

**CALENDAR ITEM
C62**

A 67
S 35

4/23/14
PRC 6616.9
D. Oetzel

AMENDMENT OF LEASE AND APPROVAL OF SUBLEASES

LESSEE:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, offshore Huntington Beach, Orange County.

AUTHORIZED USE:

The operation and maintenance of the Huntington Beach municipal pier with restroom facilities, lifeguard tower, and related concessions.

LEASE TERM:

35 years, beginning February 1, 1984.

CONSIDERATION:

The lease provides that the Lessor may set a monetary rent if income is generated from the lease premises and exceeds expenses thereon, or if the Commission finds such actions to be in the State's best interest. Since the pier was reconstructed in the early 1990s, the expenses have exceeded the revenue based on annual reports provided by the Lessee.

PROPOSED AMENDMENT:

1. Amend Section 2, Special Provisions, Paragraph 1 to change the due date from August 1 to September 30 for Lessee to provide Lessor with their annual report of income and expenses, effective April 23, 2014.
2. Amend Section 2, Special Provisions, Paragraph 4 to add the Abercrombie & Fitch Co. and See Scope subleases.
3. All other terms and conditions of the lease shall remain in effect without amendment.

CALENDAR ITEM NO. **C62** (CONT'D)

OTHER PERTINENT INFORMATION:

1. Lessee has the right to utilize the upland adjoining the Lease Premises.
2. On May 7, 1984, the Commission authorized the issuance of Lease No. PRC 6616.9, a 35-year General Lease – Public Agency Use to the City of Huntington Beach, for the Huntington Beach Municipal Pier and ancillary facilities. Pursuant to Section 2, Paragraph 1 of the Lease, the Lessee agreed to provide Lessor with an annual report showing whether or not expenses for the operation and maintenance of the Lease Premises have exceeded the income generated thereon. If for any reporting period, the amount of income generated exceeds expenses for operation and maintenance of the Lease Premises, Lessor has the right to set a monetary rental for such reporting period. Under this provision, the annual report is due August 1 of each year and shall cover income and expenses for the prior fiscal year.
3. On August 22, 1990, the Commission authorized the issuance of an Amendment of Lease No. PRC 6616.9 to (1) approve the demolition and reconstruction of the Huntington Beach Pier, (2) acknowledge the termination by the City of Huntington Beach of those subleases approved by the Commission on May 7, 1984, (3) amend the land description to permit a recreational pier with restrooms and lifeguard stations, and (4) amend the land description to accommodate a minor extension in the length of the pier when reconstructed.
4. On December 9, 2004, the Commission authorized the issuance of an Amendment of Lease No. PRC 6616.9 to amend the authorized improvements to include an existing restaurant structure not previously authorized by the Commission; to amend the consideration to include an annual rent of 50 percent (50%) of the net income for the reporting period at such time as the revenue generated exceeds the expenses, as defined in the Lease; and authorize five existing subleases, not previously authorized by the Commission.
5. The Lessee has experienced difficulty in gathering the financial information from various City departments in a timely manner in order to comply with the August 1 reporting date stipulated in the Lease. The Lessee is now applying to amend Lease No PRC 6619.9 to change the annual report due date to September 30.

CALENDAR ITEM NO. **C62** (CONT'D)

6. Pursuant to Section 4, Paragraph 10 of the Lease, any new sublease entered into by Lessee shall require the prior approval of Lessor. On July 21, 2008, a sublease between the city of Huntington Beach and Abercrombie & Fitch Co. was executed for the placement of nine cameras under the pier. For the pleasure of Abercrombie & Fitch customers, the cameras transmit the scenery of the beach and the ocean (without being able to identify individuals) to monitors within the stores. On April 7, 2008, a three-year sublease between the city of Huntington Beach and See Scopes was executed for the installation, maintenance and operation of six coin-operated telescopes; on July 16, 2012 the sublease was amended to extend the term to April 6, 2016. The Lessee is now applying to amend Lease No PRC 6619.9 to approve the Abercrombie & Fitch Co. and See Scopes subleases.

7. **Lease Amendment to Extend the Annual Reporting Deadline:**
The staff recommends that the Commission find that the subject lease extension of annual reporting deadline does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

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

8. **Approval of Subleases:**
The staff recommends that the Commission find 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).

9. 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.

