

**CALENDAR ITEM  
C48**

A 67  
S 35

10/27/11  
PRC 5550.1  
S. Paschall  
K. Colson

**CONSIDER THE DEFAULT AND TERMINATION OF A  
GENERAL LEASE - RECREATIONAL USE**

**LESSEES:**

Frank M. Singer and Rona Jane Singer, Trustees of the Frank and Rona Singer Living Trust, as amended and restated on September 30, 1990

**AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Huntington Harbour, adjacent to 3552 Venture Drive, city of Huntington Beach, Orange County.

**AUTHORIZED USE:**

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

**LEASE TERM:**

10 years, beginning August 10, 2008.

**CONSIDERATION:**

**Boat dock and access ramp:** No monetary consideration pursuant to Public Resources Code section 6503.5

**Cantilevered deck:** \$680 per year, with the State reserving the right to fix a different rent periodically during the lease term.

**SPECIFIC LEASE PROVISIONS:**

Liability Insurance:

Combined Single Limit coverage of no less than \$1,000,000.

Other:

No permanent roof or other enclosure will be constructed on the Lease Premises. Applicants agree that any proposed use of the Lease Premises that includes an extension of the actual living quarters constitutes residential use and is prohibited.

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**BACKGROUND:**

1. On August 10, 1988, the Commission authorized a 10-year Recreational Pier Lease to Frank M. Singer and Rona Singer for one existing dock.
2. On December 16, 1998, the Commission approved a 10-year Recreational Pier Lease to Frank M. Singer and Rona Singer, as Trustees of the Frank and Rona Singer Living Trust, for continued use and maintenance of an existing boat dock.
3. On August 19, 2003, staff was notified of a pending Coastal Commission application to replace an existing deck, not the Lessees' which cantilevered 5 feet beyond the bulkhead and into Huntington Harbour. Staff proceeded to conduct a site visit on May 12, 2004, where it was determined that a majority of the residences along Huntington Harbour contained existing cantilevered decks which staff had previously been unaware of.
4. On December 9, 2004, the Commission considered staff's recommendation concerning the existing cantilevered decks located in Huntington Harbour, and subsequently authorized issuance of a 10-year General Lease – Recreational Use. While this lease did not involve the Lessees, it was the first instance to acknowledge and authorize use and maintenance of a cantilevered deck located in Huntington Harbour, and subject to annual rent.
5. On February 1, 2010, the Commission authorized a 10-year General Lease – Recreational Use to Frank M. Singer and Rona Jane Singer, as Trustees of The Frank and Rona Singer Living Trust, as amended and restated on September 30, 1990, for continued use of a boat dock and access ramp, and the retention, use, and maintenance of an existing cantilevered deck. The lease term beginning August 10, 2008, with consideration for the deck to be annual rent in the amount of \$680; duly executed March 29, 2010.
6. On November 30, 2009, March 29, 2010, and May 28, 2010, Commission staff sent correspondence to the Lessees providing detailed responses to questions posed by the Lessees concerning various aspects of the Commission's leasing authority and practices.

**Current Defaults Uncured:**

On September 16, 2010 and September 20, 2010, Commission staff sent correspondence on the items listed below to the Lessees setting forth the following defaults and requesting that they be cured. Said correspondence notified the Lessees that failure to cure the defaults would result in Commission staff taking an enforcement action; including revoking the lease

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and seeking appropriate legal remedies. As of the posting of the October 27, 2011 Commission meeting agenda, none of the defaults have been cured.

The Lessees have presently failed to perform under the obligations of the Lease as follows:

- a. **Rent:** Failure to pay annual rent in the amount of \$680, for the periods 08/10/08-08/09/09 and 08/10/09-08/09/10, due March 11, 2010; failure to pay annual rent in the amount of \$680, for the period 08/10/10-08/09/11 due August 10, 2010; and failure to pay annual rent in the amount of \$680, for the period 08/10/11-08/09/12, due August 10, 2011. Penalty and interest accruing.

**OTHER PERTINENT INFORMATION:**

1. Lessees own 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 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 obtaining a lease from the Commission pursuant to Public Resources Code section 6501.1. The Lessee's upland property is located along the Main Channel of Huntington Harbour.
3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Cal. Code Regs., tit.14,§15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

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 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.

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**EXHIBITS:**

- A. Site and Location Map
- B. Legal Description

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that this activity is not subject to the requirements of the CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3) because the activity is not a project as defined by the Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

