

**STAFF REPORT
C10**

A 1
S 1

08/23/18
PRC 9295.1
S. Avila

**WAIVER OF RENT, PENALTY, AND INTEREST;
ACCEPTANCE OF A LEASE QUITCLAIM DEED; AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Homewood Mountain Partners, LLC, a California limited liability company

APPLICANT:

Christopher H. Legallet and Marie Legallet, Trustees of the Legallet Trust dated July 7, 2000 and amended and restated in 2009

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6956 Pomin Avenue, near
Tahoma, Placer County.

AUTHORIZED USE:

Continued use and maintenance of two existing mooring buoys and one
freshwater intake pipeline.

LEASE TERM:

10 years, beginning August 23, 2018.

CONSIDERATION:

\$766 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.

STAFF REPORT NO. **C10** (CONT'D)

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.
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:

On December 18, 2015, the Commission authorized a 10-year General Lease – Recreational Use for two existing mooring buoys and one freshwater intake pipeline to Homewood Mountain Partners, LLC, a California limited liability company ([Item C03, December 18, 2015](#)). That lease will expire on December 17, 2025.

On March 9, 2016, the upland was deeded to Herbert D. Stone and Betsey Stone; and subsequently transferred again on August 30, 2016, to Betsey L. Stone, Trustee of the Stone Revocable Trust, under Declaration of Trust dated July 20th, 2016. The Stone Trust did not submit an application for a lease assignment or a new lease, but paid rent through December 17, 2017.

On October 2, 2017, the upland transferred to Christopher H. Legallet and Marie Legallet, Trustees of the Legallet Trust dated July 7, 2000, and amended and restated in 2009. The Applicant submitted an application for a General Lease – Recreational Use for the continued use and maintenance of the two existing mooring buoys and one freshwater intake pipeline.

Staff sent an annual rent invoice to the Lessee for the 2017-2018 lease period. The Lessee did not pay this invoice. Staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest

STAFF REPORT NO. C10 (CONT'D)

from the Lessee for the period of December 18, 2017 through December 17, 2018, since the Lessee was no longer the upland owner at this time, and the Applicant has already agreed to be responsible for the rent during this time.

Therefore, staff recommends waiving the rent, penalty, and interest due from the Lessee under invoice number 43460. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$519 for the period beginning December 18, 2017, through August 22, 2018, the day before the new lease becomes effective.

The Lessee executed a lease quitclaim deed releasing their interest in the lease. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The mooring buoys 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 existed for many years at this location. The buoys are located directly lakeward of the upland parcel and occupy a relatively small area of the lake.

The freshwater intake pipeline is not generally associated with traditional Public Trust uses. However, the pipeline has been in place for many years, and occupies a small area of the lakebed. The owners use the pipeline to provide water to the upland property. The pipeline does not interfere with Public Trust activities at this location at this time.

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.

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

STAFF REPORT NO. **C10** (CONT'D)

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 impair Public Trust uses or values and is 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. Acceptance of the quitclaim deed and waiver of rent, penalty, and interest are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. Staff recommends that the Commission find that issuance of the lease 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.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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).

STAFF REPORT NO. **C10** (CONT'D)

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited period, continuing use and maintenance of the 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 freshwater intake pipeline is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Waive rent, penalty, and interest due for the period of December 18, 2017 through December 17, 2018, and void annual rent invoice number 43460 issued to Homewood Mountain Partners, LLC, a California limited liability company.
2. Authorize acceptance of a quitclaim deed, effective August 22, 2018, of Lease No. PRC 9295.1, a General Lease – Recreational Use, issued to Homewood Mountain Partners, LLC, a California limited liability company.
3. Authorize acceptance of compensation from the Applicant in the amount of \$519 for unauthorized occupation of State lands for the period beginning December 18, 2017, through August 22, 2018.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 23, 2018, for a term of 10 years, for the continued use and maintenance of two existing mooring buoys and one freshwater intake pipeline, 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 \$766, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 9295.1

LAND DESCRIPTION

Three (3) parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 8, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

PARCELS 1 & 2 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Grant Deed recorded June 16, 2006 as Document Number 2006-0064913 in Official Records of said County.

PARCEL 3 – WATER IN-TAKE PIPE

All those lands underlying an existing water in-take pipe lying adjacent to those parcels described in Grant Deeds recorded June 16, 2006 as Document Number 2006-0064913 in Official Records of said County.

