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May 5, 2022

VIA EMAIL

Tahoe Regional Planning Agency
Governing Board
c/o John Marshall, General Counsel
128 Market Street
Stateline, NV 89449

Re: Statement of Appeal - Appeal File Number ADMIN2022-0014; TRPA Project File Number ERSP2020-2095

Dear Honorable Members of the Board and Mr. Marshall:

This Statement of Appeal is respectfully submitted on behalf of Robert Adelman (the "Applicant"), owner of the residence located at 1590 N. Lake Blvd., Placer County, California (the "Property"). [1] Applicant is the recipient of a conditional permit (the "Permit") authorizing the demolition and reconstruction of an existing single parcel pier (the "Pier") located on the Property (TRPA File No. ERSP2020-2095) (the "Project"). Applicant is appealing Condition 3.B.6. of the Permit (the "Condition"), which provides that "[a]ll existing structure [sic] lakeward of the High Water Line of 6,299.1 shall be removed as a result of this project."

In addition to the existing Pier that is being demolished and reconstructed as part of the Project, the Property contains an approximately 144 sf sun deck located on a large boulder in the foreshore of Lake Tahoe (the "Deck"), which was built in 1960 and is depicted below:

[1] Applicant hereby incorporates by reference the complete administrative record of proceedings in this matter. Applicant also respectfully requests and reserves the right to submit additional information/justification in support of this appeal.

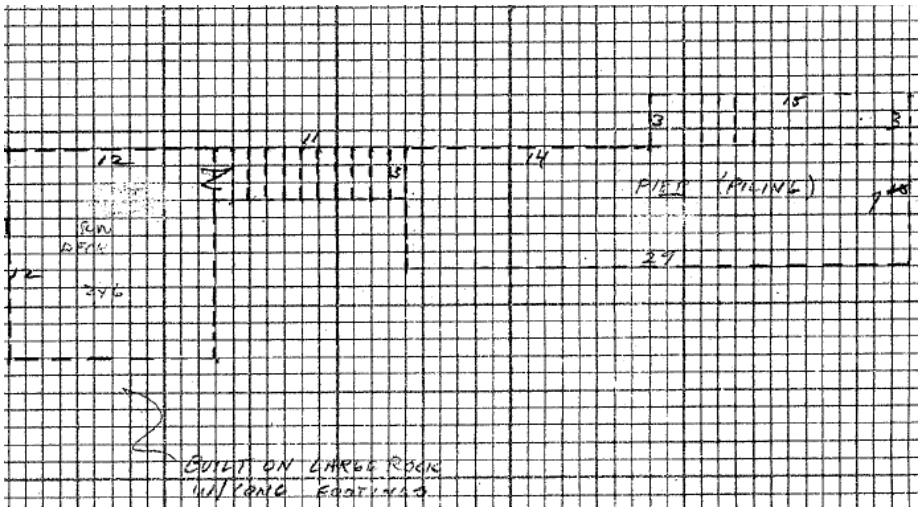
While a portion of the Deck contains a staircase to access the Pier, the Deck was designed and constructed to function and be used separate and apart from the Pier.

Condition 3.B.6. of the Permit would require removal of the Deck, which is a legal nonconforming use and structure under TRPA's Code of Ordinances ("the "Code"). The Condition requiring removal of a separate legal nonconforming structure is not authorized under the Code, nor is there any nexus between the impacts associated with the Pier modification/addition and the Deck removal. Moreover, if taken to its logical conclusion as future precedent, the Condition could have far-reaching ramifications, resulting in the abatement of other legal nonconforming structures unrelated to piers.

Accordingly, Appellants respectfully request that the Board grant the limited appeal of Condition 3.B.6 and allow the Deck to remain as part of the Project.

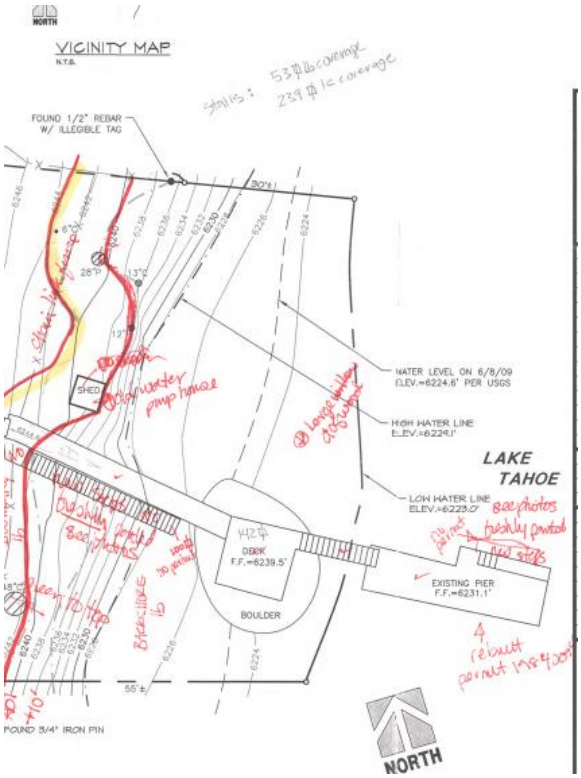
I. Background Facts

In approximately 1960, Applicant's predecessor-in-interest constructed several shorezone structures on the Property, including the Pier and separate Deck. (*See* Placer County Assessor Building Records, attached hereto as Exhibit A.) The Deck was built on a large boulder in the foreshore, which extends upwards from the Lake to an elevation of 6,239.5'. At the time of its construction, the Placer County Assessor separately evaluated and assessed the Deck structure from the Pier. (*See* Exhibit A.)

