

STAFF REPORT

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06/23/20
Lease 4229.1

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J. Toy

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

C. Don Huff, Jr., Trustee of the Exemption Trust under the C. Don Huff, Jr. and Mary K. Huff Family Trust dated November 10, 2003; and C. Don Huff, Jr., Trustee of the Survivor's Trust under the C. Don Huff, Jr. and Mary K. Huff Family Trust dated November 10, 2003

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4150 Ferguson Avenue, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse with a pitched roof, and two mooring buoys previously authorized by the Commission and an existing boat lift not previously authorized by the Commission.

LEASE TERM:

10 years, beginning June 23, 2020.

CONSIDERATION:

\$1,403 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 recreation.
- 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 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 June 1, 2009, the Commission authorized a Recreational Pier Lease for an existing pier, boathouse with a pitched roof, boat hoist, and two mooring buoys to C. Don Huff, Jr. and Mary K. Huff, Trustees of the C. Don Huff, Jr. and Mary K. Huff Family Trust Dated November 10, 2003 ([Item C04, June 1, 2009](#)). On February 14, 2012, Mary K. Huff died. On October 28, 2014, the upland property was deeded to C. Don Huff, Jr., Trustee of the Exemption Trust under the C. Don Huff, Jr. and Mary K. Huff Family Trust dated November 10, 2003; and C. Don Huff, Jr., Trustee of the Survivor's Trust under the C. Don Huff, Jr. and Mary K. Huff Family Trust dated November 10, 2003. The lease expired on February 21, 2019.

The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier, boathouse with a pitched roof, and two mooring buoys previously authorized by the Commission, and an existing boat lift not previously authorized by the Commission. The boat lift has existed for many years in the boathouse and the Applicant removed the boat hoist that was authorized under the previous lease. The Applicant owns and maintains the facilities.

Staff recommends issuance of a new lease beginning June 23, 2020. Staff further recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,872 for the period beginning February 22, 2019, the day after the Applicant's lease expired, through June 22, 2020, the day before the proposed lease begins.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained, 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 have existed for many years at this location. The pier is built on pilings, providing public access for pedestrians and lake-related activities at varying water levels underneath the pier. The immediate area of the existing pier is a gently sloping pebble beach. The two buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. TRPA issued a permit on September 20, 2019 for the two buoys and boat lift; the permit is currently valid.

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.

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, as the prior lessee, may be required to remove the pier, boathouse with a pitched roof and boat lift, 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.

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3. On October 24, 2018, the TRPA Governing Board certified a Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
4. 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

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 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 compensation from the Applicant in the amount of \$1,872 for unauthorized occupation of State land for the period beginning February 22, 2019 through June 22, 2020.
2. 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 with a pitched roof, and two mooring buoys previously authorized by the

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Commission; and use and maintenance of an existing boat lift 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 \$1,403, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 4229.1

LAND DESCRIPTION

Three (3) parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to fractional Section 28, 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:

PARCEL 1 (PIER)

All those lands underlying an existing pier, and boathouse lying adjacent to those lots as described in Grant Deed recorded October 28, 2014 as Document No. 2014-0076214 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 2-3 (BUOYS)

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent those lots as described in Grant Deed recorded October 28, 2014 as Document No. 2014-0076214 of Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 5/8/2019 by the California State Lands Commission Boundary Unit.



