

**CALENDAR ITEM
C06**

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08/09/16
PRC 4266.1
N. Lee

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Michael E. Raney, Trustee of the Michael E. Raney Living Trust dated December 3, 2010

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 7701 State Highway 89, Meeks Bay, El Dorado County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and one mooring buoy previously authorized by the Commission and use and maintenance of an existing marine rail, three freshwater intake pipelines, and one mooring buoy not previously authorized by the Commission.

LEASE TERM:

10 years, beginning August 9, 2016.

CONSIDERATION:

\$1,823 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. If Lessee does not have valid Tahoe Regional Planning Agency (TRPA) buoy permits, Lessee is required to obtain such authorization for the mooring buoys within two years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. If Lessee is unable to obtain such authorization within the time limit, they must remove the buoys.

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Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

With the exception of the freshwater intake pipelines, the subject facilities 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 land (Pub. Resources Code, § 6503.5).

The subject facilities have existed for many years at this location. The pier is built on pilings, meaning the public may navigate or walk next to and, at lower water levels, under the pier. The marine rail extends from the upland property into the lake. The rail lies on the lakebed allowing the public to navigate or walk over it. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The freshwater intake pipelines are not generally associated with traditional Public Trust uses. However, these pipelines have been in place for many years, and occupy a small area of the lakebed. The owners use the pipelines to provide water to the upland property. The pipelines do not interfere with Public Trust activities at this location and at this time.

On June 19, 1998, the Commission authorized a Recreational Pier Lease to Diana G. Jonsson, Trustee of the Diana G. Jonsson Qualified Personal Residence Trust dated December 30, 1992, and Kenneth A. Jonsson, Trustee of the Kenneth A. Jonsson Qualified Personal Residence Trust dated December 30, 1992. That lease expired on April 11, 2008. In 2010, ownership of the upland transferred to Michael E. Raney, Trustee of the Michael E. Raney Living Trust dated December 3, 2010. The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of an existing pier and one mooring buoy previously authorized by the Commission and an existing marine rail, three

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freshwater intake pipelines, and three existing mooring buoys not previously authorized by the Commission. The Applicant's mooring buoys have been in Lake Tahoe for many years, and in their current location since approximately 1966 as determined by the U.S. Army Corps of Engineers in a "grandfathered" status letter dated October 29, 2008. The Applicant provided a copy of buoy permits for three buoys issued by TRPA in February 2010 under the "grandfather clause" of the now vacated TRPA Shorezone ordinances adopted by TRPA in 2008.

Prior to 2008, TRPA ordinances allowed only two existing private mooring buoys per littoral parcel. TRPA adopted new shorezone ordinances in 2008 which allowed permitting of up to three existing private mooring buoys located adjacent to a lakefront parcel if the owner could verify that the third buoy had been placed in the lake prior to 1972, or had an existing valid lease for a third buoy from the Commission, or a valid permit from the U.S. Army Corps of Engineers. Commission staff commented to TRPA several times prior to adoption of the 2008 TRPA shorezone ordinances that there was no analysis of the need for a third buoy and the ordinance was giving recognition to previously unpermissible buoys. In 2010, the 2008 TRPA shorezone ordinances and the buoy permits issued under them were found to be invalid by the U.S. District Court. This decision was upheld by the 9th Circuit U.S. Court of Appeals.

TRPA is now operating under the pre-2008 Code of Ordinances which does not have a third buoy grandfather clause. Recommending approval for a third buoy would be in direct conflict with the current TRPA Code of Ordinances. In March 2016, staff spoke to the Applicant advising staff would not recommend more than two buoys in the new lease because of the conflict with TRPA's current code.

Staff recommends the Commission authorize two existing mooring buoys and the existing pier, marine rail, and three water intake pipelines to be consistent with the current TRPA Code of Ordinances. Staff recommends the Commission deny authorization for the two additional mooring buoys.

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.

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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. For all the reasons above, Commission staff believes the issuance of the lease for two mooring buoys, the existing pier, marine rail, and the three water intake pipelines is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. 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 and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. **Pier, Marine Rail, Freshwater Intake Pipelines, and Two Mooring Buoys:** The 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. **Denial of Two Additional Mooring Buoys:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a).

