

Staff Report 14

APPLICANT:

Cheryl Ann English; Procter J. Hug; and Elyse Hug Pasha

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8670 Brockway Vista Avenue, near Kings Beach, Placer County.

AUTHORIZED USE:

Continued use and maintenance of two existing mooring buoys and a breakwater.

TERM:

10 years, beginning December 8, 2021.

CONSIDERATION:

\$1,848 per year, with an annual Consumer Price Index adjustment; and \$542 for the unauthorized occupation of State land for the period of September 1, 2021 through December 7, 2021.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing, and lake-related recreation.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from the Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 September 1, 2011, the Commission authorized a General Lease - Recreational and Protective Structure Use for two existing mooring buoys and a breakwater to Procter R. Hug, Jr. and Barbara E. Hug, as Co-Trustees of the Procter R. Hug, Jr. and Barbara E. Hug Family Trust Agreement dated November 21, 1988; ([Item C11, September 1, 2011](#)). On August 27, 2013, the portion of the upland property and facilities owned by Procter R. Hug, Jr. and Barbara E. Hug, as Co-Trustees of the Procter R. Hug, Jr. and Barbara E. Hug Family Trust Agreement dated November 21, 1988 were transferred to their co-lessees: Cheryl Hug English, Procter J. Hug, and Elyse Hug Pasha. On October 19, 2017, the Commission authorized a continuation of rent ([Executive Officers Report, October 19, 2017](#)). The lease expired on August 31, 2021. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of the facilities.

Staff recommends the new lease begin on the date of the Commission meeting. Therefore, staff is requesting compensation from the Applicant in the amount of \$542 for the unauthorized occupation of State land for the period of September 1, 2021 through December 7, 2021, the day preceding issuance of the proposed new lease.

The Applicant owns the upland parcel adjoining the lease premises. The subject facilities are privately owned and maintained. The buoys facilitate recreational boating by providing a mooring for 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 breakwater creates an area protected from wave action, allowing for ease of entry and exit of small watercraft, such as kayaks, in addition to providing a protected swim area. The subject facilities have existed for many years at this location. Public access for pedestrians and lake-related activities is available at varying water levels over the lower parts of the breakwater, as well as around the landward end within the Public Trust easement. The immediate

upland area of the existing breakwater is flat. The two buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The Applicant registered the buoys with TRPA on August 13, 2019 (Registration #10677).

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, as the prior lessee, may be required to remove the two existing mooring buoys and breakwater 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 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 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 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 common law 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 \$542, for the unauthorized occupation of State land for the period beginning September 1, 2021 through December 7, 2021.
2. Authorize issuance of a General Lease – Recreational and Protective Structure 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 and a breakwater, 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 \$1,848, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 8935

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 19, Township 16 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved January 2, 1875, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – Breakwater

All those lands underlying an existing breakwater lying adjacent to that parcel as described in Gift Deed recorded August 27, 2013 in Document Number 2013-0084826 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 & 3 – Buoys

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel as described in Gift Deed recorded August 27, 2013 in Document Number 2013-0084826 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 05/10/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

