

**CALENDAR ITEM
C21**

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09/20/13
PRC 5801.1
M.J. Columbus

**TERMINATION OF A RECREATIONAL PIER LEASE AND ISSUANCE OF A
GENERAL LEASE – RECREATIONAL USE**

LESSEES:

Alan K. Austin and Marianne P. Austin, Trustees of the Austin Family Trust dated August 6, 1997, and Karen J. Van Voorhis, Trustee of the Karen J. Van Voorhis Revocable Trust, under Trust Agreement Dated December 23, 1992, a Trust

APPLICANTS:

Alan K. Austin and Marianne P. Austin, Trustees of the Austin Family Trust dated August 6, 1997, and Beaming Joy Limited, a BVI Limited Corporation

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 850 and 860 West Lake Boulevard, Tahoe City, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing joint-use pier, two boat lifts, and four mooring buoys.

LEASE TERM:

10 years, beginning August 23, 2013.

CONSIDERATION:

\$2,290 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in the amount of no less than \$1,000,000 per occurrence.

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Other:

The proposed lease contains a provision requiring the Applicants to obtain authorization from the Tahoe Regional Planning Agency (TRPA) 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. This is a continuation of the process the Commission used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the FEIS. In September 2010, the U.S. District Court invalidated the FEIS and nullified the Amendments. When additional information is available, Commission staff will advise the Commission on any suggested modifications to the process used by the Commission pending resolution of the TRPA FEIS and amended ordinance issues.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland parcels, Assessor's Parcel Numbers (APN) 083-172-009 and 083-172-010, adjoining the lease premises.
2. On October 20, 2003, the Commission authorized a Recreational Pier Lease with Alan K. Austin and Marianne P. Austin, Trustees of the Austin Family Trust dated August 6, 1997, and Karen J. Van Voorhis, Trustee of the Karen J. Van Voorhis Revocable Trust, under Trust Agreement dated December 23, 1992, a Trust. That lease will expire on October 31, 2013. Since the issuance of that lease, the upland parcel, APN 083-172-009, was sold. On September 27, 2010, APN 083-172-009 was deeded to Beaming Joy Limited, a BVI Limited Corporation. Applicants are now applying for a new General Lease – Recreational Use.
3. Staff recommends termination of the existing lease because the Lessee, Karen J. Van Voorhis, Trustee of the Karen J. Van Voorhis Revocable Trust, a Trust, abandoned the lease by selling the property and facility without executing a quitclaim deed.
4. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law took effect on January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission "shall charge rent for a private recreational pier constructed on state lands." The law provides for two exceptions to the imposition of rent. Those exceptions are for:

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- A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
- B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

Because the application was submitted to the Commission prior to March 31, 2011, the lease meets the statutory requirements for an exception to recently-enacted changes to section 6503.5 of the Public Resources Code for the term of this lease. When Beaming Joy Limited obtained ownership of APN 083-172-009, it did not qualify for rent-free status pursuant to the original definition of Public Resources Code section 6503.5 in effect at this time. However, the Austins' 50 percent ownership in the joint-use pier and two boat lifts and full ownership of two of the four mooring buoys qualifies for rent-free status. Annual rent is prorated based on the Austins' qualification for rent-free status.

- 5. Staff is recommending that the Commission accept rent in the amount of \$6,410 for the period beginning September 27, 2010 to August 22, 2013, for the Beaming Joy Limited's occupation without a lease
- 6. **Lease Termination:** The staff recommends that the Commission find that the subject termination of lease does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

- 7. **Issuance of Lease:** The staff recommends that the Commission find that this activity 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.

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8. 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:

Lease Termination:

Find that the subject lease termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of Lease:

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).

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.

AUTHORIZATION:

1. Authorize acceptance of rent in the amount of \$6,410 for the period of September 27, 2010 through August 22, 2013.
2. Authorize termination effective August 22, 2013, of Lease No. PRC 5801.9, a Recreational Pier Lease, issued to Alan K. Austin and Marianne P. Austin, Trustees of the Austin Family Trust dated August 6, 1997, and Karen J. Van Voorhis, Trustee of the Karen J. Van Voorhis Revocable Trust, under Trust Agreement dated December 23, 1992, a Trust.

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3. Authorize issuance of a General Lease – Recreational Use to Alan K. Austin and Marianne P. Austin, Trustees of the Austin Family Trust dated August 6, 1997, and Beaming Joy Limited, a BVI Limited Corporation beginning August 23, 2013, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier, two boat lifts and four 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 \$2,290 with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance with coverage in an amount of no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5801.1

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 18, Township 15 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing joint-use pier, catwalk and two boatlifts lying adjacent to that parcel as described in Exhibit "A" of that Grant Deed recorded September 27, 2010 as Document 2010-0076490 and that parcel as described in that Grant Deed recorded November 15, 2000 as Document 2000-0087094 in Official Records of said County.

