

**STAFF REPORT
C04**

A 1
S 1

06/21/18
PRC 5739.1
M.J. Columbus

**AUTHORIZE AN AGREEMENT AND CONSENT TO ENCUMBRANCING OF A
GENERAL LEASE – COMMERCIAL USE**

LESSEE/APPLICANT:

Big Water View, LLC, a Nevada Limited Liability Company

SECURED-PARTY LENDERS:

The Socotra Fund, LLC, a California Limited Liability Company; Kenneth A. Williams, Jr. and Jayne R. Williams as Trustees of the Kenneth A. Williams, Jr. and Jayne R. Williams Declaration of Trust dated January 24, 1996; Jacob A. Chapman and Gale S. Chapman as Trustees of The Chapman Trust; Dennis A. Neeley and Darlene I. Neeley, co-Trustees of The Dennis and Darlene Neeley Family Trust u/t/a dated April 16, 2006; Joan Ferrari, Trustee of the Joan A. Ferrari Trust dated 10/15/07; Scott Berger as Trustee of the Scott and Nicole Berger Family Trust established 9/15/2011; Wayne E. Stahmer and Linda K. Stahmer, Trustees of the Stahmer Family Trust Dated June 6, 2002; Ron Chapman and Mary Chapman as Trustees of the Chapman Family Trust 2001; Pensco Trust Company Custodian, FBO, R. Michael Wilkie, Roth IRA; Kenneth J. Chapman

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 7220 North Lake Boulevard, Tahoe Vista, Placer County.

AUTHORIZED USE:

Continued use, maintenance, and operation of an existing commercial marina facility known as "Tahoe Vista Inn and Marina" consisting of an existing commercial bulkhead pier, boat ramp, 12 seasonal berthing slips, 18 mooring buoys, 12 seasonal mooring buoys, two marker buoys, bar/lounge facility, and maintenance dredging.

LEASE TERM:

20 years, beginning August 14, 2014.

STAFF REPORT NO. **C04** (CONT'D)

CONSIDERATION:

\$5,980 per year, with an annual Consumer Price Index adjustment and the State reserving the right to adjust the rent at each 10-year anniversary as provided in the lease.

Maintenance Dredging: No royalty will be charged as the activity will improve navigation and provide a safety benefit for the public and is, therefore, in the State's best interests. The dredged material may not be sold.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$2,000,000 per occurrence.

Surety:

Surety bond or other security in the amount of \$25,000.

Other:

The lease contains provisions that require implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Berth Holders and Boaters" including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

The Applicant owns the uplands adjoining the lease premises. On February 20, 2015, the Commission authorized a 20-year General Lease – Commercial Use and endorsement of two subleases to Big Water View, LLC, a Nevada Limited Liability Company for the operation of an existing commercial marina consisting of an existing commercial bulkhead pier, boat ramp, 12 seasonal berthing slips, 18 mooring buoys, 12 seasonal mooring buoys, two marker buoys, bar/lounge facility, and maintenance dredging ([Item C25, February 20, 2015](#)). This lease will expire on August 13, 2034. On February 8, 2018, the Lessee submitted an application for an agreement and consent to encumbrancing of the lease.

The Applicant obtained refinancing in favor of The Socotra Fund, LLC, a California Limited Liability Company; Kenneth A. Williams, Jr. and Jayne

STAFF REPORT NO. **C04** (CONT'D)

R. Williams as Trustees of the Kenneth A. Williams, Jr. and Jayne R. Williams Declaration of Trust dated January 24, 1996; Jacob A. Chapman and Gale S. Chapman as Trustees of The Chapman Trust; Dennis A. Neeley and Darlene I. Neeley, co-Trustees of The Dennis and Darlene Neeley Family Trust u/t/a dated April 16, 2006; Joan Ferrari, Trustee of the Joan A. Ferrari Trust dated 10/15/07; Scott Berger as Trustee of the Scott and Nicole Berger Family Trust established 9/15/2011; Wayne E. Stahmer and Linda K. Stahmer, Trustees of the Stahmer Family Trust Dated June 6, 2002; Ron Chapman and Mary Chapman as Trustees of the Chapman Family Trust 2001; Pensco Trust Company Custodian, FBO, R. Michael Wilkie, Roth IRA; Kenneth J. Chapman the Secured-Party Lenders, in a loan amount of \$3,600,000. Under the terms of the new loan, the Secured-Party Lenders are requiring the Applicant to pledge their interest in Lease No. PRC 5739.1 as additional security. The new loan will refinance the existing debt on the property as well as provide funds to maintain marina operations.

