

# Staff Report 23

## **APPLICANT:**

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Brian Johnson Trust; Gary Steven Pleau and Vivian M. M. Pleau, Trustees under the Pleau Living Trust dated August 26, 1996, fbo Gary Steven Pleau and Vivian M. M. Pleau; Geoffrey Pleau, Trustee of the Geoffrey Pleau 2011 Irrevocable Trust dated June 29, 2011; and Stacey Ann Carter, Trustee of the Stacey Ann Carter 2011 Irrevocable Trust, dated June 29, 2011

## **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 5460 and 5480 West Lake Boulevard, near Homewood, Placer County.

## **AUTHORIZED USE:**

Use and maintenance of an existing joint-use pier, boat lift, and four mooring buoys.

## **TERM:**

10 years, beginning December 5, 2022.

## **CONSIDERATION:**

\$2,381 per year, with an annual Consumer Price Index adjustment.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee expressly acknowledges that a permit from the Tahoe Regional Planning Agency (TRPA) is required for the Authorized Improvements and failure to obtain a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of the lease.

- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

## **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, section 2000 and 2003.

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

On December 5, 2012, the Commission authorized a General Lease – Recreational Use to Brian Johnson Trust and Gary Steven Pleau and Vivian M. M. Pleau, Trustees under the Pleau Living Trust dated August 26, 1996, fbo Gary Steven Pleau and Vivian M. M. Pleau for the use and maintenance of an existing joint-use pier, two boat lifts, and four mooring buoys ([Item 23, December 5, 2012](#)). Prior to issuance of that lease, and before December 21, 2011, the boat lift on the south side of the pier was removed for repairs. As it was set to be reinstalled, it was included in the prior lease.

On October 19, 2017, the Commission authorized an amendment of lease to replace the Exhibits and modify the annual rent ([Item 23, October 19, 2017](#)). Following these prior Commission actions, staff learned that on June 29, 2011, Gary Steven Pleau and Vivian M. M. Pleau granted Geoffrey Pleau, Trustee of the Geoffrey Pleau 2011 Irrevocable Trust, dated June 29, 2011, and Stacey Ann Carter, Trustee of the Stacey Ann Carter 2011 Irrevocable Trust, dated June 29, 2011, each a 20 percent undivided interest in 5460 West Lake Boulevard. The lease expired on December 4, 2022.

The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of an existing joint-use pier, one boat lift, and four mooring buoys. On January 12, 2022, the boat lift was registered with TRPA (Registration No. 11617). On March 21, 2022, two mooring buoys adjacent to 5460 West Lake Boulevard were registered with TRPA (Registration No. 10521) and subsequently on January 12, 2022, the two other mooring buoys adjacent to 5480 West Lake Boulevard were registered with TRPA (Registration No. 10989).

As of December 21, 2022, the second boat lift has not been reinstalled, and there is currently no TRPA permit for the second boat lift. As a second boat lift has not been installed in over 10 years, and staff understands the Applicant does not have any immediate plans to apply for and install a second boat lift, the Applicant is requesting to move forward with the lease for an existing pier, one boat lift, and four mooring buoys. If the Applicant wishes to reinstall a second boat lift in the future, the Applicant will apply to the Commission for an amendment to the proposed lease after obtaining a TRPA permit for the boat lift.

The facilities have existed for many years at this location. The topography surrounding the pier is sandy and flat, making the shoreline accessible to pedestrians in this area. The pier is built on pilings and public access for pedestrians and lake-related activities is available at varying water levels underneath the pier within the Public Trust Easement. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The facilities 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 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.

### **CLIMATE CHANGE:**

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe. The frequency and severity of natural disasters like flooding, wildfire, drought, extreme heat, and storms are increasing throughout the state of California, including the Sierra Nevada mountains, and will continue to accelerate through the end of the century. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events and shifts in seasonal characteristics.

According to California's Fourth Climate Change Assessment, released in 2018, the most significant impacts of climate change in the Sierra Nevada Region are more intense heat, precipitation extremes, declining snowpacks, and changes in streamflow timing. The long-term warming trend will lead to warmer and shorter winters, and longer and dryer summers. Successive dry and warm winters are resulting in minimal snowpack, increased winter stream flows and floods, and decreased spring and summer runoff. Prolonged low lake levels will become normal. Low lake level conditions can create more expansive beaches and increased shoreline access in dry months. However, these conditions interfere with boat launching and mooring facilities. This impact is most noticeable where the facilities are sited on shallow, low gradient lake bottom locations.

Dry winters will be punctuated with exceedingly wet years where prolonged and excessive precipitation can produce flash floods. High precipitation in these years will result in higher lake levels, causing beaches to narrow and reducing public access. Extra saturation of the soil can increase erosion, especially following intense wildfire seasons. Surface runoff water may carry more sediment into the lake, adversely impacting water quality and clarity.

Climate change may also lead to more intense and unpredictable storm events and winds. These storms may deviate from prevailing wind patterns for the region. These winds can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Additionally, these winds can increase wave damage on structures and boats along the lake.

Improvements authorized under this lease may require more frequent inspection and maintenance to ensure they are not displaced during storm events. Watercraft moored to buoys, piers, or docks are also vulnerable to damage from high wind events and excessive waves.