TOGETHER WITH a ten foot impact area.

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

PARCEL 2, 3, 4 & 5 – BUOYS

Four (4) circular parcels of land, being 50 feet in diameter, underlying four (4) existing buoys lying adjacent to said parcels.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared June 28, 2013 by the California State Lands Commission Boundary Unit.



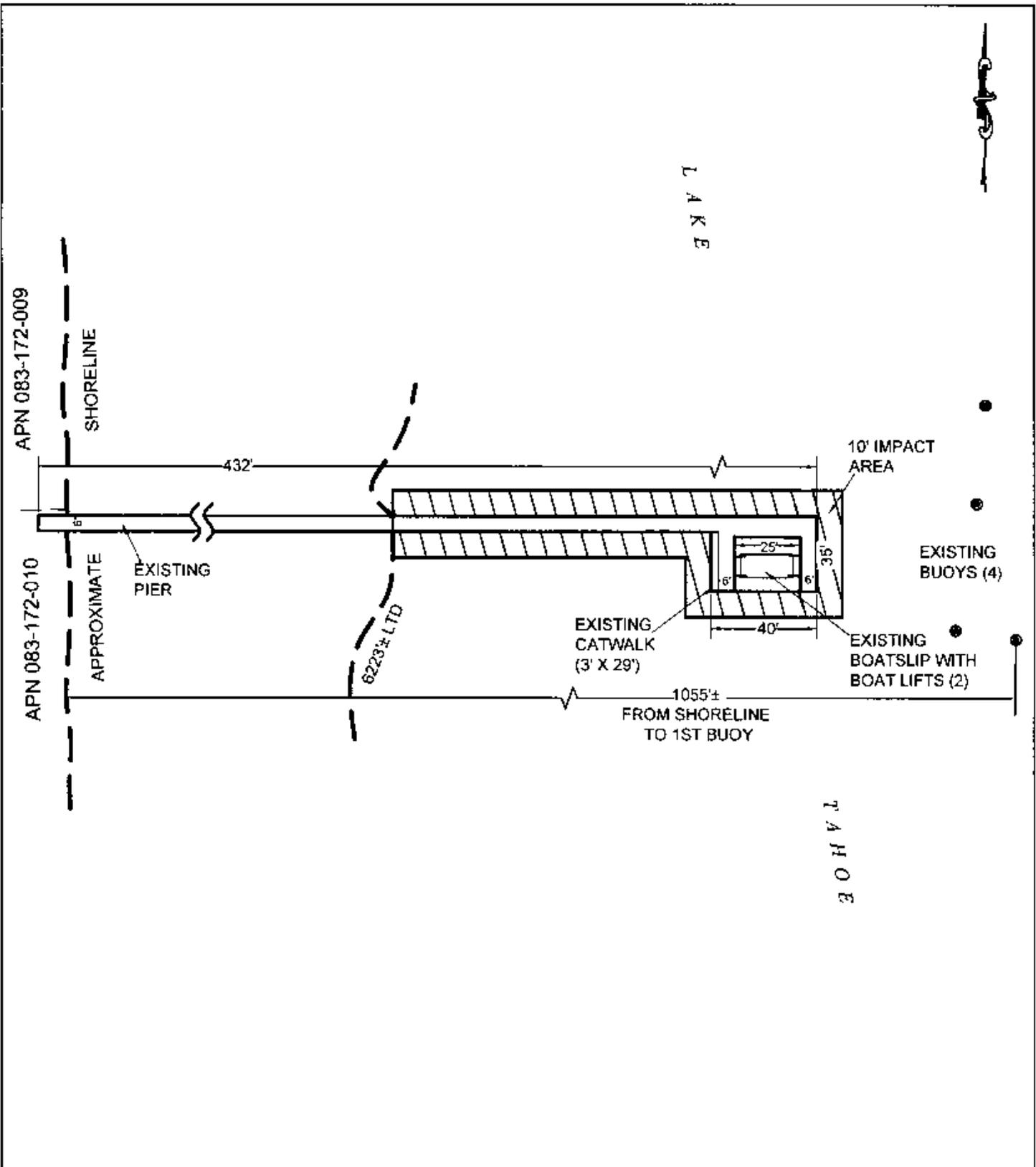


EXHIBIT A

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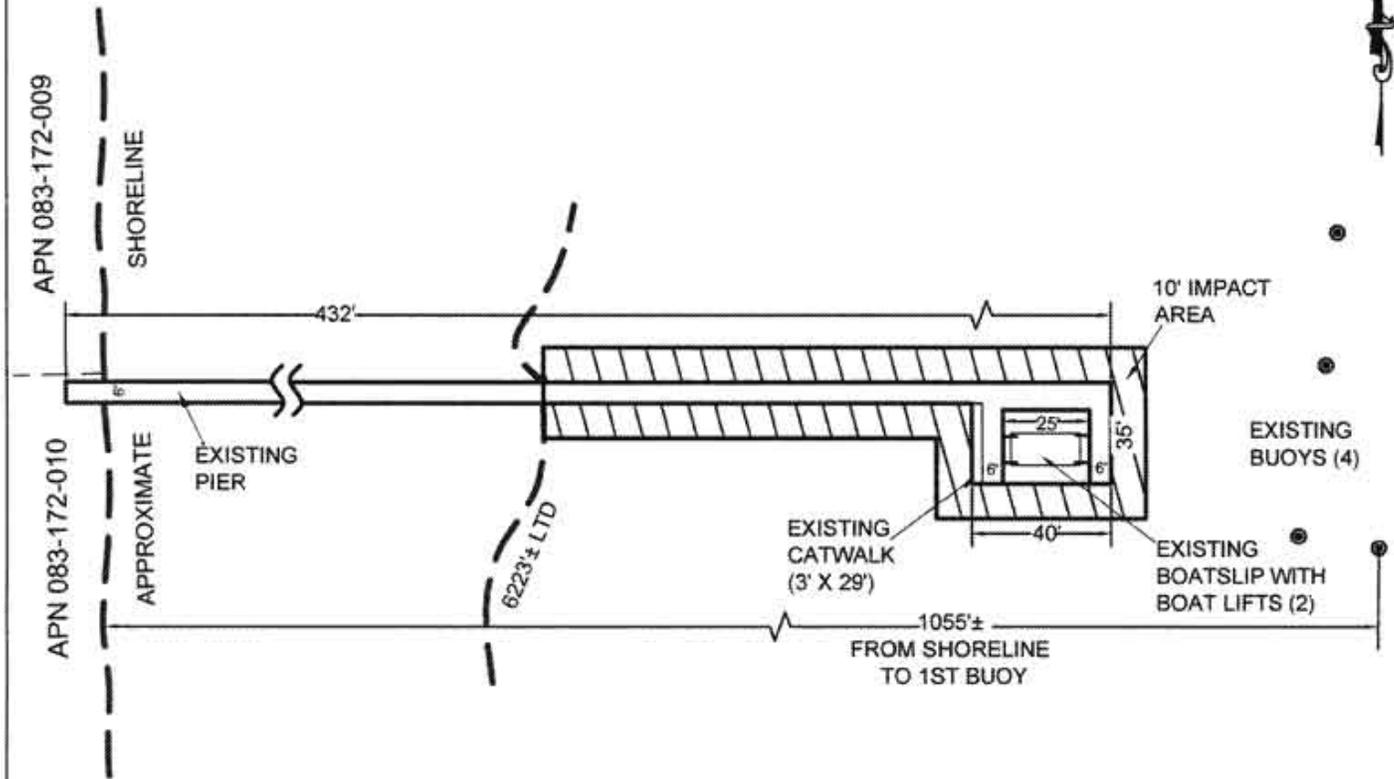
