

# Staff Report 17

## APPLICANT:

Thomas P. Nunes, Jr., Ann L. Kaye and James A. Nunes

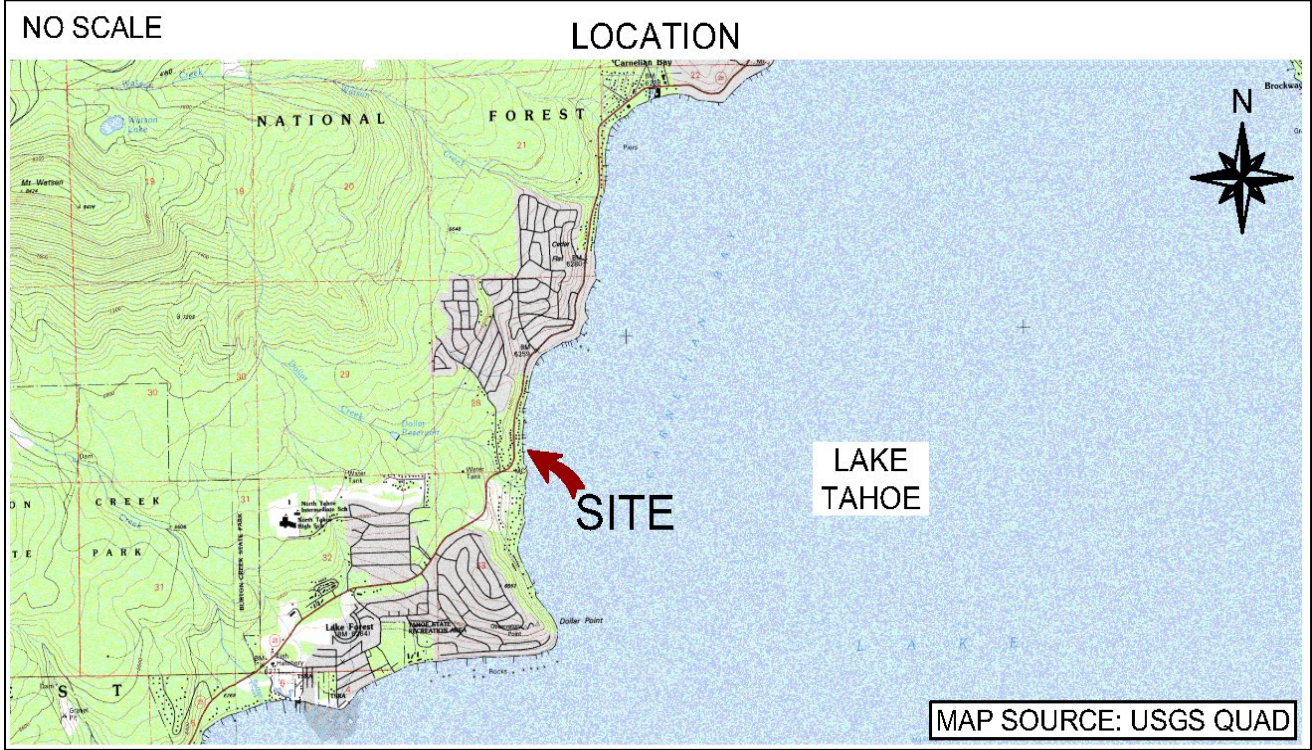
## PROPOSED ACTION:

Issuance of a General Lease - Recreational Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign Land in Lake Tahoe, adjacent to 3680 North Lake Boulevard, near Carnelian Bay, Placer County (as shown in Figure 1).

