

Staff Report 17

LESSEE:

Roger B. Primm, Trustee of the Revised and Restated Roger B. Primm Family Trust
U/D/T dated January 30, 1990

APPLICANT:

Mark L. Engstrom and Anne Stille Engstrom, as Trustees of the Engstrom Family Trust
dated May 21, 2004

PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 3115 Jameson Beach Road,
near South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, and two mooring buoys.

TERM:

10 years, beginning April 27, 2021.

CONSIDERATION:

\$872 per year, with an annual Consumer Price Index adjustment; accept \$1,348
from the Applicant for the unauthorized occupation of State land for the period
beginning October 11, 2019 through April 26, 2021.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee expressly acknowledges that a permit from the Tahoe Regional Planning Agency (TRPA) is required for the Authorized Improvements and failure to obtain a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of this lease.
- 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:

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 September 20, 2013, the Commission authorized a 10-year General Lease – Recreational Use to Roger B. Primm, Trustee of the Revised and Restated Roger B. Primm Family Trust U/D/T dated January 30, 1990, for the continued use and maintenance of an existing pier and two mooring buoys ([Item C20, September 20, 2013](#)).

On October 11, 2019, the upland was deeded to Mark L. Engstrom and Anne Stille Engstrom, as Trustees of the Engstrom Family Trust dated May 21, 2004. The Applicant has acknowledged 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 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 September 30, 2019, prior to transferring the upland property to the Applicant. On August 15, 2019, staff sent invoice number 48168 to the Lessee for annual rent covering the period of October 1, 2019 through September 30, 2020. On August 18, 2020, staff sent invoice number 50751 covering the period October 1, 2020 through September 30, 2021. The Lessee did not submit payment for either of these invoices.

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 as of October 11, 2019, the Lessee was no longer the upland owner. The Applicant has agreed to pay

compensation for the unauthorized occupation of State land for the period prior to the beginning date of the proposed lease.

Staff recommends the Commission accept settlement in the amount of \$1,348 from the Applicant for the unauthorized occupation of State land for the period beginning October 11, 2019 (the first day of unpaid rent) through April 26, 2021. Staff recommends issuance of a new lease beginning April 27, 2021.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier 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 a wide sandy beach which allows for public access. The pier is built on single pilings and allows the public to navigate or walk next to the pier. The two mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. On April 10, 2019, TRPA registered the mooring buoys under Registration No.10220.

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 the pier and two mooring buoys 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 is consistent with the common law Public Trust Doctrine, will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; 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 prior Lessee may be required to remove the pier 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 the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
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:

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

RECOMMENDED ACTION:

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 October 1, 2019 through September 30, 2021, and void annual rent invoices numbers 48168 created on August 15, 2019, and #50751 created on August 18, 2020, and issued to Roger B. Primm, Trustee of the Revised and Restated Roger B. Primm Family Trust U/D/T dated January 30, 1990.
2. Authorize termination, effective April 27, 2021, of Lease No. PRC 6863, a General Lease – Recreational Use, issued to Roger B. Primm, Trustee of the Revised and Restated Roger B. Primm Family Trust U/D/T dated January 30, 1990.
3. Authorize acceptance of compensation for the unauthorized occupation of state land from the Applicant in the amount of \$1,348 for the period beginning October 11, 2019 through April 26, 2021.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 27, 2021, for a term of 10 years for continued use and maintenance of an existing pier 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 \$872, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 6863

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 6, Township 12 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved November 9, 1866, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and catwalk lying adjacent to that parcel described in Grant Deed recorded October 11, 2019 as Document Number 2019-0043150-00 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 that parcel described in Grant Deed recorded October 11, 2019 as Document Number 2019-0043150-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 02/11/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



LAKE TAHOE

EXISTING BUOYS (2)

9' IMPACT AREA

6223'± LTD

416'±

EXISTING CATWALK
3' X 50.2'

EXISTING PIER

APPROX.
SHORELINE

10'

