

Staff Report 02

LESSEE

28 Moana Circle LLC, a California limited liability company

PROPOSED ACTION:

Amendment of Lease

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 28 Moana Circle, near Tahoma, Placer County.

AUTHORIZED USE:

Use and maintenance of an existing pier and two mooring buoys.

TERM:

10 years, beginning April 27, 2021.

CONSIDERATION:

\$1,085 per year with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

- Authorize the removal of an existing pier, catwalk, and one mooring buoy, and the construction of a new pier, catwalk, and boat lift in substantially the same footprint of the existing pier.
- Include special provisions related to construction.
- Include special provisions related to protection of Tahoe Yellow Cress (TYC), a California endangered plant species, due to the presence of TYC approximately 10 feet north of the existing pier. According to TRPA, TYC is a flowering perennial plant in the mustard family that grows on Lake Tahoe's sandy shorelines and nowhere else in the world. A Construction Impact Avoidance Plan has been incorporated as a lease condition to ensure no impact to the plant.

- Include a special provision requiring that the public be allowed to pass and repass over the pier using stairs on the landward end of the pier, with signs posted on each side of the pier, to provide continuous shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum.
- Revise the annual rent from \$1,085, with an annual Consumer Price Index adjustment, to \$1,305, with an annual Consumer Price Index adjustment.
- Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purpose only).
- 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 the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Lessee acknowledges annual consideration shall be adjusted based on the actual area of improvements as constructed should they vary from the plans submitted.
- 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.
- Amend Section 3, paragraph 11(a) to read: This lease is for a fixed term of years and contains no options or rights of renewal. If Lessee desires to occupy the Lease Premises beyond the term of this Lease, Lessee shall submit an application and minimum expense deposit for a new lease at least one year prior to the expiration of this Lease. Submission of an application does not guarantee a new lease will be granted to Lessee. Lessee has considered both the cost of construction and removal in light of these conditions.

All other terms and conditions of the lease to remain in effect without amendment.

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 April 27, 2021, the Commission authorized a General Lease – Recreational Use to 28 Moana Circle LLC, a California limited liability company, for an existing pier and two mooring buoys ([Item C01, April 27, 2021](#)). That lease will expire on April 26, 2031.

The Lessee is now applying for a lease amendment to authorize the removal of the existing pier, catwalk, and one existing mooring buoy, and construction, use, and maintenance of a pier with one boat lift and catwalk. The Tahoe Regional Planning Agency (TRPA) registered the moorings on September 30, 2019, under Registration No. 11300. The boat lift is registered as an exchange for the removal of one existing mooring buoy.

In October 2022, TRPA issued conditional permit No. ERSP2022-0406 for the proposed removal of the existing pier and construction of a new single-parcel pier, and conversion of one existing mooring buoy for one 12,000-pound capacity boat lift. The TRPA permit specifically states that the relocation of any boulders is not authorized.

Due to existing low lake levels, TRPA has permitted a minor extension in the length and width of the new pier, which will be approximately 139-feet long by 8-feet wide, but otherwise in substantially the same footprint of the existing pier. The proposed pier will include a pierhead of 60-feet long by 10-feet wide. The proposed pier will be built in a single-pile, open pier design, and be supported by 23 single steel pilings of 10.75-inch diameter.

The proposed adjustable catwalk will be approximately 3-feet wide by 30-feet long and located on the northwestern side of the pier. The proposed boat lift will be installed on the southeastern side of the pier. To comply with TRPA regulations, the Lessee will remove one existing mooring buoy in exchange for the 12,000-pound capacity boat lift.

The proposed pier will contain two sets of stairs located at the landward end of the pier. Signage reading "Public Passage Allowed Over Pier" located at the designated public access passageway will be required to be in place at all times.

The proposed project will be performed on-site with access to the site from the lake. The project will be constructed with the use of a floating/amphibious barge, and materials will be transported via barge to the site. Caissons will be used during piling removal and will be installed around the pilings during installation to reduce sediment resuspension from escaping the project area. The caissons will not be removed until sediment has settled. Construction materials will be stored within the barge, rather than on the shoreline, and protected from discharge into the lake. Materials, equipment storage, and fabrication will take place in a shop and on the barge. Construction of the beams, joists, and decking will take place above the surface of Lake Tahoe.

