

Staff Report 04

LESSEE:

Douglas P. Ley and Linda M. Gaudiani, Trustees of the Gaudiani-Ley 2007 Trust
dated August 28, 2007

APPLICANT:

Carl G. Baughn and Emilie Baughn

PROPOSED ACTION:

Consider Waiver of Rent, Penalty, and Interest; 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 8781 Rubicon Drive, near
Rubicon Bay, El Dorado County.

AUTHORIZED USE:

Use and maintenance of two existing mooring buoys.

TERM:

10 years, beginning December 8, 2021.

CONSIDERATION:

\$546 per year, with an annual Consumer Price Index adjustment, and \$1,054 to
compensate for the unauthorized occupation of state land for two mooring buoys
for the period beginning July 17, 2020, through December 7, 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 the 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, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 19, 2012, the Commission authorized a 10-year General Lease – Recreational Use for the continued use and maintenance of two mooring buoys to Douglas P. Ley and Linda M. Gaudiani, Trustees of the Gaudiani-Ley 2007 Trust dated August 28, 2007 ([Item 20, October 19, 2012](#)). On November 29, 2017, the Commission authorized continuation of the annual rent ([Executive Officer's Report, November 29, 2017](#)). The lease will expire on October 18, 2022.

On September 19, 2018, ownership interest in the upland property transferred from the Lessee to Ann Monteleone Burr. The Lessee paid rent through October 18, 2019 but did not notify the Commission of changes in ownership or seek an assignment of the lease. Staff recommends termination of Lease No. 8210 and issuance of a new lease.

Staff sent Invoice Nos. 48218 and 50794 to the Lessee for rent that was due October 19, 2019, and October 19, 2020, respectively. Staff recommends voiding Invoice No. 48218 and Invoice No. 50794, and waiving rent and any penalty and interest.

On July 17, 2020, ownership of the upland parcel transferred again, from Ann Monteleone Burr to Carl G. Baughn and Emilie Baughn (Applicant).

The Applicant is now applying for a General Lease – Recreational Use, for the continued use and maintenance of two existing mooring buoys. Because the Applicant took ownership of the upland on July 17, 2020, the lease provisions regarding indemnity extend to the period of the Applicant's unauthorized occupation of State-owned lands, from July 17, 2020, through December 7, 2021, the day before the beginning date of the proposed lease.

If the Commission approves the proposed lease, the Applicant will pay \$1,054 in compensation for the unauthorized occupation of State land for the period beginning July 17, 2020, through December 7, 2021, and will be responsible for future rent.

The subject mooring buoys have existed for many years at this location, and TRPA registered the buoys on September 6, 2019 (Registration No. 10947).

The subject mooring buoys 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 existing mooring 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 common law Public Trust Doctrine; 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 Applicant may be required to remove the 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 Areas of the Commission's 2021-2025 Strategic Plan.
3. ~~Acceptance~~ Termination of ~~a quitclaim deed~~ 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 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 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. Terminate, effective December 7, 2021, Lease Number PRC 8210, a General Lease – Recreational Use, issued to Douglas P. Ley and Linda M. Gaudiani, Trustees of the Gaudiani-Ley 2007 Trust dated August 28, 2007.
- ~~1.2.~~ Waive rent, penalty, and interest due by Lessee for the period of October 19, 2019, through October 18, 2020, and void annual rent invoice number 48218 issued to Douglas P. Ley and Linda M. Gaudiani, Trustees of the Gaudiani-Ley 2007 Trust dated August 28, 2007.
- ~~2.3.~~ Waive rent, penalty, and interest due by Lessee for the period of October 19, 2020, through October 18, 2021, and void annual rent invoice number 50794 issued to Douglas P. Ley and Linda M. Gaudiani, Trustees of the Gaudiani-Ley 2007 Trust dated August 28, 2007.
- ~~3.4.~~ Authorize acceptance of compensation from the Applicant in the amount of \$1,054 for the unauthorized occupation of State lands for the period beginning July 17, 2020, through December 7, 2021.
- 4.5. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 8, 2021, for a term of 10 years, for the continued use and maintenance of 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 \$546, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8210

LAND DESCRIPTION

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 32, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of El Dorado, State of California, more particularly described as follows:

PARCELS 1 & 2 – 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 July 17, 2020 as Document Number 2020-0035632-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/07/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



EXISTING
BUOYS (2)

