

**STAFF REPORT
C20**

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S 1

04/19/18
W 27129
M.J. Columbus

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Fred Gellert, Jr. and Annette Gellert, Trustees of the Ryan Bradley Gellert GST Trust dated May 30, 2012; Fred Gellert, Jr. and Annette Gellert, Trustees of the Landon Tyler Gellert GST Trust dated October 19, 2012; and Fred Gellert, Jr. and Annette Gellert, Trustees of the Heather Gigi Gellert GST dated October 19, 2012

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6330 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 February 27, 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

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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.

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 December 17, 2013, the upland was deeded to Fred Gellert, Jr. and Annette Gellert, Trustees of the Ryan Bradley Gellert GST Trust dated May 30, 2012; Fred Gellert, Jr. and Annette Gellert, Trustees of the Landon Tyler Gellert GST Trust dated October 19, 2012; and Fred Gellert, Jr. and Annette Gellert, Trustees of the Heather Gigi Gellert GST dated October 19, 2012. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of two mooring buoys.

The Applicant's mooring buoys are privately owned and maintained and have been in Lake Tahoe for many years, but were not previously authorized by the Commission. The Applicant owns the neighboring littoral property at 6300 West Lake Boulevard with a pier, two tandem boat lifts, and two mooring buoys authorized under Lease No. PRC 3019.9. A proposed lease for these facilities is also before the Commission at the April 19, 2018 meeting. Staff became aware of the existence of one of the mooring buoys at 6330 West Lake Boulevard when processing an application for Lease No. PRC 3019.9 in 2007. However, because the mooring buoy was located within a fish habitat area, staff could not recommend authorization of the mooring buoy unless permitted by TRPA. The second mooring buoy was previously authorized under Lease No. PRC 3019.9 when it was adjacent to the neighboring parcel. On November 5, 2009, TRPA issued a permit for the mooring buoys adjacent to the upland parcel. The ordinances under which these buoy permits were approved were later invalidated by the courts.

The mooring buoys facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law

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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 mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The mooring buoys do not substantially interfere with the Public Trust needs at this time and 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, 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 does not substantially interfere with the common law Public Trust Doctrine at this location, at this time, and for the foreseeable term of the lease; and is 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

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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.

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:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 27, 2018, 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 27129

LAND DESCRIPTION

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 7, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880 County of Placer, State of California, and more particularly described as follows:

All those lands underlying two parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Exhibit "A" of that Grant Deed recorded December 17, 2013 as Document Number 2013-0114688 in Official Records of said County.

EXCEPTING THEREFROM any portion(s) lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

Accompanying plat is hereby made part of this description.

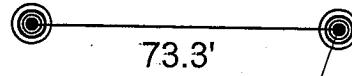
END OF DESCRIPTION

Prepared February 1, 2017 by the California State Lands Commission Boundary Unit.





2 EXISTING
BUOYS



73.3'

LAKE

TAHOE

260'

