

Staff Report 42

APPLICANT:

Ralph Ascher and Marietta Ascher

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 16232 Piedmont Circle, Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock and access ramp.

TERM:

10 years, beginning October 25, 2022.

CONSIDERATION:

\$1,498 per year, with an annual Consumer Price Index adjustment; and \$844 for unauthorized occupation of State lands for the period beginning January 26, 2022 through October 24, 2022.

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, 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 January 26, 2012, the Commission authorized a General Lease - Recreational Use to Ralph Ascher and Marietta Ascher for the use and maintenance of an existing boat dock and access ramp adjacent to 16232 Piedmont Circle, Huntington Beach, Orange County ([Item C61, January 26, 2012](#)).

On February 7, 2017, staff performed a rent review on this lease as directed by lease terms and conditions ([Item C41, February 7, 2017](#)). This resulted in the modification of annual rent from \$733 to \$828.

The Lease expired on January 25, 2022.

The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of the existing boat dock and access ramp in Huntington Harbour. Staff recommends issuance of a General Lease – Recreational Use to the Applicant, to take effect October 25, 2022.

The Applicant will pay \$844 for unauthorized occupation of State lands by the subject boat dock and access ramp for the period beginning January 26, 2022 through October 24, 2022, the day before the beginning date of the proposed lease. Additionally, the proposed lease will require the Applicant to indemnify the State for the entire period of unauthorized occupation, ensuring the State is protected.

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 location as the private upland property directly abuts the concrete bulkhead that defines the limits of the channel. The boat dock terminates at the pierhead line, leaving the majority of the Main Channel available for navigation and public recreation.

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. 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.

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 lease, may 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 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 and access ramp and restore the premises to their original condition. The lessee 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:

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 is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the applicant in the amount of \$844 for unauthorized occupation of State lands for the period of January 26, 2022 through October 24, 2022.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning October 25, 2022, for a term of 10 years, for the use and maintenance of an existing boat dock and access ramp, 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 \$1,498, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 7423

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 most northerly corner of Lot 4, as said lot is shown and designated on that certain map of Tract No. 10557 filed in Book 533 of Miscellaneous Maps at Pages 24 through 26 Official Records of said County; thence southeasterly along the northeasterly line of said lot 15.23 feet; thence leaving said line northeasterly along a line parallel with the northeasterly extension of the northwesterly line of said lot 94.10 feet to the pierhead line, as shown on said tract map; thence northwesterly along said pierhead line 22.95 feet; thence leaving said pierhead line southwesterly 96.20 feet to a point on the northeasterly line of Lot 3 of said tract map, which distant 32.98 feet from the point of beginning; thence southeasterly along northeasterly line of Lot 3 to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 04/06/2022 by the California State Lands Commission Boundary Unit



