

**STAFF REPORT
C21**

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08/23/18
PRC 8217.1
M.J. Columbus

TERMINATION AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE

LESSEE:

Christopher David Plona and Anne L. Hoffman, as Trustees of the Plona Hoffman Trust, under agreement dated 13 February 2007; and William M. Johnson, Jr.

APPLICANT:

Christopher David Plona and Anne L. Hoffman, as Trustees of the Plona Hoffman Trust, under agreement dated 13 February 2007; and John Walker and Marian B. Walker

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8632 and 8634 Brockway Vista Avenue, Kings Beach, Placer County.

AUTHORIZED USE:

Continued use and maintenance of a joint-use pier, boat lift, and four mooring buoys.

LEASE TERM:

10 years, beginning August 23, 2018.

CONSIDERATION:

\$1,985 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. Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair public uses for access, navigation, fishing and lake-related recreational uses.

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3. If Lessee does not have a valid Tahoe Regional Planning Agency (TRPA) buoy permit, Lessee is required to obtain such authorization for the mooring buoys within 2 years after the certification of a Final Environmental Impact Statement 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 may be required to remove the buoys.
4. 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, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On January 26, 2012, the Commission authorized a 10-year General Lease – Recreational Use to Christopher David Plona and Anne L. Hoffman, as Trustees of the Plona Hoffman Trust, under agreement dated 13 February 2007; and William M. Johnson, Jr., beginning January 26, 2012, for a joint-use pier, boat lift, and four mooring buoys ([Item C27, January 26, 2012](#)). That lease will expire on January 25, 2022. When the lease was issued, the Plona Hoffman Trust owned Assessor's Parcel Number (APN) 090-141-036; and William M. Johnson, Jr. owned APN 090-141-037. On February 19, 2016, Christina W. Lovato, Court Appointed Bankruptcy Trustee for William M. Johnson Jr. transferred ownership interest in APN 090-141-037 to John Walker. On March 9, 2016, John Walker transferred his interest to John Walker and Marian B. Walker. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of an existing joint-use pier boat lift, and four mooring buoys.

Staff recommends termination of the existing lease because William M. Johnson Jr. has lost title to the upland property and abandoned the lease premises. Additionally, section 3, paragraph 10(h) of the lease requires the bankruptcy trustee to elect to assume or reject this lease within sixty days of appointment of the trustee. The Commission was not notified that

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William M. Johnson Jr. was in bankruptcy, and the available information indicates the lease was not part of the bankruptcy estate. The Bankruptcy Trustee failed to assume or reject the lease, and William M. Johnson Jr. cannot be located to obtain a quitclaim. These defaults entitle the Commission to terminate the prior lease.

John Walker occupied State land from the period of February 19, 2016, through August 22, 2018. Therefore, staff recommends the Commission accept compensation from John Walker and Marian B. Walker for the unauthorized occupation of State land in the amount of \$2,492 for the period beginning February 19, 2016 through August 22, 2018, the day before the new lease becomes effective.

The subject improvements 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 joint-use pier, boat lift, and four mooring buoys have been in Lake Tahoe for many years at this location. The pier is built on pilings with the immediate area of the pier being flat with sand, cobbles, and small boulders. The topography and location of upland structures provide access for the pier and allow the public to walk or navigate next to the end of the pier within the Public Trust easement.

The four buoys 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.

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, staff believes the issuance of this lease does not substantially interfere with the common law Public Trust

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Doctrine at this time and for the foreseeable term of the lease 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; Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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, sections 15378, subdivision (b)(5).

3. 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:

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

RECOMMENDED ACTION:

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 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:

Find that the proposed actions will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the

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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 termination, effective August 22, 2018, of Lease No. PRC 8217.1, a General Lease – Recreational Use, issued to Christopher David Plona and Anne L. Hoffman, as Trustees of the Plona Hoffman Trust, under agreement dated 13 February 2007; and William M. Johnson, Jr.
2. Authorize acceptance of compensation from the Applicant in the amount of \$2,492 for the unauthorized occupation of State land for the period beginning February 19, 2016 through August 22, 2018.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 23, 2018, for a term of 10 years, for the continued use and maintenance of a joint-use pier, boat lift, and four existing 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 \$1,985 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8217.1

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 6 of fractional Section 19, Township 16 North, Range 18 East, MDM., as shown on Official Government Township Plat approved January 29, 1875, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – JOINT-USE PIER

All those lands underlying an existing pier, stairs and one existing boat lift lying adjacent to that parcel as described in Exhibit "A" of that Grant Deed recorded June 1, 2011 as Document Number 2011-42442-00 and described in Exhibit A of that Interspousal Transfer Grant Deed recorded March 9, 2016 as Document Number 2016-0016400 in Official Records of said County.

