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STAFF REPORT

Date: November 27, 2019

To: TRPA Hearings Officer

From: TRPA Staff

Subject: Jordan New Single-Use Pier, 789 Fallen Leaf Road, El Dorado County, California; Assessor's Parcel No: 021-321-23; TRPA File No: ERSP2019-0654

Requested Action:

Hearings Officer action on the proposed project, and related findings based on this Staff Summary and the Draft Permit (Attachment A).

Summary and Staff Recommendation:

The project proposes a new single-use pier serving the residence located at 789 Fallen Leaf Road at Fallen Leaf Lake, California. TRPA Code section 2.2.2F.2 requires new shorezone structures (except those identified for Governing Board review) to undergo Hearings Officer review and approval. The proposed pier is 60 feet in length, 10 feet in width at the pier head. Staff recommends that the Hearings Officer make the required findings and approve the proposed project.

Project Description/Background:

The proposed project is for a new single-use pier to serve the residence at 789 Fallen Leaf Road. The property contains one single family dwelling. The TRPA Shoreline Plan and corresponding code amendments, adopted by the TRPA Governing Board in October of 2018, allow for new shorezone structures on lakes in the Lake Tahoe region including Fallen Leaf Lake. The location, design, and construction standards set forth in the code for these structures are used as *guidelines* when applied to piers on lakes other than Lake Tahoe. As such, the review of the proposed pier considered compatibility with existing, surrounding piers, distance from property line projection setbacks, and design standards for pier and catwalk width.

The proposed project is located within the South Fallen Leaf Plan Area Statement (PAS 145) where piers are an allowed use. The proposed pier is 60 feet in length, 10 feet in width at the pier head. The proposed pier is compatible with the neighborhood and surrounding shorezone structures. The proposed pier is comparable in length, width, and overall size to those of the neighboring properties. The piers to the south and northeast of the subject property are 35 and 60 feet in length, respectively. There are additional shorezone structures in the vicinity that run parallel to the shoreline (e.g. bathhouses and docks).

Issues:

A. Scenic Quality:

The subject property is located on Fallen Leaf Lake's east side, in an area with existing upland and shorezone development. TRPA's scenic thresholds, visual magnitude system, and allowable visible mass for piers are applied as guidelines and not regulations at Fallen Leaf Lake. However, Fallen Leaf Lake Campground is a TRPA-designated recreation resource with high quality scenic viewpoints towards various areas of the lake. The new pier will not degrade the scenic quality from the Fallen Leaf Lake Campground as the property is located amongst several surrounding properties that are developed with single-family residences and various shorezone structures including piers and boathouses. The upland residence located at 789 Fallen Leaf Road sits relatively close to the shoreline of Fallen Leaf Lake. As such, the additional 88 square feet created by the new pier will be mitigated by planting two Aspen trees on the lakeside of the house in front of the rock columns.

Staff Analysis:

A. Setbacks:

TRPA Code, Sections 84.4.3.B.2.f and g require that new piers comply with a 20-foot projection line setback from the property line projection boundary and a minimum of 40 feet from other piers as measured from the pierhead. The proposed pier sits 57 feet 4 inches south of the northerly projection line boundary and 35 feet 2 inches north of the southerly projection line boundary. The proposed pier is at least 40 feet from neighboring piers and shorezone structures. The codified origination point from which projection lines are typically taken from, the low water line, does not apply to Fallen Leaf Lake as the low water line is not mapped for the lake. Therefore, the projection lines are taken from where the upland property line meets the approximate mapped high water line for Fallen Leaf Lake which is 6,274.5 feet.

B. Shoreline Review Committee:

TRPA facilitates monthly Shoreline Review Committee (SRC) meetings for agencies with permitting jurisdiction along the shoreline and within Lake Tahoe to coordinate the permitting of projects. The subject project was reviewed and discussed at SRC on August 15, 2019. California State Lands Commission (CSLC) has not established the Low Water Line in Fallen Leaf Lake and therefore the project does not need to come under lease with the CSLC. The U.S. Army Corps of Engineers and the Lahontan Regional Water Quality Control Board have not received applications for the proposed project and therefore provided no comments on the project.

C. Environmental Review:

The applicant completed an Initial Environmental Checklist (IEC) to assess the potential environmental impacts of the project. No significant long-term environmental impacts were identified because the proposed pier complies with the existing Code. The IEC is provided as Attachment D.

D. Public Comment:

Property owners within 300 feet of the subject site were provided notice of the proposed project.

E. Regional Plan Compliance:

The proposed project is consistent with the Goal and Policies of the Regional Plan, Shorezone Subelement, in that it complies with the design standards and includes mitigation to ensure no negative impacts to the environmental thresholds.

Required Actions:

In order to approve the proposed project, the Hearings Officer must make the following motions, based on the staff report and evidence in the record:

- 1) A motion to approve the required findings, including a finding of no significant effect; and
- 2) A motion to approve the proposed project subject to the conditions in the draft permit (see Attachment B).

Contact Information:

For questions regarding this agenda item, please contact Tiffany Good, Principal Planner, at (775) 589-5283 or tgood@trpa.org.

Attachments:

- A. Required Findings/Rationale
- B. Draft Permit
- C. Site Plans & Elevations
- D. Initial Environmental Checklist

Attachment A

Required Findings/Rationale

Attachment A

Required Findings/Rationale Jordan New Single-Use Pier at Fallen Leaf Lake

Required Findings: The following is a list of the required findings as set forth in Chapter 4, 80, 82, and 84 of the TRPA Code of Ordinances. Following each finding, Agency staff has indicated if there is sufficient evidence contained in the record to make the applicable findings or has briefly summarized the evidence on which the finding can be made.

1. Chapter 4 – Required Findings:

- (a) The project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code and other TRPA plans and programs.

Based on the information provided in this staff report, the project application, the Initial Environmental Checklist (IEC), and Article V(g) Findings Checklist, there is sufficient evidence demonstrating that the proposed project is consistent with and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, the Code and other TRPA plans and programs.

- (b) The project will not cause the environmental threshold carrying capacities to be exceeded.

TRPA staff has completed the “Article V(g) Findings” in accordance with Chapter 4, Subsection 4.3 of the TRPA Code of Ordinances. All responses contained on said checklist indicate compliance with the environmental threshold carrying capacities. Also, the applicant has completed an IEC. No significant environmental impacts were identified and staff has concluded that the project will not have a significant effect on the environment. A copy of the completed V(g) Findings are available at TRPA and will be made available at the Governing Board hearing.

- (c) Wherever federal, state or local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V(g) of the TPRA Compact, the project meets or exceeds such standards.

TRPA is requiring that all potential environmental effects be mitigated through Best Management Practices, including the use of turbidity curtains during construction. The applicant is also required to obtain separate approval for the project from agencies which have jurisdiction over Fallen Leaf Lake, which may include the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, California State Lands Commission, and El Dorado County to ensure the project will meet or exceed all federal, state, or local standards. As a result, upon completion of construction, the project should have no impact upon air or water quality standards.

2. Chapter 80 – Shorezone Findings:

- (a) Significant Harm: The project will not adversely impact littoral processes, fish spawning habitat, backshore stability, or on-shore wildlife habitat, including waterfowl nesting areas.

There is no evidence in the project file that indicates the proposed project will adversely impact littoral processes (the pier will be constructed on pilings to allow for the free flow of water), fish habitat (as conditioned), backshore stability, or on-shore wildlife habitat, including waterfowl nesting areas. The site is mapped as suitable habitat for the Sierra Nevada yellow-legged frog. The proposed pier will not have an additional, adverse impact on suitable Sierra Nevada yellow-legged frog because the shorezone and upland areas in the immediate vicinity are already developed.

- (b) Accessory Facilities: There are sufficient accessory facilities to accommodate the project.

The proposed pier will be accessory to the primary upland residential use located at 789 Fallen Leaf Road.

- (c) Compatibility: The project is compatible with existing shorezone and lakezone uses or structures on, or in the immediate vicinity of, the littoral parcel; or that modifications of such existing uses or structures will be undertaken to assure compatibility.

There are a number of private single-use piers in the immediate vicinity of the subject site. There is no pierhead line limiting pier length at Fallen Leaf Lake. However, the proposed pier will be compatible with the neighboring piers' length and width. There are no accessory structures proposed with the pier.

- (d) Use: The use proposed in the foreshore or nearshore is water dependent.

The pier is located in the shorezone of Fallen Leaf Lake and is therefore a water dependent structure.

- (e) Hazardous Materials: Measures will be taken to prevent spills or discharges of hazardous materials.

This approval prohibits the use of spray painting and the use of tributyltin (TBT). In addition, the special conditions of approval prohibit the discharge of petroleum products, construction waste and litter or earthen materials to the surface waters of Lake Tahoe. All surplus construction waste materials shall be removed from the project and deposited only at TRPA approved points of disposal. No containers of fuel, paint, or other hazardous materials may be stored on the pier or shoreline.

- (f) Construction: Construction and access techniques will be used to minimize disturbance to the ground and vegetation.

The project area will be accessed primarily by water with an amphibious barge. The barge and pier materials will be hauled by truck to the Fallen Leaf marina, then

transported and mobilized lakeward of the project site. The proposed pier would be constructed from this same barge. The materials and supplies will be stored on the barge during construction and placed onto the new pier. Any upland access required (other than day use access for workers) would be fitted with temporary Best Management Practices (BMPs). The Draft Permit (Attachment B) includes conditions to ensure construction and access techniques will be used to minimize disturbance to the ground and vegetation.

- (g) Navigation and Safety: The project will not adversely impact navigation or create a threat to public safety as determined by those agencies with jurisdiction over a lake's navigable waters.

The proposed pier will not extend beyond the neighboring piers for the purpose of protecting navigation and safety. The project was taken to the Shoreline Review Committee on August 15, 2019, which includes agencies with jurisdiction over the lake's navigable waters and no concerns were raised.

- (h) Other Agency Comments: TRPA has solicited comments from those public agencies having jurisdiction over the nearshore and foreshore and all such comments received were considered by TRPA, prior to action being taken on the project.

The subject project was reviewed and discussed at the Shoreline Review Committee on August 15, 2019. California State Lands Commission has not established the Low Water Line in Fallen Leaf Lake and therefore the project does not need to come under lease with the CSLC. The U.S. Army Corps of Engineers and the Lahontan Regional Water Quality Control Board have not received applications for the proposed project and therefore provided no comments on the project.

3. Chapter 83 Shorezone Tolerance Districts and Development Standards:

- (a) Permitted development or continued use may be conditioned upon installation and maintenance of vegetation to stabilize backshore areas and protect eroding areas from further destruction

The proposed project is located in Shorezone Tolerance District 2. The pier will be accessed by an existing stepping stone path and existing stone steps, ensuring that access will remain on existing stabilized areas and prevent further erosion. There is also an existing rock retaining wall that contributes to the stabilization of the backshore area between the residence and the shoreline. Additionally, there are existing trees and established shrubs in the backshore area that serve as slope stabilization and shall not be removed as a part of this project.

- (b) Projects shall not be permitted in the backshore unless TRPA finds that such project is unlikely to accelerate or initiate backshore erosion.

The existing access to the shoreline where the pier will sit is stabilized with stepping stones and stairs, an existing rock retaining wall, and existing vegetation which will remain in place. As such backshore erosion will not be initiated or accelerated.

- (c) Access to the shoreline shall be restricted to stabilized access ways which minimize the impact to the backshore.

The pier will be constructed entirely from an amphibious barge, from the lake. Access to the project area from the upland is prohibited, and construction staging of equipment and material will not occur anywhere on the shoreline or on the upland portion of the property.

Attachment B

Draft Permit

**Attachment B
Draft Conditional Permit**

PROJECT DESCRIPTION: New Pier at Fallen Leaf Lake
APN: 021-321-23
PERMITTEE: Phillip and Sheila Jordan FILE #: ERSP2019-0654
COUNTY/LOCATION: El Dorado/ 789 Fallen Leaf Road

Having made the findings required by Agency ordinances and rules, the TRPA Hearings Officer approved the project on **November 14, 2019**, subject to the standard conditions of approval attached hereto (Attachments Q and S) and the special conditions found in this permit.

This permit shall expire on **November 14, 2022**, without further notice unless the construction has commenced prior to this date and diligently pursued thereafter. Commencement of construction consists of pouring concrete for a foundation and does not include grading, installation of utilities or landscaping. Diligent pursuit is defined as completion of the project within the approved construction schedule. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action which delayed or rendered impossible the diligent pursuit of the permit.

