

# Staff Report 03

## APPLICANT:

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Dennis J. Altnow and Lois Ann Altnow, Co-Trustees of the Dennis and Lois Altnow Family Trust dated December 3, 1991; and Donald A. Altnow and Katherine Ann Altnow, Co-Trustees of the Donald and Katherine Altnow Family Trust dated December 3, 1991

## PROPOSED ACTION:

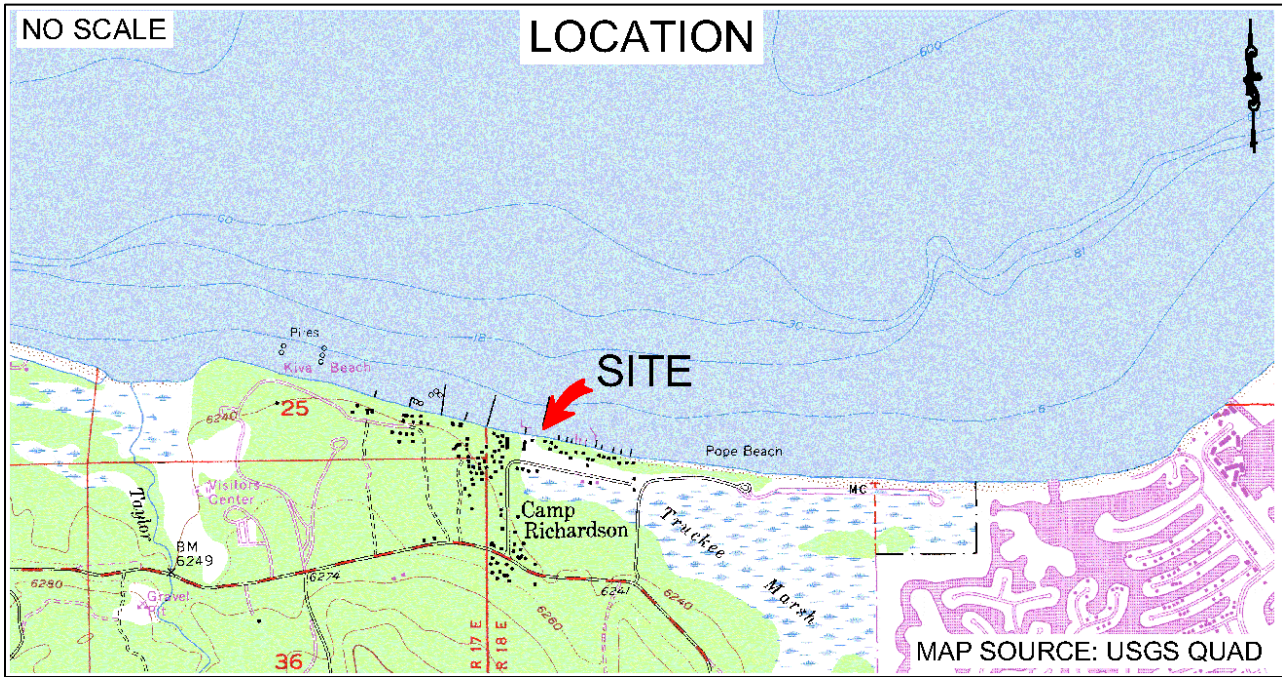
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Issuance of a General Lease – Recreational Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 3021 and 3023 Jameson Beach Road, South Lake Tahoe, El Dorado County (as shown in Figure 1).

