

**STAFF REPORT
C27**

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04/19/18
W 24815
M. Schroeder

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Bow Bay, LLC, a California Limited Liability Company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 281 Paradise Flat Lane, near Rubicon Bay, El Dorado County.

AUTHORIZED USE:

Use and maintenance of two existing mooring buoys.

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 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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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:

Bow Bay, LLC, a California Limited Liability Company (Applicant) has applied for a General Lease – Recreational Use for the use and maintenance of three existing mooring buoys. The Applicant's three mooring buoys have been in Lake Tahoe for many years, but were not previously authorized by the Commission.

Prior to 2008, TRPA ordinances allowed only two existing private mooring buoys per littoral parcel. TRPA adopted new shorezone ordinances in 2008 which allowed permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the third buoy was placed in the lake prior to 1972 or had an existing valid lease for a third buoy from the Commission or a valid permit from the U.S. Army Corps of Engineers. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA shorezone ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition to previously unpermitted buoys. In 2010, the 2008 TRPA shorezone ordinances and the buoy permits issued under them were found to be invalid by the U.S. District Court. This decision was upheld by the 9th Circuit U.S. Court of Appeals.

The Applicant provided a copy of the buoy permit for three buoys issued by TRPA in October 2009 under the "grandfather clause." As discussed, those ordinances were vacated by the court. TRPA is now operating under the pre-2008 Code of Ordinances which do not have a third buoy grandfather clause. Recommending approval for a third buoy would be in direct conflict with the current TRPA Code of Ordinances. In July 2016, staff advised the Applicant that staff would not recommend more than two buoys in the new lease because of the conflict with TRPA's current code.

Staff recommends the Commission authorize two existing mooring buoys to be consistent with the current TRPA Code of Ordinances. Staff

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recommends the Commission deny authorization for the one additional buoy.

The Applicant owns the upland adjoining the lease premises. The buoys are used 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 (Pub. Resources Code, § 6503.5).

The subject facilities do not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. The buoys have existed for many years at this location. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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. Based on the foregoing, staff believes that 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 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

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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. **Two Mooring Buoys:** 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.

4. **Denial of One Additional Mooring Buoy:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Two Mooring Buoys: 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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Denial of One Additional Mooring Buoy: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a), projects which a public agency rejects or disapproves.

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, 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 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.
2. Deny authorization for one additional mooring buoy not previously authorized by the Commission.

EXHIBIT A

W 24815

LAND DESCRIPTION

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 4, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1874, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 & 2 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded March 10, 2014 in Document Number 2014-0009230-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/16/2017 by the California State Lands Commission Boundary Unit.



