

# Staff Report 38

## **LESSEE:**

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William Stanton Sutton and Marilyn Leigh Sutton, Trustees of The Sutton Family Trust,  
Dated December 5, 1980

## **APPLICANT:**

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Paolo M. Silva and Patricia P. Gonzalez

## **PROPOSED ACTION:**

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Termination and Issuance of a General Lease – Recreational Use

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Lake Tahoe, adjacent to 4523 West Lake Boulevard, near  
Homewood Placer County.

## **AUTHORIZED USE:**

Use and maintenance of two existing mooring buoys.

## **TERM:**

10 years, beginning March 1, 2023.

## **CONSIDERATION:**

\$546 per year, with an annual Consumer Price Index adjustment and \$315 to  
compensate for the unauthorized occupation of state sovereign land for the  
period prior to March 1, 2023.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee expressly acknowledges that a permit from the Tahoe Regional Planning Agency (TRPA) 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.

- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On June 29, 2015, the Commission authorized a General Lease- Recreational Use to William Stanton Sutton and Marilyn Leigh Sutton, Trustees of The Sutton Family Trust, Dated December 5, 1980 for the use and maintenance of two existing mooring buoys ([Item C18, June 29, 2015](#)). The lease expires on July 31, 2024. On October 26, 2020, the Applicant purchased the upland property. The Commission was never informed of the sale, and the Lessee has remained unavailable since the change in ownership. Staff recommends terminating the existing lease. The proposed termination date is October 26, 2020, the day the Applicant took ownership of the upland parcel. Invoices for this lease were paid up to August 2, 2022. The Applicant is applying for Issuance of a General Lease – Recreational Use for the use and maintenance of existing facilities. On December 18, 2019, the moorings were registered with TRPA (Registration No. 10659).

The compensation for the use of the property from the period of October 26, 2020 up to the start date of the proposed lease is \$1,517. However, staff received payments for invoices on the prior lease in the amount of \$1,202. This leaves \$315 of compensation due. Staff recommends the Commission accept compensation from the Applicant in the amount of \$315 for the unauthorized occupation of state land for the existing two buoys. This amount will make the state whole for the entire period of unauthorized occupation.

The lease provisions regarding indemnity will apply from October 26, 2020, when the Applicant took ownership of the upland, through February 28, 2023, the day before the beginning of the new lease.

The two 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 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 is 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 dryer 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 winds and storm events. 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 damage from high wind events and excessive waves.

**CONCLUSION:**

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 common law Public Trust Doctrine; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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 two mooring buoys and restore the premises to their original condition. 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. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEAQ) 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, section 15378, subdivision (b)(5).

4. 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, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

## **EXHIBITS:**

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

## **RECOMMENDED ACTION:**

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

### **AUTHORIZATION:**

1. Terminate, effective October 26, 2020, Lease 5510, a General Lease – Recreational Use, issued to William Stanton Sutton and Marilyn Leigh Sutton, Trustees of The Sutton Family Trust, Dated December 5, 1980.
2. Authorize acceptance of compensation from the Applicant in the amount of \$315 for unauthorized occupation of State land for the period beginning August 3, 2022 through February 28, 2023.

3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning March 1, 2023, for a term of 10 years, for the use and maintenance of two 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 \$546, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 5510**

**LAND DESCRIPTION**

Two parcels of submerged lands situated in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 36, Township 15 North, Range 16 East, M.D.B.&M., as shown on Official Government Township Plat approved December 20, 1865, County of Placer, State of California, more particularly described as follows:

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to that parcel as described in Grant Deed recorded October 26, 2020 as Document Number 2020-0121068-00 in Official Records of said County.

Accompanying plat is hereby made part of this description.

