CALENDAR ITEM

139

A 67 06/23/11

WP 4094.1

S 35 D. Simpkin

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Edward Leroy Clark, Jr., Trustee of the Ed Clark Family Trust dated September 8, 2010

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 17061 Bolero Lane, city of Huntington Beach, Orange County.

AUTHORIZED USE:

The continued use and maintenance of an existing boat dock and access ramp, and the retention of an existing boat lift and cantilevered deck extending no more than five feet waterward of the bulkhead.

UNAUTHORIZED USE:

Existing hot tub, gazebo, and tiki bar.

LEASE TERM:

10 years, beginning September 1, 2010.

CONSIDERATION:

Boat dock, boat lift and access ramp: No monetary consideration pursuant to Public Resources Code section 6503.5.

Cantilevered deck: Annual rent in the amount of $1,274 with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Combined single-limit liability insurance coverage in the amount of no less than $1,000,000.

Other:

No permanent roof or other enclosure will be constructed on the lease premises. Applicant agrees that any proposed use of the Lease Premises that includes a residential extension of the actual living quarters constitutes residential use and is prohibited.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.

2. The State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1961 as a result of a land exchange agreement entered into between the Commission and the Huntington Harbour Corporation, recorded as Sovereign Lands Location No. 34 dated December 22, 1960, and recorded on January 31, 1961, in Book 5611, Page 470, Official Records, Orange County, California. Projects, including new development or maintenance of existing facilities, extending into these Channels beyond the bulkhead line require a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicant's upland property is located along the Main Channel of Huntington Harbour.

3. On September 19, 2000, the Commission authorized the issuance of a Recreational Pier Lease to Daniel Patrick Mundy as Trustee of the Daniel Patrick Mundy Trust, dated April 25, 1996, for a 10-year term, effective September 1, 2000. The lease expired on August 31, 2010. The Applicant is the current owner of the property and is now applying for a General Lease – Recreational Use for the existing boat dock, access ramp, boat lift, and cantilevered deck. A five-foot portion of the cantilevered deck extends over the State's fee-owned land in the Main Channel of Huntington Harbour, and was not previously authorized by the Commission. Since the boat lift and cantilevered deck are existing, staff is recommending that they be included in the lease.

4. The Applicant has also requested Commission staff to include in the lease, as acceptable improvements, a hot tub, gazebo, and tiki bar located on the boat dock. These facilities have been placed on the dock without the Commission's authorization. Pursuant to Title 2, California Code of Regulations, section 2002 (f), and California Public Resources Code section 6503.5, these facilities are not used for the docking and mooring of boats, and constitute a quasi-residential use more suited to the upland. Staff is recommending that the request to include the existing gazebo, hot tub and tiki bar in the lease be denied. Staff is further requesting that the Commission authorize the Commission staff and the Attorney General's

Office to take all action necessary and appropriate to remove the unauthorized facilities.

5. Previous leases dating from 1968 have authorized the use of the premises solely for a boat dock. In July 2002, the Applicant received a permit from the Public Works Department of the City of Huntington Beach to add a new piling and finger deck to the existing pier, resulting in the current vee-shaped configuration. However, the City could find no permits or approvals in their database for the hot tub and gazebo, or the water and electrical services to the hot tub.

6. The existing boat dock, boat lift, and access ramp qualify for rent-free status as the Applicant is a natural person who owns the littoral land improved with a single-family dwelling pursuant to Public Resources Code section 6503.5.

7. The cantilevered deck does not qualify for rent-free status because it is not used for the mooring of boats. Therefore, that portion of the deck extending over State fee owned land within the Harbour is subject to annual rent pursuant Public Resources Code section 6503.

8. The Commission has been faced with a number of unauthorized uses on state lands. The Commission has been consistent in not authorizing such improvements and has required removal.

9. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

   Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

10. 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. Location and Site Map
B. Land Description

RECOMMENDED ACTION:
It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a categorically exempt project, Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

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.