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5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Authorize One Pier, One Marine Rail, Three Freshwater Intake Pipelines, and Two 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).

Deny Authorization for Two Additional 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 statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, title 14, section 15270, subdivision (a), projects which a public agency rejects or disapproves.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

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AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational Use to Michael E. Raney, Trustee of the Michael E. Raney Living Trust dated December 3, 2010, beginning August 9, 2016, for a term of 10 years, for the continued use and maintenance of an existing pier and one mooring buoy previously authorized by the Commission and use and maintenance of an existing marine rail, three freshwater intake pipelines, and one mooring buoy not previously authorized by the Commission 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 \$1,823 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Deny authorization for two additional mooring buoys not previously authorized by the Commission.

EXHIBIT A

PRC 4266.1

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 1 fractional Section 20, Township 14 North, Range 17 East, MDM., as shown on Official Government Township Plat approved July 29, 1880 County of El Dorado, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier adjacent to that parcel described in Exhibit "A" in that Grant Deed recorded December 10, 2010 in Document 2010-0060686 of Official Records of said County.

PARCEL 2 – WATER INTAKE PIPES

All those lands underlying three (3) existing water intake pipes adjacent to said parcel.

PARCEL 3 – MARINE RAILWAY

All those lands underlying an existing marine railway adjacent to said parcel.

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCEL 4, 5 – BUOYS (2)

Two (2) circular parcels of land, each being 50 feet in diameter, underlying two (2) existing buoys lying adjacent to said parcel.

Accompanying plat is hereby made part of this description

END OF DESCRIPTION

Prepared May 2, 2016 by the
California State Lands Commission Boundary Unit.



