

Meeting Date: 12/09/22
Lease Number: 5623
Staff: M. Waldo

Staff Report 18

LESSEE:

John O. Ryan and Pauline E. Ryan, Trustees of The John and Pauline Ryan Trust
Dated January 22, 1992

APPLICANT:

8833 Rubicon, LLC

PROPOSED ACTION:

Consider Waiver of Penalty and Interest; Void Invoice Numbers 52548 and 55292;
Termination and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8833 Rubicon Drive, near Meeks Bay, El Dorado County.

AUTHORIZED USE:

Use and maintenance of an existing pier, boathouse with boat lift, and two mooring buoys.

TERM:

10 years, beginning December 9, 2022.

CONSIDERATION:

\$1,809 per year, with an annual Consumer Price Index adjustment and \$2,743 compensation for unauthorized occupation of State Land for the period of June 4, 2021 through December 8, 2022.

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's right of access for navigation, fishing, and public trust consistent recreational uses.

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 April 23, 2015, the Commission authorized the acceptance of a quitclaim deed and issuance of a General Lease – Recreational Use to John O. Ryan and Pauline E. Ryan, Trustees of The John and Pauline Ryan Trust Dated January 22, 1992, for the use and maintenance of an existing pier, boathouse with boat lift, and two mooring buoys ([Item 20, April 23, 2015](#)). The lease expires June 3, 2024.

On July 21, 2020, the upland property was deeded, to 8833 Rubicon, LLC. The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of the existing pier, boathouse with boat lift, and two mooring buoys.

The Commission's accounting records show that the annual rent is paid through June 3, 2021. Therefore, staff is requesting compensation from the Applicant for the period of unpaid rent, June 4, 2021 through December 8, 2022, the day preceding issuance of the new lease. This measure will ensure that rent is remitted for use of State land and mitigate any gaps in payment.

Staff recommends voiding Invoice Number 52548, dated June 4, 2021, in the amount of \$2,011.94 and Invoice Number 55292, dated June 4, 2022, in the amount of \$2,143.16, issued to John O. Ryan and Pauline E. Ryan, Trustees of The John and Pauline Ryan Trust Dated January 22, 1992 (Lessee) for the period of June 4, 2021 through June 3, 2023, since the Lessee was not the upland owner during this time period. Further, staff request waiving any penalty and interest associated with the invoices based on the transfer of ownership and cost of collection measures. Staff recommends termination of Lease Number PRC 5623, because the upland was sold without a lease quitclaim deed and application of assignment. The proposed termination date is July 21, 2020, the day of the transfer of the upland property.

Staff recommends issuance of a new lease to the Applicant, effective December 9, 2022, the day of proposed Commission authorization. The lease will require the Applicant to indemnify the State for the entire period of occupation noted as July 21, 2020 to December 8, 2022, ensuring the State is protected.

The pier, boathouse with boat lift, and two mooring buoys have existed for many years at this location. The Applicant registered the buoys and boat lift with the TRPA on September 12, 2022 (Registration No. 11576). The subject improvements 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 pier is built on pilings with the immediate area of the pier being flat with fine sands. The topography and location are easily traversable. Public access for pedestrians and lake-related activities is available at varying water levels both over and underneath the pier, and along the shore within the Public Trust easement.

The 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.

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 pier, boathouse with

boat lift and two mooring buoys, and restore the premises to their original condition. The lessee 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 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. Waive penalty and interest due for the period of June 4, 2021 through December 8, 2022, and void Invoice Numbers 52548 and 55292 issued to the John O. Ryan and Pauline E. Ryan, Trustees of The John and Pauline Ryan Trust Dated January 22, 1992.
2. Terminate, effective July 21, 2020, Lease Number PRC 5623, a General Lease – Recreational Use, issued to John O. Ryan and Pauline E. Ryan, Trustees of The John and Pauline Ryan Trust Dated January 22, 1992.
3. Authorize acceptance of compensation from the Applicant in the amount of \$2,743 for unauthorized occupation of State lands for the period June 4, 2021 through December 8, 2022.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 9, 2022, for a term of 10 years, for the use and maintenance of an existing pier, boathouse with boat lift, and 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 \$1,809, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5623

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 33, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, two catwalks, boathouse with a boatlift lying adjacent to that Parcel Two described in Grant Deed recorded July 21, 2020 as Document Number 2020-0036176-00 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.

