

# Staff Report 07

## **APPLICANT:**

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Douglas L. Boehner and Rita J. Boehner, as Co-Trustees of the Revocable Trust Agreement dated May 1, 1990; Hallberg DL, LLC, a California limited liability company; and Elevation5936, LLC, a California limited liability company.

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Donner Lake, adjacent to 15633, 15651, 15653, and 15655 Donner Pass Road, Truckee, Nevada County.

## **AUTHORIZED USE:**

Use and maintenance of an existing boat dock previously authorized by the Commission and three existing boat lifts with electric utility conduits not previously authorized by the Commission.

## **TERM:**

10 years, beginning February 28, 2023.

## **CONSIDERATION:**

\$630 per year, with an annual Consumer Price Index adjustment; and \$1,705 for the unauthorized occupation of state lands for the period beginning October 24, 2019 through February 27, 2023.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee expressly acknowledges that the upland parcels adjacent to the lease area are not subject to the 2019 Boundary Line and Easement Agreement.
- Lessee expressly acknowledges that the low water line is currently where the seawall intersects with the water.

- The Commission has not determined the last natural location of the ordinary high or low water lines at the subject parcels. However, the Commission reserves the right to delineate these boundaries should more information become available.
- Because the exact location of the boundaries are not currently known, and until such evidence exists to determine the location with certainty, Lessee expressly acknowledges the dispute with the Commission over the boundary location and agrees with the requirement limiting further development that may encroach on the Public Trust easement area, and that no further encroachment of fill into the lake is allowed.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 May 5, 1992, the Commission authorized a 10-year Recreational Pier Permit, No. PRC 7622, to Douglas L. Boehner, Rita J. Boehner, Edmond C. Hallberg, and Kaylene Hallberg for construction and maintenance of a two-berth "U" shaped pier next to an existing concrete wall located adjacent to 15655 Donner Pass Road, near Truckee, Nevada County ([Item 3, May 5, 1992](#)). That permit expired on May 4, 2002.

The Applicant's pier was unauthorized during the ensuing years due to ongoing litigation at Donner Lake over disagreements about the Commission's leasing jurisdiction. During the period of unauthorized occupation, three boat lifts with electric utility conduits were installed on the existing boat dock.

On April 8, 2022, Douglas L. Boehner and Rita J. Boehner, as Co-Trustees of The Revocable Trust Agreement dated May 1, 1990; Hallberg DL, LLC, a California limited liability company; and Elevation5936 LLC, a California limited liability company, submitted an application for a General Lease – Recreational Use for use and maintenance of the existing boat dock previously authorized by the Commission, and three existing boat lifts with electric utility conduits not previously authorized by the Commission. After the first lease term ended in 2002, the upland originally identified as 15655 Donner Lake Road was divided into multiple parcels which are now identified as 15633, 15651, 15653, and 15655 Donner Lake Road.

On October 24, 2019, the Commission authorized the Boundary Line and Easement Agreement that set the ordinary low-water mark at Donner Lake at 5,928 feet

elevation ([Item 69, October 24, 2019](#)). The subject parcels were not eligible for the boundary line agreement (BLA) established at Donner Lake in 2019 because of the existence of significant fill that predates any Commission surveys on the lake. The fill encroaches below the historic high-water mark and a large portion of the backyards seem to fall within the Public Trust easement.

Commission staff have been unable to find reliable surveys that predate the fill, making it difficult to precisely locate the last natural high-water mark. While it is possible the low-water mark may have been further inland than the face of the current retaining wall, the line at which the retaining wall intersects the lake is likely close to the historic location of the low-water mark. The Applicant's boat dock and three boat lifts with electric utility conduits extend past the retaining wall onto sovereign land within the Commission's leasing jurisdiction.

If the Commission approves the proposed lease, staff recommends that the Applicant's lease begin on February 28, 2023, the day of the Commission meeting. Staff also recommends acceptance of compensation in the amount of \$1,705 for the period beginning October 24, 2019 through February 27, 2023. The October 24, 2019 start date is recommended because that is the date the Commission approved the boundary line agreement that impacted most of the lake. That agreement served two purposes: 1) confirming the Commission's understanding of the historic low water elevation around Donner Lake, and 2) locating where that elevation intersects the shoreline in areas without artificial fill. Although the agreement did not locate the boundary on this parcel, it did specify the elevation of low water.

The Applicant owns the upland property adjoining the lease premises. The subject facilities are privately owned and maintained 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 boat dock and three boat lifts with electric utility conduits have existed for many years at this location. The boat dock is secured on its landward end to an existing concrete seawall on the shoreline of Donner Lake.

