

# Staff Report 11

## LESSEE/APPLICANT:

Mark B. Nelson, Trustee of the Wilborn Children's Trust and Lorie L. Wilborn, Trustee of the Nelson Heritage Trust

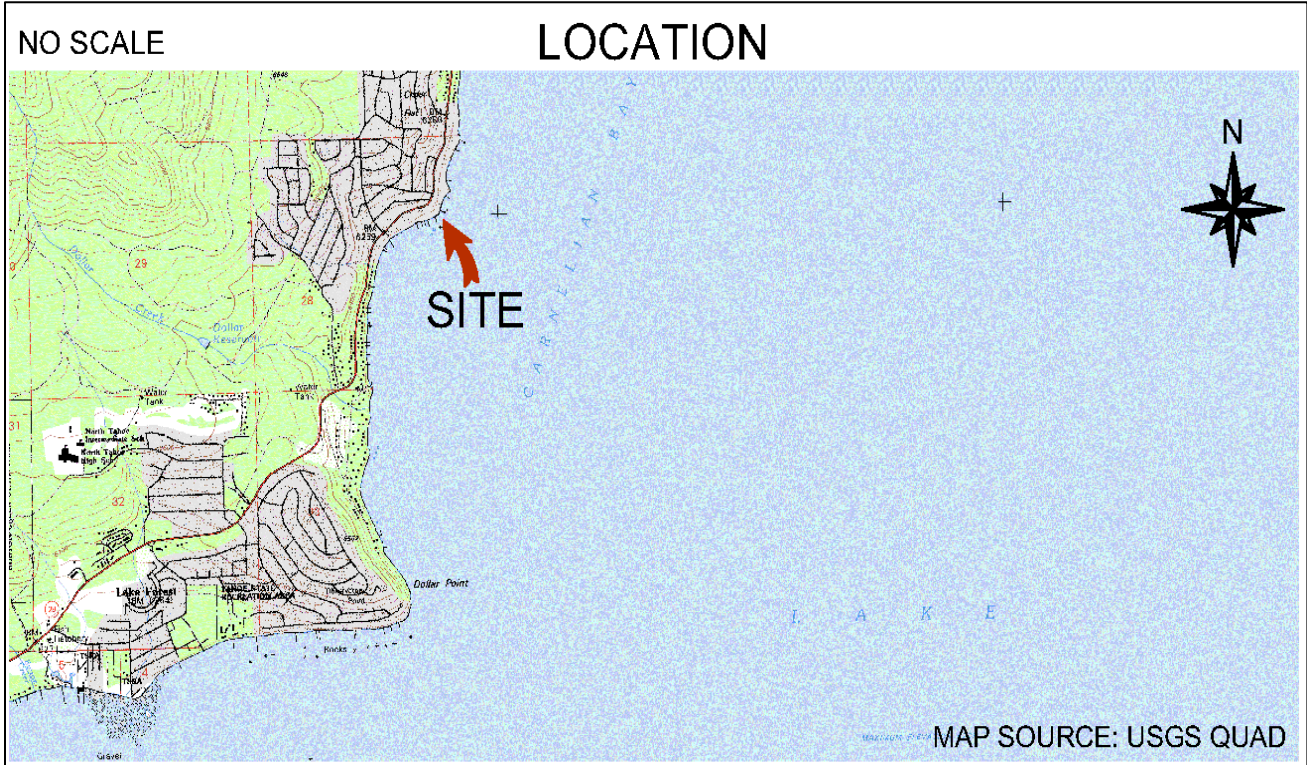
## PROPOSED ACTION:

Amendment of a General Lease – Recreational Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4200 North Lake Boulevard, Carnelian Bay, Placer County.

