

**CALENDAR ITEM  
C87**

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06/21/13

PRC 5284.1

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J. Fabel/B. Terry

**CONSIDER DENIAL OF AN APPLICATION FOR A GENERAL LEASE -  
COMMERCIAL USE AND AUTHORIZATION OF LITIGATION FOR TRESPASS AND  
EJECTMENT**

**LESSEES/PARTIES:**

Henry Westbrook, III and Robert L. Westbrook, dba Ship Ashore Resort  
P.O. Box 75  
Smith River, CA 95567

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Smith River, adjacent to Assessor's Parcel Numbers 102-170-03, 102-170-05, and 102-010-35, near the city of Crescent City, Del Norte County.

**UNAUTHORIZED USE:**

Pilings, two docks, a breakwater and other related facilities located in the Smith River, adjacent to the upland parcels.

**BACKGROUND INFORMATION:**

On April 28, 1977, the Commission authorized a 15-year General Lease – Commercial Use, with Henry Westbrook, III and Robert L. Westbrook, for dredging a proposed marina, and construction of a breakwater, two docks, and other related facilities at the mouth of the Smith River associated with an upland recreational vehicle park. On April 22, 1982, the Commission approved a revision of annual rent from \$800 to \$1,200. The Lessees objected to the increase and the last annual rent payment under the lease was submitted in 1990, which paid the annual rent through September 30, 1989. Rent for the last two years of the lease was never paid. That lease expired on September 30, 1991.

An application was submitted by the Westbrooks in 1992 for a new lease. At that time, staff was unable to negotiate a new lease because the annual rent amount was still an issue. The Westbrooks have not paid rent since 1990 and the existing facilities have been in trespass since September 30, 1991.

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Beginning in 1991 (over approximately 21 years), staff sent several invoices and letters requesting payment for the unpaid rent and submittal of an application for a new lease for the facilities located on State sovereign land or removal of the breakwater, fill and pilings. Staff understood that the marina portion was never built and the existing facilities consisted of remnant pilings, dock remnants, and a breakwater. In spite of the multiple attempts made by staff, the Westbrooks did not respond. A final attempt was made in a letter dated February 23, 2012, which gave the Lessees 30 days to reply as to their intentions to submit an application and negotiate a new lease. Again, staff received no response. On July 20, 2012, the Westbrooks were notified by certified mail that staff placed this trespass and ejection matter for the Commission's consideration at the August 14, 2012 meeting.

The Westbrooks' responded prior to the August meeting, saying they were willing to comply and negotiate a new lease, and on August 10, 2012, faxed a copy of a signed lease application and a copy of a check for the application processing fees, to show good faith. As a result, the trespass and ejection matter was removed from the Commission's agenda. The original lease application and fees were received on August 21, 2012.

The application was deemed incomplete and the staff notified the Westbrooks on October 19, 2012 and again on January 28, 2013 of the information needed to complete the application. The Westbrooks did not respond. In April and again on May 2, 2013, staff contacted the Westbrooks by telephone requesting the information necessary to complete the application and bring them under lease. As of the date of posting the meeting agenda, the Westbrooks have not responded and the application remains incomplete.

Based on the above, staff recommends that the Commission deny the application and authorize Commission staff and the Office of the Attorney General to take whatever steps are necessary, including litigation, for trespass, ejection, and removal of the all the facilities located on State sovereign land; restoration of the land to the Commission's satisfaction; and to recover damages to the extent allowed by law, for the occupancy of State sovereign lands without authorization.

**OTHER PERTINENT INFORMATION:**

1. Lessees own the uplands adjoining the lease premises.
2. On June 13, 1996, the upland parcels were transferred to Reservation Ranch, a partnership. The partners are Henry Westbrook, III and Robert L. Westbrook.

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3. **Denial of the Application:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. For project is exempt because CEQA does not apply to projects which a public agency rejects or disapproves.

Authority: Public Resources Code section 210805, subdivision (b)(5) and California Code of Regulations, Title 14, sections 15270, subdivision (a).

