

Staff Report 35

LESSEE/ASSIGNOR:

Flavio S. Jaen

APPLICANT/ASSIGNEE:

Michael McCoy, as Trustee of the McCoy 1995 Intervivos Trust, dated January 25, 1995

PROPOSED ACTION:

Assignment of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION

Sovereign land in the Main Channel of Huntington Harbor, adjacent to 17011 Bolero Lane, Huntington Beach, Orange County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, access ramp, and cantilevered deck; and the one-time removal and replacement of the existing boat dock and access ramp.

TERM:

10 years, beginning December 17, 2014

CONSIDERATION:

\$2,528 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, 6106, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On December 17, 2014, the Commission authorized Lease No. PRC 3570, a General Lease – Recreational Use for an existing boat dock, access ramp, and cantilevered deck to John R. Keefner and Lori Schaffer ([Item C51, December 17, 2014](#)). On September 26, 2016, ownership of the upland property was transferred to Flavio S. Jaen. On February 7, 2017, the Commission authorized an Assignment of Lease No. PRC 3570.1 to Flavio S. Jaen ([Item C51, February 7, 2017](#)). On April 5, 2019, the Commission authorized an amendment of the lease to allow for the one-time removal and replacement of the existing dock and access ramp, effective December 17, 2019 ([Item C52, April 05, 2019](#)). The lease will expire on December 16, 2024. On June 16, 2020, ownership of the upland property was transferred to Michael McCoy, as Trustee of The McCoy Intervivos Trust, dated January 25, 1995 (Applicant). The Applicant is now applying for an assignment of the remaining lease term.

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 lease assignment 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

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: 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 is a 10-year General Lease – Recreational Use that began on December 17, 2014, and may be subject to the climate change effects of the projected sea-level rise scenario provided above. Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact analyses on the leased facilities will be assessed at the time the lease expires in 2024 if an application is submitted for a new lease and would be based on projected sea-level rise scenarios at that time.

CONCLUSION:

Assignment of this lease will not result in a change in the use of or impacts to Public Trust resources. Commission staff believes approval of this assignment 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. If the Commission denies the application, 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 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. Assignment of lease is not a project as defined by the California Environmental Quality Act 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).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment of the Lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable remaining term of the lease; and is in the best interest of the state.

AUTHORIZATION:

Authorize the assignment of Lease No. PRC 3570, a 10-year General Lease – Recreational Use, of sovereign land located in the Main Channel of Huntington

Harbor, as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, from Flavio S. Jaen to Applicant; effective June 16, 2020.

EXHIBIT A

LEASE 3570

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 35, 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 50.00 feet; thence northwesterly and parallel with the southwesterly line of said lot 50.00 feet 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 said southwesterly line of said lot to the point of beginning.