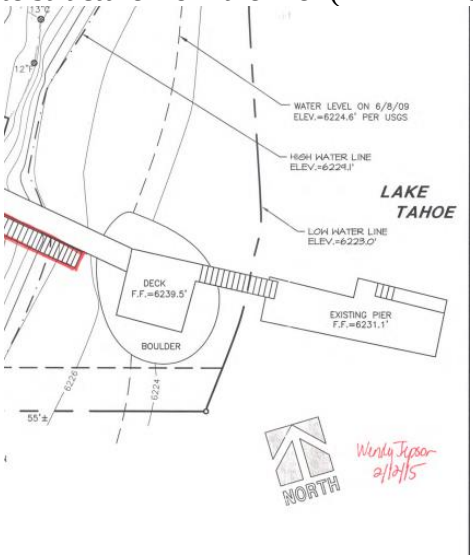


In 2009, the Applicant's predecessor applied to TRPA for a site assessment on the Property (TRPA File No. LCAP2009-0228). The site plan utilized by TRPA as part of the approved site

assessment also designates the Deck and Pier as separate structures.

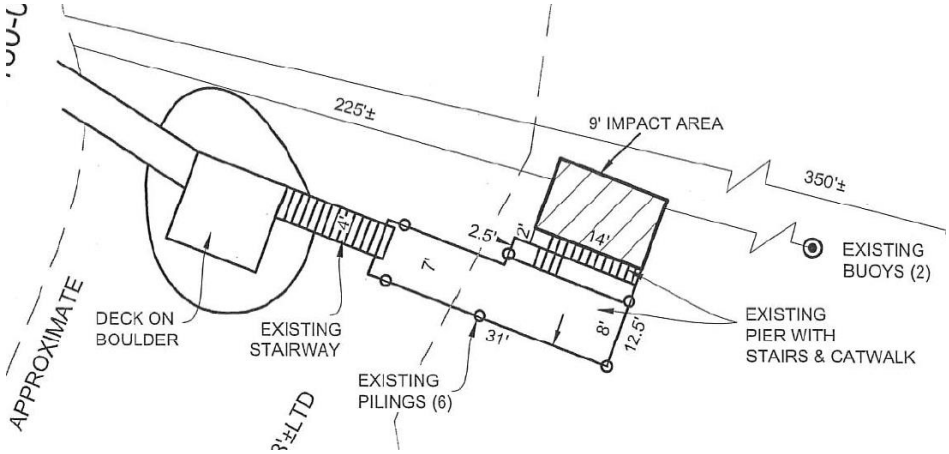


In 2015, TRPA reviewed and approved a subsequent site assessment with a site plan again depicting the Deck as a separate structure from the Pier (TRPA File No. LCAP2014-0581).

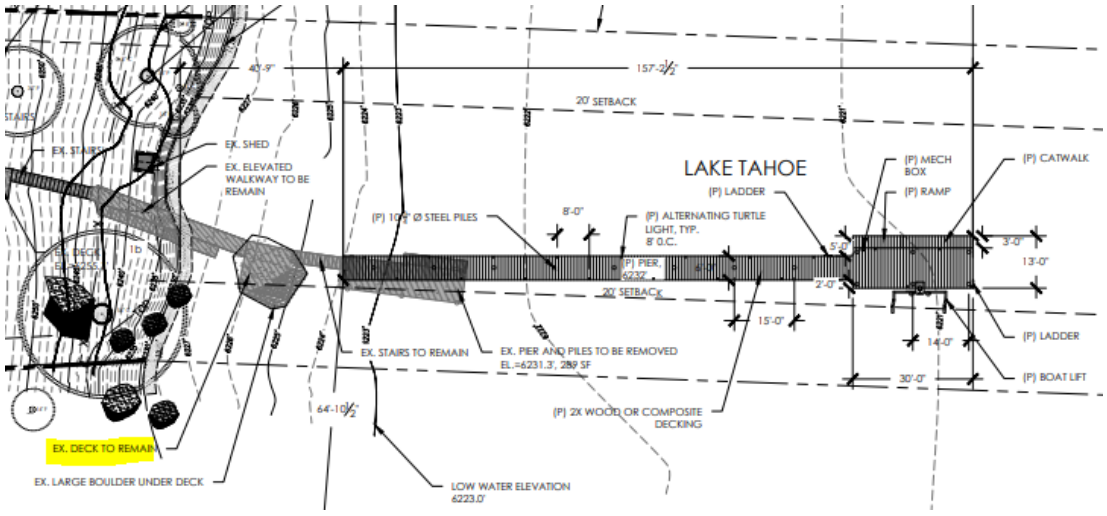


The Applicant purchased the Property in 2018, in part because of the unique amenity the Deck provided. The marketing for the Property proclaimed: "Huge lakeside deck accessed from one of the bedrooms and the living room. An additional sun deck above the pier." (Source: TSMLS #20181002.)

