

Staff Report 16

LESSEE/APPLICANT:

Irene Pestana and Michael J. Kelly, Jr., Co-Trustees of the **Survivor's Trust** established under the Pestana 1986 Family Trust u/d/t May 15, 1986, as amended

PROPOSED ACTION:

Termination of a General Lease – Recreational Use; and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 5570, 5588, and 5590 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Use and maintenance of an existing pier, two boathouses, two boat lifts, and two sundecks with stairs previously authorized by the Commission; and two existing mooring buoys not previously authorized by the Commission.

TERM:

10 years, beginning February 25, 2022.

CONSIDERATION:

\$3,755 per year, with an annual Consumer Price Index adjustment, and \$3,735 to compensate for the unauthorized occupation of state sovereign land for the period prior to February 25, 2022.

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 this 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 lease contains provisions that the two existing sundecks with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs of any portions of the two existing sundecks cost more than 50 percent of the base value of the sundecks, then the sundecks with stairs must be removed from the lease premises.

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:

On December 2, 2013, the Commission authorized Lease Number PRC 7107, a General Lease – Recreational Use, for an existing pier, two boathouses, one boat hoist, one boat lift, and two sundecks with stairs to Irene Pestana and Michael J. Kelly, Jr., Co-Trustees of the Survivor's Trust Established Under The Pestana 1986 Family Trust u/d/t May 15, 1986, as amended, ([Item C32, December 2, 2013](#)).

On October 18, 2018, the Commission authorized an amendment of the lease to reflect a change in the lease area and revision of annual rent ([Item C14, October 18, 2018](#)). The lease expires on December 1, 2023.

The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of the existing pier, two boathouses, two boat lifts, and two sundecks with stairs previously authorized by the Commission, and two existing mooring buoys not previously authorized by the Commission.

The two existing boat lifts have been in place since the prior lease was authorized, but one existing boat lift was called out as a boat hoist at that time. On December 17, 2020, TRPA issued Permit No. 11552 for the two existing boat lifts.

The two existing mooring buoys were placed in the water in 1968 pursuant to a U.S. Army Corps of Engineers permit. The mooring buoys were present in 1987 when the Applicant originally took ownership of the three upland parcels. TRPA registered the mooring buoys in 2010 (Permits MOOR2009-3393 and MOOR2009-3395). The TRPA permit states that registrants will comply with all other regulatory agencies. On

December 20, 2019, TRPA registered the two existing mooring buoys with Permits Nos. 11407 and 11408.

To bring the two existing mooring buoys under the Lease, staff recommends termination of Lease Number PRC 7107 effective February 24, 2022, and issuance of a new lease beginning February 25, 2022.

The Applicant has held a valid 2009 TRPA permit for the mooring buoys but did not attempt to bring the two existing mooring buoys under lease until their recent submission of application A3276. Staff did not contact the Lessee regarding the mooring buoys because staff **were unaware of the moorings' existence**. TRPA permit MOOR2009-3395 indicates that permit-holders will comply with all other regulatory agencies.

The Applicant has agreed to pay compensation for the unauthorized occupation of State lands for the two existing mooring buoys for the period though February 24, 2022, the day before the proposed new lease. Staff recommends that the Commission accept compensation from the Applicant in the amount of \$3,735 for the unauthorized occupation of State land prior to the commencement of the proposed lease.

The Applicant owns the upland adjoining the lease premises. The pier, two boathouses, two boat lifts, and two mooring buoys are privately owned and maintained, 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 pier, two boathouses, two boat lifts, and two mooring buoys have existed for many years at this location. The pier is built on pilings with the immediate area of the pier being relatively flat and rocky. The topography and location are not difficult to navigate, and public access for pedestrians and lake-related activities is available at varying water levels underneath the pier and by passing through the upland parcel within the Public Trust easement. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The two sundecks with stairs are not a trust-consistent use. While new sundecks are not generally approved, sundecks that have been in place for years have been permitted if they do not significantly interfere with Public Trust needs or activities. However, lease provisions prohibit the two sundecks from being expanded or rebuilt if substantially destroyed.