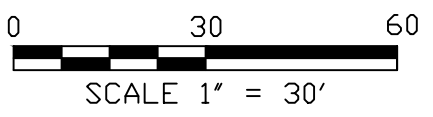
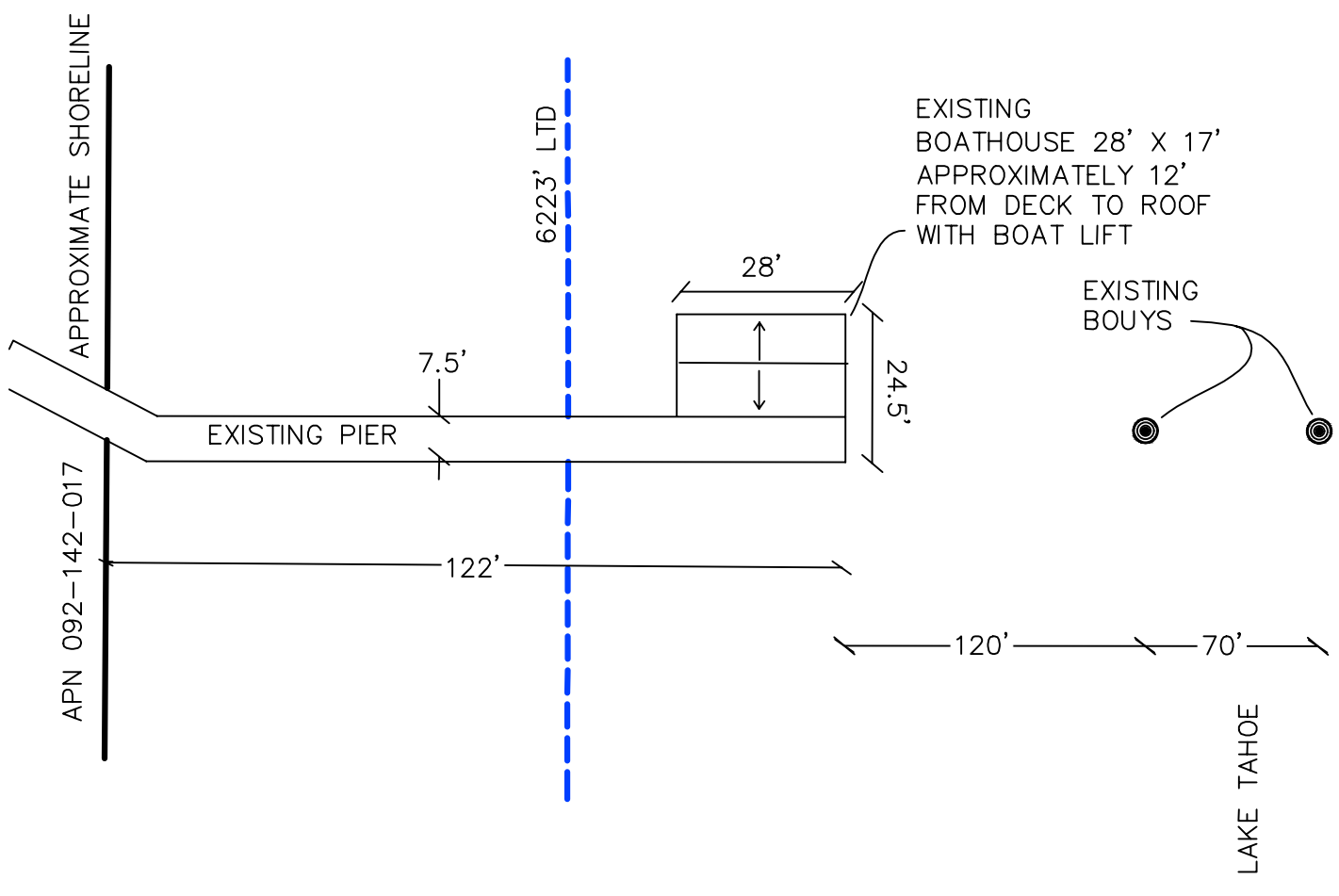


