

**CALENDAR ITEM
C11**

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12/06/16
W 26944
K. Connor

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Tori McPherson Kistler, David Kistler, Tori McPherson Kistler as Custodian of Cooper Hunter Kistler Under the Uniform Transfers to Minor Act, and Tori McPherson Kistler as Custodian of Sydney McPherson Kistler Under the Uniform Transfers to Minor Act

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5230 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Use and maintenance of two existing mooring buoys not previously authorized by the Commission.

LEASE TERM:

10 years beginning December 6, 2016.

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 permits, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the adoption of a Final Environmental Impact Statement (FEIS) 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, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

The Applicant has applied for a General Lease – Recreational Use for the use and maintenance of two existing mooring buoys. The Applicant owns the upland adjoining the lease premises. The Applicant's two mooring buoys are privately owned and maintained and have been in Lake Tahoe for many years, but were not previously authorized by the Commission. Staff became aware of the two unauthorized buoys while processing a lease application for a nearby property owner.

The two 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 lands (Public Resources Code section 6503.5).

The two buoys have existed for many years at this location. The buoys do not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. Upon termination of the lease, the lessee may be required to remove all improvements and restore the leased land to its original condition. Additionally, the two buoys occupy a relatively small area of the lake. Based on the foregoing, Commission staff believes that the two mooring buoys will not substantially interfere with Public Trust needs at this location, at this time, or 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

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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. 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.

3. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

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).

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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 the Public Trust needs and values at this location, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Tori McPherson Kistler, David Kistler, Tori McPherson Kistler as Custodian of Cooper Hunter Kistler Under the Uniform Transfers to Minor Act, and Tori McPherson Kistler as Custodian of Sydney McPherson Kistler Under the Uniform Transfers to Minor Act; beginning December 6, 2016, for a term of 10 years, for the use and maintenance of two existing mooring buoys not previously authorized by the Commission, 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

W 26944

LAND DESCRIPTION

Two (2) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 1, Township 14 North, Range 16 East, MDM., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, and more particularly described as follows:

PARCELS 1 & 2 (BUOYS)

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to those parcels described in Exhibit "A" of Grant Deed recorded December 20, 2012 as Document number 2012-0122586-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 09/07/2016 by the California State Lands Commission Boundary Unit.



