

**CALENDAR ITEM
C69**

A 67
S 35

08/14/12
PRC 8289.9
S. Paschall

**RESCISSION AND ISSUANCE OF
GENERAL LEASE – PROTECTIVE STRUCTURE USE**

LESSEES:

John D. Kubeck and Nicolette M. Kubeck

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in Huntington Harbour, adjacent to 3442 Venture Drive, city of Huntington Beach, Orange County.

AUTHORIZED USE:

Continued use and maintenance of existing bulkhead protection.

LEASE TERM:

20 years, beginning April 1, 2011.

CONSIDERATION:

The public use and benefit, with the State reserving the right at any time to set a monetary rental if the Commission finds such action to be in the State's best interest.

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 Lessees' upland properties are located along the Main Channel of Huntington Harbour.

CALENDAR ITEM NO. C69(CONT'D)

3. On April 24, 2001, the Commission authorized issuance of a General Lease – Protective Structure Use to John D. Kubeck and Nicolette M. Kubeck, for a period of 10 years, for construction, use, and maintenance of protections to the bulkhead which may include repair of existing piles, placement of sheet piles and concrete backfill, and installation of slope protections including rock and geotextile.
4. On January 26, 2012, the Commission authorized issuance of a General Lease – Protective Structure Use to John D. Kubeck and Nicolette M. Kubeck, for a period of 10 years, for continued use and maintenance of existing protections to the bulkhead. Following the authorization, staff received questions from the Kubecks regarding the term of the lease and the need for insurance, as the only improvements located on State lands are protections to the bulkhead which are generally not accessible to the public.
5. On April 19th, staff held a public meeting in Huntington Beach to receive questions, comments, and concerns from Huntington Harbour residents regarding the Commission's jurisdiction and the enactment of Chapter 585, Statutes of 2011, which requires the Commission to charge rent for private recreational piers constructed on State lands. At the meeting, questions were again raised regarding the relatively-short lease term and the need for insurance requirements in leases for bulkhead protection. After independent research and analysis by staff, staff is now recommending rescission of the prior lease and issuance of a new General Lease – Protective Structure Use. The new lease will have a longer term and while it will not have insurance requirements, it will have strengthened indemnification provisions.
6. The bulkhead protection mutually benefits the public and the Applicants. The bulkhead will be protected from undermining at no cost to the public.
7. **Rescission of General Lease – Protective Structure Use:** The staff recommends that the Commission find that the subject rescission of approval does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

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

CALENDAR ITEM NO. **C69**(CONT'D)

8. **Issuance of New General Lease – Protective Structure Use:** 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).

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

9. 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. Location and Site Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Rescission of General Lease – Protective Structure Use: Find that the subject rescission is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject 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 General Lease – Protective Structure Use: 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).

CALENDAR ITEM NO. **C69**(CONT'D)

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 rescission of the previously approved General Lease and issuance of a General Lease – Protective Structure Use to John D. Kubeck and Nicolette M. Kubeck beginning April 1, 2011, for a term of 20 years, for continued use and maintenance of existing bulkhead protection as shown on Exhibit A (for reference purposes only) attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right at any time to set a monetary rental if the Commission finds such action to be in the State's best interest.

EXHIBIT A

LAND DESCRIPTION

PRC 8289.9

Parcel 1 —(adjacent to APN 178-713-14)

