

Staff Report 06

APPLICANT:

Robert G. Bussey and Barbara G. Bussey, Trustees of the Robert G. Bussey and Barbara G. Bussey Family Trust dated March 14, 2002; Jennifer Hughes Dowley; Howard Reese Hughes; Meredith Hughes Lyons; and Andrew Pointe Legacy Homes, LP, a California limited partnership

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 3105, 3115, and 3125 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Construction, use, and maintenance of a joint-use pier.

TERM:

10 years, beginning December 8, 2021

CONSIDERATION:

\$1,459 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 TRPA permit 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.

- The public will be allowed to pass and re-pass over the landward end of the pier via stairs with signs posted on each side of the pier to provide continuous shoreline access to the Public Trust easement below elevation 6228.75, Lake Tahoe Datum.
- Within 60 days of completing the construction of authorized improvements and the removal of the concrete boat ramp, Lessee will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed and where the boat ramp was removed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor’s Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Prior to construction, a current Tahoe yellow cress (TYC) survey is required to be conducted between June 15 and September 30 and must be submitted to the Commission. If TYC is present, a Construction Impact Avoidance Plan must be submitted to the Commission for approval prior to construction to demonstrate no impact to the plant. The Plan must identify the location of TYC stems and include measures for ensuring no impact to the plant, including potential relocation of pilings, pier location, and construction access and staging areas; use of protection fencing surrounding TYC stems; signage for no work zones; etc. Revision of the pier design may also require submittal of updated site plans illustrating the pier design revisions.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 1911, subdivision (c), 2000, and 2003.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

The Applicant has applied for a General Lease – Recreational Use, for the construction, use, and maintenance of a joint-use pier; the proposed authorization is contingent upon the lessee complying with the direction of TRPA to remove an existing concrete boat launch ramp located outside of the Commission’s leasing jurisdiction, within the Public Trust easement.

On September 30, 2020, the Applicant obtained TRPA Permit ERSP2020-0125, for construction of a new multiple parcel pier to serve the three subject littoral parcels

located at 3105, 3115, 3125 West Lake Boulevard, with a requirement to remove and existing concrete boat launch ramp. The parcel located at 3125 West Lake Boulevard has no associated lease or mooring buoys at this time, and no new moorings are authorized as part of TRPA permit ERSP2020-0125.

Based upon evidence in historic photographs, an existing concrete boat ramp (approximately 284 square feet in area) was installed by a prior owner of APN 085-280-043 and was in place at the time the property was acquired by the current owner in 2014.

No evidence was found to establish the existence of the concrete boat ramp prior to 1972, therefore through TRPA's site assessment of the property, the concrete boat ramp was deemed to have been illegally placed and TRPA has required that it be removed pursuant to the conditions set within TRPA Permit ERSP2020-0125. A condition of the proposed lease will require the Lessee to submit evidence of removal of the existing concrete boat ramp within two years of the effective date of the lease because its placement between low water and high water may impact the public's full use and enjoyment of the Public Trust easement in this area.

The proposed joint-use pier would be located directly to the south of and adjacent to the existing concrete boat ramp within parcel APN 085-280-043. The proposed pier will be 114 feet long, with a pierhead of 45 feet in length and 15 feet wide, with two 3-foot-wide adjustable catwalks on each side.

The proposed pier will be supported by fifteen (15) single steel pilings, 10 ¾-inch diameter steel pilings spaced 15-feet on-center. The pier will be accessed via three sets of stairs located at the landward end of the pier and two sets of stairs at the high-water mark. These stairs will be attached to the pier decking and each be supported by two 2.5-inch steel pipes from the lowest step.

Public access along the Public Trust easement will be provided by the stairs located on the landward end of the pier where the public will be allowed to pass and repass over the pier. Signs are required to be posted on each side of the pier identifying the designated public passageway and are required to be in place at all times.

Construction will occur after all approvals are obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, the Lahontan Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers. Prior to construction, a current Tahoe yellow cress (TYC) survey is required to be conducted between June 15 and September 30 and must be submitted to the Commission.

