

STAFF REPORT

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06/23/20
Lease 4857.1

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A2367
L. Anderson

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST AND
TERMINATION AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Bearslide Lake Tahoe, LLC, a Nevada Limited Liability Company

APPLICANT:

6M, LLC, a Washington limited liability company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4480 North Lake Boulevard,
near Carnelian Bay, Placer County

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse, boat
house, sundeck with stairs, and two mooring buoys.

LEASE TERM:

10 years, beginning June 23, 2020.

CONSIDERATION:

\$2,390 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 provide proof of a Tahoe Regional Planning Agency (TRPA) permit and registration for all moorings, or proof that any unregistered and unpermitted mooring(s) have been removed on or before 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.

- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing and lake-related recreational uses.
- 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 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 19, 2018, the Commission authorized a General Lease - Recreational Use for the continued use and maintenance of existing pier, boathouse, boat house, sundeck with stairs, and two mooring buoys to Bearslide Lake Tahoe, LLC, a Nevada Limited Liability Company ([Item C26, April 19, 2018](#)). The lease expires on February 26, 2028.

On June 21, 2019, the upland property was deeded to 6M, LLC, a Washington limited liability company. The Applicant is applying for a General Lease – Recreational Use, for the continued use and maintenance of the existing pier, boathouse, boat hoist, sundeck with stairs, and two mooring buoys.

Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property without notifying the Commission or executing a lease quitclaim deed.

The Lessee paid rent through February 26, 2020 prior to transferring the upland property to the Applicant. On December 16, 2019, staff sent an annual invoice to the Lessee for annual rent covering the period of February 27, 2020 through February 26, 2021, which the Lessee did not pay. Staff believes it is not in the State's best interests to pursue the collection of rent, penalty, and interest from the Lessee for this period because they were no longer the upland owner as of June 21, 2019, and

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the Applicant already agreed to payment of compensation for the unauthorized occupation of State land during this time.

Staff recommends issuance of a new lease beginning June 23, 2020. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$766 for the period beginning February 27, 2020 (the first day of unpaid rent) through June 22, 2020 (the day before the beginning date of the new lease).

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 sundeck with stairs is not a Trust consistent use. While new sundecks are generally not authorized, sundecks that have been in place for years have been permitted if, as long as they do not significantly interfere with Public Trust needs or activities. However, the sundeck may not be expanded or rebuilt if substantially destroyed.

The subject facilities have existed for many years at this location. The pier and boathouse with boat hoist are built on pilings, meaning the public may navigate or walk next to and, at lower water levels, under the pier. Although the sundeck with stairs is a private use of public property, the sundeck is built into the existing boathouse and does not expand the footprint of the subject facilities. The immediate area of the existing pier is relatively flat beach with coarse sand mixed with pebbles, and small boulders. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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 their original condition.

The proposed lease requires the lessee to ensure 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

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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 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 existing pier, boathouse, boat hoist, sundeck with stairs, and 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 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. Termination of the lease 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.
5. 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.

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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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and continuing use and maintenance of the pier, boathouse, boat hoist, and mooring buoys will not substantially interfere with Public Trust needs and values at this location for the approved term and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and 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. Waive annual rent, penalty, and interest due for the period of February 27, 2020 through February 26, 2021, and void annual rent Invoice #49169 created on December 16, 2019, and issued to Bearslide Lake Tahoe, LLC, a Nevada Limited Liability Company.
2. Authorize termination, effective June 20, 2019, of Lease No. PRC 4857.1, a General Lease – Recreational Use, issued to Bearslide Lake Tahoe, LLC, a Nevada Limited Liability Company.
3. Authorize acceptance of compensation from the Applicant in the amount of \$766 for unauthorized occupation of State land for the period beginning February 27, 2020 to June 22, 2020.

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4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 23, 2020, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse, boat hoist, sundeck with stairs, and two 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 \$2,390 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 4857.1

LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 21, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

PARCEL 1- PIER

All those lands underlying an existing pier, boat house with boat hoist, sundeck and stairs lying adjacent to that parcel described in Grant Deed recorded June 21, 2019 as Document Number 2019-0042532-00 in Official Records of said County.

PARCELS 2 & 3 (BUOYS)

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to that parcel described in in Grant Deed recorded June 21, 2019 as Document Number 2019-0042532-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 4/02/2020 by the California State Lands Commission Boundary Unit.



