

**CALENDAR ITEM
C40**

A 72
S 34

10/13/16
PRC 3244.1
S. Kreutzburg

GENERAL LEASE – OTHER

APPLICANT:

Margaret Ann Hohly, Trustee of the Margaret Ann Hohly Trust dated November 24, 2015

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16931 Bolero Lane, city of Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, access ramp, and cantilevered deck with partial enclosure, extending no more than 5 feet waterward of the bulkhead.

LEASE TERM:

10 years, beginning August 9, 2016.

CONSIDERATION:

\$3,627 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.

Lessee shall pay the compensation amount specified in Paragraph 4 herein and the annual rental amount shown in Section 1 "*Consideration*" for the first lease-year of this lease in three (3) equal installment payments of \$2,067, to be due and payable on or before each of the following dates: December 30, 2016, March 31, 2017, and June 30, 2017. Subsequent rental payments for the remainder of the lease term shall be due and payable annually on or before the anniversary date of the Lease, as specified in Section 3, Paragraph 3 (*Rent*).

CALENDAR ITEM NO. **C40** (CONT'D)

STAFF ANALYSIS AND RECOMMENDATION:

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:

On June 19, 1998, the Commission authorized the issuance of a Recreational Pier Lease to Robert Hohly and Lois Hohly, as Trustees of the Hohly Living Trust dated September 11, 1989, for a term of 10 years ([Calendar Item C80, June 19, 1998](#)). On November 24, 2015, ownership of the upland parcel was transferred to Margaret Ann Hohly, Trustee of the Margaret Ann Hohly Trust dated November 24, 2015. The Applicant is now applying for a new lease.

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 subject facilities, consisting of a boat dock, access ramp and cantilevered deck with partial enclosure, 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 that is 60 feet into the 400-foot-wide channel leaving the majority of the Main Channel available for navigation and public recreation.

Although the enclosed portion of a cantilevered deck is not a use associated with traditional Public Trust uses, it extends no more than 5 feet over the Main Channel 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 and is limited to a 10-year term. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

CALENDAR ITEM NO. **C40** (CONT'D)

The proposed lease requires the lessee to insure the lease premises, indemnify the State for any liability, and pay annual rent for the use of State land. Conversely, the resources, costs, time and uncertainty associated with seeking removal of these relatively small encroachments are significant. For all the reasons above, Commission 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. 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.
2. Staff recommends that the Commission accept compensation for the unauthorized occupation of State land in the amount of \$2,574 for the period beginning November 24, 2015, the date the Applicant took ownership of the upland property, through August 8, 2016. The Applicant did not qualify for rent-free status pursuant to Public Resources Code section 6503.5.
3. The issuance of a lease 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.

4. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is 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. **C40** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the use of a boat dock and access ramp is consistent with the common law Public Trust doctrine and is in the best interests of the State.

Find that the existing and continuing use of the enclosed portion of the cantilevered deck is not generally consistent with the Public Trust Doctrine, but that the current use, on balance, will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location and is 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 acceptance of compensation in the amount of \$2,574 for the unauthorized occupation of State land for the period beginning November 24, 2015, through August 8, 2016, as provided in the lease.
2. Authorize issuance of a General Lease – Other to Margaret Ann Hohly, Trustee of the Margaret Ann Hohly Trust dated November 24, 2015, beginning August 9, 2016, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, and cantilevered deck with partial enclosure extending no more than 5 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 \$3,627 per year with an annual Consumer Price Index adjustment

CALENDAR ITEM NO. **C40** (CONT'D)

as provided in the lease; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 3244.1

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 43, as said lot is shown and so designated on that certain map of Tract No. 5264 filed in Book 185, Pages 27 through 34 of Miscellaneous Maps, Official Records of said County; thence along the southwesterly extension of the southeasterly line of said lot 60.00 feet; thence northwesterly and parallel with the southwesterly line of said lot 50.00 feet to the southwesterly extension of the northwesterly line of said lot; thence northeasterly along said extension to the most westerly corner of said lot; thence southeasterly along said southwesterly line of said lot to the point of beginning.

