

Staff Report 29

APPLICANT:

Tim Westphal and Bentley R. Westphal, Trustees of the Tim and Bentley Westphal Family Trust, a trust established under the laws of the State of California by an agreement dated October 11, 2002, as amended on May 25, 2005; 2825 W Lake Blvd., LLC; Gregory R. Gibeson and Lynne H. Gibeson, Trustees of the Gibeson Family Trust, dated March 16, 2007; Sandra Miller Rowe, Trustee of the Rowe Trust, dated March 31, 1998; Betty L. Costa, as Successor Trustee of the Raymond B. Costa and Betty L. Costa Revocable Trust U/A/D September 6, 1996; Daniel A. McDaniel, Sr. and Sharon L. McDaniel, as Co-Trustees of the Daniel A. McDaniel, Sr. and Sharon L. McDaniel Revocable Trust U/A/D September 6, 1996

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2780 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Continued use, maintenance, and reconstruction of an existing joint-use pier previously authorized by the Commission and use and maintenance of five existing mooring buoys not previously authorized by the Commission.

TERM:

10 years, beginning December 8, 2021.

CONSIDERATION:

\$2,004 per year, with annual Consumer Price Index adjustments; and \$3,729 to compensate for the unauthorized use of state land for five mooring buoys for the period beginning December 17, 2019 through December 7, 2021.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- The indemnity provision shall apply to the entire period of unauthorized occupation, beginning December 17, 2019, after the lease expired, through December 7, 2021, the day before the proposed lease begins.
- Lessee expressly acknowledges that a permit from the Tahoe Regional Planning Agency (TRPA) is required for the Authorized Improvements and failure to obtain a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of the lease.
- 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 recreation.
- The lease provides that the public will be allowed to pass and re-pass over the landward end of the pier and under the pier near low water with signs posted at each location on each side of the pier 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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On December 17, 2009, the Commission authorized a 10-year General Lease - Recreational Use to Tim Westphal and Bentley R. Westphal, Trustees of the Tim and Bentley Westphal Family Trust, a trust established under the laws of the State of California by an agreement dated October 11, 2002, as amended on May 25, 2005; Robert A. Church, as Trustee of the Robert Church Living Trust established November 22, 1995; Richard L. Church; Gregory R. Gibeson and Lynne H. Gibeson, Trustees of the Gibeson Family Trust, dated March 16, 2007; John Robotti and Marion Robotti; Betty L. Costa, as Successor Trustee of the Raymond B. Costa and Betty L. Costa Revocable Trust U/A/D September 6, 1996; Daniel A. McDaniel, Sr. and Sharon L. McDaniel, as Co-Trustees of the Daniel A. McDaniel, Sr. and Sharon L. McDaniel Revocable Trust U/A/D September 6, 1996, for continued use and maintenance of an existing and previously authorized joint-use pier ([Item C21, December 17, 2009](#)). The lease expired on December 16, 2019. The property owners each hold a 20 percent interest.

On February 9, 2013, Marion Robotti deeded her 20 percent interest to James Smart. On July 15, 2021, James Smart deeded his 20 percent interest to Sandra Miller Rowe, Trustee of the Rowe Trust, dated March 31, 1998.

On March 9, 2020, Robert A. Church, Trustee of the Robert A. Church Living Trust and Richard L. Church, Trustee of the 2012 Richard L. Church and Carla A. Church Revocable Trust, deeded their 20 percent interest to WLB Ventures, LLC. On November 4, 2020, WLB Ventures, LLC deeded its 20 percent interest to 2825 W. Lake Blvd., LLC.

The Applicant is applying for a General Lease – Recreational Use for the continued use, maintenance, and reconstruction in-kind of an existing joint-use pier and use and maintenance of five existing mooring buoys not previously authorized by the Commission. The pier and mooring buoys have existed in the lake for many years. The mooring buoys are registered with TRPA (Registration No. 10298).

The previous lease authorization did not include a request to approve the existing buoys because the TRPA lacked updated shorezone ordinances that had impacted the Commission's leasing in Lake Tahoe. TRPA had been unable to issue approvals for new piers or buoys in Lake Tahoe, leaving many structures in a regulatory limbo. The absence of updated shorezone ordinances also reduced the Commission's ability to meaningfully address unauthorized structures on the lake in a coordinated manner with TRPA. On October 18, 2018, the Commission authorized Memoranda of Understanding regarding shoreline permitting and enforcement with TRPA ([Item 86, October 18, 2018](#)). On December 12, 2012, the TRPA Governing Board adopted the TRPA Code of Ordinances and on December 2, 2018 amended the ordinances enabling the Commission to authorize the buoys.