APN 016-300-38

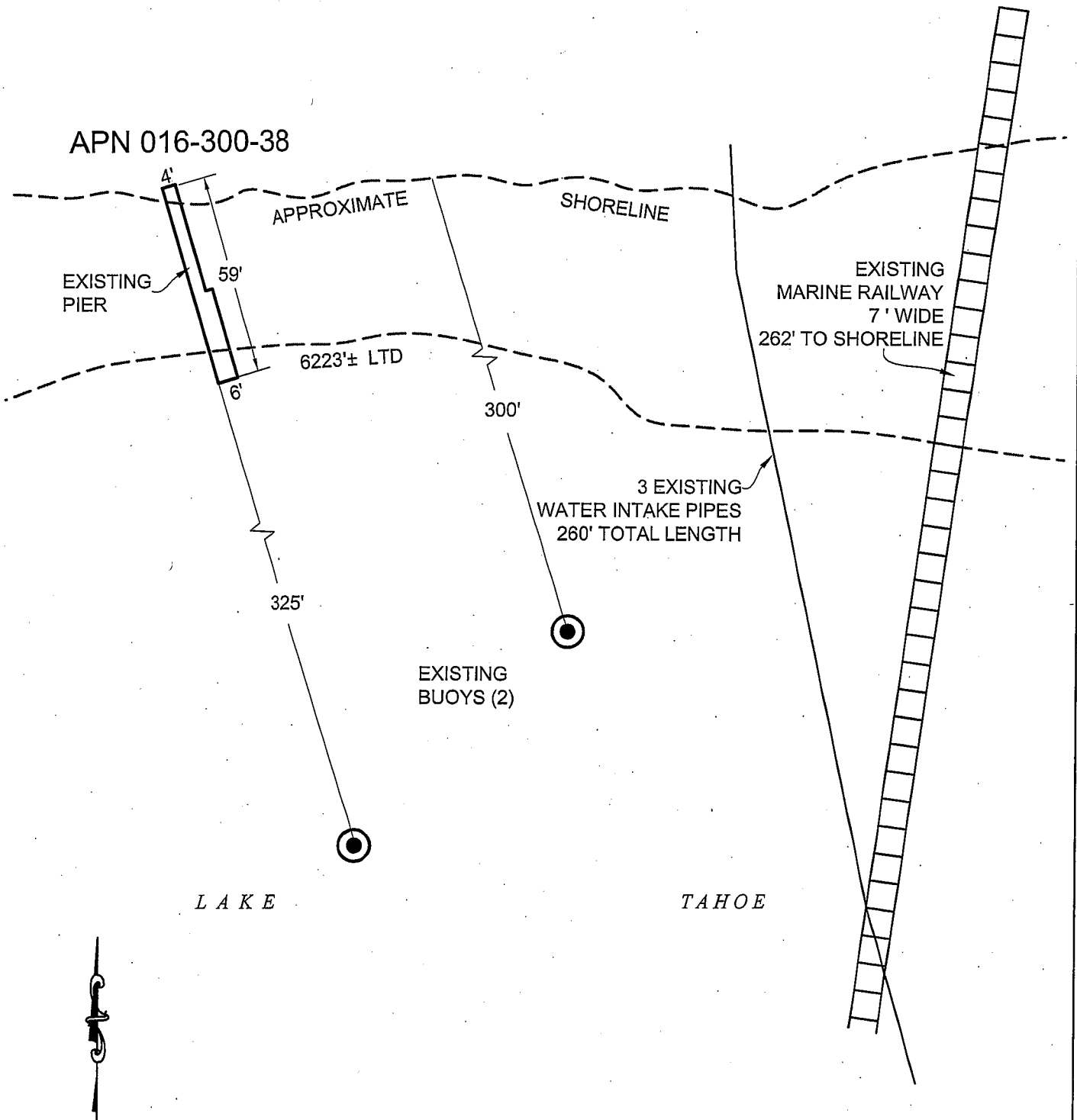


EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 4266.1, RANEY TRUST
EL DORADO COUNTY

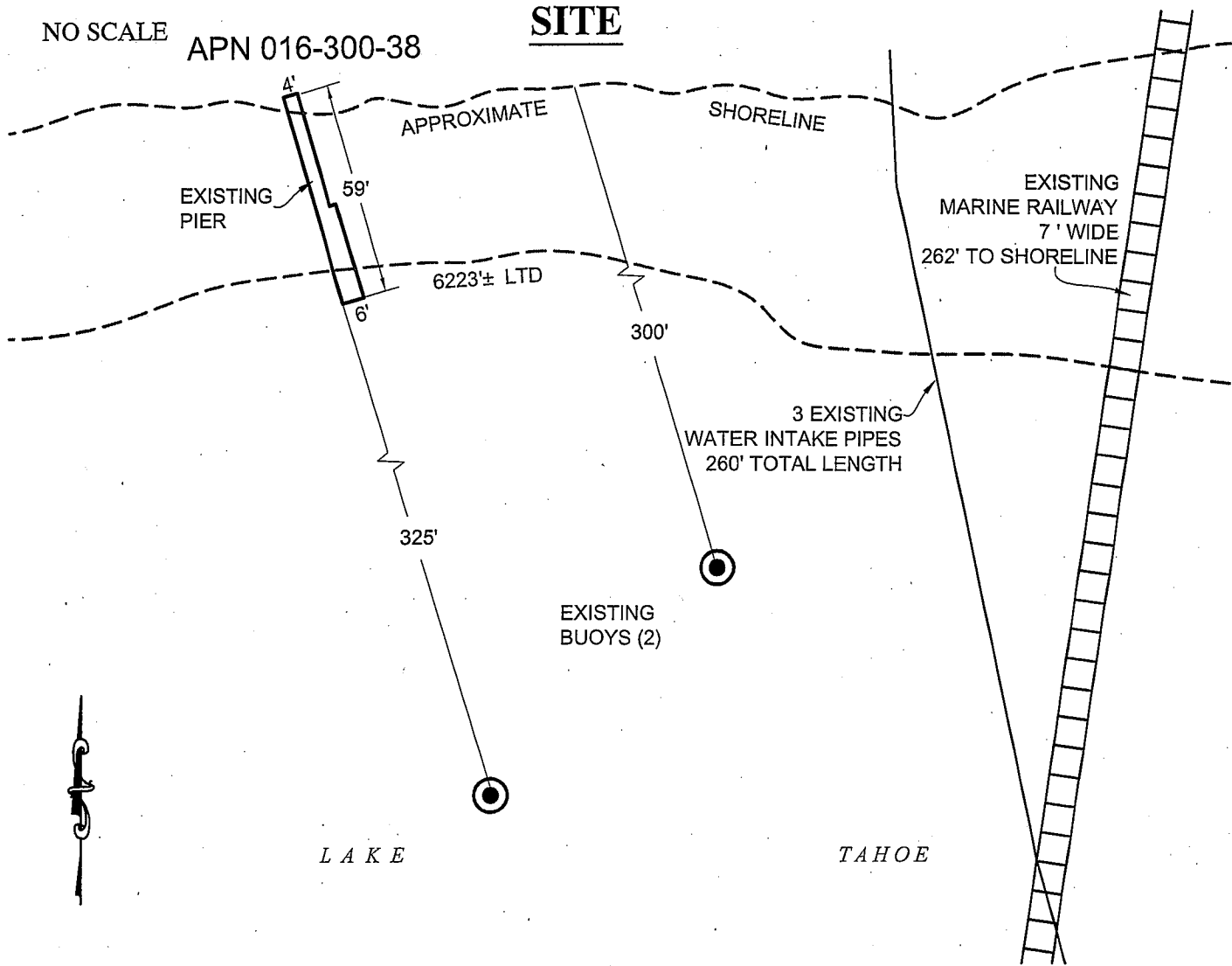
CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