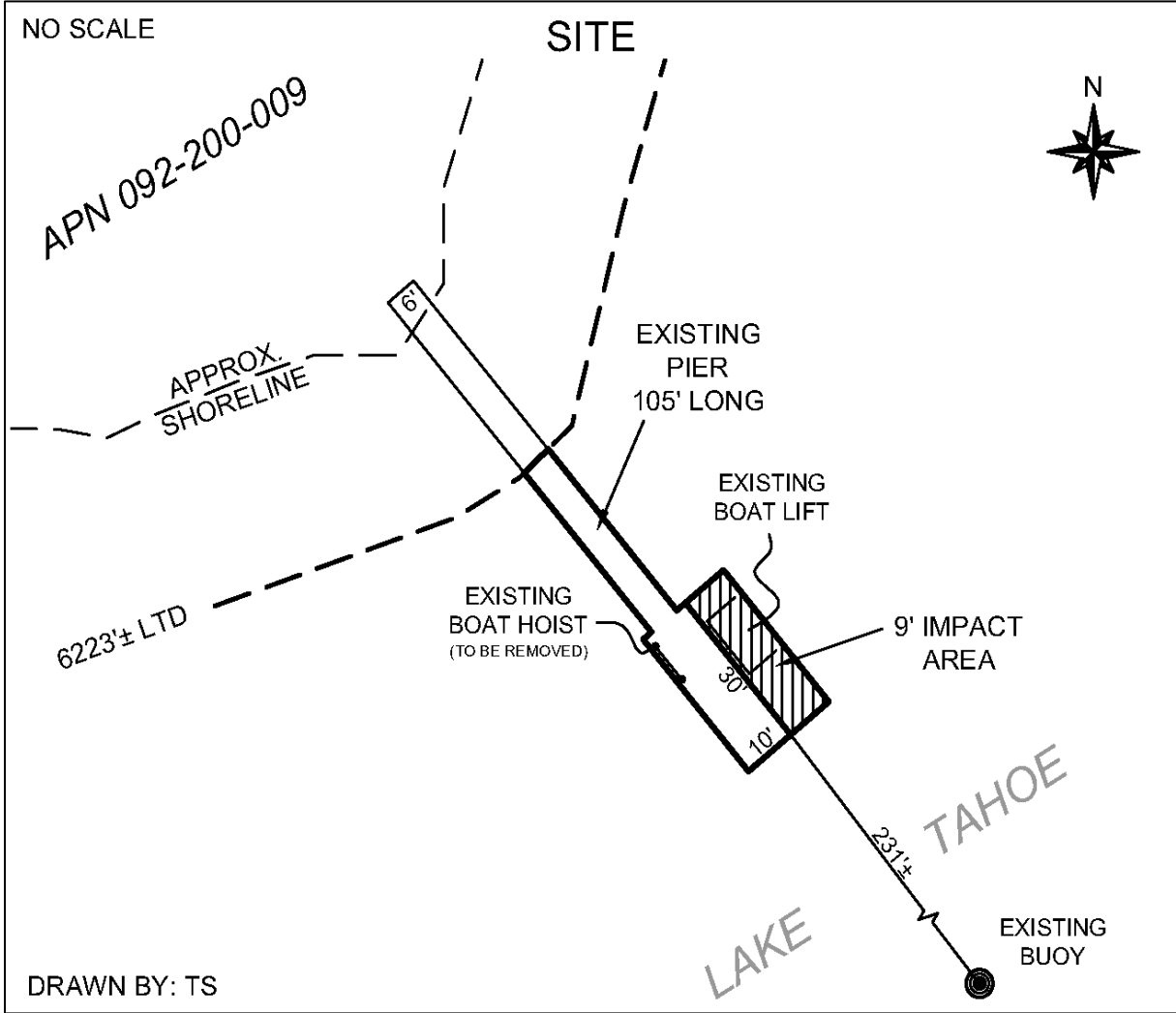
Figure 1.



**AUTHORIZED USE:**

Use of an existing pier, boat lift, and boat hoist.

**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 January 26, 2022.

**CONSIDERATION:**

\$743 per year, with an annual Consumer Price Index Adjustment.

**PROPOSED AMENDMENT:**

- Removal of existing boat hoist; and
- Addition of one existing mooring buoy not previously authorized by the Commission (as shown on Figure 2).
- Revise the annual rent from \$743, with an annual Consumer Price Index adjustment, to \$855, with an annual Consumer Price Index adjustment, effective August 17, 2023.
- Compensation for unauthorized occupation of the mooring buoy in the amount of \$1,556 for the period prior to August 16, 2023.
- The proposed amendment will require the Lessee to indemnify the State for the entire period of unauthorized occupation of the existing buoy, ensuring the State is protected.
- Within 30 days of completing the removal of the boat hoist, Lessee will provide Lessor with photographs that will show that the boat hoist has been removed from the lease premises.
- Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only), in the lease.
- 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.
- The lease provides that signs shall be posted on each side of the pier to indicate passage and to provide continuous shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).

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

**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 December 8, 2021, the Commission issued a General Lease – Recreational Use to Mark B. Nelson, Trustee of the Wilborn Children's Trust and Lorie L. Willborn, Trustees of the Nelson Heritage Trust, for the use and maintenance of a pier, boat lift, and boat hoist ([Item 22 December 08, 2021](#)). This lease expires January 25, 2032.

The Lessee is now applying for an amendment of a General Lease – Recreational Use for the removal of the boat hoist in exchange of the addition of one existing mooring buoy not previously authorized by the Commission. The Lessee registered the boat lift with TRPA on January 3, 2023, and the mooring buoy on February 23, 2023 (Registration No. 10261).

The buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake. Because the buoy has existed for many years in this location according to TRPA records, staff recommends acceptance of compensation in the amount of \$1,556, for the period prior to January 25, 2023, the day before the lease amendment takes effect. Accounting records show that the Lessee paid annual rent of \$799.99 through January 22, 2024; therefore, the Lessee will be invoiced for the remaining amount of the new balance due.

Additionally, the proposed amendment will require the Lessee to indemnify the State for the entire period of unauthorized occupation of the existing buoy, ensuring the State is protected. The 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 proposed amendment does not alienate the State's fee simple interest of 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 amendment requires the lessee to ensure 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 amendment 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 Lessee may be required to remove the previously unauthorized 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 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:**

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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 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 acceptance of compensation from the Lessee in the amount of \$1,556 for unauthorized occupation of State land by the mooring buoy for the period prior to January 25, 2023.
2. Authorize Amendment of a General Lease – Recreational Use to the Lessee beginning August 17, 2023, for the removal of the boat hoist and the addition of one existing mooring buoy not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$855, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.