

# Staff Report 02

## **RESCINDING APPLICANT:**

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David Harris Berger and Sarah James Berger

## **APPLICANT:**

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David Harris Berger and Sarah Jane Berger, or their successor(s), as Trustees of The David and Sarah Berger Family Trust under Revocable Trust Agreement dated January 22, 2020, as amended

## **PROPOSED ACTION:**

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Rescission of Approval and Authorization of a General Lease – Recreational Use

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

Sovereign land in Lake Tahoe, adjacent to 2562 Lake Forest Road, near Tahoe City, Placer County.

## **AUTHORIZED USE:**

Use and maintenance of two existing mooring buoys not previously authorized by the Commission.

## **TERM:**

10 years, beginning June 29, 2021.

## **CONSIDERATION:**

\$754 per year, with an annual Consumer Price Index adjustment; and \$1,515 for the unauthorized occupation of State land for the period of June 28, 2019 through June 28, 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:**

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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 27, 2021, the Commission authorized a 10-year General Lease-Recreational Use to David Harris Berger and Sarah James Berger, for two existing mooring buoys not previously authorized by the Commission ([Item C03, April 27, 2021](#)). After the Commission's approval, but before the lease could be executed, the Applicant informed staff that ownership of the adjacent upland transferred to a trust on March 10, 2020. The parties are now seeking to rescind the previous lease authorization in favor of authorizing a lease to David Harris Berger and Sarah Jane Berger, or their successor(s), as Trustees of The David and Sarah Berger Family Trust under Revocable Trust Agreement dated January 22, 2020, as amended. The mooring buoys have been registered with TRPA (Registration No. 10365).

Staff is requesting compensation from the Applicant in the amount of \$1,515 for the unauthorized occupation of State land for the period of June 28, 2019 through June 28, 2021, the day preceding issuance of the proposed new lease. The Bergers assumed title of the upland property adjoining the lease premises on June 28, 2019, and subsequently transferred title into a trust on March 10, 2020. Therefore, the Applicant is responsible for compensation from the initial date of upland ownership. The indemnity provisions of the proposed lease will apply to the period of unauthorized occupation.

The subject buoys are privately owned and maintained 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 at this location for many years. The 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 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 may be required to remove the two mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of a 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. Rescinding the lease authorization of a General Lease – Recreational Use 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 rescission and reauthorization 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. Authorize acceptance of compensation from the Applicant in the amount of \$1,515, for the unauthorized occupation of State land for the period beginning June 28, 2019 through June 28, 2021; and
2. Authorize the rescission of the Commission's April 27, 2021, authorization of a General Lease – Recreational Use to David Harris Berger and Sarah James Berger; and

3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 29, 2021, for a term of 10 years, for the use and maintenance of two existing mooring buoys 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 \$754, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

A 2395

### LAND DESCRIPTION

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 5, Township 15 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, 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 March 10, 2020 as Document Number 2020-0021253-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared 03/05/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



APN  
094-140-017

APPROX.  
SHORELINE

6223± LTD

LAKE

580'±

580'±

TAHOE

EXISTING  
BUOYS (2)



## EXHIBIT A

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LAND DESCRIPTION PLAT  
A 2395, BERGER FAMILY TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

## SITE

APN  
094-140-017

APPROX.  
SHORELINE

6223± LTD

LAKE

580±

580±

TAHOE

EXISTING  
BUOYS (2)

2562 LAKE FOREST ROAD, NEAR TAHOE CITY

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**

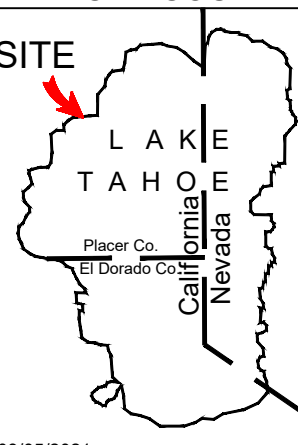
A 2395

BERGER FAMILY TRUST

APN 094-140-017

GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY

**SITE**



TS 03/05/2021