

# Staff Report 09

## **LESSEE:**

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Lucky Bluff, LLC

## **APPLICANT:**

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Full Circle Real Estate LLC, a California limited liability company

## **PROPOSED ACTION:**

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Consider Waiver of Penalty and Interest; Void Invoice Number 55193; and Termination and Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Lake Tahoe, adjacent to 9115 State Highway 89, near Meeks Bay, El Dorado County.

## **AUTHORIZED USE:**

Use and maintenance of an existing pier, boat lift, and two mooring buoys.

## **TERM:**

10 years, beginning June 23, 2022.

## **CONSIDERATION:**

\$1,785 per year, with an annual Consumer Price Index adjustment.

## **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 this 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 lake-related recreational uses.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5;  
California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On August 23, 2019, the Commission authorized a General Lease – Recreational Use, to Lucky Bluff, LLC, for use and maintenance of an existing pier, boat lift, and two mooring buoys ([Item 11, August 23, 2019](#)). That lease will expire on February 5, 2029.

On December 10, 2021, ownership interest in the upland parcel transferred to Full Circle Real Estate LLC, a California limited liability company. The Applicant is now applying for a General Lease – Recreational Use for use and maintenance of the existing pier, boat lift, and two mooring buoys. On September 12, 2019, TRPA registered the boat lift and two mooring buoys under registration number 11043.

The Commission's accounting records show that the Applicant paid annual rent through February 5, 2023. The annual rent payment was received after the due date. Late payments are subject to penalty and interest.

However, since the annual rent payment was made by the Applicant and not the Lessee, staff recommends voiding Invoice No. 55193, dated March 25, 2022, in the amount of \$136.04, issued to Lucky Bluff, LLC (Lessee) for penalty and interest on late payment of annual rent for the period of February 6, 2022 through February 5, 2023.

The Applicant requested issuance of a new lease. Staff recommends termination of the existing lease, because the upland was sold without notification to staff or providing a lease quitclaim. The proposed termination date is June 22, 2022, the day before the beginning date of the proposed lease. This application is one of two applications appearing on this agenda submitted by the Applicant. The other application requests authorization for two existing mooring buoys adjacent to 9105 State Highway 89, Meeks Bay, El Dorado County.

Staff recommends that the annual rent already paid by the Applicant be pro-rated because by using the 2021 Lake Tahoe benchmark to calculate rent for the new

lease, the annual rent has been reduced. Staff recommends pro-ration of the rent paid for the February 6, 2022 through February 5, 2023, lease year, and a credit of \$1,227.49 for the period of June 23, 2022, through February 5, 2023, be applied towards the first year's rent of the new lease.

The proposed lease will require the Applicant to indemnify the State for the entire period of occupation noted as December 10, 2021 through June 22, 2022, ensuring the State is protected.

The existing pier, boat lift, and two mooring buoys are privately owned and maintained, used for the docking, and mooring of boats, and 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 facilities have existed at this location for many years, are located directly lakeward of the upland property, and occupy a relatively small area of the lake. 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 and restore the lease premises to their original condition.

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 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 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 streamflows 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.

Shoreline structures and moorings 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; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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 may be required to remove the pier, boat lift, and two mooring buoys and restore the premises to their original condition. Upon

expiration or prior termination of the lease, the lessee also 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. Waiver of penalty, and interest, and termination of the lease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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.

## **EXHIBITS:**

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- A. Land description
- B. Site and location map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the lease 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).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

1. Find that the termination of the lease; waiver of penalty and interest 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 proposed lease; and
2. Find that the existing pier, boat lift, and two mooring buoys, used for the docking and mooring of boats, facilitate recreational boating which is a water-dependent use that is generally consistent with the Public Trust Doctrine; and
3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Waive penalty and interest due for the period of February 6, 2022 through February 5, 2023, and void Invoice Number 55193 issued to Lucky Bluff, LLC.
2. Terminate, effective June 22, 2022, Lease Number PRC 7279, a General Lease – Recreational Use, issued to Lucky Bluff, LLC.
3. Authorize pro-ration of the February 6, 2022 through February 5, 2023, lease year rent paid under Lease Number 7279; and a credit of \$1,227.49 for the period of June 23, 2022 through February 5, 2023, to be applied towards the first year's rent of the proposed lease.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 23, 2022, for a term of 10 years, for the use and maintenance of an existing pier, boat lift, and two 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 \$1,785 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 7279**

**LAND DESCRIPTION**

Three parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 33, Township 14 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved July 29, 1880, County of El Dorado, State of California, more particularly described as follows:

**PARCEL 1 – PIER**

All those lands underlying an existing pier, catwalk, and boat lift lying adjacent to Parcel 1 of Grant Deed recorded December 10, 2021, as Document Number 2021-0075614 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.

