

**STAFF REPORT  
C18**

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04/19/18  
PRC 3019.1  
M.J. Columbus

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Fred Gellert, Jr. and Annette Gellert, as Trustees of the Gellert Family Trust dated November 8, 1991

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 6300 West Lake Boulevard, near Homewood, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing pier, two tandem boat lifts, and two existing mooring buoys.

*LEASE TERM:*

10 years, beginning February 27, 2018.

*CONSIDERATION:*

\$1,376 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. 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.
3. 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

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authorization within the time limit, they may be required to remove the buoys.

4. 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, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

#### **Public Trust and State's Best Interests Analysis:**

On June 28, 2007, the Commission authorized a 10-year Recreational Pier Lease for an existing pier, boat lift, boat hoist, and three existing mooring buoys to Fred Gellert Jr. and Annette E. Gellert ([Item C02, June 28, 2007](#)). That lease expired on May 31, 2017. On December 17, 2013, the upland was deeded to Fred Gellert, Jr. and Annette Gellert, as Trustees of the Gellert Family Trust dated November 8, 1991. The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of an existing pier, two tandem boat lifts, and two mooring buoys. The Applicant maintains a third buoy which is located lakeward of an adjacent parcel the Applicant owns. There is also an item on the April agenda for a separate lease for this and another buoy (W 27129).

The boat lift authorized under the previous lease was actually two tandem boat lifts. On April 6, 2010, TRPA issued a permit for two boat lifts adjacent to the upland parcel. The proposed lease corrects the description of the boat lifts. The prior lease authorized a boat hoist which is not being included in the proposed lease because the Applicant submitted a survey dated July 7, 2017, showing the boat hoist is not on State sovereign land.

Staff recommends issuance of a lease beginning February 27, 2018. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,022 for the period beginning June 1, 2017, the day after the prior lease expired, through February 26, 2018.

Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boat lifts, and two mooring buoys are used for the docking and mooring of boats and

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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 facilities have existed for many years at this location. The pier with boat lifts is built on pilings, meaning the public may navigate or walk next to and, at lower water levels, under the pier. The area around the existing pier is slightly sloped with boulders and cobbles along the shore. 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.

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

**OTHER PERTINENT INFORMATION:**

1. The proposed lease was previously scheduled for Commission consideration at the February 27, 2018 meeting (Item C08). At that meeting, the Commission considered updates to the Lake Tahoe benchmarks (Item C90, February 27, 2018). The Commission deferred action on revising the existing Lake Tahoe benchmark and directed staff to identify funding options to conduct a thorough evaluation of the various methodologies available to the Commission to assess rent for piers, buoys and other structures located on state property in Lake Tahoe. The Commission further directed staff to continue applying the 2012 Lake Tahoe benchmarks for the next 5 years. Consequently, this item was removed from the February agenda, revised to reflect the current benchmark rates, and rescheduled for the Commission's consideration at the Commission's April meeting.

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2. 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 and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
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:**

Find that issuance of 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. Authorize acceptance of compensation from the Applicant in the amount of \$1,022 for unauthorized occupation of State lands for the period beginning June 1, 2017, through February 26, 2018.

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2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 27, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier, two tandem boat lifts, 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 \$1,376, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 3019.1**

**LAND DESCRIPTION**

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 7, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880 County of Placer, State of California, and more particularly described as follows:

**PARCEL 1 – PIER**

All those lands underlying an existing pier, catwalk and two boat lifts adjacent to that parcel described in Exhibit "A" of that Grant Deed recorded December 17, 2013 as Document Number 2013-0114687 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.

