

Staff Report 18

LESSEE:

Loren A. Jensen and Melissah A. Jensen, or their successor(s), as Trustees of the Loren and Melissah Jensen 2013 Family Trust, dated March 6, 2013; Doris A. Jensen, Trustee of the Elbert A. Jensen Bypass Trust; Birney Alan Jensen; Alice Winnifred Croft; Janice Lee Jensen; Wayne Anders Jensen; Warren Boomer Jensen; Marna June Javette; and Ronald A. Ubaldi and Esther Ubaldi, Trustees of the Ubaldi Living Trust, dated July 19, 1993, and restated August 7, 2008

APPLICANT:

Ronald A. Ubaldi and Esther Ubaldi, Trustees of the Ubaldi Living Trust, dated July 19, 1993, and restated August 7, 2008; and Chad Herrin and Jessica Herrin as Trustees, or any successor trustee, of the Herrin Family Trust U/A/D December 2, 2008

PROPOSED ACTION:

Termination of 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 1090 and 1130 West Lake Boulevard, Tahoe City, Placer County.

AUTHORIZED USE:

Use and maintenance of one existing mooring buoy.

TERM:

10 years, beginning October 25, 2022.

CONSIDERATION:

\$273 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:

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 June 19, 2014, the Commission authorized a 10-year General Lease – Recreational Use for the use and maintenance of one mooring buoy to the Lessee ([Item C41, June 19, 2014](#)). This lease will expire on June 18, 2024.

On July 21, 2021, ownership interest in the adjacent upland property transferred from Birney Alan Jensen; Janice Lee Jensen; Wayne Anders Jensen; Warren Boomer Jensesn; Marna June Jensen Javete; Loren A. Jensen and Melissah A. Jensen, or their successor(s), as Trustees of the Loren and Melissah Jensen 2013 Family Trust, dated March 6, 2013; James M. Croft and Alice W. Croft, as Trustee of the Jim and Alice Croft Trust dated September 7, 2018; and Birney A. Jensen, Successor Trustee of the Elbert A. Jensen Bypass Trust to Chad Herrin and Jessica Herrin as Trustees, or any successor trustee, of the Herrin Family Trust U/A/D December 2, 2008. The Lessee paid rent through June 18, 2023, but did not notify the Commission of changes in ownership or seek an assignment of the lease. Staff recommends termination of the lease effective July 21, 2021, the day the upland property was transferred, and issuance of a new lease.

The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of one existing mooring buoy.

Because the Applicant took ownership of the upland on July 21, 2021, the lease provisions regarding indemnity will apply from July 21, 2021, when the Applicant

took ownership of the upland, through October 24, 2022, the day before the beginning date of the proposed lease.

Rent under the current lease is paid through June 18, 2023 and was paid by the Lessee/Applicant remaining on the proposed new lease. Staff are recommending the lease be terminated effective July 21, 2021, when the upland ownership changed. The payments made on the prior lease offset the compensation due for the Applicant's unauthorized occupation to date, with an additional credit of \$244.80 that will be applied to the first year's rent under the proposed lease.

The subject mooring buoy has existed for many years at this location, and TRPA registered the buoy on October 19, 2009 (Registration No. 11017). The mooring buoy is privately owned and maintained, used for the docking and mooring of boats, and facilitates 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 mooring buoy is located directly lakeward of the upland property and occupies 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 improvements to the upland property include an existing pier that does not extend waterward of elevation 6,223 feet, Lake Tahoe Datum, and therefore is not located on sovereign land, but is within the Public Trust easement. The immediate upland topography of the pier is flat and easily traversable. Public access for pedestrians and lake-related activities is available at varying water levels underneath the pier and by passing through the upland parcel within the Public Trust easement.

The proposed lease requires insurance of the lease premises and indemnifying 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 are 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 stream flows 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 storm events and winds. 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.