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 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 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 are 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 Sierra Nevada Region 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 storm events and winds. 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; 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 may be required to remove the pier, two boathouses, two boat lifts, two sundecks with stairs, 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 the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Termination of the lease 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. Staff recommends that the Commission find that issuance of the lease 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).

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
- B. Site and location map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the issuance of the lease 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 termination of the lease and issuance of 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 proposed lease; and
2. Find that the pier, two boathouses, two boat lifts, and two mooring buoys, used for the docking and mooring of boats, facilitate recreational boating which is a water-dependent use that is generally consistent with the common law Public Trust Doctrine.
3. Find that the existing and continuing use and maintenance of the sundecks with stairs is not consistent with the Public Trust Doctrine, but the current use does not and is not anticipated to substantially interfere with Public Trust needs and values at this location for the approved term; and
4. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Terminate, effective February 24, 2022, Lease Number PRC 7107, a General Lease – Recreational Use, issued to Irene Pestana and Michael J. Kelly, Jr., Co-Trustees of the Survivor's Trust established under the Pestana 1986 Family Trust u/d/t May 15, 1986, as amended.
2. Authorize acceptance of compensation from the Applicant in the amount of \$3,735 for the unauthorized occupation of State land for two existing mooring buoys for the 5-year period prior to the beginning date of the proposed lease.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 25, 2022, for a term of 10 years, for the continued use and maintenance of an existing pier, two boathouses, two boat lifts, two sundecks with stairs previously authorized by the Commission, and two existing mooring buoys not previously authorized by the Commission, 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 \$3,755 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7107

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 15, Township 16 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, more particularly described as follows:

PARCEL 1– PIER

All those lands underlying an existing pier, two boathouses, two boat lifts and two sundecks with stairs lying adjacent to those parcels described in Grant Deeds recorded May 10, 2011 as Document Number 2011-0036395 and 2011-0036396 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 2 & 3 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in Grant Deeds recorded May 10, 2011 as Document Number 2011-0036395 and 2011-0036396 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/01/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

