

**CALENDAR ITEM
C13**

A 4
S 1

05/24/12
W 26457
M. Hays

GENERAL LEASE – RECREATIONAL USE

APPLICANTS:

Ronald T. Vanderbeek and Billie J. Vanderbeek; Robert S. Marston; and John Burdette Gage and Linda Joan Schacht, Co-Trustees of the Kalalau Revocable Inter Vivos Trust dated October 4, 1986

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 1620 Sequoia Avenue, near Tahoe City, Placer County.

AUTHORIZED USE:

Use and maintenance of an existing joint-use pier, boathouse, and boat lift not previously authorized by the Commission.

LEASE TERM:

10 years, beginning May 24, 2012.

CONSIDERATION:

\$1,703 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

1. Insurance:
Liability insurance in the amount of no less than \$1,000,000.
2. Other:
 - a. A provision in the lease acknowledging the joint use by the Applicants of the authorized improvements on the lease premises pursuant to a 1975 Declaration of Restrictions recorded in Placer County.
 - b. A provision requiring the removal of an unauthorized existing sundeck, railing, and stairs from the pier structure owned by the Vanderbeeks, no later than June 30, 2012.

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- c. A provision requiring the removal of two unauthorized existing mooring buoys owned by Marston and Gage/Schacht from below elevation 6,223-feet Lake Tahoe Lake Tahoe Datum no later than November 24, 2012, in the event that Marston and Gage/Schacht cannot obtain littoral status by November 24, 2012.

OTHER PERTINENT INFORMATION:

1. Applicants own or have the right to use the upland adjoining the lease premises.
2. In the summer of 2010, while inspecting a neighboring parcel, staff became aware of a pier with a boathouse, boat lift, sundeck, railing and stairs located on State lands that had never been authorized by the Commission. Staff immediately contacted the upland owner, the Vanderbeeks, and, on April 26, 2011, an application for a lease was received. At that time staff was informed that the pier was a joint-use pier subject to a 1975 Declaration of Restrictions between the Vanderbeeks and two backshore parcel owners that granted a pedestrian easement on and through the littoral parcel owned by the Vanderbeeks to the low water mark, elevation 6223-feet, Lake Tahoe Datum. The pier structure extends from this easement onto State lands. The 1975 Declaration set forth the respective rights and obligations for the pier structure by the Vanderbeeks and the other Applicants. For purposes of this lease, the Applicants share the use of the pier equally with the exception of the boathouse and boat lift, which are for the exclusive use of the Vanderbeeks.
3. Because the existing joint-use pier, boathouse, and boat lift have been in Lake Tahoe more than 45 years without benefit of a prior lease, staff is now recommending a lease for the use of State land for the existing joint-use pier, boathouse and boat lift. However, because the sundeck, railing and stairs are both a private and non-water dependent use of the public's waterway, staff would not have recommended installation of such structure. Staff is recommending their removal from the lease premises. This is consistent with prior Commission action at its April 9, 2009 meeting, Calendar Item #39, where the Commission required removal of a sundeck, railing and stairs from a previously unauthorized pier at Lake Tahoe.
4. During the application process, staff became aware that the Vanderbeeks have owned and used two mooring buoys on State lands for many years without authorization and the other Applicants owned and used one buoy each (two) on State lands also for many years without authorization. The Vanderbeeks have submitted a separate application for a new lease for

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their two existing buoys offshore of this same littoral parcel, more specifically the area not subject to the pedestrian easement. That application continues to be incomplete and the action before the Commission does not include the two buoys placed by the Vanderbeeks. However, the two existing buoys owned by Marston and the Gage/Schachts are being considered in this action before the Commission. Staff is recommending a provision in the lease requiring the removal of the buoys owned by Mr. Marston and the Gage/Schachts because they do not qualify as littoral owners but rather as individuals with access easement rights to the low water line of Lake Tahoe pursuant to a 1975 Declaration. At the request of these Applicants, staff is further recommending a one-time extension for the removal of the two buoys to no later than November 24, 2012 in order to give the littoral owner and two backshore owners the opportunity to resolve the issue of littoral status through an agreement that provides a littoral interest to the backshore owners. The extension requires the parties to submit an amendment application to the Commission and have formed a homeowners association by November 24, 2012. In the interim, Marston and the Gage/Schachts will be required to remove the buoy ball and drop the chain to the anchor in order to make the buoys inoperable during this period.

