

STAFF REPORT

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06/23/20

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Lease 8913.1

S. Avila

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

LESSEE:

Tahoe Lakeview, LLC, a California limited liability company

APPLICANT:

Nicksam, LLC, a California limited liability company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 963 Lakeview Avenue, South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boat lift, and three mooring buoys; relocation of an existing catwalk; installation of a proposed boat lift, and removal of a fourth mooring buoy.

LEASE TERM:

10 years beginning June 23, 2020.

CONSIDERATION:

\$1,371 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 the Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.

STAFF REPORT NO. 20 (CONT'D)

- 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.
- The public will be allowed to pass and repass underneath the pier with signs posted to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 Lake Tahoe datum. Lessee shall post signs identifying the designated public passageway.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor’s Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Construction activities will be performed pursuant to specific terms identified in the Lease, including requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.

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 February, 2011, the Commission authorized a 10-year General Lease – Recreational Use for the expansion of an existing pier and installation of a boat lift to Tahoe Lakeview, LLC, a California limited liability company ([Item C15, February 8, 2011](#)). That lease will expire on February 7, 2021.

On May 24, 2012, the Commission authorized an amendment of the lease to include four existing mooring buoys ([Item C26, May 24, 2012](#)).

STAFF REPORT NO. **20** (CONT'D)

On October 16, 2015, the Commission authorized an amendment of the lease to revise the rent and replace the lease exhibits ([Item C05, October 16, 2015](#)).

On May 2, 2018, interest in the upland parcel transferred to Nicksam Properties, LLC, a California limited liability company. The upland parcel consists of a common area parcel within which are five separate parcels for condominium units. The occupants of the condominiums have access to the pier and mooring buoys which are governed by a Declaration of Covenants, Conditions, and Restrictions. The Applicant is applying for a General Lease - Recreational Use for the continued use and maintenance of the existing pier, boat lift, and three mooring buoys; the relocation of an existing catwalk; installation of a new boat lift; and the removal of the fourth existing mooring buoy in exchange for the proposed boat lift. The Applicant has registered the moorings with TRPA (Permit No. 10286).

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.

Staff sent an invoice, Invoice No. 49705, to the Lessee for penalty and interest for late payment of rent that was due February 8, 2019. Because the Lessee was no longer the upland owner as of May 2, 2018, and rent is current, staff recommends voiding Invoice No. 49705 and waiving the penalty and interest. The Applicant will be responsible for future rent.

The proposed relocation of the catwalk includes removal of the existing catwalk and relocating it south of its current location on the same side of the pier landward of the low-water mark outside of the State's leasing jurisdiction. One mooring buoy will be removed in exchange for the addition of the proposed boat lift that will be installed within the space created on the pierhead by the relocated catwalk. The installation will occur on-site with access to the site primarily from the lake by a barge moored on the lake. Construction will occur after all required approvals are 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 lifts (including the proposed boat lift), and mooring buoys are or will be used for the docking and mooring of boats. Recreational boating is a water-dependent

STAFF REPORT NO. 20 (CONT'D)

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).

Except for the proposed boat lift, the subject facilities have existed for many years at this location. The base of the pier was originally constructed so that the public has a 6-foot-wide area for passing underneath the pier with 3 feet of the area having a minimum of 5 feet 8 inches of headroom. Signs that read "Public Passage Allowed Under Pier" are posted on both sides of the pier. The pier is built on single pilings with the immediate area of the pier being flat with sand and pebbles. 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. 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.

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 mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of

STAFF REPORT NO. **20** (CONT'D)

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 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. **Relocation and Removal Activities of a Catwalk and Installation of a Boat Lift on the Pier:** 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 or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

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

STAFF REPORT NO. **20** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Pier and 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).

Relocation and Removal Activities of a Catwalk and Installation of a Boat Lift on the Pier: 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 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

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 penalty and interest due from the Lessee for late payment of rent due for the period of February 8, 2019, through February 7, 2020, and void invoice number 49705 created on February 14, 2020, issued to Lessee.
2. Authorize acceptance of a lease quitclaim deed, effective May 1, 2018, for Lease No. PRC 8913.1, a General Lease – Recreational Use, issued to Lessee.
3. 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 pier, boat lift, and three mooring buoys; the relocation of an existing catwalk; installation of a proposed boat lift; and the removal of the fourth existing mooring buoy; 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 \$1,371,

STAFF REPORT NO. **20** (CONT'D)

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

EXHIBIT A

LEASE 8913.1

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 32, Township 13 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved July 8, 1875, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, boat lift, proposed catwalk and boat lift lying adjacent to those parcels described in Grant Deed recorded May 2, 2018 in Document # 2018-0016552-00 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 thru 4 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to those parcels described in Grant Deed recorded May 2, 2018 in Document # 2018-0016552-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on an existing pier, together with any and all appurtenances pertaining thereto, at the date of this description. An existing catwalk and appurtenances are to be removed and relocate in different location and a new proposed boat lift is to be installed per lease Applicant's provided design plans. This description is to be updated once final as-built plans are submitted.

