

Staff Report 11

LESSEE:

Karen Stone McCown, Trustee of the Karen Stone McCown Revocable Trust Agreement dated May 11, 1990, Amended and Restated August 13, 2003

APPLICANT:

Nader Panah-Izadi and Brigitte Panah-Izadi

PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 255 Drum Road, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of one existing mooring buoy.

TERM:

10 years, beginning February 23, 2021.

CONSIDERATION:

\$377 per year, with an annual Consumer Price Index adjustment, and \$1,278 to compensate for the unauthorized occupation of state sovereign land dating back to October 2017.

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 Authorized Improvements in this lease.

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 21, 2013, the Commission authorized a General Lease - Recreational Use for one existing mooring buoy to Karen Stone McCown, Trustee of the Karen Stone McCown Revocable Trust Agreement dated May 11, 1990, Amended and Restated August 13, 2003 ([Item C16, June 21, 2013](#)). The lease will expire on October 4, 2022. On April 15, 2016, the upland property and the mooring buoy were deeded to Nader Panah-Izadi. On March 24, 2020, the upland property and the mooring buoy were deeded to Nader Panah-Izadi and Brigitte Panah-Izadi. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the one existing mooring buoy.

The Lessee breached their lease by failing to notify the Commission prior to the sale or transfer of the upland property and intentionally discontinued use of the mooring buoy. Though the Lessee remains responsible for removing the buoy after the expiration or termination of their lease, Applicant has asserted ownership of the buoy by applying for a new lease. Staff recommends terminating the current lease and approving a new lease to authorize the Applicant's use of the lease premises.

Staff sent an annual rent invoice to the Lessee for October 5, 2017, through October 4, 2018 (the 2017-2018 lease period) that the Lessee did not pay. The Lessee paid rent through October 4, 2017. Staff believes it is not in the State's best interests to pursue the collection of rent, penalty, and interest from the Lessee for the 2017-2018 lease period, since they were no longer the upland owners as of April 15, 2016 and since the Applicant agreed to pay compensation in the amount of \$1,278 for October 5, 2017, through February 22, 2021, the day before staff recommends the new lease begin.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The one existing mooring buoy is used for the mooring of boats and facilitates 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 mooring buoy does not significantly alter the land, and the lease does not alienate the State's fee simple interest or permanently impair public rights. The buoy has 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 buoy occupies a relatively small area of the lake. The Applicant registered the buoy with TRPA on September 26, 2019 (#11236). Based on the foregoing, Commission staff believes that the mooring buoy 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 mooring buoy 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. 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. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of the 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 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 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 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. Waive annual rent, penalty, and interest due for the period of October 5, 2017, through October 4, 2018, and void annual rent invoice #42909 issued to Karen Stone McCown, Trustee of the Karen Stone McCown Revocable Trust Agreement dated May 11, 1990, Amended and Restated August 13, 2003.
2. Authorize termination, effective February 22, 2021, of Lease No. PRC ~~70909070~~, a General Lease – Recreational Use, issued to Karen Stone McCown, Trustee of the Karen Stone McCown Revocable Trust Agreement dated May 11, 1990, Amended and Restated August 13, 2003.
3. Authorize acceptance of compensation from the Applicant in the amount of \$1,278 for unauthorized occupation of State land for the period beginning October 5, 2017 through February 22, 2021.
4. 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 one 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 \$377, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 9070

LAND DESCRIPTION

One (1) parcel of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 20 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:

One (1) circular parcel of land, being 50 feet in diameter underlying one (1) existing buoy lying adjacent to those parcels as described in that Grant Deed, recorded April 16, 2016 as Document Number 2016-0015867 of Official Records of said County.