Construction may take place only after all required approvals have been obtained from the appropriate regulatory bodies. The Lessee will follow all construction methods and timeframes provided by TRPA, Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers. TRPA conducted a TYC survey during the 2022 TYC growing season. One TYC plant was found approximately 10 feet north of the existing pier. As a California endangered species, a TYC Construction Impact Avoidance Plan was prepared by the applicant. The Plan was reviewed and approved by Commission staff and incorporated as a lease condition to ensure no impact to the plant during construction activities.

The Lessee owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The subject improvements 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 proposed pier's design will allow for public access laterally across the shoreline via the stairs. Additionally, the pier has an open piling construction which will allow for passage under the pier at varying lake levels. The lease requires the Lessee to post signs on both sides of the pier at the designated public access passageway that reads "Public Passage Allowed Over Stairs." The proposed amendment 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 amendment 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 amendment 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 Lessee could not construct the new proposed improvements. 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 Area of the Commission's 2021-2025 Strategic Plan.
3. **Construction of a Pier, Catwalk, and Boat Lift:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.
4. **Pier Demolition and Removal of One Mooring Buoy:** 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, California Code of Regulations, title 14, section 15300.

APPROVAL OBTAINED:

Tahoe Regional Planning Agency

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
Lahontan Regional Water Quality Control Board

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Construction of a Pier, Catwalk, and Boat Lift: 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

Pier Demolition and Removal of One Mooring Buoy: 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 removal and construction of a pier and catwalk; installation of a boat lift; and removal of one mooring buoy will not substantially interfere with Public Trust needs and values at this location, at this time and for the term of the lease; are consistent with the common law Public Trust Doctrine; and that the proposed amendment is in the best interests of the State.

AUTHORIZATION:

1. Authorize the amendment of Lease Number 5301, a General Lease – Recreational Use, effective April 27, 2023, for the removal of an existing pier, catwalk, and one mooring buoy, and the construction of a new pier, catwalk, and boat lift, to include special lease provisions related to construction and public access; to revise rent from \$1,085 per year, with an annual Consumer Price Index adjustment, to \$1,305 per year, with an annual Consumer Price Index

adjustment; and to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); unless specifically described above, all other terms and conditions of the lease shall remain in effect without amendment.

2. Authorize the Executive Office or designee to replace Exhibits in the lease and adjust rent upon submission, review and approval of as-built plans detailing the final location of the new improvements following construction.

EXHIBIT A

LEASE 5301

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 7, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved July 29, 1880, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier, a catwalk to be removed and a proposed pier extension with catwalk and boat lift lying adjacent to that parcel described in Grant Deed recorded November 3, 2020, as Document Number 2020-0125832-00 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, being 50 feet in diameter, underlying two existing buoys (one to be removed) lying adjacent to that parcel described in Grant Deed recorded November 3, 2020, as Document Number 2020-0125832-00 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 an existing pier and a proposed pier extension, 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 04/25/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

