

Staff Report 21

APPLICANT:

Stephen J. Gordon, Trustee of the Stephen J. Gordon Revocable Trust; and James A. Robertson and Cathy Robertson, as Trustees of the James and Cathy Robertson Trust dated September 5, 1996

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 8770 and 8774 Brockway Vista Avenue, near Kings Beach, Placer County.

AUTHORIZED USE:

Expansion of an existing joint-use pier, relocation of an existing boat lift, installation of an additional boat lift, removal of one existing mooring buoy, and use and maintenance of three existing mooring buoys.

TERM:

10 years, beginning February 28, 2023.

CONSIDERATION:

\$2,779 per year, with an annual Consumer Price Index adjustment, and \$773.52 for the unauthorized occupation of state lands for the period beginning October 19, 2022, through February 27, 2023.

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 the lease.

- 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 Public Trust consistent recreational uses.
- 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.
- The public shall be allowed to pass and re-pass over the pier using the stairs to be installed on both sides of the pier within the Public Trust easement on the upland, 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.
- 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.
- 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.

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 issuance of a General Lease – Recreational Use to Stephen J. Gordon, Trustee of the Stephen J. Gordon Revocable Trust; and Jeffrey P. Lanini and Krista D. Lanini, for continued use and maintenance of an existing joint-use pier, boat lift, and four mooring buoys ([Item 43, October 19, 2012](#)).

On September 20, 2013, Jeffrey P. Lanini and Krista D. Lanini deeded their littoral parcel (APN 090-231-031) to James A. Robertson and Cathy Robertson, as Trustees of the James and Cathy Robertson Trust dated September 5, 1996.

On June 19, 2014, the Commission authorized an assignment of Lease 8356, a General Lease – Recreational Use, to James A. Robertson and Cathy Robertson, as Trustees of the James and Cathy Robertson Trust dated September 5, 1996, for continued use and maintenance of an existing joint-use pier, boat lift, and four mooring buoys ([Item 19, June 19, 2014](#)). The lease expired on October 18, 2022.

Since October 19, 2022, the Lessee has continued to pay the prior lease's monthly rent amount of \$231. To date, a total of \$231 has been paid. Staff recommends crediting this payment towards the total compensation amount due of \$1,004.52. Therefore, less \$231, total compensation due is \$773.52.

The proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation from October 19, 2022 through February 27, 2023, ensuring the State is protected.

The Applicant is now applying for a General Lease – Recreational Use for expansion of an existing joint-use pier, relocation of one boat lift, addition of one boat lift, removal of one existing mooring buoy; and use and maintenance of three existing mooring buoys. TRPA registered the existing boat lift under Registration No. 11456; two mooring buoys under Registration No. 10359; and two mooring buoys under Registration No. 10169. One of the two existing mooring buoys registered under Registration No. 10359 will be removed from the lake in exchange for the additional boat lift.

On November 10, 2022, TRPA issued Conditional Permit No. ERSP2021-1966 to the Applicant for the proposed pier project, specifying that no boulder relocation was approved for the project. The purpose of the project is to expand an existing joint-use pier to increase functionality of the structure during periods of low water at Lake Tahoe. The Applicant proposes to begin the project between July 2023, and July 2024. All construction is to be completed by October 1, 2025.

The existing pier will be expanded 68 feet in length to a total length of 333 feet, and an additional boat lift will be installed at the end of the expanded pier. With the relocation of the existing boat lift and the addition of one boat lift, TRPA has approved a total of two boat lifts for this joint-use pier. The existing adjustable catwalk will be relocated to the end of the expanded pier. The proposed pier will be 333 feet long as measured from the high-water line and fifteen (15) feet wide. The pier deck will be supported by a double row of piles. Twenty (20) existing steel piles will remain, three (3) piles will be removed, and seventeen (17) piles will be

added. The majority of existing decking will remain, and the newly extended portion of the pier will include materials that match the existing materials.

