

# Staff Report 10

APPLICANT:

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Fleur Du Lac Estates Association

PROPOSED ACTION:

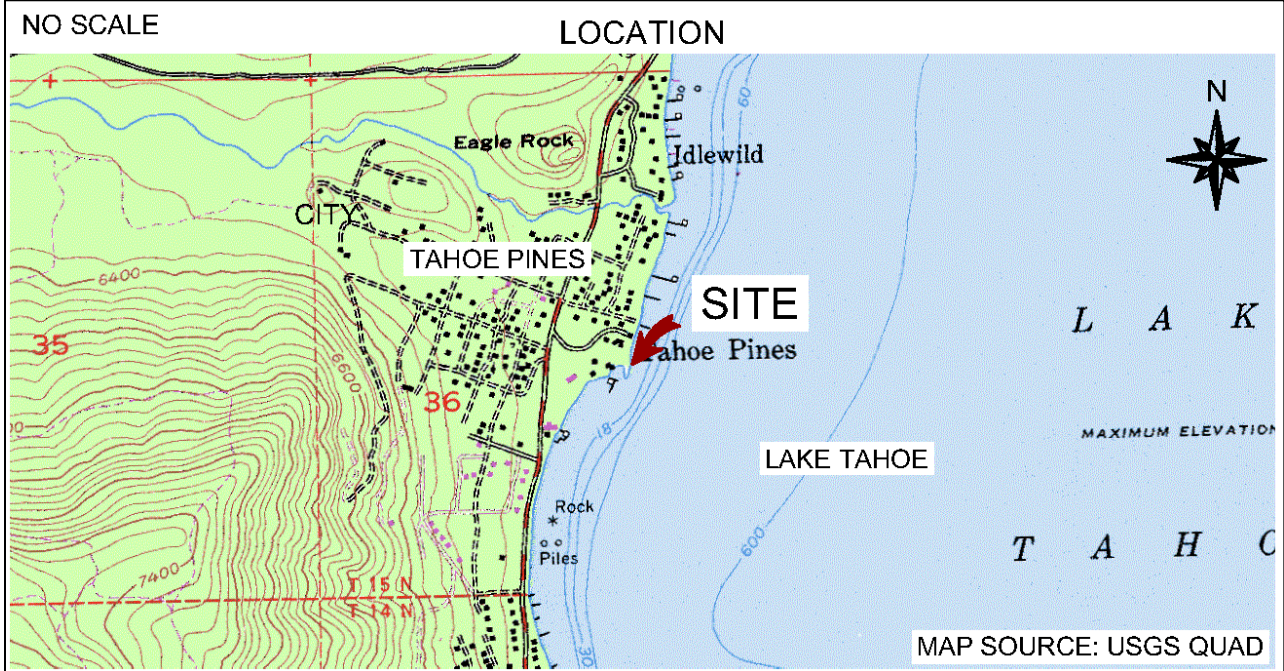
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Issuance of a General Lease – Recreational and Dredging Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4000 West Lake Boulevard, Homewood, Placer County (as shown in Figure 1).

