

Staff Report 07

LESSEE:

Klaus Martin Hirt and Sabine Gabriele Hirt

APPLICANT:

Windance West Shore Partners Limited

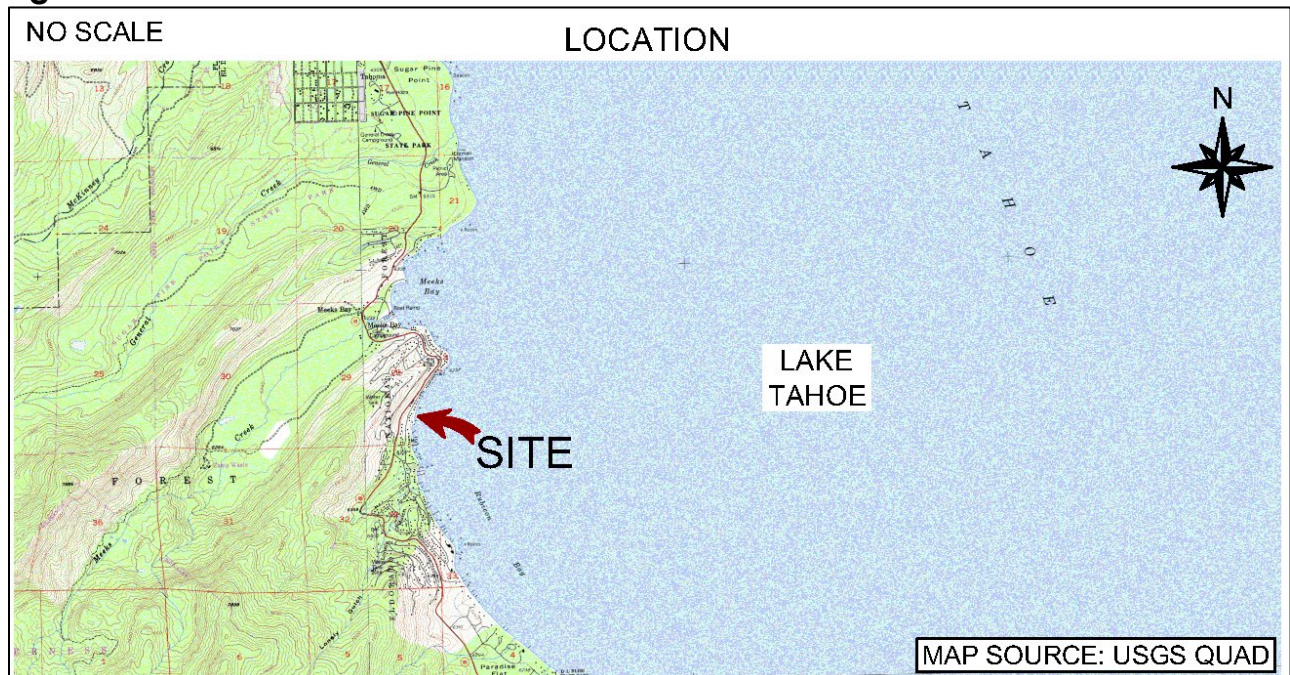
PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed and Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 8477 Meeks Bay Avenue, near Tahoma, El Dorado County (as shown in Figure 1).

