

STAFF REPORT

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06/28/19

PRC 9414.1

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J. Toy

**ACCEPTANCE OF A LEASE QUITCLAIM DEED AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Richard Helzberg and Carol Helzberg, Trustees of the Richard M. Helzberg and Carol A. Helzberg Revocable Trust dated April 10, 2003; and Melvin Blaustein and Marilyn Blaustein, Trustees of the Melvin Blaustein and Marilyn Blaustein Revocable Trust dated 7/15/2015

APPLICANT:

Maquina De Vapor, LLC, a Delaware limited liability company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6061 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of two existing mooring buoys.

LEASE TERM:

10 years, beginning August 17, 2019.

CONSIDERATION:

\$754 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- 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.

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- Lessee shall provide proof of a Tahoe Regional Planning Agency (TRPA) buoy permit or proof that unpermitted buoys have been removed by October 23, 2020.
- 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 August 17, 2017, the Commission authorized a General Lease – Recreational Use for two existing mooring buoys to Richard Helzberg and Carol Helzberg, Trustees of the Richard M. Helzberg and Carol A. Helzberg Revocable Trust dated April 10, 2003; and Melvin Blaustein and Marilyn Blaustein, Trustees of the Melvin Blaustein and Marilyn Blaustein Revocable Trust dated 7/15/2015 ([Item C13, August 17, 2017](#)). That lease will expire on August 16, 2027. On September 21, 2018, ownership of the upland property was deeded to Maquina De Vapor, LLC, a Delaware limited liability company.

The Applicant is applying for issuance of a new lease for the continued use and maintenance of the two existing mooring buoys. 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 Lessee paid the current annual rent through August 16, 2019; therefore, staff recommends acceptance of the quitclaim deed effective on August 16, 2019, and issuance of a new lease beginning one day later on August 17, 2019.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The two existing 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).

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The subject facilities do not significantly alter the land and the lease does not alienate the State's fee simple interest or permanently impair public rights. The buoys have existed for many years at this location. Upon termination of the lease, the lessee may be required to remove all improvements and restore the lease premises to their original condition. Additionally, the buoys occupy a relatively small area of the lake. Based on the foregoing, staff believes that the mooring buoys will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

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 is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the two mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. 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.
3. On October 24, 2018, the TRPA Governing Board certified a Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
4. Acceptance of a lease quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

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

5. 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.

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 acceptance of a lease quitclaim deed and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and 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.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective August 16, 2019, of Lease No. PRC 9414.1, a General Lease – Recreational Use, issued to Richard Helzberg and Carol Helzberg, Trustees of the Richard M. Helzberg and Carol A. Helzberg Revocable Trust dated April 10, 2003; and Melvin Blaustein and Marilyn Blaustein, Trustees of the Melvin Blaustein and Marilyn Blaustein Revocable Trust dated 7/15/2015.

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2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 17, 2019, for a term of 10 years, for the continued use and maintenance of two existing 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 \$754, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 9414.1

LAND DESCRIPTION

Two (2) parcels of submerged land situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 14, 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:

