

**STAFF REPORT
C07**

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S 1

02/04/19
W 26766
M. Schroeder

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Joseph P. Fanucchi and Marilyn M. Fanucchi

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 1500 North Lake Boulevard, Tahoe City, Placer County.

AUTHORIZED USE:

Use and maintenance of one existing mooring buoy not previously authorized by the Commission.

LEASE TERM:

10 years, beginning February 4, 2019.

CONSIDERATION:

\$377 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.
- If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoy 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 buoy.
- 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.

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STAFF ANALYSIS AND RECOMMENDATION:

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 Analysis:

The Applicant has applied for a General Lease – Recreational Use for the use and maintenance of one existing mooring buoy. The Applicant's buoy has been in Lake Tahoe for many years but was not previously authorized by the Commission.

The Applicant owns the upland adjoining the lease premises. The subject mooring buoy is privately owned and maintained. The buoy is used for the docking and mooring of boats and facilitates 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 lands (Pub. Resources Code, § 6503.5).

A pier is adjacent to the lease premises; however, the pier appears to be located landward of elevation 6,223 feet, Lake Tahoe Datum, based on the information available at this time, and therefore not within the Commission's leasing jurisdiction. The pier is within the Public Trust easement. The pier is built on pilings, allowing the public to navigate next to, and at certain water levels, under the pier. The immediate area of the existing pier is relatively flat with a sandy shoreline. The buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake. The buoy has been in its current location since approximately 1968 as determined by the U.S. Army Corps of Engineers in a letter dated September 18, 2009. TRPA issued a permit for the buoy in 2009. This permit and others from the same time period were based on a Final Environmental Impact Statement (FEIS) and Ordinance Amendments adopted by TRPA in October 2008. In September 2010, the U.S. District Court invalidated the FEIS and nullified the Amendments. On October 24, 2018, the Tahoe Regional Planning Agency's Governing Board certified a new FEIS and adopted Lake Tahoe Shorezone Ordinance Amendments. TRPA has indicated that it will recognize the previously issued permits and begin reissuing such permits in March 2019.

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

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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.

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, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is 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.
2. On October 24, 2018, the Tahoe Regional Planning Agency's Governing Board certified a new Final Environmental Impact Statement and adopted new Lake Tahoe Shorezone Ordinance Amendments.
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

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

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 4, 2019, for a term of 10 years, for the use and maintenance of one existing mooring buoy 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 \$377, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 26766

LAND DESCRIPTION

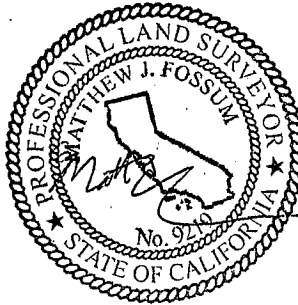
A parcel of submerged land, situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 5, Township 15 North, Range 17 East, MDM, as shown on the Official Township Plat, approved November 9th, 1866, County of Placer, State of California, and more particularly described as follows:

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy, adjacent to that Parcel as described in "Exhibit A" of that Grant Deed recorded January 31th, 1996 as document number 96-005396 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

PREPARED 12/14/18 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





APN
094-160-020

EXISTING PIER NOT
A PART OF LEASE

APPROX.
SHORELINE

APPROX. 6223' LTD

±150'

