

Staff Report 03

Amendment of Lease 7939 to consolidate authorized uses therein with the authorized uses in Lease 1691

LESSEE:

Brockway Springs of Tahoe Property Owners Association I and II, Inc.

APPLICANT:

BST III, Owners Association, Inc.

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION

Sovereign land in Lake Tahoe, adjacent to 9680 Brockway Springs Drive, near Brockway, Placer County.

AUTHORIZED USE:

Continued use and maintenance of 26 existing mooring buoys and two marker buoys (Lease 7939)

Continued use and maintenance of an existing pier with floating dock and gangway, hot springs deck and breakwater, swim area with swim line and float, and 15 mooring buoys (Lease 1691)

TERM:

10 years, beginning February 12, 2017

CONSIDERATION:

\$10,912.80 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Amend the lease to:

- Include BST III, Owners Association, Inc., as an additional Lessee.

- Replace Section 1, Land Use or Purpose, and Section 1 Authorized Improvements to authorize the continued use and maintenance of an existing pier with floating dock and gangway, 41 mooring buoys, two marker buoys, hot springs deck and breakwater, swim area with swim line and float. This action consolidates the previously existing improvements authorized under Lease 7939 and Lease 1691 into Lease 7939.
- Lessee shall provide signage at designated locations on both the main pier and the breakwater about the public's ability to pass and repass around, through, and over the structures within the Public Trust easement.
- Lessee acknowledges and understands that as they plan to reconstruct the hot springs deck area in the near future, they are required to submit an application to amend the lease and their proposal shall include design features that provide for meaningful public access along the shoreline within the Public Trust easement.
- Replace Exhibit A – Land Description and Exhibit B – Site and Location Map with a new Exhibit A – Land Description and Exhibit B – Site and Location Map (for reference purposes only), attached.
- Revise annual rent from \$10,912.80 to \$21,622 with an annual Consumer Price Index adjustment, effective February 12, 2020.

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503 and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 7, 2017, the Commission authorized a 10-year General Lease – Recreational Use, Lease 7939, to the Lessee for 26 mooring buoys and two marker buoys ([Item C04, February 7, 2017](#)). That lease expires February 11, 2027.

The Lessee owns Assessor's Parcel Numbers (APN) 094-390-005 and 090-380-009, which are landward of the lake but separated from the lake by APN 090-420-011, which is owned by the Applicant. The Lessee and Applicant entered into an agreement that gives the Lessee the right to use the lakefront parcel to access the lake.

On February 1, 2010, the Commission authorized a General Lease – Recreational Use, Lease 1691, to the Applicant for an existing pier with floating dock and gangway, hot springs deck and breakwater, swim area with swim line and float, and 15 mooring

buoys (Item C15, February 1, 2010). On December 17, 2014, the Commission authorized an Amendment of Lease for Lease 1691 to revise the annual rent and replace the land description and the site and location map with a revised land description and site and location map (Item C06, December 17, 2014). The lease expired on October 18, 2017, and the Applicant submitted an application for a new lease.

The boards of directors for both the Lessee and Applicant have submitted resolutions: 1) authorizing a lease with the Commission; 2) designating the person(s) authorized to execute documents on behalf of the respective associations; and 3) authorizing the designees to carry out any associated business with the Commission that is in the best interests of the parties. Both designated representatives have requested the proposed amendment to Lease 7939, which would add the Applicant as a co-lessee and add the improvements previously authorized in Lease 1691 to Lease 7939 to form one consolidated lease.

The subject facilities are privately owned and maintained by the Associations. The pier with floating dock and gangway and mooring buoys are used for the docking and mooring of boats and facilitate recreational boating. The area around the existing pier is gently sloped with boulders and large cobbles along the shore. The pier has stairs that allow for the public to pass and repass over the pier and the lease requires the posting of signs to notify the public of the ability to traverse the pier within the Public Trust easement. The buoys are located directly lakeward of the upland property and each one occupies a relatively small area of the lake. In addition, the swim area is located directly lakeward of the upland property. The swim area includes a swim float with the swim float occupying a relatively small area of the lake. Recreational boating and swimming are water-dependent uses that are generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities and swimming as authorized uses of Public Trust land (Public Resources Code section 6503.5).

