

# Staff Report 02

## APPLICANT:

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James A. Astorian and Kathrin C. Astorian

## PROPOSED ACTION:

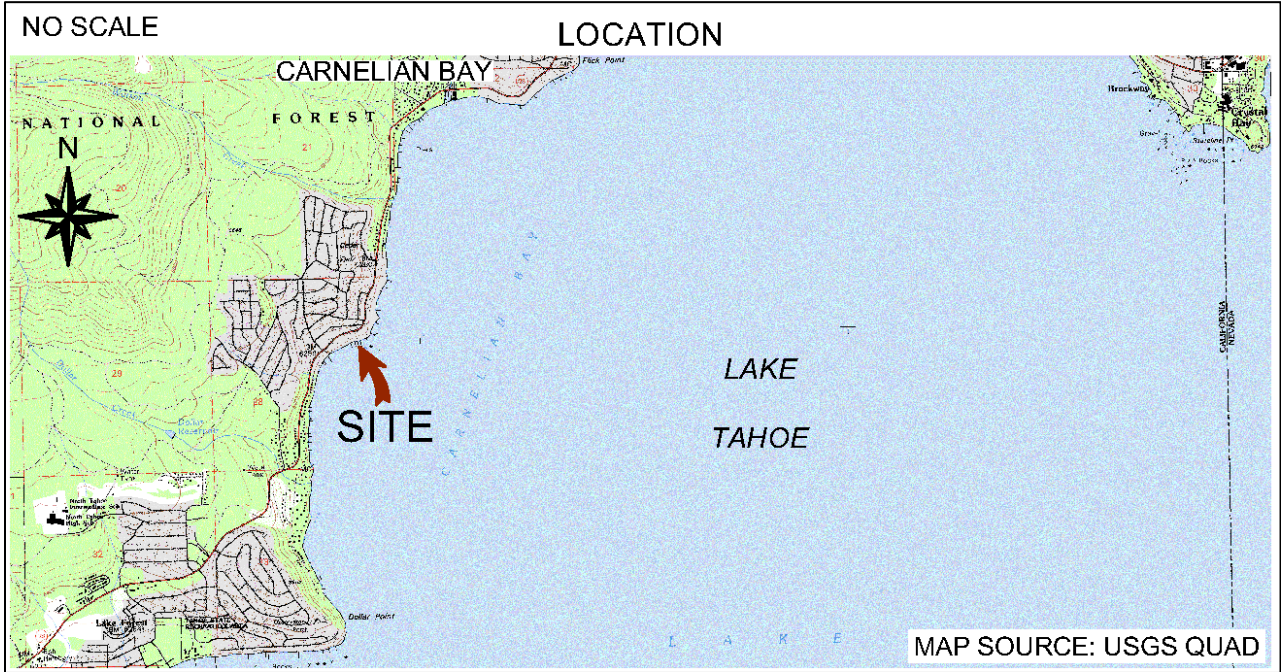
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Issuance of a General Lease – Recreational Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 4160 Ferguson Avenue, near Carnelian Bay, Placer County (as shown in Figure 1).

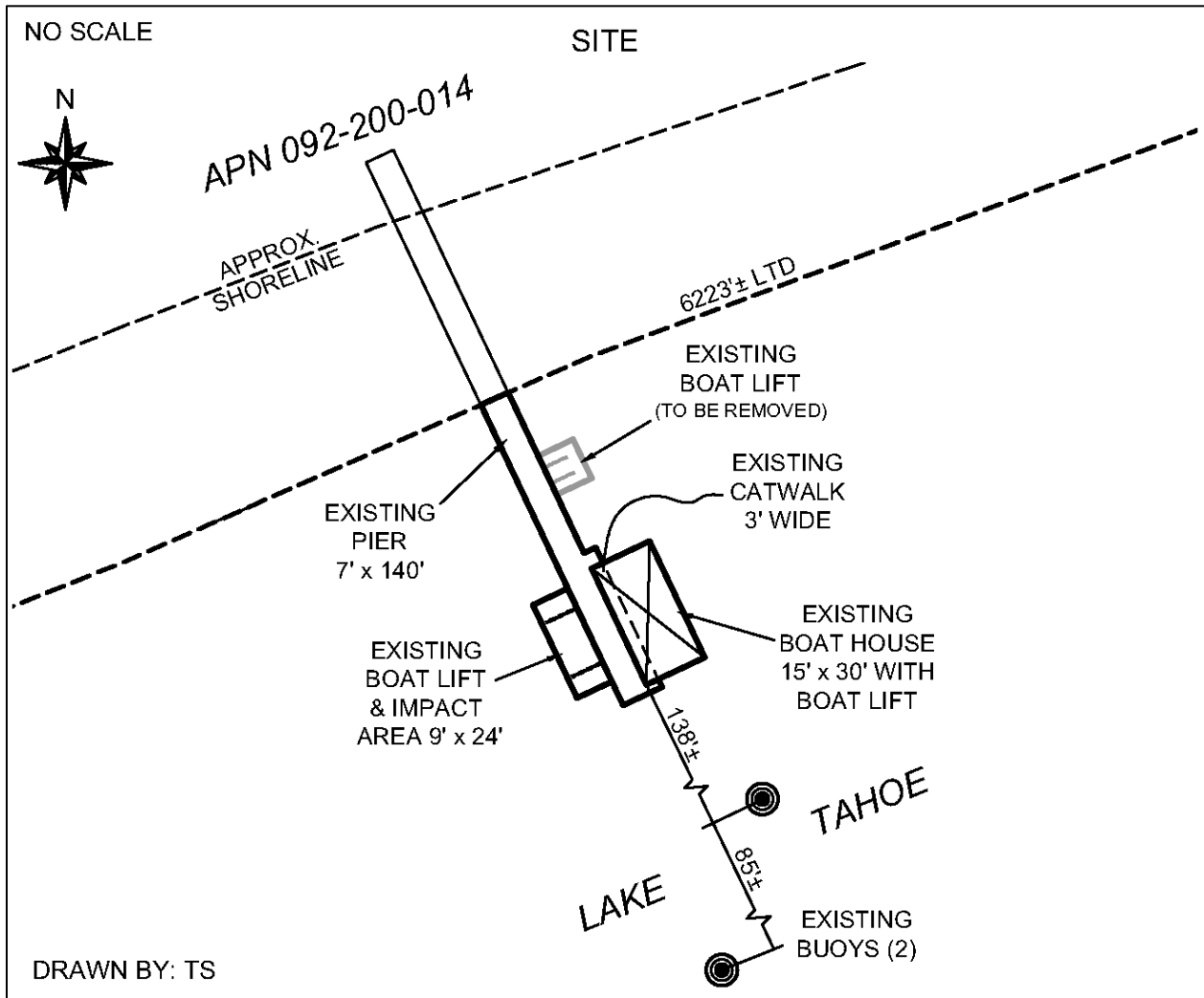
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing pier, boathouse with boat lift, boat lift, and two mooring buoys; and removal of an existing boat lift (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 February 1, 2024.

