

# Staff Report 01

Acceptance of Lease Quitclaim Deeds and Issuance of a General Lease –  
Recreational Use

## **LESSEE:**

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Michael G. Akatiff and Christy D. Akatiff, Trustees of the Michael G. Akatiff and Christy D. Akatiff Revocable Living Trust

Mark R. Gilmartin, Trustee of the Mark R. Gilmartin 2006 Trust

## **APPLICANT:**

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Michael G. Akatiff and Christy D. Akatiff, Trustees of the Michael G. Akatiff and Christy D. Akatiff Revocable Living Trust; Mark R. Gilmartin, Trustee of the Mark R. Gilmartin 2006 Trust; Henry F. Telfeian; and Elizabeth K. Stage

## **PROPOSED ACTION:**

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

Sovereign land located in Lake Tahoe, adjacent to 8778, 8780, 8782, and 8796 Brockway Vista Avenue, near Kings Beach, Placer County.

### **AUTHORIZED USE:**

Continued use and maintenance of three existing mooring buoys previously authorized by the Commission; construction, use, and maintenance of a joint-use pier with four boat lifts; and removal of three existing mooring buoys and one double personal watercraft lift.

### **TERM:**

10 years, beginning August 20, 2020.

### **CONSIDERATION:**

\$2,872 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 expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from the Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing, and lake-related recreation.
- The public will be allowed to pass and re-pass over the landward end of the pier via stairs with signs posted on each side of the pier to provide continuous shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum.
- Within 60 days of completing the construction of authorized improvements and the removal of the three mooring buoys and double personal watercraft lift, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed and removed. 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:**

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**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:**

The proposed action would consolidate existing improvements currently authorized under Lease Nos. PRC 8271 and PRC 8976 as well as new proposed improvements at the subject properties under a single lease.

On October 16, 2015, the Commission authorized Lease No. PRC 8271, a 10-year General Lease – Recreational Use, to Michael G. Akatiff and Christy D. Akatiff, Trustees of the Michael G. Akatiff and Christy D. Akatiff Revocable Living Trust for two existing mooring buoys previously authorized by the Commission and an existing double

personal watercraft lift affixed to the lakebed through pilings and one existing mooring buoy not previously authorized by the Commission ([Item C02, October 16, 2015](#)). That lease will expire on October 15, 2025.

As part of the proposed consolidation, staff recommends the Commission authorize the Executive Officer or designee to accept a lease quitclaim deed for Lease No. PRC 8271 upon verification that two existing mooring buoys and one double personal watercraft lift have been removed and the premises have been restored.

On March 29, 2012, the Commission authorized Lease No. PRC 8976, a 10-year General Lease – Recreational Use, to Mark R. Gilmartin, Trustee of the Mark R. Gilmartin 2006 Trust, for two existing mooring buoys not previously authorized by the Commission ([Item C28, March 29, 2012](#)). That lease will expire on March 28, 2022.

As part of the proposed consolidation, staff recommends the Commission authorize the Executive Officer or designee to accept a lease quitclaim deed for Lease No. PRC 8976 upon verification that one existing mooring buoy has been removed and the premises have been restored.

The Applicant is applying for a General Lease – Recreational Use, for use and maintenance of three existing mooring buoys; construction, use, and maintenance of a joint-use pier with four boat lifts; and removal of three existing mooring buoys and one double personal watercraft lift.

The subject upland parcels (APNs 090-231-047, -048, -049 and -050) consist of four single-family dwellings. Existing improvements on sovereign land adjacent to these parcels include three existing mooring buoys and a double personal watercraft lift authorized under Lease No. PRC 8271; two existing mooring buoys authorized under Lease No. PRC 8976; and one existing mooring buoy not previously authorized by the Commission. In exchange for the removal of three of the six existing mooring buoys and the existing double personal watercraft lift, TRPA will transfer the current mooring permits from the removed moorings to four new boat lifts (TRPA Permit No. ERSP2019-1326).