There is a hot springs containment facility, pump house, and deck east of the main pier within the Public Trust easement. As a public safety measure, the hot springs containment facility has a chain-link fence cover which prevents people from entering the concrete containment structure. The containment facility and pump house do not extend below low water into the Commission's leasing jurisdiction, so they are not included as authorized improvements in the lease. There is also a rock crib breakwater (hot springs deck) comprised of boulders, cobble, and concrete with a wooden structure on the interior. The breakwater protects the hot springs containment facility from degradation due to wave uprush. A wooden deck extends over the top of the breakwater from the upland and provides a vista point. The hot springs deck is not a

water-dependent use and extends across the Public Trust easement and encroaches slightly onto sovereign land. Public access along the shoreline is possible during low lake levels; however, access is limited around the hot springs deck by a narrow rocky shoreline and a large boulder at the corner of the hot springs deck. There are no stairs available for the public to walk through this area; however, there is sufficient clearance to pass inside the breakwater pier and around the hot springs containment facility. The lease requires the Lessee to post signs at specific locations that notify and guide the public of the ability to traverse under and through the hot springs deck within the Public Trust easement. The substructure of the hot springs deck is antiquated. The applicant intends to reconstruct and update the structure in the next few years and has approval from TRPA. The proposed lease requires that the lessee submit an application to amend the lease for these repairs and their proposal must include design features that provide for meaningful public access along the shoreline within the Public Trust Easement.

The proposed lease amendment includes certain provisions protecting the public use of the proposed lease area. The facilities have existed for many years at this location; they do not permanently alienate the State's fee simple interest in the underlying land, and they do not permanently impair public rights. Upon termination of the lease, the Lessee may be required to remove any improvements and restore the lease premises to their original condition.

The existing lease requires that the Lessee 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. The proposed amendment will not alter these protections for the State.

CONCLUSION:

For all the reasons above, staff believes the amendment 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; 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 two leases will not be consolidated, and the Applicant may be required to remove the

improvements associated with Lease 1691 on State lands and restore the premises to their original condition. Upon expiration or prior to termination of the lease, the Lessee also has no right to a new lease or to renewal of any previous lease.

2. Lease 1691 expired on October 18, 2017. No new lease is required.
3. 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 protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

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.

EXHIBITS:

- A. Land Description
- B1. Site and Location Map
- B2. 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:

1. Find that the existing and continuing use and maintenance of the pier with floating dock and gangway, swim area with swim line and float, mooring buoys, and marker buoys 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; are consistent with the common law Public Trust Doctrine; and

2. Find that the existing and, for a limited period, continuing use and maintenance of the hot springs deck and associated breakwater, is not generally consistent with the common law Public Trust Doctrine, but the current use does not substantially interfere with the Public Trust; and
3. Find that issuing the proposed lease amendment is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease 7939, a General Lease – Recreational Use, effective February 12, 2020, to include the Applicant as an additional Lessee; replace the authorized improvements with the use and maintenance of an existing pier with floating dock and gangway, 41 mooring buoys, two marker buoys, hot springs deck and breakwater, swim area with swim line and float; replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, Exhibit B1 and Exhibit B2, Site and Location Map (for reference purposes only) attached and by this reference made a part hereof; revise annual rent from \$10,912.80 to \$21,622 with an annual Consumer Price Index adjustment, effective February 12, 2020; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

LEASE 7939

LAND DESCRIPTION

Twenty one parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Sections 19 and 30, Township 16 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved January 2, 1875, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing rock crib pier, catwalk, adjustable ramp, seasonal floating dock and gangway lying adjacent to that parcel described in Exhibit "A" of Quitclaim Deed recorded September 29, 1995 as Document Number 95-052131 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 – SWIM AREA with swim float.