END OF DESCRIPTION

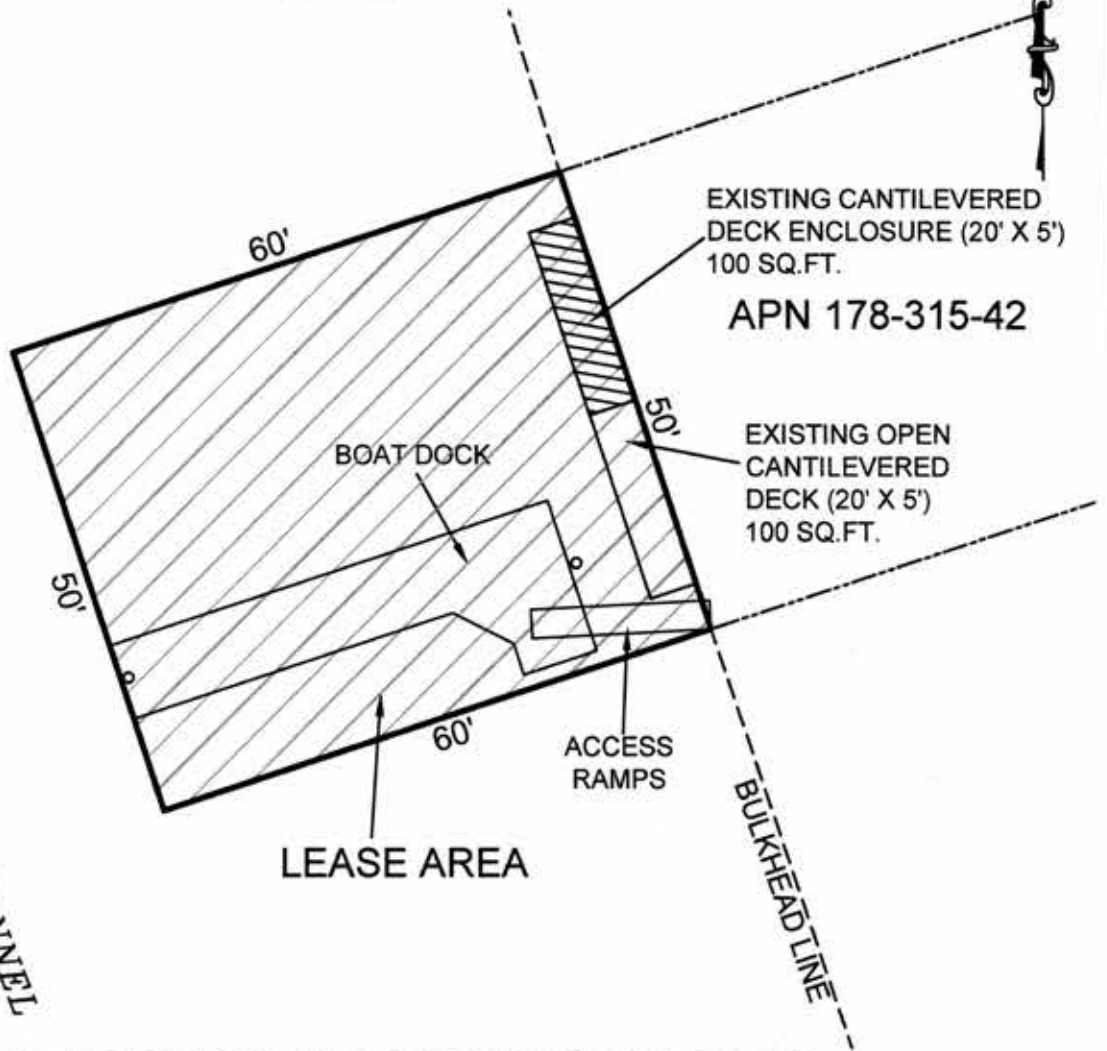
Prepared 08/20/13 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

STATE OF CALIFORNIA 400' CHANNEL



APN 178-315-42

LEASE AREA

16931 BOLERO LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



Exhibit B

PRC 3244.1
 HOHLY TRUST
 APN 178-315-42
 GENERAL LEASE -
 OTHER
 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.