

CALENDAR ITEM

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06/29/15

PRC 7378.1

S 26

D. Simpkin

**TERMINATION AND ISSUANCE OF A GENERAL LEASE – COMMERCIAL
USE AND ENDORSEMENT OF SUBLEASES**

APPLICANT/SUBLESSOR:

Santa Catalina Island Company

SUBLESSEE:

Catalina Freight Line, Inc.
Avalon Freight Services, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land located at Pebbly Beach, Santa Catalina Island, Los Angeles
County.

AUTHORIZED USE:

LEASE: Continued use and maintenance of a concrete freight barge
landing.

SUBLEASE: Commercial freight barge operation.

LEASE TERM:

20 years, beginning June 29, 2015.

CONSIDERATION:

Base Rent of \$8,575; with an annual Consumer Price Index (CPI) adjustment,
provided that the Adjusted Annual Rent will never be lower than the Base Rent
then in effect; with the State reserving the right to fix a different Base Rent
periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$2,000,000 per occurrence.

Surety:

Surety bond or other security in the amount of \$25,000.

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Other:

Lessee will provide written reports no later than June 29, 2025, and June 29, 2035, documenting the effects of sea level rise on the concrete freight barge landing. The reports should include photo-documentation through each 10-year period of the structure during high tide events along with storm surges and the condition of the landing following extreme storm events.

Lessor acknowledges that Lessee's current sublease with Catalina Freight Line, Inc. expires on March 31, 2016. Lessee will enter into a new sublease with Avalon Freight Services, LLC, with a beginning date of April 1, 2016. That sublease will expire on March 31, 2026. Should Avalon Freight Services, LLC, extend the term of its sublease with Lessee, Lessee will apply to the Commission no later than June 30, 2025, to extend the term of the sublease.

Should the sublease with Catalina Freight Line, Inc. or Avalon Freight Services, LLC, be amended, assigned, and/or terminated and/or any new subleases and/or assignments be subsequently issued, prior to execution Lessee will provide copies of all such documents to the Commission for review and approval as provided in the Lease.

In addition to Lessee's own liability insurance coverage requirements, Lessee will provide Lessor with current copies of all insurance certificates required in Lessee's lease and/or sublease with the current sublessee, including but not limited to Commercial General Liability insurance coverage of no less than \$2,000,000 per occurrence.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On March 27, 1990, the Commission authorized a 26-year General Lease – Commercial Use to the Santa Catalina Island Company (SCICo) for the maintenance of a freight barge landing located at Pebbly Beach on Santa Catalina Island. In addition, the Commission authorized a single sublease to Jack Finnie, President of the Catalina Freight Line, Inc. (CFL). The lease with SCICo expires on March 31, 2016. A SCICo lease with CFL for upland facilities associated with the freight operations also expires on March 31, 2016.
3. On April 23, 2015, the Commission deferred action on the proposed lease and directed staff to bring the item back for consideration at the next

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scheduled meeting. Subsequently, staff met with representatives from Curtin Maritime (Curtin), CFL and SCICo.

4. The portion of the operation that is located in the Commission's jurisdiction is the concrete freight ramp, which provides for the loading and unloading of freight from freight barge vessels.
5. In 2011, SCICo hired an outside consultant and initiated a Request for Proposal (RFP) process to obtain a new freight operator once CFL's upland lease expired. The RFP was sent to eight freight operators and specified that only a single freight operator would receive the contract. Five of the eight companies responded to the RFP; of the five companies, three of them – CFL, AFS, and Curtin - were selected as finalists. In November 2013, SCICo selected AFS as its new freight operator going forward beginning April 2016 and a public press release was issued.
6. AFS and Curtin have both filed applications with the California Public Utilities Commission (CPUC) to be issued Certificates of Public Convenience and Necessity (CPCNs) to permit them to provide commercial freight service between Santa Catalina Island and the mainland. CFL already has its CPCN for such service. CFL and Curtin have also filed protests to AFS's application with the CPUC. Most recently, the CPUC has consolidated AFS and Curtin's applications, granted the City of Avalon party status, denied interim authority to AFS and released a schedule. The proposed decision is scheduled to be released in October 2015. The CPUC is scheduled to consider the proposed decision at a meeting in November 2015. The Antitrust Section of the California Attorney General's (AG's) Office also received a complaint from CFL and is investigating the merits of the complaint. Staff does not believe that the issues before the CPUC and the AG's Office prohibit the Commission's consideration of the new lease and sublease.
7. SCICo is now requesting that the existing lease be terminated and a new General Lease – Commercial Use be authorized for the continued use and maintenance of a concrete freight barge landing. In addition, SCICo is requesting the Commission authorize CFL as sublessee so that it may continue freight barge operations through March 31, 2016. Upon the expiration of CFL's upland lease with SCICo, SCICo is also requesting the Commission authorize AFS as sublessee, beginning April 1, 2016. That sublease will expire on March 31, 2026.

