

CALENDAR ITEM

C44

A 72

02/07/17

PRC 3574.1

S 34

S. Avila

GENERAL LEASE – OTHER

APPLICANT:

Brent N. Allen and Pollyann Evelyn Allen, as Trustee, or any Successor Trustee, under that certain Declaration of Trust dated December 28, 1992, and created by Brent N. Allen and Pollyann Evelyn Allen, as Trustors; Dean K. Allen and Margo L. Allen; Craig D. Allen and Karen E. Allen, as Trustees of the Craig D. Allen and Karen E. Allen Family Trust dated October 20, 2009, and created by Craig D. Allen and Karen E. Allen, as Settlers; Ryan J. Allen and Mara E. Allen; and Catherine A. Hill as Trustee of the Burton Mews Trust U/A/D July 29, 2015

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16911 Bolero Lane, city of Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of a boat dock and access ramp, previously authorized by the Commission, and an existing cantilevered deck with enclosure not previously authorized by the Commission.

LEASE TERM:

10 years, beginning February 7, 2017.

CONSIDERATION:

\$2,436 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

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

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

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Public Trust and State's Best Interests Analysis:

On February 5, 2001, the Commission authorized the issuance of a Recreational Pier Lease for the existing boat dock to R. Virgil Allen and Evelyn G. Allen as Trustees of the R. Virgil Allen and Evelyn G. Allen Revocable living Trust dated June 1, 1993 ([Calendar Item C17, February 5, 2001](#)). That lease expired on August 27, 2011.

During the years 2007 through 2009, ownership of the upland parcel was transferred to the Applicant. In February 2011, when staff became aware of the first deed transfer, the new owner was notified to apply for a new lease. An application was submitted on March 24, 2011, prior to the passing of Senate Bill 152 (Stats. 2011, Ch. 585). The lease application was removed from the August 2013 Commission meeting agenda due to a lack of information as to the number and names of the trustees.

Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Public Resources Code section 6503.5). The subject facilities, consisting of a boat dock, access ramp and cantilevered deck with enclosure, are privately owned and maintained and located within the Main Channel of Huntington Harbour. The boat dock and access ramp facilitate recreational boating because they are used for the docking and mooring of recreational boats.

The Main Channel in Huntington Harbour was created in the early 1960s and the adjacent upland parcel is privately owned and developed with a residence. There is no public access at this upland property because the private upland property directly abuts the concrete bulkhead that defines the limits of the channel. The boat dock extends to the pierhead line which is 60 feet into the 400-foot-wide channel leaving the majority of the Main Channel available for navigation and public recreation. The cantilevered deck extends no more than five feet over the Main Channel, and neither it nor the enclosure substantially interferes with the public right of navigation or access.

Although the enclosed portion of a cantilevered deck is not a use associated with traditional Public Trust uses, it extends no more than 5 feet over the Main Channel and does not substantially interfere with the public right of navigation or access.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term,

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does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

Climate Change:

Climate change impacts, including sea-level rise, are not limited to the open coast and may involve increased wave activity, storm events, and flooding. The existing structures subject to the proposed lease are located within the Huntington Harbour development, along an inland, navigable, tidally-influenced channel, and may be vulnerable to the impacts of sea-level rise. The lease area contains fixed features, including pilings, a bulkhead, and an overhanging deck, and movable features, including a floating recreational dock and access ramp. Huntington Harbour is built near sea level elevation, and as a result is vulnerable to flooding and storm surge events. Huntington Harbour is adjacent to two wetlands, Bolsa Chica and the Seal Beach National Wildlife Refuge, which could act as natural buffers to storm surges and lessen flood risks. Compared to year 2000 levels, the region could see up to one foot of sea-level rise by the year 2030, two feet by 2050, and possibly over five feet by 2100 (NRC 2012). As stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise).

The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. In rivers and tidally-influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm created debris. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood

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risks, comprised of greater total water levels for longer periods of time. Flooding conditions could cause structures to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. The floating nature of the movable features will allow them to rise and fall with tides and waves, increasing their resiliency to some sea-level rise impacts. The fixed features may need to be raised or reinforced to withstand future conditions. Although the bulkhead underneath the deck is not under the Commission's jurisdiction, any sea-level rise impacts to the bulkhead could also affect the structures under the Commission's jurisdiction because it serves to stabilize the bank. Therefore, any loss or degradation of the bulkhead could result in property damage and public safety concerns within the lease area and the surrounding waterways.

More locally-based knowledge of sea-level rise impacts and adaptation strategies will be available to Huntington Harbour residents as a result of the ongoing efforts to update the City of Huntington Beach's Local Coastal Program and General Plan, and through the city's Coastal Resiliency Task Force. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$6,684 for the period prior to February 6, 2017, the day before the new lease begins. The Applicant did not qualify for rent-free status pursuant to the definition of Public Resources Code section 6503.5 in effect at that time.

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3. The Applicant submitted their application prior to March 31, 2011. Therefore, the boat dock and access ramp will remain rent-free for the term of the lease pursuant to Public Resources Code section 6503.5.
4. 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.

5. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is 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).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, or for the foreseeable term of the lease, and is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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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:

1. Authorize issuance of a General Lease – Other to the Applicant, beginning February 7, 2017, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, and cantilevered deck with enclosure as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$2,436, with an annual Consumer Price Index Adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

2. Authorize acceptance of compensation for the unauthorized occupation of state land in the amount of \$6,684 for the period prior to February 6, 2017.

