

## STAFF REPORT

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02/28/20

Lease 4225.1

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M.J. Columbus

### GENERAL LEASE – RECREATIONAL USE

#### APPLICANT:

Donald Everett Rhoades, Karen Hoffman Gilhuly, and Sheila Hoffman Lee

#### PROPOSED LEASE:

##### *AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 4260 West Lake Boulevard, near Homewood, Placer County.

##### *AUTHORIZED USE:*

Continued use and maintenance of an existing pier, boathouse, and boat hoist previously authorized by the Commission; and use and maintenance of one existing mooring buoy, a sundeck with stairs, and one boat hoist not previously authorized by the Commission.

##### *LEASE TERM:*

10 years, beginning February 28, 2020.

##### *CONSIDERATION:*

\$2,162 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 public uses for access, navigation, fishing and lake-related recreation.
- 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 percent of the base value of the sundeck, then the sundeck must be removed from the lease premises.

## STAFF REPORT NO. 06 (CONT'D)

- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from the Tahoe Regional Planning Agency (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 April 13, 1999, the Commission authorized a 10-year Recreational Pier Lease for continued use and maintenance of a pier, boathouse, and boat hoist to Donald Everett Rhoades and Donald Everett Rhoades as Trustee of the Power of Appointment Trust for the Benefit of his Sister, Marilyn Rhoades Hoffman ([Item C10, April 13, 1999](#)). The lease expired on May 28, 2009. In 2009, the Lessee submitted an incomplete application for a new lease. Staff sent several letters requesting items needed to process the application but received no response. In 2015, staff terminated the application due to inactivity.

On October 10, 2017, Marilyn Rhoades Hoffman's ownership interest of the upland property was deeded to Nancy Hoffman, Karen Hoffman Gilhuly, and Sheila Hoffman (also known as Sheila Hoffman Lee). On January 14, 2019, a court order for the Estate of Nancy L. Hoffman, deceased, distributed Nancy Hoffman's ownership interest to Karen H. Gilhuly and Sheila H. Lee. At this time, staff contacted the new owners requesting a lease application. The Applicant submitted an application for a General Lease – Recreational Use for the continued use and maintenance of an existing pier, boathouse, and boat hoist previously authorized by the Commission; and one existing mooring buoy, a sundeck with stairs, and boat hoist not previously authorized by the Commission. The Applicant has registered the mooring buoy and two boat hoists with TRPA (#10866).

Staff recommends issuance of a new lease beginning February 28, 2020. Therefore, staff recommends that the Commission accept compensation for the unauthorized occupation of State land from the Applicant in the amount of \$5,153 for the period beginning October 10, 2017, through February 27, 2020, the day before the proposed new lease becomes effective.

STAFF REPORT NO. **06** (CONT'D)

The subject improvements 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 immediate area of the existing pier is a flat beach with sand and pebbles. The pier is built on pilings. The topography of the upland provides access for the pier and allow the public to navigate in front of the pier and pass and re-pass landward of the pier. The buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake.

According to the Applicant, the sundeck with stairs was constructed in the early 1970s, which is before the Commission was expressly prohibiting sundecks in certain leases based on the individual facts and circumstances of when the sundeck was constructed. The sundeck with stairs is not associated with traditional public trust uses. While new sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as in this case, they do not significantly interfere with Public Trust needs, values, and activities. However, the lease contains provisions that the sundeck may not be expanded nor rebuilt if substantially destroyed.

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 and restore the lease premises to its 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, staff believes the issuance of this lease does not substantially interfere with the common law Public Trust Doctrine at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

**STAFF REPORT NO. 06 (CONT'D)**

**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 existing pier, boathouse, sundeck with stairs, two boat hoists, and buoy 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, TRPA's Governing Board certified a Final Environmental Impact Statement and adopted new Lake Tahoe Shorezone Ordinance Amendments.
4. Staff recommends 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.

**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).

STAFF REPORT NO. **06** (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 pier, boathouse, boat hoists, and mooring buoy 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 sundeck with stairs 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. Authorize acceptance of compensation from the Applicant in the amount of \$5,153 for unauthorized occupation of State lands for the period beginning October 10, 2017, through February 27, 2020.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 28, 2020, for a term of 10 years, for continued use and maintenance of an existing pier, boathouse, and boat hoist previously authorized by the Commission; and one existing mooring buoy, a sundeck with stairs, and one boat hoist 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 \$2,162, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 4225.1

### LAND DESCRIPTION

Two (2) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 36, Township 15 North , Range 16 East, MDBM., as shown of Official Government Township Plat approved December 20, 1865, County of Placer, State of California, and more particularly described as follows:

#### PARCEL 1 – PIER, SUN DECK, and BOAT HOUSE

All those lands underlying an existing pier, sun deck with boat hoist and catwalk, and a boathouse with boat hoist and catwalk lying adjacent to those parcels described in that Individual Grant Deed recorded October 10, 2017 as Document Number 2017-0078429-00 in Official Records of said County.

