

Staff Report 09

LESSEE:

Philip D. Chapman and Sarah D. Chapman, Trustees of the Chapman Family Living Trust

APPLICANT:

Nicholas Haemel and Anna Haemel, Trustees of the N & A Haemel Family Trust dated September 12, 2022

PROPOSED ACTION:

Termination and Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3890 North Lake Boulevard, near Carnelian Bay, Placer County (as shown in Figure 1).

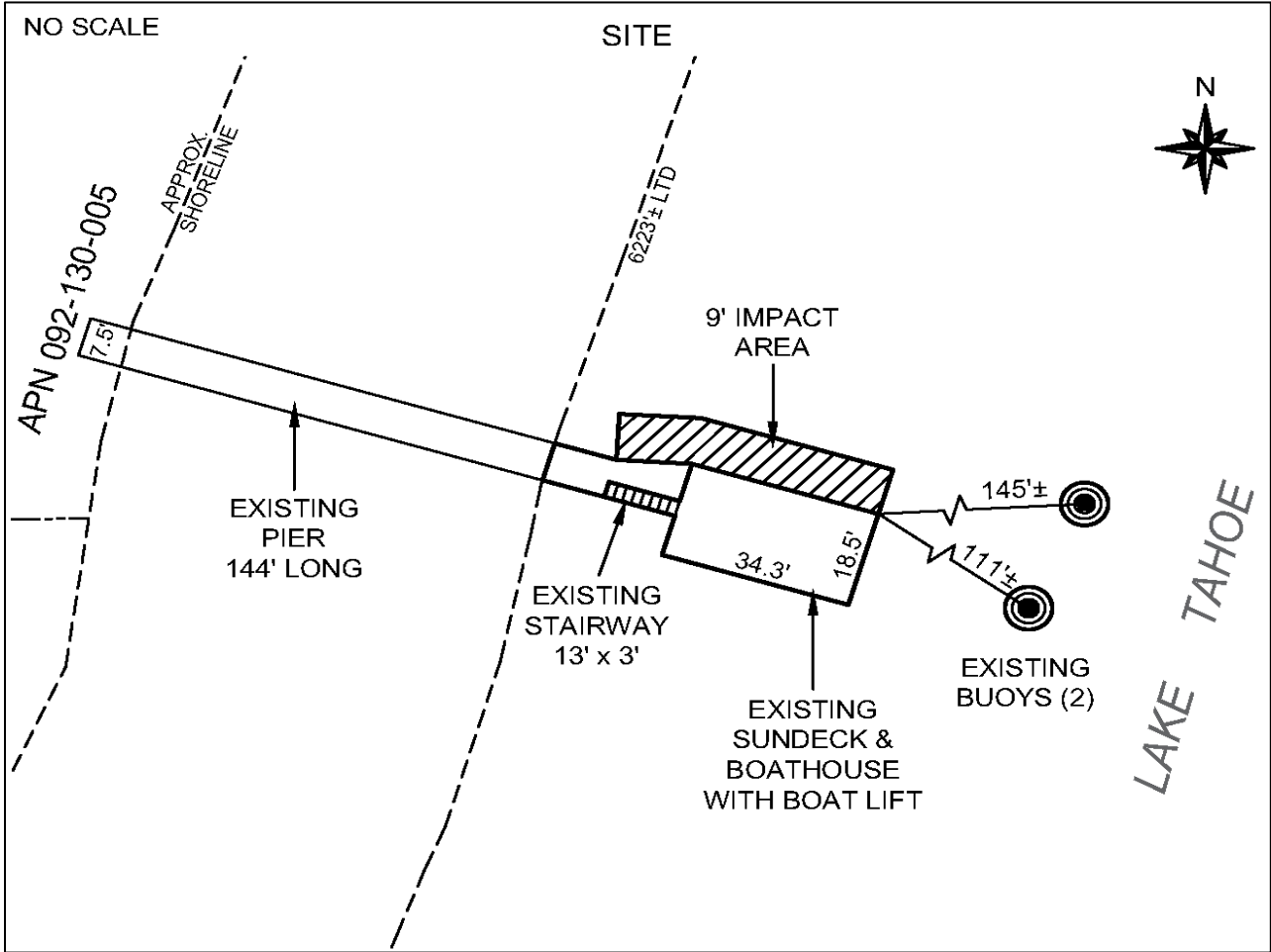
Figure 1. Location



AUTHORIZED USE:

Use of an existing pier, boathouse with boat lift, sundeck with stairs, and two mooring buoys (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 April 4, 2024.

