

Staff Report 19

APPLICANT:

Laurie Struck, Trustee of The Laurie Struck Trust dated January 11, 2001; Shell Lane LLC, a Delaware limited liability company; and Los Esteros Associates, Limited Partnership Agreement

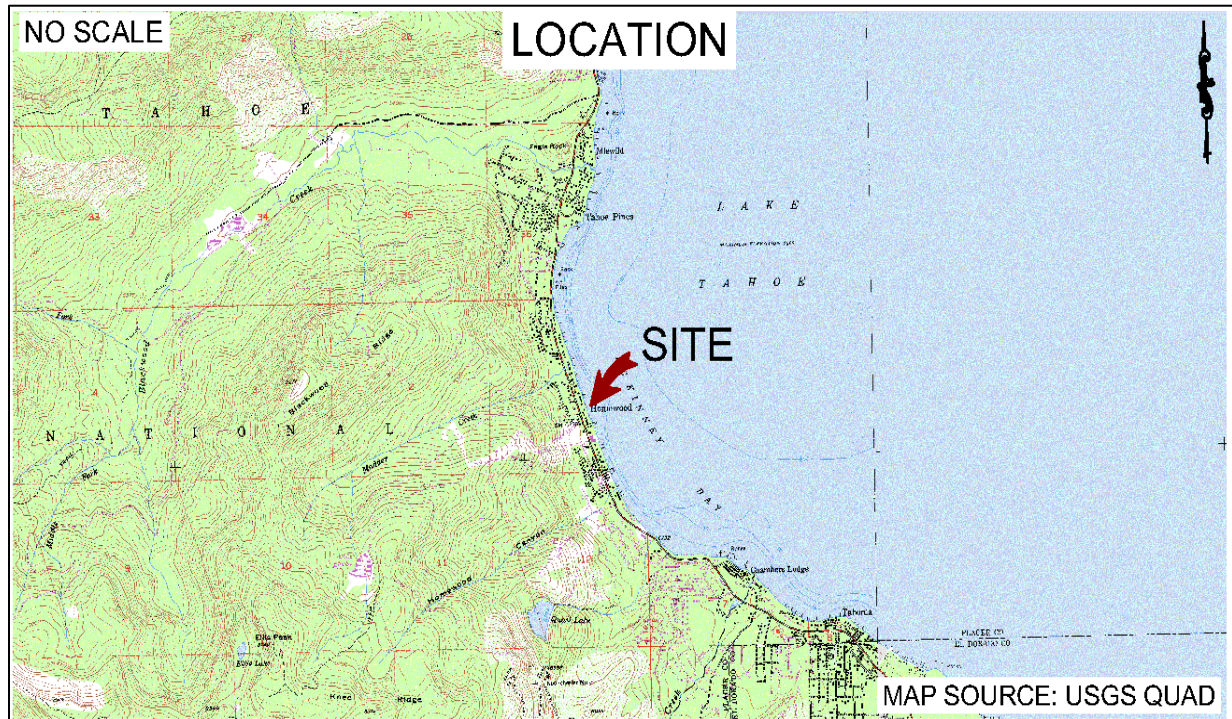
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5070, 5080, and 5090 West Lake Boulevard, Homewood, Placer County (as shown in Figure 1).

