

Staff Report 37

LESSEE

LCOF Lake Tahoe Investment LLC, a Delaware Limited Liability Company

CO-LESSEE

LCOF Lake Tahoe Operating, LLC, a Delaware Limited Liability Company

SUBLESSEE:

Action Motorsports of Tahoe, Inc. a California Corporation

PROPOSED ACTION:

Consider endorsement of a sublease ownership transfer and deferral of the consideration to terminate an existing Agreement and Consent to Encumbrance of Lease Number PRC 3981, a General Lease – Commercial Use, and deferral of consideration of a new Agreement and Consent to Encumbrance of Lease Number PRC 3981.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3411 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Lease: Continued use, maintenance, and operation of an existing commercial marina facility known as “Timber Cove Lodge Marina” consisting of an existing pier with a restaurant building and retail building, an existing fueling facility on the pier, 80 mooring buoys, two existing personal watercraft string lines, and two channel markers.

Sublease: Operation of personal watercraft, boat, and buoy rentals; fishing and boat charters; and gasoline and retail sales.

TERM:

Lease: 25 years, beginning May 19, 2011, ending May 18, 2036.

Sublease: 10 years, beginning May 1, 2018, ending April 30, 2028.

CONSIDERATION:

\$65,234 per year, against 5 percent of the gross annual income derived from the commercial activities of mooring, boat, and personal watercraft rentals, and retail sales; 3 percent of the gross annual income derived from food and beverage sales; and 1.5 cents per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and 2 cents per gallon thereafter, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$3,000,000 per occurrence.
- The lease contains provisions that require the implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and "Best Management Practices for Guest Dock Users and Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. Lessee shall post the "BMPs for Marina Owners/Operators" and "BMPs for Guest Dock Users and Boaters" in prominent places within the lease premises. The Lessee shall provide the Commission, on the first anniversary of the lease and tri-annually thereafter, a report on compliance with all BMPs.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On January 26, 2012, the Commission authorized a General Lease – Commercial Use to The Survivor's Trust under the George and Elsie Karadanis Revocable Family Trust, Robert Mitchell Karadanis, George Martin Karadanis and William Matthew Karadanis; and Lisa Maloff, Trustee of The Robert M. and Lisa Maloff Trust dated 7/7/03, dba Timber Cove Lodge Marina, with a sublease to Action Motorsports of Tahoe, Inc. ([Item C18, January 26, 2012](#)). On August 14, 2012, the Commission

authorized an assignment of the lease to Urbana Tahoe TC, LLC ([Item C36, August 14, 2012](#)). On June 29, 2015, the Commission authorized an encumbrancing of Lease Number PRC 3981.1 and the execution of the document entitled "Agreement and Consent to Encumbrancing of Lease," effective June 29, 2015 ([Item C07, June 29, 2015](#)). On June 22, 2017, the Commission authorized a revision of rent ([Item C02, June 22, 2017](#)). On February 4, 2019, the Commission authorized a Termination of an Agreement and Consent to Encumbrancing of Lease; and Authorization of Assignment, Endorsement of a Sublease, and an Agreement and Consent to Encumbrancing of Lease for an existing commercial marina known as "Timber Cove Marina" to the Lessee ([Item C26, February 4, 2019](#)). On October 24, 2019, the Commission authorized an Amendment of Lease ([Item C26, October 24, 2019](#)). The lease will expire on May 18, 2036, and the sublease will expire on April 30, 2028. The Lessee applied for the approval of a sublease ownership transfer endorsement of Lease Number PRC 3981, a General Lease – Commercial Use, termination of an existing Agreement and Consent to Encumbrance of Lease Number PRC 3981, a General Lease – Commercial Use, and approval of a new Agreement and Consent to Encumbrance of Lease Number PRC 3981. The Applicant has now requested deferral of the Commission's consideration to terminate the existing Encumbrance Agreement and consideration of a new Encumbrance Agreement to a future Commission meeting. Staff supports the deferral.

The Sublessee, Action Motorsports, Inc. (AMS), is owned by Bob and Tamara Hassett; they have been the sole shareholders for several years. Bob and Tamara Hassett are in the process of selling 100 percent of the shares of AMS to Jason Crawford. Mr. Crawford has been an employee of AMS for a few decades and will be purchasing 100 percent of the stockholder interest in AMS from the current AMS owners. The current Lessee will continue to manage the facilities, prompting the parties to request the Commission approve the sublease stock acquisition by Mr. Crawford. The sublease will be transferred to Mr. Crawford and will require that the proposed new owner of AMS, as sublessee, adhere to all of the terms and conditions of the sublease and lease, and the Lessee, as sublessor, will remain ultimately responsible for ensuring lease compliance. Therefore, this transaction will protect the Commission from an event of default. The effective date of the sublease transfer from Bob and Tamara Hassett will be December 8, 2021, or the close of a stock acquisition between the ownership interest of the current AMS owners and the proposed owner, but no later than January 31, 2022. The proposed owner agrees to perform and be bound by the terms, conditions and covenants, and agreements contained in the lease. Staff recommends the sublease transfer to reflect a change in ownership from the current sublease owner to the proposed owner.

