

**CALENDAR ITEM
C58**

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04/06/11

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PRC 5467.1

D. Plummer

**CONSIDER TERMINATION OF GENERAL LEASE- COMMERCIAL USE
AND AUTHORIZATION FOR COLLECTION OF BACK RENT AND LITIGATION
FOR TRESPASS AND EJECTMENT**

LESSEE:

Dago Mary's, a California Corporation
1875 Mission Street
San Francisco, CA 94103

LAND TYPE, AND LOCATION:

Filled and unfilled sovereign land in the city of Burlingame, San Mateo County.

AUTHORIZED USE:

Operation of a floating restaurant, parking lot, and public access amenities.

CURRENT LEASE TERM:

25 years, beginning April 1, 2006.

CONSIDERATION:

Three percent of gross income derived from the restaurant and bar operations; 25 percent of gross income from the operations of coin operated vending and electronic game machines; 10 percent from all other gross income derived from the use of the Lease Premises. Lessee shall pay a monthly minimum rent in the amount of \$750 with the State reserving the right to adjust the rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Commercial General Liability in an amount of no less than \$5,000,000;
Liquor Liability in an amount no less than \$2,000,000; and
Worker's Compensation in accordance with California law.

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Surety Bond:
\$20,000.

OTHER PERTINENT INFORMATION:

1. On February 9, 2006, the California State Lands Commission (Commission) authorized the issuance of a 25-year lease to Dago Mary's, a California Corporation for the operation and maintenance of a floating restaurant, parking lot, and public access facilities on sovereign land adjacent to San Francisco Bay in the city of Burlingame, San Mateo County. The lease became effective April 1, 2006.
2. On November 10, 2010, a Notice of Default was sent to Dago Mary's covering several items of breach, including the non-payment of rent, failure to provide an accounting of business transactions, and failure to provide required insurance coverage. Subsequent to the November 10, 2010 Notice of Default, an additional breach of the lease has occurred. The lease required the lessee to continuously use the premises for the stated purposes of the lease. Any cession of use of the premises by the lessee for a period of one-year or more is an abandonment of the premises and constitutes a breach. It is staff's understanding that the restaurant operations ceased and the premises were abandoned in December of 2009.
3. Currently, Dago Mary's owes \$24,143 for unpaid minimum rent, including penalty and interest, for the period from March 1, 2009 to April 6, 2011 with interest accruing daily. The lease also requires the payment of a percentage rent based upon gross income from the restaurant operations. The amount of percentage rent owed is currently unknown due to the failure of the lessee to provide the required reporting forms.
4. The lease required the lessee to provide a performance deposit in the amount of \$20,000, which was due upon delivery of the lease. The lessee, in compliance with the lease requirement, made a \$20,000 cash deposit to the Commission.
5. 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 15378.3

EXHIBIT:

A: Location Map.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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.

AUTHORIZATION:

1. Find that Dago Mary's, a California Corporation, is in default of Lease No. PRC 5467.1, because Dago Mary's has not complied with: 1) Section 4, paragraph (b) (MINIMUM MONTHLY RENT) of the lease by failure to pay the minimum rent on a monthly basis; 2) Section 4, paragraph (c) (MONTHLY PERCENTAGE RENT) and paragraph (e) (REPORTS) by failure to pay percentage rent based on gross income and failure to submit Gross Income reporting forms; 3) Section 8, (INSURANCE) by failure to maintain the required policies of insurance and submittal of certificates of insurance; and 4) Section 20 (MISCELLANEOUS) paragraph (j) (CONTINUOUS USE; ABANDONMENT) by cessation of use for over a one-year period.
2. Authorize staff of the Commission to issue a Notice of Termination, of Lease No. PRC 5467.1, a General Lease – Commercial Use issued to Dago Mary's, A California Corporation.
3. Authorize staff of the Commission and the Office of the Attorney General to take all necessary steps, including litigation to, 1) eject Dago Mary's; 2) to seek removal of all improvements from the lease premises; to restore the lease premises to the satisfaction of the Commission; 3) appropriate the performance deposit for non-performance of the lease; and 4) to recover the Commission's damages and costs including, but not limited to, back rent, which includes penalty, and interest for the period from March 1, 2009 to April 6, 2011, with interest accruing daily.