All those lands underlying an existing swim area with a swim float lying adjacent to that parcel described in Exhibit "A" of Quitclaim Deed recorded September 29, 1995 as Document Number 95-052131 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 – HOT SPRINGS DECK

All those lands underlying an existing hot springs deck lying adjacent to that parcel described in Exhibit "A" of Quitclaim Deed recorded September 29, 1995 as Document Number 95-052131 in Official Records of said County.

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

PARCELS 4 through 18 – BUOYS

Fifteen circular parcels of land, each being 50 feet in diameter, underlying fifteen existing buoys lying adjacent to that parcel described in Exhibit "A" of Quitclaim Deed recorded September 29, 1995 as Document Number 95-052131 in Official Records of said County.

PARCEL 19 – FIELD OF 26 BUOYS

BEGINNING at the northwest corner of Parcel One as described in Volume 1494, Page 291 in Official Records of Placer County; thence along the southwesterly prolongation of the northerly line of said Parcel One South 57°56'21" West 491.00 feet; thence South 39°20'31" East 750.97 feet; thence North 52°08'49" East 419.00 feet to the southwesterly corner of Parcel Two of said Volume 1494, Page 291; thence North 33°14'20" West 137.52 feet; thence North 41°33'17" West 180.43 feet; thence North 29°11'46" West 76.23 feet; thence North 30°43'08" West 127.07 feet; thence North 33°52'22" West 162.58 feet; thence North 07°20'00" West 23.68 feet to the POINT OF BEGINNING.

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

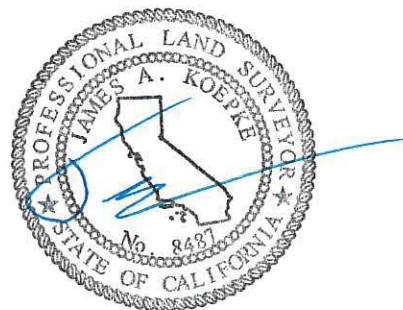
PARCELS 20 and 21 – MARKER BUOYS

Two circular parcels of land, each being 20 feet in diameter, underlying two existing marker buoys lying at or near the west and south corners of the hereinabove described PARCEL 19.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 03/11/2020 by the California
State Lands Commission Boundary Unit.



