

CALENDAR ITEM

**C49**

A 67

12/17/14

S 35

PRC 4094.1

D. Simpkin

**SETTLEMENT OF LITIGATION AND REAUTHORIZATION OF  
A GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Edward Leroy Clark, Jr., Trustee of the Ed Clark Family Trust dated September 8, 2010

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

Sovereign land in Huntington Harbour, adjacent to 17061 Bolero Lane, city of Huntington Beach, Orange County.

**AUTHORIZED USE:**

The continued use and maintenance of an existing boat dock and access ramp, and the retention of an existing boat lift and cantilevered deck extending no more than five feet waterward of the bulkhead.

**LEASE TERM:**

10 years, beginning September 1, 2010.

**CONSIDERATION:**

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

**Cantilevered deck:** Annual rent in the amount of \$1,274 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:

Liability insurance coverage in an amount no less than \$1,000,000.

Other:

No permanent roof or other enclosure will be constructed on the lease premises. Applicant agrees that any proposed use of the Lease Premises

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

**OTHER PERTINENT INFORMATION:**

1. Applicant owns the upland adjoining the lease premises.
2. The State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1962 as a result of a land exchange entered into between the Commission and the Huntington Harbour Corporation, recorded as the Amended Agreement for the Exchange of Lands in the Sunset Beach Area, Orange County, California, and recorded on March 7, 1963, in Book 6457, Page 819, 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 Applicant's upland property is located along the Main Channel of Huntington Harbour.
3. On June 23, 2011, the Commission authorized issuance of Lease No. PRC 4094.1, a General Lease – Recreational Use, to Edward Leroy Clark, Jr., Trustee of the Ed Clark Family Trust dated September 8, 2010, for the continued use and maintenance of an existing boat dock and access ramp, and the retention of an existing boat lift, and cantilevered deck extending no more than five feet waterward of the bulkhead.
4. As part of the lease application, the Applicant requested the Commission authorize a hot tub, gazebo, and tiki bar located on his dock. After consideration at the June 23, 2011 meeting, the Commission declined to authorize these improvements, ordered their removal, and authorized litigation should the Applicant fail to comply. The Applicant failed to comply with the Commission's order and litigation was filed on March 6, 2013.
5. On November 3, 2014, the Applicant proposed a settlement of litigation. If the Commission approves this settlement, the Applicant will remove the unauthorized hot tub, tiki bar, and gazebo and the Applicant will execute the lease as originally authorized by the Commission.
6. Staff is now requesting the Commission reauthorize the General Lease – Recreational Use originally presented at the June 23, 2011 Commission meeting, including acceptance of all suspended payments previously submitted by Applicant and applying these payments toward this lease, thereby bringing it current. Staff also requests that the Commission

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authorize settlement of litigation with Edward L. Clark Jr. on the following terms: (1) the Applicant will remove the unauthorized hot tub, gazebo, and tiki bar from the lease premises, (2) the Applicant executes the lease authorized herein without modification or alteration, and (3) the Applicant performs all other conditions of the lease.

7. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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 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.

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**AUTHORIZATION:**

1. Authorize settlement of litigation against Mr. Clark on performance of all terms as proposed.
2. Reauthorize issuance of a General Lease – Recreational Use to Edward Leroy Clark, Jr., Trustee of the Ed Clark Family Trust dated September 8, 2010, beginning September 1, 2010, for a term of 10 years, for the existing boat dock and access ramp, and for the retention of a boat lift and cantilevered deck as described in Exhibit A and shown on Exhibit B (for reference purpose only) attached and by this reference made a part hereof; consideration for the boat dock, boat lift and access ramp: no monetary consideration pursuant to Public Resources Code section 6503.5; consideration for the cantilevered deck: annual rent in the amount of \$1,274, with the State reserving the right to fix a different rent periodically during the term of the lease as provided in the lease; liability insurance in the amount of no less than \$1,000,000.
3. Authorize staff to release funds previously submitted by Applicant and held in suspense and apply these funds to Lease PRC 4094.1, thus bringing the lease current.

