

**STAFF REPORT
C01**

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10/18/18
PRC 8366.1
M. Schroeder

**WAIVER OF RENT, PENALTY, AND INTEREST;
ACCEPTANCE OF A LEASE QUITCLAIM DEED; AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Ashley W. Abdo and Mary E. Abdo

APPLICANT:

MMAA, LLC, a Delaware Limited Liability Company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 9922 Lake Street, Kings Beach, Placer County.

AUTHORIZED USE:

Continued use and maintenance of two existing mooring buoys.

LEASE TERM:

10 years, beginning October 18, 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. 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.

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3. 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 April 23, 2014, the Commission authorized a General Lease – Recreational Use for two existing mooring buoys to Ashley W. Abdo and Mary E. Abdo ([Item C18, April 23, 2014](#)). That lease will expire on August 15, 2023.

The Lessee paid annual rent through August 15, 2018. Commission staff sent an annual rent invoice to the Lessee for the 2018-2019 lease period. The Lessee did not pay this invoice.

On November 21, 2017, ownership of the upland parcel was deeded to the Applicant. Staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of August 16, 2018 through August 15, 2019, since the Lessee was no longer the upland owner at this time, and the Applicant has already agreed to be responsible for rent during this time. The Applicant is applying for issuance of a new lease for the continued use and maintenance of the two existing mooring buoys.

Therefore, staff recommends waiving the rent, penalty, and interest due from Lessee under invoice number 45086. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$130 for the period beginning August 16, 2018, through October 17, 2018, the day before the proposed new lease would become effective.

The Lessee executed a lease quitclaim deed releasing their interest in the lease. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

The subject facilities are privately owned and maintained. The two mooring buoys are used for the docking and mooring of boats and facilitate recreational boating. Recreational boating is a water-dependent

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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 buoys are located directly lakeward of the upland parcel and occupy relatively small areas 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. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition. Based on the foregoing, staff believes the mooring buoys will 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, 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. 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.
2. Acceptance of the quitclaim deed and waiver of rent, penalty, and interest are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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).

3. 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).

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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 acceptance of the quitclaim deed; waiver of rent, penalty, and interest; and issuance of the proposed lease will not 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. Waive rent, penalty and interest due for the period of August 16, 2018, through October 17, 2018, and void annual rent invoice number 45086 issued to Ashley W. Abdo and Mary E. Abdo.
2. Authorize acceptance of a quitclaim deed, effective October 17, 2018, of Lease No. PRC 8366.1, a General Lease – Recreational Use, issued to Ashley W. Abdo and Mary E. Abdo.
3. Authorize acceptance of compensation in the amount of \$130 for unauthorized occupation of State lands for the period beginning August 16, 2018, through October 17, 2018, from the Applicant.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 18, 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;

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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 8366.1

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 30, Township 16 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved January 2, 1875, County of Placer, State of California, more particularly described as follows:

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 November 21, 2017 as Document Number 2017-0092200-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 07/16/2018 by the California State Lands Commission Boundary Unit.



