

Staff Report 21

APPLICANT:

Tahoe Meadows, a Corporation, DBA Tahoe Meadows Association

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to Assessor's Parcel Number 029-090-001, South Lake Tahoe, El Dorado County (as shown on Figure 1).

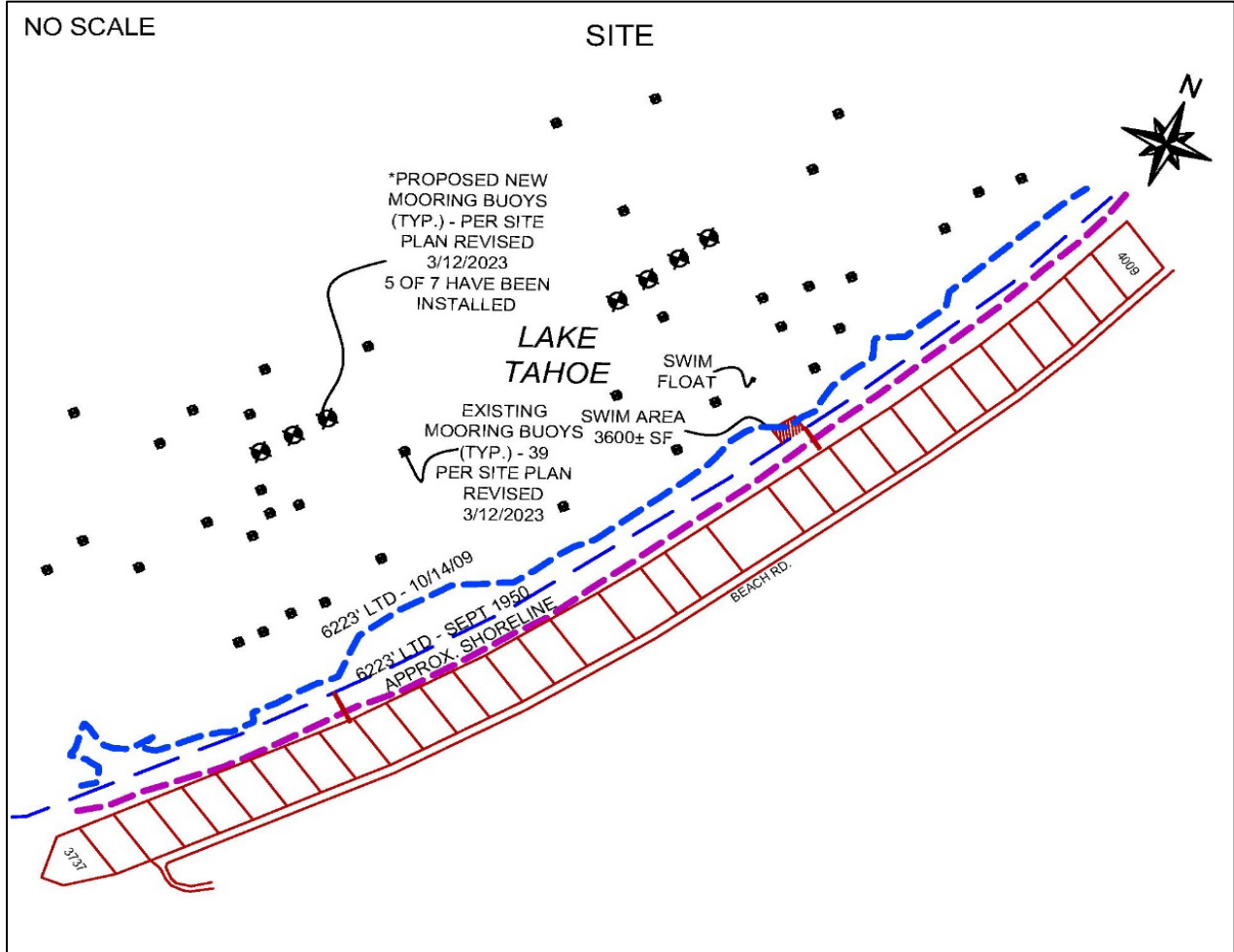
Figure 1. Location



AUTHORIZED USE:

Use of 46 mooring buoys, swim float, and swim area; and removal of all unauthorized mooring anchors (as shown on 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 August 17, 2023.

CONSIDERATION:

\$15,516 per year, with an annual Consumer Price Index adjustment; and \$18,594 for unauthorized occupation of State land for the period prior to August 17, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee 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.
- 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).
- 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.
- Within 60 days of completing the installation of the seven mooring buoys, Lessee will provide Lessor with photographs and coordinates where buoys 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.

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 April 26, 2013, the Commission authorized a General Lease – Recreational Use to Tahoe Meadows, a Corporation, DBA Tahoe Meadows Association for 39 existing mooring buoys, an enclosed swim area, one swim float, and two marker buoys ([Item C19, April 26, 2013](#)). On April 20, 2017, the Commission authorized a revision of

annual rent from \$16,077 to \$16,162 ([Item C19, April 20, 2017](#)). The lease expired April 10, 2022.

The Applicant is now applying for a General Lease – Recreational Use for the use of 39 mooring buoys, an enclosed swim area, and a swim float previously authorized by the Commission; and seven mooring buoys not previously authorized by the Commission. The Applicant applied to TRPA for a conditional permit on October 24, 2022 (ERSP2021-1906).

During discussions with TRPA, the Applicant requested the ability to remove remnant blocks within the footprint of the buoy field. TRPA recommended the Applicant include the removal of the remnant blocks under the TRPA permit application. The Applicant has no record of the placement or usage of the blocks within the buoy field. The Applicant speculates that the anchor blocks may be remnants of individual homeowners who had buoys (authorized or not) not affiliated with the HOA's buoy field. The Applicant has removed smaller remnant blocks from within the buoy field footprint, but the remaining blocks will require removal by a contractor using a barge. The Applicant is willing to undertake the removal operations at their cost to clean the bed of the lake. The proposed lease will require evidence of removal of the remnant blocks.

Five of the seven mooring buoys were installed after TRPA conditional approval (three installed 06/17/2023 and two installed 06/23/2023). Two mooring buoys are to be installed following issuance of this lease. Staff recommends accepting \$18,594 in compensation for the unauthorized occupation of state land by the 44 existing mooring buoys, enclosed swim area, and swim float. The two marker buoys previously authorized were never installed, and the Applicant does not wish to install them, nor are they needed. The proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation prior to August 17, 2023.

The 46 mooring buoys, nine anchor blocks enclosed swim area, and swim float are privately owned and maintained and facilitate recreational boating and swimming. Recreational boating and swimming are water-dependent uses that are generally consistent with the common law Public Trust Doctrine. Additionally, 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 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.

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.

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 existing facilities. 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 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; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$18,594 for unauthorized occupation of State land for the period prior to August 17, 2023.
2. Authorize issuance of a General Lease – Recreational use to the Applicant beginning August 17, 2023, for a term of 10 years, for the use of 46 mooring buoys, an enclosed swim area, and a swim float, and removal of remnant anchors; annual rent in the amount of \$15,516 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. Authorize the Executive Officer or designee to replace Exhibits to the lease upon submission, review, and approval of coordinates detailing the final location of all improvements following installation.