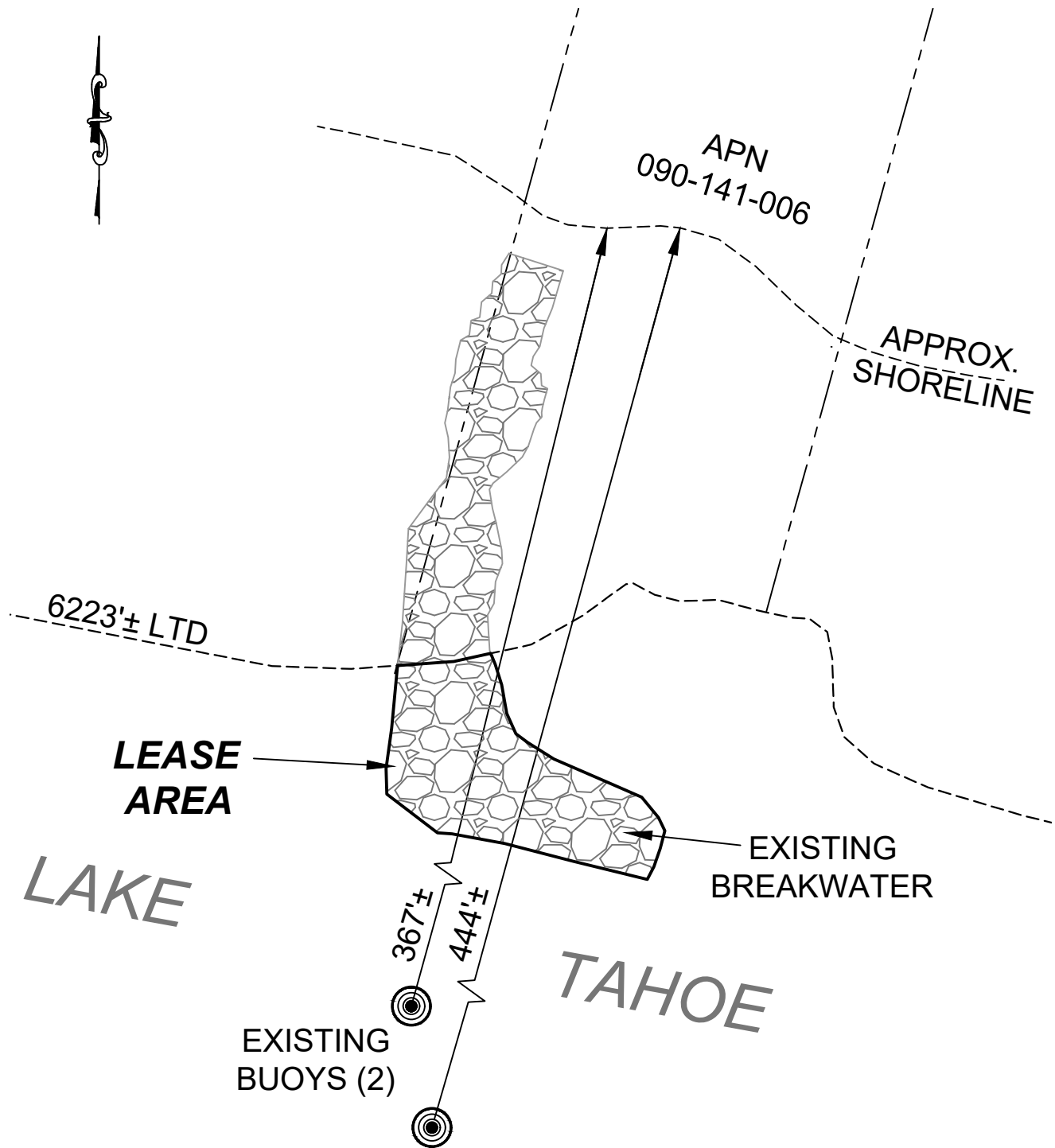


EXHIBIT A

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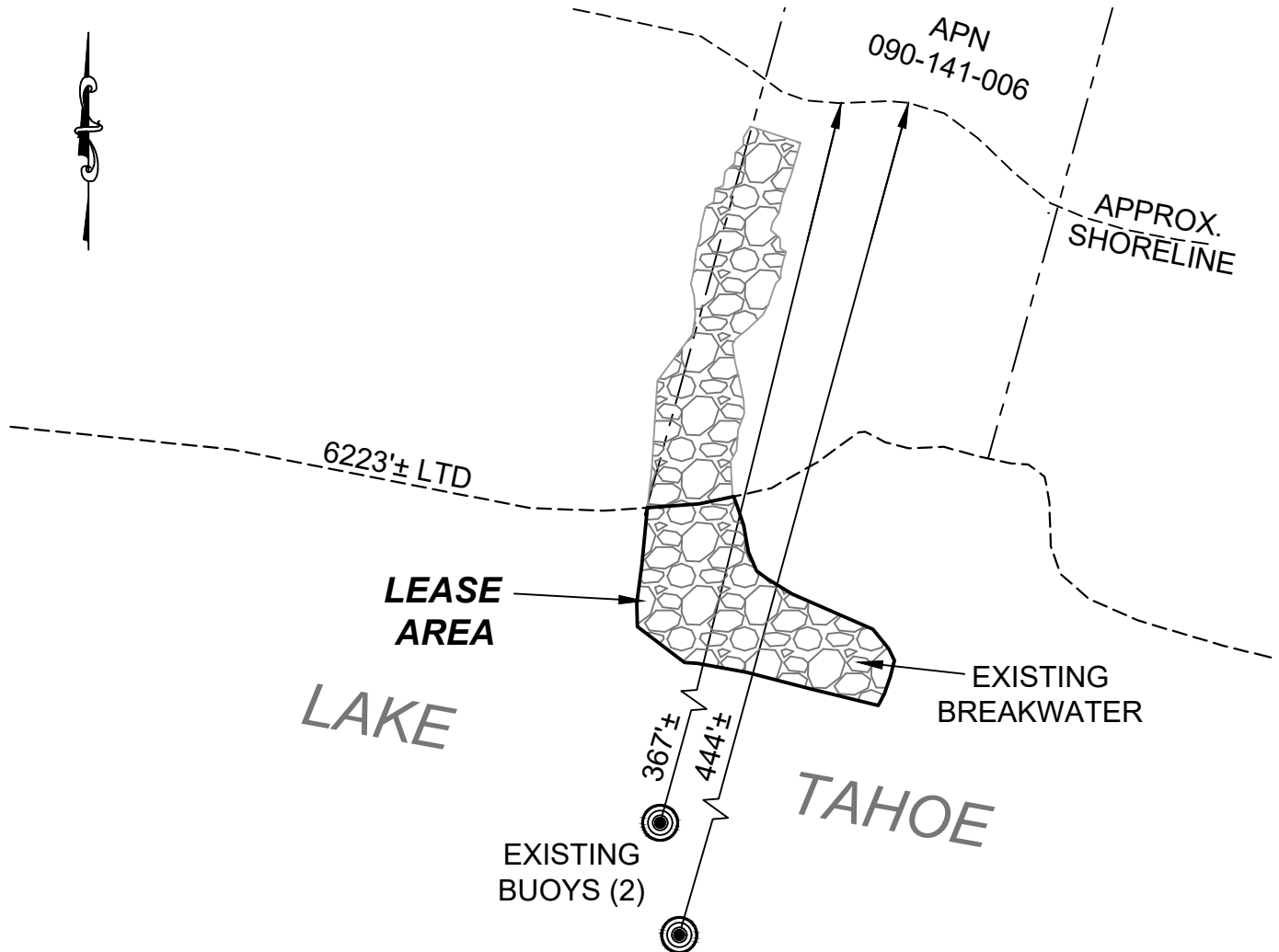
LAND DESCRIPTION PLAT
LEASE 8935, HUG, ET AL.
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

