

**STAFF REPORT
C02**

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02/04/19
PRC 3868.1
S. Avila

TERMINATION AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE

LESSEE:

Thomas H. Bredt and Polly Walker Bredt, Co-Trustees of the Bredt 1993 Living Trust

APPLICANT:

Danelle James and Edward Kavalerchik

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8645 Beach Lane, near Tahoma, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse with boat lift, boat hoist, and two mooring buoys.

LEASE TERM:

10 years, beginning February 4, 2019.

CONSIDERATION:

\$1,539 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing, and lake-related recreational uses.

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- If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the certification of a Final Environmental Impact Statement for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they may be required to remove the buoys.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On December 2, 2013, the Commission authorized the issuance of Lease No. PRC 3868.1, a General Lease - Recreational Use, for an existing pier, boathouse with boat lift, boat hoist, and two mooring buoys, to Thomas H. Bredt and Polly Walker Bredt, Co-Trustees of the Bredt 1993 Living Trust ([Item C01, December 2, 2013](#)). That lease will expire on November 26, 2023. On December 30, 2015, the upland was deeded to Danelle James and Edward Kavalchik. The Applicant is applying for a General Lease – Recreational Use for the existing pier, boathouse with boat lift, boat hoist, and two mooring buoys.

Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property without executing a lease quitclaim deed. The Applicant occupied State land from the period of December 30, 2015, through February 3, 2019 and has paid rent through November 26, 2018. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$291 for the period beginning November 27, 2018, through February 3, 2019, the day before the new lease becomes effective.

Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boathouse with boat lift, boat hoist, and two mooring buoys are used for the docking and

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mooring of boats. 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, boathouse with boat lift, boat hoist, and buoys have existed for many years at this location. The pier is built on pilings with the immediate area of the pier being flat with cobbles and small boulders. The topography and location of upland structures provide access for the pier and allow the public to walk or navigate next to the end of the pier within the Public Trust easement, and at low water to walk or navigate underneath the pier. The buoys are located directly lakeward of the upland parcel 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 and 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.

For all the reasons above, Commission 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. These actions are consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

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2. On October 24, 2018, the TRPA Governing Board certified a new Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments
3. Termination of a 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. Authorize termination, effective February 3, 2019, of Lease No. PRC 3868.1, a General Lease – Recreational Use, issued to

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Thomas H. Bredt and Polly Walker Bredt, Co-Trustees of the Bredt 1993 Living Trust.

2. Authorize acceptance of compensation from the Applicant in the amount of \$291 for the unauthorized occupation of State land for the period beginning November 27, 2018 through February 3, 2019.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 4, 2019, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse with boat lift, boat hoist, and two 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 \$1,539, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3868.1

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 32, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier with a boat hoist, catwalk, boat house with a catwalk and boat lift lying adjacent to those parcels described in Grant Deed recorded December 30, 2015 in Document No. 2015-0060364-00 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 those parcels described in Grant Deed recorded December 30, 2015 in Document No. 2015-0060364-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/21/2018 by the California State Lands Commission Boundary Unit.



