

Staff Report 21

APPLICANT:

Paul R. Malone and Virginia M. Malone, as Trustees of the Paul R. and Virginia M. Malone Family Trust, dated June 10, 1999; and Harold S. Penney and Charlotte C. Penney as Trustees of the Harold S. and Charlotte C. Penney Living Family Trust, dated November 6, 2002.

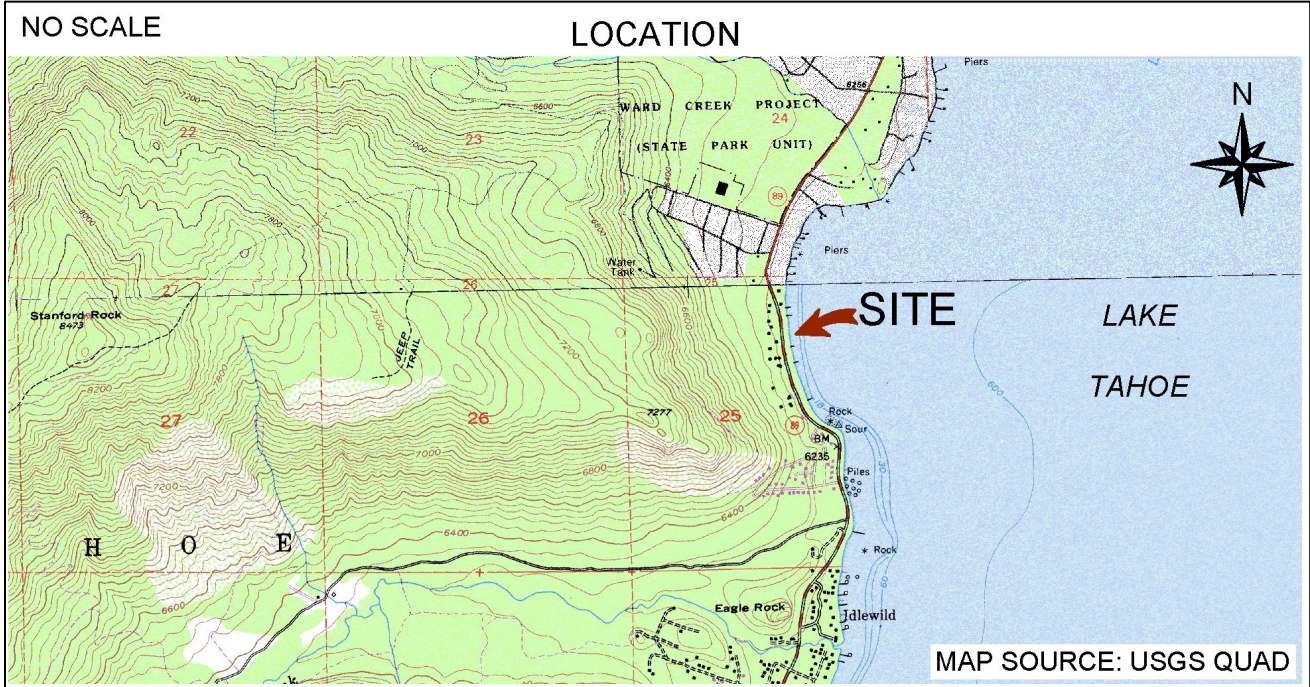
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 2865 West Lake Boulevard, Tahoe City, Placer County (as shown in Figure 1).