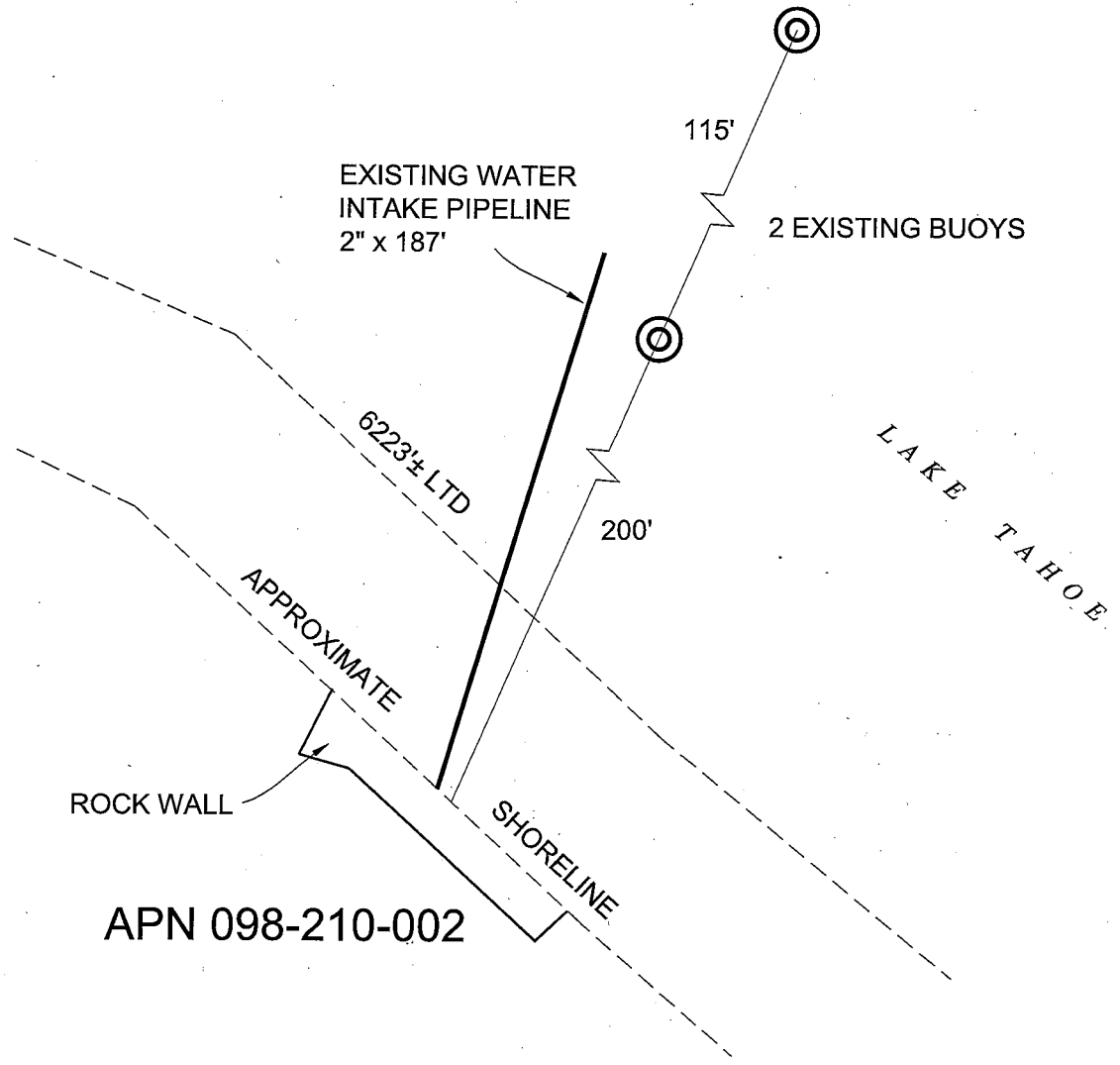
EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 6/06/2018 by the California State Lands Commission Boundary Unit.