NO SCALE

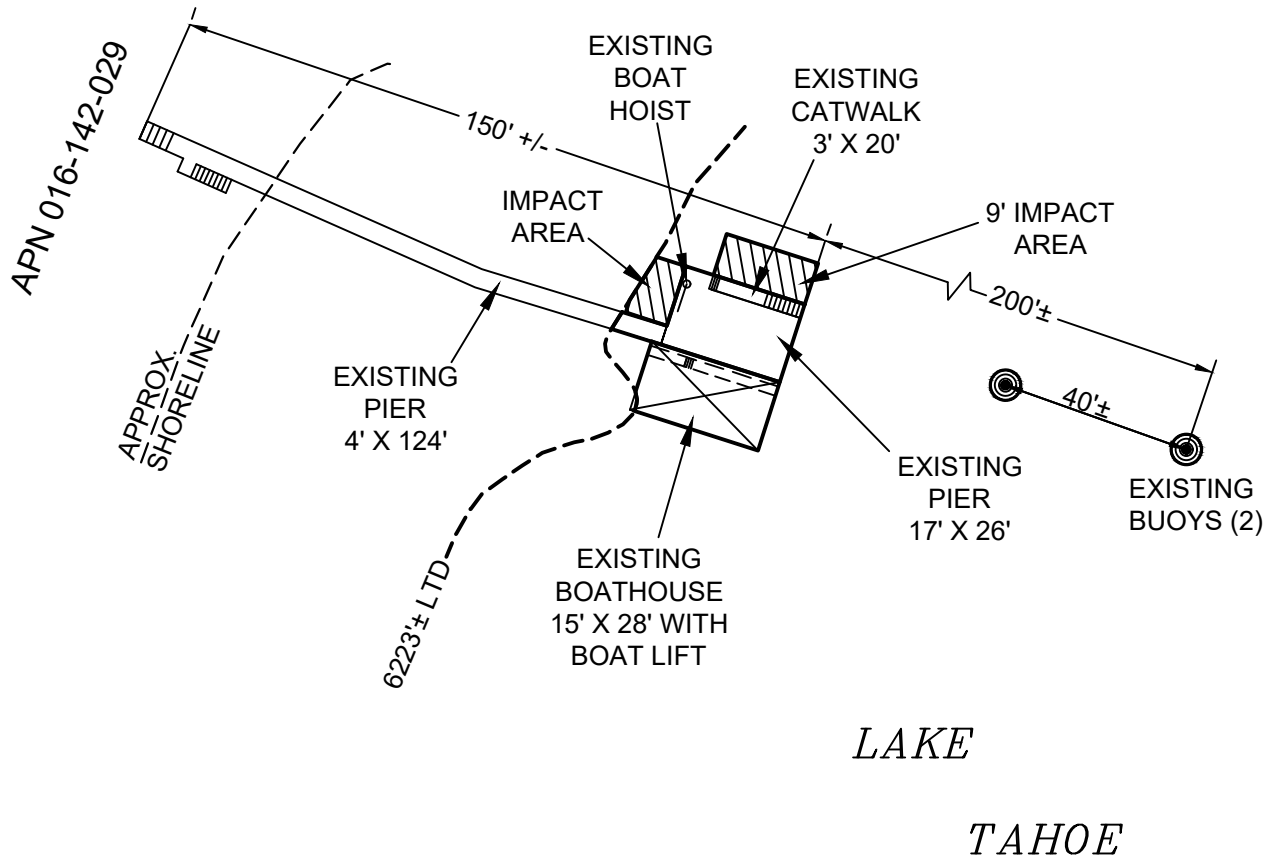


EXHIBIT A

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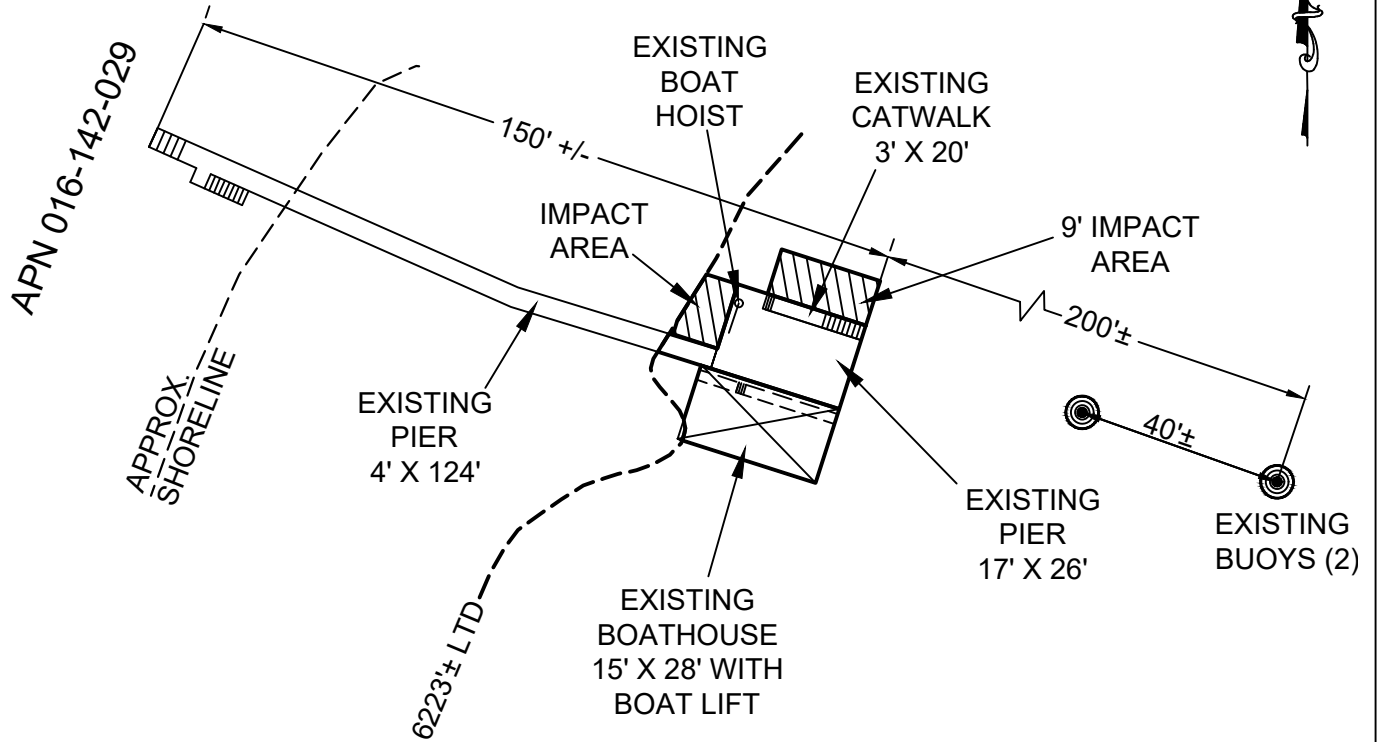
LAND DESCRIPTION PLAT
 PRC 3868.1, KAVALERCHIK & JAMES
 EL DORADO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



LAKE

TAHOE

8645 BEACH LANE, NEAR TAHOMA

NO SCALE

LOCATION

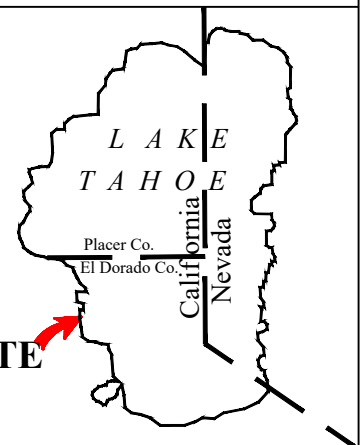


MAP SOURCE: USGS QUAD

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

PRC 3868.1
 KAVALERCHIK & JAMES
 APN 016-142-029
 GENERAL LEASE-
 RECREATIONAL USE
 EL DORADO COUNTY



SITE

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