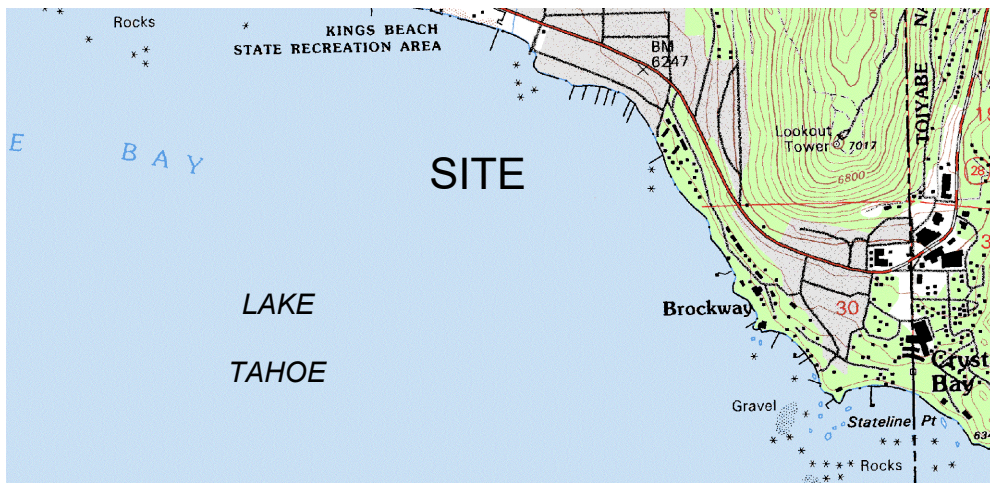
SITE



8670 BROCKWAY VISTA AVE., KINGS BEACH

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 8935

HUG, ET AL.

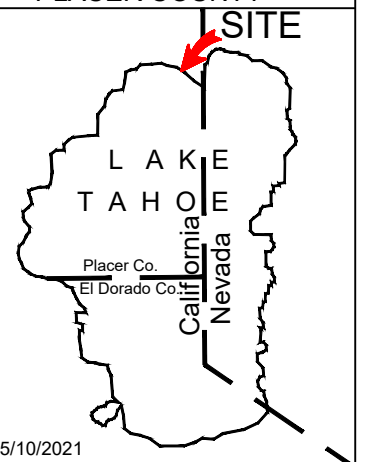
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GENERAL LEASE -

RECREATIONAL &

PROTECTIVE STRUCTURE USE

PLACER COUNTY



TS 05/10/2021