The overall impact of the fill, which consists of portions of the upland parcels and the seawall, on the Public Trust easement is lessened by several factors. Donner Lake is subject to an agreement that maintains the lake at high water during the entire boating season. Thus, the easement is only available for approximately two to three months in the fall until the rains start. The overall development in this area limits public access to the lake as the uplands are densely developed and most of

the shoreline is steeply sloped and rocky. Finally, there is alternate public access in relatively close proximity with a public boat launch and small beach area.

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 and limits further development within the estimated area of the PT easement. Upon termination of the lease, the lessee may be required to remove the dock and boat lifts from state land.

### **CLIMATE CHANGE:**

Climate change significantly affects inland non-tidal lakes such as Donner Lake. 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 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 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:**

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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 boat dock and boat lifts with electric utility conduits and restore the premises to their original condition. The Applicant 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. 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:**

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

## **RECOMMENDED ACTION:**

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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 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 acceptance of compensation from the Applicant in the amount of \$1,705 for the unauthorized occupation of State land for the period of October 24, 2019 through February 27, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 28, 2023, for a term of 10 years, for use and maintenance of an existing boat dock previously authorized by the Commission and three existing boat lifts with electric utility conduits not previously authorized by the Commission, 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 \$630, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 7622**

**LAND DESCRIPTION**

A parcel of submerged land situated in the bed of Donner Lake, lying adjacent to Lot 4 of fractional Section 14, Township 17 North, Range 15 East, M.D.B.&M., as shown on Official Government Township Plat approved April 10, 1867, County of Nevada, State of California, more particularly described as follows:

All those lands underlying two existing piers with three boat lifts lying adjacent to Lot 4 as shown on that certain map filed on June 25, 2001, in Book 19, of Parcel Maps, at Page 63, in Recorder Office of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the current shoreline of said Donner Lake at the base of the existing concrete retaining wall.

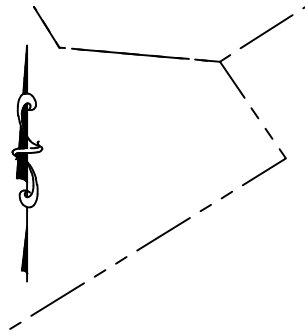
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 01/04/2023 by the California State Lands Commission Boundary Unit.



NO SCALE



APNs 017-170-036,  
-037, 038 & -039

EXISTING RETAINING WALL

EXISTING  
BOAT LIFT &  
IMPACT AREA

EXISTING  
PIER  
20' X 8'

EXISTING  
BOAT LIFTS &  
IMPACT AREAS

APPROX.  
SHORELINE

EXISTING  
PIER  
20' X 8'

