

**STAFF REPORT
C26**

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04/19/18
PRC 4857.1
M. Schroeder

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

LESSEE:

Allen L. Capurro and Carol J. Capurro, Trustees of the Allen Capurro Family 1996 Trust, dated August 30, 1996, and Brian D. Murphy and Suzanne M. Murphy, Trustees of the Murphy Family Trust, dated December 17, 2003

APPLICANT:

Bearslide Lake Tahoe, LLC, a Nevada 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 hoist, sundeck with stairs, and one mooring buoy previously authorized by the Commission, and an existing mooring buoy not previously authorized by the Commission.

LEASE TERM:

10 years, beginning February 27, 2018.

CONSIDERATION:

\$2,390 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the

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public uses of access, navigation, fishing, and lake-related recreational uses.

3. If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the certification of a Final Environmental Impact Statement for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they may be required to remove the buoys.
4. Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.
5. The lease contains provisions stating that the existing sundeck, 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 May 5, 2008, the Commission authorized a 10-year General Lease – Recreational Use for an existing pier, boathouse, boat hoist, sundeck with stairs, and one mooring buoy to Allen L. Capurro and Carol J. Capurro, Trustees of the Allen Capurro Family 1996 Trust, dated August 30, 1996, and Brian D. Murphy and Suzanne M. Murphy, Trustees of the Murphy Family Trust, dated December 17, 2003 ([Item C19, May 5, 2008](#)). The lease expired on March 24, 2018.

On January 10, 2011, the upland was deeded to Bearslide Lake Tahoe, LLC, a Nevada Limited Liability Company. The Applicant is applying for a new lease for the continued use and maintenance of the existing pier, boathouse, boat hoist, sundeck with stairs, and one mooring buoy previously authorized by the Commission, and one existing mooring buoy not previously authorized by the Commission.

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Lessee paid annual rent through March 24, 2018, for the sundeck with stairs. Pursuant to Public Resources Code section 6503.5 in effect at the time the lease was issued, Lessee qualified for rent-free status, except for the sundeck with stairs.

The Applicant, however, does not qualify for rent-free status as outlined in the lease. The Applicant has agreed to be responsible for rent from January 10, 2011, through February 26, 2018, for the pier, boathouse, boat hoist, and one mooring buoy authorized under the prior lease. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$4,039 for the period beginning January 10, 2011, through February 26, 2018, the day before the new lease would become effective.

Because the lease had not expired prior to the Applicant taking ownership, the Lessee executed a lease quitclaim deed releasing their interest in the lease. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease.

Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boathouse, boat hoist, and two mooring buoys 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 sundeck with stairs is not associated with traditional trust uses. While new sundecks are generally not favored, sundecks that have been in place for years have been permitted if, as is the case in this instance, they do not significantly interfere with Public Trust needs or activities. However, the sundeck may not be expanded nor rebuilt if substantially destroyed.

The subject facilities have existed for many years at this location. The additional mooring buoy has also existed for many years at this location but was not previously authorized by the Commission. 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 area around the existing pier and sundeck with stairs is sloped with a sandy portion of the shore. The buoys

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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.

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, Commission staff believes the issuance of this lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The proposed lease was previously scheduled for Commission consideration at the February 27, 2018 meeting. At that meeting, the Commission considered updates to the Lake Tahoe benchmarks ([Item C90, February 27, 2018](#)). The Commission deferred action on revising the existing Lake Tahoe benchmark and directed staff to identify funding options to conduct a thorough evaluation of the various methodologies available to the Commission to assess rent for piers, buoys and other structures located on state property in Lake Tahoe. The Commission further directed staff to continue applying the 2012 Lake Tahoe benchmarks for the next 5 years. Consequently, this item was removed from the February agenda, revised to reflect the current benchmark rates, and rescheduled for the Commission's consideration at the Commission's April meeting.
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. 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).

4. 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.

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:

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 the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a quitclaim deed, effective February 26, 2018, of Lease No. PRC 4857.1, a General Lease – Recreational Use, issued to Lessee.

