

# Staff Report 03

## APPLICANT:

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Douglas Robert Brien and Ramiah Shanti Brien, Trustees of the Douglas Robert Brien and Ramiah Shanti Brien 1998 Trust dated March 20, 1998, as restated

## PROPOSED ACTION:

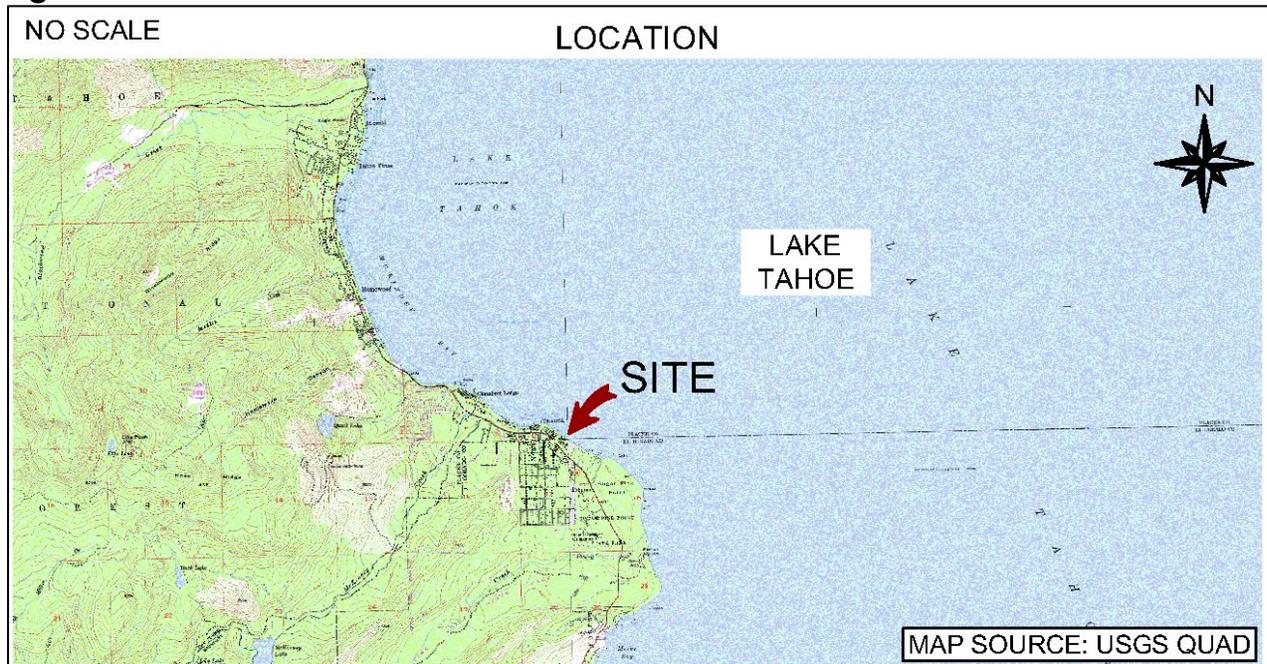
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Issuance of a General Lease – Recreational Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 200 Pine Street, near Tahoma, Placer County (as shown in Figure 1).