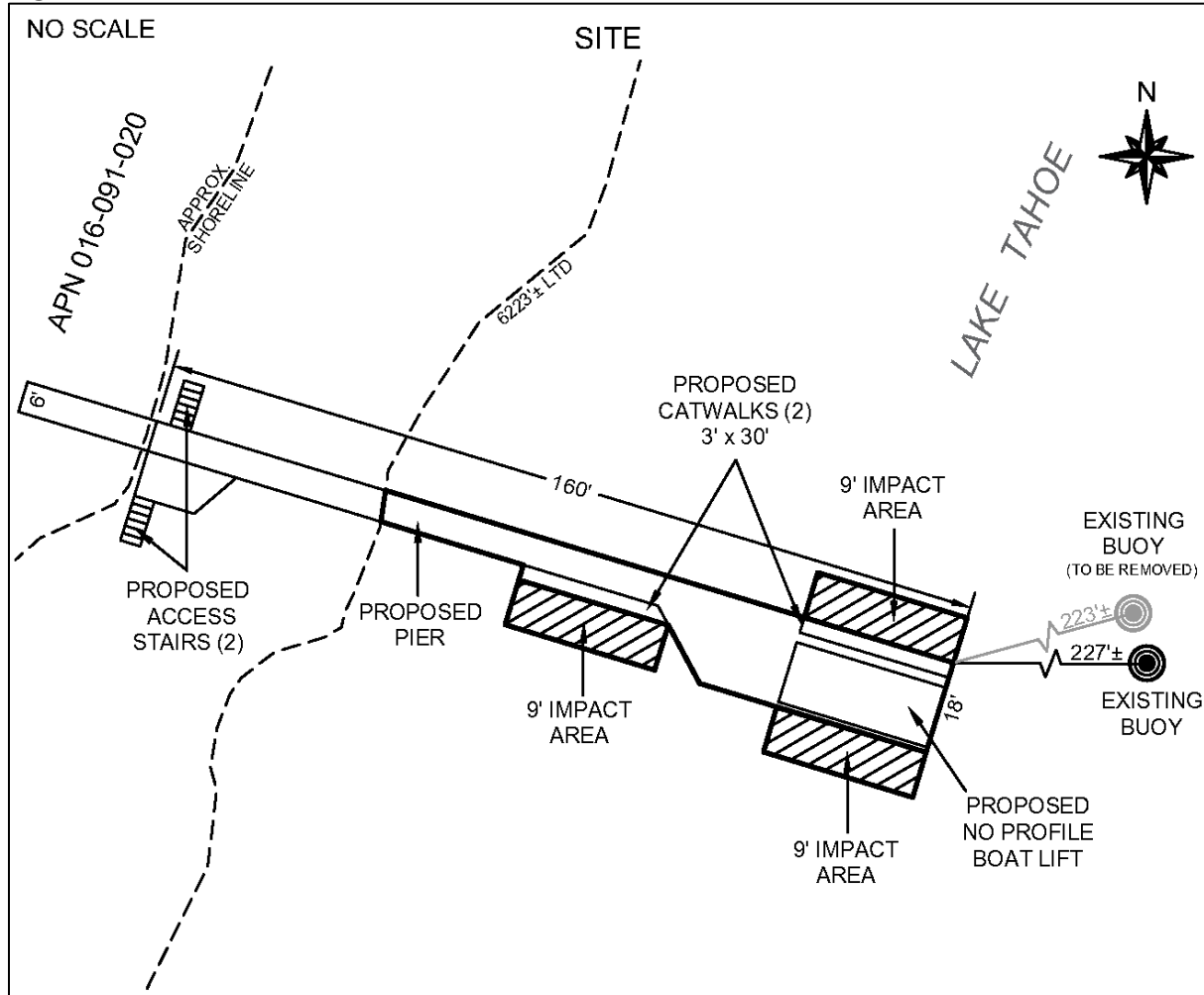
Figure 1. Location



AUTHORIZED USE:

Construction and use of a joint-use pier; installation of a boat lift; use of an existing mooring buoy; and removal of one existing mooring buoy (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 December 5, 2023.

CONSIDERATION:

\$1,721 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 acknowledges that a Tahoe Regional Planning Agency (TRPA) permit or registration 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 acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- 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 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.
- Lessee acknowledges annual consideration shall be adjusted based on the actual area of improvements as constructed should they vary from the plans submitted.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including that the Applicant obtain all necessary permits and authorizations prior to commencing work, including requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.
- Lessee agrees that the public be allowed to pass and repass over the pier using stairs on the landward end of the pier, with signs posted on each side of the pier, to provide continuous shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6505.5;
California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 23, 2014, the Commission authorized a General Lease – Recreational Use, Lease 9278, to Klaus Martin Hirt and Sabine Gabriele Hirt, for the use and maintenance of two existing mooring buoys ([Item C22, August 23, 2014](#)). This lease expires April 22, 2024 (TRPA Registration No.10533). On December 4, 2014, the Lessee transferred ownership interest of the upland parcel to Windance West Shores Partners Limited. Staff was not notified of the transfer, but the makeup of Windance West Shores Partners Limited includes the Lessee.

