

**STAFF REPORT**

**60**

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06/28/19  
PRC 8602.1  
R. Collins

**GENERAL LEASE – COMMERCIAL USE**

**APPLICANT:**

Duncan McIntosh Company, Inc.

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

4.41 acres, more or less, of sovereign land in Harbor Island West Basin, San Diego Bay, San Diego, San Diego County.

*AUTHORIZED USE:*

Construction and deconstruction of a temporary marina for an annual boat show.

*LEASE TERM:*

15 years, beginning June 27, 2015.

*CONSIDERATION:*

\$4,332 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

- Commercial General Liability insurance, including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations, with limits no less than \$1,000,000 Per Occurrence and \$2,000,000 Aggregate for bodily injury, personal injury and property damage.
- The Lessee must implement the Commission's "Best Management Practices for Marina Owners/Operators" including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

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

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### **Public Trust and State's Best Interests Analysis:**

On June 28, 2010, the Commission authorized issuance of a General Lease – Commercial Use to Southern California Marine Association ([Item 42, June 28, 2010](#)) for a temporary marina as part of the San Diego International Boat Show (Show) for a 5-year term. The lease expired on June 26, 2015. The Applicant has taken over management and responsibility for putting on the Show and is requesting a new longer-term lease for the annual event.

The Show takes place annually in early June on the upland at Spanish Landing Park and in the water in the Harbor Island West Basin of San Diego Bay adjacent to the Sheraton Harbor Island Marina. The Show's in-water temporary marina involves the placement of approximately 100 vessel docks (10 feet wide by 20 feet long) positioned in the shape of a rectangle that measures 560 by 200 feet (see Exhibit B). The temporary docks will be located approximately 80 feet from shore and connected to shore via a gangway. The docks will be held in place using a 10-inch-diameter, screw-type anchor that is inserted into the sediment by a diver using a hydraulic torque tool. The docks will be held to the anchors using flexible cord. A total of 55 anchors would be threaded into the bay floor to approximately 15 feet below the mud line. No pile driving or other in-water work is proposed or will be allowed. This combination allows for dock installation with minimal impact to the bay floor and without installation of any permanent structures. The flexible cord means that there are no chains or other structures in contact with the bay floor.

The Show has been monitoring eelgrass, a sensitive marine plant community, annually to support the temporary installation of the docks since 2005. Eelgrass beds at the in-water Show site have been relatively consistent among prior surveys indicating that the temporary shading by Show docks appears to have no permanent negative effects on eelgrass. On April 12, 2019, Marine Taxonomic Services performed a Pre-Construction Eelgrass and Caulerpa survey at the Show's in-water location and concluded that, due to the footprint of the anchors and their means of installation, the use of the lease premises to support the Show would not impact eelgrass. The study also found that eelgrass cover and density within the Show survey site is greater this year relative to last year. The pre-construction survey also found no Caulerpa, a highly invasive marine algae species, in this area.

The Show attracts more than 10,000 attendees annually and provides an opportunity for consumers who are already heavily engaged with boating to view firsthand almost every type of watercraft available. For attendees

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who are not currently engaged in boating recreation, the Show provides a comprehensive introduction to sailing, boating, and water-oriented recreation. The Show conducts hourly seminars including an introduction to sailing, boating safety, accessories, safety equipment, and includes hands-on skills training on stand-up paddleboards and kayak demonstrations.

The in-water Show features a variety of boats on display from 20 to 110 feet in length and more than 150 yachts over 35 feet in length and 100 booth displays in Spanish Landing park. The marine industry is a significant contributor to the economy of San Diego County generating more than \$450 million of revenue last year. The marketing opportunity offered by the Show affects numerous marine businesses in the area including more than 20 marinas in San Diego County alone.

The Show requires paid admission but may be viewed by the public free of charge in some areas. The Applicant has the right to use the upland adjoining the lease premises. The temporary marina will be used for the docking and mooring of boats during the Show. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The temporary marina would not significantly alter the land and the lease would not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 15-year term, does not grant the lessee exclusive rights to the lease premises and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee will be required to remove all improvements from State land. Based on the information above, staff believes that the subject facilities will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease.

The proposed 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.

**Climate Change:**

Climate change impacts, including sea-level rise, more frequent and intense storm events, increased flooding, and erosion affect both open

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coastal areas and inland waterways in California. The temporary marina facility would occupy the lease premises for about 22 days each year. It would be built 10 days before the Show, operate for 4 days during the event, and would be deconstructed within 8 days after the event.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the “high emissions,” “low risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. Projected sea-level rise scenarios for the lease area (La Jolla tide gauge) are listed in Table 1.

**Table 1. Projected Sea-Level Rise for La Jolla<sup>1</sup>**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.6
2040	0.9
2050	1.2
2100	3.6

Source: Table 31, State of California Sea-Level Rise Guidance: 2018 Update

Note: <sup>1</sup> Projections are with respect to a baseline of the year 2000.

Because the marina facility associated with Show is temporary, the annual event should be able to adjust to projected sea-level rise during the lease term. Further sea-level analyses on the event will be conducted at the time the lease expires in 2030 if an application is submitted for a new lease and would be based on projected sea-level rise scenarios at that time.

