

STAFF REPORT

75

A 72

S 34

06/28/19
PRC 5749.1
L. Pino

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Cynthia D. Williams and Nicholas DiBenedetto, Trustees of the Williams-DiBenedetto Trust, dated July 30,2008.

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Main and Midway Channel of Huntington Harbour adjacent to 16632 Coral Cay Lane, Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing floating boat dock, access ramp, and three cantilevered decks.

LEASE TERM:

10 years, beginning October 26, 2019.

CONSIDERATION:

Rent in the amount of \$5,776 per annum subject to an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Insurance: Liability coverage in an amount no less than \$1,000,000 per occurrence.

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 Analysis:

On June 28, 2010, the Commission authorized a 10-year General Lease – Recreational Use, to Cynthia D. Williams and Nicholas DiBenedetto, Trustees of the Williams-DiBenedetto Trust dated July 30, 2008 (Applicant), for the continued use and maintenance of an existing dock, access ramp, and cantilevered decks in the Main and Midway Channel of

STAFF REPORT NO. 75 (CONT'D)

Huntington Harbour, beginning October 26, 2009 ([June 28, 2010, Item C58](#)). The lease will expire on October 25, 2019. The Applicant is now applying for a new General Lease – Recreational Use for the existing boat dock, access ramp, and cantilevered decks.

The improvements are privately owned and maintained and have existed at this location for many years without incident. The boat dock and access ramp facilitate recreational boating because they are used for the docking and mooring of recreational boats. Recreational boating is water-dependent and 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 lands (Pub. Resources Code, § 6503.5).

The Main and Midway Channels in Huntington Harbour were created in the early 1960s as part of the Huntington Harbour development plan designed by the Huntington Harbour Corporation. Huntington Harbour was created by dredging and filling the sloughs and marshlands lying in and around Sunset Bay. In order to facilitate the project, the developer entered into two agreements (BLA 18 and SLL 34) with the State Lands Commission. From these agreements, the State Lands Commission retained fee ownership of the Main and Midway Channels. The adjacent upland parcel is located on the southerly corner of the Main and Midway Channel intersection; and is privately owned and developed with a residence. There is no public access at this upland property because the private upland property directly abuts the concrete bulkhead that defines the limits of the channels. The boat dock extends about 40 feet into the 400-foot-wide Main Channel and about 30 feet into the 200-foot-wide Midway Channel leaving the majority of the Main and Midway Channels available for navigation and public recreation.

The existing curved cantilevered deck has three segments: one is completely within the Commission's leasing jurisdiction on the Midway Channel, while only portions of the other two segments are subject to the Commission's leasing jurisdiction on both the Main and Midway Channels. Lots D and P as shown on Exhibit B were not transferred to the State as part of the original Huntington Harbour agreements. The decks are connected to the upland residence. Residential use is generally not consistent with the Public Trust Doctrine. However, the cantilevered deck segments extend no more than 5 feet over the Main and Midway Channels and do not substantially interfere with the public right of navigation or access. Proposed rent for the cantilevered decks is calculated using a benchmark rate based on nearby upland land values to

STAFF REPORT NO. 75 (CONT'D)

ensure the State receives appropriate compensation for use of sovereign land because the deck serves as an extension of the upland property's private backyard.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term and 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 may be required to remove all improvements from State land. 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 use of public land.

Climate Change:

Climate change impacts, including sea-level rise, increased wave activity, storm events, and flooding are not limited to the open coast. The existing structures subject to the proposed lease are located within the Huntington Harbour development, along an inland, navigable, tidally influenced channel, and may be vulnerable to the impacts of sea-level rise. Huntington Harbour is built near sea-level elevation, and as a result is vulnerable to flooding and storm surge events. Huntington Harbour is adjacent to two wetlands, Bolsa Chica and the Seal Beach National Wildlife Refuge, which could act as natural buffers to storm surges and lessen flood risks.

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," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Los Angeles tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for Los Angeles¹

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

STAFF REPORT NO. 75 (CONT'D)

Source: Table 28, State of California Sea-Level Rise

Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood risks, comprised of greater total water levels for longer periods of time. The lease area contains fixed features, including pilings and an overhanging deck, and movable features, including a floating recreational dock and access ramp. Flooding conditions could cause structures to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. The floating nature of the movable features will allow them to rise and fall with tides and waves, increasing their resiliency to some sea-level rise impacts. The fixed features may need to be raised or reinforced to withstand future conditions. For example, the pilings may be high enough to withstand projected changes in water levels, but additional fortification may be needed, because the pilings help anchor the electric utility outlets and damage to these pilings could lead to a public safety hazard. Although the bulkhead underneath the deck is not under the Commission's jurisdiction, any sea-level rise impacts to the bulkhead could also affect the structures under the Commission's jurisdiction because it serves to stabilize the bank. Therefore, any loss or degradation of the bulkhead could result in property damage and public safety concerns within the lease area and the surrounding waterways.

