

# Staff Report 07

## **LESSEE:**

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David J. Ferrari

## **APPLICANT:**

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Reynold J. DiLena

## **PROPOSED ACTION:**

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Termination of a General Lease – Recreational Use and Issuance of a General Lease – Recreational Use

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

Sovereign land located in Lake Tahoe, adjacent to 6259 North Lake Boulevard, near Tahoe Vista, Placer County.

## **AUTHORIZED USE:**

Use and maintenance of two existing freshwater intake pipelines not previously authorized by the Commission; and two existing mooring buoys.

## **TERM:**

10 years, beginning June 29, 2021.

## **CONSIDERATION:**

\$768 per year, with an annual Consumer Price Index adjustment; and \$441 to compensate for the unauthorized occupation of state sovereign land for the period beginning December 1, 2020 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, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On April 26, 2013, the Commission authorized Lease Number PRC 8431, a 10-year General Lease – Recreational Use, for the continued use and maintenance of two mooring buoys to David J. Ferrari ([Item C48, April 26, 2013](#)). During 2018, the Lessee died and the subsequent probate process continued for many months. The Lessee's family continued to make rent payments through November 30, 2020. On April 7, 2020, fee interest in the upland parcel transferred to Reynold J. Dilena. The lease will expire on November 30, 2022.

Staff recommends termination of Lease Number PRC 8431.1, a General Lease Recreational Use, because the Lessee is unable to sign a lease quitclaim deed. The Applicant is applying for a General Lease – Recreational Use, for use and maintenance of two existing freshwater intake pipelines not previously authorized by the Commission; and use and maintenance of two existing mooring buoys.

The Applicant has agreed to pay compensation of the unauthorized occupation of state land from December 1, 2020 through June 28, 2021, the day before the June Commission meeting when the new lease begins. Staff further recommends the Commission accept compensation for the Applicant in the amount of \$441 for the unauthorized occupation of state land prior to the commencement of the proposed lease.

The Applicant has filed an Initial Statement of Diversion from the State Water Resources Control Board for the two existing freshwater intake pipelines. The freshwater intake pipelines are not generally associated with traditional Public Trust uses. However, these pipelines have been in place for many years, and occupy a small area of the lakebed. The owners use the pipelines to provide water to the

upland property. The pipelines do not interfere with Public Trust activities at this location at this time.

The Applicant owns the uplands 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 two buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. TRPA registered the buoys on September 4, 2019 (Registration No. 10837).

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; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. The Commission authorized Lease 9142 to the Applicant and GDP Group LLC, a Delaware limited liability company, a General Lease – Recreational Use for removal of the deck/wall, joint-use pier construction, and use and maintenance of the two existing mooring buoys located adjacent to 6229 North Lake Boulevard on December 17, 2020 ([Item 3, December 17, 2020](#)).
2. 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 freshwater intake pipelines and 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.

3. This action is consistent with the “Meeting Evolving Public Trust Needs” Strategic Focus Area of the Commission’s 2021-2025 Strategic Plan.
4. 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).

5. 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:**

1. Find that the existing and, for a limited period, continuing use and maintenance of the two buoys will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,
2. Find that the existing and, for a limited period, continuing use and maintenance of the freshwater intake pipelines are not generally associated with traditional Public Trust uses, but the current use does not substantially interfere with the trust; and,
3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Terminate, effective June 28, 2021, Lease PRC 8431, a General Lease – Recreational Use, issued to David J. Ferrari.
2. Authorize acceptance of compensation from the Applicant in the amount of \$441 for the unauthorized occupation of State lands for the period beginning December 1, 2020 through June 28, 2021.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 29, 2021, for a term of 10 years, for the continued use and maintenance of two existing freshwater intake pipelines not previously authorized by the Commission; and 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 \$768, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 8431**

**LAND DESCRIPTION**

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 14, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

**PARCEL 1 – WATER INTAKE PIPES**

All those lands underlying the existing water intake pipes lying adjacent to that PARCEL 2 described in Grant Deed recorded April 7, 2020 as Document 2020-0030735-00 in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

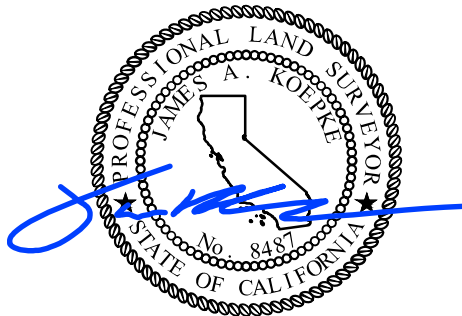
**PARCELS 2 and 3 – BUOYS**

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that PARCEL 2 described in Grant Deed recorded April 7, 2020 as Document 2020-0030735-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared April 22, 2021 by the California State Lands Commission Boundary Unit.

