

# Staff Report 12

## **APPLICANT:**

---

Peter Micelli and Jennifer Lang

## **PROPOSED ACTION:**

---

Issuance of a General Lease – Recreational Use

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

Sovereign land in Lake Tahoe, adjacent to 8769 Rubicon Drive, near Rubicon Bay, El Dorado County.

## **AUTHORIZED USE:**

Continued use and maintenance of two existing mooring buoys.

## **TERM:**

10 years, beginning December 17, 2020.

## **CONSIDERATION:**

\$754 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 the Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.

## **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:**

On June 23, 2011, the Commission authorized a Recreational Pier Lease for two existing mooring buoys to John P. Zimmermann and Bianca Zimmermann, as Trustees of the Zimmermann Family 2006 Trust, under Declaration of Trust dated December 1, 2006 ([Item C06, June 23, 2011](#)). This lease expired on April 19, 2020. On November 30, 2017, upland ownership was transferred to Peter Micelli and Jennifer Lang. The lease was not assigned to the new upland owner.

The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the two existing mooring buoys. Staff recommends issuance of a new lease beginning December 17, 2020. Staff further recommends that the Commission accept compensation for the unauthorized occupation of State land from the Applicant in the amount of \$2,299 for the period beginning November 30, 2017 (the day the property was deeded to the Applicant) through December 16, 2020 (the day before the effective date of the proposed lease) for the two mooring buoys.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The two existing 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 do not significantly alter the land, and the lease does not alienate the State's fee simple interest or permanently impair public rights. The buoys have existed for many years at this location. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition. Additionally, the buoys occupy a relatively small area of the lake. The Applicant registered the buoys with TRPA on September 19, 2019 (#11149). Based on the foregoing, Commission staff believes that the mooring buoys will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

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 two 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 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.
3. 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 in the amount of \$2,299 for unauthorized occupation of State land for the period beginning November 30, 2017, through December 16, 2020.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 17, 2020, for a term of 10 years, for the continued use and maintenance of two existing 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 \$754, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 8159

### LAND DESCRIPTION

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 32, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of El Dorado, State of California, more particularly described as follows:

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded November 30, 2017 as Document Number 2017-0054435-00 in Official Records of said County.

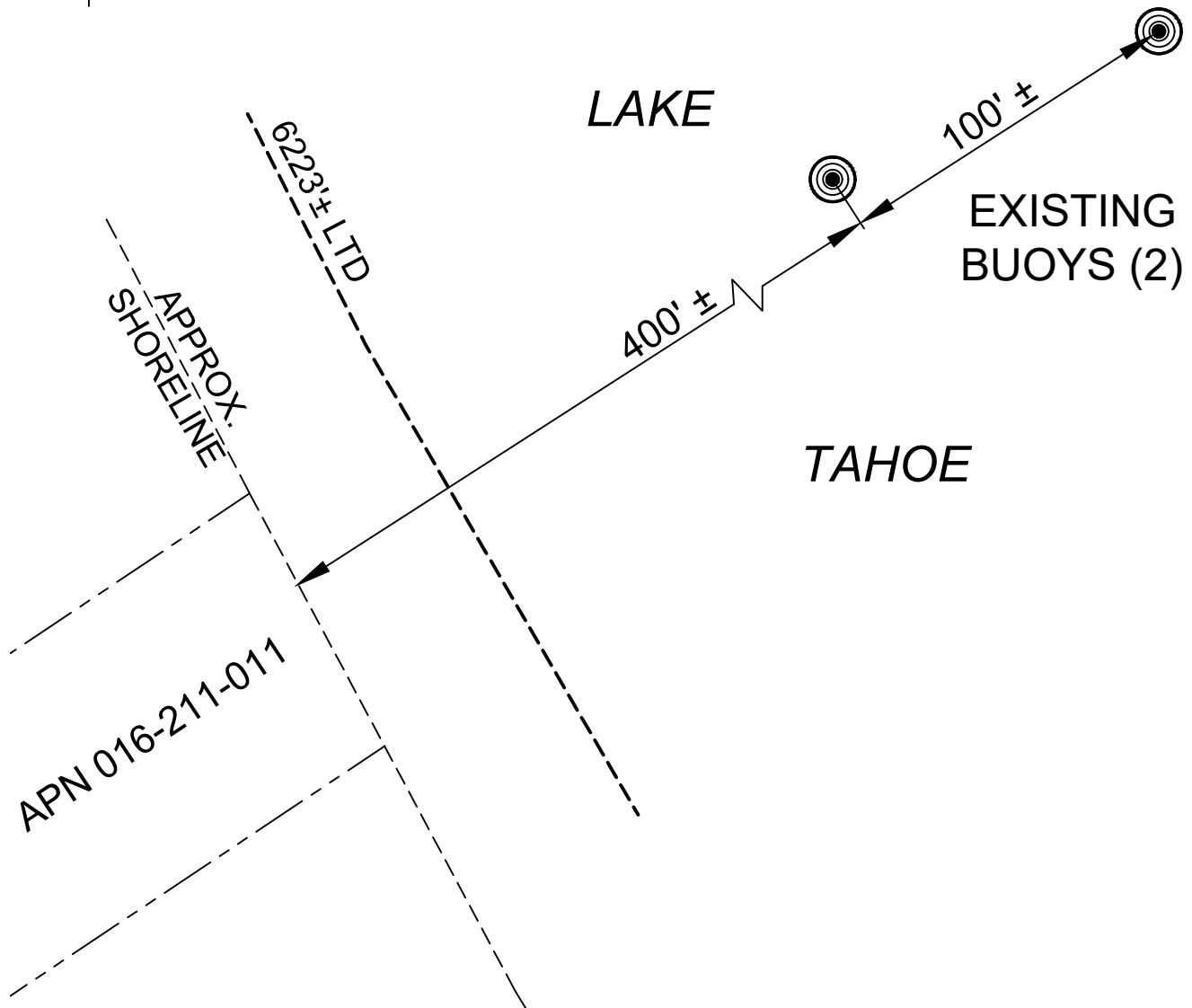
Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