NO SCALE

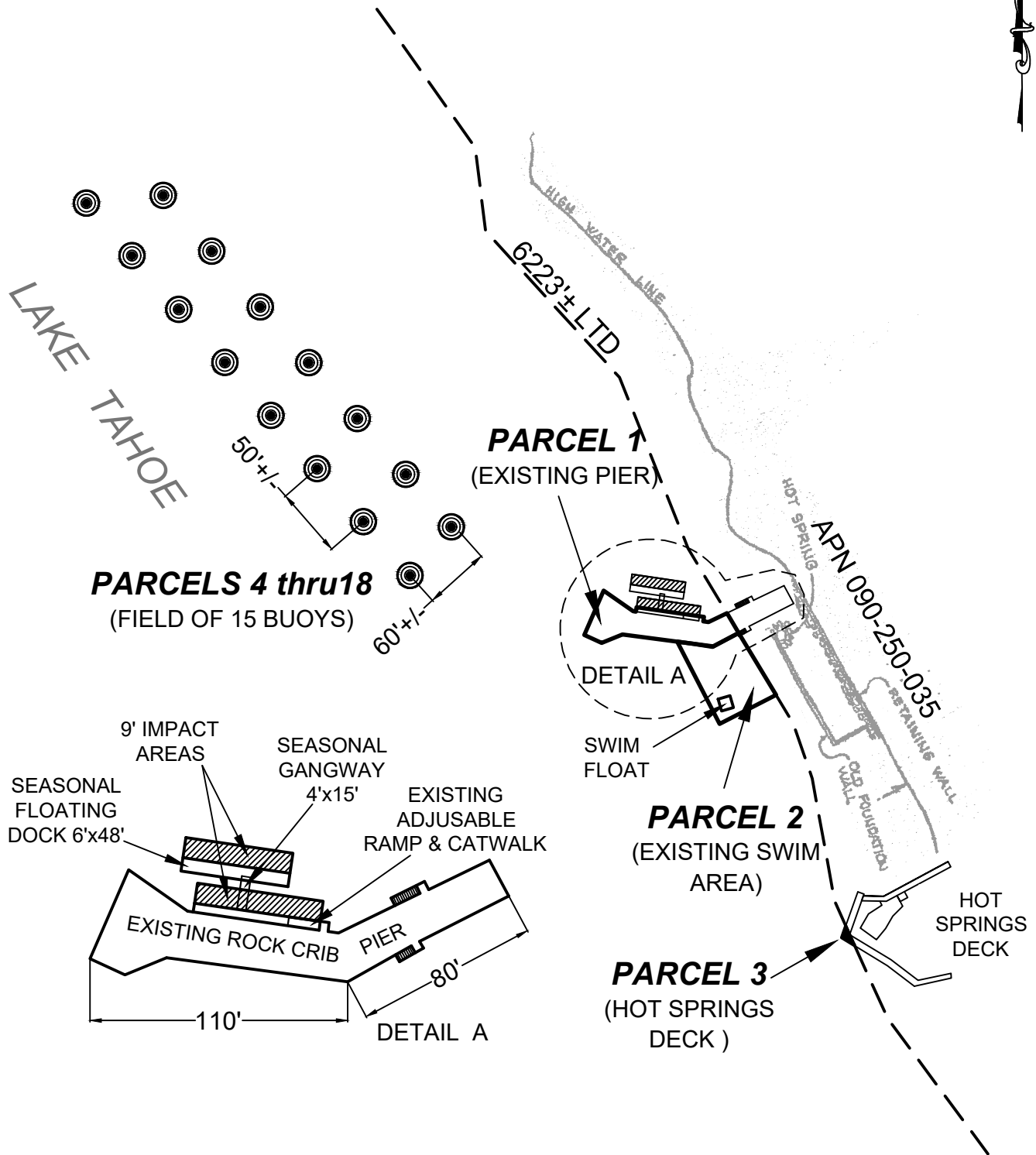


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 7939, BST III OWNERS ASSOCIATION &
BROCKWAY SPRINGS OF TAHOE, POA
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