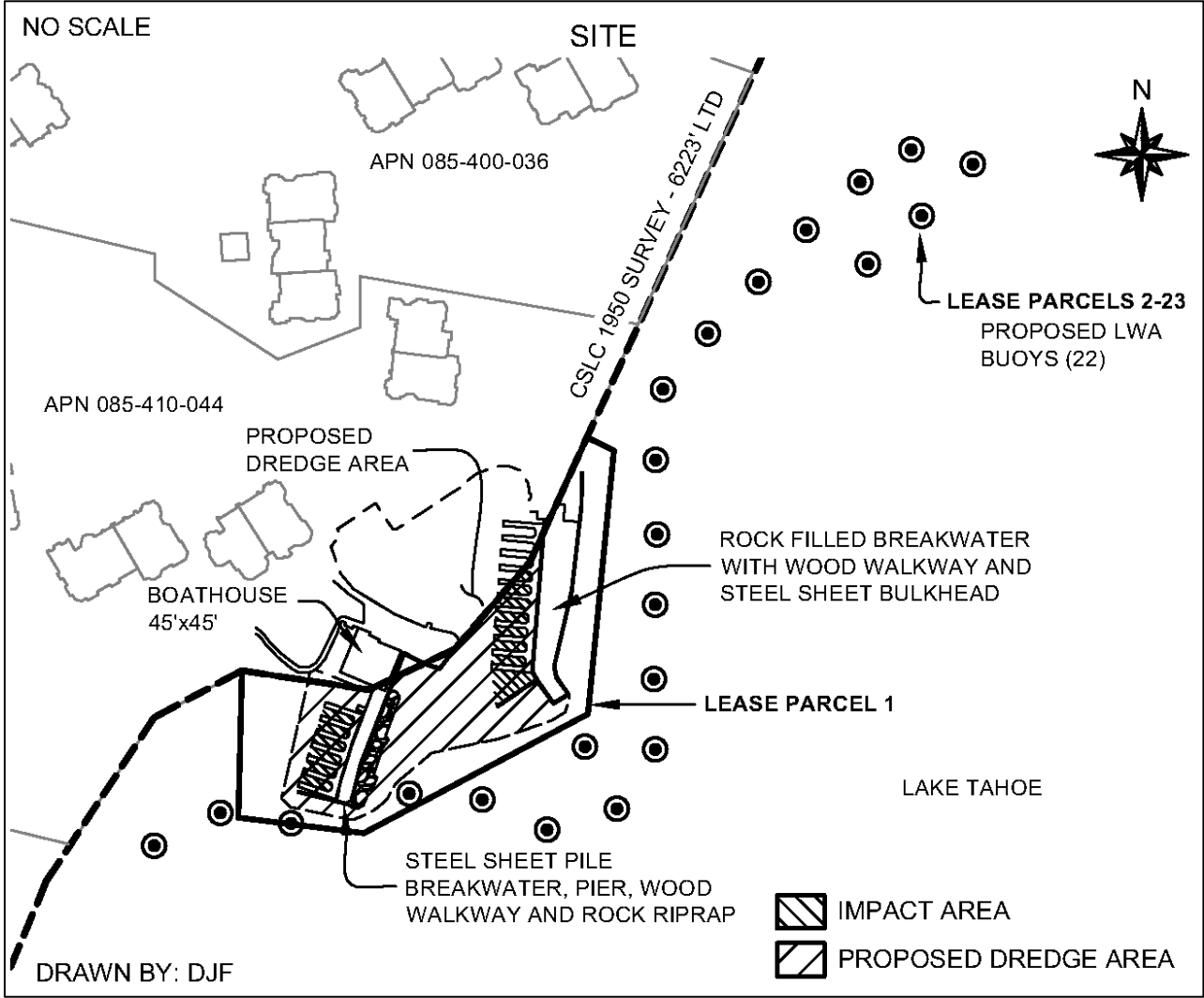
Figure 1. Location



AUTHORIZED USE:

Maintenance dredging up to a maximum of 3,900 cubic yards (cy) of sediment over the 5-year lease period from the bed of Lake Tahoe to maintain a navigable depth for recreational watercraft; installation and use of 22 low water (buoy) anchors; and use of 12 existing boat slips and a portion of four existing boat slips; one steel sheet pile jetty and breakwater with pier and rip rap bank protection; one rock filled breakwater with a wood walkway and steel sheet pile bulkhead; one steel sheet pile jetty and breakwater; a portion of a boathouse; a viewing deck and lawn area, and submerged remnants of wood pile jetties (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:

5 years, beginning June 23, 2026.

CONSIDERATION:

\$19,389 per year, with an annual Consumer Price Index adjustment; and \$29,650 to compensate for the unauthorized occupation of state sovereign land for all existing improvements during the period prior to June 23, 2026.

