

Staff Report 34

LESSEE:

Betty Yuen Cheng Liang, as Trustee for The Betty Yuen Cheng Liang 2010 Trust, under instrument dated September 9, 2010

APPLICANT:

Steven Senecal and Cynthia Senecal as community property with Right of Survivorship

PROPOSED ACTION:

Consider Waiver of Rent, Penalty, Interest; and Termination and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION

Sovereign land located in the Main Channel of Huntington Harbour, adjacent to 3532 Venture Drive, Huntington Beach, Orange County.

AUTHORIZED USE:

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

TERM:

10 years, beginning August 25, 2021

CONSIDERATION:

\$3,072 per year, with an annual Consumer Price Index adjustment; and \$1,777 to compensate for the unauthorized occupation of state sovereign land for the period beginning January 26, 2021 through August 24, 2021.

SPECIFIC 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:

On January 26, 2012, the Commission authorized a General Lease – Recreational Use to Betty Yuen Cheng Liang, as Trustee for The Betty Yuen Cheng Liang 2010 Trust, under instrument dated September 9, 2010, for the use and maintenance of an existing boat dock, access ramp, and cantilevered deck ([Item C63, January 26, 2012](#)). On March 29, 2012, the Commission authorized a correction of the January 26, 2012, authorization of General Lease – Recreational Use to change the start date of the lease term to the date of the Commission authorization, January 26, 2012; authorize the collection of compensation for unauthorized occupation for the cantilevered deck; and revise the annual rent ([Item C89, March 29, 2012](#)). At its February 7, 2017 Commission meeting, the Commission authorized a revision to annual rent ([Item C39, February 7, 2017](#)). The lease will expire on January 25, 2022.

On December 15, 2020, the ownership of the upland property was deeded to the Applicant. The Applicant is applying for a General Lease – Recreational Use for the use and maintenance of an existing boat dock, access ramp, and cantilevered deck. Staff recommends termination of the existing lease because the Lessee sold the upland property and lease improvements without notifying staff, failed to execute a lease quitclaim, and defaulted on a lease payment. The Lessee paid annual rent through January 25, 2021. Staff sent annual rent invoice number 51476 to the Lessee for January 26, 2021, through January 25, 2022 (the 2021-2021 lease period) that the Lessee did not pay. Staff recommends the Commission void invoice number 51476, in the amount of \$3,072. Staff believes it is not in the State's best interests to pursue the unpaid rent from the Lessee since the Applicant was the upland owner as of December 15, 2020 and has applied for a lease to assume responsibility for the improvements.

The Applicant has agreed to pay compensation of the unauthorized occupation of state land from January 26, 2021 through August 24, 2021, the day before the August Commission meeting when the new lease begins. Staff further recommends the Commission accept compensation for the Applicant in the amount of \$1,777

for the unauthorized occupation of state land prior to the commencement of the proposed lease.

The improvements have existed at this location for many years. The boat dock and access ramp facilitate recreational boating because they are used for the docking and mooring of recreational boats. Recreational boating is a water-dependent use that 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 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 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. 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 fixed features may need to be raised or reinforced to withstand future conditions. Although the bulkhead underneath the cantilevered 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 reason above, Commission staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, as 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 land as authorized by law. If the Commission denies the application, the Applicant 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 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. Termination of the lease and waiver of rent are not projects 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:

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as 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 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 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 terminating the existing lease and issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Waive annual rent, penalty, and interest due for the period of January 26, 2021 through January 25, 2022, void annual rent invoice number 51746 to Betty Yuen

Cheng Liang, as Trustee for The Betty Yuen Cheng Liang 2010 Trust, under instrument dated September 9, 2010.

2. Terminate, effective December 15, 2020, Lease No. PRC 5244, a General Lease – Recreational Use, issued to Betty Yuen Cheng Liang, as Trustee for The Betty Yuen Cheng Liang 2010 Trust, under instrument dated September 9, 2010.
3. Authorize acceptance of compensation from the Applicant in the amount of \$1,777 for the unauthorized occupation of State land for the period beginning January 26, 2021 through August 24, 2021.
4. Authorize issuance of a General Lease – Recreational 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, 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 \$3,072, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 5244

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 42, as said lot is shown and so designated on that certain map of Tract No. 9335 filed in Book 386, Pages 32 and 33 of Miscellaneous Maps, Official Records of said County; thence along the southwesterly extension of the southeasterly line of said lot 60.00 feet, more or less to the pierhead line, as said pierhead line is shown on EXHIBIT "A" of Resolution No. 5503, passed and adopted May 6, 1985 by the City Council of the City of Huntington Beach; thence northwesterly along said pierhead line to the southwesterly extension of the northwesterly line of said lot; thence northeasterly along said extension 60.00 feet, more or less, to the most westerly corner of said lot; thence along the southwesterly line of said lot to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 05/26/2021 by the California State Lands Commission Boundary Unit.



NO SCALE



SITE

APN 178-713-03

EXISTING RAMP

EXISTING BOAT DOCK

EXISTING CANTILEVERED DECK (230 SQ. FT.)

BULKHEAD LINE

60'

60'

60'

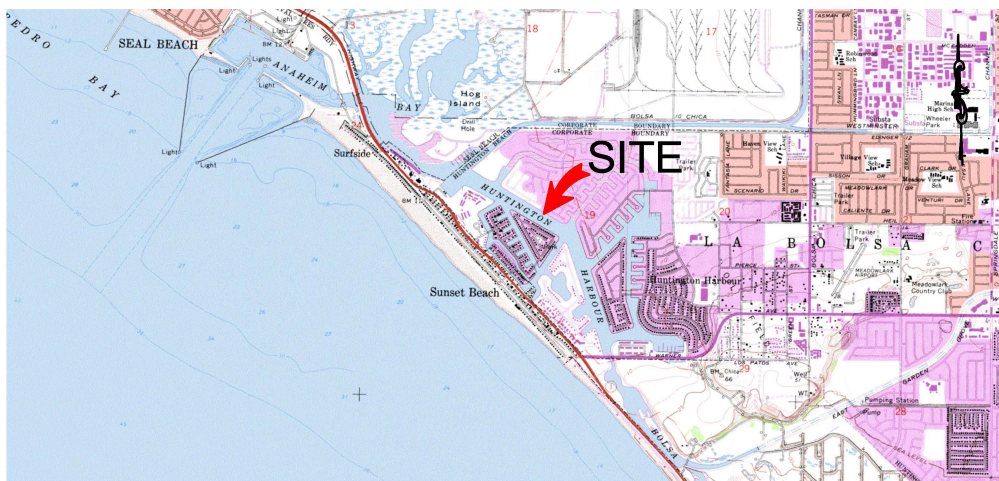
LEASE AREA

STATE OF CALIFORNIA 400' CHANNEL

3532 VENTURE DRIVE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

LEASE 5244
SENECAL
APN 178-713-03
GENERAL LEASE-
RECREATIONAL USE
ORANGE COUNTY



TS 05/26/2021

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.