

Staff Report 30

APPLICANT:

WS Marina, LLC, a Delaware limited liability company

PROPOSED ACTION:

Issuance of a General Lease – Commercial Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Lake Tahoe, adjacent to 5190 West Lake Boulevard, near Homewood, Placer County.

AUTHORIZED USE:

Continued use, maintenance, and operation of an existing commercial marina, known as Homewood High & Dry Marina, consisting of an existing pier, retaining wall, two fuel pumps, ancillary services, two marker buoys, and 125 mooring buoys.

TERM:

20 years, beginning July 1, 2021.

CONSIDERATION:

\$23,417 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount of no less than \$3,000,000 per occurrence
- Surety in an amount of no less than \$100,000.
- The lease contains provisions requiring implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encouraging implementation of the Commission's "Best Management Practices for Berth Holders and Boaters," including additional Best Management Practices (BMPs)

the Commission subsequently deems appropriate for either of the above categories.

- Upon Lessee's delivery of a good-faith estimate prepared by a reputable contractor for the costs of full removal of the Improvements, to the sole satisfaction of the Executive Officer or her designee, Lessor and Lessee agree that the Surety Bond required in Section 1 may be modified to reflect the estimated removal costs.
- The public shall be allowed to pass and re-pass around the landward end of the pier using a designated lateral access area on the upland to provide continuous shoreline access, because the Public Trust easement is occupied by the marina facilities below elevation 6228.75 Lake Tahoe Datum.
- Lessee shall post signs on both sides of the marina at the designated public access passageway that read "Public Passage Allowed." The signs shall be in place at all times. Lessee agrees to be responsible for all costs incurred for the installation and maintenance of signage on each side of the marina.
- Lessee expressly acknowledges that a Tahoe Regional Planning Agency (TRPA) permit is required for the Authorized Improvements and failure to obtain a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of the lease.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 26, 1980, the Commission authorized a 40-year General Lease - Commercial Use to Peter Topol, Nathan Topol, and Stephen Topol, d.b.a. Homewood High and Dry Marina (Lease 3953), and dba Homewood Resort (Lease 5857) ([Item 19, June 26, 1980](#)). On February 28, 1985, the Commission authorized a continuation of rent of Leases 3953 and 5857 ([Item C1, February 28, 1985](#)). On August 3, 1994, the Commission authorized an assignment of the leases to Nathan Topol, dba Homewood High and Dry Marina ([Item C08, August 3, 1994](#)) and ([Item C09, August 3, 1994](#)). On June 21, 2013, the Commission authorized an acceptance of quitclaim deed and amendment of Lease 5857 ([Item C35, June 21, 2013](#)). On September 20, 2013, the Commission authorized a rescission and acceptance of quitclaim deed of Lease 5857 ([Item C35, September 20, 2013](#)). On January 5, 2016, ownership of the upland marina parcels was transferred to the Applicant. The

marina continues to be owned and managed by the same individuals, the Topol Family. The Applicant is applying for a new General Lease – Commercial Use for the continued use and maintenance of the existing marina facilities and to consolidate the existing 30 mooring buoys under Lease 5857, the 16 mooring buoys and other facilities under Lease 3953, and the previously unauthorized mooring buoys to form one consolidated lease with two marker buoys, and 125 mooring buoys. The leases expired on June 30, 2020 and have been in holdover status with the Applicant paying the current rent.

The Applicant owns Assessor's Parcel Numbers (APNs) 097-241-031, 097-130-033, and 097-130-036, the uplands adjoining the lease premises for the marina facilities. The existing 125 mooring buoys are located offshore between APNs 097-130-026, 097-130-030, 097-130-031, 097-130-032, 097-130-033, 097-130-035, 097-130-036, 097-130-043, and 097-241-031. The Applicant has permission to maintain the mooring buoys adjacent to the nine upland parcels as recorded on February 28, 2004, under the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Harborside at Homewood (CC&R's). The 125 mooring buoys are permitted with TRPA effective April 13, 2021 (TRPA File Number BUOY2021-0035). The 79 previously unauthorized buoys have existed in the lake for many years but were unable to be brought under lease because TRPA was unable to issue permits for any buoys until the recent amendments to their code of ordinance. The lessee has paid rent based on their entire operations in the lake, including the unauthorized buoys, so there is no compensation for unauthorized occupation due at this time.

The marina facilities have existed for many years at this location. Public access for pedestrians and lake-related activities is available by passing through the upland parcel within the Public Trust easement. Upon approval of the Harborside at Homewood development, TRPA required the dedication of public access easements to the lake from Fawn Street to the south boundary of the marina property, across the marina property landward of the harbor, and all private land lakeward of Elevation 6229.1 ft., Lake Tahoe Datum, between the north sheet pile of the marina harbor and Silver Street. The marina owner constructed paved pathways to the lake from Fawn Street and along Silver Street. A public access vista point was constructed on the south end of the marina.

The subject facilities 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 proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 20-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; and a performance surety in the amount of \$100,000. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the 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 the owner of the improvements on state land, may be required to remove the marina facilities, including an existing pier, retaining wall, two fuel pumps, ancillary services, two marker buoys, and 125 mooring buoys, and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends 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 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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 2, section 2905, subdivision (a)(2).

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 foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Commercial Use to the Applicant beginning June 30, 2021, for a term of 20 years, for the continued use and maintenance of an existing commercial marina, consisting of an existing pier, retaining wall, two fuel pumps, ancillary services, two marker buoys, and 125 mooring buoys, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$23,417, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$3,000,000 per occurrence; and surety in an amount of no less than \$100,000.

EXHIBIT A

LEASE 3953

LAND DESCRIPTION

One hundred twenty eight parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to fractional Section 1, Township 14 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved January 17, 1866, County of Placer, State of California, more particularly described as follows:

PARCEL 1 - Marina

All those lands underlying an existing marina facility lying adjacent to Lot 1 of Tract No. 490 HOMEWOOD HIGH AND DRY MARINA recorded May 27, 1980 in Book "M" of Maps, Page 79, in Official Records of said County.

EXCEPTING THEREFROM any portion lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

PARCELS 2 through 128 - Buoys

One hundred twenty five circular parcel of land, each being 50 feet in diameter, underlying one hundred twenty five existing buoys lying adjacent to those Lots of Tract No. 490 HOMEWOOD HIGH AND DRY MARINA recorded May 27, 1980 in Book "M" of Maps, Page 79, in Official Records of said County.

TOGETHER WITH two MARKER BUOYS.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 11/02/2021 by the California
State Lands Commission Boundary Unit.