181'±

289'±

LAKE
TAHOE

APN 016-211-06

APPROX. SHORELINE

6223'± LTD

EXHIBIT A

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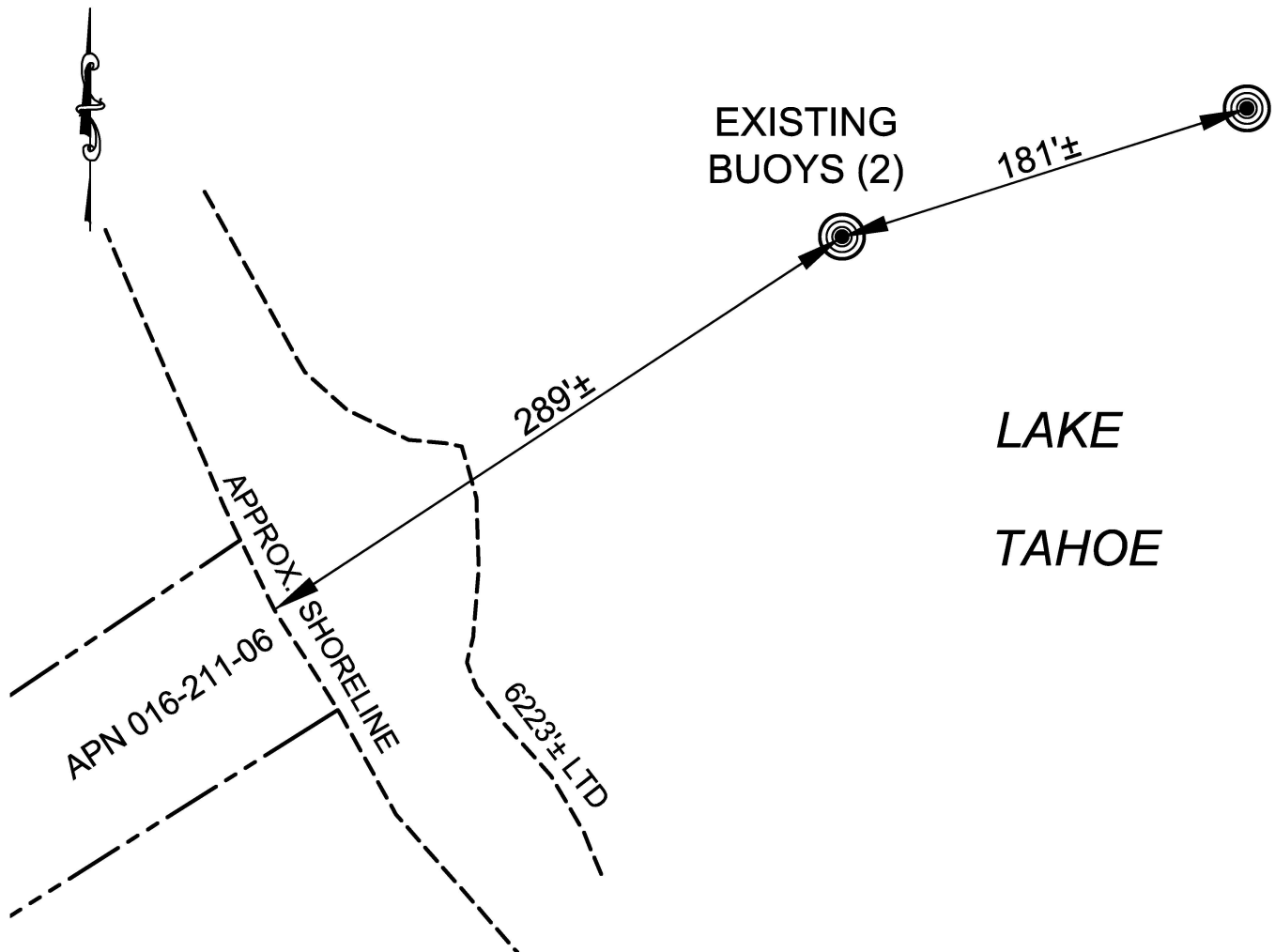
LAND DESCRIPTION PLAT
LEASE 8210, BAUGHN
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



8781 RUBICON DRIVE, NEAR RUBICON BAY

NO SCALE

LOCATION

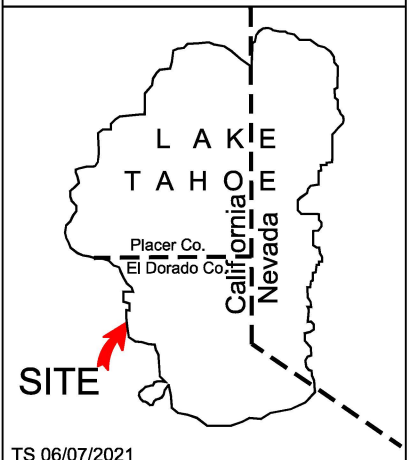


MAP SOURCE: USGS QUAD

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 8210
BAUGHN
APN 016-211-06
GENERAL LEASE-
RECREATIONAL USE
EL DORADO COUNTY



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