

# Staff Report 18

## **LESSEE/APPLICANT:**

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John A. McIntosh and Lynne B. McIntosh, Trustees Under Revocable Trust Agreement Dated May 27, 1988

## **PROPOSED ACTION:**

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

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

Sovereign land in Lake Tahoe, adjacent to 6740 Powderhorn Lane, Tahoma, ~~El Dorado County~~ Placer County.

## **AUTHORIZED USE:**

Removal and reconstruction of an existing pier, installation of a boat lift, and use and maintenance of one existing mooring buoy.

## **TERM:**

10 years, beginning December 8, 2021.

## **CONSIDERATION:**

\$1,273 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 that a permit from the Tahoe Regional Planning Agency (TRPA) is required for the Authorized Improvements and failure to obtain a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of the lease.
- 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 shall be allowed to pass and re-pass around the pier using a designated area on the upland, 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, 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 the 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.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including that the Applicant obtain all necessary permits and authorizations prior to commencing work, including requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.
- A current Tahoe yellow cress (TYC) survey was completed on July 13, 2021. There was no TYC present in the lease area.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE’S BEST INTERESTS:**

On December 5, 2012, the Commission authorized a Termination of a Recreational Pier Lease and Issuance of a General Lease – Recreational Use to John A. McIntosh and Lynne B. McIntosh, Trustees under Revocable Trust Agreement dated May 27, 1988, for continued use and maintenance of an existing pier and one mooring buoy ([Item C01, December 05, 2012](#)). That lease expires on December 4, 2022. The rent was revised October 19, 2017 ([Item C25, October 19, 2017](#)).

The Applicant is now applying for a General Lease – Recreational Use for removal and reconstruction of an existing pier, installation of a boat lift, and use and maintenance of one existing mooring buoy. The Applicant holds a current TRPA permit for the existing mooring buoy and the proposed boat lift (Registration No.10821). The proposed pier project was approved by TRPA on June 30, 2021. The

Applicant proposes to start construction between December 1, 2021 and July 1, 2022. All construction is to be completed by December 8, 2024.

Since the proposed reconstruction and installation project will take place prior to the lease expiring in December 2022, staff recommends acceptance of a lease quitclaim deed from the current Lessee and issuance of a new lease beginning December 8, 2021, the day of the Commission meeting, to align with the proposed reconstruction and installation project.

The proposed project consists of the removal and reconstruction of a pier. The proposed pier will be 147 feet in total length, which is longer than the footprint of the existing pier, with a conforming pierhead of 30 feet in length by 10 feet in width, an adjustable 30-foot catwalk at the pierhead, installation of a boat lift on the southern side of the pierhead, and installation of 20 new 12.75-inch-diameter steel pilings.

The primary construction access will be via barge or amphibious vehicle departing from an aproned launching facility. In the event of low water conditions, perforated steel mats shall be placed on the lake bottom in the area the barge would be staged to avoid permanent impact to the lakebed, therefore impacts are expected to be minimal and temporary as the lakebed shall be restored to pre-project conditions after the completion of the project. Removed piling materials will be transported by barge and taken to an approved offloading site, where debris will be transported to TRPA approved disposal facilities.

Caissons will be installed around the new piling locations, and pilings will be driven into the lakebed until refusal. The steel substructure will be prefabricated and installed via barge or amphibious vehicle. Decking will be precut to a practical extent and installed atop of the steel substructure allowing for electrical lighting and the adjustable catwalk. All building materials will be stored on the barge, and no construction materials shall be stored on the shoreline of the subject property unless proper agency authorizations are secured.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The reconstructed pier, proposed boat lift, and existing mooring buoy will be used for the docking and mooring of boats and will 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 lands. (Pub. Resources Code, § 6503.5.) The existing mooring buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake. As noted under Special Provisions above, public

access around the pier and signage identifying such access will be provided and is required under the proposed lease.

The proposed pier and boat lift will be built on pilings with the immediate upland area of the pier being relatively flat and rocky. Public access for pedestrians and lake-related activities is available at varying water levels underneath the piers and by passing through the upland parcel within the Public Trust easement.

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 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.

### **CLIMATE CHANGE:**

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe. The frequency and severity of natural disasters like flooding, wildfire, drought, extreme heat, and storms is increasing throughout the state of California, including the Sierra Nevada mountains, and will continue to accelerate through the end of the century. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events and shifts in seasonal characteristics.

