

**CALENDAR ITEM
C08**

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06/22/17
PRC 5164.1
K. Connor

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

George Carl Everett, Jr. and Andrea C. Everett, trustees of the Everett Family Trust Dated April 18, 1996

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8690 Brockway Vista Avenue, near Kings Beach, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, breakwater, and two mooring buoys.

LEASE TERM:

10 years, beginning July 15, 2017.

CONSIDERATION:

\$2,517 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.
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 adoption 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.

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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, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On March 25, 2008, the Commission authorized a 10-year General Lease – Recreational and Protective Structure Use to George Carl Everett, Jr. and Andrea C. Everett, trustees of the Everett Family Trust Dated April 18, 1996 ([Calendar Item C41, March 25, 2008](#)). That lease expires on July 14, 2017. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for the continued use and maintenance of an existing pier, breakwater, and two mooring buoys.

Except for the breakwater, the subject facilities are used for 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 existed for many years at this location. The pier is built on rock cribs and the immediate area of the pier is sandy with large boulders. The topography and the location of upland structures provides access for the pier and allows the public to walk or navigate under the pier within the Public Trust easement. There is not much vertical public access to the shoreline along this stretch of Lake Tahoe due to the existence of several breakwaters. At this site, the public would have the ability to cross over the breakwater. The two buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The breakwater has existed for many years at this location, but was not authorized by the Commission until 2008 when staff determined a portion of the existing breakwater was located below the low-water line and within the Commission's leasing jurisdiction as shown on the attached Exhibit A. Staff believes the breakwater was placed when the rock crib pier was installed. The breakwater is used to protect structures on the littoral property as well as the shoreline from severe waves on the lake.

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While new rock breakwaters are generally not favored, breakwaters that have been in place for years have been permitted if, as in this instance, they do not significantly interfere with Public Trust needs and activities at the location. Based on the information available to staff at this time, it does not appear that the existing breakwater interferes with Public Trust needs at this time and for the foreseeable term of the proposed lease.

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 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, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and in the best interests of the State.

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 and along the State's inland and coastal waterways.
2. 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.

3. 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

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

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 or 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.

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:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to George Carl Everett, Jr. and Andrea C. Everett, trustees of the Everett Family Trust Dated April 18, 1996; beginning July 15, 2017, for a term of 10 years, for the continued use and maintenance of an existing pier, breakwater, 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 \$2,517, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5164.1

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 6 fractional Section 19, Township 16 North, Range 18 East, MDM., as shown on Official Government Township Plat approved January 29, 1875 County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and three catwalks, lying adjacent to that parcel described in Exhibit A of that Grant Deed recorded July 28, 1998 in Document Number 98-0058381 of Official Records of said County.

PARCEL 2 – BREAKWATER

All those lands underlying an existing breakwater lying adjacent to said parcel.

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.

PARCELS 3, 4 – BUOYS (2)

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared November 21, 2016 by
the California State Lands Commission Boundary Unit.



APN 090-141-009

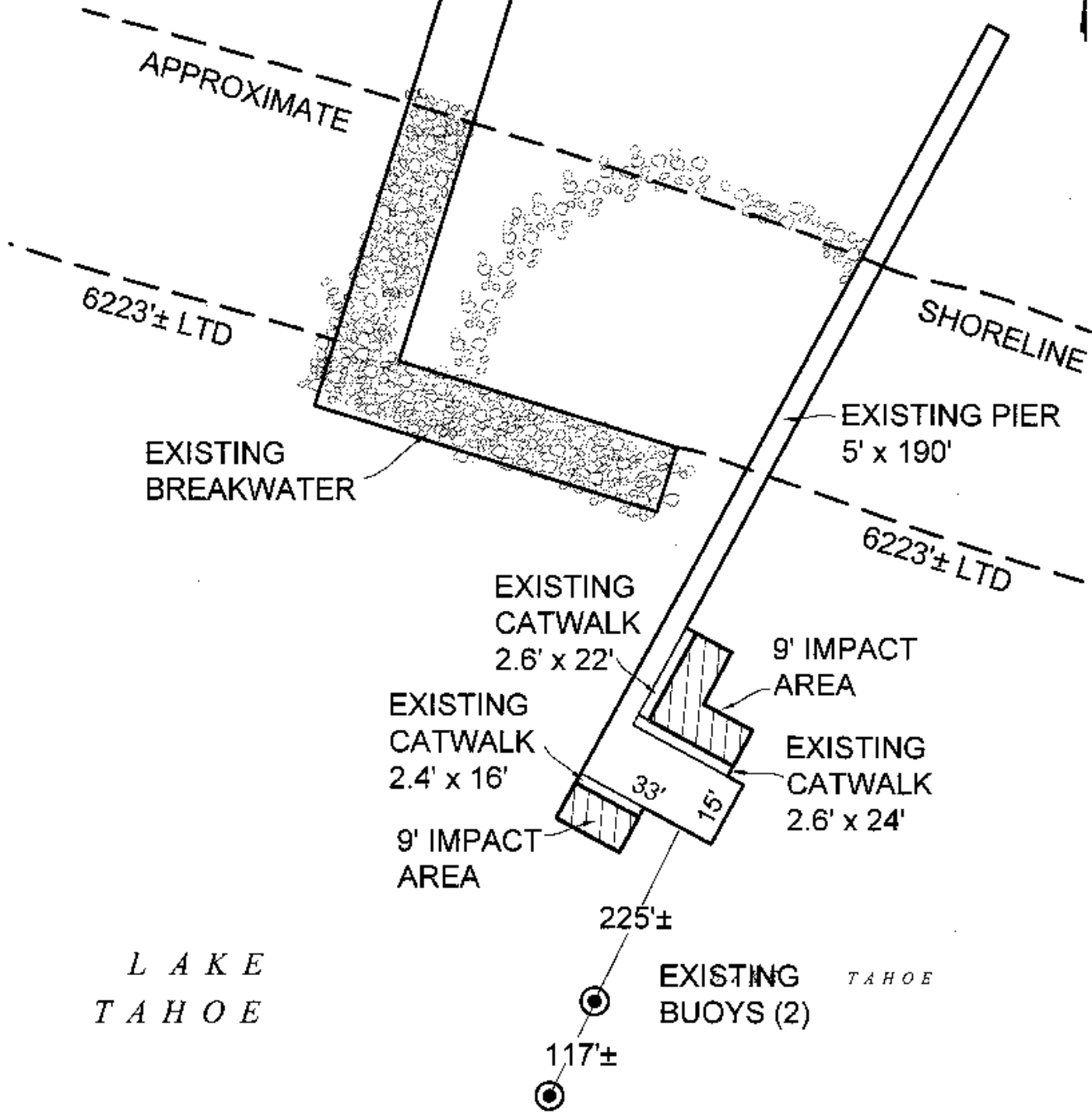


EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 5164.1, EVERETT TRUST
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



