

**STAFF REPORT  
C52**

A 1  
S 1

04/19/18  
PRC 4114.1  
J. Toy

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Patricia Borhani, Trustee of the Patricia Borhani 1997 Trust Dated June 18, 1997

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 4070 North Lake Boulevard, near Carnelian Bay, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of one existing mooring buoy.

*LEASE TERM:*

10 years, beginning February 27, 2018.

*CONSIDERATION:*

\$377 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 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 the Lessee is unable to obtain such authorization within the time limit, they may be required to remove the buoy.

STAFF REPORT NO. **C52** (CONT'D)

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 24, 2008, the Commission authorized a Recreational Pier Lease for one existing mooring buoy to Patricia Borhani, Trustee of the Family Bypass Trust and the Patricia Borhani 1997 Trust Dated June 18, 1997 ([Item C02, June 24, 2008](#)). That lease expired on November 18, 2017. On April 21, 2015, full upland ownership was transferred to Patricia Borhani, Trustee of the Patricia Borhani 1997 Trust Dated June 18, 1997. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the one existing mooring buoy.

Staff recommends issuance of a new lease beginning February 27, 2018. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$103 for the period beginning November 19, 2017, the day after the prior lease expired, through February 26, 2018.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The one existing mooring 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 land (Pub. Resources Code, § 6503.5).

The subject facility does not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. The buoy has existed for many years at this location. Additionally, the buoy occupies a relatively small area of the lake. Based on the foregoing, Commission staff believes the mooring buoy will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

STAFF REPORT NO. **C52** (CONT'D)

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, 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.

STAFF REPORT NO. **C52** (CONT'D)

**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 \$103 for unauthorized occupation of State land for the period beginning November 19, 2017, through February 26, 2018.
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 one existing mooring buoy 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**

**PRC 4114.1**

**LAND DESCRIPTION**

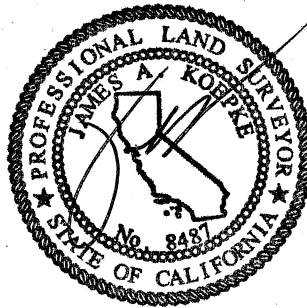
A parcel of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 28, Township 16 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, more particularly described as follows:

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to that parcel described in Trust Transfer Deed recorded April 21, 2015 as Document Number 2015-0031488-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 10/25/2017 by the California State Lands Commission Boundary Unit.





APN 092-142-021

6223'± LTD

250'±

TAHOE

LAKE

EXISTING BUOY



### EXHIBIT A

Page 2 of 2

TS 10/25/17

LAND DESCRIPTION PLAT  
PRC 4114.1, BORHANI 1997 TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

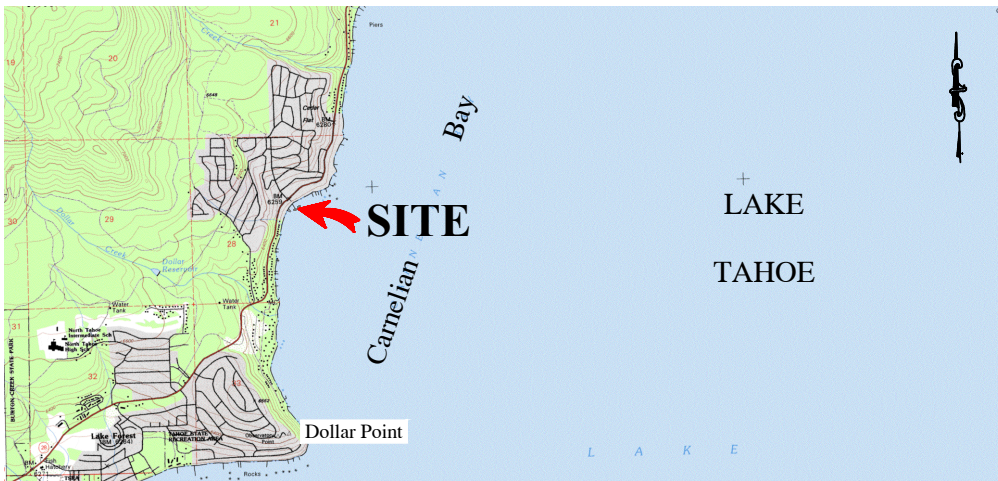
**SITE**



4070 NORTH LAKE BLVD., NEAR CARNELIAN BAY

NO SCALE

**LOCATION**



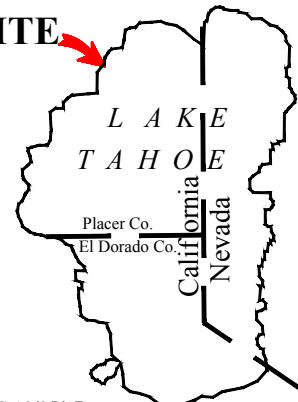
MAP SOURCE: USGS QUAD

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 4114.1  
BORHANI 1997 TRUST  
APN 092-142-021  
GENERAL LEASE-  
RECREATIONAL USE  
PLACER COUNTY

SITE



TS 10/25/17