

Staff Report 16

APPLICANT:

Alvin T. Levitt, Successor Co-Trustee of the Mary Ann Tonkin Survivor's Trust; Wendy Tonkin, Successor Co-Trustee of the Mary Ann Tonkin Survivor's Trust; and Jill B. Tonkin Finegold, Successor Co-Trustee of the Mary Ann Tonkin Survivor's Trust

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 7432 North Lake Boulevard, near Tahoe Vista, Placer County.

AUTHORIZED USE:

Use and maintenance of one existing mooring buoy not previously authorized by the Commission.

TERM:

10 years, beginning December 9, 2022.

CONSIDERATION:

\$273 per year, with an annual Consumer Price Index adjustment; and \$1,778 for unauthorized occupation of State land for the period prior to December 9, 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's right of access for navigation, fishing, and public trust consistent recreational uses.

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 September 23, 1965, ownership interest in the upland property adjacent to the lease premises transferred to Bertram M. Tonkin and Mary Ann Tonkin. The subject upland property was later deeded to the Bertram M. Tonkin and Mary Ann Tonkin Revocable Trust dated March 18, 1993. Upon Bertram M. Tonkin's death on November 23, 2002, the Mary Ann Tonkin Survivor's Trust was established and, on September 21, 2004, said Trust took ownership interest in the subject property. Mary Ann Tonkin died on November 10, 2021. Following her death, the Mary Ann Tonkin Survivor's Trust still holds ownership interest in the subject property with the Applicant now operating as successor co-trustees of the Trust.

The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of one existing mooring buoy not previously authorized by the Commission. No prior lease or application for the buoy exists, however the buoy was registered with the TRPA on May 22, 2010 (Registration No. 11523).

The Applicant will pay \$1,778 in compensation for the unauthorized occupation of State land by the subject mooring buoy for the period prior to December 9, 2022. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, prior to December 9, 2022, ensuring the State is protected.

The subject mooring buoy is privately owned and maintained, used for the docking and mooring of boats, and facilitates 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 subject mooring buoy is located directly lakeward of the upland property and occupies 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 and restore the lease premises to their original condition.

The improvements to the upland property include an existing pier that does not extend waterward of elevation 6,223 feet, Lake Tahoe Datum, and therefore is not located on sovereign land, but is within the Public Trust easement. The immediate upland topography of this pier is flat, sandy, and easily traversable, with public access for pedestrians and lake-related activities available at varying water levels underneath the pier and through the upland parcel within the Public Trust easement.

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 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 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.

The improvement authorized under this lease may require more frequent inspection and maintenance to ensure it is 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; 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 mooring buoy and restore the premises to their original condition. 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. 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).

Authority: Public Resources Code section 21084, 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 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:

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 \$1,778 for unauthorized occupation of State land for the period prior to December 9, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 9, 2022, for a term of 10 years, for the use and maintenance of one existing mooring buoy, 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 \$273, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

A 3086

LAND DESCRIPTION

A parcel of submerged land situate in the bed of Lake Tahoe, lying adjacent to fractional Section 13, 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:

A circular parcel of land, being 50 feet in diameter, underlying an existing buoy lying adjacent to that parcel described in Grant Deed recorded October 5, 2004 in Document Number 2004-0132172, Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Revised 07/06/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

