

## STAFF REPORT

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10/24/19

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Lease 4476.1  
M.J. Columbus

### TERMINATION OF A RECREATIONAL PIER LEASE AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE

#### LESSEE:

Ann Magee, Susan M. Brandt, and Jerome Magee, Jr.

#### APPLICANT:

John Charles Hodge and Stacey Keare, trustees of the Hodge/Keare Family Trust dated November 8, 2001 as amended and restated

#### PROPOSED LEASE:

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

Sovereign land in Lake Tahoe, adjacent to 5372 North Lake Boulevard, near Carnelian Bay, Placer County.

##### *AUTHORIZED USE:*

Proposed repair and reinforcement of an existing pier; reconstruction of the pierhead; removal of an overhead steel I-beam hoist, track, and gantry system; removal of one mooring buoy and fixed catwalk; installation of a boat lift and adjustable catwalk; continued use and maintenance of one existing mooring buoy previously authorized by the Commission; and one existing freshwater intake pipeline with electrical conduit and pump not previously authorized by the Commission.

##### *LEASE TERM:*

10 years, beginning October 24, 2019.

##### *CONSIDERATION:*

\$1,056, 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

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uses for access, navigation, fishing, and lake-related recreational uses.

- 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 authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.
- The lease provides that the public will be allowed to pass and re-pass by steps and ladders on each side of the pier and signage will be installed to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum.

### **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 February 8, 2011, the Commission authorized a 10-year Recreational Pier Lease to Ann Magee, Susan M. Brandt, and Jerome Magee, Jr., for continued use and maintenance of an existing pier, gantry, and two mooring buoys ([Staff Report C33, February 8, 2011](#)). That lease will expire on February 7, 2021. On May 19, 2017, the upland property was deeded to the Applicant. Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property without notifying the Commission and executing a lease quitclaim deed.

The Applicant is applying for a General Lease – Recreational Use, for the continued use and maintenance of an existing pier and one mooring buoy previously authorized by the Commission; repair and reinforcement of the pier; reconstruction of the pierhead; removal of an overhead steel I-beam hoist, track, and gantry system; removal of one mooring buoy and fixed catwalk; installation of a boat lift and adjustable catwalk; and use and maintenance of one existing freshwater intake pipeline with electrical conduit and pump not previously authorized by the Commission. The Applicant has a current TRPA permit authorizing the proposed existing

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rock crib pier repair, reinforcement, and reconstruction of the existing pierhead, removal of the existing overhead steel I-beam hoist, track and gantry system, and removal of one mooring buoy for the installation of a boat lift.

The freshwater intake pipeline is not associated with traditional Public Trust uses. However, the pipeline with conduit and pump has existed in the lake for many years, and occupies a small area of the lakebed. The Applicant uses the pipeline to provide water to the upland property. The Applicant has no other permits and has filed for a Statement of Diversion from the State Water Resources Control Board. The pipeline does not interfere with Public Trust activities at this location or at this time. Staff recommends including the freshwater intake pipeline with conduit and pump in the lease.

Staff recommends issuance of a new lease beginning October 24, 2019. Therefore, staff recommends the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$3,615 for the period beginning May 19, 2017, through October 23, 2019, the day before the new lease becomes effective.

The proposed project will not change the length of the pier and the pierhead will be reconstructed in conformance with TRPA's current design standards. The pierhead is proposed to be reconfigured to eliminate the angled pier section with a conforming straight pierhead. The project as proposed will result in a 177 square foot net reduction of the area of the footprint on the lake bottom.

The proposed project will be performed on-site with access to the site from a barge or amphibious vehicle on the lake. Depending on the level of the lake, a turbidity curtain or erosion control fencing will be installed around the perimeter of the project site. A portion of the existing pier will be demolished and removed using a front loader or other similar type of equipment. The material will be transported by barge to an approved offloading site, where it will be taken by dump truck to a TRPA-approved disposal facility.

The reconstruction of the pierhead will utilize an open pile construction using nine new 10.75-inch diameter driven steel piles with retainment of the existing underlying rock and timber crib support to be repaired and reinforced. Caissons will be installed around the new pilings. The pilings will be driven into the lakebed and may be pinned onto existing large boulders on the lakebed if pile driving is not feasible at the proposed

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location. Decking will be installed atop the structure allowing for an adjustable catwalk to be supported by the repaired and reinforced crib, as well as two of the 10.75-inch diameter piles. No construction materials will be stored on the shoreline.

