

**CALENDAR ITEM  
C22**

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S     1

12/05/12  
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 with sundeck and stairs, and boat lift not previously authorized by the Commission.

**LEASE TERM:**

10 years, beginning December 5, 2012

**CONSIDERATION:**

\$2,950 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 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 in the lease contains conditions that the existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50% of the base value of the sundeck, then the sundeck must be removed from the lease premises.

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- c. A provision in the lease requires the removal of two unauthorized existing mooring buoys owned by Marston and Gage/Schacht from below elevation 6,223-foot Lake Tahoe Lake Tahoe Datum no later than December 15, 2012, in the event that Marston and Gage/Schacht cannot obtain littoral status or written determination from the Tahoe Regional Planning Agency (TRPA) that the above owners each qualify for a TRPA buoy permit by December 5, 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 were never 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 6,223-foot, Lake Tahoe Datum. The Vanderbeeks own the littoral parcel. The Marston and the Gage/Schacht parcels are situated behind, i.e., landward of the Vanderbeek's littoral parcel. The easement runs along the east side of the parcels to the pier at the low water mark. The pier structure extends from the end of 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 with sundeck and stairs and the boat lift, which are for the exclusive use of the Vanderbeeks.
3. The existing joint-use pier, boathouse with sundeck and stairs, and boat lift have been in Lake Tahoe for the past 25 to 45 years without benefit of a prior lease and staff is now recommending a lease for the use of State land for the above facilities.
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 submitted a separate application for a new lease for their

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two existing buoys offshore of this same littoral parcel which was authorized by the Commission at its August 14, 2012 meeting.

5. The two existing buoys owned by Mr. 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 of Restrictions.

The action regarding the Marston and Gage/Schacht buoys was brought before the Commission at the August 14, 2012 where the Commission allowed Mr. Marston and the Gage/Schachts until November 24, 2012 to work with the Vanderbeeks to (1) resolve the issue of littoral status through the formation of a homeowners association providing littoral status for the three owners and three buoys (one for each member), or (2) enter into an agreement between all the littoral and backshore owners for use of two existing buoys. At the Commission's October 19, 2012 meeting, Mr. Marston represented that the parties had not come to an agreement on littoral status and that their only prospect of keeping their buoys was if TRPA issued a permit to a non-littoral property owner for an existing mooring buoy if the Commission were to first authorize the buoy under a State Lands lease. At that meeting, the Commission directed staff to send Mr. Marston and the Gage/Schachts a letter addressed to the TRPA and Mr. Marston agreed to submit the letter to TRPA. The letter requested a determination of their qualifications under TRPA regulations to obtain individual TRPA buoy permits if the Commission were to consider a lease. On October 25, staff submitted a letter to Mr. Marston and the Gage/Schachts as directed by the Commission. Staff recommends Mr. Marston and the Gage/Schachts remove two existing unauthorized mooring buoys including the anchor and chain, no later than December 15, 2012, in the event Mr. Marston and the Gage/Schachts cannot obtain littoral status or have obtained a written determination from the TRPA that Mr. Marston and the Gage/Schachts each do not qualify for a TRPA buoy permit by December 5, 2012.

6. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law took effect on 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

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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
- 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. The staff recommends that the Commission find 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).

CALENDAR ITEM NO. **C22** (CONT'D)

**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:**

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 December 5, 2012, for a term of 10 years, for the use and maintenance of an existing joint-use pier, boathouse with sundeck and stairs, and a 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 \$2,950, 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 Mr. Marston and the Gage/Schachts to remove two existing unauthorized mooring buoys including the anchor and chain, no later than December 15, 2012, in the event Mr. Marston and the Gage/Schachts cannot obtain littoral status or have obtained a written determination from the TRPA that Mr. Marston and the Gage/Schachts each do not qualify for a TRPA buoy permit by December 5, 2012.
3. 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 #2 above, authorize staff of the California State Lands Commission and the Office of the Attorney General to take all steps necessary, including litigation, to eject Robert S. Marston and John Burdette Gage and Linda Joan Schacht, Co-Trustees of the Kalalau Revocable Inter Vivos Trust dated October 4, 1986; to remove the two unauthorized buoys, including the 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 9<sup>th</sup>, 1866, County of Placer, State of California, and more particularly described as follows:

All those lands underlying an existing pier, catwalks, sundeck, stairs, 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 (3) 10' impact areas.

