

**CALENDAR ITEM
C47**

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10/22/09
WP 4173.1
B. Terry

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Cedar Flat Improvement Association, Inc.

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in Lake Tahoe, adjacent to 4370 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier with a sundeck and stairs, and 21 existing mooring buoys as shown on the attached Exhibit A.

LEASE TERM:

Ten years, beginning September 29, 2008.

CONSIDERATION:

Pier and 21 mooring buoys - \$296 per year; prorated pursuant to Public Resource Code section 6503.5; and

Sundeck with stairs - \$429 per year;

Total annual rent - \$725, 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 the amount of no less than \$2,000,000.

Other:

1. The existing sundeck with stairs, cannot be expanded, and if repairs to any portion of the existing sundeck cost more than 50% of the base value of the sundeck, then the sundeck must be removed from the lease premises.

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2. The Cedar Flat Improvement Association (Association) is required to obtain authorization from the Tahoe Regional Planning Agency for the mooring buoys within two years after the adoption of the Lake Tahoe Shorezone Amendments-Final Environmental Impact Statement (FEIS) and approval of the ordinances based on the FEIS.
3. The use of the buoy field will be made available to all members of the Association in a fair and equitable manner. A buoy allotment program must be maintained during the lease term that will identify how the buoys will be managed, maintained, and distributed for use by the Association's members.
4. The Association will not add, permit or allow the placement by any other party of any additional buoys or other improvements on, within or adjacent to the buoy field without the prior express written consent of the Commission. The Association will remove or cause any such unauthorized buoys or other improvement to be immediately removed in accordance with all appropriate legal and regulatory requirements.

BACKGROUND INFORMATION:

On September 19, 2000, the Commission authorized a ten-year General Lease – Recreational Use with the Cedar Flat Improvement Association (Association) for the existing pier and 21 mooring buoys. That lease expired on September 28, 2008 and the Association has applied for a new General Lease – Recreational Use.

On August 11, 2009, staff brought an item to the Commission for its consideration regarding an enforcement action against the Association because the Association had knowingly not been in compliance with the terms of the lease which required the use of the buoys by its members in a fair and equitable manner. In fact, the Association was allowing individual private use of the buoys by specific property owners under a private buoy use agreement. The Association had also refused to provide a buoy allocation program when advised by staff that one would need to be provided. In addition, the Association had not complied with the buoy location requirement as was outlined in the lease. At the August meeting, the Commissioners granted the Association an extension of time until the next scheduled Commission meeting to provide a buoy allocation plan and to agree to the terms for a new lease for the buoys and pier.

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Since the August meeting, staff has met several times with Board members of the Association to discuss its progress in developing a buoy allocation plan, the rescission of the prior private buoy use agreement, and to discuss terms of a future lease. On October 6, 2009, the Association submitted a draft Mooring Field Participation Plan (Plan) with an associated lottery application, rules, and buoy use agreement for staff's review. Based on staff's review of the Plan, it provides for a buoy participation scenario which will be open to all Association members that choose to participate. The Association's Board of Directors will consider approving the Plan at its October 14, 2009 meeting.

The Association has contacted five Association members who placed buoys in Lake Tahoe without authorization from the Commission. The Association reports that those five mooring buoys and chains have been removed from the Lake and it intends to use its best efforts, in accordance with all appropriate legal and regulatory requirements, to have the remaining trespassing buoys and mooring tackle removed from the Lake by April/May of 2010.

OTHER PERTINENT INFORMATION:

1. The Cedar Flat Improvement Association (Association) is a property improvement association consisting of 131 members/lots and owns the uplands adjoining the lease premises.
2. Of the 131 members/lots, four do not qualify for rent-free status pursuant to section 6503.5 of the Public Resources Code. The rent for the pier and mooring buoys has been prorated according to the number of members/lots that qualify for rent-free status. The sundeck with stairs does not qualify for rent-free status and is subject to full rent because it is not used for the docking and mooring of boats.
3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

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4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS REQUIRED:

Buoys: Tahoe Regional Planning Agency

EXHIBITS:

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

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE TO THE CEDAR FLAT IMPROVEMENT ASSOCIATION, INC., BEGINNING SEPTEMBER 29, 2008, FOR A TERM OF TEN YEARS, FOR THE CONTINUED USE AND MAINTENANCE OF AN EXISTING PIER WITH A SUNDECK AND STAIRS AND 21 MOORING BUOYS AS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES ONLY) AND AS DESCRIBED IN EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; CONSIDERATION FOR THE EXISTING PIER AND 21 MOORING BUOYS - ANNUAL RENT IN THE AMOUNT OF \$296, PRORATED PURSUANT TO PUBLIC RESOURCE CODE SECTION 6503.5; CONSIDERATION FOR THE SUNDECK WITH STAIRS - ANNUAL RENT IN THE AMOUNT OF \$429; TOTAL ANNUAL

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RENT IN THE AMOUNT OF \$725 WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; AND LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN \$2,000,000.