Improvements 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; 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 buoy and return the premises to their original condition. Upon expiration or early 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 "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Termination of 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, 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 July 21, 2021, Lease Number PRC 5611.1, a General Lease – Recreational Use, issued to the Lessee.
2. Apply the payments previously submitted under Lease Number PRC 5611.1 to offset compensation due for unauthorized occupation, with the balance of \$244.80 being credited to the first year's rent of the proposed lease.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 25, 2022, for a term of 10 years, for the use and maintenance of one existing mooring buoy, 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 \$273, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5611

LAND DESCRIPTION

A parcel of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 18, Township 15 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, State of California, more particularly described as follows:

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to those parcels described in Grant Deed recorded July 21, 2021, as Document Number 2021-0092716-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/29/2022 by the California State Lands Commission Boundary Unit.



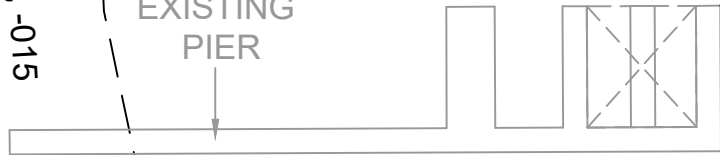
NO SCALE



LAKE TAHOE

APPROX.
SHORELINE
APNs 083-195-013, -014, -015

EXISTING
PIER



6223'± LTD

675'±

EXISTING
BUOY



EXHIBIT A

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DT 6/29/2022

LAND DESCRIPTION PLAT
LEASE 5611, UBALDI & HERRIN TRUSTS
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



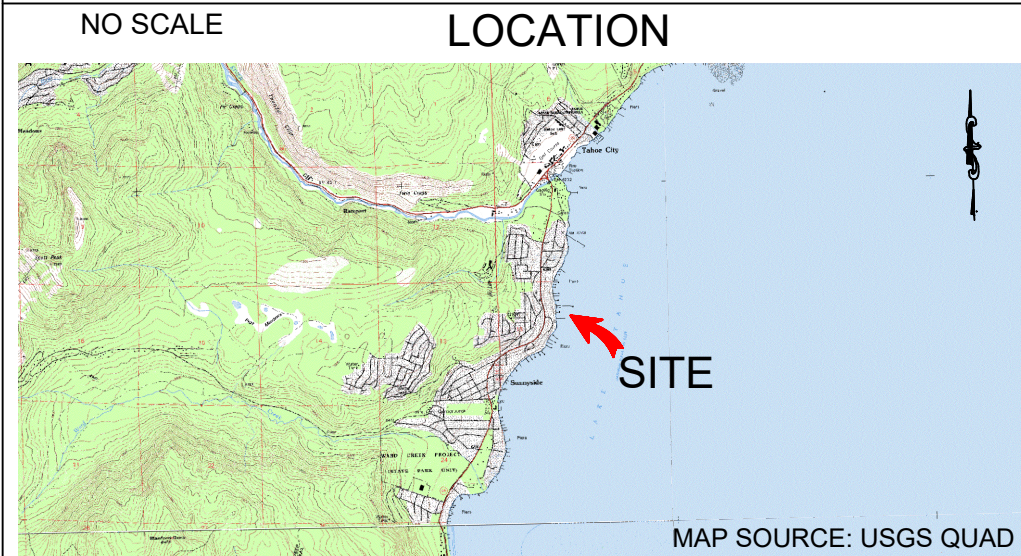
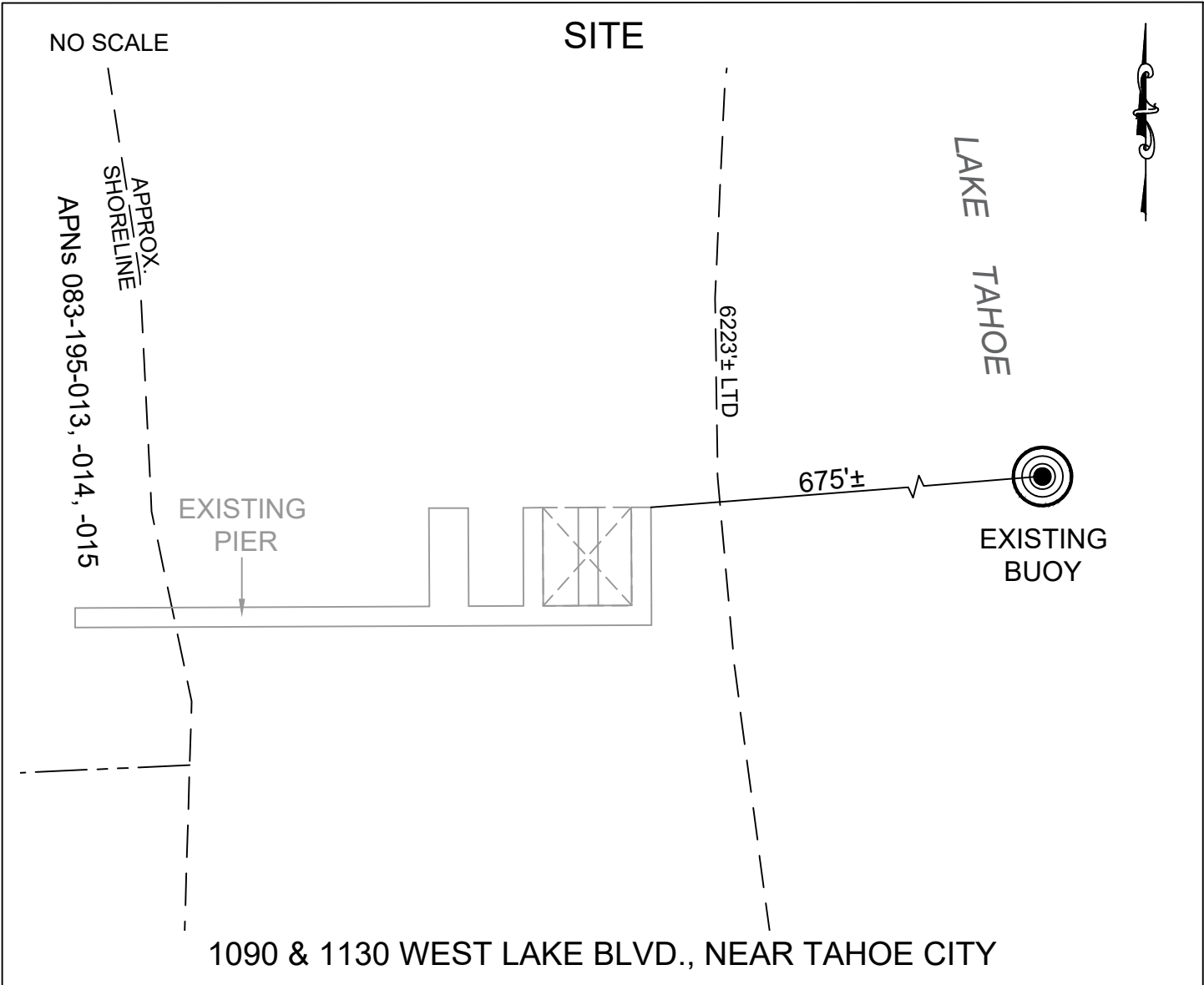
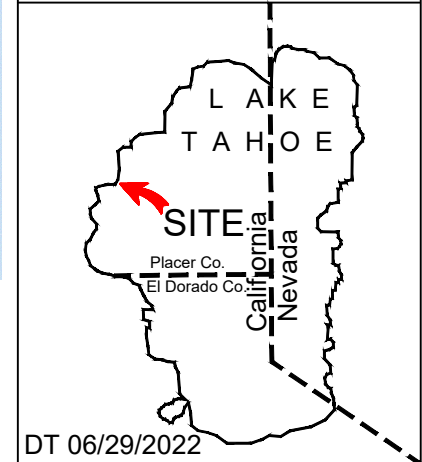


EXHIBIT B

LEASE 5611
UBALDI & HERRIN TRUSTS
APNs 083-195-013, -014, -015
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



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.