The Applicant proposes to construct a 362-foot-long joint-use pier that will be shared by the four littoral parcel owners. The pier will be double piled with a total of 54 pilings and will be 8 feet wide and 287 linear feet long for the first segment with a 75-foot-long pierhead that will be 15 feet wide. Four boat lifts are proposed (one for each parcel) including two 6,000-pound boat lifts on the inside of the pierhead and two 12,000-pound boat lifts on the outer portion of the pierhead.

A 3-foot-wide by 15-foot-long catwalk will be located on the end of the pierhead creating space required to access the sides of the four boat lifts. A 3-foot-wide ramp

to the catwalk will be inset inside the pierhead to provide access to the catwalk. The pier deck is proposed to be at elevation 6232 feet Lake Tahoe Datum (LTD).

The new pier will be constructed via barge/amphibious vehicle. The new, 10.75-foot pilings will be driven with a vibratory hammer from a barge/amphibious vehicle to a depth of 8 feet. Once the new steel pilings are installed the joists and decking will be constructed. All steel pilings and accessories will be painted before being transported to the project site. All material storage will be on the barge/amphibious vehicle.

To fulfill TRPA's mitigation requirement for the new pilings, fish habitat mitigation is proposed consisting of six rock pyramids at 9 square feet each for a total mitigation of 54 square feet of lake bottom. An inspection for Tahoe Yellow Cress (TYC), a California endangered plant species, was completed on July 13, 2020. No TYC was observed at the site.

The immediate area of the proposed pier is surrounded by small boulders and cobble rock. Access to the Public Trust Easement will be provided by stairs located on the landward end of the pier where the public will be allowed to pass and re-pass over the pier. Signs are required to be posted on each side of the pier identifying the designated public passageway.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The proposed pier, boat lifts, and existing mooring buoys are or will be used for the docking and mooring of boats. 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).

Except for the proposed pier and boat lifts, the subject facilities have existed for many years at this location. The proposed joint-use pier will minimize the footprint and impact on the lake by having one pier that services four littoral landowners. The mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The Applicant registered the mooring buoys with TRPA (Permit Nos. 10110, 10017, 10828, and 10826).

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 and 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 and restore the lease premises to their original condition.

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 will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

## OTHER PERTINENT INFORMATION:

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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 could not construct the joint-use pier and boat lifts and may be required to remove the mooring buoys and double personal watercraft lift and restore the premises to their original condition at the end of the current lease terms. 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 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. Acceptance of a 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).

5. **Existing Mooring Buoys:** 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).

6. **Construction of a New Joint-Use Pier:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(2).
7. **Removal of Three Existing Buoys and Double Personal Watercraft Lift:** 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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

## **APPROVALS OBTAINED:**

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Tahoe Regional Planning Agency

Lahontan Regional Water Quality Control Board

California Department of Fish and Wildlife

U.S. Army Corps of Engineers

## **EXHIBITS:**

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A. Land Description

B. Site and Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

**Existing Mooring Buoys:** 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).

**Construction of New Joint-Use Pier:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(2).

**Removal of Three Existing Buoys and Double Personal Watercraft Lift:** 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 4, Minor Alterations to Land, California Code of Regulations, title 14, section 15304.

**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 the 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 the Executive Officer or designee to accept in writing an executed lease quitclaim deed, from Michael G. Akatiff and Christy D. Akatiff, Trustees of the Michael G. Akatiff and Christy D. Akatiff Revocable Living Trust for Lease No. PRC 8271, a General Lease – Recreational Use, on behalf of the Commission, thereby terminating said lease, upon Lessee's demonstration to the Executive Officer or designee's satisfaction of the successful removal of the double personal watercraft lift and two mooring buoys and restoration of the premises to their natural condition.
2. Authorize the Executive Officer or designee to accept in writing an executed lease quitclaim deed, from Mark R. Gilmartin, Trustee of the Mark R. Gilmartin 2006 Trust, for Lease No. PRC 8976, a General Lease – Recreational Use, on behalf of the Commission, thereby terminating said lease, upon Lessee's demonstration to the Executive Officer or designee's satisfaction of the successful removal of one mooring buoy and restoration of the premises to their natural condition.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 20, 2020, for a term of 10 years, for continued use and maintenance of three existing mooring buoys previously authorized by the Commission; construction, use, and maintenance of a joint-use pier with four boat lifts; and removal of three existing mooring buoys and one double personal watercraft lift; 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 \$2,872, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 8271

