

Staff Report 22

LESSEE:

Robert Wagner, Trustee and Melissa Wagner, Trustee of the Wagner Family Trust dated May 22, 1990 (Lease 7930); Sheldra J. Perry, Trustee of the Sheldra J. Perry Tahoe Residence Trust dated December 27, 2012; and Sheldra Joy Perry, Trustee of the Sheldra Joy Perry Family Trust dated October 19, 2016 (Lease 8381)

APPLICANT:

Allison Wagner Carlson, as Trustee of the Trust fbo Allison Wagner Carlson under the Melissa Wagner 2018 Qualified Personal Residence Trust under agreement dated June 26, 2018; and Allison Wagner Carlson, as Trustee of the Trust fbo Allison Wagner Carlson under the Robert W. Wagner 2018 Qualified Personal Residence Trust under agreement dated June 26, 2018; and Sheldra Joy Perry, Trustee of the Sheldra Joy Perry Family Trust dated October 19, 2016

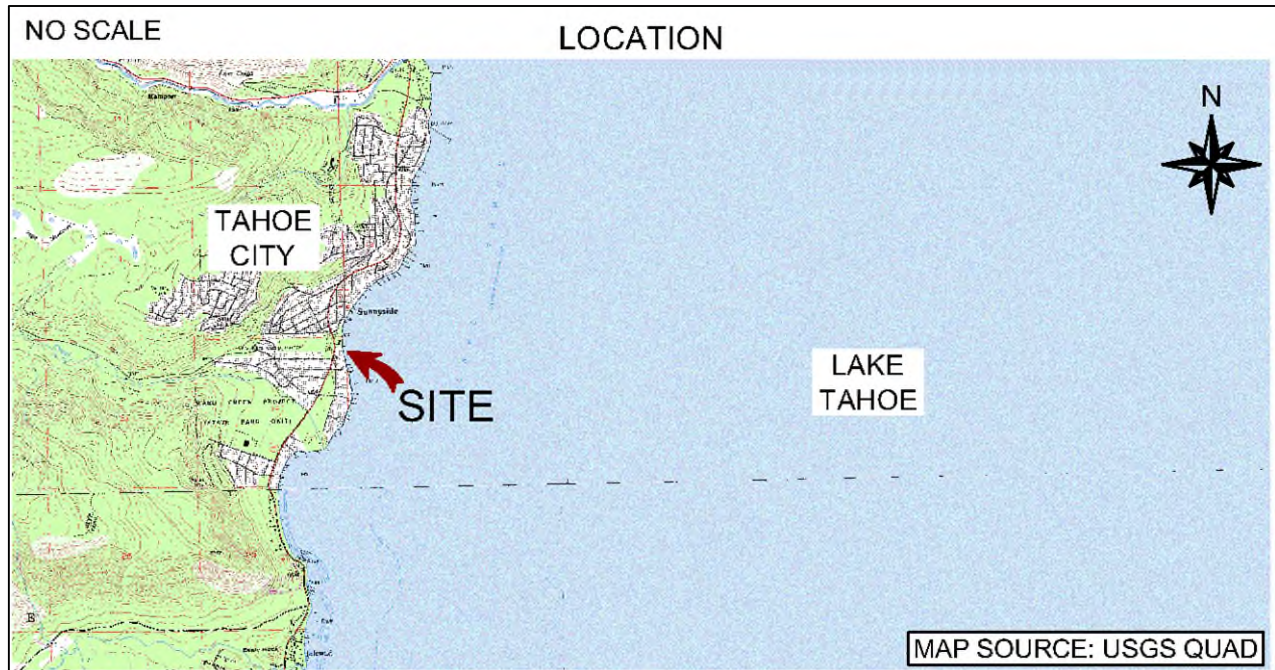
PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed for Lease 7930 and Lease 8381; and Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 1920 West Lake Boulevard and 1950 West Lake Boulevard, near Tahoe City, Placer County (as shown in Figure 1, below).

