

# Staff Report 02

## **ASSIGNOR:**

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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

## **ASSIGNEE:**

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Alan K. Austin and Marianne P. Austin, Trustees of the Austin Family Trust dated August 6, 1997; and Eric S. O' Brien and Suzanne D. O' Brien, Trustees of the O' Brien Family 2003 Trust dated December 29, 2003

## **PROPOSED ACTION:**

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Assignment of a General Lease - Recreational Use

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

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

### **AUTHORIZED USE:**

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

### **TERM:**

10 years, beginning August 23, 2013.

### **CONSIDERATION:**

\$1,373 per year.

### **SPECIFIC PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from Tahoe

Regional Planning Agency (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:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

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

On September 13, 2013, the Commission authorized a General Lease – Recreational Use for the continued use and maintenance of an existing joint-use pier, two boat lifts, and four mooring buoys 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 (Beaming Joy) ([Item C21, September 13, 2013](#)). The lease authorized a pier shared between the two upland parcels adjoining the lease premises, Assessor's Parcel Number (APN) 083-172-009 owned by Beaming Joy, and APN 083-172-010 owned by The Austin Family Trust. When the lease was issued, The Austin Family Trust qualified for rent-free status pursuant to section 6503.5 of the Public Resources Code but Beaming Joy did not. Therefore, the annual rent was prorated based on the Austin Family Trust's qualification for rent-free status.

On August 23, 2018, the Commission authorized an amendment of the lease to reflect a reduced lease area and a revision of annual rent ([Item C01, August 23, 2018](#)). The lease will expire on August 23, 2023.

On December 18, 2018, without notification to staff, ownership of APN 083-172-009 transferred to West Lake Boulevard II, A Delaware limited liability company. On June 6, 2019, ownership of this parcel transferred to Eric S. O' Brien and Suzanne D. O' Brien, Trustees of the O' Brien Family 2003 Trust dated December 29, 2003. The upland parcel, APN 083-172-010, is still owned by the Austin Family Trust.

The Applicant is applying for assignment of a General Lease – Recreational Use, for the continued use and maintenance of the existing joint-use pier, two boat lifts, and four mooring buoys. The Applicant has registered the moorings with TRPA (No. 10817, No. 11196, and No. 11340).

Approval of this lease assignment will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the foreseeable term of the lease. For these reasons, staff recommends finding that approval of this assignment is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. The Commission cannot unreasonably deny an assignment to a qualified party. The Assignee is qualified to hold the lease and no information has been discovered that would provide a basis for withholding the assignment. Upon expiration or prior termination of the lease, neither the lessee nor the assignee have any right to a new lease or to renewal of any previous lease. If no new lease is granted the lessee may be required to remove the joint-use pier, two boat lifts, and four mooring buoys and restore the premises to their original condition.
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 promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. Assignment of the lease is not a project as defined by the California Environmental Quality Act 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).

## **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:

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

Find that the proposed assignment of the lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

### **AUTHORIZATION:**

Authorize the assignment of Lease No. PRC 5801, a General Lease – Recreational Use of sovereign land, as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only) attached and by this reference made a part hereof, from Beaming Joy Limited, A BVI Limited Corporation, to Eric S. O' Brien and Suzanne D. O' Brien, Trustees of the O' Brien Family 2003 Trust dated December 29, 2003, effective June 6, 2019.

**EXHIBIT A**

**LEASE 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 June 6, 2019 as Document 2019-0038269 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 any applicable impact area(s).

EXCEPTING THEREFROM any portion(s) 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**