PARCELS 1 & 2 – BUOYS

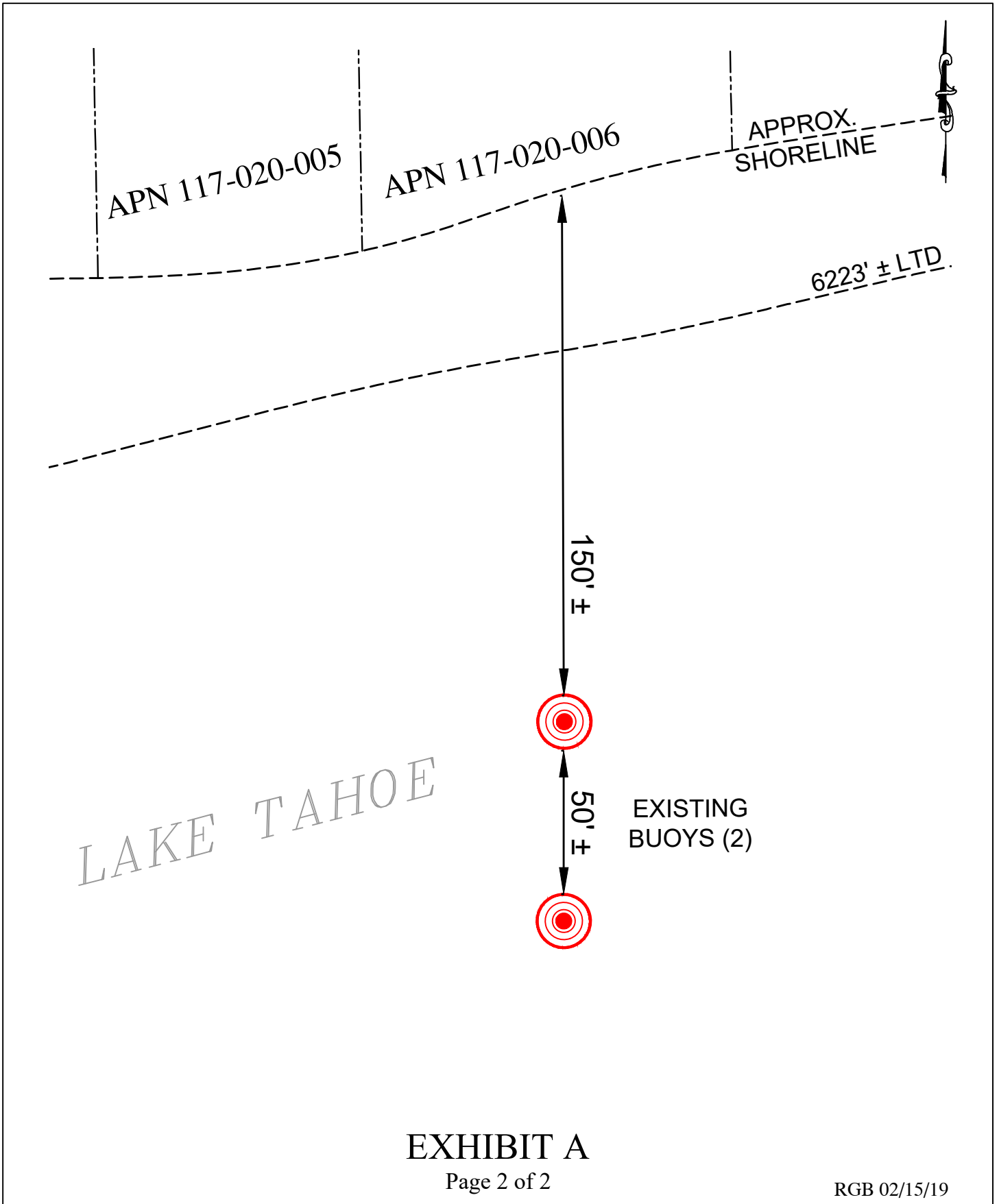
Two circular parcels of land, being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded September 21, 2018 as Document Number 2018-0068475 in Official Records of said County.