SPECIFIC LEASE PROVISIONS:

- In performing the dredging, the Lessee will abide by Best Management Practices to control turbidity to protect aquatic resources and habitats from excessive siltation in the general vicinity of the Project.
- Lessee acknowledges that material dredged from the Lease Premises is the property of the State of California and shall not be sold, and that Lessee is not authorized to dredge for purposes of commercial resale, environmental mitigation credits, or other **private benefit without Lessor's prior written consent**.
- Lessee shall obtain all necessary approvals prior to the beginning of any dredging activities on the Lease Premises, from all agencies having jurisdiction over this project.
- This Lease does not authorize an overall increase in mooring capacity at this location. The 22 mooring anchors will only be used when the slips are inaccessible, in compliance with all special conditions imposed by Tahoe Regional Planning Agency (TRPA) Permit No. MOOR2022-1635 and special conditions of Lease 6454.
- During this lease, the Lessee shall remove the existing signs from the rock wall along the north side of the property near Grand Avenue. In exchange, the Lessor shall not object to Lessee placing signage identifying the current location of the high water mark. Lessee shall not interfere with public access and recreation below this point. These concessions are non-**prejudicial to the parties'** claims about the location of the Public Trust easement.

## 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 February 1, 2010, the Commission authorized a 12-year General Lease – Recreational and Maintenance Dredging Use to Fleur Du Lac Estates Association ([Item 35](#)). That lease expired on July 26, 2020.

The Applicant is applying for a new General Lease – Recreational and Dredging Use for maintenance dredging. The original application was for a period of 10 years; however, the parties have negotiated a shorter-term lease that will be for a 5-year period. The original application was for dredging of up to 7,800 cubic yards. Given the shorter lease term, the recommended dredging is set at a maximum of 3,900 cy of sediment over the 5-year lease period from the bed of Lake Tahoe to maintain navigational access between the harbor and Lake Tahoe for recreational watercraft and also around the boat slips. The proposed lease will also authorize the installation and use of 22 low water (buoy) anchors; the use of 12 existing boat slips and a portion of four existing boat slips; one steel sheet pile jetty and breakwater with pier and rip rap bank protection; one rock filled breakwater with a wood walkway and steel sheet pile bulkhead; one steel sheet pile jetty and breakwater; a portion of a common meeting area known locally as the boathouse; a viewing deck and lawn area, and submerged remnants of wood pile jetties.

The proposed dredging activities are necessary to reduce the navigational impacts of sediment accumulation within the artificially created harbor and its opening into Lake Tahoe. Navigation is a recognized Public Trust use. The harbor entrance was last dredged in 2021. If the proposed area is not dredged, navigational access between the harbor and Lake Tahoe may be limited to high water levels and prevented during low water levels.

Based on the submitted application, the project includes dredging over a 5-year period not to exceed a maximum total of 3,900 cy of sediment. The material would be removed through mechanical clamshell dredge with placement of material into a scow. The mechanical clamshell dredge consists of a crane mounted on a barge, with a clamshell bucket on the end of the crane boom. The scows are open

barges that can carry large quantities of sediment. The dredged material would be removed from the lake and placed on the scow and then transported to an authorized upland disposal site. The materials may not be sold or used for other private benefit without prior written authorization.

The Applicant will obtain permits from all applicable regulatory agencies having jurisdiction over the proposed activities and ensure that annual mooring allocations and authorized limits on dredging volume are not exceeded. The work activities will be performed during the in-water work window as stated on permits from regulatory agencies.

Staff believes that the proposed lease and work activities in the lake will not substantially interfere with the Public Trust needs and values at this location because the work is focused on specific areas and will be conducted as authorized in permits from regulatory agencies. The project work will not impact public access to the lake.

Additionally, the Applicant proposes installation and use of 22 low water (buoy) anchors as conditioned with the TRPA Permit MOOR2022-1635. Specifically, the 22 anchors shall not be used as new additional moorings and are only authorized for use when the existing boat slips within the harbor are inaccessible due to sediment accumulation or low lake levels preventing navigational access between the harbor and Lake Tahoe. The anchors would be located lakeward of the harbor and adjacent to the upland property and would occupy a relatively small area of the lake. The anchors would be privately owned and maintained and restricted for the docking and mooring of boats as explained above and conditioned in the TRPA permit.

