

**STAFF REPORT
C26**

A 1
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08/23/18
PRC 4183.1
S. Avila

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Alfred S. Sullivan, Successor Trustee of the Allen Family Trust, under instrument dated December 29, 1995, as amended November 9, 2009.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5472 North Lake Boulevard, near Carnelian Bay, Placer County

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse, sundeck with stairs, and two mooring buoys.

LEASE TERM:

10 years beginning January 25, 2019.

CONSIDERATION:

\$3,562 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 which may impair the public uses of access, navigation, fishing, and lake-related recreational uses.
3. The lease contains provisions stating that the existing sundeck, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck must be removed from the lease premises.

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4. 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 (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.
5. 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.
6. The public will be allowed to pass and re-pass over the pier to provide continuous shoreline access to the Public Trust easement.

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 June 28, 2010 the Commission authorized a General Lease – Recreational Use, for an existing pier, boathouse, sundeck with stairs, and two mooring buoys, to Shirley H. Allen, Trustee, or the Acting Successor Trustee of the Allen Family Trust for the Benefit of David and Shirley Allen, under instrument dated December 29, 1995 ([Item C71, June 28, 2010](#)). That lease will expire on January 24, 2019. On December 5, 2016, Shirley Allen died, and Alfred S. Sullivan, Successor Trustee, assumed ownership of the upland parcel. The Applicant is applying for a General Lease – Recreational Use, for the existing pier, boathouse, sundeck with stairs, and two mooring buoys.

The existing sundeck is not associated with traditional Public Trust uses. While sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as is the case in this instance, they do not significantly interfere with trust activities. However, the lease contains provisions that the sundeck may not be expanded nor rebuilt if substantially destroyed.

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The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. Other than the sundeck, the subject facilities 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 been in Lake Tahoe for many years at this location. The pier is built on a rock crib with pilings supporting the boathouse and sundeck. The immediate area of the pier is gently sloped with large rocks and cobble. The topography and the location of upland structures provide access for the pier and the public can navigate or walk next to the pier within the Public Trust easement. The public can pass over the pier as it is low to the ground within the Public Trust easement. The lease includes a provision allowing the public to pass and re-pass providing access within the Public Trust easement to neighboring properties. The Applicant has agreed to allow the public to pass and re-pass over the pier. The mooring buoys are located directly lakeward of the upland property and occupy a relatively small area 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, 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 and restore the lease premises to their original condition.

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 will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the state.

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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, and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to land along the State's inland and coastal waterways.

2. The 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:

1. Find that the existing and, for a limited period, continuing use and maintenance of the pier, boathouse, and two mooring buoys will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,

2. Find that the existing and, for a limited period, continuing use and maintenance of the sundeck with stairs is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,

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3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning January 25, 2019, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse, sundeck with stairs, and two 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 \$3,562 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 4183.1

LAND DESCRIPTION

Three parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 15, Township 16 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, boathouse, sundeck and stairs lying adjacent to that parcel described in Grant Deed recorded November 29, 2001 as Document Number 2001-0126579 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

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

PARCEL 2 & 3 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 4/12/2018 by the California State Lands Commission Boundary Unit.





APN 115-010-019

APPROX. SHORELINE

EXISTING SUNDECK
BOATHOUSE
WITH BOATLIFT

EXISTING STAIRS

EXISTING BUOYS (2)

