

**STAFF REPORT  
07**

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06/23/20  
Lease 7258.1  
A2223  
J. Toy

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**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

David B. Coward and Linda J. Coward, as Trustees of the David B. and Linda J. Coward Trust dated October 1, 1989; and John F. Kautz and Kurt Kautz and Sandra Kautz

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 8193 and 8201 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

*AUTHORIZED USE:*

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

*LEASE TERM:*

10 years, beginning June 23, 2020.

*CONSIDERATION:*

\$1,381 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 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.

## STAFF REPORT NO. 07 (CONT'D)

### **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 October 22, 2009, the Commission authorized a Recreational Pier Lease for an existing joint-use pier, two boat lifts, and two mooring buoys to Murray M. Smith and Carol J. Smith; and Frank Elliott and Michelle De Corte, Trustees for FCEMAD RLT DTD 4/4/05 ([Item C07, October 22, 2009](#)). The lease expired on October 6, 2018.

The joint-use pier is shared between the two upland parcels adjoining the lease premises: Assessor's Parcel Number (APN) 016-051-033 and APN 016-051-058. On December 27, 2018, APN 016-051-033 was sold to David B. Coward and Linda J. Coward, as Trustees of the David B. and Linda J. Coward Trust dated October 1, 1989. APN 016-051-058 was sold to Kautz Equities LLC, an Oregon limited liability company, on June 28, 2019, that then transferred title to John F. Kautz and Kurt Kautz and Sandra Kautz on March 31, 2020.

The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing facilities. Staff recommends issuance of a new lease beginning June 23, 2020. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,029 from December 27, 2018, through June 22, 2020, for APN 016-051-033; and in the amount of \$683 from June 28, 2019, through June 22, 2020, for APN 016-051-058.

The former upland owners, Murray M. Smith and Carol J. Smith; and Frank Elliott and Michelle De Corte, Trustees for FCEMAD RLT DTD 4/4/05, did not apply for a new lease after their rent-free Recreational Pier Lease expired on October 6, 2018. Staff believes it is not in the State's best interests to pursue the collection of rent from them for the period of October 7, 2018, through December 26, 2018, and June 27, 2019, respectively, when their parcels were deeded to the Applicant.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. 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

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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 covered with dirt and boulders. The two buoys are located directly lakeward of the upland properties and occupy a relatively small area of the lake. On April 16, 2019, and May 14, 2019, TRPA issued permits for the buoys and boat lifts. The Applicant's TRPA permits are currently valid.

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, two boat lifts, 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

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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 for the unauthorized occupation of State land in the amount of \$1,029 for the period beginning December 27, 2018, through June 22, 2020, for APN 016-051-033; and in the amount of \$683 for the period

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beginning June 28, 2019, through June 22, 2020, for APN 016-051-058.

2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 23, 2020, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier, two boat lifts, 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 \$1,381, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 7258.1**

**LAND DESCRIPTION**

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 29, Township 14 North, Range 17 East, MDM, as shown on Official Government Township Plat approved January 17, 1866, County of El Dorado, State of California, more particularly described as follows:

**PARCEL 1 – PIER**

All those land underlying an existing pier, catwalk, and two boatlifts lying adjacent to Parcel Two as described in Grant Deed recorded June 28, 2019 as document Number 2019-0025055-00 in Official Records of said County, and lying adjacent to Parcel two as described in Grant Deed recorded December 7, 2018 as document Number 2018-0048890-00 in Official Records of said County.

TOGETHER WITH any 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, each being 50 feet in diameter, underlying two existing buoys lying adjacent to Parcel Two as described in Grant Deed recorded June 28, 2019 as document Number 2019-0025055-00 in Official Records of said County, and lying adjacent to Parcel two as described in Grant Deed recorded December 7, 2018 as document Number 2018-0048890-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