**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:**

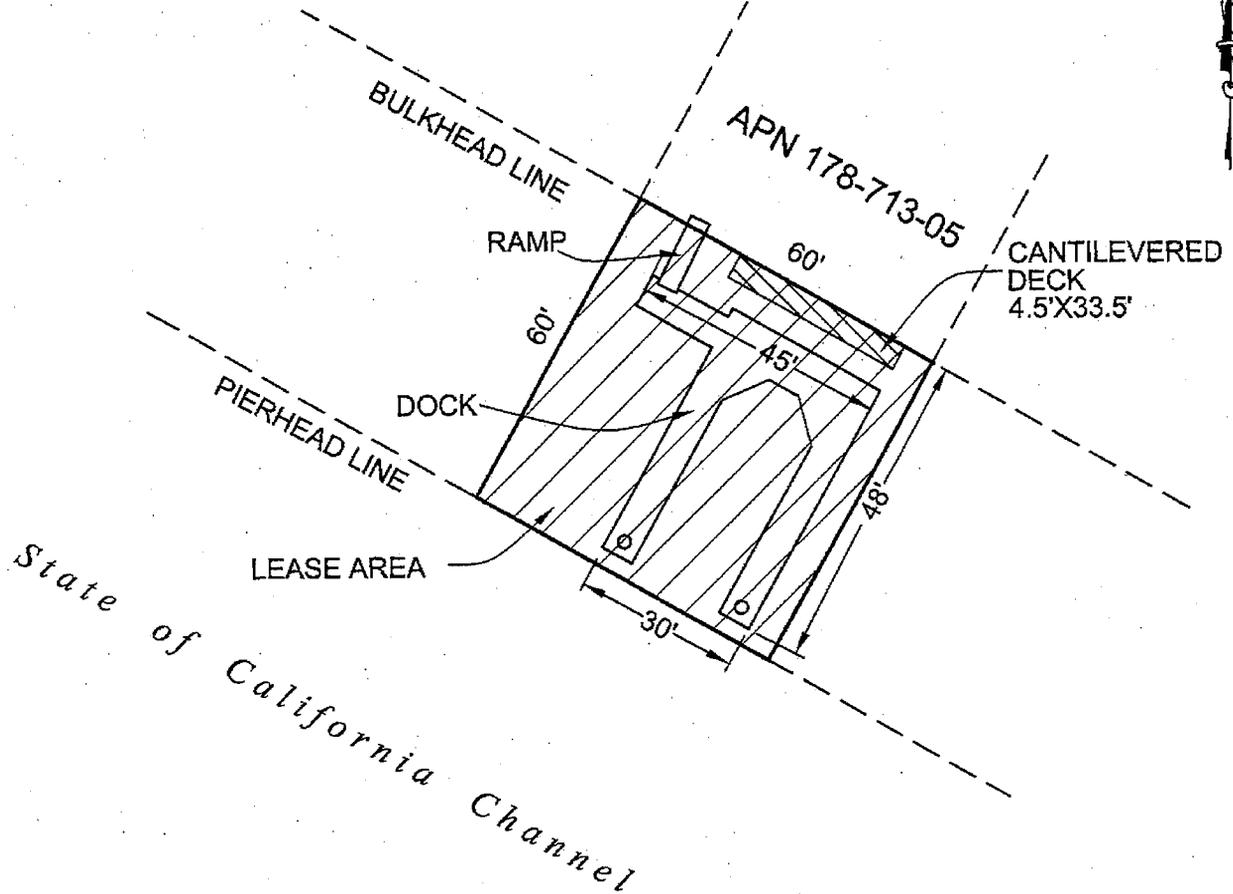
1. Ratify staff's findings that Lessees are and have been in immediate default of Lessees' obligations under Section 4, Paragraph 11(a)(1) of Lease No. PRC 5550.1 for failure:
  - A) to pay annual rent in the principal amount of \$680 due March 11, 2010, for the periods of 08/10/08-08/09/09 and 08/10/09-08/09/10, plus penalty and interest in the amount of \$467.06, as of October 27, 2011, and continuing accrual at the rate of \$.67 per day thereafter,
  - B) to pay annual rent in the principal amount of \$680 due August 10, 2010, for the period of 08/10/10-08/09/11, plus penalty and interest in the amount of \$182.56, as of October 27, 2011, and continuing accrual at the rate of \$.34 per day thereafter,
  - C) to pay annual rent in the principal amount of \$680 due August 10, 2011, for the period of 08/10/11-08/09/12, plus penalty and interest in the amount of \$60.16, as of October 27, 2011, and continuing accrual at the rate of \$.34 per day thereafter.
2. Authorize staff to issue a Notice of Termination and Ejectment to Lessees, for failure to cure the defaults set forth in Paragraph 1 above.

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3. Authorize termination of Lease No. PRC 5550.1 issued to Frank M. Singer and Rona Jane Singer, Trustees of the Frank and Rona Singer Living Trust, as amended and restated on September 30, 1990, for failure to cure or cause to be cured the defaults of the Lease set forth in Paragraph 1 above within 15 days of having received the Notice of Termination and Ejectment.
  
4. Authorize staff of the State Lands Commission and the Office of the Attorney General to take all steps necessary, including litigation, to terminate Lease No. PRC 5550.1 and to seek the removal of improvements from the Lease Premises including, but not limited to, a boat dock, access ramp and cantilevered deck on and over the Lease Premises; and to seek recovery of such other damages to which the State of California is entitled under the Lease and law; provided, however, that this authorization shall not be effective until Lessees' have failed to cure the aforementioned defaults within 15 days of having received the Notice of Termination and Ejectment.

NO SCALE

### SITE



3552 VENTURE DRIVE, HUNTINGTON BEACH

NO SCALE

### LOCATION



### Exhibit A

PRC 5550.1  
 SINGER  
 GENERAL LEASE  
 RECREATIONAL USE  
 ORANGE COUNTY



MO 01/10

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 B**

**PRC 5550.1**

**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 44, 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 01/06/2010 by the California State Lands Commission Boundary Unit

