

# Staff Report 12

**LESSEE:**

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Arthur Grant Burton and Kathleen Keane Burton, Trustees of the Burton Family Trust

**APPLICANT:**

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Lake of the Sky, LLC

**PROPOSED ACTION:**

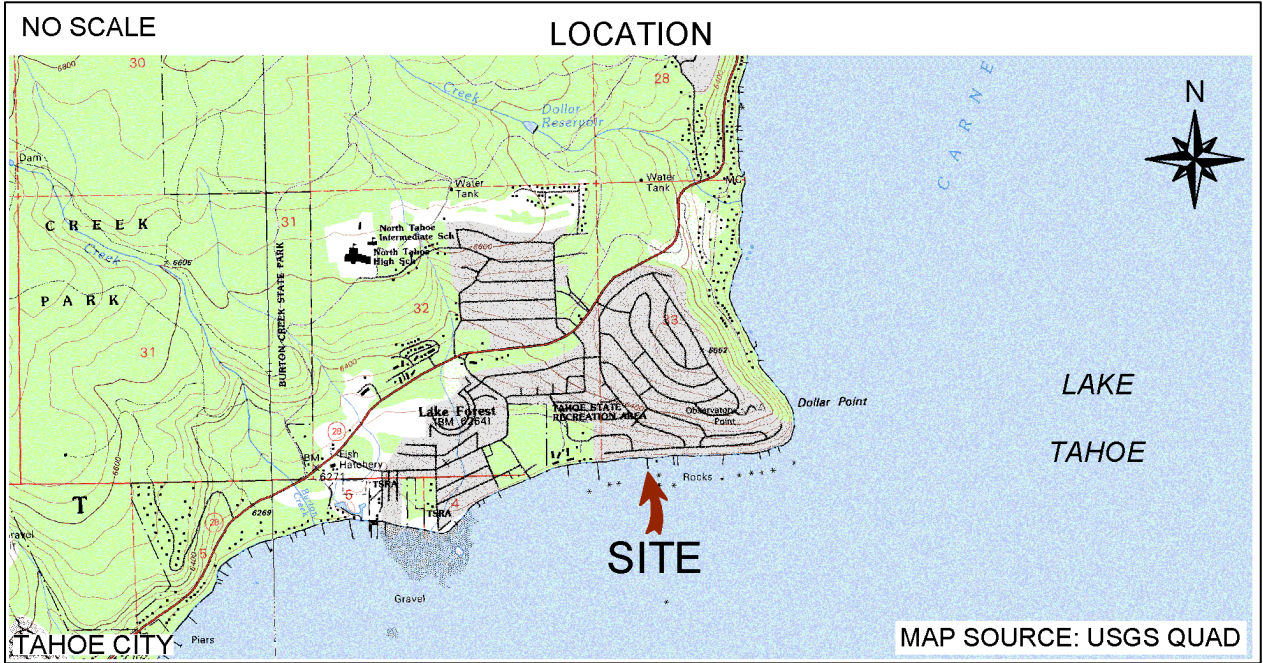
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Termination and Issuance of a General Lease – Recreational Use.

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Lake Tahoe, adjacent to 3216 Edgewater Drive, Tahoe City, Placer County (as shown in Figure 1).

