

# Staff Report 09

## APPLICANT:

Deborah Gay Elliot and Richard Case Elliot, Trustees of the Elliot Family Revocable Trust, dated April 13, 1993, as Amended and Restated on December 4, 2018

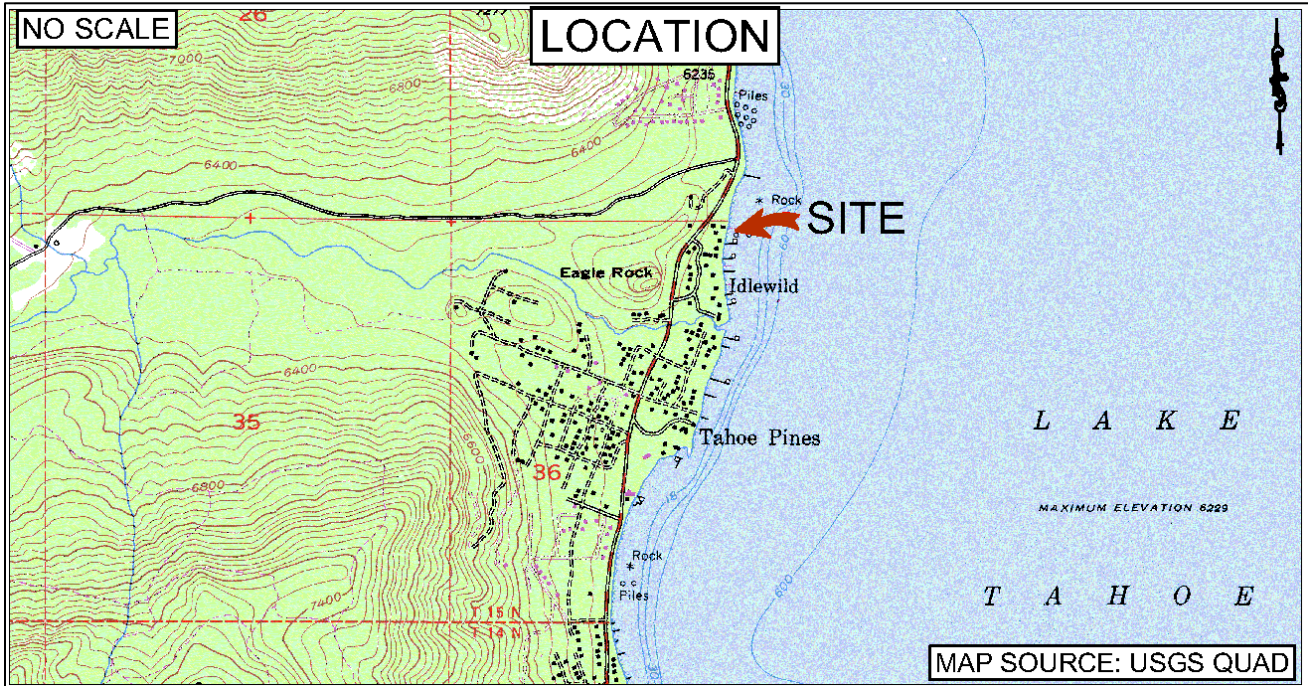
## PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3540 West Lake Boulevard, near Homewood, Placer County (as shown in Figure 1).

