

Staff Report 21

LESSEE:

Peter Mulligan and Sharmila Mulligan; Thomas R. Harry, Trustee of The Thomas R. Harry and Carolyn D. Harry Family Decedent's Trust, established October 23, 1997; Michael R. Harry; Anne L. Harry; Thomas J. Harry; Cynthia A. Harry; Debora D. Goehring; and Arden Goehring

APPLICANT:

8579 Meeks Bay, LLC, a California limited liability company, and 8581 North Lane, LLC, a California limited liability company

PROPOSED ACTION:

Consider Waiver of Rent, Penalty, and Interest, and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8579 Meeks Bay Avenue and 8581 North Lane, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing joint-use pier and two mooring buoys; and replacement of the existing joint-use pier decking and two catwalks with new decking and adjustable catwalks.

TERM:

10 years, beginning December 8, 2021.

CONSIDERATION:

\$2,043 per year, with an annual Consumer Price Index adjustment; and compensation for unauthorized occupation of state sovereign land in the amount of \$7,255 for the period beginning March 23, 2018 through December 7, 2021.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- The indemnity provision shall apply to the entire period of unauthorized occupation by the Applicant, beginning April 20, 2017, when the Applicant acquired the upland property at 8581 North Lane; and September 11, 2017, when the Applicant acquired the upland property at 8579 Meeks Bay Avenue, through December 7, 2021, the day before the proposed lease begins.
- 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.
- The lease provides that the public will be allowed to pass and repass over the pier through stairs with signs posted at each location on each side of the pier to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including that the Applicant obtain all necessary permits and authorizations prior to commencing work, requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 28, 2010, the Commission authorized a 10-year General Lease - Recreational Use for the continued use and maintenance of an existing joint-use pier and two mooring buoys to Selective Rubicon Property, LLC; Thomas R. Harry, Trustee of The Thomas R. Harry and Carolyn D. Harry Family Decedent's Trust, established October 23, 1997; Michael R. Harry; Anne L. Harry; Thomas J. Harry; Cynthia A. Harry; Debora D. Goehring; and Arden Goehring ([Item C45, June 28, 2010](#)). On October 16, 2015, the Commission authorized an Amendment of Lease and Revision of Rent ([Item C03, October 16, 2015](#)). On June 28, 2016, the

Commission authorized an Assignment of Lease from Selective Rubicon Property, LLC to Peter Mulligan and Sharmila Mulligan ([Item C06, June 28, 2016](#)). That lease expired on March 22, 2019.

On April 20, 2017, the upland property at 8581 North Lane was deeded to Tatiana S. Botton. On September 11, 2017, the upland property at 8579 Meeks Bay Avenue was deeded to Tatiana Botton. Staff contacted the new owner of the upland properties, Tatiana Botton, to request a lease application several times in January through September 2018. In 2018, Tatiana Botton created two limited liability companies to hold title to the two upland parcels and, on January 11, 2019, she transferred the upland parcels to those companies, 8581 North Lane, LLC, a California limited liability company and 8579 Meeks Bay, LLC, a California limited liability company. Staff continued to contact the Applicant in 2019 to request an application. The Applicant is now applying for a General Lease – Recreational Use, for the continued use and maintenance of an existing joint-use pier and two mooring buoys; and replacement of the existing joint-use pier decking and two catwalks with new decking and adjustable catwalks. The pier and mooring buoys have existed in the lake for many years. The mooring buoys have been registered with TRPA (Registration No. 10734 and 10735).

Staff recommends issuance of a new lease beginning December 8, 2021. The Commission's accounting records show the Lessee paid annual rent through March 22, 2018, past the date of the ownership transfer, but did not pay invoice numbers 44051 and 46719 for the period of March 23, 2018 through March 22, 2020. The Applicant agrees to pay, and staff recommends that the Commission accept, compensation for the unauthorized occupation of state land from the Applicant in the amount of \$7,255 for the period beginning March 23, 2018 through December 7, 2021, the day before the proposed new lease becomes effective. Staff believes it is not in the State's best interest to pursue the unpaid rent, penalty, and interest from the Lessee since the Applicant was the upland owner starting in 2017 and the State is being made whole on rent through the collection of compensation for unauthorized occupation.

