

**CALENDAR ITEM**

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M. Hays

C. Connor

**CONSIDER A RECOMMENDATION ON THE RENTAL PRACTICES FOR PRIVATE  
RECREATIONAL PIERS AND MOORING BUOYS AT LAKE TAHOE**

**PARTY:**

California State Lands Commission  
100 Howe Avenue, Suite 100, South  
Sacramento, CA 95825

**LAND TYPE AND LOCATION:**

Sovereign lands in Lake Tahoe, Placer, and El Dorado Counties

**BACKGROUND:**

At the January 26, 2012 Commission meeting, there was an extensive discussion surrounding the methodology of determining annual rent for recreational piers and mooring buoys at Lake Tahoe using the Lake Tahoe benchmark. This discussion was in relation to Calendar Item #22, which involved a lease application for an existing recreational pier and two mooring buoys in Lake Tahoe near Tahoe City in Placer County. Mr. Gregory Price (a principal in the ownership, 2280 Sunnyside, LLC) spoke to the Commission regarding what he considered to be flaws and inconsistencies in the methodology and analyses used to establish a fair rental rate.

In his presentation, Mr. Price stated that there were inconsistencies in the Commission's benchmark methodology, which led to confusion and an inability to understand how Commission staff arrived at the rents. He stated that there was a need for a "common, simple-to-understand approach". After considering this, the Commissioners asked staff to meet with Lake Tahoe stakeholders to discuss the current Lake Tahoe benchmark methodology, and to report back to the Commission with a recommendation on whether or not to make changes to the methodology. The Commissioners amended the staff recommendation to include that if the rent methodology was modified at a subsequent meeting in a way that recalculation of the rent methodology resulted in a lower rent than that utilizing the current benchmark methodology, the annual rents would be adjusted; Mr. Price's lease and other Lake Tahoe leases approved at the January 2012 meeting would be refunded the difference paid. The Commission also agreed to toll any statute of limitations to challenge the Commission's actions until the rent issue had been heard at a subsequent Commission meeting and reconsidered by them. Calendar Item #22 was approved as amended.

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Pursuant to the Commissioners' request, Commission staff held the meeting with Lake Tahoe stakeholders in Sacramento on February 29, 2012. Eight people participated in person and another eight people, including Mr. Price, participated by teleconference. The participants at this meeting were primarily professional consultants, attorneys and property managers that represent a broad swath of Lake Tahoe lakefront property owners and also included some individual lakefront owners. Prior to the meeting, staff developed several alternative methods to the current benchmark methodology for determining rent for Lake Tahoe piers and buoys. At the meeting, staff presented to the stakeholders the following description of the current benchmark methodology and alternative methods of establishing rent:

**PRIVATE PIERS** - The Lake Tahoe Benchmark has been used by the Commission since the early to mid-1980s and was last updated in 2007. The current methodology, for piers is based on the principle of substitution. The first step in setting the Lake Tahoe Benchmark is surveying local marinas to determine their rental rates. Marinas usually rent their slips on a per lineal foot basis, based on the length of the slip or vessel. For benchmark purposes, the average surveyed rental rate is used. This rate is multiplied by the average or typical berth length as shown by the survey. Based on these inputs, the annual gross income is calculated. The State's rent is based on a 5% rate of return of this annual income. It represents compensation for the use of State-owned submerged land, much like what a property owner would expect to receive for a typical commercial or industrial ground lease of dry land. The State's rent is then converted to a per square foot basis using a table calculated by a Department of Boating and Waterways' publication titled "Layout and Design Guidelines for Marina Berthing Facilities".

**PRIVATE BUOYS** - The annual rental rate set for private buoys in 1985 was \$53 per buoy. The methodology utilized for setting that particular rate is not known. What is known is that the current buoy benchmark rate is the result of adjusting the rate by applying a factor based on the percentage increase in the buoy rates from the prior benchmark survey.