The encumbrancing of the lease would be implemented through the document, "Agreement and Consent to Encumbrancing of Lease," that includes protections for the State land associated with the lease. These protections include the following requirements:

1. No subsequent encumbrancing of the lease shall be allowed without prior written consent of the Commission.
2. Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
3. If the Secured Party-Lender forecloses on the lease, it shall be bound by all terms and conditions of the lease.
4. The duration of the encumbrancing agreement is limited to the term of the lease.

The existing lease will expire on August 13, 2034. In approving the encumbrancing agreement, the Commission, through a delegation to the Executive Officer, retains the right to approve any transfer of the lease from the lending institution to a prospective lessee, should any foreclosure of the loan occur. The proposed Agreement and Consent to Encumbrancing of Lease provides that the Commission's Executive Officer make certain approvals as provided in the Agreement, including the approval of purchasers during a foreclosure sale.

STAFF REPORT NO. **C04** (CONT'D)

The subject commercial marina facilities directly promote Public Trust needs. They accommodate, promote, and support recreational boating, public access, and enjoyment of the State's sovereign land. 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 adjacent upland is privately owned and developed as a commercial marina. The marina is available for use by the general public.

The existing lease includes certain provisions and Best Management Practices protecting the public use of the lease area, including a limited lease term of 20 years. The marina and appurtenant facilities have existed for many years at this location; they do not significantly alter the land, they do not permanently alienate the State's fee simple interest in the underlying land, and they do not 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.

The existing lease requires the lessee 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.

For all the reasons above, staff believes entering into this Agreement and Consent to Encumbrancing is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Consenting to encumbrancing of the lease is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

STAFF REPORT NO. **C04** (CONT'D)

EXHIBITS:

- A. Land Description
- B-1. Site and Location Map
- B-2. Site and Location Map
- B-3. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed encumbrancing of the lease will allow the Lessee to finance marina upgrades, repairs, and renovations that will improve existing facilities serving 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 Executive Officer or her designee to execute the document entitled "Agreement and Consent to Encumbrancing of Lease," allowing Lessee's right, title, and interest in Lease No. PRC 5739.1 to be pledged as partial security for a loan in the principal amount not to exceed \$3,600,000 in favor of the Secured Party Lenders in substantially the same form as that on file in the Sacramento office of the Commission, effective June 21, 2018, and to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.
2. Authorize the Executive Officer or designee to give approval on behalf of the Commission of prospective purchasers during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

EXHIBIT A

PRC 5739.1

LAND DESCRIPTION

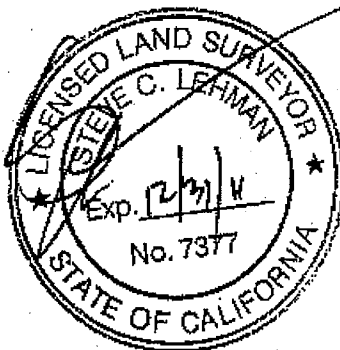
A parcel of submerged land in the bed of Lake Tahoe, Placer County, California, situated adjacent to Lot 4 of fractional Section 13, T. 16 N., R. 17 E., M.D.M. as shown on the Official Government plat approved November 10, 1865, more particularly described as follows:

BEGINNING at a point on the line of the historic Low Water Mark, as depicted on sheet 20 of those maps entitled "Survey of the Low Water Mark on the Shore of Lake Tahoe", filed in Book 2 of Surveys at Page 71, Placer County Records, said point lying distant N 49°57'30" W 41.00 feet from Station 459 as shown on said map; thence along said Low Water Mark S 49°57'30" E 41.00 feet to Station 459 as shown on said map; thence S 73°39'23" E 138.60 feet to Station 460 as shown on said map; thence S 53°28'15" E 34.00 feet; thence leaving said Low Water Mark S 26°27'53" W 469.02 feet; thence N 70°26'05" W 349.37 feet; thence N 41°43'51" E 520.57 feet to the POINT OF BEGINNING.

The BASIS OF BEARINGS of this description is the California Coordinate System of 1927, Zone 2. All distances are grid distances.

END OF DESCRIPTION

Prepared 11/08/2011 by the California State Lands Commission Boundary Unit.