All pier construction activities will be conducted from the lake using a barge or amphibious vehicle departing from an approved launching facility (public marina or boat ramp). The barge will be tethered to the existing pier pilings during the demolition phase and to at least one of the new pilings during the pile driving and construction phases of the project. Removed piling materials will be transported by barge and taken to an approved offloading site, where debris will be transported to TRPA-approved disposal facilities.

Caissons/bubble curtains will be installed during pile removal and around each new piling while it is being set in place to minimize any adverse impacts to aquatic species from the concussive shock waves generated as a result of driving the pier pilings into the lakebed. All building materials will be stored on the barge, and no construction materials shall be stored on the shoreline of the subject property unless proper agency authorizations are secured.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The extended pier, two boat lifts, and three mooring buoys will be used for the docking and mooring of boats and will 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 lands. (Pub. Resources Code, § 6503.5.) The existing mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The proposed pier expansion and boat lifts will be built on pilings with the immediate upland area of the pier being relatively flat and rocky. Public access for pedestrians and lake-related activities is available at varying water levels underneath the pier and public access over the pier will be provided via the addition of stairs on the portion of the pier within the Public Trust easement. Signage directing the public to such access will be provided as required under the proposed lease.

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.

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 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 area 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 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 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 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 will not be able to remove and reconstruct the 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 Areas of the Commission's 2021-2025 Strategic Plan.
3. **Use and Maintenance of Existing Mooring Buoys:** 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 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

4. **Pier Expansion:** 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).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905

5. **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 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

California Department of Fish and Wildlife
Lahontan Regional Water Quality Control Board
Tahoe Regional Planning Agency
U.S. Army Corps of Engineers

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Use and Maintenance of 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).

Pier Expansion: 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).

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 proposed lease 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 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 \$773.52 for the unauthorized occupation of State land for the period of October 19, 2022, through February 27, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 28, 2023, for a term of 10 years, for the expansion of an existing pier, relocation of an existing boat lift, installation of one 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 \$2,779, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. 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 8356

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 19, Township 16 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved January 29, 1875, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing joint-use pier, a catwalk to be removed, a boatlift to be relocated and a proposed pier extension with ramp, catwalk and boat lift lying adjacent to that parcel described in Grant Deed recorded October 11, 2013, as Document Number 2013-0097842-00 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 & 4 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to that parcel described in Grant Deed recorded October 11, 2013, as Document Number 2013-0097842-00 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 12/13/2022 by the California
State Lands Commission Boundary Unit.