9' IMPACT AREA

EXISTING PIER

LAKE TAHOE

EXHIBIT A

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MJJ 4/28/18

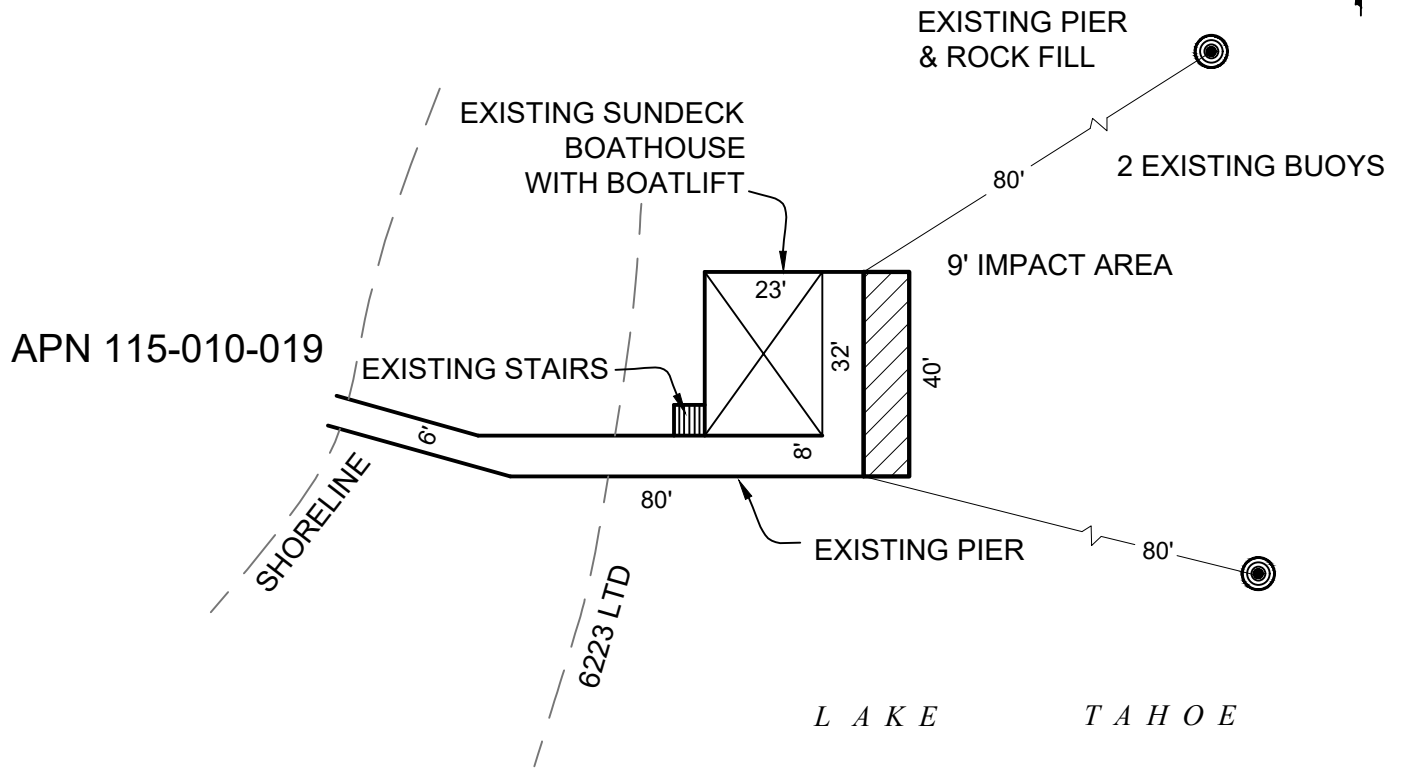
LAND DESCRIPTION PLAT
PRC 4183.1, ALLEN FAMILY TRUST
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



5472 NORTH LAKE BLVD., NEAR CARNELIAN BAY

NO SCALE

LOCATION

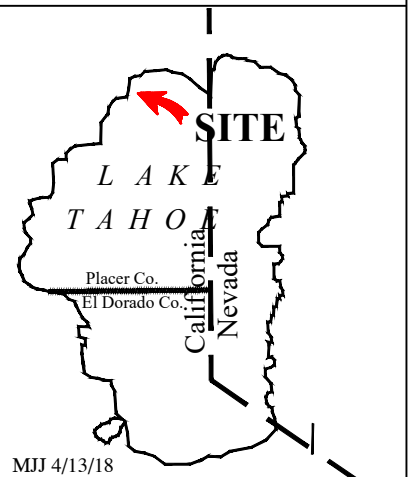


MAP SOURCE: USGS QUAD

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

PRC 4183.1
 ALLEN FAMILY TRUST
 APN 115-010-019
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 4/13/18