

Staff Report 25

LESSEE/APPLICANT:

Marilyn Jane Kennedy, as Trustee of the MJK Trust, Dated February 17, 2006; and Kyle P. Kennedy

PROPOSED ACTION:

Amendment of Lease

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 5058 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Use and maintenance of an existing pier and one mooring buoy.

TERM:

10 years, beginning March 20, 2018.

CONSIDERATION:

\$1,052 per year, with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

- Authorize the installation, use, and maintenance of one additional mooring buoy, adjacent to 5058 West Lake Boulevard, near Homewood, Placer County.
- Revise the annual rent from \$1,052, with an annual Consumer Price Index adjustment, to \$1,332, 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 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, 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 December 3, 2018, the Commission authorized a General Lease - Recreational Use to Marilyn Jane Kennedy, as Trustee of the MJK Trust, Dated February 17, 2006; and Kyle P. Kennedy, for the use and maintenance of an existing pier and one mooring buoy adjacent to 5058 West Lake Boulevard, near Homewood, Placer County ([Item C14, December 3, 2018](#)). This lease expires March 19, 2028.

The Applicant is now applying for an amendment to this lease for the installation, use, and maintenance of one additional mooring buoy, effective March 1, 2023. The Applicant has demonstrated due diligence by obtaining a permit for the additional buoy from the Tahoe Regional Planning Agency (TRPA), which was acknowledged by TRPA staff on September 14, 2022 (Registration No. 10617).

The proposed mooring buoy will be located directly lakeward of the upland property, will occupy a relatively small area of the lake, and is for the mooring of boats. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The buoy will be privately owned and maintained. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land. (Pub. Resources Code, §6503.5.)

The proposed lease, as amended, 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. The 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. 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.

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.

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 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 trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to install the new mooring buoy. 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 the California Environmental Quality Act (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, 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(3).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment 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 the amendment of Lease Number 3661, a General Lease – Recreational Use, effective February 28, 2023, for the installation, use, and maintenance of one additional mooring buoy; to revise rent from \$1,052, with an annual Consumer Price Index adjustment, to \$1,332, 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; 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 installation.

EXHIBIT A

LEASE 3661

LAND DESCRIPTION

Three parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 1 Township 14 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier with catwalk, lying adjacent to that parcel described in Grant Deed recorded December 28, 2020 as Document Number 2020-0153017-00 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, each being 50 feet in diameter, underlying one existing buoy and one proposed buoy lying adjacent to that parcel described in Grant Deed recorded December 28, 2020 as Document Number 2020-0153017-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 10/27/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