END OF DESCRIPTION

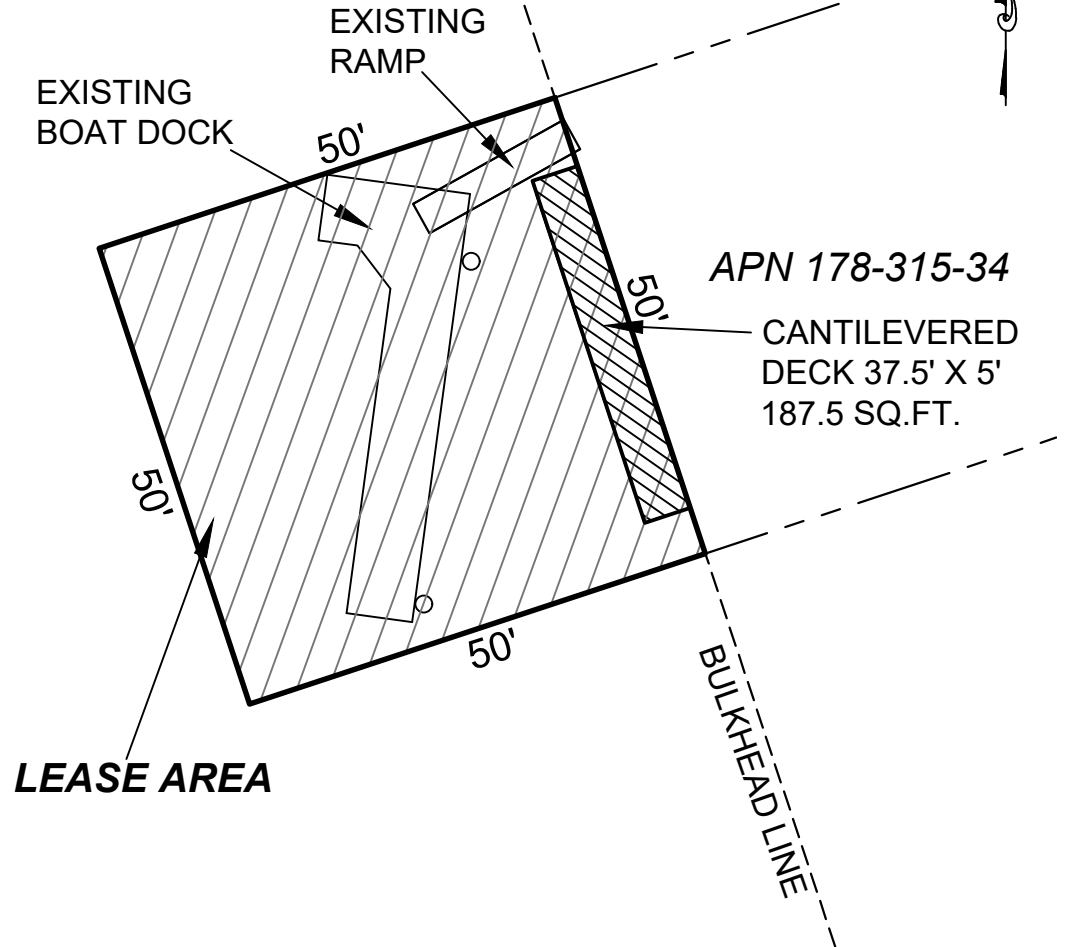
Prepared 09/15/2020 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

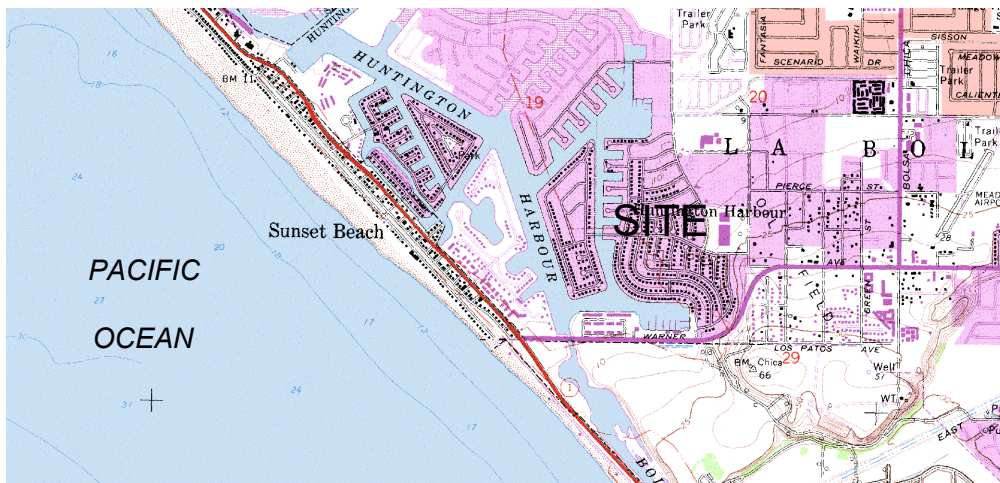
STATE OF CALIFORNIA 400' CHANNEL



17011 BOLERO LANE, 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 3570
MCCOY, TRUSTEE
APN 178-315-34
GENERAL LEASE-
RECREATIONAL USE
ORANGE COUNTY



TS 09/15/2020