APN 098-210-002

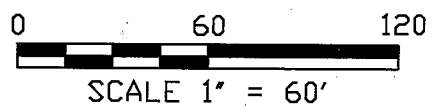


EXHIBIT A

Page 2 of 2

MJ 6/06/18

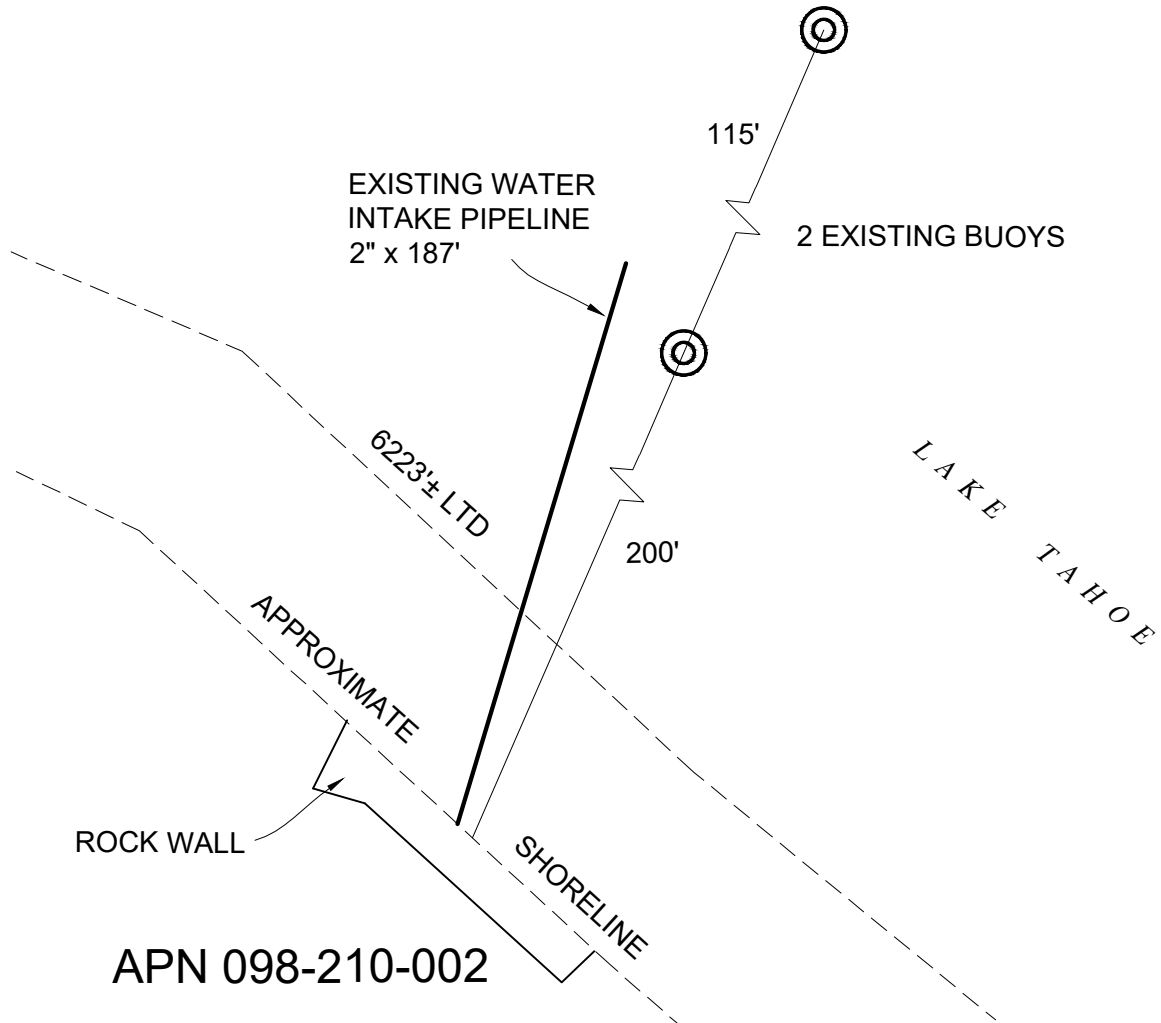
LAND DESCRIPTION PLAT
 PRC 9295.1, LEGALLET TRUSTEES
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



APN 098-210-002

6956 POMIN AVENUE NEAR TAHOMA

NO SCALE

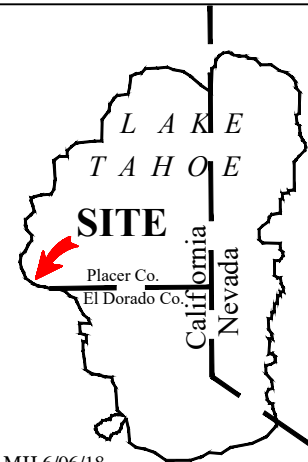
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 9295.1
 LEGALLET TRUSTEES
 APN 098-210-002
 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.

MIJ 6/06/18