

**CALENDAR ITEM
C12**

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06/24/08
WP 5925.1
V. Caldwell

GENERAL LEASE - RECREATIONAL AND RESIDENTIAL USE

APPLICANT:

William McInerney

AREA, LAND TYPE, AND LOCATION:

0.08 acres, more or less, of sovereign lands in Mare Island Straits, adjacent to 39 Sandy Beach Road, city of Vallejo, Solano County.

AUTHORIZED USE:

Continued use and maintenance of an existing deck and residential use and the construction of a new boatlift as shown on Exhibit A.

LEASE TERM:

Ten years, beginning July 13, 2005.

BACKGROUND:

On April 1, 1868, the State issued Tideland Survey numbers 10 and 11 for lands in Solano County. In ensuing years, the patented area was subdivided into numerous small lots, which were developed with homes built upon pilings in an area known as Sandy Beach.

The boundaries of the Tideland Surveys were litigated by private land owners in November 1945; however, the State was not a party to the suit. The court described the waterward boundaries of the tideland lots at the ordinary low water mark. State Lands Commission staff surveyed the private judgment line in 1955 and it was found that many of the porches, decks and small portions of some residences encroached below the adjudicated low water line.

The Commission, in 1960 authorized leases to eight property owners at Sandy Beach, whose structures encroached below the adjudicated low water line onto State-owned lands. Staff has notified those other homeowners who are encroaching on State lands and do not have a lease, that they must acquire a lease or remove the structures from State lands. It is the staff's position, supported on advice from the staff of the Attorney General, that residential use is

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not consistent with the public trust under which the Commission holds State-owned sovereign lands, and may be authorized at Sandy Beach only to the extent the structures now exist, and for so long as the sovereign lands are not needed for public trust purposes.

CONSIDERATION:

\$1,241 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: Combined single limit coverage of not less than \$1,000,000.

Bond:

\$5,000.

Other:

The proposed lease contains specific provisions prohibiting expansion of the residential structures, and requiring removal of the residential structures from the State's sovereign land under specific circumstances.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. On September 20, 1960, and again on December 16, 1980, the Commission authorized a General Permit – Recreational and Residential Use to Paul R. Schneidewind and Ethel Schneidewind. That lease expired on September 23, 2000. On July 13, 2005, William McInerney (Applicant) acquired the upland property from the Schneidewind's estate. During the period from September 23, 2000, through July 13, 2005, the lease was considered to be in holdover and rent, in the amount of \$1,613.20 accrued during the holdover period. The Applicant has paid the annual rent from July 13, 2005, to July 12, 2008, and staff recommends that rent accrued during the holdover period, under the prior ownership, be waived.
3. A portion of the lease premises includes patented tidelands, subject to the State's public trust easement, upon which a portion of the residence is located. The area waterward of the adjudicated low water line is occupied by the remaining portion of the residential structure, the attached deck, and the proposed boatlift. The portion of the residence with attached decking and boatlift waterward of the adjudicated low water line is subject to annual rent.

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4. Because the residential use and related improvements were previously approved by the Commission, the improvements constitute a relatively minor encroachment below the adjudicated low water line, and the improvements do not appear to constitute a nuisance, staff recommends issuance of the lease subject to the conditions contained therein, including but not limited to, the specific provisions referenced above.

5. **Recreational Deck and Residence:** 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 the 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. **Boatlift:** 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 the CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; Title 2, California Code of Regulations, section 2905 (c)(1).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. 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.

APPROVALS REQUIRED:

Boatlift: San Francisco Bay Conservation and Development Commission

EXHIBITS:

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

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

RECREATIONAL DECK AND RESIDENCE: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE 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).

BOATLIFT: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 3, NEW CONSTRUCTION OF SMALL STURCTURES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (c)(1).

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 WAIVING THE UNCOLLECTED HOLDOVER RENT IN THE AMOUNT OF \$1,631.20 FOR THE PERIOD FROM SEPTEMBER 23, 2000, TO JULY 12, 2005.
2. AUTHORIZE ISSUANCE OF A GENERAL LEASE - RECREATIONAL AND RESIDENTIAL USE TO WILLIAM MCINERNEY BEGINNING JULY 13, 2005, FOR A TERM OF TEN YEARS, FOR AN EXISTING DECK AND RESIDENTIAL USE AND THE CONSTRUCTION OF A NEW BOATLIFT AS SHOWN ON EXHIBIT A AND DESCRIBED ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT IN THE AMOUNT OF \$1,241, WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; LIABILITY INSURANCE COVERAGE OF NO LESS THAN \$1,000,000; AND SURETY BOND IN THE AMOUNT OF \$5,000.