NO SCALE

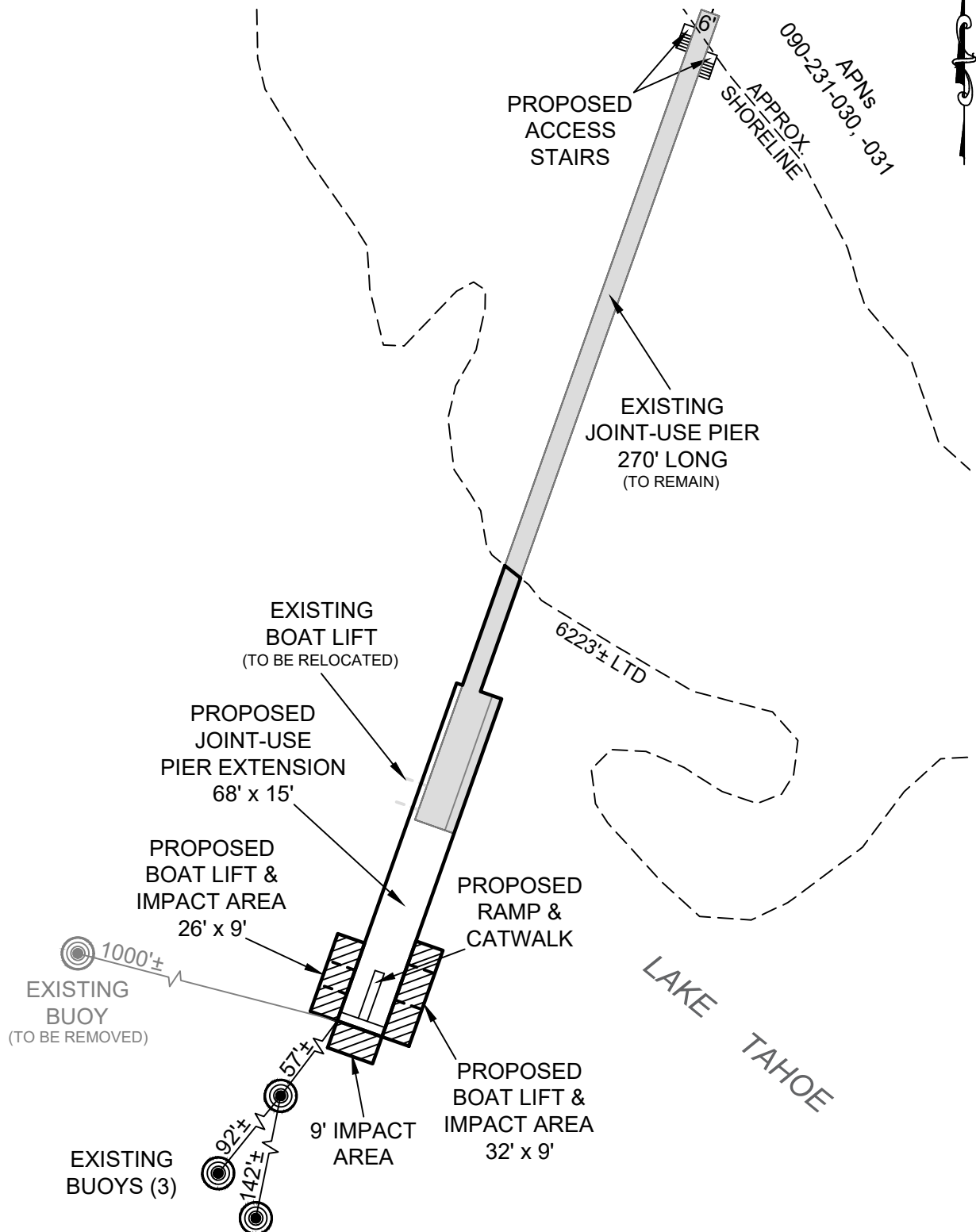


EXHIBIT A

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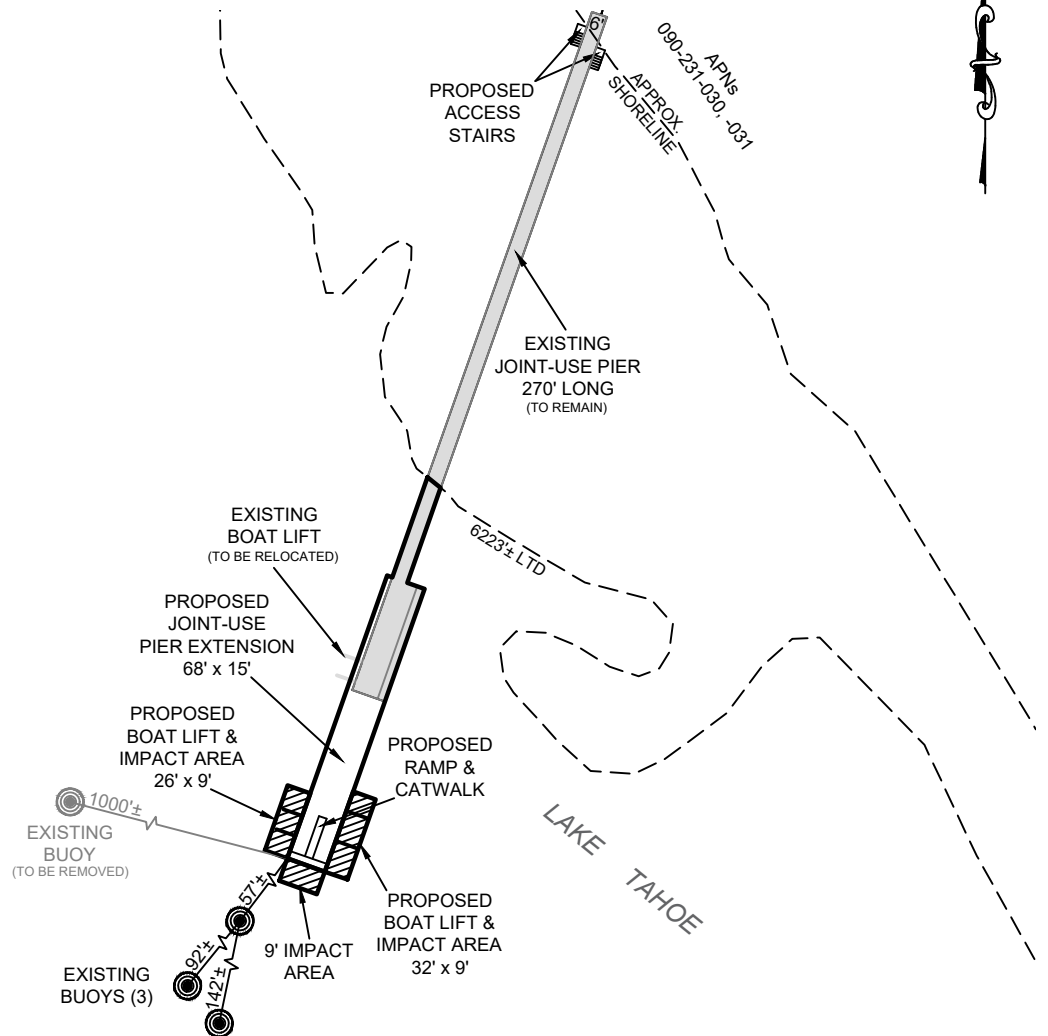
LAND DESCRIPTION PLAT
LEASE 8356, GORDON & ROBERTSON TRUSTS
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