Alternatives:

At the meeting, staff discussed the following alternatives to the current benchmark methodology with the stakeholders, requested feedback and input on the methodologies presented, and also requested and encouraged stakeholders to provide additional methodologies that staff could consider in formulating a recommendation for the Commission for the March 29 Commission meeting.

1. **Update and continue to use current Lake Tahoe benchmark methodology for piers and mooring buoys.**

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Staff has updated the benchmark survey, which provides the market data for the Lake Tahoe Benchmark. The results of the survey indicate that the average slip length has increased to 26 feet (up from 25 feet shown on the 2007), but that the average slip rate has remained the same at \$33.66 per lineal foot (LF). Based on these figures and the current methodology, the 2012 benchmark rate for recreational use has actually decreased from \$0.804 to \$0.79 per square foot. The decrease is attributed to the rent being spread over a larger water area, i.e. the longer the slip length is, the greater the water area needed to account for the bigger docks and fairways.

The survey shows that Lake Tahoe buoy rents increased an average of 10.9% from the last Benchmark survey in 2007. Applying this rate of increase to the existing buoy rate results in a revised buoy benchmark rate of \$377 (\$340 current benchmark x 1.109).

### **2. Buoy rent based on the same square footage rate used for piers.**

This alternative is a variation of the current benchmark methodology. It is intended to unify the two existing techniques for setting rent into one method. It is the application of the per square foot rental rate derived from the marina survey to the swing area of a buoy. Applying the 2012 benchmark rental rate of \$0.79 per square foot to a buoy area with a swing radius of 25 feet results in a revised buoy rate of \$1,550 per buoy ( $25' \times 25' \times 3.14 = 1,962.5 \text{ SF} \times \$0.79/\text{SF}$ ).

### **3. Rent based on 9% of appraised value of the leased land area for piers and buoys.**

The California Code of Regulations provides for rent based on 9% of appraised land value. This methodology is based on the premise that the highest and best use of the submerged land is to be used in conjunction with the upland property. In most cases, the appraised land value is estimated through the use of the sales comparison approach. Since there is no active real estate market for submerged land, the State-owned submerged land is valued based on analysis of comparable upland sales. If the adjoining upland is a residential property, then the submerged land value can be estimated through use of comparable sales of vacant residential lots or the allocated land value of improved comparables.

The appraisal method could provide for a benchmark land value rate based on upland land values. This rate (price per square foot) may require more than one benchmark land value rate to account for price per square foot differences based on location and physical characteristics (slope of shore, water depth, sandy vs. rocky shore, etc.) of the Lake Tahoe shoreline.

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Based on a preliminary analysis of limited market data and discussion with Placer County Assessor's staff, the value of a sample lease area on the West Shore of Lake Tahoe is estimated at \$50 to \$100 per square foot. Based on the low end of this range, the annual rent would be \$4.50 per square foot (\$50 X .09 rate of return = \$4.50), applied to piers. For buoys, the benchmark rental rate would be \$8,831 per buoy, which is the \$4.50/SF rate applied to the 1,962.50-square foot buoy area. Rent for a pier would likewise reflect the \$4.50/SF rate.

**4. Rent based on direct comparison.**

a. Buoy rent based on direct comparison.

This alternative for the buoy benchmark rate is also based on the principle of substitution. In this case, the premise is that an upland property owner may either lease a buoy from a marina or purchase the buoy tackle and lease the submerged land from the State. Under this methodology, the benchmark rental rate for buoys is based on direct comparison to seasonal buoy rental rates in marina buoy fields on Lake Tahoe.

Preliminary results from staff's survey indicate that buoy rental "season" at Lake Tahoe varies from four to seven months, with a typical season of five months. The average seasonal rate for buoys lake wide is \$2,951. The survey also revealed that seasonal rates for buoys in marinas in Placer County (\$4,182) are significantly higher than marina buoy rentals in El Dorado County (\$1,413). This suggests that separate County benchmarks for buoys based on the direct comparison approach may be appropriate.

