

Staff Report 08

LESSEE/APPLICANT:

Bow Bay, LLC, a California Limited Liability Company

PROPOSED ACTION:

Amendment of Lease

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 281 Paradise Flat Lane, near Rubicon Bay, El Dorado County.

AUTHORIZED USE:

Construction, use, and maintenance of a pier; and continued use and maintenance of two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission.

TERM:

10 years, beginning October 22, 2020.

CONSIDERATION:

\$1,700 per year, with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

- Authorize the installation, use, and maintenance of a boat lift.
- Authorize the removal of one mooring buoy.
- Revise the annual rent from \$1,700, with an annual Consumer Price Index adjustment, to \$1,305, with an annual Consumer Price Index adjustment, effective March 1, 2023.

- 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).
- 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 and Lessee, 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 agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

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 October 22, 2020, the Commission authorized a General Lease – Recreational Use to Bow Bay, LLC, a California Limited Liability Company ([Item 3, October 22, 2020](#)) for the construction, use, and maintenance of a pier; and continued use and maintenance of two mooring buoys previously authorized by the Commission and one mooring buoy not previously authorized. That lease expires on October 21, 2030. The Lessee is now applying for an amendment to this General Lease – Recreational Use to allow installation, use, and maintenance of a boat lift and removal of one mooring buoy. The Lessee has registered the moorings with the Tahoe Regional Planning Agency (TRPA) under registration number 11267. On August 18, 2022, TRPA issued a conditional permit for the proposed removal and construction of a new single-parcel pier with boat lift and related activities.

The Applicant owns the upland adjoining the lease premises. The proposed boat lift is for the mooring of boats and will be built on the on the northern side of the

existing pier head. The boat lift and two remaining mooring buoys will be privately owned and maintained. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands. (Pub. Resources Code, § 6503.5.)

The immediate area of the pier is a gently sloped and sandy beach. The lease provides that the public is allowed to pass and re-pass over the pier via stairs to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum.

The proposed amendment for the installation, use, and maintenance of a boat lift is consistent with the common law Public Trust Doctrine and in the best interests of the State. The proposed lease also requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease requires the payment of annual rent to compensate the people of the State for the occupation of the sovereign land involved. The lease does not alienate the State's fee simple interest or permanently impair public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

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 amendment 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 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 a trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Lessee would not be able to install the boat lift. The Lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" and the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. **New 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 3,

New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

4. **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.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

New 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 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

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 proposed lease amendment 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 lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the amendment of Lease Number 9443, a General Lease – Recreational Use, effective March 1, 2023, to allow the installation, use, and maintenance of a boat lift and removal of one mooring buoy; to revise rent from \$1,700, with an annual Consumer Price Index adjustment, to \$1,305, with an annual Consumer Price Index adjustment; and to replace 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; all other terms and conditions of the lease shall remain in effect without amendment.
2. Authorize the Executive Office or designee the authority to replace Exhibits in the lease, if necessary, to accurately reflect the proposed improvement's final location.

EXHIBIT A

LEASE 9443

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 4, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1874, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PROPOSED PIER

All those lands underlying an existing pier with proposed catwalk and boat lift lying adjacent to that parcel described in Grant Deed recorded March 10, 2014 in Document Number 2014-0009230-00 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.

PARCEL 2, 3 and 4 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys (one buoy to be removed) lying adjacent to that parcel described in Grant Deed recorded March 10, 2014 in Document Number 2014-0009230-00 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, 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 12/27/2022 by the California
State Lands Commission Boundary Unit.



