

# Staff Report 09

## **APPLICANT:**

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Pasha Family Legacy Real Estate LLC, a California limited liability company

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land in Lake Tahoe, adjacent to 5398 North Lake Boulevard, near Carnelian Bay, Placer County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier, open-sided boathouse, sundeck with stairs, three boat lifts, and two mooring buoys not previously authorized by the Commission.

## **TERM:**

10 years, beginning August 23, 2022.

## **CONSIDERATION:**

\$3,790 per year, with an annual Consumer Price Index adjustment, and \$17,229 to compensate for the unauthorized occupation of state sovereign land for the period prior to August 23, 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 provides that signs shall be posted on each side of the pier to indicate passage and to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).
- The existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck must be removed from the lease premises.

## **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:**

The Applicant owns an existing pier, boathouse, sundeck with stairs, three boat lifts, and two mooring buoys located in Lake Tahoe, adjacent to 5398 North Lake Boulevard. These improvements have never been authorized by the Commission. In 2010, upon discovery of the unauthorized improvements, staff notified the Pasha family of the requirement to obtain a lease for the improvements occupying state sovereign land and to apply for a lease. In August 2018, staff again notified the Pasha family of the requirement to obtain a lease.

On October 22, 2018, ownership interest in the upland parcel transferred from the six individual trusts of the Pasha family to Pasha Family Legacy Real Estate LLC, a California limited liability company. Subsequently, legal ownership of the parcel was settled and recorded.

On February 4, 2019, the Applicant applied for a General Lease – Recreational Use for the use and maintenance of the existing pier, open-sided boathouse, sundeck with stairs, three boat lifts, and two mooring buoys.

If the Commission approves the proposed lease, the Applicant will pay \$17,229 for the unauthorized occupation of state land for the period prior to the start of the proposed lease on August 23, 2022. Additionally, the proposed lease will require the Applicant to indemnify the State for the period of occupation from August 23, 2017 through August 22, 2022, ensuring the State is protected.

On May 17, 2019, TRPA registered the boat lifts and mooring buoys under registration number 10362. The existing pier, open-sided boathouse, three boat lifts, and two mooring buoys are 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 Applicant owns the upland adjoining the lease premises. The subject improvements have existed for many years at this location. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The pier is partially supported by wood cribs filled with rock, and the majority of the pier was recently repaired with steel piling, steel beams, steel joists and new decking. During 2017 and 2018, the Applicant obtained permits for piling and pier repair from the U. S. Army Corps of Engineers, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and TRPA. The immediate area of the existing pier is relatively flat beach with coarse sand mixed with pebbles and small boulders. The pier and boathouse are built on pilings, meaning the public may navigate or walk next to and, at lower water levels, underneath the pier to access the Public Trust easement. Signs are required to be posted on each side of the pier identifying the designated public passageway and are required to be in place at all times.

Although the sundeck with stairs is a private use of public property, and not a Public Trust consistent use, the sundeck is built onto the existing boathouse and does not expand the footprint of the subject facilities. While new sundecks are not generally authorized, sundecks that have been in place for many years have been permitted, as long as they do not significantly interfere with Public Trust needs or activities. According to an affidavit dated May 26, 2022, Mr. Larry B. Levison (the previous owner of 5398 North Lake Boulevard) stated that the pier existed when he bought the property in 1968. Mr. Levison said that in 1969 he repaired the pier and added the boathouse. Mr. Levison added the sundeck, stairs, and railings to the boathouse in 1970 for his family's recreational use. Per Mr. Levison's affidavit, his children utilized the sundeck to play, fish, and jump into the lake. The sundeck has been maintained and repaired several times over the years. An aerial photograph dated June 21, 1972, shows the pier, boathouse, and sundeck in a similar size and shape to what exists today. Based on this evidence of historical existence and use of the sundeck, staff recommends authorization of the sundeck, however the proposed lease contains terms that the sundeck may not be 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 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 stream flows 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.

