

Staff Report 09

APPLICANT/LESSEE:

Joseph A. McCarthy, Trustee of the Joseph A. McCarthy Revocable Trust dated June 22, 1998; John F. Brennan; and Lisa Brennan

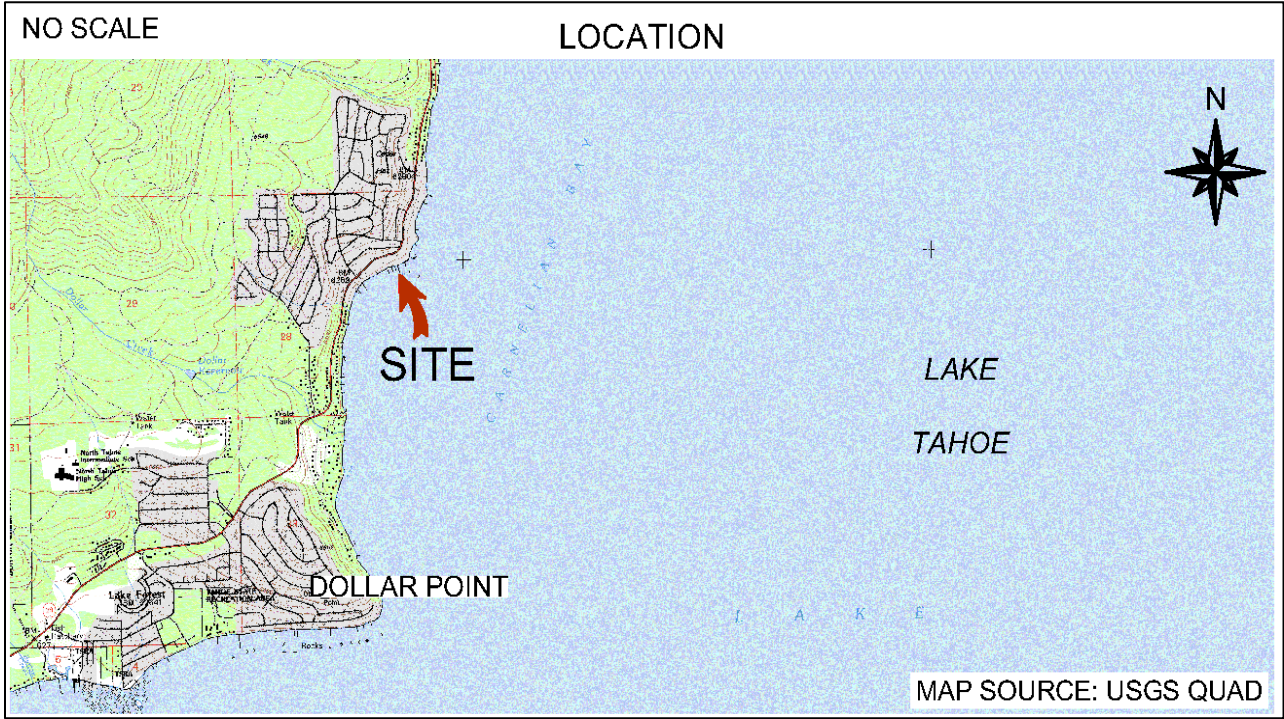
PROPOSED ACTION:

Amendment of Lease.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 4170 and 4176 Ferguson Avenue, near Carnelian Bay, Placer County (as shown in Figure 1).

