August 4, 2021

John Marshall
TRPA General Counsel
Environmental Review Services
Tahoe Regional Planning Agency
P.O. Box 5310
Stateline, NV 89449

RESPONSE - NOTICE TO APPEAL PERMIT, WESTERMEYER, 1015 SKYLAND DR., DOUGLAS COUNTY, NV, ASSESSOR'S PARCEL NUMBER (APN) 1318-03-210-030, TRPA FILE NO. ERSP2021-0347

Dear Mr. Marshall

On July 26, 2021 a Notice of Appeal Application ("the Notice") and filing fee were submitted to TRPA by Mr. Gary Midkiff in regard to the Permitted Project. In that letter Mr. Midkiff raised several allegations regarding the Permitted Project, specifically in relation to the location in which the Low Point of Natural Grade (LPNG) was established to determine the allowed height governed by Chapter 37, Table 37.4.1-1 of the TRPA Code. The intent of this letter is to address the items raised in the Notice and to demonstrate that these items are without merit, thus allowing for the commencement of the Permitted Project.

Allegation # 1: The site plan upon which the plans are drawn does not adequately represent the site topography to allow TRPA to accurately identify the low point of natural grade where the foundation intercepts with natural grade.

The Notice implies that information was intentionally left off the site plan to allow for height greater than permissible by applicable TRPA Code. Applicable items required for a single-family dwelling site plan are established by the TRPA Single-Family Dwelling application checklist. That checklist requires, "Existing and proposed topographic contour lines at 2-foot intervals." The site plan utilized for permit review and issuance provided topographic contour lines at 2-foot intervals, thus adhering to TRPA topographic requirements. Routinely LPNG do not interact exactly with a 2-foot topographic line. When this occurs, it is common for an Applicant to interact with TRPA staff or in this case a TRPA third-party reviewer to establish the LPNG for height measurement purposes.

Natalia Wieczorek from Benjamin Fagan Designs drafted a letter dated July 29th, 2021 in which she outlines the process in which the LPNG was established to determine the allowable height for the Permitted Project. Ms. Wieczorek coordinated the specific LPNG designation in direct consultation with staff from TRPA third-party consultant firm Wells Barnett & Associates. Per direction from Wells Barnett & Associates staff, the LPNG of 103.2 was established for height calculation purposes because it was the closest spot elevation provided in which the permitted residence interacted with the LPNG. This spot elevation was provided by licensed surveyor, Turner & Associates. The Notice suggested the appropriate LPNG is 102.6'. It is of great importance to point out that at no point does the suggested LPNG 102.6 interact with the building foundation or its support structures. No apparent methodology exists for why Mr. Midkff selected the elevation of 102.6. Mr. Wieczorek reiterates this point in her July 29th letter.

The process to establish LPNG as outlined above and within Ms. Wieczorek's July 29th letter follows the standard process for the permitting of all single-family dwellings in the Tahoe Basin. To allege otherwise is inaccurate and contrary to precedent.

Allegation # 2: The appellant believes that the plans incorrectly represented the slope through the building site by measuring the slope in an area entirely outside of the footprint of the house.

A TRPA Land Capability Verification (LCV) was completed for the Subject Parcel in 2020 (TRPA File No. LCAP 2020-0416 / Exhibit A). TRPA Senior Planner Julie Roll established the cross slope of the parcel at 10%. The Permitted Project used the same 10% LCV cross slope in the same location for height calculation purposes. The goal of utilizing the same slope in the same location was to be consistent with TRPA's previous verifications. The Subject Parcel is only 12,300 square feet (.28 acres). TRPA defines Building Site as, "the portion of a parcel designated for development. For residential parcels comprising less than a 1/3rd of an acre in size, the entirety of the parcel is considered developable (taking into account applicable setbacks).

TRPA Code subsection 37.3.3 and associated exhibit establishes how the cross slope is derived through a building footprint by evaluating the slope via a straight line perpendicular to the topographic contours. Attached Exhibit B represents the cross slope of the permitted building footprint at 12% utilizing the methodology established by TRPA Code subsection 37.3.3. A cross slope of 12% would allow for heights greater than represented on the Permitted Plans.