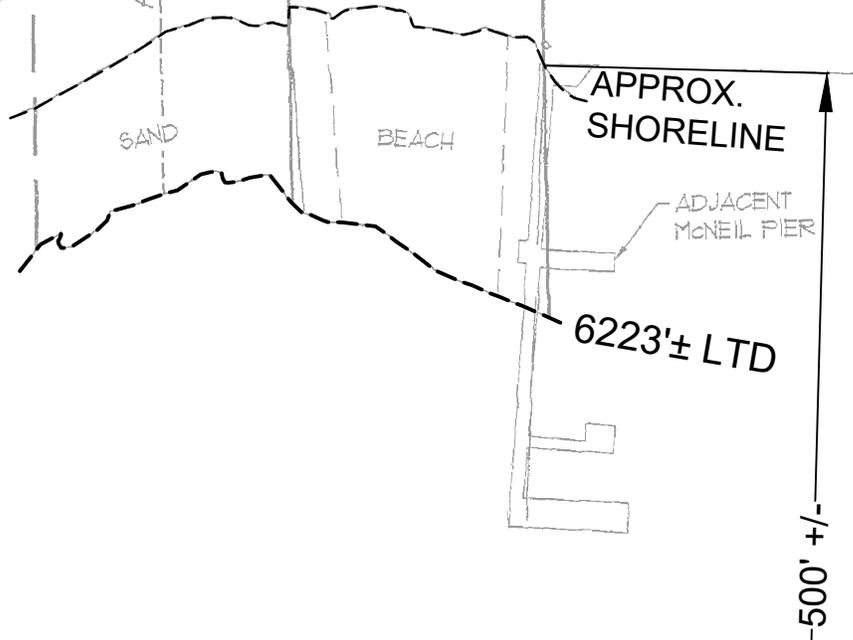


HARBOR AVENUE

AGRAWAL TRUST
APN: 090-320-002, 003

APN 090-324-004

MCNEIL TRUST
APN: 090-320-001



LAKE

TAHOE

EXISTING
BUOYS (2)



EXHIBIT A

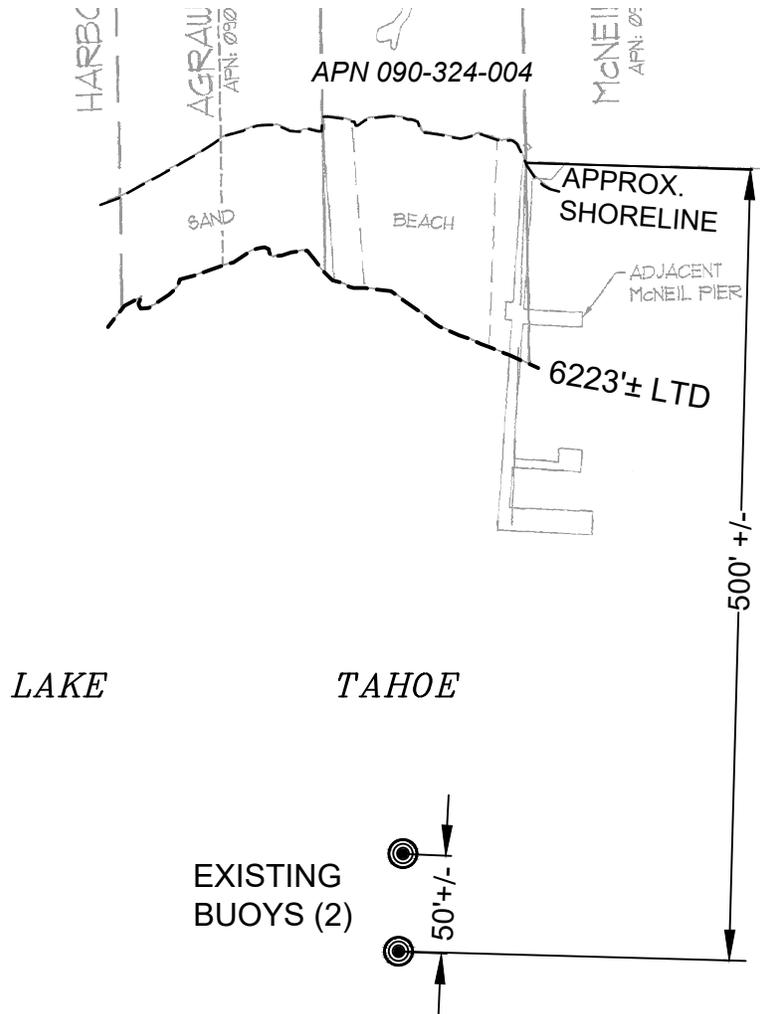
LAND DESCRIPTION PLAT
PRC 8366.1, MMAA, LLC
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



9922 LAKE STREET, NEAR KINGS BEACH

NO SCALE

LOCATION

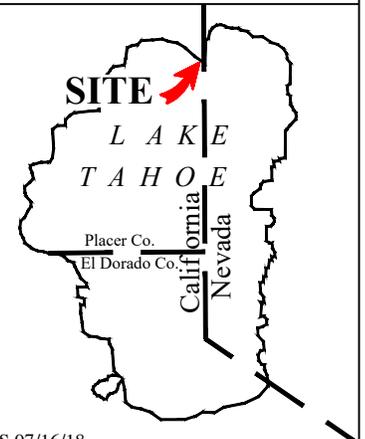


MAP SOURCE: USGS QUAD

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 8366.1
 MMAA, LLC
 APN 090-324-004
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



TS 07/16/18