

Staff Report 18

APPLICANT:

Douglas M. Sherman and Janet B. Sherman, Trustees of the Sherman Family Trust of 1995 U.D.T. dated March 1, 1995; and Ten Mile Cast LLC, a California Limited Liability Company

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 7153 and 7155 State Highway 89, near Tahoma, El Dorado County.

AUTHORIZED USE:

Removal and reconstruction of an existing pier with an extension; placement, use, and maintenance of one mooring buoy; continued use and maintenance of one existing mooring buoy; and removal of a marine railway.

TERM:

10 years, beginning February 25, 2022.

CONSIDERATION:

\$1,301 per year, with an annual Consumer Price Index adjustment, and \$901 to compensate for the unauthorized occupation of state sovereign land dating back to June 23, 2021.

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 recreation.

- 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.
- The lease provides that the public will be allowed to pass and re-pass over 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 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 this 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 revised Exhibits shall be incorporated in this Lease as though fully set forth herein.**

STAFF ANALYSIS AND RECOMMENDATION:

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 June 23, 2011, the Commission authorized a Recreational Pier Lease for an existing pier, marine railway, and one mooring buoy to Douglas M. Sherman and Janet B. Sherman, Trustees of the Sherman Family Trust of 1995 U.D.T. dated March 1, 1995 ([Item C17, June 23, 2011](#)). The 2011 staff report erroneously identified the Applicant as “Douglas M. Sherman and Janet B. Sherman, Trustees of the Sherman Family Trust of 1994 U.D.T. dated March 1, 1995,” but the pertinent deeds confirm the trust is dated 1995, not 1994. On August 31, 2018, the Applicant applied to the El Dorado County Development Services Department for a lot line adjustment to transform their highway parcel and lakefront parcel into two lakefront parcels. The application, LLA18-0020, was approved on November 6, 2018. The resulting parcels are legally known as 7153 and 7155 State Highway 89, locally known as 7153 and 7155 West Lake Boulevard, and also known as **Assessor’s Parcel Numbers 015-370-027 and 015-370-028**, respectively. The Applicant retained ownership of 7153 State Highway 89. On April 2, 2019, 7155 State Highway 89 was deeded to Joseph Staley

and Caroline Staley, Trustees of the Staley Family 2014 Trust. On November 27, 2019, that parcel was deeded to Ten Mile Cast LLC, a California Limited Liability Company. The lease expired on June 22, 2021.

In January 2022, TRPA issued a conditional permit for the removal and reconstruction of the existing pier and retirement of the existing marine railway in exchange for the placement of one additional mooring buoy. The parcels formed by the boundary line adjustment are subject to a recorded TRPA deed restriction which requires the two parcels be evaluated as a single littoral parcel. Therefore, the proposed pier will be constructed at the property line of the two upland parcels, serving both properties, but is considered a single parcel pier and will conform to single parcel pier development standards. Although the pier will be used and maintained by the two upland parcel owners, staff recommends the pier not be authorized as a joint-use pier. Identifying this pier as a single use pier in the authorization will mirror the TRPA permit status and avoid confusion.

The Applicant is now applying for a General Lease – Recreational Use for the proposed removal and reconstruction of an existing pier with an extension onto State-owned sovereign land; placement, use, and maintenance of one mooring buoy; continued use and maintenance of one mooring buoy; and removal of a marine railway. The proposed pier would be reconstructed approximately 30 feet to the southeast of the existing pier and would be 173-feet long and 10-feet wide, with a 3-foot-wide adjustable catwalk on the southeastern side of the pierhead.

Staff recommends issuance of a new lease beginning on the date of the Commission meeting, February 25, 2022. Staff further recommends the Commission accept compensation from the Applicant for the unauthorized occupation of state land in the amount of \$901 for the period beginning June 23, 2021, **the day after the Applicant's lease expired, through** February 24, 2022, the day before the proposed lease begins. The proposed lease provides for application of the lease's indemnity provisions to this period of unauthorized occupation.

The project will be performed on-site with access to the pier from a floating/amphibious barge. All materials will be stored and transported to the site from a barge. Depending on the water level of the lake, a turbidity curtain will be installed around the perimeter of the construction site.

Construction will take place after all required approvals have been obtained and will occur between October 1 and May 1. The Applicant will follow all construction methods and timeframes provided by TRPA, the Lahontan Regional

Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The facilities are and will be 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 immediate area of the proposed pier is gently sloped with small rocks and boulders. The lease provides that the public will be allowed to pass and re-pass over the pier via stairs to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum. The buoys are located directly lakeward of the upland properties and occupy a relatively small area of the lake.

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 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 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 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 proposed lease; is consistent with the common law Public Trust Doctrine; 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 not construct the pier and place the mooring buoy, and as prior lessee, may be required to

remove the existing pier, mooring buoy, and marine railway 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. Existing mooring buoy: 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.