PARCELS 2 & 3 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that Parcel Two described in Grant Deed recorded July 21, 2020 as Document Number 2020-0036176-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 09/07/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

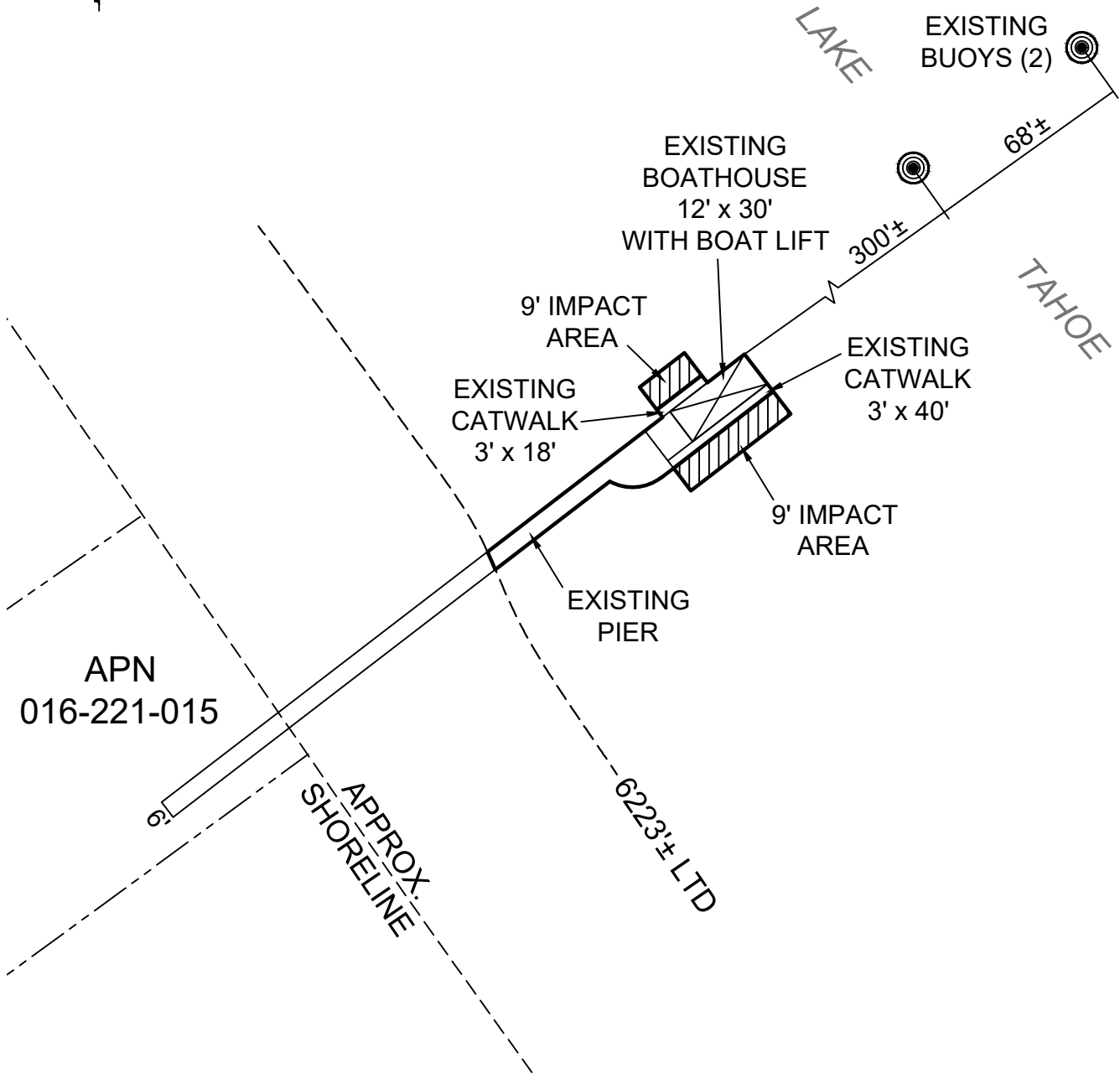