### LAND DESCRIPTION

Four parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to fractional Section 19, Township 16 North, Range 18 East, MDM., as shown on Official Government Township Plat approved January 2, 1875, County of Placer, State of California, more particularly described as follows:

#### PARCEL 1

All those lands underlying a proposed pier, catwalk, and 4 boat lifts lying adjacent to those parcels described in Exhibit One of that Grant Deed recorded November 14, 2003 in Document Number 2003-0193179 and that parcel described in MBR #10576 of that Grant Deed (Individual) recorded July 22, 2003 in Document Number 2003-0119000 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 1 is based on Applicant provided design plans, by Ferrell Civil Engineering dated June 1, 2020, for a proposed pier, four (4) boatlifts and catwalk together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

#### PARCEL 2 - 4

All those lands underlying three (3) existing buoys lying adjacent to those parcels described in Exhibit One of that Grant Deed recorded November 14, 2003 in Document Number 2003-0193179 and that parcel described in MBR #10576 of that Grant Deed (Individual) recorded July 22, 2003 in Document Number 2003-0119000 of said County.

Accompanying plat is hereby made a part of this description.

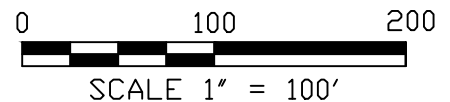
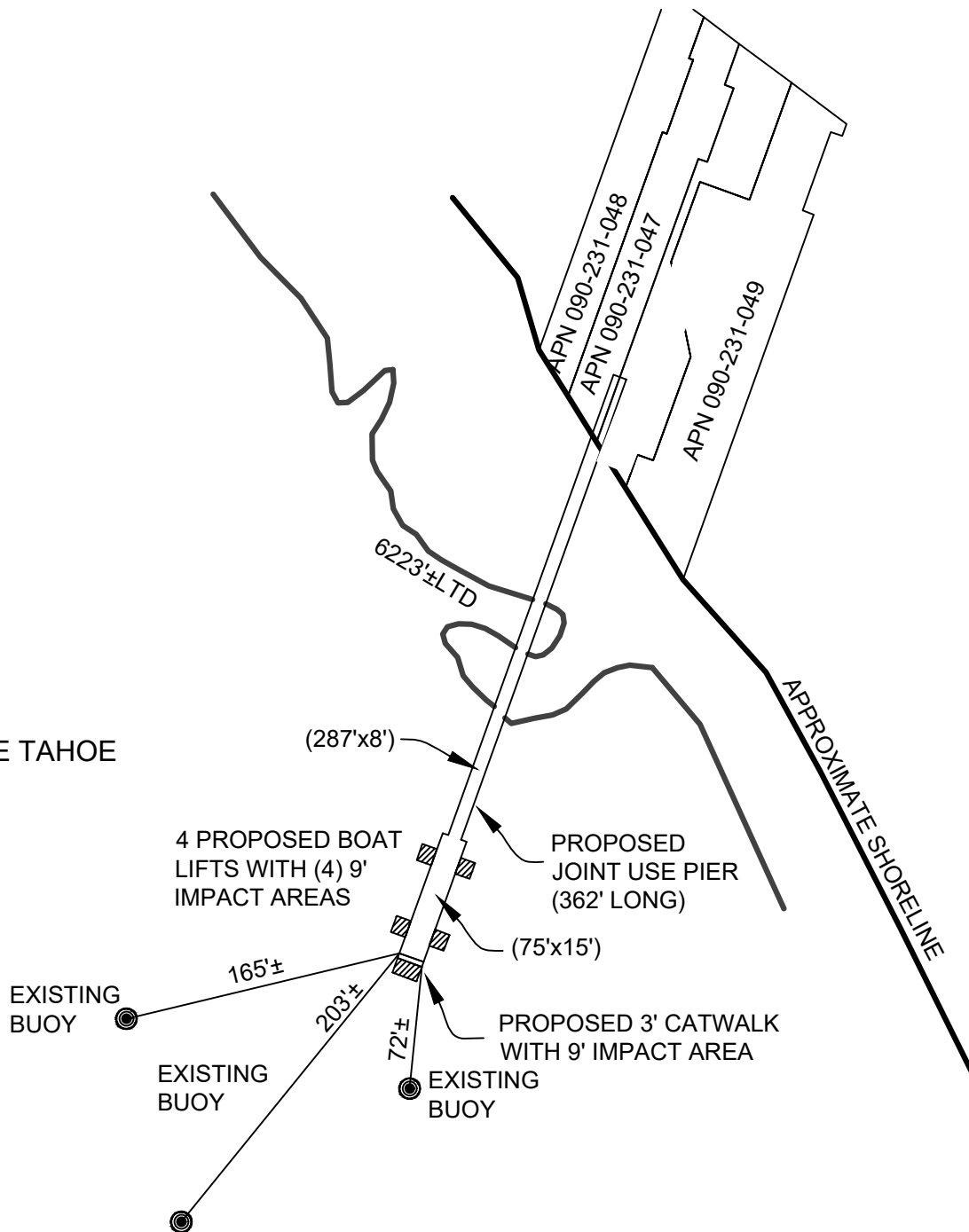
### END OF DESCRIPTION