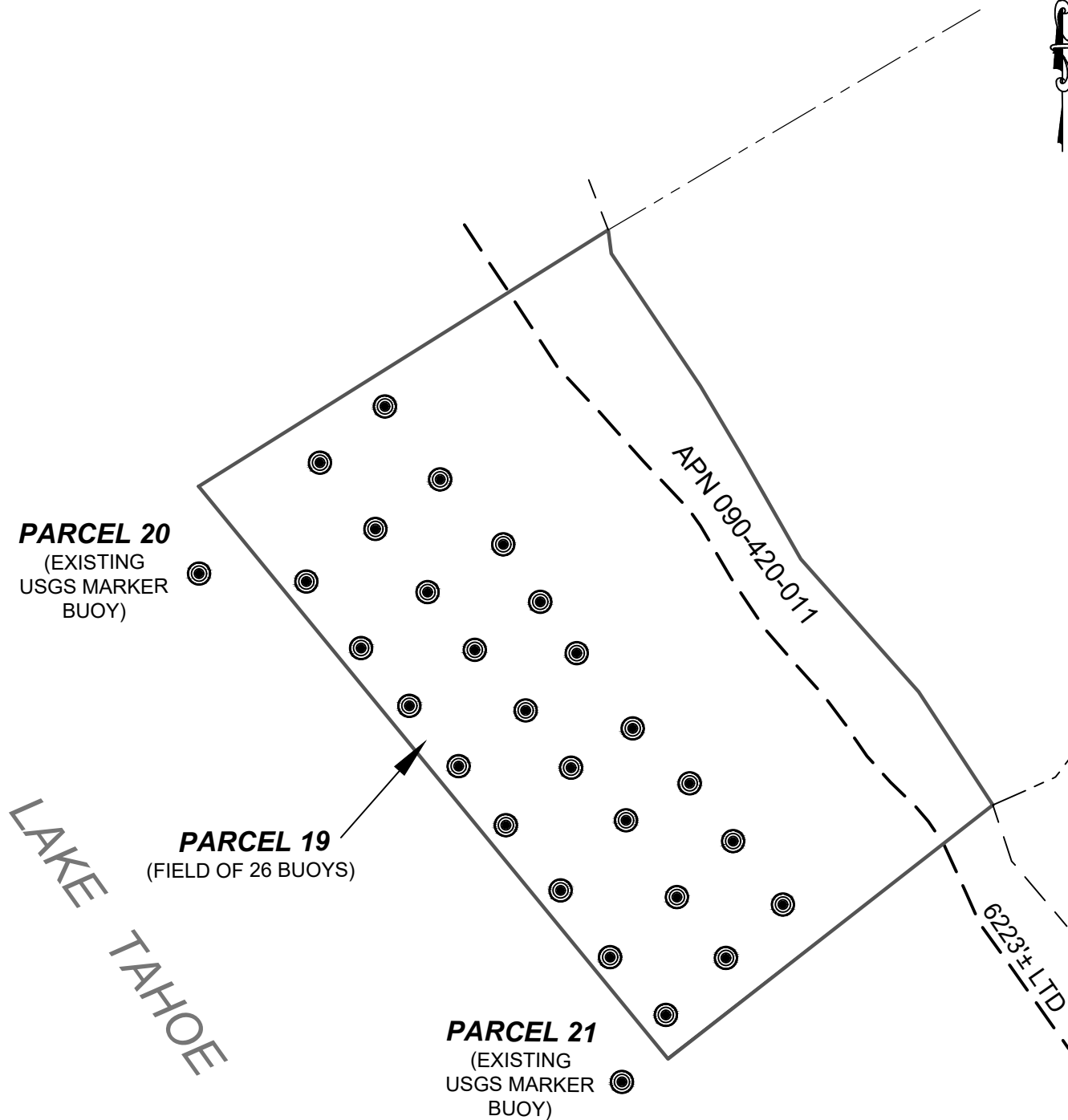


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 7939, BST III OWNERS ASSOCIATION &
BROCKWAY SPRINGS OF TAHOE, POA
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



