

STAFF REPORT

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12/06/19

PRC 7986.1

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K. Connor

AMENDMENT OF LEASE

LESSEE:

Frank B. DeGelas and Donna L. DeGelas, as Trustee(s) of The Frank and Donna DeGelas Trust Established 2-27-2003

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 3632 Venture Drive, Huntington Beach, Orange County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, access ramp, and cantilevered deck.

LEASE TERM:

10 years, beginning April 6, 2011.

CONSIDERATION:

\$1,506 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

PROPOSED AMENDMENT:

Amend the lease to:

1. Remove the existing boat dock, access ramp, and cantilevered deck.
2. Install, use, and maintain a new boat dock, access ramp, and cantilevered deck.
3. Modify the annual rent to \$1,488 to reflect the updated dimensions of the lease area effective April 6, 2020.
4. Replace the existing Exhibit B, Site and Location Map, with the attached Exhibit B, Site and Location Map (for reference purposed only).

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All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503 and 6503.5; California Code of Regulations, title 2, section 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On April 6, 2011, the Commission authorized a General Lease – Recreational Use to Angelo Zaby, Trustee of the Angelo Zaby Trust, Dated September 9, 1983 ([Item C36, April 6, 2011](#)). On June 21, 2013, the Commission authorized an assignment of the lease to Ida Zaby ([Item C77, June 21, 2013](#)). Subsequently, on June 28, 2016, the Commission authorized an assignment of the lease from the Lessee to their trust ([Item C67, June 28, 2016](#)). On December 3, 2018, the Commission authorized an assignment of the lease to Frank B. DeGelas and Donna L. DeGelas, as Trustee(s) of The Frank and Donna DeGelas Trust Established 2-27-2003 (Lessee) ([Item C64, December 3, 2018](#)). The lease will expire on April 5, 2021.

The Lessee is now applying for a lease amendment to authorize the removal of the existing boat dock, access ramp, and cantilevered deck, and its replacement with a new boat dock, access ramp, and cantilevered deck. The proposed boat dock and ramp replacement would be in a similar configuration and would extend to the 60-foot pierhead line of the Main Channel. The proposed cantilevered deck would be smaller in size and only a portion would be rebuilt over the Main Channel.

For the dock replacement, the existing boat dock would be floated away by boat to the contractor's facility for disassembly and a new boat dock would be floated in in its place, using the same pilings as the existing dock. None of the pilings would be replaced or removed. Additionally, the construction of the proposed cantilevered deck would take place from the upland property and not impact the Main Channel.

When the lessee submitted the application for a lease amendment, staff became aware that the dimensions of the new cantilevered deck were smaller than the existing cantilevered deck, and that only a portion of the proposed cantilevered deck would be within the Commission's jurisdiction. These updated dimensions require a change in the lease area and are reflected within the exhibits. With the change in dimensions of the

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cantilevered deck area, annual rent has been reduced to reflect the smaller surface area, effective April 6, 2020.

The existing boat dock, access ramp, and cantilevered deck, and the proposed replacement are and will be 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. 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 (Pub. Resources Code, § 6503.5).

The existing cantilevered deck and its proposed replacement are and will be privately owned and maintained and located partially within the Main Channel of Huntington Harbour. The cantilevered deck is connected to the upland residence. Residential use is generally not consistent with the Public Trust Doctrine. However, the proposed cantilevered deck extends no more than 5 feet over the Main Channel and does not substantially interfere with the public right of navigation or access. The terms of the proposed lease prohibit use of the cantilevered deck as living quarters. Proposed rent for the cantilevered deck is based on nearby upland land values to ensure the State receives appropriate compensation for use of sovereign land as an extension of the private backyard of the upland.

The Huntington Harbour development 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 proposed amendment does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term and 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 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 use of public land.

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Climate Change:

Climate change impacts, including sea-level rise, increased wave activity, storm events, and flooding are not limited to the open coast. The proposed replacement facilities 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. 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.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Los Angeles tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for Los Angeles¹

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 28, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), 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 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.

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This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structures to higher flood risks, comprised of greater total water levels for longer periods of time. The lease area contains fixed features, including pilings and an overhanging cantilevered deck, and movable features such as a floating recreational dock and access ramp, which are proposed for replacement. 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 amendment will not substantially interfere with Public Trust needs at this location, at this time and for the foreseeable term of the proposed lease; and is in the best interest of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for amending the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as a trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or renewal of any previous lease.

