

Staff Report 15

LESSEE:

Loyd Bingham Hutchins, Elizabeth Daisy Helman, and Katherine Page Bingham

APPLICANT:

West Lake Rentals LLC, a California Limited Liability Company

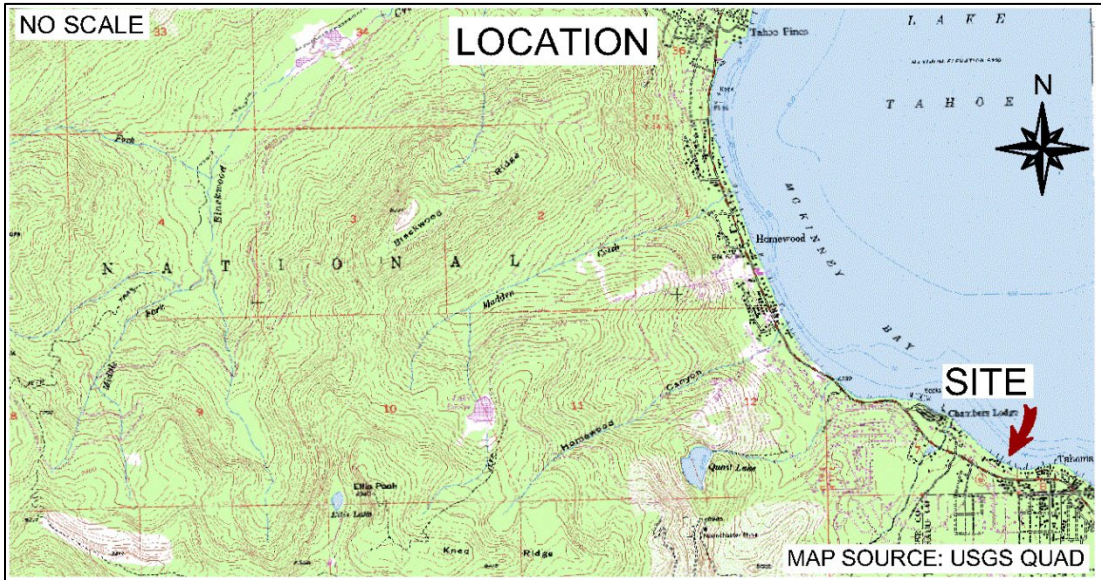
PROPOSED ACTION:

Termination of a General Lease – Recreational Use and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 6730 West Lake Boulevard, near Tahoma, Placer County (as shown in Figure 1).

