

Staff Report 18

APPLICANT:

FRE 655 LLC, A California limited liability company

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6720 Powderhorn Lane, Tahoe, Placer County.

AUTHORIZED USE:

Use and maintenance of an existing pier and two mooring buoys previously authorized by the Commission; and an existing water intake pipeline not previously authorized by the Commission.

TERM:

10 years, beginning March 1, 2023.

CONSIDERATION:

\$999 per year, with an annual Consumer Price Index adjustment, and \$3,966 to compensate for the unauthorized occupation of State land for the period beginning June 3, 2019 through February 28, 2023.

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.

- The lease provides that signage shall be posted on each side of the pier to indicate passage and to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).
- 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.

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 29, 2010, the Commission authorized a General Lease – Recreational Use to Amy L. Armstrong, as to an undivided 33.33 percent interest; Richard E. Armstrong, III, as to an undivided 33.33 percent interest; Gregory G. Armstrong, as to an undivided 16.67 percent interest; and John O. Shinn, trustee of the Richard E. Armstrong trust, as to an undivided 16.67 percent interest; for an existing pier and two mooring buoys ([Item 01, October 29, 2010](#)). This lease expired October 28, 2020.

On June 3, 2019, the upland parcel was deeded to the Applicant. The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of an existing pier and two mooring buoys previously authorized by the Commission; and an existing water intake pipeline not previously authorized by the Commission.

Staff recommends issuance of a new lease beginning March 1, 2023. The Applicant will pay \$3,966 in compensation for the unauthorized occupation of State land by the subject pier, water intake pipeline, and two mooring buoys for the period beginning June 3, 2019, the day the Applicant took ownership of the upland parcel, through February 28, 2023, the day before the proposed lease and the lease provisions regarding indemnity will extend to the period of the Applicant's unauthorized occupation of State-owned lands for the period before February 28, 2023.

The pier and mooring buoys 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 pier and two mooring buoys have existed for many years at this location. The pier is built on pilings. The topography in the immediate area around the pier is gently sloped and rocky and is easily traversable. Public access for pedestrians and lake-related activities are available at varying water levels underneath the pier and through the upland parcel within the Public Trust easement. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. On September 3, 2019, the Applicant registered both moorings with TRPA (Registration No. 10820).

The water intake pipeline has existed for many years. The Applicant is requesting use of the pipeline for irrigation purposes. Although the water intake pipeline is not related to Public Trust use, the presence and location does not interfere with public access and enjoyment 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 is 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 winds and storm events. 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; 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, water intake pipeline, and two mooring buoys and restore the premises to their original condition. 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. 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:

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

RECOMMENDED ACTION:

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:

1. Find that the proposed pier and two mooring buoys used for the docking and mooring of boats, facilitate recreational boating which is a water-dependent use that is consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance of the water intake pipeline is generally not consistent with Public Trust Doctrine, but the current use does not substantially interfere with Public Trust need and values at this location for the approved term; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation in the amount of \$3,966 for unauthorized occupation of State lands for the period of June 3, 2019 through February 28, 2023.
2. Authorize issuance of a 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 two mooring buoys not previously authorized by the Commission; and an existing water intake pipeline 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 \$999, with an annual Consumer Price index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 3675

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 7, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and catwalk, lying adjacent to that parcel described in Grant Deed recorded June 3, 2019 as Document Number 2019-0037069-00 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.

PARCEL 2– Water Intake Pipeline

A parcel of land, underlying an existing water intake pipeline lying adjacent to that parcel described in Grant Deed recorded June 3, 2019 as Document Number 2019-0037069-00 in Official Records of said County.

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

PARCELS 3 & 4 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded June 3, 2019 as Document Number 2019-0037069-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/24/2020 by the California State Lands Commission Boundary Unit.





LAKE

TAHOE

EXISTING BUOYS (2)

70'±

127'±

EXISTING CATWALK

9' IMPACT AREA

EXISTING WATER INTAKE PIPELINE

EXISTING PIER

APPROX. SHORELINE

6223'± LTD

120'

6'

