

# Staff Report 35

## **APPLICANT:**

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Rubicon Park Estates Improvement Association, a California non-profit corporation

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land in Lake Tahoe, adjacent to 8820 Victoria Circle, near Rubicon Bay, El Dorado County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier, swim platform, and 50 mooring buoys.

## **TERM:**

10 years, beginning March 1, 2023.

## **CONSIDERATION:**

\$16,049 per year, with an annual Consumer Price Index adjustment and \$5,848 compensation for unauthorized occupation of State Land for the period beginning October 19, 2022 through February 28, 2023.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$2,000,000 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.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 19, 2012, the Commission authorized the issuance of a General Lease – Recreational Use to Rubicon Park Estates Improvement Association for use and maintenance of an existing pier previously authorized by the Commission; use and maintenance of an existing swim platform not previously authorized by the Commission; and relocation, use, and maintenance of 50 mooring buoys also not previously authorized by the Commission ([Item 35, October 19, 2012](#)). The lease expired October 18, 2022.

The applicant is now applying for a General Lease – Recreational Use for use and maintenance of the existing pier, swim platform, and 50 mooring buoys. On June 27, 2022, the applicant registered the 50 mooring buoys with the TRPA (Registration No. 10725).

The pier, swim platform, and 50 mooring buoys have existed for many years at this location. The improvements 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 subject pier is built on pilings with the area immediately upland of the pier being steep and rocky. A strip of flat, sandy shoreline underneath the pier is relatively easy to traverse, with public access for pedestrians and lake-related activities available at varying water levels underneath the pier.

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 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 pier, swim platform, and 50 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. 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)(1).

### **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. Authorize acceptance of compensation from the applicant in the amount of \$5,848 for unauthorized occupation of State land for the period beginning October 19, 2022 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, swim platform, and 50 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 \$16,049, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$2,000,000 per occurrence.

## EXHIBIT A

LEASE 1711

### LAND DESCRIPTION

Three parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 32, Township 14 North, Range 17 East, M.D.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 lying adjacent to that parcel described in Grant Deed recorded April 30, 1962 in Book 589, Page 413 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 – SWIM PLATFORM

All those lands underlying an existing swim platform lying adjacent to that parcel described in Grant Deed recorded April 30, 1962 in Book 589, Page 413 in Official Records of said County.

#### PARCEL 3 – BUOY FIELD

COMMENCING at the westerly terminus of that line described as S 70°51' W 35 feet in Grant Deed recorded April 30, 1962 in Book 589, Page 413 in Official Records of said County, said line also being the southerly line of the parcel described in said deed; thence along said line, or the prolongation thereof N 70°51' E 289.00 feet to the POINT OF BEGINNING; thence continuing along the prolongation of said line N 70°51' E 640.00 feet; thence leaving the prolongation of said line N19°09' W 199.68 feet to a point which intersects the easterly prolongation of the line described as N 70°51' E 72 feet in said Grant Deed; thence along the prolongation of said line S 70°51' W 640.00 feet; thence leaving the prolongation of said line S 19°09' E 199.68 feet to the POINT OF BEGINNING.

