

**CALENDAR ITEM
C54**

A 67
S 35

01/26/12
W 26512
PRC 5240.9
PRC 8285.9
S. Paschall

**GENERAL LEASE – RECREATIONAL AND
PROTECTIVE STRUCTURE USE**

APPLICANTS:

Jack Graham Merritt and Sharon Lee Merritt, Trustees of The Jack Graham Merritt and Sharon Lee Merritt Family Trust, dated December 13, 1988

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Main Channel of Huntington Harbour, adjacent to 3502 Venture Drive, Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of a boat dock, access ramp, bulkhead protection, and cantilevered deck extending no more than 5 feet waterward of the bulkhead.

LEASE TERM:

10 years, beginning January 26, 2012.

CONSIDERATION:

Bulkhead protection: the public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest;

Boat Dock and Access Ramp: no monetary consideration pursuant to Public Resources Code section 6503.5.

Cantilevered Deck: Annual rent in the amount of \$1,001; 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:

Combined single-limit liability of no less than \$1,000,000.

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Other:

No permanent roof or other enclosure will be constructed on the lease premises. Applicants agree that any proposed use of the lease premises that includes an extension of the actual living quarters constitutes residential use and is prohibited.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland adjoining the lease premises.
2. The State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1961 as a result of a land exchange entered into between the Commission and the Huntington Harbour Corporation, recorded as Sovereign Lands Location No. 34 dated December 22, 1960 and recorded on January 31, 1961 in Book 5611, Page 470, Official Records, Orange County, California. Projects, including new development or maintenance of existing facilities, extending into these Channels beyond the bulkhead line require a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicants' upland property is located along the Main Channel of Huntington Harbour.
3. On December 7, 1995, the Commission approved the issuance of a Recreational Pier Lease, Lease No. PRC 5240.9, for a 10-year term to Susan Sutter for the continued use and maintenance of the boat dock. The lease expired on April 30, 2004. On May 31, 2005 the upland property was deeded to the Applicants. The Applicants initially submitted an application for a new Recreational Pier Lease on August 10, 2005.
4. On April 24, 2001, the Commission approved the issuance of a General Lease – Protective Structure Use, Lease No. PRC 8285.9, for a 10-year term to Susan Sutter for the construction, use, and maintenance of the bulkhead protection. The lease expired March 31, 2011. The Applicants submitted an application for a new General Lease – Protective Structure Use on June 20, 2011.
5. Staff is recommending that the two prior leases, Nos. PRC 5240.9 and PRC 8285.9 be combined into a single General Lease – Recreational and Protective Structure Use.
6. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law is effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the

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former section with a new section 6503.5 which provides that the State Lands Commission “shall charge rent for a private recreational pier constructed on state lands.” The law provides for two exceptions to the imposition of rent. Those exceptions are for:

- A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
- B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

The proposed lease meets one of the statutory exceptions because the Applicants submitted an application to renew Lease No. PRC 5240.9 prior to March 31, 2011. Therefore, the boat dock and access ramp are rent-free for the remaining term of the lease.

- 7. While the existing access ramp and cantilevered deck were not previously authorized or explicitly leased, staff is recommending that these facilities be included in the new combined lease. The cantilevered deck is subject to rent.
- 8. The bulkhead protection mutually benefits the public and the Applicants. The bulkhead has been protected from undermining at no cost to the public.
- 9. **Termination of Existing Leases:** Pursuant to the Commission’s delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15060, subd. (c)(3)), the staff has determined that this activity is not subject to the provisions of CEQA because it is not a “project” as defined by CEQA and the State CEQA Guidelines.

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

- 10. **Issuance of New Lease:** Pursuant to the Commission’s delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15061), the staff has determined that this activity is exempt from the requirements of 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).

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

11. 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:

Termination of Existing Leases: Find that the activity is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of New Lease: 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 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

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:

Authorize Issuance of a General Lease – Recreational and Protective Structure Use to Jack Graham Merritt and Sharon Lee Merritt, Trustees of The Jack Graham Merritt and Sharon Lee Merritt Family Trust, dated December 13, 1988 beginning January 26, 2012, for a term of 10 years, for use and maintenance of an existing boat dock, access ramp, cantilevered deck, and bulkhead protection as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the

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bulkhead protection: the public use and benefit; consideration for the boat dock and access ramp: no monetary consideration pursuant to Public Resources Code section 6503.5; consideration for the cantilevered deck: annual rent in the amount of \$1,201; combined single-limit liability insurance coverage in the amount of no less than \$1,000,000.

EXHIBIT A

W 26512

LAND DESCRIPTION

A parcel of submerged land situate in the City of Huntington Beach, Orange County, California, described as follows:

BEGINNING at the most southerly corner of Lot 1, as said lot is shown on that certain map entitled Tract No. 8636, filed in Book 397 of Miscellaneous Maps at Pages 33 to 35, Orange County Records; thence along the southwesterly prolongation of the southeasterly line of said lot 60.00 feet to the pierhead line, as said pierhead line is described in Resolution No. 5503, passed and adopted May 6, 1985 by the City Council of said City; thence 60.00 feet northwesterly along said pierhead line to the southwesterly prolongation of the northwesterly line of said lot; thence northeasterly along said prolongation 60.00 feet to the most westerly corner of said lot; thence southeasterly along the southwesterly line of said lot 60.00 feet to the Point of Beginning.