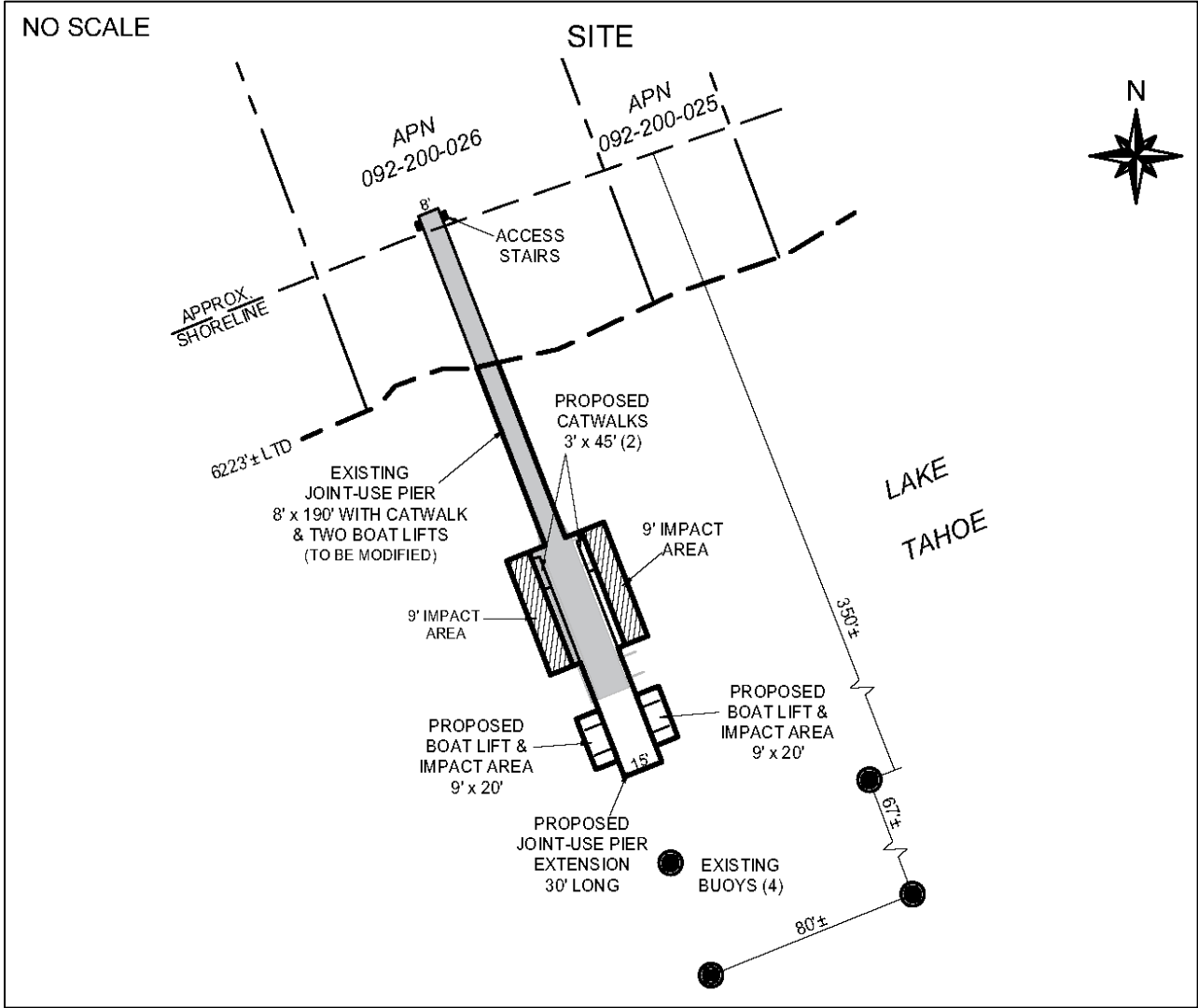
Figure 1. Location



AUTHORIZED USE:

Use of an existing joint-use pier, two boat lifts, and four mooring buoys (as shown in Figure 2).

Figure 2. Site Map



TERM:

10 years, beginning August 20, 2019.

CONSIDERATION:

\$2,769 per year, with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

- Authorize the rehabilitation, expansion, and use of an existing joint-use pier; installation and use of two adjustable catwalks, new deck lighting, and electrical service; and relocation and use of two existing boat lifts, adjacent to 4170 and 4176 Ferguson Avenue, near Carnelian Bay, Placer County (as shown in Figure 2).
- Revise the annual rent from \$2,769, with an annual Consumer Price Index adjustment, to \$3,559, with an annual Consumer Price Index adjustment.
- Require Lessee to acknowledge that a portion of the pier exists within the State administered Public Trust Easement and that Lessee agrees to allow the public to pass and re-pass over the pier using staircases located on both sides of the pier to facilitate continuous access to and along the Public Trust Easement.
- Require that Lessee post signs on each of the staircases which provide public passage over the pier to clearly designate the presence of the public passageway.
- Require that within 60 days of completing construction of the 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 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.
- Provide that construction activities will be performed pursuant to the specific terms identified in the Lease, including requirements pertaining to construction equipment, debris, and the delivery to Lessor of specified documents related to the construction activities; and that the Lessee obtain all necessary permits and authorizations prior to commencing work.
- 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.

All other terms and conditions of the lease to remain in effect without amendment.

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 24, 2019, the Commission authorized a General Lease - Recreational Use to Joseph A. McCarthy, Trustee of the Joseph A. McCarthy Revocable Trust dated June 22, 1998; John F. Brennan; and Lisa Brennan, for the use of an existing joint-use pier, two boat lifts, and four mooring buoys adjacent to 4170 and 4176 Ferguson Avenue, near Carnelian Bay, Placer County ([Item 15, October 24, 2019](#)). This lease expires August 19, 2029.