APPROVALS OBTAINED:

U.S. Army Corps of Engineers
California Coastal Commission

CALENDAR ITEM NO. **C62** (CONT'D)

EXHIBIT:

A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Lease Amendment to Extend the Annual Reporting Deadline:

Find that the extension of an annual reporting deadline is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Approval of Subleases:

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

SIGNIFICANT LANDS INVENTORY FINDING:

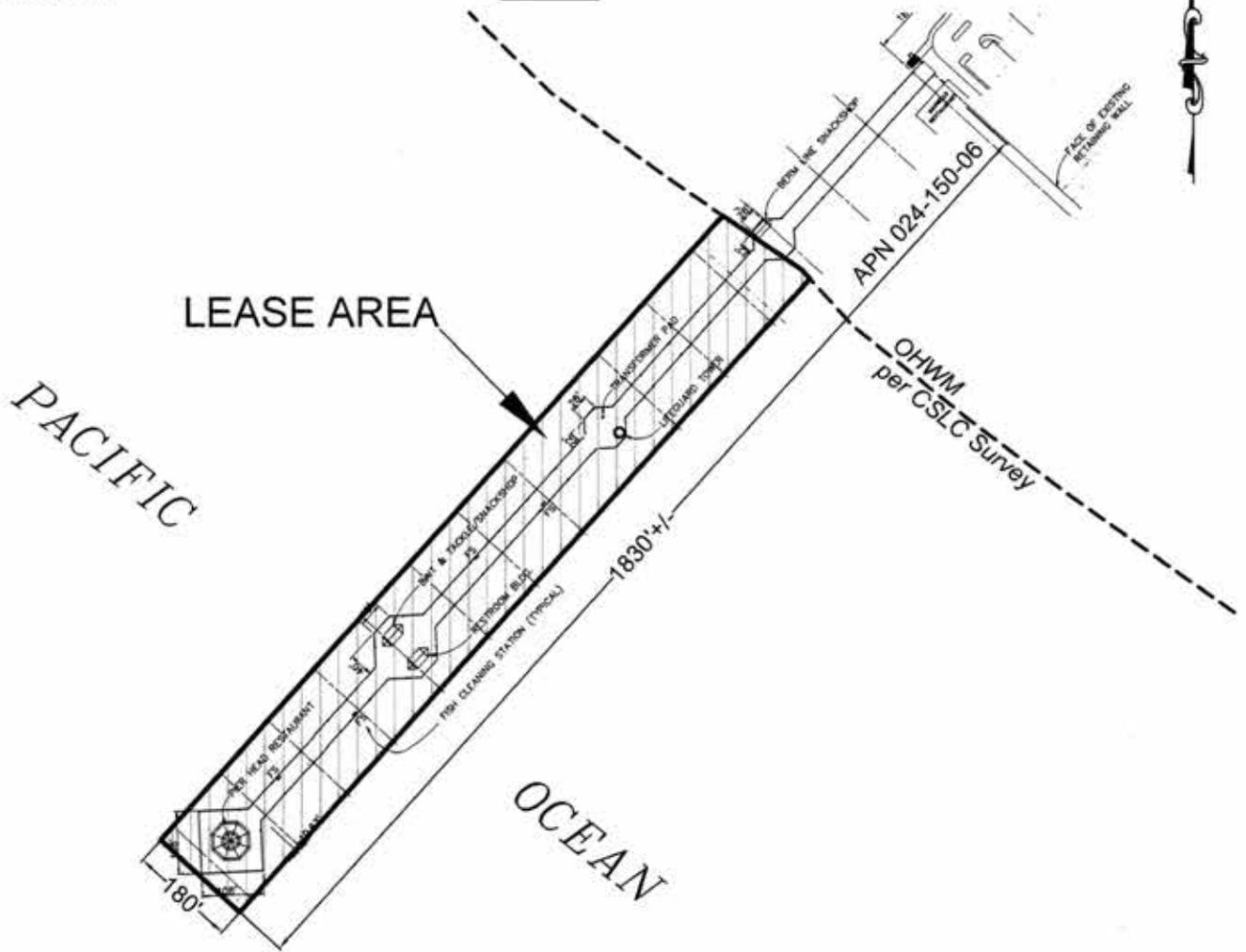
Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize the Amendment of Lease No. PRC 6616.9, a General Lease – Public Agency Use, to amend Section 2, Paragraph 1, of the Lease to change the due date from August 1 to September 30 for Lessee to provide Lessor their annual report of income and expenses and to amend Section 2, Paragraph 4 of the lease to add the Abercrombie & Fitch Co. and See Scope subleases; all other terms and conditions of the lease shall remain in effect without amendment.

NO SCALE

SITE



HUNTINGTON BEACH MUNICIPAL PIER

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 6616.9
 CITY OF HUNTINGTON
 BEACH
 APN 024-150-06
 GENERAL LEASE -
 PUBLIC AGENCY USE
 ORANGE COUNTY



TS 04/22/13

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.