

Staff Report 05

APPLICANT:

CFT Challenge, LLC, a Nevada limited liability company

PROPOSED ACTION:

Consider Waiver of Rent, Penalty, and Interest; and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4250 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Removal and reconstruction of an existing pier and one boat lift.

TERM:

10 years, beginning April 26, 2022.

CONSIDERATION:

\$483 per year, with an annual Consumer Price Index adjustment, and \$1,799 to compensate for the unauthorized occupation of State land for the period beginning December 27, 2017 through April 25, 2022.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- 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 signs shall be posted on each side of the pier to indicate passage and to provide continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor'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 replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including that the Applicant obtain all necessary permits and authorizations prior to commencing work, including requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.
- The lease contains a provision that the Applicant must obtain and maintain continuous authorization from the littoral property owner, Cedar Flat Improvement Association (Association), to access and maintain the pier and boat lift on the littoral property (APN 092-190-010) which is an intervening strip parcel, adjacent to the lease premises.

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 June 23, 2011, the Commission authorized a General Lease – Recreational Use to Bruce W. Olson for continued use and maintenance of an existing pier and boat lift ([Item 108, June 23, 2011](#)). That lease expired on September 26, 2020.

On December 27, 2017, ownership interest in the upland was transferred to Michael C. Dermody, Trustee of the Michael C. Dermody Revocable Trust dated August 10, 1989. The Lessee did not apply for an assignment of the lease.

On May 31, 2019, Michael C. Dermody transferred his ownership interest in the upland from his revocable trust to his wholly owned company CT Challenge, LLC, a Nevada limited liability company.

Staff sent Invoice No. 45355 to the last known Lessee (Bruce Olson) for rent that was due September 27, 2018. Staff recommends voiding Invoice No. 45355, and waiving rent and any penalty and interest.

The Applicant is now applying for a General Lease – Recreational Use, for removal and reconstruction of an existing pier and one boat lift. If the Commission approves the proposed lease, the Applicant will pay \$1,799 in compensation for the unauthorized occupation of State land for the period beginning December 27, 2017, when the Applicant took ownership, through April 25, 2022, and will be responsible for future rent. Additionally, the lease provisions regarding indemnity extend to the period of the Applicant's unauthorized occupation of State-owned lands, from December 27, 2017 through April 25, 2022, the day before the proposed lease become effective.

On September 12, 2019, TRPA registered the existing boat lift under Permit Number 11044, and on December 16, 2021, the Applicant obtained TRPA Permit ERSP2020-1982 for the pier project. It is anticipated that the work will occur between October 1 and May 1 and will commence after all approvals are obtained.

The proposed project consists of the removal and reconstruction of a pier and boat lift. The proposed pier will be 6-feet wide and 123 feet in total length, which is approximately 3 feet longer than the footprint of the existing pier due to lower lake levels, with a conforming pierhead of 30 feet in length by 10 feet in width. The terminus of the pier where it meets land will remain in the same location. A 3-foot-wide adjustable catwalk is proposed for the northerly side of the pier and a 6,000-pound boat lift is proposed for the southerly side of the pier.

A steep bluff is located on the shoreline where the landward end of the pier is to be located. Therefore, that section of the pier is a steep ramp which passes through the Public Trust. Providing access above the pier and over the bluff does not offer a viable option to the public to access the Public Trust Easement. Instead, the public shall be allowed to pass and repass under the pier. The steep character of the shoreline combined with the ramp design of the pier and the height of the pier offers easy access at varying lake levels within the Public Trust Easement. Signs are

required to be posted on each side of the pier identifying the designated public passageway and are required to be in place at all times.

Twelve steel piles will be driven into the lakebed, and one steel I-beam will be driven into the lakebed to support the boat lift. Construction access will be via a barge or amphibious vehicle departing from an approved launching facility such as a public marina or boat ramp. The removal of the existing pier and construction of the new pier will be performed from the lake. The access confinement for the barge will be adjacent to the pier location in order to minimize disturbance. The existing pier will be removed via barge.

Depending on the lake level and substrate type in the project area, a turbidity curtain, caissons, and/or best management practice fencing will be installed around the perimeter of the deconstruction site. The existing pier will be demolished and removed using a front loader or other similar machinery stationed on the barge. The material will be transported via barge to an approved offloading site, where it will be taken by dump trucks to a TRPA approved disposal facility.

Caissons will be installed around the new piling locations. The pilings will then be driven into the lakebed until refusal. Pier pilings may be pinned onto large existing boulders on the lakebed if pile driving is not feasible at the proposed location. The steel substructure will be installed via barge or amphibious vehicle. Decking will be installed atop the structure allowing for construction of the lighting and adjustable catwalk. The storage and staging areas for the pier materials will be on the primary or a secondary barge. No storage of construction materials shall occur on the shoreline of the subject property unless the proper agency authorizations are secured. All construction wastes will be collected and disposed of at the nearest dumpster or sanitary landfill site.

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. A Tahoe yellow cress (TYC) survey was completed on August 4, 2021. There was no TYC present in the lease area. Prior to construction, a current TYC survey is required to be conducted between June 15 and September 30 and must be submitted to the Commission.