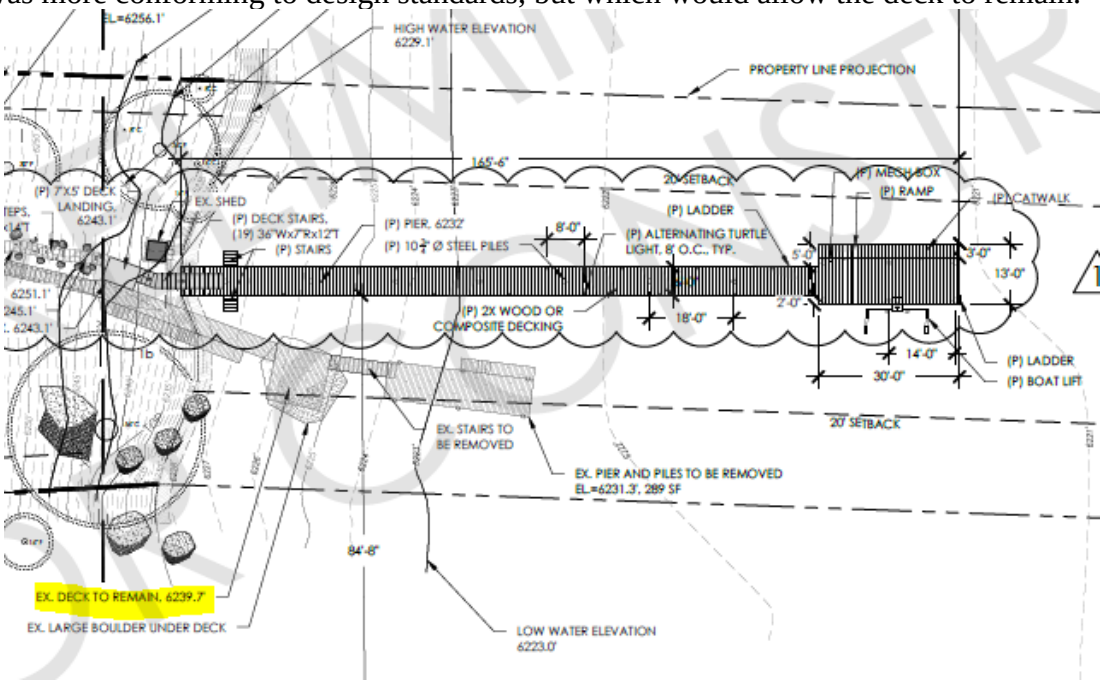
In 2019, the Applicant applied to the California State Lands Commission ("CSLC") for a lease for the Pier and two existing buoys. The Lease Exhibit prepared by CSLC similarly depicts the deck as a freestanding structure separate and apart from the Pier. (*See* CSLC Lease Exhibit attached as Exhibit B.)



In 2020, the Applicant submitted an application for the Pier modification Project. The application identified the Deck as a separate structure that was proposed to remain as part of the Project.



Upon consultation with staff, the Applicant revised his plans to realign the pier to a configuration that was more conforming to design standards, but which would allow the deck to remain.



On March 15, 2022, TRPA staff issued the Conditional Permit approving the Project. Condition No. 3.B.6. requires that "[a]ll existing structure [sic] lakeward of the High Water Line of 6,299.1 shall be removed as a result of this project." Applicant filed the instant appeal to challenge this Condition on the bases set forth below.

II. Bases for Appeal

A. The Deck Is Allowed to Remain As a Legal Nonconforming Use/Structure.

The Deck was legally existing prior to February 10, 1972, and is therefore considered a legal nonconforming use and structure. (Code §§ 21.5.1, 90.2.) Section 82.7.1.A. of the Code governs the existence and maintenance of nonconforming structures in the nearshore and foreshore, providing "[s]tructures that were legally established and are used for a conforming use but are nonconforming with regard to applicable location and design standards *may continue as legal nonconforming structures* and may be maintained and repaired." (Emphasis added.) Similarly, Section 81.6.1 of the Code, regulating nonconforming uses in the shorezone, directs that "[u]ses legally commenced prior to the effective date of ordinance adopting this Chapter, are recognized as existing uses and may be continued, except as otherwise set forth in subparagraphs

81.6.1.A and 81.6.1.B."[2]

The Deck was legally established and recognized by Placer County in 1960 and has been maintained in its current location since that time. (*See* Exhibit A.) Under both Sections 81.6.1 and 82.7.1.A. of the Code, the Deck is considered a legal nonconforming use and structure, and as explained below, there is no authority to require its removal as part of the Project.

B. The Code Does Not Authorize the Condition Requiring Removal of the Deck.

The Project was approved as a modification of and addition to an existing pier. (TRPA Conditional Permit and Approved Findings for ERSP2020-2095.) Pursuant to Code section 84.4.3.F.1., a conforming pier may be modified if the modification results in a net environmental benefit and is consistent with the applicable development standards.[3] Code section 84.4.3.F.3 provides that a conforming pier may be expanded to the extent allowed by applicable development standards. Neither of these provisions, nor any other provision in the Code, requires the removal of a separate legal nonconforming structure as part of a Pier modification/addition.

While the Applicant agrees that the Code authorizes removal of the existing Pier as part of the Project, the Deck is a separate freestanding structure, which operates and functions independently from the Pier. The utility of the Deck is not limited solely to access the Pier - - it serves a separate function and use.

The distinction between the Deck and the Pier is aptly demonstrated by the Code's "unserviceability" regulations. Legally existing structures in the shorezone are allowed to be maintained as long as they have not been unserviceable for the last three years. (Code § 82.2.) The Code defines an "unserviceable" structure as one that "can not [sic] longer serve the function for which it was designed." (Code § 90.2.)

To be serviceable, a Pier must be able to serve as a landing or temporary mooring for watercraft. The Deck, on the other hand, is not required to, and in fact cannot, serve this function.[4] Accordingly, if the Pier was damaged in such a manner that it could not serve as a mooring for watercraft for a period exceeding three years, and the Deck was still able to function as a deck,

[2] Neither Code Section 81.6.1.A, which concerns discontinuance of a nonconforming use for a period of a year, nor Section 81.6.1.B, which governs a use subject to a specific program requiring discontinuance, are applicable to the existing Deck.
[3] The Project requires BMP and scenic compliance, as well as mitigation of excess land coverage, all of which are conditions of Project approval.
[4] The Deck itself does not meet TRPA's definition of a Pier as it cannot serve as a landing or temporary mooring for watercraft.

only the Pier would be required to be removed. It follows that if the Pier is modified, the Deck should also be allowed to remain.

