



TAHOE LAKEFRONT
OWNERS' ASSOCIATION

September 12, 2018

Mr. Charlie Donohue
Nevada Division of State Lands
901 S. Stewart Street, Suite 5003
Carson City, Nevada 89701

Re: Proposed Fees for the Use of State Lands

Dear Mr. Donohue:

The Tahoe Lakefront Owners' Association (TLOA) appreciates the opportunity to provide comments to the proposed regulation amending fees charged for recreational piers, buoys, boat hoists, boat houses, boat ramps, boat slips, and other shorezone improvements.

In 2017, TLOA met with you and your staff to discuss the fee increase, and provide you with appraisal information pertaining to similar processes in the State of California. Since California borders Nevada and shares navigable water, we felt this information was extremely pertinent to the Nevada statute and had been supported by TLOA and the California State Lands Commission staff a few months earlier at their Commission hearing.

Since 1993, and prior to the adoption of SB 512, TLOA believes it was the legislative intent to collect fees for the application and administration of the program for recreational structures occupying sovereign land of the state. Since NRS 322.100 has required the fees be based on fair market value since 1993, it makes sense that the current rates were reflective of that mandate at the time they were set. It also seems fair to make adjustments based on average CPI. This is what TLOA is recommending.

With SB 512, which was agency-initiated, the legislators heard that staff wanted to take over setting and adjusting the fees through a regulatory approach, but at no time was the legislature informed of staff's determination to completely change the focus of the fee structure and create a scheme whereby the fees would be raised exponentially (approximately 1900% for piers, 900% for buoys). Had the Legislature, TLOA, and your permittees realized what was being changed, we assure you there would have been robust discussion during the legislative process. Having listened to the proceedings, it is clear our legislators were misled, and lakefront owners were not informed of what was at stake.

Box 7073

Tahoe City,

CA 96145

PH (530) 583-5253

FX (530) 583-0401

www.tloa.net

In fact, the gratuitous nature of Section 4 of the NDSL proposed fee program seems completely out of place since NDSL staff indicated the current funding levels were not adequate to administer the permitting program. It was clearly the main discussion topic at legislative committee hearings prior to adoption. TLOA suggests that if the application process and program administration costs are exceeding current funding levels, surely there should be careful consideration and analysis of budget needs to ensure adequate application fees are charged. Before we begin to promote funding for Lake Tahoe using pier and buoy fees from all permittees, not just those at Lake Tahoe, the NDSL staff should first provide actual data as to their costs and operation budget for both permitting and administration of the program.

The NDSL staff hosted two workshops within a week of each other in November, 2017. Neither was very well attended, and comments received felt the staff's proposal which was based on less-than-adequate data was outrageous and opposed by the majority who attended. As a result of comments, NDSL staff hired an appraiser for what TLOA assumed was to be an independent and thoughtful review, however, what resulted was anything but proper analysis. The method and analysis should have been based on supportable assumptions and demonstrated facts, but it was not. The NDSL staff and the appraiser ignored TLOA's comprehensive data provided months earlier, ignored California entirely, and failed to reconcile the concepts of the value of submerged land. Because the NDSL (Johnson) appraisal was so egregious, we are providing a professional Review on that specific document under separate cover.

In examining the Johnson report, TLOA was stunned by the suggestion that the pier value to the upland should benefit the State of Nevada. In his rush to give NDSL the answer they were looking for, the appraiser failed to consider the value of a pier at Lake Tahoe. Since new piers have been prohibited by protracted moratoria for several decades, there is an inflated value based on this prohibition. In the coming weeks, a program to allow new piers at Lake Tahoe is expected to be adopted, with implementation beginning in 2019. This release of new pier allocations will certainly affect the "value" as determined by the appraiser. The appraiser incorrectly focused on the value of the pier/buoy to the upland property rather than on the value of submerged land. If you are charged with looking at the fair market value of the use of state land, it must be the value of the submerged land owned by the state, not upland property privately owned and for which taxes are already paid.

