

Staff Report 44

LESSEE:

Robert Sebring, Jr. and Gail Sebring, as Trustees of the Sebring Family Trust dated January 10, 2002

APPLICANT:

Stephen Temming and Diane Temming

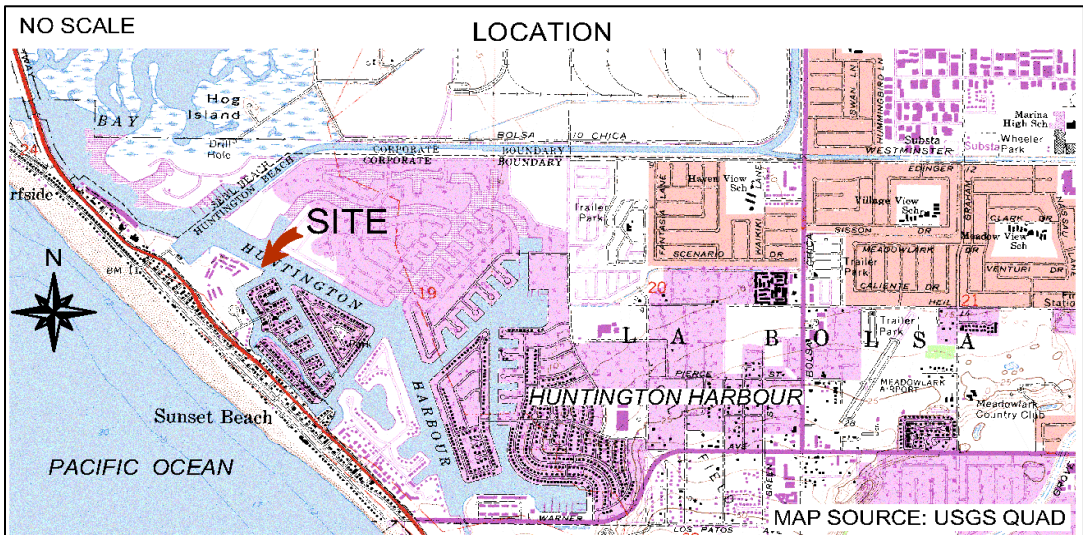
PROPOSED ACTION:

Rescission of prior authorization for an assignment of a General Lease – Recreational Use, Termination of a General Lease – Recreational Use, and Issuance of a General Lease – Recreational Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16402 Grimaud Lane, Huntington Beach, Orange County (as shown in Figure 1).