NO SCALE

SITE

SEE EXHIBIT B2 & B3 FOR THIS AREA

EXISTING BUOYS
(18 TOTAL)

LEASE AREA

SEASONAL BUOYS
(12 TOTAL)

COAST GUARD MARKER BUOYS
(2 TOTAL)

APN 117-110-070

APN 117-110-069

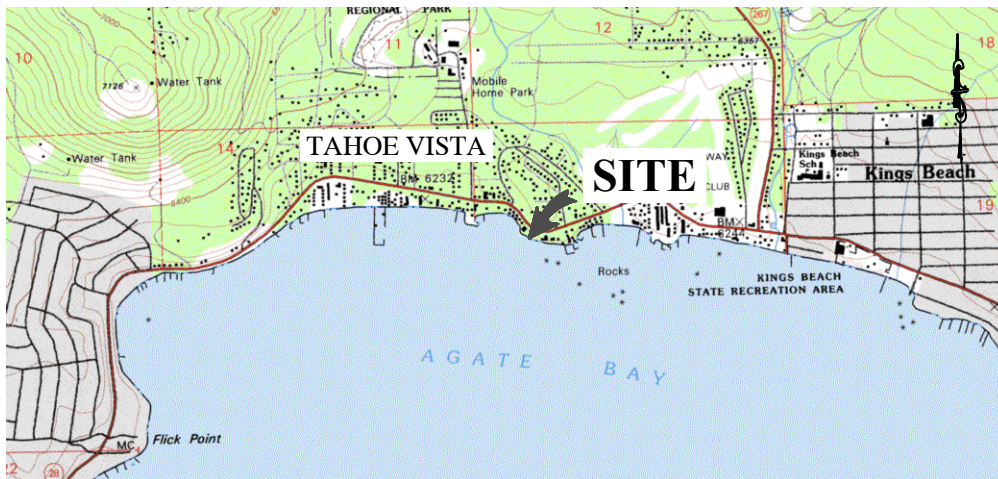
APPROXIMATE CSLC
1950 6223' LTD LINE

LAKE TAHOE

7220 NORTH LAKE BLVD., TAHOE VISTA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 B1

PRC 5739.1
BIG WATER VIEW, LLC
APN 117-110-069 &
117-110-070
GENERAL LEASE -
COMMERCIAL USE
PLACER COUNTY

SITE

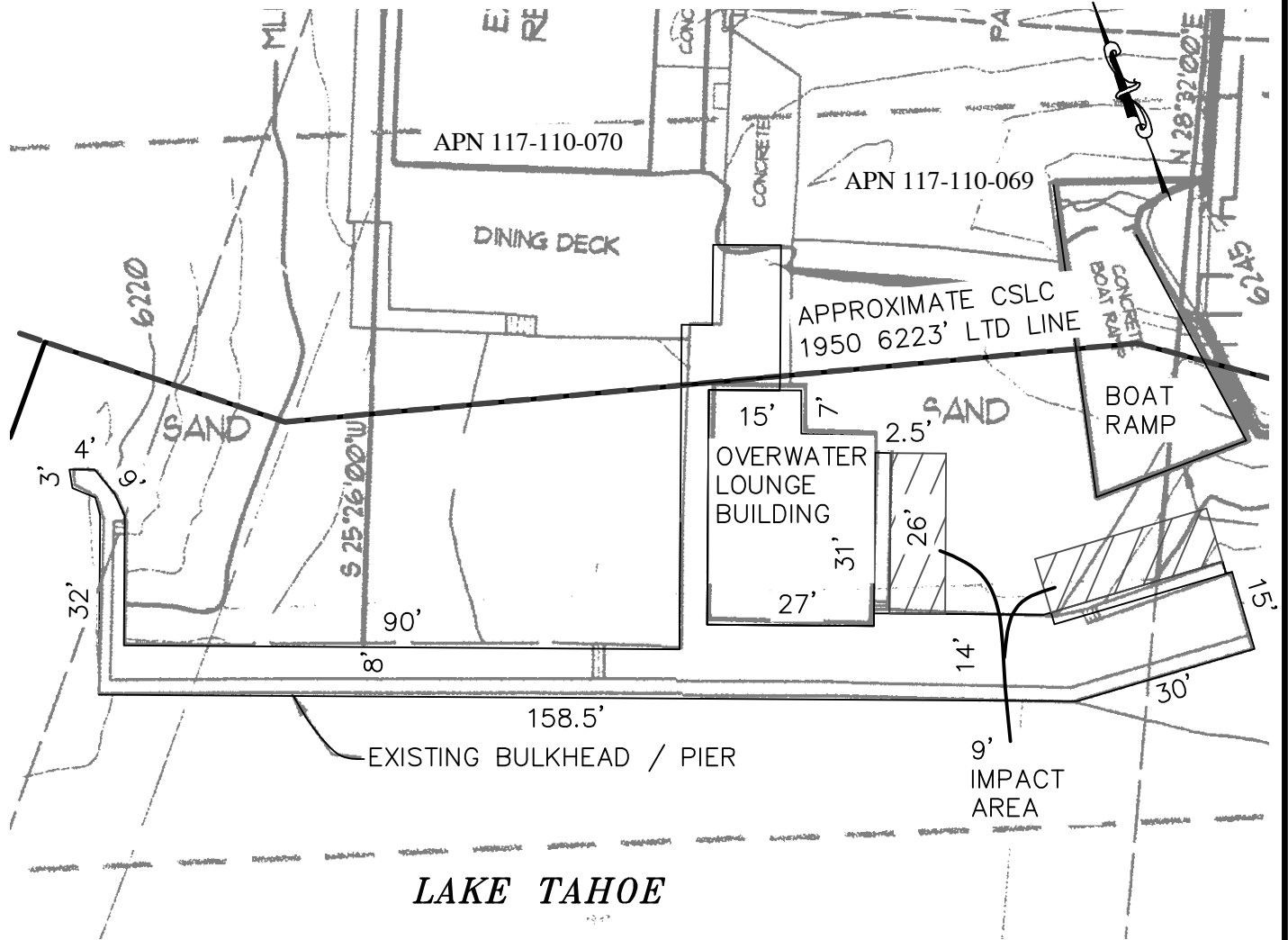
LAKE
TAHOE

Placer Co.
El Dorado Co.

