

**STAFF REPORT**

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06/28/19

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PRC 8983.1

J. Toy

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

**APPLICANT:**

Robert D. May and Judith T. May, Trustees of the May Family Trust as Amended and Updated in 2013

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 8441 Meeks Bay Avenue, near Rubicon Bay, El Dorado County.

*AUTHORIZED USE:*

Removal and reconstruction/extension of an existing pier, and continued use and maintenance of three existing mooring buoys.

*LEASE TERM:*

10 years, beginning August 23, 2019.

*CONSIDERATION:*

\$1,641 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.
- 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

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authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

- The lease provides that the public will be allowed to pass and re-pass over the pier via stairs to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum.

### **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 April 20, 2017, the Commission authorized a General Lease – Recreational Use for three existing mooring buoys to Robert D. May and Judith T. May, Trustees of the May Family Trust as Amended and Updated in 2013 ([Item C10, April 20, 2017](#)). The Lessee owned two contiguous lakefront parcels adjoining the lease premises: two of the mooring buoys were adjacent to Assessor's Parcel Number (APN) 016-091-50 and one buoy was adjacent to APN 016-091-51. The two parcels were recently consolidated into APN 016-091-65. The lease expires on August 22, 2026.

The Applicant is now applying for a General Lease – Recreational Use for the proposed removal, reconstruction and extension of an existing pier onto State-owned sovereign land, and continued use and maintenance of the three existing mooring buoys. The existing pier extends from the upland into the lake but does not extend below the low-water mark and is not currently within the Commission's leasing jurisdiction. The Applicant proposes to extend the pier just above the TRPA pier headline at elevation 6,220 feet Lake Tahoe Datum. The pier will be constructed approximately 5 feet south from its current location.

The project will be performed on-site with waterward access to the pier from a floating/amphibious barge. All materials will be stored and transported to the site from a barge. Depending on the water level of the lake, a turbidity curtain will be installed around the perimeter of the construction site.

Construction will take place after all required approvals have been obtained and will occur between October 1 and May 1. The Applicant will follow all construction methods and timeframes provided by TRPA, the

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Lahontan Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers.

The Applicant requested issuance of a new lease and executed a quitclaim deed releasing their interest in the current lease. Staff recommends the Commission accept the lease quitclaim deed and approve the new lease, effective on the lease anniversary date of August 23, 2019.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The facilities 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 immediate area of the proposed pier is gently sloped with small rocks and boulders. The lease provides that the public will be allowed to pass and re-pass over the pier via stairs to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum. In addition, the proposed pier will be built on pilings with a clearance of about 6 feet underneath the pier and 15 feet between the pilings, providing public access for pedestrians and lake-related activities at varying water levels within the Public Trust easement. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. TRPA permitted the reconstruction and expansion of the pier in 2018.

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 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.

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**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 pier and three 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, and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
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 the 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.

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

5. **Existing Mooring Buoys:** 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).
6. **Removal of Existing Pier and Rock Foundation:** 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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7. **New Pier:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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:**

**Existing Mooring Buoys:** 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).

**Removal of Existing Pier and Rock Foundation:** 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

**New Pier:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

**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.

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**AUTHORIZATION:**

1. Authorize acceptance of a lease quitclaim deed, effective August 22, 2019, of Lease No. PRC 8983.1, a General Lease – Recreational Use, issued to Robert D. May and Judith T. May, Trustees of the May Family Trust as Amended and Updated in 2013.
  
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 23, 2019, for a term of 10 years, for the removal and reconstruction of a pier, and continued use and maintenance of three 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 \$1,641, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 8983.1**

**LAND DESCRIPTION**

Four (4) parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to fractional Section 29, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, more particularly described as follows:

**PARCEL 1 (PIER)**

All those lands underlying a proposed pier and catwalk lying adjacent to those parcel's as described in Grant Deed recorded August 23, 2016 as Series No. 2016-39281 of Official Records of said County.

TOGETHER with any applicable impact area(s).

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

**PARCELS 2-4 (BUOYS)**

Three (3) circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent those parcel's as described in Grant Deed recorded August 23, 2016 as Series No. 2016-39281 of Official Records of said County.

