

**STAFF REPORT  
C103**

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**REQUEST AUTHORITY FOR THE EXECUTIVE OFFICER TO SOLICIT PROPOSALS  
FOR CONSULTANT SERVICES, NEGOTIATE A FAIR AND REASONABLE PRICE,  
AND AWARD AND EXECUTE AN AGREEMENT FOR PREPARATION OF A  
LAKE TAHOE RENT METHODOLOGY STUDY**

**PARTY:**

California State Lands Commission

**BACKGROUND:**

The Commission uses benchmark rental rates in specific geographic regions like Lake Tahoe that have large concentrations of similar facilities, mostly private recreational improvements. The use of benchmarks, essentially uniform rental rates, improves consistency and transparency throughout a geographic region, improves staff efficiency in setting and adjusting rent for large numbers of leases, and saves time and money for both the applicant/lessee and the State. The benchmark rental rates are developed by Commission appraisal staff and are updated every five years.

The Commission has two types of benchmarks: Category 1, which is generally applied to private docks, piers, and buoys; and Category 2, which is generally applied to cantilevered decks, sundecks, or other non-water dependent uses. Benchmark rental rates are developed based on an analysis of similar land uses or substitute facilities in the local area. Other geographic areas where Category 1 and 2 benchmarks are used include Southern California, the San Francisco Bay Area, the Delta, the Sacramento River, Huntington Harbour in Orange County, and the Colorado River. Generally, staff recommends updates to the benchmarks every 5 years.

There are approximately 750 Commission-authorized leases at Lake Tahoe. Of these, 544 leases have annual rents based on the Category 1 benchmark. There are another 155 leases for piers and buoys that have rent-free status under a prior version of Public Resources Code section 6503.5. This code section was revised by the Legislature in 2011 (SB 152, Pavley) to require rent for private recreational piers and buoys. The statute also required rent to be based on local conditions and local fair annual rental values. Accordingly, the 155 rent-free leases will become subject to rent as their lease terms expire. These rent-free

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leases should be phased out by 2022. The remainder of the leases at Lake Tahoe are for commercial marinas, public uses, dredging, etc., and are either rent free or do not rely on the Category 1 benchmark for rent-setting purposes.

There are two Category 1 benchmark rates at Lake Tahoe, and a Category 2 benchmark is proposed. One of the Category 1 benchmarks is for recreational piers, and the other is for recreational buoys. These benchmark rates have been used by the Commission since the 1980s and were last updated in 2012. In 2012, the Commission reviewed the current leasing practices including the use of benchmarks for recreational piers and buoys in Lake Tahoe. At the direction of the Commission at that time, staff developed several alternative methods to the benchmark methodology for determining rent for Lake Tahoe piers and mooring buoys. Staff held a public meeting at Lake Tahoe with stakeholders and reviewed and analyzed numerous alternative methods for determining rent for Lake Tahoe buoys and piers. Other methodologies explored, especially those for buoys, resulted in significantly higher rental values. On May 24, 2012, the Commission agreed with staff's recommendation that the existing methodology was the most reasonable approach and authorized staff to continue using the existing methodology for the Lake Tahoe Benchmark for recreational piers and buoys ([Item 82, May 24, 2012](#)). However, the Commission recognized that certain identified alternative methodologies were not fully explored and analyzed due to limitations in staff expertise and workload capacity.

On October 12, 2013, the Governor approved SB 630 (Chapter 762, Statutes of 2013). Among other things, this legislation created the Lake Tahoe Science and Lake Improvement Account and required all revenue generated from Commission leases at Lake Tahoe be deposited into the account, rather than into the General Fund. The law authorizes the money to be expended by the Natural Resources Agency, upon appropriation by the Legislature, for activities and projects that include, but are not limited to, aquatic invasive species prevention projects, projects to improve public access to sovereign land in Lake Tahoe, and projects to improve near-shore water quality monitoring. The law also authorizes the money in the account to be expended for the costs associated with establishing and operating a bi-state science-based advisory council and authorizes the Secretary of the Natural Resources Agency to enter into a memorandum of agreement with the Nevada Department of Conservation and Natural Resources to establish the council. Furthermore, the statute requires the Natural Resources Agency, or another agency designated by it, to annually make certain information available regarding any activity funded from the account. Since enactment of the law, the Commission has transferred almost \$4.7 million into the account.