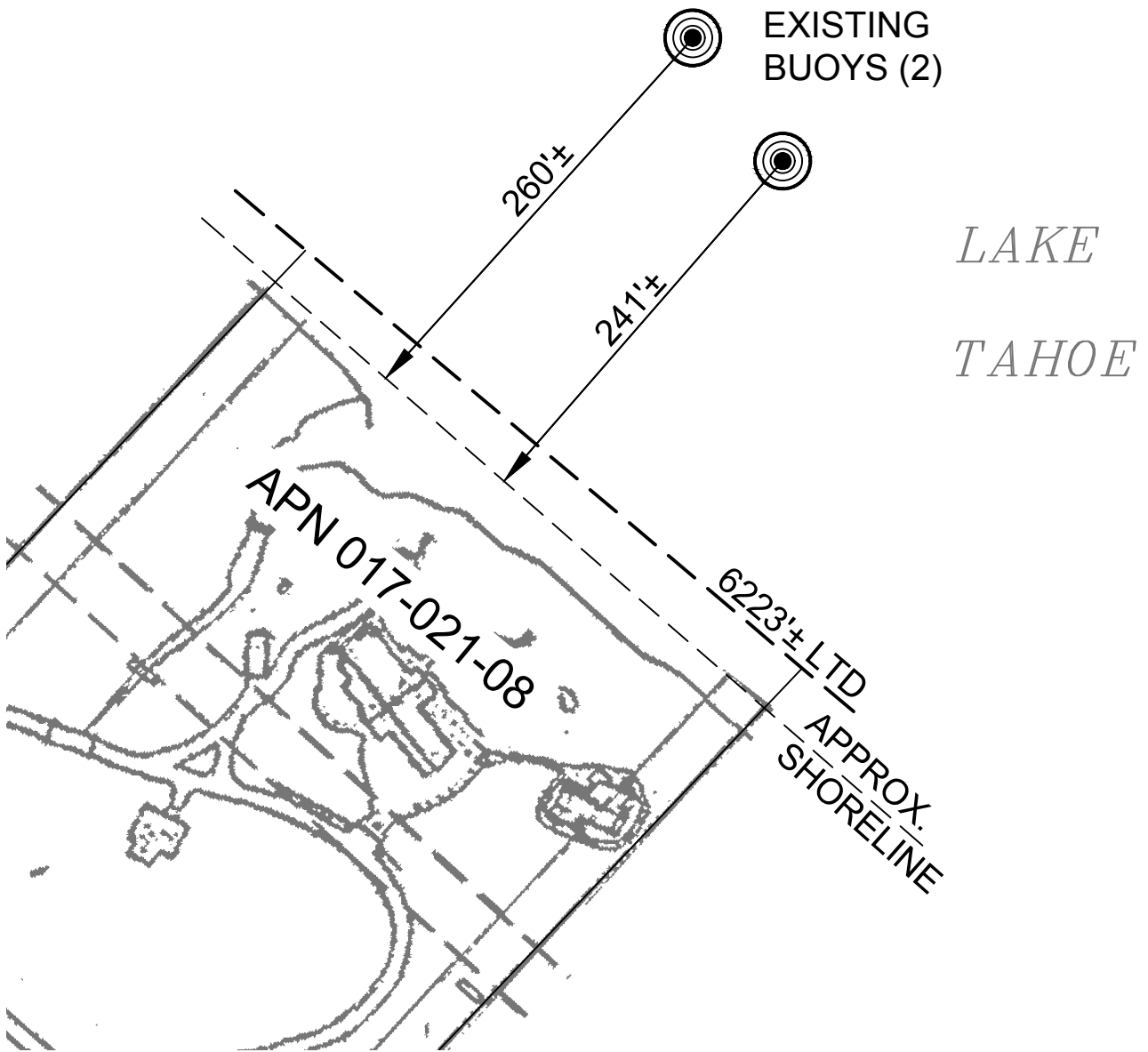


EXHIBIT A

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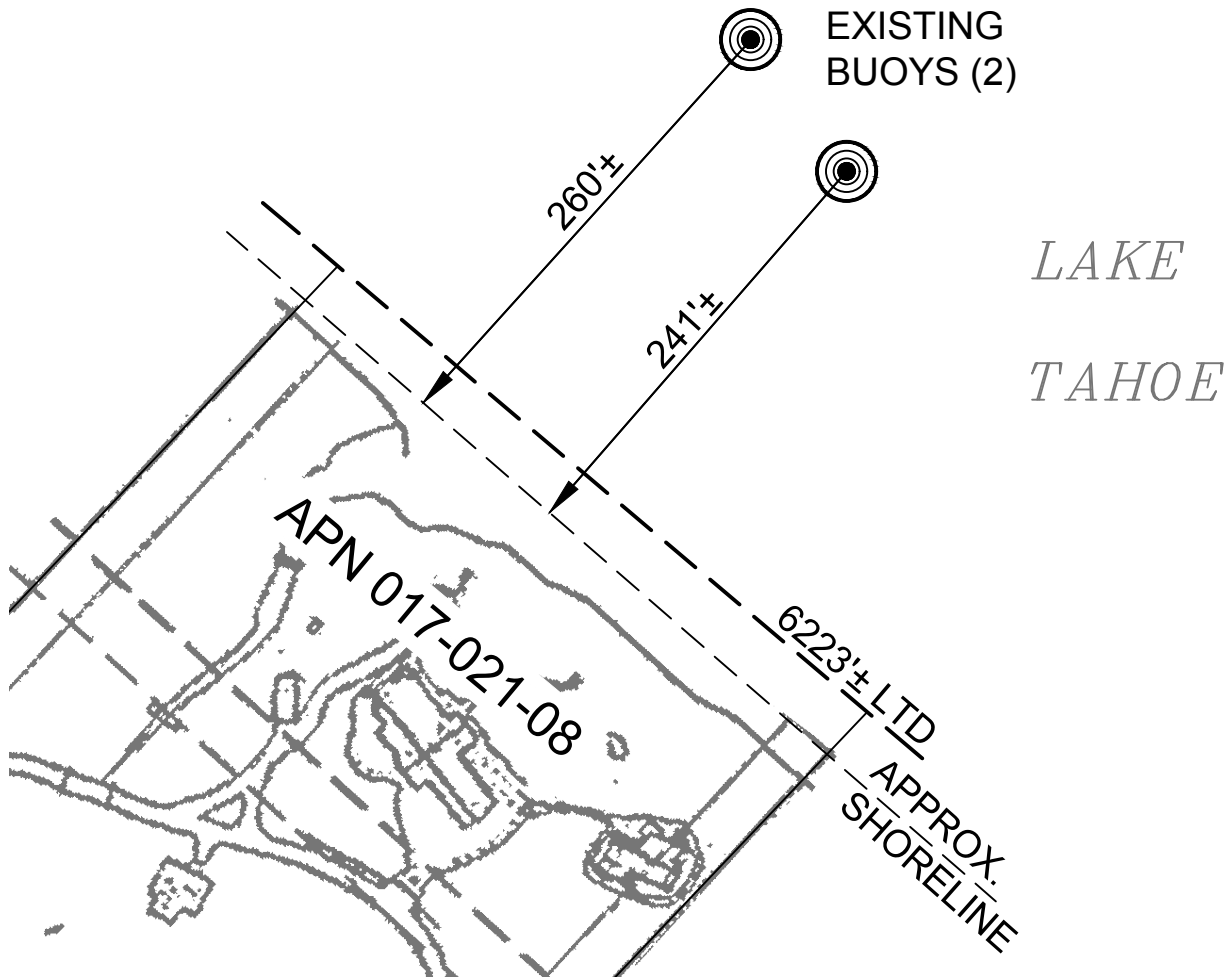
LAND DESCRIPTION PLAT
W 24815, BOW BAY, LLC
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



281 PARADISE FLAT LANE, NEAR RUBICON BAY

NO SCALE

LOCATION

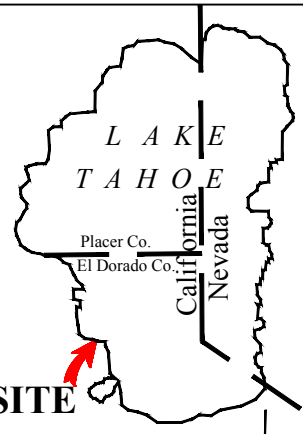


MAP SOURCE: USGS QUAD

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

W 24815
BOW BAY, LLC
APN 017-021-08
GENERAL LEASE-
RECREATIONAL USE
EL DORADO COUNTY



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