Staff recommends that the proposed new lease begin on December 8, 2021, the day of Commission authorization. The proposed lease will require the Applicant to indemnify the State for the entire period of occupation, ensuring the State is protected.

The Commission's accounting records show the annual rent for the pier is paid current through December 16, 2021, but rent has not historically been paid for the buoys. Staff is requesting compensation from the Applicant in the amount of \$3,729 for the unauthorized occupation of State land of five existing mooring buoys not under lease. Based on Commission records, the buoys have existed at this location for many years. The annual rent paid for the pier through December 16, 2021 will be prorated and the amount apportioned to the period from December 8, 2021 through December 16, 2021 will be credited towards the amount due under the new lease.

The existing pier is open-pile, 126 feet long (from highwater 6229.1 Lake Tahoe Datum), 8-feet wide, with a single 3-foot x 30-foot adjustable landing at the lakeward end of the pier. The in-kind pier reconstruction will replace 20 existing wood pilings with 10-3/4-inch-diameter steel pilings located above the pier deck. Fender piles will be replaced on the adjustable landing with a swim ladder. The old wood pilings will be removed or cut flush with the substrate and new steel pilings will be driven in the same location. Following pile driving, steel H-beam caps will be installed, along with stringers and composite decking. The existing wooden landing will be replaced with an adjustable landing along with fender pile bolted to the landing rather than driven in the lake bottom including adjustable scissor stairs. All work will be performed from the lake via barge or amphibious vessel.

Public access ladders will be provided within the Public Trust easement to cross over the pier near the shore below high water and public access passage will be provided under the pier near low water. Public access signage is required at the access locations.

The shore area around the existing pier is sloped and consists of cobbles, sand, and gravel. The near shore area is characterized as prime fish spawning habitat. A Tahoe Yellow Cress (TYC) Field Survey was performed on September 19, 2021 indicating that the TYC is not present.

The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained, 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 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 its 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.

CLIMATE CHANGE:

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe. The frequency and severity of natural disasters like flooding, wildfire, drought, extreme heat, and storms is increasing throughout the state of California, including the Sierra Nevada mountains, and will continue to accelerate through the end of the century. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events and shifts in seasonal characteristics.

According to California's Fourth Climate Change Assessment, released in 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. The long-term warming trend will lead to warmer and shorter winters, and longer and dryer summers. Successive dry and warm winters are resulting in minimal snowpack, increased winter stream flows and floods, and decreased spring and summer runoff. Prolonged low lake levels will become normal. Low lake level conditions can create more expansive beaches and increased shoreline access in dry months. However, these conditions interfere with boat launching and mooring facilities. This impact is most noticeable where the facilities are sited on shallow, low gradient lake bottom locations.

Dry winters will be punctuated with exceedingly wet years where prolonged and excessive precipitation can produce flash floods. High precipitation in these years will result in higher lake levels, causing beaches to narrow and reducing public access. Extra saturation of the soil can increase erosion, especially following intense wildfire seasons. Surface runoff water may carry more sediment into the lake, adversely impacting water quality and clarity.

Climate change may also lead to more intense and unpredictable winds and storm events. These storms may deviate from prevailing wind patterns for the region. These winds can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Additionally, these winds can increase wave damage on structures and boats along the lake.

Shoreline structures 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 damage from high wind events and excessive waves.

CONCLUSION:

For all the reasons above, Commission staff believes 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, or 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.

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 prior lessee and current Applicant may be jointly liable to remove the pier and 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 the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. **Existing Mooring Buoys:** 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).

Pier Reconstruction: 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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:

TRPA Mooring Buoy Registration
US Army Corps of Engineers

EXHIBITS:

- A. Land Description
- B. 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).

Pier Reconstruction: 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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, or 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 compensation from the Applicant in the amount of \$3,729 for the unauthorized occupation of State land for the period beginning December 17, 2019 through December 7, 2021.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant, beginning December 8, 2021, for a term of 10 years, for the use, maintenance, and reconstruction of an existing joint-use pier previously authorized by the Commission and the use and maintenance of five existing mooring buoys 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 \$2,004, with an annual Consumer

Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 2278

LAND DESCRIPTION

Six (6) parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 2 of fractional Section 25, Township 15 North, Range 16 East, MDM., as shown on Official Government Township Plat approved April 11, 1884, County of Placer, State of California, and more particularly described as follows:

PARCEL 1 — PIER

All those lands underlying an existing joint-use pier and catwalk lying adjacent to that parcel as described in that Gift Deed recorded February 21, 2013 as Document 2013-0016658 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.