Prepared 7/27/2020 by the California State  
Lands Commission Boundary Unit.





LAKE TAHOE



## EXHIBIT A

PAGE 2 OF 2

DJF 7/27/2020

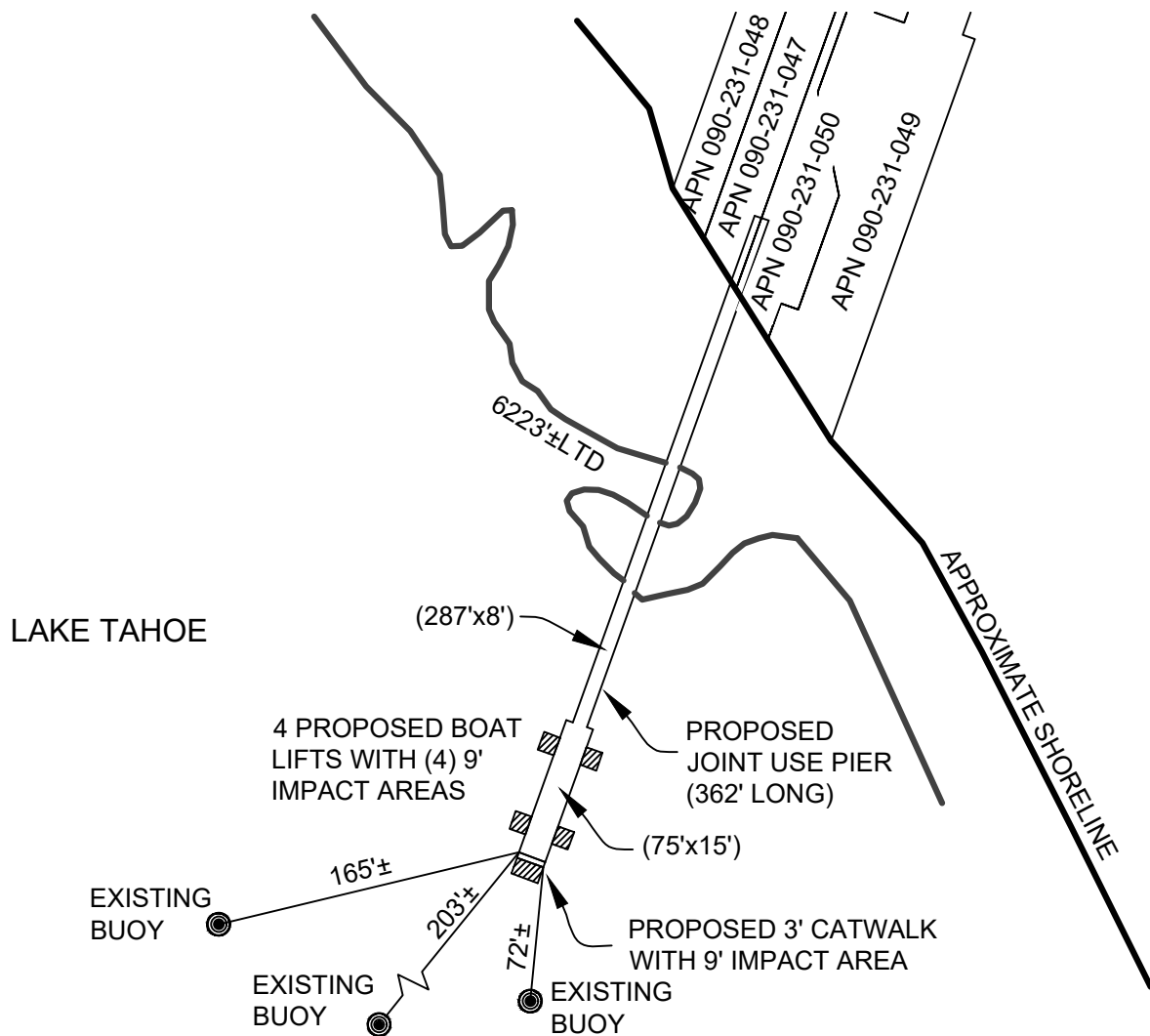
LAND DESCRIPTION PLAT  
LEASE 8271, AKATIFF, ET.AL.  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