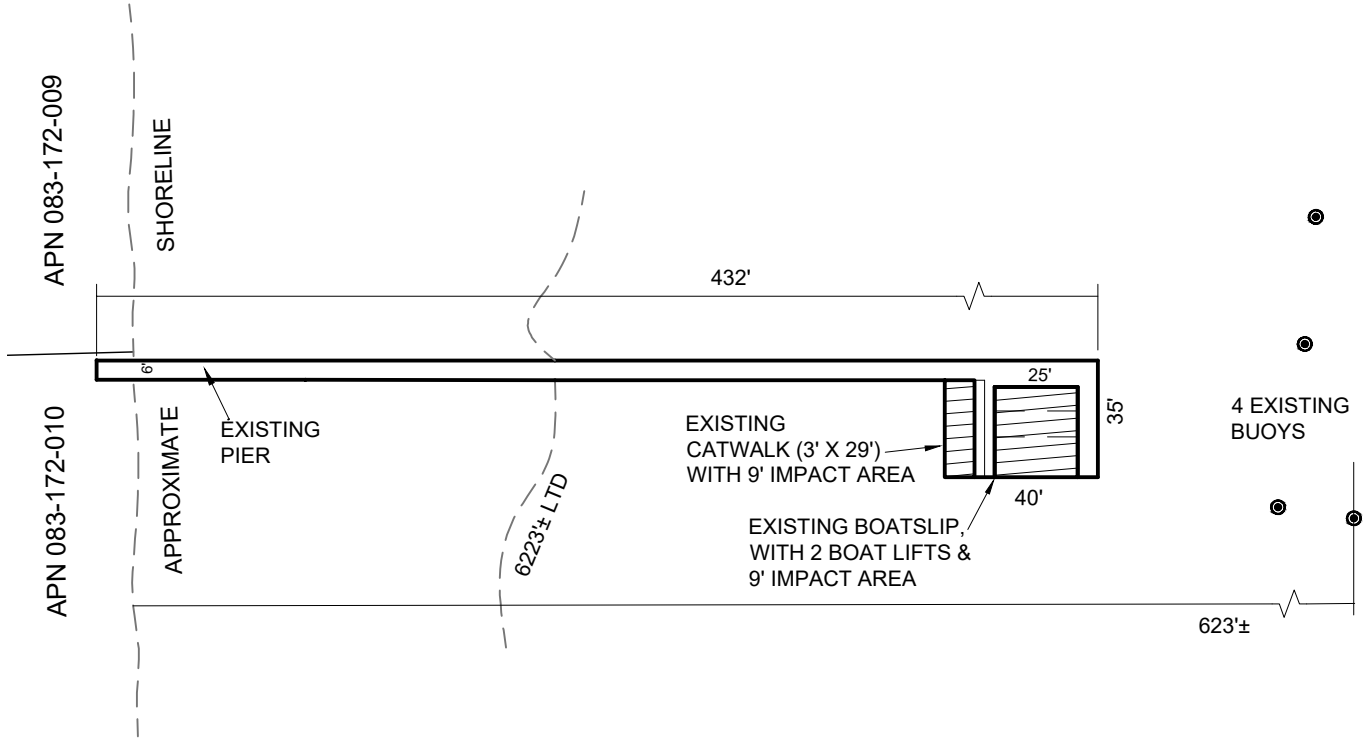
Prepared January 7, 2020 by the California State Lands Commission Boundary Unit.



NO SCALE

L A K E

T A H O E



# EXHIBIT A

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LAND DESCRIPTION PLAT  
LEASE 5801.1, AUSTIN AND O'BRIEN TRUSTS  
PLACER COUNTY

