

Staff Report 32

APPLICANT:

Gaby Mendez, as Trustee(s) of the Lovewater Family Trust dated May 1, 2021

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 3622 Venture Drive, Huntington Beach, Orange County.

AUTHORIZED USE:

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

TERM:

10 years, beginning August 25, 2021.

CONSIDERATION:

Boat Dock, Access Ramp, and Cantilevered Deck: \$3,111 per year, with an annual Consumer Price Index adjustment.

Rock Slope Protection: The public health and safety, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:

Insurance: Liability coverage in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 6, 2011, the Commission authorized Lease PRC 7996, a General Lease – Recreational and Protective Structure Use to Frank B. De Gelas and Donna L. De Gelas, as Trustees of the Frank and Donna De Gelas Trust dated February 27, 2003, for an existing boat dock, access ramp, cantilevered deck, and rock slope protection ([Item C43, April 6, 2011](#)). In 2011, this lease only required rent for the cantilevered deck, as the boat dock and access ramp were, by law, rent free at that time.

On February 9, 2016, the Commission authorized a revision of the rent from \$979 to \$1,175 per year, effective April 6, 2016 ([Item C67, February 9, 2016](#)). That lease expired on April 5, 2021.

On September 7, 2018, interest in the upland parcel was transferred to the Lessee's company, Colton RV Center1, LLC, a California limited liability company. The Lessee did not notify staff of the ownership change but continued to pay annual rent.

In April 2021, the Lessee submitted their lease application while interest in the upland parcel was pending transfer to a new owner. The Lessee was billed in holdover and has paid rent through September 5, 2021.

On June 2, 2021, interest in the upland parcel transferred to Gaby Mendez, as Trustee(s) of the Lovewater Family Trust dated May 1, 2021. Staff recommends the Applicant's lease begin on August 25, 2021. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for use and maintenance of the existing boat dock, access ramp, cantilevered deck, and rock slope protection. The rock slope protection serves to protect the existing bulkhead by preventing erosion and maintaining the channel's integrity.

The subject facilities are privately owned and maintained and have existed at this location for many years. The boat dock and access ramp 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 proposed lease authorizes the use and maintenance of rock slope protection to protect the bulkhead. The bulkhead underneath the deck serves to stabilize the bank, and loss or degradation of this structure could result in property damage and public safety concerns within the lease area and the surrounding waterways.

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 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 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 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 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 area contains fixed features such as 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 referenced in 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 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 an 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 existing boat dock, access ramp, rock slope protection, 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 renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.

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 existing boat dock, access ramp, and rock slope protection 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 existing 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 and Protective Structure Use to the Applicant beginning August 25, 2021, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, cantilevered deck, and rock

slope protection, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the boat dock, access ramp, and cantilevered deck to be annual rent in the amount of \$3,111, with an annual Consumer Price Index adjustment; consideration for the rock slope protection to be the public health and safety, with the State reserving the right to fix a different rent periodically during the lease term as provided in the lease; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7996

LAND DESCRIPTION

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

BEGINNING at the westerly corner of Lot 68, as said lot is shown and so designated on that certain map of Tract No. 9168 filed in Book 371, Pages 16 through 20 of Miscellaneous Maps, Official Records of said County; thence along the southwesterly extension of the northwesterly line of said lot 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 to the southwesterly extension of the southeasterly line of said lot; thence northeasterly along said extension of the southeasterly line of said lot to the southerly corner of said lot; thence northwesterly along the southwesterly line of said lot to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 05/05/2021 by the California State Lands Commission Boundary Unit.



