



STAFF REPORT

DATE: September 21, 2018

TO: Charles Donohue, Administrator and State Land Registrar

FROM: Nevada Division of State Lands (NDSL) Staff

SUBJECT: Proposed Regulation of the State Land Registrar Relating to Establishing Certain Application and Annual Use Fees for State Lands Associated with Navigable Bodies of Water

Summary and Staff Recommendation

NDSL staff ask that the State Land Registrar consider and adopt the Proposed Regulation of the State Land Registrar LCB File No. R167-18 August 1, 2018, with modifications. As required by Senate Bill 512 (Chapter 366, 79th Session), the proposed regulation establishes application and annual use fees for state lands associated with navigable bodies of water. In response to public comments received over a 10-month period, staff recommend modifying the proposed regulation to include phasing-in annual use fees over a three-year period beginning July 1, 2019, and reducing annual use fees for piers and buoys below the amounts originally proposed.

Background

Sovereign Lands Held in the Public Trust

When Nevada was admitted into the Union in 1864, title to lands beneath navigable waters passed from the Federal Government to the new state. Through the Submerged Land Act of 1953, Congress reaffirmed its intent to convey navigable waters to the states. These submerged lands are the state's "Sovereign Lands" and are held in the Public Trust for navigation, fisheries, and related public purposes.

Extent of State Ownership of Sovereign Lands

Nevada's navigable waters include the Truckee River, Carson River, Colorado River, Virgin River, Lake Tahoe, Walker Lake, Washoe Lake, and Winnemucca Lake. State ownership includes the bed and banks of these waters below the ordinary high water mark.

For Lake Tahoe, the boundary between public lands owned by the State and adjacent lands owned by others is established in NRS 321.595 as the line whose elevation is 6,223 feet. Although the state's ownership of the bed of Lake Tahoe is lakeward of (or below) this elevation, the State retains permitting authority for any structures lying between elevation 6,223 and 6,229.1 for purposes of protecting the Lake's navigability.

Fees for the Use and Occupancy of Sovereign Lands

Existing law and regulation authorize the State Land Registrar to issue authorizations for the lawful use of Sovereign Lands (NRS 322.100; NAC 322.150). Before the 2017 legislative session, statute also set forth application and annual use fees for these lands. Fees are established for private residential and commercial piers, boat hoists, boat houses, boat ramps, boat slips, decks, and mooring buoys occupying public lands (NRS 322.110 and 322.120). Fee proceeds are paid into the State General Fund (NRS 322.160). In this way, the public is compensated for the benefits conferred to adjacent landowners and commercial operators for their private use of public lands.

Authority to Modify Fees

Under existing law, the State Land Registrar is required to charge fees in such an amount he determines to be reasonable based upon the fair market value of the use (NRS 322.100(1)(b)). In 2017, Senate Bill 512 (Chapter 366, 79th Session) recognized that the fee schedule for the use of Sovereign Lands had not been modified in 25 years and was less than what many other western states and agencies charge for comparable uses. SB 512 required the State Land Registrar to establish fees in regulation and that fee proceeds in excess of \$65,000 be deposited into a dedicated account to carry out environmental improvement projects in the Lake Tahoe Basin. The Act became effective July 1, 2017.

The State's ownership of Sovereign Lands held in the Public Trust for the enjoyment of all Nevada residents and visitors is well established, as is the State's obligation to compensate the public for the private use of public lands through fees. Recent legislation and existing law direct the State Land Registrar to modify fees that have remained stagnant for 25 years in an amount he determines reasonable based on the fair market value of the use of state land.

Project Description

In August 2017, staff undertook a multi-pronged research effort to develop and propose a modified fee schedule as directed by SB 512. Staff research included the historical review of the effort to establish fees set in statute in 1993, a comparative analysis of fees applied by other Western states for similar uses, an evaluation of fees charged by marinas and other businesses, the application of an in-house valuation method to determine fair market value of submerged lands, stakeholder engagement, and securing a licensed and certified appraiser to determine annual market rent of typical pier and buoy sites at Nevada-Tahoe.

Legislative Review

In the late 1970's, regulation meetings were conducted to establish a permitting process and fee structure for the use and occupancy of submerged lands (Regulation Meetings of the 59th Session of the Nevada Legislature, Chapter 529, Statutes of Nevada 1977). It appears, to the best of our knowledge, it took in excess of 15 years to establish fees and once they were established they were done so in statute in 1993. Fees have remained stagnant since this time.

Staff reviewed the testimony from the 1993 legislative session and found little information regarding the methodology for how fees were set. However, in the minutes from the Permit Regulation Meeting dated December 7, 1977, multiple options for appropriately establishing fees were presented. The minutes state:

“Permits shall contain provisions for the payment of rent based upon the rates established by the following schedule in fixed sums, in sums based in whole or in part on a percent of appraised value (appraisal to be completed by the applicant) or assessed value (County Assessor's Records will be used),

gross income, volume or quantity of commodities passing over State Land, area used, or for such other consideration as in the judgment of the Administrator may be in the best interests of the State.”