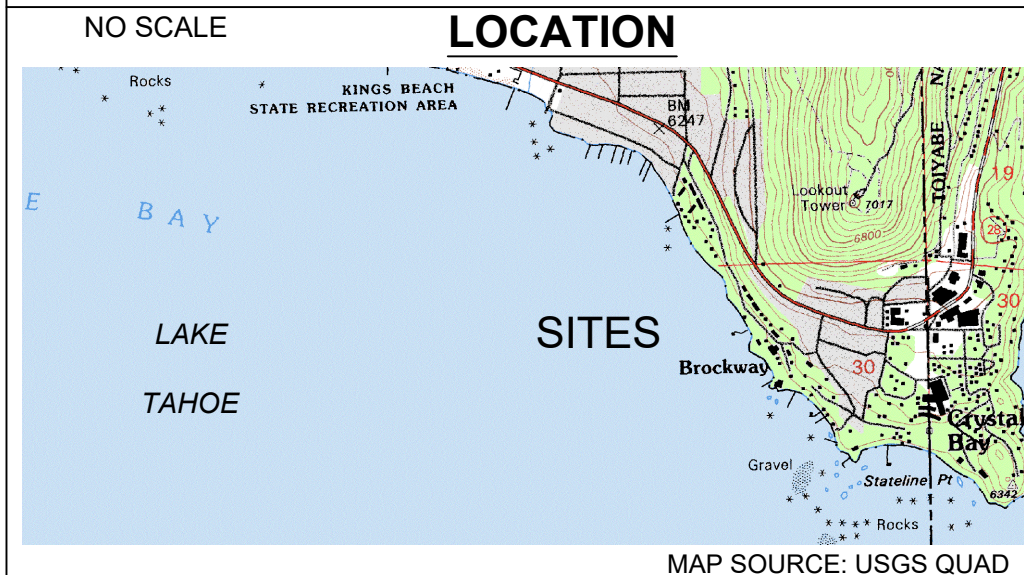
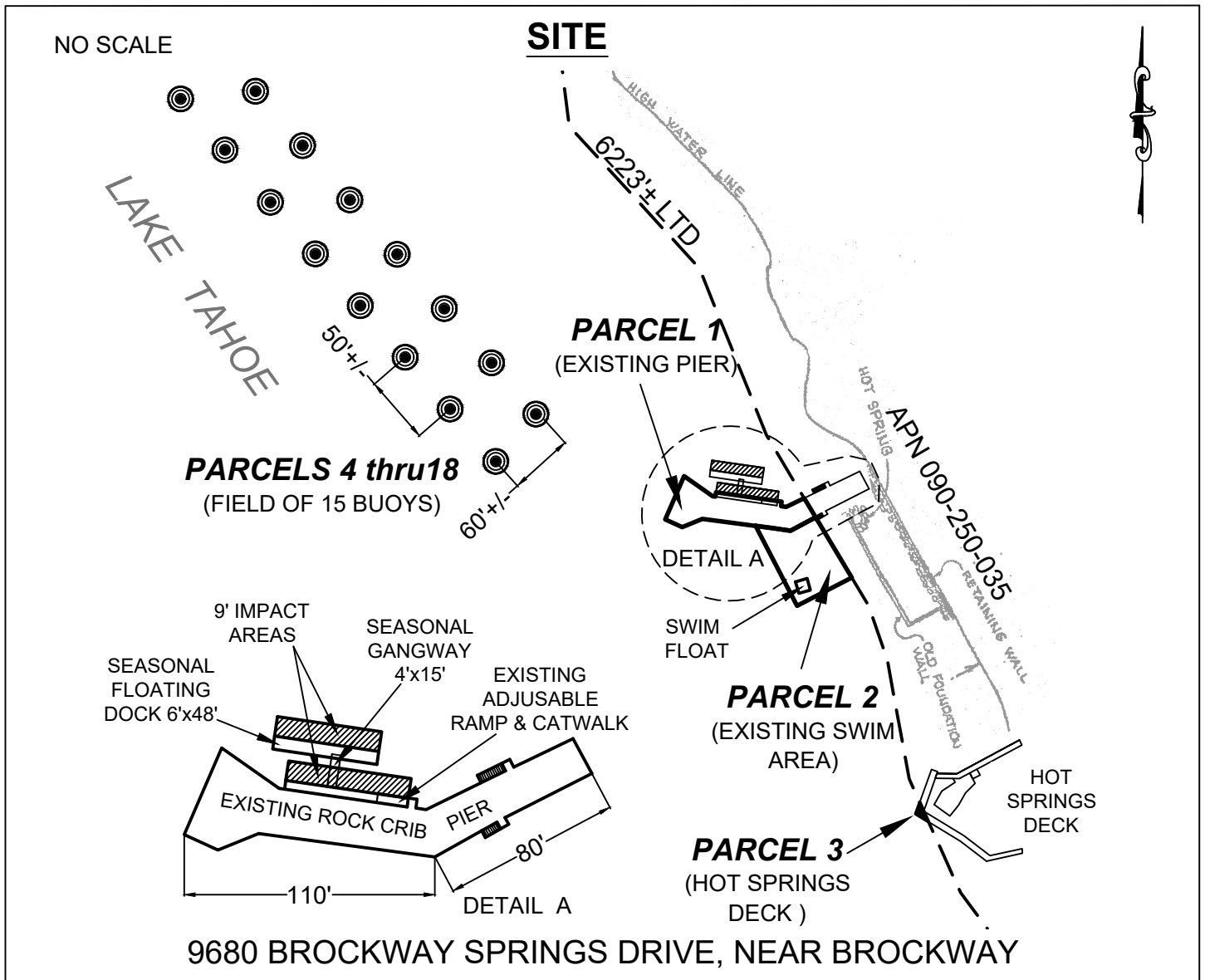