More importantly, is the value of a pier to the upland property. What is entirely lost on the appraiser and NDSL is the value of a pier at Lake Tahoe. The majority of the value of a pier is by it extending beyond the high water mark. The area between high and low water is *private* property and this is where the bulk of the value occurs. Nominally, any added value for deeper water as the pier extends onto state land is ancillary. Again, it is the value of the submerged land that is being used, and cannot be based on the value of private property as your appraiser incorrectly assumes. Our professional Appraisal Review will address this topic in greater detail. TLOA believes that NDSL should in no way rely on the Johnson appraisal

Under the authority granted by SB 512, the Registrar must determine fees to be reasonable and based upon the fair market value of the use. Certainly, this would entail a comprehensive review of that use, and at least consider the seasonal nature of that use at Lake Tahoe. The boating season at the lake is roughly four (4) months in duration, and the structures being charged fees offer recreational boating access. Most of the data relied upon in NDSL's initial review were based on *Leases* by other states, and not fees. Most of the lease fees were minimal, and in the case of the state of Washington, no annual

fees were required (even though NDSL staff made assertions to the contrary during our meeting) making Nevada's proposed fees some of the highest in the Western United States.

It is interesting to note that NRS 322.140 allows the complete waiver of fees for the protection or promotion of public health and safety. In California, lessees enjoyed over 30 years of rent-free status for their piers and buoys when the legislature found (correctly) that piers provide an aid to navigation and safe harbor for distressed boaters and swimmers. We cannot estimate the number of lives saved by the existence of piers and moorings to provide emergency response to those in peril on the lake. Lakefront owners prove their stewardship for public health and safety every day on this lake, through all kinds of weather and conditions. Our first responders have also been afforded lake access by utilizing boat lifts in the Incline Village area for quick response to emergencies.

Lakefront owners pay property taxes on the value of their piers to their properties, however, this scheme will result in double taxation. If your appraiser's argument that if the impact on a landowner's value was indeed \$1,000,000, that landowner is already paying over \$11,000 per year in property taxes. Your appraiser then suggests they should pay an additional \$12,000 per year resulting in more than double the burden. This line of reasoning is without foundation, and the appraisal uses fatally flawed reasoning.

Further, NDSL suggests a one-size-fits-all fee works well for piers and buoys. Under the current rates, that is certainly the case. For example, a pier that extends onto state lands by 6" will pay the same \$1,000 per year as a pier extending 100" beyond the low water mark. TLOA believes the proposed fees, are punitive and neither fair nor reasonable as required.

The NDSL proposal to offer a 3-year phase in is disingenuous to the process. TLOA believes this is disingenuous to the process and a transparent attempt to be "responsive" to exorbitant increases. TLOA further opposes any reliance on the appraisal as a basis for future increases or as part of a longer phase-in program.

The TLOA sees two components to this issue:

1. The application fee charged to process permits; and
2. The annual fee charged for the use of piers, buoys, and related facilities

TLOA suggests the following:

Application fees – Analyze actual cost data as to the processing of (1) Commercial applications, and (2) Residential Applications and adopt either a fee commensurate with the average cost, or develop a cost-recovery approach. The application fee should be based on the past twelve to eighteen months of staff time. If the staff has not completed an audit, this should be implemented to provide data on which to make the decision on application fees.

Annual fees – TLOA examined current fees for piers and buoys, adjusted for an average CPI, and proposes the following for Annual Fees (excerpted) as a fair compromise to NDSL's proposal:

Type		Piers		Buoys
Commercial	(\$125)	\$300/year	(\$100)	\$150/year
Residential	(\$ 50)	\$150/year	(\$ 30)	\$ 75/year

If the above is adopted, the result will more than double the current revenue from commercial piers, and triple revenue associated from residential piers. Buoy fees will increase as well; 50% for commercial, and two-and-a-half times current residential buoy fees. We believe a similar strategy for the other types of structures/uses can benefit from this type of fee structure.

By carefully considering the above information, and supplemental analysis by our appraisal expert, TLOA believes the NDSL will find a program that more accurately and fairly implements the fee review as envisioned by the legislature, and can be supported by the permittees in Nevada.

Thank you for your consideration.

Sincerely,

TAHOE LAKEFRONT OWNERS' ASSOCIATION



Jan Brisco
Executive Director