

## STAFF REPORT

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02/28/20

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Lease 5554.1

J. Toy

### GENERAL LEASE – RECREATIONAL USE

#### APPLICANT:

Todd J. Kinion and Patrice A. Kinion, as Trustees of the Kinion Family Trust  
under Agreement dated June 7, 2006

#### PROPOSED LEASE:

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

Sovereign land in Lake Tahoe, adjacent to 8387 Meeks Bay Avenue, near  
Meeks Bay, El Dorado County.

##### *AUTHORIZED USE:*

Continued use and maintenance of an existing pier and two mooring  
buoys.

##### *LEASE TERM:*

10 years, beginning February 28, 2020.

##### *CONSIDERATION:*

\$1,281 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 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.

### **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 December 17, 2009, the Commission authorized a Recreational Pier Lease for an existing pier and two mooring buoys to Todd Kinion and Patrice Kinion ([Item C08, December 17, 2009](#)). On January 29, 2010, upland ownership was transferred to Todd J. Kinion and Patrice A. Kinion, as Trustees of the Kinion Family Trust under Agreement dated June 7, 2006. The lease expired on September 26, 2018. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the existing facilities.

Staff recommends issuance of a new lease beginning February 28, 2020. Therefore, staff recommends that the Commission accept compensation for the unauthorized occupation of State land from the Applicant in the amount of \$1,821 for the period beginning September 27, 2018 (the day after the lease expired) through February 27, 2020 (the day before the effective date of the new lease) for the pier and two mooring buoys.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The facilities 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 subject facilities have existed for many years at this location. The pier is built on pilings, providing public access for pedestrians and for lake-related activities at varying water levels underneath the pier. The immediate area of the existing pier is steep with large boulders. The two 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

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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 may be required to remove the pier 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. 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.

**STAFF REPORT NO. 12 (CONT'D)**

**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 \$1,821 for unauthorized occupation of State land for the period beginning September 27, 2018, through February 27, 2020.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 28, 2020, for a term of 10 years, for the continued use and maintenance of an existing pier 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 \$1,281, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 5554.1

### LAND DESCRIPTION

Three (3) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 29, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, and more particularly described as follows:

#### PARCEL 1 – PIER

All those lands underlying an existing pier and catwalk lying adjacent to that parcel as described in Exhibit “B” of that Grant Deed recorded October 20, 2000 in Document Number 2000-0052987 of said County.

TOGETHER WITH any applicable impact area(s).