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8. The proposed lease requires that if the CPUC denies AFS' application with the CPUC, then SCICo will return to the Commission to amend the authorized sublessee.

9. **Termination of Lease and Approval of Subleases:** The staff recommends that the Commission find that the subject lease termination and approval of subleases do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects 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.

10. **Issuance of Lease:** The staff recommends that the Commission find 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.

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:

Lease Termination and Approval of Subleases: Find that the subject lease termination and approval of subleases are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are

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not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of 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:

1. Authorize termination of Lease No. PRC 7378.1, a General Lease – Commercial Use, to Santa Catalina Island Company effective June 28, 2015.
2. Authorize issuance of a General Lease – Commercial Use to Santa Catalina Island Company beginning June 29, 2015, for a term of 20 years for the continued use and maintenance of a concrete freight barge landing, as described in Exhibit A and shown on Exhibit B (for reference purposed only) attached and by this reference made a part hereof; consideration: Base Rent in the amount of \$8,575 per year, with an annual Consumer Price Index (CPI) adjustment, provided that the Adjusted Annual Rent will never be lower than the Base Rent then in effect; with the State reserving the right to fix a different Base Rent periodically during the lease term, as provided in the lease; liability insurance in an amount no less than \$2,000,000 per occurrence; surety bond or other security in the amount of \$25,000.
3. Approve by endorsement a sublease from Catalina Island Company to Catalina Freight Line, Inc., effective June 29, 2015, and ending March 31, 2016.
4. Approve by endorsement a 10-year sublease from Catalina Island Company to Avalon Freight Services, LLC, effective April 1, 2016, and ending March 31, 2026, with the requirement that if the CPUC denies the issuance of AFS' CPCN that SCICo return to the Commission.

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5. Direct staff to defer executing the authorized lease and sublease documents until the Commission has received a copy of a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission authorizing the proposed sublessee, Avalon Freight Services, LLC, to transport freight between the California mainland and Santa Catalina Island. Should the CPUC decision substantively affect the terms of the Commission's authorization as it relates to the lease and subleases, staff will return to the Commission for further authorization.

LAND DESCRIPTION

PARCEL 1

A strip of tide and submerged land 20 feet wide in the Pacific Ocean on the northeast side of Catalina Island at Pebbly Beach, Los Angeles County, California, said strip lying 10 feet on each side of the following described line:

BEGINNING at a point having local coordinate system coordinates of E = 102,423 and N = 12,526 as said coordinate system is shown on Sheet 1 of 1 of that certain map entitled "Topographic Map of Santa Catalina Island (Pebble Beach)" prepared by the County of Los Angeles, Department of County Engineer Survey Division, filed as Survey No 108-62-A in the office of said county Engineer; thence N 38° 30' E, 50 feet to the end of the herein described line.

EXCEPTING THEREFROM any land lying landward of the ordinary high tide line of the Pacific Ocean.

PARCEL 2

A strip of tide and submerged land 40 feet wide in the Pacific Ocean on the northeast side of Catalina Island at Pebbly Beach, Los Angeles County, California, said strip lying 20 feet on each side of the following described line:

COMMENCING at a point having local coordinate system coordinates of E = 102,423 and N = 12,526 as said coordinate system is shown on Sheet 1 of 1 of that certain map entitled "Topographic Map of Santa Catalina Island (Pebble Beach)" prepared by the County of Los Angeles, Department of County Engineer Survey Division, filed as Survey No 108-62-A in the office of said county Engineer; thence N 38° 30' E, 50 feet to the TRUE POINT OF BEGINNING; thence N 38° 30' E, 130 feet to the end of the herein described line.

EXCEPTING THEREFROM any land lying landward of the ordinary high tide line of the Pacific Ocean.

PARCEL 3

A strip of tide and submerged land 20 feet wide in the Pacific Ocean on the northeast side of Catalina Island at Pebbly Beach, Los Angeles County, California, said strip lying 10 feet on each side of the following described line:

COMMENCING at a point having local coordinate system coordinates of E = 102,423 and N = 12,526 as said coordinate system is shown on Sheet 1 of 1 of that certain map entitled "Topographic Map of Santa Catalina Island (Pebble Beach)" prepared by the County of Los Angeles, Department of County Engineer Survey Division, filed as Survey No 108-62-A in the office of said county Engineer; thence N 38° 30' E, 135 feet; thence S 51° 30' E, 30 feet to the TRUE POINT OF BEGINNING; thence N 38° 30' E, 65 feet to the end of the herein described line.

