

Staff Report 03

LESSEE/APPLICANT:

Bow Bay, LLC, a California Limited Liability Company

PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed and Issuance of a General Lease –
Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 281 Paradise Flat Lane, near Rubicon Bay, El Dorado County.

AUTHORIZED USE:

Construction, use, and maintenance of a pier; and continued use and maintenance of two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission.

TERM:

10 years, beginning October 22, 2020.

CONSIDERATION:

\$1,700 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 shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing, and lake-related recreation.
- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from the Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.

- Within 60 days of completing the construction of authorized improvements, Lessee will provide Commission staff with photographs and a set of “as-built” plans that will show where the improvements have been placed. Commission staff shall then replace Exhibit A (Land Description) and Exhibit B (Site and Location Map) to this Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Commission's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.
- The lease provides that the public will be allowed to pass and re-pass over the pier via stairs to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

On April 19, 2018, the Commission authorized a General Lease - Recreational Use for two existing mooring buoys to Bow Bay, LLC, a California Limited Liability Company ([Item C27, April 19, 2018](#)). The lease will expire on February 26, 2028. The Applicant is now applying for a General Lease – Recreational Use for the construction, use, and maintenance of a pier; and continued use and maintenance of two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission. The Applicant previously applied to include their third existing mooring buoy in Lease Number PRC 9443, however, at the time, recommending approval for a third buoy was in direct conflict with the TRPA Code of Ordinances. The Applicant has now registered their three existing mooring buoys with TRPA on September 27, 2019, registration number 11267.

On April 7, 2020, TRPA issued a conditional permit for a pier development right transfer to the Applicant and Tony Weir Industries, LLC (Weir Industries). Weir Industries has an existing pier extending from their upland property (APN 017-021-16) into Lake Tahoe but it does not extend below the low water line and is therefore not within the Commission's leasing jurisdiction. The Applicant will receive a pier

development right to construct a single-use pier adjacent to their upland property after Weir Industries' existing pier is removed and upon TRPA issuing final approval.

The proposed single-pile pier with a catwalk will extend approximately 147 feet from the high-water mark into Lake Tahoe. The project will be performed on-site with waterward access to the pier from a floating/amphibious barge. All materials will be stored and transported to the site from a barge. Precautions will be taken to confine lake bottom sediments associated with the pier construction which may include but not be limited to a turbidity curtain.

Construction will take place after all required approvals have been obtained. The Applicant will follow all construction methods and timeframes provided by TRPA, the Lahontan Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers.

The Applicant has requested issuance of a new lease and has executed a quitclaim deed releasing their interest in the current lease. Staff recommends the Commission accept the lease quitclaim deed and approve the new lease, effective October 22, 2020.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The proposed pier and existing mooring buoys are and will be used for the docking and mooring of boats 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 immediate area of the proposed pier is a gently sloped sandy beach. The lease provides that the public will be allowed to pass and re-pass over the pier via stairs to provide continuous shoreline access to the Public Trust easement below elevation 6,228.75 feet, Lake Tahoe Datum. The proposed lease requires signage to notify the public of their ability to pass and repass over the pier. In addition, the proposed pier will be built on pilings with a clearance of about 6 feet underneath the pier and 15 feet between the pilings, providing public access for pedestrians and lake-related activities at varying water levels within the Public Trust easement. The three buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

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.

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. For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine 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 not construct the pier, and as prior lessee, may be required to remove the mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. 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 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. Acceptance of a lease quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) 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).

4. **Existing Mooring Buoys:** 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

5. **New Pier Construction:** 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 of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers
California Department of Fish and Wildlife
Tahoe Regional Planning Agency

APPROVAL REQUIRED:

Lahontan Regional Water Quality Control Board

EXHIBITS:

1. Land Description
2. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Existing Mooring Buoys: 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 2, section 2905, subdivision (a)(2).

New Pier Construction: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of a lease quitclaim deed and issuance of 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 foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective October 21, 2020, of Lease No. PRC 9443, a General Lease – Recreational Use, issued to Bow Bay, LLC, a California Limited Liability Company.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 22, 2020, for a term of 10 years, for the construction, use, and maintenance of a pier; and continued use and maintenance of two mooring buoys previously authorized by the Commission and one existing mooring buoy not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$1,700, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 9443

LAND DESCRIPTION

Four parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 4 of fractional Section 4, Township 13 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1874, County of El Dorado, State of California, more particularly described as follows:

PARCEL 1 – PROPOSED PIER

All those lands underlying a proposed pier with catwalk lying adjacent to that parcel described in Grant Deed recorded March 10, 2014 in Document Number 2014-0009230-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCEL 2, 3 and 4 – BUOYS

Three circular parcels of land, each being 50 feet in diameter, underlying three existing buoys lying adjacent to that parcel described in Grant Deed recorded March 10, 2014 in Document Number 2014-0009230-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans for a proposed pier, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to are submitted.

Prepared 08/03/2020 by the California
State Lands Commission Boundary Unit.





LAKE
TAHOE

EXISTING
BUOYS (3)

PROPOSED
CATWALK
30' x 3'

9' IMPACT
AREA

PROPOSED
PIER

STAIRS

APN 017-021-008

EXHIBIT A

Page 2 of 2

TS 08/03/2020

LAND DESCRIPTION PLAT
LEASE 9443, BOW BAY, LLC
EL DORADO COUNTY

CALIFORNIA STATE
LANDS COMMISSION



