

Staff Report 40

APPLICANT:

Minh T. Nguyen and Tien M. Nguyen

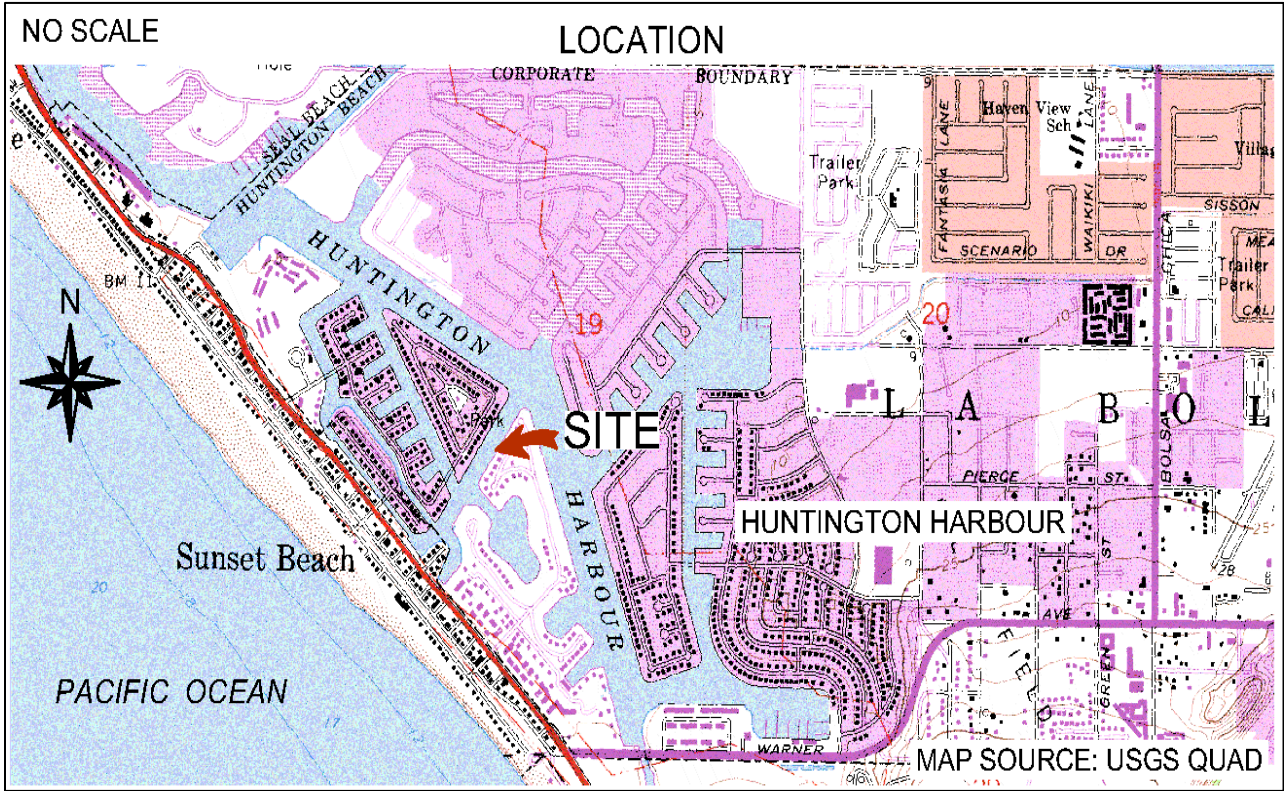
PROPOSED ACTION:

Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Midway Channel of Huntington Harbour, adjacent to 3581 Courtside Circle, Huntington Beach, Orange County (as shown in Figure 1).

