

CALENDAR ITEM

**C51**

A 67  
S 35

01/26/12  
PRC 5625.1  
S. Paschall

**AMENDMENT OF LEASE**

**LESSEES:**

Robert E. Faber and Sarah K. Faber, Co-Trustees of the Third Amendment and Restatement of the Faber Revocable Inter-Vivos Trust, u/d/t April 29, 2005

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

Sovereign land located in the Main Channel of Huntington Harbour, adjacent to 16671 Carousel Lane, Huntington Beach, Orange County.

**AUTHORIZED USE:**

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

**LEASE TERM:**

10 years, beginning January 25, 2009.

**CONSIDERATION:**

**Boat Dock and Access Ramp:** no monetary consideration pursuant to Public Resources Code section 6503.5.

**Cantilevered Deck:** Annual rent in the amount of \$810; 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 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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**PROPOSED AMENDEMENTS:**

Amend Lease No. PRC 5625.1 to include those facilities previously authorized under expired Lease No. PRC 8240.9. Specifically, amend the lease to be a General Lease – Recreational and Protective Structure Use; amend the land use and purpose, authorized improvements, and consideration to include bulkhead protection.

**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 Applicants' upland property is located along the Main Channel of Huntington Harbour.
3. On November 27, 2000, the Commission approved the issuance of a General Lease – Protective Structure Use, Lease No. PRC 8240.9, for a 10-year term to the Lessees for the construction, use, and maintenance of the bulkhead protection. The lease expired on October 31, 2010.
4. On April 6, 2010, the Commission approved the issuance of a General Lease – Recreational Use, Lease No. PRC 5625.1, for a 10-year term to the same Lessees for the use and maintenance of a boat dock, access ramp, and cantilevered deck. Staff is recommending that the expired lease No. PRC 5625.1 be amended to include the improvements previously authorized under Lease No. PRC 8240.9
5. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law is effective January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission "shall charge rent for a private recreational pier constructed on state lands." The law provides for two exceptions to the imposition of rent. Those exceptions are for:

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- A. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
- B. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

Because Lease No. PRC 5625.1 was in effect on July 1, 2011, the boat dock and access ramp are rent-free for the remaining term of the lease. The cantilevered deck, however, does not qualify for rent free status and is charged rent. No rent will be charged for the bulkhead protection because it mutually benefits the public and the Applicants. The bulkhead has been protected from undermining at no cost to the public.

- 6. **Amendment of Lease PRC 5625.1:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, §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.

- 7. 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. Land Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

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**CEQA FINDING:**

**Amendment of Lease No. PRC 5625.1:** 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 termination of lease No. PRC 8240.9 and amendment to lease No. PRC 5625.1 to include Protective Structure Use for 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; effective January 26, 2012; all other terms and conditions of the lease will remain in effect without amendment.

## EXHIBIT A

PRC 5625.1

### 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 westerly corner of Lot 143, as said lot is shown and so designated on that certain map of Tract No. 5481 filed in Book 215, Pages 11 through 22, Official Records of said County; thence along the westerly extension of the northerly line of said lot 60.00 feet, more or less, 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 southerly 50.00 feet along said pierhead line to the westerly extension of the southerly line of said lot; thence along said extension 60.00 feet, more or less, to the most southerly corner of said lot; thence northerly along the westerly line of said lot to the point of beginning.

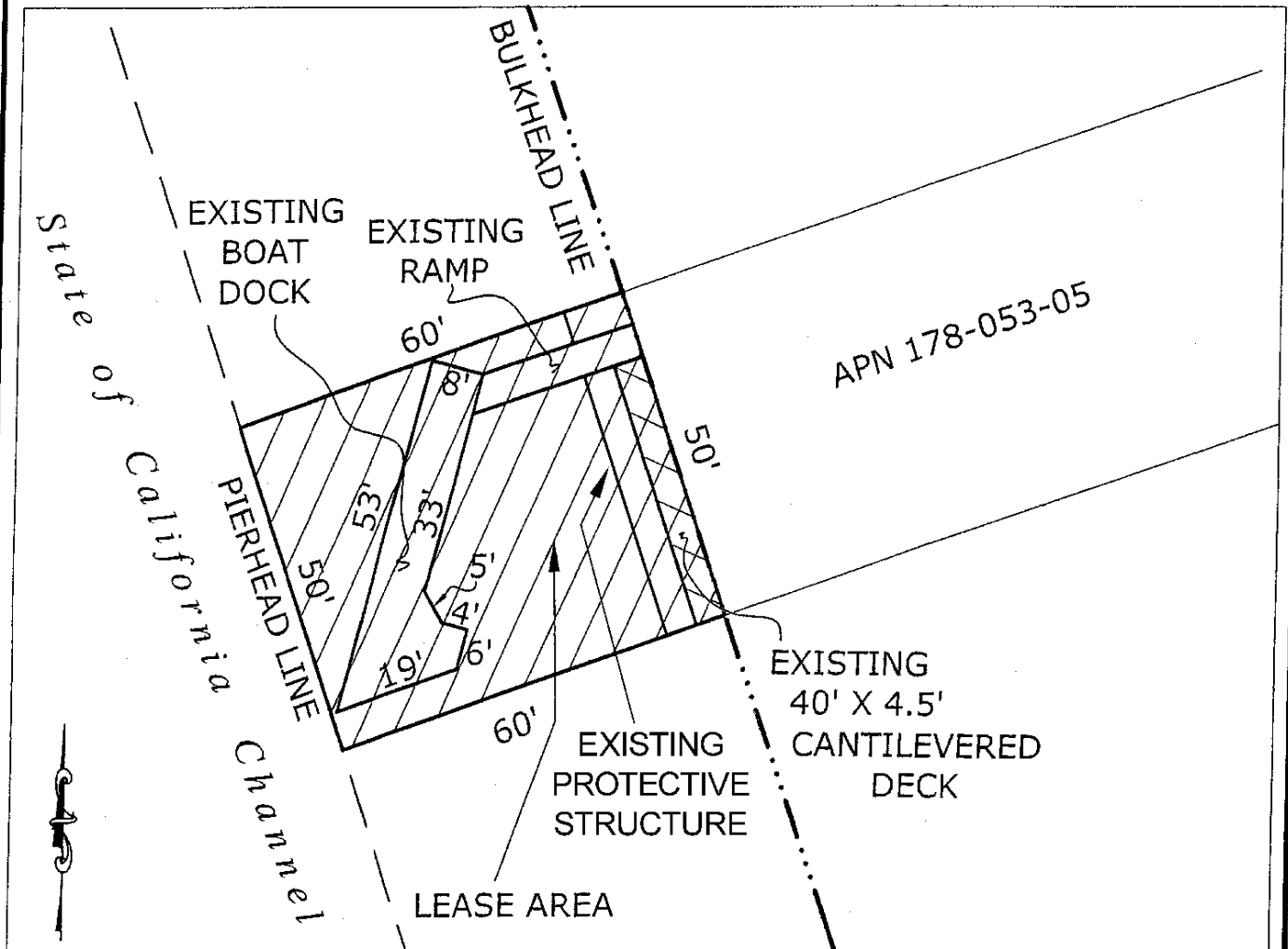
### END OF DESCRIPTION

Prepared 01/28/2010 by the California State Lands Commission Boundary Unit



NO SCALE

## SITE



16671 CAROUSEL 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 B**

PRC 5625.1  
FABER TRUSTEES  
APN 178-053-05  
GENERAL LEASE -  
RECREATIONAL AND  
PROTECTIVE STRUCTURE USE  
ORANGE COUNTY



JWP 01/10