**PARCELS 2, 3 – BUOYS (2)**

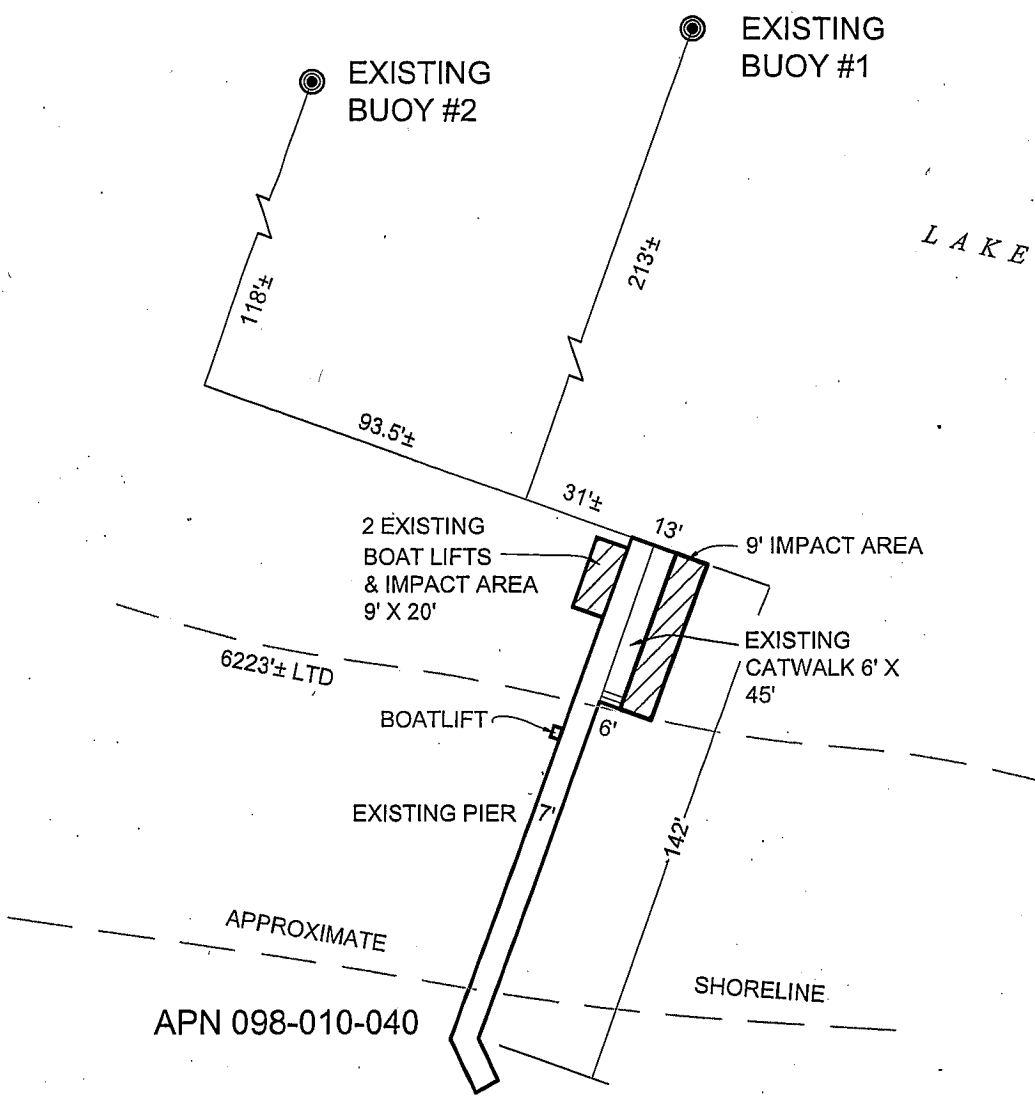
Two (2) circular parcels of land being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared February 2, 2018 by the California State Lands Commission Boundary Unit.



