

# Staff Report 11

## **LESSEE:**

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Wellington S. Henderson, Jr., as to a life estate; and Wellington S. Henderson, Jr., and Richard L. Greene as Trustees of the Harriet Walker Henderson Irrevocable Trust U/T/A dated August 14, 1973

## **APPLICANT:**

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Charles C. Henderson, Melinda Henderson, Robert Wallace, Brian Keating, and Mark W. Henderson, as Trustees of the five separate trusts established under the Harriet Walker Henderson Irrevocable Trust dated August 14, 1973 FBO Charles C. Henderson, James A. Henderson, Joan H. Henderson, Elena D. Henderson, and Mark W. Henderson

## **PROPOSED ACTION:**

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Rescission of prior lease authorization, and Issuance of a General Lease – Recreational Use

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

Sovereign land in Lake Tahoe, adjacent to 8901 Rubicon Drive, near Meeks Bay, El Dorado County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier, boathouse, boat lift, and two mooring buoys.

## **TERM:**

10 years, beginning April 26, 2022.

## **CONSIDERATION:**

\$1,952 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.

**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 June 28, 2010, the Commission authorized a 10-year Recreational Pier Lease for an existing pier, boathouse, boat lift, and two mooring buoys to Wellington S. Henderson, Jr., as to a life estate; and Wellington S. Henderson, Jr., and Richard L. Greene as Trustees of the Harriet Walker Henderson Irrevocable Trust U/T/A dated August 14, 1973 ([Item C03, June 28, 2010](#)). That lease expired on June 27, 2020. On August 20, 2020, the Commission approved a General Lease – Recreational Use to the Lessee ([Item 06, August 20, 2020](#)), however the death of Wellington S. Henderson, Jr., the last life tenant of the upland property, prevented the complete execution of the lease. Staff recommends rescinding the prior authorization.

The Applicant is seeking authorization for a General Lease – Recreational Use to Charles C. Henderson, Melinda Henderson, Robert Wallace, Brian Keating, and Mark W. Henderson, as Trustees of the five separate trusts established under the Harriet Walker Henderson Irrevocable Trust dated August 14, 1973 FBO Charles C. Henderson, James A. Henderson, Joan H. Henderson, Elena D. Henderson, and Mark W. Henderson, for the use and maintenance of the existing pier, boathouse, boat lift, and two mooring buoys. TRPA registered the Applicant's moorings on December 31, 2021 (Registration No. #10146).

Staff recommends issuance of a General Lease – Recreational Use to Applicant beginning April 26, 2022, to coincide with the date of the Commission meeting. The Commission's accounting records show the annual rent is paid through June 27, 2022. This rent will be prorated through April 25, 2022, and the remaining amount of

\$357.50 paid for the period of April 26, 2022, through June 27, 2022, will be credited towards the rent owed for the new proposed lease.

The pier, boathouse, boat lift, and mooring buoys have existed for many years at this location. The pier is built on pilings with the immediate area of the pier being flat and sandy. The topography and location are flat with small boulders. Public access for pedestrians and lake-related activities are 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 Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boathouse, boat lift, and two mooring buoys are used for water-related recreational activities including swimming and the docking and mooring of boats. Recreational swimming and boating are water-dependent activities that are 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 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 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 interfere with the 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 may be required to remove the pier, boathouse,

boat lift, and two mooring buoys, and restore the premises to their original condition.

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. Rescinding the prior lease authorization 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:**

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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:**

Find that 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:**

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 rescission of the Commission's August 20, 2020, authorization of a General Lease –Recreational Use to Wellington S. Henderson, Jr., as to a life estate; and Wellington S. Henderson, Jr., and Richard L. Greene as Trustees of the Harriet Walker Henderson Irrevocable Trust U/T/A dated August 14, 1973.
2. Authorize proration of annual rent paid under existing Lease 4471, with rent paid for the period April 26, 2022, through June 27, 2022, to be credited to annual rent due under the proposed lease.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 26, 2022, for a term of 10 years, for the use and maintenance of a pier, boathouse, boat lift, and two mooring buoys 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 \$1,952, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 4471**

**LAND DESCRIPTION**

Three parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 33, Township 14 North, Range 17 East, M.D.M.&M., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California and more particularly described as follows:

**PARCEL 1 – PIER**

All those lands underlying an existing pier and boathouse with boat lift lying adjacent to those parcels described in Affidavit of Change of Trustee recorded March 31, 2010 as Document Number 2010-0013906-00 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.

**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 Affidavit of Change of Trustee recorded March 31, 2010 as Document Number 2010-0013906-00 in Official Records of said County.