Because there is no authority under the Code to require removal of the Deck, Condition 3.B.6. should be modified accordingly.

C. There is No Nexus Between the Condition Imposed and the Impacts of the Project.

For any condition of approval of a development permit, there must be a "nexus" or connection between the impacts of the project being approved and the condition imposed, and the condition must also bear a "rough proportionality" to the project's impacts. If these "nexus" and "rough proportionality" requirements are not met, the condition imposed is considered an "unconstitutional condition." (*Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595, 605-06, 133 S.Ct. 2586 (2013*); Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837, 107 S.Ct. 3141 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 385, 114 S.Ct. 2309 (1994).)

Here, there is simply no nexus between the impacts associated with reconstruction, modification, and expansion of an existing pier to bring the structure into conformance with the current development standards, and the Condition requiring removal of a separate legal nonconforming Deck. The Project does not increase or exacerbate the nonconformity, nor result in any expansion of the Deck. Nor would allowing the Deck to remain result in environmental threshold carrying capacities to be exceeded. Any impacts associated with the Pier modification are adequately mitigated via other Permit conditions. The Condition requiring removal of the Deck does not mitigate any impacts associated with the Project, has no nexus to the Project impacts, and thus, is an unconstitutional condition.

D. The Condition Would Set a Precedent Requiring Removal of Other Nonconforming Structures Unassociated With Piers.

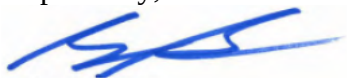
The Condition requiring removal of a separate legal nonconforming structure in order to expand or modify a pier would result in far-reaching precedent with unintended consequences. Because the Condition is not authorized under the Code, there is no limit as to how far the abatement of legal nonconforming structures could extend. For example, would a legal nonconforming pumphouse in the backshore be required to be removed? Or a legal nonconforming seawall crossed by stairs accessing a pier? Precisely because the Governing Board has not adopted a Code provision requiring abatement of legal nonconforming structures as part of a pier modification, the potential scope of similar conditions on other pier modification projects is unlimited.

The Code does contemplate that specific programs requiring discontinuance or modification of nonconforming shorezone uses may be adopted by TRPA. However, the Code expressly provides that "[s]uch specific programs shall be further defined and adopted by ordinance." (Code § 81.6.1.B.) As explained above, the Governing Board has not adopted an ordinance requiring abatement of legal nonconforming structures/uses in conjunction with a pier modification application. Until such a program is adopted, removal of legal nonconforming structures cannot be required as a condition of pier modification approval on an ad hoc basis.

Based on the foregoing, Appellants respectfully request that the Board grant the Applicant's appeal and modify Condition 3.B.6 to allow the Deck to remain as part of the Project.

I declare under penalty of perjury that this Statement of Appeal and all information submitted herewith is true and accurate to the best of my knowledge.

Respectfully,



Greg Gatto

Exhibits

EXHIBIT LIST

Statement of Appeal - Appeal File Number ADMIN2022-0014

Exhibit A Placer County Assessor Building Records

Exhibit B California State Lands Commission Lease No. PRC 8644.1 Exhibits

EXHIBIT A

RESIDENTIAL BUILDING RECORD

ADDRESS

PARCEL 02-340-07 94-160-08

SHEET 2 OF 5 SHEETS

DESCRIPTION OF BUILDING

CLASS & SHAPE: D-X-D

ARCHITECTURE: CONV. — 1 Stories

TYPE

Use	Design
X Single	X
Double	
Duplex	
Apartment	
Flat-Court	
Motel	
Units	

CONSTRUCTION

- Light
- Sub-Standard
- X Standard
- Above-Standard
- Special

FOUNDATION

- X Concrete 1/2
- Reinforced
- Brick
- Wood
- X Piers 1/2

Light | Heavy

STRUCTURAL

- X Frame 1/ 2" x 4" 16"
- Sheathing
- Concrete Block
- B.& B. | T.& G.
- Brick
- Adobe
- Floor Joist:
- X 1ST 2" x 6" 16"
- 2ND " x " "
- X Sub-Floor
- Concrete Floor

EXTERIOR

- Stucco on
- X Siding 1/ 1/2"
- LAP
- Shingle
- Shake
- B.& B. | T.& G.
- Brick
- Stone

WINDOWS

- X D.H. | Casement
- Metal Sash
- Screens

ROOF

- Flat 1/4 Pitch
- X Gable 1/4
- Hip 1/4
- Shed 1/4
- X Cut Up
- Dormers
- X Roft 2" x 6 24"
- Gutters
- X SOL. SH.
- X Shingle
- Shake
- Tile
- Tile Trim
- Compo.; X
- Compo. Shingle

LIGHTING

Wiring: K.T. | Conduit; B.X. X | Cable

Fixtures: Few | Cheap; Avg. X | Med.; Many | Special

PLUMBING

Poor | X Std. | Spec.