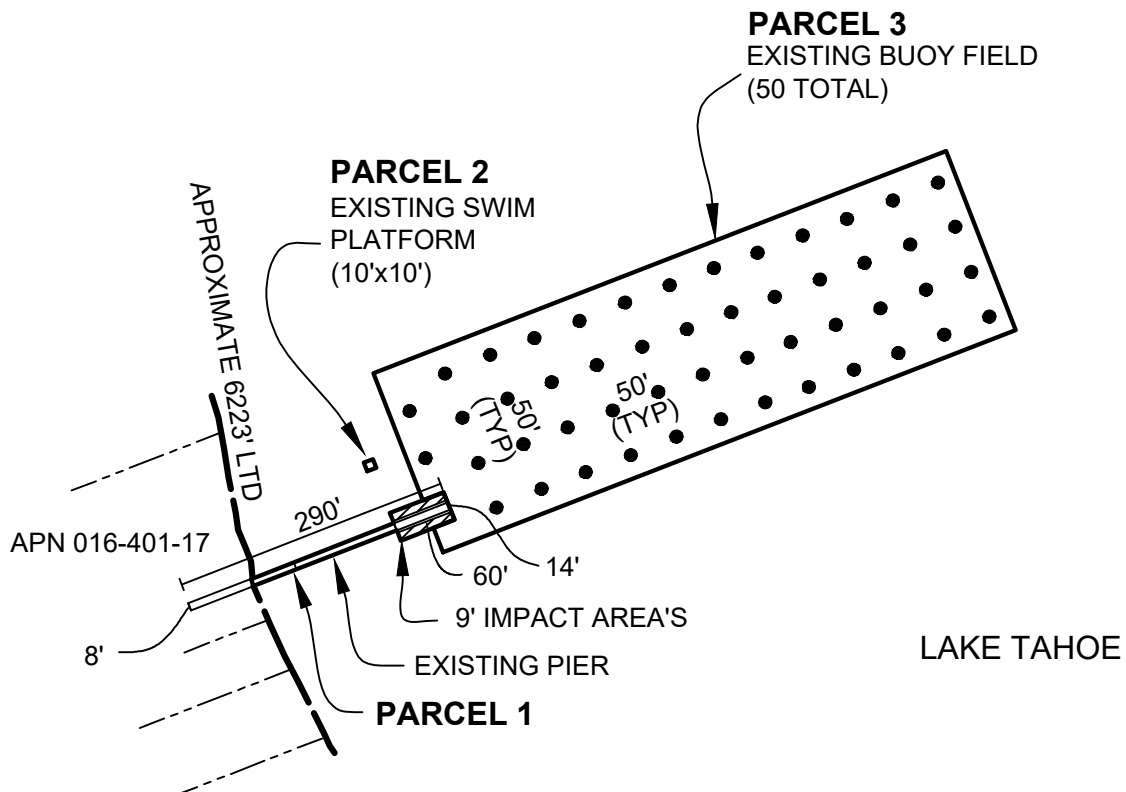
EXCEPTING THEREFROM any portion lying within hereinabove described Parcel 1.

Accompanying plat is hereby made a part of this description.

**END OF DESCRIPTION**

Updated 09/1/2017 by the California State Lands Commission Boundary Unit.