Although the Permittee could have utilized a building cross slope of 12% for height calculation purposes they instead chose to utilize the 10% cross slope established for LCV calculation purposes. Utilizing TRPA LCV verification cross slopes for height calculation purposes for residential parcels smaller than 1/3rd of an acre is very common and is done to ensure consistency throughout the permitting process. This was the process also recommended by Wells Barnett & Associates during their application review process.

Deviation of Minor Significance

Notice only alleges that the residence is .6' or 7.2" above TRPA allowable height. Even with modern surveying practices minor deviations can exist for elevations and topographic lines. The alleged deviation in the Notice is within that minor deviation range possible even with modern surveying techniques.

Imposing a "Stay" Would Create Harm & Cost

Grading activity within the Tahoe Basin is limited between May 1st - October 15th of each year. Any Stay granted by TRPA would result in a delay in acknowledging the Subject Permit, which would likely result in not being able to complete the needed grading by October 15th. The granting of a Stay would result in the loss of the 2021 building season and additional holding costs. The additional holding costs are estimated at $42,000 annually. In addition, this is a record setting building season in the Tahoe Basin. If a project is delayed it could result in the project contractor having to move to another job. It can be extremely difficult to arrange for another contractor to complete the Permitted Project if the current contractor has to accept new work as a result of the Stay.

As previously mentioned, the Applicant also utilized third party contractor Wells Barnett & Associates to complete the TRPA review. This third party review process is expressly set up to expedite the issuance of a permit and requires the submission of additional fees to TRPA. Additional expediting costs were provided to the project surveyor and engineer so they could promptly address questions/comments raised by Well Barnett during their review. The total expediting fees are estimated at $12,000. A Stay now would remove any permit expediting benefits and the cost associated with paying the third party consultant and other subconsultants would be lost. Finally, legal/professional fees associated with engaging with TRPA regarding the Notice as of today total over $2,000. The granting of a Stay by TRPA will cause significant financial harm to the Permitted Project property owner.

TRPA Processes & Precedent

When a question arises during the permitting phase of a project a wise Applicant typically reaches out to TRPA staff for guidance. This is exactly what the Applicant did when they reached out to Wells Barnett & Associates staff to establish the LPNG. Similarly, the process to establish the cross slope for the Subject Parcel discussed above follows precedent. Utilizing both Applicable TRPA Code and precedent backed up by reasoned methodologies allowed for the establishment of the LPNG and the eventual drafting of the Subject Permit by Wells Barnett & Associates, and final signoff by TRPA staff prior to permit issuance.

As previously stated, the suggested LPNG within the Notice of 102.6 does not interact at any point with the building foundation or its support structures and no apparent methodology exists for why this elevation was chosen. Furthermore, the alleged deviation is only .6' or 7.2" which falls within the window of deviation for modern surveying techniques. The LPNG utilized was

done so utilizing sound methodology, in direct consultant with Wells Barnett & Associates staff and following existing TRPA precedent. The claims raised within the Notice are not supported by facts and without merit. It is requested that the Acknowledgment of the Permitted Project be allowed without delay.

I thank you for your time and please feel free to reach out if you have any additional questions.

Sincerely,

Nicholas Exline

Nicholas D. Exline
Principal Planner, AICP

Cc. Katherine Hangeland
Theresa Avance

Enc.
Exhibit A
Exhibit B

BENJAMIN FAGAN DESIGNS

589 Tahoe Keys Blvd. Unit E8
South Lake Tahoe, CA 96150
(530) 541-3520
benfagandesigns@gmail.com

7/29/21
Re: Appeal at 1015 Skyland Dr.
APN: 1318-03-210-030
TRPA File #: ERSP2021-0347

To Whom it May Concern:

The appeal notice from Mr. Midkiff alleges that the site plan upon which the plans are drawn is not correct. The original topographic survey was performed within the last year by a Turner & Associates, Inc., a licensed land surveyor in the state of Nevada. It was submitted to the TRPA for a full Site Assessment and the existing coverage, site slope, and land capability were addressed and approved by TRPA based on this survey. The proposed building was based on the figures denoted by TRPA on the original survey.

