

Staff Report 10

APPLICANT:

Lowell W. Lash and Terry L. Lash, Trustees of the Lash Family Trust Dated January 16, 2007

PROPOSED ACTION:

Issuance of a General Lease - Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign Land in Lake Tahoe, adjacent to 1740 North Lake Boulevard, near Tahoe City, Placer County (as shown in Figure 1).

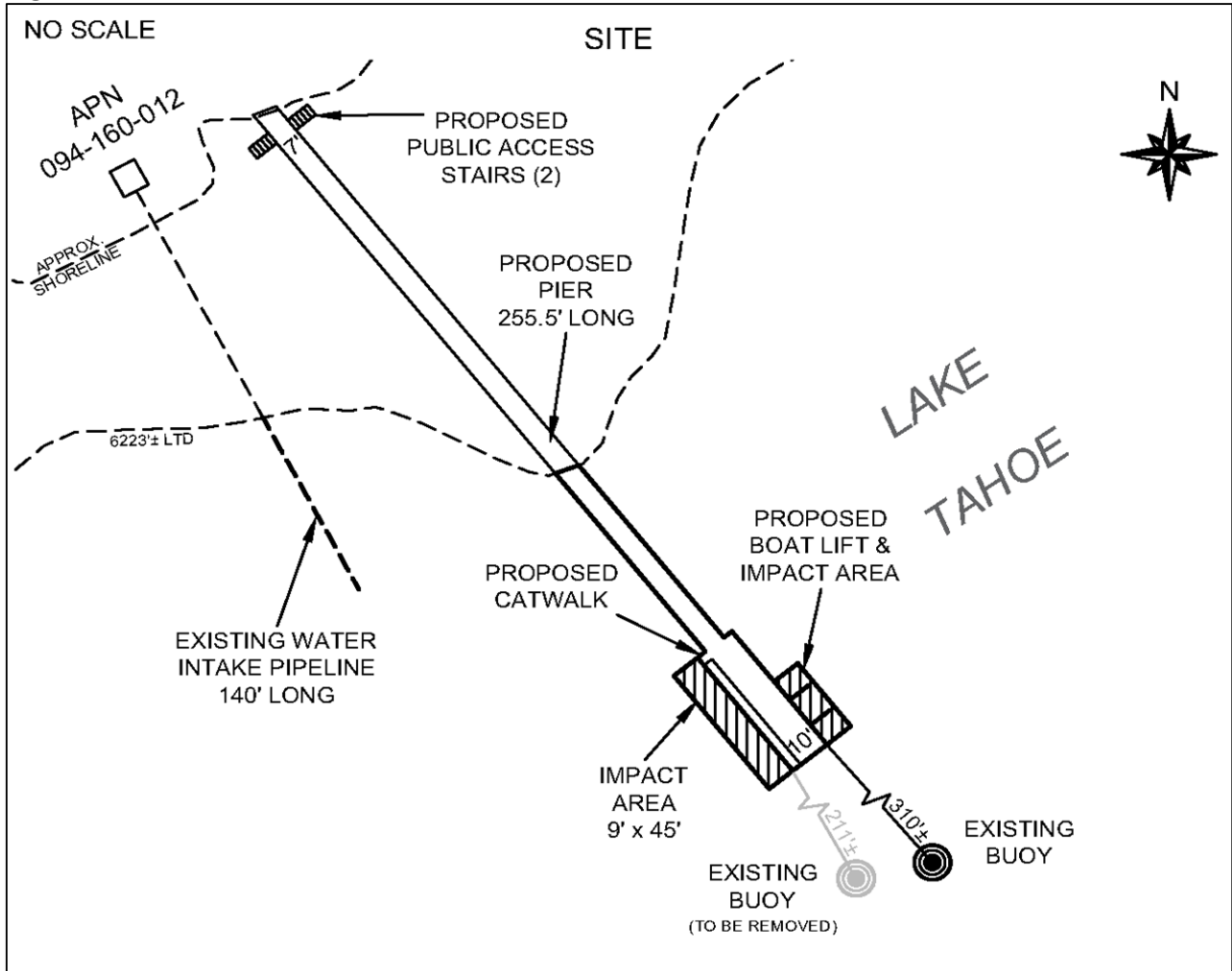
Figure 1. Location



AUTHORIZED USE:

Construction and use of a pier and boat lift; removal of one buoy; and continued use of a freshwater intake pipeline and one buoy (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 August 15, 2024.

