

**STAFF REPORT
C26**

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02/04/19
PRC 3981.1
M.J. Columbus

**CONSIDER TERMINATION OF AN AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE; AND AUTHORIZATION OF ASSIGNMENT,
ENDORSEMENT OF A SUBLEASE, AND AN AGREEMENT AND CONSENT
TO ENCUMBRANCING OF LEASE**

LESSEE/ASSIGNOR:

Urbana Tahoe TC, LLC, a Delaware limited liability company

APPLICANT/ASSIGNEE:

LCOF Lake Tahoe Investment LLC, a Delaware limited liability company

SUBLESSEE:

Action Motorsports of Tahoe, Inc., a California corporation

SECURED-PARTY LENDER:

PFP Holding Company VI, LLC, a Delaware limited liability company

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3411 Lake Tahoe Boulevard, near South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

LEASE: Continued use, maintenance, and operation of an existing commercial marina facility known as "Timber Cove Lodge Marina" consisting of an existing pier with a restaurant building and retail building, an existing fueling facility on the pier, 80 mooring buoys, two existing personal watercraft string lines, and two channel markers.

SUBLEASE: Operation of personal watercraft, boat and buoy rentals; fishing and boat charters; and gasoline and retail sales.

LEASE TERM:

LEASE: 25 years, beginning May 19, 2011, ending May 18, 2036.

SUBLEASE: 10 years, beginning May 1, 2018, ending April 30, 2028.

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CONSIDERATION:

\$65,234 per year, against five percent of the gross annual income derived from the commercial activities of mooring, boat and personal watercraft rentals and retail sales; three percent of the gross annual income derived from food and beverage sales; and one and one-half cents per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and two cents per gallon thereafter, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$3,000,000 per occurrence.

Surety Bond:

Bond in the amount of \$50,000

Other:

The lease contains provisions that require implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Marina Owners/Operators," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

On January 26, 2012, the Commission authorized a General Lease – Commercial Use and sublease with The Survivor's Trust under The George and Elsie Karadanis Revocable Family Trust, Robert Mitchell Karadanis, George Martin Karadanis and William Matthew Karadanis; and Lisa Maloff, Trustee of The Robert M. and Lisa Maloff Trust dated 7/7/03, dba Timber Cove Lodge Marina ([Item C18, January 26, 2012](#)). On August 14, 2012, the Commission authorized an assignment of the lease to Urbana Tahoe TC, LLC ([Item C36, August 14, 2012](#)). On June 29, 2015, the Commission authorized an encumbrancing of Lease No. PRC 3981.1 and the execution of the document entitled "Agreement and Consent to Encumbrancing of Lease," effective June 29, 2015 ([Item C07, June 29, 2015](#)). On June 22, 2017, the Commission authorized the revision of rent

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([Item C02, June 22, 2017](#)). The lease will expire on May 18, 2036, and the sublease expired on April 30, 2013.

The upland property is currently in escrow with LCOF Lake Tahoe Investment LLC. LCOF Lake Tahoe Investment LLC is a recently formed Limited Liability Company and was created to purchase, own, and maintain the marina known as Timber Cove Lodge Marina, and is not affiliated with the current owners of the marina. The assignment would be effective ~~January 23~~~~February 4~~[January 28](#), 2019. The proposed Assignee is requesting approval of an assignment of Lease No. PRC 3981.1; a sublease endorsement for the continued operation of personal watercraft, boat and buoy rentals, fishing and boat charters, and gasoline and retail sales; termination of the existing Agreement and Consent to Encumbrancing of Lease No. PRC 3981.1; and a new Agreement and Consent to Encumbrancing of Lease No. PRC 3981.1.

Although the proposed Assignee is a newly formed limited liability company (LLC), and thus cannot provide previous financial statements to demonstrate a solid business or financial record, staff reviewed Assignee's organizational structure and LLC Agreement, Assignee's proforma balance sheet, and cash flow analysis. Staff has also received information on key employees of the Assignee's, verifying a satisfactory level of experience in managing and maintaining commercial real estate. The Assignee's parent company has been in the financial and hospitality service industries for more than 20 years. The lease requires a financial performance surety in the amount of \$50,000. The surety mitigates the risk of the Assignee being a newly formed LLC with no historic performance information available.

The proposed Assignee agrees to perform and be bound by the terms, conditions, covenants, and agreements contained in the lease. Staff recommends an assignment of the lease to reflect the change in ownership of the upland properties from the Assignor to the Assignee, and sublease to reflect the extended terms of the Lease Agreement by and between Assignor and Action Motorsports of Tahoe, Inc.

The Assignee is in the process of obtaining a mortgage loan in favor of PFP Holding Company VI, LLC, a Delaware limited liability company (Secured-Party Lender), for a loan amount not to exceed \$22,750,000. The loan sponsor is Linchris Capital Opportunity Fund GP LLC, Assignee's management company. Under the terms of the loan, the Secured-Party Lender is requiring LCOF Lake Tahoe Investment LLC to pledge their interest in Lease No. PRC 3981.1 as additional security. The

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purpose of the loan is for the Assignee's acquisition and improvements of the leasehold and the hotel adjoining the lease area.

The encumbrance of the lease would be implemented through a document, "Agreement and Consent to Encumbrancing of Lease," that would include protections for the State land associated with the lease. These protections include requirements that: 1) no subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission; 2) transfer of the lease to a third party without written notice to the Commission within 45 days of the transfer relieves the Commission of noticing obligations under the Encumbrancing Agreement; 3) if the Secured Party-Lender becomes the lessee, it shall be bound by all terms and conditions of the lease; and 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent.

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.

For all the reasons above, staff believes that the authorization of the lease assignment, sublease endorsement, termination of the existing Agreement and Consent to Encumbrancing, and proposed Agreement and Consent to Encumbrancing, will not result in a change in the use of, or impacts to, Public Trust resources and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction; and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. On October 24, 2018, the Tahoe Regional Planning Agency's Governing Board certified a new Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
3. Approving the lease assignment, sublease endorsement, and encumbrancing agreement are not projects as defined by the California

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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, sections 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment, sublease, and agreement and consent to encumber 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 lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the assignment of Lease No. PRC 3981.1, a General Lease – Commercial Use, of sovereign land, as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, from Assignor to Assignee, effective ~~January 23~~ February 4 ~~January 28~~, 2019.
2. Authorize, by endorsement, a sublease between Assignee and Action Motorsports of Tahoe, Inc., a California corporation, of Lease No. PRC 3981.1, which shall be subject to the terms of the Lease Agreement by and between Assignor and Action Motorsports of Tahoe, Inc., for a term of 10 years, beginning May 1, 2018.
3. Authorize the termination of the Agreement and Consent to Encumbrancing of Lease No. PRC 3981.1 previously authorized by the Commission on June 29, 2015, by and between Lessee/Assignor and Pacific Western Bank, a California state-chartered bank.
4. Authorize the Executive Officer or her designee to execute the document entitled "Agreement and Consent to Encumbrancing of Lease," allowing the Assignee's right, title, and interest

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in Lease No. PRC 3981.1 to be pledged as partial security for a loan in the principal amount not to exceed \$22,750,000 in favor of Secured Party-Lender, in substantially the same form as that on file in the Sacramento office of the Commission; and authorize the Executive Officer or her designee to execute, acknowledge, accept, and record all related documents as may be necessary to complete the transaction.

EXHIBIT A

PRC 3981.1

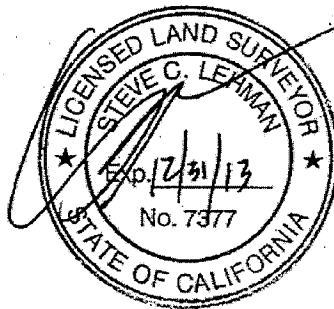
LAND DESCRIPTION

A parcel of submerged land lying in the bed of Lake Tahoe, adjacent to fractional Section 33, Township 13 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved July 13, 1867, County of El Dorado, State of California, more particularly described as follows:

BEGINNING at a point on the line of the historic Low Water Mark, as depicted on sheet 3 of those maps entitled "Survey of the Low Water Mark on the Shore of Lake Tahoe", on file at the California State Lands Commission, Sacramento Office, said point lying distant N 68°43'51" E 37.98 feet from Station 27 as shown on said map; thence along said line of Low Water S 68°43'51" W 37.98 to said Station 27; thence S 64°11'10" W 451.69 feet; thence leaving said line of Low Water Mark N 25°48'50" W 1790.88 feet; thence N 70°25'49" E 681.76 feet; thence S 19°34'11" E 1730.00 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 1/4/2012 by the California State Lands Commission Boundary Unit.