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

#### PARCEL 2, 3 – 2 BUOYS

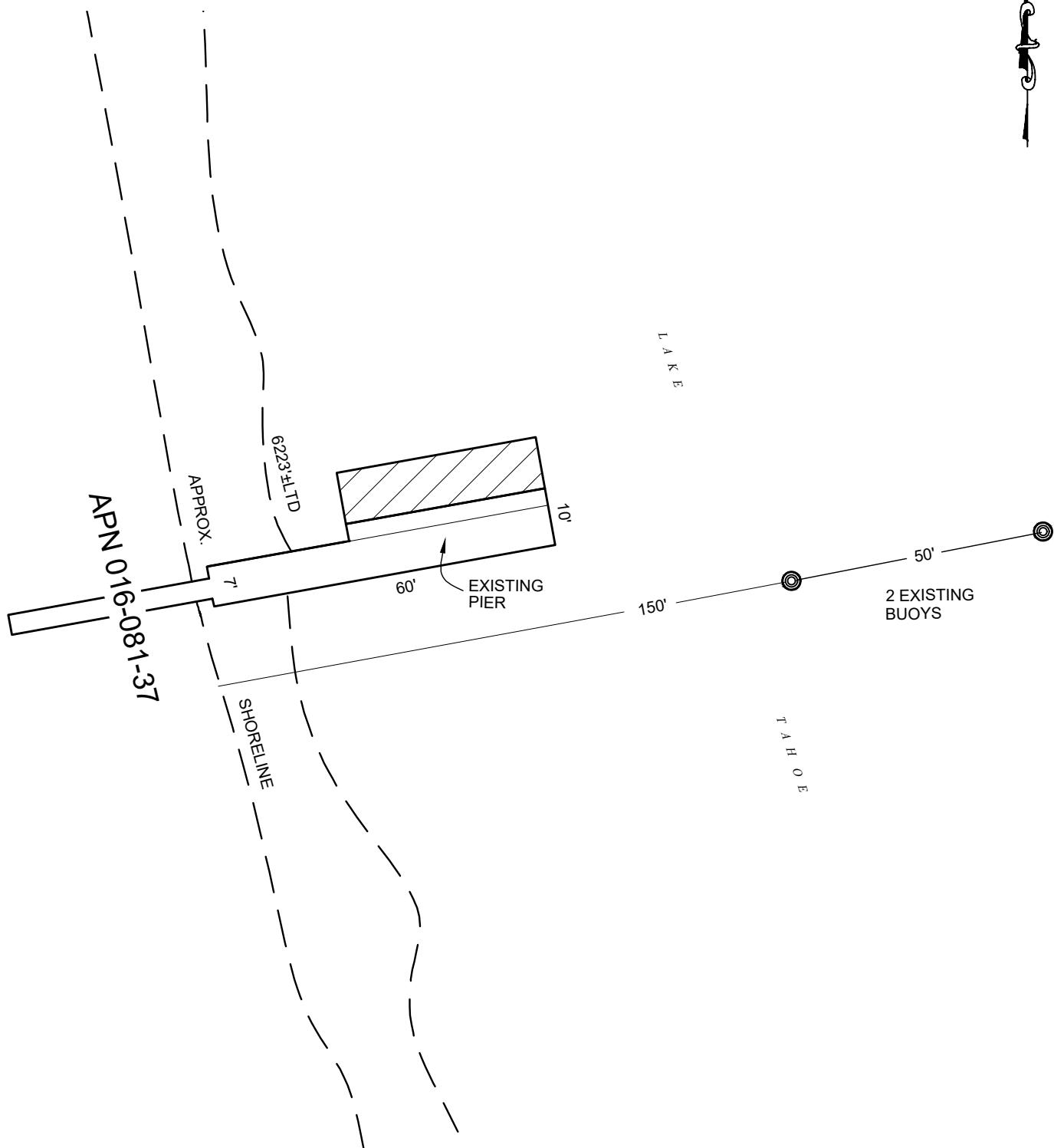
Two (2) circular parcels of land being 50 feet in diameter, underlying two (2) existing buoys adjacent to said parcel.

Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared December 17, 2019 by  
the California State Lands Commission Boundary Unit.





