

# Staff Report 08

## **APPLICANT:**

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Victoria L. Figone, Trustee, Figone Family Trust For Benefit Of Sarah J. Ihnken dated December 31, 2020; and Victoria L. Figone, Trustee, Figone Family Trust For Benefit Of Linda I. Ihnken dated December 31, 2020

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land located in Lake Tahoe, adjacent to 32 Moana Circle, near Homewood, Placer County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier and two mooring buoys.

## **TERM:**

10 years, beginning April 14, 2021

## **CONSIDERATION:**

\$1,313 per year, with an annual Consumer Price Index adjustment.

## **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 October 27, 2011, the Commission authorized a 10-year General Lease – Recreational Use for the continued use and maintenance of an existing pier and two mooring buoys to Bay View Refuse Service, Inc. a California Corporation ([Item C12, October 27, 2011](#)). On December 6, 2016, the Commission authorized an amendment of the lease to reflect a reduced lease area and a revision of annual rent ([Item C21, December 6, 2016](#)).

On June 26, 2020, ownership of the upland parcel transferred from the family corporation to trusts within the family. Because the deed transfers occurred within the Figone family, the Lessee did not notify the Commission of changes in ownership or seek an assignment of the lease. Although this was an unauthorized assignment under the terms of the lease, the Lessee's family trusts continued to fulfill the obligations of the lease. The lease expired on April 13, 2021.

The Applicant is now applying for a General Lease – Recreational Use, for the continued use and maintenance of an existing pier and two mooring buoys. For the purposes of consistency and ease of record-keeping and accounting, staff recommends retaining the original lease anniversary date and starting the new lease on April 14, 2021. Staff further recommends a provision in the lease applying the indemnity provision to the entire period of unauthorized occupation, beginning June 26, 2020, when the ownership was transferred to the Applicant, through June 28, 2021, the day before the proposed lease begins.

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 pier is built on pilings, providing public access for pedestrians and lake-related activities at varying water levels underneath the pier. The immediate area of the pier is gently sloped with sand and small pebbles. 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 9, 2019 (Registration No. 10908).

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 may be required to remove the pier and 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.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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, 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 the activity 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 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 Public Trust Doctrine; and is in the best interests of the State.

### **AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 14, 2021, for a term of 10 years, for the 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 \$1,313, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 5300**

**LAND DESCRIPTION**

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 7, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, 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 Quitclaim Deed recorded January 8, 2021 as Document Number 2021-0003112-00 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 Quitclaim Deed recorded January 8, 2021 as Document Number 2021-0003112-00 in Official Records of said County.

