

# Staff Report 08

## **LESSEE:**

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FAUPS, LLC, a Delaware limited liability company

## **APPLICANT:**

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Paul William Lloyd and Alisha Ann Graves, Trustees of the Lloyd Graves Family Trust

## **PROPOSED ACTION:**

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Consider Waiver of Rent, Penalty, and Interest and Termination and Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION**

Sovereign land located in Lake Tahoe, adjacent to 8401 Meeks Bay Avenue, near Meeks Bay, El Dorado County.

## **AUTHORIZED USE:**

Continued use and maintenance of an existing pier, two catwalks, stairs, boat hoist, and two mooring buoys.

## **TERM:**

10 years, beginning October 22, 2020.

## **CONSIDERATION:**

\$1,390 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.

- 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.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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:**

On February 7, 2017, the Commission authorized a 10-year General Lease – Recreational Use to FAUPS LLC, a Delaware limited liability company, for the continued use and maintenance of a pier and two mooring buoys; removal of a boat hoist and secondary catwalk; and construction, use, and maintenance of a boat lift, and replacement of a portion of the primary catwalk with stairs within the existing footprint of the catwalk ([Item C17, February 7, 2017](#)). The proposed construction never occurred. The lease will expire on February 6, 2027.

On December 5, 2019, the upland was deeded to Paul William Lloyd and Alisha Ann Graves, Trustees of the Lloyd Graves Family Trust. The Applicant has acknowledged their interest in and control over the improvements on sovereign land and is applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier, two catwalks, stairs, boat hoist, and two mooring buoys.

Staff recommends termination of the existing lease because the Lessee improperly conveyed the lease by selling the upland property without notifying the Commission, seeking an assignment, or executing a lease quitclaim deed.

The Lessee paid rent through February 6, 2020, prior to transferring the upland property to the Applicant. On December 16, 2019, staff sent an annual invoice to the Lessee for annual rent covering the period of February 7, 2020 through February 6, 2021, which the Lessee did not pay. Staff believes it is not in the State's best interests to pursue the collection of rent, penalty, and interest from the Lessee for this period because the Lessee was no longer the upland owner as of December 5, 2019, the Lessee paid rent through February 6, 2020, and the Applicant agrees to pay compensation for the unauthorized occupation of State land from February 7, 2020 through October 21, 2020.

Staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$983 for the period beginning February 7, 2020 (the first day of unpaid rent) through October 21, 2020. Staff recommends issuance of a new lease beginning October 22, 2020.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boat hoist, two catwalks, stairs, and two mooring buoys 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 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 pier is gently sloped and dominated by cobbles and large boulders. The pier is built on single pilings and allows the public to navigate or walk next to and, at lower water levels, under the pier. The two mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. On February 26, 2020, the Applicant registered the mooring buoys with TRPA (Permit #11298).

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 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 common law Public Trust Doctrine; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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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 prior Lessee may be required to remove the pier, boat hoist, two catwalks, stairs, 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 land along the State's inland and coastal waterways.
3. Termination of the lease 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).

4. The 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).

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:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that the 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).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that termination of a lease; waiver of rent, penalty, and interest; and issuance of 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 annual rent, penalty, and interest due from the Lessee for the period of February 7, 2020 through February 6, 2021, and void annual rent Invoice #49138 created on December 16, 2019, and issued to FAUPS LLC, a Delaware limited liability company.
2. Authorize termination, effective October 22, 2020, of Lease No. PRC 1828, a General Lease – Recreational Use, issued to FAUPS, LLC, a Delaware limited liability company.
2. Authorize acceptance of compensation from the Applicant in the amount of \$983 for the unauthorized occupation of State land for the period beginning February 7, 2020 through October 21, 2020.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 22, 2020, for a term of 10 years for continued use and maintenance of an existing pier, boat hoist, two catwalks, stairs, 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 \$1,390, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 1828

### LAND DESCRIPTION

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 29, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, and more particularly described as follows:

#### PARCEL 1 – PIER

All those lands underlying an existing pier, two catwalks and boat hoist lying adjacent to those parcels as described in that Grant Deed recorded December 5, 2019 in Document 2019-0052058-00 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 those parcels as described in that Grant Deed recorded December 5, 2019 in Document 2019-0052058-00 in Official Records of said County.

