

**CALENDAR ITEM
C81**

A 67

03/29/12
WP 8237.1
S. Paschall

S 35

**GENERAL LEASE – RECREATIONAL AND
PROTECTIVE STRUCTURE USE**

APPLICANTS:

Nathan Chen and Jennie Chen, Trustees of The Nathan Chen Family Trust

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Main Channel of Huntington Harbour, adjacent to 16641 Carousel Lane, Huntington Beach, Orange County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning January 1, 2012.

CONSIDERATION:

Bulkhead Protection: the public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest;

Boat Dock, Access Ramp, and Cantilevered Deck: annual rent in the amount of \$2,007, with the State reserving the right to fix a different rent periodically during the lease term, as provided for 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

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that includes an extension of the actual living quarters constitutes residential use and is prohibited.

OTHER PERTINENT INFORMATION:

1. Applicants 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 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 September 17, 2001, the Commission approved the issuance of General Lease – Recreational and Protective Structure Use Lease No. PRC 8237.9 to Donald H. Wilson and Kristen W. Wilson, for a period of 10 years, for use and maintenance of an existing boat dock and repair of an existing bulkhead. That lease expired on May 31, 2011. The upland property was subsequently deeded to the Applicants. The Applicants are now applying for a new lease.
4. A portion of the cantilevered deck and access ramp extends over the State's fee owned land in the Main Channel of Huntington Harbour, and were not previously authorized by the Commission. Since the cantilevered deck and access ramp are existing, staff is recommending that they be included in the lease.
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.

The proposed lease does not meet either of the statutory exceptions and is thus subject to rent.

- 6. The bulkhead protection mutually benefits the public and the Applicants. The bulkhead has been protected from undermining at no cost to the public.
- 7. 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; 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.

- 8. 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:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a

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categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (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 and Protective Structure Use, to Nathan Chen and Jennie Chen, Trustees of The Nathan Chen Family Trust, beginning January 1, 2012, for a term of 10 years, for 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; consideration: annual rent in the amount of \$2,007; combined single-limit liability insurance coverage in the amount of no less than \$1,000,000.

EXHIBIT A

WP 8237.1

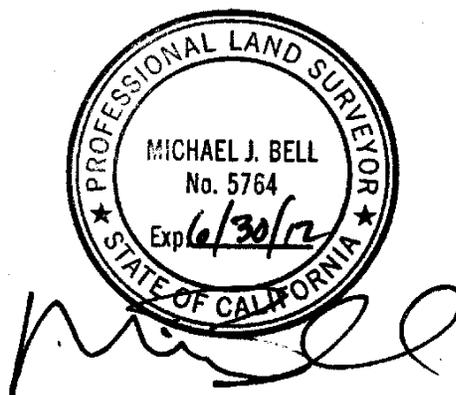
LAND DESCRIPTION

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 140, 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 westerly along the westerly prolongation of the northerly line of said lot 60.00 feet 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 prolongation of the southerly line of said lot; thence easterly 60.00 feet along said westerly prolongation 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 1/17/2012 by the California State Lands Commission Boundary Unit.