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



NO SCALE



## EXHIBIT A

Page 2 of 2

TS 08/07/2020

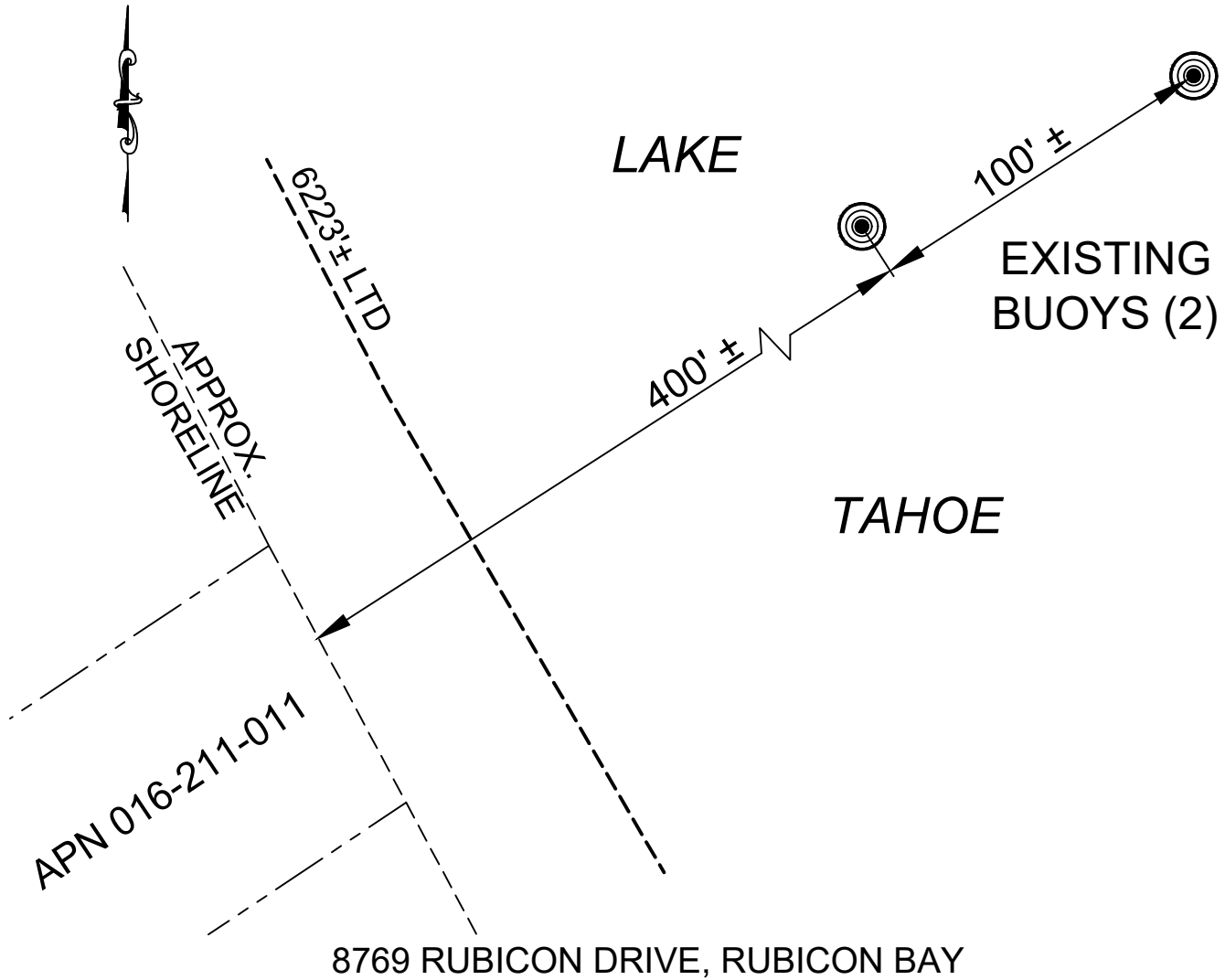
LAND DESCRIPTION PLAT  
LEASE 8159, MICELLI ET AL  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