- Sink
- Laundry
- X Water Htr.-Auto.
- Water-Softner

AIR CONDITION

- ✓ Heating | Cooling
- Forced | Clean'g
- Gravity | Humid.
- Wall Unit
- Floor Unit
- Zone Unit (90)
- X Central " Gas
- 250
- Oil Burner
- M-B.T.U.
- X Fireplace 700 400

ROOM AND FINISH DETAIL

ROOMS	FLOORS B	1	2	FLOOR FINISH Material	Grade	TRIM	INTERIOR FINISH Walls	Ceilings
All								
Ent. Hall								
Living		1		T&G	G	OP	SH-R	SH-R
Dining		1						
Bed		2		"	"	"	"	"
Bed		1		"	"	"	"	1
SERV.		1		(2) CORK			PNL	T&G
Kitchen		1		TI ~~AST~~ TI	"	"	"	"

Drain Bd. Material: WOOD Lgth: 10 Ft. Splash: 4"

BATH DETAIL

Fl.	No.	FINISH Floors	FINISH Walls	FIXTURES Wc.	La.	Tub	Type	Grade	SHOWER St.	Q.T.	G.D.	Finish
1	2	T&G	S-R	2	2	1		1	X			

SPECIAL FEATURES

	Book Cases		Built-in Beds	Venetian Blinds
	Shutters			

CONSTRUCTION RECORD

Permit No.	Permit For	Amount	Date	EFFEC. YEAR	APPR. YEAR
	REAPPRAISAL			1948	1962
55786	R Furnace	1700	8-89	1948	1967
85296	repairs to bathroom	2,200.	8-95	1954	1969
94384	Remod				1972
95594	repair roof truss	4,100.	4-97	1954	1971

NORMAL % GOOD

Age	Remain'g Life	Table	%
14	41	R55	82
19	37	R55	75
15	45	R60	85
18	43	R60	80
22	39	R60	74

RATING (E, G, A, F, P)

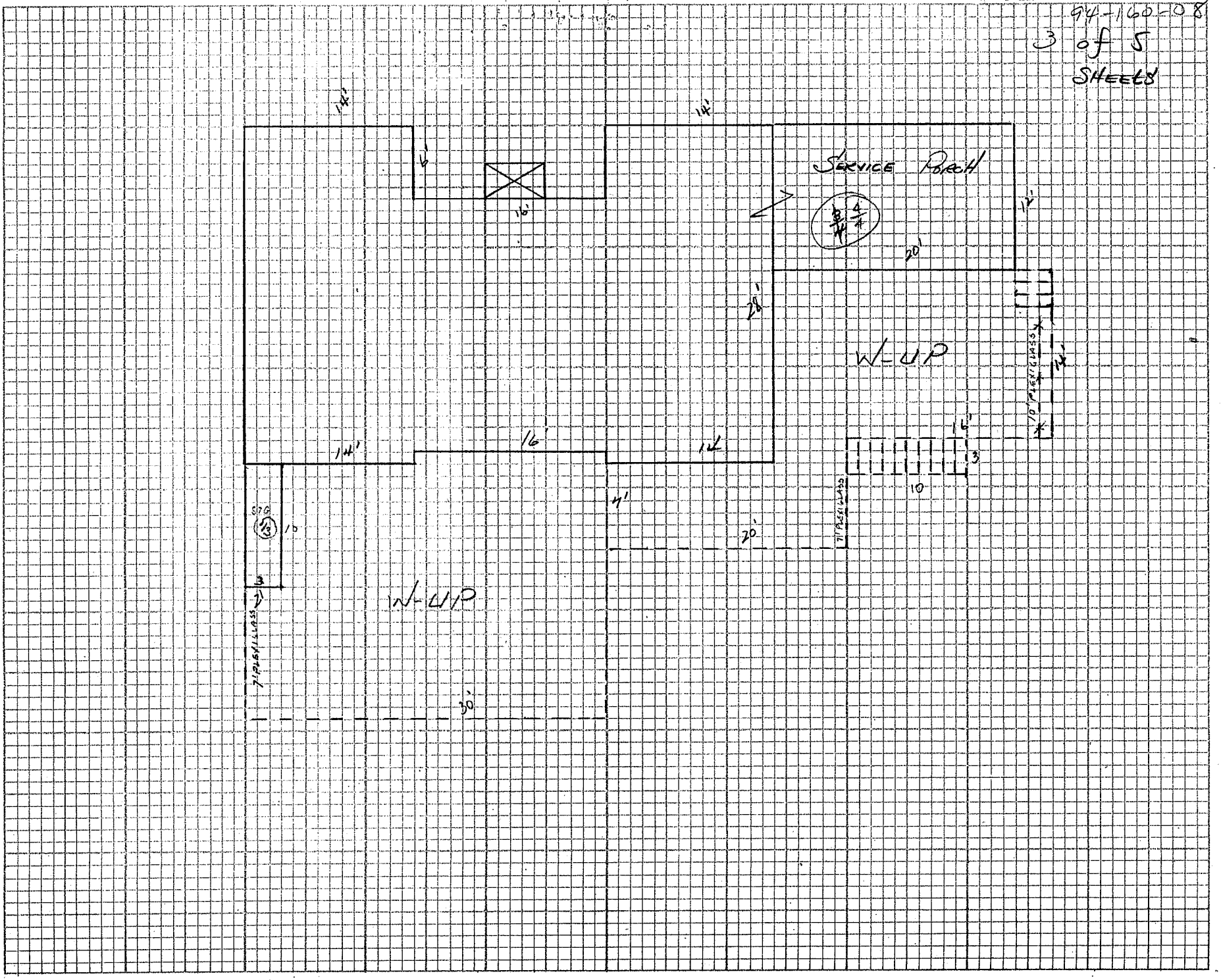
Cond.	Arch. Attr.	Func. Plan	Con-form	Storage Space Cupb'd	Closet	Work-m'nshp
A						A
A	A	A	A	—	—	A
A	A					

TOTAL = 1364.