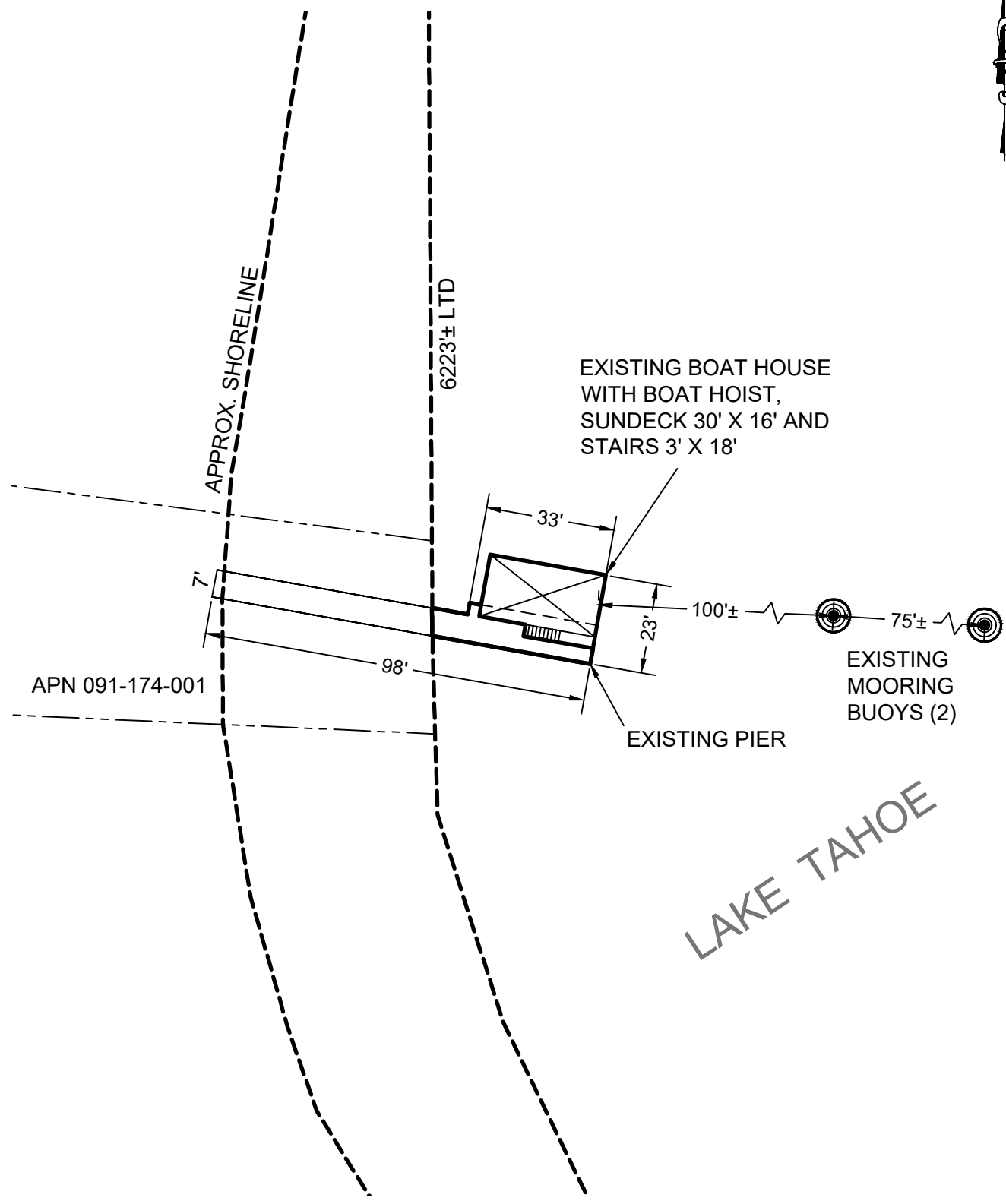
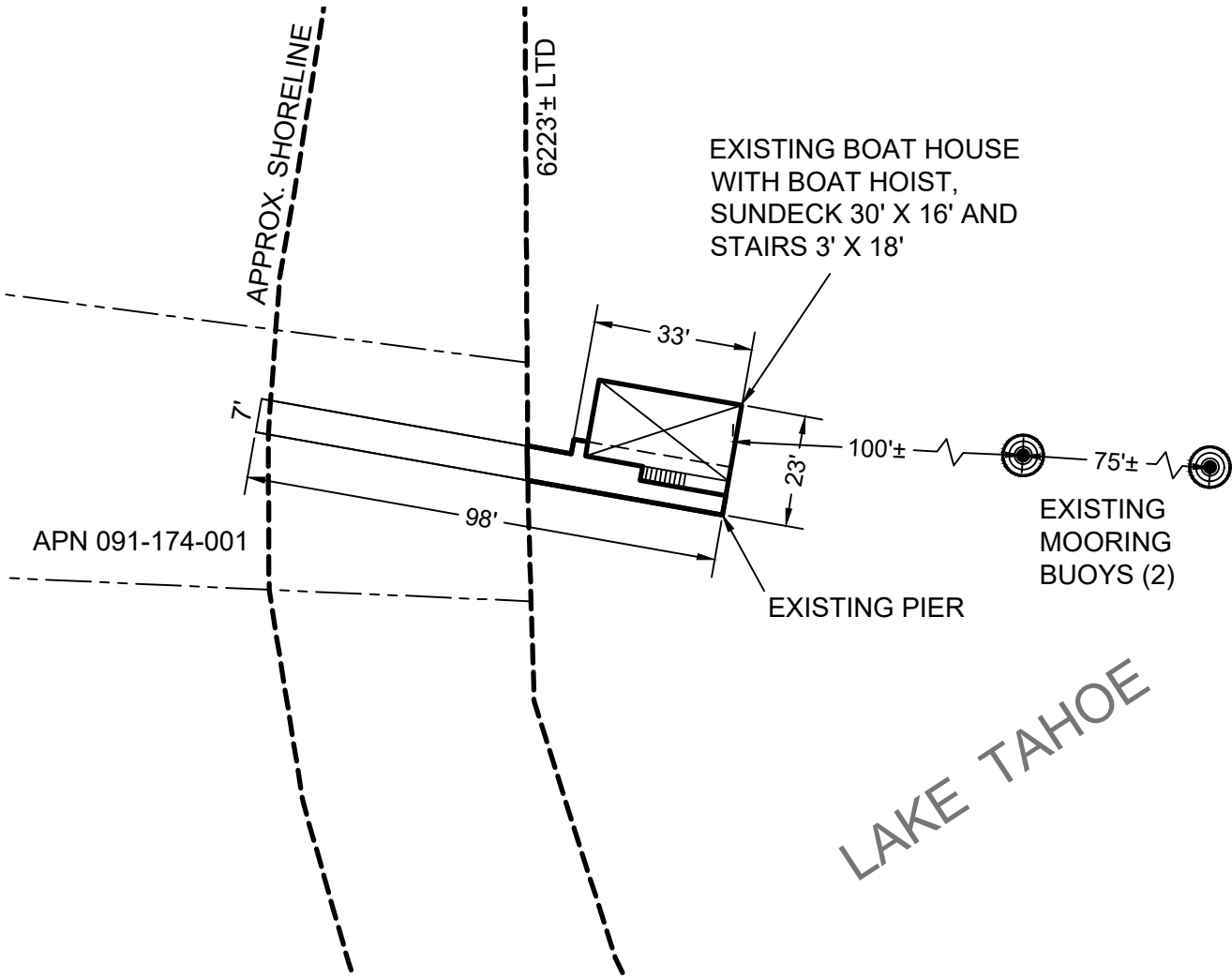


EXHIBIT A



NO SCALE

SITE



4480 NORTH LAKE BOULEVARD, NEAR CARNELIAN BAY

NO SCALE

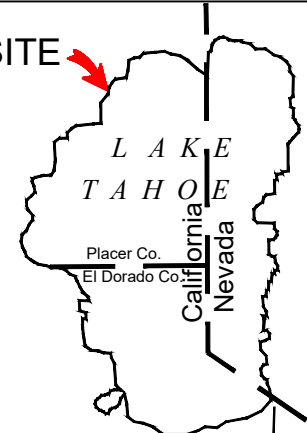
LOCATION



EXHIBIT B

LEASE 4857
 6M LLC
 APN 091-174-001
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY

SITE



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.

RGB 4/02/20