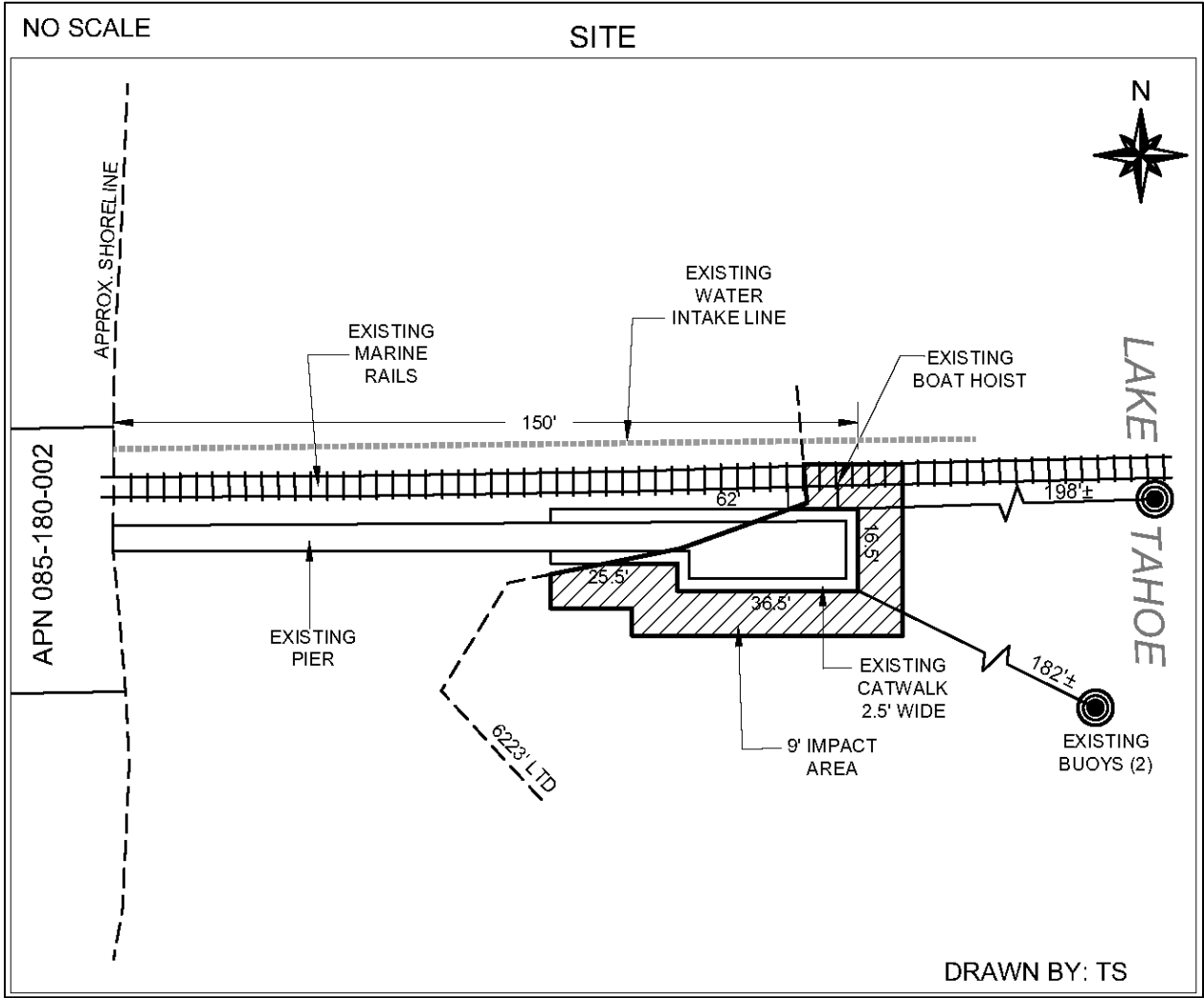
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing pier with boat hoist, previously authorized by the Commission; and an existing marine rail, water intake line, and two mooring buoys not previously authorized by the Commission (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 June 5, 2023.

**CONSIDERATION:**

\$1,824 per year, with an annual Consumer Price Index adjustment; and \$6,518 for the unauthorized occupation of state land from July 29, 2018 through June 4, 2023.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee expressly acknowledges that a permit or registration from the Tahoe Regional Planning Agency (TRPA) may be required for the Authorized Improvements and failure to obtain a permit or registration from TRPA and maintain compliance with that permit or registration 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.
- 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).
- 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.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**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 July 29, 2008, the Commission authorized a General Lease – Recreational Use for the continued use of an existing pier and the retention of an existing boat hoist to David J. Elliot and Bonnie J. Elliot ([Item C05, December 8, 2008](#)). The lease expired July 28, 2018. Legal title of the upland property transferred to the Elliot Family Revocable Trust in 2003.

The Applicant is applying for a General Lease – Recreational Use, for the use of an existing pier with boat hoist previously authorized by the Commission; and an existing marine rail, water intake line, and two mooring buoys not previously

authorized by the Commission. On January 5, 2023, the Applicant registered the two mooring buoys with TRPA (Registration No. 11208).

Staff recommends the Commission accept compensation from the Applicant in the amount of \$6,518 for the unauthorized occupation of State land for the existing facilities from July 29, 2018 through June 4, 2023.

The pier with boat hoist, marine rail, water intake line and two mooring buoys have also existed for many years at this location, however staff were made aware of the marine rail, water intake line and two mooring buoys during the processing of the current application. The Applicant has provided evidence of diversion confirmation from the California State Water Resources Control Board for the water intake line.

The topography at this location is sandy and flat, making the shoreline accessible to pedestrians in this area. The pier is built on pilings, and public access for pedestrians and lake-related activities are available at varying water levels underneath the pier within the Public Trust easement. Applicant agrees that the public has the right to pass and re-pass underneath the pier 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.

The pier with boat hoist, marine rail, and two mooring buoys are privately owned and maintained to 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 buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The water intake line is not generally associated with traditional Public Trust uses, occupies a small area of the lakebed, and does not interfere with Public Trust activities at this location at this time.

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.

**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 interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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 prior lessee may be required to remove the pier with boat hoist, marine rail, water intake line, and two mooring buoys and restore the premises to their original condition. 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 Area 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

**RECOMMENDED ACTION:**

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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:**

1. Find that the proposed pier with boat hoist, marine rail and two mooring buoys used for the docking and mooring of boats, facilitate recreational boating which is a water-dependent use that is consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, use of the water intake pipeline is generally not consistent with the Public Trust Doctrine, but the current use does not substantially interfere with Public Trust need and values at this location for the approved term; and
3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Accept compensation from the Applicant for the unauthorized occupation of State land for an existing pier and boatlift in the amount of \$6,518 for the period of July 29, 2018 through June 4, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 5, 2023, for a term of 10 years, for the use of an existing pier with boat lift previously authorized by the Commission; and an existing marine rail, water intake line, and two mooring buoys not previously authorized by the Commission; annual rent in the amount of \$1,824, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.