NO SCALE

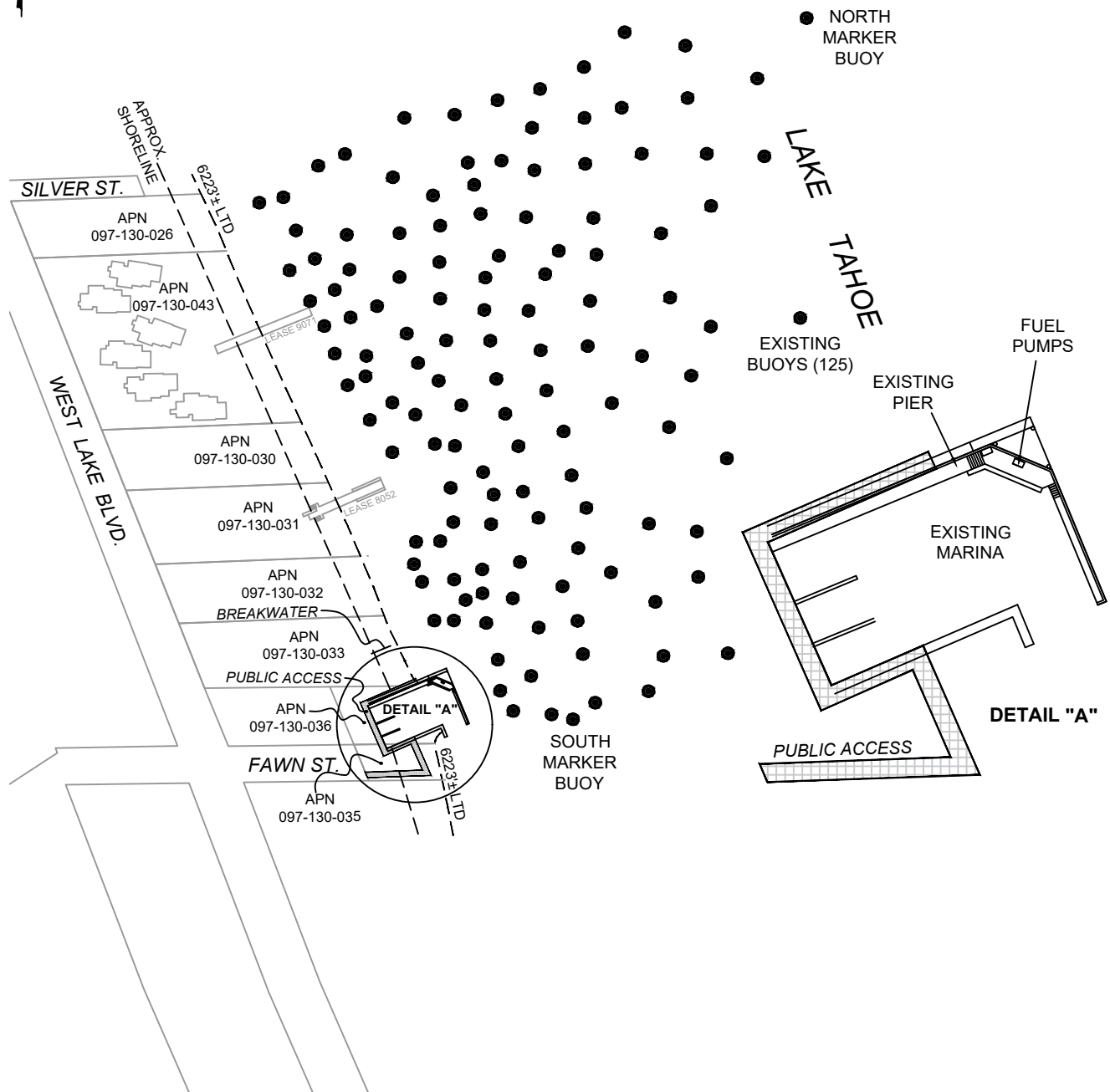


EXHIBIT A

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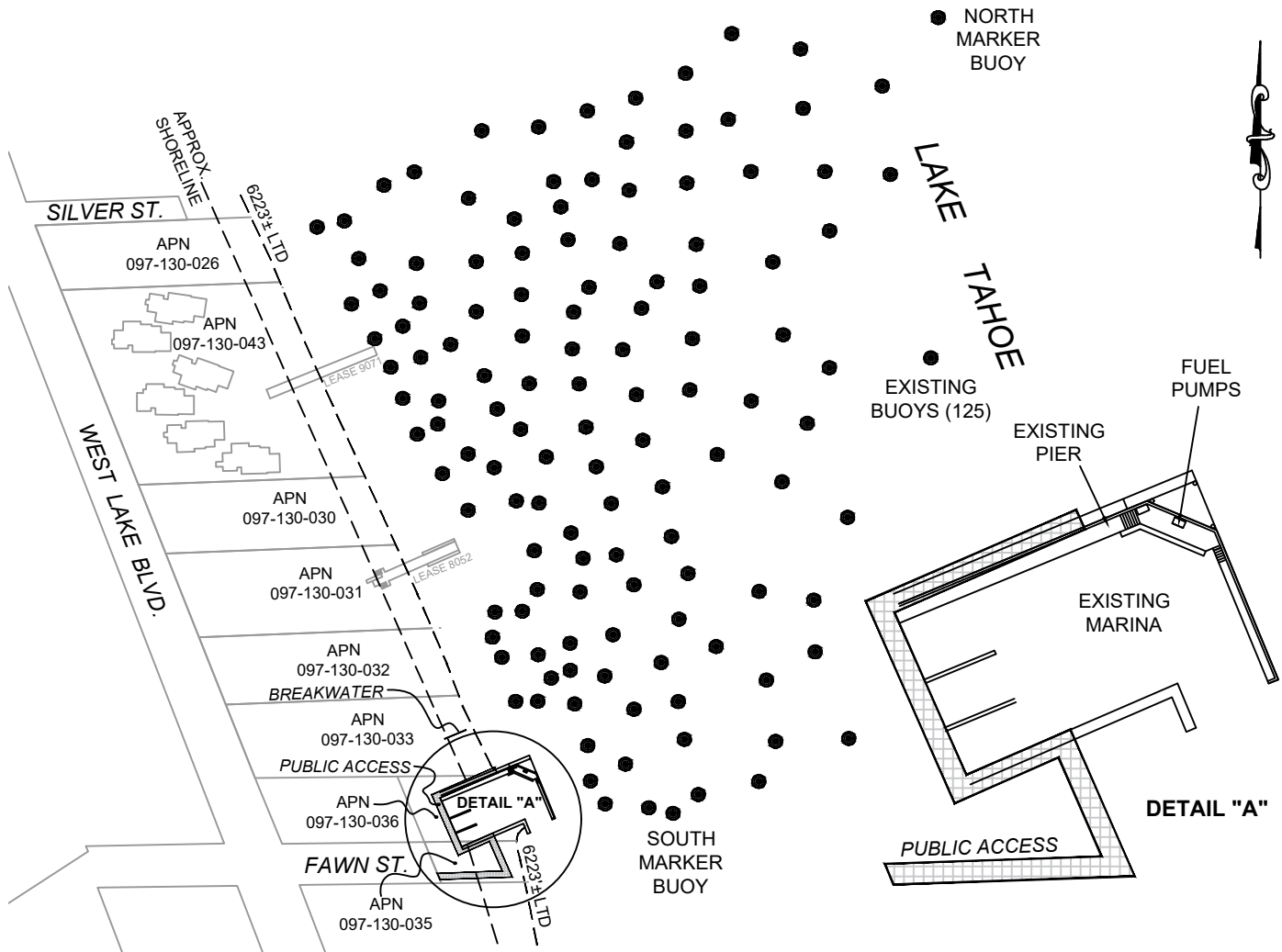
LAND DESCRIPTION PLAT
LEASE 3953, WS MARINA, LLC
PLACER COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