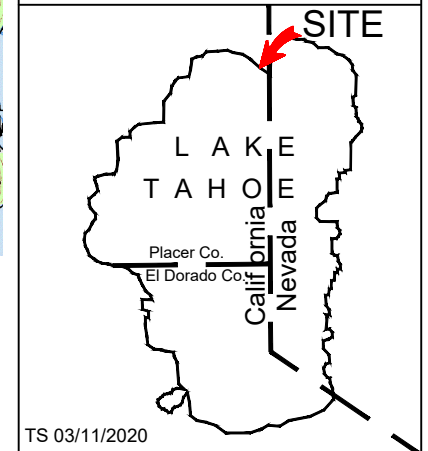
Exhibit B-1

LEASE 7939

BST III OWNERS ASSOCIATION
& BROCKWAY SPRINGS
OF TAHOE, POA

APNs: 090-250-035 & 090-420-011

GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



TS 03/11/2020

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.

NO SCALE

SITE

PARCEL 20
(EXISTING
USGS MARKER
BUOY)

PARCEL 19
(FIELD OF 26 BUOYS)

PARCEL 21
(EXISTING
USGS MARKER
BUOY)

APN 090-420-011

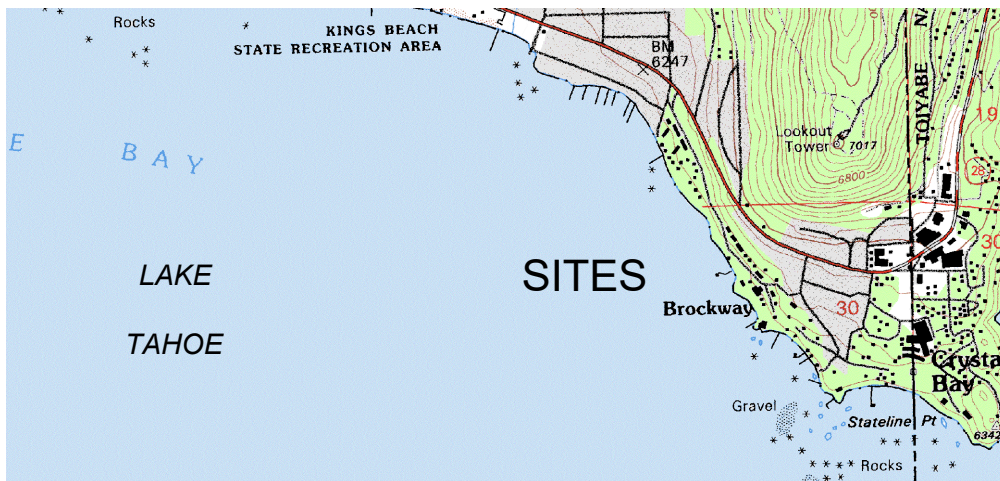
6223'± LTD

LAKE
TAHOE

9680 BROCKWAY SPRINGS DRIVE, NEAR BROCKWAY

NO SCALE

LOCATION

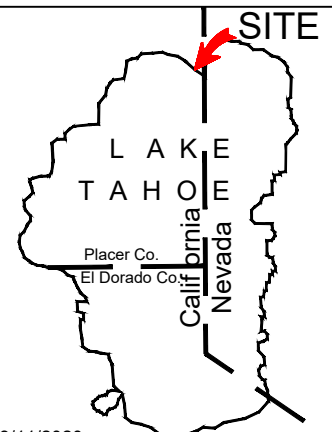


MAP SOURCE: USGS QUAD

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Exhibit B-2

LEASE 7939
BST III OWNERS ASSOCIATION
& BROCKWAY SPRINGS
OF TAHOE, POA
APNs: 090-250-035 & 090-420-011
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



TS 03/11/2020