

Staff Report 07

Acceptance of a Lease Quitclaim Deed and Issuance of a General Lease –
Recreational Use

LESSEE:

Meganne G. Houghton-Berry

APPLICANT:

Laurentinum Limited Partnership, a Delaware Limited Partnership

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION

Sovereign land in Lake Tahoe, adjacent to 9120 South Lane and 9101 Highway 89
(Assessor's Parcel Numbers 016-131-01 and 016-131-07), Tahoma, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of two existing mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized; removal of one previously unauthorized mooring buoy; and construction, use and maintenance of a joint-use pier, adjustable catwalk, boat lift, stairs, and ladders.

TERM:

10 years, beginning August 20, 2020.

CONSIDERATION:

\$2,191 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.
- Applicant 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.

- Applicant 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 lease provides a provision that the public will be allowed to pass and repass over the pier by way of stairs with signs posted on each side of the pier to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum.
- 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 and evidence of the removal of one unauthorized mooring buoy with anchor and tackle. 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.

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:

Unbeknownst to staff, the prior upland owner, Meganne G. Houghton-Berry, deeded the upland parcel, Assessor's Parcel Number (APN) 016-131-001, to Laurentinum Limited Partnership, her limited partnership, on January 22, 2013. A month later, on February 22, 2013, the Commission authorized a General Lease – Recreational Use for the continued use and maintenance of two existing mooring buoys to the prior upland owner [\(Item C10, February 22, 2013\), who, because of the transfer, was no longer the legal littoral land owner.](#) The Limited Partnership did not qualify for rent-free status under the regulations in effect when the lease was issued, and the lease contained terms notifying the Lessee of this fact. As such, Ms. Houghton-Berry's execution of the lease authorized on February 22, 2013 was ineffective. Had that lease been valid it would have qualified for rent-free status pursuant to section 6503.5 of the Public Resources Code and it would have expired on February 21, 2023. The authorized Lessee, Meganne G. Houghton-Berry, knew of the transfer to the Limited Partnership

and failed to notify staff of the ownership change when it occurred. Staff was unaware of the change in ownership until March 2020, upon receipt of an application for a new lease. As such, the buoys were neither authorized nor rent free.

The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of two existing mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized; removal of one previously unauthorized mooring buoy; and proposed construction of a joint-use pier, adjustable catwalk, boat lift, stairs, and ladders. The Applicant has owned both APNs 016-131-01 and 016-131-07 since December 2012, and the Grant Deeds were recorded on January 22, 2013. The Applicant has requested a new lease, which will consolidate the two mooring buoys previously authorized under Lease No. PRC 9038 with the proposed joint-use pier construction and an existing mooring buoy not previously authorized. The existing mooring buoys have been registered with TRPA under Mooring Registration No.10488, on June 10, 2020, for APN 016-131-01 and No.11518, on July 10, 2020, for APN 016-131-07.

As part of the proposed consolidation, staff recommends acceptance of the lease quitclaim deed for Lease 9038, out of an abundance of caution, and the issuance of a new lease effective August 20, 2020. Staff further recommends acceptance of compensation in the amount of \$7,546 for the unauthorized occupation of state property beginning January 22, 2013, when ownership was transferred to the limited partnership and no longer qualified for rent-free status pursuant to the terms of the existing lease, through August 19, 2020, the day before the proposed new lease begins.

The proposed new joint-use pier construction includes installation of an adjustable catwalk and a boat lift, which will require 12 pilings and will extend 173.1 feet from the high-water mark. The construction timeline is not fixed and is proposed to start in the fall of 2020. The pilings will be driven with a barge-mounted pile driver. Caissons or turbidity barriers will be used if necessary. A floating mesh-fabric screen or other device will be used to capture fallen material. All construction access will occur from the lake via barge or amphibious marine vessel. No staging of equipment or construction materials will be stored on the shoreline. The Applicant also proposes to remove one mooring buoy with anchor and tackle in exchange for the proposed installation of the boat lift. The mooring buoy will be removed during construction and evidence to verify the removal of the mooring buoy will be provided. An inspection for the California endangered plant species, Tahoe Yellow Cress (TYC) was completed on July 7, 2020, and there was no TYC observed at the site.

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 the U.S. Army Corps of Engineers.

The subject facilities will be privately owned and maintained. The facilities will be 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 identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The construction of the proposed pier design will allow public access laterally across the shoreline. The topography and the location of upland structures provides access for the pier and the public may navigate or walk across the pier via stairs on each side of the pier within the Public Trust easement. The lease requires the placement of signs on both sides of the pier at the designated public access passageway that read "Public Passage Allowed Over Pier." In exchange for approval to install the boat lift, the Applicant will remove one existing mooring buoy. The remaining mooring buoys 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, 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 ensure 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.

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/Lessee could not construct the proposed pier and may be required to

remove the existing 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 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 of the Commission's Strategic Plan 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.

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

5. **Existing 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. **New Joint-Use Pier Construction:** 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)(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.

7. **Removal of Buoy:** 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

APPROVALS OBTAINED:

Tahoe Regional Planning Agency

Lahontan Regional Water Quality Board

California Department of Fish and Wildlife

FURTHER APPROVAL REQUIRED:

U.S. Army Corps of Engineers

EXHIBITS:

A. Land Description

B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing 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).

