

**CALENDAR ITEM
C42**

A 72

10/13/16

S 34

PRC 8244.1
S. Kreutzburg

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Qui V. Phan and Ngan L. Phan

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16711 Carousel 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 5 feet waterward of the bulkhead, and bulkhead protection.

LEASE TERM:

10 years, beginning October 13, 2016.

CONSIDERATION:

Boat dock, access ramp, and cantilevered deck: \$2,007 per year, with an annual Consumer Price Index adjustment.

Bulkhead protection: The public health and safety; 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 interests.

SPECIFIC LEASE PROVISIONS:

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

Lessee shall pay the compensation amount specified in the Lease for the unauthorized occupation of State-owned land prior to the beginning date of the Lease in three (3) installment payments: First payment of \$957.67 due and payable on or before December 30, 2016; Second payment of \$957.67 due and payable on or before March 31, 2017; Third payment of \$957.66 due and payable on or before June 30, 2017.

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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 September 17, 2001, the Commission authorized a General Lease – Recreational and Protective Structure Use to Sharon L. DeAlmeida, for a term of 10 years ([Calendar Item C42, September 17, 2001](#)). On May 31, 2011, the lease expired. The former lessee submitted an incomplete application in 2013 for the continued use of the lease premises; however, the former lessee subsequently stopped communicating with staff and the 2013 lease application was not brought before the Commission. On January 19, 2016, the upland was deeded to Qui V. Phan and Ngan L. Phan. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use.

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, are privately owned and maintained and located within the Main Channel of Huntington Harbour. 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 was partially enclosed with a room attached to the residence, but the enclosure has since been removed and will not be reconstructed. Although a cantilevered deck is not a use associated with traditional Public Trust uses, it extends no more than five feet over the Main Channel and does not substantially interfere with the public right of navigation or access. The bulkhead protection consists of rock placed at

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the base of the bulkhead and extends no more than five feet into the Main Channel at the base of the bulkhead. It is underneath the cantilevered deck and access ramp. There is no public access at this location and the bulkhead protection does not impede navigation or public recreation at this location.

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.

The proposed lease requires the lessee to insure the lease premises and 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 \$2,873 for the period beginning January 19, 2016, the date the Applicant took ownership of the upland property, through October 12, 2016. The Applicant did not qualify for rent-free status pursuant to Public Resources Code section 6503.5.
3. The issuance of the 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.

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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

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 at this time, is consistent with the common law Public Trust Doctrine, 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 \$2,873 for the unauthorized occupation of State land for the period beginning January 19, 2016, through October 12, 2016, as provided in the Lease.
2. Authorize issuance of a General lease – Recreational and Protective Structure Use to Qui V. Phan and Ngan L. Phan beginning October 13, 2016, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, and

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cantilevered deck extending no more than 5 feet waterward of the bulkhead, 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 boat dock, access ramp, and cantilevered deck, \$2,007 per year with an annual Consumer Price Index adjustment; for the bulkhead protection, the public health and safety, 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 interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8244.1

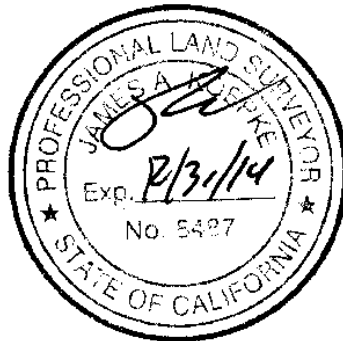
LAND DESCRIPTION

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

BEGINNING at the most southerly corner of Lot 147, as said lot is shown and designated on that certain map of Tract No. 5481 filed in Book 215 of Miscellaneous Maps at Pages 11 through 22, Official Records of said County; thence along the southwesterly extension of the southeasterly line of said lot 60.00 feet to the pierhead line as said pierhead line is described in Resolution No. 5631, passed and adopted January 21, 1986 by the City Council of said City; thence northwesterly 50.00 feet along said pierhead line to the southwesterly extension of the northwesterly line of said lot; thence northeasterly along said extension 60.00 feet to the most westerly corner of said lot; thence southeasterly along the southwesterly line of said lot to the point of beginning.