EXHIBIT A

PRC 3574.1

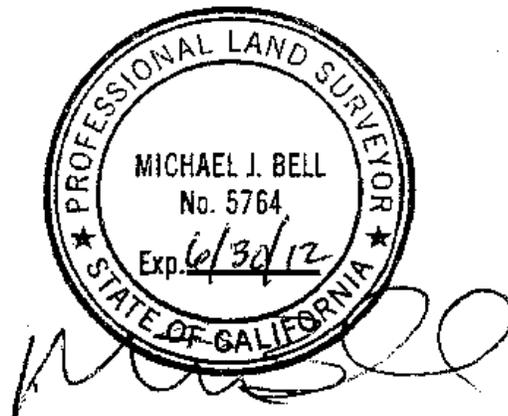
LAND DESCRIPTION

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 45, as said lot is shown and so designated on that certain map of Tract No. 5264 filed in Book 185, Pages 27 through 34 of Miscellaneous Maps, Official Records of said County; thence along the southwesterly extension of the southeasterly line of said lot to the pierhead line, as said pierhead line has been determined by the City Council of said City; thence northwesterly along said pierhead line to the southwesterly extension of the northwesterly line of said lot; thence northeasterly along said extension to the most westerly corner of said lot; thence southeasterly along the southwesterly line of said lot to the point of beginning.

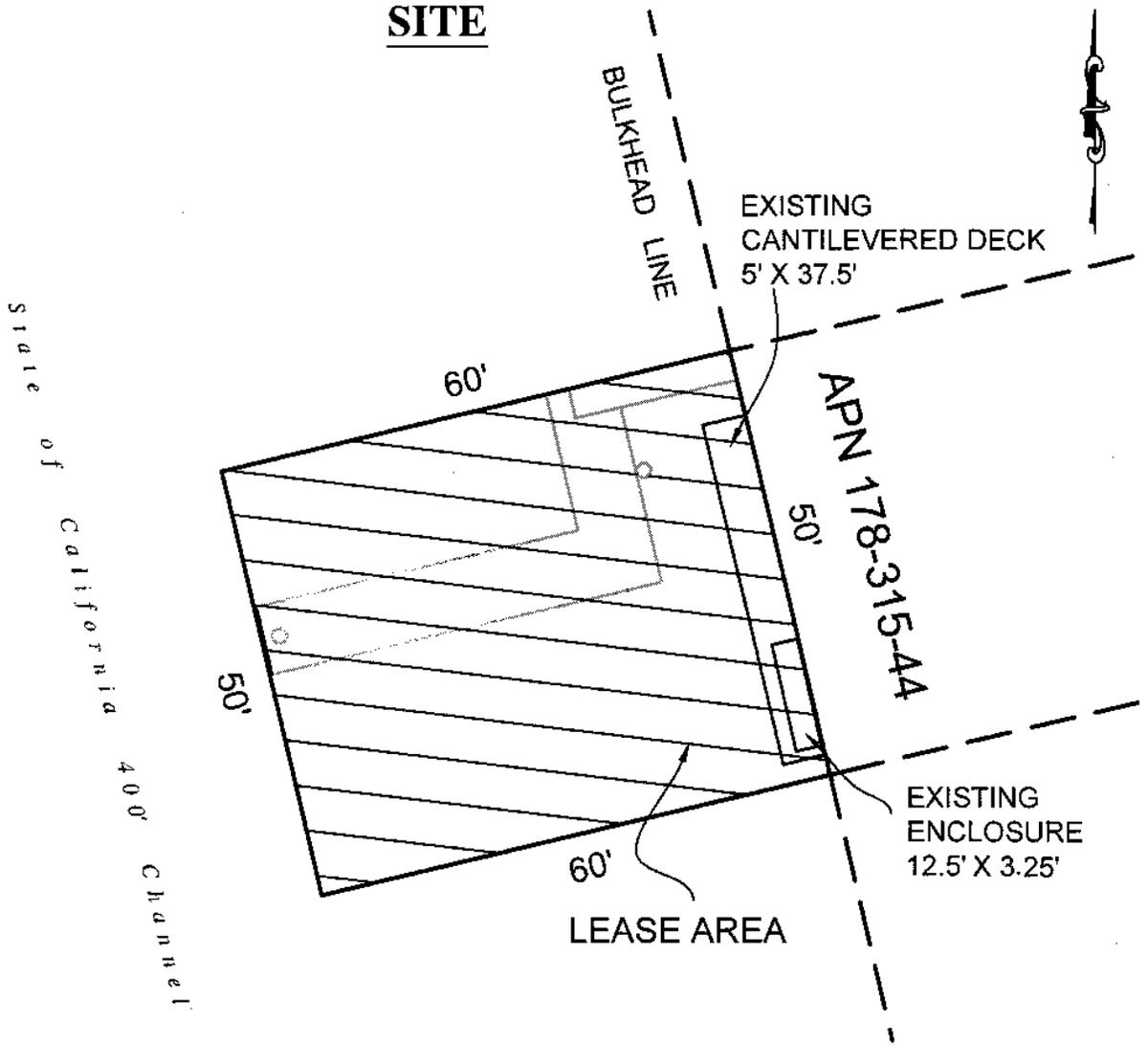
END OF DESCRIPTION

Prepared 05/18/2011 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



16911 BOLERO LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

EXHIBIT B

PRC 3574.1
 ALLEN TRUSTS &
 BURTON MEWS TRUST
 APN 178-315-44
 GENERAL LEASE -
 OTHER
 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.

MJJ 01/26/2017