4. **Trespass and Litigation for Trespass:** The staff recommends that the Commission find that trespass and litigation for trespass does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

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

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.

**EXHIBITS:**

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

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Denial of Application:**

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.

**Trespass and Litigation for Trespass:**

Find that the subject finding of trespass and litigation for trespass are not subject to the requirements of CEQA pursuant to California Code of

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Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

**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:**

1. Authorize denial of the application for a General Lease – Commercial Use, submitted on August 21, 2012.
2. Ratify staff's finding that Henry Westbrook III and Robert L. Westbrook, along with any agents, successors, or assigns, are in trespass on State-owned sovereign land located in the Smith River, adjacent to Assessor's Parcel Numbers 102-170-03, 102-170-05, and 102-010-35, near Crescent City, Del Norte County, as described on the attached Exhibit A and shown on the attached Exhibit B.
3. Authorize staff of the California State Lands Commission and the Office of the Attorney General to take all steps necessary, including litigation, for trespass and ejectment of Henry Westbrook, III and Robert L. Westbrook, along with any agents, successors, or assigns; to remove all improvements from State sovereign land in the Smith River, adjacent to Assessor's Parcel Numbers 102-170-03, 102-170-05, and 102-010-35, near Crescent City, Del Norte County; and to restore the sovereign land at this location to its condition prior to placement of the improvements to the satisfaction of the Commission; and to recover the Commission's damages and costs.

A parcel of tide and submerged land lying waterward of the right bank of the State owned bed of the Smith River, and situated adjacent to that parcel of land recorded in Book 100, Pages 177-179, Official Records of Del Norte County, State of California, more particularly described as follows:

BEGINNING at a point from which the concrete monument marking the north one-quarter corner of Section 17, T 18 N, R 1 W, H.B.M. bears N  $14^{\circ} 51' 35''$  W, 5654.09 feet; thence S  $43^{\circ}$  E, 1085 feet more or less, to the ordinary high water mark of the right bank of Smith River; thence northerly along said ordinary high water mark 1200 feet, more or less, to a point from which the point of beginning bears S  $47^{\circ}$  W; thence S  $47^{\circ}$  W, 177 feet, more or less, to the point of beginning.

The basis of bearings for this description is the true meridian based on solar observation.