To account for the fact that the property owner has to provide for the purchase and placement of the buoy when leasing State land, a deduction to the surveyed buoy rental rate is warranted. Based on information provided by a private buoy placement service, a deduction of \$250 per year is made. This is based on a reported total cost of \$2,500 (for the anchor block, chain, buoy, and installation) spread evenly over a typical 10-year lease term. Staff believes this is reasonable, especially considering that the economic life of the anchor block should be much longer than the lease term. Below is a table showing the potential benchmark rates for buoys under this alternative.

<b>Location</b>	<b>Avg. Seasonal Rate</b>	<b>Annualized Cost of Tackle</b>	<b>Net Rent to Land</b>
El Dorado Co.	\$1,413	\$250	\$1,163
Placer Co.	\$4,182	\$250	\$3,932
Overall	\$2,951	\$250	\$2,701

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b. Pier rent based on the direct comparison analysis for buoys (4a.).

Like alternative 2, this alternative would provide the same methodology for the benchmark rates for buoys and piers. It is the application of the per square foot rental rate derived from the direct comparison analysis for the buoys (presented in No. 4a). As described in alternative 2, the area occupied by a buoy with a swing radius of 25 feet is 1,962.50 square feet. Dividing the seasonal rates (less the deduction for purchase and placement of the buoy) results in the following per square foot rents, which could then be applied to piers either on an overall basis or by County.

<b>Location</b>	<b>Seasonal Rent</b>	<b>Rent Per SF</b>
El Dorado Co.	\$1,163	\$0.59
Placer Co.	\$3,932	\$2.00
Overall	\$2,701	\$1.38

**5. Paired sales analysis.**

In this alternative methodology, the value of the submerged land is estimated through comparison of sales of lakefront properties with piers (most likely improved with single family residences) with piers to sales of lakefront properties without piers. All other things being equal, the difference in the values should be attributable to the pier and the submerged land beneath it. The depreciated cost of the pier could then be estimated and deducted from the previously-arrived at value differential. The remaining value should be attributable to the submerged land. The annual rent would then be based on 9% of that value per the California Code of Regulations.

It should be noted that this is a complex valuation methodology with many variables that need to be considered in the analysis (location, lot size, shape, other site characteristics, size & age of the residence, amenities, etc.). It could be extremely difficult to find paired sales with few enough differences to isolate an accurate value of the price differential provided by the pier and submerged land. Consequently, and due to resource constraints, this alternative has not been fully explored or analyzed by Commission staff. An independent consultant might need to be retained to perform this analysis.

Following the meeting on February 29<sup>th</sup>, staff again solicited input from stakeholders multiple times via email. Leading up to the March 29 meeting, staff had only one response from a stakeholder and consequently recommended extending the period for feedback from the stakeholders. At the March 29 meeting, the Commission approved Item #C25 authorizing the following:

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1. Authorize staff of the Commission to continue current rental practices using the Lake Tahoe Benchmark for recreational piers and mooring buoys on sovereign lands in Lake Tahoe, Placer and El Dorado counties until the May 24, 2012 meeting, at which time staff will bring to the Commission a summary of alternatives to the current benchmark methodology and a recommendation for a methodology to be used in the 2012 Lake Tahoe Benchmark.
2. In the event the Commission adopts a change in the methodology for determining rent for recreational piers and mooring buoys in Lake Tahoe and that methodology results in a lower rent, authorize staff to amend the applicable leases at Lake Tahoe authorized since January 26, 2012 to reflect the new rent.
3. Authorize the tolling of the statute of limitations for challenges to the methodology used to determine the amount of rent applying to Lake Tahoe leases for recreational piers and buoys authorized at the January 26, 2012 and March 29, 2012 meeting, until the Commission completes its reconsideration of the methodology of determining rent at a subsequent meeting.