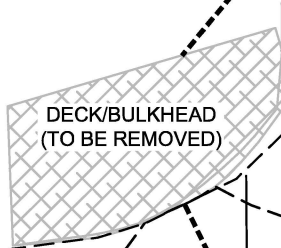


NO SCALE



N. LAKE BLVD.

APN  
117-010-016



6223'± LTD

APPROX.  
SHORELINE

WATER  
INTAKE  
PIPES  
(68'± long)

TAHOE

LAKE

200'±

50'±

EXISTING  
BUOYS (2)

### EXHIBIT A

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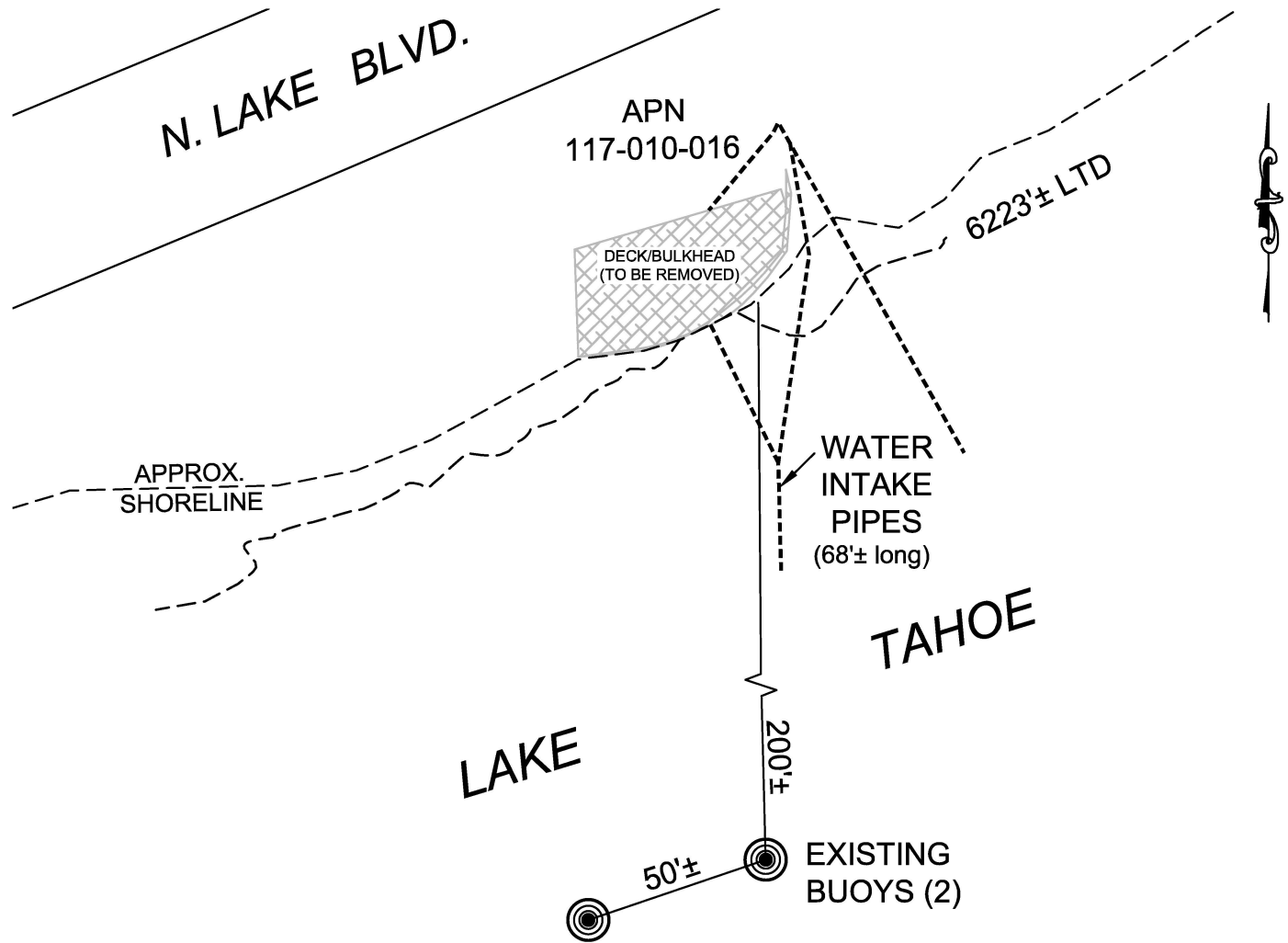
LAND DESCRIPTION PLAT  
LEASE 8431, DILENA  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

### SITE



6259 NORTH LAKE BLVD., TAHOE VISTA

NO SCALE

### LOCATION

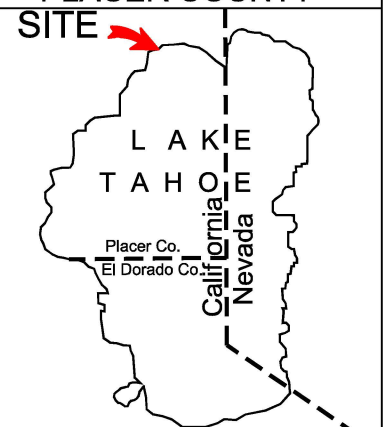


MAP SOURCE: USGS QUAD

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 8431  
DILENA  
APN 117-010-016  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY



TS 04/22/2021