APN 098-180-007

EXHIBIT A

Page 3 of 3

TS 11/24/2020

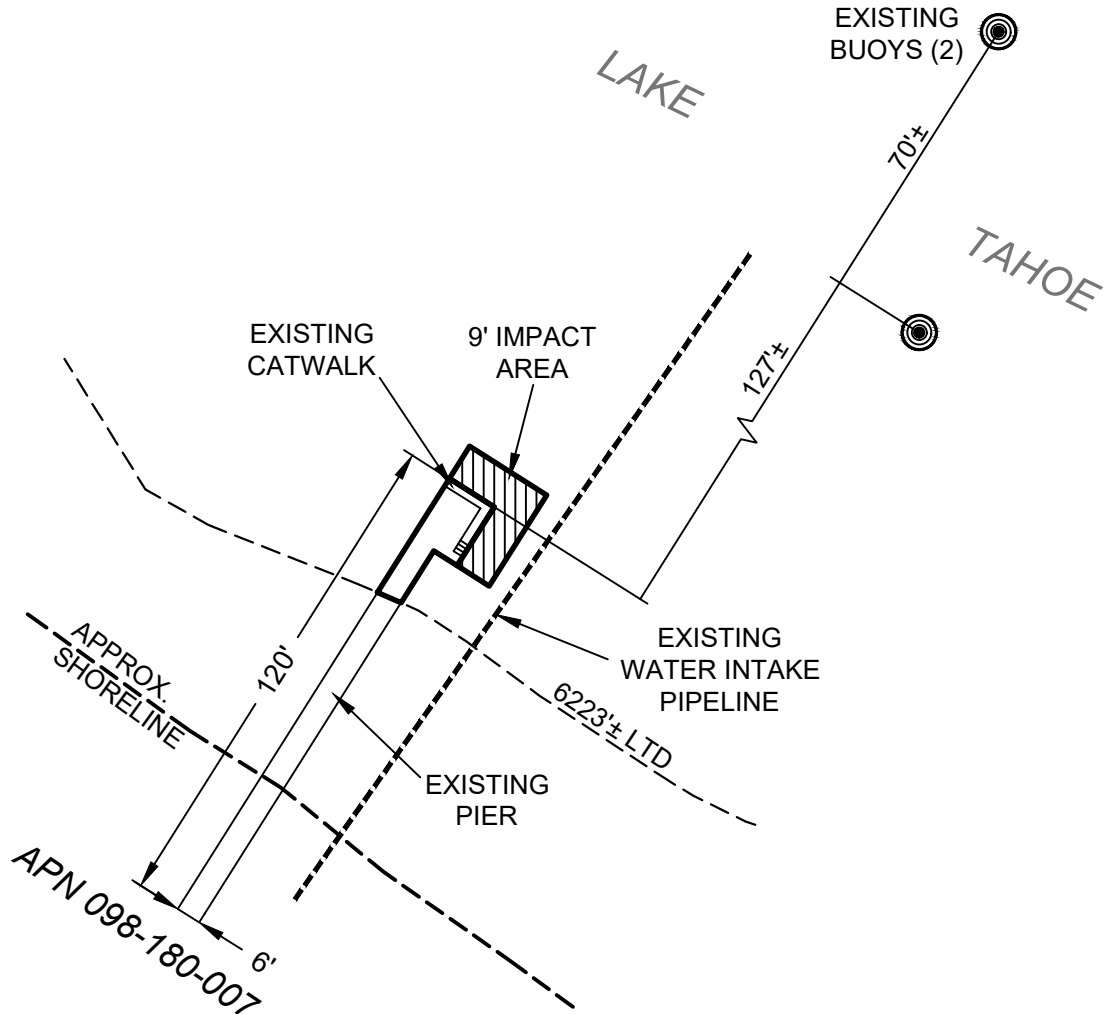
LAND DESCRIPTION PLAT
LEASE 3675, FRE 665, LLC
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

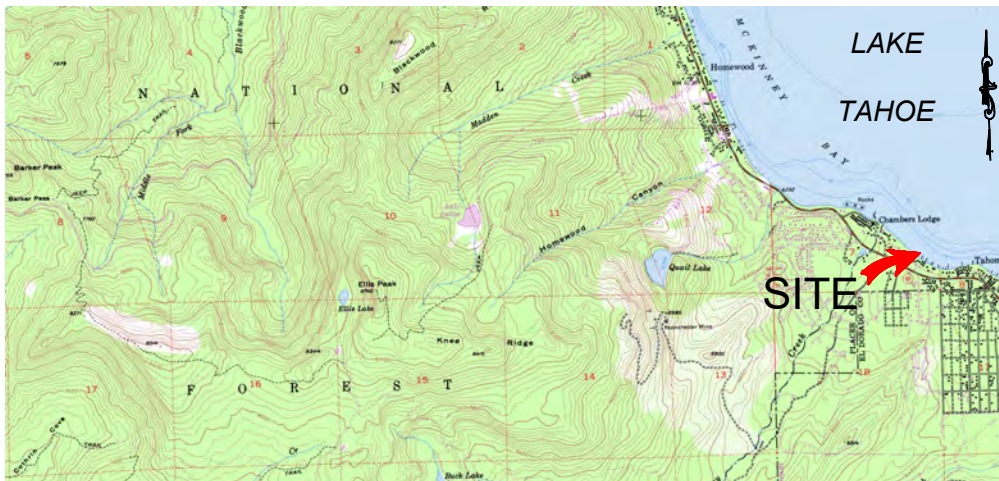
SITE



6720 POWDERHORN LANE, TAHOMA

NO SCALE

LOCATION

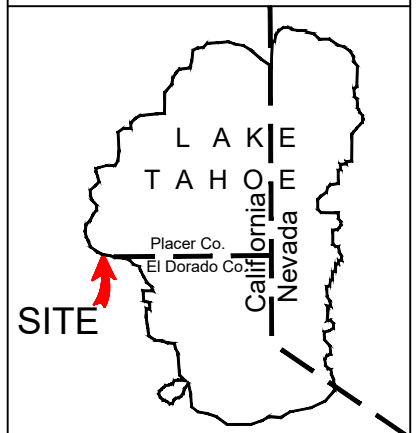


MAP SOURCE: USGS QUAD

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 3675
 FRE 665, LLC
 APN 098-180-007
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



TS 11/24/2020