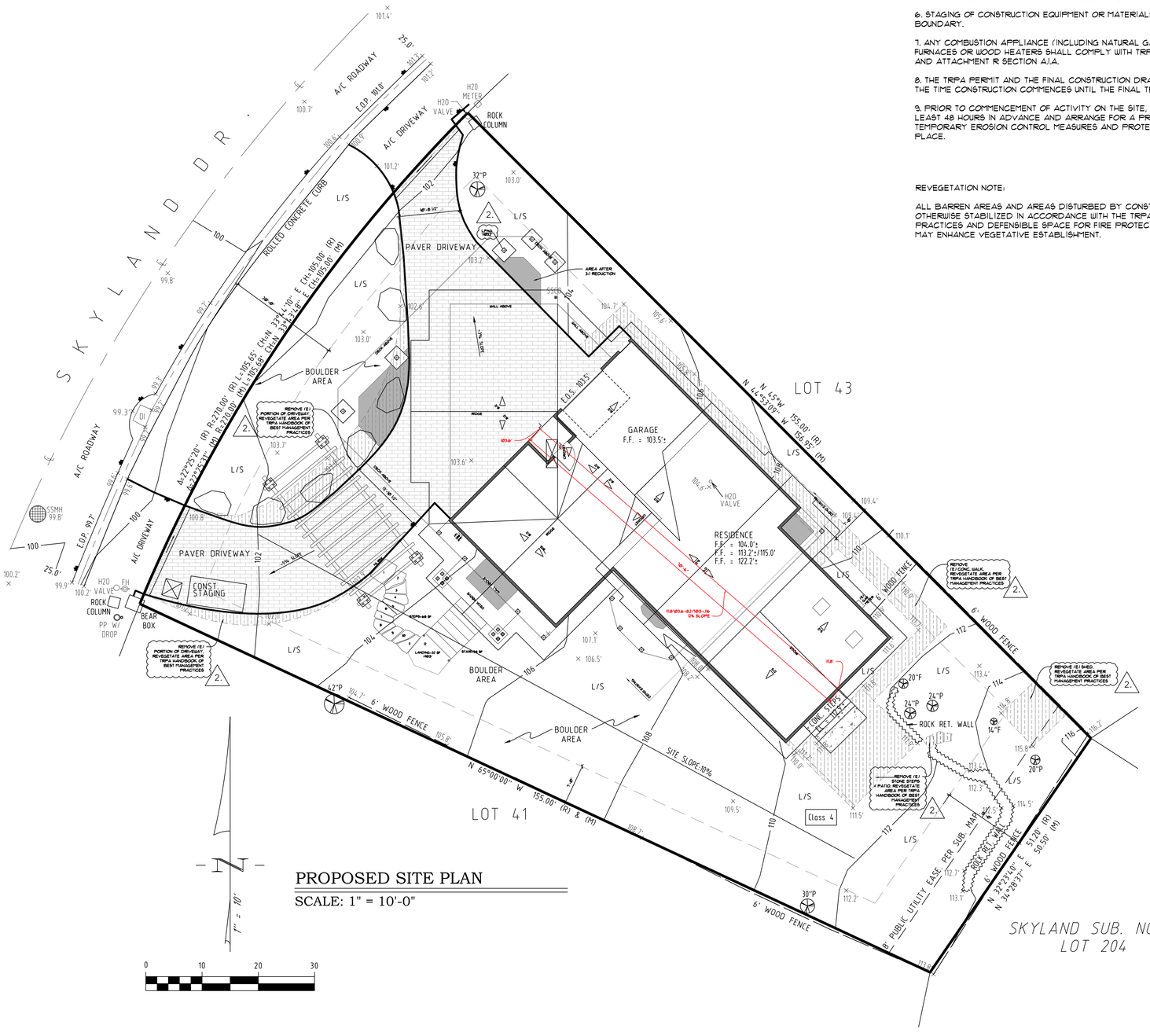
The low point was discussed during plan check and we were made aware that any feature outside of the building footprint that acts a supporting member of the living area should be counted as a low point for the structure – not necessarily the footing at the bottom level of the building. Due to this, the low point was revised after review and discussion with the TRPA 3rd party plan checker at Wells Barnett & Associates LLC. The existing topographic survey was used and an exterior support post was selected at the recommendation of the planner. The nearest spot elevation, as verified by the NV licensed surveyor, is at 103.2'. Therefore, this was used as the lowest point of natural grade and acts as the basis for the maximum to which the overall building height adheres.