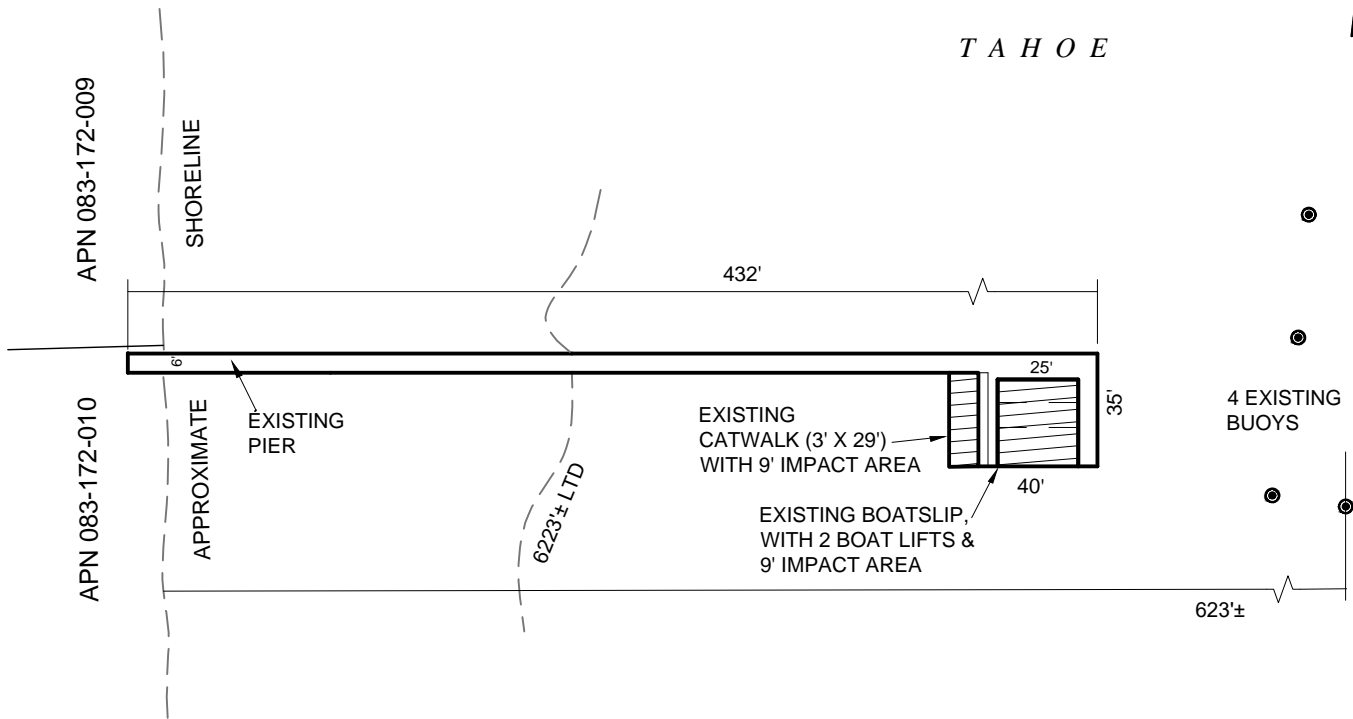
CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE

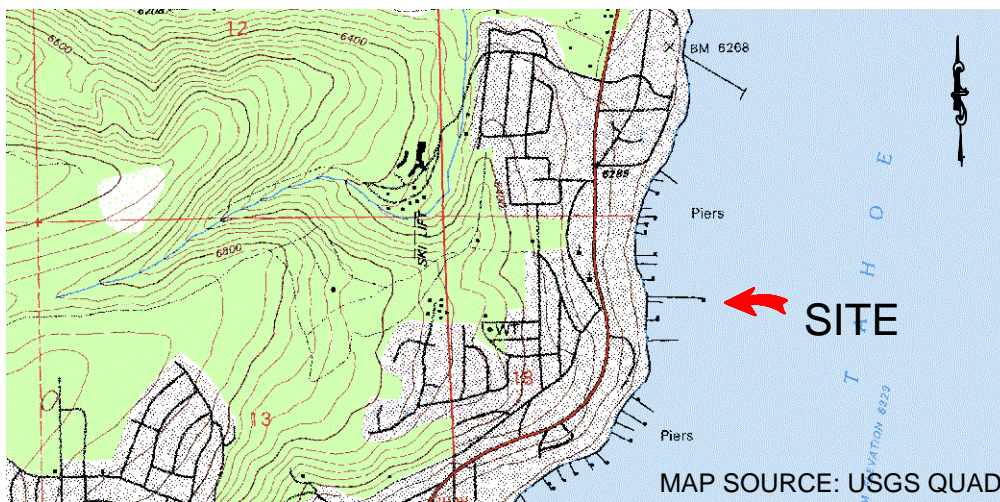
L A K E  
T A H O E



850 & 860 WEST LAKE BLVD., NEAR TAHOE CITY

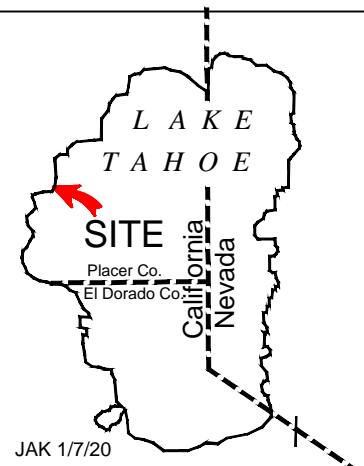
NO SCALE

# LOCATION



# EXHIBIT B

LEASE 5801.1  
 AUSTIN AND O'BRIEN TRUSTS  
 APN 083-172-009, 010  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY



JAK 1/7/20

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.