

Staff Report 69

APPLICANT:

Harold M. Messmer, Jr. and Marcia N. Messmer, Trustees of the Messmer Family Trust U/D/T dated October 1, 1993

PROPOSED ACTION:

Issuance of a General Lease – Other

AREA, LAND TYPE, AND LOCATION

Sovereign land in Lake Tahoe, adjacent to 4440 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier with boat lift and slip; multi-level boathouse with two boat lifts and residential quarters; two mooring buoys; and one swim float.

TERM:

10 years, beginning December 9, 2022.

CONSIDERATION:

\$19,547 per year, with an annual Consumer Price Index adjustment; and \$35,772 for the unauthorized occupation of state lands for the period beginning September 13, 2020, through December 8, 2022.

SPECIFIC PROVISIONS:

- Liability insurance in an amount no less than \$2,000,000 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's right of access for navigation, fishing, and Public Trust consistent recreational uses.
- The existing residential quarters, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing residential quarters cost more than 50 percent of the base value of the residential quarters, then the residential quarters must be removed from 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 June 23, 2011, the Commission authorized a General Lease – Recreational Use to Harold M. Messmer, Jr. and Marcia N. Messmer, Trustees of the Messmer Family Trust U/D/T dated October 1, 1993, for the continued use and maintenance of an existing pier with boat lift, two-story boat house with two boat slips on the lower level and residential quarters on the upper level, one swim float, and two mooring buoys previously authorized by the Commission, and two existing boat hoists not previously authorized by the Commission ([Item 111, June 23, 2011](#)). The lease expired on September 12, 2020.

The two-story boathouse was re-built in the mid-1940s following a catastrophic fire. The non-water dependent residential quarters were constructed at the time of the boathouse reconstruction. It is staff's understanding that no permits were required or obtained at that time. The only project for which a building permit was required was for repairs to the pier decking and railing in 1989 (TRPA Permit #B-34943).

The lower level of the boathouse includes two boat lifts, storage and utility facilities, washer and dryer, refrigerator, and wooden walkways. The north wall is open for boat access, and the windows have shutters that are closed and secured in fall providing winter protection from snow and storm damage.







The upper level of the boathouse includes heated residential quarters which are accessible by a finished interior staircase.



The electric heating controls are located in the front hallway of the residential quarters.



The four bedrooms are paneled with knotty pine and, each furnished with two twin beds, dressers, chairs, and closets.









There are two "Jack and Jill" styled bathrooms with incoming water supply lines and outgoing waste lines to service pedestal sinks, toilets, and showers in each.





An outside covered balcony with railings and flowerboxes is accessible through sets of French doors serving each of the two east-facing (lakeside) bedrooms.



The attic above the residential quarters houses a water heater and a forced-air heating unit.

According to the Applicant, in the fall, winter, and early spring, utilities to the building are shut off. The decks are exposed to the elements, and subject to freezing temperatures. Double and triple protection shut-off valves are installed between the street and the boathouse to prevent water and wastewater systems from being inadvertently activated. During the winter, the water heater is drained and the electrical circuit shut off at the electrical panel servicing the boathouse. The Applicant provided a signed affidavit dated January 13, 2021, stating that typical usage of the residential quarters is 10 days per season.

During the current lease application process, staff reviewed the Applicant's statement regarding habitability of the residential quarters and were later invited to visit the facilities. Staff conducted a site visit on September 15, 2022, and confirmed

that the residential quarters were an enclosed, non-water dependent residential space occupying State sovereign land year-round that could be used at any time during the year and are being used year-round for storage.

The Applicant is now applying for a General Lease – Other for the use and maintenance of the existing pier with boat lift and slip, boathouse with two boat slips and lifts, non-water dependent upper level residential quarters, two mooring buoys, and one swim float. TRPA registered the two boat lifts and two mooring buoys under Permit No.10485, with the swim float not being considered a mooring. Additionally, TRPA recognized the boat slip which existed previously at the landward side of the pier under Permit No. 10485. TRPA did not register the slips within the boathouse as separate items, but as two spaces with both a slip/lift in each spot. The slip located on the landward side of the pier is a registered mooring under TRPA No. 10485.

Staff recommends that the Commission authorize issuance of a lease beginning December 9, 2022, the date of the Commission meeting. Staff also recommends acceptance of compensation in the amount of \$35,772 for the period beginning September 13, 2020, the day after the prior lease expired, through December 8, 2022.

