

STAFF REPORT

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08/23/19
PRC 8284.1
AH-005
K. Connor
B. Johnson

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RESCISSION OF APPROVAL AND ISSUANCE OF A GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Dean Edward Dager, Trustee of the Alan B. Dager Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dager; and Dean Edward Dager, Trustee of the Marlene Cheng Dager Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dager

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 3582 Venture Drive, Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, access ramp, cantilevered deck, and bulkhead protection.

LEASE TERM:

10 years, beginning August 23, 2019.

CONSIDERATION:

Boat dock, access ramp, and cantilevered deck: \$2,824 per year, with an annual Consumer Price Index adjustment.

Bulkhead protection: The public health and safety; with the State reserving the right to set a monetary rent if the Lessor funds such action to be in the State's best interest, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee must pay compensation in the amount of \$6,463 for the prior unauthorized use of State land by September 22, 2019.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6224.3, 6224.4, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 1911, 2000, 2003, and 3000 through 3016.

Background:

On May 10, 2007, the Commission authorized the termination of a Recreational Pier Lease and a General Lease – Protective Structure Use, and issuance of a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing boat dock, access ramp, cantilevered deck, and bulkhead protection, to Alan B. Dager and Marlene Cheng Dager, Trustees of the Dager Family Trust, April 4, 1977; and Marlene Cheng Dager, Trustee of the Marlene Cheng Dager Qualified Personal Residence Trust Dated May 20, 1999 and Alan B. Dager, Trustee of the Alan B. Dager Qualified Personal Residence Trust Dated May 20, 1999, for a term of 10 years ([Item C65, May 10, 2007](#)). That lease expired on May 9, 2017.

On July 5, 2014, all interest in the upland parcel transferred to Dean Edward Dager, Trustee of the Alan B. Dager Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dager; and Dean Edward Dager, Trustee of the Marlene Cheng Dager Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dager (Applicant).

On October 19, 2017, the Commission authorized the issuance of Lease No. PRC 8284.1, a General Lease – Recreational and Protective Structure Use, to the Applicant, for a term of 10 years ([Item C64, October 19, 2017](#)). However, the Applicant did not agree to the terms of that lease and never executed the lease. On May 21, 2019, staff initiated an administrative enforcement action pursuant to Public Resources Code section 6224.3 to resolve the trespassing structures. In response, the Applicant disputed the trespass allegation but began discussions with staff to enter into a lease.

Staff is now recommending the October 19, 2017 authorization be rescinded, and the Commission authorize issuance of a new lease. Entering into a lease will resolve the violation identified in the Notice of Violation. Therefore, should the Commission approve the issuance of this lease, staff recommends the Commission direct the Executive Officer or her designee to terminate enforcement matter AH-005 under California Code of Regulations, title 2, section 3005, as long as the Applicant

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submits a properly executed and notarized lease on or before September 23, 2019.

Public Trust and State's Best Interests Analysis:

The subject facilities, consisting of a boat dock, access ramp, cantilevered deck, and bulkhead protection are privately owned and maintained and located within the Main Channel of Huntington Harbour. The boat dock and access ramp are used for recreational boating. 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.

The existing cantilevered deck is connected to the upland residence. Residential use is generally not consistent with the Public Trust Doctrine. However, the cantilevered deck 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 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. 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 occupation of the public land involved.

The proposed lease requires the Applicant to pay \$6,463 to reimburse the public for the Applicant's prior use of State land from the expiration of the previous lease to the beginning of the proposed lease term.

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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.

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.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Los Angeles tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for Los Angeles¹

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 28, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), 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

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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. The lease area contains fixed features, including pilings and an overhanging deck, and movable features, including a floating recreational dock and access ramp. 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 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; in particular, the bulkhead underneath the deck serves to stabilize the bank, and loss or degradation of this structure 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 (not within the lease area) 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, 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. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the boat dock, access ramp, and cantilevered deck

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and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. 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.
3. Rescission 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).

4. 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.

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:

1. Find that the existing and, for a limited period, continuing use and maintenance of the boat dock, access ramp, and bulkhead protection will not substantially interfere with Public Trust needs

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and values at this location and are consistent with the common law Public Trust Doctrine; and

2. Find that the existing and, for a limited period, continuing use and maintenance of the cantilevered deck is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Rescind the previous authorization for Lease No. PRC 8284.1, a General Lease – Recreational and Protective Structure Use, authorized on October 19, 2017, to Dean Edward Dauger, Trustee of the Alan B. Dauger Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dauger; and Dean Edward Dauger, Trustee of the Marlene Cheng Dauger Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dauger.
2. Authorize acceptance of compensation in the amount of \$6,463 for unauthorized use of State land following the prior lease's expiration.
3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to Dean Edward Dauger, Trustee of the Alan B. Dauger Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dauger; and Dean Edward Dauger, Trustee of the Marlene Cheng Dauger Qualified Personal Residence Trust dated May 20, 1999, FBO Dean Edward Dauger; beginning August 23, 2019, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, cantilevered deck, 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; annual rent in the amount of \$2,824, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
4. Direct the Executive Officer or her designee to terminate the pending administrative enforcement action against the Applicant for structures adjacent to 3582 Venture Drive, Huntington Beach, upon receipt of a properly executed and notarized lease by September 23, 2019; termination to be documented by a letter from the Executive Officer to the Applicant.

EXHIBIT A

PRC 8284.1

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 46, as said lot is shown and so designated on that certain map of Tract No. 9335 filed in Book 386, Pages 32 and 33 of Miscellaneous Maps, Official Records of said County; thence along the southwesterly extension of the southeasterly line of said lot 60.00 feet, more or less, to the pierhead line, as said pierhead line is shown on EXHIBIT 'A' of Resolution No. 5503, passed and adopted May 6, 1985 by the City Council of the City of Huntington Beach and recorded May 10, 1985 as Document 85-170510, Official Records of said County; thence northwesterly along said pierhead line to the southwesterly extension of the northwesterly line of said lot; thence along said extension 60.00 feet, more or less, to the most westerly corner of said lot; thence along the southwesterly line of said lot to the point of beginning.

END OF DESCRIPTION

Prepared 04/19/2007 by the California State Lands Commission Boundary Unit