TOGETHER WITH Any applicable impact area(s).

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

PARCELS 2, 3, 4, & 5 – BUOYS

Four (4) circular parcels of land, each being 50 feet in diameter, underlying four (4) existing buoys lying adjacent to that parcel as described in Exhibit "A" of that Grant Deed recorded June 1, 2011 as Document Number 2011-42442-00 and described in Exhibit A of that Interspousal Transfer Grant Deed recorded March 9, 2016 as Document Number 2016-0016400 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared April 24, 2018 by the
California State Lands Commission Boundary Unit.



APN 090-141-036

APN 090-141-037

SHORELINE

APPROXIMATE

EXISTING PIER

175'±

6223'±LTD

EXISTING
9' BOAT LIFT
IMPACT AREA

9' IMPACT AREAS

13'

150'±

100'±

L A K E

100'±

EXISTING
BUOYS (4)

T A H O E

100'±

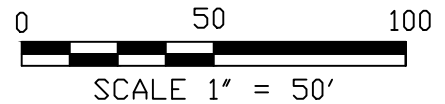


EXHIBIT A

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LAND DESCRIPTION PLAT
PRC 8217.1, PLONA HOFFMAN TRUST & WALKER
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION

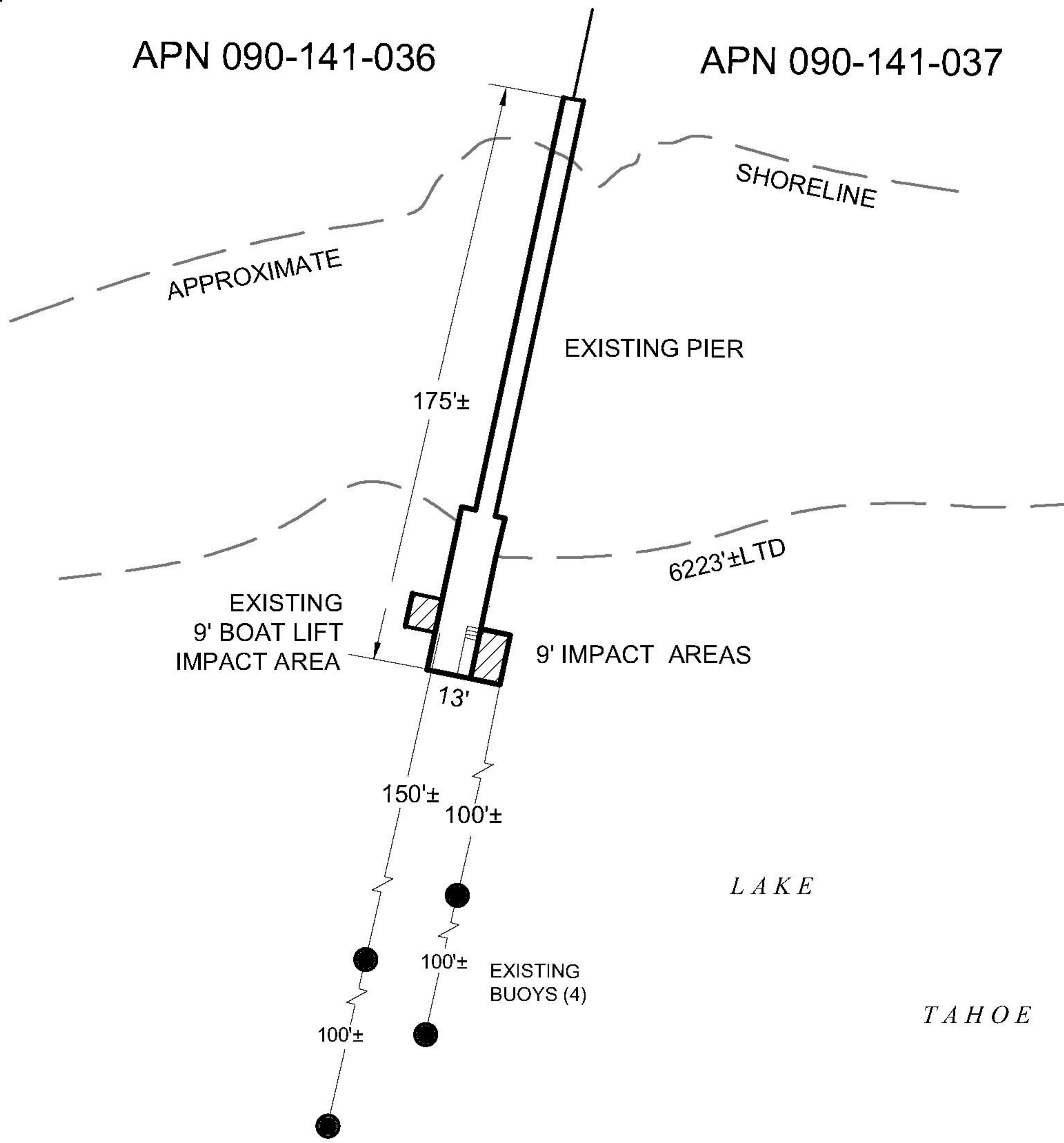


NO SCALE

SITE

APN 090-141-036

APN 090-141-037



8632 & 8634 BROCKWAY VISTA AVE., KINGS BEACH

NO SCALE

LOCATION

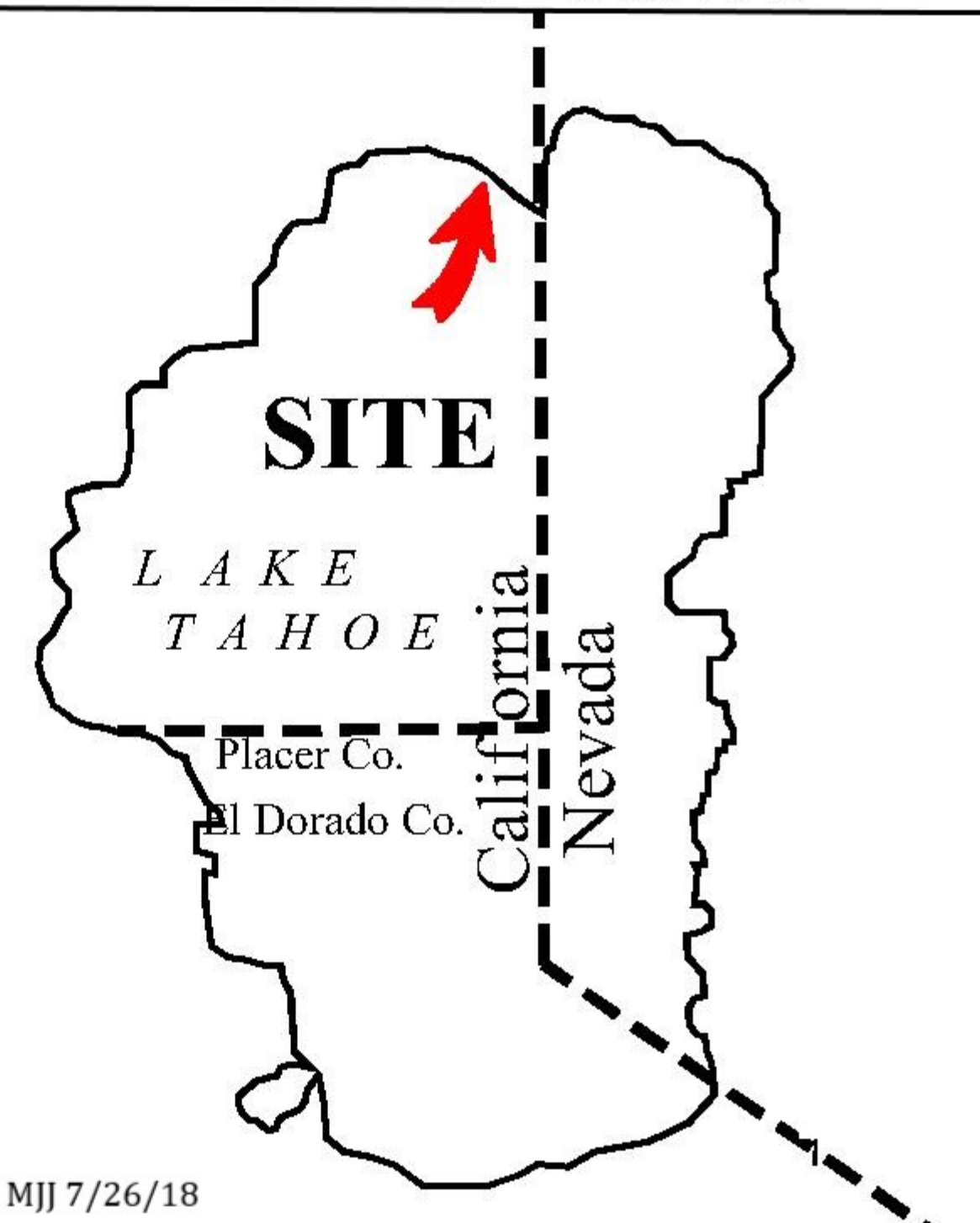


MAP SOURCE: USGS QUAD

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 8217.1
PLONA HOFFMAN TRUST
& WALKER
APN 090-141-036
& APN 090-141-037
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



MJJ 7/26/18