

Meeting Date: 04/04/24
Lease Number: 3953
Staff: J. Holt

Staff Report 17

APPLICANT/LESSEE:

WS Marina, LLC, a Delaware limited liability company

PREVIOUS SECURED PARTY-LENDER:

EquiTrust Life Insurance Company

SECURED PARTY-LENDER:

Augustar Life Insurance Company, an Ohio Corporation

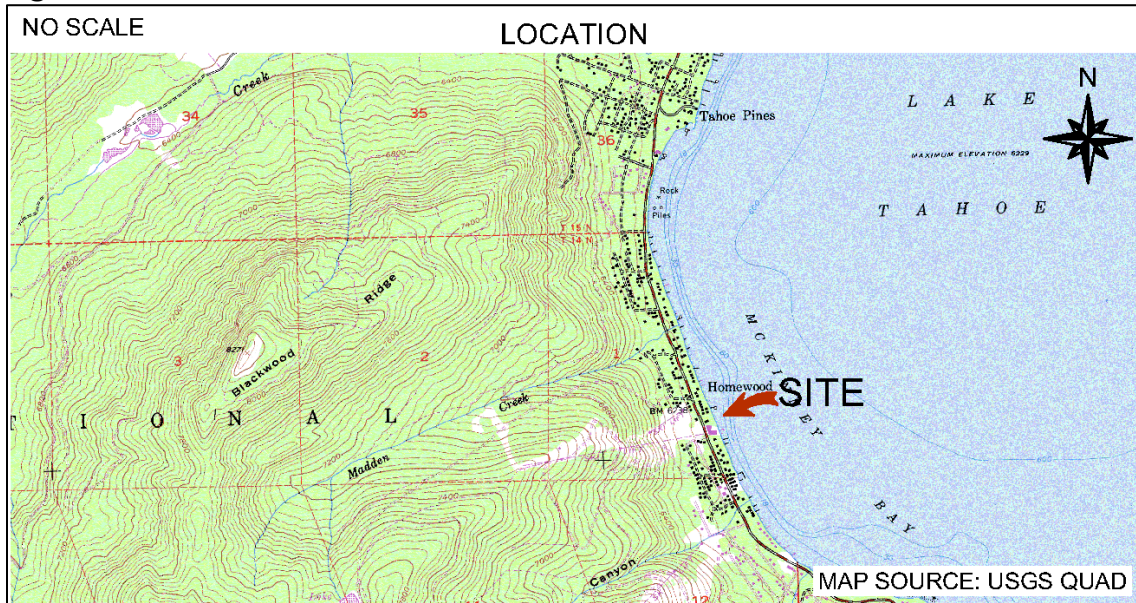
PROPOSED ACTION:

Termination of a previous Agreement and Consent to Encumbrance of Lease and authorization of a new Agreement and Consent to Encumbrance of Lease.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5190 West Lake Boulevard, Homewood, Placer County (as shown in Figure 1, below).