Appraiser & Date	
Unit	**Area**
1st Story	1124
SERVICE PORCH (1/2)	240
W-UP	~~1240~~
A.C.	1364 ~~#24~~
F.P.	
S T G SHED	30
PLUS PLUMB	
TOTAL	C
NORMAL % GOOD	
R.C.L.N.D	

LEGAL COMMITTEE ITEM NO. 3 &
AGENDA ITEM NO. VII. A.

~~42-340-07~~
94-160-08
3 of 5
SHEETS



MISCELLANEOUS BUILDING RECORD

ADDRESS

PARCEL 82-340-07

SHEET 1 OF 5 SHEETS

DESCRIPTION OF BUILDINGS

Bldg. No.	Structure	Size	Found.	Wall & Exterior	Roof Type	Roof Cover	Floor & Interior Detail	Second Story or Loft	Year Built	Est. Tot. Life Yrs.
1	BD WALK	~~7~~ X 4 x 41	POLES	STRINGERS 4X8 V24			2 X 8 BDS		1960	20
2	SUN DECK + STEPS								"	"
3	PIER	7 x 29							"	"
4	STAIRWAY	@ 3' x 40		GRAVEL FILLED (TO SUN DECK)					"	"
5	CATWALK	3 x 15							"	"

Appraiser - Date	
Bldg. No.	Area
1	164
2	177
3	~~248~~ 203
4	E/20
5	15 LF
Total	C

Appraiser - Date	
Bldg. No.	Area
Total	

LEGAL COMMITTEE ITEM NO. 3 &
AGENDA ITEM NO. VII. A.

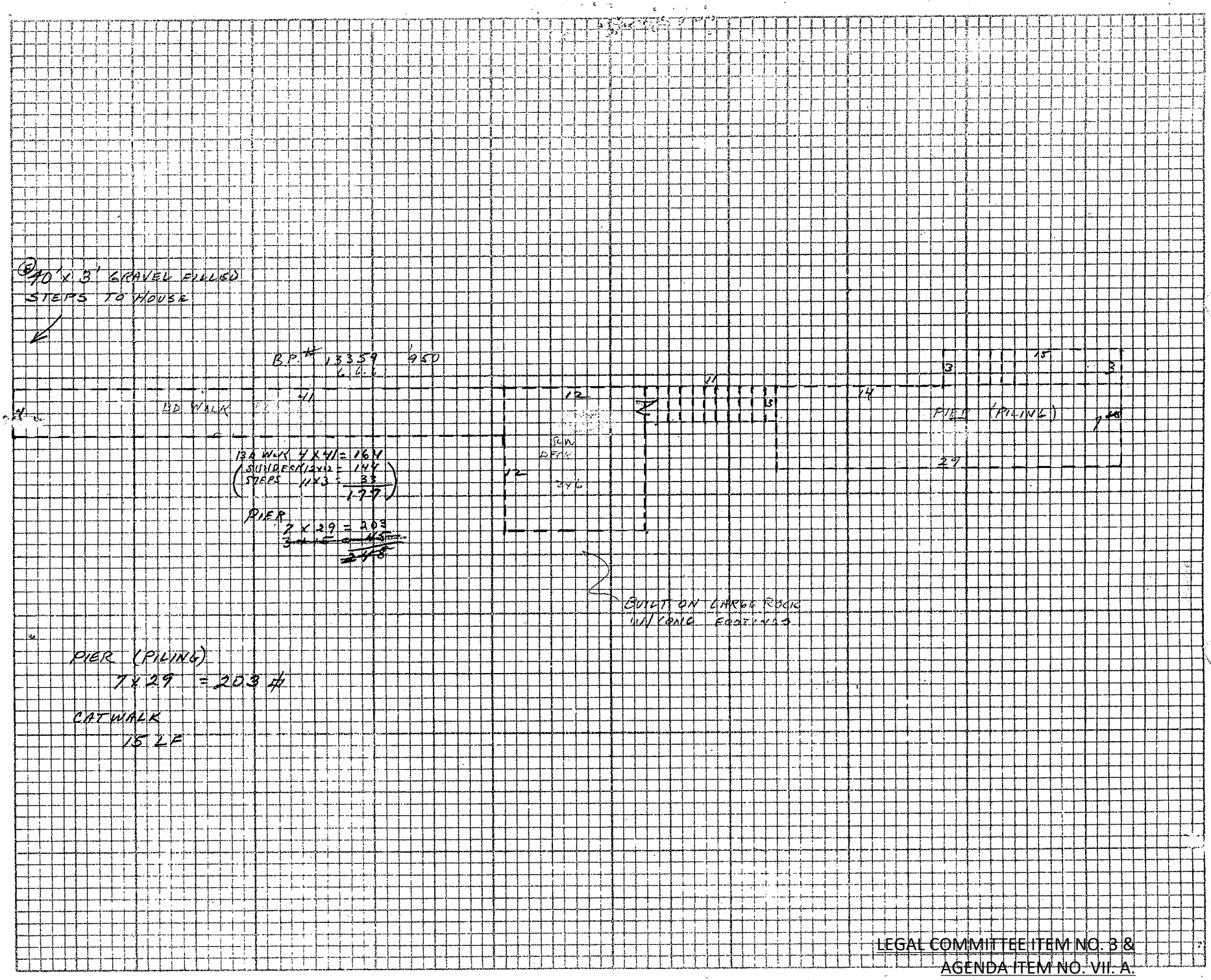

40' x 3' GRAVEL FILLED STEPS TO HOUSE
BP # 13359 6.6.
950
4'
LD WALK
41
12
11
14
3
15
3
PIER (PILING)
29
13.6 WALK 4 X 41 = 164
SUNDECK 12x12 = 144
STEPS 11X3 = 33
177
PIER
2 X 29 = 203
3 X 15 = 45
248
BUILT ON LARGE ROCK W/ CONC FOOTINGS
PIER (PILING)
7 X 29 = 203 #
CATWALK
15 LF