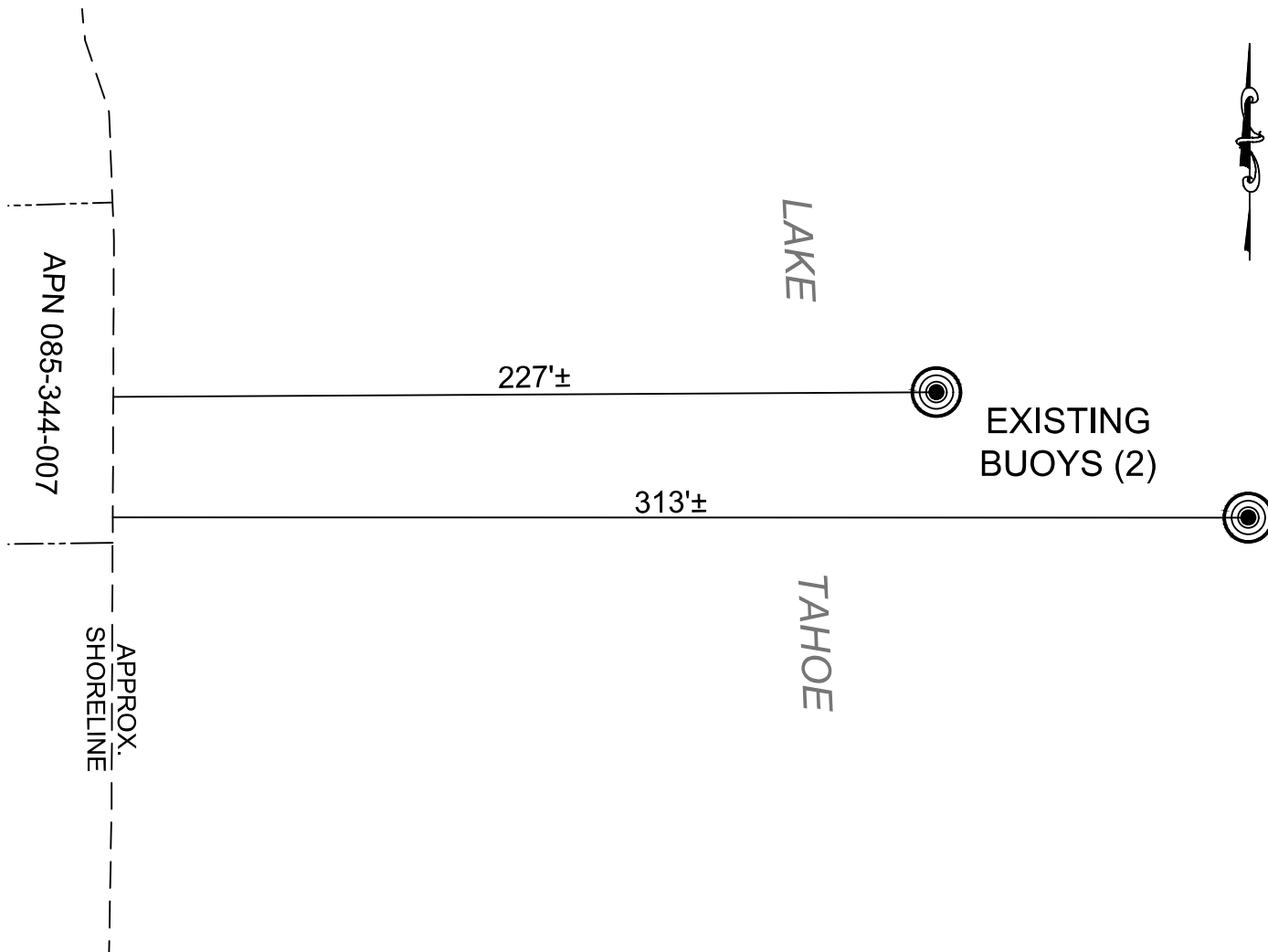
**END OF DESCRIPTION**

Prepared 10/21/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

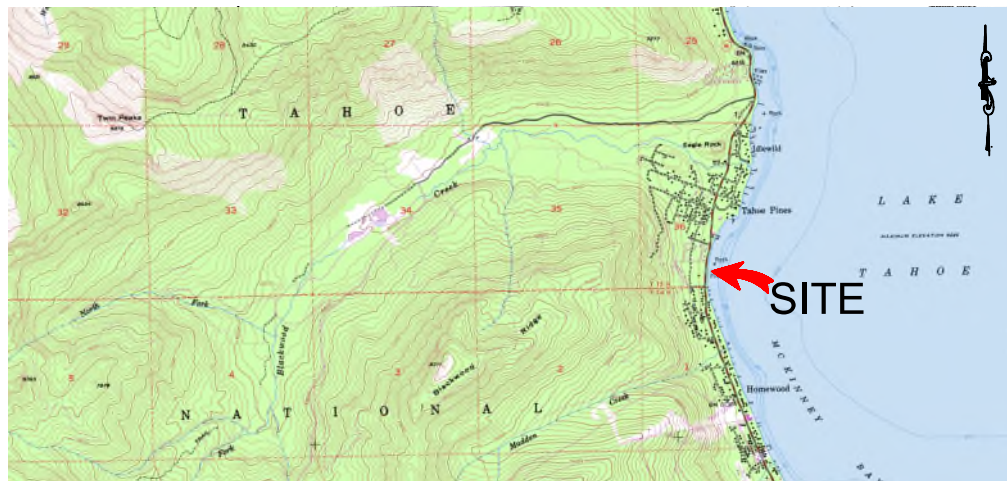
# SITE



4523 WEST LAKE BLVD., HOMEWOOD

NO SCALE

# LOCATION

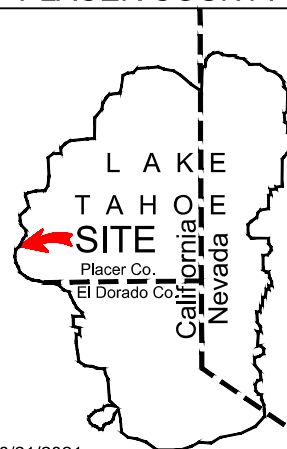


MAP SOURCE: USGS QUAD

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 5510  
 SILVA & GONZALES  
 APN 085-344-007  
 GENERAL LEASE-  
 RECREATIONAL USE  
 PLACER COUNTY



TS 10/21/2021