NO SCALE



LAKE TAHOE

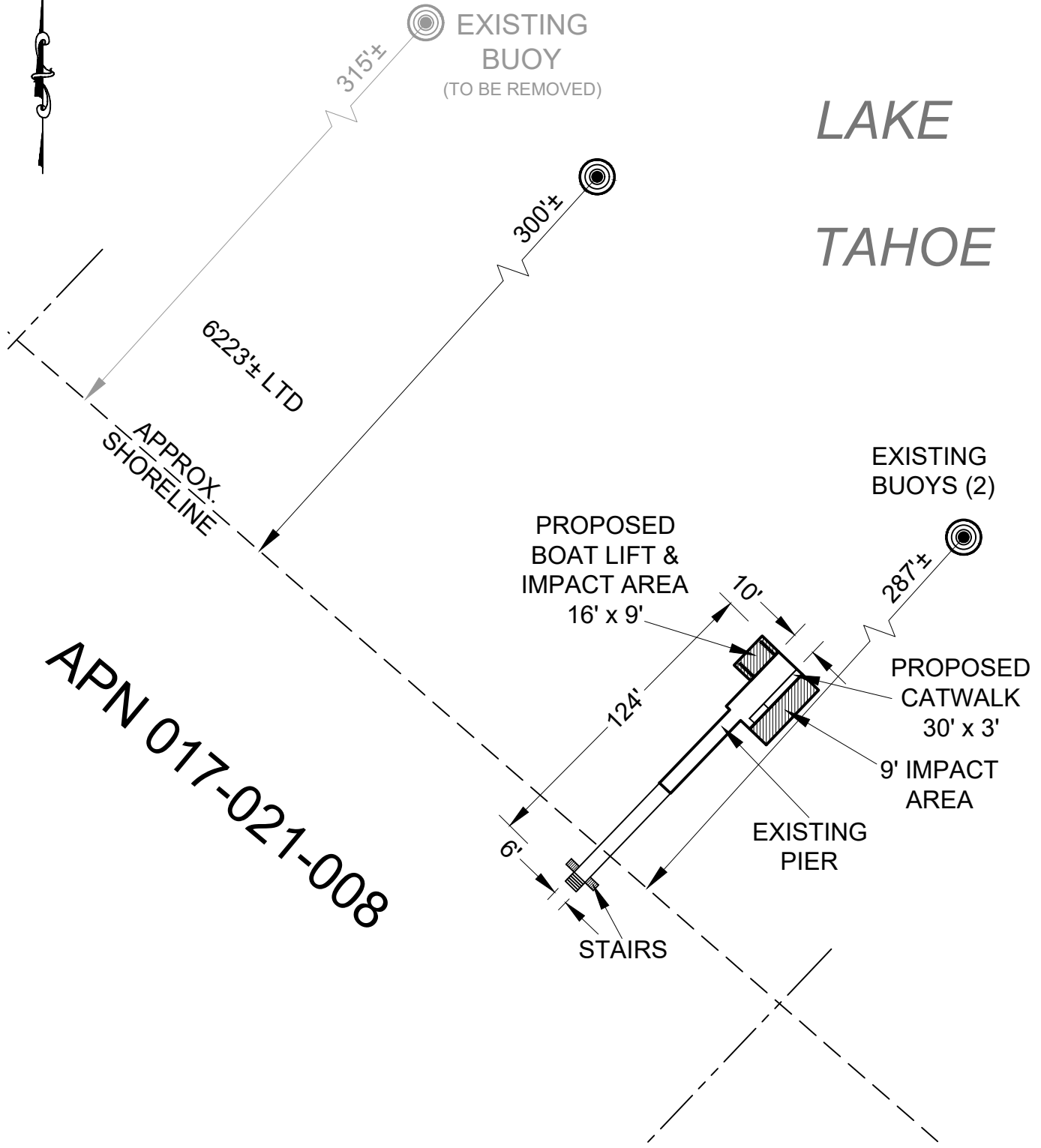


EXHIBIT A

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LAND DESCRIPTION PLAT
 LEASE 9443, BOW BAY, LLC
 EL DORADO COUNTY

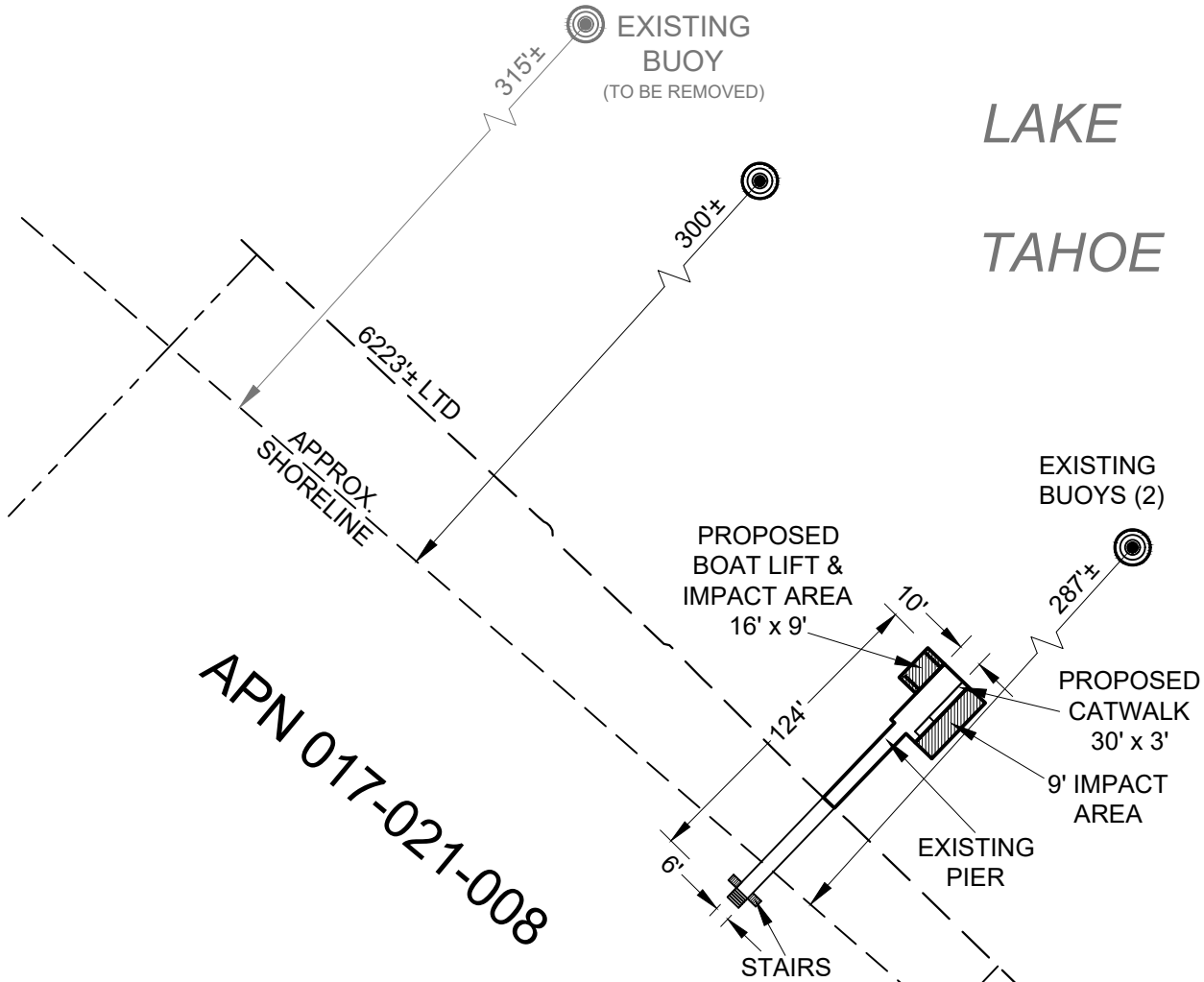
CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE

LAKE
TAHOE



281 PARADISE FLAT LANE, NEAR RUBICON BAY

NO SCALE

LOCATION

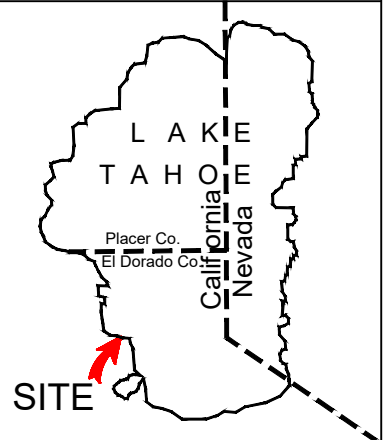
LAKE
TAHOE



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.

Exhibit B

LEASE 9443
BOW BAY, LLC
APN 017-021-008
GENERAL LEASE-
RECREATIONAL USE
EL DORADO COUNTY



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