**Conclusion:**

For all of the reasons above, staff believes the issuance of a lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the Public Trust Doctrine; and is 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, it exercises legislatively delegated authority and responsibility as trustee of the State’s Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

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2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. The lease expired June 28, 2015. The lease includes an annual Consumer Price Increase adjustment with back rent due in the amount of \$18,107 for the period between June 28, 2015 to June 27, 2019. Rent due for the current lease year is \$4,936.
4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

**APPROVALS OBTAINED:**

San Diego Unified Port District  
U.S. Army Corps of Engineers  
San Diego Regional Quality Control Board  
California Department of Fish and Wildlife

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map
- C. Best Management Practices for Marina Owners and Operators

**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 categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the issuance of a new lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Commercial Use to Duncan McIntosh Company, Inc., beginning June 27, 2015, for a term of 15 years, for construction and deconstruction of a temporary marina for an annual boat show, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$4,332, with an annual Consumer Price Index adjustment; and commercial general liability insurance, including, without limitation, contractual liability, personal injury, advertising injury, and products/completed operations, with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, and property damage.

**EXHIBIT A**

**PRC 8602.1**

**LAND DESCRIPTION**

All of those submerged lands in the bed of the San Diego Bay on the easterly side of Harbor Island West Basin, City of San Diego, County of San Diego, State of California, and being more particularly described as follows:

COMMENCING at a point on the pierhead line of San Diego Harbor, said point designated as Station 459-D-1 having CCS27, Zone 6, coordinates North =205,639.37, East = 1,708,014.87 as shown on California State Lands Commission (CSLC) map entitled "Map of the Lands Transferred to the San Diego Unified Port District pursuant to Chapter 67 Statutes of 1962 1<sup>st</sup> E.S." and on file with the CSLC Sacramento office as CB map number 1574, thence along said pierhead line North 89° 29' 22" West, 74.75 feet to the POINT OF BEGINNING continuing along said pierhead line North 89° 29' 22" West, 815.21 feet; thence leaving said pierhead line South 00° 59' 49" West, 235.48 feet; thence South 89° 27' 42" East, 815.56 feet; thence North 00° 54' 41" East, 235.87 feet to said pierhead line which is also the POINT OF BEGINNING.

EXCEPTING THEREFROM any lands lying within the lands granted to the San Diego Unified Port district pursuant to Chapter 67 Statutes of 1962 1<sup>st</sup> E.S.

