

# Staff Report 01

## LESSEE/APPLICANT:

Michael G. Akatiff and Christy D. Akatiff, Trustees of the Michael G. Akatiff and Christy D. Akatiff Revocable Living Trust; Mark R. Gilmartin, Trustee of the Mark R. Gilmartin 2006 Trust, Henry F. Telfeian; and Elizabeth K. Stage

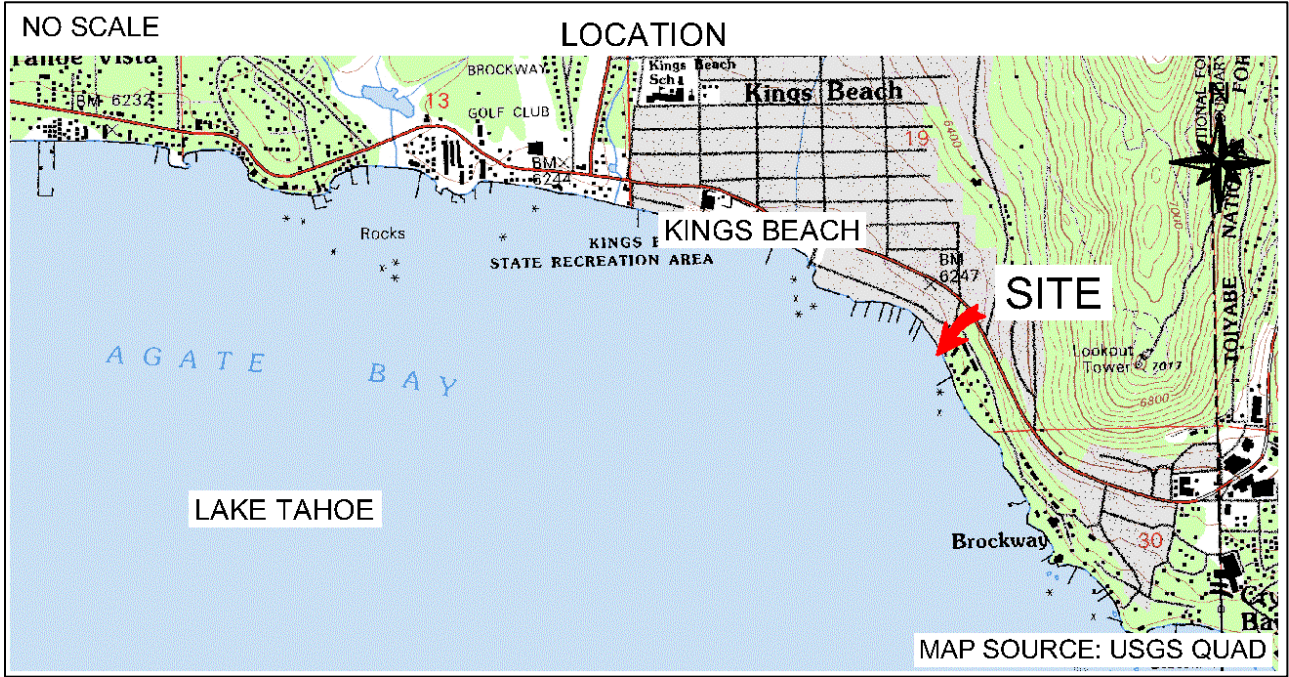
## PROPOSED ACTION:

Amendment of a General Lease – Recreational Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 8778, 8780, 8782, and 8796 Brockway Vista Avenue, near Kings Beach, Placer County (as shown in Figure 1).

Figure 1. Location



**AUTHORIZED USE:**

Use and maintenance of three existing mooring buoys previously authorized by the Commission; construction, use, and maintenance of a joint-use pier with four boat lifts; and removal of three existing mooring buoys and one double personal watercraft lift.

**TERM:**

10 years, beginning August 20, 2020.

