

Staff Report 02

APPLICANT:

Buffalo Wahoo LLC, a California limited liability company

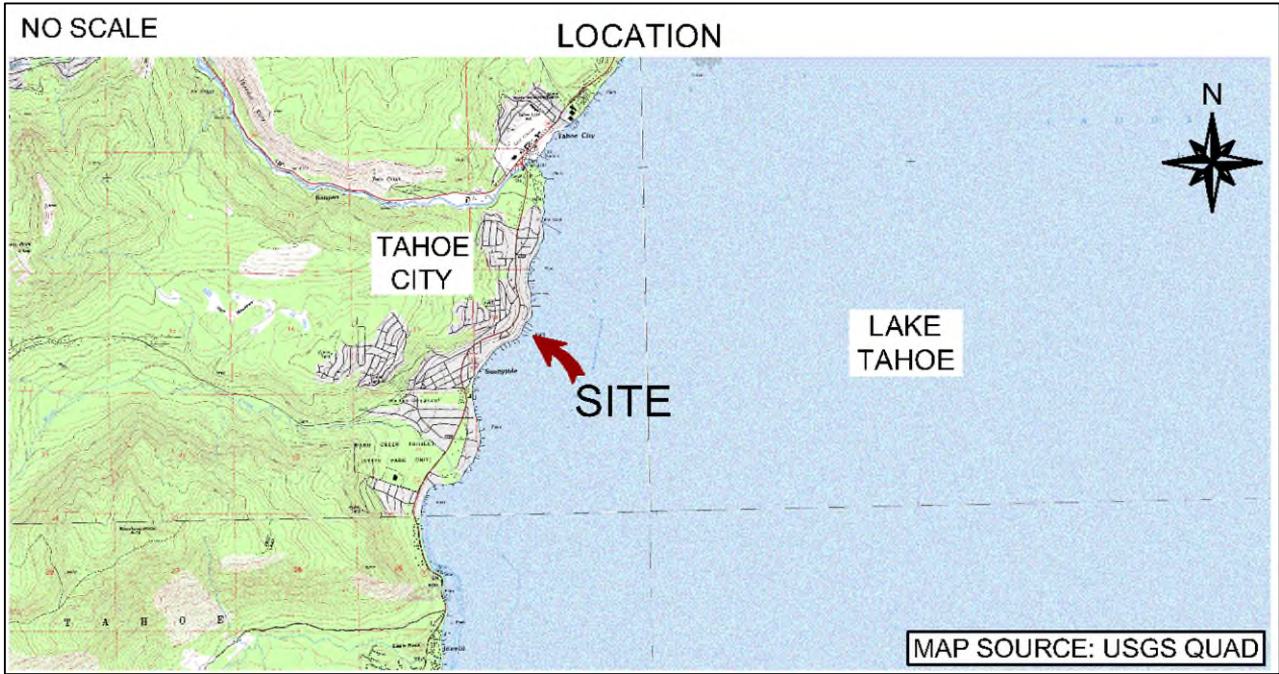
PROPOSED ACTION:

Issuance of a General Lease - Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 1280 West Lake Boulevard, near Tahoe City, Placer County (as shown in Figure 1).

