

Staff Report 67

LESSEE:

Anthony J. Sotelo, or his successor Trustee, Trustee of the Anthony J. Sotelo Family Trust dated June 15, 2011

APPLICANT:

Trong Va Ma and Huong T. Nguyen

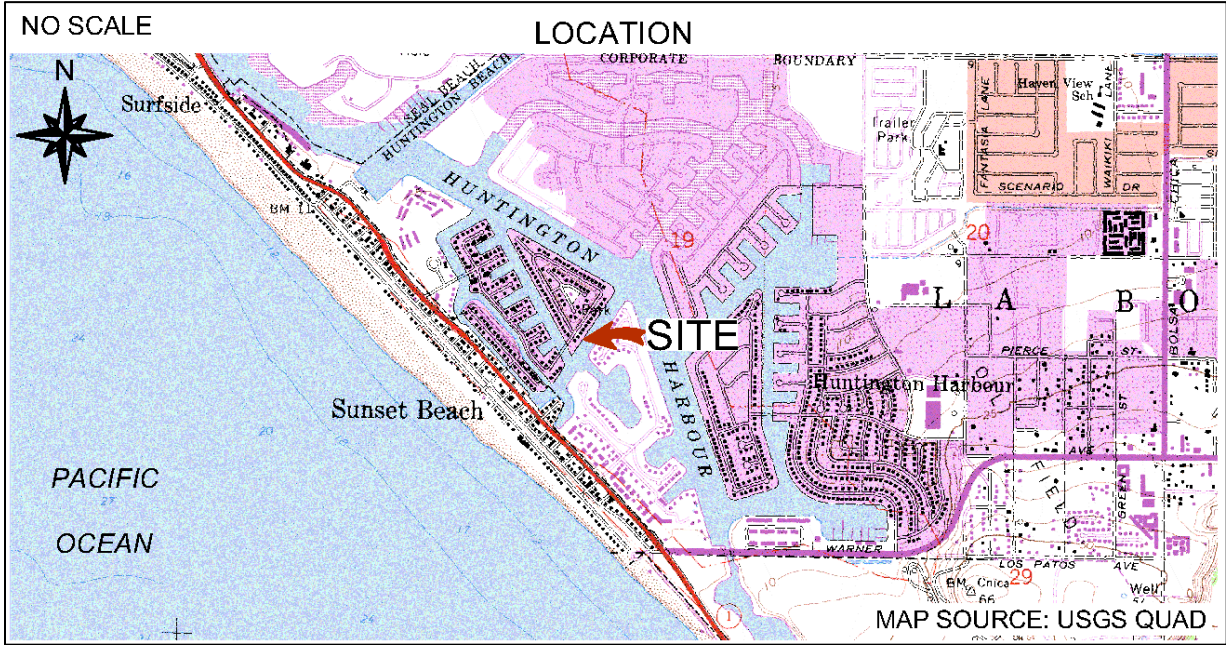
PROPOSED ACTION:

Termination and Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land, in the Midway Channel of Huntington Harbour, adjacent to 3392 Gilbert Drive, Huntington Beach, Orange County (as shown in Figure 1).

