

STAFF REPORT

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08/23/19
PRC 3813.1

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A2091
S. Avila

**WAIVER OF RENT, PENALTY, AND INTEREST; TERMINATION AND
ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Sunnyside Lane, LLC, a California limited liability company

APPLICANT:

Golden Range LLC, a California limited liability company

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2340 Sunnyside Lane, near Tahoe City, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, two boat slips, and two mooring buoys previously authorized by the Commission; and two existing freshwater intake pipelines with electrical conduits and pumps not previously authorized by the Commission.

LEASE TERM:

10 years beginning December 19, 2018.

CONSIDERATION:

\$3,122 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 shall provide proof of a Tahoe Regional Planning Agency (TRPA) buoy permit or proof that unpermitted buoys have been removed by October 23, 2020.

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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.
- 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:

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 June 22, 2017, the Commission authorized a General Lease - Recreational Use, Lease No. PRC 3813.1, for the continued use and maintenance of an existing pier, two boat slips, and two mooring buoys to Sunnyside Lane, LLC, a California limited liability company ([Item C04, June 22, 2017](#)). The lease will expire on August 20, 2026. On December 19, 2018, the upland was deeded to Golden Range LLC, a California limited liability company. Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the upland property without executing a lease quitclaim deed. Golden Range LLC has another lease application for an adjacent property for consideration by the Commission at this meeting.

The Applicant is applying for a General Lease – Recreational Use, for the continued use and maintenance of the existing pier, two boat slips, and two mooring buoys previously authorized by the Commission; and two existing freshwater intake pipelines with electrical conduits and pumps not previously authorized by the Commission. The pipelines with conduits and pumps have existed in the lake for many years. Fresh water drawn from the lake is used for household needs and relied upon for fire prevention because no other water services are available.

The pipelines with conduits are buried at the shoreline and lay along the bottom of the lake bed all the way to the submerged pumps. At the pumps, the pipelines with conduits extend to the top of a tripod that suspends each pump just above the lake bottom. The pumps have fish screens and filters that prevent fish from being sucked into them. The pipelines, conduits, and pumps are configured in the same manner as other similar facilities on the lake.

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Because the upland parcel is adjacent to the lake, diversion of the water does not require governmental permission but a Statement of Diversion must be reported to the State Water Resources Control Board (SWRCB). The Applicant has submitted a Statement of Diversion to SWRCB. Staff recommends including the freshwater intake pipelines with electrical conduits and pumps in the lease.

Staff sent an annual rent invoice to the Lessee for the 2019-2020 lease period that the Lessee did not pay. Staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of August 21, 2019, through August 20, 2020, since the Lessee was no longer the upland owner as of December 19, 2018, and the Applicant has already agreed to be responsible for the rent dating back to the transfer of ownership. Therefore, staff recommends waiving the rent, penalty, and interest due from the Lessee under invoice number 47860.

The subject facilities are privately owned and maintained. While the freshwater intake pipelines with electrical conduits and pumps are not uses typically associated with the Public Trust Doctrine, they do not interfere with public access or other Public Trust uses at this time. The pier, boat slips, and mooring buoys are used for the docking and mooring of boats. 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 pier, boat slips, and mooring buoys have existed for many years at this location. The pier is built on single pilings with the boat slips built on a rock crib. The immediate area of the pier is located on flat beach with sand and pebbles. The topography of the upland provides access for the pier and public access for pedestrians. The waterward structure provides access for lake-related activities. At varying water levels, passage is possible underneath part of the pier. The 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 and 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.

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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, 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:

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, two boat slips, two mooring buoys, and two freshwater intake pipelines with electrical conduits and pumps 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 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 promote, expand, and enhance appropriate public use and access to land along the State's inland and coastal waterways.
3. On October 24, 2018, the TRPA Governing Board certified an Environmental Impact Statement for adoption of Lake Tahoe Shorezone Ordinance Amendments.
4. Termination of the lease and waiver of rent, penalty, and interest 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).
5. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project.