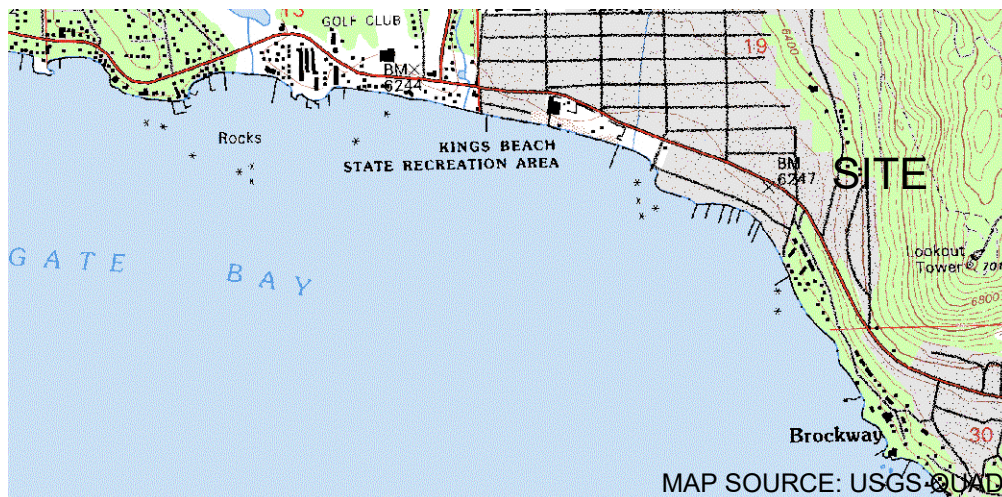
## SITE



8778, 8780, 8782 & 8796 BROCKWAY VISTA AVE., NEAR KINGS BEACH

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 8271  
AKATIFF, ET. AL.  
APN 090-231-047, 048, 049, 050  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY