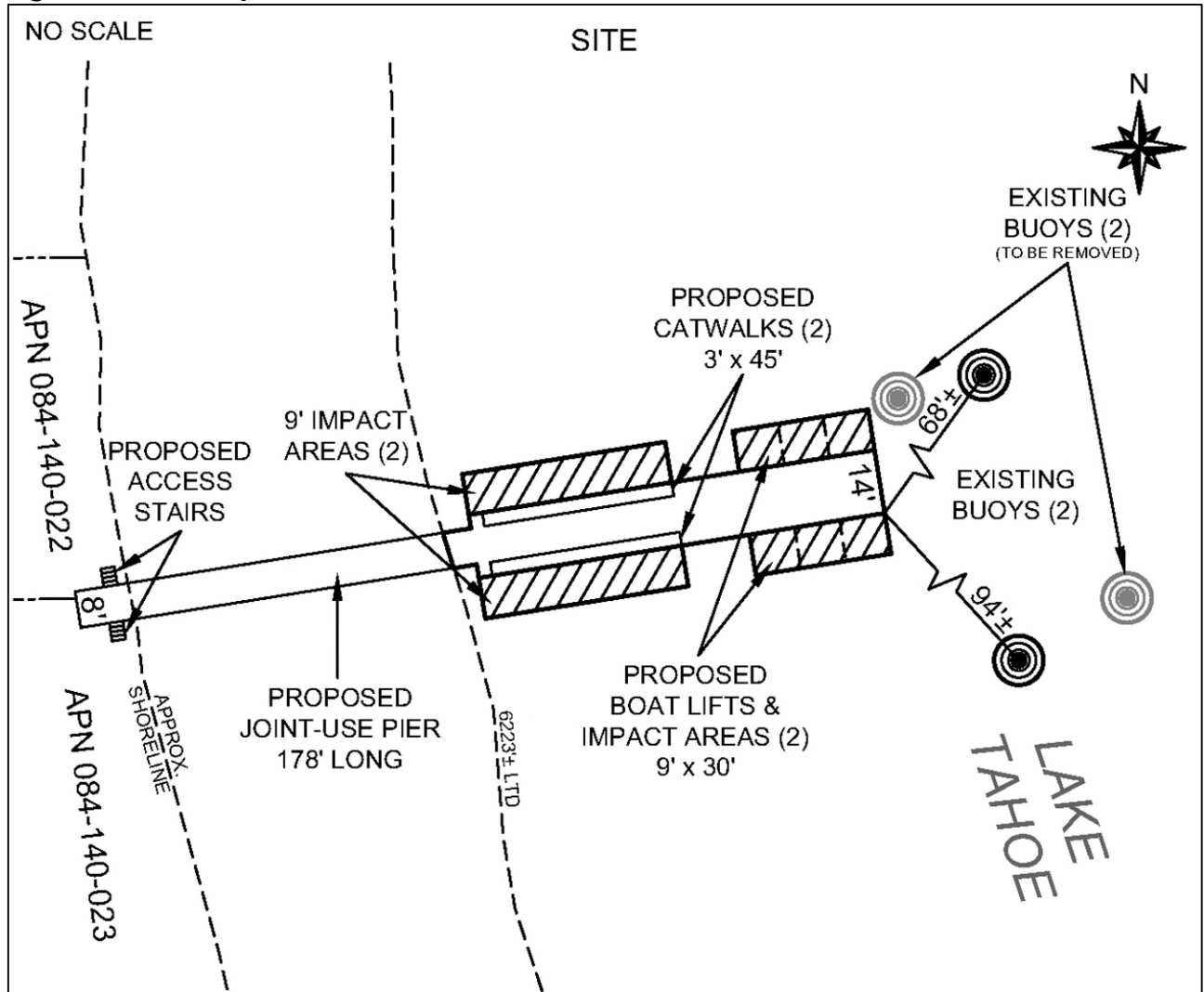
Figure 1. Location



AUTHORIZED USE:

Construction and use of a joint-use pier and two catwalks and removal of two mooring buoys in exchange for installation of two boat lifts; and the continued use of two existing mooring buoys (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 August 15, 2024.