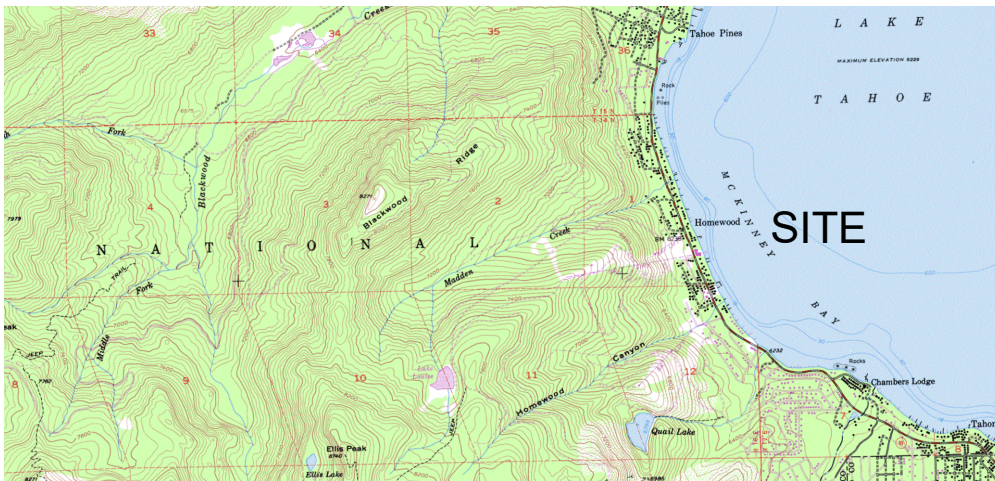
SITE



5190 WEST LAKE BLVD., HOMEWOOD

NO SCALE

LOCATION

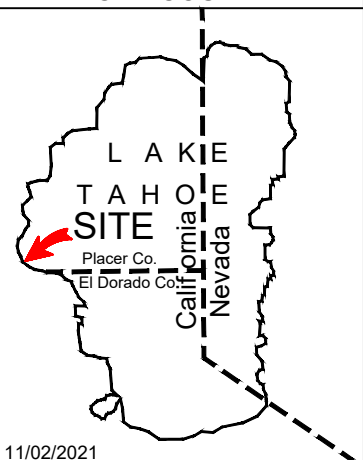


MAP SOURCE: USGS QUAD

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

Exhibit B

LEASE 3953
WS MARINA, LLC
APNs: 097-130-026, 030, -031,
-032, -033, 035, 036 & -043
GENERAL LEASE -
COMMERCIAL USE
PLACER COUNTY



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