

Staff Report 21

LESSEE:

Nessebar Holdings II LLC

APPLICANT:

Nessebar Holdings II LLC and Nessebar Holdings LLC

PROPOSED ACTION:

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 4950 and 4960 North Lake Boulevard,
Carnelian Bay, Placer County.

AUTHORIZED USE:

Construction of a joint-use pier and catwalk; installation of a boat lift; removal of
one existing mooring buoy; and use and maintenance of three existing mooring
buoys.

TERM:

10 years; beginning October 25, 2022.

CONSIDERATION:

\$2,459 per year, with an annual Consumer Price Index adjustment; and \$2,416 to
compensate for the unauthorized occupation of State sovereign land for the
period of May 14, 2019, through October 24, 2022.

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 which may impair the public uses of access, navigation, fishing, and lake-related recreation.
- 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.
- The proposed pier is to be built 1 foot higher than normal in order to provide up to 8 feet of vertical clearance under the pier along the low water line. The public will be allowed to pass and re-pass under the pier to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum. In addition, the County of Placer holds a recorded easement for a foot path extending from the Gar Wood Building property across several adjacent properties, including Lessee's upland property. The footpath is approximately 20 feet upland from the pier with access points to the beach on either side of the pier, providing additional lateral passage along the beach.
- 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.
- Before installation of the proposed boat lift and prior to October 24, 2024, Lessee shall remove one existing mooring buoy as shown on Exhibit A and Exhibit B; provide photos of the construction area before and after removal of the subject buoy; and restore the land to its natural condition. Construction of the pier and catwalk, and installation of the boat lift shall be completed by October 24, 2027.
- 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, 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.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

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 October 19, 2012, the Commission authorized a 10-year General Lease – Recreational Use to Michael C. Bailey for two existing mooring buoys ([Item 31, October 19, 2012](#)). On April 19, 2018, the Commission authorized assignment of the lease from Michael C. Bailey to Nessebar Holdings II LLC, for two existing mooring buoys ([Item 36, April 19, 2018](#)). That lease will expire on November 30, 2022, and the Lessee now wishes to execute a quitclaim deed to release its interest in the Lease.

On February 3, 2014, the adjacent parcel Placer County Assessor Parcel Number (APN) 115-050-033 was purchased by Nessebar Holdings LLC. There are two buoys adjacent to APN 115-050-033 that have not been authorized by the Commission. The Applicant is now applying for a General Lease – Recreational Use, for construction of a joint-use pier and catwalk; installation of a boat lift; removal of one existing mooring buoy; and use and maintenance of three existing mooring buoys. Of the four existing moorings, only two have been previously authorized by the Commission. Based on the proposed project plans and TRPA regulations, the Applicant will remove one mooring buoy as shown on Exhibits A and B and restore the land to its natural condition before October 24, 2024, in exchange for the proposed boat lift. In summer 2022, TRPA conducted a Tahoe Yellow Cress survey and found no evidence of the existence of Tahoe Yellow Cress in the proposed lease area. On February 2, 2022, the Applicant registered the mooring buoys with the TRPA under registration numbers 10351 and 10352.

Staff recommends acceptance of a lease quitclaim deed from the current Lessee and issuance of a new lease to Applicant beginning October 25, 2022, to coincide with the date of the Commission meeting. The new lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation from May 14, 2019, to October 24, 2022, ensuring the State is fully protected. Further, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land by two mooring buoys associated with APN 115-050-033) in the amount of \$2,416 for the period of May 14, 2019 through October 24, 2022. Because the two unauthorized buoys were not under lease with the Commission, they enjoyed the benefit of using State land without remitting compensation for such utilization.

The proposed joint-use pier is subject to a TRPA permit and perpetual reciprocal easement agreement that includes joint-use of the pier and buoys. On September 28, 2022, TRPA's governing board approved this item. The proposed project will be performed on-site with waterway access to the lease area 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, to minimize the disturbance to natural habitats and public enjoyment of the lake during peak seasons. The Applicant will follow all construction methods and timeframes provided by TRPA, the Lahontan Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers.

The Applicant owns the littoral parcels adjoining the lease premises. The subject facilities will be privately owned and maintained by the Applicant. The facilities 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). Based on the proposed location of the joint-use pier and appurtenant facilities, this action falls within the Commission's leasing jurisdiction and the Public Trust easement. The proposed lease will ensure that the public will be allowed to pass and re-pass under the pier to provide continuous shoreline access within the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum. Signs that read "Public Passage Allowed under Pier" will be placed on both sides of the pier. The proposed pier deck height has been raised an additional foot to provide as much as 8 feet of clearance under the pier within the easement area. In addition, the County holds a recorded easement for a foot trail which can be used to pass around the pier.