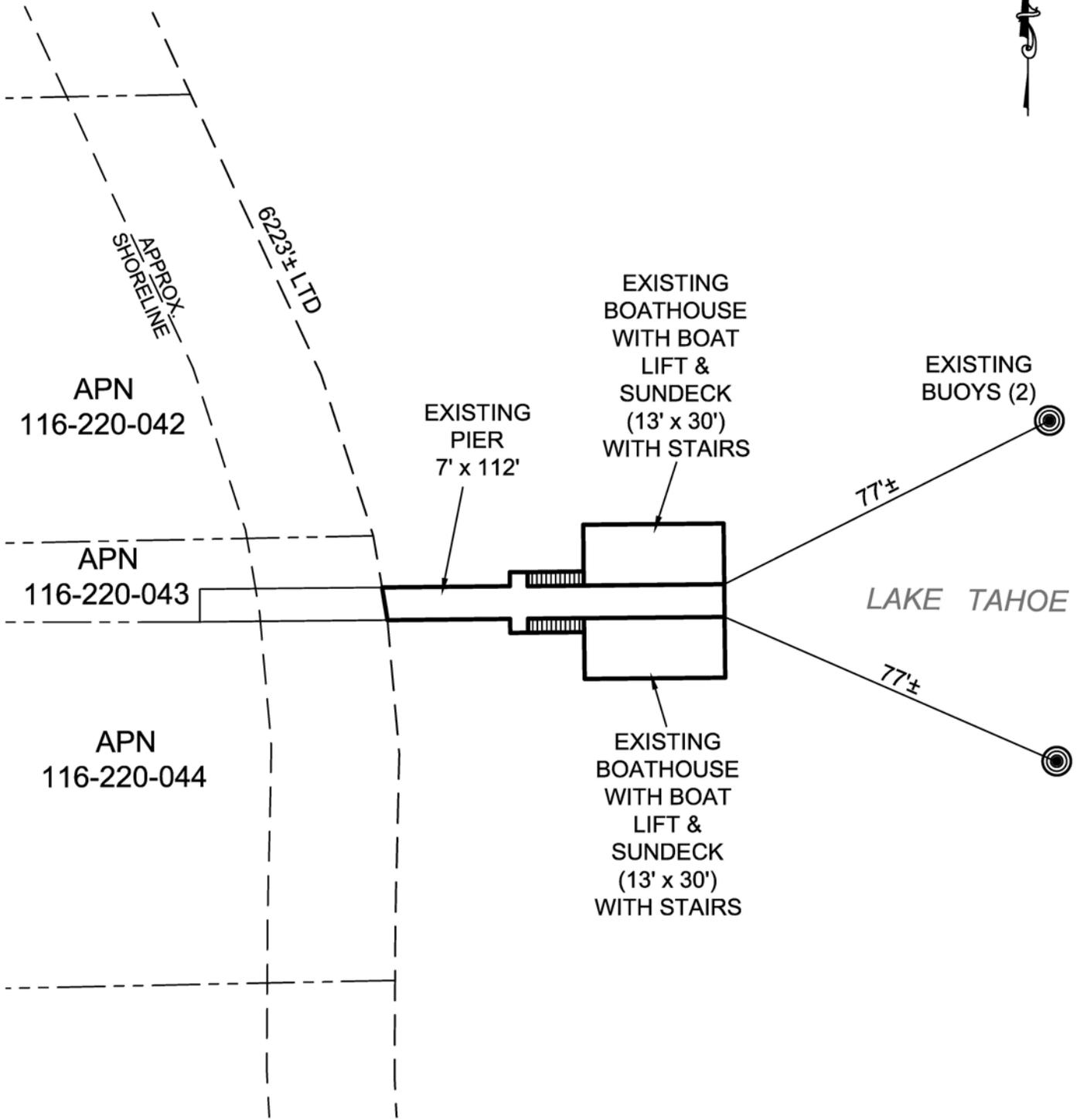


EXHIBIT A



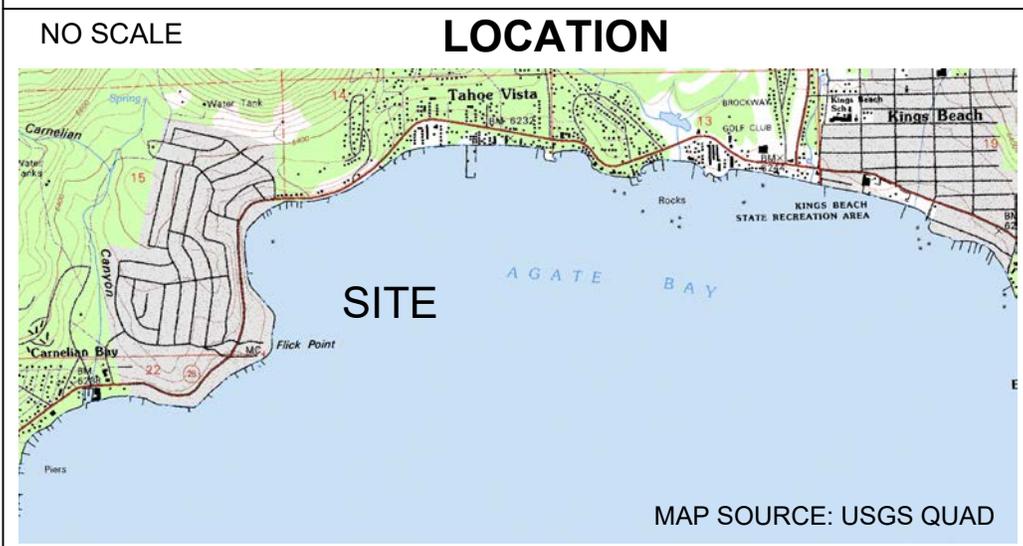
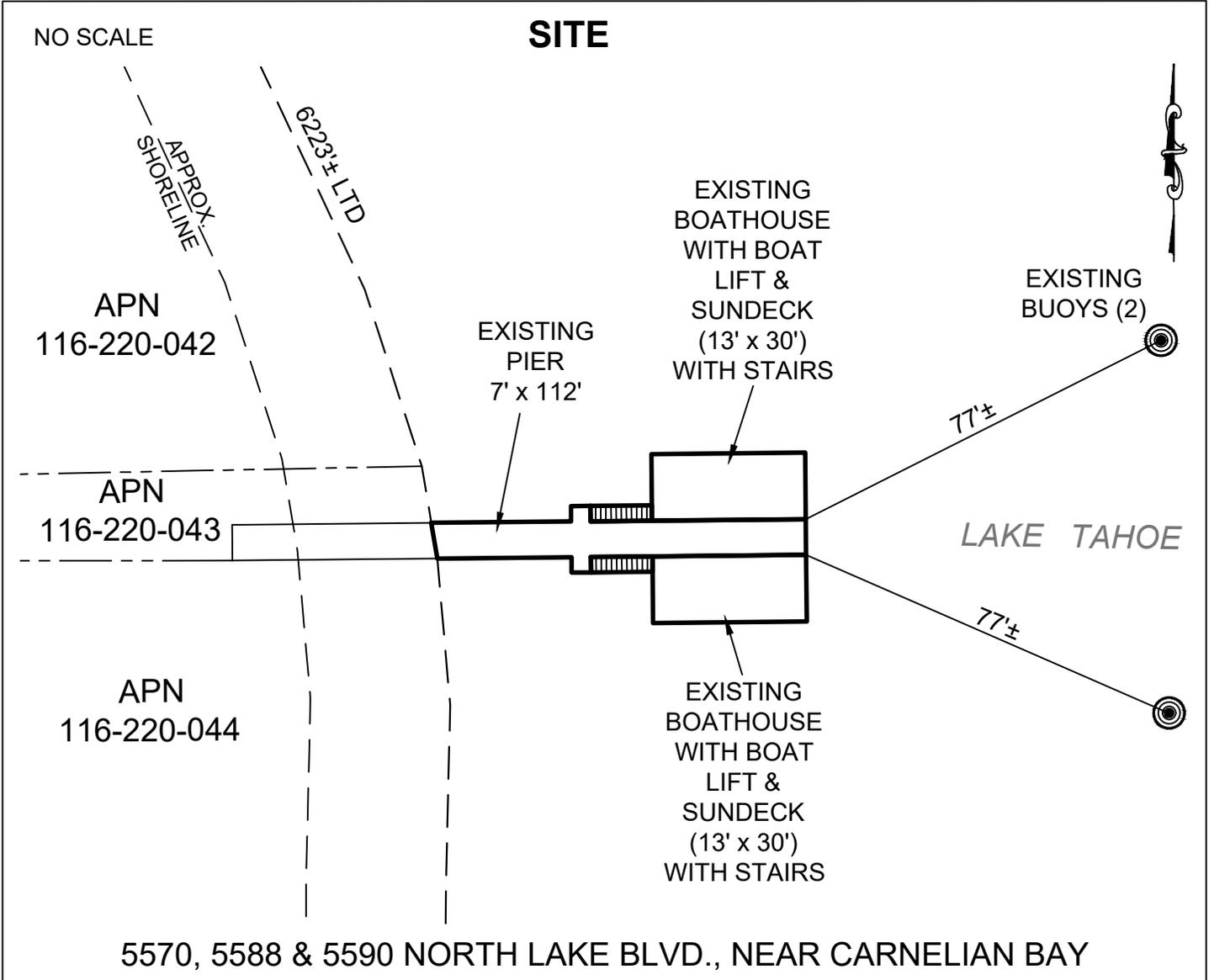
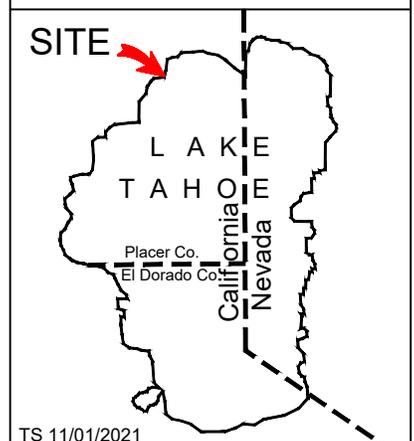


Exhibit B
 LEASE 7107
 PESTANA TRUST
 APNs 116-220-042, -043
 & -044
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



TS 11/01/2021

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.