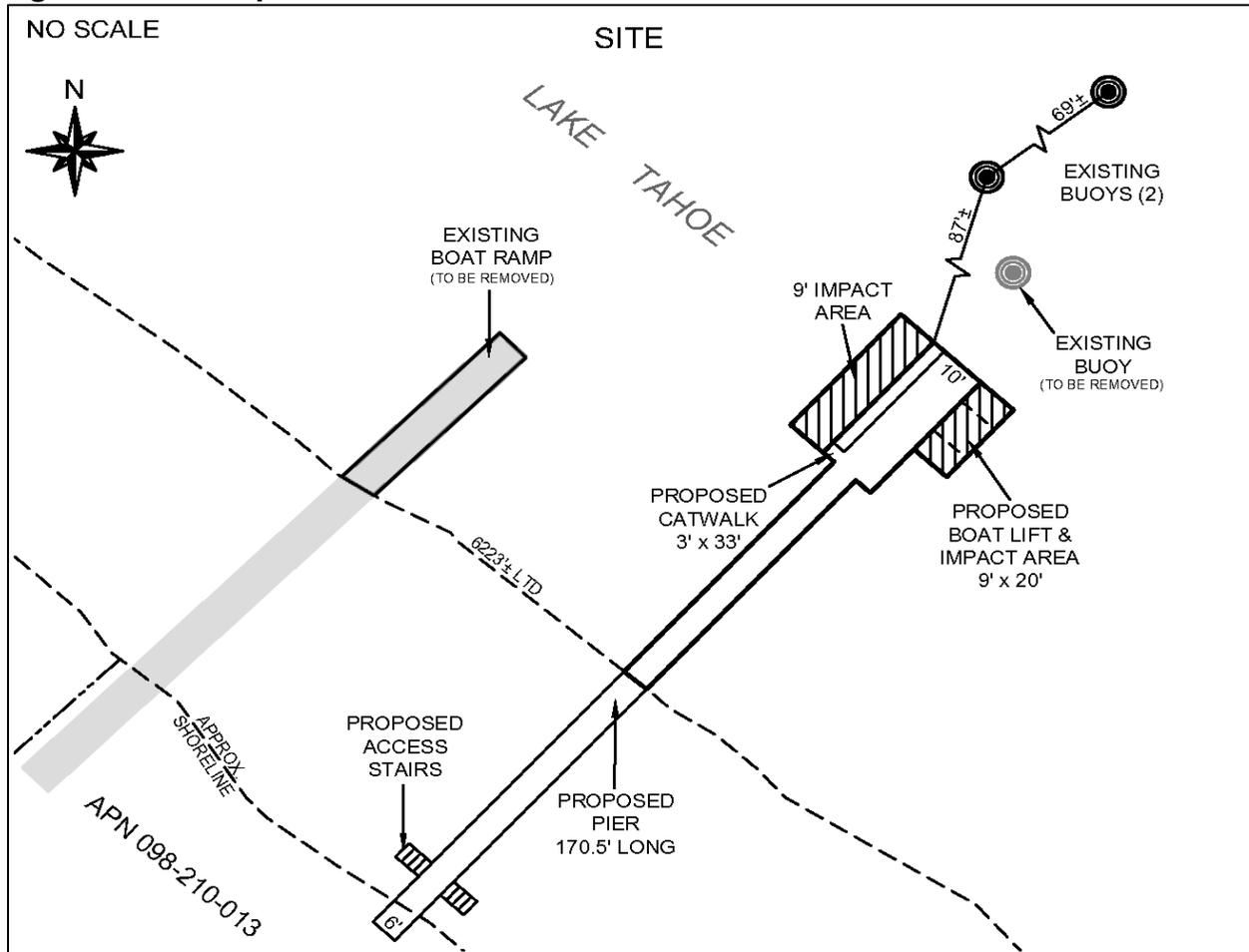
**Figure 1. Location**



**AUTHORIZED USE:**

Use of two existing mooring buoys, removal of an existing mooring buoy, removal of an existing boat ramp, and construction and use of a new pier and installation of a boat lift (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 April 4, 2024.

**CONSIDERATION:**

\$1,523 per year, with an annual Consumer Price Index adjustment; and \$6,261 for the unauthorized occupation of state land for the period prior to April 4, 2024.

**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 this lease.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that 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.
- Within 60 days of completing the installation of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements 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, and Lessee, 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.
- Lessee acknowledges annual consideration shall be adjusted based on the actual area of improvements as constructed should they vary from the plans submitted.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including that the Applicant obtain all necessary permits and authorization prior to commencing work, including requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.
- Lessee agrees that the public be allowed to pass and repass over the pier using stairs on the landward end of the pier, with signs posted on each side of the pier, to provide continuous shoreline access to the Public Trust easement below elevation 6228.75, Lake Tahoe Datum (LTD).

## **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:**

The Applicant is applying for a General Lease – Recreational Use for the use of two existing mooring buoys, removal of an existing mooring buoy, removal of an existing boat ramp, and construction and use of a new pier and installation of a boat lift. None of the improvements were previously authorized by the Commission.