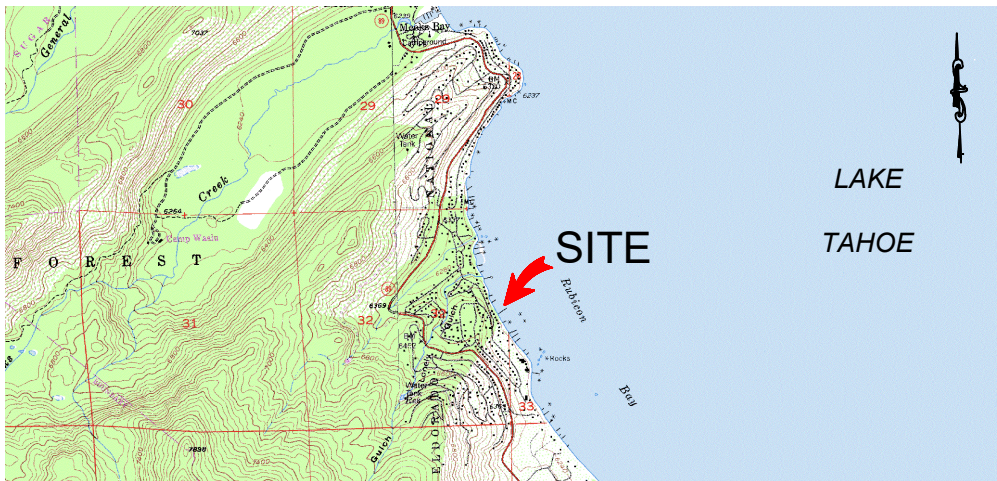
NO SCALE

## SITE



NO SCALE

## LOCATION

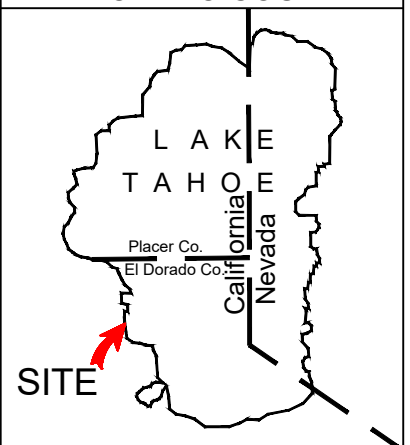


MAP SOURCE: USGS QUAD

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 8159  
MICELLI ET AL  
APN 016-211-011  
GENERAL LEASE-  
RECREATIONAL USE  
EL DORADO COUNTY



TS 08/07/2020