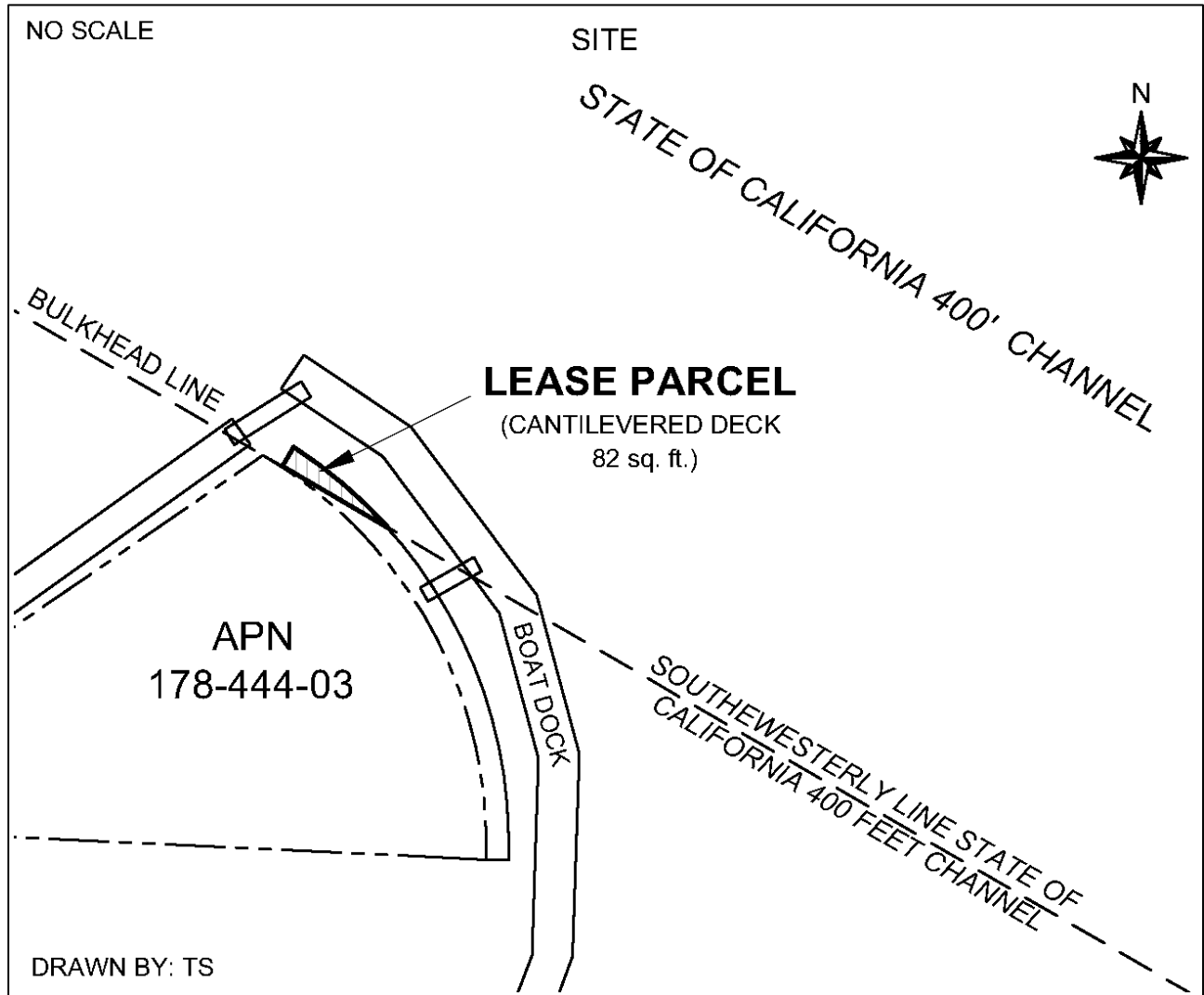
Figure 1. Location



AUTHORIZED USE:

Use of an existing 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 April 4, 2024.

CONSIDERATION:

\$845 per year, with an annual Consumer Price Index adjustment.

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.
- No permanent roof or other enclosures will be constructed or permitted 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.
- Lessee agrees the provisions of Section 3, Paragraph 8 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands, from August 16, 2023 through April 3, 2024.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 23, 2020, the Commission authorized a General Lease – Recreational Use to Robert G. Sebring and Gail Sebring, Trustees of the Sebring Family Trust, dated January 10, 2002, for the use and maintenance of an existing cantilevered deck ([Item 51, June 23, 2020](#)). That lease is set to expire on June 27, 2030.

On August 25, 2021, the Commission authorized an assignment of lease to Michael McCoy, Trustee of the McCoy 1995 Inter Vivos Trust dated January 25, 1995 ([Item 33, August 25, 2021](#)). Though approved by the Commission, this assignment of lease was never fully executed.

On August 16, 2023, ownership interest in the upland parcel was transferred to Stephen Temming and Diane Temming. The Applicant is now applying for a

General Lease- Recreational Use for the use of the existing cantilevered deck. Due to the change in ownership and because the previously authorized assignment was never fully executed, staff is recommending rescission of the August 25, 2021, authorization of an assignment of lease, termination of Lease 8881, and issuance of a General Lease – Recreational Use to the Applicant, to take effect on April 4, 2024.

The boat dock and public access ramp at this location (see Figure 2, Site Map, above) are under lease to Broadmoor Huntington Harbour Community Association, under Lease 5799, and are therefore not affiliated with this lease and rental calculation.

The Applicant has occupied State land without authorization since taking ownership of the upland property on August 16, 2023. However, since the authorization of assignment of lease on August 25, 2021, Michael McCoy, Trustee of the McCoy 1995 Inter Vivos Trust dated January 25, 1995, has been paying the rent invoices for the subject improvements. Commission accounting records show that annual rent has been paid through June 27, 2024. Thus, the State has already been compensated for the period of unauthorized occupation, and no additional compensation will be required. Staff recommends that the rent on the new lease be prorated to account for rent that has already been paid.

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 Premises are located in the Main Channel of Huntington Harbour. The Main 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.

The Applicant owns the uplands adjoining the lease premises. The subject improvements are privately owned and maintained. 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 Main 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 structure 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 ([Figure 6-17](#), 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 structure. 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 ([Figure 6-25](#), 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 a fixed, overhanging deck. Flooding conditions could cause the structure to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. The fixed feature 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, 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; is consistent with the common law Public Trust Doctrine; and is in the best interests 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 may be required to remove the cantilevered deck and return the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. The parcel is associated with another lease (Lease No. 5799) with the Commission for a boat dock and public access ramp.
3. 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.
4. Recission of the prior approval of assignment of lease and termination of the lease are not projects as defined by the California Environmental Quality Act

(CEQA) because they are administrative actions 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).

5. 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

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 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

1. 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.
2. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize the rescission of the Commission's August 25, 2021 (Item 33), approval of assignment of a General Lease – Recreational Use.
2. Authorize termination, effective August 16, 2023, of Lease 8881, a General Lease – Recreational Use, issued to Robert G. Sebring and Gail Sebring, Trustees of the Sebring Family Trust, dated January 10, 2002.

3. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning April 4, 2024, for a term of 10 years, for use of an existing cantilevered deck; annual rent in the amount of \$845, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.