APN 032-120-012

EXHIBIT A

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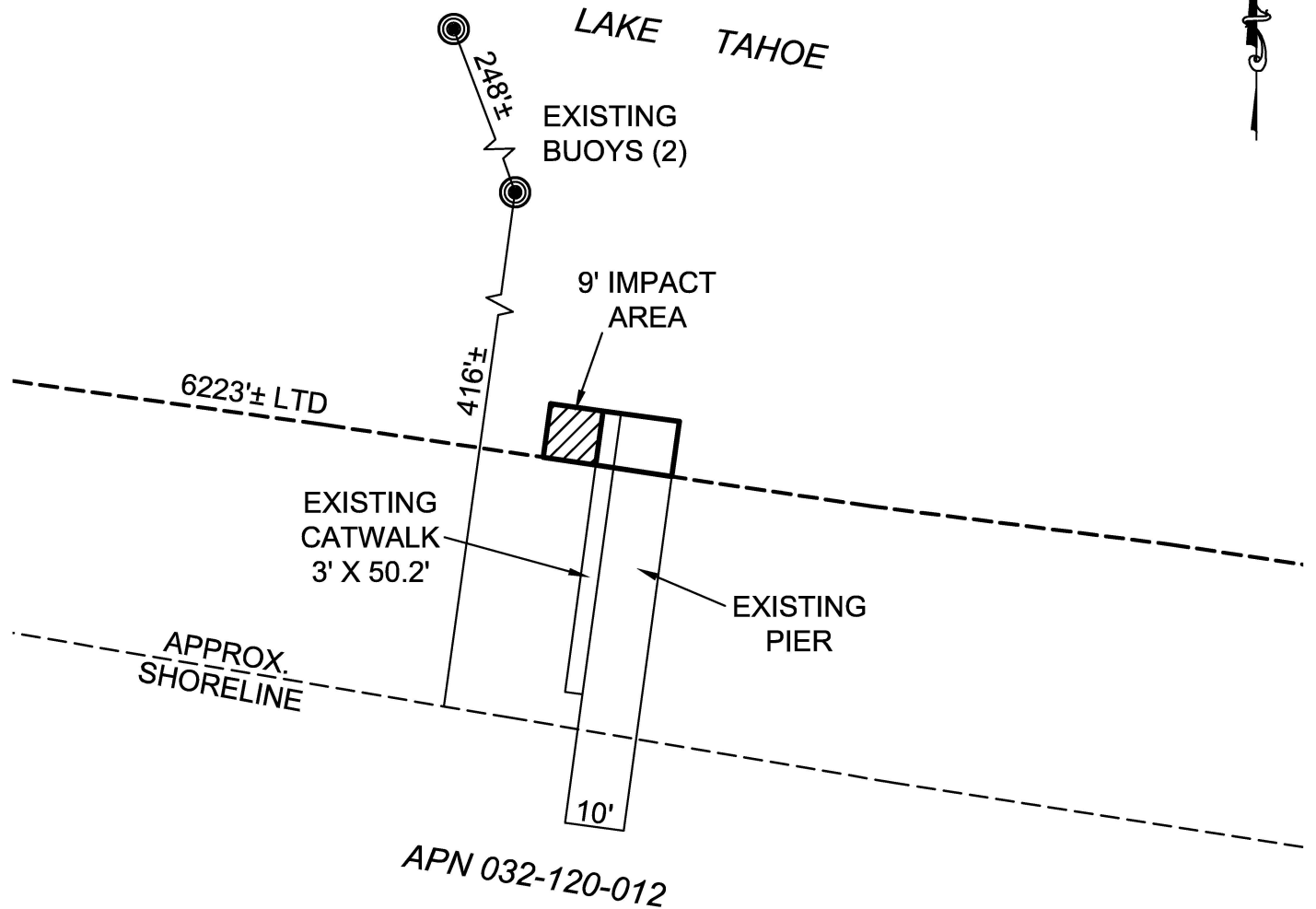
LAND DESCRIPTION PLAT
LEASE 6863, ENGSTROM FAMILY TRUST
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



3115 JAMESON BEACH ROAD, SOUTH LAKE TAHOE

NO SCALE

LOCATION

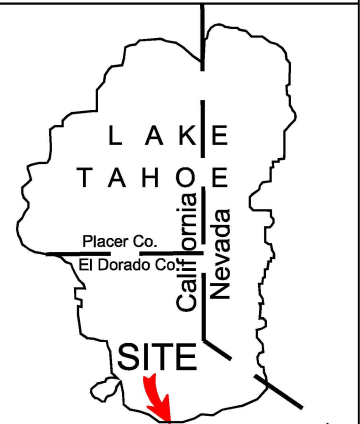


MAP SOURCE: USGS QUAD

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 6863
 ENGSTROM FAMILY TRUST
 APN 032-120-012
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



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