5. For purposes of clarification, the May 24, 2012 meeting agenda also includes a new lease application by the Vanderbeeks (Item #C14) for consideration of issuing a lease for two existing mooring buoys offshore of an adjacent parcel located at 1640 Sequoia Avenue (Assessor's Parcel Number 083-162-038). This is a separate littoral parcel also improved with a residence.
6. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law became effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission "shall charge rent for a private recreational pier constructed on state lands." The law provides for two exceptions to the imposition of rent. Those exceptions are for:
 - A. A lease in effect on July 1, 2011, through the remaining term of that lease. If a lease in effect on July 1, 2011, expires or is otherwise terminated, any new lease will be subject to rent; and

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- B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

Because the application was submitted to the Commission after March 31, 2011, the lease does not qualify for an exception to recently-enacted changes to Section 6503.5 of the Public Resources Code and is subject to rent.

7. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity 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.

8. 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 the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the 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).

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.

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AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational Use to Ronald T. Vanderbeek and Billie J. Vanderbeek; Robert S. Marston; and John Burdette Gage and Linda Joan Schacht, Co-Trustees of the Kalalau Revocable Inter Vivos Trust dated October 4, 1986, beginning May 24, 2012, for a term of 10 years, for the use and maintenance of an existing joint-use pier, boathouse and boat lift 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 \$1,703; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance in the amount of no less than \$1,000,000.
2. Require removal of an unauthorized staircase, railing and prohibit use of the boathouse roof as a sundeck, no later than June 30, 2012.
3. Require removal of the two unauthorized existing mooring buoys including buoy, chain, and anchor, used and owned by Robert S. Marston and John Burdette Gage and Linda Joan Schacht, -Co Trustees, no later than November 24, 2012 if Mr. Marston and the Gage/Schachts cannot obtain littoral status by November 24, 2012.
4. In the event Ronald T. Vanderbeek and Billie J. Vanderbeek do not comply with #2 above, authorize staff of the State Lands Commission and the Office of the Attorney General to terminate the lease and take all the steps necessary, including litigation, to eject the lessees; to remove all improvements from State sovereign land in Lake Tahoe, adjacent to 1620 Sequoia Avenue (Assessor's Parcel Number 083-162-037); to restore the sovereign lands at this location to its condition prior to placement of the unauthorized improvements to the satisfaction of the Commission; and to recover the Commission's damages and costs.
5. In the event Robert S. Marston; and John Burdette Gage and Linda Joan Schacht, Co-Trustees of the Kalalau Revocable Inter Vivos Trust dated October 4, 1986 do not comply with #3 above, authorize staff of the State Lands Commission and the Office of the Attorney General to take all the steps necessary, including litigation, to eject Robert S. Marston; and John Burdette Gage and Linda Joan Schacht, Co-Trustees of the Kalalau Revocable Inter

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Vivos Trust dated October 4, 1986; to remove the two unauthorized buoys, including anchor and chain, from State sovereign land in Lake Tahoe, adjacent to 1620 Sequoia Avenue (Assessor's Parcel Number 083-162-037); to restore the sovereign lands at this location to its condition prior to placement of the unauthorized improvements to the satisfaction of the Commission; and to recover the Commission's damages and costs.

EXHIBIT A

W 26457

LAND DESCRIPTION

A parcel of submerged land, situate in the bed of Lake Tahoe, lying adjacent to Lot 3, fractional Section 18, Township 15 North, Range 17 East, MDM, as shown on the Official Township Plat, approved November 9th, 1866, County of Placer, State of California, and more particularly described as follows:

All those lands underlying an existing pier, catwalks boathouse and boatlift adjacent to that "Resultant Parcel 1" of "Exhibit A" of that Grant Deed recorded August 6, 2008 as Document Number 2008-0063470-00 in Official Records of said County.

TOGETHER WITH three ten (10) foot use areas.

EXCEPTING THEREFROM any portion lying landward of the elevation of 6223 feet LTD along the shoreline of Lake Tahoe.