CONSIDERATION:

\$3,136 per year, with an annual Consumer Price Index adjustment; and \$1,289 to compensate for the unauthorized occupation of state sovereign land prior to April 4, 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.
- Existing sundeck with stairs, as shown on the attached Exhibit B, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50 percent of the base value of the sundeck, then the sundeck must be removed from 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 October 22, 2020, the Commission authorized issuance of a lease to the Lessee, Philip D. Chapman and Sarah D. Chapman, Trustees of the Chapman Family Living Trust, for an existing pier, boathouse with boat lift, sundeck with stairs, and two mooring buoys ([Item 04, October 22, 2020](#)). That lease will expire on November 30, 2030.

On November 6, 2023, the Lessee transferred ownership interest in the upland parcel to the Applicant, Nicholas Haemel and Anna Haemel, Trustees of the N & A Haemel Family Trust dated September 12, 2022. Staff recommends terminating the existing lease because the Lessee did not notify the Commission of the sale of the upland parcel nor sign a lease quitclaim deed. The proposed termination date is November 6, 2023, the day the Applicant took ownership of the upland parcel.

The Applicant is applying for issuance of a General Lease – Recreational Use for the use of an existing pier, boathouse with boatlift, sundeck with stairs, and two mooring buoys. On July 7, 2023, the two mooring buoys and boat lift were registered with TRPA (Registration No. 10778).

Due to the Applicant attaining ownership of the upland property on November 6, 2023, staff recommends that the Commission accept compensation from the Applicant for unauthorized occupation of State land in the amount of \$1,289, to compensate for the period of unauthorized occupancy prior to April 4, 2024.

The lease provisions regarding indemnity will be extended to apply from November 6, 2023, when the Applicant took ownership of the upland, through April 3, 2024, the day before the beginning of the new lease.

The Applicant owns the uplands adjoining the lease premises. The subject improvements 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 existing buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. The pier and boathouse with boat lift are built on pilings, providing public access for pedestrians and lake related activities at varying water levels underneath the pier. The immediate area of the existing pier is relatively flat with scattered small boulders and rocks. The proposed lease includes a provision requiring the Applicant 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.

Although the sundeck with stairs is a private use of public property, and not a Public Trust consistent use, the sundeck is built onto the existing boathouse and does not expand the footprint of the subject facilities. While new sundecks are not generally

authorized, sundecks that have been in place for many years have been permitted, so long as they do not significantly interfere with Public Trust needs or activities. Additionally, the proposed lease contains terms such that the sundeck may not be expanded or rebuilt if it is substantially damaged.

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; 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 lease, the Applicant may be required to remove the existing pier, boathouse with boat lift, sundeck with stairs, and two 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 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 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 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing pier, boathouse with boat lift, and two mooring buoys 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 proposed lease, and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and continuing use of the sundeck with stairs is not generally associated with Public Trust uses, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination, effective November 6, 2023, of Lease 3674, a General Lease – Recreational Use, issued to Philip D. Chapman and Sarah D. Chapman, Trustees of the Chapman Family Living Trust.
2. Accept compensation from the Applicant in the amount of \$1,289, for the unauthorized occupation of State land for the period prior to April 4, 2024.
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 4, 2024, for a term of 10 years, for use of an existing pier, boathouse with boat lift, sundeck with stairs, and two mooring buoys; annual rent in the amount of \$3,136, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.