The facilities will be located directly lakeward of the Applicant's littoral parcels and occupy a relatively small area of the lake. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or the foreseeable future. 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 Applicant/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 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.

Improvements authorized under this lease may require more frequent inspection and maintenance to ensure they are not displaced during storm events. In particular, the pier and buoys are vulnerable to high wind events and wave

damage. Pier pilings and components of the mooring buoys (block, tether, and floats) may need more frequent inspection and maintenance from rough lake and weather conditions. The tethering length of the mooring buoys will require periodic adjustment due to changes in lake levels as climatic conditions change between low lake level drought conditions to high water year lake levels.

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 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 be required to remove the two unauthorized mooring buoys and restore the premises to their original condition. Further, if the Commission denies the application, the Applicant/Lessee may not construct the proposed pier and catwalk or install the boat lift and will be required to remove two existing unauthorized mooring buoys within lands under the Commission's jurisdiction. The lessee 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. 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 Buoys:** 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 (a)(2).

Joint-Use Pier Construction: 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, subdivision (c)(2).

Buoy Removal: 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 and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

Lahontan Regional Water Quality Control Board

APPROVALS REQUIRED:

Tahoe Regional Planning Agency
U.S. Army Corp of Engineers
California Department of Fish and Wildlife

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Mooring Buoys: 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).

Joint-Use Pier Construction: 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, subdivision (c)(2).

Buoy Removal: 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 acceptance of a lease quitclaim deed and issuance of 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. Accept a lease quitclaim deed, effective October 24, 2022, of Lease Number PRC 8440.1, a General Lease – Recreational Use, from the Lessee Nessebar Holdings II LLC.
2. Accept compensation in the amount of \$2,416 from the Applicant, for unauthorized occupation of State land (two mooring buoys adjacent to APN 115-050-033) for the period of May 14, 2019 through October 24, 2022.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 25, 2022, for a term of 10 years, for the construction of a joint-use pier and catwalk; installation of a boat lift; removal of one existing mooring buoy; and use and maintenance of three existing 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 \$2,459, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
4. 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.

EXHIBIT A

LEASE 8440

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 22, 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 a proposed joint-use pier, ramp, catwalk and boat lift lying adjacent to those parcels described in Grant Deed recorded February 3, 2014 in Document 2014-0007192-00 and Grant Deed recorded May 24, 2016 in Document 2016-0039398-00 in Official Records of said County.

TOGETHER WITH an applicable Impact Area(s).

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

PARCELS 2 through 4 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to those parcels described in Grant Deed recorded February 3, 2014 in Document 2014-0007192-00 and Grant Deed recorded May 24, 2016 in Document 2016-0039398-00 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 a 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 08/30/2022 by the California
State Lands Commission Boundary Unit.