### **CONCLUSION:**

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 as prior lessee may be required to remove the pier, boat lift and four mooring buoys and restore the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
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 the 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:**

Authorize issuance of General Lease – Recreational Use to the Applicant beginning December 5, 2022, for a term of 10 years, for the use and maintenance of an existing joint-use pier, boat lift, and four mooring buoys, as described in Exhibit A and shown in Exhibit B (for reference purposes only) attached to and by this reference made a part here of; annual rent in the amount of \$2,381 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 3546

### LAND DESCRIPTION

Five parcels of submerged lands situate in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 12, Township 14 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

#### PARCEL 1 – PIER

All those lands underlying an existing joint-use pier, two catwalks and boat lift lying adjacent to those parcels described in Grant Deed recorded January 27, 1997 as Document Number 97-0004856-00 and Grant Deed recorded November 19, 1997 as Document Number 97-0072265-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

#### PARCELS 2 thru 5 – BUOYS

Four circular parcels of land, each being 50 feet in diameter, underlying four existing buoys lying adjacent to those parcels described in Grant Deed recorded January 27, 1997 as Document Number 97-0004856-00 and Grant Deed recorded November 19, 1997 as Document Number 97-0072265-00 in Official Records of said County.

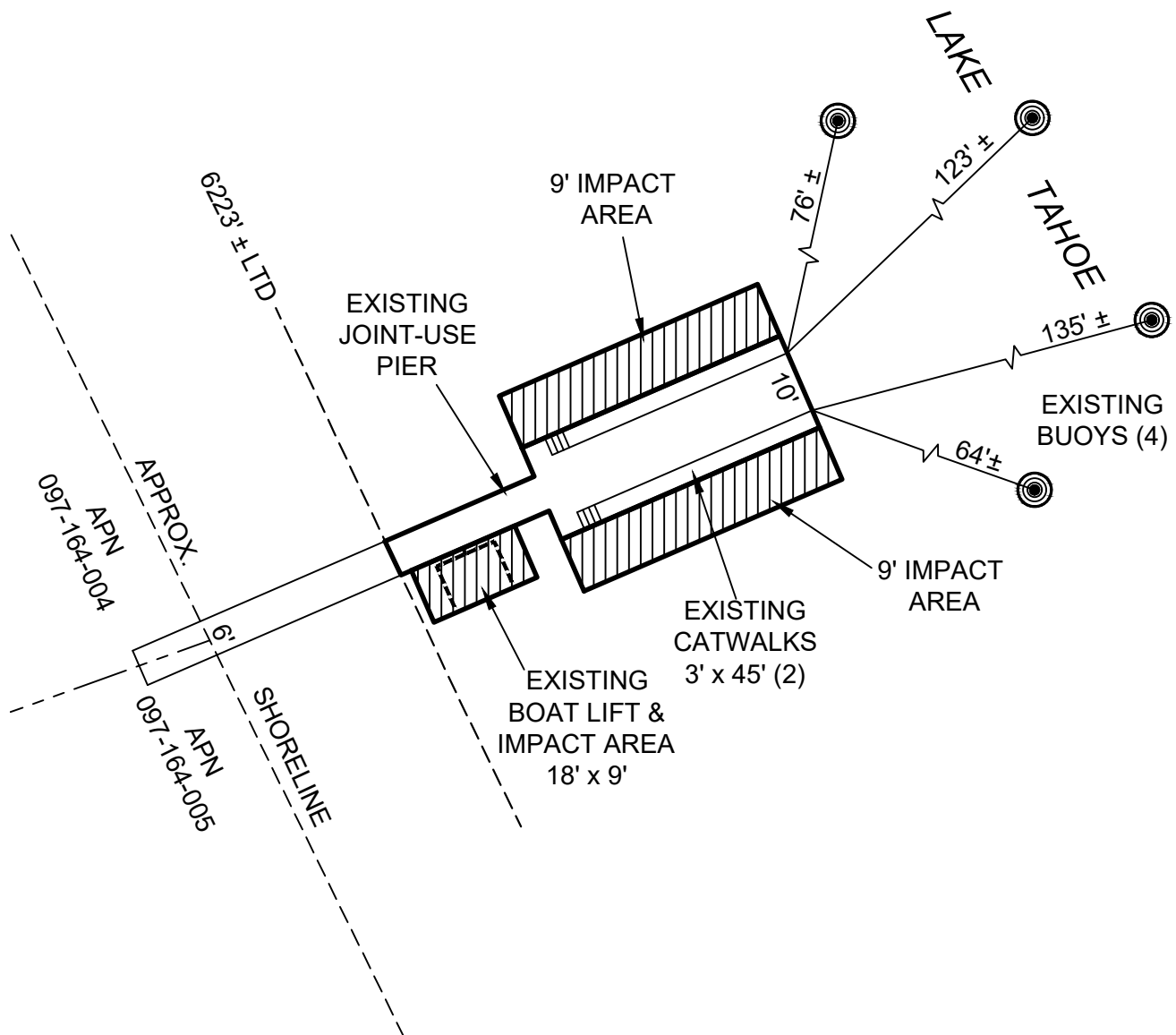
Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared 03/17/2022 by the California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

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TS 03/17/2022

LAND DESCRIPTION PLAT  
LEASE 3546, PLEAU & JOHNSON  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION





