

# Staff Report 08

## **LESSEE:**

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Gerald E. Johnston and Cynthia M. Johnston, Trustees of the Gerald E. Johnston and Cynthia M. Johnston Trust, under the Declaration of Trust dated April 26, 2002; Cyrus A. Johnson, Trustee of the Johnson Family Revocable Trust of 1989; Carole J. Gray, (formerly Carole E. Johnson) and Stephen N. Gray, Co-Trustees of the Gray Family Revocable Trust dated August 7, 1999; Julie Landis, Trustee of the Julie Landis Revocable Trust of 2015

## **APPLICANT:**

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Gray Landis Family Properties LLC and Homewood Camp LLC, A California Limited Liability Company

## **PROPOSED ACTION:**

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Termination and Issuance of a General Lease – Recreational Use.

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Lake Tahoe, adjacent to 5020 and 5040 West Lake Boulevard, Homewood, Placer County (as shown in Figure 1, below).

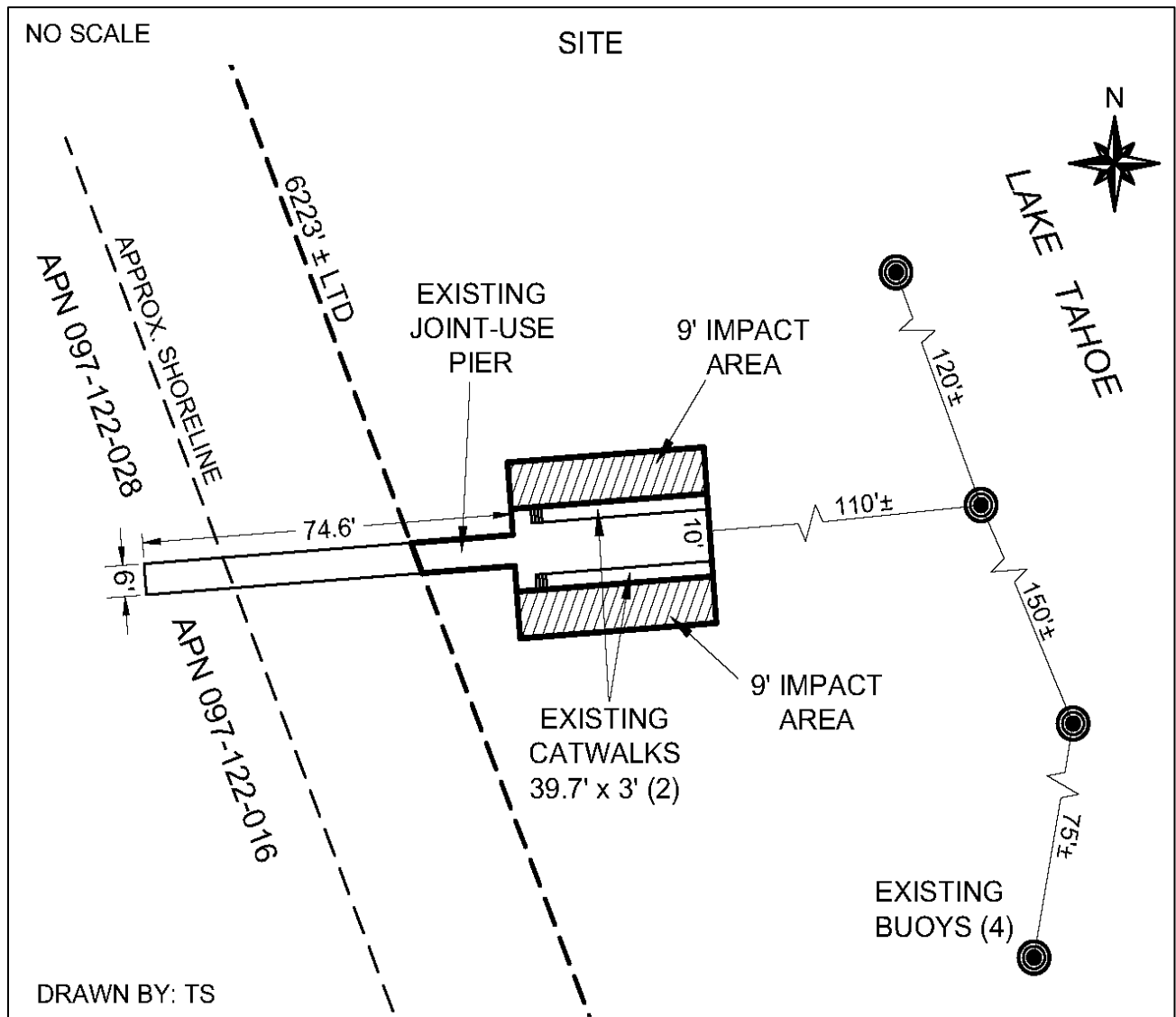
**Figure 1. Location**



**AUTHORIZED USE:**

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

**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:**

\$2,287 per year, with 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 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 this lease.
- 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 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.
- 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 August 16, 2019 through December 4, 2023.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503.5 and 6505.5;  
California Code of Regulations, title 2, section 2000.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On April 19, 2018, the Commission authorized the acceptance of a lease quitclaim deed from Gerald E. Johnston and Cynthia M. Johnston, Trustees of the Gerald E. Johnston and Cynthia M. Johnston Trust, under the Declaration of Trust dated April 26, 2002; Cyrus A. Johnson, Successor Trustee Under Revocable Trust Dated January 10, 1989; Stephen N. Gray and Carole J. Gray, Co-Trustees of the Gray Family Revocable Trust dated August 7, 1999, and William E. Landis and Julie H. Landis, Co-Trustees of the Landis Family Revocable Trust of 1999, and issuance of a General

Lease – Recreational Use to Gerald E. Johnston and Cynthia M. Johnston, Trustees of the Gerald E. Johnston and Cynthia M. Johnston Trust, under the Declaration of Trust dated April 26, 2002; Cyrus A. Johnson, Trustee of the Johnson Family Revocable Trust of 1989; Carole J. Gray, (formerly Carole E. Johnson) and Stephen N. Gray, Co-Trustees of the Gray Family Revocable Trust dated August 7, 1999; Julie Landis, Trustee of the Julie Landis Revocable Trust of 2015, for the removal and reconstruction of an existing joint-use pier with minor expansion and use of four existing mooring buoys ([Item C15, April 19, 2018](#)).

On August 16, 2019, ownership interest in the upland property adjacent to 5020 West Lake Boulevard was transferred from Gerald E. Johnston and Cynthia M. Johnston Trustees of the Gerald E. and Cynthia M. Johnston Trust under Declaration of Trust dated April 26, 2002, to Homewood Camp LLC, a California Limited Liability Company.