NO SCALE

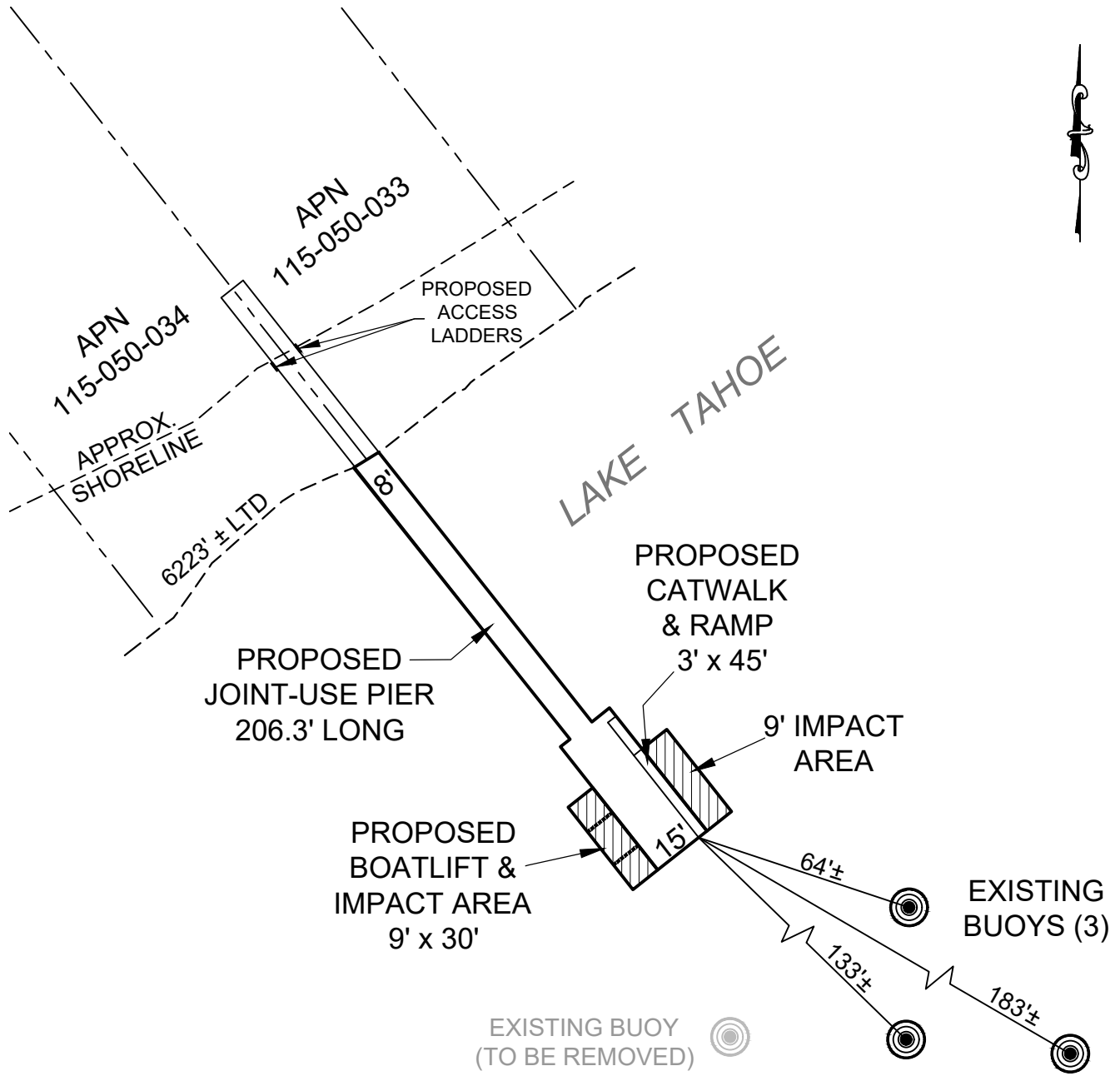


EXHIBIT A

Page 2 of 2

TS 08/30/2022

LAND DESCRIPTION PLAT
 LEASE 8440, NESSEBAR HOLDINGS LLC &
 NESSEBAR HOLDINGS II LLC
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



