TAHOE LAKEFRONT OWNERS' ASSOCIATION

January 31, 2021

Via Email Only

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Re: ***Doré Rent Methodology Study – Lake Tahoe***

Gentlepersons:

The Tahoe Lakefront Owners' Association (TLOA) is pleased to provide the following comments on the Rent Methodology Study – Lake Tahoe prepared by The Doré Group and Lance Doré (Doré). TLOA consulted extensively with appraisal and real estate professionals, conducted meetings with California State Lands Commission (CSLC) staff, Doré, and reviewed all materials provided. For a decade, TLOA has worked alongside the CSLC in development of a logical and transparent system to assess rent for piers and buoys at Lake Tahoe. We know that it will never be perfect, but it needs to be fair, and easy for owners/lessees to understand.

Until 10 years ago, recreational piers and buoys in California were rent-free largely due to their public benefit as found by the California Legislature. Those benefits include aiding the boating public and providing safe harbor in times of distress. As an aid-to-navigation, piers and buoys help signal to the experienced and inexperienced boater where navigation may be unsafe. Shallow or rocky shoals often go undetected except for the location of piers and buoys extending beyond unsafe areas. With piers and mooring buoys located appropriately, they provide a warning to maintain an adequate distance offshore. For safe harbor, lakefront owners have been saving lives and boats for well over a hundred years. From distressed swimmers, paddlers, or boaters and changeable weather conditions, having a pier or buoy available offshore can be the difference between life or death. Owners themselves, as well as first responders know the times they have relied on having a boat or pier nearby to facilitate a rescue. There is no doubt that this benefit could be the single most important consideration that should be weighed in discussion regarding annual rent. The CSLC discounts a myriad of lease rates when there is a public benefit, and the TLOA feels serious consideration should be applied to any methodology selected. The Study fails to adequately address the significant public benefit from piers and buoys.

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In 2011, the legislature enacted SB152, changing the statute from rent-free to charging annual rent. The statute is clear in its intent, and unambiguous in how to derive rent. "...Rent **shall** be based upon local conditions and local fair annual rental values." TLOA believes the legislature's requirement that we use local and fair rental values was deliberate and reasonable. It did not propose to value any land or assign a value to submerged land because they knew the rights had already been paid for by lakefront owners. Simply put, rent shall be set guided by the fair local price paid by the public for recreational boating access. The Study fails to make the fundamental distinction between submerged land that can produce income versus submerged land that cannot produce income. This theme is carried throughout the Study and results in completely incoherent efforts to support an estimate based upon income, capitalization rates and land values which are not based upon credible analysis. TLOA found that Doré recommends a methodology that violates Public Resources Code section 6503.5 and fails to meet the intent of the statute. For this reason alone, the Study should be disregarded.

Review of the Doré Study

The CSLC Scope of Work in the Doré contract clearly identified specific services and deliverables. In reading through the Study, it is clear the Study fails to meet the scope and goals of the contract. The TLOA believes the Study should have provided a more comprehensive review of various methodologies, their strengths and weaknesses, advantages and disadvantages, and developed a prioritization of the options for staff and Commission consideration. In our opinion, the potential rent-setting methodologies should have included a more thorough analysis of the 2018 Benchmark methodology proposed at the February 2018 Commission meeting. The Study all but ignored this methodology and failed to consider what had been an exhaustively reviewed option.

TLOA and its experts thoroughly reviewed the Study methodologies and all supporting documentation provided and found the Study was virtually impossible to follow or understand. An attempt was made to systematically review each methodology and yet TLOA found great difficulty in understanding how the assumptions were developed and discovered many inaccuracies in the analysis and conclusions. In the end, the information provided in the Study was misleading, confusing, and impossible to understand not only from a layman's perspective, but to the professionals we consulted as well. The comments made at the November 10, 2020 virtual Town Hall Meeting, and written comments provided to the CSLC share similar complaints. One of the most significant and critical requests TLOA made after the November Town Hall meeting was for Doré to provide accurate data, analysis, and supportive reasoning for the exclusion of Rent Method 2, Rent Method 3, Rent Method 5, Rent Method 6, and Rent Method 8. It should be noted that no additional justification or information was ever received by TLOA on this request. Rather than cite each deficiency, TLOA will highlight the most critical issues. The following was developed in consultation with our professional appraisers:

On page 51 Doré presents eight (8) "Recognized rent methodologies" with a brief definition and summary of how they are applied. It is clear after reviewing the Study that Doré only provides analysis for two (2) of the eight (8) methodologies. On page 63 Doré provides a one-page summary of why all six (6) of the other methodologies were not considered. TLOA finds this reasoning and rationale for rejecting the other methodologies deficient and not in keeping with the Scope of Work. On page 52 though page 62 Doré presents a section entitled Rent Method 1 – 9% of the Appraised Value of the Leased Land. As highlighted on Page 86, Doré concludes that "Rent Method 1 is the most reliable method" of all the eight methodologies and places virtually all his emphasis, rationale, and discussion on this methodology.