4. Pier Reconstruction and New 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivisions (c)(2) and (c)(3).

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

5. Pier Demolition and Removal of Marine Railway: 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.

APPROVALS OBTAINED:

Tahoe Regional Planning Agency
California Department of Fish and Wildlife
Lahontan Regional Water Quality Control Board

APPROVAL REQUIRED:

U.S. Army Corps of Engineers

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

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 and New 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivisions (c)(2) and (c)(3).

Pier Demolition and Removal of Marine Railway: 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 Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law 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 \$901 for unauthorized occupation of State land for the period beginning June 23, 2021, through February 24, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 25, 2022, for a term of 10 years, for the removal and reconstruction of an existing pier with an extension; placement, use, and maintenance of one mooring buoy; continued use and maintenance of one existing mooring buoy; and removal of a marine railway, 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 \$1,301, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 4264

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 17, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier with catwalk (to be remove and relocated) and proposed pier with catwalk lying adjacent to those parcels as shown on Parcel Map filed on April 2, 2019 in Book 52 of Parcel Maps at Page 18, Records Office 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.

PARCELS 2 & 3 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying one existing buoy and one proposed buoy lying adjacent to those parcels as shown on Parcel Map filed on April 2, 2019 in Book 52 of Parcel Maps at Page 18, Records Office of said County.

PARCEL 4 – MARINE RAILWAY

All those lands underlying an existing marine railway (to be removed) lying adjacent to that Parcel A as shown on Parcel Map filed on April 2, 2019 in Book 52 of Parcel Maps at Page 18, Records Office of said County.

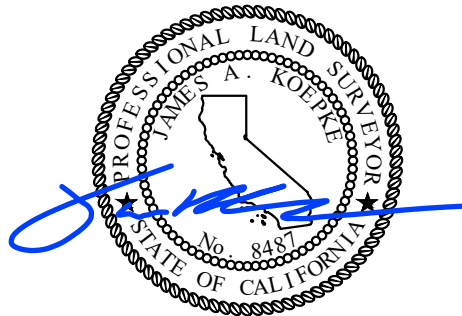
EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

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 (to be removed and relocated) and proposed pier, 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 01/18/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