More locally based knowledge of sea-level rise impacts and adaptation strategies will be available to Huntington Harbour residents as a result of the ongoing efforts to update the City of Huntington Beach's Local Coastal Program and General Plan, and through the city's Coastal Resiliency Task

STAFF REPORT NO. 75 (CONT'D)

Force. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to the effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; 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. If the Commission denies the application, the Applicant may be required to remove the portions of the boat dock, access ramp, and cantilevered decks on State property and restore the premises to their original condition. 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.
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.
3. 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

EXHIBITS:

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

STAFF REPORT NO. 75 (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited period, continuing use and maintenance of the existing boat dock and access ramp will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance of the existing cantilevered decks is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant, beginning October 26, 2019, for a term of 10 years, for an existing dock, access ramp, and three cantilevered decks, 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 \$5,776, with an annual Consumer Price Index Adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5749.1

LAND DESCRIPTION

Two parcels of submerged land in Huntington Harbour, in the City of Huntington Beach, Orange County, California, described as follows:

Parcel 1

Beginning at the most westerly corner of Lot 56 as said lot is shown and so designated on that certain map of Tract No. 8040 filed Book 350, Pages 27 through 37 of Official Records of said County, said corner being on the bulkhead line as shown on said map; thence along said bulkhead line South 33°44'29" West 20.00 feet; thence North 56°15'31" West 30.00 feet to the pierhead line shown on said map; thence along said pierhead line and the extension of said line North 33°44'29" East 151.00 feet; thence South 70°40'03" East 30.97 feet to the westerly line of Lot "P" as shown on said map; thence along said line and said bulkhead line South 33°44'29" West 158.64 feet to the point of beginning.

Parcel 2

Beginning at the most easterly corner of said Lot 56 as said lot is shown and so designated on that certain map of Tract No. 8040 filed Book 350, Pages 27 through 37 of Official Records of said County, said corner being on the easterly line of Lot "P" as shown on said map; thence along said easterly line of Lot "P" North 19°00'00" West 55.40 feet; thence South 70°40'03" East 48.79 feet to said pierhead line and the beginning of a non tangent curve, concave to the southwest, having a radius of 90 feet, to which a radial line bears North 59°46'00" East; thence southeasterly 17.65 feet along said curve through a central angle of 11°14'00"; thence continuing along said pierhead line South 19°00'00" East 7.61 feet; thence South 71°00'00" West 40.00 feet to the point of beginning.

