

# Staff Report 01

## **LESSEE:**

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John Brockway Metcalf

## **APPLICANT:**

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John Brockway Metcalf and Elizabeth Scott Metcalf

## **PROPOSED ACTION:**

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

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

Sovereign land in Lake Tahoe, adjacent to 9031 Lupine Lane, near South Lake  
Tahoe, El Dorado County.

## **AUTHORIZED USE:**

Continued use and maintenance of an existing pier and two mooring buoys  
previously authorized by the Commission and one existing mooring buoy not  
previously authorized by the Commission.

## **TERM:**

10 years, beginning February 23, 2021.

## **CONSIDERATION:**

\$1,694 per year, with an annual Consumer Price Index adjustment, and \$636 to  
compensate for the unauthorized occupation of state sovereign land dating back  
to June 2019.

## **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:**

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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 April 5, 2016, the Commission authorized a General Lease - Recreational Use for an existing pier and two mooring buoys not previously authorized by the Commission to John Brockway Metcalf ([Item C15, April 5, 2016](#)). The lease will expire on April 4, 2026. On June 28, 2017, upland ownership was updated to include both John Brockway Metcalf and Elizabeth Scott Metcalf.

The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier and two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission. The Applicant did not include the third existing mooring buoy in the current lease since, at the time, approval for a third buoy was in direct conflict with the TRPA Code of Ordinances. There is no longer a conflict and the Applicant registered the three existing mooring buoys with TRPA on June 18, 2019, registration number 10364. Staff recommends that the Commission accept compensation from the Applicant for the third buoy's unauthorized occupation of State land in the amount of \$636 for the period beginning June 18, 2019 (the date of the TRPA registration) through February 22, 2021 (the day prior to the beginning date of the new lease).

The Applicant requested issuance of a new lease and executed a quitclaim deed releasing their interest in the current lease. Staff recommends the Commission accept the lease quitclaim deed and approve the new lease, effective February 23, 2021.

The Applicant owns the upland property adjoining the lease premises. The subject facilities are privately owned and maintained, 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 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 a gently sloped sandy beach. The three 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 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 Applicant, as the owner of the improvements on state land, may be required to remove the pier and two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission 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 and along the State's inland and coastal waterways.
3. 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).

4. 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 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 the acceptance of a lease quitclaim deed and issuance of 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 a lease quitclaim deed, effective February 22, 2021, of Lease No. PRC 9324, a General Lease – Recreational Use, issued to John Brockway Metcalf.
2. Authorize acceptance of compensation from the Applicant in the amount of \$636 for unauthorized occupation of State land for the period beginning June 18, 2019 through February 22, 2021.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 23, 2021, for a term of 10 years, for the continued use and maintenance of an existing pier and two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission, 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 \$1,694, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 9324

### LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 4, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1874, County of El Dorado, State of California, more particularly described as follows:

#### PARCEL 1 – PIER

All those lands underlying an existing pier and two catwalks lying adjacent to those parcels described in Grant Deed recorded June 28, 20017 as Document Number 2017-0026231-00 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 & 4 – BUOYS

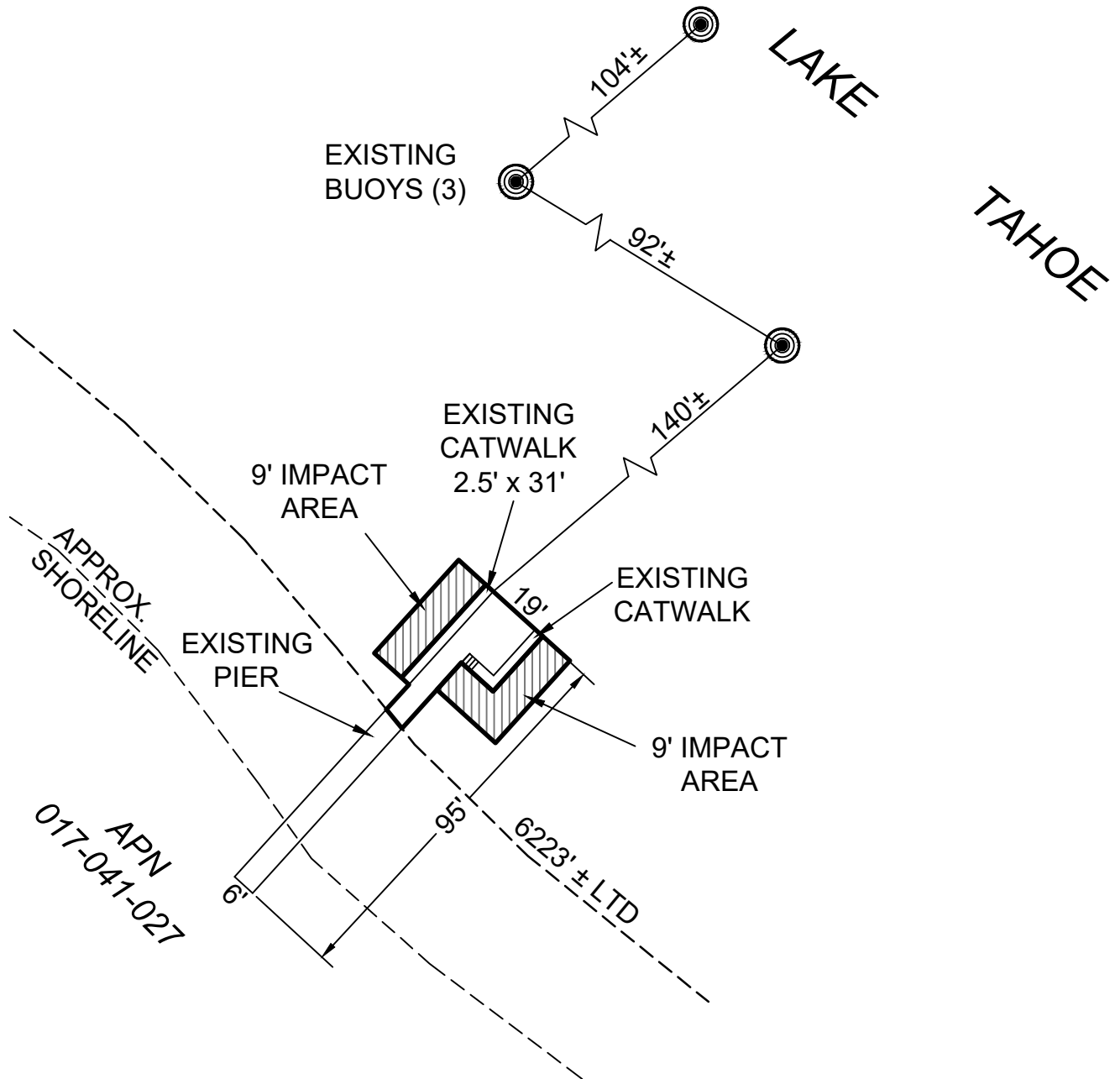
Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to those parcels described in Grant Deed recorded June 28, 20017 as Document Number 2017-0026231-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared 11/19/2020 by the California State Lands Commission Boundary Unit.





## EXHIBIT A

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LAND DESCRIPTION PLAT  
LEASE 9324, METCALF  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