The existing pier is open-pile, 195-feet 4 ½ inches long (from Elevation 6228 feet, Lake Tahoe datum), 6-feet wide, with double 3-feet by 45-feet 2 ½ inch long catwalks at the lakeward end of each side of the pierhead. The decking and decking supports are proposed for replacement. The pier modifications will use the existing pilings and no additional lake bottom disturbance will occur. The existing fixed catwalks with stairs will be converted to adjustable catwalks including sea stairs. All work is to be performed from the lake via barge or amphibious vessel.

The immediate shore area around the existing pier is flat with boulders, cobbles, and sand. The existing pier design allows public access laterally across the shoreline. The public may access stairs within the Public Trust easement to cross over the pier near the landward end of the pier below high water. Public access signage will be placed at the access locations. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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 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 its 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, Commission staff believes that the proposed Project and issuance of this lease will not substantially interfere with the Public's Trust needs and values over the lease term 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 joint-use 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 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. Waiver of rent, penalty, and interest 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. **Existing Mooring Buoys:** 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).
5. **Pier Deck and Catwalk Replacement:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
California Department of Fish and Wildlife
Lahontan Regional Water Quality Control Board

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Mooring Buoys: 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).

Pier Deck and Catwalk Replacement: 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that waiver of rent, penalty, and interest, and issuance of 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, or 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. Waive annual rent, penalty, and interest due for the period from March 23, 2018 through March 22, 2020, and void annual rent invoice numbers 44051 and 46719 issued to Peter Mulligan and Sharmila Mulligan; Thomas R. Harry, Trustee of The Thomas R. Harry and Carolyn D. Harry Family Decedent's Trust, established October 23, 1997; Michael R. Harry; Anne L. Harry; Thomas J. Harry; Cynthia A. Harry; Debora D. Goehring; and Arden Goehring.
2. Authorize acceptance of compensation from the Applicant in the amount of \$7,255 for the unauthorized occupation of state land for the period beginning March 23, 2018 through December 7, 2021.
3. 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 an existing joint-use pier and two mooring buoys; and replacement of the existing joint-use pier decking and two catwalks with new decking and adjustable catwalks, 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 \$2,043, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7449

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 29 and Lot 1 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:

PARCEL 1 – PIER

All those lands underlying an existing joint-use pier, two catwalks and two steel steps lying adjacent to those parcels described in Grant Deed recorded January 11, 2019 in Document No. 20190001063 and Grant Deed recorded January 11, 2019 in Document No. 20190001064 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 parcel of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Grant Deed recorded January 11, 2019 in Document No. 20190001063 and Grant Deed recorded January 11, 2019 in Document No. 20190001064 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 10/13/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