EXHIBIT B

NO SCALE

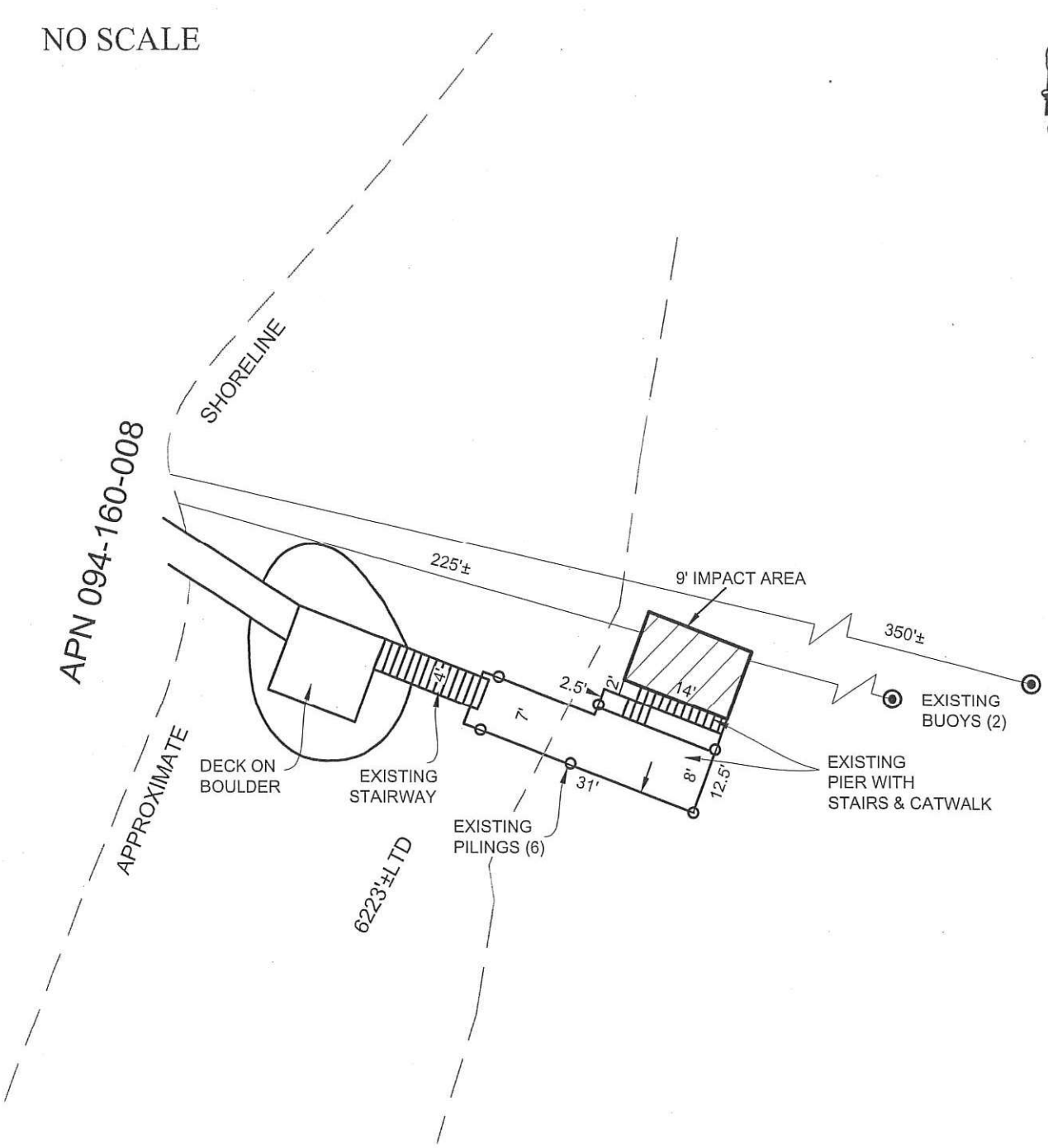


EXHIBIT A

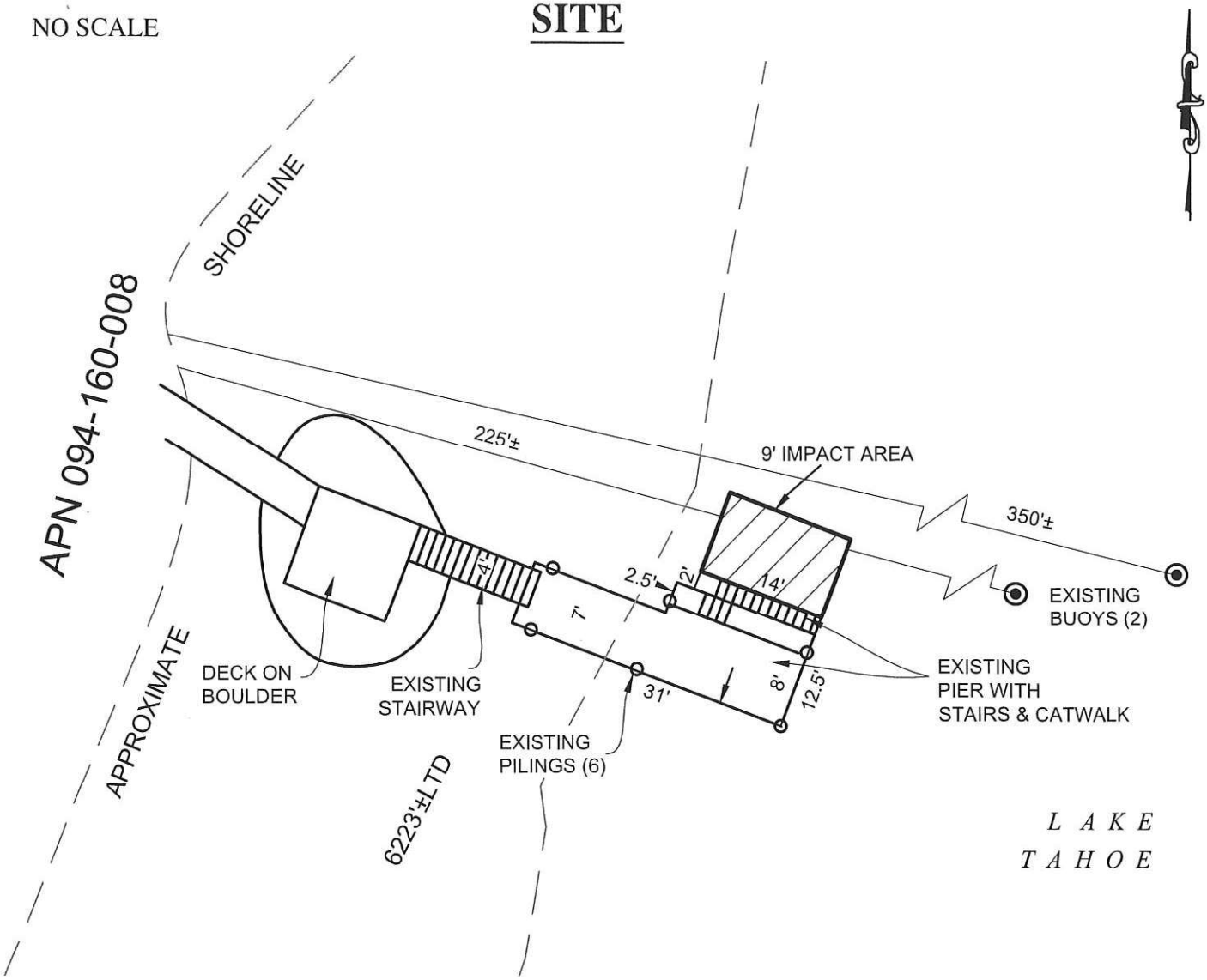
Page 2 of 2

MJJ 11/11/18

LAND DESCRIPTION PLAT PRC 8644.1, ADELMAN PLACER COUNTY	CALIFORNIA STATE LANDS COMMISSION

NO SCALE