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

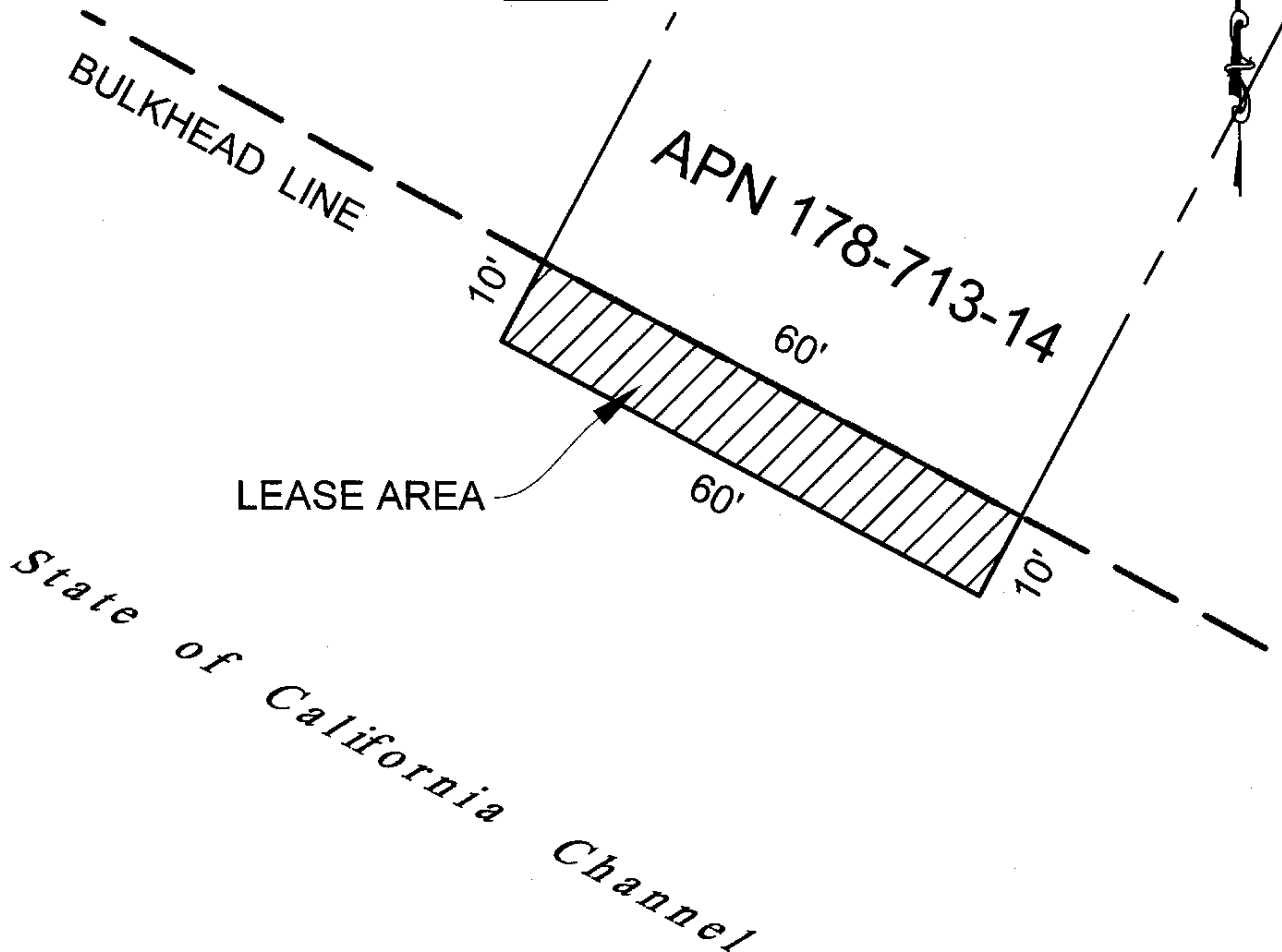
Beginning at the most southerly corner of Lot 5, as said lot is shown on that certain map entitled Tract No. 8636, filed in Book 397 of Miscellaneous Maps at Pages 33 to 35, Orange County Records; thence along the southwesterly line of said lot, North 61° 00' 00" West, 60.00 feet to the most westerly corner of said lot; thence along the southwesterly prolongation of the northwesterly line of said lot, South 29° 00' 00" West, 10.00 feet to a line which is parallel with and distant 10.00 feet southwesterly from said southwesterly line of said lot; thence along said parallel line, South 61° 00' 00" East 60.00 feet to the southwesterly prolongation of the southeasterly line of said lot ; thence along said prolongation, North 29° 00' 00" East, 10.00 feet to the point of beginning.

Prepared in February, 2001 from record data.



NO SCALE

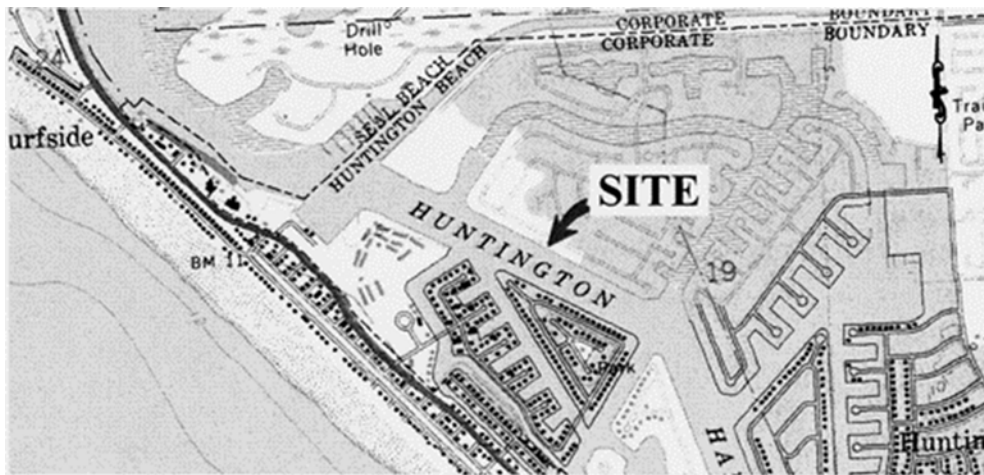
SITE



3442 VENTURE DRIVE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8289.9
 KUBECK
 APN 178-713-14
 GENERAL LEASE -
 ORANGE COUNTY



MIJ 09/11

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.