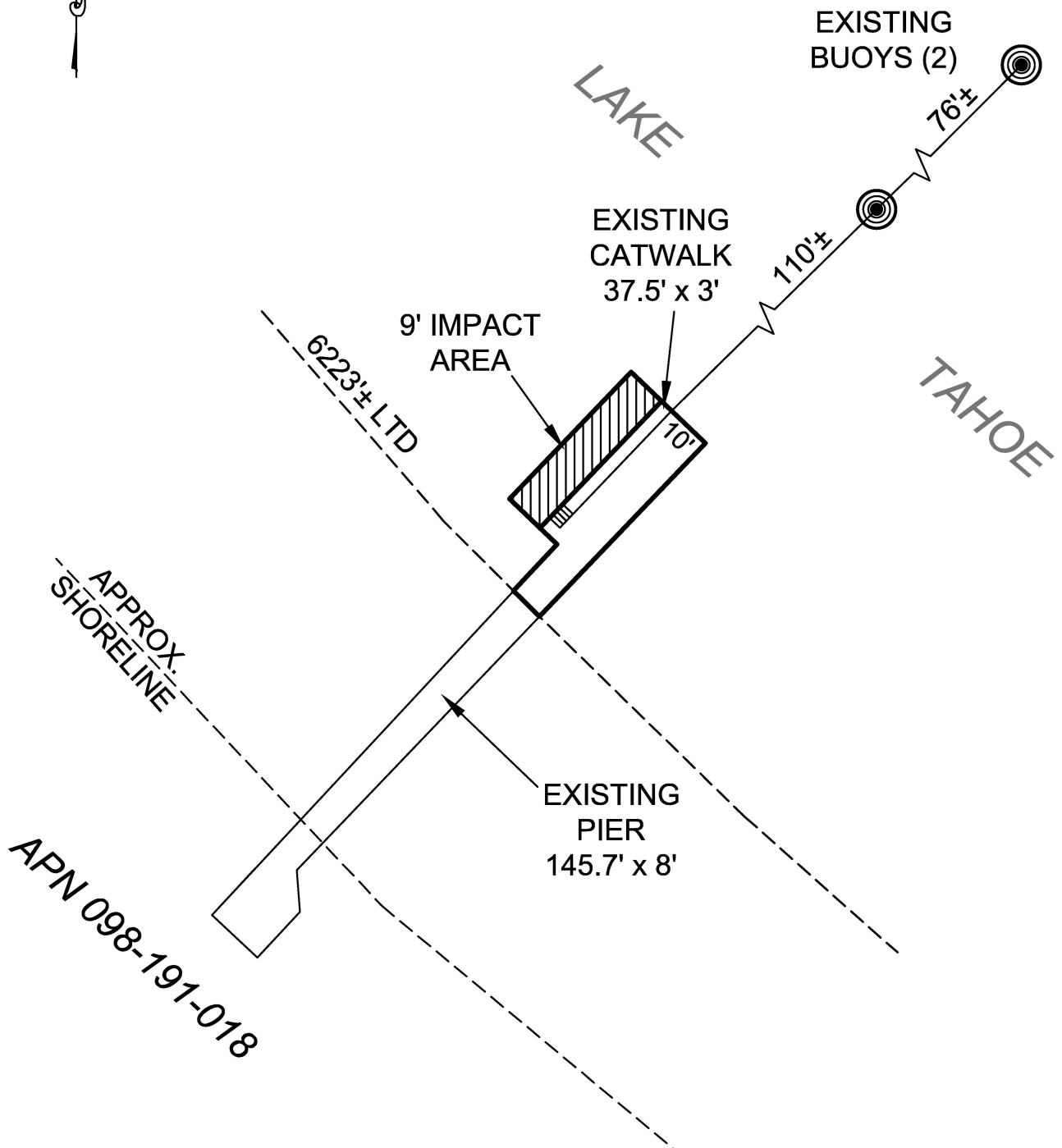
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 04/30/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

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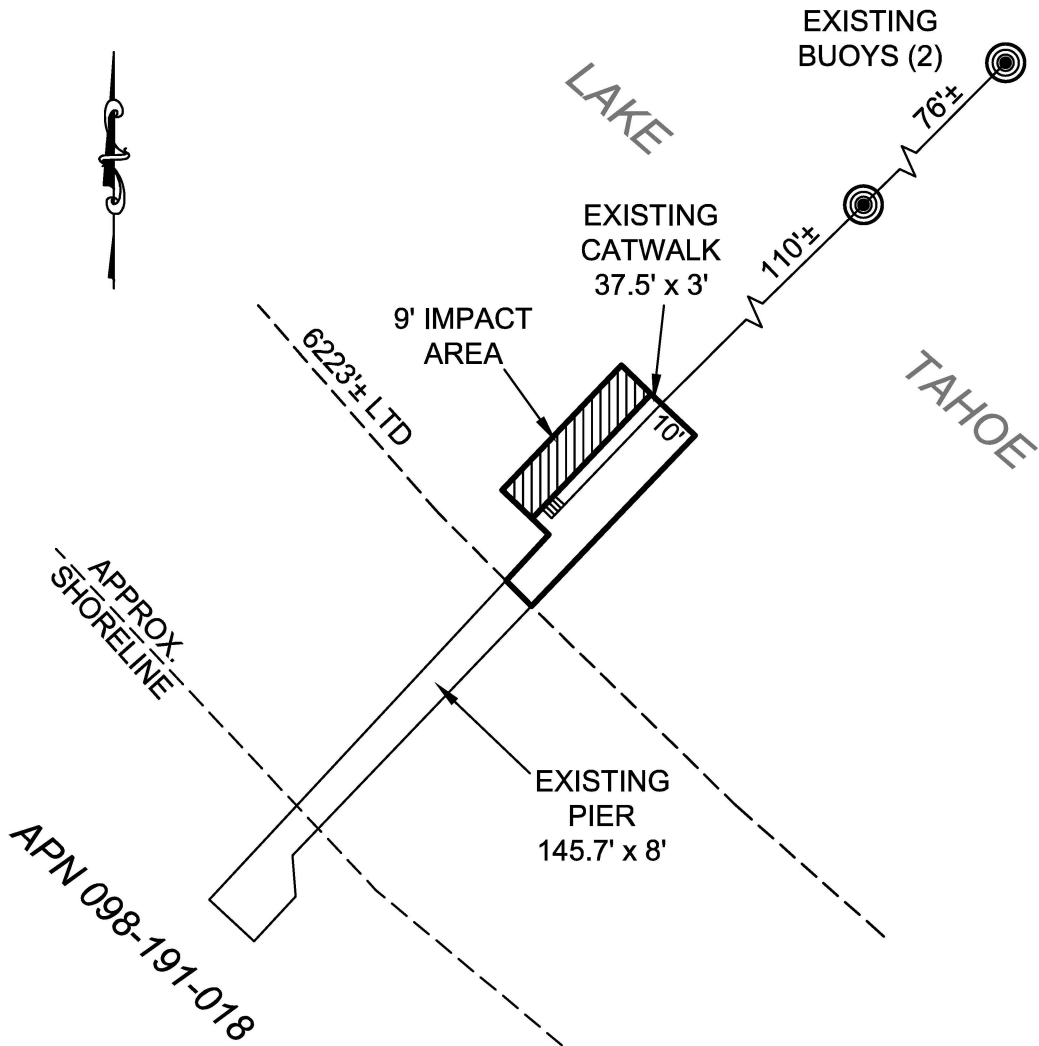
TS 04/30/2021