If TYC is present, a Construction Impact Avoidance Plan must be submitted to the Commission for approval prior to construction to demonstrate no impact to the plant. The Plan must identify the location of TYC stems and include measures for ensuring no impact to the plant, including potential relocation of pilings, pier location, and construction access and staging areas; use of protection fencing

surrounding TYC stems; signage for no work zones; etc. Revision of the pier design may also require submittal of updated site plans illustrating the pier design revisions.

The Applicant owns the uplands adjoining the lease premises. The subject facilities are privately owned and maintained. The proposed pier and boat lift will be 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).

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 and 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.

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 streamflows 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, 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 will not be authorized to construct the pier and boat lift and may be required to remove the improvements and bring the lease premises back to its natural 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 "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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

APPROVALS OBTAINED:

California Department of Fish and Wildlife
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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

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. Waive rent, penalty, and interest due by Lessee for the period of September 27, 2018 through September 26, 2019, and void annual rent invoice number 45355 issued to Bruce W. Olson.
2. Authorize acceptance of compensation in the amount of \$1,799 for the unauthorized occupation of State land for the period prior to the effective date of the proposed lease.

3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 26, 2022, for a term of 10 years, for removal, reconstruction, use, and maintenance of an existing pier; and installation of one boat lift, contingent on the lessee's compliance with TRPA Permit ERSP2020-1982; 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 \$483, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
4. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the new improvements following construction.

EXHIBIT A

LEASE 5101

LAND DESCRIPTION

A parcel of submerged land situated in the bed of Lake Tahoe, lying adjacent to Lot 1 of fractional Section 28, Township 16 North, Range 17 East, M.D.B.&M., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, more particularly described as follows:

All those lands underlying an existing pier (to be removed), proposed pier with catwalk and boat lift lying adjacent to that parcel described in Grant Deed recorded December 27, 2017 as Document Number 2017-0103112-00 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

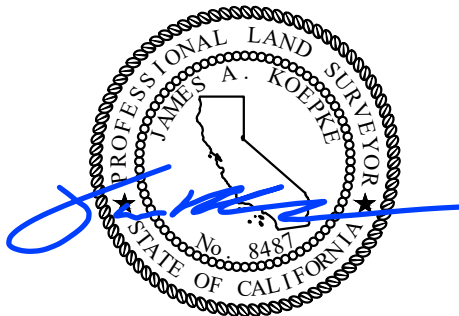
EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans for an existing pier (to be removed) and 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 be updated once final as-built plans are submitted.