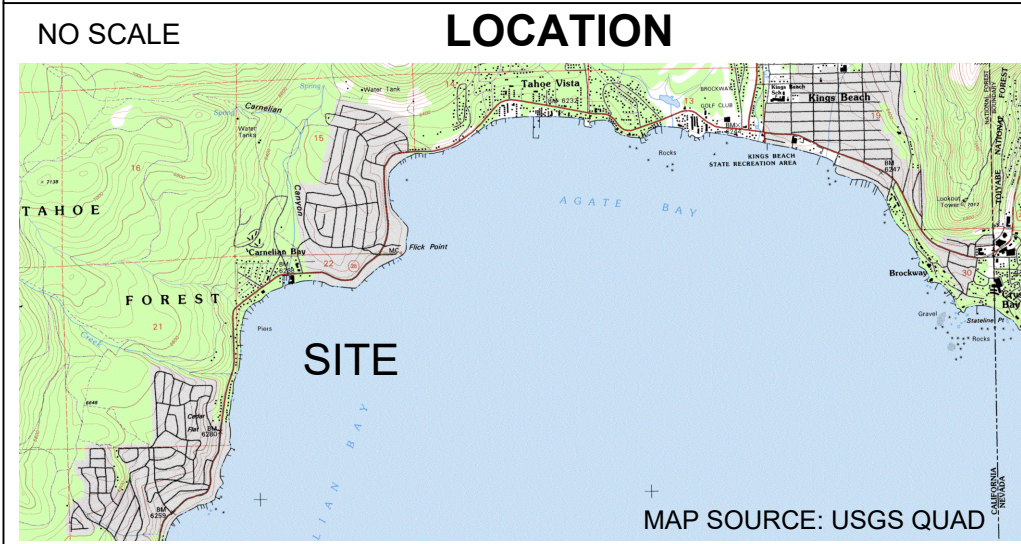
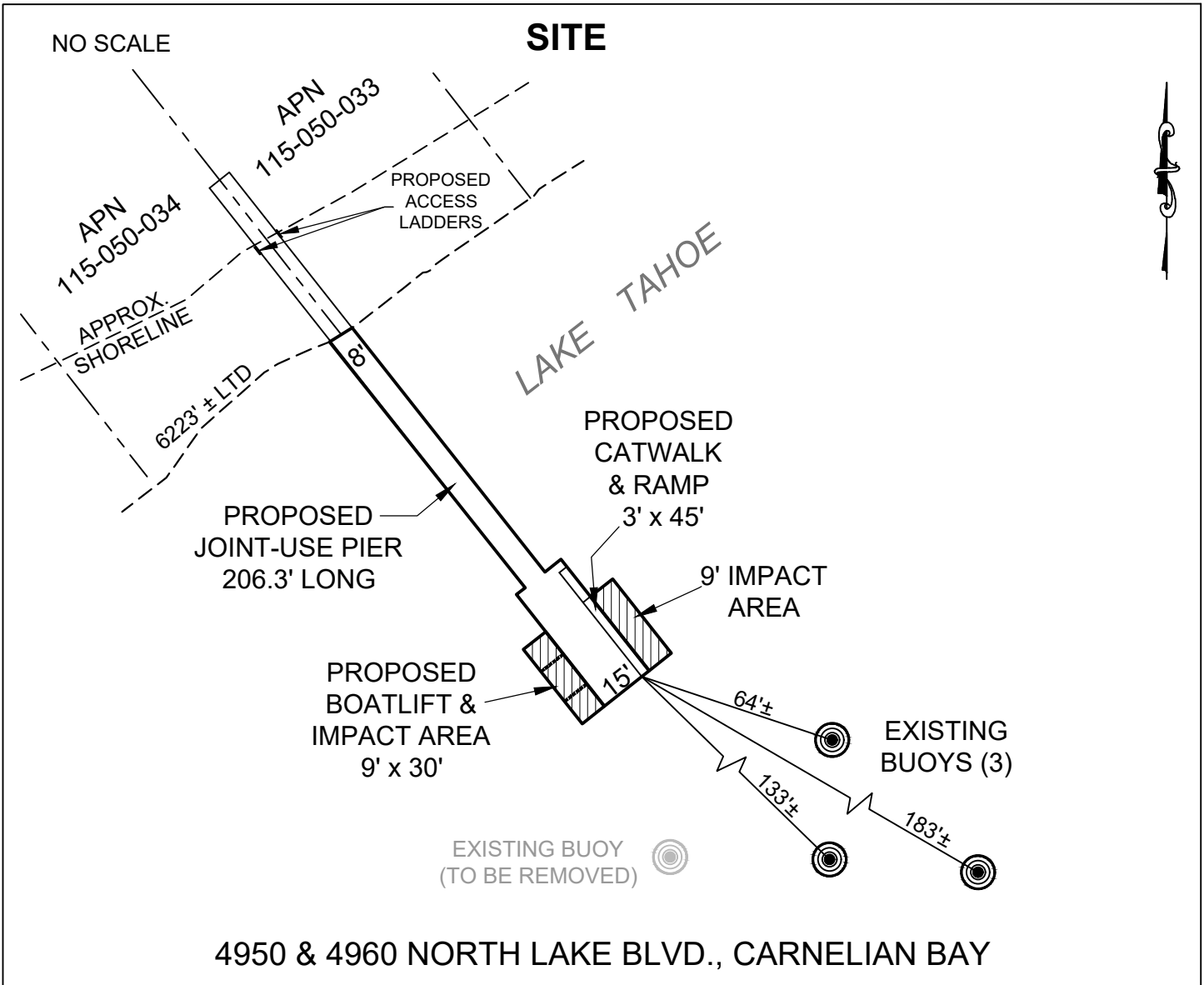


Exhibit B

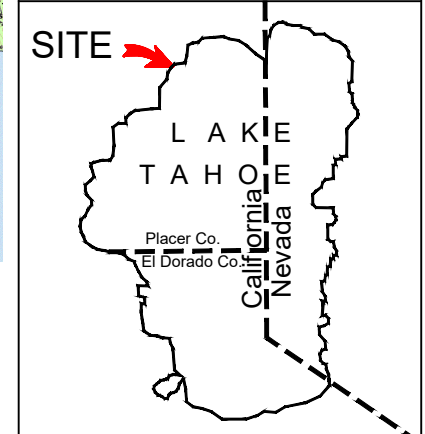
LEASE 8440

NESSEBAR HOLDINGS LLC & NESSEBAR HOLDINGS II LLC

APNs 115-050-033 & 034

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.