

## STAFF REPORT

**46**

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### GENERAL LEASE – RECREATIONAL USE

#### APPLICANT:

Edward Leroy Clark, Jr., Trustee of the Ed Clark Family Trust dated May 25, 2016.

#### PROPOSED LEASE:

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

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

##### *AUTHORIZED USE:*

Use and maintenance of an existing boat dock, boat lift, access ramp, and cantilevered deck; and the removal and replacement of the boat dock and access ramp within the lease premises.

##### *LEASE TERM:*

10 years, beginning September 1, 2020.

##### *CONSIDERATION:*

\$4,042 per year, with an annual Consumer Price Index adjustment.

##### *SPECIFIC LEASE PROVISIONS:*

- Insurance: liability insurance in an amount no less than \$1,000,000 per occurrence.
- Upon submission of as-built plans for the new dock and access ramp, Exhibit B will be replaced to reflect the change in dock configuration.

#### STAFF ANALYSIS AND RECOMMENDATION:

##### **Authority:**

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

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### **Public Trust and State's Best Interests Analysis:**

On June 23, 2011, the Commission authorized a 10-year 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 in the Main Channel of Huntington Harbour, beginning September 1, 2010 ([June 23, 2011, Item 139](#)). As part of the lease application, Mr. Clark requested the Commission also 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 Lessee fail to comply. The Lessee failed to comply with the Commission's order to remove the unauthorized improvements and litigation was filed on March 6, 2013. On November 3, 2014, Mr. Clark proposed to settle the litigation by removing the hot tub, gazebo, and tiki bar and executing the lease.

On December 17, 2014, the Commission authorized settlement of litigation and reauthorization of the lease ([December 17, 2014, Item C49](#)). That lease will expire on August 31, 2020. Staff has verified that the unauthorized improvements have been removed from the lease premises.

On June 20, 2016, the upland property was transferred to Edward Leroy Clark, Jr., Trustee of the Ed Clark Family Trust dated May 25, 2016 (Applicant). The Applicant is now applying for a new General Lease – Recreational Use for the existing boat dock, boat lift, access ramp, and cantilevered deck, and for authorization to remove and replace the dock and ramp within the lease premises.

The proposed boat dock and access ramp removal and replacement will result in a reduction of the dock's footprint within the proposed lease area. The removal and replacement will not require the removal or relocation of any of the existing piles.

To replace the dock, the existing boat dock would be disconnected from the existing piles and transported by boat to a flatbed trailer and taken to a demolition and recycling facility in Huntington Beach. Silt curtains will be utilized to control turbidity during all construction activities. Floating booms will be maintained around the project site to capture any floating debris that may inadvertently enter the water during the construction process. No debris, rubbish, oil, or petroleum products related to construction will be allowed to enter into or be placed where they may be washed by rainfall or runoff into the water. All debris and trash generated by construction

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activities will be disposed of properly by the end of each day. The new dock will be floated in by boat and attached to the existing piles. Construction activities will be limited to daytime hours.

The Applicant may wish to replace the boat dock and ramp before the effective date of the proposed new lease. Section 4, Paragraph 4, subparagraph (d) of the current lease states that the lessee cannot alter or remove improvements without the prior written consent of the Commission. If the Commission approves the proposed new lease, staff also recommends that the Commission consent to the removal and replacement of the boat dock during the term of the current lease or the new lease.

The improvements are and will be privately owned and maintained. 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 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 existing cantilevered deck is connected to the upland residence. Residential use is generally not consistent with the Public Trust Doctrine. However, the cantilevered deck extends no more than 5 feet over the Main Channel and does not substantially interfere with the public's right of navigation or access. Proposed rent for the cantilevered deck is calculated using a benchmark rate based on nearby upland land values to ensure the State receives appropriate compensation for the use of sovereign land as the deck serves as an extension of the upland property's private backyard.

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 and does not grant the lessee exclusive rights to the leased 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

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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 use of public land.

### **Climate Change:**

Climate change impacts, including sea-level rise, increased wave activity, storm events, and flooding, are not limited to the open coast. The existing structures subject to the proposed lease are and will be 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 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 Angeles<sup>1</sup>**

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: <sup>1</sup> 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

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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 risks, comprised of greater total water levels for longer periods. The lease area contains fixed features such as piles, and movable features, including a floating boat dock and ramp. 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. By accepting the proposed lease, the Applicant acknowledges that the leased 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, staff believes the issuance of this lease 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 interests of the State.

### **OTHER PERTINENT INFORMATION:**

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects the use of

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sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, at the end of the current lease term, the Lessee may be required to remove the existing boat dock, access ramp, and cantilevered deck and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease.

2. 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.
3. **Existing Boat Dock, Access Ramp, and Cantilevered Deck:** 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).
4. **Replacement of Boat Dock and Access Ramp:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Existing Boat Dock, Access Ramp, and Cantilevered Deck:** 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).

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**Replacement of Boat Dock and Access Ramp:** 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

1. Find that the existing and, for a limited period, continuing use, maintenance, and replacement of the 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
2. Find that the existing and, for a limited period, continuing use and maintenance of the cantilevered deck is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that issuing the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning September 1, 2020, for a term of 10 years, for an existing boat dock, boat lift, access ramp, and cantilevered deck, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; rent in the amount of \$4,042 per year, with an annual Consumer Price Index adjustment; liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize the removal and replacement of the existing dock and access ramp, as described in this staff report, during the term of the current lease or the new lease; and authorize staff to update and replace Exhibit B of the lease on or after September 1, 2020, to reflect the new location and configuration of the dock and access ramp upon submission of as-built plans.

## EXHIBIT A

LEASE 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

PROPOSED BOAT  
DOCK WITH  
BOATLIFT

PROPOSED  
RAMP  
(3'x19')

EXISTING  
CANTILEVERED DECK  
283 Sq.Ft.

APN 178-315-29

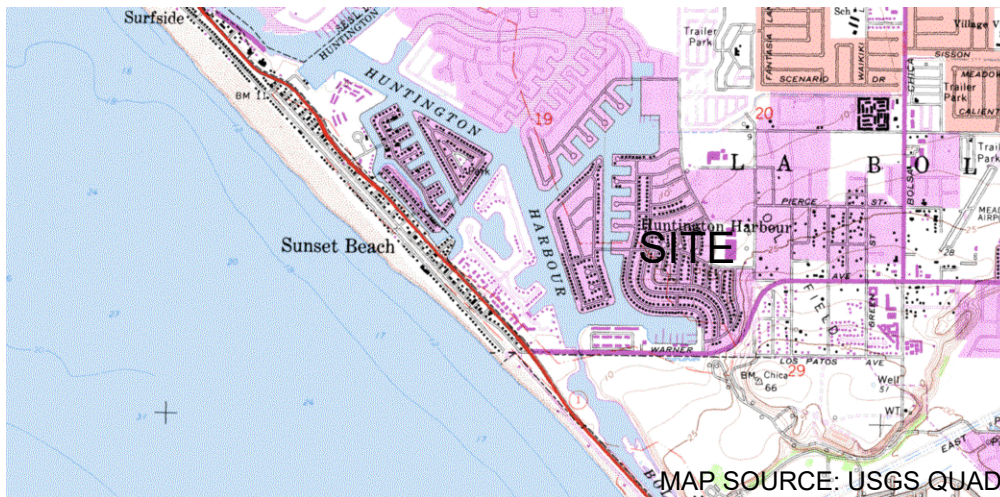
BULKHEAD LINE

LEASE AREA

17061 BOLERO LANE, HUNTINGTON BEACH

NO SCALE

## LOCATION



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



DJF 3/13/2020