LAND DESCRIPTION PLAT  
LEASE 5300, FIGONE FAMILY TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



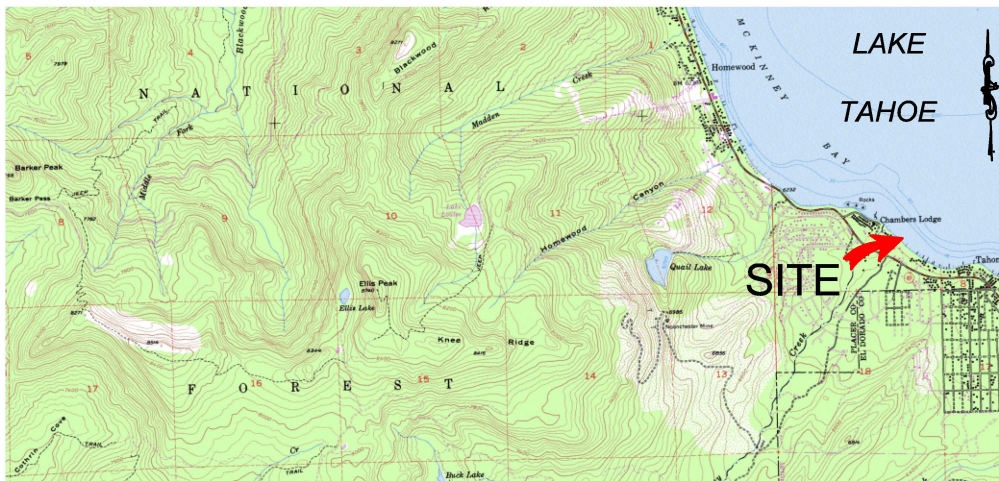
## SITE



## 32 MOANA CIRCLE, NEAR HOMEWOOD

NO SCALE

## LOCATION

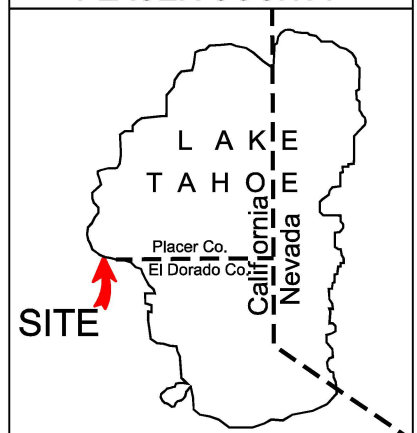


MAP SOURCE: USGS QUAD

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 5300  
FIGONE FAMILY TRUST  
APN 098-191-018  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY



TS 04/30/2021