The anchors, slips, and related mooring structures facilitate recreational boating. The dredging activity helps keep the harbor open for navigation. 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 viewing deck, lawn area, and boathouse are not directly related to boating and navigation. However, the deck and lawn areas are integrated into the breakwater for the harbor that protects the slips. The boathouse was originally constructed to house boats. However, it has been converted to a common meeting area for the residents. Additionally, only a small corner of the boathouse extends beyond the low water line onto state land. These facilities have existed at

this location for many years. Existing non-consistent uses can be authorized if they do not create significant interference with other trust-consistent uses. Staff have been working with the Applicant for several years to decrease the impact of these structures on the surrounding Public Trust uses. This shorter-term lease is proposed to give the parties more time to continue these negotiations. The proposed lease would prohibit any further expansion of these structures. Additionally, the lease premises contain a small area of remnant pilings which the applicant conveyed were cut off near the mudline. Removing the remnants would be disruptive to the natural habitat and would cause significant turbidity which could impact water quality in the lake. Because the pilings are buried, they do not currently impair navigation or Public Trust uses. The proposed lease will continue to include these remnants so they can be monitored to determine whether they will become exposed and require remediation in the future if necessary.

Staff recommends starting the new lease on the day of the Commission meeting. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation for all existing improvements during the period prior to June 23, 2026, ensuring the State is protected. Staff is requesting compensation from the Applicant for the 12 existing boat slips and a portion of four existing boat slips; one steel sheet pile jetty, breakwater with pier and rip rap bank protection; one rock filled breakwater with a wood walkway and steel sheet pile bulkhead; one steel sheet pile jetty and breakwater; a portion of a boathouse; and submerged remnants of wood pile jetties on state land during the period of unauthorized occupation. The Applicant's compensation will ensure that the State is made whole for the occupation of state land prior to the starting date of the new lease term.

While processing the current application, it became apparent that there was a dispute between the Applicant and Commission staff as to the landward boundaries of the Public Trust easement. The parties have agreed to a 5-year term lease while both sides review the historical information and attempt to reach an agreement on the Lessee's public access obligations. As an interim measure, the parties have agreed to remove the sign from the existing wall along Grand Avenue. This sign stated in large lettering that the property on the other side of the wall was private, with much smaller lettering adding "above the high water mark." Generally, staff viewed this sign as an attempt to discourage public access within the easement area. The public will be allowed to access the northern beach in front of the Lessee's property up to the current location of the high water mark. The Lessee may install signs to identify the current location of high water and may not

exclude the public below this point. The proposed lease will not be prejudicial to either side's claims or legal rights.

The facilities have existed at this location for many years. While the public access in this area has been limited for many years, the current negotiations and the proposed lease will result in some increased access to a formerly secluded beach. The authorized improvements are not a permanent alienation of state land because upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. 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:

### *INTRODUCTION:*

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe, and its effects are increasing throughout the Sierra Nevada mountains. According to [California's Fourth Climate Change Assessment](#) (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. These impacts create hazardous conditions like flooding, landslides, wildfire, drought, extreme heat, and severe storms. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events, year-to-year changes in total precipitation, and shifts in seasonal characteristics.

### *DATA & PROJECTIONS:*

Temperatures in the Sierra Nevada are expected to increase six to ten degrees Fahrenheit on average by the end of the century, causing the snowline to shift upslope 1,500 to 3,000 feet in elevation ([California's Fourth Climate Change Assessment](#), 2018). The long-term warming trend will lead to warmer and shorter winters and longer and drier summers. The warmer winters will reduce winter snowpacks by up to 60 percent across most of the Sierra Nevada and will result in increased winter streamflows and floods and decreased spring and summer runoff. Loss of snowpack is expected to dry soils 15 to 40 percent below their historical norms. Hotter, drier summer seasons and low water years will increase stress to vegetation, elevating wildfire risk and fire severity in the Tahoe Basin.

Dry winters will be punctuated with exceedingly wet years and higher temperatures will result in more rain-on-snow events ([Integrated Vulnerability Assessment of Climate Change in the Lake Tahoe Basin](#), 2020). Atmospheric river systems will become more common. These events produce both flash floods and higher than normal seasonal flooding which may shift earlier in the year. Higher soil moisture will increase erosion and elevate landslide risk, particularly following intense wildfire seasons.