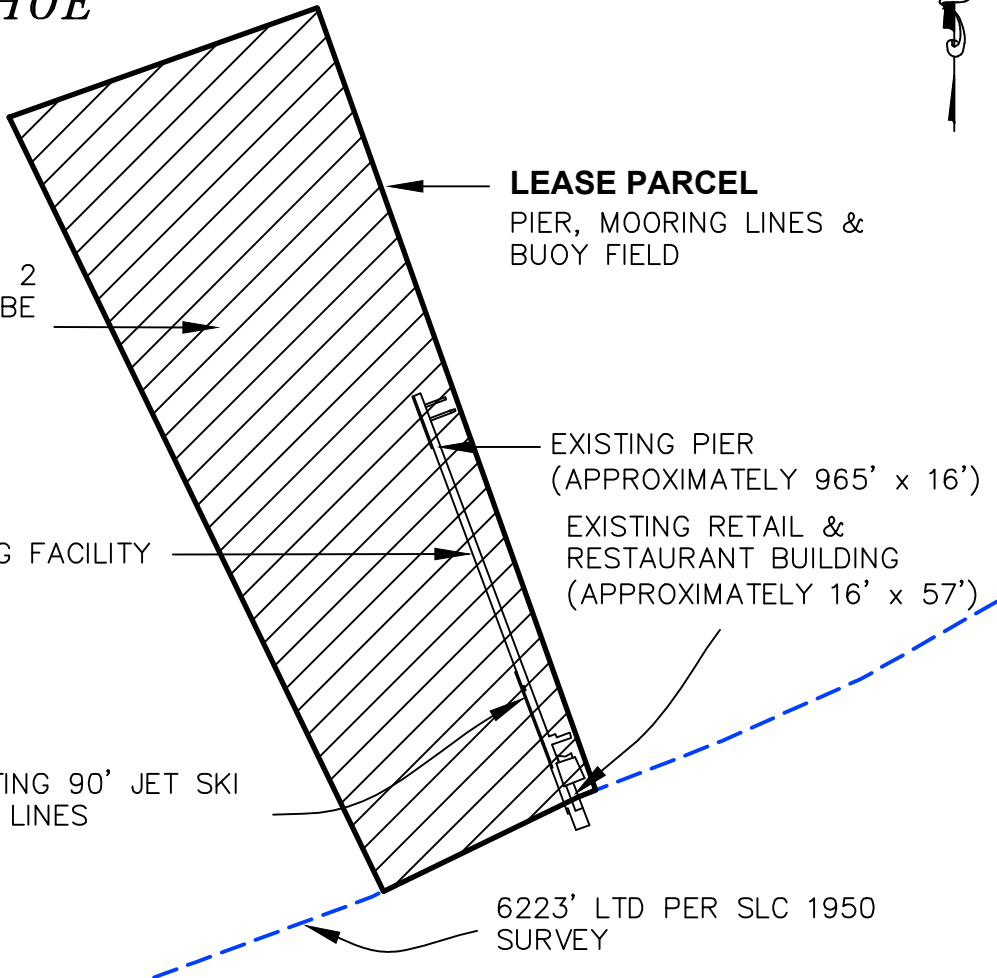
NO SCALE

SITE

LAKE TAHOE



80 EXISTING BUOY'S & 2 CHANNEL MARKERS TO BE PLACED WITHIN LEASE PARCEL BY APPLICANT



3411 LAKE TAHOE BLVD., SOUTH LAKE TAHOE

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

PRC 3981.1
 LCOF LAKE TAHOE INVESTMENT, LLC
 APN 027-090-25
 GENERAL LEASE - COMMERCIAL USE
 EL DORADO COUNTY