Prepared 01/12/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

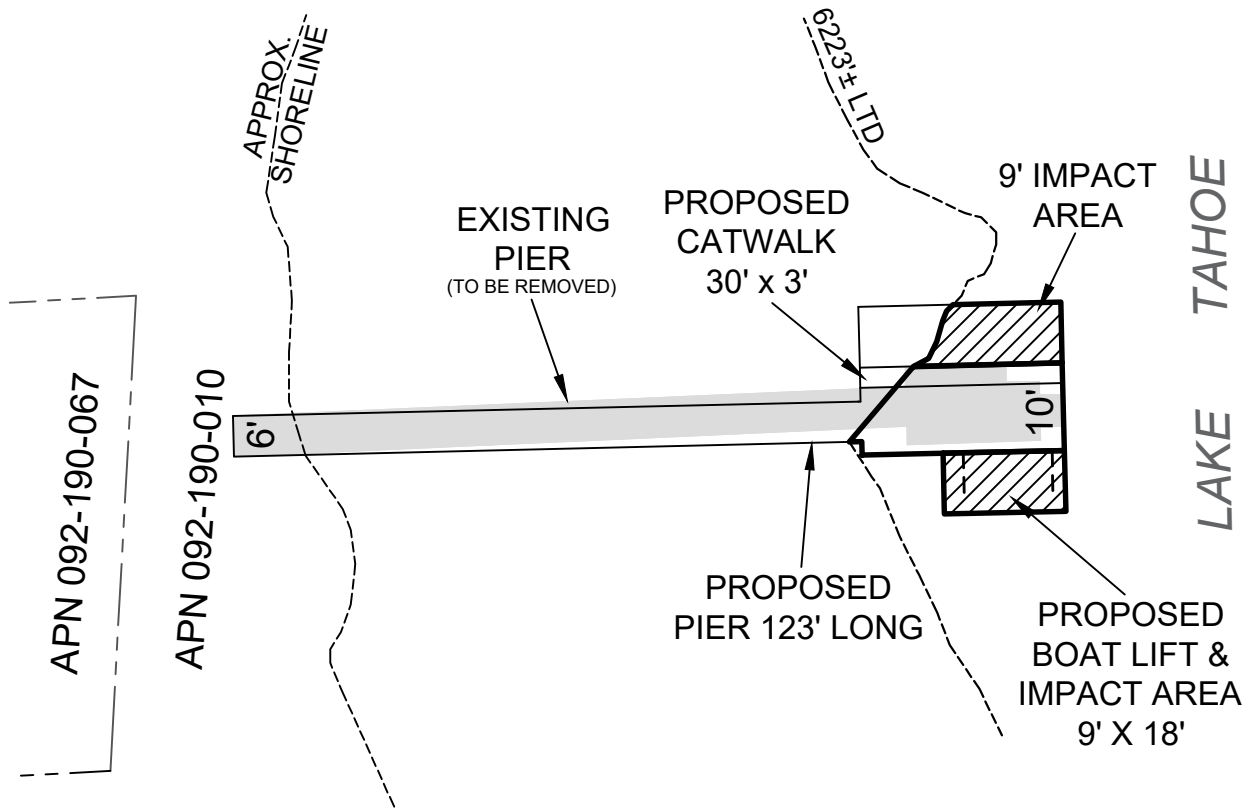


EXHIBIT A

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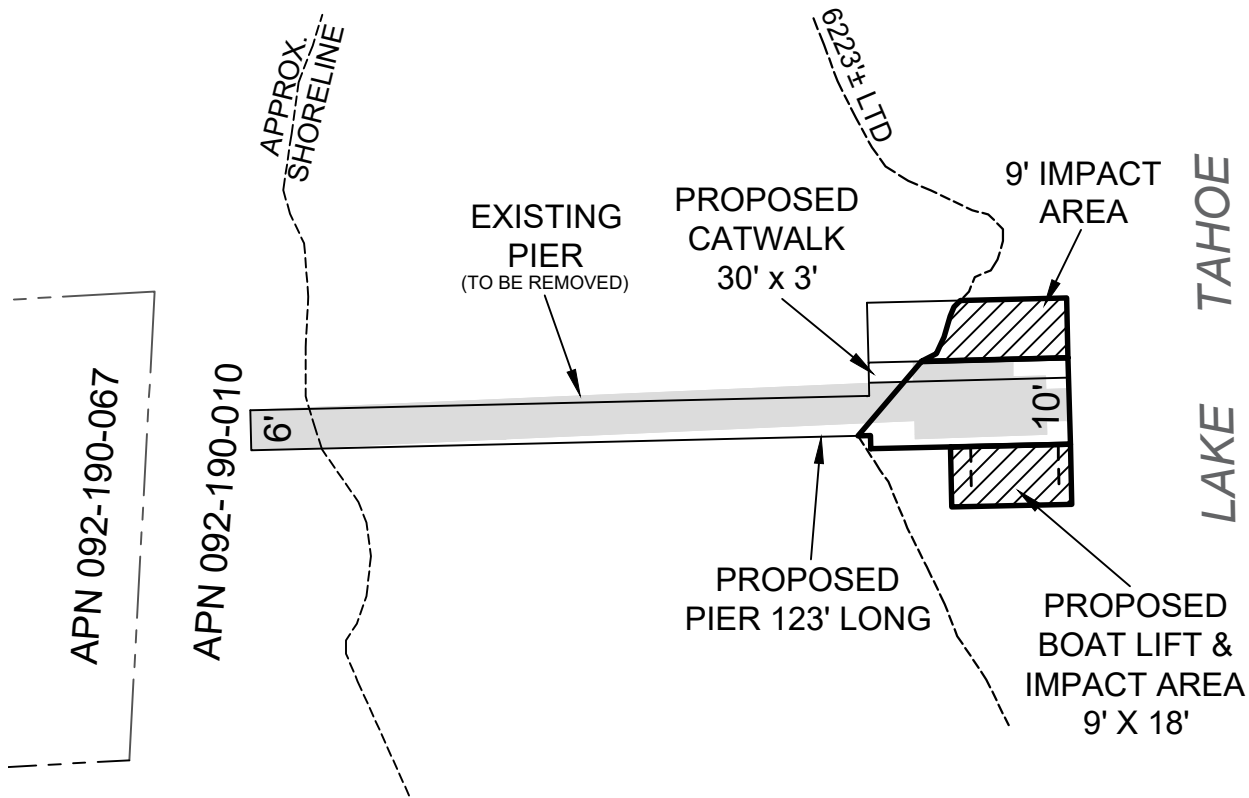
LAND DESCRIPTION PLAT
LEASE 5101, CFT CHALLENGE LLC
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



4250 NORTH LAKE BOULEVARD, NEAR CARNELIAN BAY

NO SCALE

LOCATION

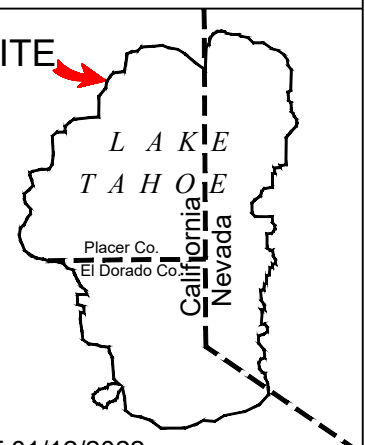


THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

EXHIBIT B

LEASE 5101
CFT CHALLENGE LLC
APNs 092-190-067 & -010
GENERAL LEASE -
RECREATIONAL USE
PLACER COUNTY

SITE



DT 01/12/2022