NO DEMOLITION, CONSTRUCTION OR GRADING SHALL COMMENCE UNTIL:

- (1) TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE(S) HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT;
- (2) ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA'S ACKNOWLEDGEMENT OF THIS PERMIT;
- (3) THE PERMITTEE OBTAINS APPROPRIATE COUNTY PERMIT. TRPA'S ACKNOWLEDGEMENT MAY BE NECESSARY TO OBTAIN A COUNTY PERMIT. THE COUNTY PERMIT AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPIRATION DATES AND RULES REGARDING EXTENSIONS; AND
- (4) A TRPA PRE-GRADING INSPECTION HAS BEEN CONDUCTED WITH THE PROPERTY OWNER AND/OR THE CONTRACTOR.

TRPA Executive Director/Designee

Date

PERMITTEES' ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents' and employees' compliance with the permit conditions. I also understand that if the property is sold, I remain liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Signature of Permittee(s) _____ Date _____

(PERMIT CONTINUED ON NEXT PAGE)

APN 021-321-23
FILE NO. ERSP2019-0654

Project Security Posted (1): Amount \$ _____ Type Paid _____ Receipt No. _____

Security Administrative Fee (2): Amount \$ _____ Paid _____ Receipt No. _____

Shorezone Mitigation Fee (3): Amount \$ 2,130 Type Paid _____ Receipt No. _____

Notes:

(1) Amount to be determined. See Special Condition 3.F, below.

(2) \$200

(3) See Special Condition 3.G, below.

Required plans determined to be in conformance with approval: Date: _____

TRPA ACKNOWLEDGEMENT: The Permittee has complied with all pre-construction conditions of approval as of this date and is eligible for a county building permit:

TRPA Executive Director/Designee

Date

SPECIAL CONDITIONS

1. This permit authorizes a new single-use pier to serve the residence at 789 Fallen Leaf Road, at Fallen Leaf Lake. The proposed pier is 60 feet in length and 10 feet in width at the pier head. The pier does not include any accessory structures. The proposed pier is compatible with the neighborhood and surrounding shorezone structures. The proposed pier is comparable in length, width, and overall size to those of the neighboring properties. No modification or expansion of any additional shorezone structures or additional disturbance outside of the scope of this permit is approved as a result of this permit. Any periodic maintenance may require further review and approval by TRPA. No new or additional buoys, boatlifts, slips or any other shorezone structure are approved as a result of this permit.
2. The Standard Conditions of Approval listed in Attachment S shall apply to this permit.
3. Prior to permit acknowledgement, the following conditions of approval must be satisfied:
 - A. The plan sheet titled "Pier Plan" shall be revised to include the following:

1. Delineate any necessary access to the project area from the upland portion of the properties; include the location of temporary BMPs if necessary.
 2. Delineate the location of the turbidity curtain and include allowance for amphibious vehicle/barge access to the project area.
 3. Include a plan notation indicating that there will be no staging activity on the shoreline, and that all access associated with pier construction activities shall occur from the lake by barge; and that delivery and staging of all construction equipment and materials shall occur on the barge.
 4. Add a note stating no containers of fuel, paint, or other hazardous materials may be stored on the pier or shoreline.
 5. Include a plan notation that indicates pile driving operations and other piling installation methods (i.e. pinning, etc.) shall require the installation of caissons for turbidity control **upon the discretion of the TRPA inspector upon a pre-grade inspection**. A floating fine mesh fabric screen or other material approved by TRPA shall be installed underneath the pier decking to capture any fallen materials during pier demolition and reconstruction. The floating screen and caissons may be removed upon project completion and after a satisfactory inspection by TRPA to ensure that all suspended materials have settled.
 6. A notation that no new buoys are authorized as a part of this pier modification project.
- B. The Permittee shall provide a site plan with a coverage table which matches that of the DOAC, TRPA file number LCAP2007-0424. Per TRPA file number LCAP2007-0424, the parcel size in LCD 1b/backshore is 1,420 square feet, with an allowable coverage of 14 square feet. Provide accurate, proposed coverage for the minimum necessary for access from the upland to the pier. Any coverage that exceeds 14 square feet shall be transferred in accordance with TRPA Code Section 85.5.4.
- C. The Permittee shall submit a projected construction completion schedule to TRPA prior to acknowledgment. Said schedule shall include completion dates for each item of construction.
- D. This permit acknowledges the past BMP certificate issued for APN 021-321-23 (BMP Certificate #15205). All Best Management Practices shall be maintained in perpetuity to ensure effectiveness which may require BMPs to be periodically reinstalled or replaced. BMPs may be inspected by the TRPA inspector prior to the return of the project security for conformance with TRPA BMP requirements.
- E. The Permittee shall provide a Spill Prevention Plan for the use of any hazardous materials or equipment (i.e., fuel, epoxy glue, other volatile substances, welding and torch equipment, etc.), for construction activities occurring from a barge and/or amphibious vehicle and within the lake. The Plan shall require absorbent sheets/pads to