On October 14, 2009, TRPA permitted the three existing mooring buoys (MOOR2009-3161). The Applicant reregistered the three existing mooring buoys with TRPA on March 8, 2019 (TRPA Mooring Registration #10042). On August 24, 2023, TRPA permitted the proposed pier with boat ramp and catwalk (TRPA File #ERSP2023-0006). The permit specifically authorizes removal of the existing boat ramp.

The existing, unauthorized mooring buoys and boat ramp have existed for many years at this location. Staff recommends the Commission accept compensation from the Applicant in the amount of \$6,261 for the unauthorized occupation of state land by the existing three mooring buoys and boat ramp for the period prior to April 4, 2024. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

Pursuant to the TRPA permit, the proposed pier will conform to the TRPA design standards for single use piers and will be approximately 172 feet and 6 inches in total length, and 6 feet in width, except for the last 33 feet of the pier will be 10 feet wide and have a 3-foot-wide adjustable catwalk and installation of a boat lift. The pierhead will terminate approximately 8 feet landward of the TRPA pierhead line. The installation of the boat lift is contingent upon the removal of a buoy. The existing boat ramp is mostly at grade and will be removed by a crane set at the top of the barge. A turbidity curtain will be installed around the area of the boat ramp and will not be removed until all sediment has settled. The area will be restored to natural conditions and new material will not be installed.

The topography is sandy and flat, making it accessible to pedestrians in this area. The proposed pier will be built on pilings, and public access for pedestrians and

lake-related activities will be available at varying water levels underneath the pier within the Public Trust easement. The minimum clearance under the pier must be at least 6 feet with an open piling construction to allow passage. The Applicant also proposes to construct public access stairs on each side of the pier within the Public Trust easement. The proposed lease will also require the Lessee to post signs on both sides of the pier at the staircase showing the designated public access passageway that reads "Public Passage Allowed Over the Pier." These signs shall be in place at all times and will ensure that the public is aware of the designated passageway within the Public Trust easement.

The two existing mooring buoys and proposed pier with attached boat lift and catwalk are privately owned and maintained 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 proposed project will be performed on-site with access to the site from the lake. The project will be constructed with the use of a floating/amphibious barge, and materials will be transported via barge to the site. Construction materials will be stored within the barge, rather than on the shoreline, and protected from discharge into the lake. Materials, equipment storage, and fabrication will take place in a shop and on the barge. Construction of the beams, joints, and decking will take place above the surface of Lake Tahoe.

Construction will take place after all required approvals have been obtained and will occur between October 1 and May 1, to minimize the disturbance of natural habitats and public enjoyment of the lake during the peak seasons. The Applicant will follow all construction methods and timeframes provided by U.S. Army Corps of Engineers, the Lahontan Regional Water Quality Control Board, the California Department of Fish and Wildlife, and TRPA.

The two existing mooring buoys that will remain 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 proposed 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 high wind events and damaging 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 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 Applicant cannot construct the pier or install a boat lift and may be required to remove all existing improvements, by restoring the sovereign land 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 Areas of the Commission's 2021-2025 Strategic Plan.
3. **Existing Mooring Buoys:** 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 14, section 15301.

**New Pier:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

**Removal of Boat Ramp and One Mooring Buoy:** 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:**

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Tahoe Regional Planning Agency

### **APPROVALS REQUIRED:**

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

### **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 through the combination of the following exemptions: Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301; Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1); and 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 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 term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Accept compensation from the Applicant for the unauthorized occupation of state land for three existing mooring buoys and a boat ramp in the amount of \$6,261 for the period prior to April 4, 2024.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 4, 2024, for a term of 10 years, for the use of two existing mooring buoys, removal of a third existing mooring buoy, removal of a boat ramp, and construction and use of a new pier and installation of a boat lift, and an adjustable catwalk; annual rent in the amount of \$1,523, with an annual Consumer Price Index adjustment; and liability insurance in an amount of no less than \$1,000,000 per occurrence.
3. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.