

**CALENDAR ITEM
C28**

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S 1

04/23/14
PRC 5828.1
M. Schroeder

AUTHORIZE ACCEPTANCE OF A LEASE QUITCLAIM DEED, RESCISSION OF APPROVAL, AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE

LESSEES:

Dan Best II, in Trust, for the Benefit of Brenda Payne Cooley, William Ashley Payne and Robert Best Payne under The Barbara Best Payne Testamentary Trust; Dan G. Best II, as Trustee under The Brenda Best Weaver Testamentary Trust; Dan G. Best II, Trustee of the Dan G. Best II Revocable Living Trust under Declaration of Trust dated October 7, 1993; Dan G. Best, as Sole Trustee of the “Best Exempt Credit Trust”; and Dan G. Best, as Sole Trustee of the “Best Survivor’s Trust”

APPLICANTS:

Brenda P. Cooley, Trustee of the Brenda Cooley Trust dated April 10, 2013, and Successor Trustees Thereunder; William Ashley Payne; Robert Best Payne; John C. Weaver III; Dan G. Best II, Trustee of the Dan G. Best II Revocable Living Trust under Declaration of Trust dated October 7, 1993; Dan G. Best II, as Sole Trustee of the “Best Exempt Credit Trust”; and Dan G. Best II, as Sole Trustee of the “Best Survivor’s Trust”

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4940, 4950, and 4960 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier previously authorized by the Commission; and use and maintenance of four existing mooring buoys not previously authorized by the Commission.

LEASE TERM:

10 years, beginning April 23, 2014.

CONSIDERATION:

\$2,120 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

CALENDAR ITEM NO. **C28** (CONT'D)

SPECIFIC LEASE PROVISIONS:

Insurance:

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

Other:

1. 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.
2. 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.

OTHER PERTINENT INFORMATION:

1. The Applicants own three upland parcels, Assessor's Parcel Numbers (APN) 097-100-034, 097-100-041, and 097-100-042, adjoining the lease premises.
2. On April 9, 2009, the Commission authorized Lease No. PRC 5828.9, a Recreational Pier Lease, to Dan Best II, in Trust, for the Benefit of Brenda Payne Cooley, William Ashley Payne and Robert Best Payne under The Barbara Best Payne Testamentary Trust; Dan G. Best II, as Trustee under The Brenda Best Weaver Testamentary Trust; Dan G. Best II, Trustee of the Dan G. Best II Revocable Living Trust under Declaration of Trust dated October 7, 1993; Dan G. Best, as Sole Trustee of the "Best Exempt Credit Trust"; and Dan G. Best, as Sole Trustee of the "Best Survivor's Trust." That lease authorized removal of a pier adjacent to APN 097-100-034 and construction of a pier adjacent to APN 097-100-035 (now APN 097-100-041), and will expire on April 8, 2019. Dan G. Best passed away

CALENDAR ITEM NO. **C28** (CONT'D)

in 2008 with Dan G. Best II becoming the Sole Trustee of both trusts held by Dan G. Best.

3. On April 26, 2013, the Commission authorized Lease No. PRC 9055.1, a General Lease – Recreational Use, to the Lessees for four mooring buoys adjacent to APNs 097-100-034, 097-100-041, and 097-100-042. At the time of processing the lease application, it was staff's understanding there were no changes in ownership. However, after Commission authorization, staff became aware that the ownership changed during April 2013. As a result, the Applicants never executed the lease.
4. Because of the ownership changes, the Applicants are now applying for a General Lease – Recreational Use for the existing pier and four mooring buoys. The Lessees have submitted an executed Quitclaim Deed releasing all right, claim, title, or interest in Lease No. PRC 5828.9 back to the State. Staff recommends acceptance of the Quitclaim Deed. Staff also requests that the authorization for issuance of Lease No. PRC 9055.1 made by the Commission at the April 26, 2013, meeting be rescinded.
5. The Applicants' mooring buoys have been in Lake Tahoe for many years but were not previously authorized by the Commission. Staff recommends bringing the placement of the Applicants' mooring buoys under lease, subject to the Applicants obtaining TRPA permit authorization as required in the lease. For purposes of the proposed lease, two existing mooring buoys will be authorized adjacent to APN 097-100-034; one existing mooring buoy authorized adjacent to APN 097-100-041; and one existing mooring buoy authorized adjacent to APN 097-100-042.
6. **Acceptance of a Lease Quitclaim Deed for the Pier and Rescission of Approval of Lease for the Buoys:** The staff recommends that the Commission find that the subject acceptance of a lease quitclaim deed for the pier and rescission of lease approval for the buoys do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects 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 New Lease for the Pier and Buoys:** The staff recommends that the Commission find that this activity is exempt from the requirements

CALENDAR ITEM NO. **C28** (CONT'D)

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.