According to California's Fourth Climate Change Assessment, released in 2018, the most significant impacts of climate change in the area are more intense heat, precipitation extremes, declining snowpacks, and changes in streamflow timing. The long-term warming trend will lead to warmer and shorter winters, and longer and dryer summers. Successive dry and warm winters are resulting in minimal snowpack, increased winter streamflows and floods, and decreased spring and summer runoff. Prolonged low lake levels will become normal. Low lake level conditions can create more expansive beaches and increased shoreline access in dry months. However, these conditions interfere with boat launching and mooring facilities. This impact is most noticeable where the facilities are sited on shallow, low gradient lake bottom locations.

Dry winters will be punctuated with exceedingly wet years where prolonged and excessive precipitation can produce flash floods. High precipitation in these years will result in higher lake levels, causing beaches to narrow and reducing public

access. Extra saturation of the soil can increase erosion, especially following intense wildfire seasons. Surface runoff water may carry more sediment into the lake, adversely impacting water quality and clarity.

Climate change may also lead to more intense and unpredictable winds and storm events. These storms may deviate from prevailing wind patterns for the region. These winds can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Additionally, these winds can increase wave damage on structures and boats along the lake.

Shoreline structures authorized under this lease may require more frequent inspection and maintenance to ensure they are not displaced during storm events. Watercraft moored to buoys, piers, or docks are also vulnerable to damage from high wind events and excessive waves.

**CONCLUSION:**

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 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 may be required to remove the existing pier and mooring buoy, and the Applicant would not be authorized to construct the proposed pier. 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 the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of a lease 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).

4. **Existing Mooring Buoy:** 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 (c)(2).
5. **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 14, section 15302.

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  
California Department of Fish and Wildlife  
Lahontan Regional Water Quality Control Board  
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 Buoy:** 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 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 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 replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the new improvements following construction.
2. Authorize acceptance of a lease quitclaim deed, effective December 8, 2021, of Lease 4357, a General Lease – Recreational Use, issued to John A. McIntosh and Lynne B. McIntosh, Trustees Under Revocable Trust Agreement Dated May 27, 1988.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 8, 2021, for a term of 10 years, for the removal and reconstruction of an existing pier, installation of a boat lift, and use and maintenance of one existing mooring buoy, 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 \$1,273, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 4357**

**LAND DESCRIPTION**

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 7, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

**PARCEL 1 - Pier**

All those lands underlying an existing pier (to be replaced), proposed pier extension with catwalk and boatlift lying adjacent to those parcels described in Grant Deed recorded September 24, 2010 as Document Number 2010-0075765-00 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 - Buoy**

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to those parcels described in Grant Deed recorded September 24, 2010 as Document Number 2010-0075765-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