The point referred to by Mr. Midkiff, at 102.6', is outside of not just the house footprint and footprint of the support structure, but even outside of the proposed deck cantilever. No portion of the proposed structure exists at the point of 102.6'. The difference in topography between the selected low point and Mr. Midkiff's selection is .6', or 7.2". This amount, when compared to the overall project, will not drastically alter the overall design, but will affect the timeline for TRPA Acknowledgement, Douglas County submittal, and final building permit issuance.

We respectfully disagree with the allegations made against the proposed design and are available to answer any further questions.

Thank You,

- Natalia Wieczorek



PROPOSED SITE PLAN

SCALE: 1" = 10'-0"

0 10 20 30

TRPA NOTES:

1. TRPA STANDARD CONDITIONS FOR RESIDENTIAL PROJECTS (ATTACHMENT R) SHALL APPLY TO THIS PROJECT.

2. EXCAVATION IN EXCESS OF FIVE FEET IN DEPTH OR WHERE THERE EXISTS A REASONABLE POSSIBILITY OF INTERFERENCE OR INTERCEPTION OF A WATER TABLE SHALL BE PROHIBITED UNLESS APPROVED BY TRPA, PER TRPA CODE OF ORDINANCES 33.3.6.B.

3. IF GROUNDWATER IS INTERCEPTED DURING EXCAVATION AND TRPA STAFF IS NOT PRESENT, THEN THE APPLICANT SHALL IMMEDIATELY NOTIFY TRPA AND THE EXCAVATION AND FOUNDATION DESIGN SHALL BE IMMEDIATELY REVISED TO NOT INTERCEPT GROUNDWATER. THE REVISED DEPTH SHALL BE SUBJECT TO APPROVAL BY TRPA STAFF.

4. ALL EXTERIOR LIGHTING SHALL BE CONSISTENT WITH TRPA CODE OF ORDINANCES SECTION 36.8. SPECIFICALLY, ALL EXTERIOR LIGHTING SHALL BE FULLY SHIELDED AND DIRECTED DOWNWARD SO AS NOT TO PRODUCE OBTRUSIVE GLARE ONTO THE PUBLIC RIGHT-OF-WAY OR ADJOINING PROPERTIES. ILLUMINATION FOR AESTHETIC OR DRAMATIC UP-LIGHTING PURPOSES OF ANY BUILDING OR SURROUNDING LANDSCAPE UTILIZING EXTERIOR LIGHTING FIXTURES PROJECTED ABOVE THE HORIZONTAL IS PROHIBITED.

5. THE PERMITTEE SHALL SUBMIT A PROJECTED CONSTRUCTION COMPLETION SCHEDULE TO TRPA PRIOR TO COMMENCEMENT OF CONSTRUCTION. SAID SCHEDULE SHALL INCLUDE COMPLETION DATES FOR EACH ITEM OF CONSTRUCTION, AS WELL AS BMP INSTALLATION FOR THE ENTIRE PROJECT AREA.

6. STAGING OF CONSTRUCTION EQUIPMENT OR MATERIALS IS PROHIBITED WITHIN THE BACKSHORE BOUNDARY.

7. ANY COMBUSTION APPLIANCE (INCLUDING NATURAL GAS OR PROPANE-FIRED WATER HEATERS OR FURNACES OR WOOD HEATERS SHALL COMPLY WITH TRPA CODE OF ORDINANCES SECTION 65.1.4 AND ATTACHMENT R SECTION A.1.A.

8. THE TRPA PERMIT AND THE FINAL CONSTRUCTION DRAWINGS SHALL BE PRESENT ON-SITE FROM THE TIME CONSTRUCTION COMMENCES UNTIL THE FINAL TRPA SITE INSPECTION.