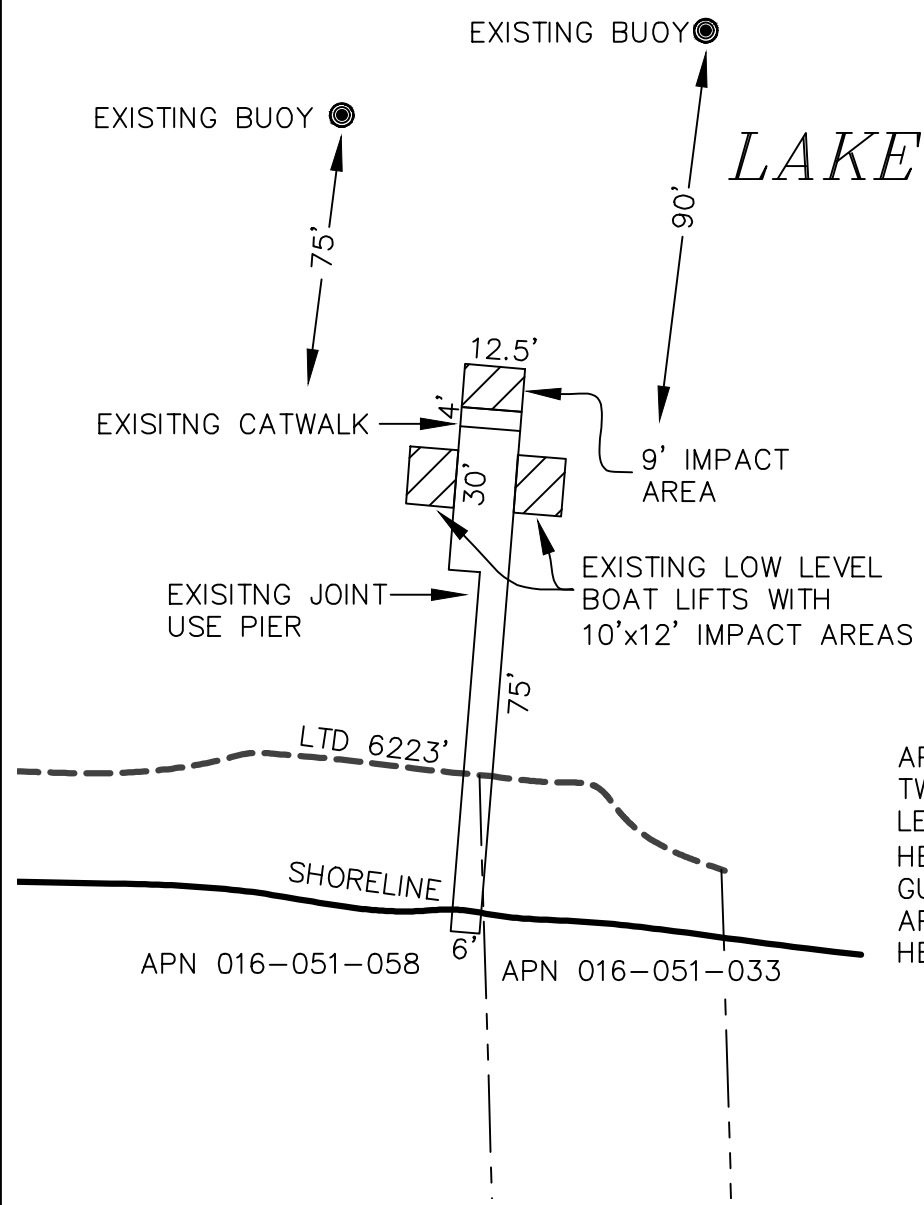
**END OF DESCRIPTION**

Prepared 10/21/19 by the California State Lands Commission Boundary Unit.

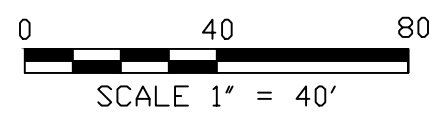




# LAKE TAHOE



APPROXIMATE DIMENSIONS FOR TWO LIFTS:  
 LENGTH: 12 FEET WIDTH: 10 FEET  
 HEIGHT: 2 FEET (REMOVABLE GUIDE POSTS AND BUMPERS ADD APPROXIMATELY 4 FEET TO HEIGHT)