END OF DESCRIPTION

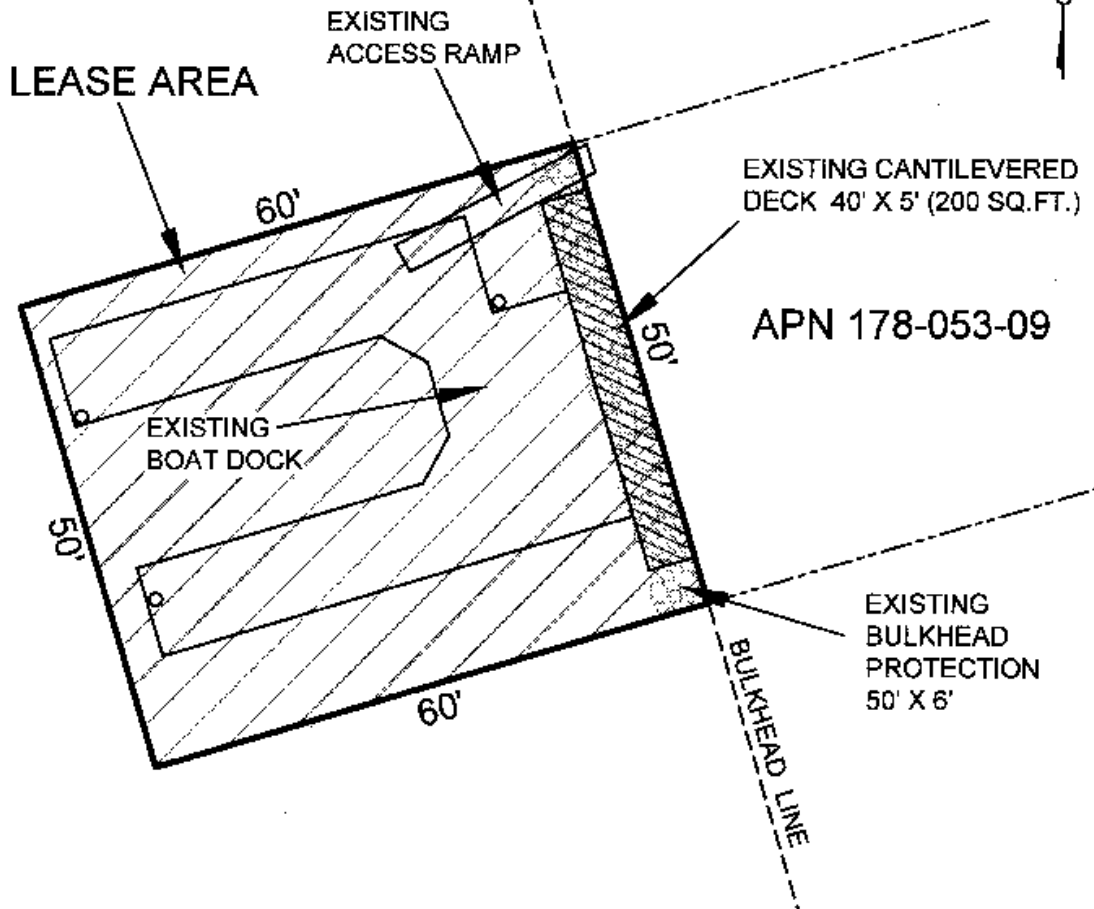
Prepared 08/22/2013 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

STATE OF CALIFORNIA 400' CHANNEL



16711 CAROUSEL LANE, HUNTINGTON HARBOUR

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8244.1
 PHAN
 APN 178-053-09
 GENERAL LEASE-
 RECREATIONAL 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.

TS 08/16/16