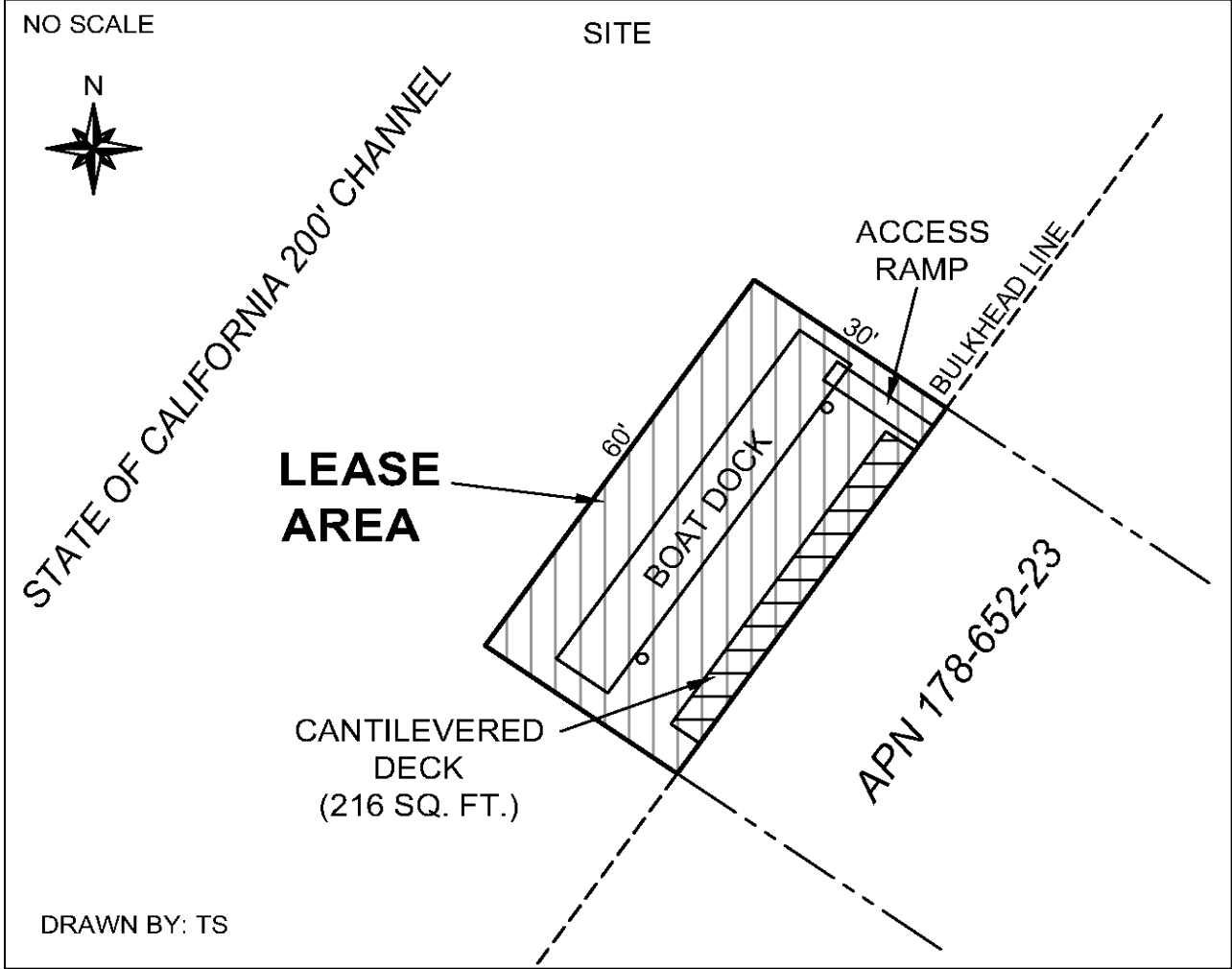
Figure 1. Location



AUTHORIZED USE:

Use of an existing boat dock, access ramp, and cantilevered deck (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 December 5, 2023.

CONSIDERATION:

\$2,940 per year, with an annual Consumer Price Index adjustment; and \$3,850 for the unauthorized occupation of State land prior to December 5, 2023.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less 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.
- Lessee shall not construct, or allow to be constructed, a permanent roof or other enclosure on the Lease Premises.
- Lessee agrees that any proposed use of the Lease Premises that includes extension of the actual living quarters constitutes residential use and is prohibited.
- Lessee agrees that the cantilevered deck measurements submitted to the Lessor are accurate to the best of the Lessee's knowledge.