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

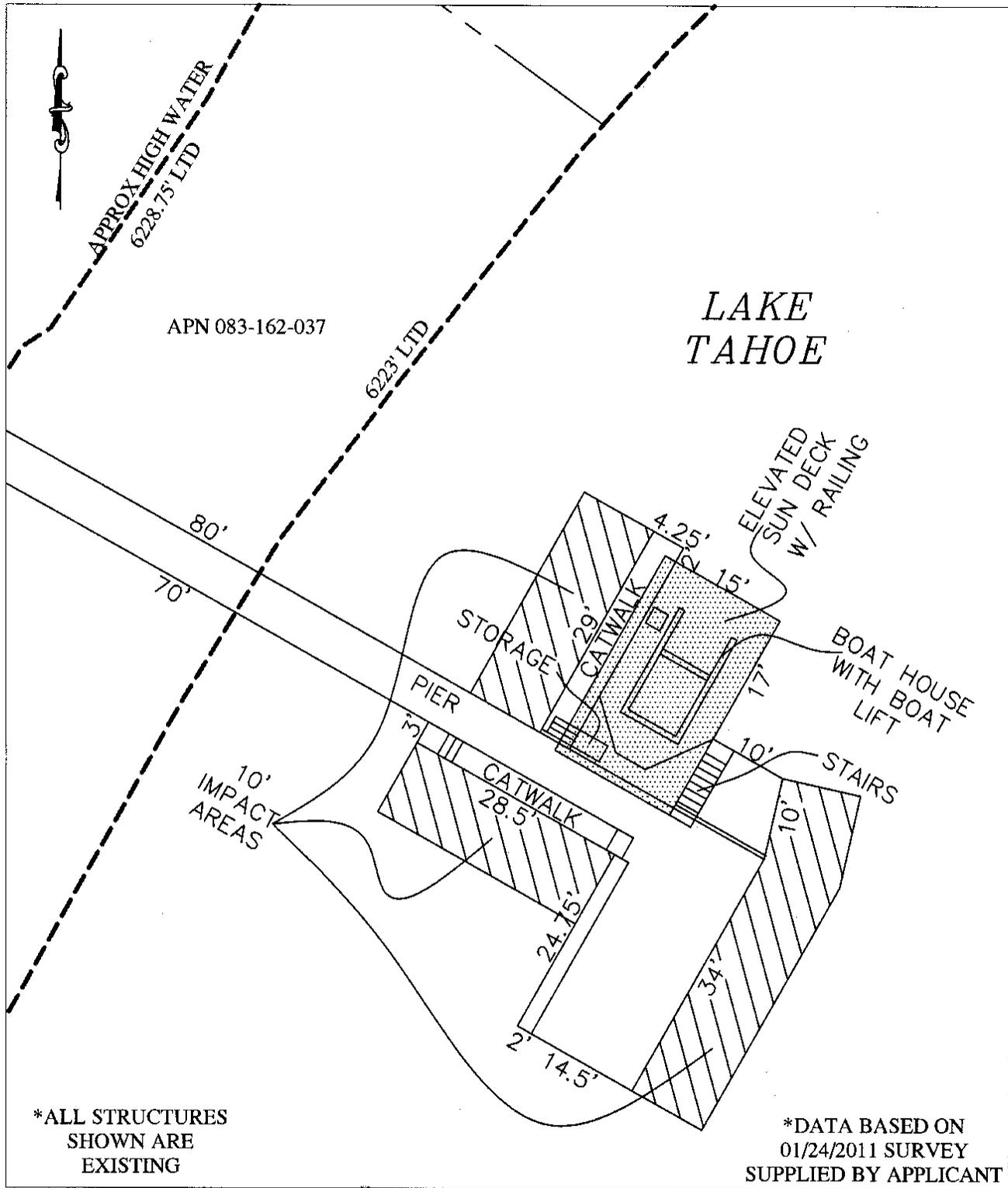
Accompanying plat is hereby made a part of this description.