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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 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:

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

AUTHORIZATION:

1. Waive rent, penalty, and interest due for the period of August 21, 2019, through August 20, 2020, and void annual rent invoice number 47860 issued to Sunnyside Lane, LLC, a California limited liability company.
2. Authorize termination, effective December 18, 2018, of Lease No. PRC 3813.1, a General Lease – Recreational Use, issued to Sunnyside Lane, LLC, a California limited liability company.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 19, 2018, for a term of 10 years, for the continued use and maintenance of an existing pier, two boat slips, and two mooring buoys previously authorized by the Commission and two freshwater intake pipelines with electrical conduits and pumps not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference

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purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$3,122, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3813.1

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 24 Township 15 North, Range 16 East, MDM., as shown on Official Government Township Plat approved April 11, 1884, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 –PIER

All those lands underlying an existing pier and two boat slips adjacent to that lot described in that Grant Deed recorded December 19, 2018 as Document 2018-0090846 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 – BUOYS (2)

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

PARCELS 4 & 5 – 2 FRESHWATER INTAKE PIPELINES WITH ELECTRICAL CONDUITS AND PUMPS

Two (2) parcels of land underlying two (2) existing freshwater intake pipelines with 2.5” pipes with 1” electrical conduits and pumps lying adjacent to said lot.

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared July 26, 2019 by
the California State Lands Commission Boundary Unit.