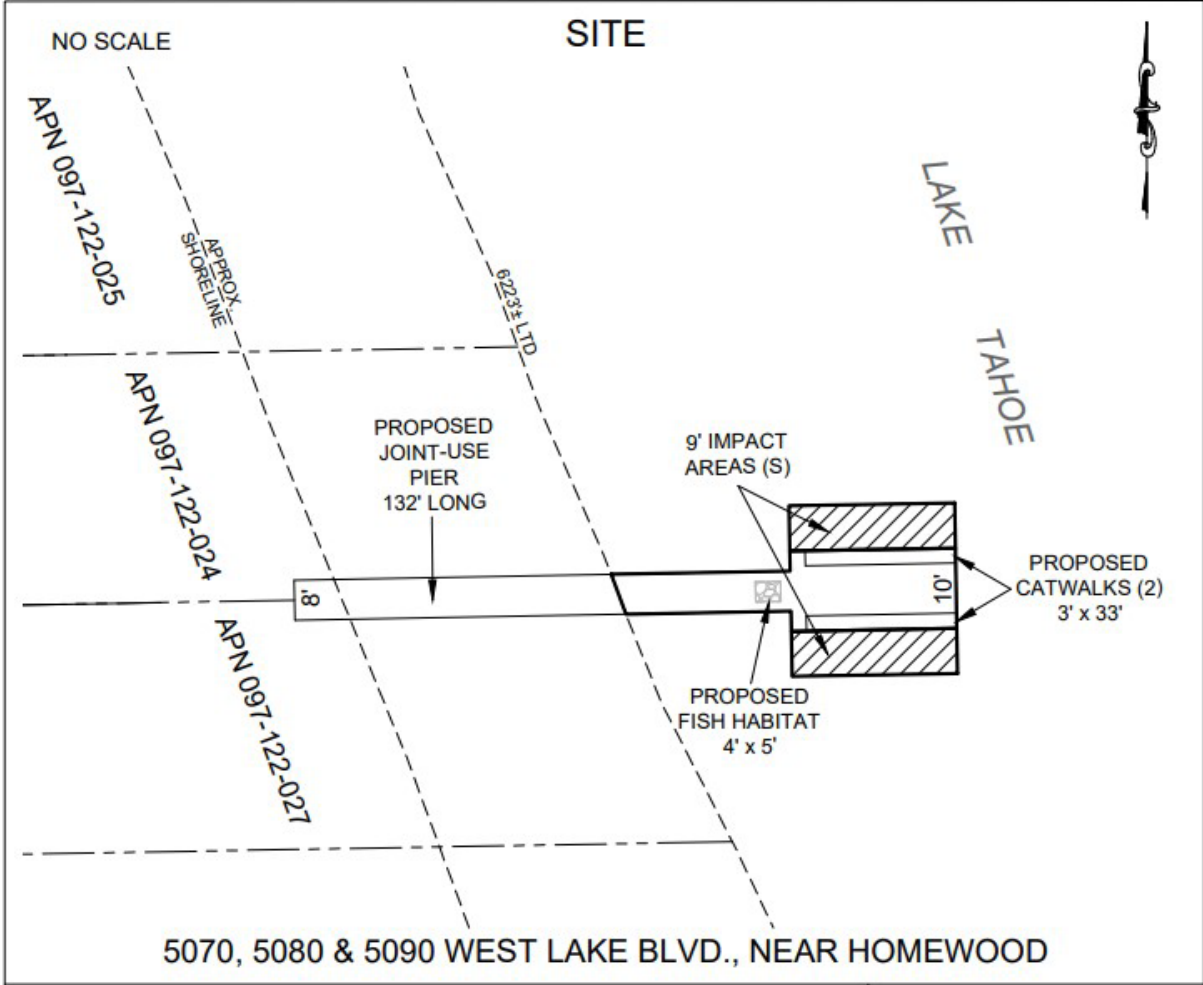
Figure 1. Location



AUTHORIZED USE:

Construction and use of a joint-use pier(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 August 17, 2023.

CONSIDERATION:

\$1,006 per year, with an annual Consumer Price Index Adjustment.

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.
- 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. 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 the Lessor's Executive Officer of designee, 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.
- Lessee acknowledges annual consideration shall be adjusted based on the actual area of improvements as constructed should they vary from the plans submitted.
- 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.
- The lease requires the Lessee to comply with TRPA's permit mitigation measure by installing cobbles over an existing gravel substrate located within the footprint of the proposed pier.

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:

The Applicant is applying for a General Lease – Recreational Use for the construction and use of a joint-use pier. On November 16, 2022, TRPA issued a conditional permit for the proposed multi-parcel pier construction and related activities. The applicants, referred to as Applicant, currently have individual leases with the Commission, each for two mooring buoys adjacent to 5070 West Lake Boulevard (Lease 9204), 5080 West Lake Boulevard (Lease 8656), and 5090 West Lake Boulevard (Lease 8250). The three leases for the buoys will be held separately from the joint-use pier lease.

The proposed project involves the construction of a joint-use pier to be used by all three adjacent properties at 5070, 5080, and 5090 West Lake Boulevard. The new pier will be approximately 132-feet long by 8-feet wide. The last 33 feet of the pier will be 10-feet wide with 3-foot adjustable catwalks on each side. The pier will extend 24 feet past elevation 6219 feet, LTD. The pier is located in areas mapped as "Spawning Habitat" and "Feed-Cover Habitat" by TRPA. Lake bottom disturbance will be 12.1 square feet and will be mitigated at a ratio of 1.5:1 by the installation of a 4-foot by 5-foot area of 6-inch to 8-inch cobbles over an existing gravel substrate, as required by the Applicant's TRPA permit. The cobbles will be placed within the footprint of the proposed pier. Construction will take place between October 1 and May 1 to minimize any potential fish habitat disturbance.

The proposed project activities will be performed on-site with access to the site from the lake. The project will be constructed with the use of a floating/amphibious barge, and materials will be transported via the barge to the site. Construction materials will be stored within the barge, rather than on the shoreline, and protected from discharge into the lake. Materials, equipment storage, and fabrication will take place offsite and on the barge. Construction of the beams, joists, and decking will take place above the surface of Lake Tahoe.

Construction may take place only after all required approvals have been obtained from the appropriate regulatory bodies. The Lessee will follow all construction methods and timeframes provided by TRPA, the Lahontan Regional Water Quality Control Board, California Department of Fish and Wildlife, and U.S. Army Corps of Engineers.

Tahoe yellow cress (TYC) is a flowering perennial plant in the mustard family that grows on Lake Tahoe's sandy shorelines and nowhere else in the world and is an endangered species under the California Endangered Species Act. A TYC survey was conducted on June 16, 2023, and TYC was not present within the shoreline of the subject properties.

The Applicant owns the upland adjoining the lease premises. The proposed joint-use pier 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 land. (Pub. Resources Code, § 6503.5.)

The proposed pier's design will allow for public access around the shoreline end of the pier. The pier will include signage to facilitate public access. Additionally, the pier has a clearance of approximately 6- feet underneath within the Public Trust easement area. 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 proposed 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 high wind events and damaging waves.

CONCLUSION:

For all of 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 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 will not be authorized to construct the proposed pier. 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 3, New

Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(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.

APPROVAL OBTAINED:

Tahoe Regional Planning Agency

APPROVALS REQUIRED:

U.S. Army Corps of Engineers
Lahonton Regional Water Quality Control Board
California Department of Fish and Wildlife

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)(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. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 17, 2023, for a term of 10 years, for the construction and use of a joint-use pier; annual rent in the amount of \$1,006, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

2. Authorize the Executive Officer or designee to replace Exhibits in the lease and adjust rent upon submission, review, and approval of as-built plans detailing the final location of the new improvements following installation.