New Joint-Use Pier Construction: 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 of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(2).

Removal of Buoy: 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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. Authorize acceptance of a lease quitclaim deed, effective August 20, 2020, for Lease No. PRC 9038, a General Lease – Recreational Use issued to the Lessee.
2. Authorize acceptance of compensation from the Applicant in the amount of \$7,546 for unauthorized occupation of State land for the period beginning January 22, 2013, through August 19, 2020.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 20, 2020, for a term of 10 years, for continued use and maintenance of two existing mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized; removal of one previously unauthorized mooring buoy; and construction, use and maintenance of a joint-use pier, adjustable catwalk, boat lift, stairs, and ladders, 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 \$2,191 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 9038

LAND DESCRIPTION

Four parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to fractional Section 33, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying a proposed pier with catwalk and boat lift lying adjacent to those parcels as described in those Grant Deeds recorded January 22, 2013 in Document Number 2013-0002798-00 and Document Number 2013-0002799-00 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 and 4 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to those parcels as described in those Grant Deeds recorded January 22, 2013 in Document Number 2013-0002798-00 and Document Number 2013-0002799-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

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.

Prepared 07/21/2020 by the California
State Lands Commission Boundary Unit.



NO SCALE

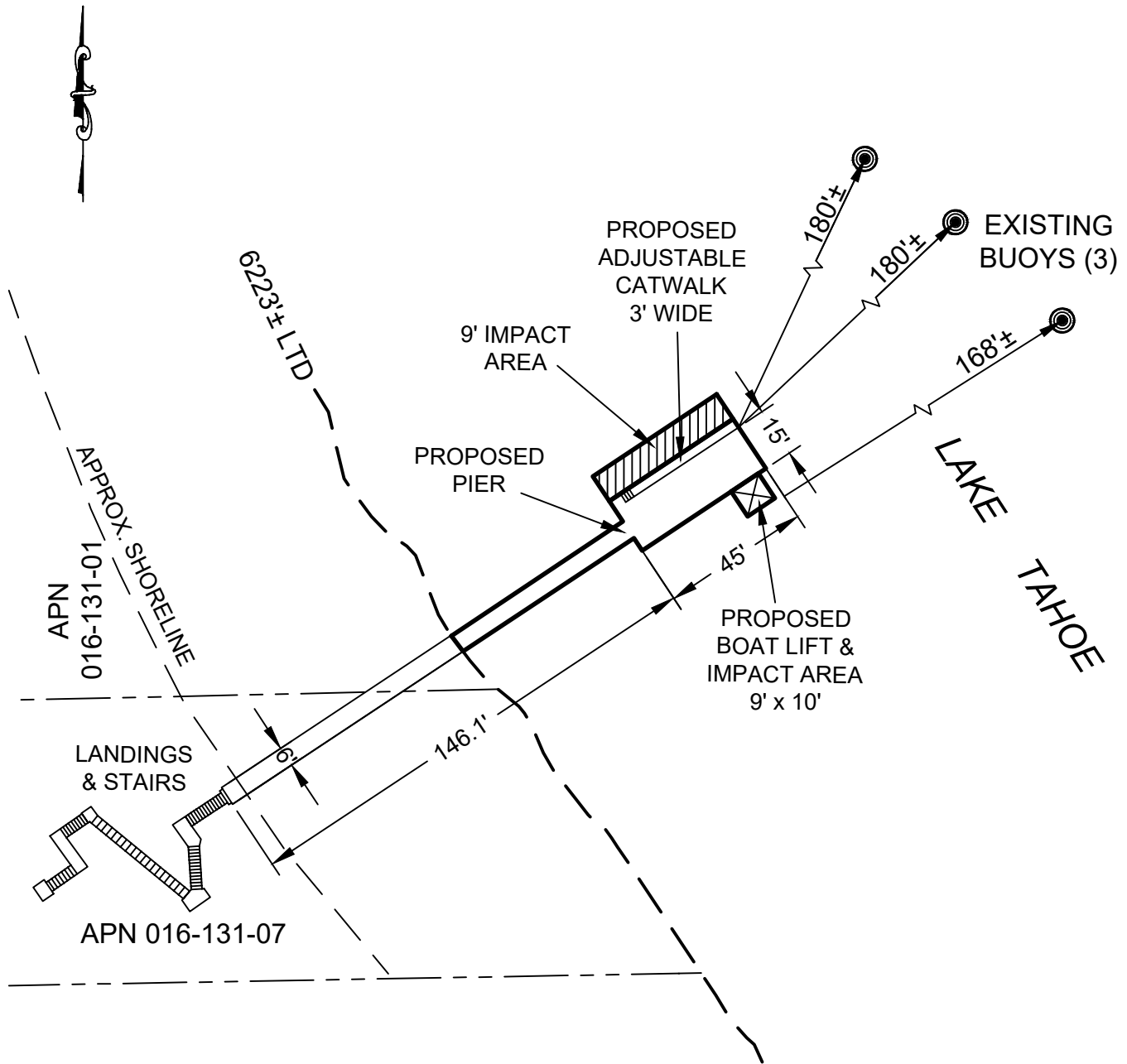


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 9038, LAURENTINUM, LP
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