The Applicant is now applying for an amendment to this lease for the rehabilitation, expansion, and use of the existing joint-use pier; installation and use of two adjustable catwalks, new deck lighting, and electrical service; and relocation and use of the two boat lifts. Staff recommends amending Lease 3652 to authorize this proposed project. The proposed amendment will take effect on August 20, 2023, in order to align with the anniversary of the lease.

On April 7, 2023, the Tahoe Regional Planning Agency (TRPA) approved the project to rehabilitate, expand, and modify the pier (File No. ERSP2022-0242). The work for this project will commence after the Lessee has obtained all necessary permits and approvals.

The proposed project consists of removing and replacing the pier decking, cutting the existing pilings flush with the pier deck, widening the pierhead to 15 feet, extending the pier 30 feet, driving four new steel pilings to support the pier extension, removing the existing catwalk, adding two adjustable catwalks, relocating the two existing boat lifts and their associated pilings to the end of the extended pier, installing new deck lighting fixtures, and installing electrical service to accommodate the catwalks, boat lifts, and deck lighting.

The proposed extended pier will be 220 feet in total length. Starting from the landward terminus, the proposed pier will have a width of 8 feet for the first 130 feet of length and a width of 15 feet for the remaining 90 feet of length. This will result in the proposed pier occupying a footprint which is approximately 823 square feet larger than the existing pier.

The landward aspect of the pier will cross the entirety of the shore and terminate in a short staircase leading directly to the adjacent upland residence. The

topography proximate to the landward aspect of the pier is moderately sloping, gravelly, and relatively easy to traverse. Continuous public access to and along the Public Trust easement will be available by passing over the pier. This passage shall be facilitated by the presence of two short stairways located on either side of the pier which will provide access to the pier deck. The proposed amendment includes a provision requiring the Applicant to post signs on each of these stairways which shall clearly identify the designated public passageway over the pier. These signs shall be in place at all times and will ensure that the public is aware of the designated public passageway.

The proposed project includes removal of the existing catwalk and installation of two adjustable catwalks. These adjustable catwalks will be installed on both sides of the pier such that the new catwalks will terminate 45 feet from the lakeward terminus of the proposed pier. Additionally, the existing boat lifts will be removed and relocated to the end of the proposed pier extension, approximately 10 feet from the lakeward terminus of the pier.

To facilitate rehabilitation of the pier, new steel girders and composite deck material will be utilized, and the existing pilings will be cut flush with the pier deck. To support the proposed extension of the pier, two rows of new steel pilings will be driven to refusal into the lakebed using either a drop or vibratory hammer. An alternative method of piling installation may be used if deemed appropriate by the project engineer.

Construction will primarily occur from the lake via an amphibious barge or similar approved equipment. The proposed construction will predominantly be accomplished through the use of portable equipment and manual labor, with specific tools and methods utilized so as to minimize pollution and atmospheric or acoustic impacts. Appropriate spill prevention and containment devices, such as a floating fine mesh, tarps, or small boats will be used to prevent equipment, tools, or hazardous materials from being discharged into the lake during construction.

Caissons, turbidity curtains, or other acceptable containment systems will be utilized to prevent resuspension of lakebed sediments or discharge of any construction material into the lake or onto the shore if deemed necessary by any agency with pertinent jurisdiction.

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, the U.S. Army Corps of Engineers, and any other agency exercising pertinent jurisdiction within the lease area.

A Tahoe yellow cress (TYC) survey was completed in the lease area on September 26, 2022, and indicated that there was no TYC present in the area. Tahoe yellow cress (*Rorippa subumellata*) is a flowering perennial plant in the mustard family that grows on Lake Tahoe's sandy shorelines and nowhere else in the world.

Additionally, TYC is a California endangered plant species and, as such, killing or possessing this plant is prohibited by the California Endangered Species Act. TYC surveys are conducted to ensure that projects do not pose a threat to existing TYC. Due to the specifics of this project and the habitat in the area surrounding the project location, an additional TYC survey will not be required prior to the start of construction for the proposed project.

The Lessee owns the uplands adjoining the lease premises. The subject facilities 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, as amended, 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. The 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. 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 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 high wind events and wave damage.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease amendment 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 cannot execute the proposed project. 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. 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, California Code of Regulations, title 14, section 15300.

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 amendment 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. Authorize the amendment of Lease 3652, a General Lease – Recreational Use, effective August 20, 2023, for the rehabilitation, expansion, and use of the existing joint-use pier; installation and use of two adjustable catwalks, new deck lighting, and electrical service; and relocation and use of the two existing boat lifts, contingent on the Lessee’s compliance with TRPA Permit ERSP2022-0242; and to revise rent from \$2,769, with an annual Consumer Price Index adjustment, to \$3,559, with an annual Consumer Price Index adjustment.

2. 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.