EXISTING BUOY

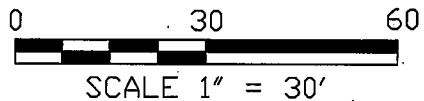


EXHIBIT A

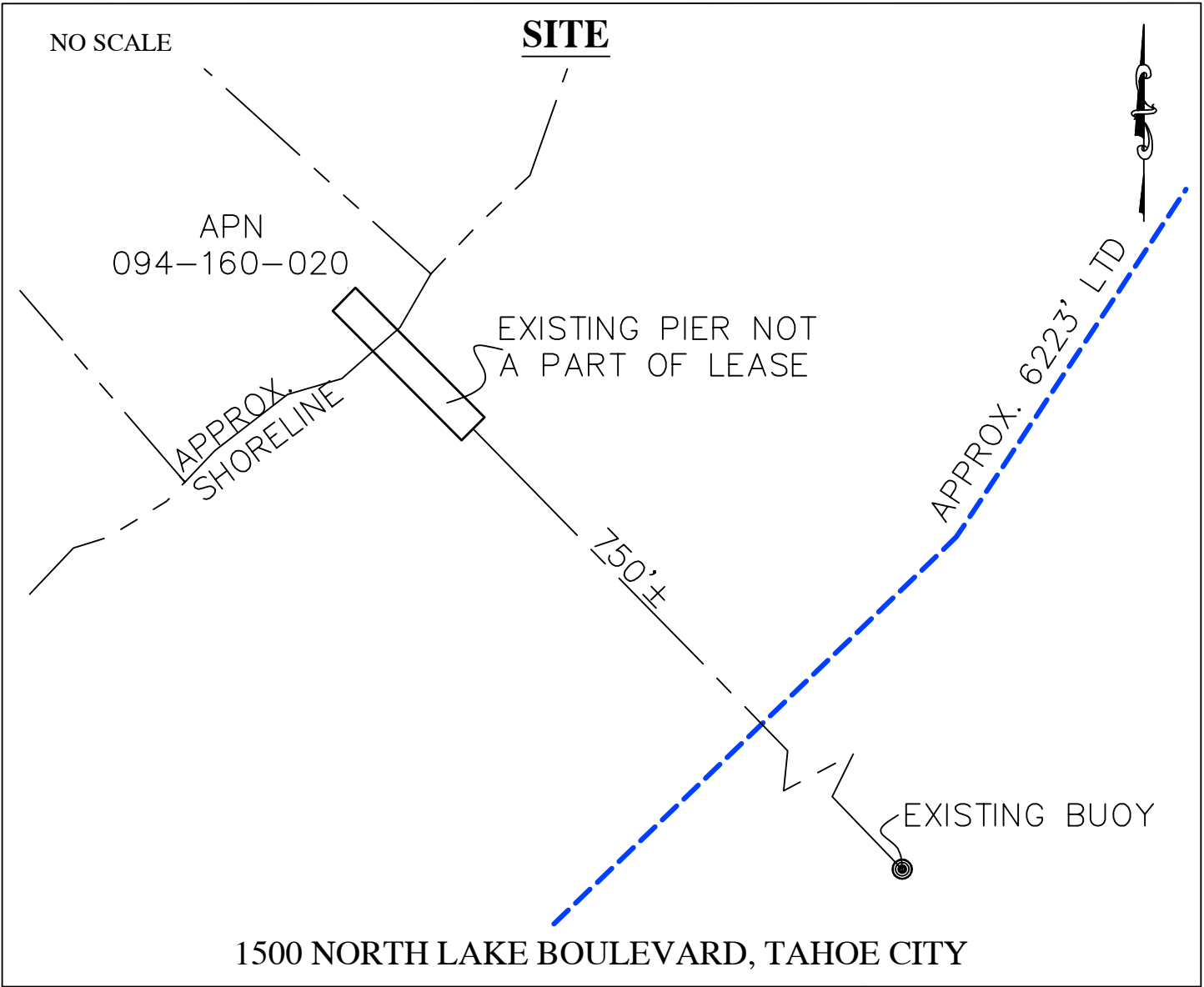
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LAND DESCRIPTION PLAT
W 26766, FANUCCHI
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION





NO SCALE

LOCATION

TAHOE CITY

SITE

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.

The map shows the site location in Tahoe City, California, with a red arrow pointing to the site. The map includes labels for 'TAHOE CITY', 'SILVERTON CREEK', and 'STATE PARK'. A north arrow is present.

Exhibit B

W 26766
FANUCCHI
APN 094-160-020
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY

SITE

L A K E
T A H O E

Placer Co.
El Dorado Co.
California
Nevada

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The map shows the outline of Lake Tahoe, with a red arrow pointing to the site location on the California side. The map is divided into Placer Co. and El Dorado Co. by a vertical line, and California and Nevada are labeled on either side. A north arrow is present.