

# Staff Report 16

## **APPLICANT:**

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Tony Weir Industries, LLC, a California Limited Liability Company

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational Use

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

Sovereign land in Lake Tahoe, adjacent to 242 Four Ring Road, near Rubicon Bay, El Dorado County.

## **AUTHORIZED USE:**

Use and maintenance of two existing mooring buoys not previously authorized by the Commission.

## **TERM:**

10 years, beginning February 23, 2021.

## **CONSIDERATION:**

\$754 per year, with an annual Consumer Price Index adjustment, and \$436 to compensate for the unauthorized occupation of state sovereign land dating back to July 2020.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing, and lake-related recreation.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from the

Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

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

On June 9, 2020, the upland property was deeded from Tony Weir Industries, LLC, a Texas Limited Liability Company to Tony Weir Industries, LLC, a California Limited Liability Company. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of two existing mooring buoys not previously authorized by the Commission. The Applicant registered the buoys with TRPA on July 27, 2020 (Registration #11520). Staff recommends that the Commission accept compensation from the Applicant for the two mooring buoys' unauthorized occupation of State land in the amount of \$436 for the period beginning July 27, 2020 (the date of the TRPA registration) through February 22, 2021 (the day prior to the beginning date of the new lease).

On October 26, 2020, the Applicant signed a letter of non-objection, I2059, issued by Commission staff for the removal of the pier that extended from the upland parcel into the Public Trust Easement but terminated before extending into the Commission's leasing jurisdiction. The pier was removed on December 3, 2020.

The Applicant removed the pier to transfer their pier development right to Bow Bay, LLC, a California Limited Liability Company (Bow Bay). TRPA issued a conditional permit for the transfer on April 7, 2020. On October 22, 2020, the Commission authorized a General Lease - Recreational Use to Bow Bay for the construction, use, and maintenance of a pier; and continued use and maintenance of two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission ([Item C03, October 22, 2020](#)).

The Applicant owns the upland parcel adjoining the lease premises. The buoys are privately owned and maintained and facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
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.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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.

## **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:

### **CEQA FINDING:**

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).

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

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 23 2021, for a term of 10 years, for the use and maintenance of two 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 reference made a part hereof; annual rent in the amount of \$754, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize acceptance of compensation from the Applicant in the amount of \$436 for unauthorized occupation of State land for the period beginning July 27, 2020 through February 22, 2021.

## **EXHIBIT A**

**A 2747**

### **LAND DESCRIPTION**

Two parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to fractional Section 4, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved May 19, 1875, County of El Dorado, State of California, more particularly described as follows:

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel described in Grant Deed recorded June 9, 2020 as Document Number 2020-0026696-00 in Official Records of said County.

Accompanying plat is hereby made a part of this description.

### **END OF DESCRIPTION**

Prepared 10/06/2020 by the California State Lands Commission Boundary Unit.



NO SCALE



LAKE



EXISTING  
BUOYS (2)

405'±

145'±

TAHOE



6223'± LTD

APPROX.  
SHORELINE

APN  
017-021-016

## EXHIBIT A

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TS 10/06/2020

LAND DESCRIPTION PLAT  
A 2747, TONY WEIR INDUSTRIES, LLC  
EL DORADO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