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:

Acceptance of a Lease Quitclaim Deed for the Pier and Rescission of Approval of Lease for the Buoys: Find that the subject acceptance of a lease quitclaim deed for the pier and rescission of lease approval for the buoys are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of New Lease for the Buoys and Pier: 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).

CALENDAR ITEM NO. **C28** (CONT'D)

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 a lease quitclaim deed, effective April 22, 2014, for Lease No. PRC 5828.9, a Recreational Pier Lease, issued to Dan Best II, in trust, for the benefit of Brenda Payne Cooley, William Ashley Payne and Robert Best Payne under The Barbara Best Payne Testamentary Trust; Dan G. Best II, as Trustee under The Brenda Best Weaver Testamentary Trust; Dan G. Best II, Trustee of the Dan G. Best II Revocable Living Trust under Declaration of Trust dated October 7, 1993; Dan G. Best, as Sole Trustee of the "Best Exempt Credit Trust"; and Dan G. Best, as Sole Trustee of the "Best Survivor's Trust."
2. Authorize rescission of Lease No. PRC 9055.1, a General Lease – Recreational Use, approved by the Commission on April 26, 2013, to Dan Best II, in Trust, for the Benefit of Brenda Payne Cooley, William Ashley Payne and Robert Best Payne under the Barbara Best Payne Testamentary Trust; Dan G. Best II, as Trustee under the Brenda Best Weaver Testamentary Trust; Dan G. Best II, Trustee of the Dan G. Best II Revocable Living Trust under Declaration of Trust dated October 7, 1993; Dan G. Best II, as Sole Trustee of the "Best Exempt Credit Trust"; and Dan G. Best II, as Sole Trustee of the "Best Survivor's Trust."
3. Authorize issuance of a General Lease – Recreational Use to Brenda P. Cooley, Trustee of the Brenda Cooley Trust dated April 10, 2013, and Successor Trustees Thereunder; William Ashley Payne; Robert Best Payne; John C. Weaver III; Dan G. Best II, Trustee of the Dan G. Best II Revocable Living Trust under Declaration of Trust dated October 7, 1993; Dan G. Best II, as Sole Trustee of the "Best Exempt Credit Trust"; and Dan G. Best II, as Sole Trustee of the "Best Survivor's Trust" beginning April 23, 2014, for a term of 10 years, for the continued use and maintenance of an existing pier previously authorized by the Commission and use and maintenance of four existing mooring buoys not previously authorized by the Commission as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this

CALENDAR ITEM NO. **C28** (CONT'D)

reference made a part hereof; annual rent in the amount of \$2,120, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5828.1

LAND DESCRIPTION

Five (5) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 3 of fractional Section 1, Township 14 North, Range 16 East, MDM., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 – PIER

All those lands underlying an existing pier and two adjustable catwalks lying adjacent to those Lots 72, 73 and 74 as described in Exhibit A of that Trust Transfer Deed (Grant Deed) recorded April 17, 2013 as Document Number 2013-0036567 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, being 50 feet in diameter, underlying four (4) existing buoys lying adjacent to said Lots.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared March 12, 2014 by the California State Lands Commission Boundary Unit.



