

MINUTE ITEM

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CALENDAR ITEM

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08/21/84
WP 3981
Horn
Hadly
Judson
PRC 3981

GENERAL LEASE - COMMERCIAL USE

APPLICANT: HKM Investments
2020 Marconi Avenue
Sacramento, California 95821

AREA, TYPE LAND AND LOCATION:
Approximately 10.1 acres of submerged land in
the bed of Lake Tahoe; near Bijou, City of
South Lake Tahoe, El Dorado County.

LAND USE: Commercial pier and huoy field.

TERMS OF PROPOSED LEASE:
Initial period: ten years from May 19, 1983.
Public liability insurance: Combined single
limit coverage of \$1,000,000.

CONSIDERATION: \$2,600 per annum or ten percent of income
received from concessionaires per annum,
whichever is greater, with the State reserving
the right to fix a different rental on each
fifth anniversary of the lease.

BASIS FOR CONSIDERATION:
Pursuant to 2 Cal. Adm. Code 2003.

APPLICANT STATUS:
Applicant is owner of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:
N/A.

(NON-SUBSTANTIVE REVISION 03/27/85)

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STATUTORY AND OTHER REFERENCES:

- A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Adm Code: Title 2, Div. 3; Title 14, Div. 6.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorical exempt project. The project is exempt under Class 1, existing facilities, 2 Cal. Adm. Code 2905(a)(2).

Authority: P.R.C. 21084 and 14 Cal. Adm. Code 15300.

2. HKM Investments, owner of the Timber Cove Lodge, filed suit against the City of South Lake Tahoe in 1974 seeking to quiet title to beach-front property waterward to the low water mark HKM v. City of South Lake Tahoe, El Dorado Court Superior Court Case No. 24285. The State was later joined in the case.

Subsequently, the California Supreme Court in State of California v. Superior Court (Lyon) (1981) 29 Cal. 3d 210 and State of California v. Superior Court (Fogerty) 29 Cal. 3d 240 held that private upland owners on non-tidal navigable waters hold fee title to the low water mark. It also held that the area lying between high and low water marks is subject to the public trust. While the Fogerty litigation has not determined, the location (elevation) of the high and low water marks in Lake Tahoe, the Commission has previously taken the position that elevations 6,223 and 6,229.1 feet (Lake Tahoe datum) represent the locations of low and high water marks, respectively. Approval of this lease is

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contingent on Commission acceptance of the settlement proposal for HKM v. City of South Lake Tahoe case considered in the preceding item of the Commission's Calendar.

The staff has finally concluded an agreement with HKM, wherein the State claims ownership below elevation 6,223 and is charging rent for areas below such elevation, subject to a final judicial resolution of the high and low water marks of Lake Tahoe.

Staff is also recommending that the Commission accept a payment of \$18,000 as rental for occupation of the premises for the period May 19, 1973 through May 18, 1983.

3. This activity involves lands identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. but will not affect those significant lands.

APPROVALS OBTAINED:
N/A.

FURTHER APPROVALS REQUIRED:
N/A.

EXHIBITS: A. Land Description.
 B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A CATEGORICAL EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, 2 CAL. ADM. CODE 2905.
2. FIND THAT THIS ACTIVITY WILL INVOLVE LANDS IDENTIFIED AS POSSESSING SIGNIFICANT ENVIRONMENTAL VALUES PURSUANT TO P.R.C. 6370, ET SEQ., BUT THAT SUCH ACTIVITY WILL HAVE NO DIRECT OR INDIRECT EFFECT ON SUCH LANDS.

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3. AUTHORIZE ISSUANCE TO HKM INVESTMENTS OF A TEN-YEAR GENERAL LEASE - COMMERCIAL USE FROM MAY 19, 1983; IN CONSIDERATION OF A BASE ANNUAL RENT IN THE AMOUNT OF \$2,600 OR TEN PERCENT OF INCOME RECEIVED FROM CONCESSIONAIRES PER ANNUM, WHICHEVER IS GREATER, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENTAL ON EACH FIFTH ANNIVERSARY OF THE LEASE; PROVISION OF PUBLIC LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF \$1,000,000; FOR THE MAINTENANCE OF A COMMERCIAL PIER WITH ITS ANCILLARY BOATING AND FISHING FACILITIES TOGETHER WITH 80 BOAT MOORING BUOYS. APPROVAL OF SUCH LEASE SHALL BE CONTINGENT ON COMMISSION ACCEPTANCE OF THE SETTLEMENT PROPOSAL FOR HKM V. CITY OF SOUTH LAKE TAHOE, EL DORADO COUNTY SUPERIOR COURT CASE NO. 24285 CONSIDERED IN THE PRECEEDING ITEM OF THE COMMISSION'S CALENDAR.