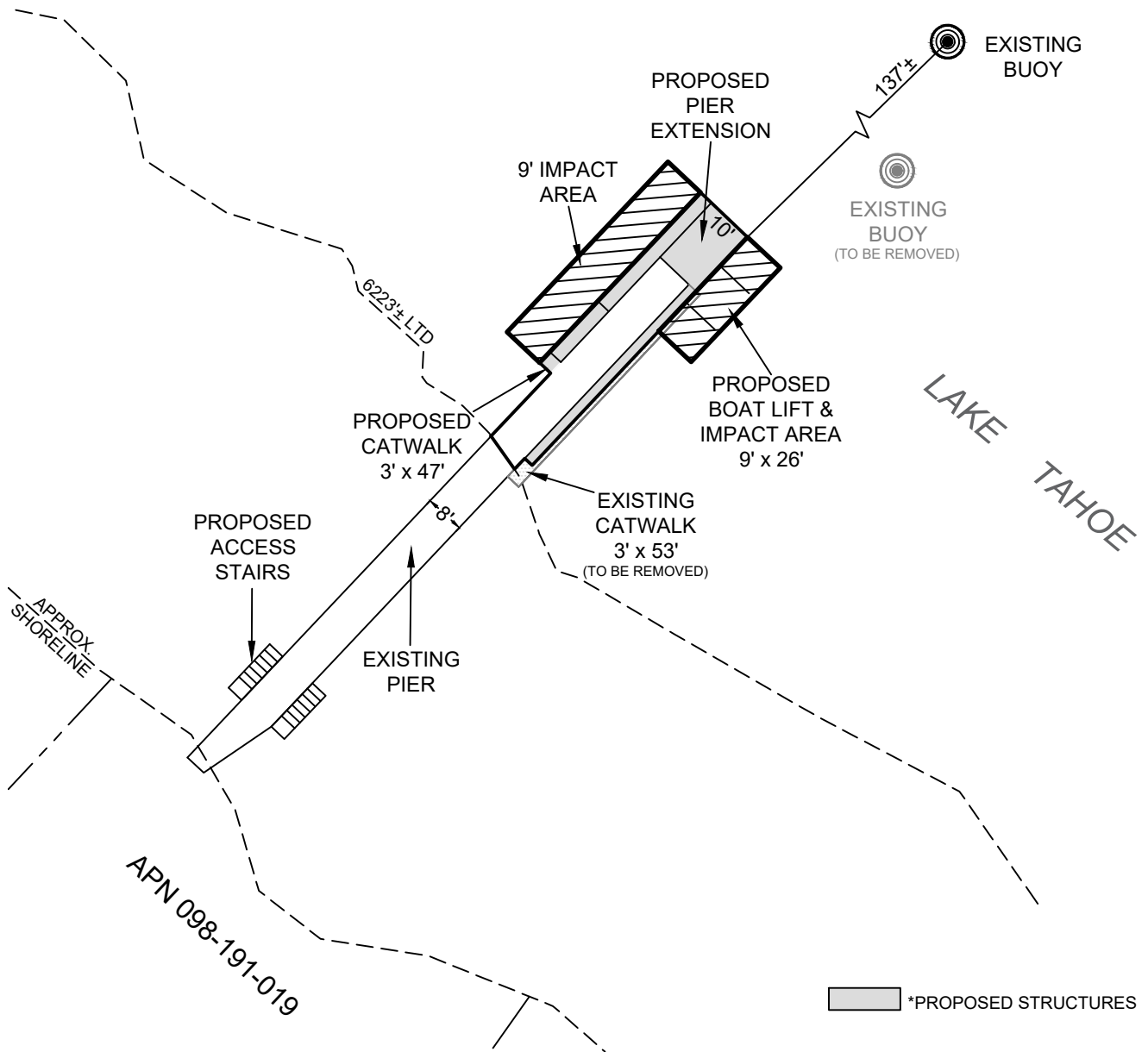


EXHIBIT A

PAGE 2 OF 2

DT 04/25/2022

LAND DESCRIPTION PLAT
 LEASE 5301, 28 MOANA CIRCLE LLC
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



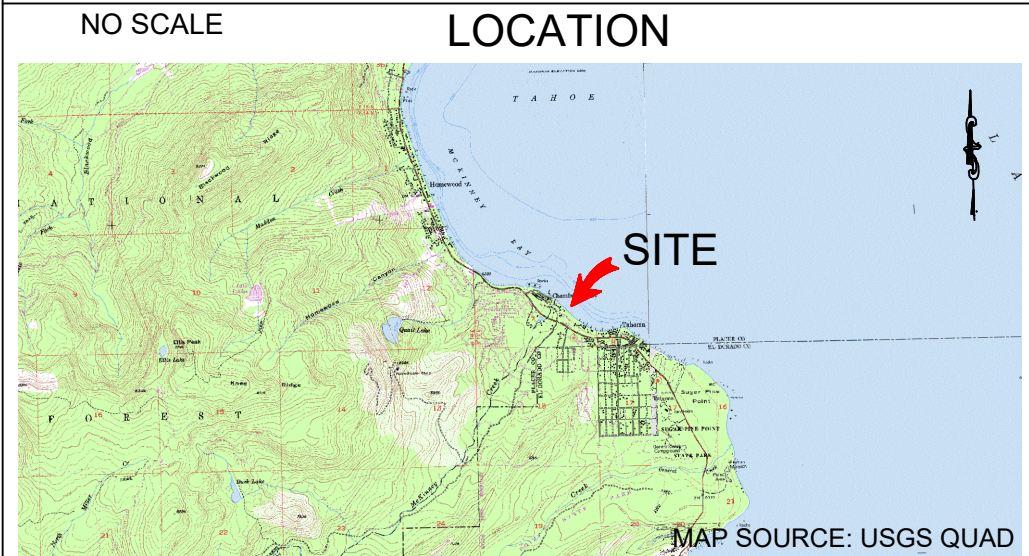
