

Staff Report 11

APPLICANT:

Lorraine K. Furchner Howard, Trustee, or Her Successors in Trust, of the LKFH Trust, Under the Furchner Family Revocable Living Trust of 1994, dated February 23, 1994; Nicholas Allen Furchner, Trustee, or His Successors in Trust, of the NAF Trust, Under the Furchner Family Revocable Living Trust of 1994, dated February 23, 1994; Barbara May Oliver aka Barbara Ann Oliver, Successor Trustee of the Oliver Community Property Trust dated May 5, 1975; Randall E. Pond and Cynthia M. G. Pond, as Trustees of the Randall E. Pond Personal Residence Trust U/T/A 12/13/08; and Randall E. Pond and Cynthia M. G. Pond, as Trustees of the Cynthia M. G. Pond Personal Residence Trust U/T/A 12/13/08

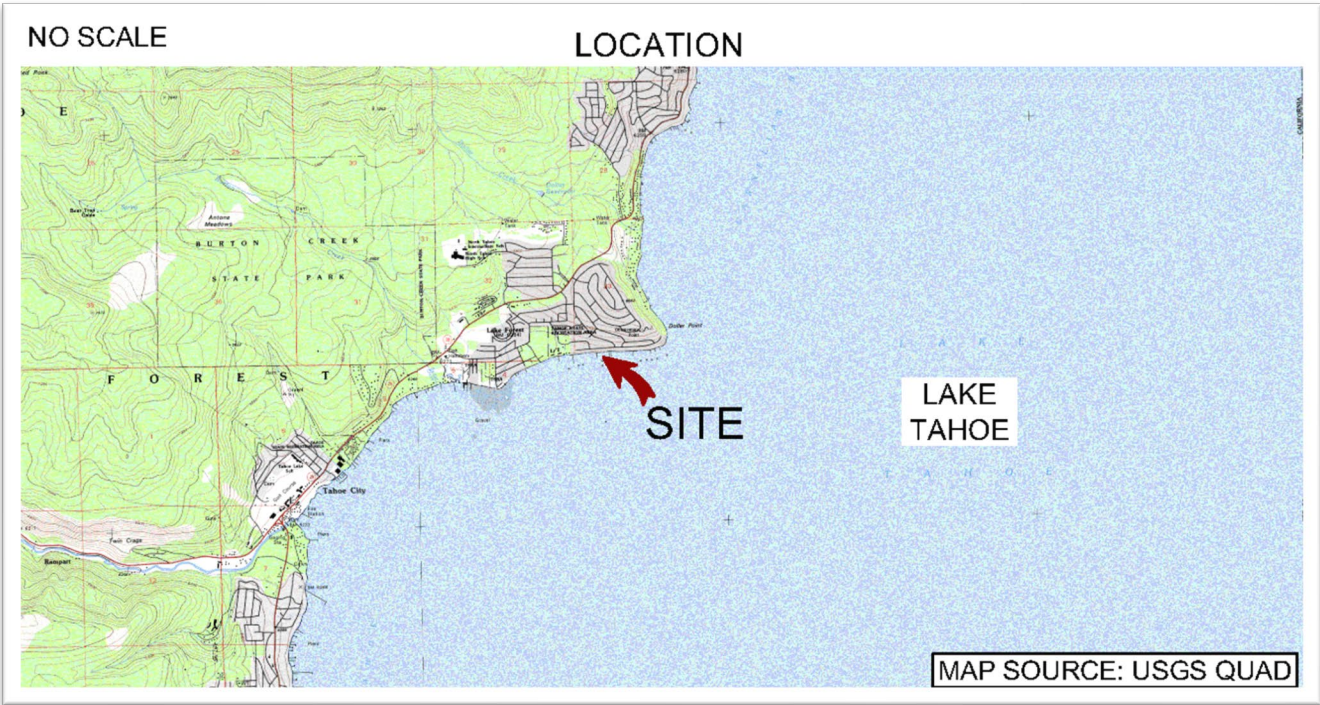
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3230, 3240, and 3250 Edgewater Drive, near Tahoe City, Placer County (as shown in Figure 1, below).

