

**STAFF REPORT
C67**

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S 34

10/19/17
W 27020
S. Avila

GENERAL LEASE – RECREATIONAL USE

LESSEE/APPLICANT:

Alexander H. McKay and Elaine M. McKay, as Co-Trustees of the McKay Living Trust, Established November 22, 2011

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 16772 Coral Cay Lane, Huntington Beach, Orange County.

AUTHORIZED USE:

Removal of an existing boat dock and access ramp; the construction, use, and maintenance of a new boat dock and access ramp; and the use and maintenance of an existing cantilevered deck.

LEASE TERM:

10 years, beginning October 19, 2017

CONSIDERATION:

Rent in the amount of \$3,147 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee shall pay the compensation amount of \$4,457.24 for the unauthorized occupation of State-owned land prior to the beginning date of the Lease.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

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Public Trust and State's Best Interests Analysis:

The improvements occupying sovereign land adjacent to the subject parcel have not been previously authorized. On May 20, 2016, ownership of the upland parcel transferred to the Applicant. The Applicant has agreed to pay for the unauthorized occupation and use of the sovereign land from the time the upland parcel was occupied to a date immediately before the commencement of the proposed lease. The Applicant is now applying for a lease to authorize the removal of the existing boat dock and access ramp, and to replace it with a new boat dock and access ramp in the same configuration, with no changes to the footprint. For the boat dock replacement, the existing boat dock will be floated away by boat to the contractor's facility for disassembly and a new boat dock will be floated in its place, using the same pilings as the existing dock- none of the pilings will be replaced or removed. The existing access ramp will be removed and replaced with an access ramp in the same location and with the same dimensions as the existing access ramp.

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. 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 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. Although the 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's 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 and 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

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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.

Climate Change:

Climate change impacts, including sea-level rise, increased wave activity, storm events, and flooding are not limited to the open coast. The existing structures subject to the proposed lease are located within the Huntington Harbour development, along an inland, navigable, tidally influenced channel, and may be vulnerable to the impacts of sea-level rise. The lease area contains fixed features, including pilings, an overhanging deck, and movable features, including a floating recreational dock and access ramp. Huntington Harbour is built near sea-level elevation, and as a result is vulnerable to flooding and storm surge events. Huntington Harbour is adjacent to two wetlands, Bolsa Chica and the Seal Beach National Wildlife Refuge, which could act as natural buffers to storm surges and lessen flood risks.

Compared to year 2000 levels, the region could see up to 1 foot of sea-level rise by the year 2030, 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). As stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood risks, comprised of greater total water levels for longer periods of time. Flooding conditions could cause structures to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. The floating nature of the movable features will allow

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them to rise and fall with tides and waves, increasing their resiliency to some sea-level rise impacts. The fixed features may need to be raised or reinforced to withstand future conditions. Although the bulkhead underneath the deck is not under the Commission's jurisdiction, any sea-level rise impacts to the bulkhead could also affect the structures under the Commission's jurisdiction because it serves to stabilize the bank. Therefore, any loss or degradation of the bulkhead would result in property damage and public safety concerns within the lease area and the surrounding waterways.

More locally based knowledge of sea-level rise impacts and adaptation strategies will be available to Huntington Harbour residents as a result of the ongoing efforts to update the City of Huntington Beach's Local Coastal Program and General Plan, and through the city's Coastal Resiliency Task Force. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea-level rise.

Conclusion:

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 or for the foreseeable term of the proposed lease, and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Staff recommends that the Commission accept compensation for the unauthorized occupation of State land in the amount of \$4,457.24 for the period of occupation prior to the beginning date of the lease.
2. These actions are 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.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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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. These activities involve lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activities 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 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, or for the foreseeable term of the lease, 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 \$4,457.24 for the unauthorized occupation of State land for the period of occupation prior to the beginning date of the lease.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 19, 2017, for a term of 10 years, for the removal of the existing boat dock and access ramp; the

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construction, use, and maintenance of a new boat dock and access ramp; and the use and maintenance of an existing cantilevered deck as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$3,147, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 27020

LAND DESCRIPTION

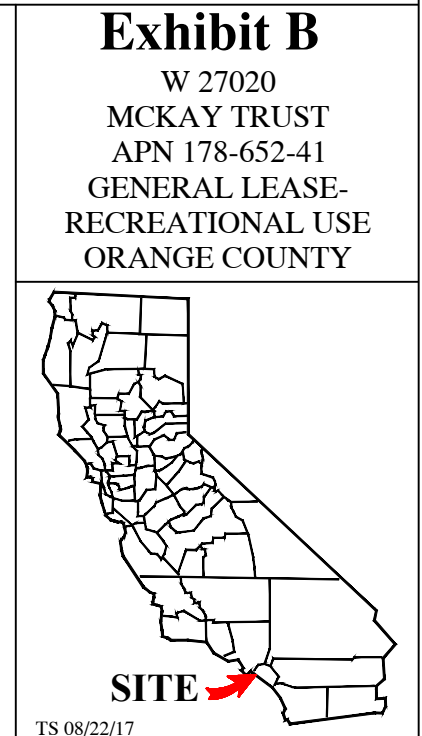
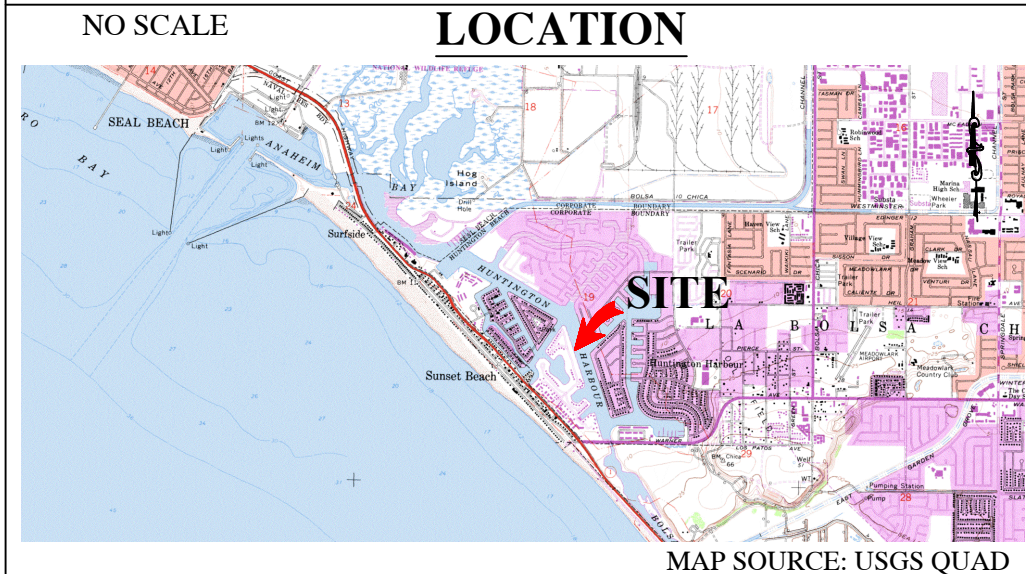
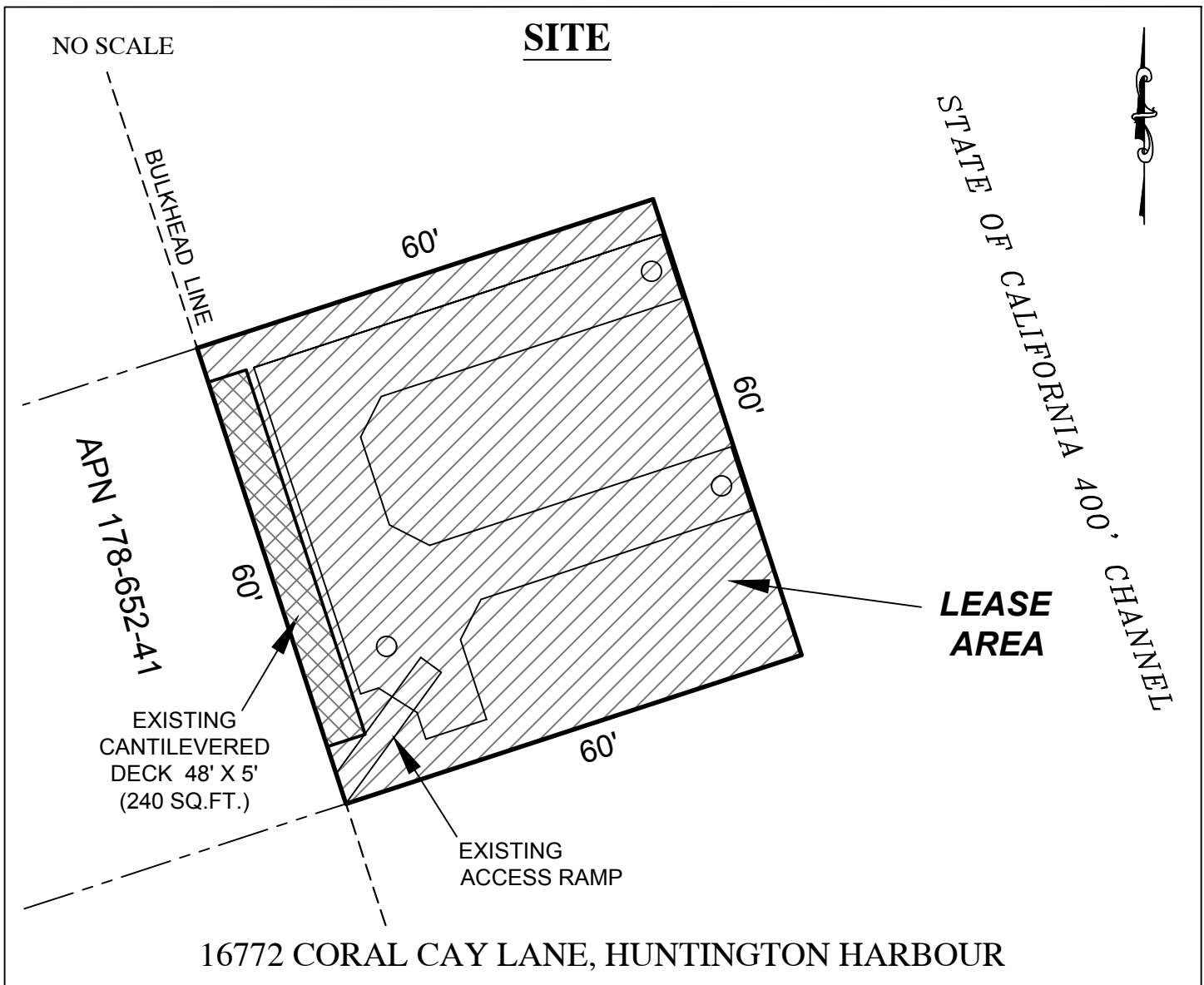
A parcel of submerged land situate in Huntington Harbour, in the City of Huntington Beach, Orange County, State of California, described as follows:

Beginning at the most easterly corner of Lot 43, as said lot is shown and so designated on that certain map of Tract No. 8040 filed November 22, 1974, in Book 350, Pages 27 through 37 of Miscellaneous Maps, Official Records of said County; thence along the northeasterly extension of the southeasterly line of said lot 60.00 feet to the pierhead line, as said pierhead line is described in Resolution No. 5197, passed and adopted December 6, 1982 by City Council of said City; thence northwesterly and parallel with the northeasterly line of said lot to the northeasterly extension of the northwesterly line of said lot; thence southwesterly along said northeasterly extension 60.00 feet to the most northerly corner of said lot; thence southeasterly along said northeasterly line of said lot to the point of beginning.

END OF DESCRIPTION

Prepared 08/22/2017 by the California State Lands Commission Boundary Unit





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.