

Meeting Date: 10/17/24
Lease Number: 9525
Staff: D. Romero

Staff Report 43

LESSEE/ASSIGNOR:

PG Marina Investors II

APPLICANT/ASSIGNEE:

Argo SMI Peter's Landing, LLC, a Delaware limited liability company

PROPOSED ACTION:

Assignment and Amendment of a General Lease – Commercial Use, and approval of an Agreement and Consent to Encumbrance of Lease form.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Main Channel of Huntington Harbour, Huntington Beach, Orange County (as shown in Figure 1 below).

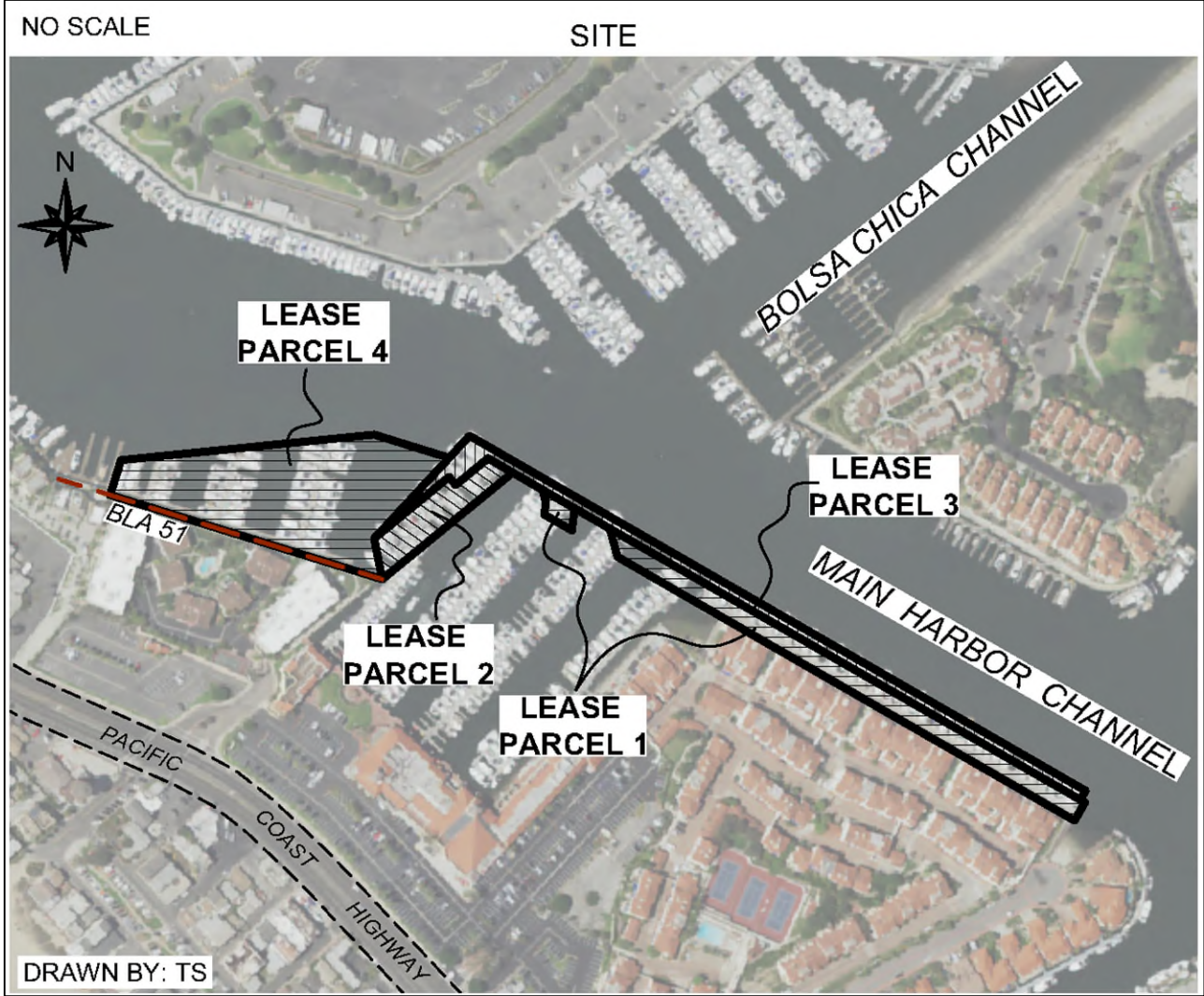
Figure 1. Location



AUTHORIZED USE:

Operation, use, and maintenance of an existing commercial marina and public fishing dock (as shown in Figure 2 below).

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:

30 years, beginning December 3, 2018.

CONSIDERATION:

\$72,986 per year.