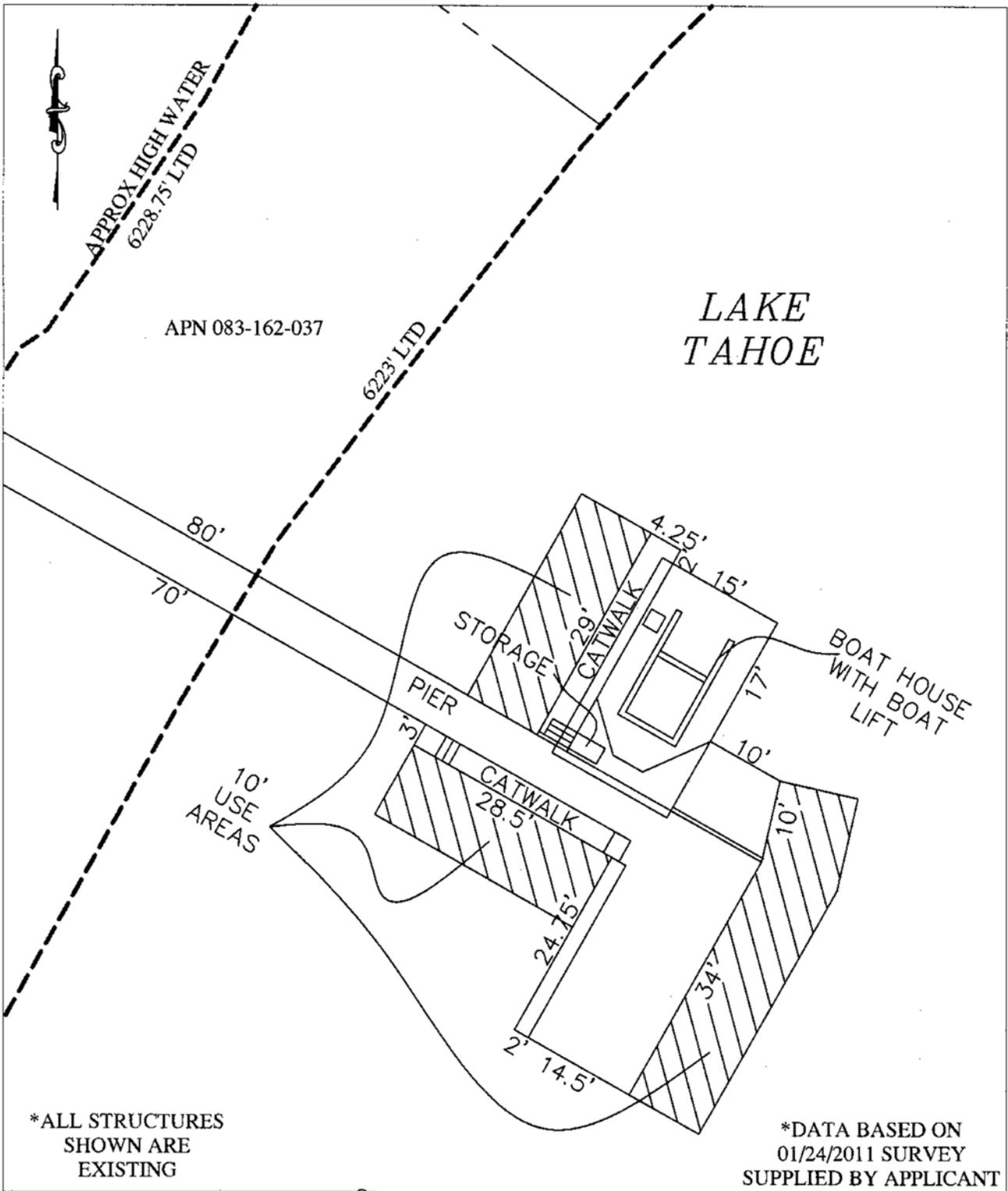
Accompanying plat is hereby made a part of this description.

