

Staff Report 11

APPLICANT:

Robert Buccola

PROPOSED ACTION:

Issuance of General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2169 Cascade Road, near South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Use and maintenance of an existing pier and boat lift and installation of one mooring buoy.

TERM:

10 years, beginning March 1, 2023.

CONSIDERATION:

\$862 per year, with an annual Consumer Price Index adjustment; and \$243 for the unauthorized occupation of state land from October 1, 2022 through February 28, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no 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.

- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Within 60 days of completing the installation of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee, and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

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 October 1, 2012, the Commission authorized a General Lease – Recreational Use to Robert Buccola, for the use and maintenance of an existing pier and boat lift ([Item C01, October 1, 2012](#)). The lease expired September 30, 2022.

The Applicant is applying for a General Lease – Recreational Use for the installation of one mooring buoy and the use and maintenance of the existing pier and boat lift. On March 30, 2022, the Applicant registered the boat lift with TRPA (Registration No. 10562). On November 30, 2022, the Applicant registered the proposed mooring buoy with TRPA.

Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$243 for the period of October 1, 2022 through February 28, 2023. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The pier and boat lift have existed for many years at this location. The topography is rocky and slightly sloped making the shoreline inaccessible to pedestrians in the area. The pier is built on pilings, and public water access for pedestrians and lake-related activities are available at varying water levels underneath the pier within the Public Trust Easement.

The pier, boat lift, and proposed mooring buoy 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 proposed buoy will be located directly lakeward of the upland property and will 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 ensure 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 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:

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 prior lessee may be prohibited from installing the one mooring buoy and required to remove the pier and boat lift 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. **Existing Pier and Boat lift:** 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).

4. **Installation of One Mooring Buoy:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(3).

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:

Existing Pier and Boatlift: 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).

Installation of One Mooring Buoy: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(3).

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 common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Accept compensation from the Applicant for the unauthorized occupation of State land for an existing pier and boat lift in the amount of \$243 for the period of October 1, 2022 through February 28, 2023.
2. Authorize issuance of General Lease – Recreational Use to the Applicant beginning March 1, 2023, for a term of 10 years, for the use and maintenance of an existing pier and boat lift and installation of one mooring buoy, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached to and by this reference made a part hereof; annual rent in the amount of \$862, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.

EXHIBIT A

LEASE 8420

LAND DESCRIPTION

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 6 of fractional Section 26, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1874, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier with boat lift and catwalk lying adjacent to that parcel described in Grant Deed recorded September 23, 1999 as Document Number 99-0059989-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion(s) lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCEL 2 – BUOY

A circular parcel of land, being 50 feet in diameter, underlying a proposed buoy lying adjacent to that parcel described in Grant Deed recorded September 23, 1999 as Document Number 99-0059989-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 08/01/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