The existing lease requires the Lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

CONCLUSION:

The proposed sublease ownership transfer endorsement does not alienate the State's fee simple interest in the underlying land, nor will they permanently impair public rights. For this reason, staff recommends finding that approval of the sublease ownership transfer will not substantially interfere with the common law Public Trust Doctrine and are in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the Application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land (including an encumbrance of lease for sovereign land), it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by the law. Upon expiration or prior termination of the lease, neither the Lessee, Co-Lessee, nor the Sublessee has any right to a new lease or to renewal of any previous lease. If the Commission denies the action, the Applicant is not able to transfer the sublease ownership. Upon expiration or other prior termination of the lease, the lessee also has no right to a new lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Endorsement of a sublease ownership transfer is not a project as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed endorsement of a sublease ownership transfer will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize, by endorsement, a sublease ownership transfer between the current AMC owners and proposed AMC owner, of Lease Number PRC 3981, which shall be subject to the terms of the existing Sublease and Lease, effective December 8, 2021, or the close of a stock acquisition, whichever occurs last, but in no event later than January 31, 2022. Authorization shall expire if the stock acquisition has not occurred by February 1, 2022.
2. Defer consideration of termination of the existing Encumbrance Agreement and a new Encumbrance Agreement to a future Commission meeting.

EXHIBIT A

PRC 3981.1

LAND DESCRIPTION

A parcel of submerged land lying in the bed of Lake Tahoe, adjacent to fractional Section 33, Township 13 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved July 13, 1867, County of El Dorado, State of California, more particularly described as follows:

BEGINNING at a point on the line of the historic Low Water Mark, as depicted on sheet 3 of those maps entitled "Survey of the Low Water Mark on the Shore of Lake Tahoe", on file at the California State Lands Commission, Sacramento Office, said point lying distant N 68°43'51" E 37.98 feet from Station 27 as shown on said map; thence along said line of Low Water S 68°43'51" W 37.98 to said Station 27; thence S 64°11'10" W 451.69 feet; thence leaving said line of Low Water Mark N 25°48'50" W 1790.88 feet; thence N 70°25'49" E 681.76 feet; thence S 19°34'11" E 1730.00 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 1/4/2012 by the California State Lands Commission Boundary Unit.

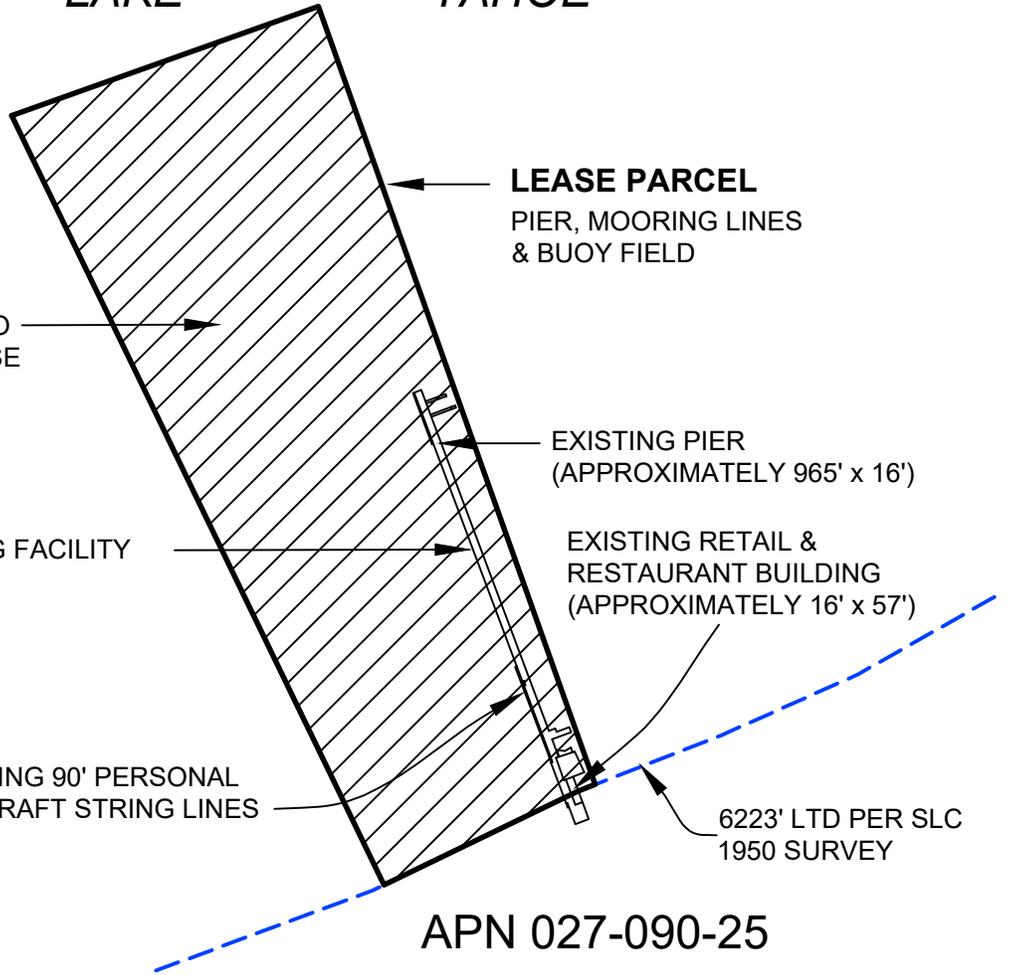


NO SCALE

SITE

LAKE

TAHOE



APN 027-090-25

3411 LAKE TAHOE BLVD., SOUTH LAKE TAHOE

NO SCALE

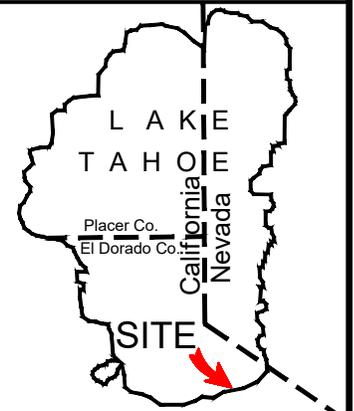
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3981.1
 LCOF LAKE TAHOE
 INVESTMENT, LLC
 APN 027-090-25
 GENERAL LEASE -
 COMMERCIAL USE
 EL DORADO COUNTY



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.