EXCEPTING THEREFROM any land lying landward of the ordinary high tide line of the Pacific Ocean.

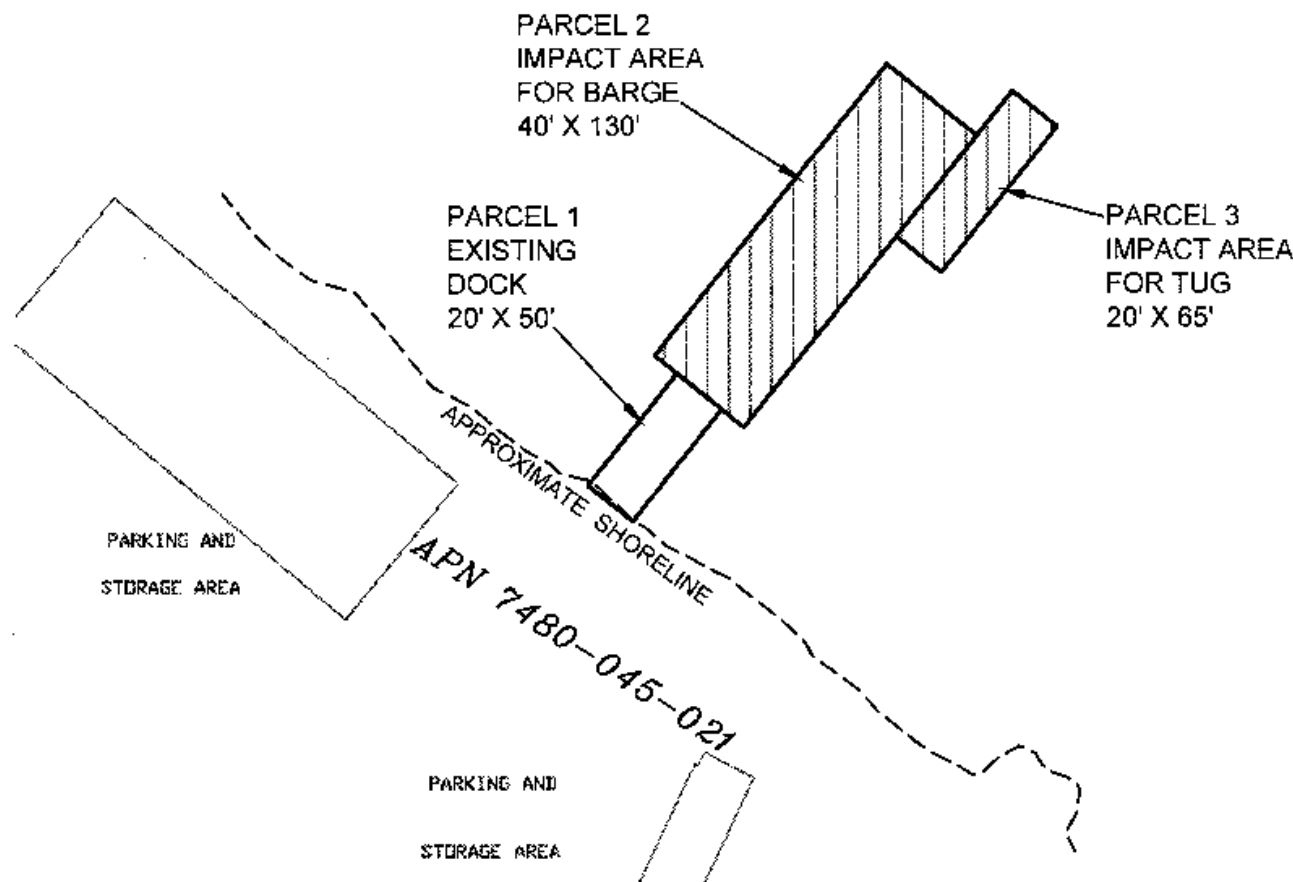
END OF DESCRIPTION

The above description is based on that original description prepared by BIU 1 on September 2, 1988 as found in PRC 7378 file.

NO SCALE

SITE

PACIFIC OCEAN



NEAR PEBBLY BEACH, SANTA CATALINA ISLAND

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 B

PRC 7378.1
 SANTA CATALINA ISLAND
 COMPANY
 APN 7480-045-021
 GENERAL LEASE-
 COMMERCIAL USE
 LOS ANGELES COUNTY



TS 03/03/15