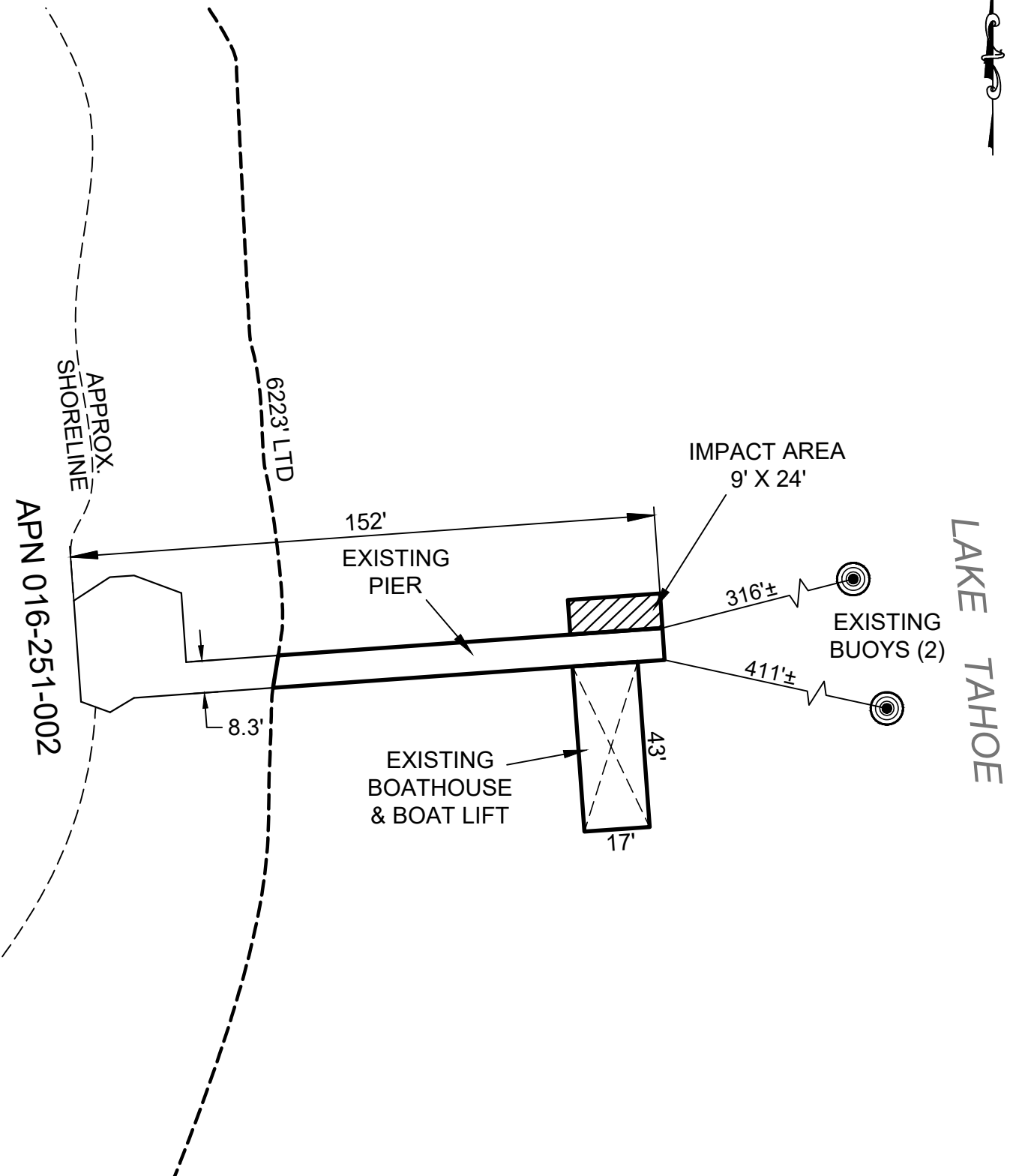
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 02/24/2022 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