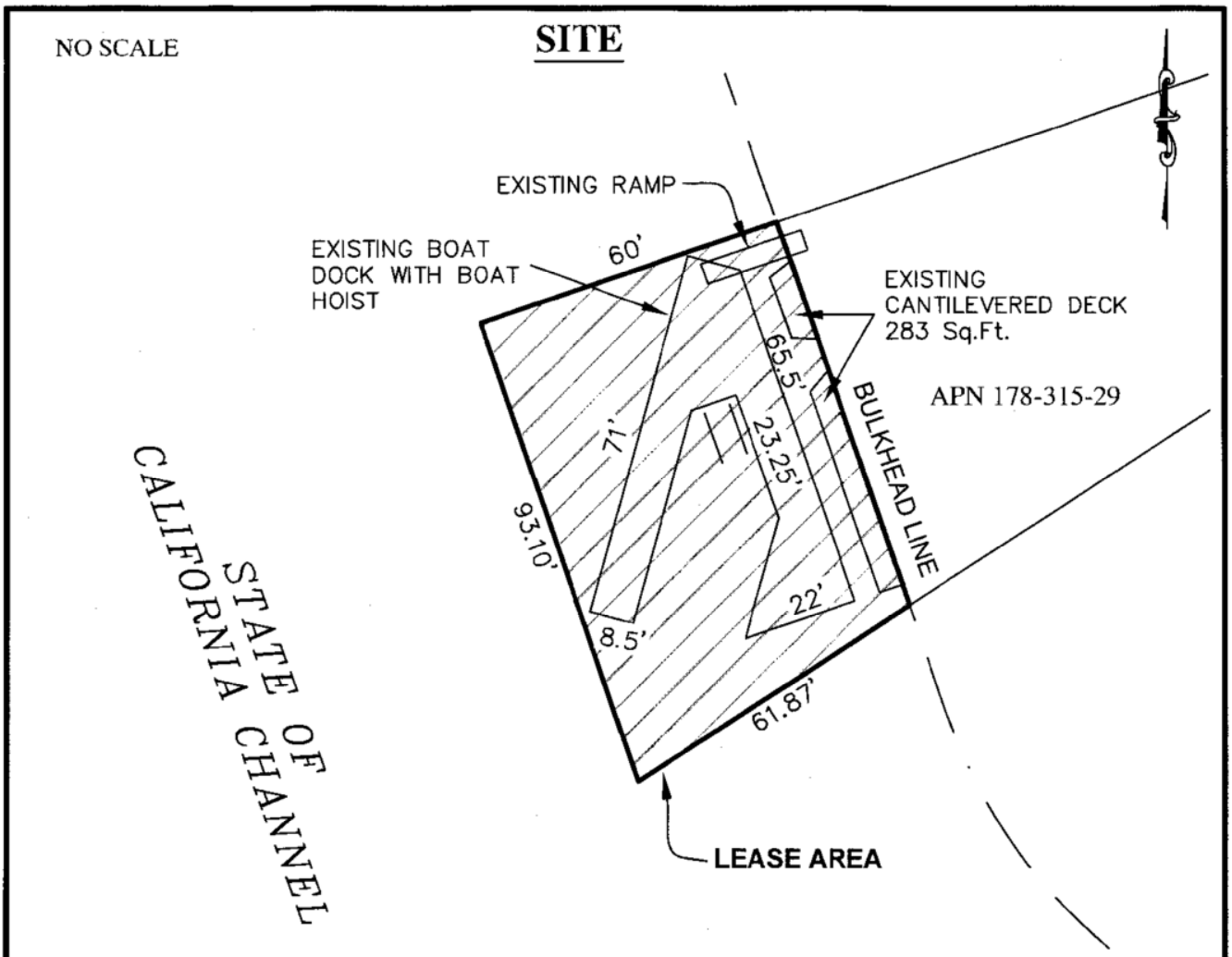
AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Edward Leroy Clark, Jr., Trustee of the Ed Clark Family Trust dated September 9, 2010, beginning September 1, 2010, for a term of 10 years, for the existing boat dock and access ramp, and retention of a boat lift and cantilevered deck as shown on Exhibit A attached (for reference purposes only) and described on Exhibit B attached and by this reference made a part hereof; consideration for the boat dock, boat lift and access ramp: no monetary consideration pursuant to Public Resources Code section 6503.5; consideration for the cantilevered deck: annual rent in the amount of $1,274, with the State reserving the right to fix a different rent periodically during the term of the lease as provided in the lease; combined single-limit liability insurance coverage in the amount of no less than $1,000,000.

Deny authorization for the existing hot tub, gazebo, and tiki bar and authorize the Commission staff and the Attorney General's Office to take all action necessary and appropriate, including litigation to remove the unauthorized facilities.

NO SCALE

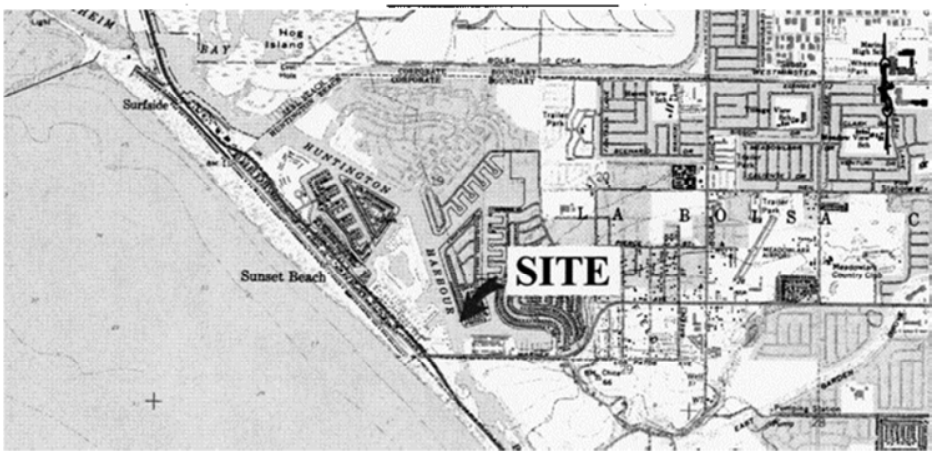
SITE



17061 BOLERO LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit A

WP 4094.1
ED CLARK FAMILY TRUST
APN 178-315-29
GENERAL LEASE - RECREATIONAL USE
ORANGE COUNTY

DJF 05/25/2011

EXHIBIT B

WP 4094.1

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 30, as said lot is shown and so designated on that certain map of Tract 5264 filed in Book 185, Pages 27 to 34 inclusive of Miscellaneous Maps, Official Records of said County; thence northerly along the westerly line of said lot, said line also being the bulkhead line as shown on said map, 78.00 feet to the most westerly corner of said lot; thence westerly along the westerly prolongation of the northerly line of said lot to a line parallel with and 60.00 feet westerly, measured at right angles, from said westerly line of said lot; thence southerly along said parallel line and its southerly prolongation 93.10 feet to the southwesterly prolongation of the southerly line of said Lot 30; thence northeasterly along said southwesterly prolongation 61.87 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 05/16/2011 by the California State Lands Commission Boundary Unit.

PROFESSIONAL LAND SURVEYOR
MICHAEL J. BELL
No. 5764
Exp. 6/30/12
STATE OF CALIFORNIA