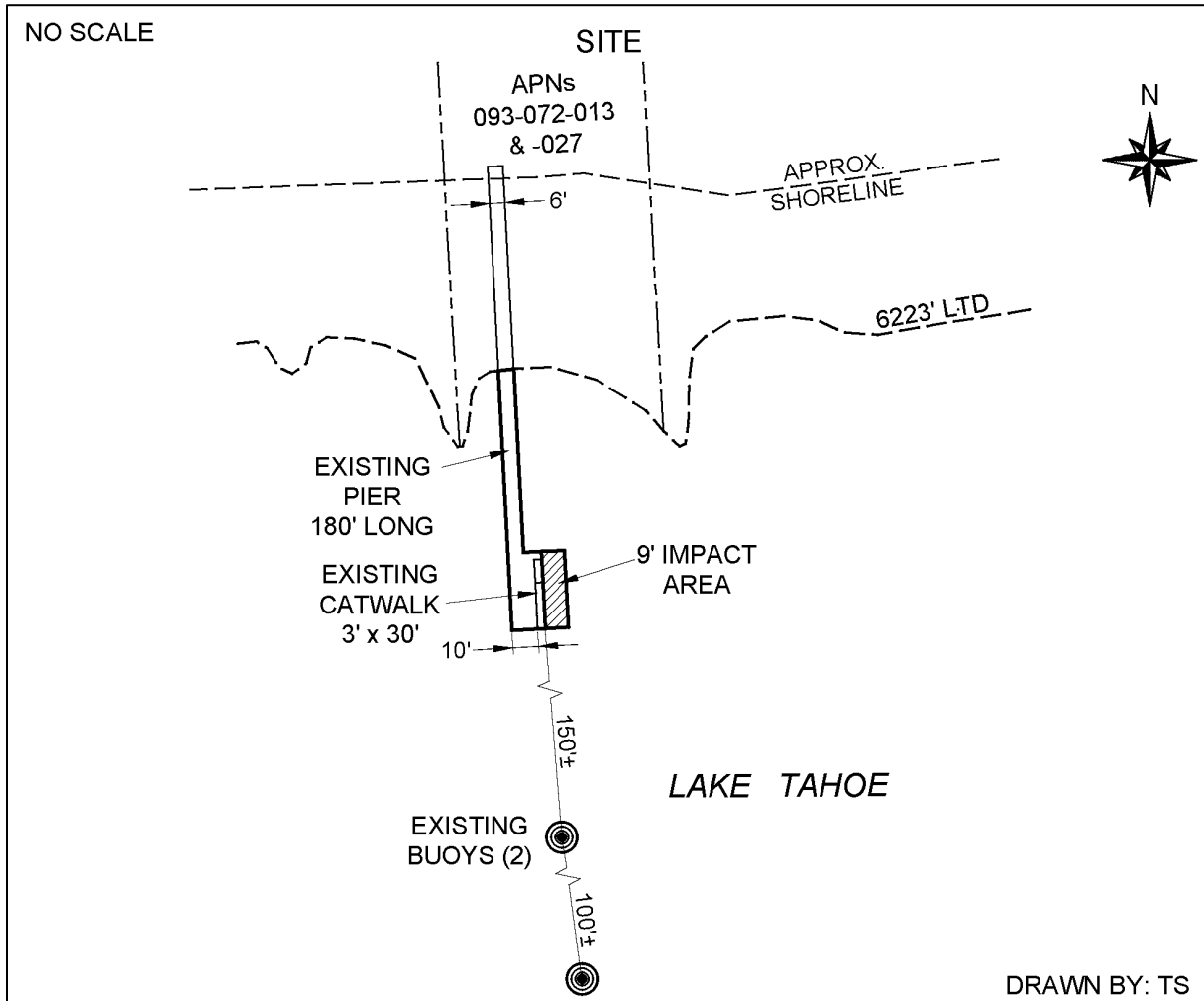
**Figure 1. Location**



**AUTHORIZED USE:**

Use of an existing pier and two existing mooring buoys (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:**

\$1,373 per year, with an annual Consumer Price Index adjustment; and \$238 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 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.
- 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 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.
- Lessee agrees the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands, from August 10, 2023 to April 3, 2024.

**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 June 28, 2016, the Commission authorized a General Lease – Recreational Use to Arthur Grant Burton and Kathleen Keane Burton, Trustees of the Burton Family Trust, for an existing pier and two mooring buoys ([Item 2, June 28, 2016](#)).

On February 7, 2017, the Commission authorized an amendment of lease for the expansion of the existing pierhead, removal of an existing catwalk including steel stairway and fender piling, and installation, use, and maintenance of a new

adjustable catwalk including an 11-inch-diameter steel pile ([Item 5, February 7, 2017](#)). The lease is set to expire on January 31, 2027.

On August 10, 2023, Lake of the Sky, LLC acquired ownership of the upland property. Staff recommends terminating the existing lease because the Lessee did not notify staff of the sale of the upland parcel nor sign a quitclaim deed. The proposed termination date is August 10, 2023, the day the Applicant took ownership of the upland parcel.

The Applicant is applying for an issuance of a General Lease – Recreational Use for the use of an existing pier and two mooring buoys. Both mooring buoys were registered with the TRPA on January 18, 2024 (Registration No. 10949).

Due to annual invoices being paid through January 31, 2024, staff recommends that the Commission accept compensation from the Applicant for unauthorized occupation of State land in the amount of \$238, to compensate for the period of unauthorized occupancy between February 1, 2024 through April 4, 2024, the start date of the new proposed lease.

The lease provisions regarding indemnity will be extended to apply from August 10, 2023, when the Applicant took ownership of the upland, through April 3, 2024, the day before the beginning of the new lease.

The topography at this location is steep and consists of medium and large-sized rocks, making the shoreline difficult to access for pedestrians in this area. The pier is built on short pilings, and public access for pedestrians is not available at varying water levels underneath the pier within the Public Trust Easement. Applicant thus agrees to allow the public to pass and re-pass over the pier by using the rocks in the Public Trust easement. Signs are required to be posted on each side of the pier identifying the designated public passageway and are required to be in place at all times.

The Applicant owns the uplands adjoining the lease premises. The subject improvements 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 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.

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 drier 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 lease, the Applicant may be required to remove the existing improvements. 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. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

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

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the lease 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 14, section 15301.

### **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. Authorize termination, effective August 10, 2023, of Lease 8739, a General Lease – Recreational Use, issued to Arthur Grant Burton and Kathleen Keane Burton, Trustees of the Burton Family Trust.
2. Accept compensation from the Applicant in the amount of \$238, for the unauthorized occupation of State land for the period prior to April 4, 2024.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 4, 2024, for a term of 10 years, for use of an existing pier and two existing mooring buoys; annual rent in the amount of \$1,373, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.