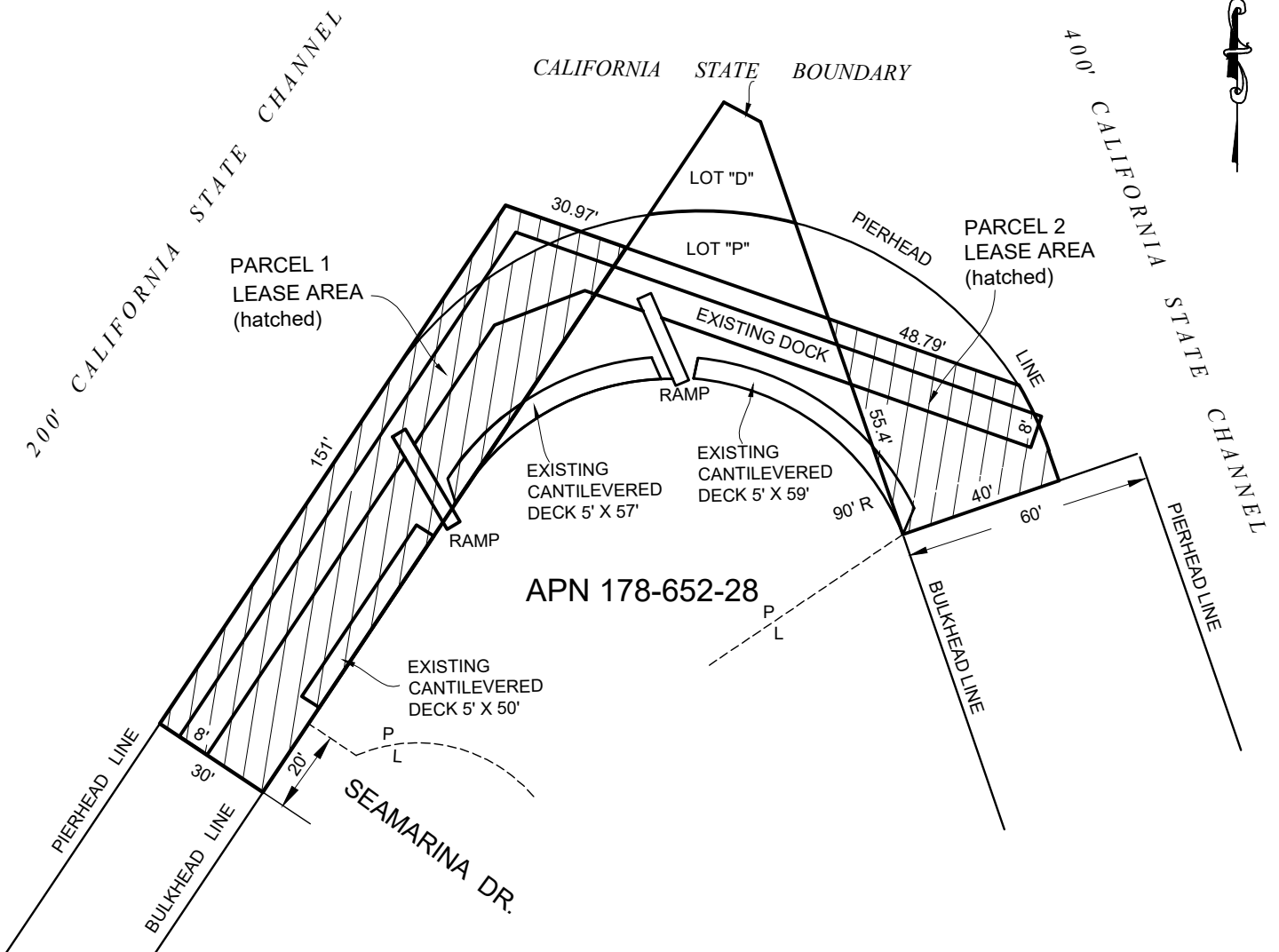
END OF DESCRIPTION

Prepared 03/26/2010 by the California State Lands Commission Boundary Unit



NO SCALE

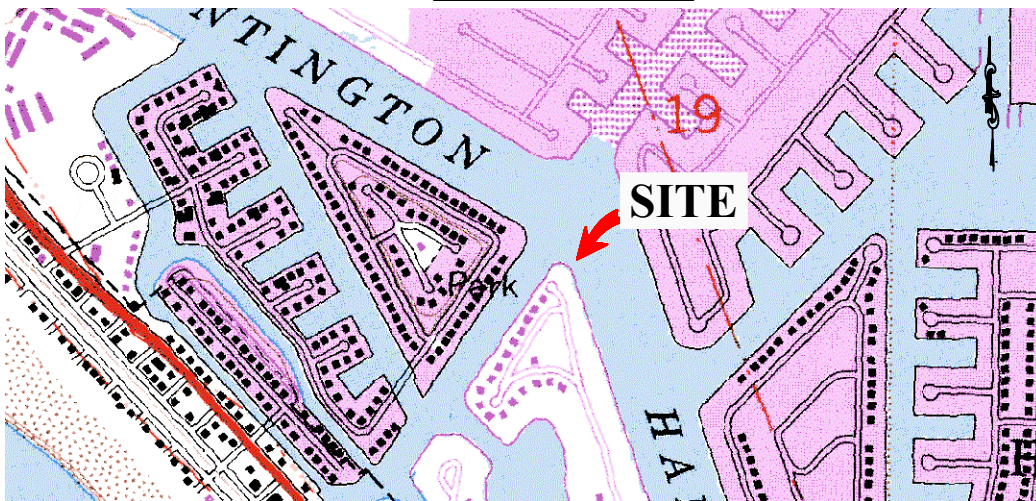
SITE



16632 CORAL CAY LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5749.1
 DiBENEDETTO &
 WILLIAMS TRUST
 APN 178-652-28
 GENERAL LEASE -
 RECREATIONAL USE
 ORANGE 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.

MJJ 3/27/19