

**STAFF REPORT  
C43**

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04/19/18  
PRC 8311.1  
J. Toy

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Lawrence B. Levy and Hillary B. Levy, Trustees of the H&L Trust UDT dated April 8, 1996

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 2796 Aqua Drive, near Tahoe City, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of two existing mooring buoys.

*LEASE TERM:*

10 years, beginning April 19, 2018.

*CONSIDERATION:*

\$754 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 the Lessee is unable to obtain such authorization within the time limit, they may be required to remove the buoys.

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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 May 5, 2008, the Commission authorized a Recreational Pier Lease for two existing mooring buoys to Lawrence B. Levy and Hillary B. Levy, Trustees of the H&L Trust UDT dated April 8, 1996 ([Item C03, May 5, 2008](#)). The lease expired on January 16, 2018. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of two existing mooring buoys.

Staff recommends issuance of a new lease beginning April 19, 2018. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$190 for the period beginning January 17, 2018, the day after the prior lease expired, through April 18, 2018, the day before the new lease becomes effective.

Staff also recommends that although the corner parcel faces Main Street, the lease be written with 2796 Aqua Drive as the adjacent property.

The buoys are privately owned and maintained. The buoys are for the 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 subject facilities do not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. The buoys have existed for many years at this location. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition. Additionally, the buoys occupy a relatively small area of the lake. Based on the foregoing, Commission staff believes that the mooring buoys will

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not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

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 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. 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.
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.
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.

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**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 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 \$190 for unauthorized occupation of State land for the period beginning January 17, 2018, through April 18, 2018.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 19, 2018, for a term of 10 years, for the continued use and maintenance of two existing 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 \$754, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 8311.1**

**LAND DESCRIPTION**

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 4, Township 15 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 9, 1866 County of Placer, State of California, and more particularly described as follows:

Two (2) circular parcels of land being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to those parcels described in Exhibit "A" of that Trust Transfer Deed recorded August 12, 2010 as Document Number 2010-0062346 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared October 16, 2017 by the California State Lands Commission Boundary Unit.





APN 094-173-012

SHORELINE

370'

50'

6223' ± LTD

2 EXISTING BUOYS

L A K E

T A H O E

# EXHIBIT A.

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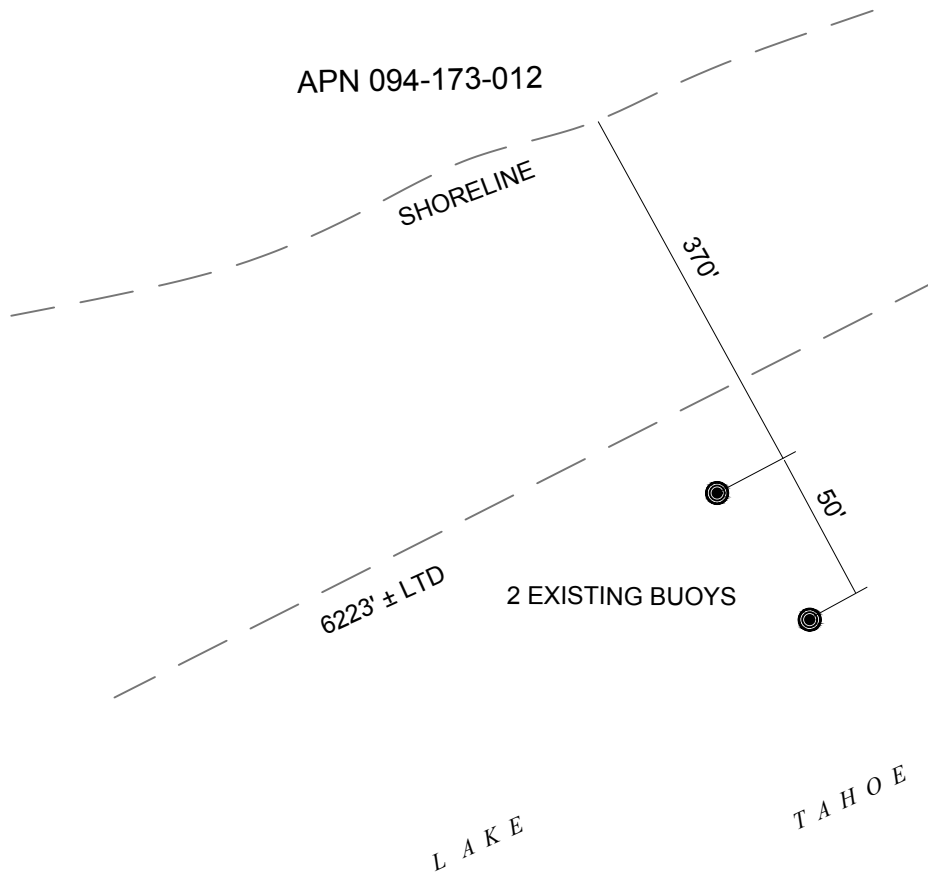
LAND DESCRIPTION PLAT  
PRC 8311.1, H & L TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE



2796 AQUA DRIVE, NEAR TAHOE CITY

NO SCALE

# LOCATION

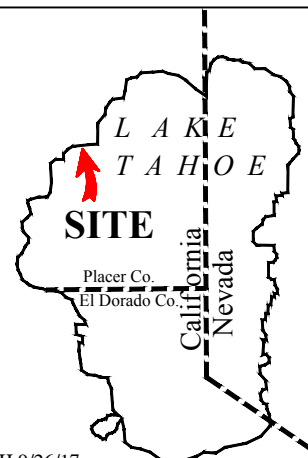


MAP SOURCE: USGS QUAD

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 8311.1  
 H & L TRUST  
 APN 094-173-012  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY



MJJ 9/26/17