The proposed project will take place after all required approvals have been obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

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 design of the proposed pier will allow public access laterally across the shoreline. The topography and the location of upland structures provide access for the pier and the public may navigate or walk on steps or ladders on each side of the pier within the Public Trust easement. The lease requires the placement of signs on both sides of the pier at the designated public access passageway that read "Public Passage Over Pier". The mooring buoy is located directly lakeward of the upland property and occupies 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. 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; is consistent with the Public Trust; and is in the best interests of the State.

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**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 pier, appurtenant facilities, mooring buoys, and freshwater intake pipeline with electrical conduit and pump 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. 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.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. **Retention of One Existing Mooring Buoy, Removal of One Existing Mooring Buoy, Rock Crib Pier, and Freshwater Intake Pipeline:** Staff recommends that the Commission find that this activity 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).
5. **Reconstruction of the Pierhead, Replacement of the Catwalk, and Other Pier Modifications:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

Authority: Public Resources Code section 21084, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

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**APPROVALS OBTAINED:**

Tahoe Regional Planning Agency  
U.S. Army Corps of Engineers  
California Department of Fish and Wildlife

**FURTHER APPROVALS REQUIRED:**

Lahontan Regional Water Quality Control Board

**EXHIBITS:**

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

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Retention of One Existing Mooring Buoy, Removal of One Existing Mooring Buoy, Rock Crib Pier, and Freshwater Intake Pipeline:** 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).

**Reconstruction of the Pierhead, Replacement of the Catwalk, and Other Pier Modifications:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

**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 termination, effective May 18, 2017, of Lease No. PRC 4476.9, a Recreational Pier Lease, issued to Ann Magee, Susan M. Brandt, and Jerome Magee, Jr.
2. Authorize acceptance of compensation in the amount of \$3,615 for the period of May 19, 2017, through October 23, 2019.

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3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 24, 2019, for a term of 10 years, for proposed repair and reinforcement of an existing pier; reconstruction of the pierhead; removal of an overhead steel I-beam hoist, track, and gantry system; removal of one mooring buoy and fixed catwalk; installation of a boat lift and adjustable catwalk; continued use and maintenance of one mooring buoy previously authorized by the Commission; and one existing freshwater intake pipeline with electrical conduit and pump 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 \$1,056, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## **EXHIBIT A**

**LEASE 4476.1**

### **LAND DESCRIPTION**

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 22, 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 and proposed pier with a boat lift, and adjustable catwalk lying adjacent to that parcel described in Grant Deed recorded May 19, 2017 as Document Number 2017-0036637-00 in 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 said Lake Tahoe.

#### **PARCEL 2 – Water In-take Pipeline with Electrical Conduit and Pump**

All those lands underlying an existing water in-take pipeline lying adjacent to that parcel described in Grant Deed recorded May 19, 2017 as Document Number 2017-0036637-00 in Official Records of said County.

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

#### **PARCEL 3 – Buoy**

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to that parcel described in Grant Deed recorded May 19, 2017 as Document Number 2017-0036637-00 in Official Records of said County.