California
Nevada

NO SCALE

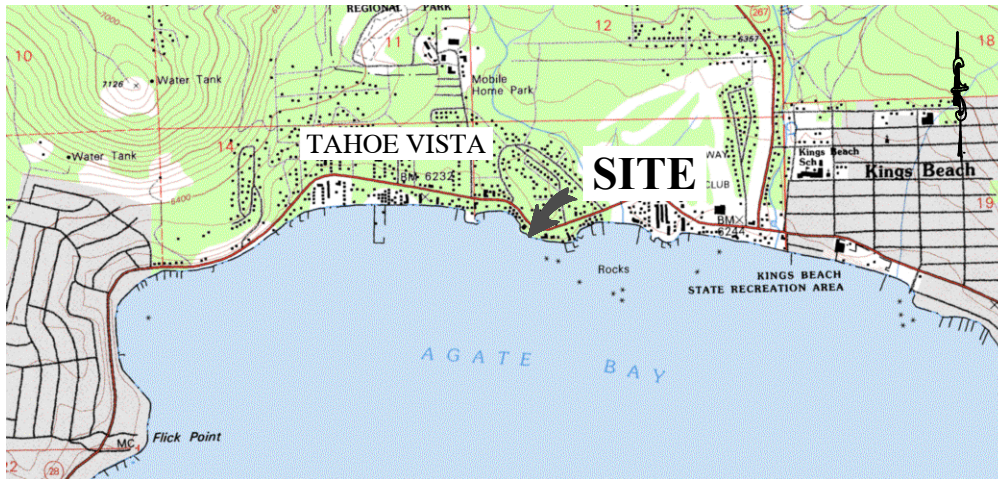
SITE



7220 NORTH LAKE BLVD., TAHOE VISTA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 B2

PRC 5739.1
 BIG WATER VIEW, LLC
 APN 117-110-069 &
 117-110-070
 GENERAL LEASE -
 COMMERCIAL USE
 PLACER COUNTY

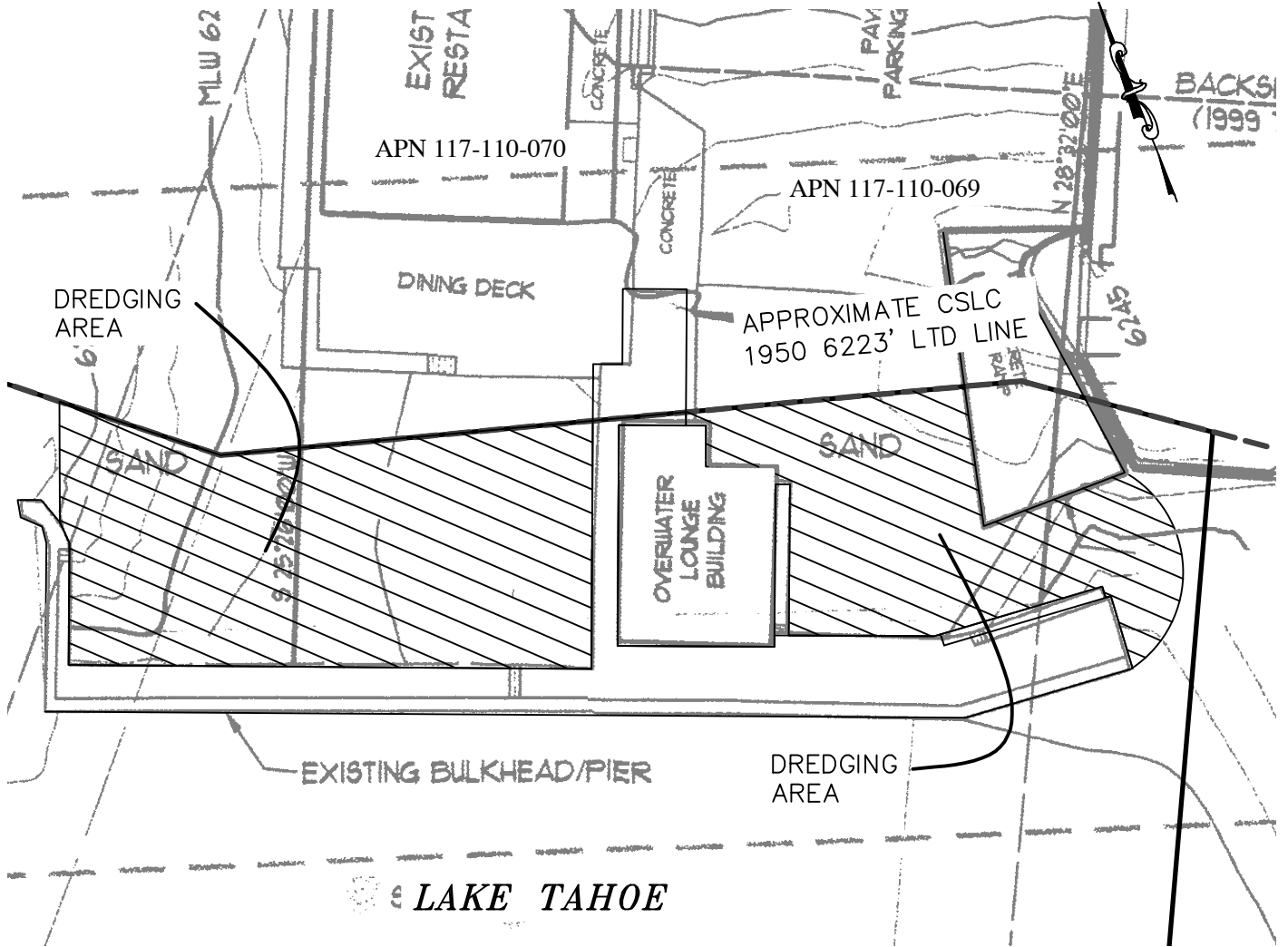
SITE

LAKE TAHOE

Placer Co.
