

Staff Report 38

Termination of a General Lease – Commercial Use, and Issuance of General Lease – Commercial Use

APPLICANT:

General Petroleum dba Maxum Petroleum

PROPOSED ACTION:

AREA, LAND TYPE, AND LOCATION

Sovereign land in Sunset Bay, Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing commercial fuel dock facility.

TERM:

10 years, beginning August 20, 2020.

CONSIDERATION:

\$11,641 per year, with an annual Consumer Price Index adjustment, effective August 20, 2020.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$5,000,000 per occurrence.
- Bond or other surety in the amount of \$35,000.
- No later than January 1, 2025, Lessee shall provide to Lessor's staff a report on the safety and structural integrity of the fuel dock prepared by a certified and licensed coastal engineer. The report shall include information, including, but not limited to, the safety of the improvements, any necessary repairs and estimated costs, the life expectancy of the fuel dock, and the estimated cost of removal. The report will coincide with the five-year review of the consideration and surety bond pursuant to Section 3, paragraphs 3(c) and 10. The report will inform staff's analysis regarding the amount of appropriate bond or other surety. If an increase is

warranted, a recommendation will be brought before the Commission at a properly notices, public meeting.

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:

On February 9, 2016, the Commission authorized the termination and issuance of a General Lease – Commercial Use to the Applicant for the continued use and maintenance of an existing commercial fuel dock facility (Item C71, [February 9, 2016](#)). Although the lease does not expire until February 8, 2026, the Applicant is seeking capital investment to improve and upgrade the fuel dock facility and has applied to terminate the existing lease and obtain a new 10-year lease. A new lease and full 10-year term will aid in securing the necessary investment from lenders.

The Applicant's commercial fuel dock, located near Huntington Harbour, provides a necessary and convenient service to regional boaters, thereby facilitating public navigation, fishing, and water-related recreation. The proposed new lease will allow for additional capital investment, improvements to the fuel dock, and continued operation of the fuel dock facility. The nearest public fuel dock outside Huntington Harbour is in Alamitos Bay, approximately 8- to 9-miles round-trip from Huntington Harbour.

The proposed new lease is for a 10-year term and includes provisions requiring insurance, indemnity, and restoration of the lease premises at the end of the lease. The proposed lease also requires the lessee to implement the Commission's "Best Management Practices of Marina Owners/Operators" and "Best Management Practices for Guest Dock Users and Boaters," including additional Best Management Practices the Commission subsequently deems appropriate. Additionally, the proposed lease includes the payment of annual rent to compensate the people of the State for the occupation of and generation of revenue on 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 commercial fueling dock is located within the city of Huntington Beach, and may be vulnerable to the impacts of sea-level rise.

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.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area structure to higher flood risks, comprised of greater total water levels for longer periods of time. Flooding conditions could cause the existing dock to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation. The fixed dock may need to be raised or reinforced to withstand future conditions, especially the pilings. Degradation of the dock could also 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 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 the reasons stated above, staff believes the termination and issuance of the proposed General Lease – Commercial Use will not substantially impair the public rights to navigation, fishing, or other Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; 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. 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. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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:

Lease Termination: Find that the subject lease termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

Issuance of Lease: Find that issuance of the lease 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 interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize termination, effective August 19, 2020, of Lease 3265, a General Lease – Commercial Use, issued to General Petroleum dba Maxum Petroleum.
2. Authorize issuance of a General Lease – Commercial Use to the Applicant beginning August 20, 2020, for a term of 10 years, for an existing commercial fuel dock facility, 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 \$11,641, with an annual Consumer Price Index adjustment; surety bond or other security in the amount of \$35,000; and liability insurance in an amount no less than \$5,000,000 per occurrence.

EXHIBIT A

LEASE 3265

LAND DESCRIPTION

A parcel of submerged land in Sunset Bay, City of Huntington Beach, Orange County, State of California, located adjacent to and northeasterly of Tideland Location No. 141 patented to Alamitos Land Company on April 4, 1901 and being further described as follows:

BEGINNING at the most northerly corner of Tract No. 5864 filed in Book 214, Pages 37 through 42 of Miscellaneous Maps, in Official Records of said County; thence N 52° 45' 00" W 100.00 feet along the northwesterly prolongation of the northeast tract boundary, said northeast tract boundary and its prolongation being coincident with the northeasterly line of said Tideland Location No. 141; thence leaving said tract boundary and northeasterly line, into Sunset Bay N 37° 15' 00" E 75.00 feet; thence S 52° 45' 00" E 100.00 feet; thence S 37° 15' 00" W 75.00 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

The above description is based on that original description prepared by Patrick J. Savage, PLS 5183 on 06/14/2010 as found in PRC 3265 file, Calendar Item 71.

Revised 05/13/2020 by the California State Lands Commission Boundary Unit.



NO SCALE

The map shows the coastal area of Seal Beach, Huntington Beach, and Seal Rock. A red arrow points to a location on the coast, labeled 'SITE'. The map includes various landmarks, streets, and geographical features like Seal Rock and Seal Island. The word 'SITE' is prominently displayed in the center of the map, with a red arrow pointing to a specific location on the coast. The map also shows the Huntington Harbor, Seal Beach, and Sunset Beach. The word 'SITE' is prominently displayed in the center of the map, with a red arrow pointing to a specific location on the coast.

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.

LEASE 3265
MAXUM PETROLEUM
APN 178-581-01
GENERAL LEASE -
COMMERCIAL USE
ORANGE COUNTY



TS 05/13/2020