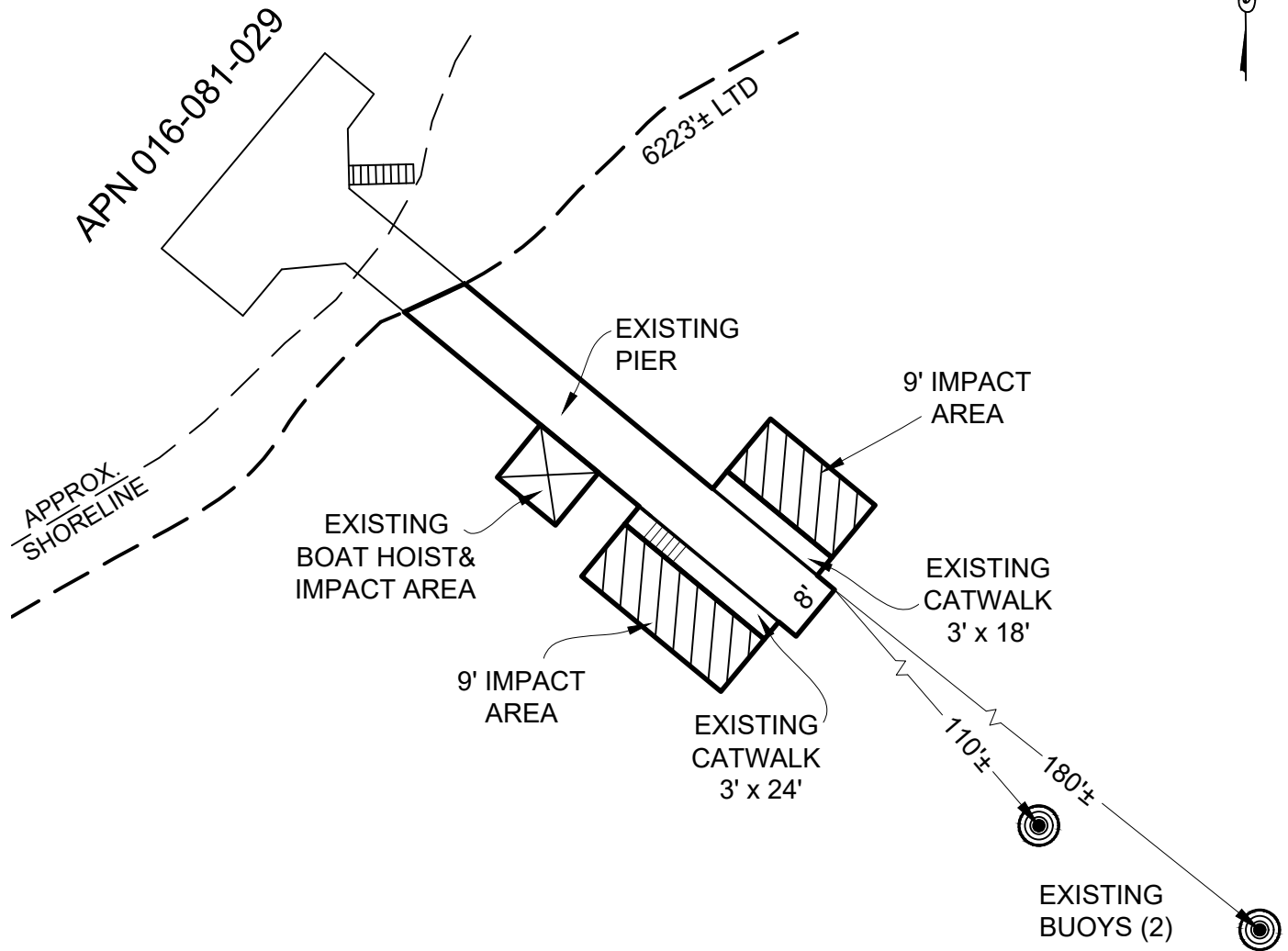
Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared 07/08/2020 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

