

Staff Report 15

APPLICANT:

Matthew Kelly, Trustee of the John M. Kelly Revocable Trust, dated March 31, 1997;
John M. Kelly Jr., Trustee of the John M. Kelly, Jr. 2022 Trust dated May 20, 2022;
Elizabeth K. D'Ambrosia, Trustee of the Elizabeth K. D'Ambrosia Separate Property Trust dated April 21, 2022; and Matthew Kelly, Trustee of the Matthew Kelly Separate Property Trust dated April 18, 2022

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3390 Edgewater Drive, near Tahoe City, Placer County (as shown in Figure 1).

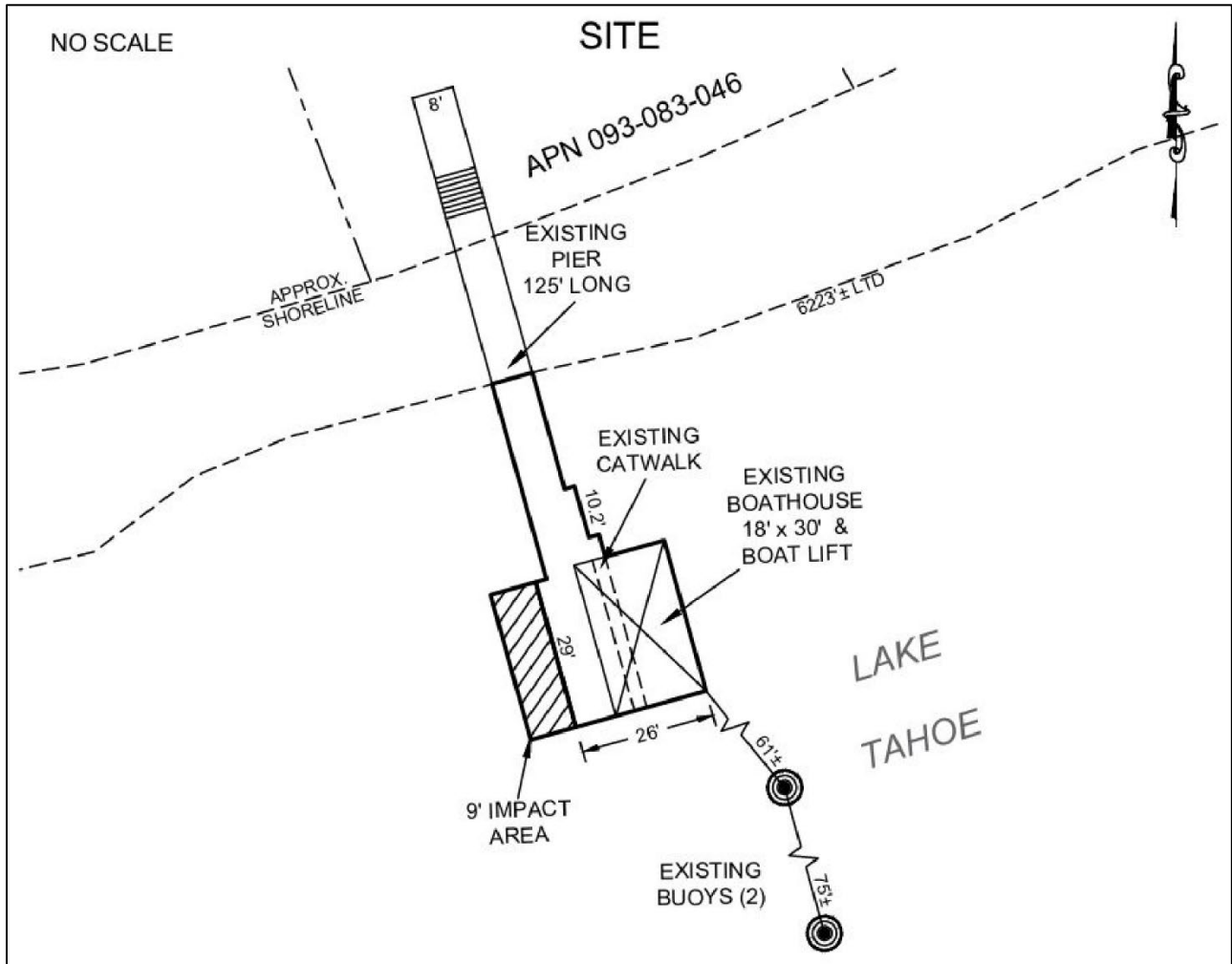
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of an existing pier, boathouse with boat lift, and two mooring buoys (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 October 1, 2023.

CONSIDERATION:

\$1,610 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, navigation, fishing, and lake-related recreation.
- 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:

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 19, 2014, the Commission authorized a General Lease – Recreational Use to John M. Kelly, as Trustee of the John M. Kelly Revocable Trust, dated March 31, 1997; John M. Kelly as Trustee of the John M. Kelly Exempt Generation-Skipping Trust under The Paul B. Kelly Revocable Trust, dated November 2, 1981; John M. Kelly, Jr.; Elizabeth K. D'Ambrosia, and Matthew F. Kelly, for use and maintenance of an existing pier, boathouse with boat lift, and two mooring buoys ([Item 18, June 19, 2014](#)). The lease expires on September 31, 2023.

On April 27, 2022, ownership interest in the upland property was transferred from John M. Kelly to John M. Kelly, as Trustee of the John M. Kelly Trust, dated March 31, 1997. On August 3, 2022, ownership interest was quitclaimed from Matthew F. Kelly to Matthew F. Kelly, Trustee of the Matthew Kelly Separate Property Trust dated April 18, 2022. Ownership interest was also quitclaimed from Elizabeth K. D'Ambrosia to Elizabeth K. D'Ambrosia, Trustee of the Elizabeth K. D'Ambrosia Separate Property Trust dated April 21, 2022, and from John M. Kelly to John M. Kelly, Jr., Trustee of the John M. Kelly Jr. 2022 Trust dated May 20, 2022, on August 3, 2022. Although there was no assignment of the lease correlating with these upland transfers, staff recommends the new lease begin at the expiration of the current lease. The same

individuals continued to be responsible for the property as trustees of their respective trusts.

The Applicant is applying for a General Lease – Recreational Use for the continued use and maintenance of the existing pier, boathouse with boat lift, and two mooring buoys.

The mentioned improvements have existed for many years at this location. The Applicant holds a current TRPA registration for the boat lift and two mooring buoys as obtained on January 24, 2023 (Registration No. 10102). The pier, boathouse with boat lift, and buoys are privately owned and maintained, used for the docking and mooring of boats, 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 pier is built on pilings with the area immediately upland of the pier being slightly sloped and very rocky. Due to the natural topography of this area, traversing the upland, including the Public Trust easement, may be difficult because of dense vegetation and various sized rocks. Public access for pedestrians and lake-related activities is available by passing under the waterward end of the pier, however this area is unlikely to be accessed by members of the public due to its steep and rocky topography.

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.

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 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 may be required to remove the pier, boathouse with boat lift and two 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.

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 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:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 1, 2023, for a term of 10 years, for the use and maintenance of an existing pier, boathouse with boat lift, and two mooring buoys; annual rent in the amount of \$1,610, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.