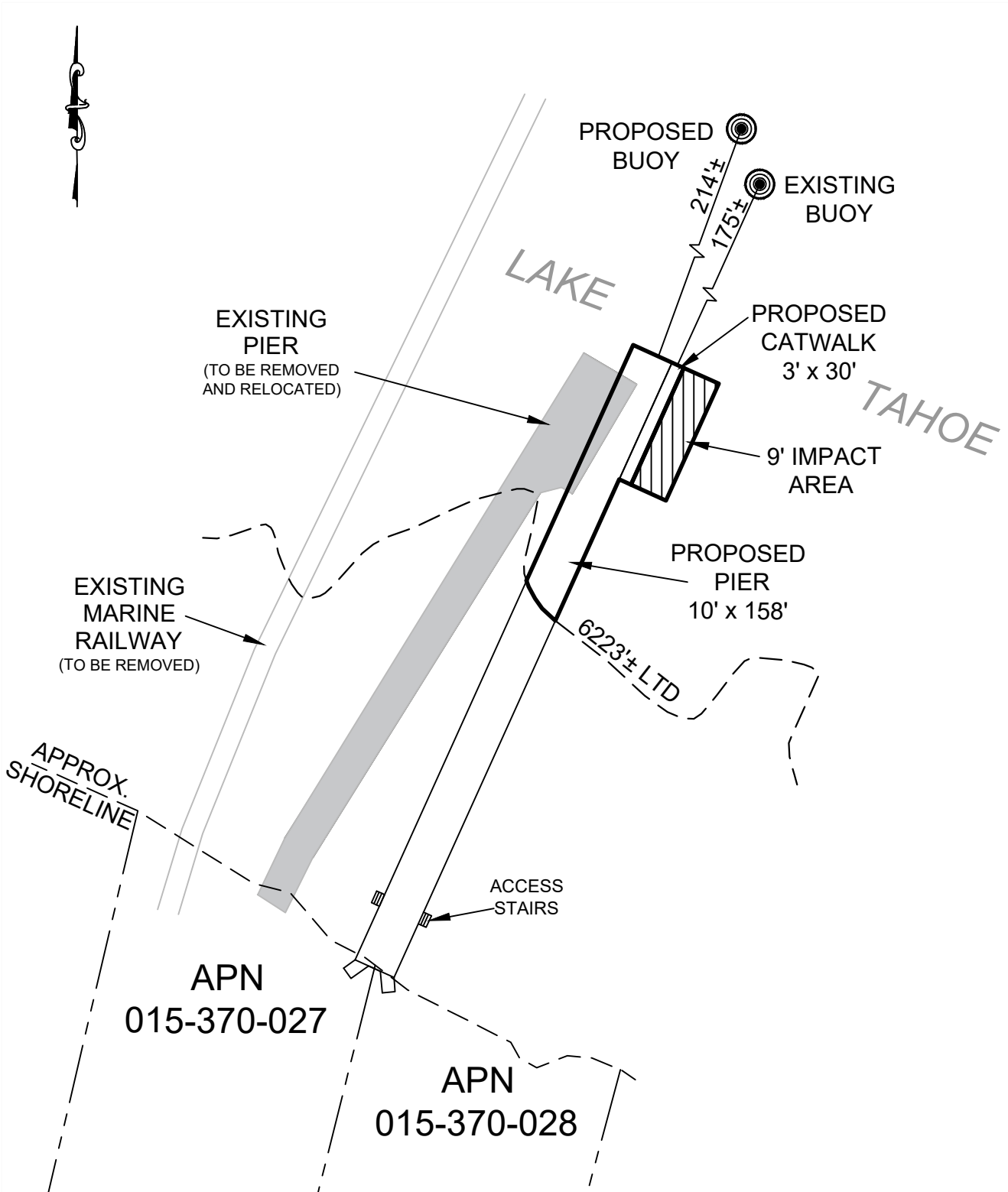


EXHIBIT A

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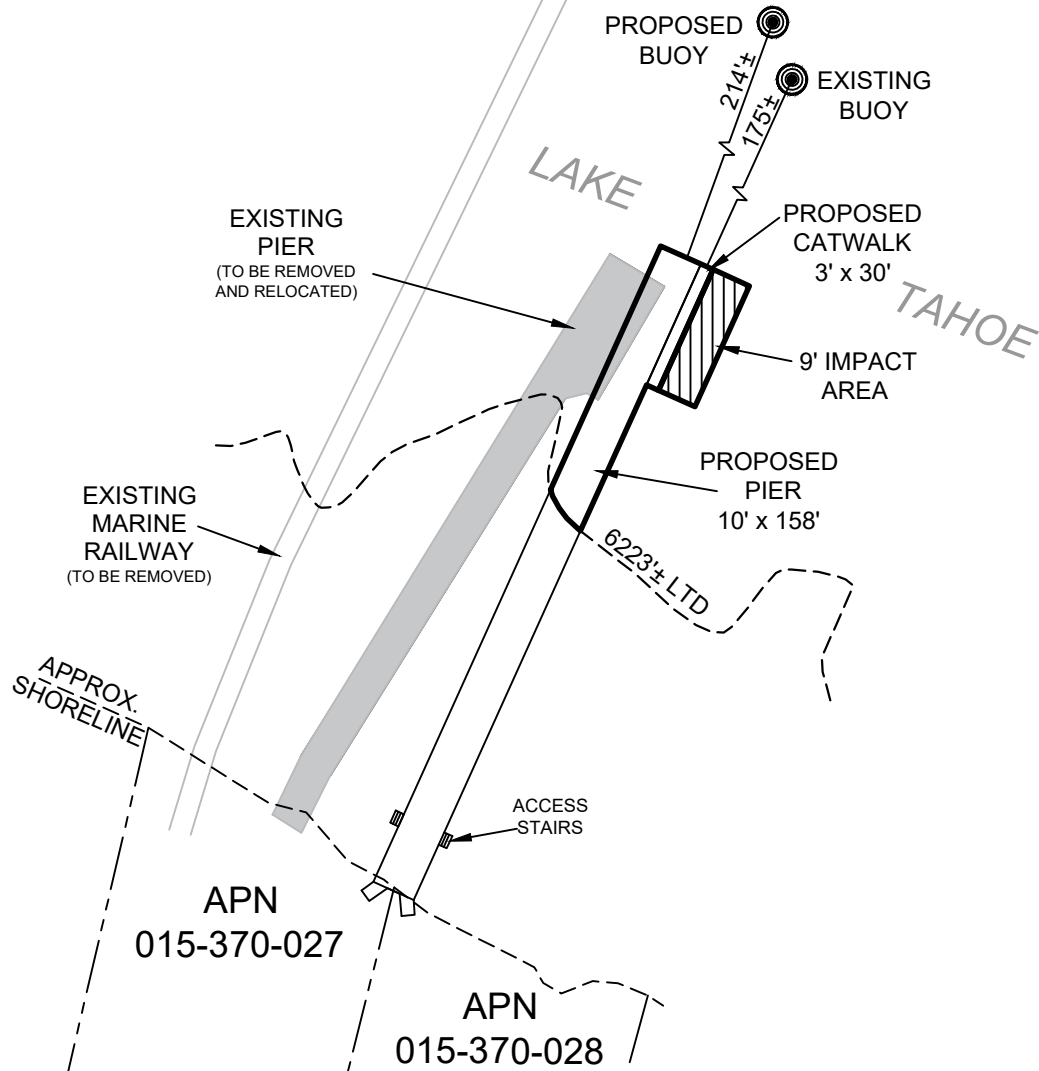
LAND DESCRIPTION PLAT
LEASE 4264, SHERMAN TRUST &
TEN MILE CAST LLC
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



7153 & 7155 STATE HIGHWAY 89, NEAR TAHOMA

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 4264
 SHERMAN TRUST &
 TEN MILE CAST LLC
 APNs 015-370-027 & -028
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY