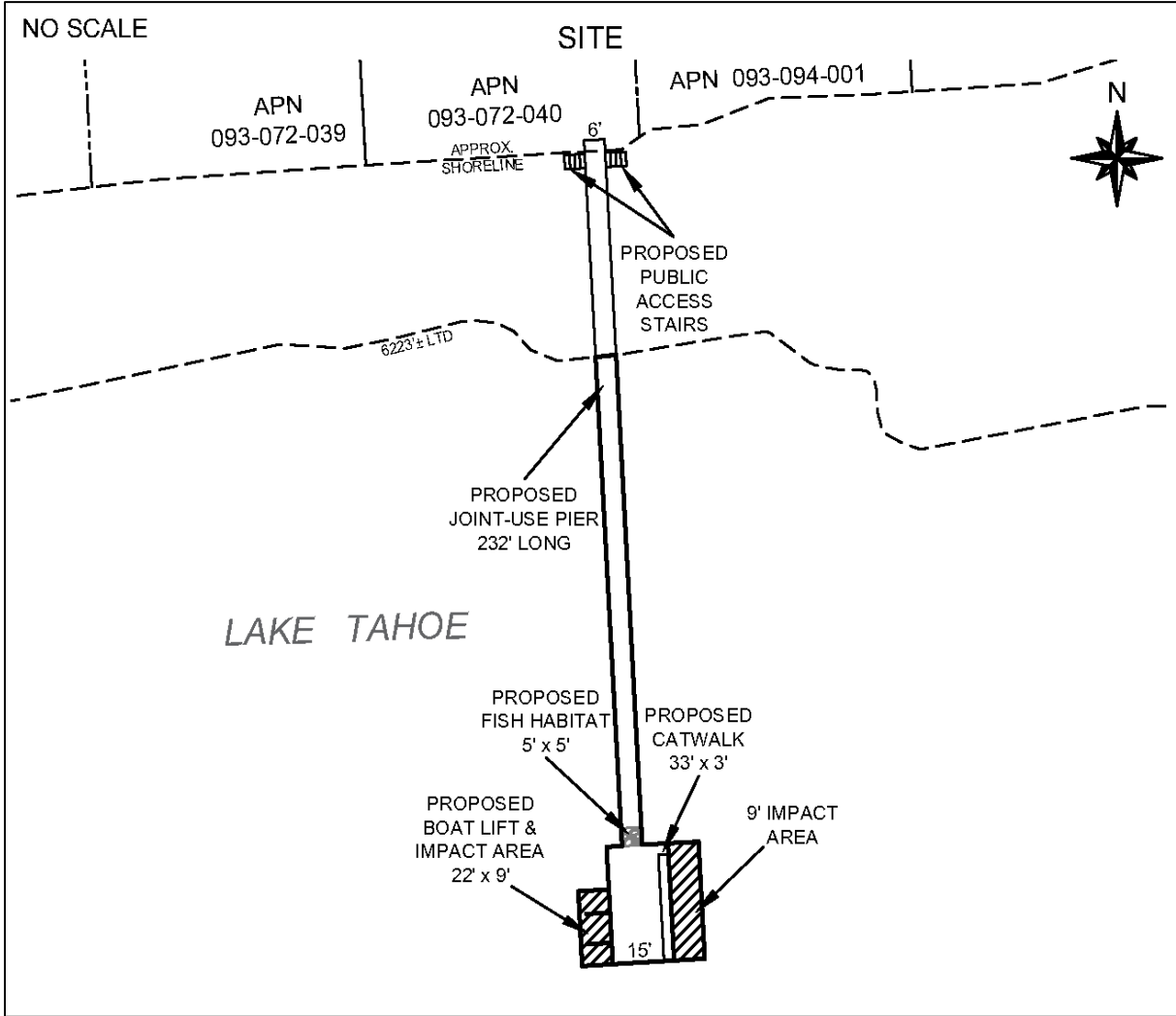
Figure 1. Location



AUTHORIZED USE:

Construction and use of a joint-use pier and installation of a boat lift (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 June 7, 2024.

CONSIDERATION:

\$1,455 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 this lease.
- 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.
- Prior to pier construction, the lessee shall provide written authorization from the Tahoe City Public Utility District (TCPUD) that the proposed pier is authorized from the deck that covers the TCPUD lift station and within the TCPUD easement. This condition is consistent with the TRPA permit condition.
- 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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

The Applicant has applied for a General Lease – Recreational Use for the construction and use of a joint-use pier and installation of a boat lift. On July 31, 2023, TRPA issued conditional permit No. ERSP2022-0034 for the proposed construction of a joint-use pier and the conversion of one existing mooring buoy into a boat lift. Per TRPA, the pier is located in an area known to be spawning and feed-cover habitats for nearby aquatic life. To compensate for disturbances and reduction of habitats, placement of a 5'x5' area of 6" to 8" cobbles will be placed over existing gravel substrate to emulate local natural conditions.

Per TRPA, the proposed authorization is to allow for the construction of the joint-use pier with one boat lift. However, authorization to construct the boat lift shall be contingent upon the removal of one mooring buoy. Specifically, one buoy required for removal will come from Lease 8919 Application 4667, scheduled for the August Commission meeting. While the Applicant's buoy removal request was included in their pier application, the actual removal of the buoy shall be addressed separately under the lease it affects in order to maintain clarity and ensure proper management of each lease. The proposed lease for new pier construction includes a condition requiring Commission authorization to amend Lease 8919 for buoy removal prior to constructing the boat lift. The proposed project will be constructed adjacent to 3230, 3240, and 3250 Edgewater Drive, near Tahoe City, Placer County.

The proposed joint-use pier is to be built on an existing TCPUD lift station deck, adjacent to a TCPUD sewer manhole, and within a TCPUD easement for both facilities. Consultation has occurred with TCPUD for the proposed pier and additional plan review is required by TCPUD. The proposed lease includes a condition that prior to pier construction, the lessee shall provide written authorization from the TCPUD that the proposed pier is authorized from the deck that covers the TCPUD lift station and within the TCPUD easement. The TRPA permit also requires documentation from TCPUD.

Rent will be assessed for the pier with the boat lift prior to the construction and installation of the improvements.

The proposed joint-use pier will be approximately 236 feet in total length, single piled, and 6 feet wide by 203 feet in length with a pierhead of 33 feet by 15 feet wide, and one catwalk, 33 feet in length and 3 feet in width. The proposed boat lift will be installed on the opposite side of the pierhead.

The pier design will allow for public access over the pier at designated stairways. The minimum clearance under the pier must be at least 6 feet with an open piling construction allowing for passage under the pier at varying lake levels, and public access stairs are to be installed on each end. The proposed lease will also require the Lessee to post signs on both sides of the pier at the designated public access stairway that reads "Public Passage Allowed Over the Pier." These signs shall be in place at all times and will ensure that the public is aware of the designated passageway within the Public Trust easement.

The Applicant owns the uplands adjoining the lease premises. The subject facilities 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 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 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 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:

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 or install one boat lift 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. 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(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.

APPROVAL OBTAINED:

- Tahoe Regional Planning Agency

APPROVALS REQUIRED:

- 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(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 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. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 7, 2024, for a term of 10 years, for the construction and use of a joint-use pier and installation of a boat lift; with annual rent in the amount of \$1,455 per year, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence.
2. 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.