The existing pier with boat lift and slip, the portion of the boathouse with two boat lifts, two mooring buoys, and one swim float are privately owned and maintained 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 portions of the boathouse with the residential quarters and other facilities that are non-water dependent and not related to the docking and mooring of boats are not a Public Trust consistent use. While new residential quarters and similar non-water dependent facilities are not allowed, residential quarters that have been in place for years have been permitted, as long as they do not significantly interfere with Public Trust needs or activities. Although the residential quarters are a private use of public property, the residential quarters are primarily built atop the existing boathouse and do not expand the footprint of the subject facilities. They also do not impede the use of the boathouse area for Public Trust consistent purposes as the lower level has boat slips and hoists. Regardless, the lease contains provisions that prohibit the residential quarters from being expanded or rebuilt if substantially destroyed.

The subject facilities have existed for many years at this location. The pier and boathouse are built on pilings, meaning the public may navigate or walk next to

and, at lower water levels, under the pier. The immediate area of the existing pier is a relatively flat beach with small stones and boulders. The buoys and swim float are located directly lakeward of the upland property 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 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 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.

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 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; 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 all improvements from state land and restore the premises to their original condition. The lessee has no right to a new lease.
2. This action is consistent with "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 issuance of the lease 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.

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:

1. Find that the existing and continuing use and maintenance of the pier with boat lift, boathouse with two boat lifts, two mooring buoys, and one swim float will not substantially interfere with the Public Trust needs and values at this location for the approved term and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and continuing use and maintenance of the non-water dependent uses, including the residential quarters, is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; 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 \$35,772 for the unauthorized occupation of State land for the period of September 13, 2020 through December 8, 2022.
2. Authorize issuance of a General Lease – Other to the Applicant beginning December 9, 2022, for a term of 10 years, for the use and maintenance of an existing pier with boat lift, boathouse with two boat lifts and residential quarters, two mooring buoys, and one swim float, 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 \$19,547, with an annual Consumer

Price Index adjustment; and liability insurance in an amount no less than \$2,000,000 per occurrence.

EXHIBIT A

LEASE 4380

LAND DESCRIPTION

Four parcels of submerged land situated in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 21, 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 an existing pier, boat lift, boat house with two boat lifts and residential quarters lying adjacent to that parcel described in Grant Deed recorded September 13, 2000 as Document Number 2000-0067689 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.

PARCEL 2 – SWIM FLOAT

All those lands underlying an existing swim float lying adjacent to that parcel described in Grant Deed recorded September 13, 2000 as Document Number 2000-0067689 in Official Records of said County.

PARCELS 3 & 4 – BUOYS

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded September 13, 2000 as Document Number 2000-0067689 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 04/13/2020 by the California
State Lands Commission Boundary Unit.