The Study goes on to characterize the initial analysis as "paired sales analysis." The analysis presented by Doré is **not** paired sales analysis. To apply this technique, sale or rental data on **nearly identical properties** except for one characteristic is analyzed to isolate the single characteristic's effect on value. To have paired sales, **two properties are equivalent in all respects but one**, the value of the single difference can be measured by the difference in price between the two properties.

The charts on pages 54 and 55 and the analysis that follows in the Study are neither Paired Sales Analysis nor are they Grouped Data Analysis. As can be seen, there are six (6) categories of properties with several hundred sales that are grouped in categories with an average and median for each category. Doré represents that the differences in the average and median for each category is solely due to one single element i.e., pier or a buoy. The most troubling problem with this method of analysis is the properties in each category are not identical or nearly identical. The raw data shows that many of the properties labeled as having a pier or buoy are not even littoral properties. In fact, the properties in each of the categories are extremely different in multiple physical and legal characteristics. The differences in the average and median in each category is not due to the contributory value of a pier or a buoy. A Grouped Data Analysis also requires that the grouped data be identical or nearly identical which they are not. The graph and the analysis presented in this section of the Study appear convincing on the surface, but as the information is analyzed, it proves to be false and very misleading.

As the Study shows, Doré himself expresses trepidation about Paired Sales Analysis on pages 21 of the Study. Doré provides a brief explanation of this methodology and goes on to state the following: ***"It should be noted that this is a complex valuation methodology with many variables that need to be considered in the analysis (location, lot size, shape, other site other site characteristics, size & age of the residence, amenities, etc.). It could be extremely difficult to find paired sales with few enough differences to isolate an accurate value of the price differential provided by the pier and submerged land."*** In short, Doré acknowledges the fact that Paired Sale Analysis is virtually impossible to implement when dealing with extremely different properties such as very dissimilar lakefront properties at Lake Tahoe.

Typical Pier: The concept of a "typical" pier on Lake Tahoe is not defined or described for purposes of understanding the value associated in the Study. Location, length, depth, width, along with construction type, age, condition, and accessories such as boatlifts, catwalks, and handrails are all unique and therefore it is nearly impossible to determine a "typical" pier. On page 57 and throughout the Study Doré states that "The value of a pier is approximately $900,000". TLOA finds this type of appraising to be faulty as it is impossible to rely on any subsequent value conclusions when it is not clear what is being appraised. This aspect of the Study makes any value conclusions and any Market Rent conclusions completely unsupportable.

Given the above critical flaws, the resulting conclusions are therefore invalid and cannot be relied upon.

Private Submerged Land v Public Submerged Land

During a follow-up discussion, Doré admitted that while he was evaluating the value of a pier and its contribution to the upland land value, he did not consider the value of the private submerged land separate from public submerged land. While Doré attempted to dismiss this important consideration, it is very clear that it cannot be ignored.

With the extensive discussion in the Study regarding the regulatory process at Lake Tahoe, and the difference between properties with and without piers and buoys, the most critical component in the analysis is glaringly absent. That component is the portion of the pier on private submerged land. In all cases, a pier extends from the high-water mark to a termination point in the lake. That pier may or may not extend beyond the property boundary of 6223.0 LTD, otherwise known as the low water mark. If a pier does not extend beyond low water, it does not require a Lease from the State of California, but arguably offers value to the upland property. Any value attributable to the presence of a private pier on private land can never factor into the determination of rent on adjacent public land. The Study fails to adequately describe, value, and analyze the differences between private and public submerged land.

Other Considerations

As stated in the beginning of this comment letter, TLOA believes that a process adopting a fair and reasonable Benchmark Rent for piers and buoys, and along with this and the governing statutes, needs to include consideration for public benefits, and local conditions. One of the main conditions at Lake Tahoe that makes it unique is the availability for use. The boating season is primarily Memorial Day to Labor Day - roughly three months of use. As with concessions and marinas, the seasonal aspect of commercial boating operations is quite limited, and therefore the rents paid are annualized. The same should be true for private recreational structures such as piers and buoys.

TLOA commends the CSLC staff for navigating the complex task of developing fair rents in 2018. TLOA recommends the Doré Study be rejected as it fails to provide a credible and objective review as required by statute, professional practices, and the scope of work. TLOA looks forward to resuming the process from 2018 and developing a fair and equitable system.

Submitted by: Jan Brisco

Jan Brisco, Executive Director