No one methodology was forwarded as the best approach for establishing fees; instead, the selection of the methodology or combination of methodologies was left to the State Lands Administrator’s judgement acting in the best interests of the State.

Comparative Analysis of Western States

Staff contacted other western states and researched their current rates and fee evaluation methods. The other states researched were Arizona, California, Idaho, Washington, Oregon and Utah. Staff discovered there is no one-size-fits-all approach to establishing fees. Each state’s methodology is different.

For example, Washington State’s fees apply only to commercial uses. Due to the large extent of their Sovereign Lands and the high level of commercial activity on them, it is not practical from a staff resource and efficiency standpoint for Washington to apply fees to residential uses. Staff suggest it is appropriate for Nevada to charge a fee for both commercial and residential use of state lands as it is currently prescribed in statute. Statute also differentiates between commercial and residential uses, applying a higher fee to commercial uses. Staff believe this to be an important distinction to carry forward in the proposed fee schedule, as commercial enterprises have the ability to generate an income from state land through their business operations.

Oregon’s fees are variable and individually calculated based on the size of each structure occupying their public lands. Staff evaluated and dismissed this “per square foot” fee methodology. To do so would require each applicant to conduct a survey of their structures by a licensed surveyor in order for agency staff to calculate their size. This represents an additional cost and burden to applicants that Nevada’s permitting process currently avoids. In addition, as lakebed topography varies depending on location, pier lengths must also vary in order to reach deeper, navigable waters. A “per square foot” fee would have the effect of unfairly penalizing littoral property owners who live in an area with a shallow shelf and who would necessarily have to build a longer pier to reach those navigable waters. Therefore, staff recommend a simplified fee structure. The simplified fee structure has the additional benefit of being straightforward and predictable to applicants.

Staff is also aware of the recent effort by the California Lands Commission (Commission) to modify rental rates for piers and buoys occupying Sovereign Lands in Lake Tahoe. Working closely with stakeholders including the Tahoe Lakefront Owners Association (TLOA), Commission staff proposed discounted rental rates based on the concept that piers and buoys are only used seasonally. In a letter issued by California Assembly Member Richard Bloom and Senator Bob Wieckowski on February 26, 2018, the authors note the flaw in this concept. In providing a discount for seasonal use, “the rate no longer reflects the fact that the pier is occupying public lands permanently.” NDSL staff agree that although the majority of a pier’s use may be enjoyed in summer months, it can be accessed at any time and is permanently affixed to the lake bed owned by the state. For these reasons, staff recognize piers to be year-round structures.

Also, California Lands Commission staff’s methodology relied significantly on marina rates at Lake Tahoe, and in so doing failed to reflect that residential piers offer more than recreational value to the owner. The legislators note in their letter that in addition to private recreational value, the presence of residential piers adds significantly to the adjacent upland property’s real estate value. By failing to take

this into consideration, the rates proposed by Commission staff were undervalued and did not “properly compensate the state for the private use of public lands...”.

The potential impacts to undervaluing pier and buoy rental rates were also noted. The legislators in their letter state, “The consequences of not properly capturing the true benefits impact the state as a whole, but on the Lake itself as revenues go directly to efforts protecting the Lake including aquatic invasive species prevention, improving public access, and improving near-shore water quality monitoring.” As SB 512 directs NDSL to dedicate fee proceeds in excess of \$65,000 to environmental improvement projects at Lake Tahoe, Nevada is in a similar position in that an undervaluation of the benefits of public lands would also have negative consequences to the Basin’s environmental restoration efforts.

In February 2018, the California Lands Commission deferred approval of the staff proposal developed in coordination with the TLOA on the basis that a more thorough evaluation of the various methodologies available to assess rent for piers and buoys was needed. **California’s rental rates at Lake Tahoe remain \$377 per year for residential buoys. Pier rental rates are also unchanged; they are on average in excess of \$1,000 per year and are individually calculated on a square-foot basis.** California’s current lease fees for piers and buoys exceed the new rates proposed by NDSL.

Marina Fees

Staff’s third action was to research what marinas and other waterfront commercial businesses around Nevada and adjacent states (such as Arizona and California) charge for rental rates for buoys and boat slips. This information was gained through conversations with staff from other Conservation and Natural Resource Divisions in neighboring states, realtors and a local appraiser. Finally, NDSL contracted a licensed and certified appraiser to determine the annual market rent of a typical pier and buoy site at Nevada-Tahoe. Through this appraisal, a thorough fee evaluation of marinas around Lake Tahoe was also conducted and documented.

In-House Valuation Method

Finally, staff applied an in-house valuation method the agency has used since 2003 to estimate fair market value and derive annual use fees for certain types of authorizations including easements and leases. The method is used to establish fees not specifically referenced in statute while determining fair market value of the land as directed in NRS 322.060(2). Staff applied the method to piers authorized by existing permits, randomly selected, of various pier lengths, and located in four different areas in Nevada Tahoe. The exercise resulted in figures that validated staff research and support the proposed fee structure without modification.

