

## STAFF REPORT

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06/23/20

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Lease 5263.1

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### GENERAL LEASE – RECREATIONAL USE

#### APPLICANT:

D. A. Dabbagh and Jeanne M. Dabbagh, Trustees of the D.A. and Jeanne M. Dabbagh 1985 Revocable Family Trust; Donald R. Johnson and Laura K. Johnson, Trustees of the Don and Laura Johnson Trust; and Linda Bullock Merrifield, Trustee of the Linda C. Bullock Revocable Trust Agreement

#### PROPOSED LEASE:

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

Sovereign land in Lake Tahoe, adjacent to 3031 and 3035 Jameson Beach Road, near Camp Richardson, El Dorado County.

##### *AUTHORIZED USE:*

Continued use and maintenance of one existing mooring buoy previously authorized by the Commission; removal of an existing pier; construction, use, and maintenance of a multi-parcel joint use-pier; use and maintenance of two existing freshwater intake pipelines and two mooring buoys not previously authorized by the Commission.

##### *LEASE TERM:*

10 years, beginning June 23, 2020.

##### *CONSIDERATION:*

\$1,221 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 recreational uses.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from Tahoe Regional Planning Agency (TRPA) or

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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 over and around the landward end of the pier with signs posted on each side of the pier to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

### **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 August 11, 2009, the Commission authorized a Recreational Pier Lease to Charlotte F. Shea, as Trustee of The Charlotte F. Shea Revocable Trust, Kevin E. Shea, Deborah M. Rowe, and Michael L. Shea for the continued use and maintenance of an existing pier and one mooring buoy adjacent to 3031 Jameson Beach Road (APN 032-110-06) ([Item C02, August 11, 2009](#)). That lease expired April 30, 2019. On September 5, 2012, the property was deeded to D. A. Dabbagh and Jeanne M. Dabbagh, and on February 15, 2013, the property was deeded to D. A. Dabbagh and Jeanne M. Dabbagh Trustees of the D. A. and Jeanne M. Dabbagh 1985 Revocable Family Trust. There is an existing pier, one mooring buoy, and a freshwater intake pipeline associated with this property.

On January 28, 2016, the adjacent property located at 3035 Jameson Beach Road (APN 032-110-07), was deeded to Donald R. Johnson and Laura K. Johnson, Trustees of the Don and Laura Johnson Family Trust, dated March 10, 1998, and Linda Bullock Merrifield, Trustee of the Linda

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C. Bullock Revocable Trust Agreement dated August 22, 1990. There are two existing mooring buoys and a freshwater intake pipeline associated with that property not previously authorized by the Commission.

The Applicant has submitted a single lease application for all the structures located adjacent to both parcels. The property owners have shared the existing pier for many years and have entered a joint-use pier agreement for the proposed pier in order to facilitate TRPA permitting. The Applicant seeks authorization to remove the existing pier and construct, use and maintain a joint-use pier; use and maintenance of the three existing mooring buoys and two existing freshwater intake pipelines.

The Applicant owns the uplands adjoining the lease premises. The pier and three mooring buoys have existed for many years at this location, are privately owned and maintained, and are used for the docking and mooring of boats and facilitates 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).

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 for the three mooring buoys and two freshwater intake pipelines in the amount of \$1,509 for the period beginning March 8, 2019, the date the Application submitted the lease application, through June 22, 2020, the day before the new lease becomes effective. Although the existing pier was authorized under the expired lease, Staff confirmed that the pier does not extend onto sovereign land below low water. Therefore, compensation is not charged for the pier.

The freshwater intake pipelines are not associated with traditional Public Trust uses. However, the pipelines with electrical conduits and pump have been in the lake for many years and occupy a small area of the lakebed. The pipelines are the sole source of water for household and fire safety use because no other feasible water sources are available. The Applicant has applied for Statements of Diversion from the State Water Resources Control Board. No other permits have been found. Staff recommends bringing the water intake pipelines, electrical conduits, and submerged pump under lease.

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The existing pier was constructed prior to 1969 with wood pilings, deck, and cross beams that have been structurally damaged from high easterly wind and wave action particularly when the lake level is above the high-water mark.