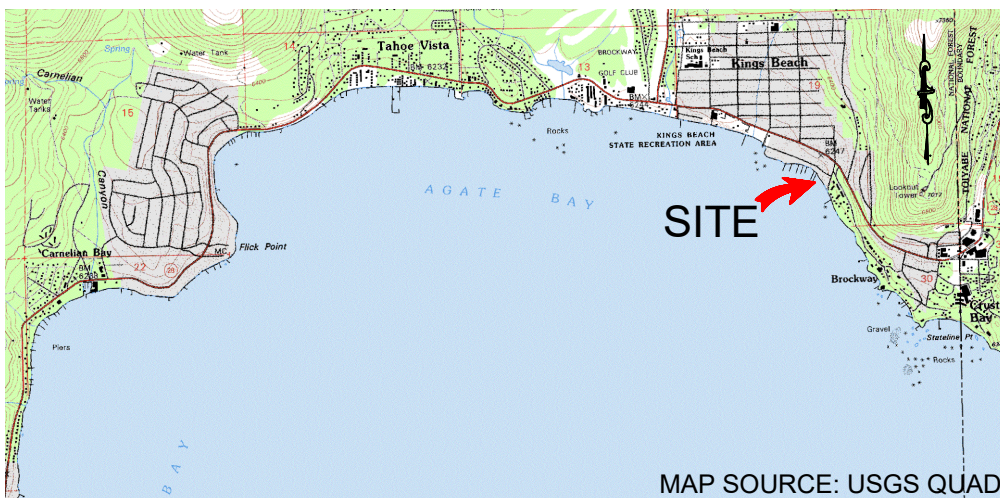
SITE



8770 & 8774 BROCKWAY VISTA AVENUE, NEAR KINGS BEACH

NO SCALE

LOCATION

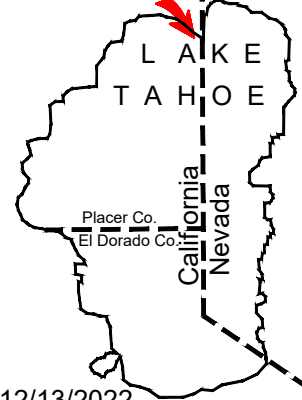


THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

EXHIBIT B

LEASE 8356
GORDON & ROBERTSON
TRUSTS
APN 090-231-030, -031
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY

SITE



DT 12/13/2022