Improvements 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 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 lease; 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 for a new lease, the Applicant may be required to remove the pier, boathouse, sundeck with stairs, three boat lifts, and two mooring buoys, and restore the premises to their original condition. Upon expiration or early 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. 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, 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

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

## **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 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 pier, open-sided boathouse, three boat lifts, and two mooring 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 proposed lease, and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and continuing use and maintenance of the sundeck with stairs is not generally associated with traditional Public Trust uses, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time; and
3. Find that issuing the proposed lease is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize acceptance of compensation from the Applicant in the amount of \$17,229 for the unauthorized occupation of state sovereign land for the period prior to August 23, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 23, 2022, for a term of 10 years, for the use and maintenance

of an existing pier, open-sided boathouse, sundeck with stairs, three boat lifts, and two 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 \$3,790 with an annual Consumer Price Index adjustment; and liability insurance in the amount of \$1,000,000 per occurrence.

**EXHIBIT A**

**W 27233**

**LAND DESCRIPTION**

Three parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 22, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

**PARCEL 1 – PIER**

All those lands underlying an existing pier with two (2) boatlifts, boathouse with boat lift, and sundeck adjacent to that parcel described as “PARCEL ONE” of that Grant Deed recorded October 22, 2018 as Document Number 2018-0076688-0 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

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

**PARCELS 2 - 3 – BUOYS**

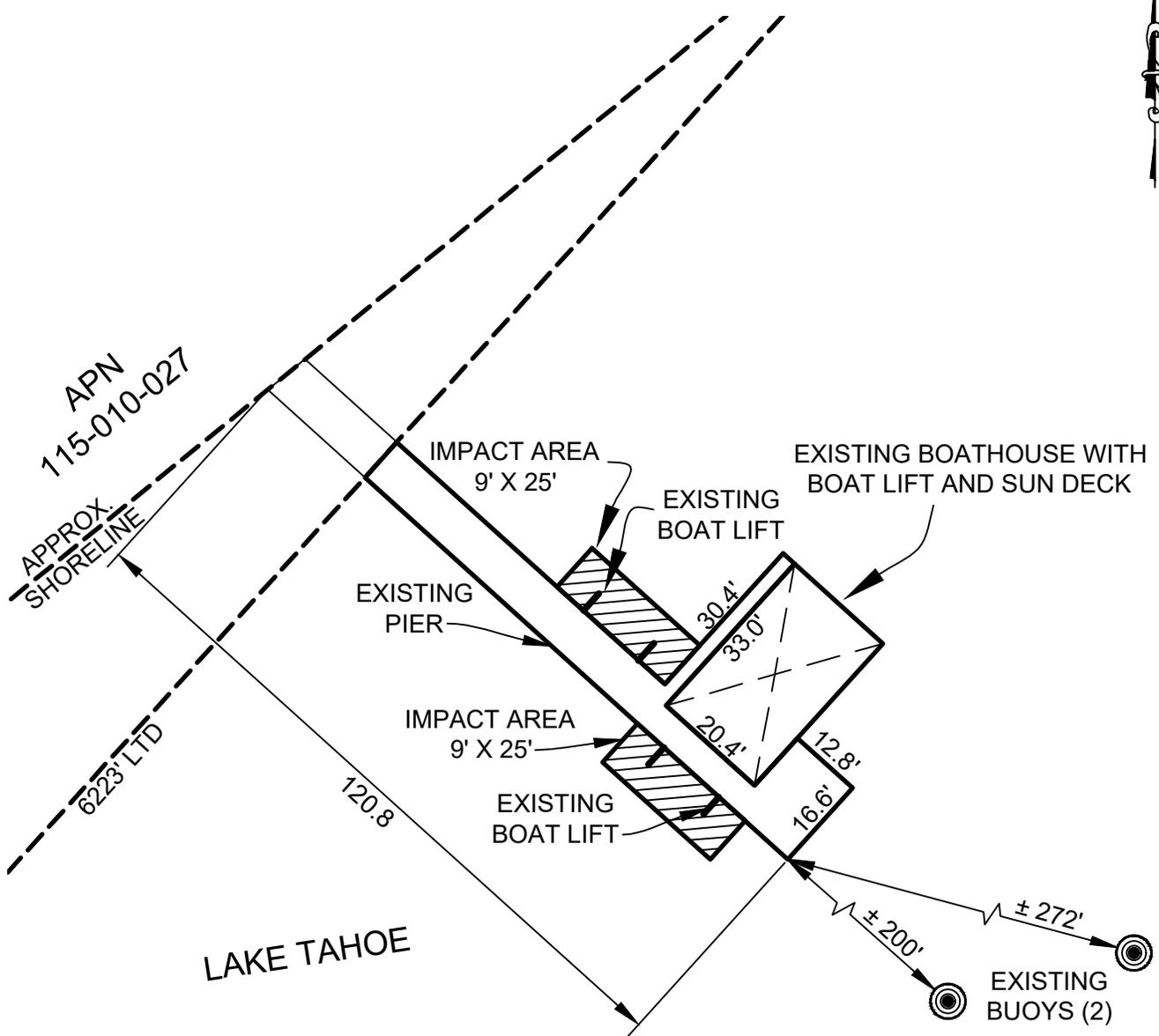
Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described as “PARCEL ONE” of that Grant Deed recorded October 22, 2018 as Document Number 2018-0076688-0 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 6/24/2022 by the California State Lands Commission Boundary Unit.



