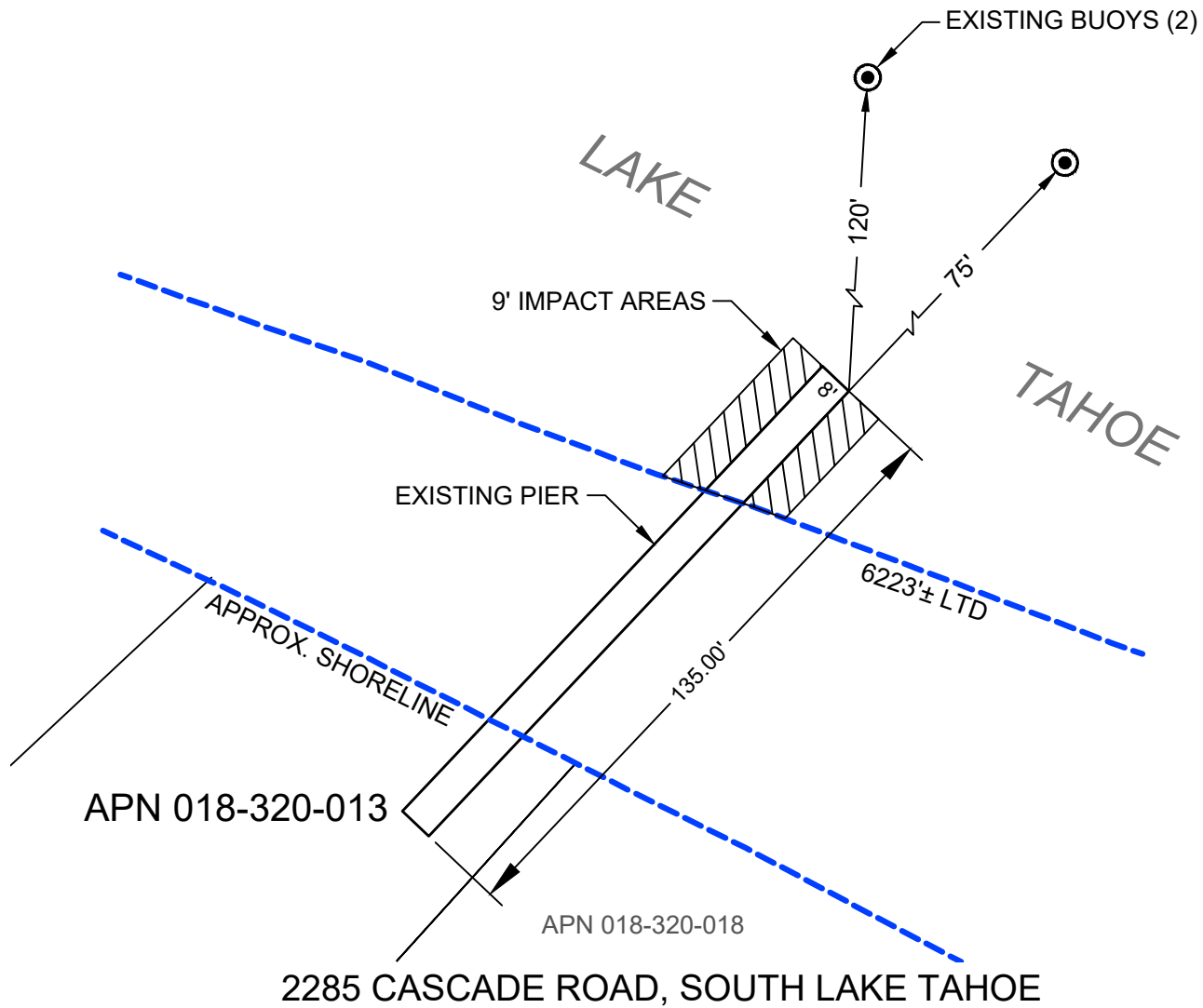
LAND DESCRIPTION PLAT
LEASE 8623.1, EBRIGHT TRUST
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



NO SCALE

LOCATION



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 8623.1
EBRIGHT TRUST
APN 018-320-013
GENERAL LEASE -
RECREATIONAL USE
EL DORADO COUNTY