EXHIBIT A

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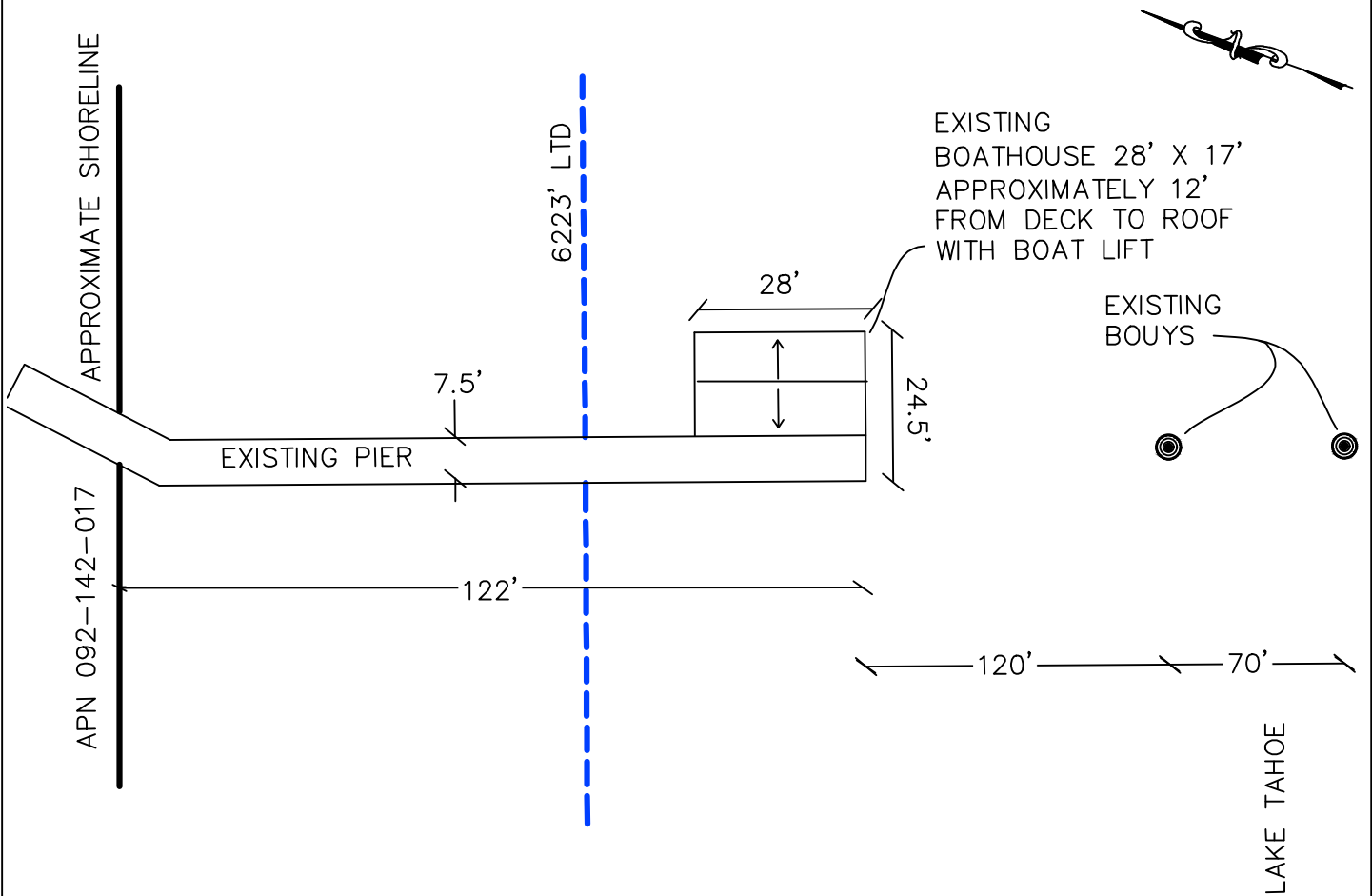
LAND DESCRIPTION PLAT
LEASE 4229.1, HUFF TRUST, ET. AL.
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

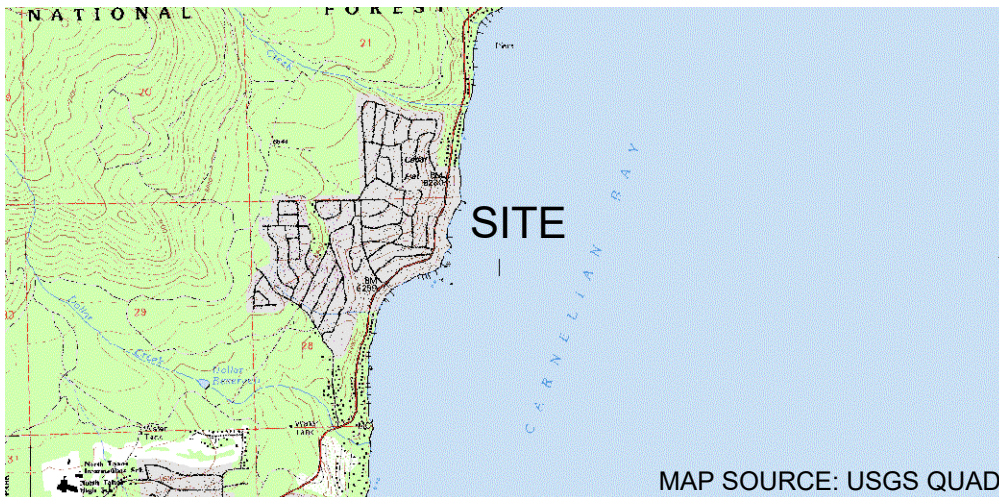
SITE



4150 FERGUSON AVE., CARNELIAN BAY CA

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 4229.1
 HUFF TRUST, ET. AL.
 APN 092-142-017
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY