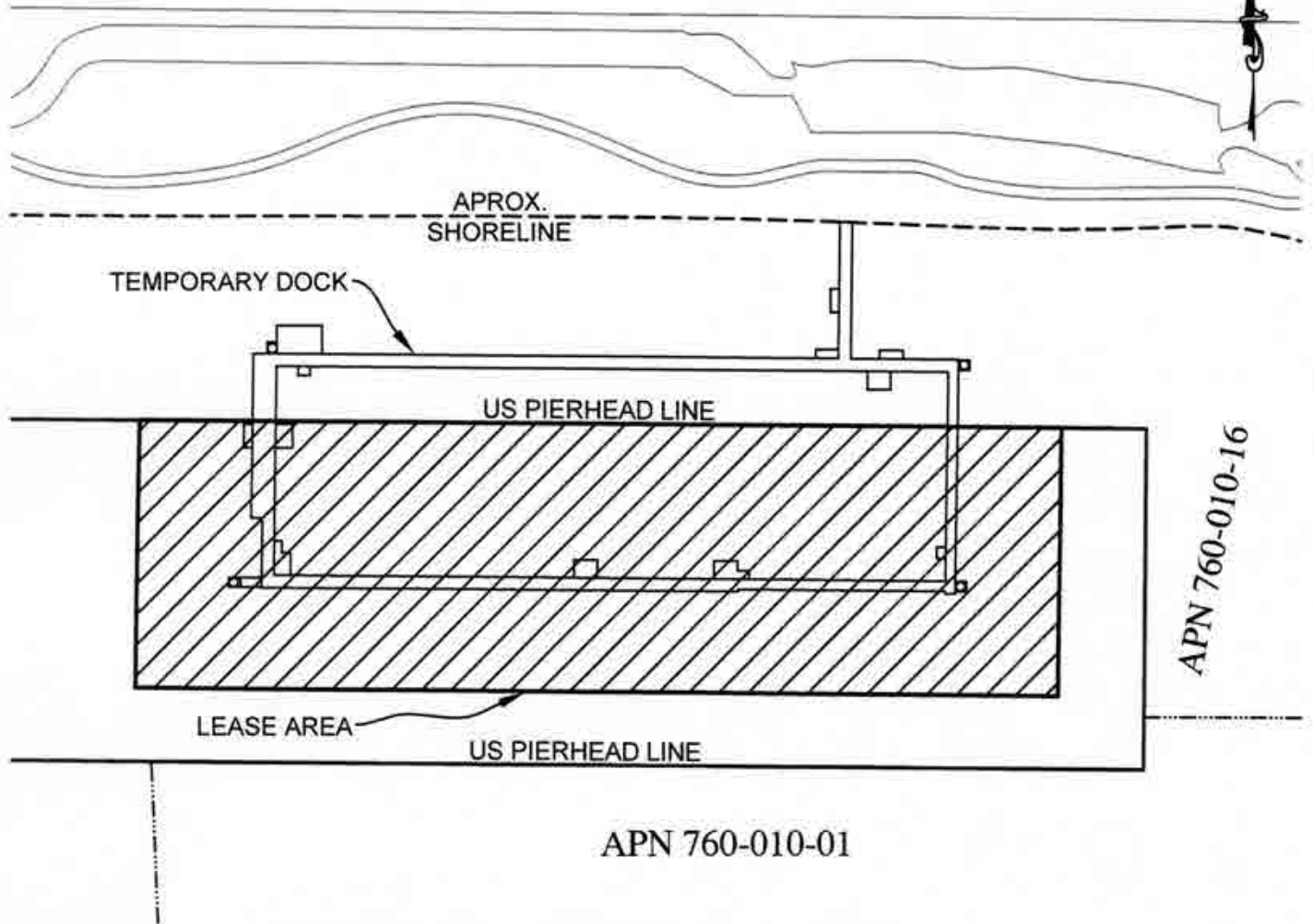
**END OF DESCRIPTION**

Prepared 07/27/2016 by the California State Lands Commission Boundary Unit.



NO SCALE

# SITE



1380 HARBOR ISLAND DRIVE, SAN DIEGO

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# **Exhibit B**

PRC 8602.1  
 DUNCAN McINTOSH CO INC  
 APN 760-010-01, &16  
 GENERAL LEASE -  
 COMMERCIAL USE  
 SAN DIEGO COUNTY



RGB 07/27/16

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 C**

### **BEST MANAGEMENT PRACTICES FOR MARINA OWNERS / OPERATORS**

#### **Petroleum Management**

Instruct staff not to use detergents or emulsifiers on a fuel or oil spill.

Post emergency telephone numbers to report oil or chemical spills in prominent locations at the marina.

Recommend the installation and use of fuel/air separators on air vents or tank stems of inboard fuel tanks to reduce the amount of fuel spilled into surface waters during fueling.

Provide a collection site for used oily pads and used oil or provide information on how and where to dispose of them.

#### **Hazardous Wastes**

Have a marina policy to manage hazardous wastes and hazardous materials.

Post a prohibition on the disposal of used oil, antifreeze, paint, solvents, varnishes and batteries into the dumpster or general collection waste receptacles.

If you provide for hazardous waste collection, manage the wastes in a proper fashion through the use of structurally sound, non-leaking containers, in accordance with all local, state and federal laws.

In the event of a spill or leak, clean up and dispose of materials promptly and properly and report the spill to all appropriate entities.

If operating a collection facility is not feasible, provide information to your tenants on how and where to dispose their wastes.

Encourage the use of alternative products to hazardous household chemicals. There are many non-toxic or less-toxic products that can be used as alternatives.

#### **Emergencies**

Have an updated map of important shut off valves and make sure all employees know the locations.

Keep your list of Emergency Phone Numbers and contact persons updated.

Be sure that all employees are trained in emergency procedures and that they know their responsibilities for each situation as designed in an Emergency Response Plan.

### **Underwater Boat Hull Cleaning**

Require the use of legal hull paints to reduce the possibility of contamination when performing hull cleaning.

### **Boat Sewage Discharge**

If your marina operates a pump out facility, install adequate signs to identify the station, its location and hours of operation.

Provide the service at convenient times and at a reasonable cost.

Make the pump out station user friendly.

Develop and adhere to a regular inspection and maintenance schedule for the pump out station.

Provide educational information about the pump out station to boaters.

Inform berth holders of existing local, state and federal regulations pertaining to the use of Marine Sanitation Devices and the illegal discharge of boat sewage.

Post a list of local pump-out locations in a conspicuous location such as the entrances to the docks.

### **Solid Waste**

Keep litter picked up.

Place trash receptacles and dumpsters in convenient locations for boaters and guests.

Use covered dumpsters and trashcans so they do not fill up with rainwater and do not blow away in heavy winds.

Keep trash enclosures clean and free of debris.

Keep cleanup equipment and materials available.

Inspect trash storage areas regularly.

Dispose of all solid wastes in accordance with local, state and federal laws and regulations.

### **Liquid Waste**

Train marina employees in oil spill response procedures.

Keep adequate spill response equipment and materials in strategic locations.

### **Storm Water Runoff**

Maintain a Storm Water Pollution Prevention Plan.

Report spills that have entered or have a potential to enter a water body to appropriate agencies.

Provide signage adjacent to any storm drain inlet to discourage illegal dumping of pollutants.

Provide signs adjacent to parking lots that prohibit littering, dumping and vehicle servicing or washing.

Develop and implement a regular sweeping / cleaning program for hard surface areas.

Reduce or eliminate landscaping and irrigation runoff into the waterway.