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2. The current Exhibit A, Land Description, to the lease is attached and included for reference purposes only; there are no changes being made to the Land Description.
3. 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
4. On May 16, 2019, the City of Huntington Beach determined that the project, as described above, was categorically exempt from the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15303, under Class 3, New Construction or Conversion of Small Structures.

Staff concurs with City of Huntington Beach's determination and recommends that the Commission also find that this activity is exempt under the exemption listed above.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

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 3, New Construction or Conversion of Small Structures; California Code of Regulations, title 14, section 15303.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. Find that the existing and, for a limited period, continuing use and maintenance of the existing boat dock and access ramp and the installation, use, and maintenance of the new boat dock and access ramp will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,

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2. Find that the existing and, for a limited period, continuing use and maintenance of the cantilevered deck and the installation, use, and maintenance of a new cantilevered deck is not generally consistent with the Public Trust Doctrine, but the current and proposed uses do not substantially interfere with the trust; and,
3. Find that the proposed amendment is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 7986.1, a General Lease – Recreational Use, effective December 6, 2019, for the removal of the existing boat dock, access ramp, and cantilevered deck; and for the installation, use, and maintenance of a new boat dock, access ramp, and cantilevered deck; to replace Exhibit B, Site and Location Map, with the attached Exhibit B, Site and Location Map (for reference purposes only); effective April 6, 2020, annual rent to be revised from \$1,506 to \$1,488 per year, with an annual Consumer Price Index Adjustment; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

LEASE 7986.1

LAND DESCRIPTION

A parcel of submerged land in Huntington Harbour, in the City of Huntington Beach, Orange County, California, described as follows:

COMMENCING at the most southerly corner of Lot 67, as said lot is shown and so designated on that certain map of Tract 9168 filed in Book 371, Pages 16 through 20 of Miscellaneous Maps, Official Records of said County; thence S 8°47'10" W 9.85 feet to the southerly boundary of said Tract, and the POINT OF BEGINNING; thence N 61°00'00" W 55.23 feet to the point on the southerly line of said Lot 67; thence along said southerly Line N 61°00'00" W 44.69 to the most westerly corner of said Lot 67; thence leaving said southerly line southwesterly along the southwesterly prolongation of the northwesterly line of said Lot 67, 60.00 feet to the Pierhead Line, as said Pierhead line is described in Resolution No. 5503, passed and adopted May 6, 1985 by the City Council of said City; thence southeasterly along said Pierhead Line 44.69 feet to the beginning of a curve to the left having a radius of 210 feet; thence easterly along said curve through a central angle of 20°12'50", a distance of 74.09 feet to a radial line passing through the most southerly corner of said lot; thence along said radial line N 08°47'10" E 50.15 feet to the POINT OF BEGINNING.