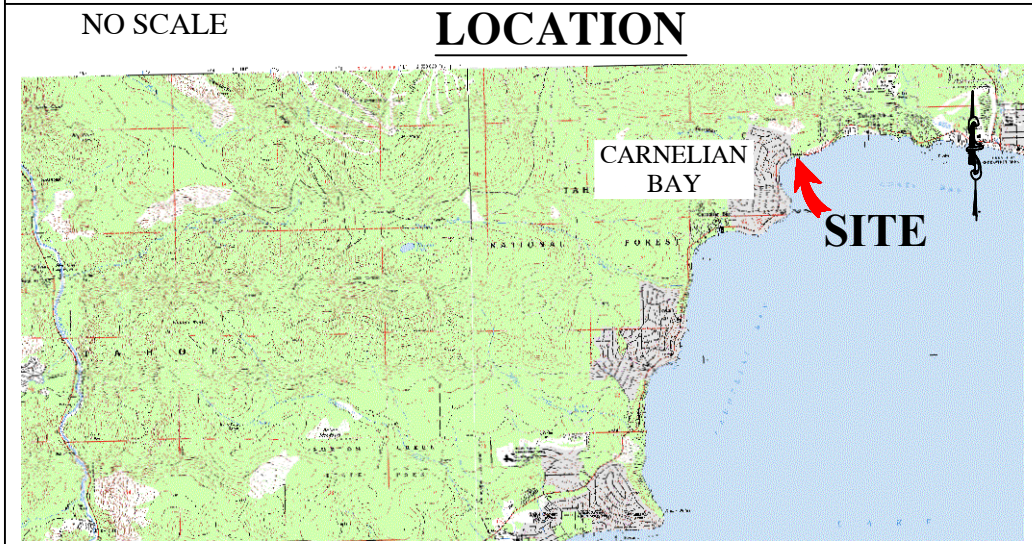
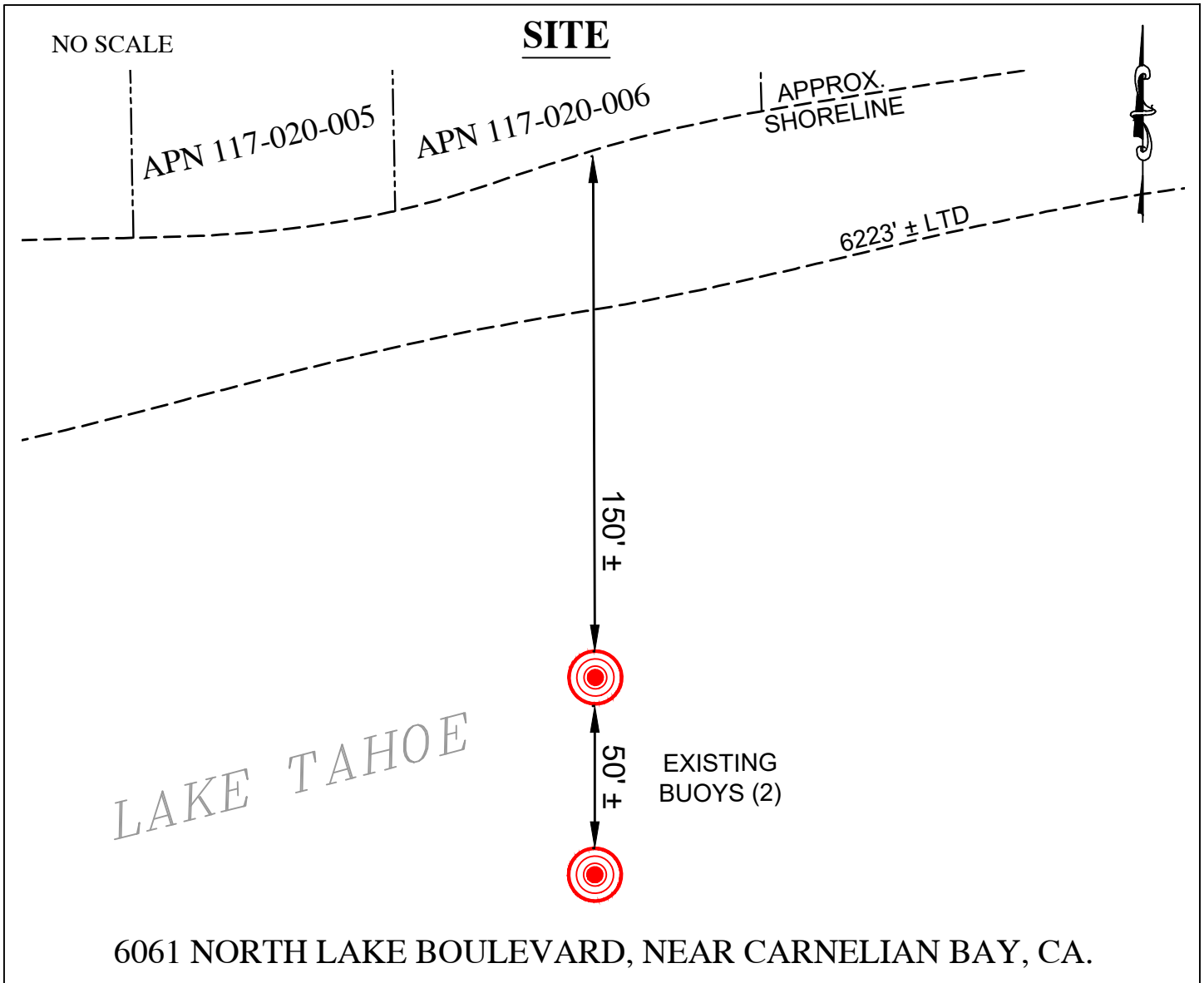
Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 02/15/2019 by the California State Lands Commission Boundary Unit.







MAP SOURCE: USGS QUAD

Exhibit B

PRC 9414.1
 MAQUINA DE VAPOR, LLC
 APN 117-020-006
 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.