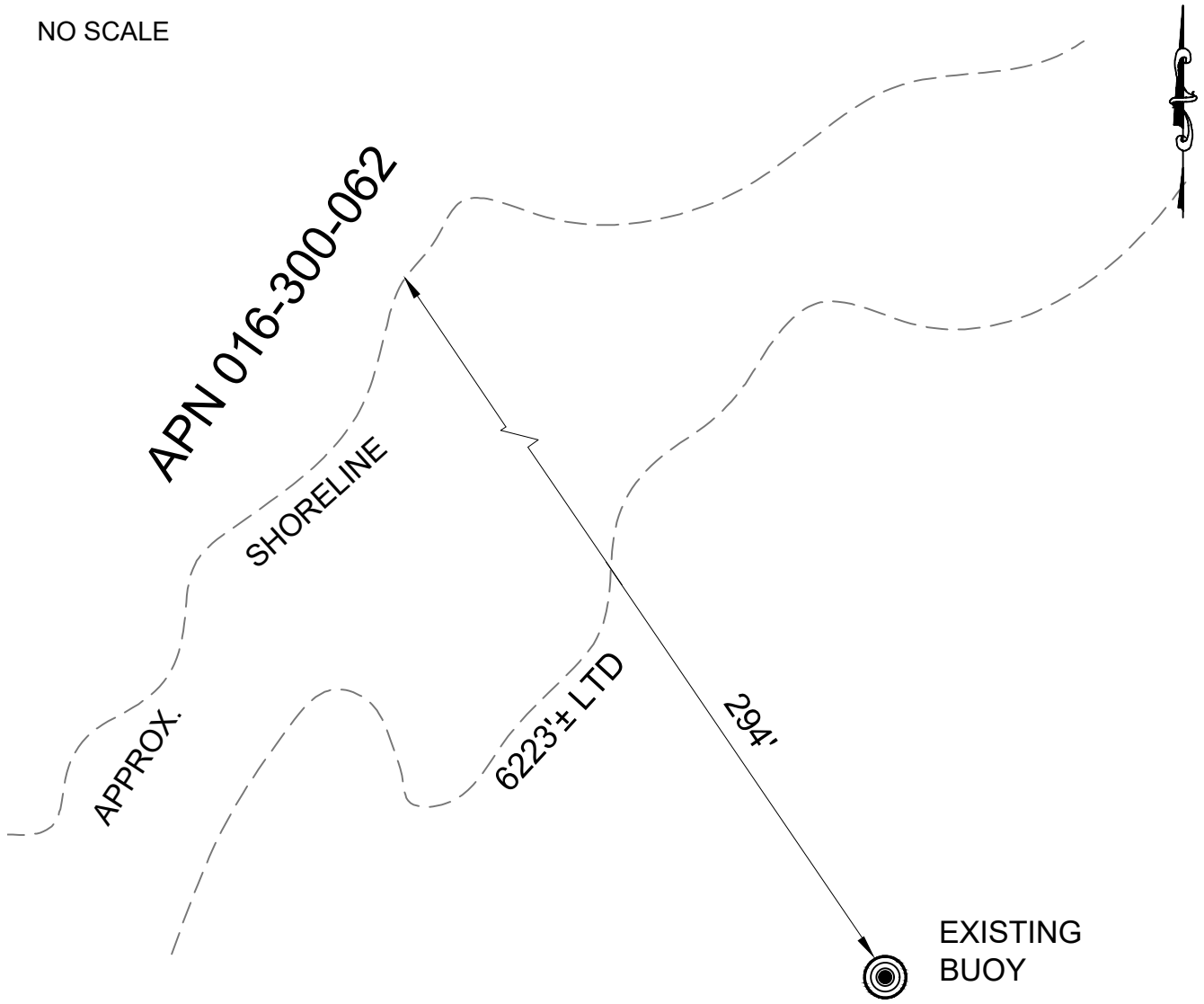
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared October 21, 2019 by the California State Lands Commission Boundary Unit.