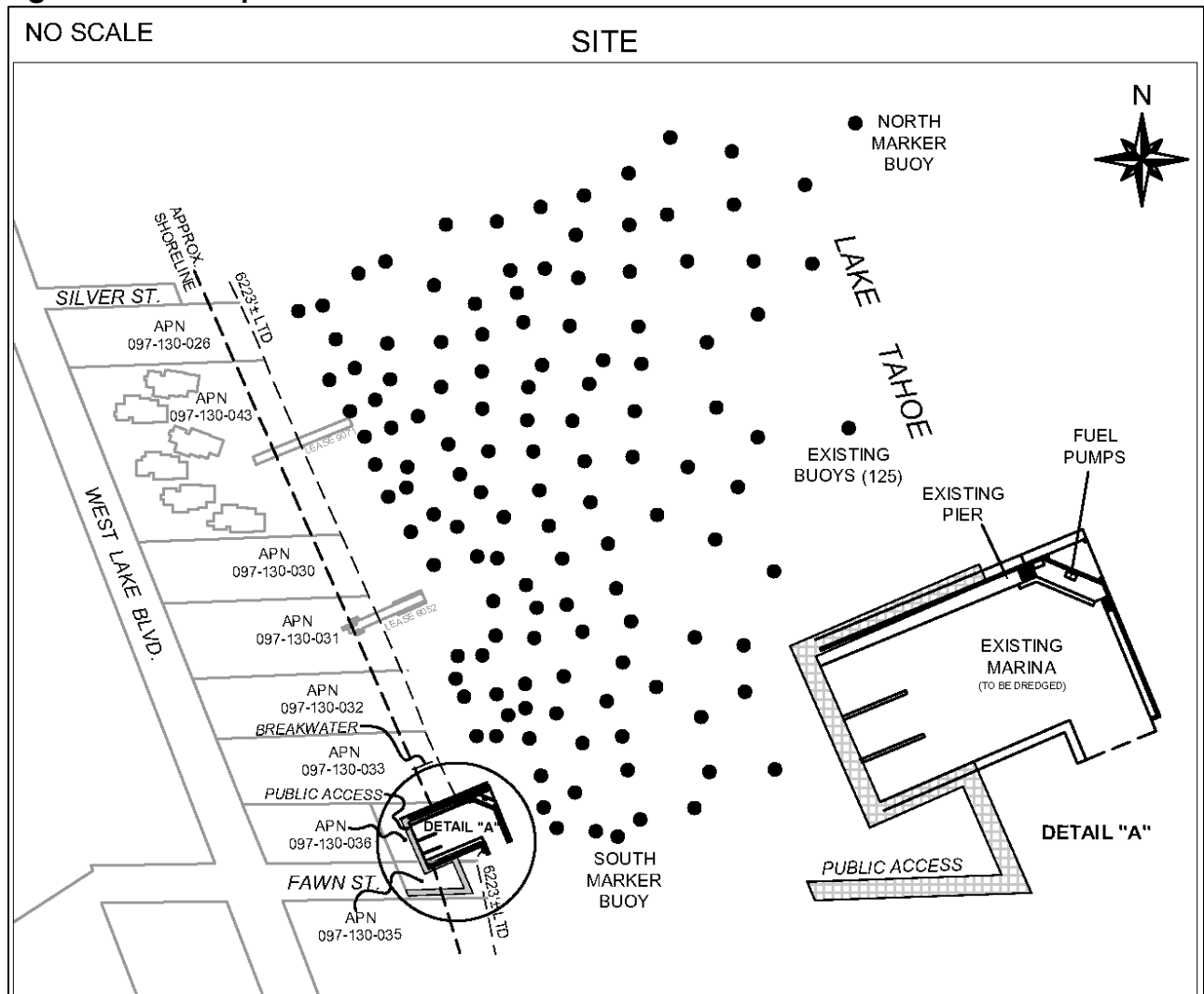
Figure 1. Location



AUTHORIZED USE:

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 (as shown on Figure 2, below).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

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.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6106, 6216, 6301, 6321, 6321.2, 6501.1, 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On December 8, 2021, the Commission authorized issuance of a 20-year General Lease – Commercial Use to the Lessee/Applicant ([Item 30, December 8, 2021](#)). On April 26, 2022, the Commission authorized an amendment of Lease Number 3953, a General Lease – Commercial Use, for maintenance dredging and replacement of exhibits ([Item 24, April 26, 2022](#)). That lease will expire on June 30, 2041. On June 5, 2023, the Commission authorized an Agreement and Consent to Encumbrance of Lease, in favor of EquiTrust Life Insurance Company, the Secured Party-Lender, in the principal amount not to exceed \$16,300,000 ([Item 24, June 5, 2023](#)). At some point, the Lessee decided not to obtain financing from EquiTrust Life Insurance Company. The loan documents were not signed or recorded. Therefore, staff is requesting termination of the previous Agreement and Consent to Encumbrance of Lease, in favor of EquiTrust Life Insurance Company based on non-issuance of the loan. In February 2024, the Lessee submitted a new application to the Commission for authorization of an Agreement and Consent to Encumbrance of Lease, in favor of Augustar Life Insurance Company, an Ohio Corporation, not to exceed \$10,000,000. The purpose of the loan is to maintain the commercial marina under lease. The encumbrance of the lease is a condition of the Secured Party-Lender.

The proposed authorization of encumbrance of the lease would be implemented through a document, "Agreement and Consent to Encumbrance of Lease," which will provide the Secured Party-Lender with certain rights if the Lessee defaults on the lease or is otherwise unable to perform. The Commission agrees to provide the Secured Party-Lender with notice and opportunity to cure defaults of the lease, and sixty (60) days' notice prior to terminating the lease. The agreement also limits the right of the lessee and Commission to amend, modify, or replace the lease without receiving the written consent of the Secured Party-Lender. Additionally, the agreement contains a process whereby the Secured Party-Lender can assume the lease should the Lessee reject the lease in a bankruptcy action, provided the Secured Party-Lender cures all defaults and agrees to all the lease terms.

The Agreement and Consent to Encumbrance of Lease provides the Commission with another party who may be able to step in if a default of the lease occurs. Additionally, the agreement would include protections for the State land associated with the lease. These protections include requirements that 1) no subsequent encumbrance of the lease shall be executed without prior written consent of the Commission; 2) any intent to transfer of the lease to a third party shall be subject to the prior written approval and consent of the Commission; 3) if the Secured Party-Lender becomes the lessee, it shall be bound by all terms and conditions of the lease; 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent; and 5) the duration of the encumbrance agreement is limited to the term of the lease.

The encumbrance of the lease does not alienate the State's fee simple interest in the underlying land, and it does not impair public rights. Based on the foregoing, Commission staff believes that the Agreement and Consent to Encumbrance will not substantially interfere with Public Trust needs, at this location, at this time, or for the foreseeable term of the proposed lease. By encumbering the lease, the Lessee can obtain funds used to maintain the leased State property, and the lender effectively acts as the guarantor of Lessee's performance of its lease obligations. The existing 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.

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. The lessee 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 Area of the Commission's 2021-2025 Strategic Plan.
3. Termination of an agreement and authorization of a new Agreement and Consent to Encumbrance of Lease are not projects as defined by the California Environmental Quality Act because they are administrative actions 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).

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed Agreement and Consent to Encumbrance of Lease will not impact 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 term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Terminate the previous Agreement and Consent to Encumbrance of Lease 3953, in favor of EquiTrust Life Insurance Company, in the principal amount not to exceed \$16,300,000, approved as Item 24 at the Commission's June 5, 2023 meeting, to WS Marina, LLC, a Delaware limited liability company.
2. Authorize the Executive Officer or designee to execute the document titled "Agreement and Consent to Encumbrance of Lease," allowing Lessee's right, title, and interest in Lease 3953 to be pledged as partial security for a loan in the principal amount not to exceed \$10,000,000, in favor of Augustar Life Insurance Company, an Ohio Corporation in substantially the same form as that on file in the Sacramento office of the Commission, effective upon execution by both parties.
3. Authorize the Executive Officer or designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.