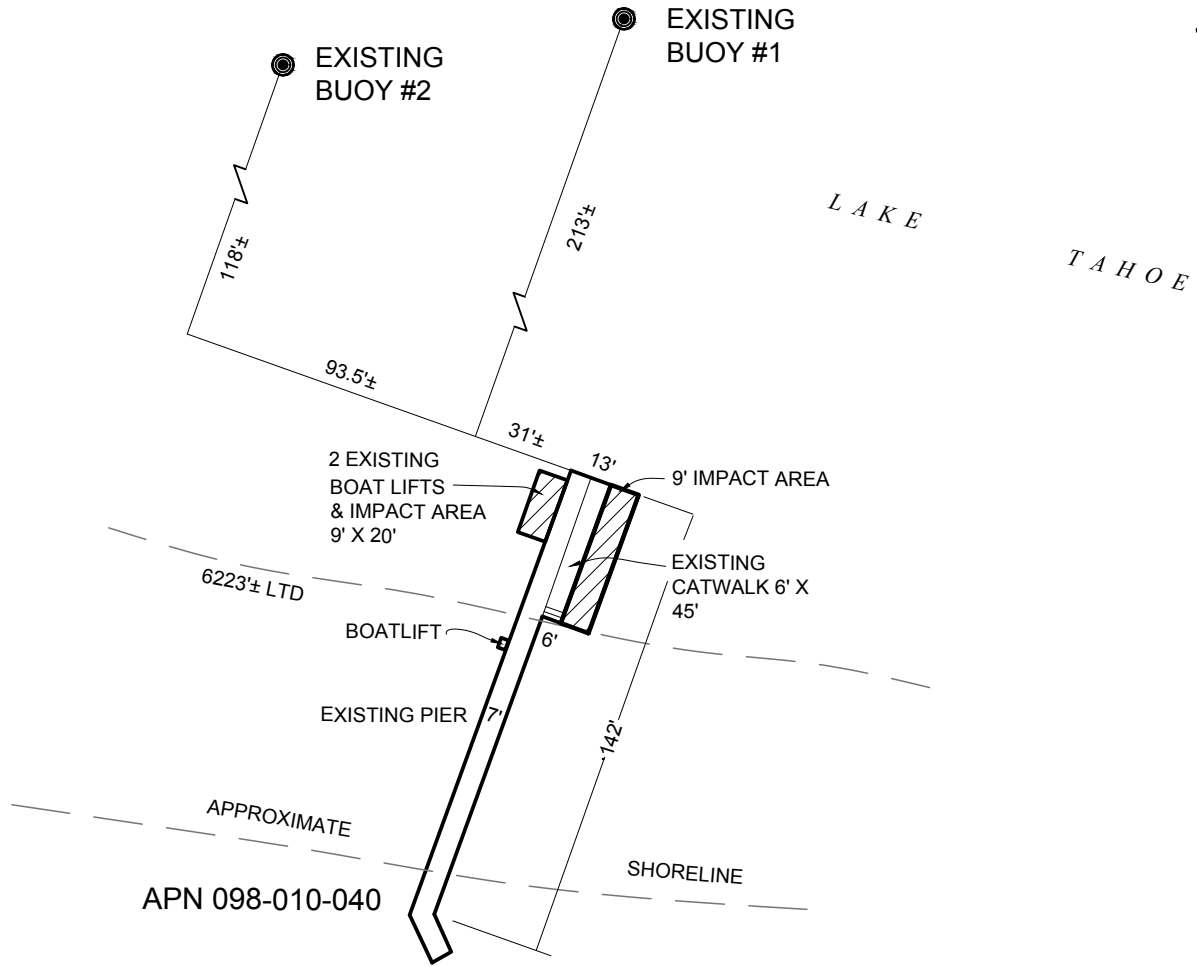


**EXHIBIT A**



NO SCALE

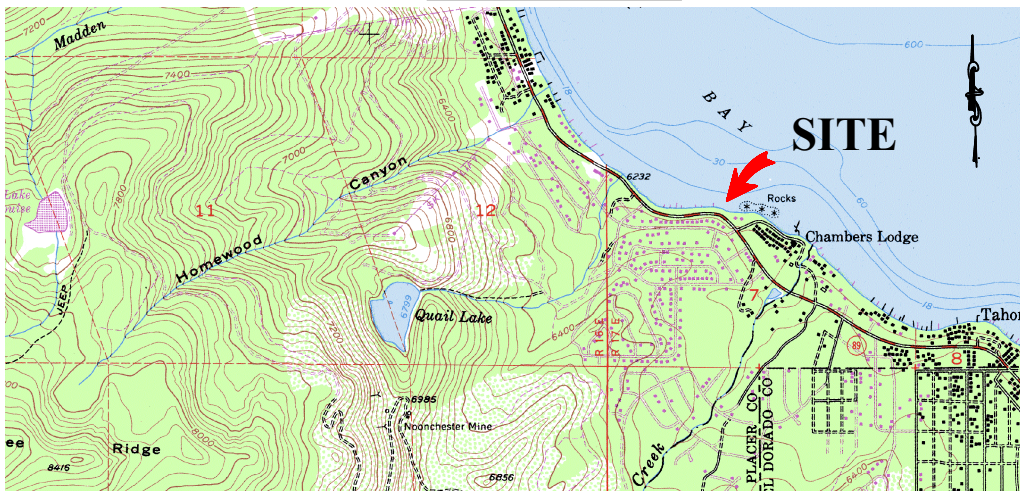
# SITE



6300 WEST LAKE BLVD., NEAR HOMEWOOD

NO SCALE

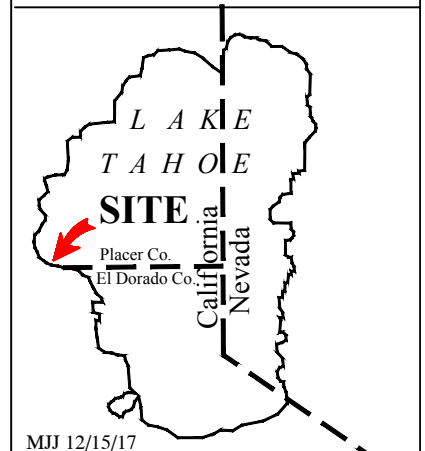
# LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B

PRC 3019.1  
 GELLERT, TRUSTEES  
 APN 098-010-040  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY



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.