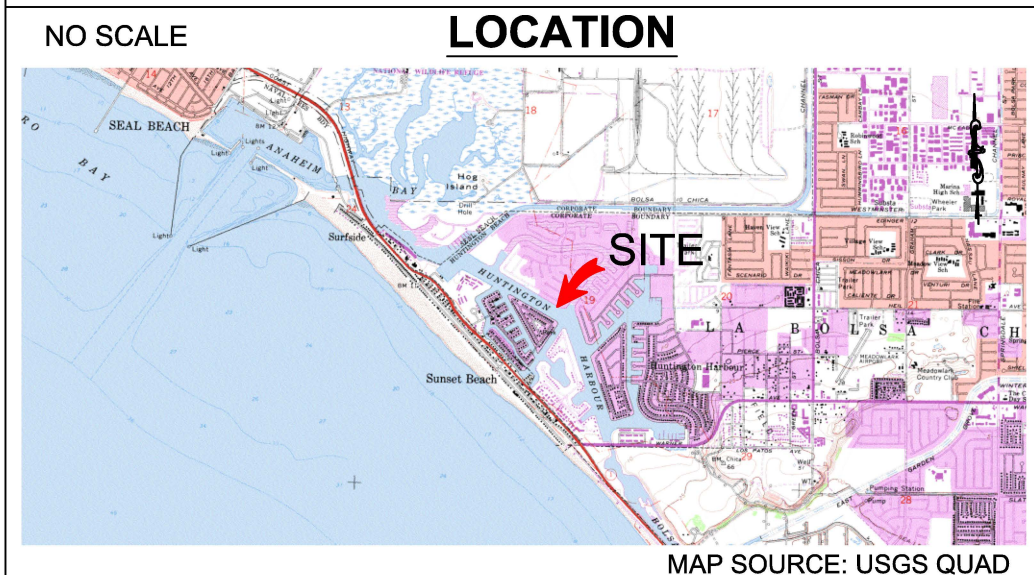
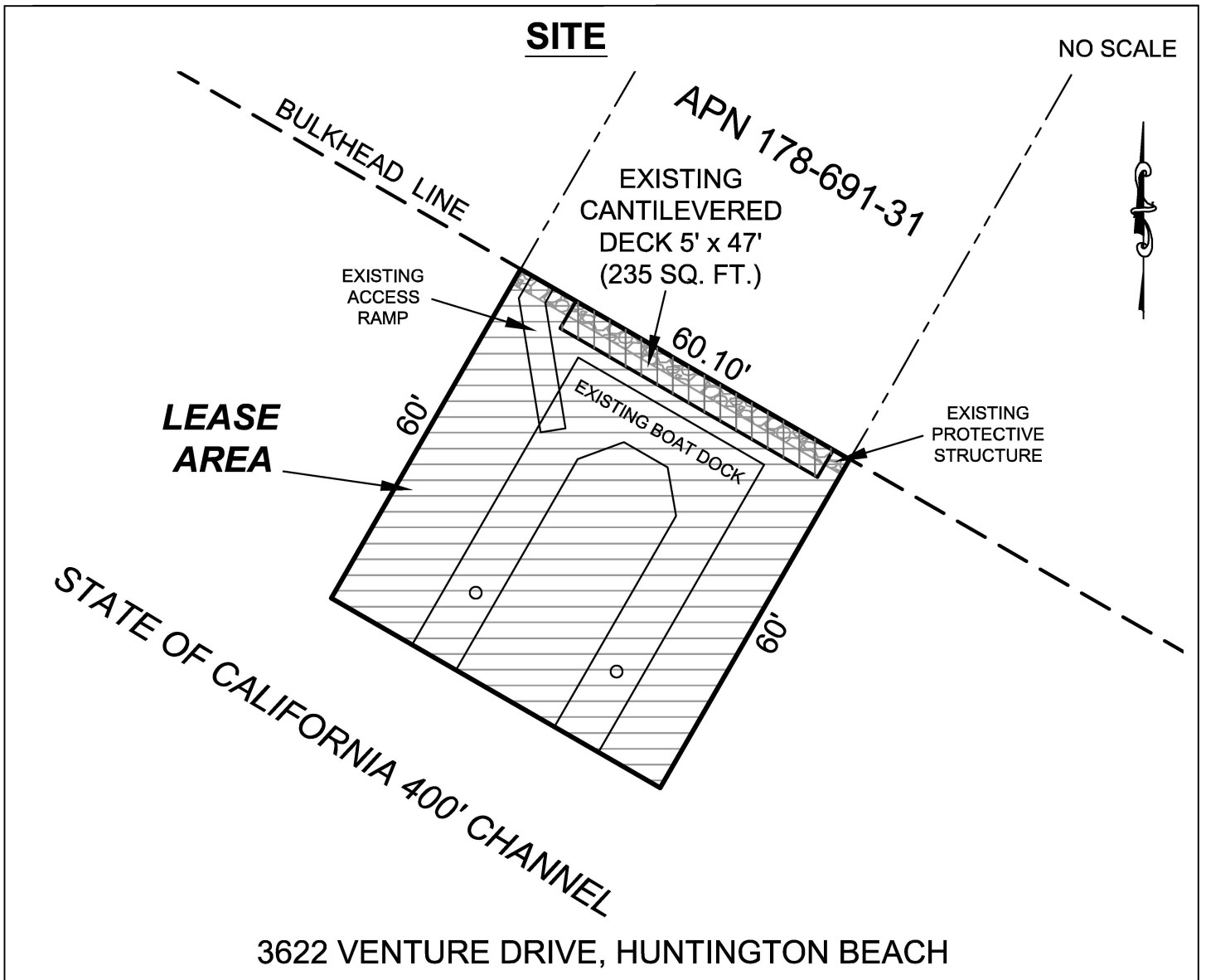


Exhibit B

LEASE 7996
LOVEWATER FAMILY TRUST
APN 178-691-31
GENERAL LEASE -
RECREATIONAL & PROTECTIVE
STRUCTURE USE
ORANGE COUNTY



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.