

Staff Report 03

APPLICANT:

Blue Bronco, LLC, a California limited liability company

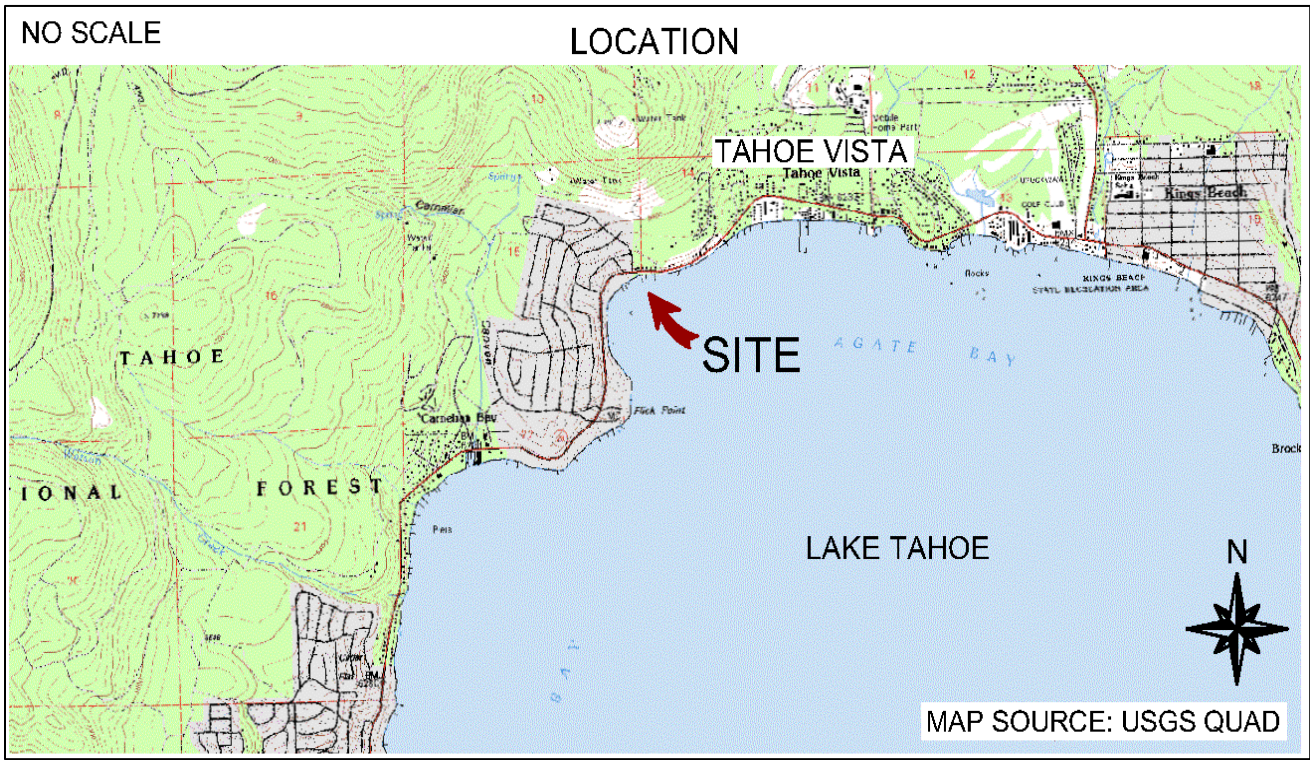
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6049 North Lake Boulevard, near Tahoe Vista, Placer County (as shown in Figure 1).