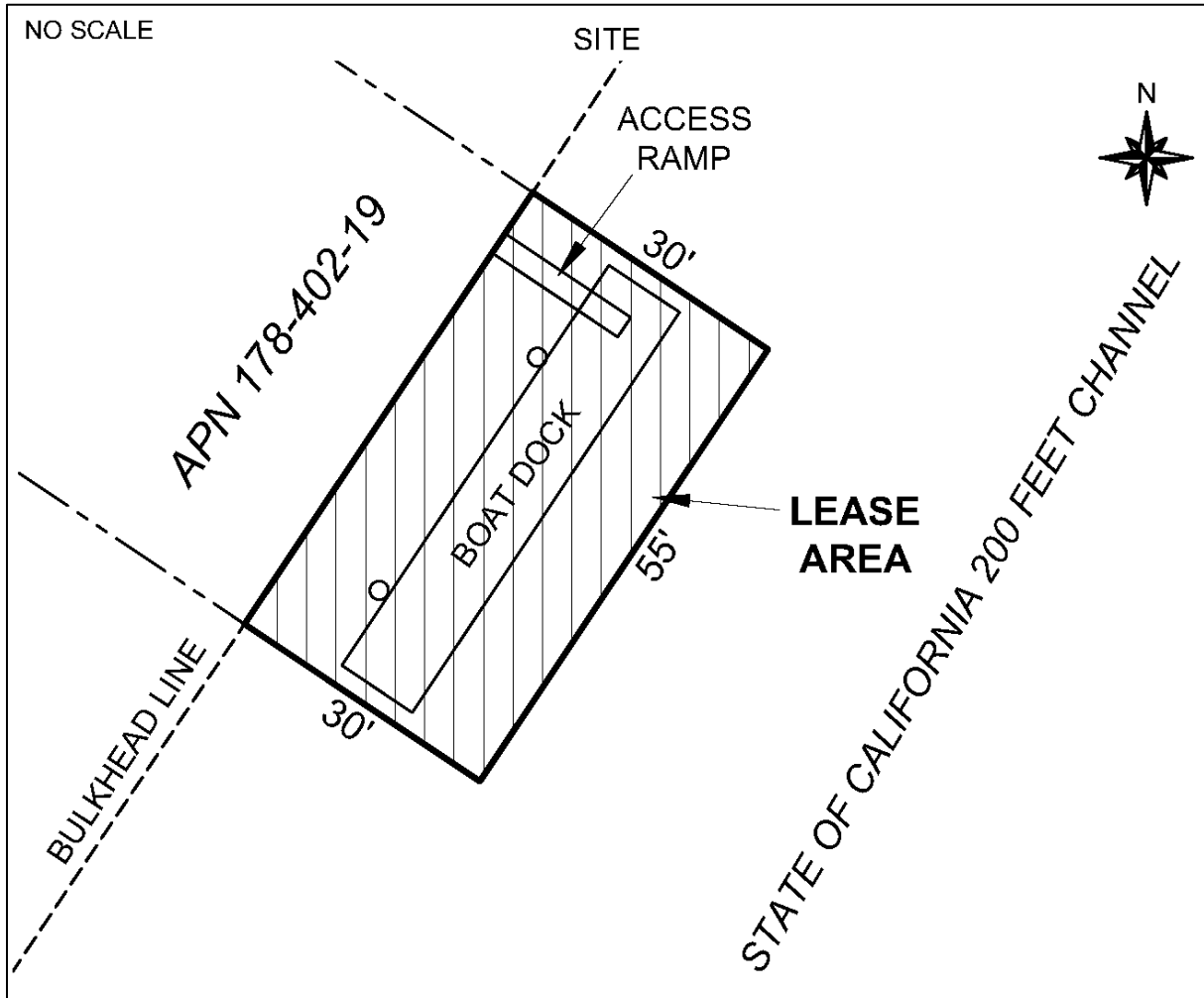
Figure 1. Location Map



AUTHORIZED USE:

Use of an existing boat dock and access ramp (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years; beginning June 5, 2023.

CONSIDERATION:

\$744 per year, with an annual Consumer Price Index adjustment; and \$628 for the unauthorized occupation of State land from August 1, 2022 through June 4, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no than \$1,000,000 per occurrence.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

On April 20, 2017, the Commission authorized a General Lease – Recreational Use to Anthony J. Sotelo, or his successor Trustee, Trustee of the Anthony J. Sotelo Family Trust dated June 15, 2011, for the use and maintenance of an existing boat dock and access ramp, adjacent to 3392 Gilbert Drive, Huntington Beach, Orange County ([Item C64, April 20, 2017](#)). The lease is set to expire on July 31, 2027.

On June 4, 2020, following the death of Anthony J. Sotelo, ownership interest in the upland parcel was transferred to Trong Va Ma and Huong T. Nguyen. Due to this circumstance, staff recommends terminating the existing lease. The proposed termination date is June 4, 2020, the day the Applicant took ownership of the upland parcel. Invoices for this lease were paid through July 31, 2022. The Applicant is applying for issuance of a General Lease – Recreational Use for the use of an existing boat dock and access ramp.

Because the invoices were paid through July 31, 2022, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$628 for the period of August 1, 2022 through June 4, 2023. 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 lease provisions regarding indemnity will apply from June 4, 2020, when the Applicant took ownership of the upland, through June 4, 2023, the day before the beginning of the new lease.

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 Midway 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 lease area extends to the pierhead line, which is 30 feet into the 200-foot-wide channel, leaving the majority of the Midway 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. 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.

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, staff believes approval of this lease assignment will not substantially interfere with Public Trust needs at this location, at this time, nor for the

remaining term of this lease; is consistent with the common law Public Trust Doctrine; and is in the best interest 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 Applicant as prior lessee may be required to remove the boat dock and access ramp and restore the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
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, subdivision (a)(2).

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 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 impair the public rights to navigation and fishing or 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. Termination effective June 4, 2020, Lease 3312, a General Lease – Recreational Use, issued to Anthony J. Sotelo, or his successor Trustee, Trustee of the Anthony J. Sotelo Family Trust dated June 15, 2011.
2. Accept compensation from the Applicant for the unauthorized occupation of State land for an existing boat dock and access ramp in the amount of \$628 for the period of August 1, 2022 through June 4, 2023.
3. Authorize issuance of General Lease – Recreational Use to the Applicant beginning June 5, 2023, for a term of 10 years, for the use of an existing boat dock and access ramp; annual rent in the amount of \$744, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.