9. PRIOR TO COMMENCEMENT OF ACTIVITY ON THE SITE, THE PERMITTEE SHALL CONTACT TRPA AT LEAST 48 HOURS IN ADVANCE AND ARRANGE FOR A PRE-GRADING INSPECTION TO VERIFY THAT ALL TEMPORARY EROSION CONTROL MEASURES AND PROTECTIVE FENCING FOR VEGETATION ARE IN PLACE.

REVEGETATION NOTE:

ALL BARREN AREAS AND AREAS DISTURBED BY CONSTRUCTION SHALL BE REVEGETATED OR OTHERWISE STABILIZED IN ACCORDANCE WITH THE TRPA HANDBOOK OF BEST MANAGEMENT PRACTICES AND DEFENSIBLE SPACE FOR FIRE PROTECTION REQUIREMENTS. APPLICATION OF MULCH MAY ENHANCE VEGETATIVE ESTABLISHMENT.

10. THE SITE SHALL BE WINTERIZED BY OCTOBER 15TH OF EACH CONSTRUCTION SEASON IN ACCORDANCE TO TRPA WINTERIZATION STANDARDS TO REDUCE AND MITIGATE WATER QUALITY IMPACTS ASSOCIATED WITH WINTER WEATHER.

A. EXCAVATION EQUIPMENT SHALL BE LIMITED TO THE FOUNDATION FOOTPRINT TO MINIMIZE SITE DISTURBANCE. NO GRADING OR EXCAVATION SHALL BE PERMITTED OUTSIDE OF THE BUILDING FOOTPRINT.

B. CONSTRUCTION PLANS SHALL BE CONFIRMED AT THE TIME OF THE TRPA PRE-GRADING INSPECTION. ANY REQUIRED MODIFICATIONS, AS DETERMINED BY TRPA, SHALL BE INCORPORATED INTO THE PROJECT PERMIT AT THAT TIME.

C. THIS SITE SHALL BE WINTERIZED IN ACCORDANCE W/ THE PROVISIONS OF ATTACHMENT R OR BY OCT. 15TH EACH CONSTRUCTION SEASON.

D. THE PERMITTEE IS RESPONSIBLE FOR INSURING THAT THE PROJECT, AS BUILT, DOES NOT EXCEED THE APPROVED LAND COVERAGE FIGURES SHOWN ON THIS SITE PLAN. THE APPROVED LAND COVERAGE FIGURES SHALL SUPERSEDE SCALED DRAWINGS WHEN DISCREPANCIES OCCUR.

11. CONTRACTOR SHALL SECURE PERMITS PRIOR TO COMMENCEMENT OF WORK AND SATISFY ALL REQUIREMENTS OF GOVERNING AGENCIES. CONTRACTOR MUST OBTAIN WRITTEN PERMISSION FROM TRPA AND OTHER AGENCIES HAVING JURISDICTION TO RESOLVE DESIGN MODIFICATIONS, AS NEEDED.

12. CONTRACTOR SHALL CONTACT UTILITIES AT LEAST 48 HOURS PRIOR TO EXCAVATION IN THIS AREA. PHONE: 811.

13. THE EXISTENCE, LOCATION AND ELEVATION OF ANY UNDERGROUND FACILITIES ARE SHOWN ON THIS PLAN IN A GENERAL WAY ONLY. IT IS MANDATORY THAT THE CONTRACTOR EXPOSE AND VERIFY THE TOP AND BOTTOM OF ALL UTILITIES PRIOR TO ANY WORK ON SUBSEQUENTLY AFFECTED FACILITIES. IT IS THE RESPONSIBILITY AND DUTY OF THE CONTRACTOR TO MAKE THE FINAL DETERMINATION AS TO THE EXISTENCE, LOCATION AND ELEVATION OF ALL UTILITIES.

14. ANY EXISTING UTILITY COMPANY UTILITIES DISRUPTED WITHOUT THE CONSENT OF THE APPROPRIATE UTILITY COMPANY SHALL BE REPLACED OR REPAIRED TO THE SATISFACTION OF AND AT NO COST TO THE OWNER.

