

CALENDAR ITEM

C49

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04/06/11

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WP 3368.1

B. Terry

TERMINATION AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL USE

LESSEE:

Bruck-McLain Properties, a General Partnership

APPLICANTS:

Bruck-McLain Properties, a General Partnership; and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Jennifer B. Lavis 2010 Irrevocable Trust u/a/d June 25, 2010, and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Matthew M. Sitzmann 2010 Irrevocable Trust u/a/d June 25, 2010

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to Assessor's Parcel Numbers 098-210-026 and 098-210-027, near Tahoma, Placer County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning August 4, 2010.

CONSIDERATION:

\$2,937 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 \$1,000,000.

Other:

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

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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 FEIS and nullified the Amendments. TRPA is presently evaluating its response. At such time as 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 amended ordinance issues.

OTHER PERTINENT INFORMATION:

1. Applicants own the two upland contiguous parcels adjoining the lease premises, Assessor's Parcel Numbers (APN) 098-210-026 and 098-210-027.
2. On April 17, 2006, the Commission authorized a General Lease - Recreational Use with Bruck-McLain Properties, a General Partnership. That lease will expire on October 28, 2015. On August 4, 2010, one-third ownership of the upland parcels was transferred to Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Jennifer B. Lavis 2010 Irrevocable Trust u/a/d June 25, 2010, and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Matthew M. Sitzmann 2010 Irrevocable Trust u/a/d June 25, 2010. Applicants are now applying to terminate the existing lease and to request issuance of a new General Lease – Recreational Use.
3. Two of the existing mooring buoys are adjacent to APN 098-210-026, which is an unimproved littoral parcel and does not qualify for rent-free status pursuant to Public Resources Code section 6503.5. Therefore, the two mooring buoys are subject to full rent. The pier and two mooring buoys are located adjacent to APN 098-210-027, which is improved with a single family dwelling and qualifies for rent-free status; however, Bruck-McLain Properties, a General Partnership (Bruck-McLain), does not qualify for rent-free status because it does not own the littoral property as a natural person pursuant to Public Resources Code section 6503.5. Therefore, the pier and two mooring buoys adjacent to APN 098-210-027 will be pro-rated based on the Bruck-McLain two-thirds ownership.
4. **Termination of Existing Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.

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Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

5. **Issuance of New Lease:** 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 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.

6. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. but such activity will not affect those significant lands. 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.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Termination of Existing Lease: Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3) because the activity is not a project as defined by Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

Issuance of New Lease: 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 termination, effective August 3, 2010, of Lease No. PRC 3368.1, a General Lease – Recreational Use, issued to Bruck-McLain Properties, a General Partnership.
2. Authorize issuance of a General Lease – Recreational Use to Bruck-McLain Properties, a General Partnership; and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Jennifer B. Lavis 2010 Irrevocable Trust u/a/d June 25, 2010; and Gary R. Sitzmann and Lindy Lou Sitzmann, Co-Trustees of the Matthew M. Sitzmann 2010 Irrevocable Trust u/a/d June 25, 2010, beginning August 4, 2010, for a term of 10 years, for the continued use and maintenance of an existing pier and four mooring buoys as shown on Exhibit A attached and by this reference made a part hereof; annual rent in the amount of \$2,937, 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 \$1,000,000.