The proposed pier will be constructed with steel pilings, decking, cross beams, and a catwalk. The proposed pier extends beyond the ordinary low water elevation of 6,223 feet, Lake Tahoe datum, covering a 2.84 square foot area. Piling removal is proposed and all work will conform with the TRPA permit conditions. The proposed project will be accessed primarily from the lake by a barge moored adjacent to the existing pier structure. Construction will take place after all required approvals have been obtained. The Applicant agrees to 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 Applicant agrees to allow public passage to and from the area below the high-water mark via the uplands for lake related activities. The immediate area surrounding the existing pier and proposed pier is a shallow sloped sandy beach with small rocks. The lease requires the placement of signs on both sides of the pier at the designated public access passageway that read "Public Passage Allowed Over and Around Pier". The pier, buoys, and water intake lines are located directly lakeward of the upland properties and occupy a relatively small area of the lake. The Applicant has registered three mooring buoys with TRPA: one mooring buoy to Dabbagh (TRPA Permit No. 11131) and two mooring buoys to Johnson (TRPA Permit No. 10481).

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 lessees' 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.

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For all the reasons above, Commission staff believes the issuance of this lease is consistent with the Public Trust Doctrine; in the event that elements of the lease are not trust consistent, they do not substantially interfere with the Public Trust Doctrine 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. 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/prior lessee may be required to remove the pier, three mooring buoys, and two freshwater intake pipelines and restore the premises to their original condition. Upon expiration or prior termination of the lease, a 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 land 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. 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 recreational uses.
5. Applicant expressly acknowledge and agree 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
6. **Existing Facilities:** 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).

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7. **Pier Reconstruction:** 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 2, section 2905, subdivision (b).

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. Legal Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Existing Facilities:** 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).

**Pier Reconstruction:** 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 2, section 2905, subdivision (b).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that issuance of 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 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 \$1,509 for unauthorized occupation of State land for the period beginning March 8, 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

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continued use and maintenance of one existing mooring buoy previously authorized by the Commission; removal of an existing pier; construction, use and maintenance of a multi-parcel joint-use pier; and use and maintenance of two existing freshwater intake pipelines and two existing mooring buoys not previously authorized by the Commission as described on 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 \$1,221 with an annual Consumer Price Index adjustment, and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 5263.1

### LAND DESCRIPTION

Four parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 6, Township 12 North, Range 18 East, MDM., as shown on Official Government Township Plat approved November 9, 1866 County of El Dorado, State of California, described as follows:

#### PARCEL 1

All those lands underlying a proposed joint use pier, proposed joint use catwalk, proposed joint use ramp and two existing freshwater pipelines lying adjacent to that parcel described in Grant Deed recorded February 24, 2016 as Document Number 2016-0006902-00 in Official Records of said County and Parcels One and Two as described in Grant Deed recorded February 15, 2013 as Document Number 2013-0008217-00 in Official Records of said County.

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

#### PARCEL 2-4 (BUOYS)

Three circular parcels of land, being 50 feet in diameter, underlying three existing buoys lying adjacent to that parcel described in Grant Deed recorded February 24, 2016 in Document Number 2016-0006902-00 in Official Records of said County and Parcels One and Two as described in Grant Deed recorded February 15, 2013 as Document Number 2013-0008217-00 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