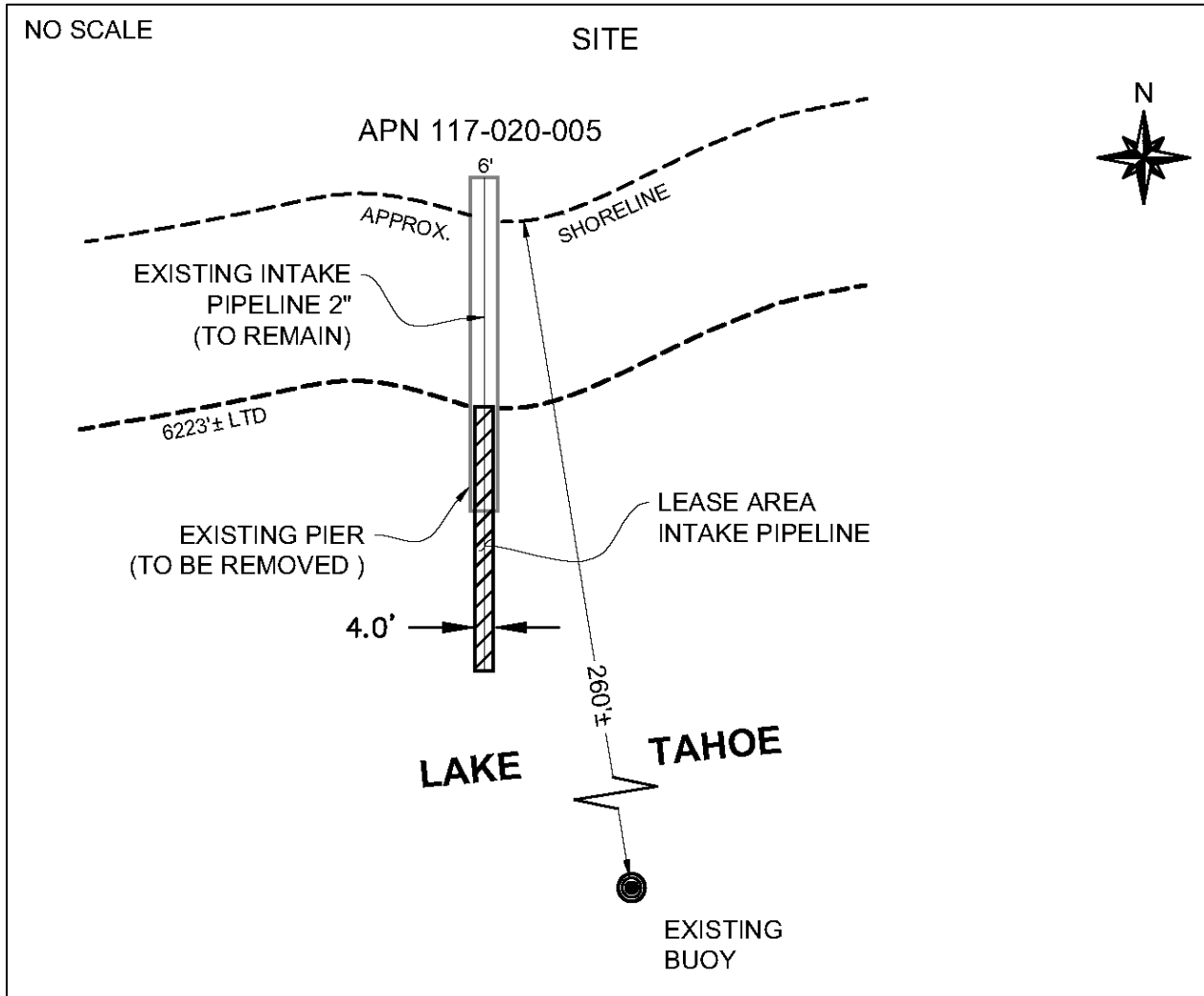
Figure 1. Location



AUTHORIZED USE:

Use of one mooring buoy previously authorized by the Commission; use of an existing water intake line not previously authorized by the Commission; and removal of an existing pier (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 June 5, 2023.

CONSIDERATION:

\$279 per year, with an annual Consumer Price Index adjustment; and \$524 for the unauthorized occupation of state land from May 31, 2022 through June 4, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee expressly acknowledges that a permit or registration from the Tahoe Regional Planning Agency (TRPA) may be required for the Authorized Improvements and failure to obtain a permit or registration from TRPA and maintain compliance with that permit or registration 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:

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 termination of a Recreational Pier Lease from lessees Gerald G. Swanson and Gail Swanson and an issuance of a General Lease – Recreational Use to Gerald G. Swanson and Gail Swanson, Trustee, or its successor(s), of the Gerald and Gail Swanson Family Trust, dated March 17, 1993, for the use and maintenance of an existing pier previously authorized by the Commission; and the use and maintenance of one existing mooring buoy not previously authorized by the Commission ([Item C02, December 5, 2012](#)). That lease expired on April 9, 2022.

On May 31, 2022, ownership interest of the upland parcel was transferred to Blue Bronco, LLC, a California limited liability company (Applicant). The Applicant is applying for an issuance of a General Lease – Recreational Use for the use of one existing mooring buoy previously authorized by the Commission; one existing water

intake line not previously authorized by the Commission; and the removal of an existing pier. The mooring buoy was registered with TRPA on January 4, 2023 (Registration No. 11266).

Although the previous lease had rent-free status pursuant to Public Resources Code section 6505.5, staff recommends that the Commission accept compensation in the amount of \$524 for the existing pier, mooring buoy, and the water intake line from May 31, 2022, when the upland ownership transferred to the Applicant through June 4, 2023, the day preceding the proposed new lease. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The Applicant obtained a conditional permit No. ERSP2022-1956 from TRPA on April 26, 2023, which is set to occur in two stages. The permit specifically authorizes the transfer of scenic credits associated with an existing single-use pier from Placer County Assessor's Parcel Number (APN) 117-020-005 (Lease 4065/Application 3963) to Placer County APN 085-180-018 (Lease 8887/Application 3943). Pursuant to the TRPA permit, the Lessee is required to demolish the existing pier located on Placer County APN 117-020-005 before the scenic credits can be transferred to Placer County APN 085-180-018 for proposed pier construction project. Both applications are expected to be heard at the June 5, 2023 Commission meeting.

The pier will be demolished from the water using an amphibious vessel or barge. It will involve disassembling the steel pier deck, beams, stringers and all 8 steel pilings. Caissons will be employed during the removal of the pilings and the materials will be transported to an off-site waste facility.

The existing mooring buoy is privately owned and maintained and facilitates 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 buoy is located directly lakeward of the upland property and occupies 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 Applicant has filed an Initial Statement of Diversion with the State Water Resources Control Board for the existing freshwater intake pipeline. The freshwater intake pipeline is not generally associated with traditional Public Trust uses. However, the pipeline has been in place for many years, and occupies a small area of the lakebed. The owners use the pipeline to provide water to the upland property. The pipeline does not interfere with Public Trust activities at this time. Per

TRPA, once the pier is removed, clean washed rock will be placed on top of the pipeline to prevent scenic impacts.

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 and rough wave 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 approval of this lease assignment will not substantially interfere with Public Trust needs at this location, at this time, nor for the remaining term of this lease; is consistent with the common law Public Trust Doctrine; and is in the best interest 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 as prior lessee may be required to remove the mooring buoy, water intake line, including the existing pier and restore the premises to its 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 Area of the Commission's 2021-2025 Strategic Plan.
3. **Existing Buoy and Water intake line:** 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).
4. **Pier Demolition:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The

project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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

APPROVAL OBTAINED:

Tahoe Regional Planning Agency

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
Lahontan Regional Water Quality Control Board
California Department of Fish and Wildlife

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Mooring Buoy and Water intake line: 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).

Pier Demolition: 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the removal of the pier and the existing mooring buoy and, for a limited period, use of the mooring buoy 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;

2. Find that the existing and, for a limited period, use of the water intake line is generally not consistent with the Public Trust Doctrine, but the current use does not substantially interfere with Public Trust need and values at this location of the approved term; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Accept compensation from the Applicant for the unauthorized occupation of State land for an existing pier, mooring buoy, and water intake line in the amount of \$524 for the period of May 31, 2022 through June 4, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 5, 2023, for a term of 10 years, for the use of one mooring buoy previously authorized by the Commission, use of an existing water intake line not previously authorized by the Commission, and removal of an existing pier; annual rent in the amount of \$279, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.