#### ANALYSIS:

The greatest vulnerability to recreational facilities is from flooding, landslides, and wildfire hazards (Integrated Vulnerability Assessment of Climate Change in the Lake Tahoe Basin, 2020). The Sierra Nevada is expected to experience year-to-year variability in precipitation and may shift between extreme wet and dry periods. High precipitation years or successive years will result in higher lake levels, causing beaches to narrow and reducing public access. Surface runoff may carry more sediment into the lake, adversely impacting water quality, clarity, and increasing risk of algal blooms ([UC Davis Tahoe Environmental Research Center](#), 2024).

Conversely, low lake levels will become normal during periods of extended drought. Low lake level conditions can create more expansive beaches and increased shoreline access in dry months. However, these conditions could make some shoreline areas too shallow for effective recreational use of piers, boat docks, and mooring buoys. During drought, structures will also be exposed to heat and wind that may accelerate deterioration or reduce the structural integrity of certain structures.

Additionally, atmospheric rivers and extreme weather events are expected to increase in the high Sierra. Storms may deviate from prevailing wind patterns for the region. Wind-driven waves can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Winds can also increase wave damage on structures and boats along the lake.

Sediment accumulation at the harbor entrance area will continue as influenced by sedimentation produced from Blackwood Creek to the north of the harbor and the wave action of the lake, particularly during storm events. The orientation of the harbor setting as an endpoint landform, combined with the vertical bulkhead walls also contributes to the interception and accumulation of sediment.

*RECOMMENDATIONS:*

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. Replacing older structural components with materials designed to better withstand extreme heat, wind events, and storms can reduce the likelihood of degradation and damage to structures. The low water adaptation buoys will provide relief with maintaining moorage of watercraft and access to the lake during low lake levels and periods of prolonged drought conditions. Maintenance dredging at the harbor will continue to provide temporary boating access to the lake to offset the ongoing sediment accumulation processes. Any future construction or activities on State land would require a separate authorization from the Commission.

Regular maintenance, as required by the lease, may reduce the risks from extreme temperatures and rain. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change.

*CONCLUSION:*

For all the reasons above, staff believe that issuance 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; 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 will not be authorized to perform maintenance dredging or install 22 low water (buoy) anchors; and may be required to remove all existing improvements and restore the property 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 Structures: 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 2, section 2905, subdivision (a)(2).

Installation of Low Water Anchor Blocks: 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 or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

Maintenance Dredging: 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 15061 and California Code of Regulations, title 2, section 2905.

## APPROVALS REQUIRED:

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- U.S. Army Corps of Engineers
- California Department of Fish and Wildlife
- Tahoe Regional Planning Agency
- 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 2, section 2905, subdivision (a)(2); Class 3, New Construction or Conversion of Small Structures; California Code of

Regulations, title 14, section 15303; and Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing boat slips, pier, rip rap bank protection, steel sheet pile breakwaters, wood walkways, steel sheet bulkhead, low water anchors, and dredging 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 and are consistent with the Public Trust Doctrine.
2. Find that the existing and continuing use of the fill area, lawn and viewing deck, and a portion of the boathouse is not generally a Public Trust consistent use, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$29,650 for the unauthorized occupation of state sovereign land for the period prior to June 23, 2026.
2. Authorize issuance of a General Lease – Recreational and Dredging Use to the Applicant beginning June 23, 2026, for a term of 5 years, for maintenance dredging up to a maximum of 3,900 cy of sediment over the 5-year lease period; installation and use of 22 low water buoy anchors; and use of 12 existing boat slips and a portion of four existing boat slips; one steel sheet pile jetty and breakwater with pier and rip rap bank protection; one rock filled breakwater with a wood walkway and steel sheet pile bulkhead; one steel sheet pile jetty and breakwater; a portion of a boathouse; a viewing deck and lawn area, and submerged remnants of wood pile jetties; annual rent in the amount of \$19,389 with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$2,000,000 per occurrence; and the dredged material may not be sold or used for other private benefit.