

CALENDAR ITEM

C44

A 72

04/05/16

S 34

PRC 3859.1
S. Kreutzburg

**TERMINATION AND ISSUANCE OF A
GENERAL LEASE – RECREATIONAL USE**

LESSEE:

Scott S. Brown, Trustee U/D/T dated May 23, 2011, F/B/O of the Scott S. Brown Trust

APPLICANT:

Yu Shao and Bin Xu

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16801 Bolero Lane, city of Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, access ramp, and cantilevered deck extending no more than five feet waterward of the bulkhead.

LEASE TERM:

10 years, beginning July 9, 2015.

CONSIDERATION:

\$2,300 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

Statutory Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

Recreational boating is water-dependent and is generally consistent with the common law public trust doctrine. The California Legislature has

CALENDAR ITEM NO. **C44** (CONT'D)

identified private recreational boating facilities as an authorized use of public trust lands (Pub. Resources Code, § 6503.5). The subject facilities, consisting of a boat dock, access ramp and cantilevered deck, are privately owned and maintained and located within the Main Channel. The boat dock and access ramp facilitate recreational boating because they are used for the docking and mooring of recreational boats.

The Main Channel in Huntington Harbour was created in the early 1960s and the adjacent upland parcel 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 channel. The boat dock extends to the pierhead line which is 60 feet into the 400 foot wide channel leaving the majority of the Main Channel available for navigation and public recreation. The cantilevered deck extends no more than five feet over the Main Channel. is not fully enclosed, and does not substantially interfere with the public right of navigation or access.

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, 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. For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law public trust doctrine, 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. Applicant owns the upland adjoining the lease premises.
2. On February 23, 2013, the Commission authorized a 10-year General Lease – Recreational Use to Scott S. Brown, Trustee U/D/T dated May 23, 2011, F/B/O of the Scott S. Brown Trust. That lease expires on September 15, 2019. On July 9, 2015, the upland was deeded to Yu

CALENDAR ITEM NO. **C44** (CONT'D)

Shao and Bin Xu. The Applicant is now applying for a General Lease – Recreational Use.

3. Staff recommends termination of the existing lease because the Lessee abandoned the lease by selling the property without executing a lease quitclaim deed.
4. Staff recommends the issuance of this lease as it promotes 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.
5. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

6. The staff recommends that the Commission find that issuance of the lease 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.

7. 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

CALENDAR ITEM NO. **C44** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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:

Find that the proposed lease will not substantially interfere with the public trust needs and values at this location; find these actions are consistent with the common law public trust doctrine and are in the best interests of the State.

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, effective July 8, 2015, of Lease No. PRC 3859.1, a General Lease – Recreational Use, issued to Scott S. Brown, Trustee U/D/T dated May 23, 2011, F/B/O of the Scott S. Brown Trust.
2. Authorize issuance of a General Lease – Recreational Use to Yu Shao and Bin Xu beginning July 9, 2015, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, and cantilevered deck extending no more than five feet waterward of the bulkhead, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration in the amount of \$2,300 per year with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3859.1

LAND DESCRIPTION

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

Beginning at the most southerly corner of Lot 58, as said lot is shown and so designated on that certain map of Tract No. 5264 filed in Map Book 185, Pages 27 through 34, Official Records of said County; thence along the westerly extension of the southerly line of said lot 60.00 feet; thence northerly along a line parallel with the westerly line of said lot to the westerly extension of the northerly line of said lot; thence easterly along said extension 60.00 feet to the most westerly corner of said lot; thence southerly along said westerly line of said lot to the point of beginning.

END OF DESCRIPTION

Prepared 06/06/2005 by the California State Lands Commission Boundary Unit



400'
STATE OF CALIFORNIA CHANNEL

LEASE AREA

APN 178-371-10

EXISTING
CANTILEVERED DECK
5' X 49.2'

53'

60'

PIERHEAD LINE

BULKHEAD LINE

EXHIBIT A

Page 2 of 2

MJJ 02/10/2016

LAND DESCRIPTION PLAT
PRC 3859.1, BIN XU
ORANGE COUNTY

CALIFORNIA STATE
LANDS COMMISSION



NO SCALE

SITE



16801 BOLERO LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



Exhibit B

PRC 3859.1

BIN XU

APN 178-371-10

GENERAL LEASE -
RECREATIONAL USE
ORANGE COUNTY



MJJ 01/14/2015

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.