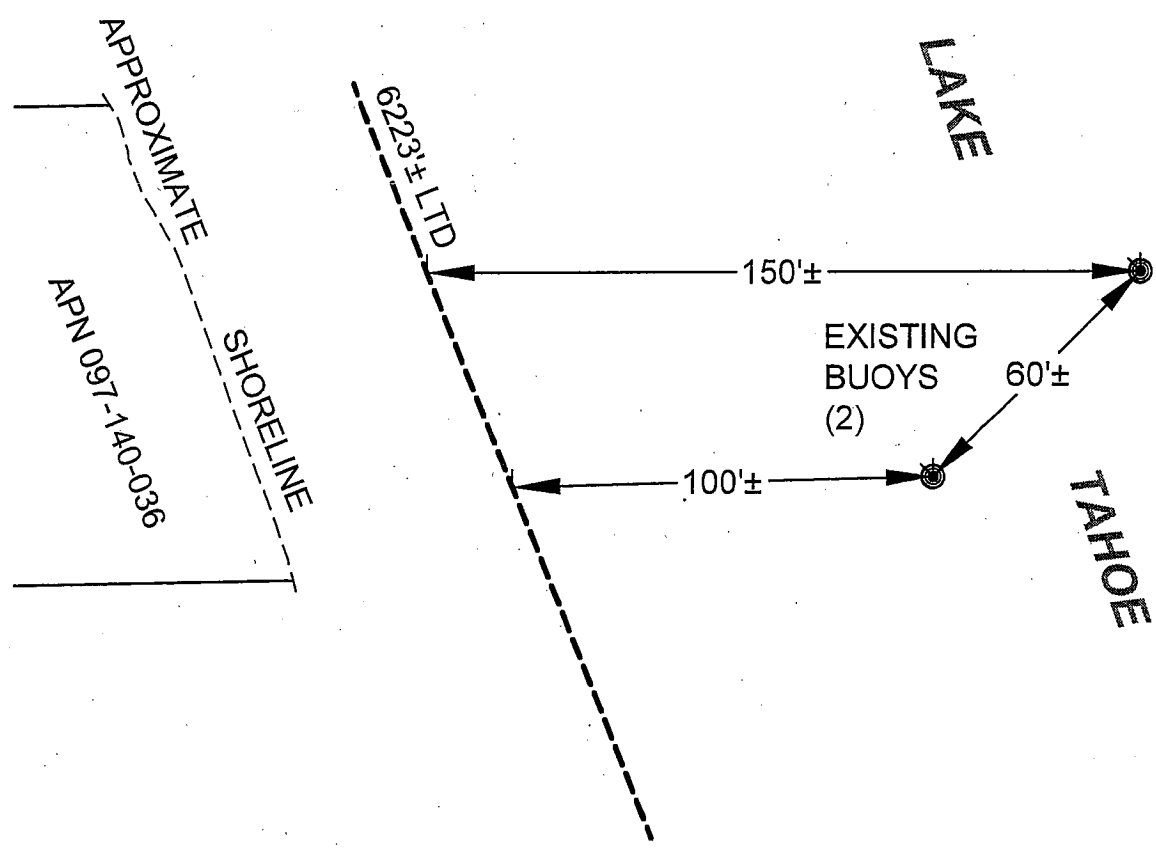


EXHIBIT A

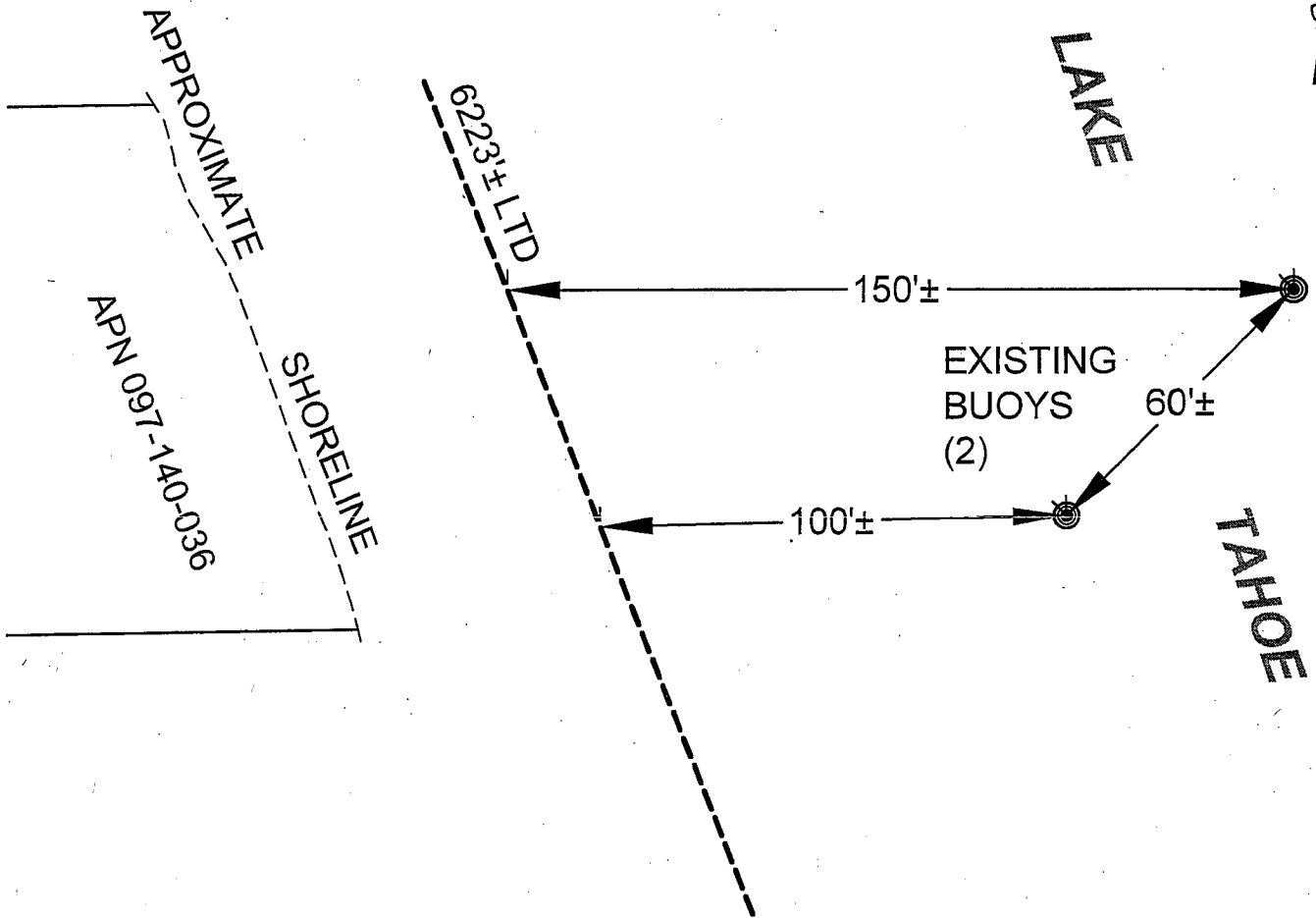
LAND DESCRIPTION PLAT
W 26944, KISTLER
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

