

**STAFF REPORT  
C17**

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S 1

10/18/18  
PRC 8266.1  
M. Schroeder

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST;  
TERMINATION OF LEASE; AND ISSUANCE OF A GENERAL LEASE –  
RECREATIONAL USE**

**LESSEE:**

Bob R. Simpson and Janice L. Simpson

**APPLICANT:**

David William Jeske, Trustee of the David W. Jeske Trust UDT dated 8/20/2009

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 1780 North Lake Boulevard,  
Tahoe City, 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 May 24, 2012, the Commission authorized a General Lease – Recreational Use for two existing mooring buoys to Bob R. Simpson and Janice L. Simpson ([Item C35, May 24, 2012](#)). On February 7, 2017, the Commission authorized a revision of rent to revise the annual rent from \$680 per year to \$754 per year ([Item C19, February 7, 2017](#)). That lease will expire on May 23, 2022.

The Lessee paid annual rent through May 23, 2018. Commission staff sent annual rent invoices to the Lessee for the 2018-2019 lease period. The Lessee did not pay these invoices.

On September 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 May 24, 2018, through May 23, 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 numbers 44522 and 45460. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$304 for the period beginning May 24, 2018, through October 17, 2018, the day before the proposed new lease would become effective.

Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland without notifying Commission staff and without executing a lease quitclaim deed.

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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 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 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. Additionally, the buoys are located directly lakeward of the upland property and occupy relatively small areas of the lake. 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 and resources under the Commission's jurisdiction.
2. Termination of a lease 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).

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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).

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 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, or 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 annual rent, penalty and interest due for the period of May 24, 2018, through October 17, 2018, and void annual rent invoice numbers 44522 and 45460 issued to Bob R. Simpson and Janice L. Simpson.
2. Authorize termination, effective October 17, 2018, of Lease No. PRC 8266.1, a General Lease – Recreational Use, issued to Bob R. Simpson and Janice L. Simpson.
3. Authorize acceptance of compensation in the amount of \$304 for unauthorized occupation of State lands for the period beginning May 24, 2018, through October 17, 2018, from the Applicant.

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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; 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 8266.1**

**LAND DESCRIPTION**

Two (2) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 of Section 5, 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:

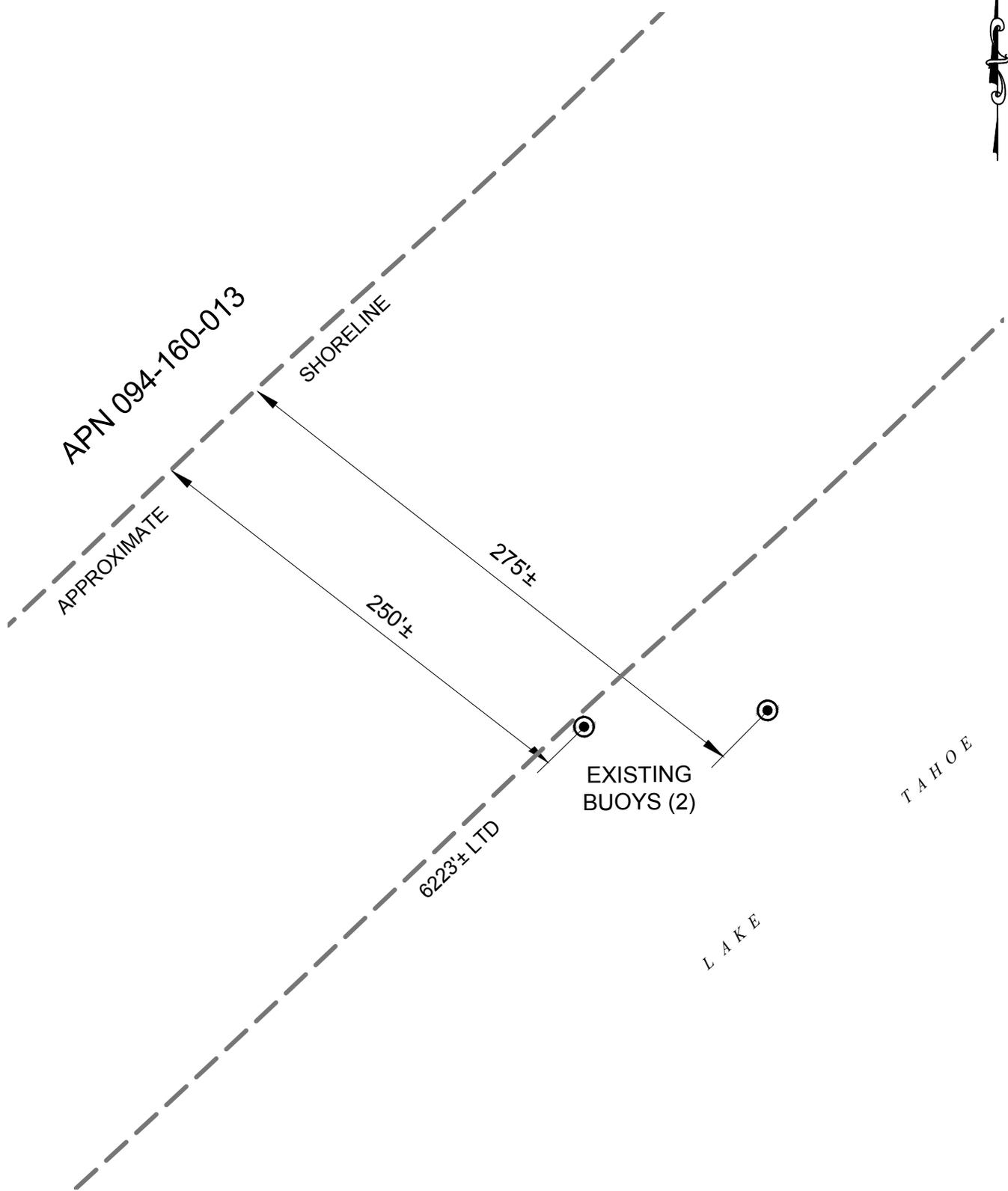
Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to a parcel described in that Grant Deed recorded September 21 2017 as Document Number 2017-0073399-00 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

**END OF DESCRIPTION**

Prepared January 10, 2018 by the California State Lands Commission Boundary Unit.