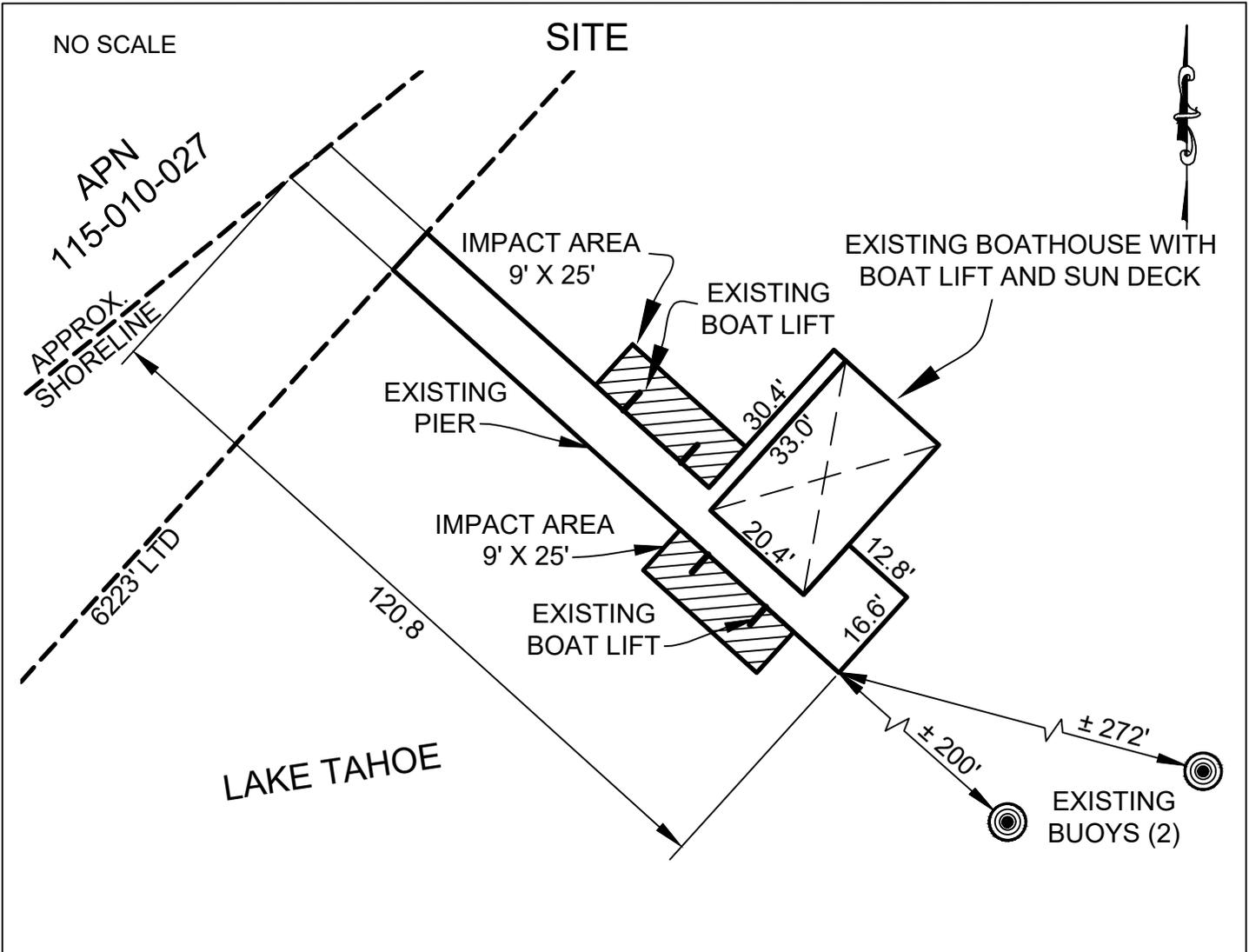


# EXHIBIT A

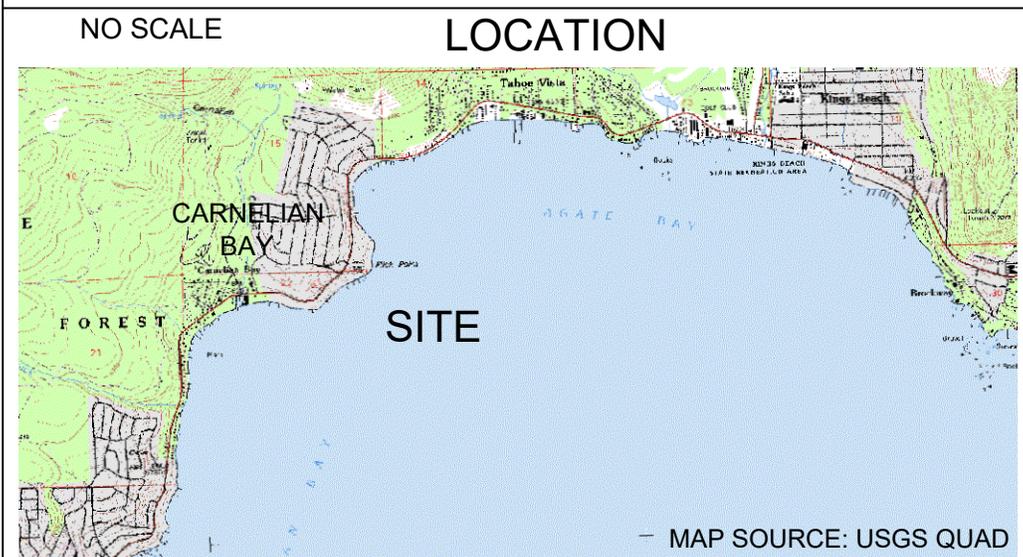
LAND DESCRIPTION PLAT  
 W 27233, PASHA FAMILY LEGACY  
 REAL ESTATE, LLC  
 PLACER COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION





5398 NORTH LAKE BLVD., NEAR CARNELIAN BAY



**EXHIBIT B**

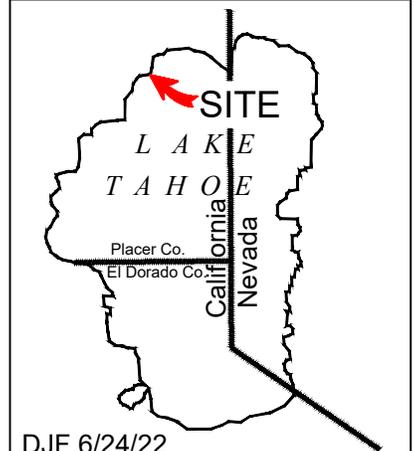
W 27233

PASHA FAMILY LEGACY  
REAL ESTATE, LLC

APN 115-010-027

GENERAL LEASE -  
RECREATIONAL USE

PLACER 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.