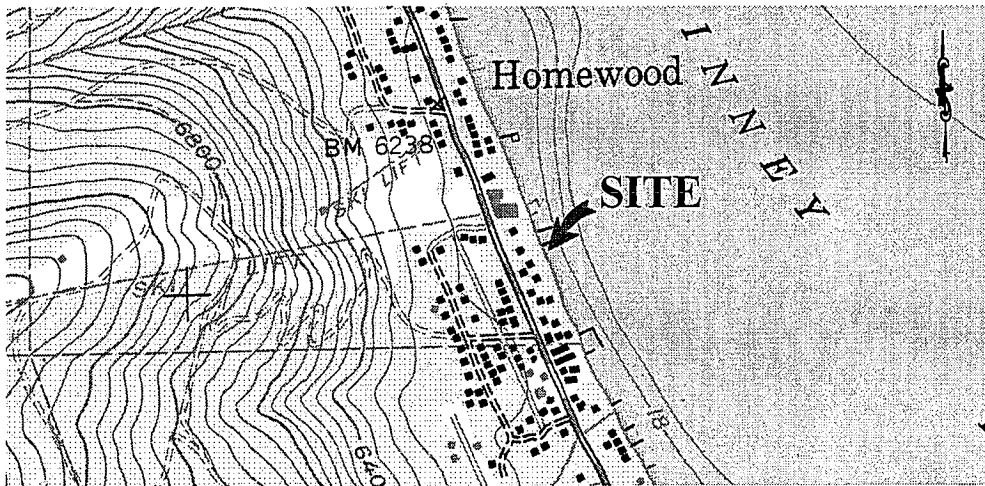
SITE



5230 WEST LAKE BLVD., HOMEWOOD

NO SCALE

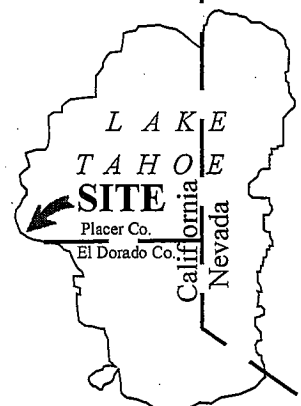
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26944
 KISTLER
 APN 097-140-036
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



RPF 09/07/16

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.