 El Dorado Co.
 California
 Nevada

NO SCALE

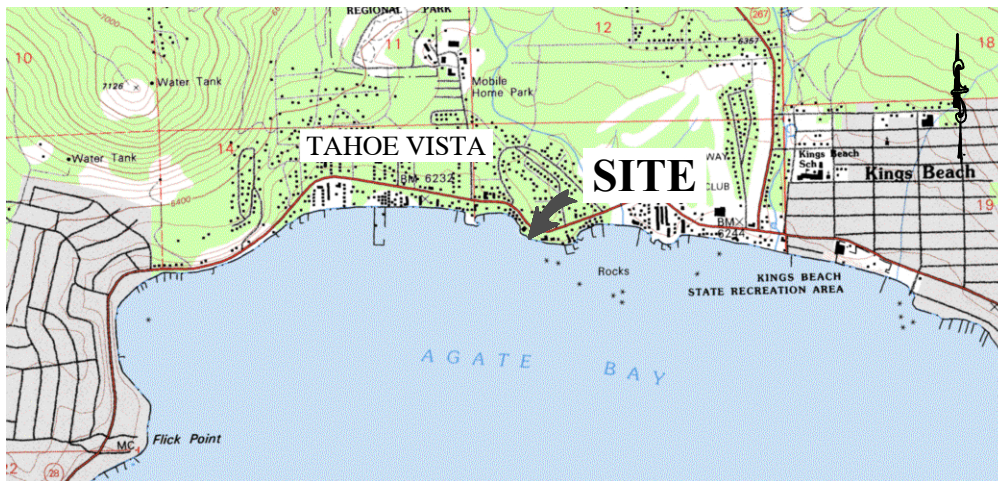
SITE



7220 NORTH LAKE BLVD., TAHOE VISTA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 B3

PRC 5739.1
 BIG WATER VIEW, LLC
 APN 117-110-069 &
 117-110-070
 GENERAL LEASE -
 COMMERCIAL USE
 PLACER COUNTY

SITE

LAKE TAHOE

Placer Co.
El Dorado Co.

California
Nevada