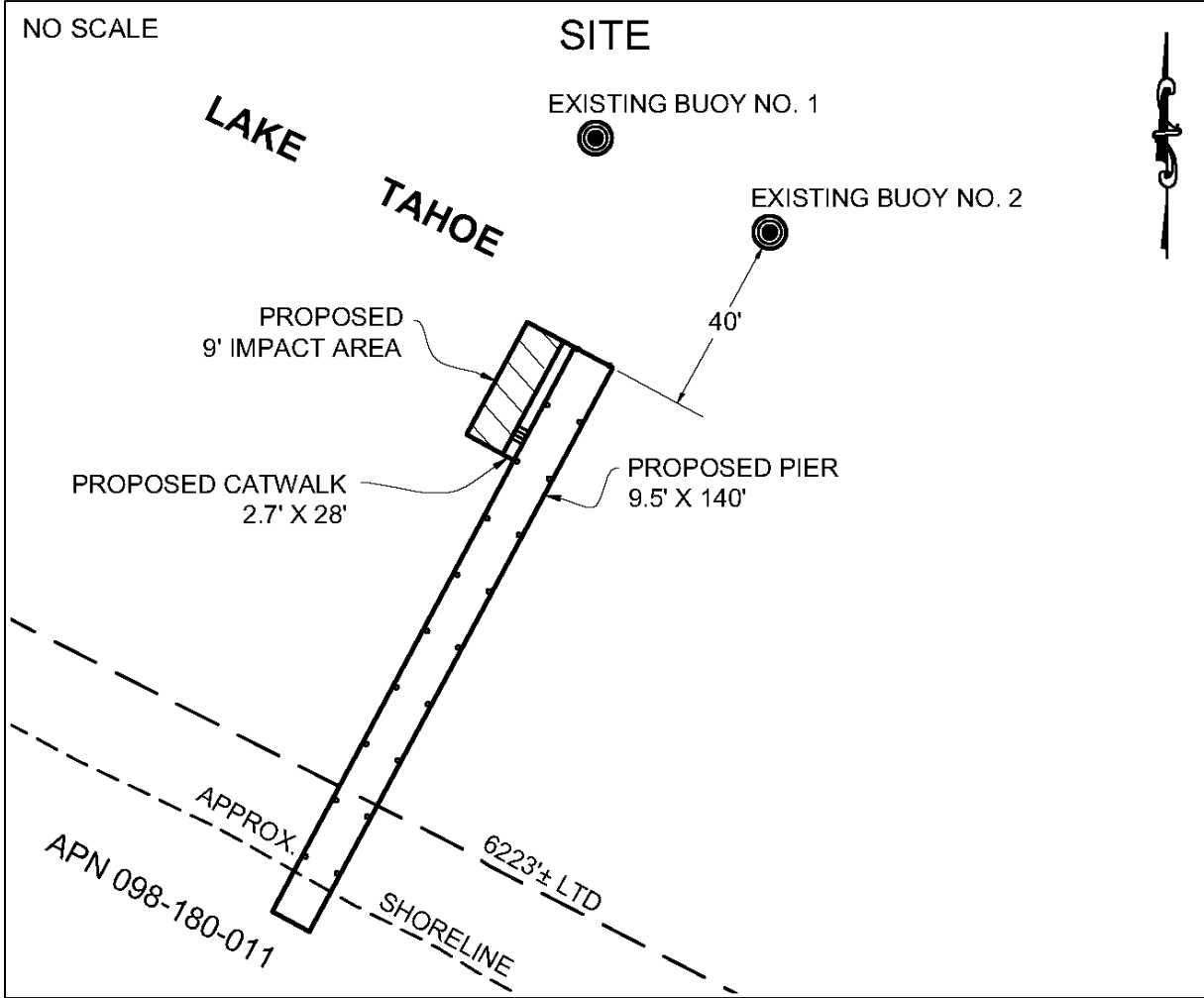
Figure 1. Location



AUTHORIZED USE:

Modification and use of an existing pier and use 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 June 5, 2023.

CONSIDERATION:

\$1,589 per year, with an annual Consumer Price Index adjustment and \$2,040 compensation for unauthorized occupation of State Land for the period beginning December 8, 2021 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.
- 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.
- 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 the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of State-owned lands from December 8, 2021 through June 4, 2023.
- Within 60 days of completing the modification of the existing pier, 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.
- The Authorized Improvements shall not be used for business or commercial purposes.

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 October 18, 2018, the Commission authorized the issuance of a General Lease – Recreational Use to Loyd Bingham Hutchins, Elizabeth Daisy Helman, and Katherine Page Bingham, for the use and maintenance of an existing pier and two mooring buoys ([Item 07, October 18, 2018](#)). The lease expires on August 9, 2028.

Unbeknownst to staff, ownership interest in the upland property was obtained by Lewiston Loge, LLC, a California limited liability company, who subsequently deeded to property to the Applicant, West Lake Rentals LLC, a California limited liability company, on December 8, 2021. Because of this change in upland ownership, staff recommends termination of the lease.

The Applicant is now applying for a General Lease – Recreational Use, for the modification and use of the existing pier and use of two existing mooring buoys. The Applicant registered the mooring buoys with TRPA on February 2, 2022 (Registration No. 11431). Annual rent for this lease has not been paid since ownership interest in the upland property was transferred on December 8, 2021. Therefore, the Applicant will pay \$2,040 in compensation for the unauthorized occupation of State land for the pier and two mooring buoys for the period prior to June 5, 2023. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, from December 8, 2021 through June 4, 2023.

Proposed modifications to the pier include widening the decking. This will be done by cutting the existing piling below the surface of the pier deck and removing the existing steel beams, joists, and decking. A steel wide flange will extend over the top of the piling with new steel joists and decking. The area between the existing piling and pier deck will be filled in. Visible mass will be reduced due to removal of the top portion of piling and a reduction in joist depth. The proposed modification will take place after all required approvals have been obtained. The Application will follow all construction method and timeframes provided by U.S. Army Corps of Engineers, TRPA, the Lahontan Regional Water Quality Control Board, the California Department of Fish wildlife.

The pier and mooring buoys are privately owned and maintained 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 pier is built on pilings with the immediate upland area of the pier being gently sloped with small gravel, cobbles, and boulders making up most of the shoreline. The topography and location of the upland allows the public to navigate or walk next to, and at certain water levels, under the pier within the Public Trust easement. The proposed modification of the pier will not change the current clearance underneath the pier for public access. The clearance underneath the pier within the Public Trust Easement is approximately 6 feet.

The 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.

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 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 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; 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 Applicant may be required to remove the existing pier 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 Areas of the Commission’s 2021-2025 Strategic Plan.
3. Termination of the lease 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 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 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

TRPA

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
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 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 Public Trust needs and values at this location, at this time, and 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. Terminate Lease 4033, a General Lease – Recreational Use issued to Loyd Bingham Hutchins, Elizabeth Daisy Helman, and Katherine Page Bingham, effective June 4, 2023.
2. Accept payment of \$2,040 as compensation for the unauthorized occupation of sovereign land for the period of December 8, 2021 through June 4, 2023.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 5, 2023, for a term of 10 years, for the modification and use of an existing pier and use of two mooring buoys; annual rent in the amount of \$1,589, with an annual Consumer Price Index adjustment; and Liability insurance in an amount no less than 1,000,000.