CONSIDERATION:

\$2,409 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 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 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.
- 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).
- 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.

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 June 29, 2015, the Commission authorized a General Lease – Recreational Use, Lease 7930, to Robert Wagner, Trustee and Melissa Wagner, Trustee of the Wagner Family Trust dated May 22, 1990, for the use and maintenance of two existing mooring buoys adjacent to 1950 West Lake Boulevard, near Tahoe City, Placer County ([Item 12, June 29, 2015](#)). This lease expires March 31, 2026.

On July 24, 2018, Lessee transferred 50 percent ownership interest of the upland parcel to Allison Wagner Carlson, as Trustee of The Melissa Wagner 2018 Qualified Personal Residence Trust under agreement June 26, 2018; and the other 50 percent ownership interest to Allison Wagner Carlson, as Trustee of The Robert W. Wagner 2018 Qualified Personal Residence Trust under agreement dated June 26, 2018. On July 20, 2023, Allison Wagner Carlson, as Trustee of The Melissa Wagner 2018 Qualified Personal Residence Trust under agreement June 26, 2018, transferred ownership of the upland parcel to Allison Wagner Carlson, as Trustee of the Trust fbo Allison Wagner Carlson under The Melissa Wagner 2018 Qualified Personal Residence Trust under agreement dated June 26, 2018. On July 20, 2023, Allison Wagner Carlson, as Trustee of The Robert W. Wagner 2018 Qualified Personal Residence Trust under agreement dated June 26, 2018, transferred ownership interest of the upland parcel to Allison Wagner Carlson, as Trustee of the Trust fbo Allison Wagner Carlson under The Robert W. Wagner 2018 Qualified Personal Residence Trust under agreement dated June 26, 2018. The two mooring buoys were registered with TRPA on May 18, 2024 (Registration No. 10983).

On October 24, 2019, the Commission authorized a General Lease – Recreational Use, Lease 8381, to Sheldra J. Perry, Trustee of the Sheldra J. Perry Tahoe Residence Trust dated December 27, 2012; and Sheldra Joy Perry, Trustee of the Sheldra Joy Perry Family Trust dated October 19, 2016, for the use and maintenance of two existing mooring buoys adjacent to 1920 West Lake Boulevard, near Tahoe City, Placer County ([Item 19, October 24, 2019](#)). The two mooring buoys were registered with TRPA on May 20, 2024 (Registration No. 10982). On November 15, 2023, Sheldra J. Perry, Trustee of the Sheldra J. Perry Tahoe Residence Trust dated December 27, 2012, transferred ownership interest of the upland parcel to Sheldra J. Perry. On November 15, 2023, Sheldra J. Perry transferred ownership interest of the upland parcel to Sheldra Joy Perry, trustee of the Sheldra Joy Perry Family Trust dated October 19, 2016. This lease expires October 23, 2029.

The Lessees seek to quitclaim their existing leases, and the Applicant has applied for a General Lease – Recreational Use for the construction and use of a joint-use

pier and two catwalks, and removal of two mooring buoys in exchange for installation of two 12,000-pound capacity boat lifts and use of two existing mooring buoys. The proposed project will be constructed adjacent to 1920 and 1950 West Lake Boulevard, near Tahoe City, Placer County. On April 25, 2024, TRPA issued conditional permit No. ERSP2023-1794 for the proposed construction of a multiple-parcel pier, two catwalks, conversion of two existing mooring buoys to two boat lifts, and authorization of two existing mooring buoys. The anchor blocks associated with the buoys being removed shall be permanently removed from the water. 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 buoys approved for removal and anchors were permanently removed.

