

Staff Report 17

APPLICANT:

Kirsten Towne Smith, Trustee of The Kirsten Smith Revocable Trust dated June 9, 2017; and Edward Mark Smith, Trustee of the Edward Mark Smith Separate Property Trust dated August 5, 2013

PROPOSED ACTION:

Issuance of General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4136 Ferguson Avenue, Carnelian Bay, Placer County (as shown in Figure 1).

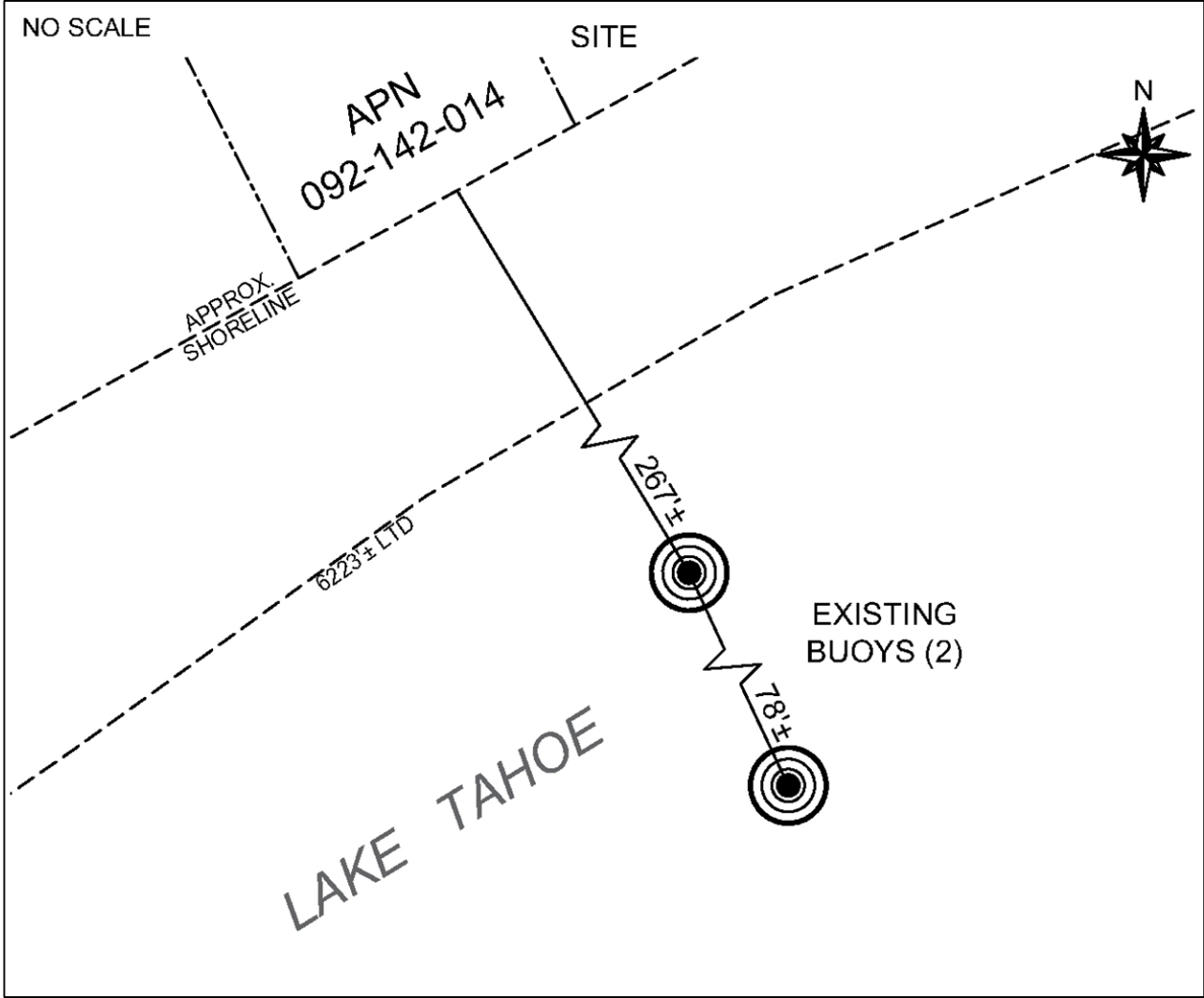
Figure 1. Location Map



AUTHORIZED USE:

Use of 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 on December 1, 2024.

CONSIDERATION:

\$546 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.

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 October 14, 2014, the Commission authorized issuance of a General Lease – Recreational Use to Winifred C. Smith, Trustee of the Winifred C. Smith Qualified Personal Residency Trust and Edward R. Smith, as Trustee of the Edward R. Smith Revocable Trust U/T/D October 31, 2006, for the use and maintenance of two existing mooring buoys adjacent to 4136 Ferguson Avenue, near Carnelian Bay, Placer County ([Item 45, October 14, 2014](#)).

On September 25, 2016, Edward R. Smith passed away. As a result, with Edward Mark Smith as the sole Successor Trustee, Edward Mark Smith, Trustee of the Edward Robert Smith Revocable Trust dated October 31, 2006 deeded the full 50 percent ownership of the upland property to Kirsten Towne Smith and Edward Mark Smith on December 5, 2016. On October 30, 2017, Kirsten Towne Smith, deeded their 25 percent ownership of the property to Kirsten Towne Smith, as trustee of the Kirsten Smith Revocable Trust, dated June 9, 2017. On November 6, 2018, Edward Mark Smith deeded their 25 percent ownership of the property to Edward Mark Smith, Trustee of the Edward Mark Smith Separate Property Trust dated August 5, 2013. Staff was not notified of the changes in ownership. On November 28, 2023, Winifred C. Smith, Trustee of the Winifred C. Smith Qualified Personal Residency Trust deeded

their full 50 percent ownership of the upland property to Kirsten Towne Smith, Trustee of the Kirsten Smith Revocable Trust dated June 9, 2017, and to Edward Mark Smith, Trustee of the Edward Mark Smith Separate Property Trust dated August 5, 2013.

Because the deed transfers occurred within the Smith family, the Lessee did not notify the Commission of changes in ownership or seek an assignment of the lease. Instead, the Lessee's family continued to fulfill the obligations of the lease. The Lessee's family, the Applicant, paid annual rent through November 30, 2024, continues to indemnify the Lease Premises at the sole and exclusive risk of the Lessee's family from November 28, 2023 through November 30, 2024, and continues to maintain the improvements. This lease expires on November 30, 2024.

For the purposes of consistency and ease of record-keeping and accounting, staff recommend retaining the original lease anniversary date and starting the new lease on December 1, 2024. The new lease will backdate the indemnity provisions to the date of the upland property transfer to ensure the state is protected. The Applicant is now applying for a General Lease – Recreational Use, for the use of an existing boat dock and appurtenant facilities.

The two mooring buoys were registered with TRPA on January 31, 2024 (Registration No. 10117).

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 buoys on the lease premises facilitate 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.

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 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:

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 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 15061.

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 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 December 1, 2024, for a term of 10 years, for the use of two existing mooring buoys; annual rent in the amount of \$546, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.