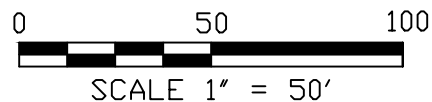
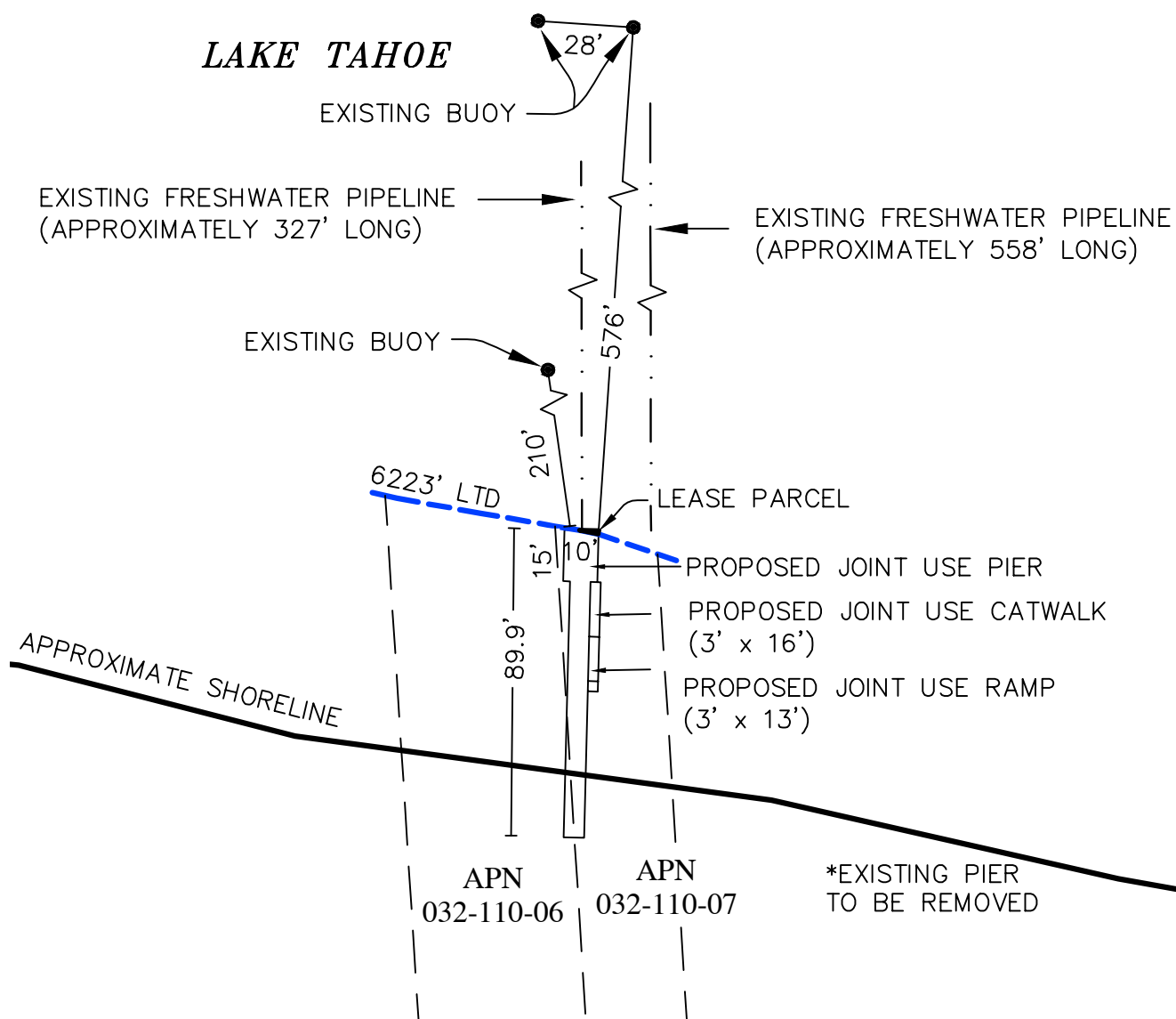
### END OF DESCRIPTION

This description is based on Applicant provided design plans, by Ferrell Civil Engineering dated January 10, 2019, for a proposed joint use pier, together with any and all appurtenances pertaining thereto, to be built as a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 5/15/2020 by the California State Lands Commission Boundary Unit.







## EXHIBIT A

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LAND DESCRIPTION PLAT  
LEASE 5263.1, DABBAUGH TRUST, JOHNSON  
TRUST & BULLOCK TRUST  
EL DORADO COUNTY