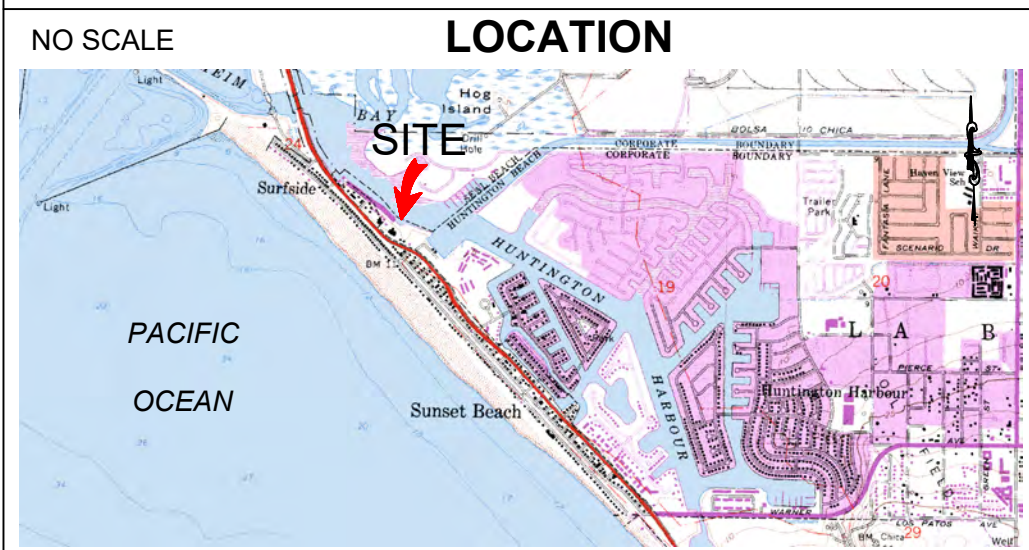
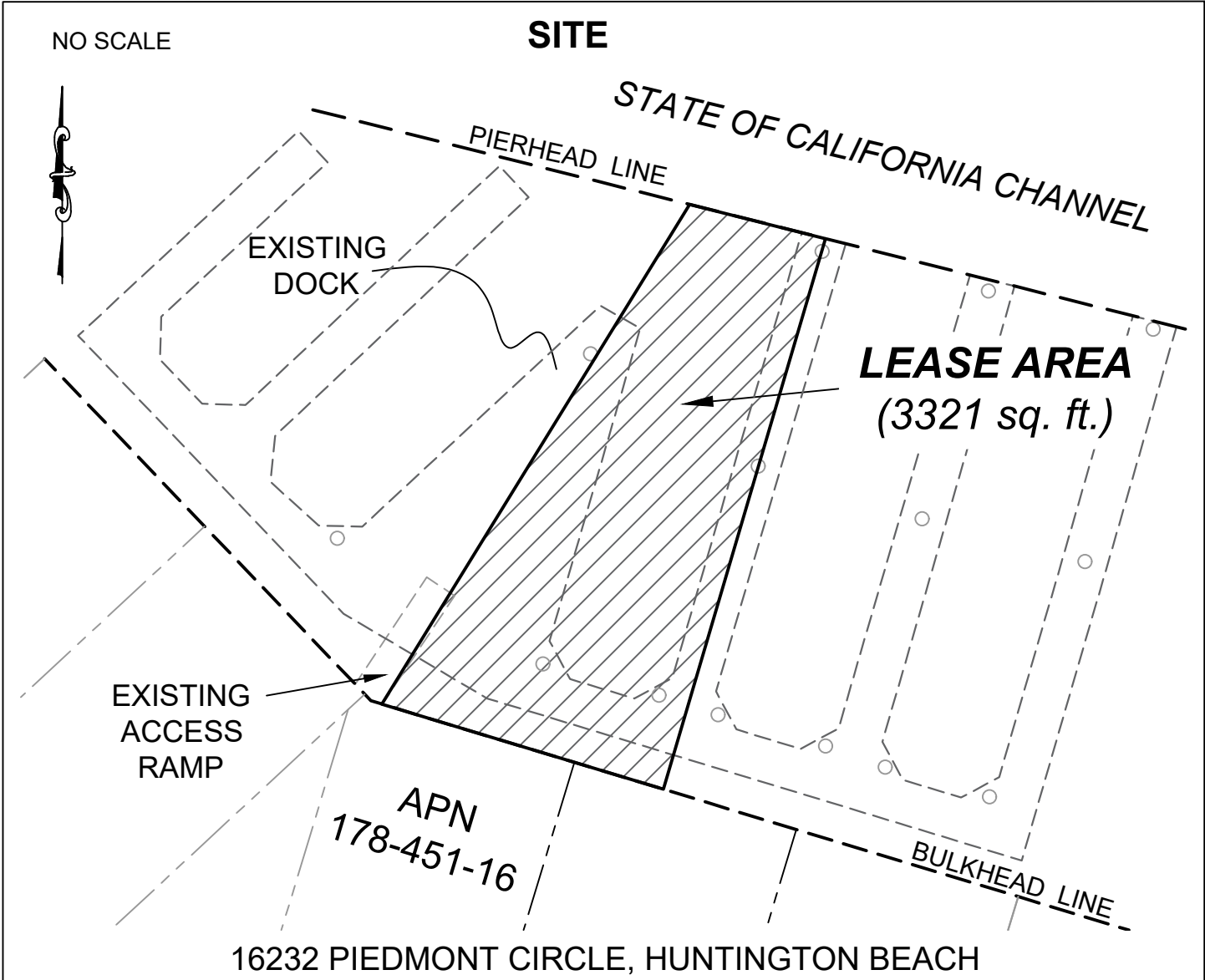


Exhibit B

LEASE 7423
 ASCHER
 APN 178-451-16
 GENERAL LEASE -
 RECREATIONAL 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.