# EXHIBIT A

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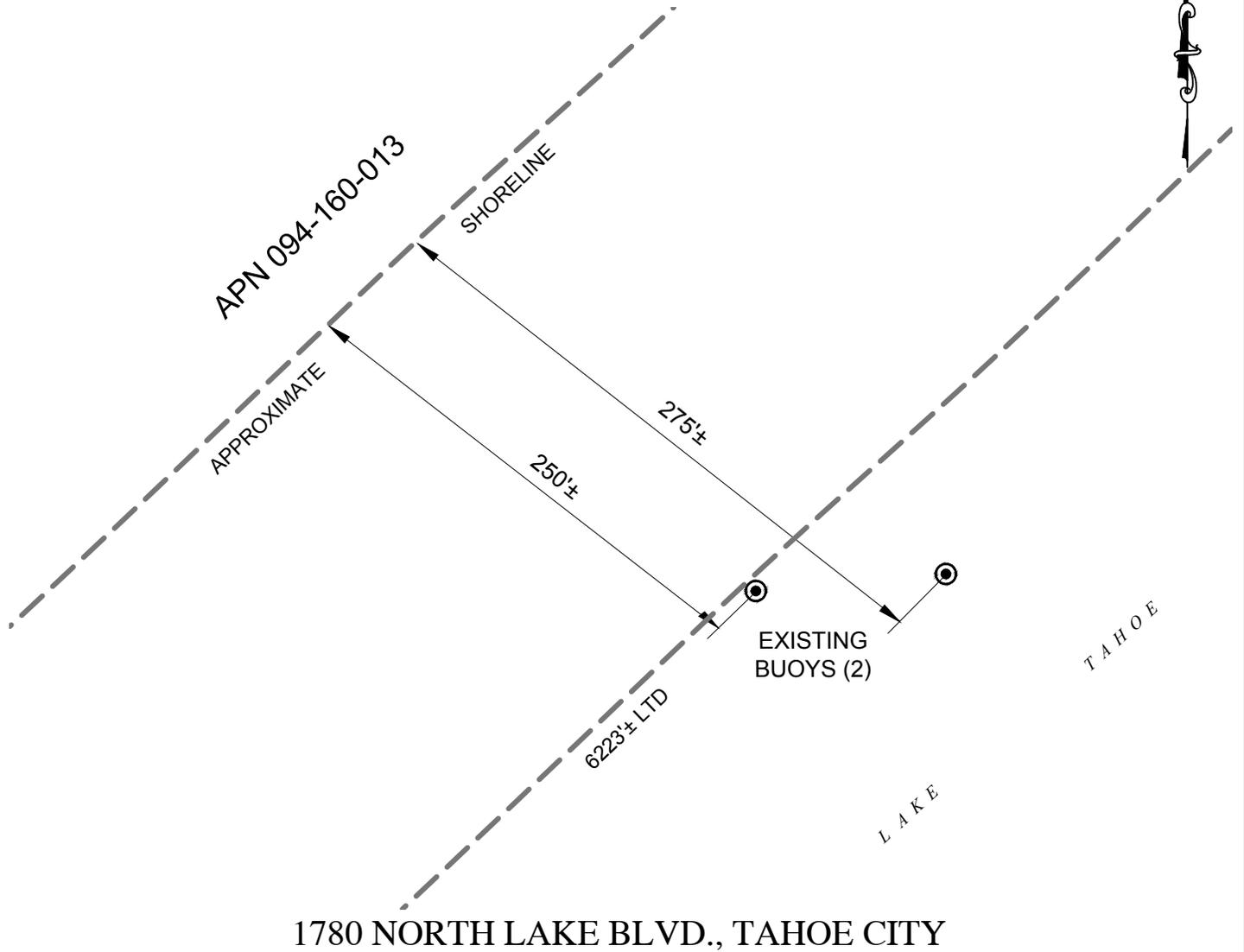
LAND DESCRIPTION PLAT  
PRC 8266.1, JESKE TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE



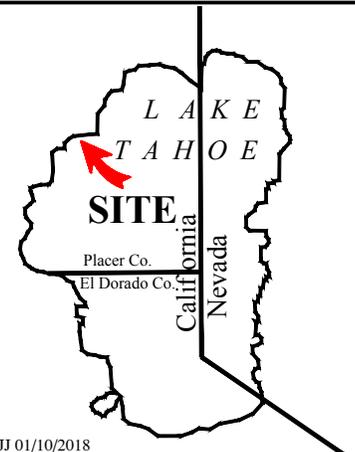
NO SCALE

# LOCATION



# Exhibit B

PRC 8266.1  
 JESKE TRUST  
 APN 094-160-013  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY



MJJ 01/10/2018

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.