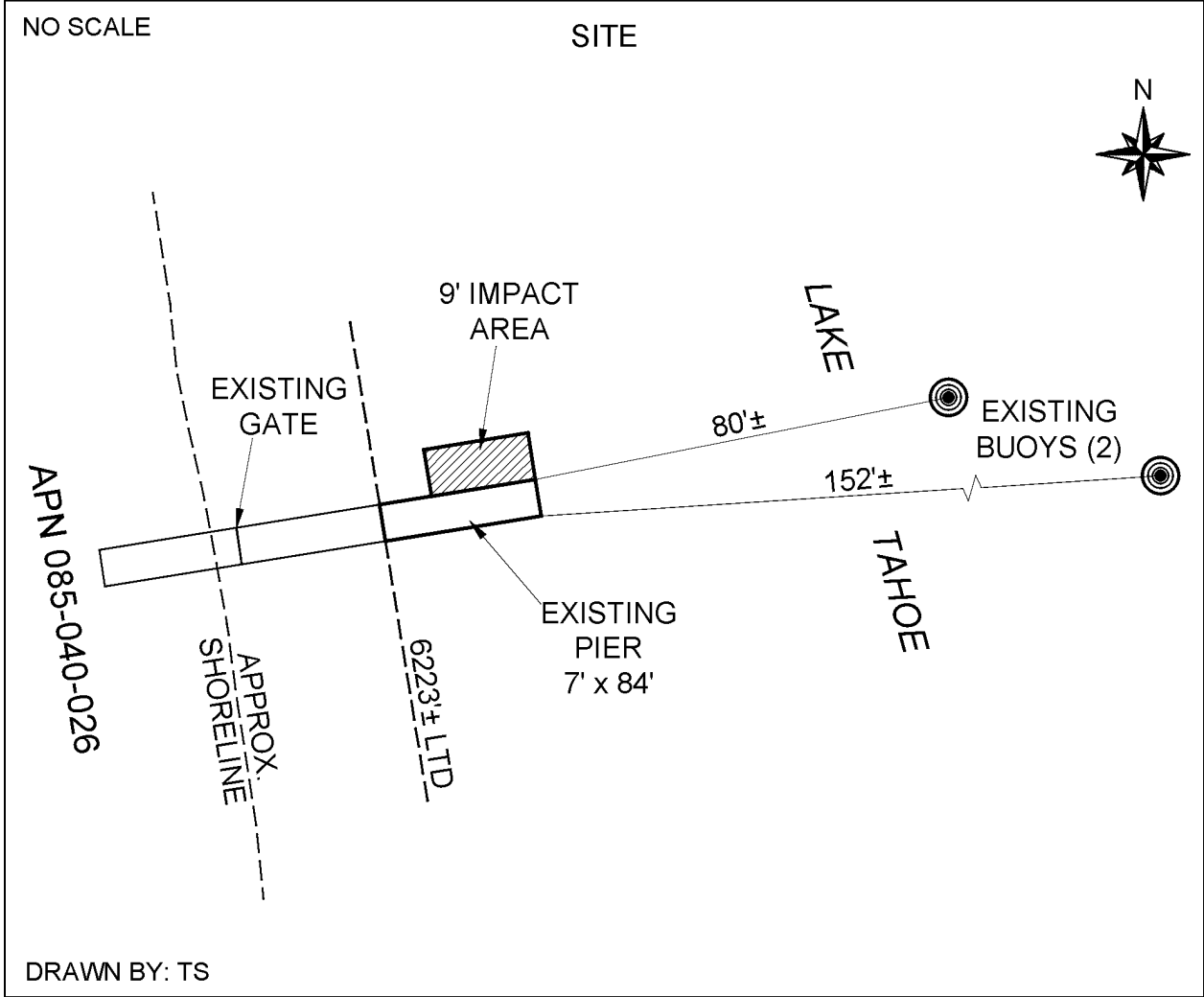
Figure 1. Location



AUTHORIZED USE:

Use of an existing pier and one mooring buoy previously authorized by the Commission, and one mooring buoy not previously authorized by the Commission (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:

\$824 per year, with an annual Consumer Price Index adjustment; and \$373 for the unauthorized occupation of State land for the period prior to February 1, 2024.

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 this lease.
- Lessee shall post signs on each side of the pier to indicate the public passageway that provides continuous shoreline access to the Public Trust Easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).
- Lessee will 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.

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 September 20, 2013, the Commission authorized a General Lease – Recreational Use to Paul R. Malone and Virginia M. Malone, and Harold S. Penney and Charlotte C. Penney as Trustees of the Harold S. Penney and Charlotte C. Penney Living Family Trust, dated November 6, 2002, for the use of an existing pier and one mooring buoy ([Item 28, September 20, 2013](#)). This lease expired on September 19, 2023.

The Applicant is now applying for a General Lease – Recreational Use for the use of an existing pier and one mooring buoy previously authorized by the Commission, and one existing mooring buoy not previously authorized by the Commission. Staff recommends issuance of a General Lease – Recreational Use to the Applicant, to take effect on February 1, 2024.

Staff further recommends that the Commission accept compensation from the Applicant in the amount of \$373 for the unauthorized occupation of State land for the subject facilities for the period prior to February 1, 2024. Additionally, the lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The pier and two 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 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. Both mooring buoys were registered with TRPA on June 19, 2023 (Registration No. 10021).

The pier is built on short pilings, with the area immediately upland of the pier being gently sloped and gravelly. The immediate upland topography is easily traversable; however, due to the short height of the pier, public access across the shoreline for pedestrians and lake-related activities is not available by passing underneath the pier within the Public Trust easement. Thus, in order to facilitate public access, the Applicant agrees to allow the public to pass and re-pass over the pier within the Public Trust easement. Additionally, the proposed lease requires that the Applicant post signs on each side of the pier to clearly identify the designated public passageway over the pier; these signs are required to be in place at all times.

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 interest of the state.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is 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, as prior lessee, may be required to remove the pier and two mooring buoys 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 "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 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and 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 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

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. Authorize acceptance of compensation from the Applicant in the amount of \$373 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 the use of an existing pier and one mooring buoy previously authorized by the Commission, and one existing mooring buoy not previously authorized by the Commission; annual rent in the amount of \$824 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.