PARCELS 2 thru 6 — BUOYS

Five circular parcels of land, each being 50 feet in diameter, underlying five existing buoys lying adjacent to that parcel described in Gift Deed recorded February 21, 2013 as Document 2013-0016658 in Official Records of said County.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 03/19/2020 by the California State Lands Commission Boundary Unit.



APN 085-030-008

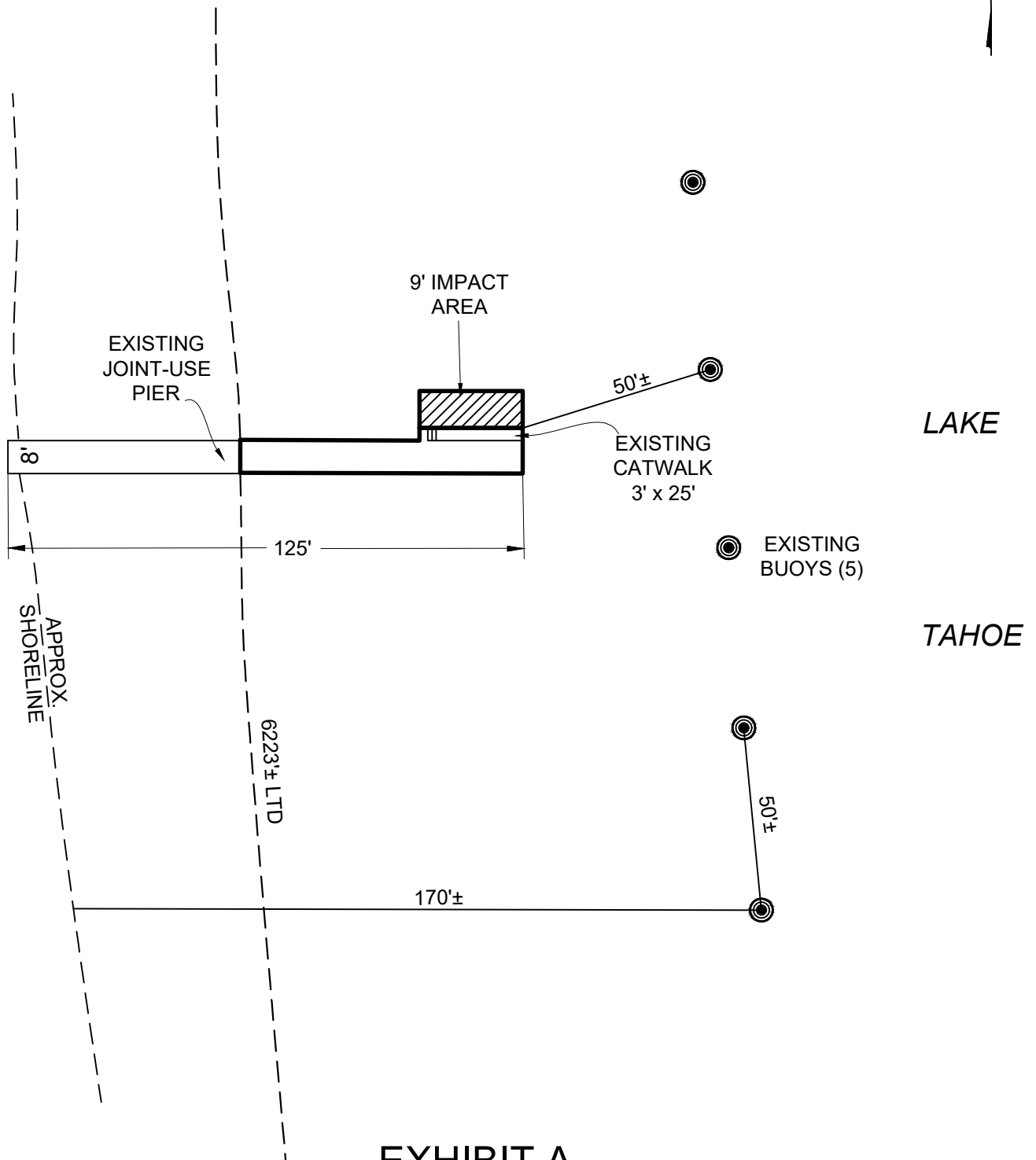


EXHIBIT A

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LAND DESCRIPTION PLAT
LEASE 2278, WESTPHAL ET.AL.
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



