

Staff Report 55

PARTIES:

Marty and Ronnie Sherman

PROPOSED ACTION:

Consider taking title to and authorizing the removal and disposal of an abandoned buoy.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, near Homewood, Placer County.

BACKGROUND:

For several decades, the Tahoe Regional Planning Agency (TRPA) did not have ordinances in place to issue permits for mooring buoys at Lake Tahoe. This left many property owners around the lake in regulatory limbo. Many buoys were installed in the lake during this time without permits from TRPA or a lease from the Commission. A 2016 survey of the buoys on Lake Tahoe indicated that there were 3,693 buoys on the California side of the lake.

In October 2018, the TRPA Governing Board approved a new Shoreline Plan for Lake Tahoe, enabling TRPA to resume issuing permits for buoys. The first step of this plan was to issue permits for legally existing buoys. Once the legally existing buoys were legitimized by getting permits from TRPA and a lease from the Commission, both TRPA and Commission staff are to begin enforcement actions against the many unauthorized buoys found throughout the lake.

In January 2019, TRPA entered into a Memorandum of Understanding (MOU) with the Commission, authorizing TRPA to act as the Commission's agent in tagging and removing buoys under the Commission's statutory authority provided by Public Resources Code section 6302.1. This MOU provides for a consultation process and

allows TRPA to utilize their presence and resources on the lake to remove unauthorized and trespassing buoys within the Commission's existing authority.

Marty and Ronnie Sherman (the Shermans) have an interest in property at 3153 West Lake Boulevard, Homewood, California. The Shermans placed two buoys on sovereign land in the bed of Lake Tahoe without a lease from the Commission and without a permit from TRPA. The property at 3153 West Lake Boulevard is not a littoral property with waterfront access. According to TRPA staff, this property does not and cannot qualify for a buoy permit. Because the buoys cannot be brought into compliance with local ordinances, Commission staff would also be unable to recommend a lease for the buoys.

While TRPA staff were investigating a complaint by a waterfront property owner concerning unauthorized buoys offshore from their littoral property, they noticed two buoys with identification information tying them to the Shermans' property. The Shermans submitted an application to TRPA for a permit for the buoys and to associate those buoys with their parcel at 3153 West Lake Boulevard. After more than one year, the Shermans were unable to provide information to TRPA sufficient to qualify for a permit. The TRPA application was closed, and TRPA staff again informed the Shermans they must remove the buoys. The Shermans advised that they would not remove the buoys. TRPA staff informed the Shermans that the buoys are unpermitted and in trespass. When TRPA staff returned to tag the two trespassing buoys, they noted that there was only one buoy in the lake at this location with the Sherman's information on it. TRPA staff wanted to be certain they tagged only the buoys belonging to the Shermans, so they only tagged one buoy.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6302.1, 6302.3, and 6302.4.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Commission and TRPA staff sent a notification letter to the Shermans on May 9, 2023, to the property at 3153 West Lake Boulevard. That letter was returned as undeliverable. The property at 3153 West Lake Boulevard is owned by an LLC based in Pleasanton, California. TRPA and Commission staff sent another notification letter to this Pleasanton address in hopes of contacting the Shermans. This letter was not returned, but there was no response from the Shermans.

TRPA staff posted a Cease and Desist notice under their authority, along with a notice of action to remove trespassing vessels and moorings under the Public

Resources code section 6302.1 on August 16, 2023. At that time, the identification information had been removed from one of the two buoys, leaving only one buoy clearly tied to the Shermans. For this reason, only one of the two buoys was tagged. Commission staff also mailed notice of the tagging on August 31, 2023, to the Pleasanton address. The notice became effective on September 15, 2023. After this point, the buoy is considered abandoned according to law. Once abandoned, the Commission may take title to the buoy and direct its disposition at a public meeting.

Staff recommends that, if the buoy is not removed from state lands, the Commission authorize staff to take title and to direct TRPA staff or one of its on-call contractors to remove the buoy and dispose of it. TRPA has agreed to be responsible for these up-front costs.

CONCLUSION:

Staff believes that taking title to the buoy, if it has not been removed from state waters within the statutory period, and directing its disposal, is consistent with the Public Trust and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The recommended authorization is a discretionary action by the Commission. Each time the Commission approves or rejects an action on sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law.
2. Commission staff posted notice on the buoy on August 16, 2023, and mailed notice to the Shermans on August 31, 2023. Notice is effective, and the Commission may take action as of September 15, 2023. At least 30 days must pass between the Commission action and removal of the buoy. It may not be possible to remove the buoy during the winter months, so staff recommends that the authorization to take title include discretion to delay taking title until just prior to the removal to minimize risks to the state.
3. This action is consistent with the "Meeting Evolving Public Trust Needs," "Prioritizing Social, Economic, and Environmental Justice," and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021–2025 Strategic Plan.

4. 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 4, Minor Alterations to Land, California Code of Regulations, title 14, section 15304.

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

EXHIBIT:

- A. Photos of the Sherman's Buoy

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed action will support and promote the Public Trust needs and values at this location, at this time, and for the foreseeable future; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the Executive Officer or designee, to take title to a buoy in Lake Tahoe, previously owned by the Shermans, on or after November 18, 2023, unless before that date the buoy has been removed from state lands and not returned.
2. Authorize the Executive Officer or designee, on or after November 18, 2023, to direct TRPA staff or one of TRPA's on-call contractors to remove and dispose of the buoy.
3. Authorize the Executive Officer or designee, in cooperation with the Office of the Attorney General, to recoup the Commission's costs through any available administrative or civil means, if determined feasible and prudent.

EXHIBIT A – BUOY