OWNER & MAILING ADDRESS:
JENAL ENGINEERING CORP.
PO BOX 458
LEMON GROVE, CA 91946
(619) 520-0350
JENALINC@COX.NET

BUILDING CODE DATA
OCCUPANCY GROUP = R-3, U
TYPE OF CONSTRUCTION = V-B
SPRINKLERS = YES
STORIES = 3 MOD. AREA UNDER ROOF = 4,884 SF
TOTAL CONDITIONED SPACE = 4,992 SF
TOTAL UNCONDITIONED SPACE = 422 SF

TOTAL PARCEL AREA: 12,300 SF
PLANNING AREA: SKYLAND
LAND USE (EXISTING): SINGLE FAMILY DWELLING
LAND USE (PROPOSED): SINGLE FAMILY DWELLING
DENSITY (EXISTING): 1 RESIDENTIAL UNIT
DENSITY (PROPOSED): 1 RESIDENTIAL UNIT
NATURAL HAZARDS (FLOOD/AVALANCHE): NONE
HISTORIC: BUILT IN 1960
SCENIC: PARTIALLY VISIBLE FROM LAKE TAHOE

BASE ALLOWABLE COVERAGE:	2,460 SF
TOTAL EXISTING COVERAGE:	5,003 SF
TOTAL PROPOSED COVERAGE:	4,985 SF
TOTAL REMAINING COVERAGE TO BE BANKED FOR FUTURE USE:	18 SF
EXCESS COVERAGE:	2,543 SF

LAND CAPABILITY	LAND AREA	% COVERAGE	COVERAGE (SF)
4	12,300 SF	20%	2,460 SF

EXISTING VERIFIED COVERAGE TABLE (PER TRPA FILE #LCAP2020-0416):

TYPE:	TOTAL SF:
RESIDENCE/CHIMNEY/GARAGE	1,849 SF
A/C DRIVEWAY	2,206 SF
CONC. WALKS/PATIO	775 SF
WOOD DECKS/STEPS (W/ 3:1)	173 SF
TOTAL EXISTING LAND COVERAGE:	5,003 SF
EXCESS LAND COVERAGE:	2,543 SF
TOTAL EXISTING OFF-SITE COVERAGE:	418 SF

PROPOSED COVERAGE TABLE:

TYPE:	TOTAL SF:	3:1 REDUCTION:	TOTAL COVERAGE:
RESIDENCE/GARAGE	2,580 SF	-102 SF	2,478 SF
A/C DRIVEWAY	2,041 SF	-	2,041 SF
FRONT CONC. STOOP	31 SF	-	31 SF
FRONT DECK	270 SF	-134 SF	136 SF
POSTS	65 SF	-	65 SF
ENTRY DECK	67 SF	-51 SF	16 SF
MASTER DECK	92 SF	-83 SF	9 SF
STONE STEPS/LANDING	158 SF	-	158 SF
REAR STEPS/CONC.	63 SF	-	63 SF
TOTAL (P) COVERAGE:	5,367 SF	-370 SF	4,997 SF
TOTAL PROPOSED LAND COVERAGE:			4,997 SF
BANKED COVERAGE:			6 SF
EXCESS COVERAGE:			2,543 SF
TOTAL OFFSITE COVERAGE:			418 SF

• ALL COVERAGE EXEMPTIONS MUST BE LOCATED ON NON-SENSITIVE LANDS (LAND CAPABILITY CLASSES 4,5,6,7 OR IPES SCORES 726 OR HIGHER)

SCOPE OF WORK

- ADD NEW LIVING AREA AT (E) 9FR
- NEW GARAGE
- NEW DECKS
- NEW 3RD LEVEL

TITLE:

SITE PLAN - PROPOSED COVERAGE -

PROJECT:

Project For:
WESTERMEYER RESIDENCE
1015 SKYLAND DR.
DOUGLAS CO. NEVADA
1318-03-210-030

DATE:

2. TRPA REV. 6/24/21

DRAWN BY: NMW
DATE PREPARED: 5/19/21
SCALE: AS NOTED

DRAWING No:

SP1

LEGAL COMMITTEE ITEM NO. 5 & AGENDA ITEM NO. VII. A.