**EXHIBIT A**

**PRC 4094.1**

**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 30, as said lot is shown and so designated on that certain map of Tract 5264 filed in Book 185, Pages 27 to 34 inclusive of Miscellaneous Maps, Official Records of said County; thence northerly along the westerly line of said lot, said line also being the bulkhead line as shown on said map, 78.00 feet to the most westerly corner of said lot; thence westerly along the westerly prolongation of the northerly line of said lot to a line parallel with and 60.00 feet westerly, measured at right angles, from said westerly line of said lot; thence southerly along said parallel line and its southerly prolongation 93.10 feet to the southwesterly prolongation of the southerly line of said Lot 30; thence northeasterly along said southwesterly prolongation 61.87 feet to the POINT OF BEGINNING.

**END OF DESCRIPTION**

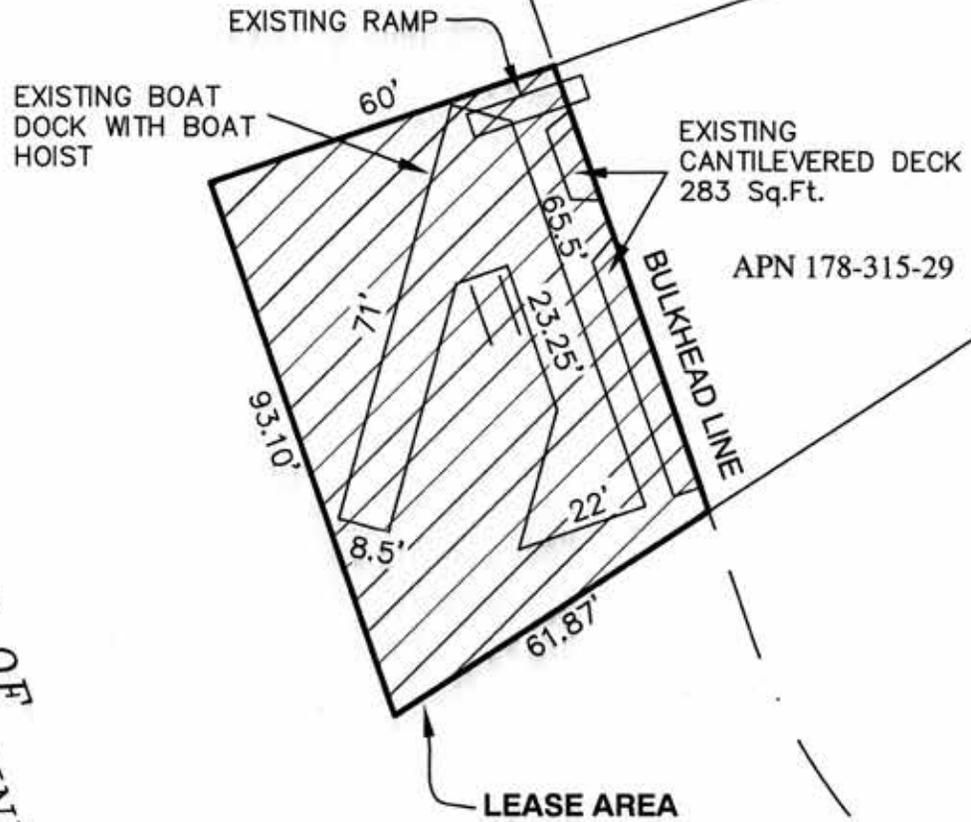
Prepared 05/16/2011 by the California State Lands Commission Boundary Unit.



NO SCALE

### SITE

CALIFORNIA  
STATE  
CHANNEL



17061 BOLERO LANE, HUNTINGTON BEACH

NO SCALE

### LOCATION



### **Exhibit B**

PRC 4094.1  
 ED CLARK FAMILY TRUST  
 APN 178-315-29  
 GENERAL LEASE -  
 RECREATIONAL USE  
 ORANGE COUNTY



DJF 11/17/2014

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.