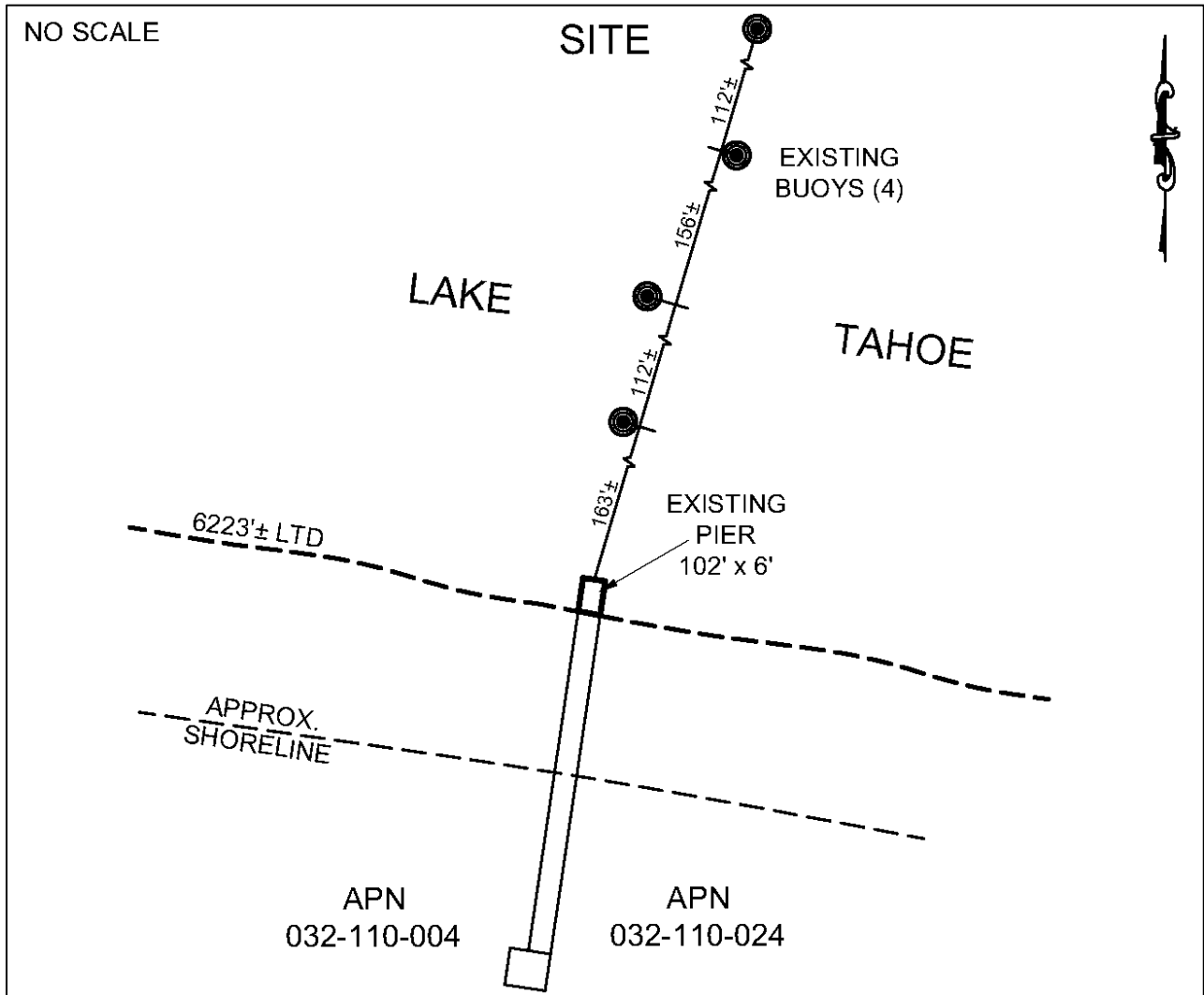
Figure 1. Location



**AUTHORIZED USE:**

Use and maintenance of an existing pier and two mooring buoys previously authorized by the Commission, and use and maintenance of two existing mooring buoys not previously authorized by the Commission (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.

**TERM:**

10 years, beginning May 1, 2023.

**CONSIDERATION:**

\$1,137 per year, with an annual Consumer Price Index adjustment; and \$7,857 for unauthorized occupation of State land for the period prior to May 1, 2023.

**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 this 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.
- Lessee agrees the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands through April 30, 2023.

**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, sections 2000 and 2003.

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

On June 21, 2013, the Commission authorized a General Lease - Recreational Use to Gene A. Landen, Trustee of the Gene A. Landen Trust dated October 24, 2003 for the use and maintenance of an existing pier and two mooring buoys adjacent to 3021 Jameson Beach Road, South Lake Tahoe, El Dorado County ([Item 45, June 21, 2013](#)). This lease expired on May 31, 2022.

On September 6, 2016, ownership interest in the upland property was transferred to 3021 Jameson Beach Road, LLC, a California limited liability company (the LLC). The Commission was not notified of the change in ownership at this time, nor was an assignment of lease sought. However, on July 20, 2017, the Commission received an application from the LLC to renew and transfer the lease.

On August 3, 2017, prior to this lease application being brought before the Commission, ownership interest in the upland property was transferred to two trusts comprised of and controlled by the same individuals as the LLC: Dennis J. Altnow and Lois Ann Altnow, Co-Trustees of the Dennis and Lois Altnow Family Trust dated December 3, 1991; and Donald A. Altnow and Katherine Ann Altnow, Co-Trustees of the Donald and Katherine Altnow Family Trust dated December 3, 1991. Commission staff was notified of this change in ownership and was informed that the Applicant intended to reconstruct and extend their pier. Per the Applicant's request, Commission staff postponed processing of this application to allow the Applicant sufficient time to develop a project plan for this reconstruction and to obtain the necessary permits and authorizations for said project. The Applicant was ultimately unable to obtain the required permits, and the proposed pier reconstruction project never came to fruition.

Additionally, the previous lease only designated 3021 Jameson Beach Road as the adjacent upland property. However, the residence on the upland property is located on two neighboring parcels located at both 3021 Jameson Beach Road and 3023 Jameson Beach Road. The Applicant acquired ownership interest in both of these parcels at the same time, and they function as a single unit. Therefore, the lease will now identify both parcels, and their associated addresses, as the adjacent upland properties to the lease premises.

The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of the existing pier and two mooring buoys previously authorized by the Commission, and two existing mooring buoys not previously authorized by the Commission. Staff recommends issuance of a General Lease – Recreational Use to the Applicant, to take effect on May 1, 2023.

Annual rent for this lease has not been paid since ownership interest was transferred on September 6, 2016. Therefore, the Applicant will pay \$7,857 in compensation for the unauthorized occupation of State lands by the pier and four mooring buoys for the period prior to May 1, 2023. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, from September 6, 2016 through April 30, 2023, ensuring the State is protected.

The pier and four mooring 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 subject mooring buoys have existed for many years at this location, are located directly lakeward of the upland property, and occupy a relatively small

area of the lake. TRPA registered the buoys on May 15, 2019 (Registration No. 10038 and 10039).

The subject pier is built on pilings, with the area immediately upland of the pier being gently sloped and sandy. The immediate upland topography is easily traversable, with public access for pedestrians and lake-related activities available by passing under the pier.

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 may be required to remove the pier and four mooring buoys and return 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, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

## **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 interest of the State.

### **AUTHORIZATION:**

1. Authorize acceptance of compensation from the Applicant in the amount of \$7,857 for unauthorized occupation of State land for the period prior to May 1, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning May 1, 2023, for a term of 10 years, for the use and maintenance of an existing pier and two mooring buoys previously authorized by the Commission, and two existing mooring buoys not previously authorized by the Commission; annual rent in the amount of \$1,137, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.