

EXHIBIT O

RESOLUTION

Calendar Item No. 61, entitled CONSIDER MOST APPROPRIATE PUBLIC TRUST NEEDS AND USES AND EXERCISE THE PUBLIC TRUST EASEMENT INVOLVING LAND IN LAKE TAHOE AT BUCK'S BEACH (AKA SPEEDBOAT BEACH), AT PARCELS LOCATED BETWEEN 9898 AND 9950 LAKE STREET, EAST OF KINGS BEACH AND WEST OF THE CALIFORNIA/NEVADA BOUNDARY IN PLACER COUNTY; AUTHORIZE THE REMOVAL OF A FENCE WITHIN THE PUBLIC TRUST EASEMENT; AND COMPENSATE THE PROPERTY OWNER FOR THE VALUE OF ANY LAWFULLY PLACED IMPROVEMENT THAT IS REMOVED, duly coming on for public hearing before the State Lands Commission of the State of California at its regular public meeting at 10:00 a.m. on October 22, 2009 in the City of Sacramento, County of Sacramento, California; upon lawful notice to interested parties and all persons having requesting an opportunity to be heard and present evidence to the Commission did so; the Commission having fully heard their testimony and considered their evidence; and having heard the statements and evidence of the staff of the State Lands Commission and the Office of the Attorney General and having considered the Calendar Item and the matters referred to therein; and upon due deliberation THE COMMISSION NOW FINDS:

1. WHEREAS, the real property described in Exhibit N of Calendar Item #61 (a copy of which is attached and made part of the Resolution), is located in the County of Placer and lies along the shore of Lake Tahoe between the high water elevation of 6228.75 Lake Tahoe Datum as determined by the California Supreme Court in *State of California, et al. v. Superior Court of Placer County (Fogerty I)*, 29 Cal 3d 240 (1981) and Court of Appeal in *Fogerty v State of California (Fogerty II)*, 187 Cal. App. 3d 224, 229 (1986) and the low water elevation of 6228 Lake Tahoe Datum; and
2. WHEREAS, the California Supreme Court has found that the public's trust interests encompass the bed of the lake, and not just the water, being subject to and available for the public uses of navigation, fishing, and lake related recreational uses such as bathing, swimming and open space, as described in the case of *State of California v. Superior Court of Lake County (Lyon)*, 29 Cal. 3d 210, 229-231; and
3. WHEREAS, it is in the public's interest and reasonable needs of the public that the public trust easment located below the elevation of high water located within the lands described in the attached Exhibit N be accessible to public use for lake and shorezone/beach related recreational purposes; and
4. WHEREAS, the continued use and maintenance of existing structures, facilities, or improvements, which have been lawfully placed in good faith within the shorezone as described in Exhibit N, other than the metal fence located either along the westerly boundary of a parcel of land owned by Heigh Ho, LLC or within the public right of way of Harbor Avenue owned by Placer

County, do not presently constitute a substantial interference with the public's trust needs and uses within the shorezone, and the exercise of trust interests does not contemplate or require removal or taking of possession of them in any manner; and

5. WHEREAS, it is in the public's interest and reasonable needs of the public that the metal fence located below the elevation of high water and within the lands described in the attached Exhibit N and either along the westerly boundary of a parcel of land owned by Heigh Ho, LLC or within the public right of way of Harbor Avenue, owned by Placer County, constitutes a substantial interference with the public's trust needs and uses; and
6. WHEREAS, California law provides for the tender of a fair and just compensation for the taking by the Commission, on behalf of the State, of such lawful improvements as may have been made in good faith by the grantee or patentee or his successors in interest of the fee title in lands subject to the public trust; and
7. WHEREAS, the California Constitutional rights of public access and fishing, as well as the common law public trust rights of recreational use of the lake and lakebed below high water can best be preserved, protected and enhanced by formal determination of the public's needs and rights and formal exercise of the public trust rights within the lands described in attached Exhibit N;

NOW, THEREFORE, upon motion duly made and approved, the State Lands Commission hereby finds and resolves:

1. The public's trust needs and appropriate uses of the shorezone below elevation 6228.75 feet Lake Tahoe Datum, involving the public trust easement area described in the attached Exhibit N, are determined to be needed for and shall be available for public uses of navigation, fishing and other lake related recreational uses such as bathing, swimming and open space, as described in *State of California v. Superior Court of Lake County (Lyon)*, 29 Cal 3d 210, 229-231(1981).
2. The public trust interest of the State is hereby formally exercised on the lands described in Exhibit N, hereto, to confirm and protect the public's rights of access to and use of the shorezone of Lake Tahoe, as described in Exhibit N, for navigation, fishing, and other lake related recreational uses and to require the removal of a metal fence extending waterward from the high water elevation of 6228.75 feet lake Tahoe Datum
3. The Commission staff is hereby authorized to tender a fair and just compensation for the taking by the Commission, on behalf of the State, of such lawful improvements as may have been made in good faith by the grantee or patentee or his successors in interest of the property underlying the metal fence located below the elevation of high water and within the lands

described in the attached Exhibit N and existing either along the westerly boundary of a parcel of land owned by Heigh Ho, LLC or within the public right of way of Harbor Avenue, owned by Placer County.

4. The jurisdiction of the Commission is continuing and nothing contained in this Resolution shall in any manner limit, prohibit or restrict the Commission on its own motion, recommendation of the Commission staff, or upon the request of lawful owners of any underlying fee interest or other parties, and, after further public hearings from amending or revoking this Resolution in the future; from establishing different criteria for exercise of the State's retained public trust easement rights; from taking possession of improvements on the lands described in Exhibit N hereto and granting compensation to the owners of lawful improvements; or from taking any action whatever which may later be deemed necessary or appropriate in the interest of the public and consistent with the public's property rights.
5. It is the intent of the Commission to fully and completely carry out its responsibilities as guardian and trustee of the public trust while recognizing the reasonable concerns of the owners of the underlying fee interest of the lands described in attached Exhibit N, to the extent such concerns do not substantially interfere with the exercise of the public's trust rights. In recognizing the concerns of owners of the upland property adjacent to Lake Tahoe, including those lands within the trust exercise area as described in attached Exhibit N, the Commission acknowledges and supports the authority of the County of Placer to adopt and enforce reasonable health and safety ordinances regulating time place and manner of use of the public trust easement area. The Commission further directs staff to provide assistance to Placer County and other local governments having jurisdiction involving Lake Tahoe to insure that both private property rights and the statewide interest of the public for protection and use of the Lake are properly considered.
6. The staff of the Commission is directed to record this Resolution in the Office of the Placer County Recorder.