

**CALENDAR ITEM
C51**

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08/14/12
PRC 5467.1
G. Kato
D. Oetzel

**CONSIDER DENIAL OF AN APPLICATION FOR A
GENERAL LEASE – COMMERCIAL USE**

APPLICANT:

Frank M. Coxe, LLC
816 E. 4th Avenue
San Mateo, CA 94401

AREA, LAND TYPE, AND LOCATION:

Filled and unfilled sovereign land located at 410 Airport Boulevard in the city of Burlingame, San Mateo County

BACKGROUND

Beginning in April 1971, the Commission has authorized several leases, subleases, assignments, and amendments for a floating restaurant operation at this site. Mr. Lloyd Bothwell, the representative of the current Applicant, was involved in the early operations of the floating restaurant.

In 1978, the Commission authorized a lease to Robert M. Sherman for a term of 18 years. The lease authorized the continued mooring of the decommissioned vessel known as the "S.S. Gen. Frank M. Coxe" to be used as a floating restaurant, together with parking facilities to accommodate the restaurant. Over the years, the restaurant operated intermittently through a number of sub-lessees and assignments. In early 2006, Mr. Sherman reportedly sold the vessel to Dago Mary's, a California Corporation, which then refurbished the vessel.

On February 9, 2006, the Commission authorized the termination of the lease to Mr. Sherman and the issuance of a new lease to Dago Mary's, for a term of 25 years beginning April 1, 2006. The restaurant was reportedly closed in December 2009 by Diego Mary's, who subsequently abandoned the lease premises. Staff made several unsuccessful attempts to contact Diego Mary's and, on November 10, 2010, sent a Notice of Default covering several items of breach of lease premises, including non-payment of rent, failure to provide an

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accounting of business transactions, and failure to provide required insurance coverage. On April 6, 2011, the Commission authorized the termination of the lease, collection of back rent in the amount of \$24,143, and litigation for trespasses and ejection.

On July 13, 2010, while staff was still trying to contact Dago Mary's, Mr. Bothwell contacted staff to request a lease with the same terms and conditions of the Dago Mary's lease. Staff advised Mr. Bothwell of the application process and that there was still an existing lease in place. Over the course of the next 17 months, staff met with Mr. Bothwell several times in person and participated in many phone calls to review the application process. Staff received Mr. Bothwell's application on December 8, 2011.

Since the application has been received, Mr. Bothwell and his legal representative and business partner, Mr. Richard Higbie, have contacted staff numerous times requesting that the application be brought before the Commission. Staff advised both Mr. Bothwell and Mr. Higbie that the application could not be brought before the Commission until certain information was provided and the application could be deemed complete. The information requested included (1) a market feasibility study indicating that the proposed floating restaurant operation would be economically viable in light of the failed restaurants operations in the past, (2) a business plan demonstrating that the Applicant has the financial knowledge and capability to operate the restaurant, and (3) confirmation of the ownership of the vessel.

Although the Applicant has responded to these three requests, the information provided does not sufficiently address staff's concerns regarding the proposed restaurant operation or ownership of the vessel. Specifically, the market feasibility study does not indicate how the proposed restaurant operation will be more feasible than prior operations on the vessel at the same site which have failed. Furthermore, title to the vessel is clouded. It appears there may be other parties, including the wife of the now deceased former owner, Mr. Sherman, with either an ownership or financial claim to the vessel. There is currently an active investigation by the California Department of Motor Vehicles (DMV) based on a claim that Mr. Lloyd Bothwell used fraudulent documentation to obtain the DMV ownership paperwork. Staff understands that the investigation is still pending. Staff was also advised of a claim placed with the United States Coast Guard on the ownership of the vessel. Staff does not believe it is prudent for the state to enter into a long-term lease until such time as the questions and uncertainty surrounding the ownership of the vessel have been clarified and resolved.

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OTHER PERTINENT INFORMATION:

1. On April 6, 2011, the Commission authorized the termination of Lease No. 5467.1, a General Lease – Commercial Use, issued to Dago Mary's, a California Corporation, collection of back rent (in the amount of \$24,143), and litigation for trespasses and ejection. Staff has been unable to collect the back rent from the prior lessee. Staff has not proceeded with the trespass and ejection action pending Commission consideration of this lease application.
2. On December 8, 2011, Commission staff received a lease application from Frank M. Coxe, LLC for the operation of a floating restaurant, parking lot, and public access amenities.
3. Staff has reviewed the information contained in the lease application, including the market study provided. Staff believes that the application and market study do not adequately address concerns about the economic feasibility of the proposed floating restaurant operation in this location, given the site's recent history of failed floating restaurant operations. Furthermore, there are significant, unresolved questions regarding ownership of the vessel and staff is not certain whether Mr. Bothwell has clear title to use the vessel. Staff therefore believes that the proposed floating restaurant operation is not in the best interest of the State and recommends denial of the lease application and moving forward with the previously authorized trespass and ejection action.
4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, Title 14, section 15270, subdivision (a).

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 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.

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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 California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(5) and California Code of Regulations, Title 14, section 15270, subdivision (a), projects which a public agency rejects or disapproves.

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 section 6370 et seq.

AUTHORIZATION:

Authorize denial of the application for a General Lease – Commercial Use, submitted by the Frank M. Coxe, LLC on December 8, 2011.