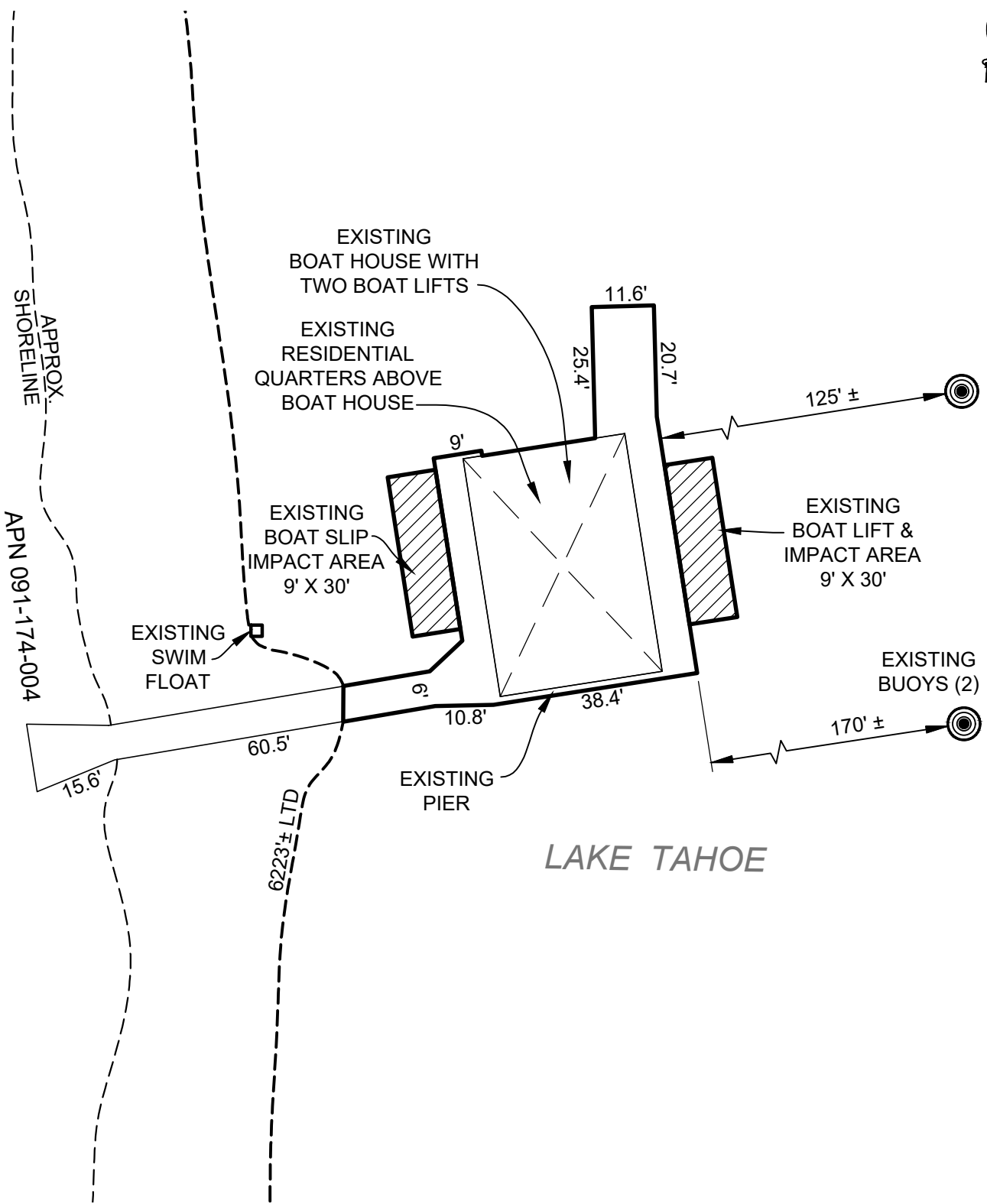


EXHIBIT A

LAND DESCRIPTION PLAT
LEASE 4380, MESSMER TRUST
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



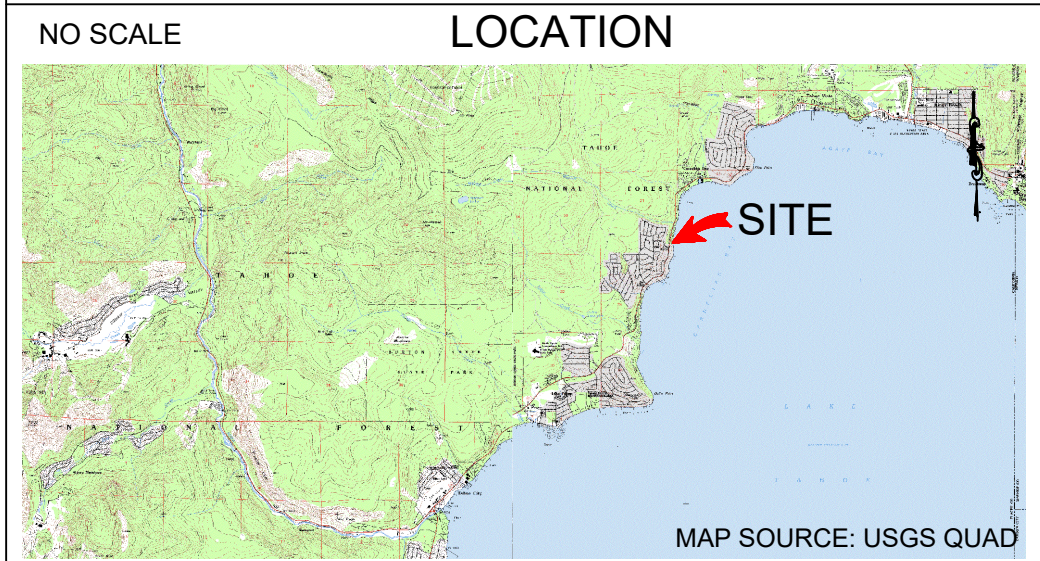
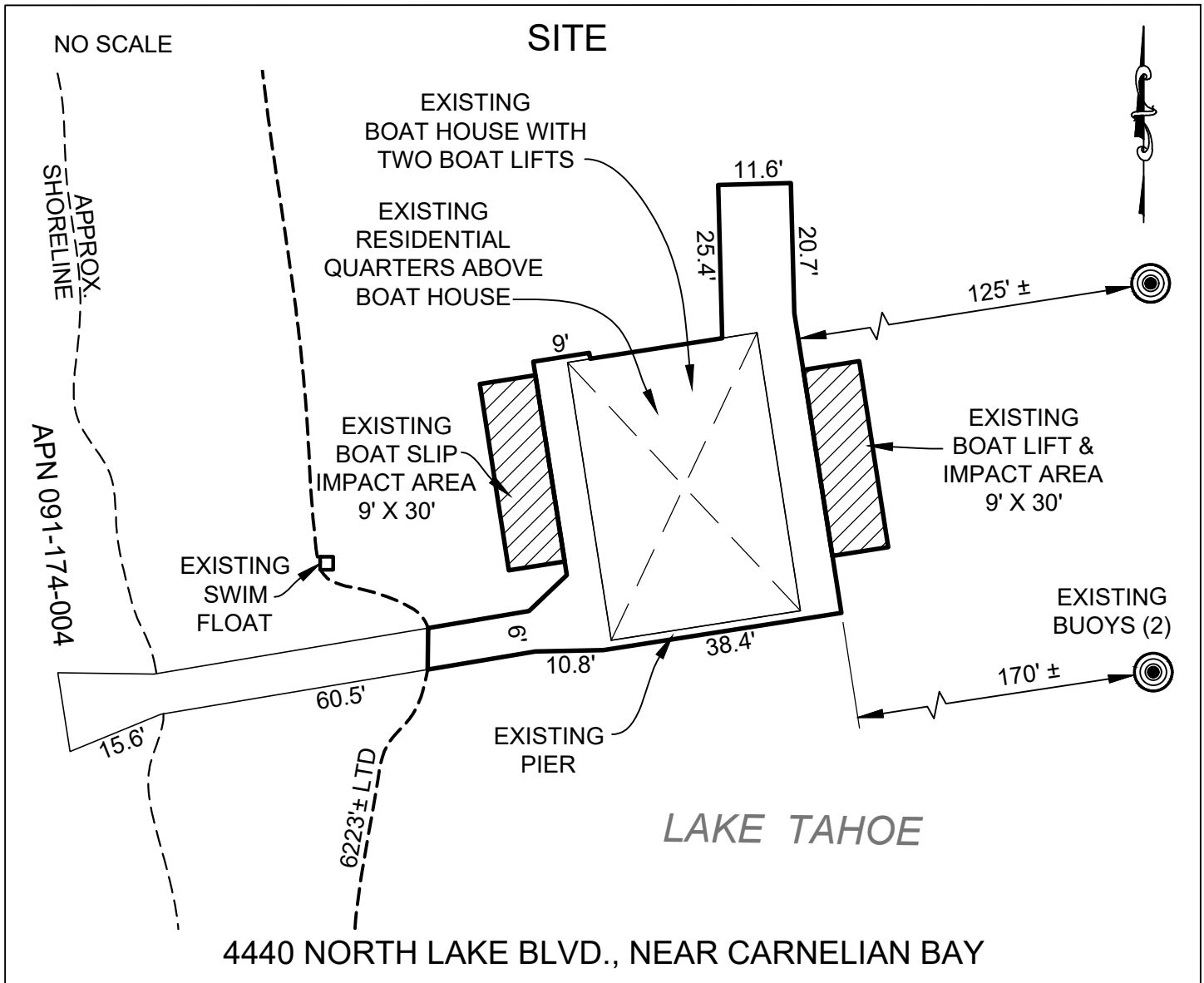
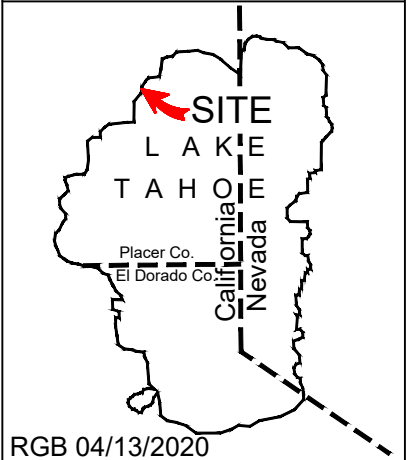


EXHIBIT B
 LEASE 4380
 MESSMER TRUST
 APN 091-174-004
 GENERAL LEASE - OTHER
 PLACER COUNTY



RGB 04/13/2020

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.