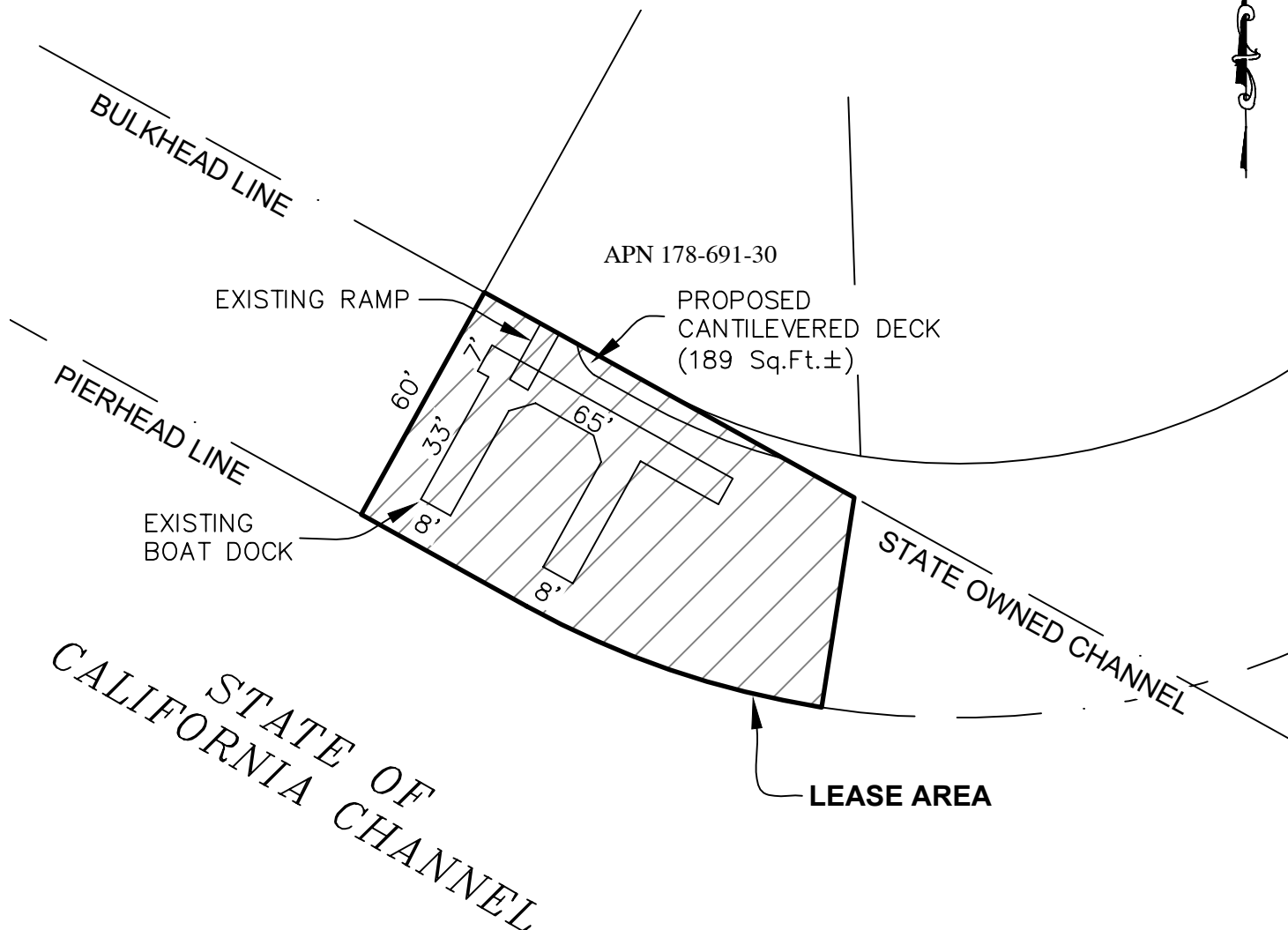
END OF DESCRIPTION

Prepared 03/14/2011 by the California State Lands Commission Boundary Unit.



NO SCALE

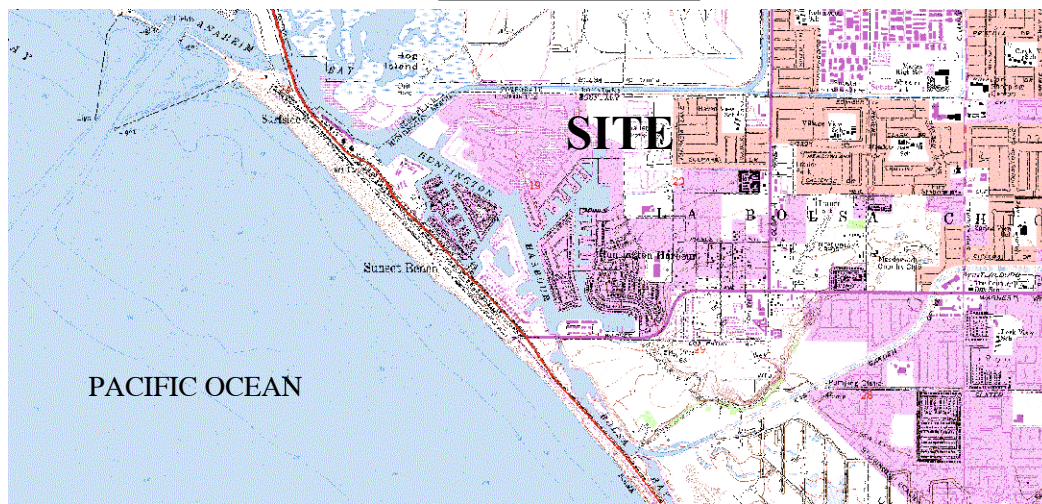
SITE



3632 VENTURE DRIVE, HUNTINGTON BEACH

NO SCALE

LOCATION



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.

Exhibit B

LEASE 7986.1
DE GELAS TRUST
APN 178-691-30
GENERAL LEASE -
RECREATIONAL USE
ORANGE COUNTY



DJF 11/4/19