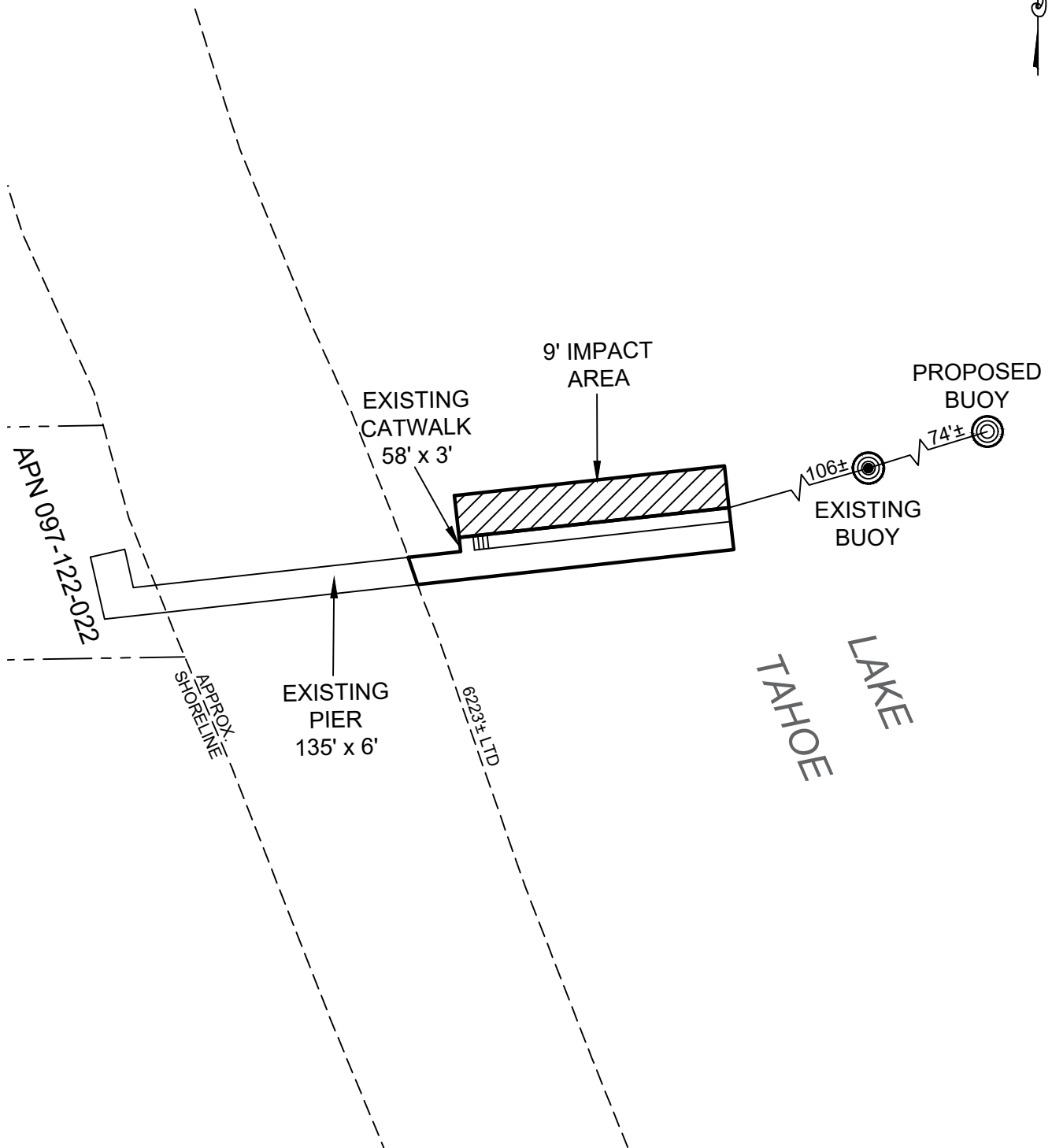


EXHIBIT A

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LAND DESCRIPTION PLAT
 LEASE 3661, KENNEDY
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