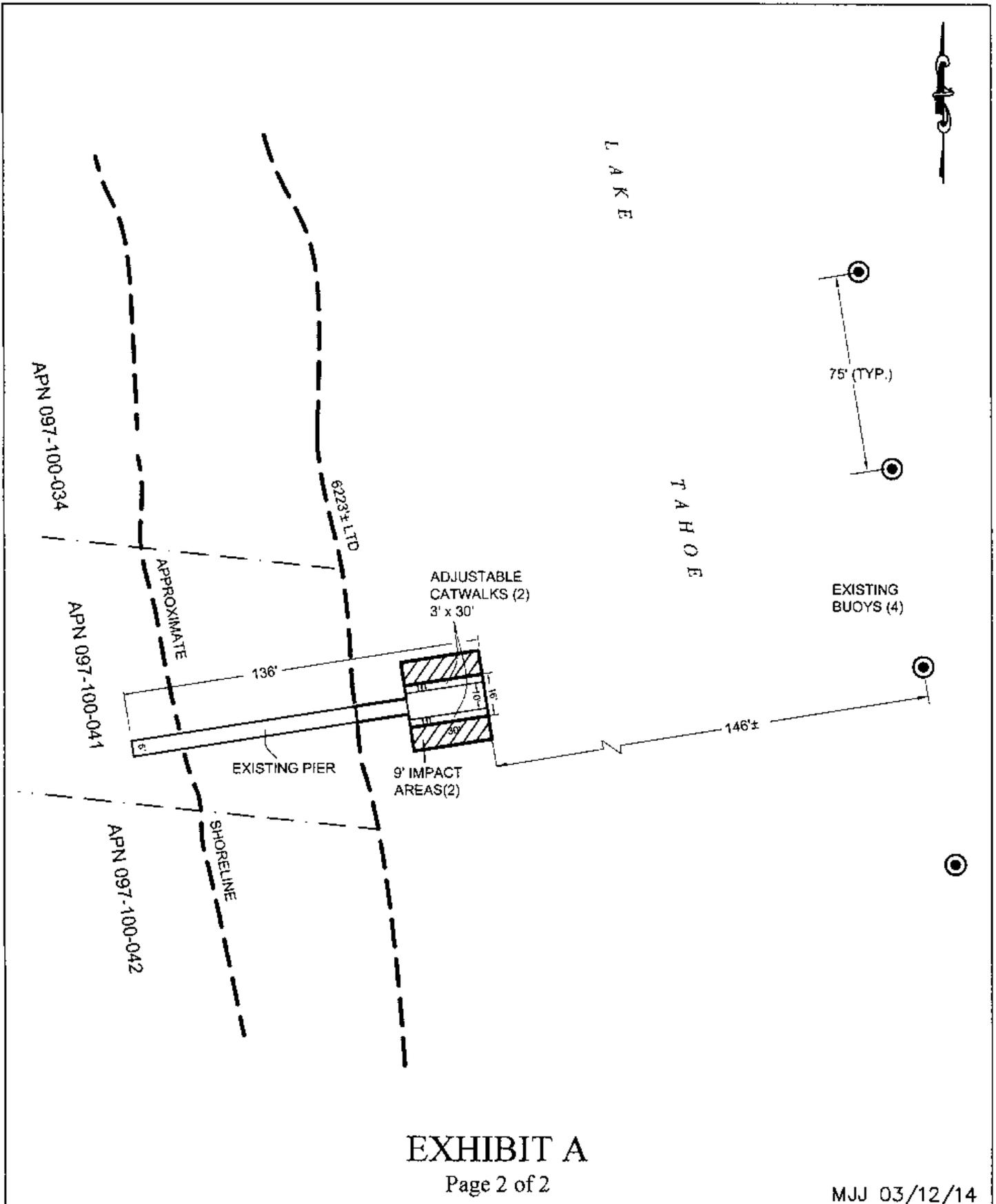


EXHIBIT A

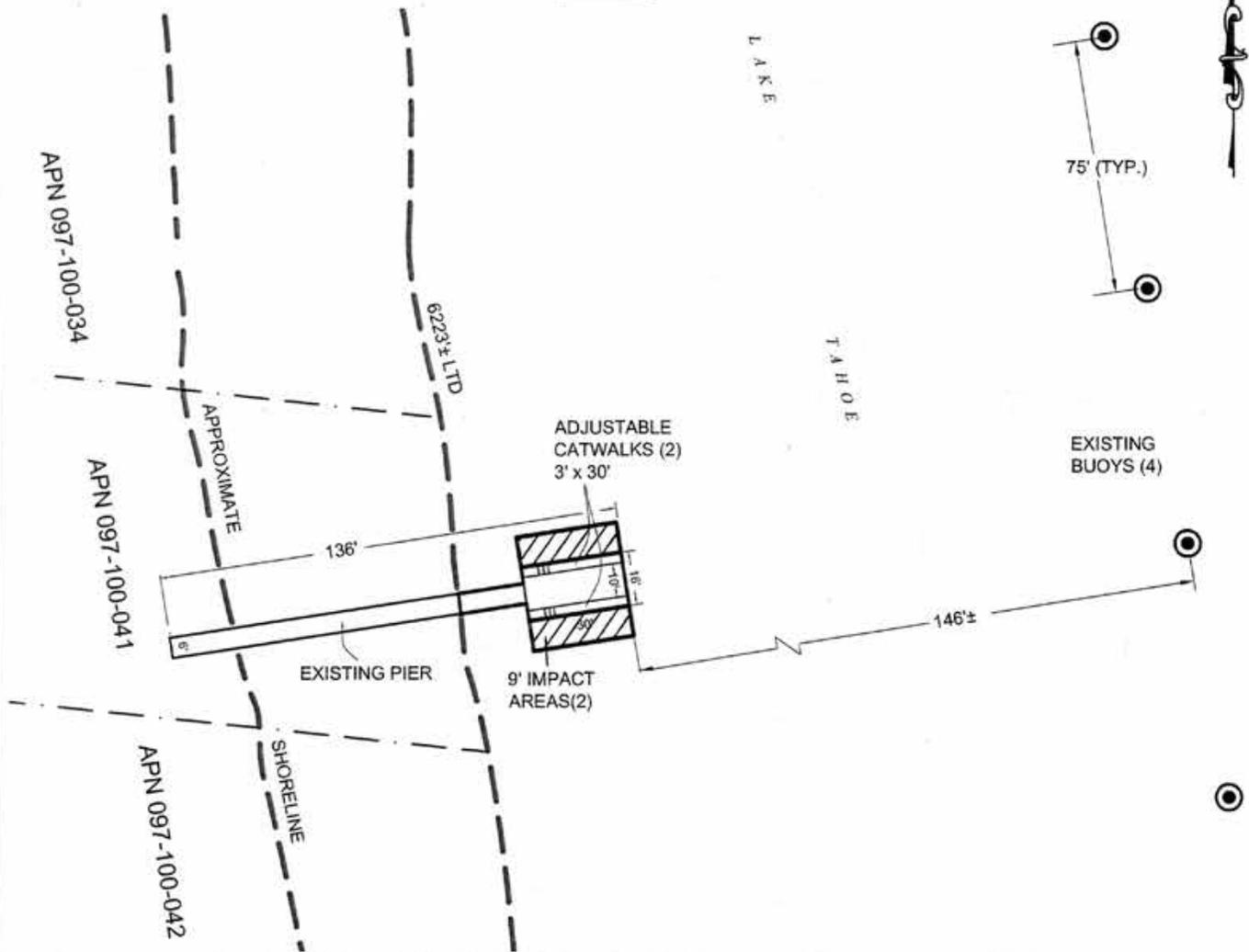
LAND DESCRIPTION PLAT
 PRC 5828.1, BEST TRUST ET AL
 PLACER COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



4940, 4950 & 4960 WEST LAKE BLVD., NEAR HOMEWOOD