DONNER LAKE

# EXHIBIT A

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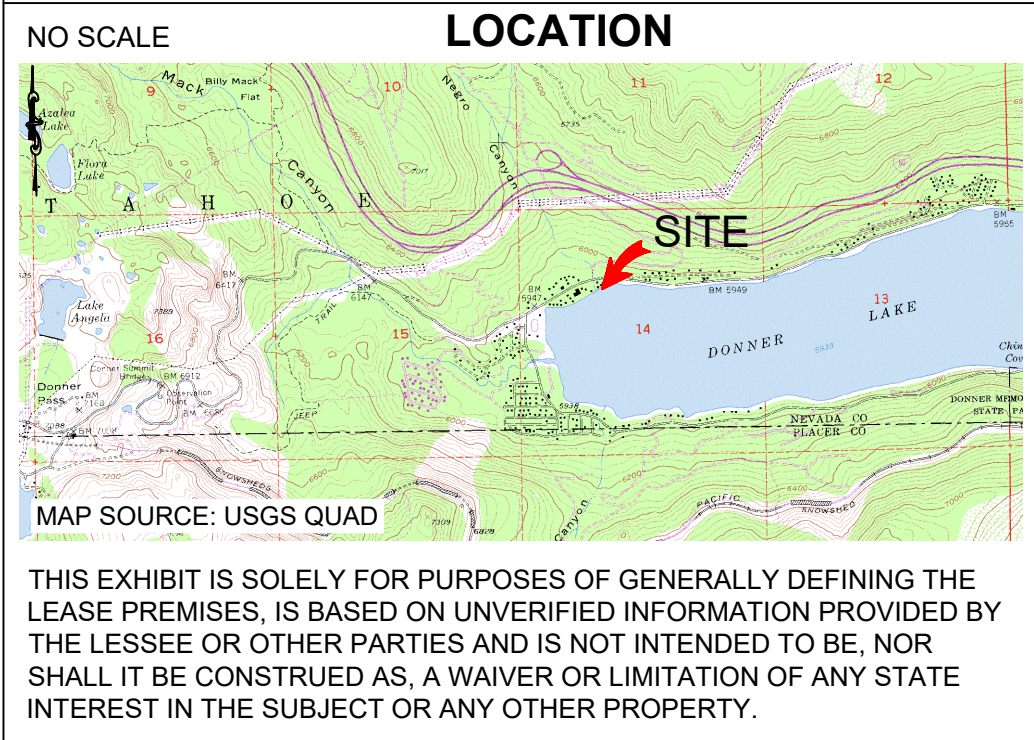
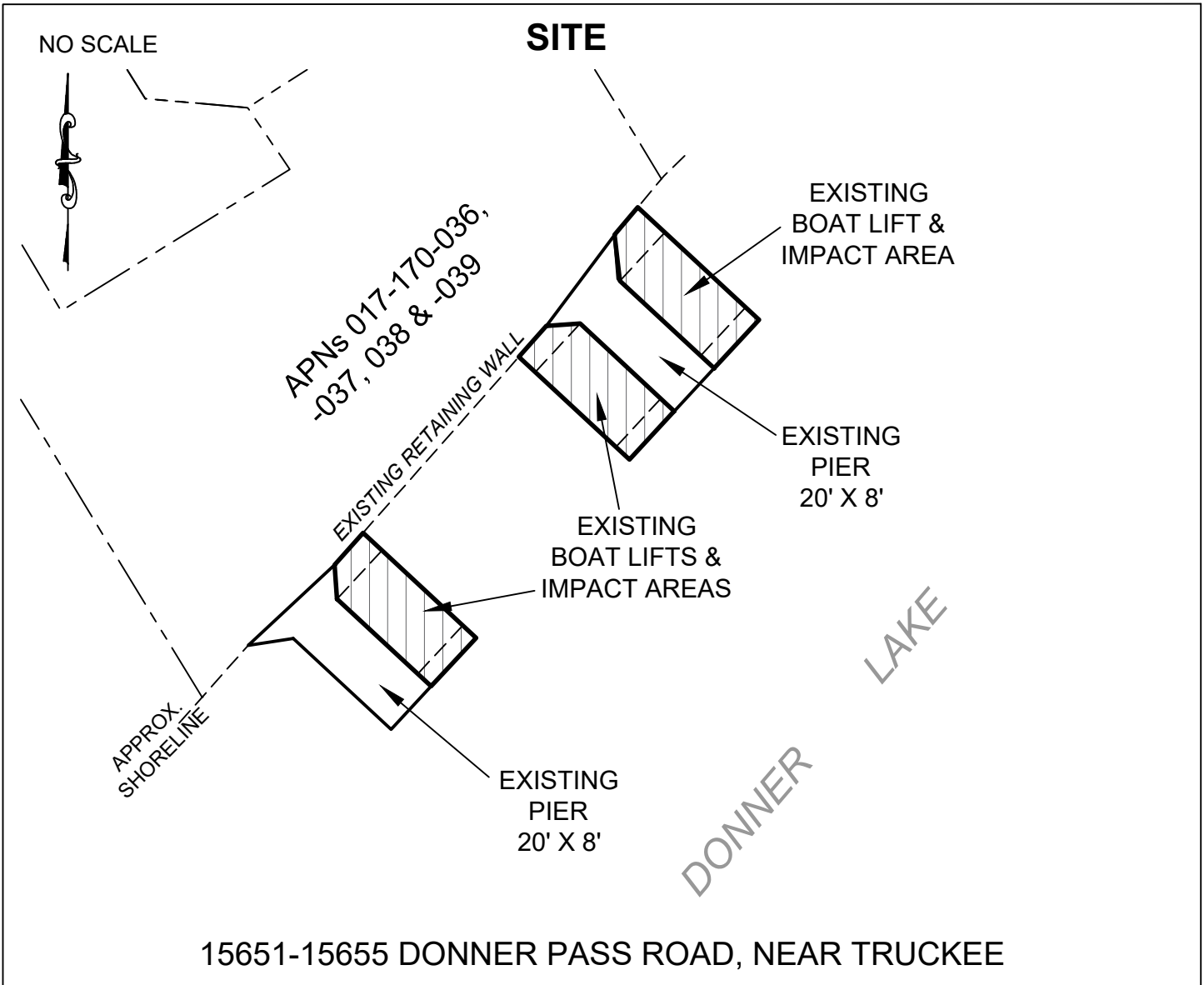
TS 01/04/2023

LAND DESCRIPTION PLAT  
LEASE 7622, BOEHNER ET AL.  
NEVADA COUNTY

CALIFORNIA STATE  
LANDS COMMISSION







**Exhibit B**  
 LEASE 7622  
 BOEHNER ET AL.  
 APNs 017-170-36, -037, -038 & -039  
 GENERAL LEASE - RECREATIONAL USE  
 NEVADA COUNTY

**SITE**

TS 01/04/2023