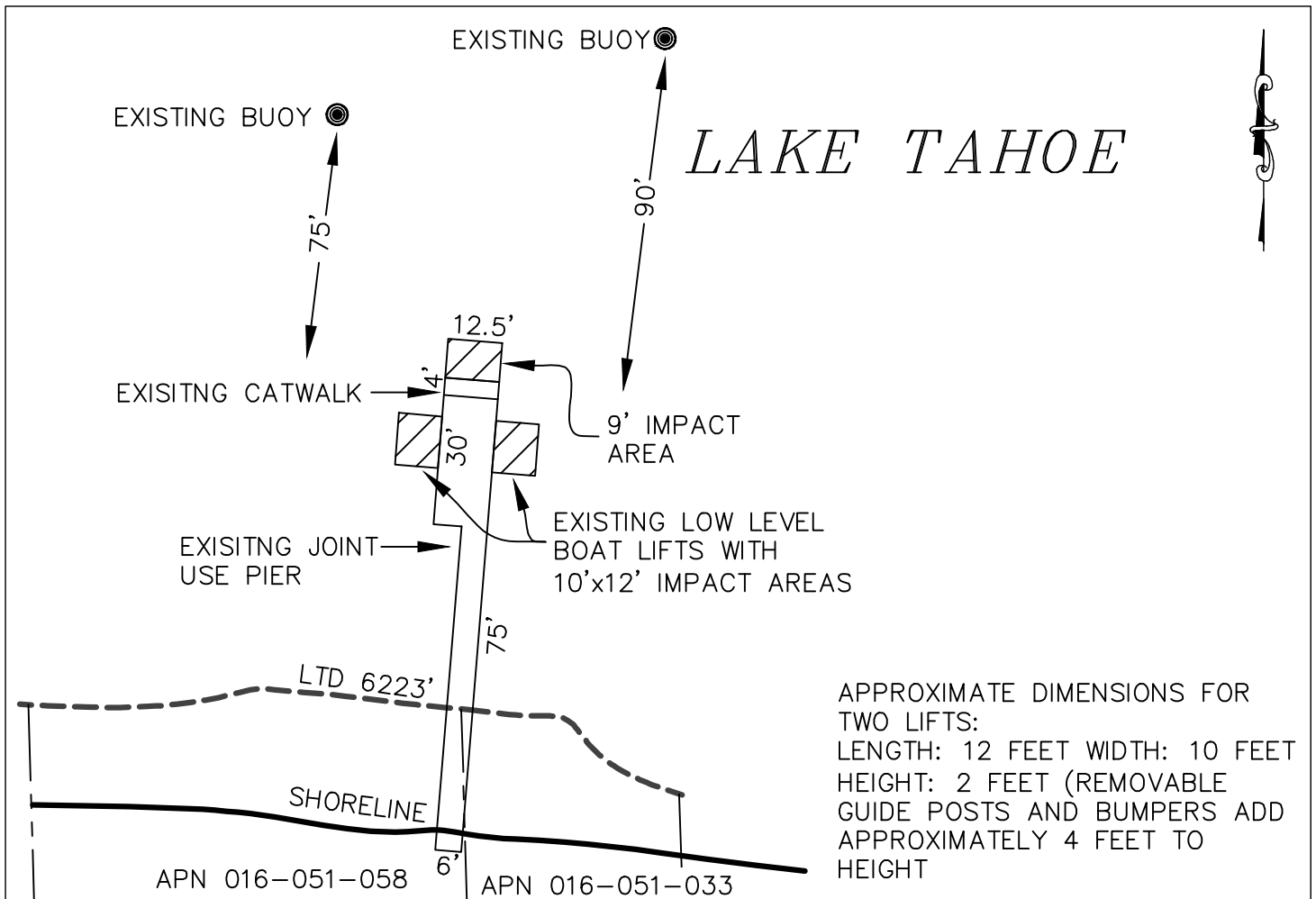
## EXHIBIT A





NO SCALE

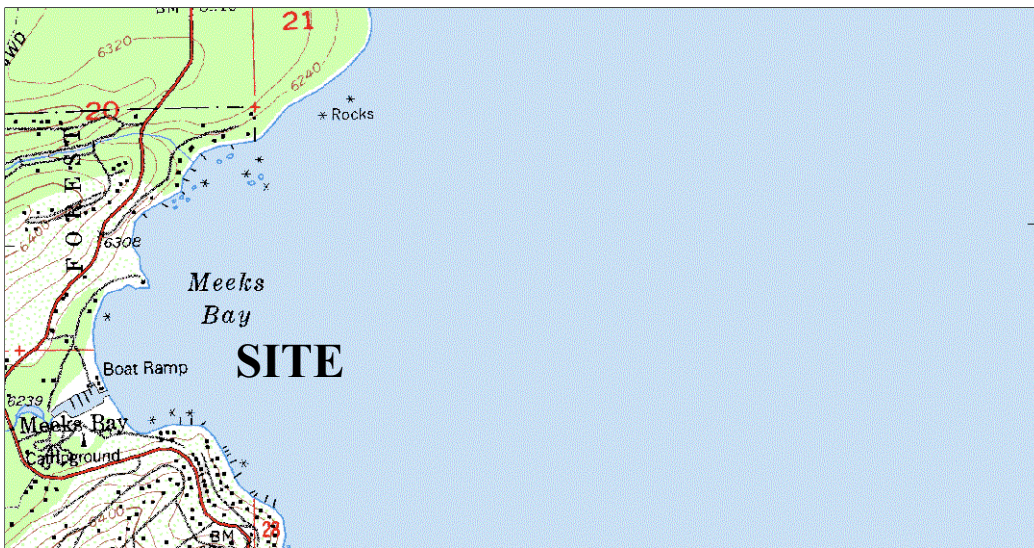
# SITE



8193 & 8201 Meeks Bay Avenue, 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 7258.1  
 COWARD TRUST, et. al.  
 APN 016-051-033 &  
 016-051-058  
 GENERAL LEASE  
 RECREATIONAL USE  
 EL DORADO COUNTY