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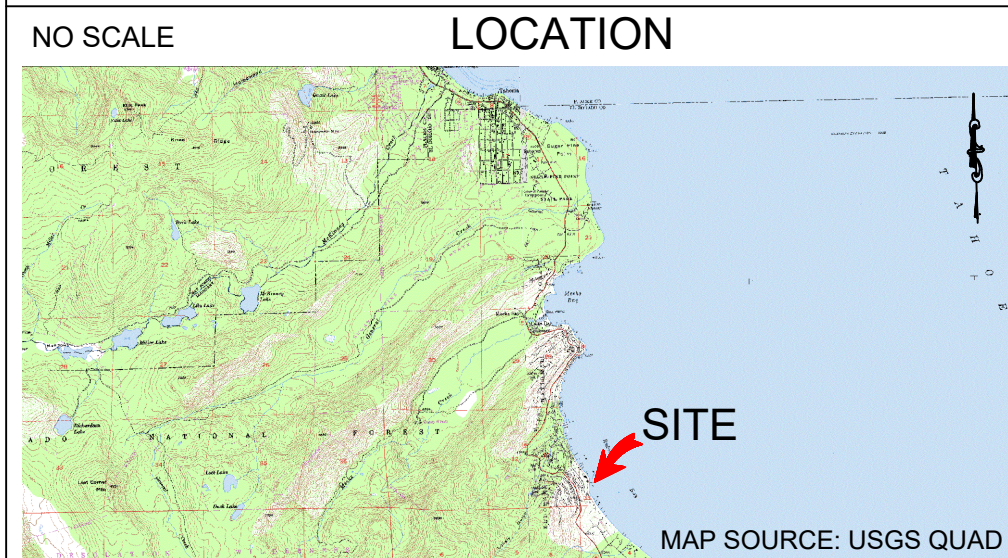
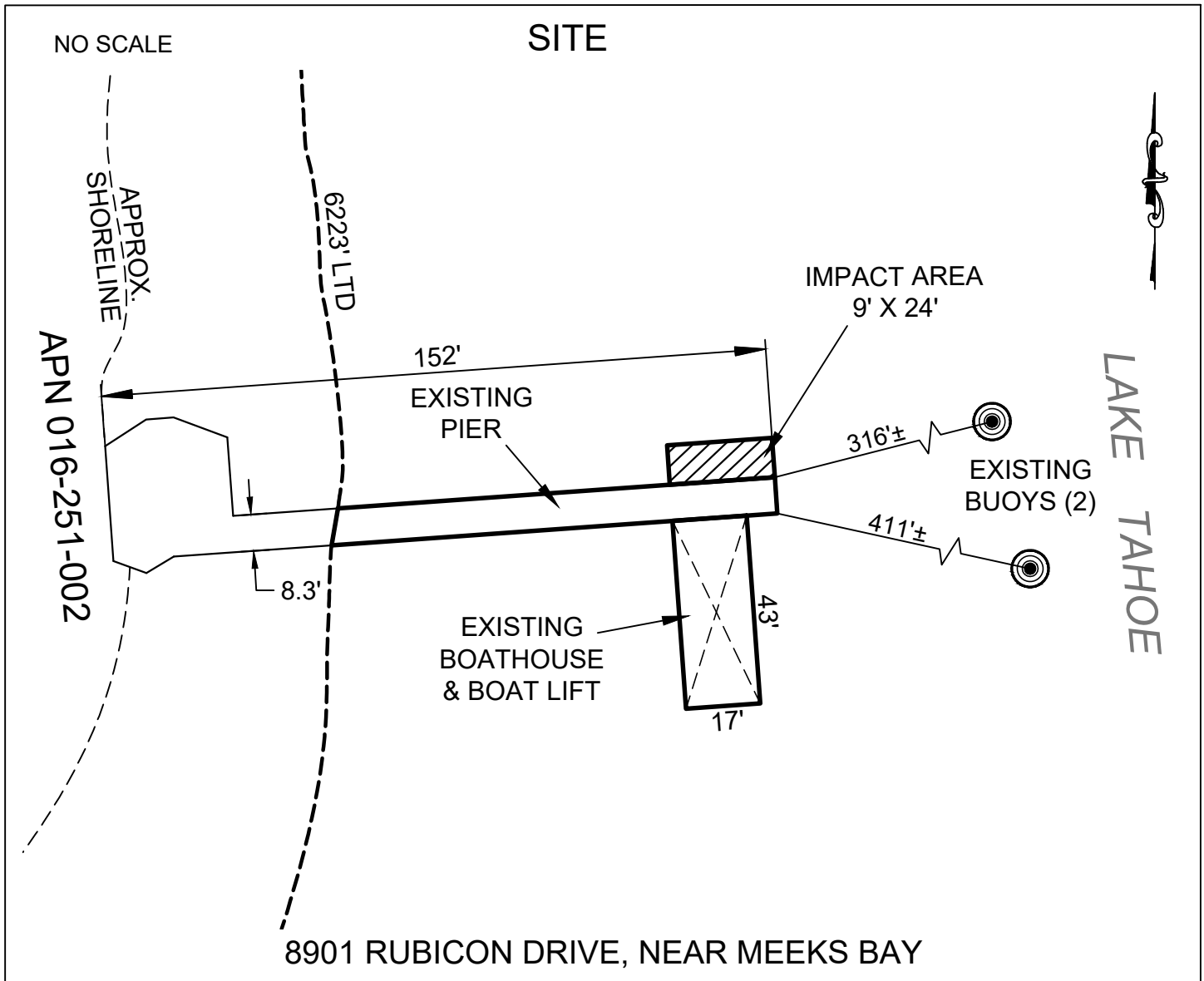
TS 02/24/2022

LAND DESCRIPTION PLAT  
LEASE 4471, HARRIET WALKER  
HENDERSON IRREVOCABLE TRUST  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION







**EXHIBIT B**

LEASE 4471

HARRIET WALKER HENDERSON

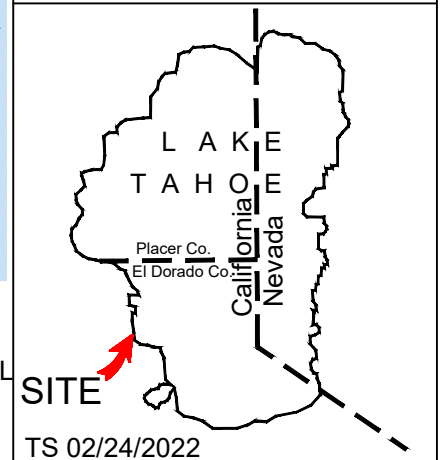
IRREVOCABLE TRUST

APN 016-251-002

GENERAL LEASE -

RECREATIONAL USE

EL DORADO COUNTY



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.