TOGETHER WITH an applicable Impact Area(s).

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

#### PARCELS 2 – BUOY

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to said parcels.

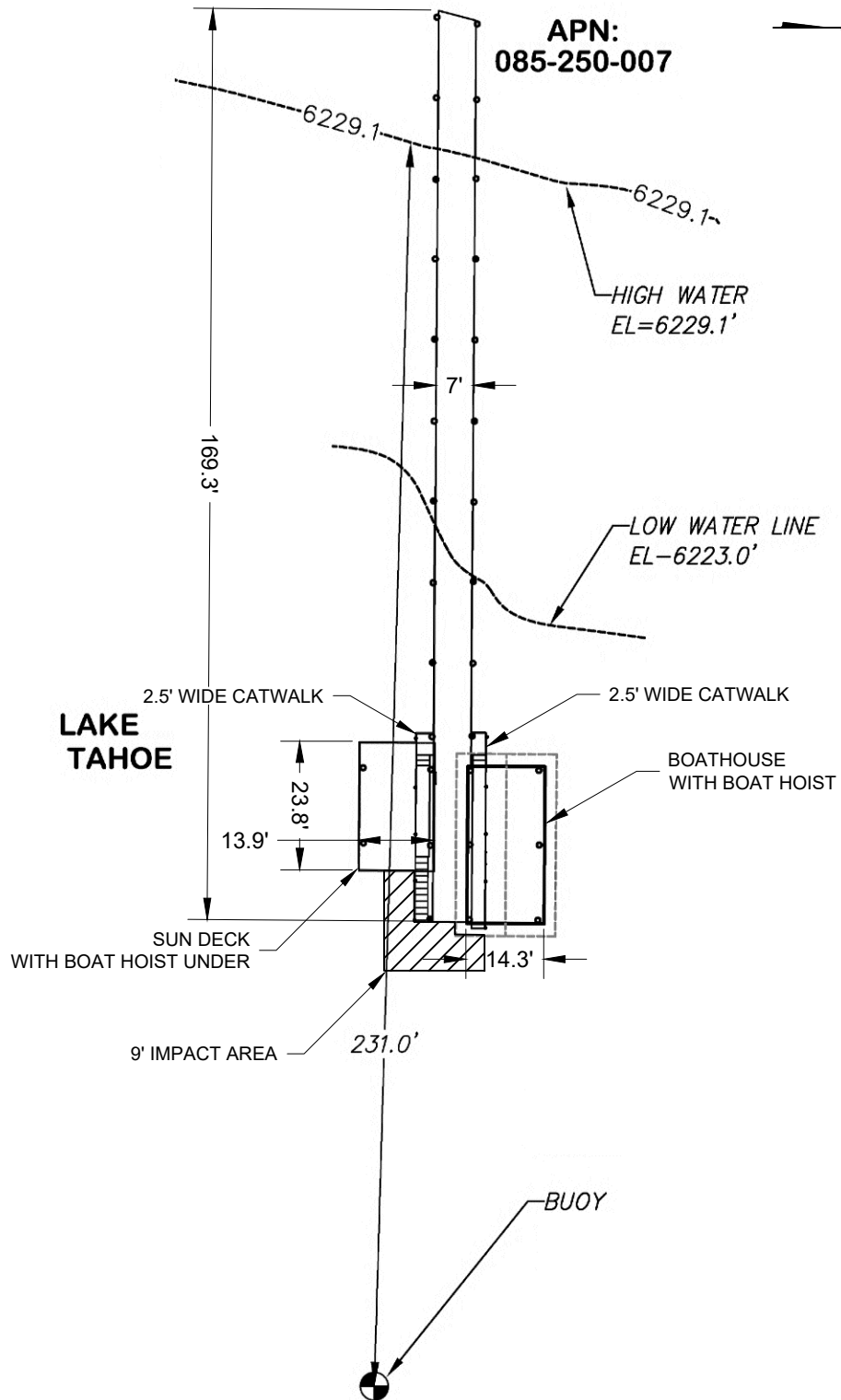
Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared December 30, 2019 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