**PARCEL 2 & 3 - BOUYS**

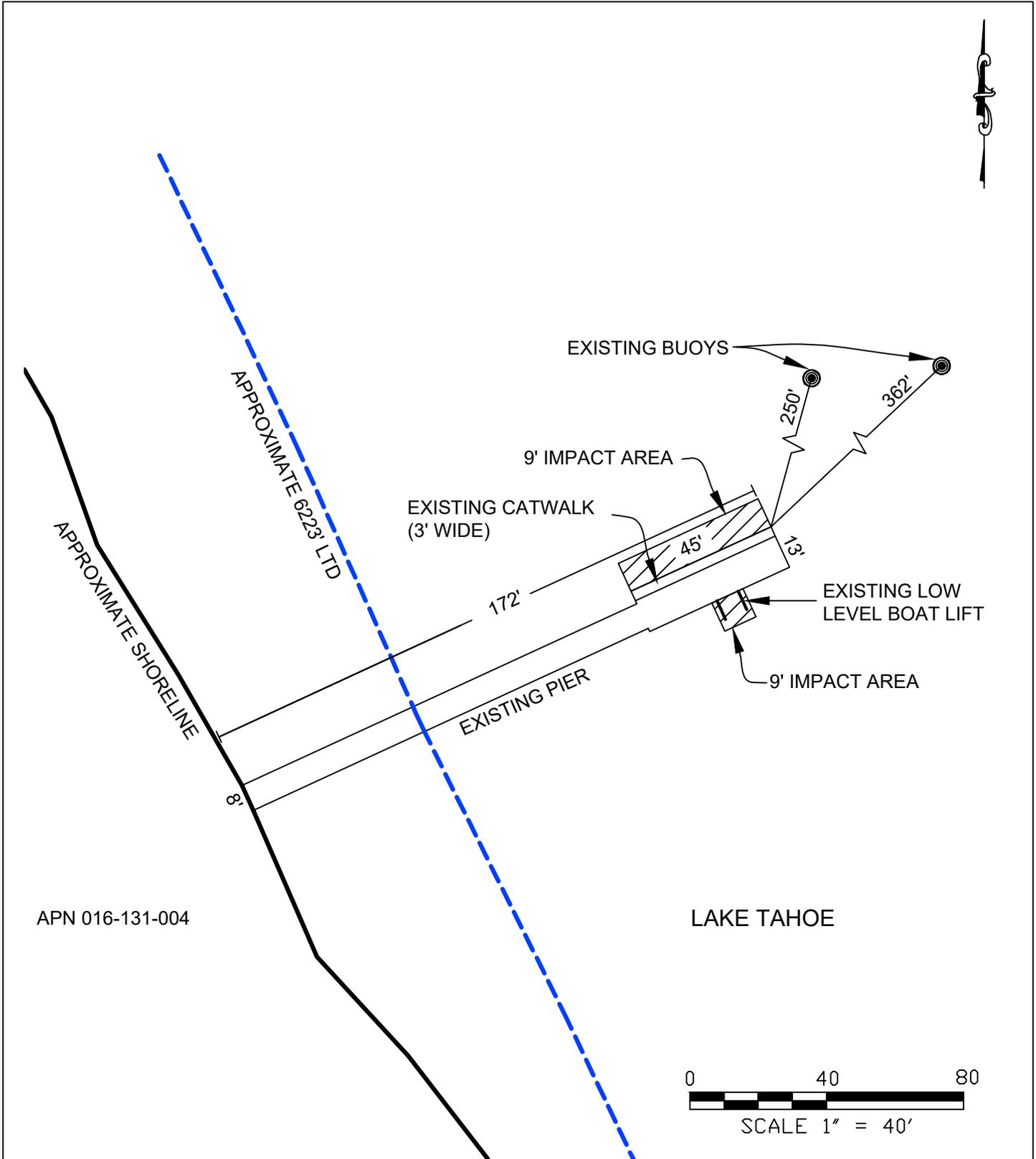
Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to Parcel 1 of Grant Deed recorded December 10, 2021, as Document Number 2021-0075614 in Official Records of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 05/06/2022 by the California State Lands Commission Boundary Unit.