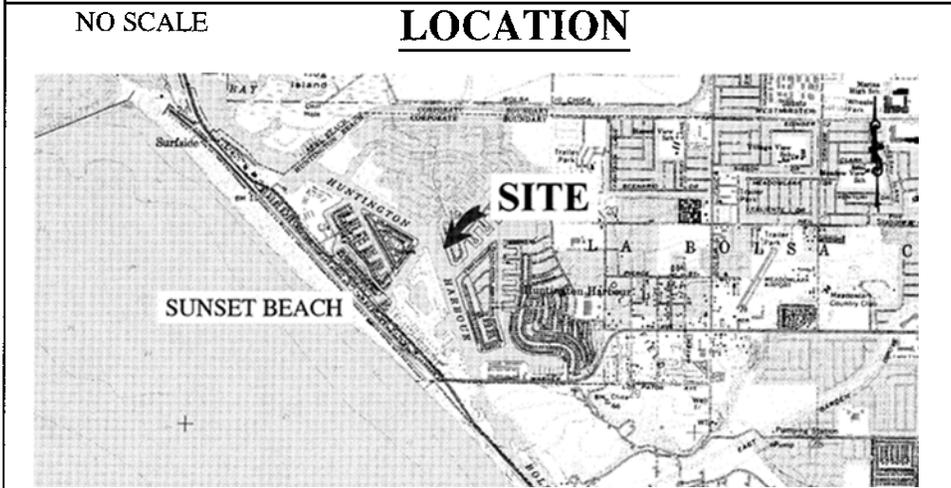
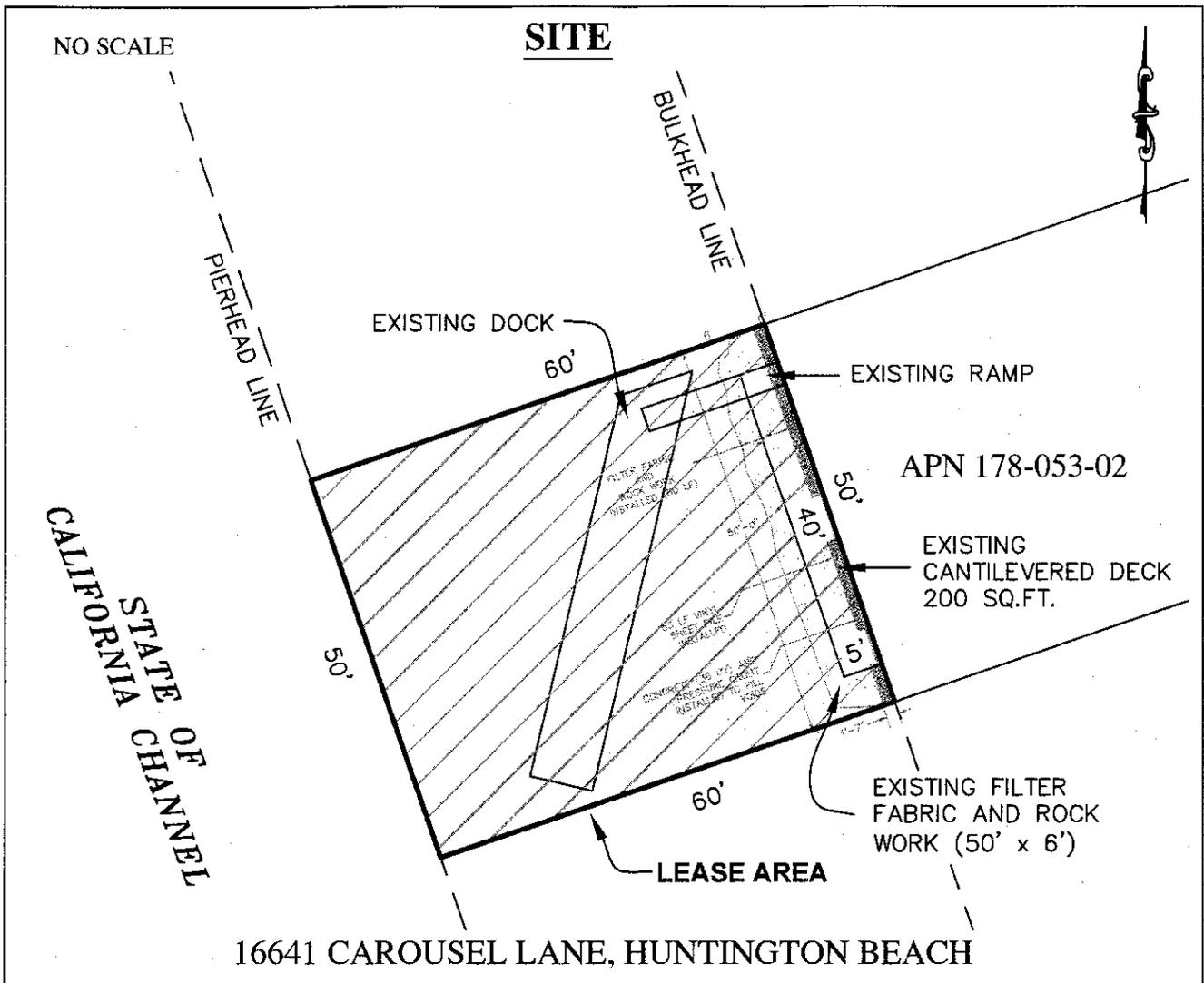


Exhibit B

WP 8237.1
CHEN
APN 178-053-02
GENERAL LEASE -
RECREATIONAL &
PROTECTIVE STRUCTURE USE
ORANGE COUNTY



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.