

**CALENDAR ITEM
C25**

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12/10/10
WP 3545.1
N. Lee

GENERAL LEASE - RECREATIONAL USE

APPLICANTS:

Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 5240 North Lake Boulevard, near Carnelian Bay, Placer County.

AUTHORIZED USE:

Continued use and maintenance of an existing pier and two mooring buoys as shown on the attached Exhibit A.

LEASE TERM:

10 years, beginning September 8, 2010.

CONSIDERATION:

\$3,254 per year 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 proposed lease contains a provision requiring the Applicants to obtain authorization from the Tahoe Regional Planning Agency (TRPA) for the mooring buoys within two years after the adoption of a Final Environmental Impact Statement (FEIS) for the Lake Tahoe Shorezone Ordinance Amendments and approval of the amended ordinances. This is a continuation of the process the Commission used from approximately 1995 to October 2008 when TRPA adopted an FEIS and Ordinance Amendments supported by the FEIS. In September 2010, the U.S. District Court invalidated the

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FEIS and nullified the Amendments. TRPA is presently evaluating its response. When additional information is available, Commission staff will advise the Commission on any suggested modifications to the process used by the Commission pending resolution of the TRPA FEIS and ordinance issues.

2. The lease contains a provision that the Lessee acknowledges that a portion of the existing raised sundeck and foundation exists within the State-administered Public Trust easement between the locations of the ordinary high water mark and the low water mark of Lake Tahoe as those locations existed prior to construction. Lessee agrees not to block or otherwise prohibit the public from passing and re-passing across the Public Trust easement to access adjacent property subject to the Public Trust easement.
3. The lease contains a provision acknowledging that two existing freshwater intake pipelines are located on the lease premises and that, if they become unserviceable or in disrepair at any time during the lease term, the Lessee must submit a work plan to the Lessor for removal of the pipelines.
4. The lease contains provision that the Lessee will pay back rent for the period of September 8, 1998 to September 7, 2010 in the total amount of \$19,240 in four equal payments on a quarterly basis until October 15, 2011.

OTHER PERTINENT INFORMATION:

1. Applicants own the uplands adjoining the lease premises.
2. On September 23, 1987, the Commission authorized the issuance of a General Permit – Recreation and Right of Way Uses to Alvina Patterson for the continued use and maintenance of an existing pier, two mooring buoys, and a fresh water intake pipeline. That lease expired on September 7, 2001. On April 25, 1997, Alvina Patterson sold the upland parcel to Mark R. Freeman and, on September 3, 2004, ownership was deeded to Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004.
3. Applicants are now applying for a new General Lease - Recreational Use for the continued use and maintenance of the existing pier and two mooring buoys. The fresh water intake pipeline still exists; however, it is exempt from Commission consideration pursuant to Public Resources Code section 6327.

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4. Applicants do not qualify for rent-free status because the littoral land is not improved with a single-family dwelling pursuant to Public Resources Code section 6503.5.
5. Rent has not been paid since 1997. Accordingly, staff is recommending that the Commission accept back rent in the amount of \$19,240 for the period ranging from September 8, 1998 to September 7, 2010. Back rent will be made in four equal payment installments of \$4,810. The first payment was received on October 12, 1010. Each of the succeeding three equal payments will be made within one year, on or before February 15, June 15, and October 15, 2011.
6. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined this activity is exempt from the requirements of 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.

7. 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 staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of 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).

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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:

1. Authorize acceptance of back rent for the period of September 8, 1998 to September 7, 2010 in the total amount of \$19,240 in four equal payments of \$4,810 on a quarterly basis until October 15, 2011.

2. Authorize issuance of a General Lease – Recreational Use to Mark R. Freeman and Julie Bannon-Freeman, Trustees of the Freeman Family Trust, U.D.T. dated May 10, 2004, beginning September 8, 2010, for a term of 10 years, for the continued use and maintenance of an existing pier and two mooring buoys as shown on Exhibit A attached and by this reference made a part hereof; annual rent in the amount of \$3,254, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; and liability insurance in the amount of no less than \$2,000,000.