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 August 14, 2012, the Commission authorized a General Lease - Recreational Use to Huntington Beach Properties, LLC for the use of an existing boat dock, access ramp, and reconstruction of a cantilevered deck adjacent to 3581 Courtside Circle, Huntington Beach, Orange County ([Item 75, August 14, 2012](#)).

On April 20, 2017, staff performed a rent review as directed by lease terms and conditions ([Item 72, April 20, 2017](#)). This resulted in the modification of annual rent from \$1,690 to \$2,293. The property was sold to Minh T. Nguyen and Tien M. Nguyen on September 9, 2021, without notification to the Commission. The lease expired on August 13, 2022.

The Applicant is now applying for a General Lease – Recreational Use for the use of the existing boat dock, access ramp, and cantilevered deck. Staff recommends issuance of a General Lease – Recreational Use to the Applicant, to take effect on December 5, 2023. Because the invoices were paid through August 13, 2022, staff further recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$3,850 for the period prior to December 5, 2023.

The proposed lease will require the Applicant to indemnify the State for the entire period of the unauthorized occupation, ensuring the State is protected. The lease provisions regarding indemnity will apply from September 9, 2021, the date Lessee took title to the upland property, through December 4, 2023, the day before the beginning of the new lease.

The lease premises are located in the Midway Channel of Huntington Harbour. The Midway Channel was created in the early 1960s, and the State of California acquired fee ownership of this channel in 1962. The upland parcel adjacent to the Lease Premises is privately owned and developed with a residence. There is no public access at this location because the private upland property directly abuts the concrete bulkhead that defines the limits of the channel. However, the boat dock on the Lease Premises terminates at the pierhead line which leaves the majority of the channel available for navigation and public recreation.

The subject facilities are privately owned and maintained and have existed at this location for many years. The boat dock and access ramp facilitate 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 cantilevered deck is connected to the upland residence and serves as an extension of the upland property's backyard. Such residential use is generally not consistent with the Public Trust Doctrine; however, the cantilevered deck extends no more than 5 feet over the Midway Channel and does not substantially interfere with the public's right of navigation or access. Because the cantilevered deck serves as an extension of the upland property, proposed rent for the deck is calculated utilizing a benchmark rate based on nearby upland land values to ensure the State receives appropriate compensation for this use of sovereign land.

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 imposes special conditions regarding use of the cantilevered deck. 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. Currently, the area already experiences flooding during high tides exceeding 6.7 feet, King Tides, and El Niño events, impacting road infrastructure and boat ramps and launches (see [Figure 6-17](#) in *City of Huntington Beach Sea Level Rise Vulnerability Assessment, 2021*). While adjacent to two wetlands, Bolsa Chica Ecological Reserve and the Seal Beach National Wildlife Refuge, which may offer a natural buffer to storm surges and lessen flood risks, the area is still highly vulnerable due to its low elevation.

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. Additionally, the area is vulnerable to rising groundwater levels, which are currently estimated to be between 1-2 meters below the surface of much of Huntington Harbour (see [Figure 6-25](#) in *City of Huntington Beach Sea Level Rise Vulnerability Assessment*, 2021).

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.

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. Locally available resources such as the [upcoming update](#) to the City of Huntington Beach's Local Coastal Program, the 2021 City of Huntington Beach [Sea Level Rise Vulnerability Assessment](#), and the *State of California Sea Level Rise Guidance: 2018 Update* (linked above) can be valuable references for understanding the impacts from climate change and options available to minimize the risks.

Regular maintenance, as referenced in the terms of the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Lessee 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 and rising groundwater levels.

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 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, and cantilevered deck, 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.

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 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.

2. Find that the existing and, for a limited period, continuing use 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.
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$3,850 for the unauthorized occupation of State lands for the period prior to December 5, 2023.
2. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning December 5, 2023, for a term of 10 years, for the use of an existing boat dock, access ramp, and cantilevered deck; annual rent in the amount of \$2,940, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.