

**STAFF REPORT**

**09**

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02/28/20

W 20846

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A. Franzoia

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Timothy Leigh Heyboer and Lisa Jo Heyboer, Trustees of the Heyboer Family 2018 Revocable Trust u/d/t dated March 27, 2018; Virginia H. Knight, Trustee of Virginia Knight Living Trust; Aspen Cabin LLC, a California LLC; Tahoma Associates, a General Partnership; W. Howard Wells and Patricia A. Wells, Co-Trustees of the W. Howard Wells and Patricia A. Wells Revocable Trust; Russell W. Skinner and Tracy K. Skinner; Jennifer Fitzgerald and James Fitzgerald, Trustees of the James D. and Jennifer E. Fitzgerald Living Trust dated September 17, 2018; and Christopher W. Kahn and Floreine R. Kahn

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 7442 and 7452 North Lake Boulevard, near Tahoe Vista, Placer County.

*AUTHORIZED USE:*

Use and maintenance of six existing mooring buoys not previously authorized by the Commission.

*LEASE TERM:*

10 years, beginning February 28, 2020.

*CONSIDERATION:*

\$2,262 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 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.

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- 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 recreation.

**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:**

The Applicant owns the upland, known as Tahoe Vista Chalets, consisting of six cabins and a pier, adjoining the lease premises. The pier does not extend onto sovereign land. The Applicant includes individuals, trusts, a partnership, and a limited liability company who are owners of the upland development. The Applicant owns and maintains the six mooring buoys, which have existed in Lake Tahoe adjacent to the Applicant's upland for many years.

The mooring buoys are located directly lakeward of the upland property and each one occupies a relatively small area of the lake. In 2019, the Applicant registered the six existing mooring buoys with TRPA (Registration Numbers 10283 and 10284). The Applicant is now applying for a lease for the six existing mooring buoys, which have not been previously authorized by the Commission.

The buoys facilitate recreational boating, 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 proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years, and a non-exclusive use provision. The facilities have existed for many years at this location; they do not significantly alter the land, they do not permanently alienate the State's fee simple interest in the underlying land, and they do not permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any 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

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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; will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is 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 six mooring buoys on sovereign land 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. 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.

**EXHIBITS:**

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

STAFF REPORT NO. 09 (CONT'D)

**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 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 Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to the Applicant; beginning February 28, 2020, for a term of 10 years, for use and maintenance of six existing mooring buoys not previously authorized by the Commission, as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent of \$2,262 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**W 20846**

**LAND DESCRIPTION**

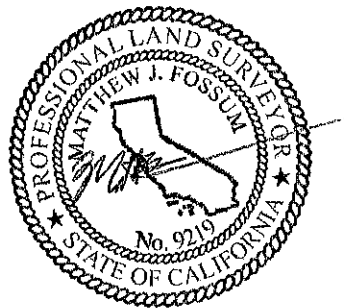
Six (6) parcels of submerged lands, situate in the bed of Lake Tahoe, lying adjacent to fractional Section 13, Township 16 North, Range 17 East, MDM, as shown on the Official Township Plat, approved November 9<sup>th</sup>, 1865, County of Placer, State of California, and more particularly described as follows:

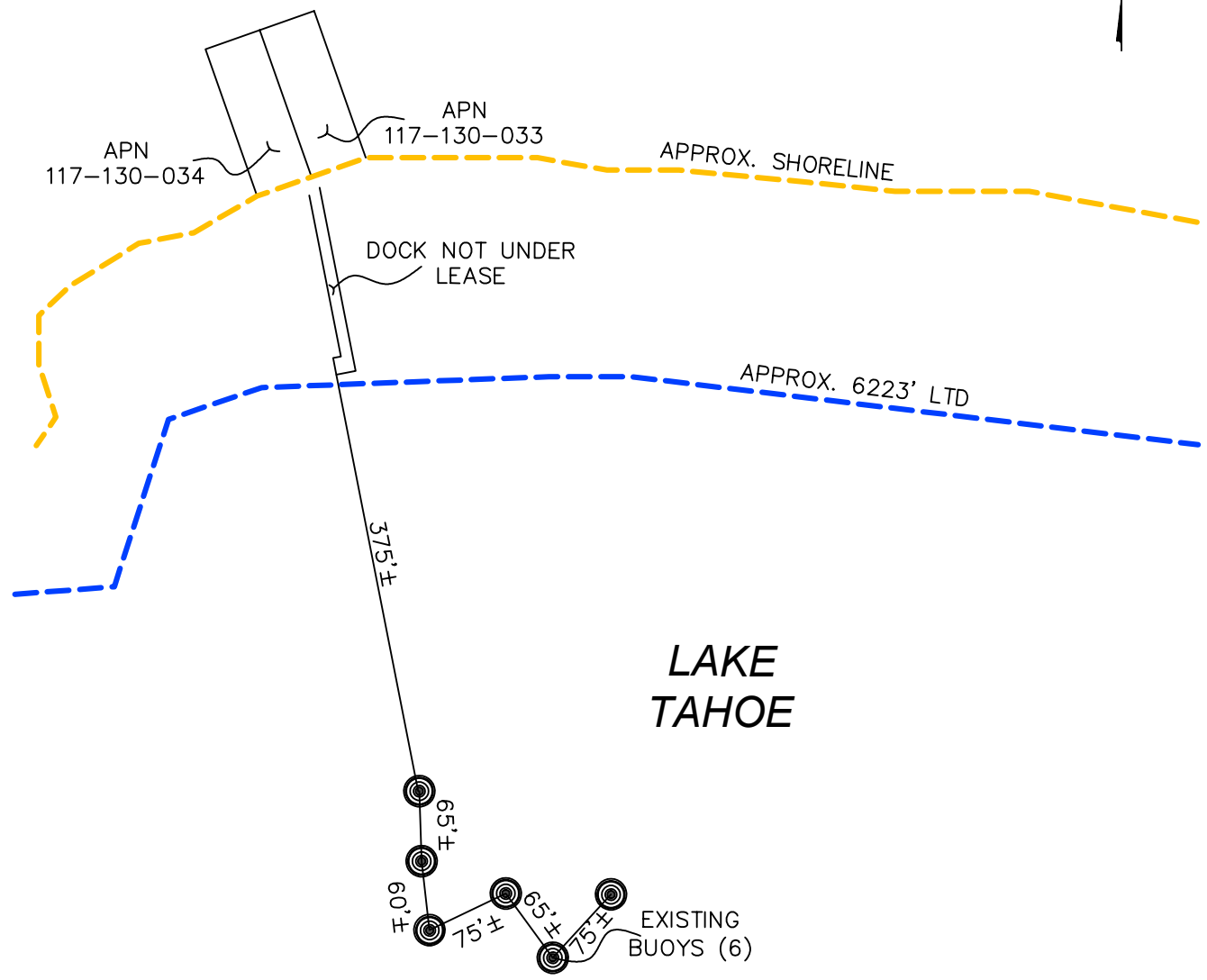
Six (6) circular parcels of land, being 50 feet in diameter, each underlying an existing buoy, adjacent to those parcels as described in that Grant Deed recorded June 18<sup>th</sup>, 2008 in Document number DOC-2008-0049809-00 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