APN 016-300-38

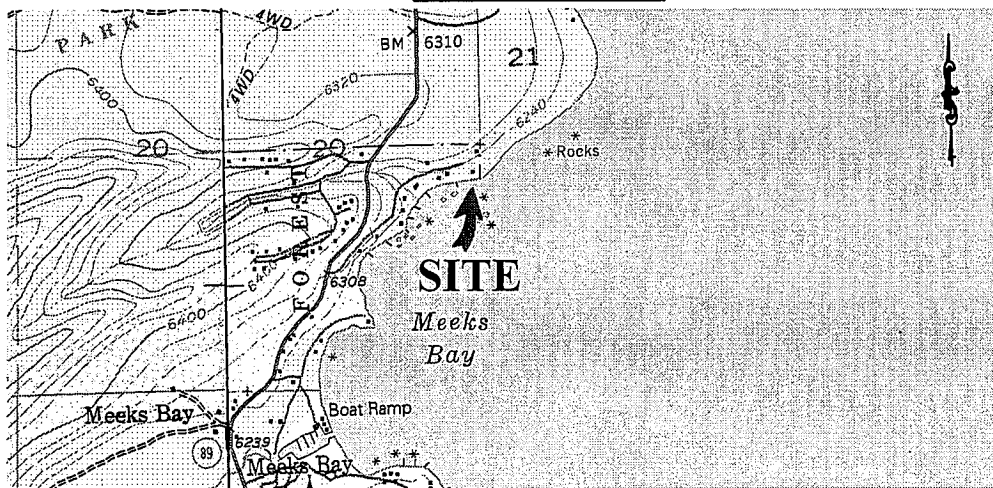
SITE



7701 STATE HIGHWAY 89, NEAR MEEKS BAY

NO SCALE

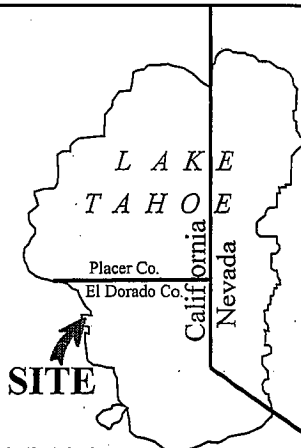
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 4266.1
 RANEY LIVING TRUST
 APN 016-300-38
 GENERAL LEASE -
 RECREATIONAL USE
 EL DORADO COUNTY



MJJ 04/02/2016

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.