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In keeping with the normal 5-year cycle, staff commenced the benchmark update process in early 2017. During this process, two homeowner groups hired consultants to review, analyze, and develop alternatives to the Commission's proposed benchmark. Commission staff received input from these consultants and participated in two public stakeholder meetings. Based on the input received, staff revised the proposed benchmarks for the Commission's consideration at its February 27, 2018 public meeting.

In the weeks before the Commission meeting, staff received verbal and written comments from stakeholders involved with the Lake Tahoe Science and Lake Improvement Account into which all rental revenue generated by the Commission's leases is deposited. The comments generally expressed concern about the benchmark methodology and that the proposed benchmark rates would adversely impact the Account's ability to fund aquatic invasive species prevention projects, projects to improve public access to sovereign land in Lake Tahoe, and projects to improve near-shore water quality monitoring. Additionally, the Chairs of Senate Budget Sub-committee #2 and Assembly Budget Sub-committee #3 sent a letter requesting the Commission delay any action on the benchmarks "until methodology that more completely reflects the benefits to the upland owner can be established."

The Commission subsequently deferred action on the Lake Tahoe benchmarks at its February public meeting ([Item 90, February 27, 2018](#)) and directed staff to identify funding options to conduct a thorough and independent, third-party evaluation of the various methodologies available to the Commission to assess rent for piers, buoys and other structures located on state property in Lake Tahoe.

The recently-enacted 2018-19 State budget included an appropriation of \$250,000 from the Lake Tahoe Science and Lake Improvement Account for the development of the Lake Tahoe Rent Methodology Study.

### **PROPOSED ACTIVITY AND STAFF RECOMMENDATION:**

The scope of the proposed Lake Tahoe Rent Methodology Study will include the following components:

- Conduct literature research regarding valuation and leasing of submerged land
- Conduct research regarding relevant statutes and codes
- Interview agencies or entities, including those in other states, that lease submerged land as to their practices and rates
- Interview lakefront homeowner associations and groups at Lake Tahoe
- Interview SB 630 stakeholders

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- Solicit input from individual lessees and stakeholders at Lake Tahoe
- Research relevant market data
- Compile descriptive list of potential rent-setting methodologies with the strengths and weaknesses of each
- Identify benefits to upland owner afforded by a pier on leased land
- Attempt to quantify the value enhancement to the upland property added by a leased pier
- Make recommendations
- Prepare draft study for review by State Lands Commission staff
- Attend public meetings and provide outreach to, and respond to questions from, lessees, stakeholders and other interested parties, and
- Prepare final study and make presentation at publicly-noticed Commission meeting

With the anticipated level of public involvement, the proposed study is expected to take 1-2 years to complete. Staff will use the study to inform its recommendations to the Commission for revising the Lake Tahoe benchmarks. Staff recommends the Commission authorize the Executive Officer or her designee to solicit proposals, negotiate a fair and reasonable price, and award and execute an agreement for preparation of a Lake Tahoe Rent Methodology Study in accordance with State policies and procedures.

**OTHER PERTINENT INFORMATION:**

1. Statutory Authority: Public Resources Code section 6106 (Delegation to execute written instruments); Government Code section 19130; Public Contract Code section 10335.5.
2. Authorization to solicit proposals is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 2.1 to optimize returns for the responsible development and use of State lands and resources, both onshore and offshore.
4. Funding for this activity has been included in the Commission's 2018-19 fiscal year budget.

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

1. Find that the services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system, as specified in Government Code section 19130, subdivision (b)(4).
2. Find that the selection of consultants under this process does not affect small businesses as defined in Government Code section 11342.610, because they will be afforded equal opportunity to submit statements of qualifications and performance data.
3. Authorize the Executive Officer or her designee to solicit proposals, negotiate a fair and reasonable price, and award and execute an agreement for preparation of a Lake Tahoe Rent Methodology Study in accordance with State policies and procedures.