CONSIDERATION:

\$1,585 per year, with an annual Consumer Price Index adjustment, and \$209 for the unauthorized occupation of state land for the period prior to August 15, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee 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.
- Lessee acknowledges annual consideration shall be adjusted based on the actual area of improvements as constructed should they vary from the plans submitted.
- Lessee agrees that the public will be allowed to pass underneath the pier and to use the stairs on the landward end to pass over the pier. Lessee will post signs on each side of the pier, to indicate continuous shoreline access to the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum (LTD).
- 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.
- Within 60 days of completing the construction of the 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.

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, section 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 19, 2014, the Commission authorized issuance of a General Lease – Recreational Use to Lowell W. Lash and Terry L. Lash, Trustees of the Lash Family Trust Dated January 16, 2007, for the use of two mooring buoys and a freshwater intake pipeline ([Item 34, June 19, 2014](#)). The lease expired on March 31, 2024. TRPA registration for the two mooring buoys was paid on February 27, 2024 (Registration No. 10596).

The Applicant is now applying for a General Lease – Recreational Use for the construction and use of a pier, installation of a boat lift; removal of one buoy; and continued use of a freshwater intake pipeline and one buoy.

Staff recommends the proposed new lease begin on August 15, 2024. Staff also recommends accepting compensation for the occupation of the two existing mooring buoys and one freshwater intake pipeline, prior to the beginning date of the new lease. The lease provisions regarding indemnity will be extended from April 1, 2024, the day after the previous lease expired, through August 14, 2024, the day preceding the new lease.

On May 9, 2024, TRPA issued a conditional permit No. ERSP 2023-1796 for the proposed construction of a single -parcel pier and the conversion of one existing mooring buoy into a 12,000-pound boat lift. The proposed pier will extend approximately 255.1 feet long with a 3-foot by 30-foot catwalk, gangway, two safety ladders, pilings, and a set of stairways for public easement access. Per the TRPA conditional permit, the Applicant will install a boat lift; however, the authorization is contingent upon the removal of one existing mooring buoy and anchor block, associated with TRPA mooring Identification No. 7031 (TRPA Registration No. 10596). Furthermore, the TRPA conditional permit requires the Applicant to provide underwater photos of the project area indicating the conditions prior to the start of construction and post-construction underwater photos of the same locations of the project area indicating that the existing mooring buoy and anchor were permanently removed.

The Applicant owns the uplands adjoining the lease premises. The subject facilities will be located directly waterward of the upland property, and these facilities occupy a relatively small area of the lake. The proposed pier will have public access stairs on each side within the Public Trust easement. The proposed pier and appurtenant facilities are used for recreational boating. Recreational boating is water-dependent and 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 lands. (Pub. Resources Code, § 6503.5)

The Applicant has obtained an Initial Statement of Diversion with the State Water Resources Control Board for the existing freshwater intake pipeline. The freshwater intake pipeline is not generally associated with traditional Public Trust uses. However, the pipeline has been in place for many years, and occupies a small area of the lakebed. The owners use the pipeline to provide water to the upland property. The pipeline does not interfere with Public Trust activities at this time.

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 dryer 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 application, the Applicant may be required to remove the improvements on 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. **Construction of Pier:** 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)(1).

Removal of Mooring Buoy: 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 Alterations to Land; California Code of Regulations, title 14, section 15304.

Existing Buoy and Freshwater Intake Pipeline: 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 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 15061 and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

- Tahoe Regional Planning Agency
- California Department of Fish and Wildlife

APPROVALS REQUIRED:

- U.S. Army Corps of Engineers
- 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 through the combination of the following exemptions: Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2), Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1), and Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the proposed pier and boat lift and the existing buoy 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; and are consistent with the common law Public Trust Doctrine.
2. Find that the existing and, for a limited period, use of the water intake line is generally not consistent with the Public Trust Doctrine, but the current use does not substantially interfere with Public Trust need and values at this location of the approved term.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 15, 2024, for a term of 10 years, for the construction and use of a pier and boat lift; removal of one buoy; continued use of freshwater intake pipeline and one buoy; annual rent in the amount of \$1,585, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize acceptance of compensation from the Applicant in the amount of \$209 for unauthorized occupation of State land from the period prior to August 15, 2024.

3. 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.