

**CALENDAR ITEM
C96**

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S 1

10/19/12
PRC 3545.1
N. Lee
J. Frey

**CONSIDER TERMINATION OF GENERAL LEASE - RECREATIONAL USE AND
AUTHORIZATION OF LITIGATION FOR EJECTMENT**

LESSEES/PARTY:

Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5240 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and two mooring buoys.

LEASE TERM:

10 years, beginning September 8, 2010.

CONSIDERATION:

\$3,254 per year with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

BACKGROUND:

On September 23, 1987, the Commission authorized a General Permit – Recreation and Right-of-Way Uses to Alvina Patterson for the continued use and maintenance of an existing pier and two mooring buoys. That permit expired on September 7, 2001. In 1997, prior to expiration of the permit, Alvina Patterson sold the upland parcel to Mark R. Freeman and, on September 3, 2004, he deeded ownership to Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004.

Between 1997 and 2009, Commission staff continued to send letters and contact the Freemans by telephone, requesting submission of an application for a new lease. In late 2009, an application was submitted and on December 10, 2010,

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the Commission authorized a General Lease – Recreational Use for the continued use and maintenance of the existing pier and two mooring buoys.

As a condition of the lease, the Commission negotiated back rent in the amount of \$19,240 and agreed to a payment plan in four equal installments of \$4,810 for the period from September 8, 1998 through September 7, 2010. The back rent payments were to be submitted on or before the following dates: October 15, 2010; February 15, 2011; June 15, 2011; and October 15, 2011. On July 23, 2012, after multiple past due notices, the Freemans were formally notified in writing that the lease was in default for failure to pay the June 15, 2011 and October 15, 2011 installments of back rent as agreed to in the lease.

After the July 23 letter, staff sent several more letters with no response until September 27, 2012 when Mr. Freeman finally contacted staff to advise that he was aware of the past rent due but was not in a financial position to submit the rent at this time. He advised that he was attempting to sell his upland parcel and, upon sale, he would be able to submit payment for all rent due. As of October 5, 2012, the Freemans have not submitted any funds toward payment for the back rent installments or the outstanding annual rent which was due on September 8, 2012.

The Freemans have failed to comply with the terms of the lease and are in immediate default because 1) pursuant to Section 1, Consideration, of the lease, the Freemans agreed to pay annual rent in the amount of \$3,254; 2) pursuant to Section 2, paragraph 1 of the lease, the Freemans agreed to pay back rent in the total amount of \$19,240; and 3) pursuant to Section 4, paragraph 2 of the lease, the Freemans agreed to pay the annual rent without deduction, delay, or offset, on or before each anniversary of the beginning date of the lease during each year of the lease term.

Therefore, staff is now requesting the Commission's authorization for termination of the lease, litigation to eject, and restoration of the lease premises.

OTHER PERTINENT INFORMATION:

1. Lessees own the uplands adjoining the lease premises.
2. On December 10, 2010, the Commission authorized a General Lease – Recreational Use to Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004 for an existing pier and two mooring buoys.
3. The staff recommends that the Commission find that the subject lease termination does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and

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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.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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.

AUTHORIZATION:

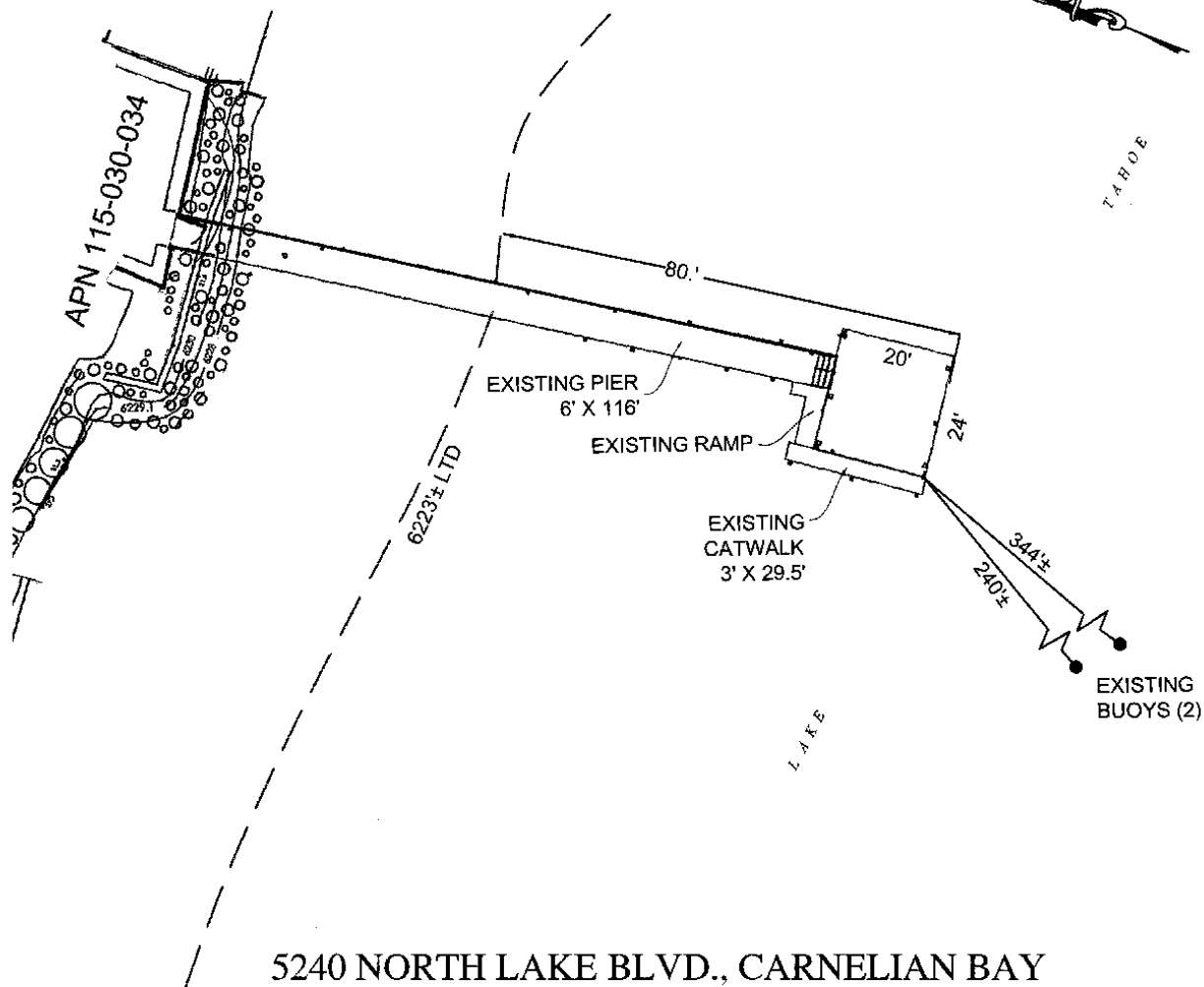
1. Ratify staff's finding that Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004, are in default of Lease No. PRC 3545.1 because the Freemans have not complied with: 1) Section 1, Consideration, of the lease where they agreed to pay annual rent in the amount of \$3,254; 2) Section 2, paragraph 1 of the lease where they agreed to pay back rent in the total amount of \$19,240; and 3) Section 4, paragraph 2 of the lease where they agreed to pay the annual rent without deduction, delay, or offset, on or before each anniversary of the beginning date of the lease during each year of the lease term.
2. Authorize staff to issue a notice of termination of Lease No. PRC 3545.1, a General Lease – Recreational Use, issued to Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004.
3. Authorize staff of the State Lands Commission and the Office of the Attorney General to take all necessary legal steps, including litigation, to eject Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004, from State sovereign land; to seek removal of the existing pier and two mooring buoys from sovereign land in Lake Tahoe adjacent to 5240 North Lake Boulevard, Carnelian Bay, Placer County; to seek

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restoration of the sovereign land at this location to its natural condition prior to the placement of the improvements to the satisfaction of the Commission; to seek such other remedies available for the breach of Lease No. PRC 3545.1; and to recover the Commission's damages and costs.

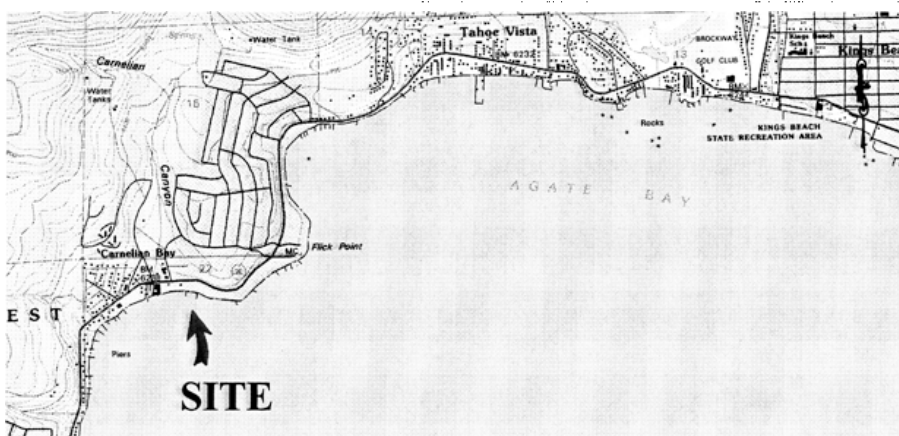
NO SCALE

SITE



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.

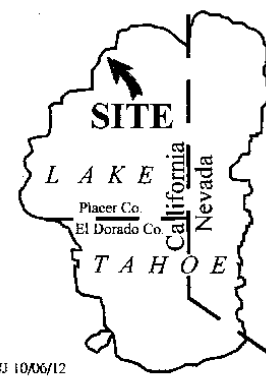
Exhibit A

PRC 3545.1

FREEMAN

APN 115-030-034

GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY



MJJ 10/06/12