Since the March 29, 2012 Commission meeting, staff has reached out several more times to stakeholders asking for feedback. On April 5, 2012, stakeholders were contacted and asked to provide feedback by April 20, 2012. On April 30, 2012, stakeholders were contacted again and the deadline was extended to May 5th. As of the week before this meeting, only two additional stakeholders have provided comments. Of the 14 participants at the February 29, 2012 stakeholder meeting, we have had feedback by three individuals, Curtis Sproul, Attorney for a Lessee, Kevin Agan, Agan Consulting Corporation, and William Threlfall, a lakefront property owner and Lessee.

The following are comments and alternatives submitted by the above stakeholders:

- Mr. Sproul's comments were not directly related to the use of the Lake Tahoe benchmark for piers and buoys, but were more specific to the Commission's practice of determining rent for seasonal swim areas. Mr. Sproul's comments were very thoughtful and substantive. Staff subsequently met with Mr. Sproul and his client, Chambers Landing Homeowners Association, regarding the swim area offshore of their lakefront property. Staff is in the final negotiations on recommending a modified lease area and rent for their swim area. Furthermore, staff has

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modified its recommendations for rent and other considerations for seasonal swim areas going forward in response to Mr. Sproul's input.

- Mr. Agan's comments recommended considering the cost of replacement of a pier and mooring buoy as a basis for determining rent. He suggests rent based on 9% of the cost of replacing these structures as new. He gave figures of \$35 per square foot for pier structures and \$2,500 for mooring buoys. He recommends updating the cost figures every five years based on the market price increase or decrease. The Commission's practice has been to set rent based on the value of the public's property being used, not the cost of the improvements. The basis for this practice is Section 6503 of the Public Resources Code, which states: "*the Commission shall appraise the lands and fix the annual rent or other consideration thereof.*" Mr. Agan's recommendation, while easy to calculate and understand, is not related in any way to valuation of the public's land.
- Mr. Threlfall provided a range of constructive comments regarding piers and buoys, but did not recommend an alternative rent methodology. He points out that all piers and buoys should be subject to rent (except those exempted by SB152) whether under lease or not. Mr. Threlfall discussed enforcement issues pointing to the inequity of owners of illegally placed buoys avoiding rent. He recommended developing a different classification for non-operational buoys similar to the Certificate of Non-Operation for motor vehicles that provides for a legal non-use period where vehicles are exempt from vehicle registration fees. He asks to consider a non-use provision in regard to buoys that would allow for temporary removal or non-use during the term of the lease and rent would be charged only for the time the buoy is in place and being used.

### **OTHER PERTINENT INFORMATION:**

1. This May 24, 2012 Commission meeting agenda contains 20 Lake Tahoe items, 14 of which have annual rent based on the current Lake Tahoe benchmark. The previously approved delegation would apply to the following eight calendar items from the January 26, 2012 Commission meeting, the 15 items on the March 29, 2012 meeting and those on the current agenda:

#### January 26, 2012

C10 (Nelson)

C11 (Ghilotti)

C19 (Tahoe Marina Owners Association)

C20 (Hill)

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C21 (Rubicon Tahoe Owners Inc.)  
C22 (2280 Sunnyside lane, LLC)  
C27 (Plona Hoffman Trust)  
C28 (Dollar Point Association, Inc.)

March 29, 2012

C01 (Macbride Tahoe Management, LLC)  
C03 (Flores Trusts and Frankel Trust)  
C06 (Adjuidaumo, LLC)  
C26 (Bischoff Trust)  
C28 (Gilmartin Trust)  
C29 (Kessler Trust)  
C30 (Berry)  
C37 (Tuncer Trust)  
C44 (Chinquapin Homeowners Association)  
C45 (Trustees of the Lake Tahoe Park Association)  
C46 (SDC Tahoe City, LLC)  
C50 (Schweichler Trusts)  
C51 (TRI Association)  
C54 (Bottomley Trust)  
C56 (Heck Trust)