Prepared 02/26/2020 by the California
State Lands Commission Boundary Unit.



NO SCALE

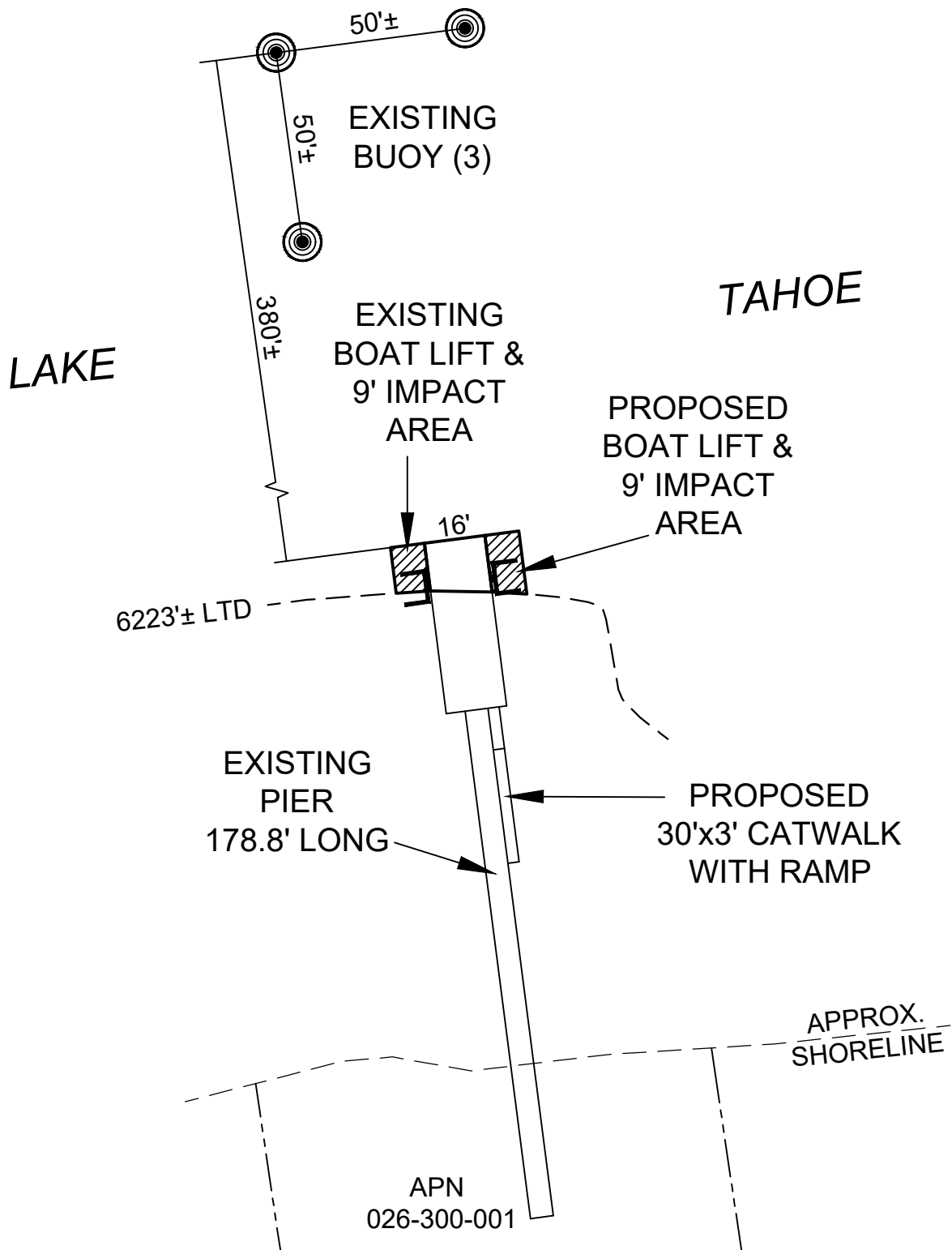


EXHIBIT A

PAGE 2 OF 2

TS 02/26/2020

LAND DESCRIPTION PLAT
LEASE 8913.1, NICKSAM PROPERTIES, LLC
EL DORADO COUNTY

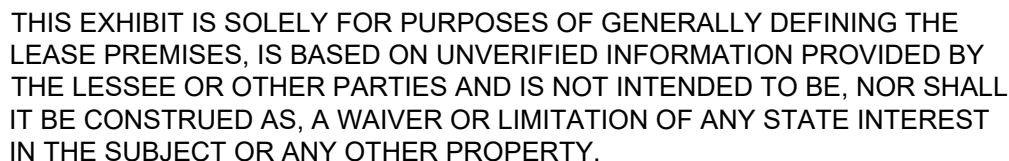
CALIFORNIA STATE
LANDS COMMISSION



SITE



LOCATION



LEASE 8913.1

TS 02/26/2020