Stakeholder Engagement

The State Land Registrar and staff also reached out to specific stakeholders so they had an opportunity to make comments and suggestions during the development of the proposed fee schedule. Staff reached out to Bob Hassett, who operates marinas in Lake Tahoe, on several occasions for his input on the proposed fees. Staff also hosted a meeting with Jan Brisco, who represents the TLOA, and Todd Lowe, President of TLOA to elicit feedback on the proposed fee schedule as staff worked through the process. The TLOA requested that all research data be provided to them, which NDSL has supplied throughout the fee development process.

Independent Appraisal

NDSL responded to public comment that the process to develop a proposed fee schedule for the use and occupancy of Sovereign Land would benefit from an independent, third-party appraisal. In Spring 2018, NDSL solicited bids for the appraisal of the market rent of public lands by piers and buoys at Lake Tahoe. The solicitation was sent to 11 appraisal service companies and NDSL received two responses. Of the two responses, NDSL selected the lowest bidder. This bidder's qualifications included over 25 years of experience conducting appraisals in the Lake Tahoe Basin. Once contracted, it was this licensed and certified appraiser's determination to perform an Income Approach Residual Analysis appraisal. The appraisal report adhered to the reporting requirements set forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice for an Appraisal Report. In the preparation of the appraisal, no extraordinary assumptions were made and no hypothetical conditions were utilized. The appraisal determined the market rent of a typical pier site located on the Nevada side of the Lake Tahoe Basin to be \$12,000 per year. It determined the market rent of a typical buoy site located on the Nevada side of the Lake Tahoe Basin to be \$525. The independent appraisal revealed that the staff analysis used to develop the proposed fee schedule was conservative.

Public Outreach

NDSL's public outreach efforts included five public workshops, individual noticing to all permittees, and posting of workshop notices at libraries in all of Nevada's 17 counties. NDSL also advertised the most recent workshop held in September 2018 in newspapers with regional circulation. Workshop notices were published according to the State's open meeting laws. The PowerPoint Presentation for all five meetings can be found on the NDSL website (www.lands.nv.gov).

As a result of NDSL's solicitation of public comment, NDSL received 30 written comments and heard oral comments at the public workshops. NDSL staff reviewed and considered all written and oral comments. Staff noted that some comment letters shared similar language and repeated mis-information that should be corrected here. Notably, many comments refer to the proposed fees as a tax. Rather, NDSL's fees are established to compensate the public for the private use and occupancy of public land. Most of the revenue obtained through these fees will be used specifically to improve the air, land, and water quality in the Tahoe Basin.

NDSL has been the lead implementer of the Environmental Improvement Program (EIP) for the State of Nevada since 1998. A five-year priority project list is reviewed annually to ensure projects are well-defined and coordinated. The additional revenue that will be generated by the proposed fee structure will be set aside in a dedicated account for the implementation of the EIP, and is estimated to be \$472,000 per year. The agency is funded by the State General Fund and would not directly benefit from the increased revenue generated by the proposed fees.

Proposed Fee Schedule

Based on the completed research and written and oral public comments, staff developed and proposes the following annual fee schedule with modifications for the use of sovereign land by piers and buoys.

	FY 2019-2020 FY 2020	FY 2020-2021 FY 2021	FY 2021-2022 FY 2022
The commercial use of a pier	\$1,000	\$1,500	\$2,000 \$1,850
The multiple residential use of a pier	500	750 700	1,000 850
The single residential use of a pier	500	750 700	1,000 850
Any other use of a pier	500	750 700	1,000 850
The commercial use of a mooring buoy or similar device for mooring vessels	300 200	400 300	500 400
Any other use of a mooring buoy or similar device for mooring vessels	100	200	300 275

The fee schedule incorporates the public comment that the fee increase be phased in over time. This fee schedule phases in increases over a three-year period and would remain in place for a minimum of five years so that it can be straightforward and predictable for both residential and commercial applicants.

As noted previously, fees for the occupancy and use of public land have remained stagnant for 25 years. SB 512 acknowledges fees are under value and require modification. Existing law directs the State Land Registrar to charge a fee in such an amount he determines to be reasonable based upon the fair market value of the use (NRS 322.100(1)(b)). In the development of the proposed fee schedule, fair market value was determined through research including an in-house valuation method and an independent appraisal. The independent appraisal calculated the annual market rate for piers and buoys at Lake Tahoe to be \$12,000 and \$575, respectively.

The proposed regulation with modifications responds to and accommodates public comments that note the increase above current rates in statute. The proposed fees are also less on average than those currently used by California for the Lake Tahoe Basin. Therefore, the proposed fee schedule with modifications is reasonable, conforms to statute, and does not undervalue the benefits of Nevada’s public lands.

Attachments

- A. Proposed Regulation of the State Land Registrar LCB File No. R167-18 August 1, 2018 with Modifications