END OF DESCRIPTION

PREPARED 4/19/12 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE



*ALL STRUCTURES SHOWN ARE EXISTING

*DATA BASED ON 01/24/2011 SURVEY SUPPLIED BY APPLICANT

EXHIBIT A

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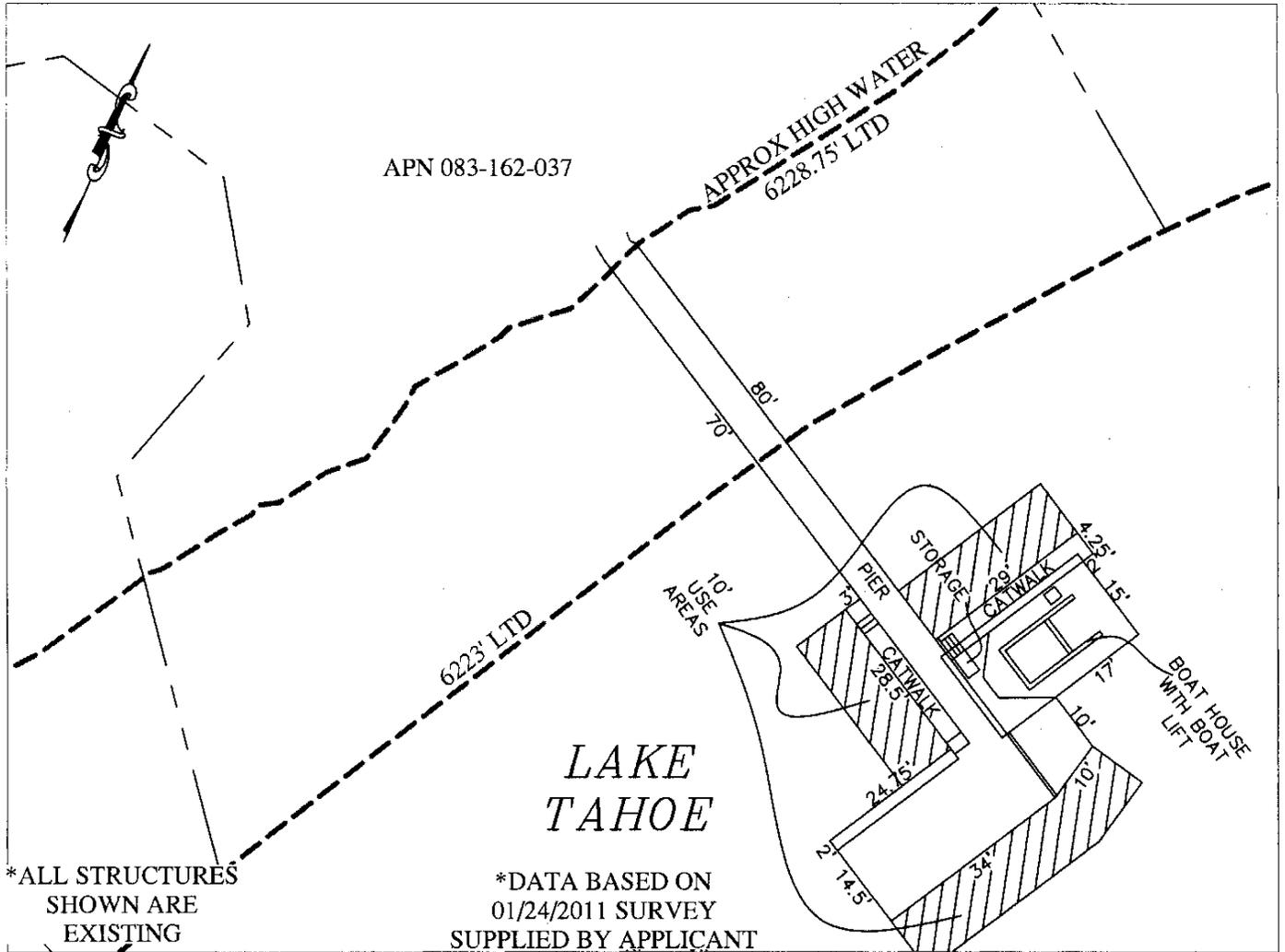
LAND DESCRIPTION PLAT
W 26457, VANDERBEEK, ET. AL.
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



APN 083-162-037

APPROX HIGH WATER
6228.75' LTD

6223' LTD

LAKE TAHOE

*ALL STRUCTURES
SHOWN ARE
EXISTING

*DATA BASED ON
01/24/2011 SURVEY
SUPPLIED BY APPLICANT

1620 Sequoia Ave, Tahoe City

NO SCALE

LOCATION

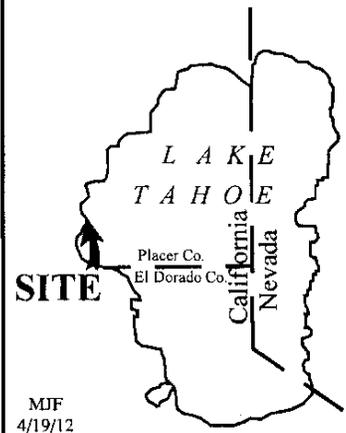


MAP SOURCE: USGS QUAD

Exhibit B

W 26457
VANDERBEEK, ET. AL.
APN 083-162-037
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY

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.



MF
4/19/12