6223'± LTD

APN 098-010-038

APPROXIMATE

SHORELINE

EXHIBIT A

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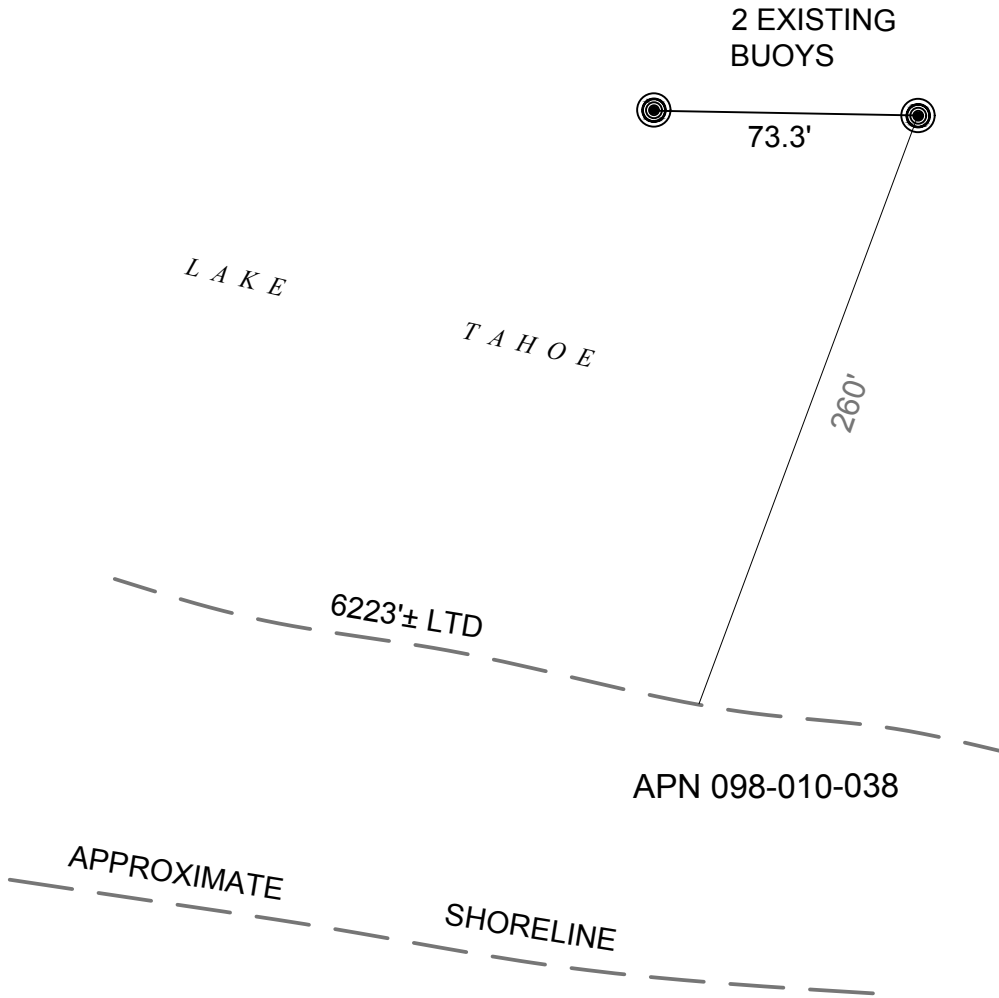
LAND DESCRIPTION PLAT
W 27129 , GELLERT, TRUSTEES
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

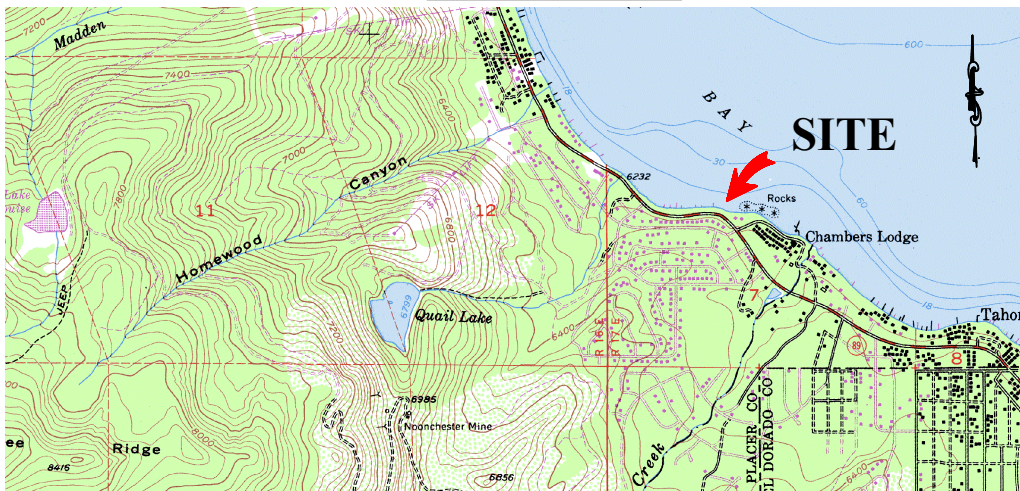
SITE



6330 WEST LAKE BLVD., NEAR HOMEWOOD

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

W 27129
 GELLERT, TRUSTEES
 APN 098-010-038
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY