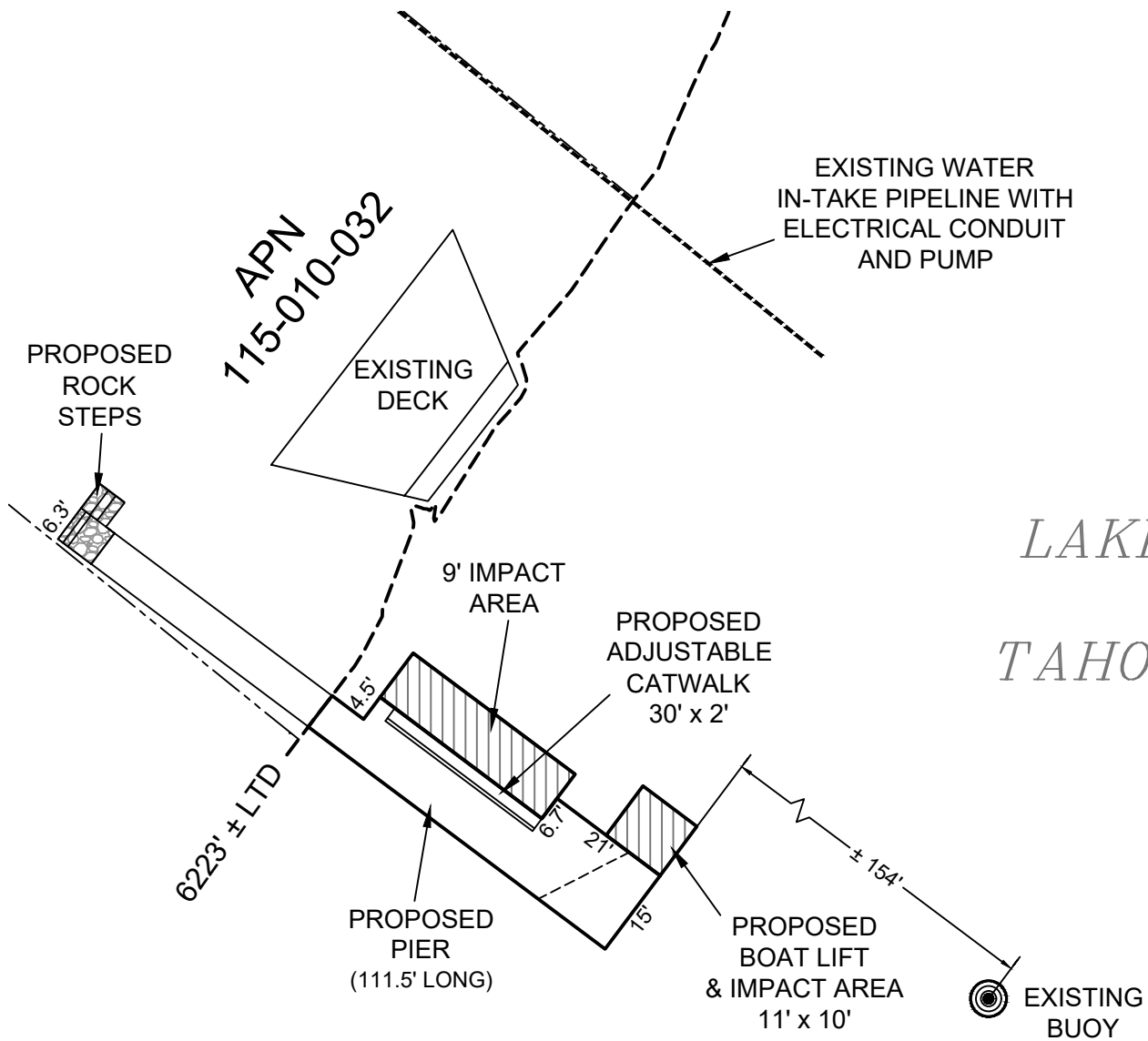
Accompanying plat is hereby made part of this description.

### **END OF DESCRIPTION**

This description is based on an existing pier, together with any and all appurtenances pertaining thereto, at the date of this description. A portion of the existing pier and appurtenances are to be removed and a new proposed pier and appurtenances are to be built per lease Applicant's provided design plans. This description is to be updated once final as-built plans are submitted.

Prepared 09/11/2019 by the California State Lands Commission Boundary Unit.





## EXHIBIT A

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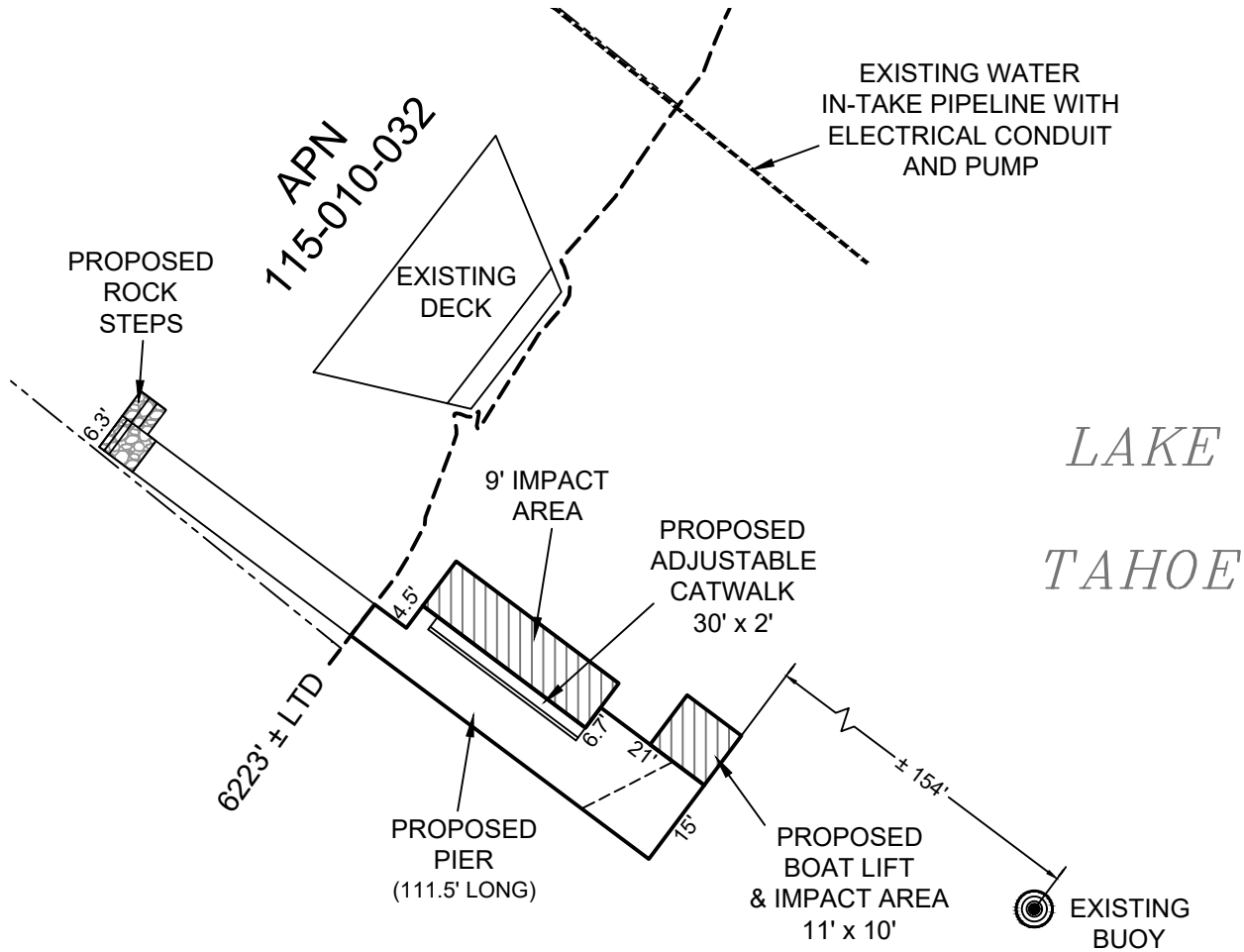
LAND DESCRIPTION PLAT  
LEASE 4476.1, HODGE/KEARE TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

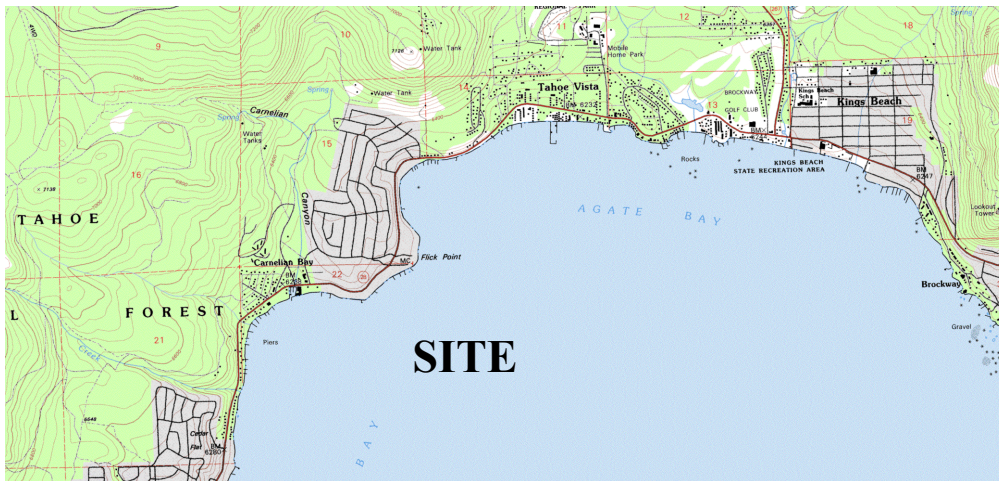
## SITE



5372 NORTH LAKE BLVD., 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**

LEASE 4476.1  
HODGE/KEARE TRUST  
APN 115-010-032  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY

**SITE** →

L A K E  
T A H O E

Placer Co.  
El Dorado Co.  
California  
Nevada

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