

Staff Report 12

APPLICANT:

Heidi E. Gemperle, Anita Mahaffey, Susan A. Abdo, Peter E. Gemperle, Richard J. Gemperle, and Stephen M. Gemperle, as Individuals, and Michael E. Gemperle and Kristi A. Gemperle, Trustees, M & K Gemperle 2011 Trust

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 4560 North Lake Boulevard, Carnelian Bay, Placer County (as shown in Figure 1).

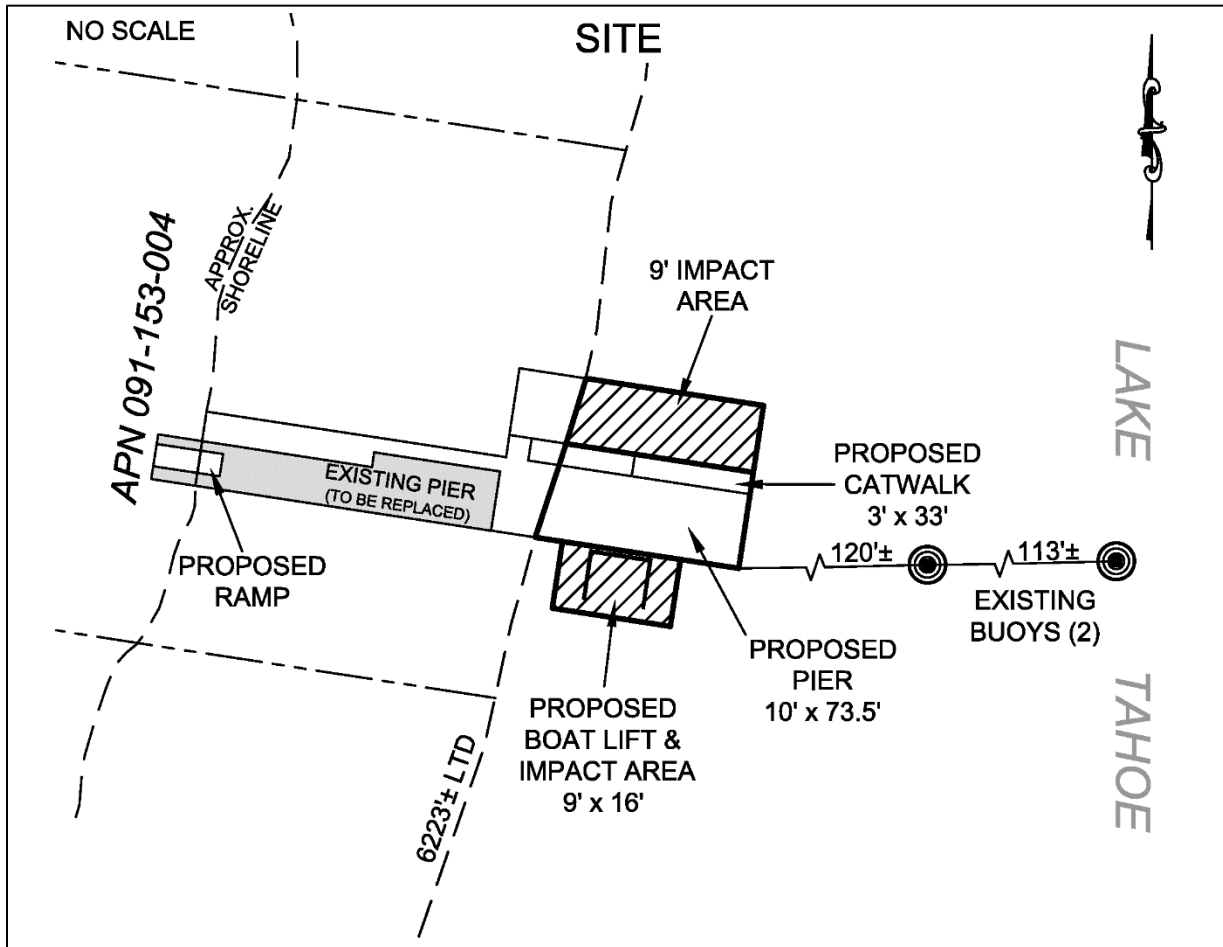
Figure 1. Location



AUTHORIZED USE:

Replacement, use and maintenance of an existing pier extending onto sovereign land, installation of a boat lift, removal of an existing swim float, and use and maintenance of two existing mooring buoys. (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning May 1, 2023.