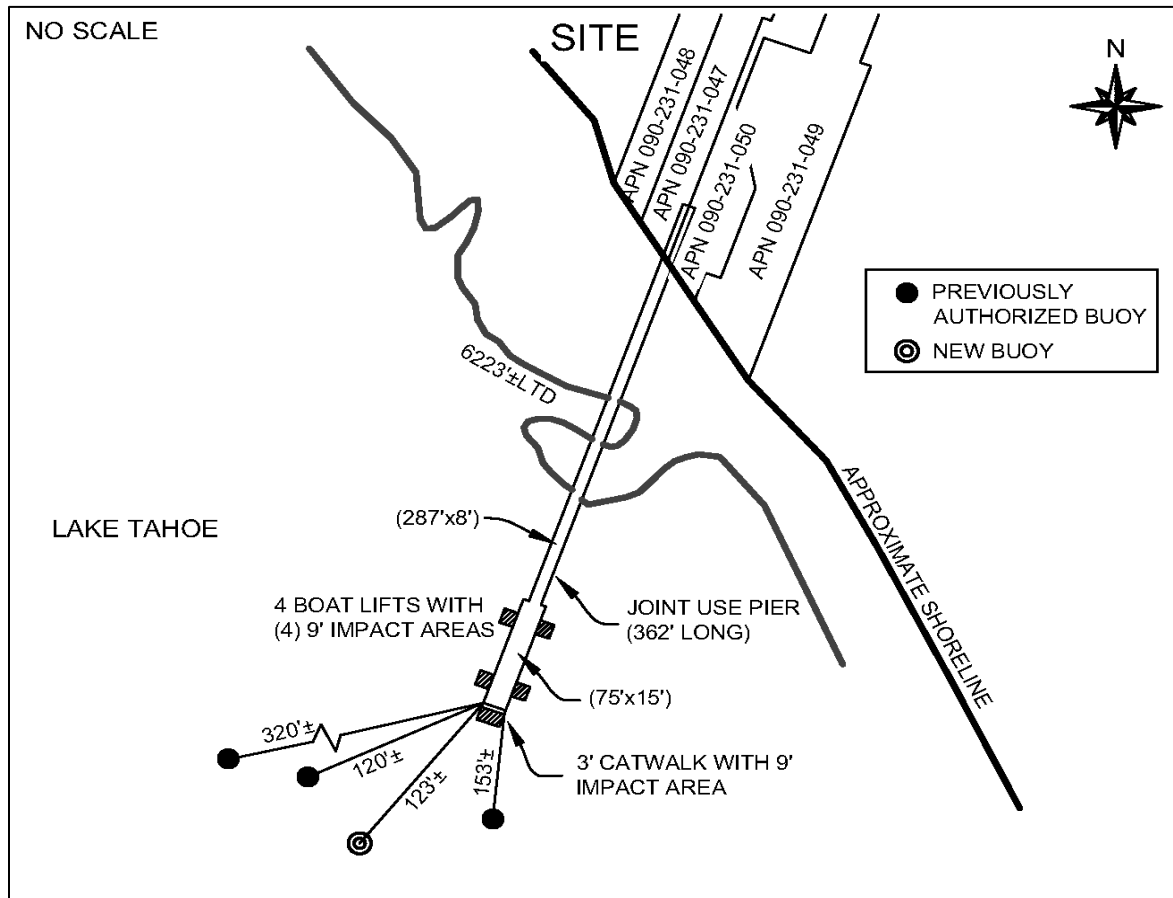
**CONSIDERATION:**

\$2,872 per year, with an annual Consumer Price Index adjustment.

**PROPOSED AMENDMENT:**

- Authorize the installation, use, and maintenance of one additional mooring buoy, adjacent to 8780 Brockway Vista Avenue, near Kings Beach, Placer County (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

- Revise the annual rent from \$2,872, with an annual Consumer Price Index adjustment, to \$3,046, with an annual Consumer Price Index adjustment.
- Replace the existing Exhibit A, Land Description and Exhibit B, Site and Location Map (for reference purposes only) in the Lease.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor's Executive Officer or designee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- 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.

All other terms and conditions of the lease to remain in effect without amendment.

## **STAFF ANALYSIS AND RECOMMENDATION:**

---

### **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 August 20, 2020, the Commission authorized the consolidation of existing improvements that were previously authorized under two leases, PRC Nos. 8271 and PRC 8976. The lease consolidation was accomplished by the Commission accepting lease quitclaim deeds and authorizing issuance of a new General Lease – Recreational Use to Michael G. Akatiff and Christy D. Akatiff, Trustees of the Michael G. Akatiff and Christy D. Akatiff Revocable Living Trust; Mark R. Gilmartin, Trustee of the Mark R. Gilmartin 2006 Trust, Henry F. Telfeian; and Elizabeth K. Stage ([Item 01, August 20, 2020](#)). The new lease, identified as Lease No. 8271, authorized the continued use and maintenance of three existing mooring buoys previously

authorized by the Commission; construction, use, and maintenance of a joint-use pier with four boat lifts; and removal of three existing mooring buoys and one double personal watercraft lift adjacent to 8778, 8780, 8782, and 8796 Brockway Vista Avenue, near Kings Beach, Placer County. This lease expires August 19, 2030.

The Applicant is now applying for an amendment to this lease for the installation, use, and maintenance of one additional mooring buoy, effective May 1, 2023. The Applicant obtained a permit from the Tahoe Regional Planning Agency (TRPA) on October 25, 2022 (Registration No. 11624). The permit specifically authorizes placement of one new (additional) mooring buoy and anchoring device lakeward of the upland parcels, resulting in a total of four mooring buoys now being authorized by TRPA along with four boat lifts.

Commission records indicate that rent under the current lease has been paid through August 19, 2023. With the CPI adjustments, the current rent exceeds the proposed rent. Staff recommends amending the lease prior to the August 20, 2023 lease anniversary date, which means the rent payment made on the current lease will be prorated with the remaining balance used to offset a portion of the rent due for the proposed amendment of the lease. Therefore, a credit of \$946.08 will be applied to the first year's rent under the proposed amendment of the lease.

The placement of the additional mooring buoy will occupy a relatively small area of the lake and is for the mooring of boats. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The buoy will be privately owned and maintained. 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, as amended, 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. The 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. 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.

**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 streamflows 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 amendment 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:**

---

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 will not be authorized to install the new mooring buoy. 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(3).

Authority: Public Resources Code section 21084, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

## **RECOMMENDED ACTION:**

---

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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(3).

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

Find that the proposed amendment 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 the amendment of Lease Number 8271, a General Lease – Recreational Use, effective May 1, 2023, for the installation, use, and maintenance of one additional mooring buoy; to revise rent from \$2,872 with an annual Consumer Price Index adjustment, to \$3,046, with an annual Consumer Price Index adjustment; and to replace the existing lease Exhibit A, Land Description, and lease Exhibit B, Site and Location Map, with Lease Exhibit A, Land Description, and Lease Exhibit B, Site and Location Map; all other terms and conditions of the lease shall remain in effect without amendment.
2. Apply the payments previously submitted under Lease Number 8271 to offset rent due for the proposed amendment of lease, with a credit of \$946.08 being applied to the first year's rent of the proposed amendment of the lease.
3. Authorize the Executive Office or her designee to replace Exhibits in the lease and adjust rent upon submission, review, and approval of as-built plans detailing the final location of the new improvements following installation.