If TYC is present, a Construction Impact Avoidance Plan must be submitted to the Commission for approval prior to construction to demonstrate no impact to the plant. The Plan must identify the location of TYC stems and include measures for ensuring no impact to the plant, including potential relocation of pilings, pier location, and construction access and staging areas; use of protection fencing surrounding TYC stems; signage for no work zones; etc. Revision of the pier design may also require submittal of updated site plans illustrating the pier design revisions.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The proposed joint-use pier will be used for the docking and mooring of boats. 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 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 and 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 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.

CLIMATE CHANGE:

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe. The frequency and severity of natural disasters like flooding, wildfire, drought, extreme heat, and storms is increasing throughout the state of California, including the Sierra Nevada mountains, and will continue to accelerate through the end of the century. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events and shifts in seasonal characteristics. According to California's Fourth Climate Change Assessment, released in 2018, the most significant impacts of climate change in the Sierra Nevada Region are more intense heat, precipitation extremes, declining snowpacks, and changes in streamflow timing. The long-term warming trend will lead to warmer and shorter winters, and longer and dryer summers. Successive dry and warm winters are resulting in minimal snowpack, increased winter streamflows and floods, and decreased spring and summer runoff. Prolonged low lake levels will become normal. Low lake level conditions can create more expansive beaches

and increased shoreline access in dry months. However, these conditions interfere with boat launching and mooring facilities. This impact is most noticeable where the facilities are sited on shallow, low gradient lake bottom locations.

Dry winters will be punctuated with exceedingly wet years where prolonged and excessive precipitation can produce flash floods. High precipitation in these years will result in higher lake levels, causing beaches to narrow and reducing public access. Extra saturation of the soil can increase erosion, especially following intense wildfire seasons. Surface runoff water may carry more sediment into the lake, adversely impacting water quality and clarity. Climate change may also lead to more intense and unpredictable winds and storm events. These storms may deviate from prevailing wind patterns for the region. These winds can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Additionally, these winds can increase wave damage on structures and boats along the lake. Shoreline structures authorized under this lease may require more frequent inspection and maintenance to ensure they are not displaced during storm events. Watercraft moored to buoys, piers, or docks are also vulnerable to damage from high wind events and excessive waves.

CONCLUSION:

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:

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 will not be authorized to construct the joint-use pier. 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. On June 22, 2017, the Commission authorized Lease No. PRC 5728.1, a General Lease - Recreational Use, to Robert G. Bussey and Barbara G. Bussey, Trustees of the Robert G. Bussey and Barbara G. Bussey Family Trust dated March 14, 2002, for continued use and maintenance of one existing mooring buoy, located adjacent to 3115 West Lake Boulevard, APN: 085-280-043 ([June 22, 2017, Item C20](#)). The lease is set to expire on June 21, 2027. On October 9, 2020, TRPA registered the mooring buoy under Permit No. 10207.

3. On December 18, 2015, the Commission authorized Lease No. PRC 7556.1, a General Lease – Recreational Use, to Thomas Bryte Hughes and Martha Reese Hughes, Trustees of the Thomas and Martha Hughes 2006 Revocable Trust, for continued use and maintenance of two existing mooring buoys, located adjacent to 3105 West Lake Boulevard, APN: 085-280-042 ([December 18, 2015, Item C20](#)). The lease is set to expire on August 11, 2025. On September 30, 2019, TRPA registered the mooring buoys under Permit No. 11314. On February 19, 2021, ownership of the upland parcel transferred to successor Trustees. On October 21, 2021, the Commission authorized the assignment to Jennifer Hughes Dowley; Howard Reese Hughes; and Meredith Hughes Lyons ([October 21, 2021, Item 2](#)).
4. This action is consistent with the “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
5. Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(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.

APPROVALS OBTAINED:

Tahoe Regional Planning Agency
California Department of Fish and Wildlife

APPROVALS REQUIRED:

Lahontan Regional Water Quality Control Board
U.S. Army Corps of Engineers

EXHIBITS:

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

RECOMMENDED ACTION:

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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(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 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 the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the new improvements following construction.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 8, 2021, for a term of 10 years, for construction, use, and maintenance of a joint-use pier, contingent on the lessee's compliance with TRPA Permit ERSP2020-0125; 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 \$1,459, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

A 2953

LAND DESCRIPTION

A parcel of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 25, Township 15 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved December 20, 1865, County of Placer, State of California, more particularly described as follows:

All those lands underlying a proposed multi-use pier with two catwalks lying adjacent to that parcel described in Grant Deed recorded March 17, 2016 as Document Number 2016-0018457-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

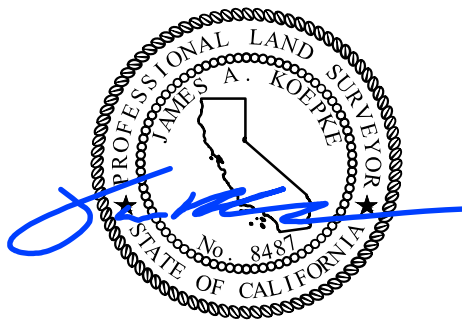
EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 02/08/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