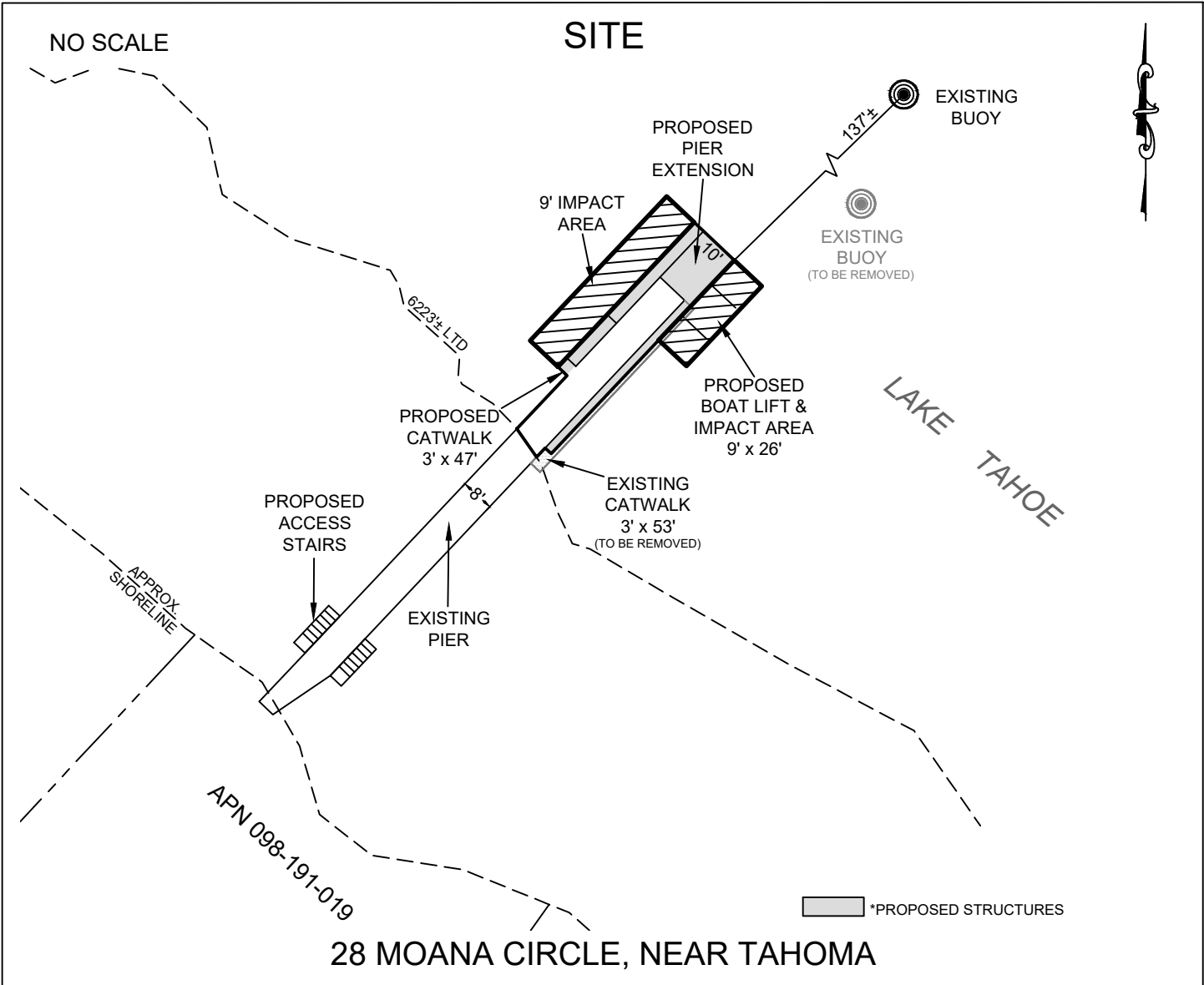


EXHIBIT B

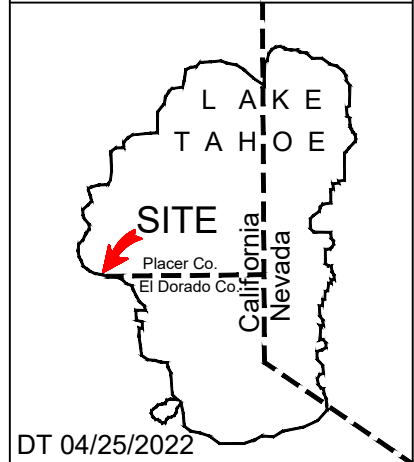
LEASE 5301

28 MOANA CIRCLE LLC

APN 098-191-019

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.