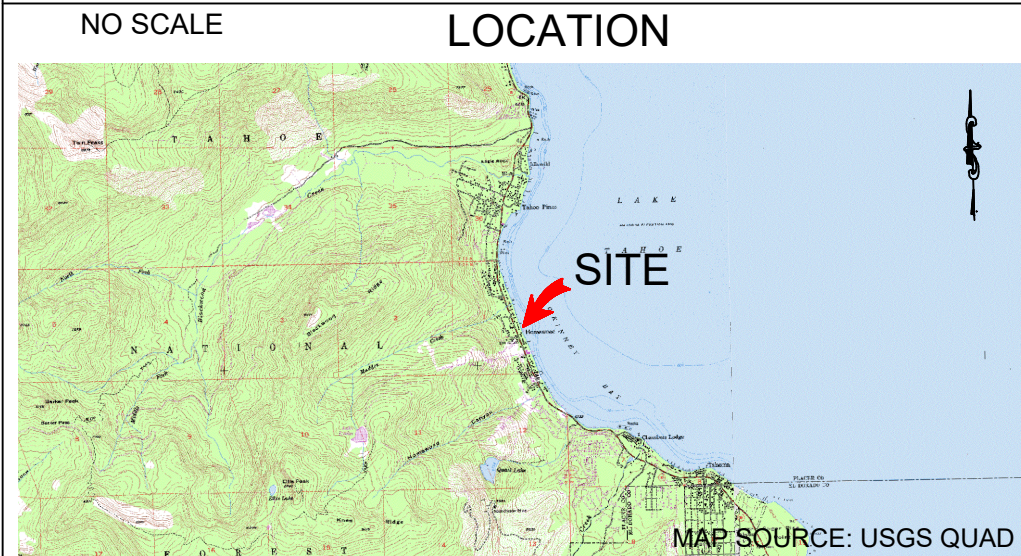
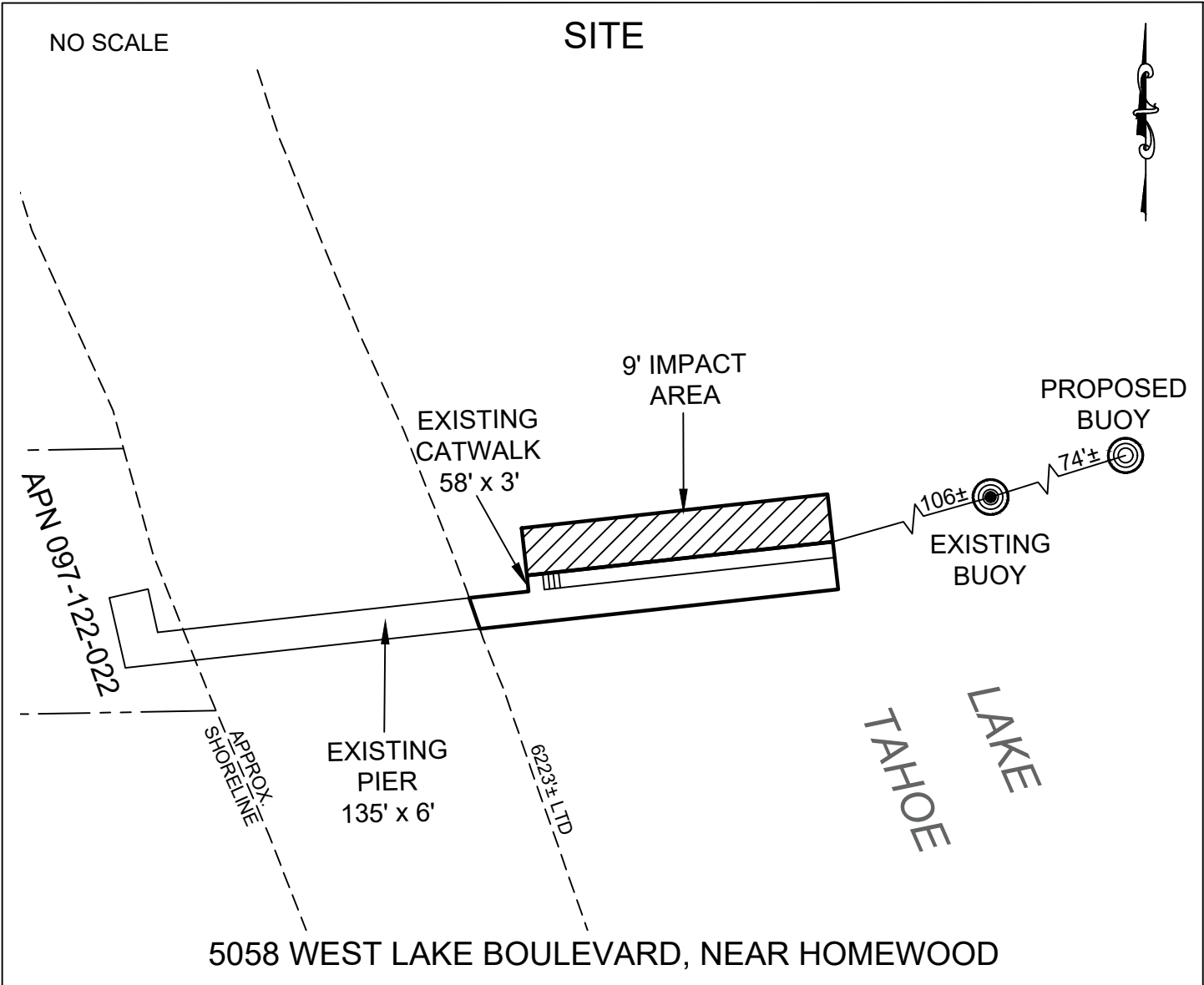
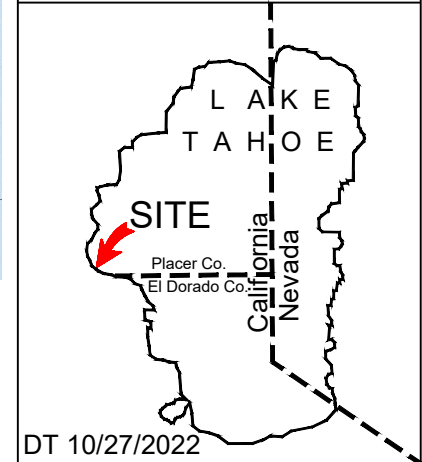


EXHIBIT B

LEASE 3661
KENNEDY
APN 097-122-022
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.