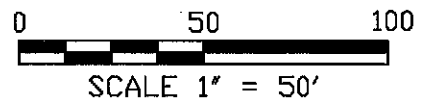
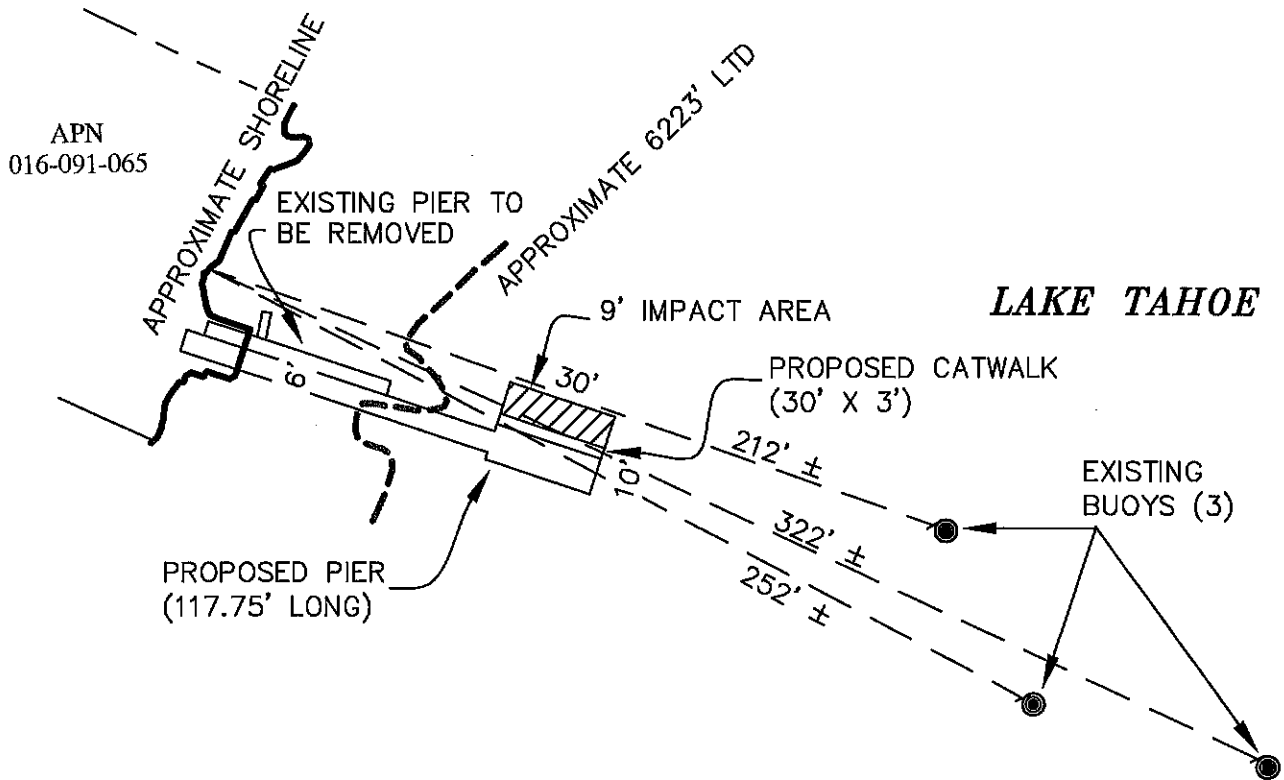
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

This description is based upon Applicant provided design plans for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease timeframe. This description is to be updated once final as-built plans are submitted.

Prepared 4/22/2019 by the California State Lands Commission Boundary Unit.





### EXHIBIT A

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LAND DESCRIPTION PLAT  
PRC 8983.1, MAY FAMILY TRUST  
EL DORADO COUNTY

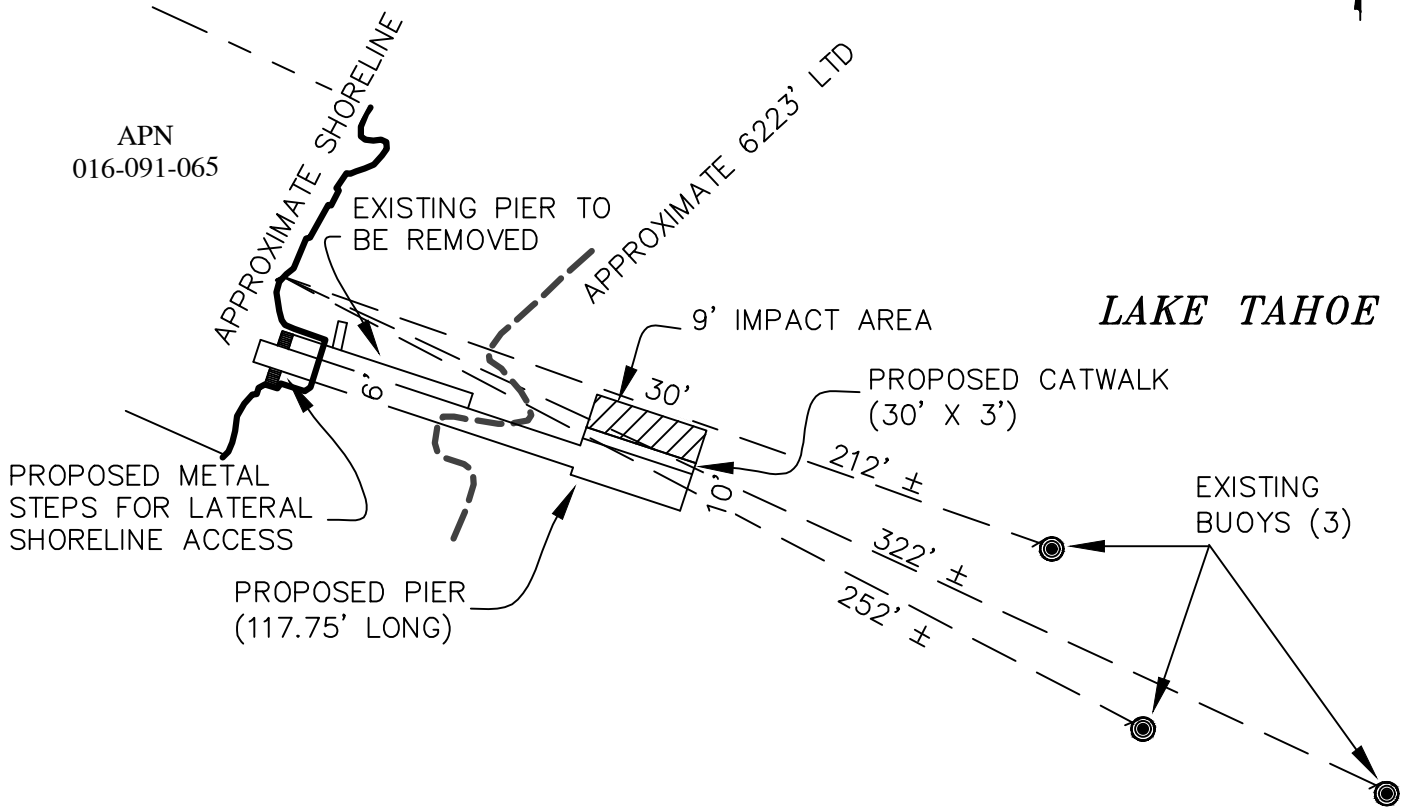
CALIFORNIA STATE  
LANDS COMMISSION





NO SCALE

# SITE



8441 MEEKS BAY AVE., RUBICON BAY

NO SCALE

# LOCATION

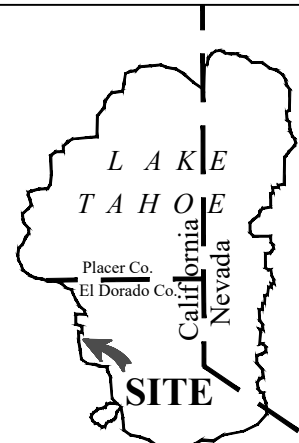


MAP SOURCE: USGS QUAD

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.

# Exhibit B

PRC 8983.1  
 MAY FAMILY TRUST  
 APN 016-091-65  
 GENERAL LEASE -  
 RECREATIONAL USE  
 EL DORADO COUNTY



DJF 05/30/19