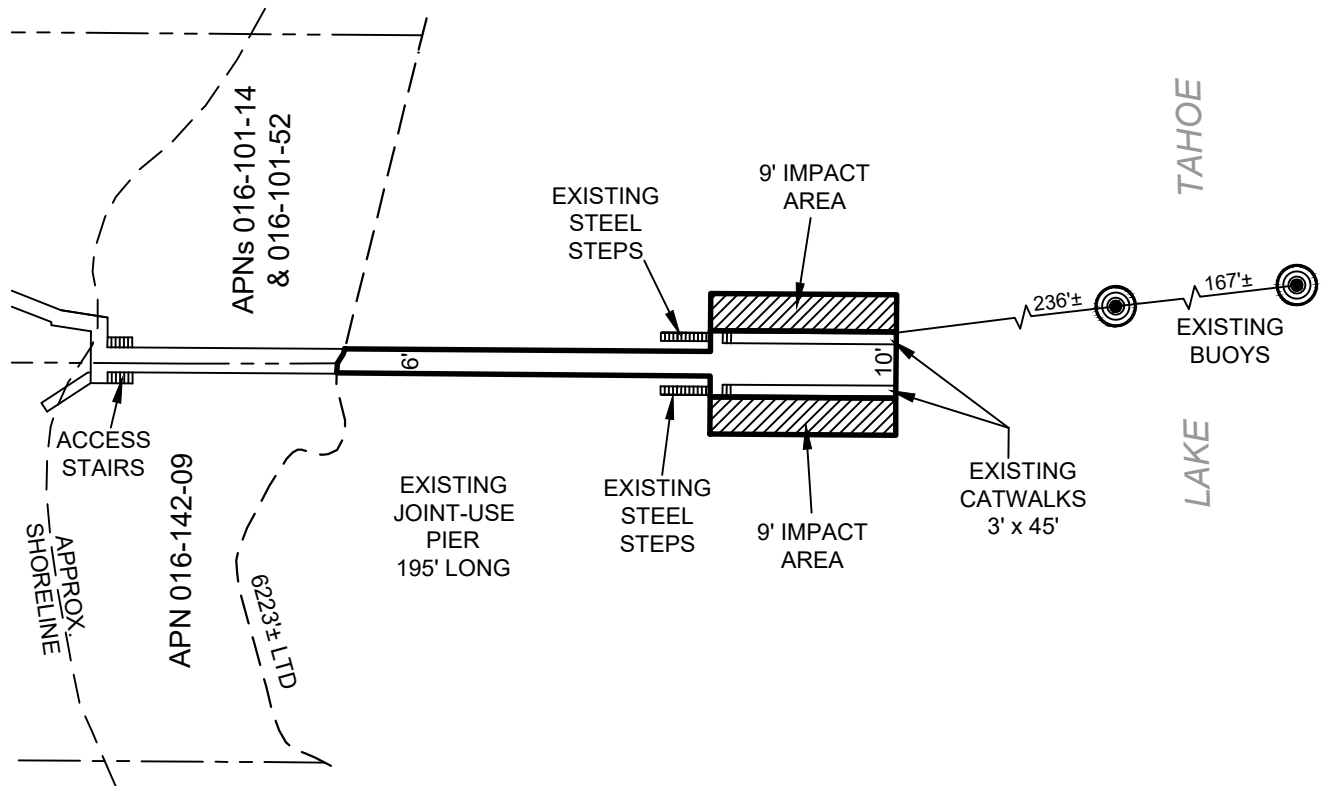


EXHIBIT A

Page 2 of 2

TS 10/13/2021

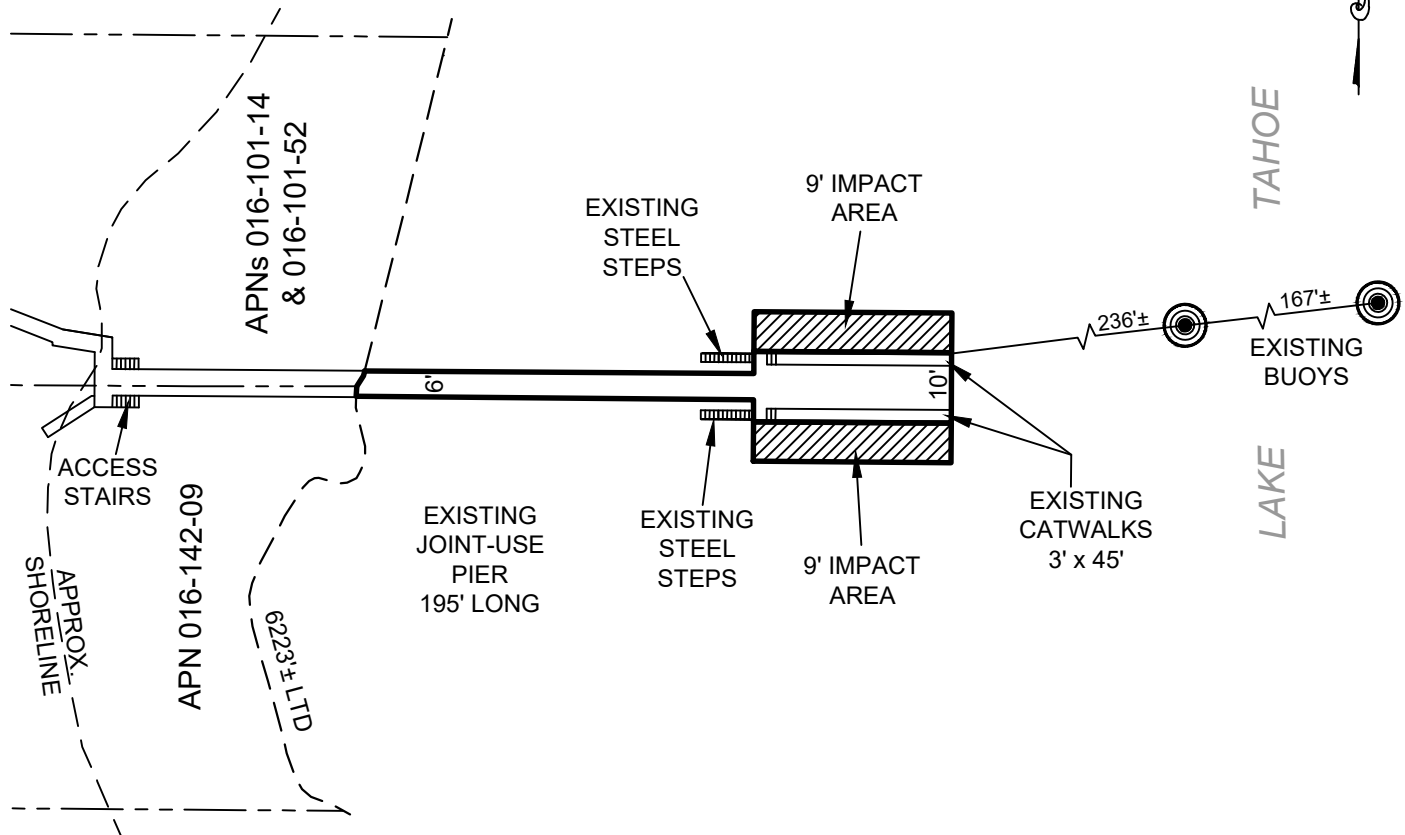
LAND DESCRIPTION PLAT
LEASE 7449, 8579 MEEKS BAY, LLC &
8581 NORTH LANE, LLC
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



8579 MEEKS BAY AVENUE & 8581 NORTH LANE, NEAR MEEKS BAY

NO SCALE

LOCATION

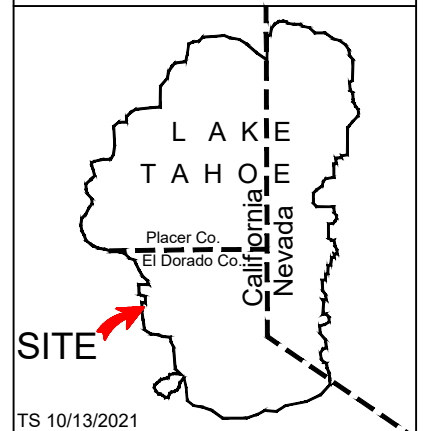


MAP SOURCE: USGS QUAD

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 7449
8579 MEEKS BAY, LLC &
8581 NORTH LANE, LLC
APNs 016-142-09,
016-101-14 & 52
GENERAL LEASE-
RECREATIONAL USE
EL DORADO COUNTY



TS 10/13/2021