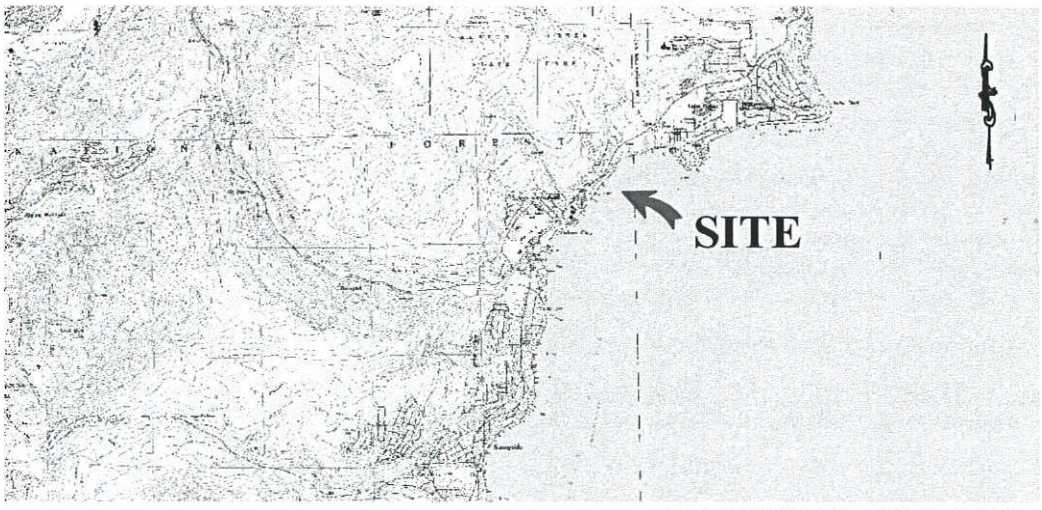
SITE



1590 NORTH LAKE BLVD., NEAR TAHOE CITY

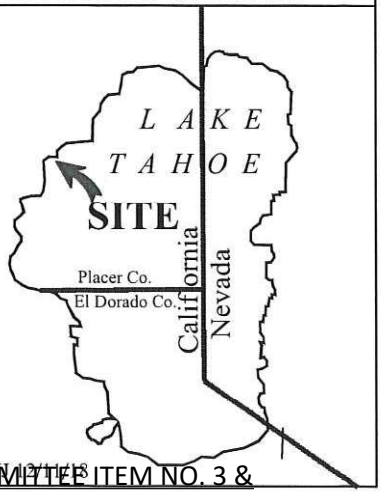
NO SCALE

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 B

PRC 8644.1
ADELMAN
APN 094-160-008
GENERAL LEASE - RECREATIONAL USE
PLACER COUNTY