CONSIDERATION:

\$1,043 per year, with an annual Consumer Price Index adjustment; and \$2,852 for unauthorized occupation of State land for the period beginning June 14, 2019 through April 30, 2023.

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's right of access for navigation, fishing, and Public Trust consistent recreational uses.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Lessee agrees the provision of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned land from June 14, 2019 through April 30, 2023.
- 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. Once approved by the Lessor's Executive Officer or designee, and Lessee, Lessor shall 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.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including the requirement for the Applicant to obtain all necessary permits and authorizations prior to commencement of work.
- Lessee agrees and acknowledges that hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on 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, section 2000, subdivision (b).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

The Applicant is applying for a General Lease – Recreational Use for the replacement, use and maintenance of an existing pier extending onto sovereign land, installation of a boat lift, removal of an existing swim float, and

use and maintenance of two existing mooring buoys. The existing pier and two buoys at this location have never been under lease with the Commission.

The existing pier has been in place since 1952 and did not extend past elevation 6,223 feet, Lake Tahoe Datum, and so did not require a lease from the Commission. The proposed pier replacement will extend onto State sovereign land requiring a lease. The Applicant proposes to remove the swim float with anchor and tackle in exchange for installation of a boat lift, pursuant to the TRPA permit requirements. The Applicant obtained TRPA approval in May 2021 for the proposed pier replacement and boat lift installation, and holds current TRPA permits for the boat lift and two mooring buoys (Registration No. 10443).

Staff recommends issuance of a lease beginning May 1, 2023. The Applicant will pay \$2,852 in compensation for unauthorized occupation of State land for the swim float and the two existing mooring buoys from the period beginning June 14, 2019 through April 30, 2023. The proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, from June 14, 2019 through April 30, 2023, ensuring the State is protected.

The proposed pier replacement project would extend and widen the pier. The width will expand from 6 feet to 10 feet and the length will increase from 33.5 feet to 73.5 feet. The boat lift will be installed on the south side of the pier which will be 30 feet long by 3 feet wide. Eleven new 10.75-inch-diameter pilings will be driven 6 inches into the lakebed; no pilings will be removed. The entire proposed project will be constructed from the lake via barge. Caissons will be installed around the pilings during installation.

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 owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained. The topography is rocky, with varying rock sizes surrounding the area, making the shoreline difficult to access for pedestrians. The proposed pier's design will allow for public access laterally across the shoreline with approximately 8-foot clearance underneath the pier within the Public Trust Easement. The two mooring buoys, proposed boat lift, and pier replacement will be used for the docking and mooring of boats and will 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 lands (Pub. Resources Code, § 6503.5). The existing

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.

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 are 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 storm events and winds. 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.

Improvements 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 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 proposed 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 an 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. If the Commission denies the application, the Applicant may not construct the proposed facilities and may be required to remove the existing improvements. The lessee 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. **Existing Mooring Buoys and Swim Float Removal:** 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 Replacement and Boat Lift Installation: 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:

TRPA
U.S. Army Corps of Engineers

APPROVALS REQUIRED:

California Department of Fish and Wildlife
Lahontan Regional Water Quality Control Board

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 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 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; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning May 1, 2023, for a term of 10 years, for the replacement, use, and maintenance of an existing pier onto sovereign land, installation of a boat lift, removal of an existing swim float, and use and maintenance of two existing mooring buoys; annual rent in the amount of \$1,043, with an annual

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

2. Authorize acceptance of compensation from the Applicant in the amount of \$2,852 for unauthorized occupation of State land for the period beginning June 14, 2019, through April 31, 2023.
3. 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 improvements following construction.