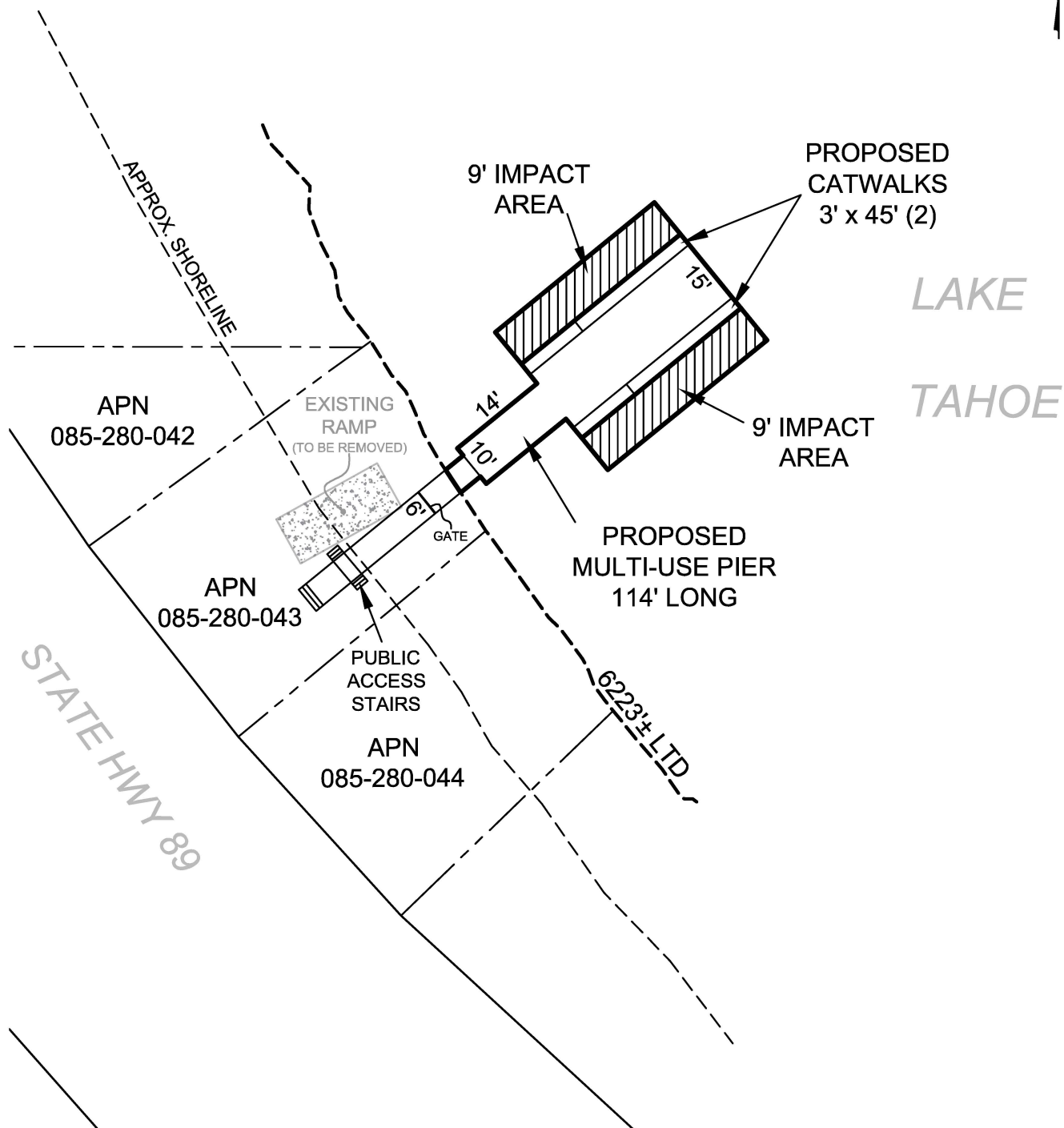


EXHIBIT A

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LAND DESCRIPTION PLAT
A 2953, BUSSEY, ET AL
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



SITE

NO SCALE

APPROX. SHORELINE

APN
085-280-042

EXISTING
RAMP
(TO BE REMOVED)

APN 085-280-043

APN
35-280-044

9' IMPACT
AREA

PROPOSED
CATWALKS
3' x 45' (2)

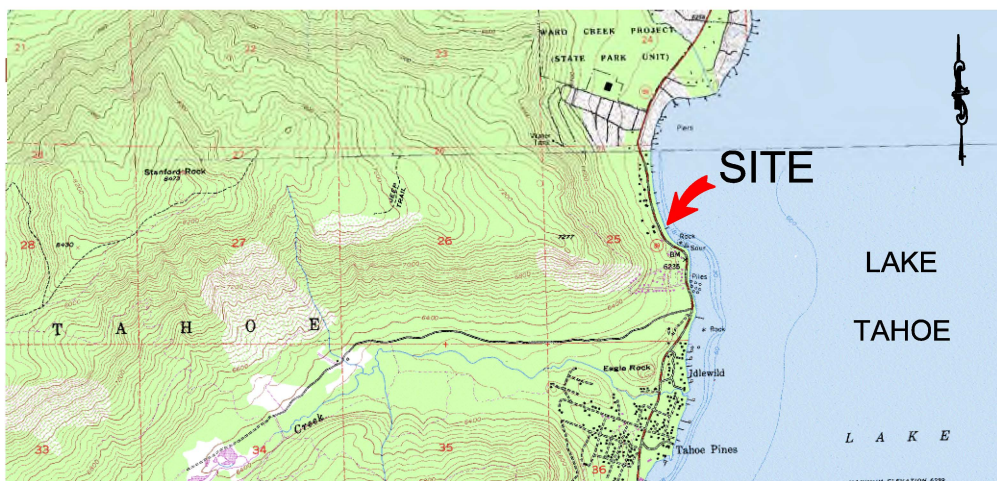
' IMPACT AREA

PROPOSED
MULTI-USE PIER
114' LONG

3105 - 3125 WEST LAKE BLVD., HOMEWOOD

LOCATION

NO SCALE

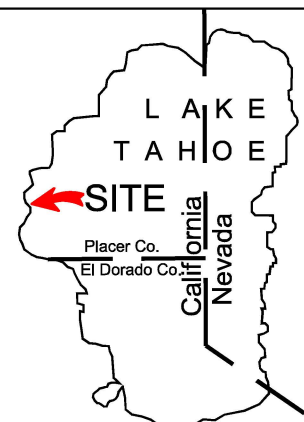


MAP SOURCE: USGS QUAD

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 2953
BUSSEY, ET AL
APNs 085-280-042, -043 & -044
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY**



TS 02/08/2021