## EXHIBIT A

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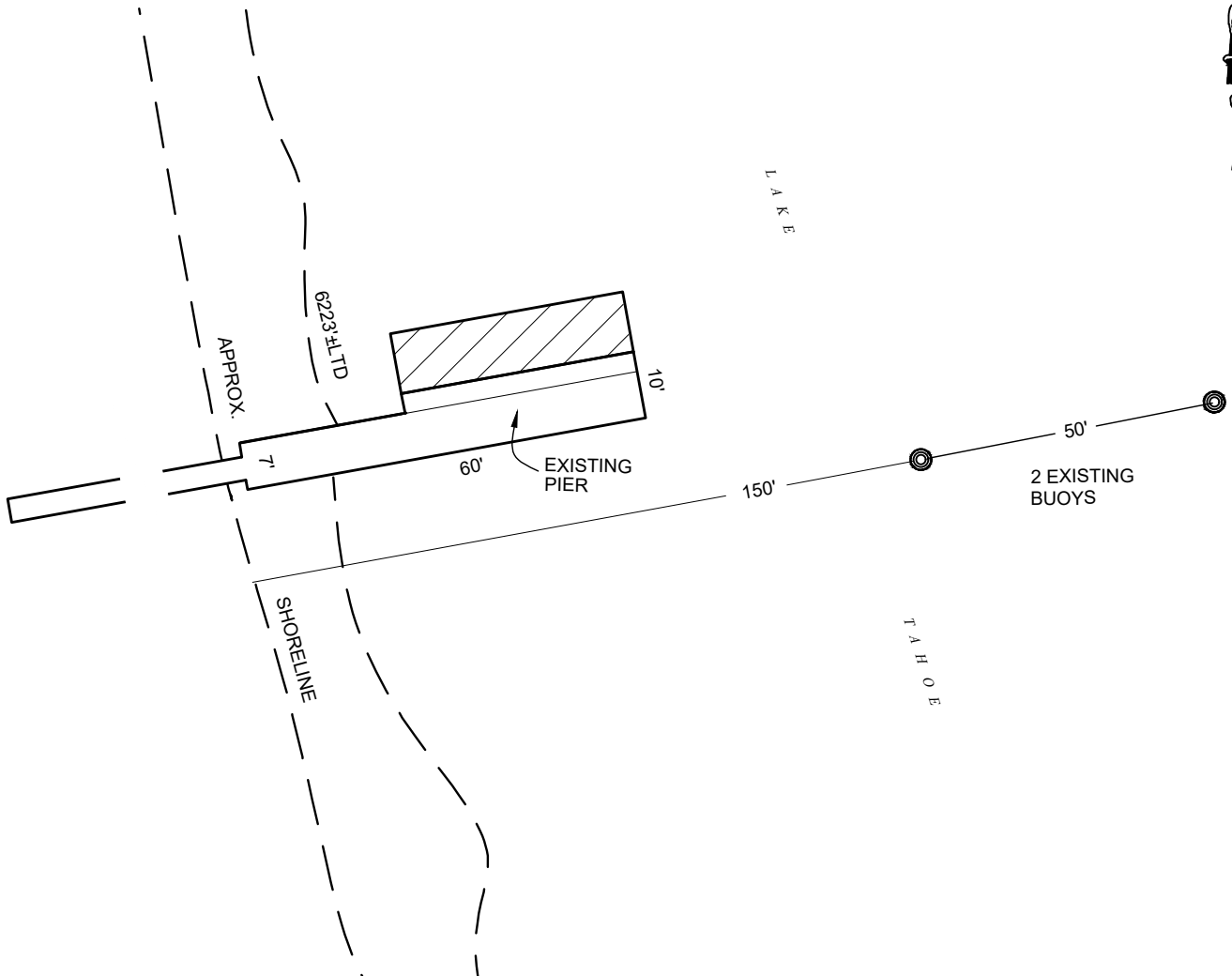
LAND DESCRIPTION PLAT  
LEASE 5554.1, KINION FAMILY TRUST  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

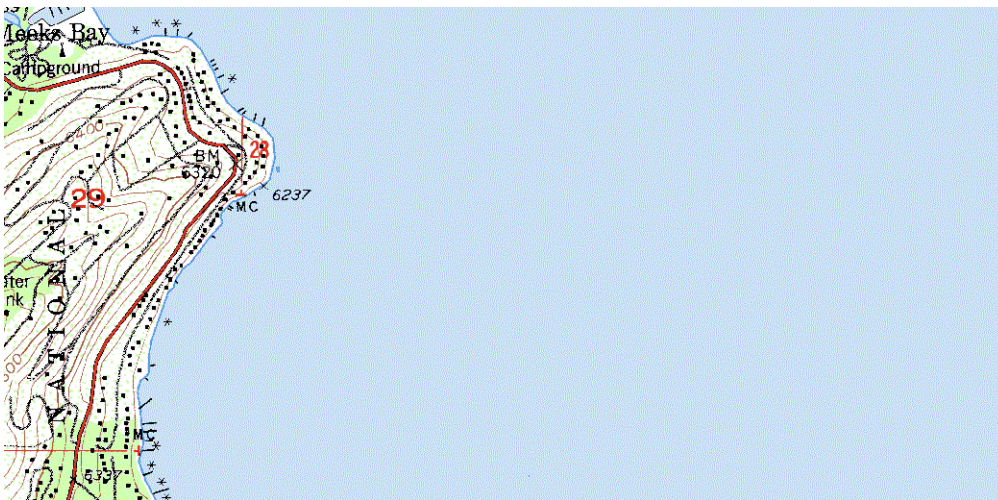
## SITE



8387 MEEKS BAY AVE., NEAR MEEKS BAY

NO SCALE

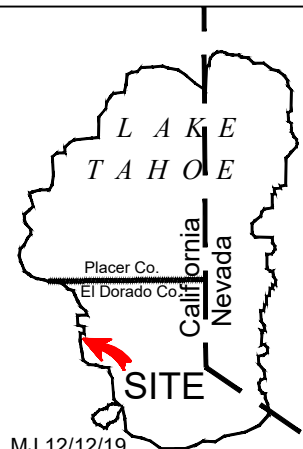
## LOCATION



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 5554.1  
KINION FAMILY TRUST  
APN 016-081-37  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY



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