

Staff Report 18

LESSEE:

U.S. Trust Company, N.A. and Ute W. Zapf, Co-Trustees of the QTIP Trust under the Zapf Family Revocable Trust Agreement dated May 5, 1993; and Ute W. Zapf, as Trustee of The Ute W. Zapf Qualified Personal Residence Trust dated November 29, 2012

APPLICANT:

Ute W. Zapf, as Trustee of the QTIP Trust under the Zapf Family Revocable Trust Agreement dated May 5, 1993; Dietmar C. Zapf; and Antje Colby

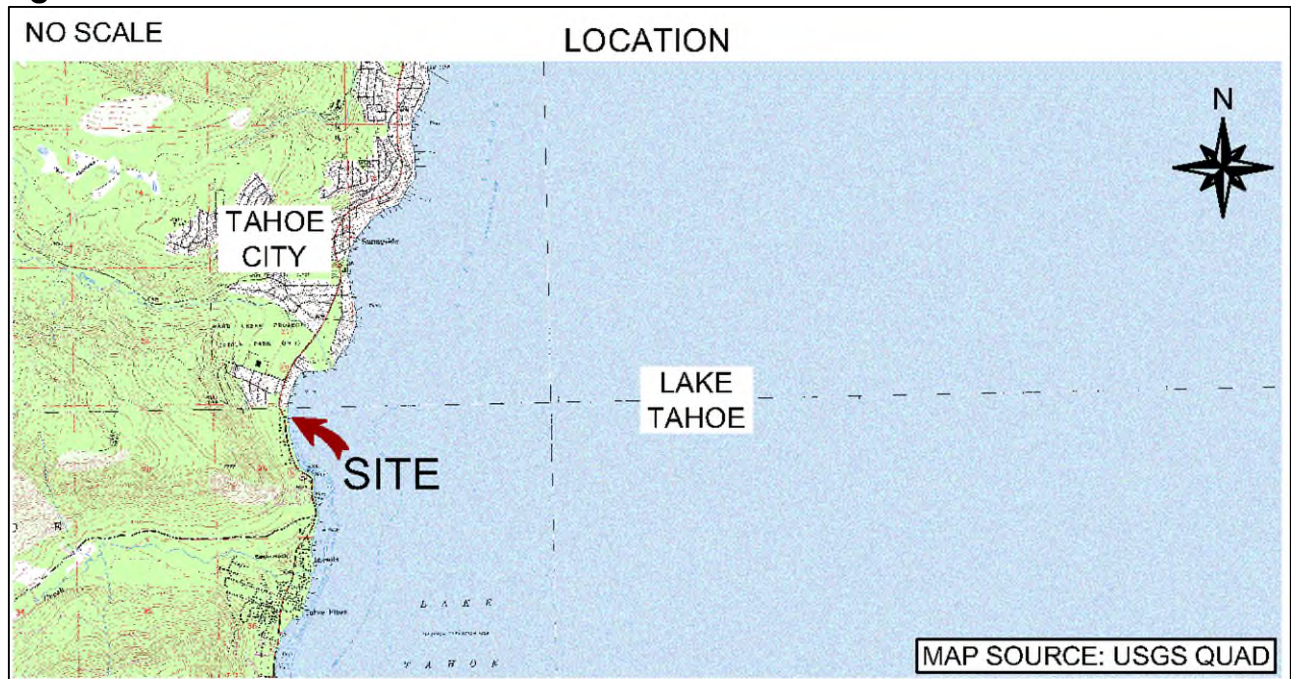
PROPOSED ACTION:

Acceptance of a Lease Quitclaim Deed and Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 2770 West Lake Boulevard, near Tahoe City, Placer County (as shown in Figure 1, below).