4. ACCEPT AS RENTAL FOR OCCUPATION OF THE PREMISES FROM MAY 19, 1973 TO MAY 18, 1983, THE SUM OF \$18,000.

(NON-SUBSTANTIVE REVISION 03/27/85)

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EXHIBIT "A"

LAND DESCRIPTION WP3981

Two parcels of submerged land in the State-owned bed of Lake Tahoe, El Dorado County, State of California, said parcels also being within protracted Section 33, T13N, R18E, MDM and being more particularly described as follows:

PARCEL 1

COMMENCING at the northwest corner of Lot B as shown on that certain map entitled "BIJOU BEACH SUBDIVISION" recorded in Map Book B, page 92, records of said County; thence S 83° 49' 44" W a distance of 81.21 feet to the TRUE POINT OF BEGINNING;
thence N 19° 22' 06" W a distance of 23.50 feet;
thence S 70° 37' 54" W a distance of 4.50 feet;
thence N 19° 22' 06" W a distance of 337.00 feet;
thence N 70° 37' 54" E a distance of 4.50 feet;
thence N 19° 22' 06" W a distance of 615.00 feet;
thence N 70° 37' 54" E a distance of 93.00 feet;
thence S 19° 22' 06" E a distance of 82.00 feet;
thence S 70° 37' 54" W a distance of 57.00 feet;
thence S 19° 22' 06" E a distance of 683.50 feet;
thence N 70° 37' 54" E a distance of 22.00 feet;
thence S 19° 22' 06" E a distance of 7.00 feet;
thence N 70° 37' 54" E a distance of 20.00 feet;
thence S 19° 22' 06" E a distance of 32.00 feet;
thence S 70° 37' 54" W a distance of 42.00 feet;
thence S 19° 22' 06" E a distance of 19.50 feet;
thence N 70° 37' 54" E a distance of 40.50 feet;
thence S 19° 22' 06" E a distance of 69.00 feet;
thence S 70° 37' 54" W a distance of 26.00 feet;
thence S 19° 22' 06" E a distance of 58.50 feet;
thence S 70° 37' 54" W a distance of 6.00 feet;
thence S 19° 22' 06" E a distance of 124.00 feet;
thence S 70° 37' 54" W a distance of 44.50 feet;
thence N 19° 22' 06" W a distance of 100.00 feet to the true point of beginning.

PARCEL 2

COMMENCING at the northwest corner of Lot B as shown on that certain map entitled "BIJOU BEACH SUBDIVISION" recorded in Map Book B, page 92, records of said County; thence S 83° 49' 44" W a distance of 81.21 feet to the TRUE POINT OF BEGINNING:
thence N 19° 22' 06" W a distance of 23.50 feet;
thence S 70° 37' 54" W a distance of 4.50 feet;
thence N 19° 22' 06" W a distance of 337.00 feet;
thence N 70° 37' 54" E a distance of 4.50 feet;
thence N 19° 22' 06" W a distance of 615.00 feet;
thence S 70° 37' 54" W a distance of 433.48 feet;
thence S 20° 17' 19" E a distance of 1002.14 feet;
thence N 69° 42' 41" E a distance of 417.44 feet;
thence N 19° 22' 06" W a distance of 19.81 feet to the true point of beginning.

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The bearings used in this description are based on the westerly line of said Lot B, being N 15° 55' W as shown on said subdivision map.

EXCEPTING THEREFROM any portion lying landward of the ordinary low water mark.

END OF DESCRIPTION

REVIEWED JULY 26, 1983 BY BOUNDARY AND TITLE UNIT, LEROY WEED, SUPERVISOR.

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L A K E T A H O E