On August 1, 2022, ownership interest in the upland property adjacent to 5040 West Lake Boulevard was transferred from Carole J. Gray, Co-Trustee of the Gray Family Revocable Trust dated August 7, 1999; Joseph F. Gray, Trustee of The Joseph F. Gray Separate Property Trust dated January 11, 2021; Paul S. Gray, Trustee of The Paul S. Gray Separate Property Trust dated January 12, 2021; Matthew A. Landis, Trustee of The Matthew A. Landis 2021 Separate Property Trust; William B. Landis, Trustee of The William B. Landis 2021 Trust dated July 19, 2021; James H. Landis, Trustee of The James H. Landis Trust dated August 31, 2021 to Gray Landis Family Properties LLC. The lease will expire on April 18, 2028.

The Applicants are now applying for a General Lease – Recreational Use for the use of the existing joint-use pier and four mooring buoys. Because the Commission was not notified of the ownership transfers that occurred during the previous lease period, staff recommends the termination of the previous lease.

Annual rent for the lease premises has been paid through April 19, 2024. The proposed lease will require the Applicants to indemnify the State for the entire period of unauthorized occupation, from August 16, 2019 through December 4, 2023.

The two mooring buoys adjacent to 5020 West Lake Boulevard were registered with TRPA on August 23, 2023, and the two mooring buoys adjacent to 5040 West Lake Boulevard were registered on January 19, 2023.

The joint-use pier and four 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 subject pier is built on pilings, and the immediate upland topography is flat, with small rocks scattered across the shoreline. Public access for pedestrians and lake-related activities are available at varying water levels both underneath and over the pier within the Public Trust easement. Applicant thus agrees to allow the public to pass and re-pass under the pier in the Public Trust easement. Signs are required to be posted on each side of the pier identifying the designated public passageway and are required to be in place at all times.

### **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 drier 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.

### **CONCLUSION:**

For all the reasons above, staff believe approval 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:**

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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 joint-use pier and four mooring buoys, and return 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 issuance of the lease is exempt from the requirements of the 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:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the lease 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 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 December 5, 2023, Lease 5120, a General Lease – Recreational Use, issued to Gerald E. Johnston and Cynthia M. Johnston, Trustees of the Gerald E. Johnston and Cynthia M. Johnston Trust, under the Declaration of Trust dated April 26, 2002; Cyrus A. Johnson, Trustee of the Johnson Family Revocable Trust of 1989; Carole J. Gray, (formerly Carole E. Johnson) and Stephen N. Gray, Co-Trustees of the Gray Family Revocable Trust dated August 7, 1999; Julie Landis, Trustee of the Julie Landis Revocable Trust of 2015.
2. Authorize issuance of a General Lease – Recreational Use to the Applicants beginning December 5, 2023, for a term of 10 years, for the use of an existing joint-use pier and four mooring buoys; annual rent in the amount of \$2,287, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.