2. Staff has reviewed and analyzed all the alternatives, including those received from the public, to evaluate which are the most supportable from a market data standpoint, easy to understand, and reasonable to the State, as well as applicants and lessees. Taking into account the analysis of all the alternatives, including input from the stakeholders, staff has determined that there is no single methodology that is both easier to understand and reasonable. Consequently, staff recommends continuing with, and updating, the Lake Tahoe benchmark methodology. Presented in Exhibit A are staff's recommendations, weighted in order of presentation, for rental methodologies for private recreational piers and buoys.
3. If the Commission decides to retain the current Lake Tahoe benchmark methodology, adopts a new benchmark methodology, or adopts a different rent methodology for recreational piers and buoys at Lake Tahoe that does not result in a rent more favorable to the Lessee than the current benchmark methodology, then no increase in rent will occur to those parties whose leases were authorized by the Commission since the January 26, 2012 meeting and who have signed their leases.

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4. The staff recommends that the Commission find that the consideration of rental practices for recreational piers and mooring buoys at Lake Tahoe does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

**EXHIBIT:**

- A. Summary of Staff Recommendations

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the consideration of rental practices for recreational piers and mooring buoys at Lake Tahoe is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

**AUTHORIZATION:**

1. Authorize staff of the Commission to continue current rental practices using the Lake Tahoe Benchmark for recreational piers and buoys on sovereign lands in Lake Tahoe, Placer and El Dorado counties.
2. In the event the Commission does not act on recommendation #1 above, authorize the tolling of the statute of limitations for challenges to the methodology used to determine the amount of rent applying to Lake Tahoe leases for recreational piers and buoys authorized at the January 26, 2012, March 29, 2012 and May 24, 2012 Commission meetings until staff completes its reconsideration of the methodology of determining rent at a subsequent meeting.

**EXHIBIT A  
SUMMARY OF RECOMMENDATIONS  
2012 Lake Tahoe Benchmark**

Method	Rate / Rent	Pros	Cons	
<b><u>Recreational Piers</u></b>				
1	The 2012 Lake Tahoe Benchmark	\$0.79/SF	Based on the principle of substitution, i.e., rent for value underlying a slip in a marina.	Not simple or easy for the public to understand. Basis is slips that are rented on a seasonal basis, but the benchmark rent is extrapolated to annual basis to reflect the fact that the facilities occupy State lands year round. Some have questioned the applicability of commercial rates to private recreational use.
2	Pier rent extracted from the Direct Comparison Method for buoys	\$1.38/SF (overall); \$0.59/SF (El Dorado Co.); \$2.00/LF (Placer Co.)	Simple & easy to understand. Based on market data.	Not apples to apples (i.e., buoys to piers). Does not adequately reflect the owner's investment in the pier.
3	9% of appraised value of the leased land per the California Code of Regulations.	Will vary.	Reflective of specific property location and physical characteristics. Rate is set by Code.	Does not provide efficiencies or consistencies for Commission staff. Based on preliminary information, will most likely result in much higher annual rents.
<b><u>Buoys</u></b>				
1	The 2012 Lake Tahoe Benchmark	\$377 per buoy	Based on average rate of change from last Benchmark rate.	Different methodology for buoys than recreational piers.
2	Direct Comparison Method	\$2,700 per buoy (overall); \$1,160 per buoy (El Dorado Co.); \$3,900 per buoy (Placer Co.)	Simple & easy to understand. Based on direct comparison of market data.	Rents would be significantly higher than under the current methodology.
3	Apply recreational pier rate (per SF) from the 2012 Benchmark to buoys	\$1,550 per buoy (\$0.79/SF)	Methodology and per SF rate consistent with piers.	Overall methodology is not simple or easy for the public to understand. Basis is slips that are rented on seasonal basis, but this benchmark rent is extrapolated to annual basis. Some have questioned the applicability of commercial rates to private recreational use.