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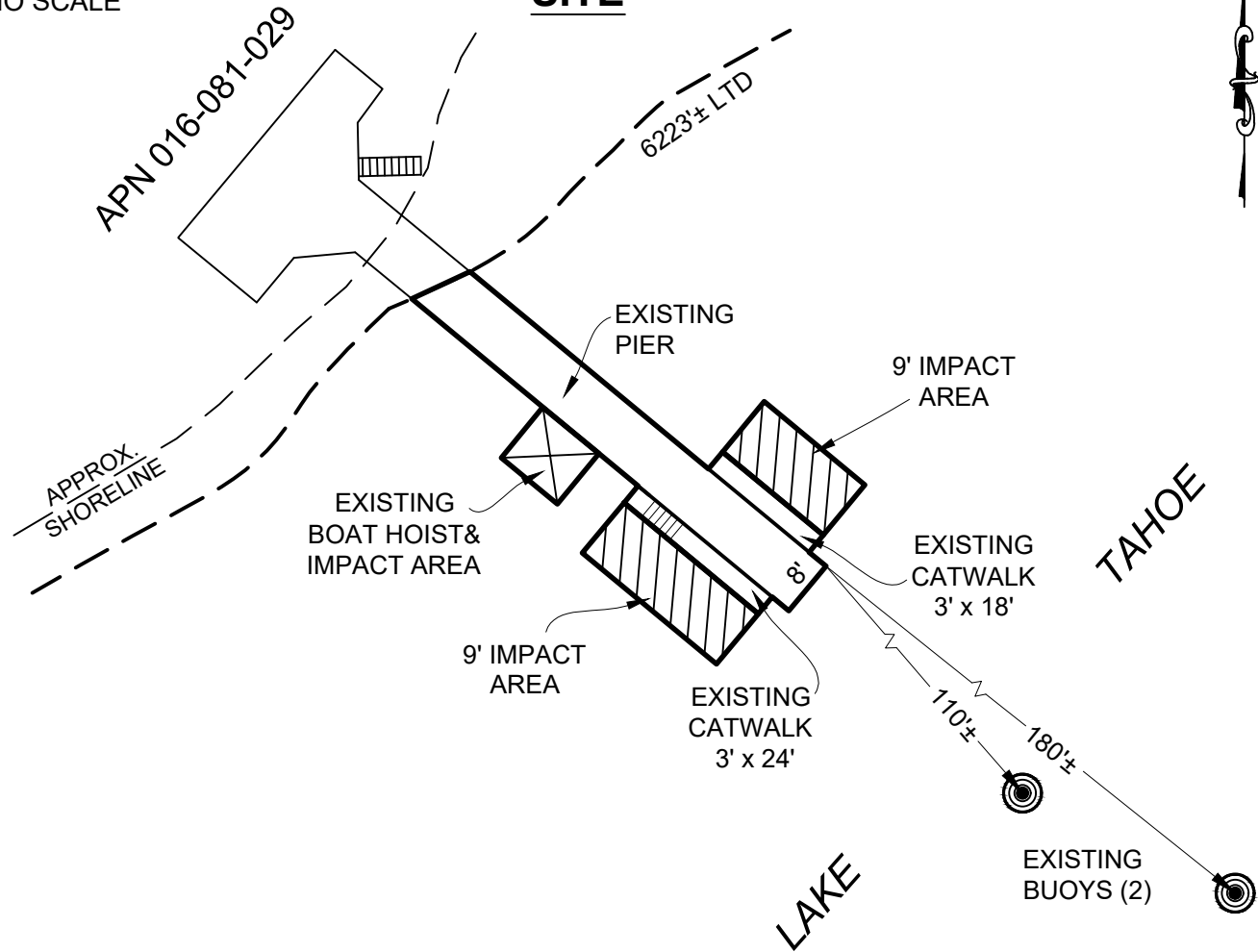
LAND DESCRIPTION PLAT  
LEASE 1828, LLOYD GRAVES FAMILY TRUST  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

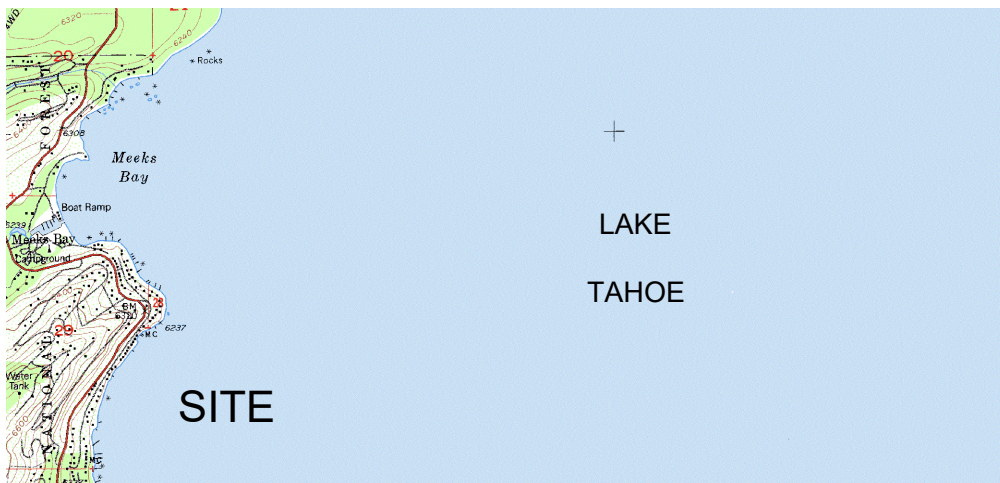
## SITE



8401 MEEKS BAY AVENUE, NEAR 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 1828  
LLOYD GRAVES  
FAMILY TRUST  
APN 016-081-029  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY

L A K E  
T A H O E

Placer Co.  
El Dorado Co.

California  
Nevada

**SITE**

TS 07/08/2020