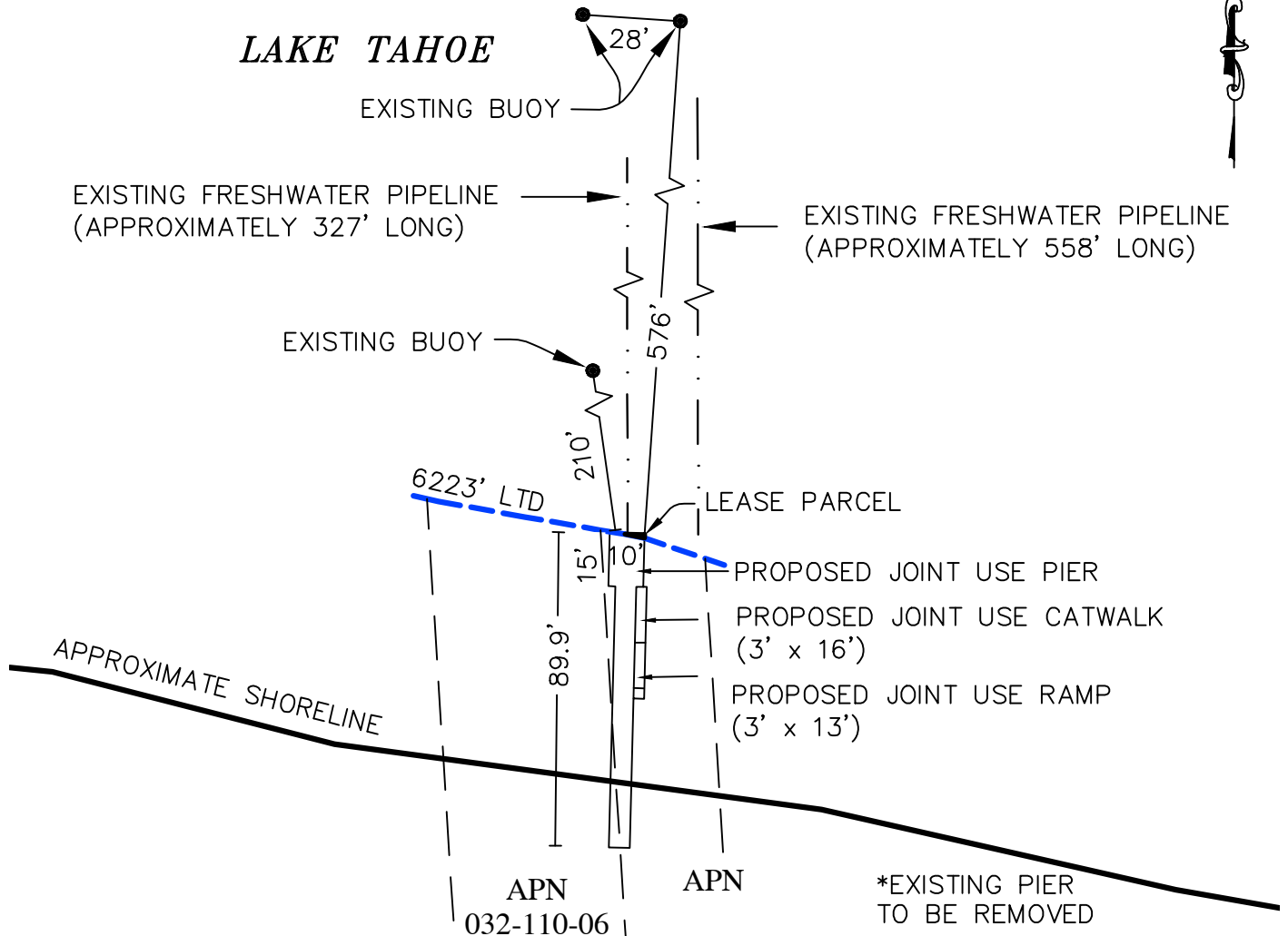
CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

## SITE

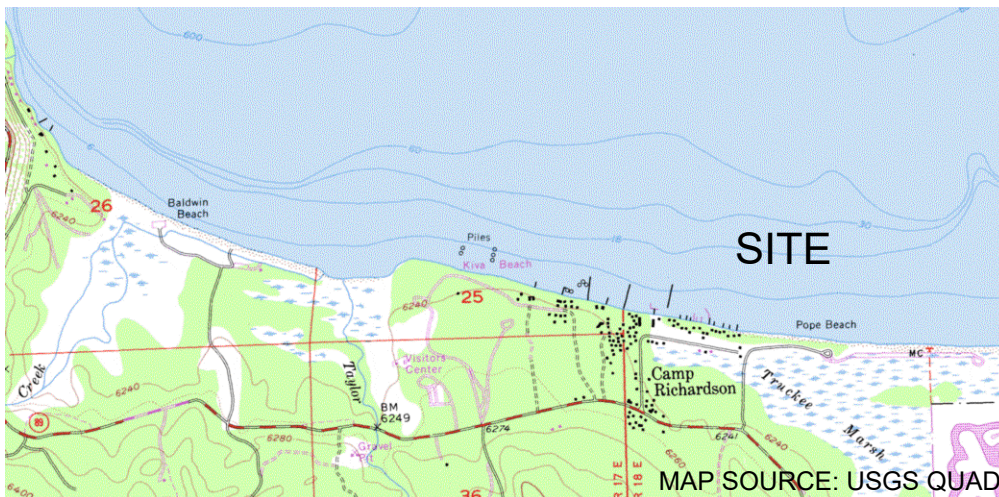
### *LAKE TAHOE*



3031 & 3035 JAMESON BEACH ROAD, SOUTH LAKE TAHOE

NO SCALE

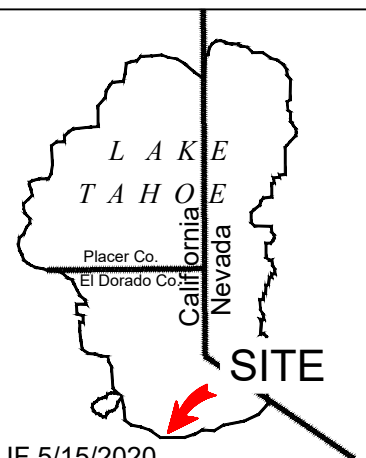
## LOCATION



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 5263.1  
DABBAUGH TRUST, JOHNSON  
TRUST & BULLOCK TRUST  
APN 032-110-06 & 032-110-07  
GENERAL LEASE -  
RECREATIONAL USE  
EL DORADO COUNTY



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