

Staff Report 05

LESSEE:

Domingo Properties, LLC; David J. Saca; Purple Hour, LLC, a California Limited Liability Company

APPLICANT:

ELGH 1 LLC, a California Limited Liability Company; Purple Hour, LLC, a California limited liability company; 3755 BELLEVIEW, LLC, a California Limited Liability Company

PROPOSED ACTION:

Termination and Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3755, 3765, and 3775 Bellevue Avenue, near Homewood, Placer County (as shown on Figure 1).

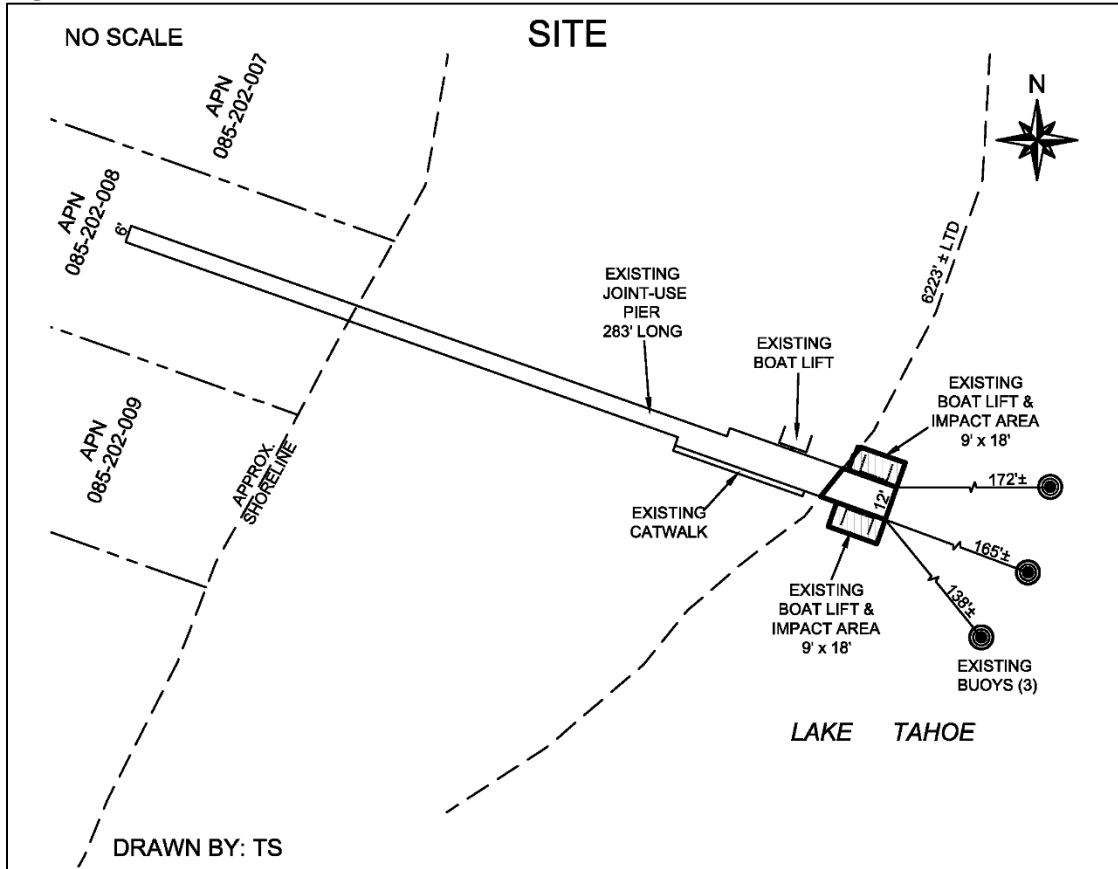
Figure 1. Location



AUTHORIZED USE:

Use of a joint-use pier, two boat lifts, and three mooring buoys (as shown on 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 August 17, 2023.

CONSIDERATION:

\$1,224 per year, with an annual Consumer Price Index adjustment and \$1,384 for unauthorized occupation of State land for the period prior to August 17, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee 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.
- Lessee agrees the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned land.

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 February 20, 2015, the Commission authorized a termination of a Recreational Pier Lease and issuance of a General Lease – Recreational Use for a joint-use pier, two boat lifts, and three mooring buoys from Timothy H. Martin and Kristine Martin as Trustees of the Timothy H. Martin and Kristine Martin 1981 Living Trust Agreement; The Jane G. Wheeler Exemption Trust, under Amended and Restated Revocable Trust Agreement dated December 11, 1995; John Dorsey Wheeler III; Janet Ann Wheeler Wilson; Judith Gwerder Wheeler Culbertson; Jill Marie Wheeler Callis; Marshall D. Kraus and Nancy Fiddymont Kraus, Trustees of the Marshall D. Kraus and Nancy Fiddymont Kraus Revocable Trust originally dated November 12, 1982, as revised and restated November 4, 1993 to Domingo Properties, LLC; David J. Saca; Purple Hour, LLC, a California Limited Liability Company ([Item 23, February 20, 2015](#)).

On January 3, 2019, Domingo Properties, LLC transferred their ownership to 3755 Belleview, LLC a California limited liability company. David J. Saca transferred his interest to Todd Sperber and Maria Sperber, Trustees of the Sperber Family Trust before the end of the term of the lease. On June 13, 2023, the Sperber Trust deeded their ownership to ELGH 1 LLC, a California limited liability company. As the lease has less than two years left and ownerships have changed hands multiple times without quitclaims or notification to the Commission, staff recommends a termination of the lease. The proposed termination date is August 16, 2023. The Applicant is applying for an issuance of a General Lease – Recreational Use for the use of the existing joint-use pier, two boat lifts, and three mooring buoys.

Annual rent has been paid through June 30, 2022, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$1,384.

The joint-use pier, two boat lifts, and three mooring buoys have existed for many years at this location. On September 29, 2021, the moorings were registered with TRPA (Registration No. 10788). The topography and location of the upland structures provide access to the pier and allow the public to navigate or walk next to, and at certain water levels, under the pier within the Public Trust easement. The pier is built on pilings, and public access for pedestrians and lake-related activities is available at varying water levels underneath the pier within the Public Trust easement. 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, LTD. The buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake.

The joint-use pier, two boat lifts, and three 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 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.

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; 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 facilities. 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. There are three boat lifts connected to the existing joint-use pier, however only two are within the leasing jurisdiction of the Commission. The boat lift that is located within the Public Trust easement area does not substantially interfere with the Public Trust uses and needs in the area.
4. Termination of a 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)

5. Staff recommends that the Commission find that issuance of the lease 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.

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 remaining 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, effective August 16, 2023, Lease 3599, a General Lease – Recreational Use, issued to Domingo Properties, LLC; David J. Saca; Purple Hour, LLC, a California Limited Liability Company.
2. Authorize acceptance of compensation from the Applicant in the amount of \$1,384 for unauthorized occupation of State land for the period prior to August 17, 2023.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 17, 2023, for a term of 10 years, for an existing joint-use pier, two boat lifts and three mooring buoys; annual rent in the amount of \$1,224, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.