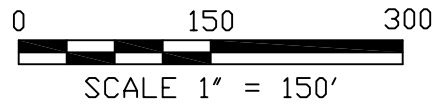
**END OF DESCRIPTION**

PREPARED 1/21/2020 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT





LAKE  
TAHOE



### EXHIBIT A

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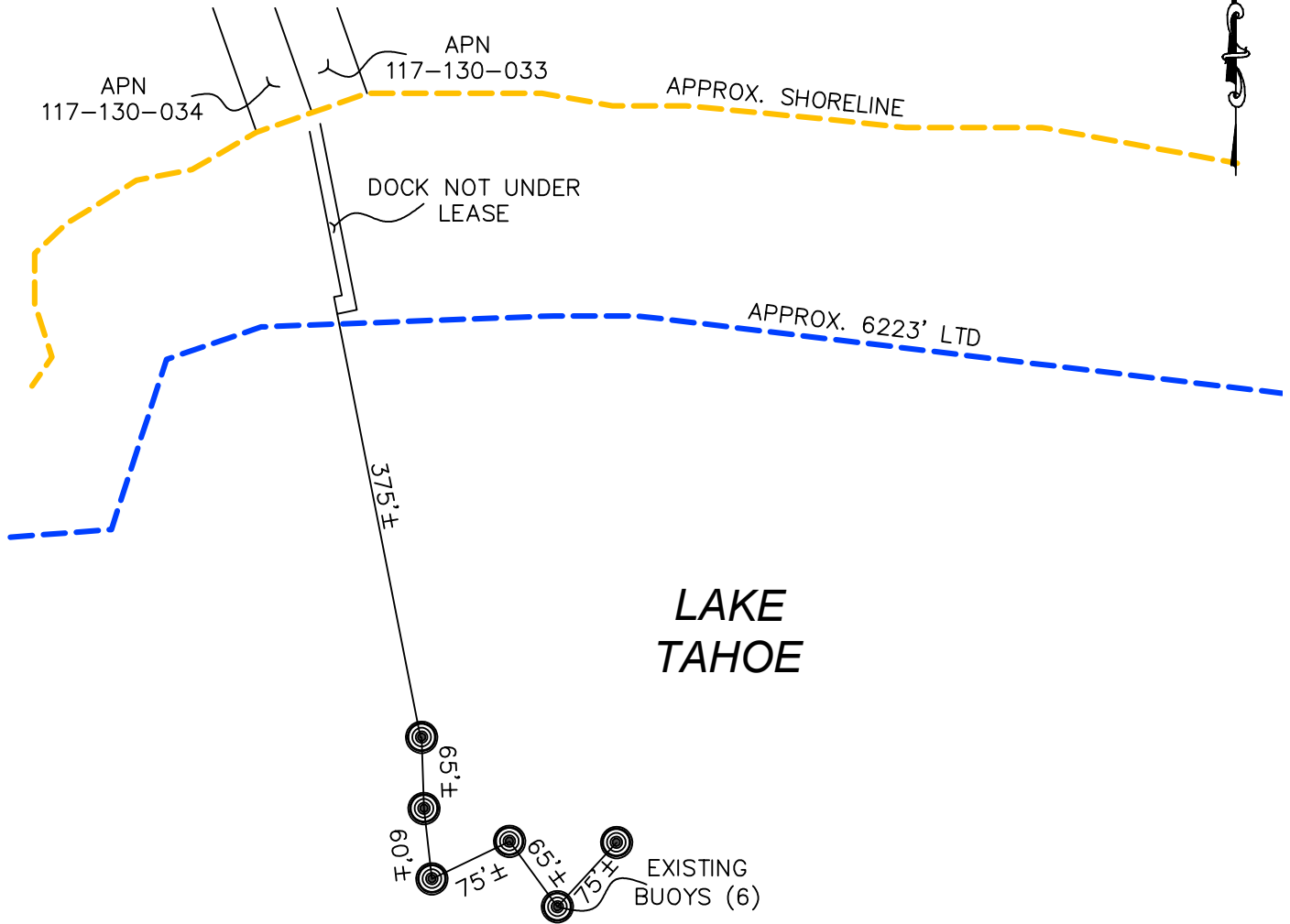
LAND DESCRIPTION PLAT  
W 20846, HEYBOER ET AL.  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE



7442 & 7452 NORTH LAKE BLVD. NEAR TAHOE VISTA

NO SCALE

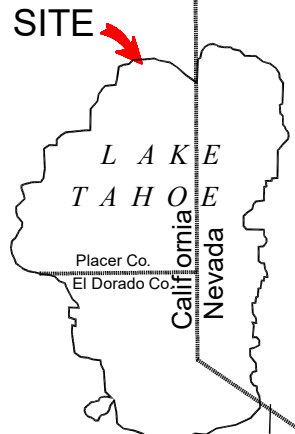
# LOCATION



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

W 20846  
 HEYBOER ET AL.  
 APN 117-130-033 & 034  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY



MJF 1/21/20