LAND DESCRIPTION PLAT
 PRC 5801.1, AUSTIN & BEAMING JOY LTD.
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

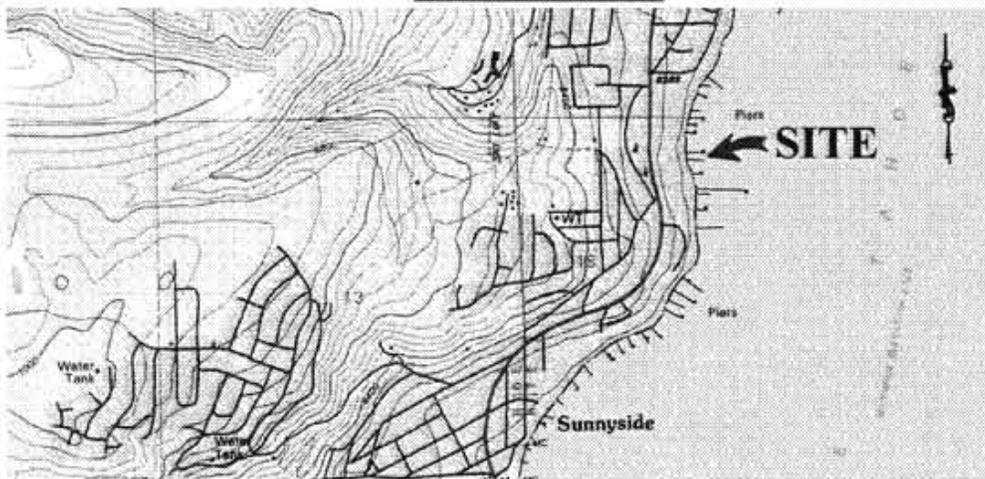
SITE



850 AND 860 WEST LAKE BLVD., NEAR TAHOE CITY

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5801.1
 AUSTIN & BEAMING JOY LTD.
 APN 083-172-009 & 010
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MJJ 07/25/13

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.