NO SCALE

LOCATION

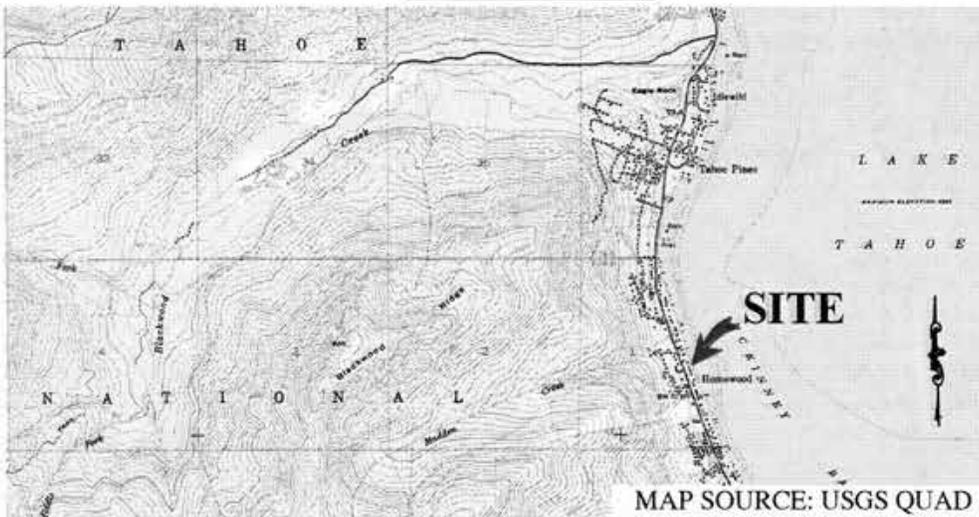


Exhibit B

PRC 5828.1
 BEST TRUST ET AL
 APN 097-100-034, 041 & 42
 GENERAL LEASE -
 RECREATIONAL USE
 PLACER COUNTY



MEJ 3/11/2014

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.