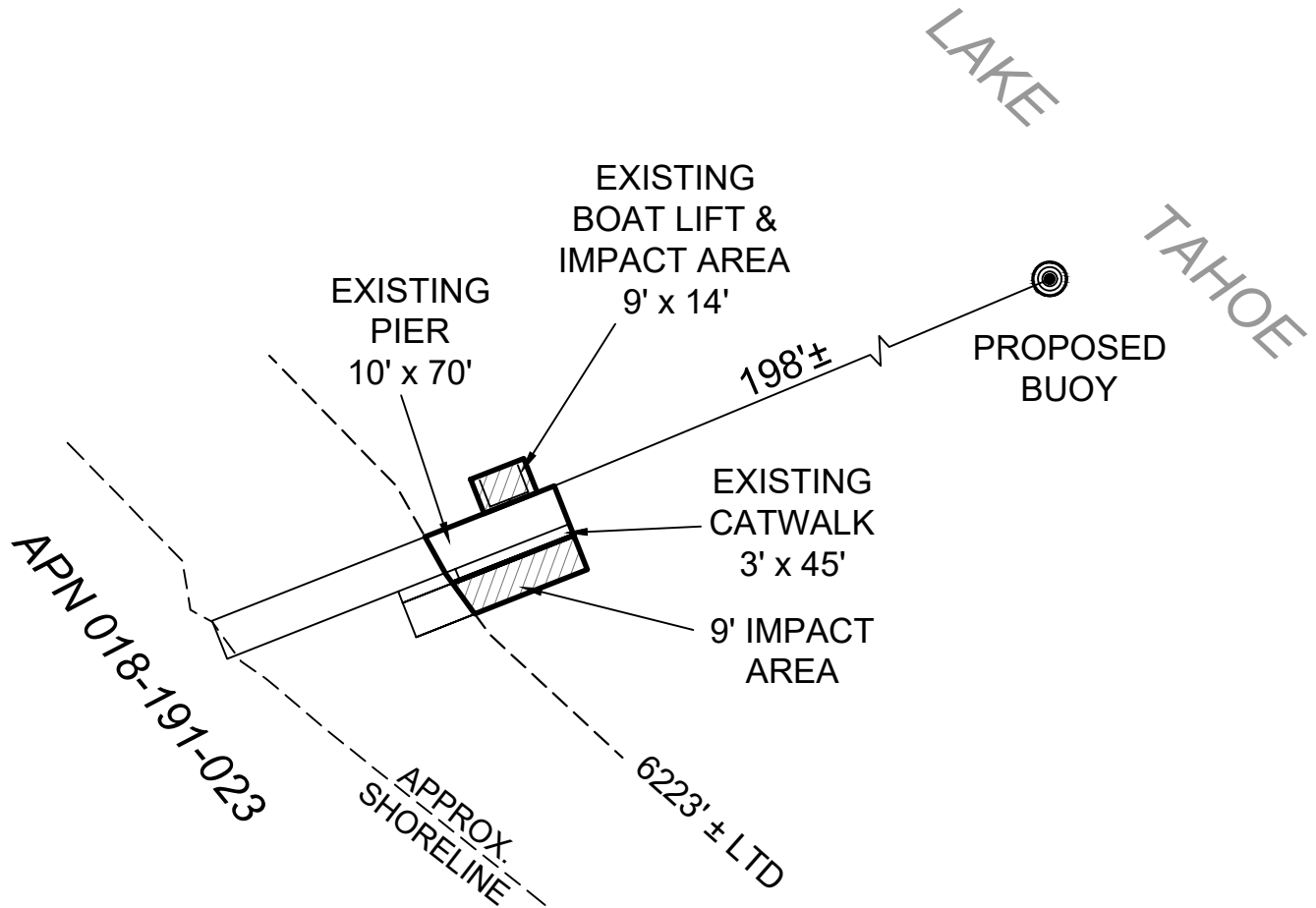


EXHIBIT A

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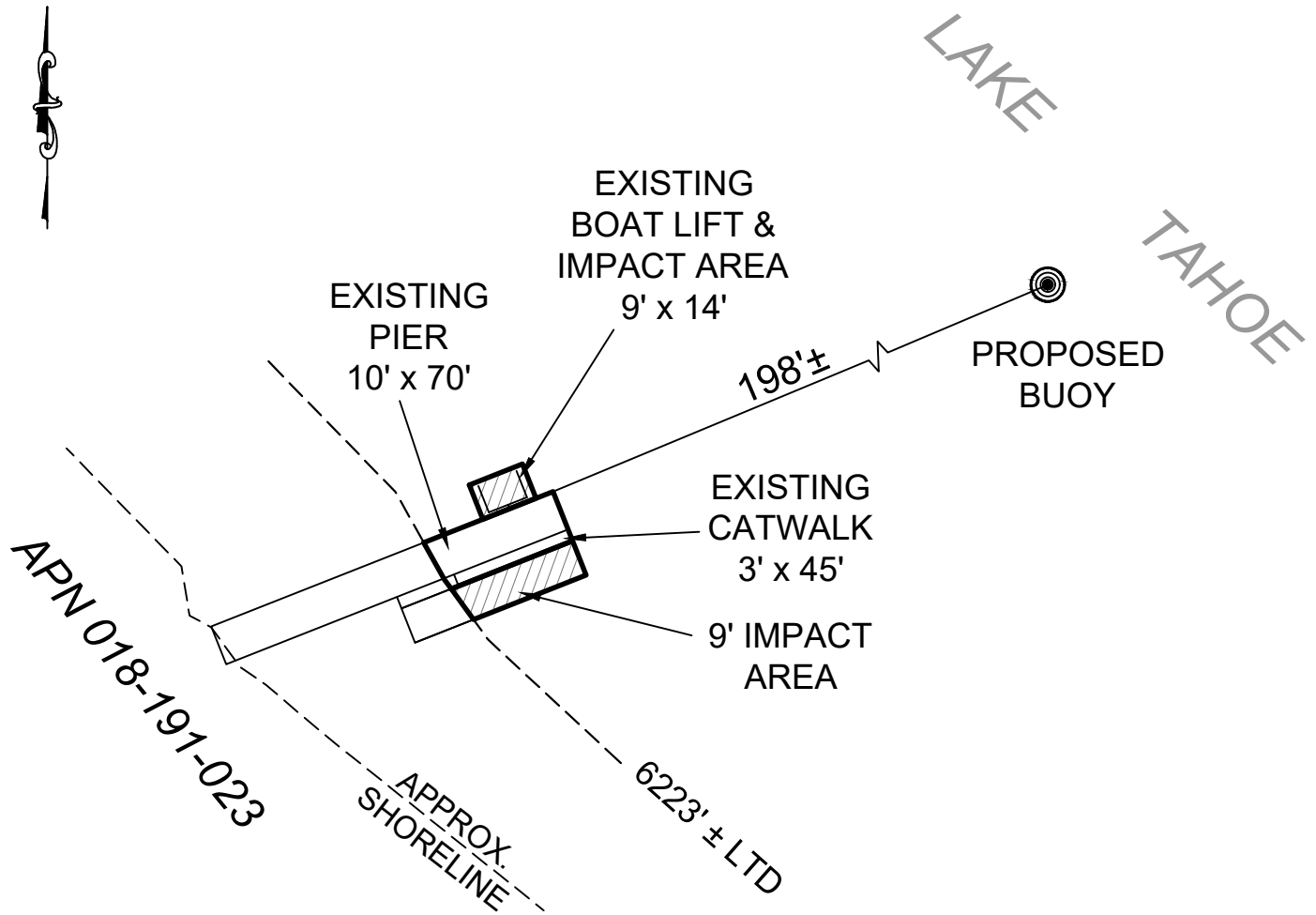
LAND DESCRIPTION PLAT
LEASE 8420, BUCCOLA
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



2169 CASCADE ROAD, NEAR SOUTH LAKE TAHOE

NO SCALE

LOCATION

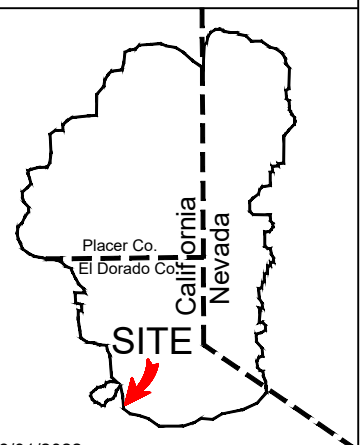


MAP SOURCE: USGS QUAD

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 8420
BUCCOLA
APN 018-191-023
GENERAL LEASE -
RECREATIONAL USE
EL DORADO COUNTY



TS 08/01/2022