NO SCALE



L A K E

T A H O E

EXHIBIT A

Page 2 of 2

MJJ 10/15/19

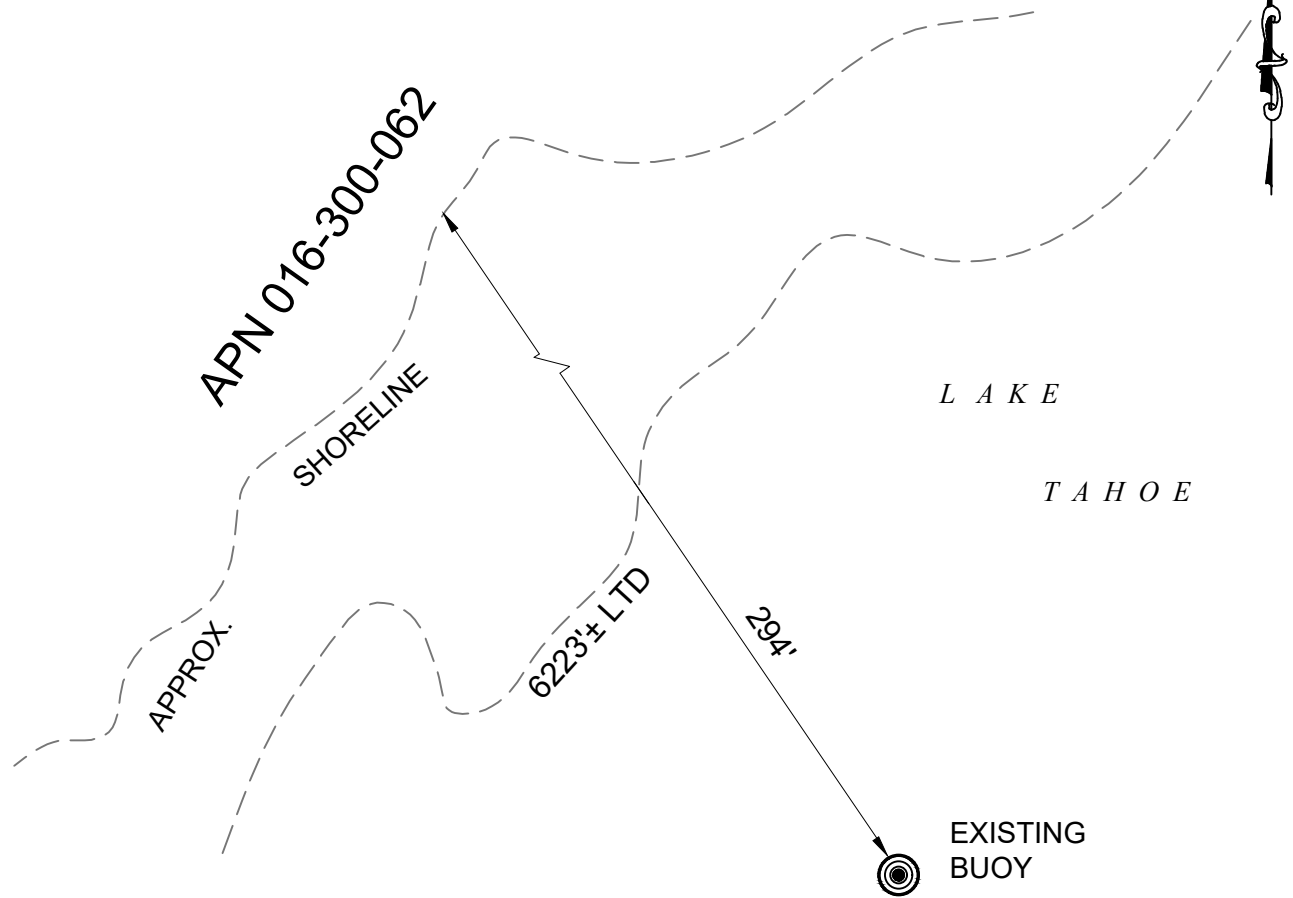
LAND DESCRIPTION PLAT
 LEASE 9070, PANAH-IZADI
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

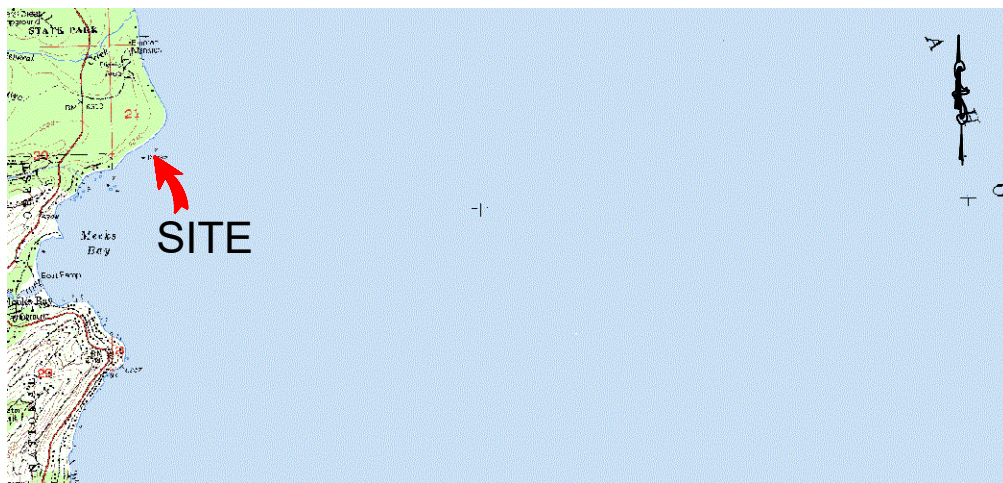
SITE



255 DRUM ROAD, NEAR MEEKS BAY

NO SCALE

LOCATION

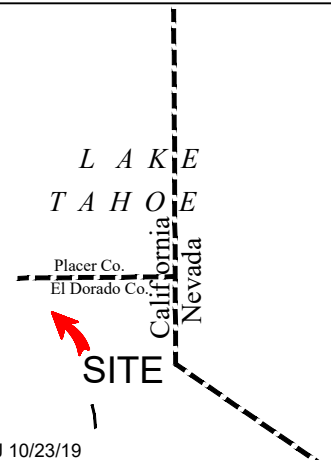


MAP SOURCE: USGS QUAD

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 9070
 PANAH-IZADI
 APN 016-300-062
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



MJJ 10/23/19