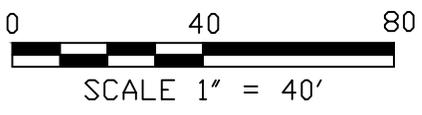




# EXHIBIT A

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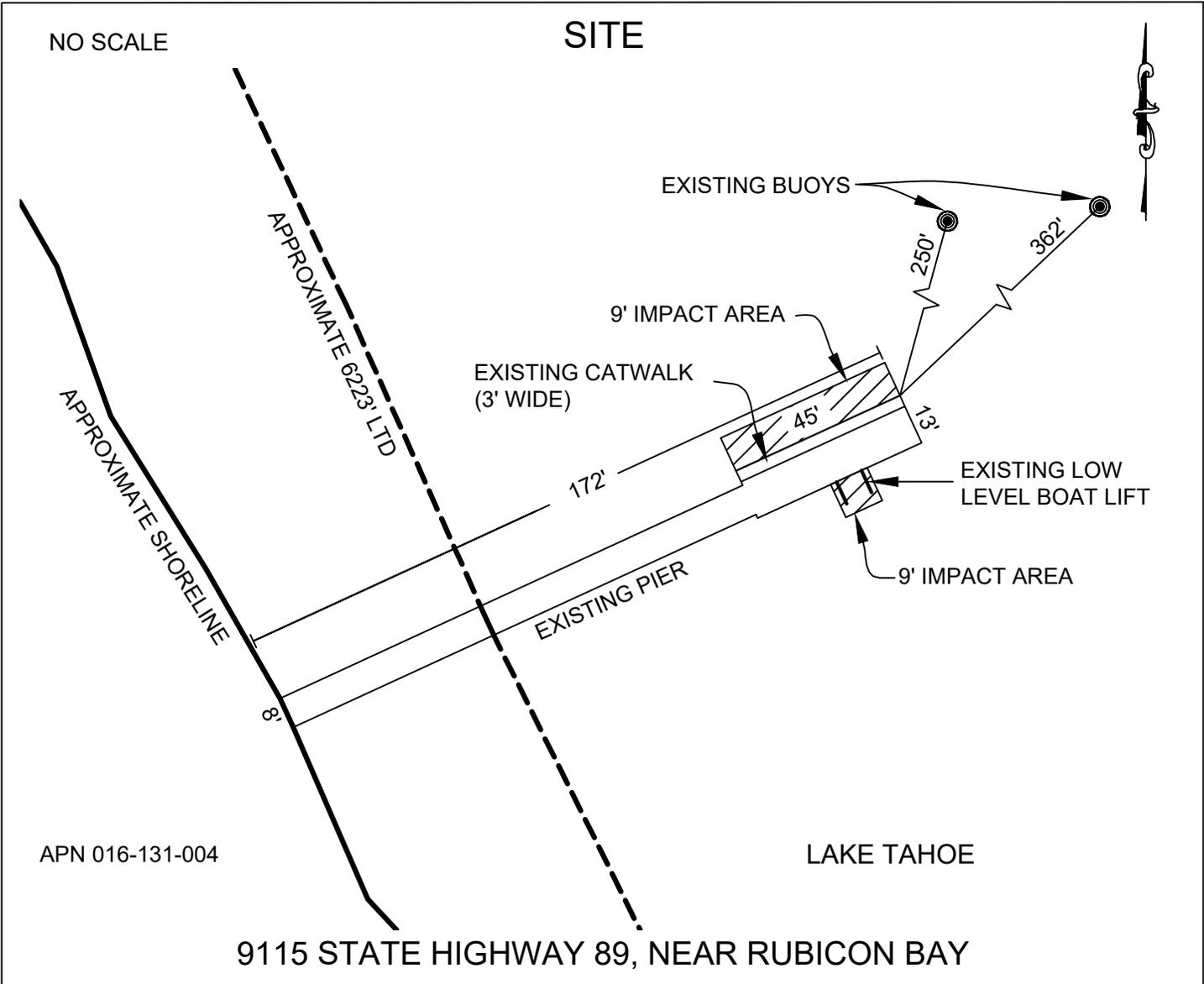
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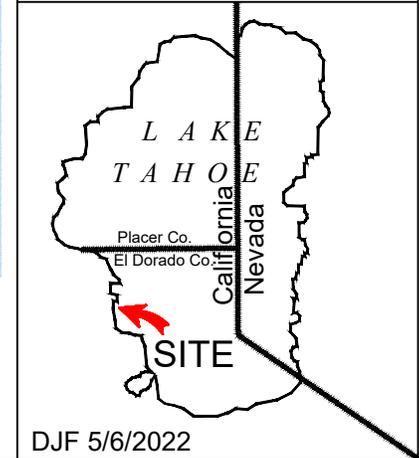
LAND DESCRIPTION PLAT  
 LEASE 7279, FULL CIRCLE  
 REAL ESTATE LLC  
 EL DORADO COUNTY

CALIFORNIA STATE  
 LANDS COMMISSION





**EXHIBIT B**  
 LEASE 7279  
 FULL CIRCLE  
 REAL ESTATE LLC  
 APN 016-131-004  
 GENERAL LEASE -  
 RECREATIONAL USE  
 EL DORADO 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.