

Staff Report 06

APPLICANT:

Jason A. DiLullo and Sarah E. K. DiLullo

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 2620 West Lake Boulevard, near
Homewood, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier, boathouse with boat lift, and
one mooring buoy previously authorized by the Commission; and one existing
mooring buoy not previously authorized by the Commission.

TERM:

10 years, beginning August 14, 2020.

CONSIDERATION:

\$1,669 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 expressly acknowledges that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the improvements authorized by the Commission.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public uses of access, navigation, fishing and lake-related recreational uses.

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 October 19, 2012, the Commission authorized a General Lease – Recreational Use for the continued use and maintenance of an existing pier, boathouse with hoist, and one mooring buoy to Jason A. DiLullo and Sarah E. K. DiLullo ([Item C49, October 19, 2012](#)). On August 17, 2017, the Commission authorized an amendment of the lease to reflect a reduced lease area and a revision of annual rent ([Item C31, August 17, 2017](#)). The lease expires on August 13, 2022.

The Applicant is applying for a General Lease – Recreational Use, for the continued use and maintenance of the existing pier, boathouse with boat hoist, and one mooring buoy, and one existing mooring buoy not previously authorized by the Commission. The Applicant discovered a second mooring buoy block during routine maintenance of the existing moorings and subsequently installed a buoy float to the existing block. The Applicant provided historic documentation to TRPA and confirmed that the prior upland owner had owned and maintained the buoy at this location. On August 28, 2019, TRPA registered the two mooring buoys and boat hoist (Permit No. 10795).

The Lessee executed a lease quitclaim deed releasing their interest in the General Lease – Recreational Use. Staff recommends acceptance of the lease quitclaim deed and issuance of a new lease effective August 14, 2020.

The pier and boathouse with boat hoist are built on pilings, meaning the public may navigate or walk next to and, at lower water levels, under the pier. The topography and location are sloped, rocky, with some thick vegetation.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The pier, boathouse with boat hoist, and mooring buoys are used for the docking and mooring of boats. 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).

Except for the second mooring buoy, the subject facilities have existed for many years at this location. The pier is built on pilings, providing public access for

pedestrians and for lake-related activities at varying water levels underneath the pier. The immediate area surrounding the existing pier is sloped with cobbles. The mooring 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 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.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the Public Trust Doctrine; and is 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, as the prior lessee and owner of the improvements on state land, may be required to remove the pier, boathouse with boat hoist, and two 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 of the Commission's Strategic Plan to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

3. Acceptance of a 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. 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).

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:

Tahoe Regional Planning Agency

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a lease quitclaim deed, effective August 13, 2020, of Lease No. PRC 3209, a General Lease – Recreational Use, issued to Jason A. DiLullo and Sarah E. K. DiLullo.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 14, 2020, for a term of 10 years, for the continued use and maintenance of an existing pier, boathouse with boat hoist, and one mooring buoy 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 \$1,669 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

