

**STAFF REPORT
27**

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04/29/20
Lease 8555.1
A2365
J. Toy

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

LESSEE/APPLICANT:

Roy L. Wickland, as Trustee of the Wickland Marital Trust established September 25, 2012

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 9021 Lupine Lane, near Rubicon Bay, El Dorado County.

AUTHORIZED USE:

Construction of a pier and boat lift; and continued use and maintenance of two existing mooring buoys and a swim platform.

LEASE TERM:

10 years, beginning April 29, 2020.

CONSIDERATION:

\$1,300 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 provide proof of a Tahoe Regional Planning Agency (TRPA) permit for the swim platform, or proof that the swim platform has been removed on or before April 29, 2021.
- 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.

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- 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.
- The lease provides that the public will be allowed to pass and re-pass over the pier where it is flush to the ground to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 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 June 22, 2017, the Commission authorized a General Lease – Recreational Use for an existing swim platform and two mooring buoys to Roy L. Wickland, as Trustee of the Wickland Marital Trust established September 25, 2012 ([Item C07, June 22, 2017](#)). The lease will expire on June 6, 2027.

The Applicant is now applying for a General Lease – Recreational Use for the construction of a pier and boat lift; and continued use and maintenance of two existing mooring buoys and a swim platform. In order to obtain authorization from TRPA to construct this pier, it was necessary to remove a pier from another parcel. Richard C. Blum, Trustee of the Richard C. Blum 1996 Revocable Trust, dated January 9, 1996; Annette C. Blum, Heidi J. Blum, and Eileen J. Blum agreed to retire the pier adjacent to their parcel at 9105 State Highway 89, near Meeks Bay. The pier was previously authorized by the Commission on June 1, 2009, under Lease No. PRC 5555.9 ([Item C12, June 1, 2009](#)). That lease expired on September 26, 2018. The Blums' pier was removed in 2015. The Blums also submitted an application to renew their lease for two mooring buoys. That application is also scheduled for consideration at the April 29, 2020 meeting.

TRPA permitted the Applicant's two mooring buoys and issued a conditional permit for the transfer of scenic credit, which includes a single-use pier and boat lift, from APN 016-131-006 (the Blum parcel) to APN 017-041-031 (the Applicant's parcel) in 2019. The Applicant also has a swim platform on State land adjacent to their parcel. The swim platform is not currently permitted by TRPA. The Applicant is working with TRPA to

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obtain a permit for the swim platform. If TRPA permits the structure, the Applicant will provide a copy of the permit. If TRPA does not permit the structure by April 29, 2021, the Applicant must remove the swim platform and apply to amend the lease to exclude it as an authorized improvement.

The proposed single-pile pier will include 11 piles spaced 15 feet apart and will extend 53 feet short of the TRPA pier headline. The construction timeline has not been fixed, but work will be performed on-site with the use of a barge on the lake and no staging will occur along the shore. Turbidity barriers and/or caissons will be employed if necessary and all decking and materials will be pre-cut to prevent sawdust and other materials from entering 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, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

The Applicant requested the issuance of a new lease and executed a quitclaim deed releasing their interest in the current lease. Staff recommends the Commission accept the lease quitclaim deed effective April 28, 2020, and approve the new lease, effective April 29, 2020.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The facilities are used for water-related recreational activities, including swimming and the docking and mooring of boats, and facilitate recreational boating. Recreational swimming and boating are water-dependent uses that are 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 immediate area of the pier is a flat sandy beach. The proposed pier will be flush to the beach and built on pilings, providing public access for pedestrians and lake-related activities at varying water levels within the Public Trust easement. Signs that read "Public Passage Allowed Over Pier" will be placed on both sides of the pier. The buoys and swim platform 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, staff believes the issuance of 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; 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 swim platform 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 a lease 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.

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Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

5. **Two Existing Mooring Buoys and Swim Platform:** 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 2, section 2905, subdivision (a)(2).
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

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
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:

Two Existing Mooring Buoys and Swim Platform: 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 2, section 2905, subdivision (a)(2).

Pier Construction with Boat Lift: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title

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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 acceptance of a lease quitclaim deed and issuance of 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 April 28, 2020, of Lease No. PRC 8555.1, a General Lease – Recreational Use, issued to Roy L. Wickland, as Trustee of the Wickland Marital Trust established September 25, 2012.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 29, 2020, for a term of 10 years, for the construction of a pier and boat lift and continued use and maintenance of two existing mooring buoys and a swim platform, 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 \$1,300, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8555.1

LAND DESCRIPTION

Four (4) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 4, Township 13 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1874, County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PROPOSED PIER

All those lands underlying a proposed pier with catwalk and boatlift lying adjacent to those parcels described in that Grant Deed recorded December 29, 2019 as Document Number 2016-0063986-00 in Official Records of said County.