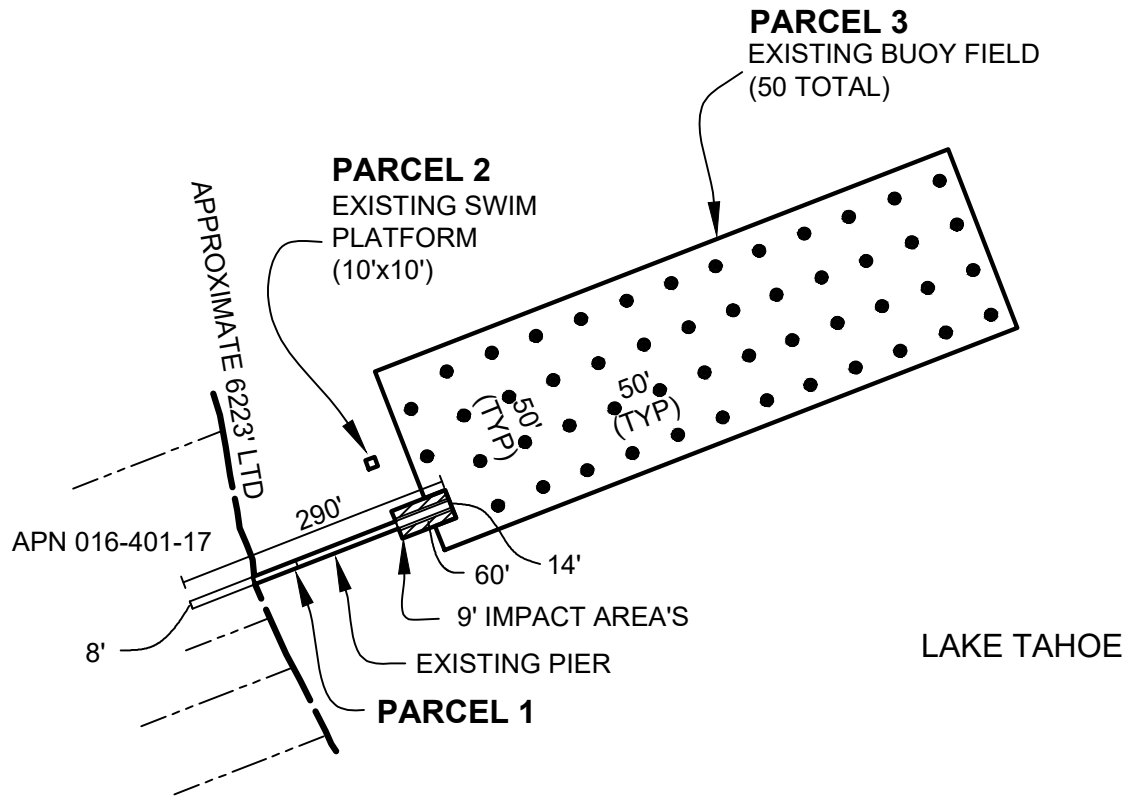
# EXHIBIT A





NO SCALE

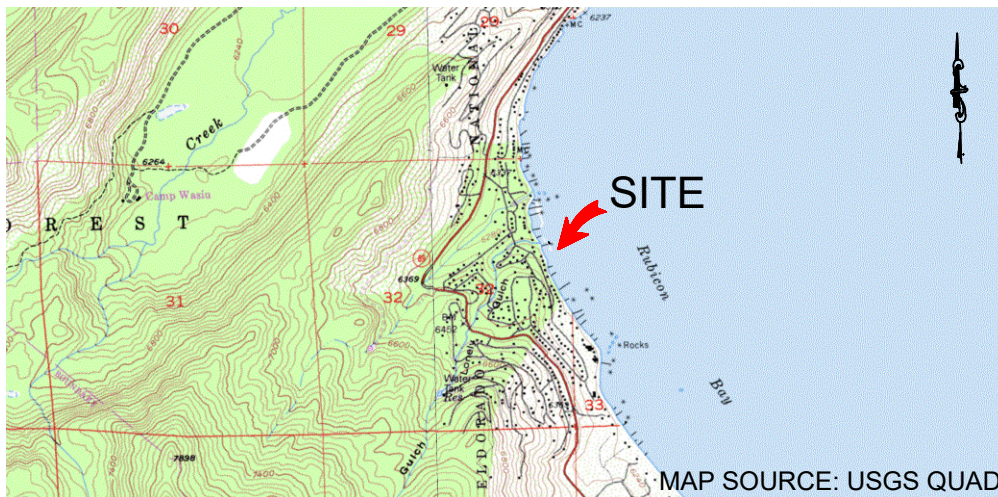
# SITE



8820 VICTORIA CIRCLE, NEAR RUBICON BAY

NO SCALE

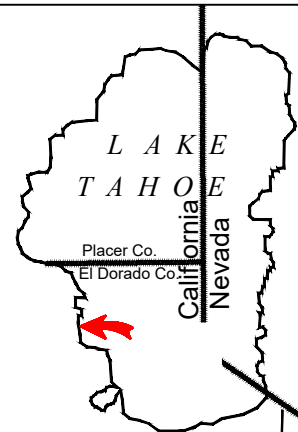
# LOCATION



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 1711  
RUBICON PARK ESTATES  
IMPROVEMENT ASSOCIATION  
APN 016-401-17  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY



DJF 11/22/22