Rent under Lease 7930 has been paid through March 31, 2025, and Lease 8381 paid through October 23, 2024. Any rent paid for the existing leases beyond the August 15, 2024, start date for the new lease will be prorated and the remaining balance used to offset a portion of the rent due for the proposed new lease. Rent for the proposed lease will be assessed for the joint-use pier, two boat lifts, and two mooring buoys prior to the construction and installation of the improvements.

The proposed joint-use pier will be approximately 177.8 feet in total length, 8 feet wide by approximately 133.4 feet in length, with a pierhead of 45 feet long by 14 feet wide. Two adjustable catwalks, 30 feet in length and 3 feet in width, and access stairs/ramp will be installed on each side of the pier leading to the adjustable catwalks. The proposed boat lifts will be installed at the end of the pierhead on both sides. The pier will be supported by 24 pilings below the mean high water mark, driven 8 feet or until refusal for all piles associated with 8 feet pier width and driven 8 feet or until refusal for all piles associated with 14 feet pier width using a barge mounted pile driver or amphibious vehicle. Approximately 26 turtle-type lights will be flush mounted along the pier deck. Three safety ladders are proposed.

The pier design will allow for public access both over and under the proposed pier at varying water levels. Access under the pier will be facilitated by a minimum pier height of six feet and an open piling design that allows for easy passage between the pilings. The pier design will also facilitate access over and across the pier via stairways within the Public Trust easement on either side of the pier. To ensure that the public is aware of the public accessway over the pier, the proposed lease will include a provision requiring the Lessee to post signs on the public access stairways

that indicate the public is allowed to use said stairways to cross over the pier. These signs shall be in place at all times and will clearly identify the designated passageway over the pier within the Public Trust easement.

The proposed construction 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, 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 the lake. To the extent practicable, all decking, accessory, and construction materials will be prefabricated and pre-cut. All work performed from the lake via barge or amphibious vessel will use caissons or turbidity curtains as needed during pile driving to protect water quality. All Best Management Practices and construction techniques will be utilized to protect the water body. Spill prevention materials and their plan will be on site during construction.

The project area resides in spawning and marginal fish habitat. All impact to fisheries will be mitigated as required by TRPA. For example, restoration of the disturbed area associated with the pile and mitigation will be the addition of three, 9.0 square feet fish pyramids of clean gravel/cobble similar to the surrounding substrate and will not be placed under the proposed pier.

Construction will take place after all required approvals have been obtained and will occur between October 1 and May 1 to comply with TRPA provisions, 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 Applicant owns the uplands adjoining the lease premises. The subject facilities will be located directly waterward of the upland properties, and these facilities occupy a relatively small area of the lake. The proposed pier, two boat lifts, two catwalks, and two mooring buoys will be 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 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.

Staff recommends acceptance of a Quitclaim Deed for the current leases upon execution of a new lease, and issuance of a General Lease – Recreational Use to the Applicant.

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 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, installation of two boat lifts and two catwalks, and may be required to remove the existing four 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. Acceptance of a quitclaim deed 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

4. **Two Existing Buoys:** 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).

New Multi-Use Pier: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(2).

Removal of Two Buoys: 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.

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:

- California Department of Fish and Wildlife (EPIMS-PLA-48037-R2)
- Tahoe Regional Planning Agency
- Lahontan Regional Water Quality Control Board

APPROVAL REQUIRED:

- U.S. Army Corps of Engineers

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)(2); and Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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 a Lease Quitclaim Deed for Lease 7930 and Lease 8381, effective August 14, 2024.
2. 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 joint-use pier, installation of two boat lifts and two catwalks, removal of two mooring buoys, and use of two existing mooring buoys; with annual rent in the amount of \$2,409 per year, with an annual Consumer Price Index adjustment, effective August 15, 2024; liability insurance in an amount no less than \$1,000,000 per occurrence.
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.