The Lessee has applied to quitclaim the existing lease and the Applicant has requested a General Lease – Recreational Use for the construction and use of a joint-use pier and removal of one mooring buoy in exchange for installation of a boat lift; and the use of one existing mooring buoy. On April 26, 2023, TRPA issued conditional permit No. ERSP2022-0045 for the proposed construction of a new joint-use pier and conversion of one existing mooring buoy for a 10,000 lb. boat lift. TRPA registration of the buoys is current (Registration No. 10533).

The Commission's accounting records show the annual rent is paid for Lease 9278 through April 22, 2024. Any rent paid for the existing lease beyond the December 4, 2023 start date for the new lease will be prorated and credited to the first year's rent for the proposed lease.

The proposed joint-use pier will be approximately 160 feet in total length, single piled, and 7 feet wide by 115 feet in length, with a pierhead of 45 feet by 15 feet wide. Two catwalks, 30 feet in length and 3 feet in width, and access stairs will be installed on each side of the pierhead. The proposed boat lift will be installed at the end of the pierhead.

The proposed pier's design will allow for public access laterally across the pier. The minimum clearance under the pier is at least 6 feet with an open piling construction allowing for passage under the pier at varying lake levels. The lease requires the Lessee to post signs, at the stairs, on both sides of the pier at the designated public access passageway that reads "Public Passage Allowed Over the Pier."

The proposed pier, boat lift, and one remaining mooring buoy will be 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 buoy that will be retained is located directly lakeward of the upland property and occupies 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 the Public Trust consistent uses. Upon termination of the lease, the Lessee may be required to remove all improvements from State land and restore the leases premises to their original condition.

The proposed project 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 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 in a shop and on the barge. Construction of the beams, joists, and decking will take place above the surface of Lake Tahoe.

Construction will take place after all required approvals have been obtained and will occur between October 1 and May 1, to minimize the disturbance to natural habitats and public enjoyment of the lake during peak seasons. 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, and the U.S. Army Corps of Engineers.

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.

Staff recommends acceptance of a Lease Quitclaim Deed for the current lease concurrent with the issuance of a new lease to the Applicant.

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 wave damage.

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 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 construct the joint-use pier and install the boat lift and may be required to remove the existing mooring buoy 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 "Meeting Evolving Public Trust Needs" and the "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of the quitclaim deed 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. **Existing Mooring Buoy:** Staff recommends that the Commission find that this activity is exempt from the requirements of 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).

New Joint-Use Pier Construction: Staff recommends that the Commission find that this activity is exempt from the requirements of 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).

Removal of One Mooring Buoy: Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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 (conditional permit)

APPROVALS REQUIRED:

Tahoe Regional Planning Agency (final approval pending)

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); Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(2); and Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Find that the whole of the project is categorically exempt from the requirement for the preparation of environmental documents through the combination of categorical exemptions listed above.

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 the Public Trust needs and values at this location, at this time, and for the term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Accept a Lease Quitclaim Deed for Lease 9278.
2. Authorize a credit to apply to the annual rent of Lease 9278 in the amount of \$287.14.

3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 5, 2023, for a term of 10 years, for the construction and use of a joint-use pier, installation of a boat lift, removal of one mooring buoy, and use of an existing mooring buoy; with annual rent in the amount of \$1,721 per year, with an annual Consumer Price Index adjustment, effective December 5, 2023; liability insurance in an amount no less than \$1,000,000 per occurrence.
4. 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.