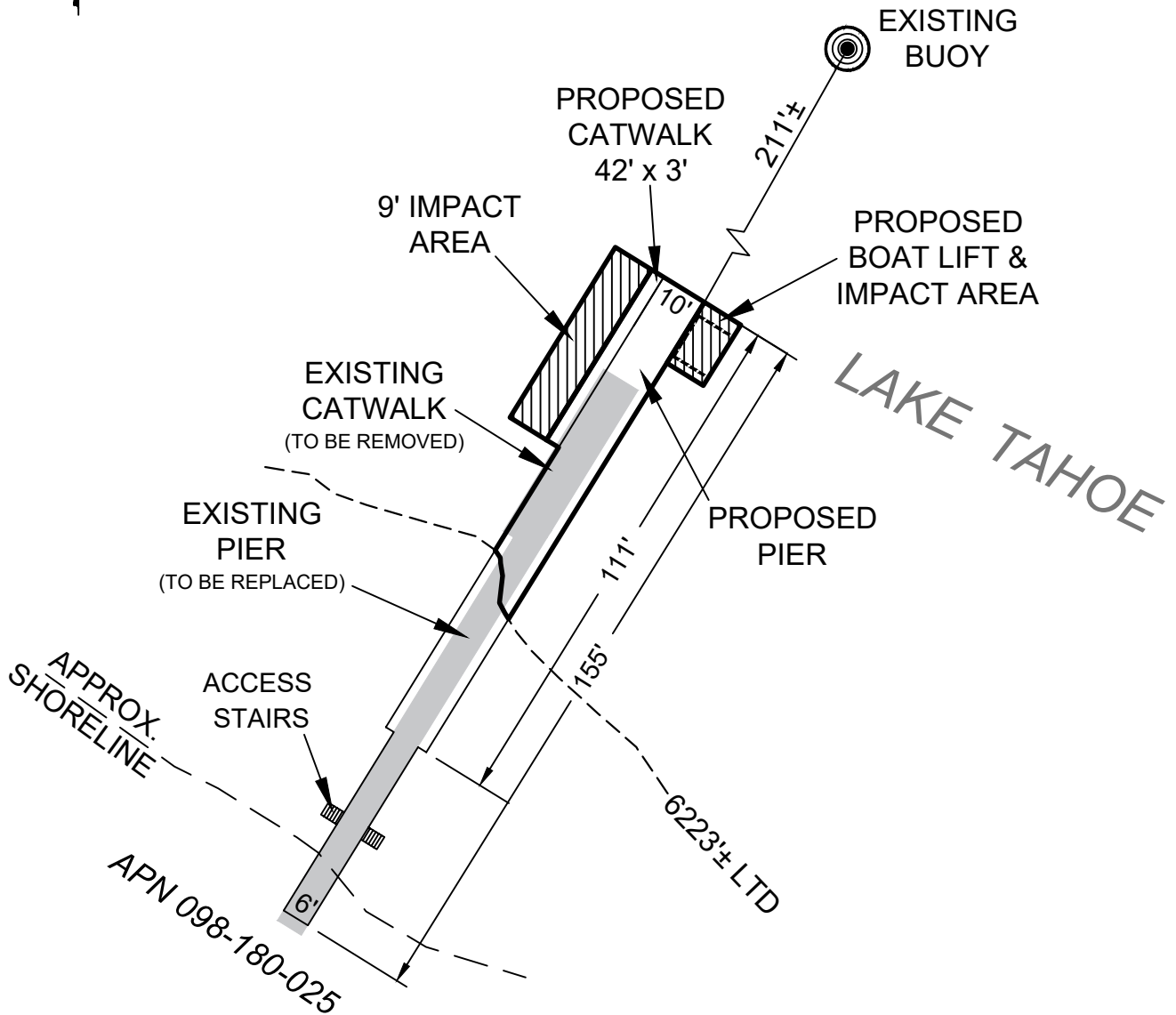
This description is based on Applicant provided design plans for an existing pier and proposed pier extension, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 09/02/2021 by the California State Lands Commission Boundary Unit.





NO SCALE



# EXHIBIT A

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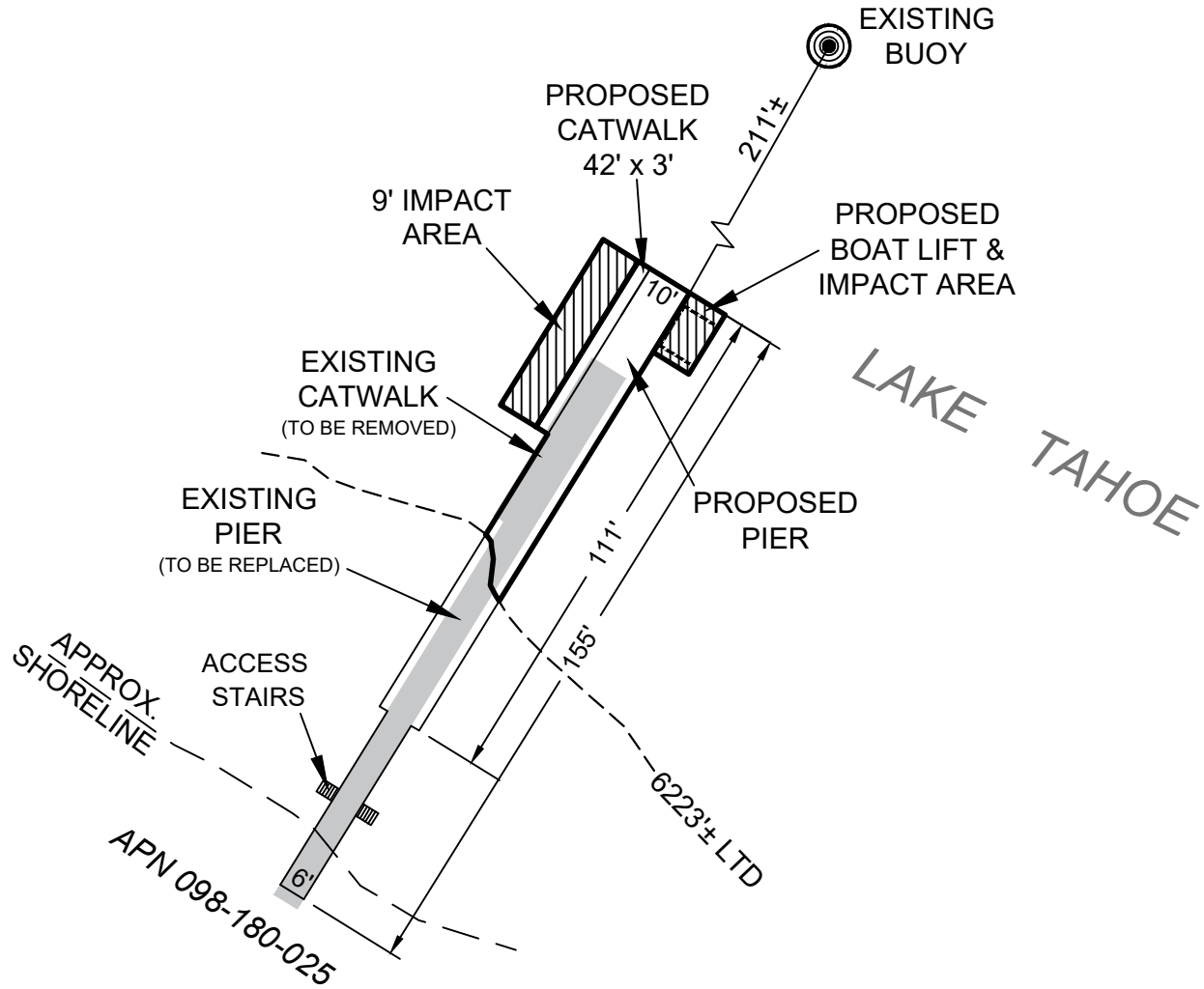
LAND DESCRIPTION PLAT  
LEASE 4357, MCINTOSH  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