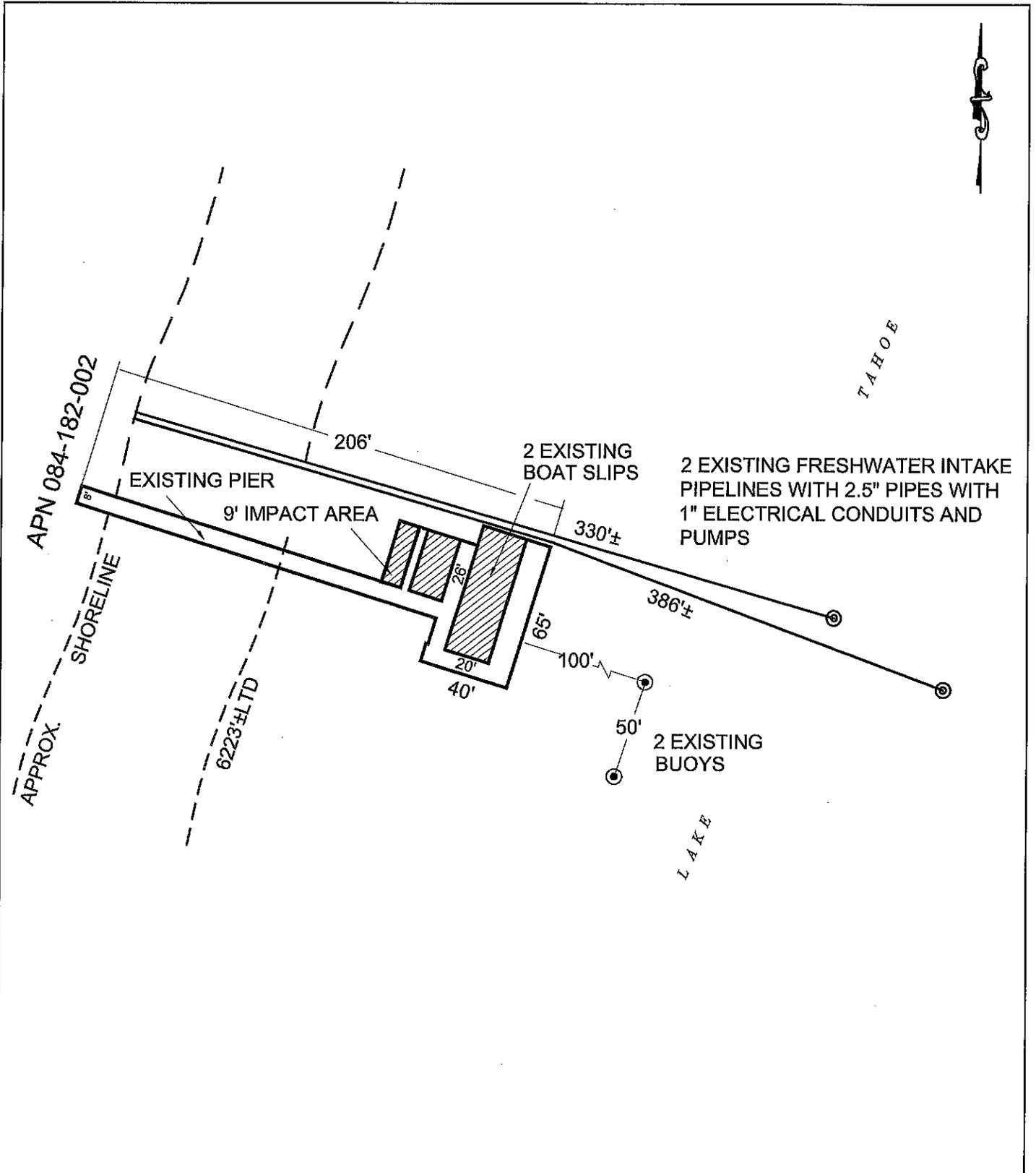


EXHIBIT A

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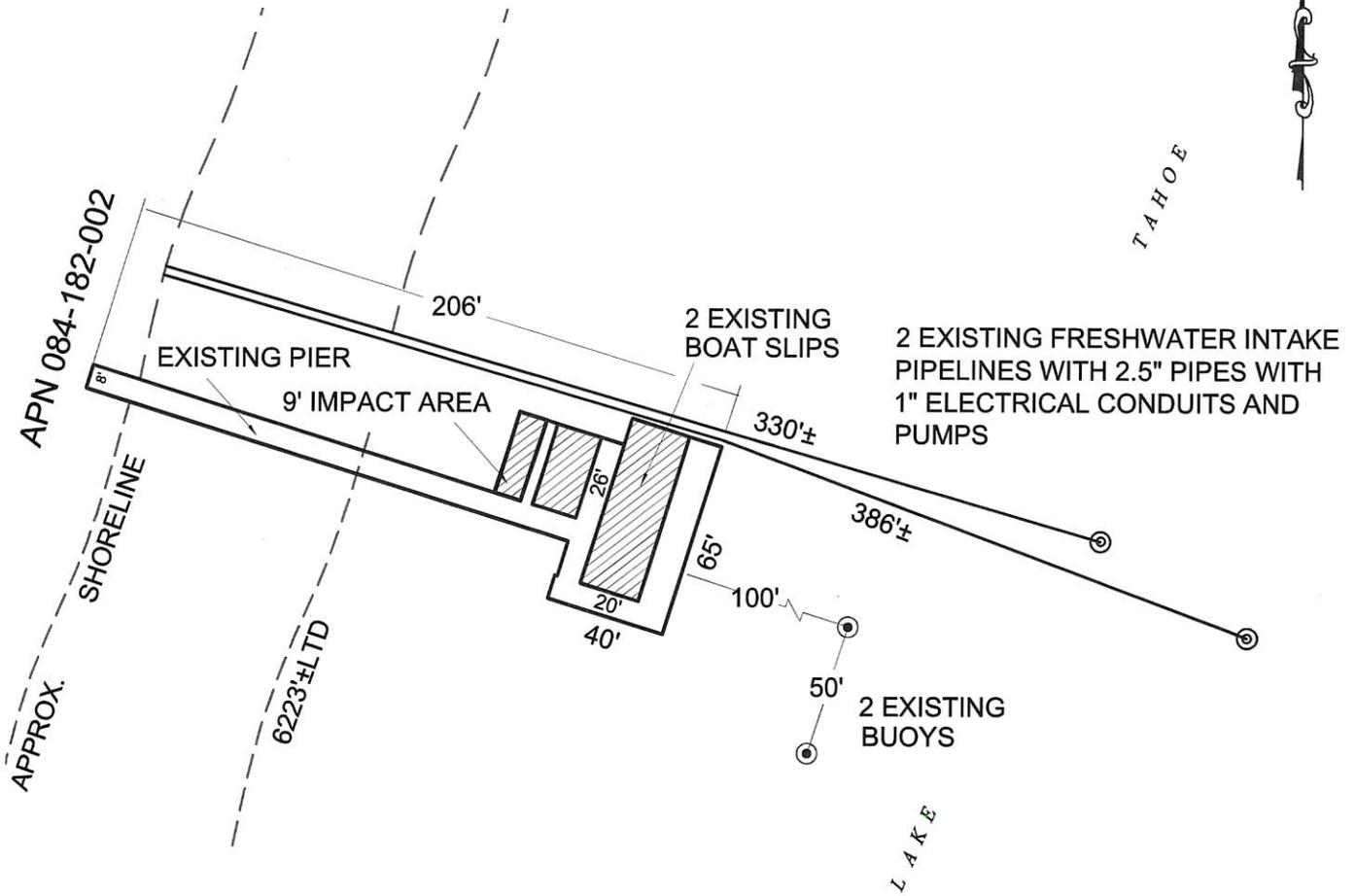
LAND DESCRIPTION PLAT
 PRC 3813.1, GOLDEN RANGE LLC.
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