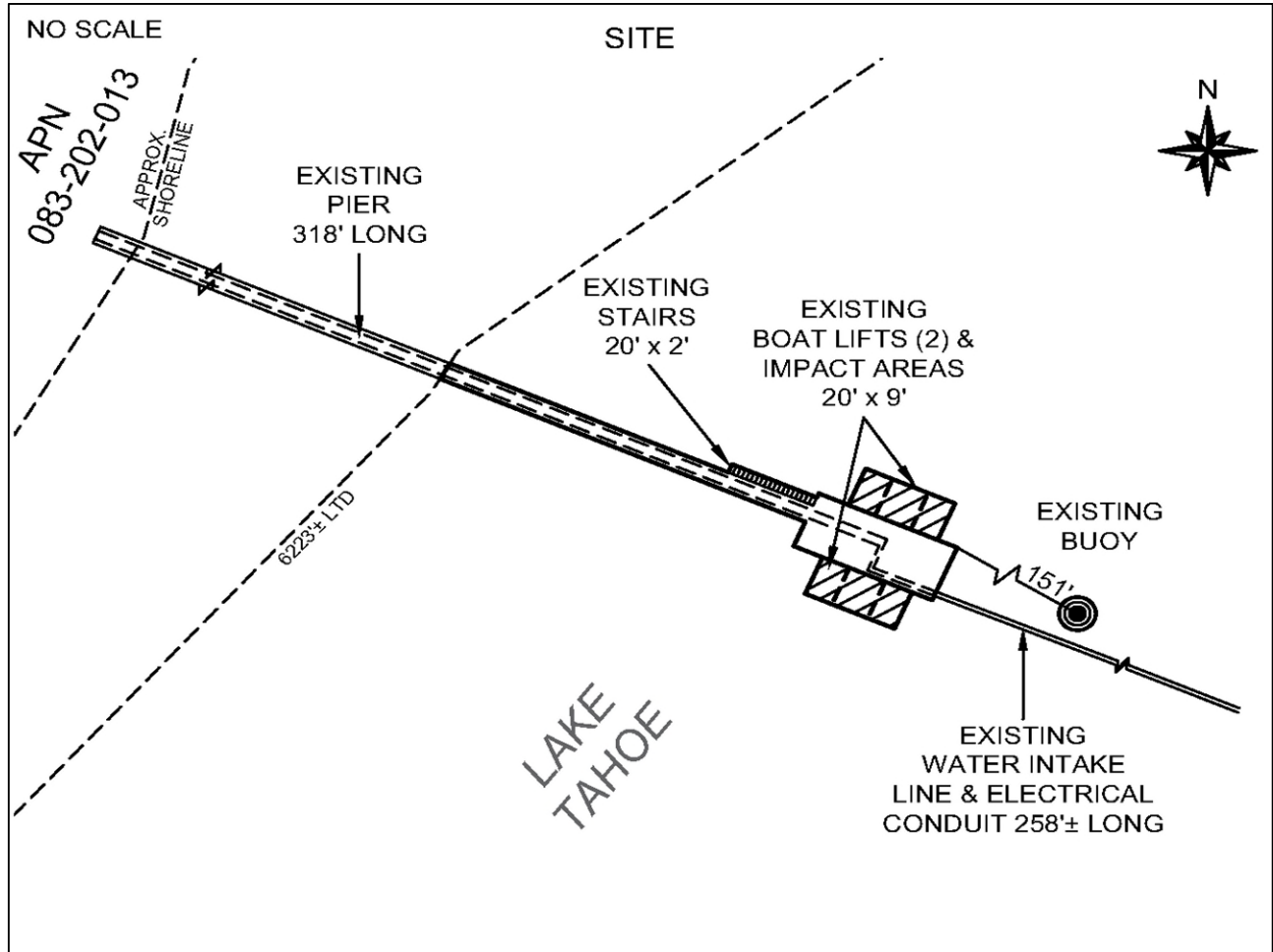
Figure 1. Location



AUTHORIZED USE:

Use of an existing pier, one covered boat lift, one uncovered boat lift, and one mooring buoy previously authorized by the Commission; and an existing water intake line not previously authorized by the Commission (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 March 1, 2025.

CONSIDERATION:

\$1,163 per year, with an annual Consumer Price Index adjustment; and \$5,766 for the unauthorized occupation of state land for the period prior to March 1, 2025.

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 underneath the pier and to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).

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 January 29, 2009, the Commission authorized issuance of a General Lease – Recreational Use to Edith Bogart Dagley and Margaret Bogart Power, Trustee of the Margaret Bogart Power Trust, for the use of an existing pier, a covered boat lift, an uncovered boat lift, and one mooring buoy ([Item 12, January 29, 2009](#)). The lease expired on November 30, 2018. On August 17, 2018, the ownership of the upland property was deeded to the Applicant. Both boat lifts and the mooring buoy are currently registered with the TRPA (Registration No. 10878).

The Applicant is now applying for a General Lease – Recreational Use for the use of an existing pier, one covered boat lift, one uncovered boat lift, and one mooring buoy previously authorized by the Commission; and an existing water intake line not previously authorized by the Commission.

The Commission's accounting records show that the prior lessee paid annual rent through August 17, 2018, the date of transfer of ownership interest. The proposed

lease will require the Applicant to pay compensation for the unauthorized occupation of State lands for the period prior to March 1, 2025, in the amount of \$5,766. The lease provisions regarding indemnity will be extended to apply from August 17, 2018, when the upland parcel was deeded to the Applicant, through February 28, 2025, the day before the beginning of the new lease.

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 existing buoy is located directly lakeward of the upland property and occupies a relatively small area of the lake. The subject pier is built on pilings, providing public access for pedestrians and lake related activities at varying water levels underneath the pier. The proposed lease includes a provision requiring the Applicant to post signs on each side of the pier identifying the designated public passageway. These signs shall be in place at all times and will ensure that the public is aware of the designated public passageway within the Public Trust easement.

The approximately 258-linear-foot-long water intake pipeline is used for landscape irrigation and fire protection and has existed in the lake for many years. The Applicant has provided evidence of application for an Initial Statement of Diversion from the California State Water Resources Control Board. The lease does not take the place of other authorizations for water diversion. The water intake line is not generally associated with traditional Public Trust uses, occupies a small area of the lakebed, and does not interfere with Public Trust activities at this location at this time.

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, Commission staff believe the issuance of this lease will not substantially interfere with the Public Trust needs at this location, at this time, and for the term of the lease; and 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 improvements 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 recommend 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:

1. Find that the pier, boat lifts, and mooring buoy are used for the docking and mooring of boats, facilitate recreational boating which is a water-dependent use that is consistent with the common law Public Trust Doctrine.
2. Find that the existing and for a limited period, use of the water intake line is generally not consistent with Public Trust Doctrine, but the current use does not substantially interfere with Public Trust need and values at this location for the approved term.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 1, 2025, for a term of 10 years, for the use of an existing pier, one covered boat lift, one uncovered boat lift, and one mooring buoy previously authorized by the Commission; and an existing water intake line not previously authorized by the Commission; annual rent in the amount of \$1,163, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize acceptance of compensation from the Applicant in the amount of \$5,766 for unauthorized occupation of State lands for the period prior to March 1, 2025.