**CONSIDERATION:**

\$1,496 per year, with an annual Consumer Price Index adjustment, and \$1,993 to compensate for the unauthorized occupation of state sovereign land prior to February 1, 2024.

**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 the 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 entire period of Lessee's unauthorized occupation of state-owned lands, from October 19, 2022 through January 31, 2024.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**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 19, 2012, the Commission authorized issuance of a General Lease-Recreational Use to James A. Astorian and Kathrin C. Astorian for the use and

maintenance of an existing pier, boathouse with boat lift, and two mooring buoys previously authorized by the Commission; and use and maintenance of two boat lifts not previously authorized by the Commission ([Item 21, October 19, 2012](#)). On November 29, 2017, the Commission authorized an amendment of lease and revision of rent to James A. Astorian and Kathrin C. Astorian for the use and maintenance of an existing pier, boathouse with boat lift, two boat lifts, and two mooring buoys ([Item 21, November 29, 2017](#)). That lease expired on October 19, 2022.

Now the Applicant is applying for a General Lease – Recreational Use for the use of an existing pier, boathouse with boat lift, boat lift, and two mooring buoys; and removal of one existing boat lift. On April 11, 2023, both mooring buoys and one of the boat lifts were registered with TRPA. On October 2, 2023, the second boat lift was registered with TRPA (Registration No. 10604). TRPA requested that the third boat lift, not authorized, be removed by June 1, 2024. The proposed lease will allow for the removal of the third boat lift to remain consistent with the authorizations by TRPA. The work for this project will commence after the Lessee has obtained all necessary permits and approvals.

Staff recommends that the Commission accept compensation from the Applicant for unauthorized occupation of State land in the amount of \$1,993 for the period prior to February 1, 2024. The lease provisions regarding indemnity will apply for the period of October 19, 2022, the day after the previous lease expired, through January 31, 2024, the day before the beginning of the proposed lease.

The subject mooring buoys have existed for many years at this location, are located directly lakeward of the upland property, and occupy a relatively small area of the lake. The pier has also existed for many years at this location.

The Applicant owns the adjoining lease premises. The pier, boat house with boat lift, and boat lift 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 topography surrounding the pier is slightly sloped, with medium sized rocks scattered across the shoreline, making the shoreline accessible to pedestrians in the area. The pier is built on pilings and public access is available at varying water levels underneath the pier within the Public Trust easement. The Applicant agrees to post signs on each side of the pier identifying the designated public

passageway. These signs shall be in place at all times and will ensure that the public is aware of the designated public passageway within the Public Trust easement.

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.

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 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.

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 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:**

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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 improvements 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. **Existing pier, boathouse with boat lift, boat lift, and two mooring buoys:** 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**Boat lift removal:** 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 Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

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 the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project through the combination of the following exemptions: Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2); and Class 4, Minor Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

### **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 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 compensation from the Applicant in the amount of \$1,993, for the unauthorized occupation of State land for the period prior to February 1, 2024.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 1, 2024, for a term of 10 years, for use of a pier, boathouse with boat lift, boat lift, and two mooring buoys; and removal of an existing boat lift; annual rent in the amount of \$1,496, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.