END OF DESCRIPTION

Prepared

M. L. Shaf

Checked

W. Hoff

Reviewed

A. D. Runnecke

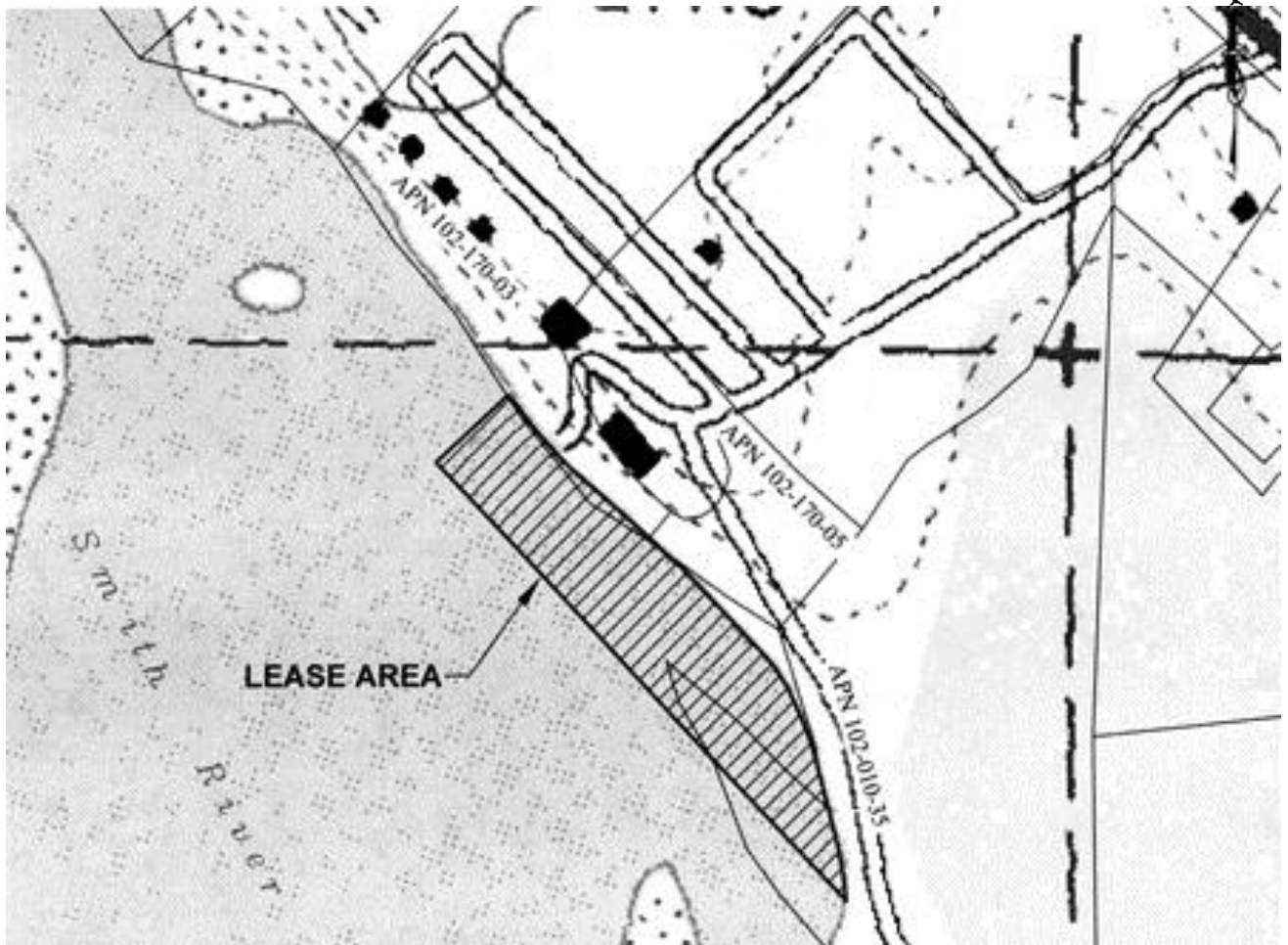
Date

7/13/76

XLS

NO SCALE

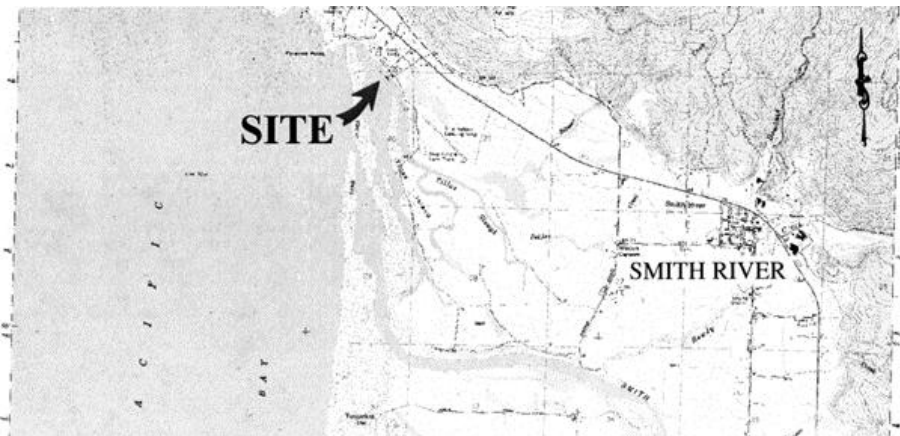
**SITE**



**SHIP ASHORE RESORT, SMITH RIVER**

NO SCALE

**LOCATION**



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

**Exhibit B**

PRC 5284.1  
WESTBROOK  
APN 102-170-03, 05,  
102-010-35  
TRESPASS & EJECTMENT  
DEL NORTE COUNTY