2340 SUNNYSIDE LANE, NEAR TAHOE CITY

NO SCALE

LOCATION

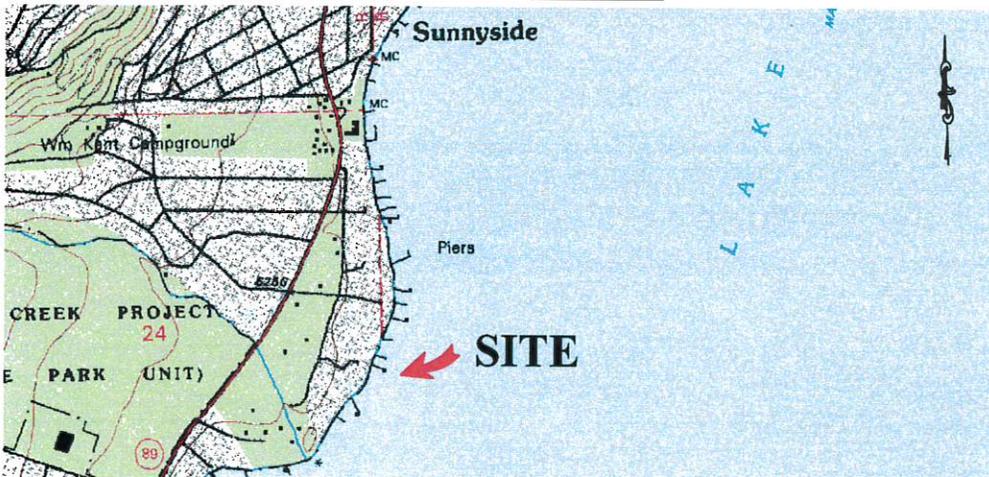
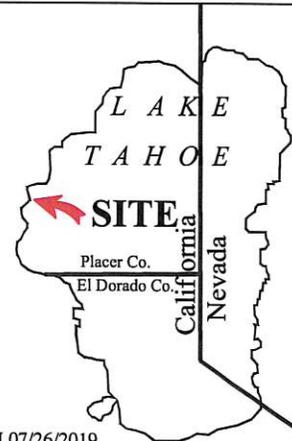


Exhibit B

PRC 3813.1
 GOLDEN RANGE LLC.
 APN 084-182-002
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 07/26/2019

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.