**END OF DESCRIPTION**

PREPARED 9/14/12 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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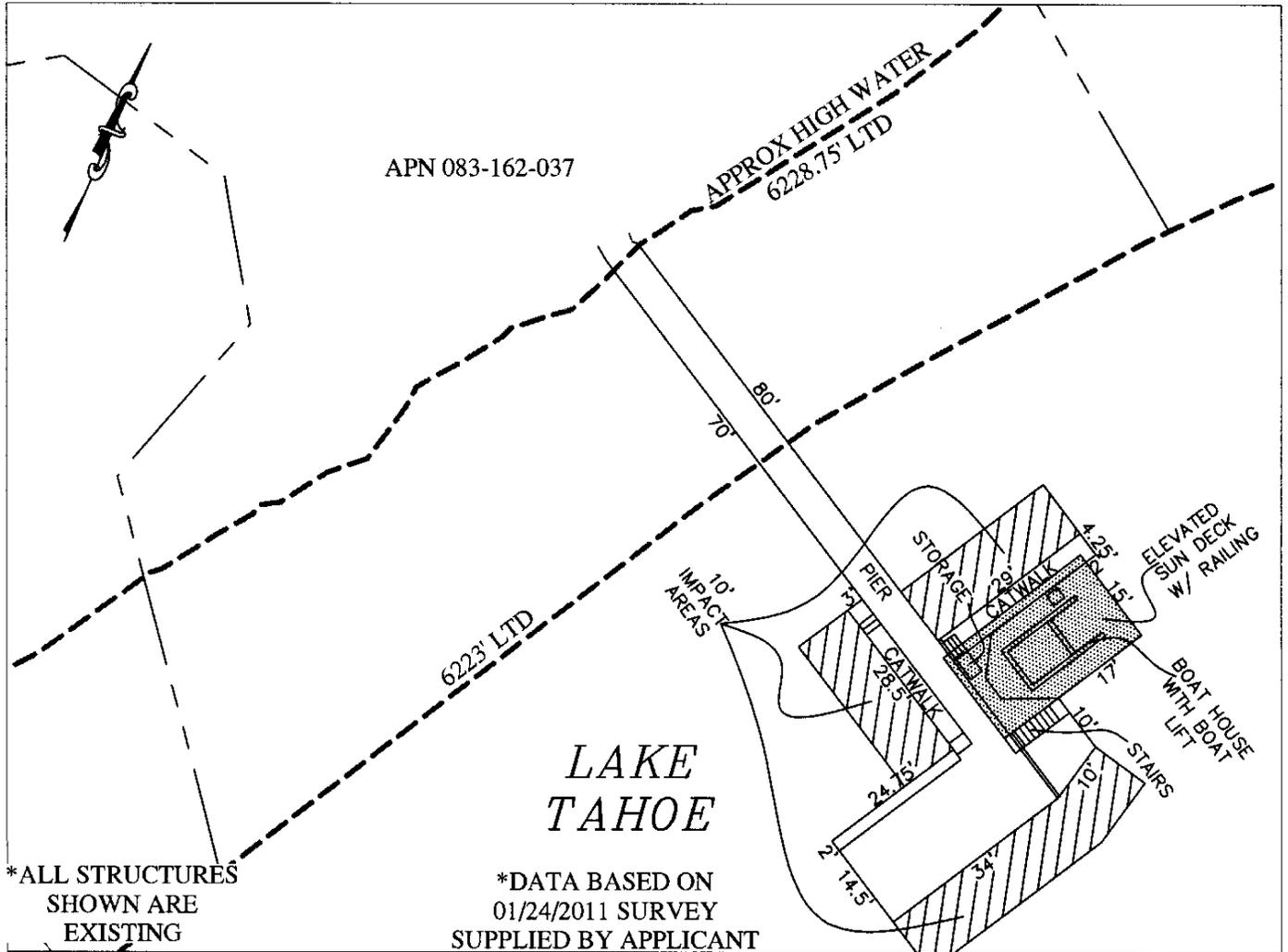
LAND DESCRIPTION PLAT  
W 26457, VANDERBEEK, ET. AL.  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE



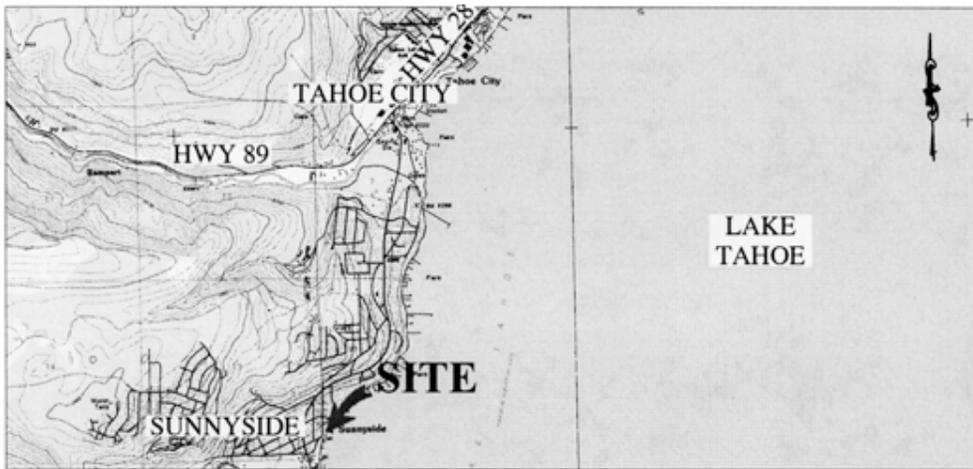
\*ALL STRUCTURES SHOWN ARE EXISTING

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

1620 Sequoia Ave, Tahoe City

NO SCALE

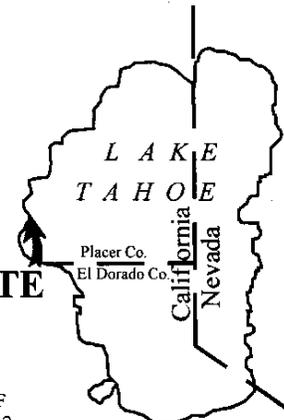
# LOCATION



MAP SOURCE: USGS QUAD

# Exhibit B

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



MJF  
9/5/12

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.