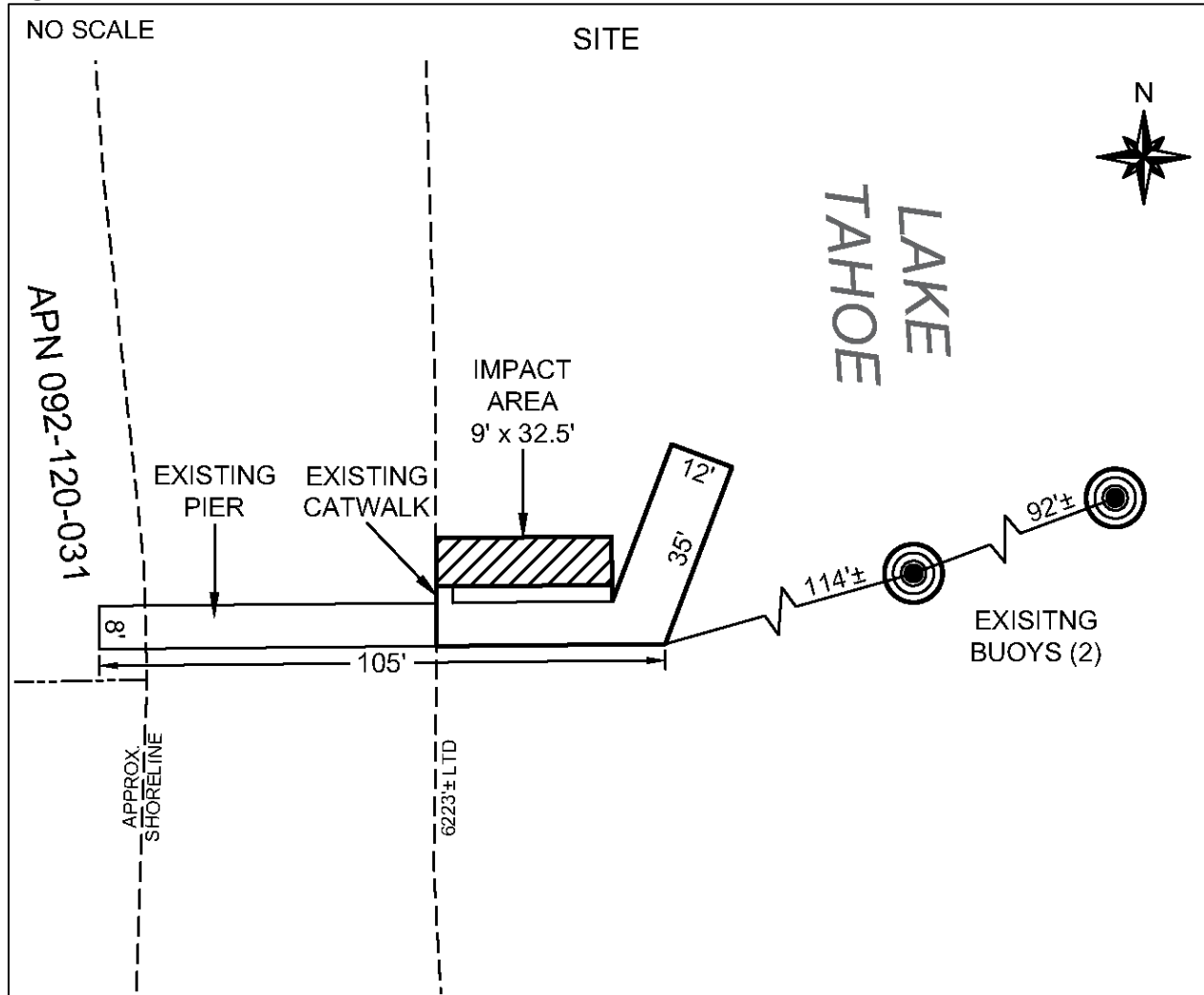
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing pier and two 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 November 21, 2024.

**CONSIDERATION:**

\$1,365 per year, with an annual Consumer Price Index adjustment.

**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 item 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.
- 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).

**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, section 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On October 14, 2014, the Commission authorized issuance of a General Lease – Recreational Use to Thomas P. Nunes and Thomas P. Nunes Jr., as Trustees of the ATN Family 1999 Trust pursuant to Declaration of Trust dated January 1, 1999; and Ann L. Kaye beginning November 21, 2014, for the use of an existing pier and two buoys ([Item 49, October 14, 2014](#)). The lease expires on November 20, 2024. On December 31, 2020, the upland property was deeded to Ann L. Kaye, Thomas P. Nunes, Jr., and James A. Nunes. TRPA registration for two buoys is paid as of January 17, 2024 (Registration #10095). The Commission's accounting records show that the Lessee paid annual rent through November 20, 2024. Since the upland is with the same family, staff recommends starting the lease on November 21, 2024.

The Applicant is now applying for a General Lease – Recreational Use for the use of an existing pier and two buoys.

The lease provisions regarding indemnity will be extended to apply from December 31, 2020, when the upland parcel was deeded to the applicant, through November 20, 2024, the day before the beginning of the new lease.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are located directly waterward of the upland property, and these facilities occupy a relatively small area of the lake. The topography immediately upland of the pier is steep with large boulders, and generally not traversable by pedestrian traffic. Nevertheless, the pier is built on pilings and public access for pedestrians and lake-related activities is available at varying water levels by passing underneath the pier. 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 pier and two buoys are used for recreational boating. Recreational boating is water-dependent and 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 lands. (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. The proposed lease will not significantly interfere with navigation and does not substantially interfere with any Public Trust needs at this time or in the foreseeable future.

### **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, Commission staff believes the approval of this lease will not substantially interfere with the Public Trust needs at this location at this time, or for the remaining term of the lease; is consistent with the common law Public Trust Doctrine; and 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 may be required to remove the pier and two mooring buoys and restore the premises to their 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. 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.

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 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 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:**

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning November 21, 2024, for a term of 10 years, for the use of an existing pier and two mooring buoys; annual rent in the amount of \$1,365, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.