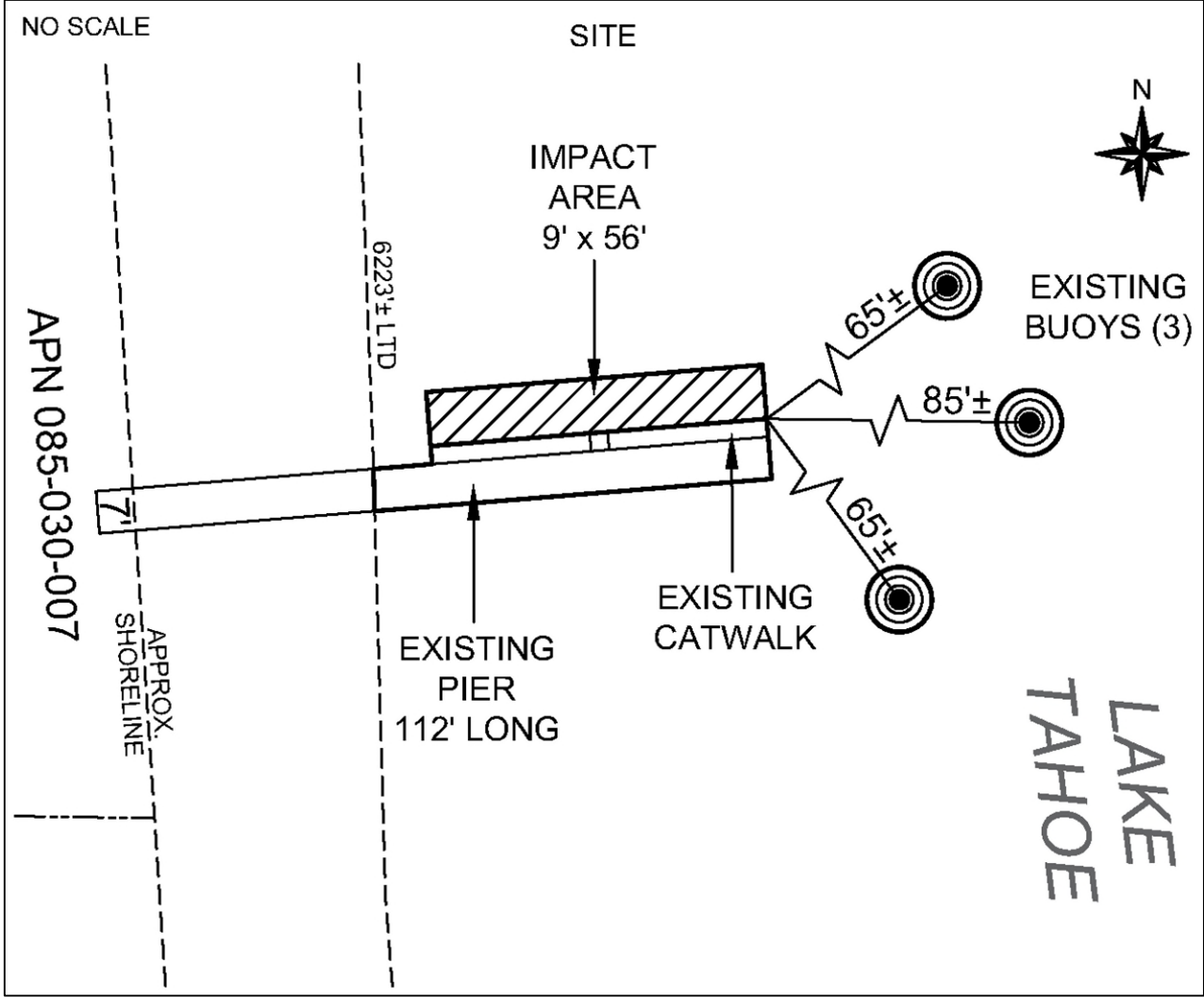
Figure 1. Location



AUTHORIZED USE:

Use of an existing pier, two buoys previously authorized by the Commission; and one existing mooring buoy not previously authorized by the Commission (as shown in Figure 2, below).

Figure 2. Site



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 2, 2025.

CONSIDERATION:

\$1,603 per year, with an annual Consumer Price Index adjustment; and \$1,370 for the unauthorized occupation of State land for the period prior to April 2, 2025.

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 the lease.
- Lessee shall not store any personal items or construct any improvements in the Public Trust Easement that may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses.
- 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).

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 October 16, 2015, the Commission authorized the issuance of a General Lease – Recreational Use to U.S. Trust Company, N.A. and Ute W. Zapf, Co-Trustees of the QTIP Trust Under The Zapf Family Revocable Trust Agreement dated May 5, 1993; and Ute W. Zapf, as Trustee of The Ute W. Zapf Qualified Personal Residence Trust dated November 29, 2012, for the continued use and maintenance of an existing pier and two mooring buoys ([Item 15, October 16, 2015](#)). That lease expires on September 18, 2025.

On May 30, 2018, U.S. Trust Company, N.A. was removed as Co-trustee of the QTIP Trust under the Zapf Family Revocable Trust Agreement dated May 5, 1993.

On February 9, 2021, partial ownership was gifted from Ute W. Zapf, Trustee of the Ute W. Zapf Qualified Personal Residence Trust dated November 29, 2012, to her two children Dietmar Zapf and Antje Colby, dissolving the Ute W. Zapf Qualified Personal Residence Trust dated November 29, 2012. The Commission was not

notified of the change in ownership nor was an assignment of lease sought; however, the beneficial interest in the infrastructure is still held by the same Trust.

Staff was recently made aware of the existence of a third mooring buoy adjacent to 2770 West Lake Boulevard. This buoy is registered with TRPA (Registration No. 11371) and has existed on Lake Tahoe for many years.

In order to have the third existing mooring buoy under lease, the prior lessee has provided a quitclaim for the existing lease, and the Applicant is now applying for a General Lease – Recreational Use for an existing pier, two mooring buoys previously authorized by the Commission; and one existing mooring buoy not previously authorized by the Commission. Staff recommends acceptance of a lease quitclaim deed from the Lessee and issuance of a new lease to the Applicant, with a beginning date of April 2, 2025.

Accounting records show annual rent for the pier and two mooring buoys were paid through September 18, 2025; therefore, the prorated rent will be applied as a credit to future rent.

Staff recommends that the Commission accept compensation in the amount of \$1,542 for the unauthorized third mooring buoy for the period prior to April 2, 2025. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

The subject pier and three 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 subject 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. TRPA registered the three buoys on August 12, 2024 (Registration No. 11371).

The subject pier is built on pilings with the area immediately upland of the pier being flat with sand along the shoreline. The immediate upland topography is easily traversable, and public access for pedestrians and lake-related activities is available by passing over the pier within the Public Trust easement. The proposed lease includes a provision requiring that the Applicant post signs on each side of the pier to identify the designated public passageway within the Public Trust

Easement. These signs are required to be in place at all times and will ensure that the public is aware of the designated passageway.

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 believe 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 as prior lessee may be required to remove the unauthorized mooring buoy. 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 the 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. Staff recommend 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 15061.

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 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. Accept a lease quitclaim deed from the Lessee for Lease 4456
2. Accept compensation from the Applicant for the unauthorized occupation of State land for an unauthorized mooring buoy in the amount of \$1,542 for the period prior to April 2, 2025
3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 2, 2025, for a term of 10 years, for the use of an existing pier and three mooring buoys; annual rent in the amount of \$1,603, with an annual

Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.