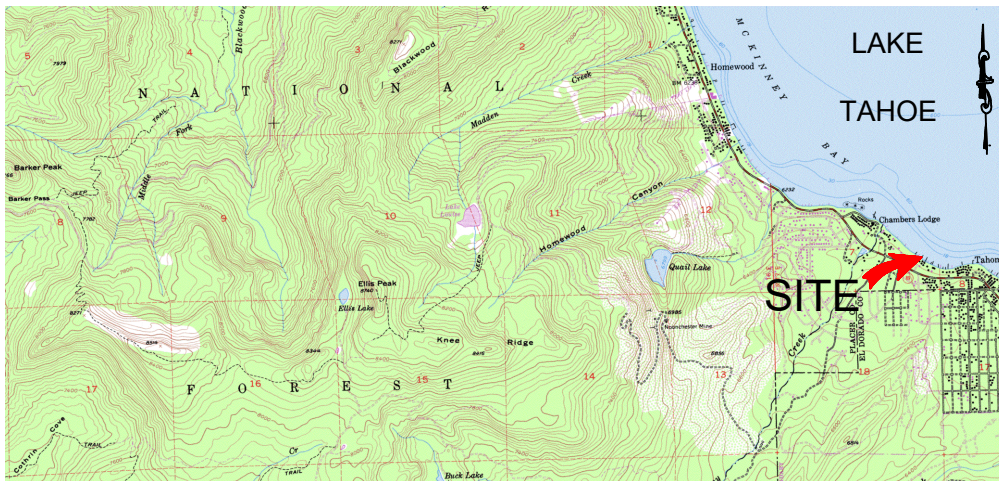
# SITE



6740 POWDERHORN LANE, TAHOMA

NO SCALE

# LOCATION

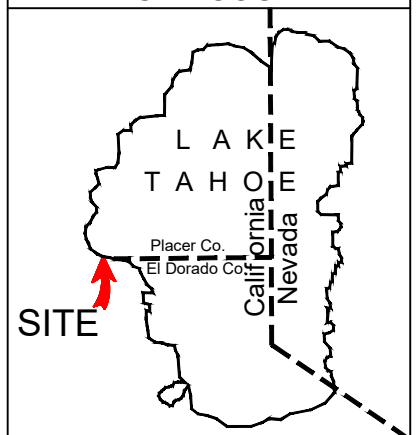


MAP SOURCE: USGS QUAD

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 4357  
MCINTOSH  
APN 098-180-025  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY



SITE

TS 09/02/2021