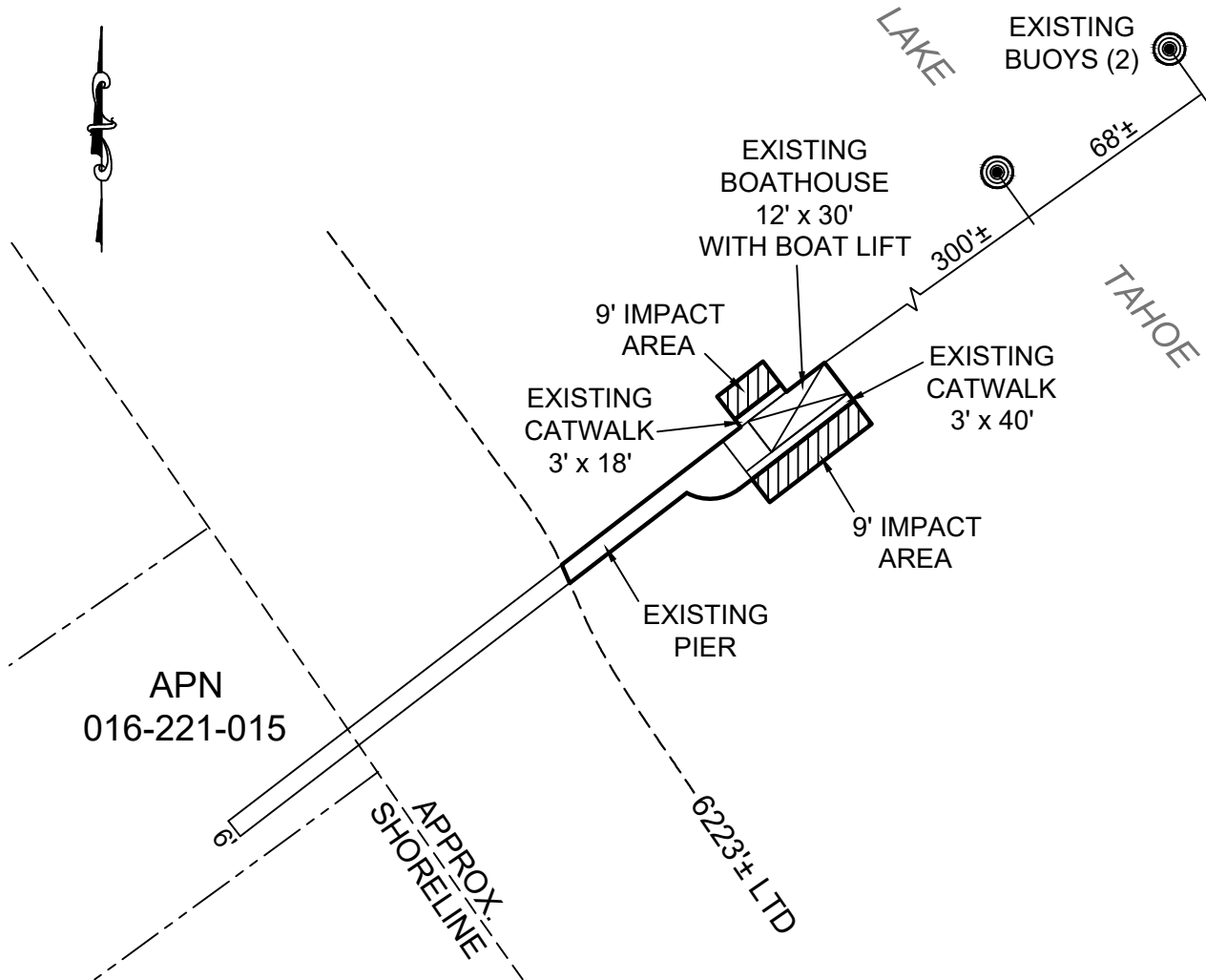


EXHIBIT A



NO SCALE

SITE



8833 RUBICON DRIVE, NEAR MEEKS BAY

NO SCALE

LOCATION

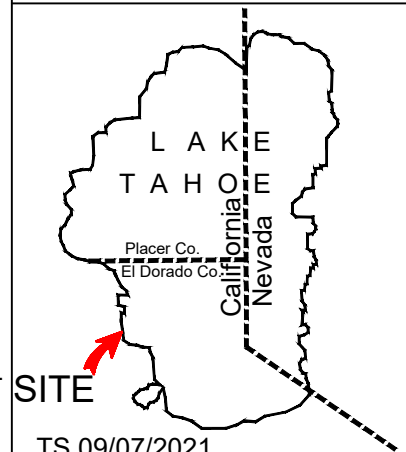


MAP SOURCE: USGS QUAD

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 5623
 8833 RUBICON, LLC
 APN 016-221-015
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



TS 09/07/2021