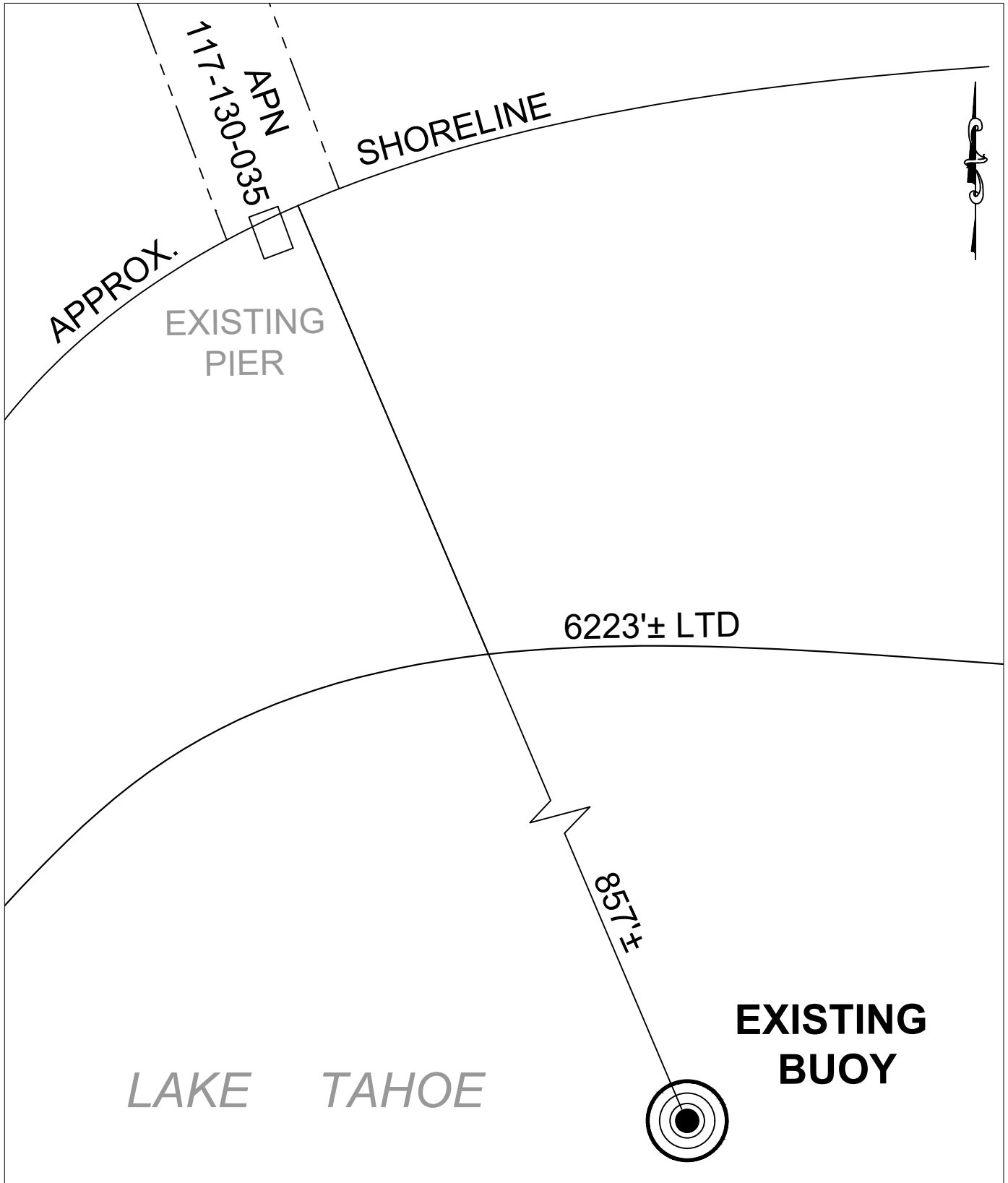


EXHIBIT A

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TS 07/06/2021

LAND DESCRIPTION PLAT
A 3086, TONKIN SURVIVOR'S TRUST
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