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2. Authorize acceptance of compensation in the amount of \$4,039 for unauthorized occupation of State lands for the period beginning January 10, 2011, through February 26, 2018, from the Applicant.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 27, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse, boat hoist, sundeck with stairs, and one mooring buoy previously authorized by the Commission and one existing mooring buoy 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 \$2,390, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 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 January 10, 2011 as Document Number 2011-0002512-00 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 January 10, 2011 as Document Number 2011-0002512-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/15/2016 by the California State Lands Commission Boundary Unit.



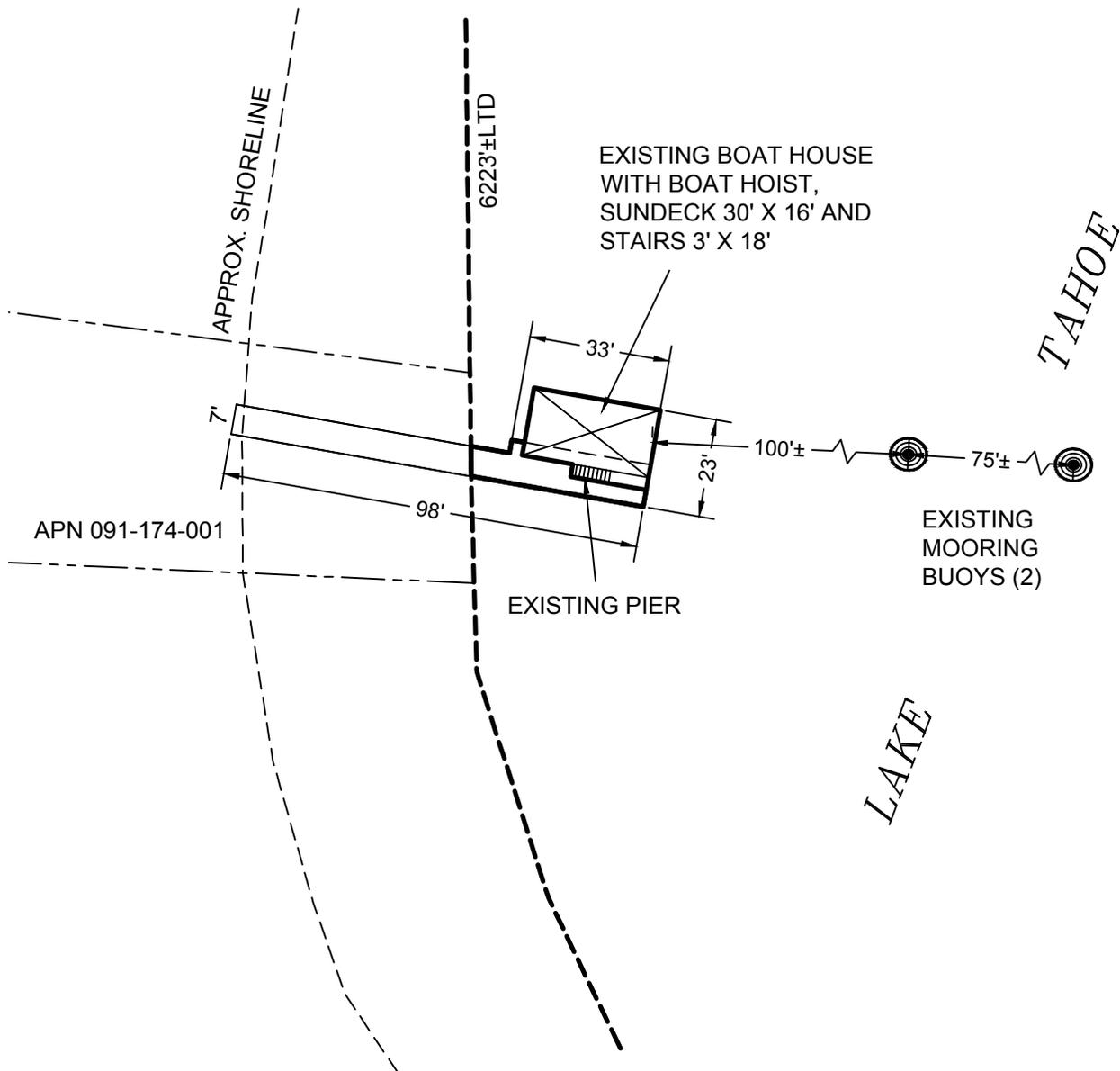


EXHIBIT A

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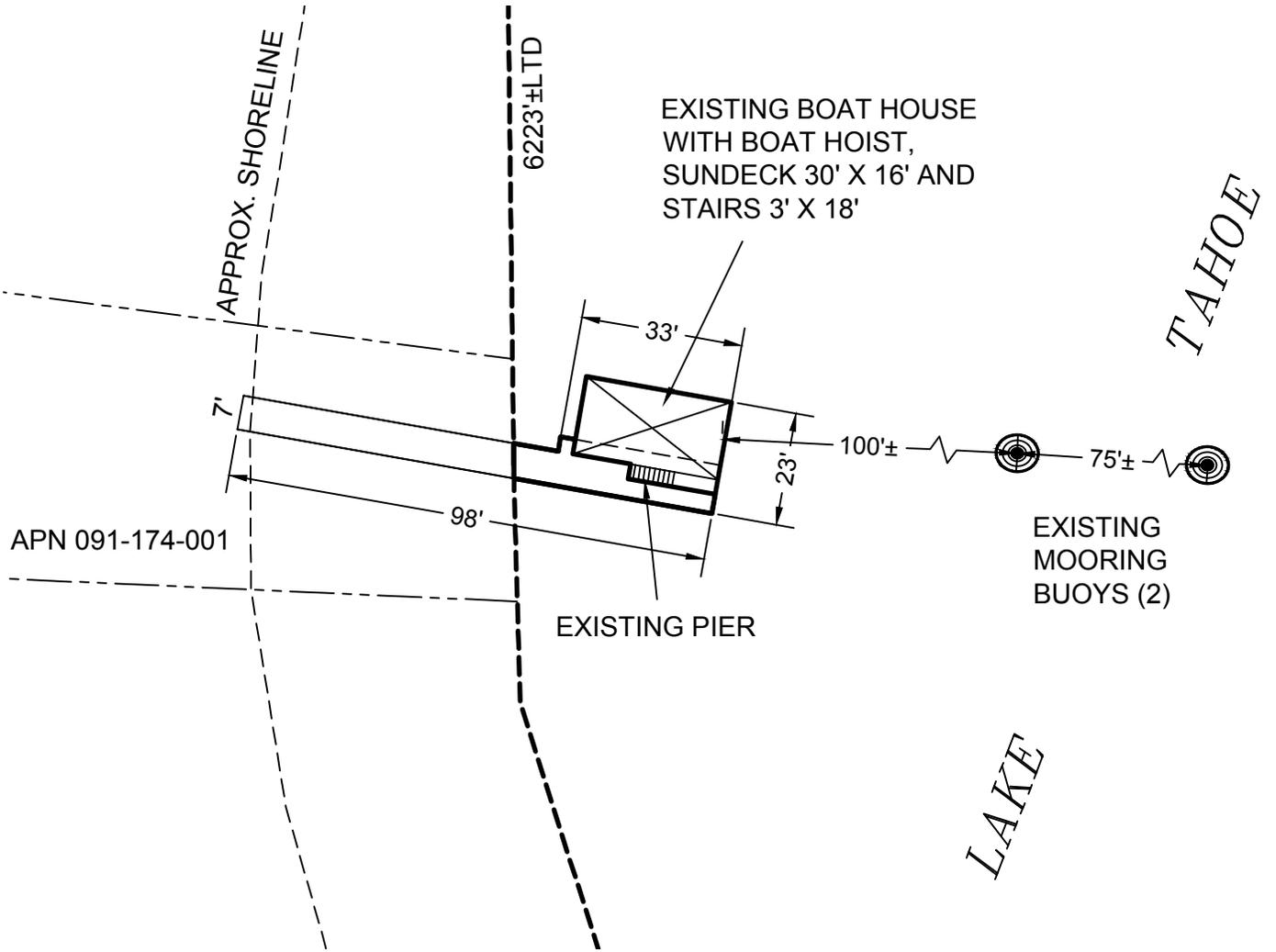
LAND DESCRIPTION PLAT
 PRC 4857.1, BEARSLIDE LAKE TAHOE, LLC
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



4480 NORTH LAKE BOULEVARD, NEAR CARNELIAN 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 4857.1
 BEARSLIDE LAKE
 TAHOE, LLC
 APN 091-174-001
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY

SITE