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LAND DESCRIPTION PLAT  
LEASE 4225.1, GILHULY ET. AL.  
PLACER COUNTY

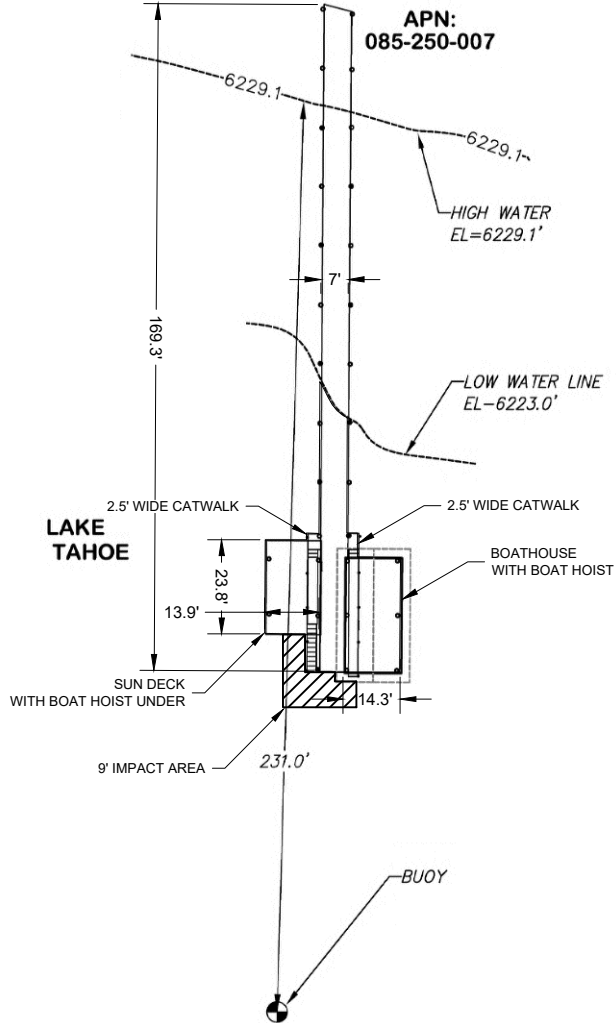
CALIFORNIA STATE  
LANDS COMMISSION





NO SCALE

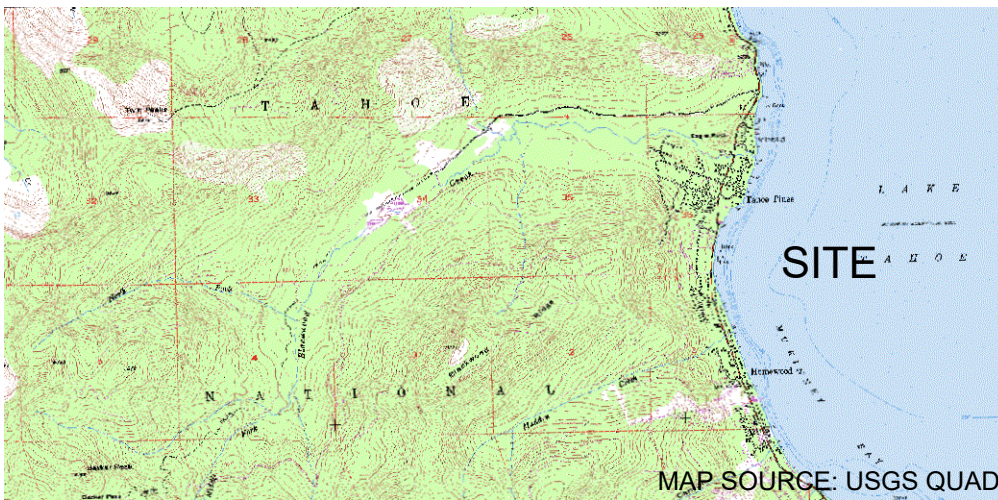
# SITE



4260 WEST LAKE BLVD., HOMEWOOD

NO SCALE

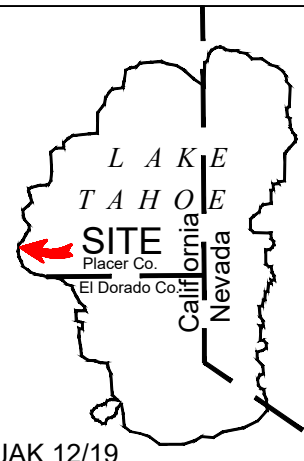
## LOCATION



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

LEASE 4225.1  
GILHULY ET. AL.  
APN 085-250-007  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY



JAK 12/19