END OF DESCRIPTION

Prepared 07/29/2011 by the California State Lands Commission Boundary Unit



Michael J. Bell

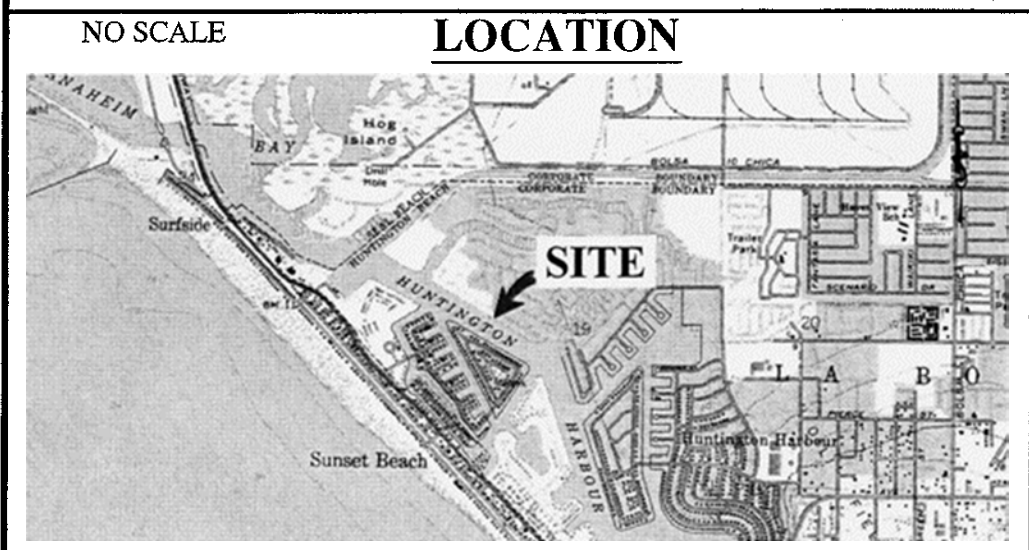
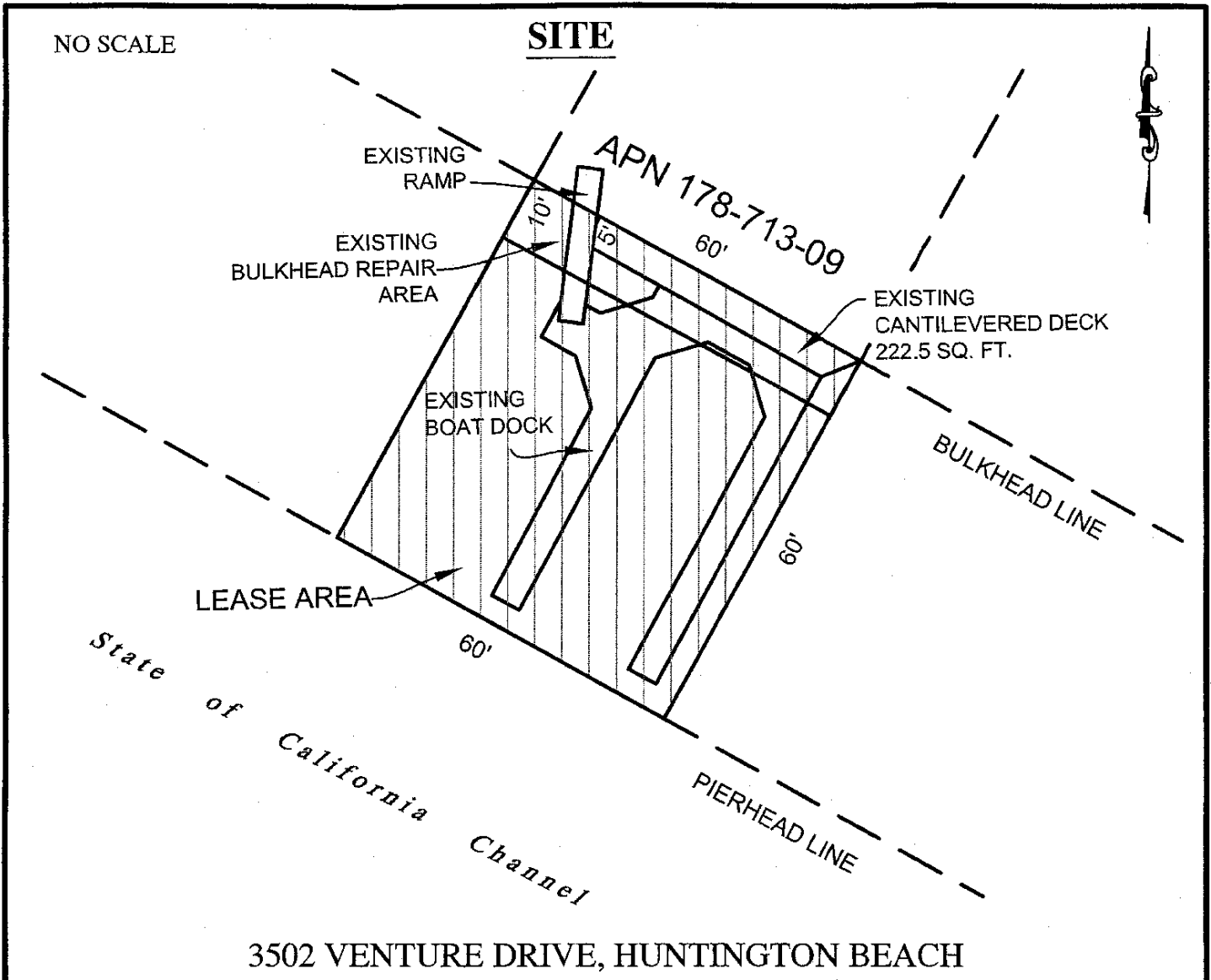


Exhibit B

W 26512
 MERRITT TRUST
 APN 176-713-09
 GENERAL LEASE
 RECREATIONAL &
 PROTECTIVE STRUCTURE 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.