PARCEL 2 – SWIM FLOAT

All those lands underlying an existing swim float lying adjacent to those parcels described in said Grant Deed.

PARCELS 3 & 4 – Buoys

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to those parcels described said Grant Deed.

TOGETHER WITH any applicable impact areas.

EXCEPTING THEREFROM any portion lying landward of elevation 6623' LTD.

This description is based on Applicant provided design plans for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

END OF DESCRIPTION

Prepared 4/14/2020 by the California
State Lands Commission Boundary Unit.



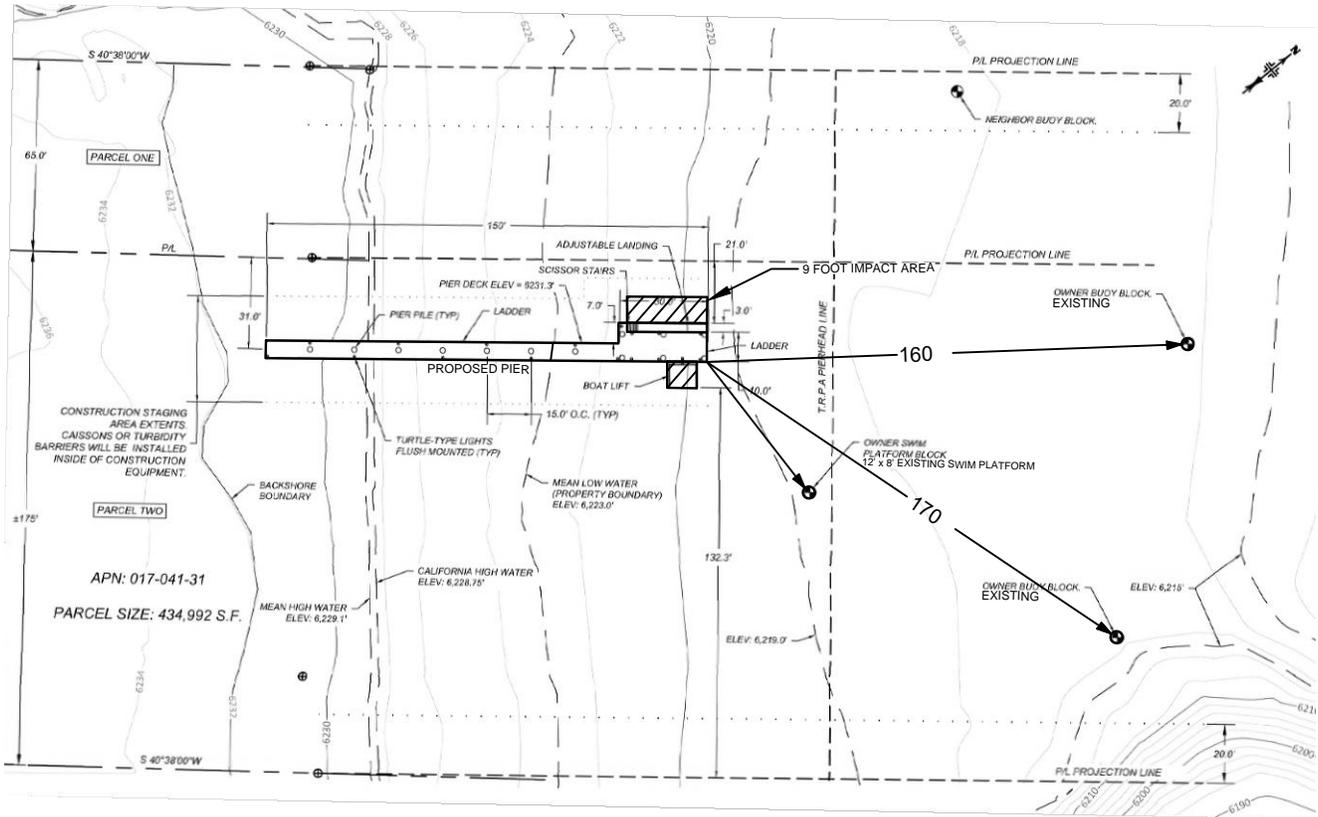
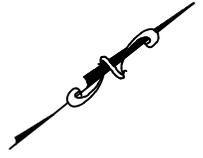


