

**CALENDAR ITEM
C85**

A 67
S 35

01/26/12
PRC 8652.1
S. Paschall
K. Colson

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

LESSEE:

Iris M. Schuster, Trustee of the Schuster Residence Trust I and Trust II, u/d/t
March 6, 2001

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16661 Carousel Lane, in the
city of Huntington Beach, Orange County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning December 8, 2005.

CONSIDERATION:

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

Cantilevered Deck: \$900 per year, with the State reserving the right to fix a
different rent periodically during the lease term, as provided in the lease.

Bulkhead Protections: Public use and benefit with the State reserving the right
to fix a rental consideration if it is determined to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:

Liability Insurance:

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

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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.

BACKGROUND:

1. On December 8, 2005, the Commission authorized the issuance of a 10-year General Lease – Recreational and Protective Structure Use PRC 8652.1 to Iris M. Schuster, Trustee of the Schuster Residence Trust I and Trust II, dated March 6, 2001, for continued use and maintenance of an existing boat dock, access ramp, and bulkhead protections, and the re-construction, use, and maintenance of an existing cantilevered deck. The lease term began December 8, 2005, with consideration for the cantilevered deck to be annual rent in the amount of \$900. The lease was executed on December 28, 2005.
2. Lessee paid their annual rent for the periods from December 8, 2005 through December 7, 2009.
3. For the past two years, Commission staff sent multiple letters to the Lessee requesting the Lessee comply with various provisions of their lease including the payment of rent and submittal of proof of insurance.
4. On August 8, 2011, Commission staff sent a letter to Lessee setting forth the defaults and requesting they be cured. On December 27, 2011, Commission staff sent correspondence notifying the Lessee that failure to cure the defaults would result in Commission staff taking an enforcement action; including terminating the lease and seeking appropriate legal remedies.
5. As of the posting of the January 26, 2012 Commission meeting agenda, none of the defaults have been cured.

The Lessee has presently failed to perform obligations under Section 4, Paragraph 11(a)(1) of the Lease as follows:

- a. **Rent:** Failure to pay annual rent for 3 years in the amount of \$900 with penalty and interest accruing:
 1. 12/08/09-12/07/10, due December 08, 2009;
 2. 12/08/10-12/07/11, due December 08, 2010;
 3. 12/08/11-12/07/12, due December 08, 2011

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- b. Insurance:** Failure to provide a current Certificate of Insurance evidencing combined single-limit liability coverage of no less than \$1,000,000

OTHER PERTINENT INFORMATION:

1. Lessee 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 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 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, subd. (c)(3)), the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.

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

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

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

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AUTHORIZATION:

1. Ratify staff's findings that Lessee is and has been in immediate default of Lessee's obligations under Section 4, Paragraph 11(a)(1) of Lease No. PRC 8652.1 for failure to pay annual rent of \$900 for the following periods with penalty and interest accruing as of January 26, 2012:
 - a) 12/08/09-12/07/10, due December 8, 2009, plus penalty and interest in the amount of \$390.75 and continuing accrual at the rate of \$.44 per day thereafter,
 - b) 12/08/10-12/07/11, due December 8, 2010, plus penalty and interest in the amount of \$223.87 and continuing accrual at the rate of \$.44 per day thereafter,
 - c) 12/08/11-12/07/12, due December 8, 2011, plus penalty and interest in the amount of \$66.75 and continuing accrual at the rate of \$.44 per day thereafter.
2. Ratify staff's finding that Lessee is in default of Lessee's obligation under Section 4, Paragraph 8(a)(c) of Lease No. PRC 8652.1 for failure to provide a current Certificate of Insurance evidencing combined single-limit liability coverage of no less than \$1,000,000 and which contains the assurances required within the lease provisions.
3. Authorize staff to issue a Notice of Termination and Ejectment to Lessee, for failure to cure the defaults set forth in Paragraph 1 & 2 above.
4. Authorize termination of Lease No. PRC 8652.1 issued to Iris M. Schuster, Trustee of the Schuster Residence Trust I and Trust II, dated March 6, 2001, for failure to cure or cause to be cured the defaults of the Lease set forth in Paragraph 1 & 2 above within 15 days of having received the Notice of Termination and Ejectment.
5. 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 8652.1 and to seek the removal of improvements from the Lease Premises including, but not limited to, a boat dock, access ramp, cantilevered deck, and bulkhead protections 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 Lessee has failed to cure the aforementioned defaults

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within 15 days of having received the Notice of Termination and Ejection.

EXHIBIT A

PRC 8652.1

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 142, 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 11/08/2005 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

State of California Channel

LEASE AREA

50'

60'

EXISTING PROTECTIVE STRUCTURE

APN 178-053-04

50'

60'

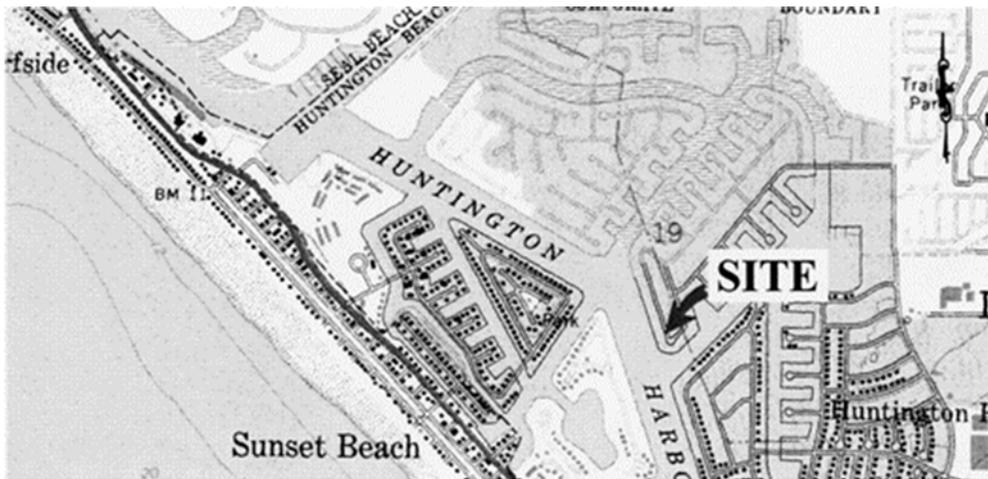
EXISTING RAMP & BOAT DOCK

EXISTING CANTILEVERED DECK 5'X40' 200 SQ. FT.

16661 CAROUSEL LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8652.1
 SCHUSTER TRUST
 APN 178-053-04
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 ORANGE COUNTY



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.

MIJ 07/11