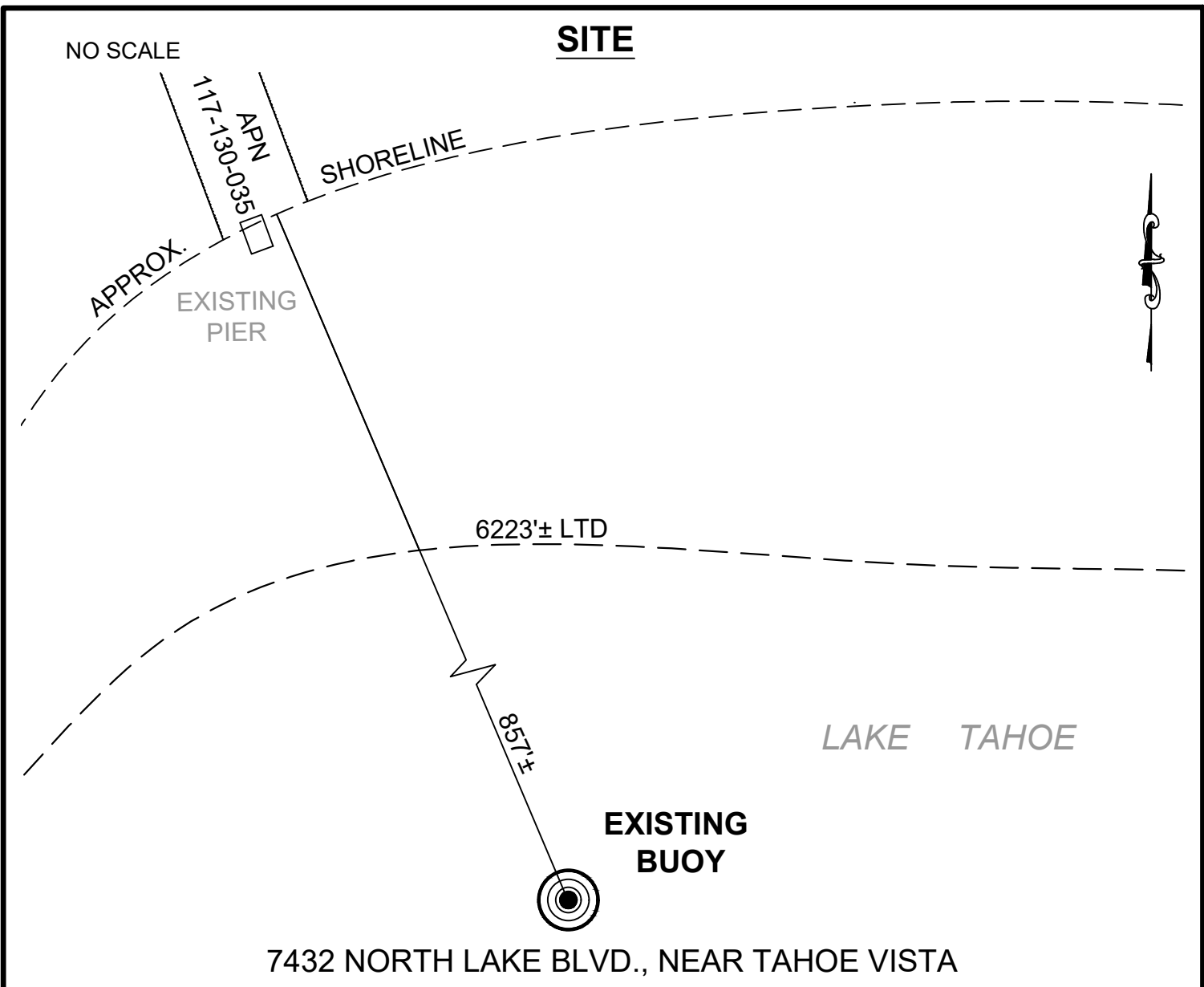
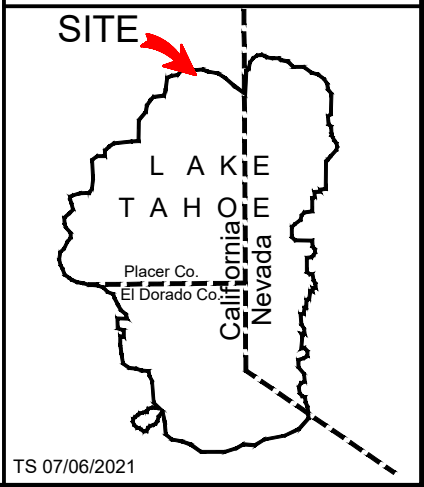


Exhibit B

A 3086
 TONKIN SURVIVOR'S TRUST
 APN: 117-130-035
 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.