STAFF REPORT

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A 72 06/23/20

Lease 3252.1

S 34 K. Connor

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Stephen W. Prochnow and Karen E. Prochnow as Co-Trustees of the Prochnow Living Trust established November 30, 1999

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Midway Channel of Huntington Harbour, adjacent to 3472 Gilbert Drive, Huntington Beach, Orange County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning June 23, 2020.

CONSIDERATION:

Rent in the amound of $2,117 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, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On March 1, 1995, the Commission authorized a 10-year Recreational Pier Lease to Robert G. and Mildred R. Helfer, Trustees, for the use and maintenance of an existing boat dock and walkway, beginning February 27, 1995 (Item C10, March 1, 1995). That lease expired on February 26, 2005. On July 14, 2000, the upland property was deeded to Stephen W. Prochnow and Karen E. Prochnow as Co-Trustees of the Prochnow Living Trust established November 30, 1999 (Applicant). On July 8, 2013, the

Applicant submitted an incomplete application for a new General Lease – Recreational Use for the existing previously authorized boat dock and access ramp, and a previously unauthorized cantilevered deck. During this time, the Applicant communicated and worked with staff to provide the necessary information to continue to process the application.

The improvements are privately owned and maintained and have existed at this location within the Midway Channel of Huntington Harbour for many years. The boat dock and access ramp facilitate recreational boating because they are used for the docking and mooring of 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 Midway 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 30 feet into the 200-foot-wide channel, leaving the majority of the Midway 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 Midway Channel and does not substantially interfere with the public rights 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 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, 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, increased wave activity, storm events, and flooding are not limited to the open coast. 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. 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 Angeles[1]

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.

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 deck, and movable features, including a floating recreational dock and access 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, especially the pilings which do not extend more than a few feet above the dock, as evidenced by photos included with the lease application. For example, the pilings may be high enough to withstand projected changes in water levels, but additional fortification may be needed, because the pilings may help anchor electric utility outlets and damage to these pilings could lead to a public safety hazard. 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 would 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 (not within the lease area) 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 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 a use of 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, the Applicant may be required to remove the 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 or to renewal of any previous 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. 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.

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:

1. Find that the existing and, for a limited period, continuing use and maintenance 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:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 23, 2020, for a term of 10 years, for use and maintenance of an existing boat dock, 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; annual rent in the amount of $2,117, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than $1,000,000 per occurrence.

EXHIBIT A

LEASE 3252.1

LAND DESCRIPTION

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

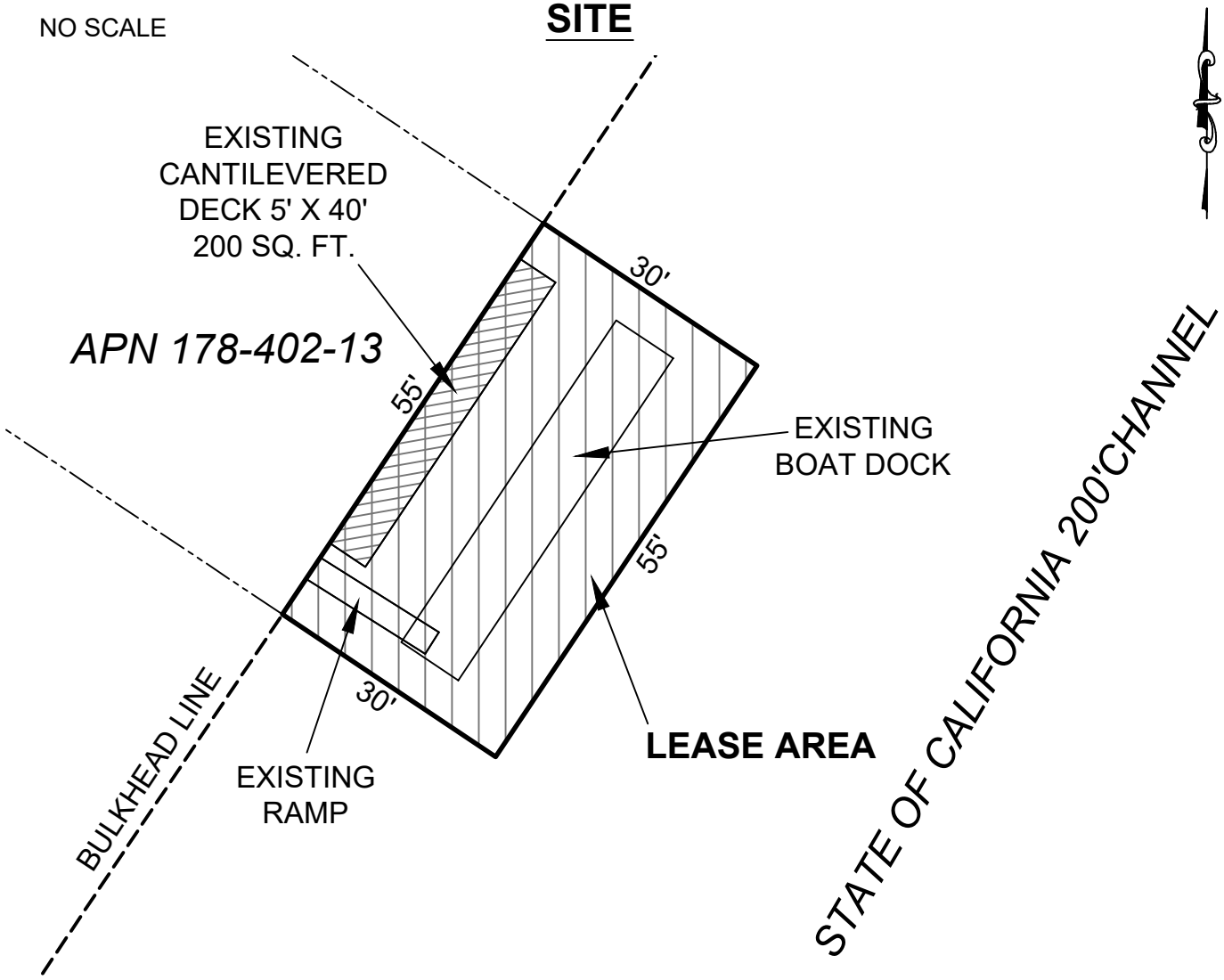
BEGINNING at the most southerly corner of Lot 22, as said lot is shown and so designated on that certain map of Tract No. 4677 filed in Book 168, Pages 14 through 18 of Miscellaneous Maps, Official Records of said County; thence along the southeasterly prolongation of the southwesterly line of said lot 30.00 feet to a line parallel with the southeasterly line of said lot; thence northeasterly along said parallel line 55 feet to the southeasterly prolongation of the northeasterly line of said lot; thence northwesterly along said southeasterly prolongation 30 feet to the most easterly corner of said lot; thence southwesterly along southeasterly line of said lot to the point of beginning.

END OF DESCRIPTION

Prepared 05/12/2020 by the California State Lands Commission Boundary Unit

NO SCALE

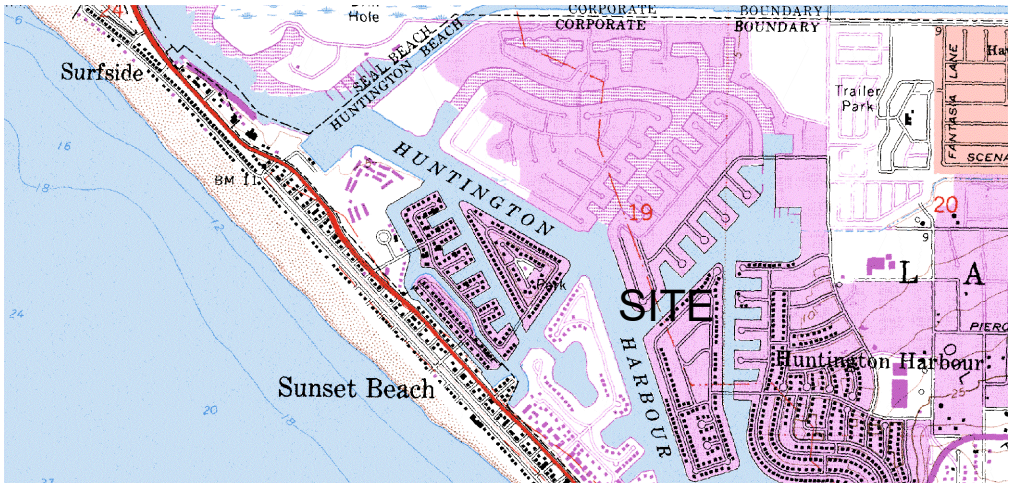
SITE



3472 GILBERT 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 3252.1
PROCHNOW TRUST
APN 178-402-13
GENERAL LEASE -
RECREATIONAL USE
ORANGE COUNTY

TS 05/12/2020