EXHIBIT A

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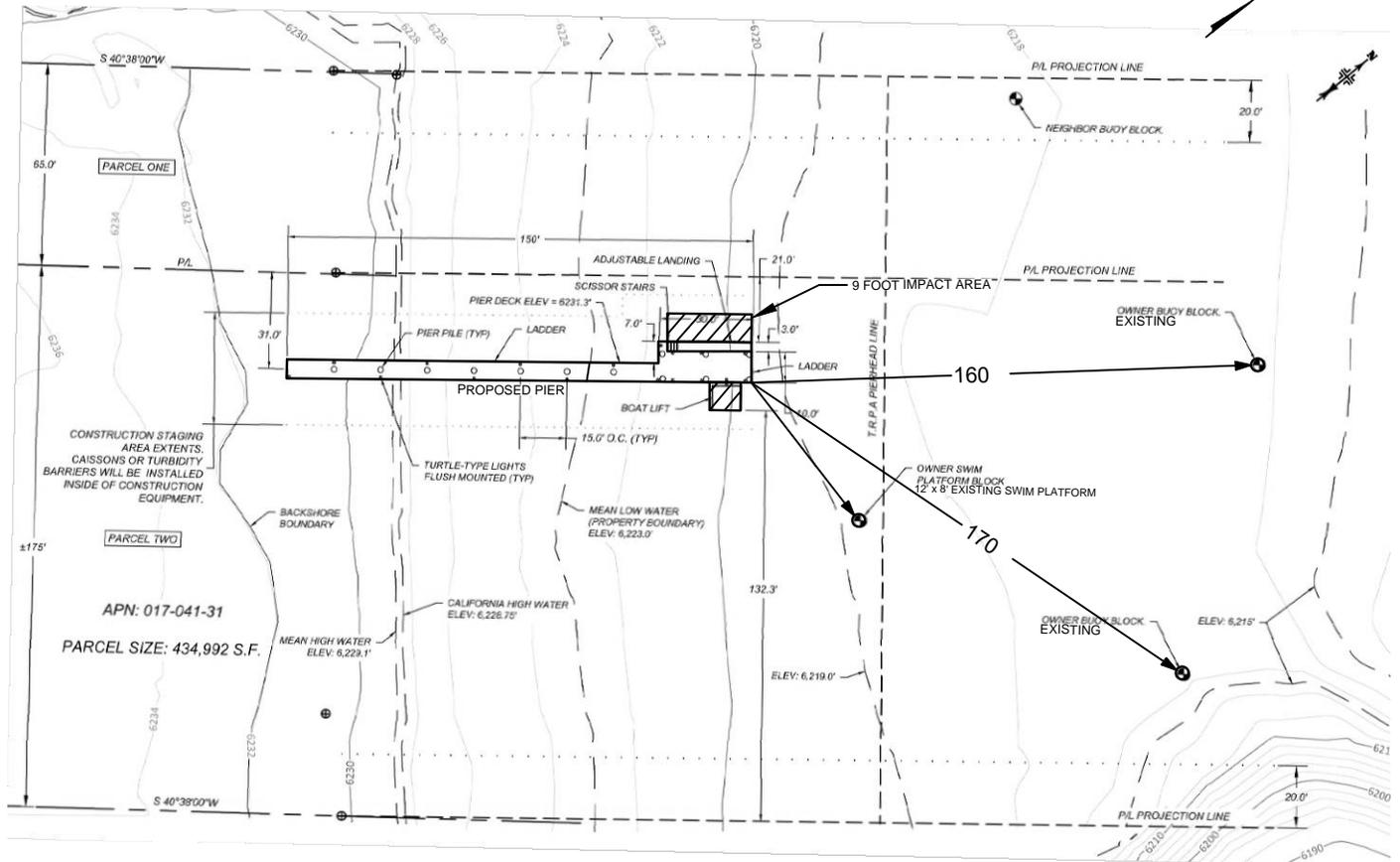
LAND DESCRIPTION PLAT
LEASE 8555.1, WICKLAND TRUST
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



9021 LUPINE LANE, NEAR RUBICON BAY

NO SCALE

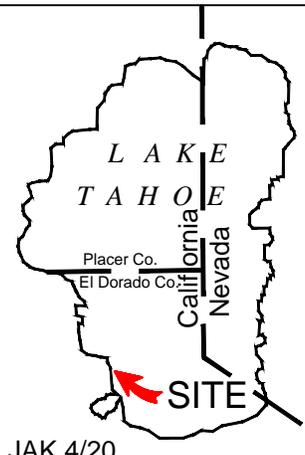
LOCATION



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 8555.1
 WICKLAND TRUST
 APN 017-041-31
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



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