PROPOSED AMENDMENT:

- Revise the annual rent from \$72,986 to \$88,012, with an annual Consumer Price Index adjustment.
- Revise the surety bond or other security from \$100,000 to \$220,000.
- Lessee must provide proof regarding sale of the adjacent property and the Authorized Improvements on or before January 15, 2025 (within 90 days following Commission authorization).
- If the sale of the adjacent property and improvements does not occur on or before January 15, 2025, then this Assignment and Amendment shall be null and void.
- Approve an Agreement and Consent to Encumbrance of Lease form for future execution as needed under the Commission’s Delegation of Authority.
- All other terms and conditions of the lease to remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE’S BEST INTERESTS:

On December 3, 2018, the Commission authorized the issuance of a General Lease – Commercial use to PG Marina Investors II, for a portion of the existing Peter’s Landing commercial marina ([Item 59, December 3, 2018](#)). On April 27, 2021, the Commission authorized an amendment of lease to include the installation, use, and maintenance of a new public fishing dock.

A sale of the marina and upland property is currently in progress; however, ownership interest in the upland parcel has not yet been transferred to the Applicant. The Applicant, in coordination with the Lessee, is now applying for an assignment and amendment of Lease Number 9525, for the operation, use, and maintenance of the portion of the existing marina occupying sovereign land in Huntington Harbour. The effective date of this assignment and amendment will be the date of sale for the upland property and the improvements.

Since the upland property sale and transfer of ownership interest has not yet been completed, staff recommends that the assignment and amendment only be in full force and effect upon the submittal to the Commission of proof of said sale. The sale and subsequent submittal of proof must be completed within 90 days following the Commission's authorization of this action, on or before January 15, 2025. If the upland sale does not go through or proof is not provided within the 90-day period, the lease will not be assigned or amended, and PG Marina Investors II will remain the lessee under the current lease terms.

Under the current lease terms, the lessee maintains liability insurance and has provided a surety bond. These amounts are subject to increase over the lease term and serve to mitigate costs that might otherwise be shouldered by the State, including circumstances when the State must take restorative actions on the Lease Premises upon lease termination from default, or abandonment of the Lease Premises. Pursuant to this provision, staff has conducted a review of the bond under this lease and recommends that the bond be increased from \$100,000 to \$220,000, effective upon the sale of the upland property and the improvements and submittal of proof of said sale.

The Applicant is qualified to hold the lease. The lease is in good standing, and staff has not discovered any information that would provide a basis for withholding the amendment and assignment. Staff believes that amending and assigning the lease is in the State's best interest to ensure that a capable lessee continues to be committed to managing the improvements and fulfilling the lease obligations. The proposed amendment and assignment do not alienate the State's fee simple interest.

The Applicant is also requesting that the Commission approve a modified Agreement and Consent to Encumbrance of Lease form. The Applicant has a credit facility (a type of loan) with Wells Fargo bank and intends to use it to fund the purchase of the upland property and associated improvements. In exchange for the financing, the credit facility authorizes Wells Fargo to require the Applicant to mortgage the lease, if needed, to finance the debt. In approving the modified encumbrance agreement form, the Commission retains the right to approve any transfer from a prospective lending institution to a prospective lessee, should any foreclosure of the loan occur.

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 assignment 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 experiences flooding during high tides exceeding 6.7 feet, King Tides, and El Niño events, impacting road infrastructure and boat ramps and launches ([page 51](#), Ch. 7: Vulnerability Assessment, 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 ([Figure 6-20](#), City of Huntington Beach *Sea Level Rise Vulnerability Assessment*, 2021).

The lease is a 30-year General Lease – Commercial Use that began on December 3, 2018, and may be subject to the climate change effects and projected sea level rise scenarios provided above. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact analyses on the leased facilities would be assessed if a new lease is considered in 2048 and would be based on projected climate change and sea level rise scenarios at that time.

CONCLUSION:

For all the reasons above, staff believes the approval of this lease assignment and amendment will not result in a change in the use of, or impacts to, Public Trust resources at this location, at this time, and for the remaining term of the lease; and is in the best interest of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for assignment and amendment of lease 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 a trustee of the State’s Public Trust lands authorized by law. The Lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the “Meeting Evolving Public Trust Needs” and “Leading Climate Activism” Strategic Focus Areas of the Commission’s 2021 – 2025 Strategic Plan.
3. Assignment and amendment of the lease and approval of an Agreement and Consent to Encumbrance of Lease form are not projects as defined by the California Environmental Quality Act 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment and amendment of the lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the assignment of Lease Number 9525, a General Lease – Commercial Use of sovereign land, from PG Marina Investors II to Argo SMI Peter's Landing, LLC, a Delaware limited liability company, effective upon the sale of the upland property and the improvements and submittal of proof of said sale, which must be completed on or before January 15, 2025.
2. Authorize the amendment of Lease Number 9525, a General Lease – Commercial Use, effective upon the sale of the upland property and the improvements and submittal of proof of said sale, which must be completed on or before January 15, 2025, to include provisions regarding the sale of the authorized improvements and Assignment of Lease; to revise rent from \$72,896 to \$88,012, with an annual Consumer Price Index adjustment; to revise the surety bond or other security from \$100,000 to \$220,000; all other terms and conditions of the lease shall remain in effect without amendment.
3. Approve a modified Consent and Agreement to Encumbrance of Lease form substantially in the form as attached to the lease as Exhibit C, and delegate authority to staff to execute a valid encumbrance agreement upon receipt of a written request from the Applicant and review and acceptance by staff under the Commission's Delegation of Authority.