be retained on the barge at all times. A contact list of all emergency response agencies shall be available at the project site at all times during construction.

- F. The project security required under Standard Condition A.3 of Attachment S shall be \$5,000. Please see Attachment J, Security Procedures, for appropriate methods of posting the security and for calculation of the required security administration fee. This security shall not be released until all conditions of the permit have been satisfied.
 - G. Pursuant to Section 10.8.5.E.4.a.i of the TRPA Rules of Procedure, the permittee shall submit a shorezone mitigation fee of \$3,600 for the construction of a new pier, 60 feet in length (assessed at \$60.00 per linear foot).
 - H. The Permittee shall provide three (3) sets of final construction drawings and site plans for TRPA Acknowledgement.
4. To the maximum extent allowable by law, the Permittee agrees to indemnify, defend, and hold harmless TRPA, its Governing Board, its Planning Commission, its agents, and its employees (collectively, TRPA) from and against any and all suits, losses, damages, injuries, liabilities, and claims by any person (a) for any injury (including death) or damage to person or property or (b) to set aside, attack, void, modify, amend, or annul any actions of TRPA. The foregoing indemnity obligation applies, without limitation, to any and all suits, losses, damages, injuries, liabilities, and claims by any person from any cause whatsoever arising out of or in connection with either directly or indirectly, and in whole or in part (1) the processing, conditioning, issuance, or implementation of this permit; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation, or operation of any improvements, regardless of whether the actions or omissions are alleged to be caused by TRPA or Permittee.
- Included within the Permittee's indemnity obligation set forth herein, the Permittee agrees to pay all fees of TRPA's attorneys and all other costs and expenses of defenses as they are incurred, including reimbursement of TRPA as necessary for any and all costs and/or fees incurred by TRPA for actions arising directly or indirectly from issuance or implementation of this permit. TRPA will have the sole and exclusive control (including the right to be represented by attorneys of TRPA's choosing) over the defense of any claims against TRPA and over this settlement, compromise or other disposition. Permittee shall also pay all costs, including attorneys' fees, incurred by TRPA to enforce this indemnification agreement. If any judgment is rendered against TRPA in any action subject to this indemnification, the Permittee shall, at its expense, satisfy and discharge the same.
- 5. It is the Permittee's responsibility to receive authorization, and obtain any necessary permits from other responsible agencies for the proposed project.
 - 6. No pier construction shall occur between May 1 and October 1 (spawning season) unless prior approval is obtained from the California Department of Fish and Wildlife, the U.S. Army Corps of Engineers, or the U.S. Fish and Wildlife Service.
 - 7. Disturbance of lake bed materials shall be the minimum necessary. Gravel, cobble, or small boulders shall not be disturbed or removed to leave exposed sandy areas before, during, or after construction.

8. Best practical control technology shall be employed to prevent earthen materials to be re-suspended as a result of construction activities and from being transported to adjacent lake waters.
9. The discharge of petroleum products, construction waste and litter (including sawdust), or earthen materials to the surface waters of the Lake Tahoe Basin is prohibited. All surplus construction waste materials shall be removed from the project and deposited only at approved points of disposal.
10. Any normal construction activity creating noise in excess of the TRPA noise standards shall be considered exempt from said standards provided all such work is conducted between the hours of 8:00 A.M. and 6:30 P.M.

END OF PERMIT

Attachment C

Site Plans & Elevations

Attachment D

Initial Environmental Checklist