

# Staff Report 36

## APPLICANT:

Bolero HH, LLC, a California Limited Liability Company

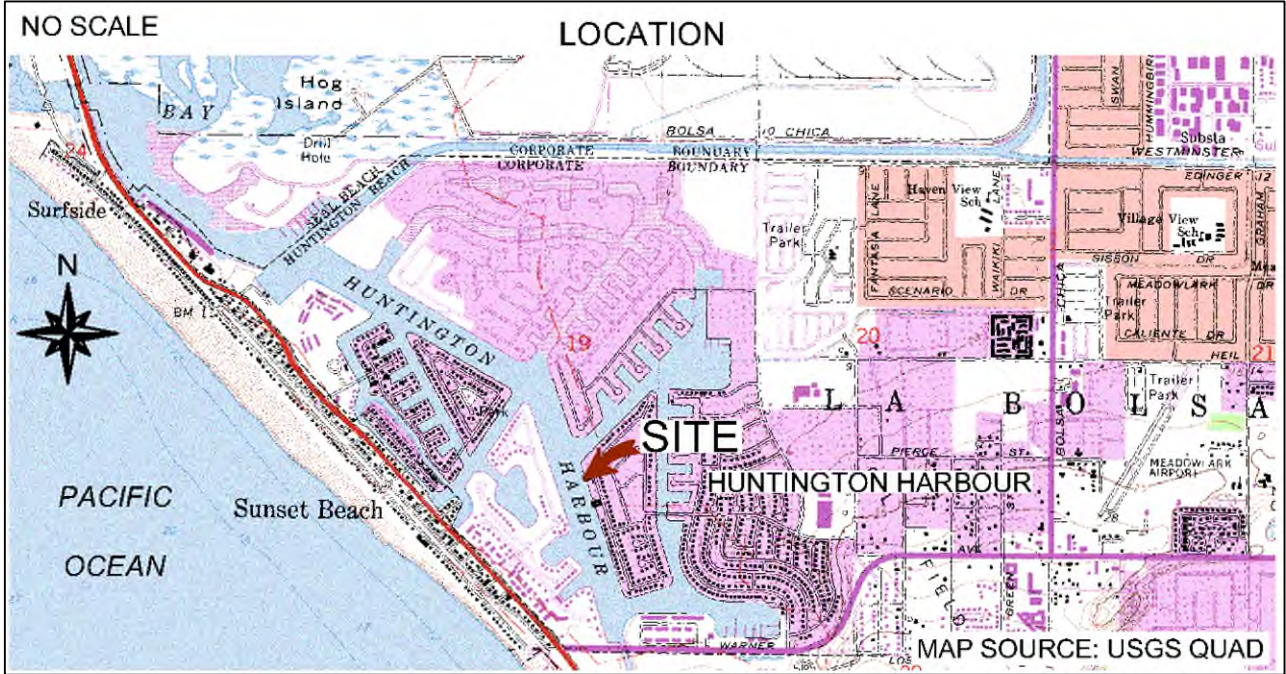
## PROPOSED ACTION:

Amendment of a General Lease – Recreational Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 16791 Bolero Lane, 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).

**Term:**

10 years, beginning August 23, 2022.

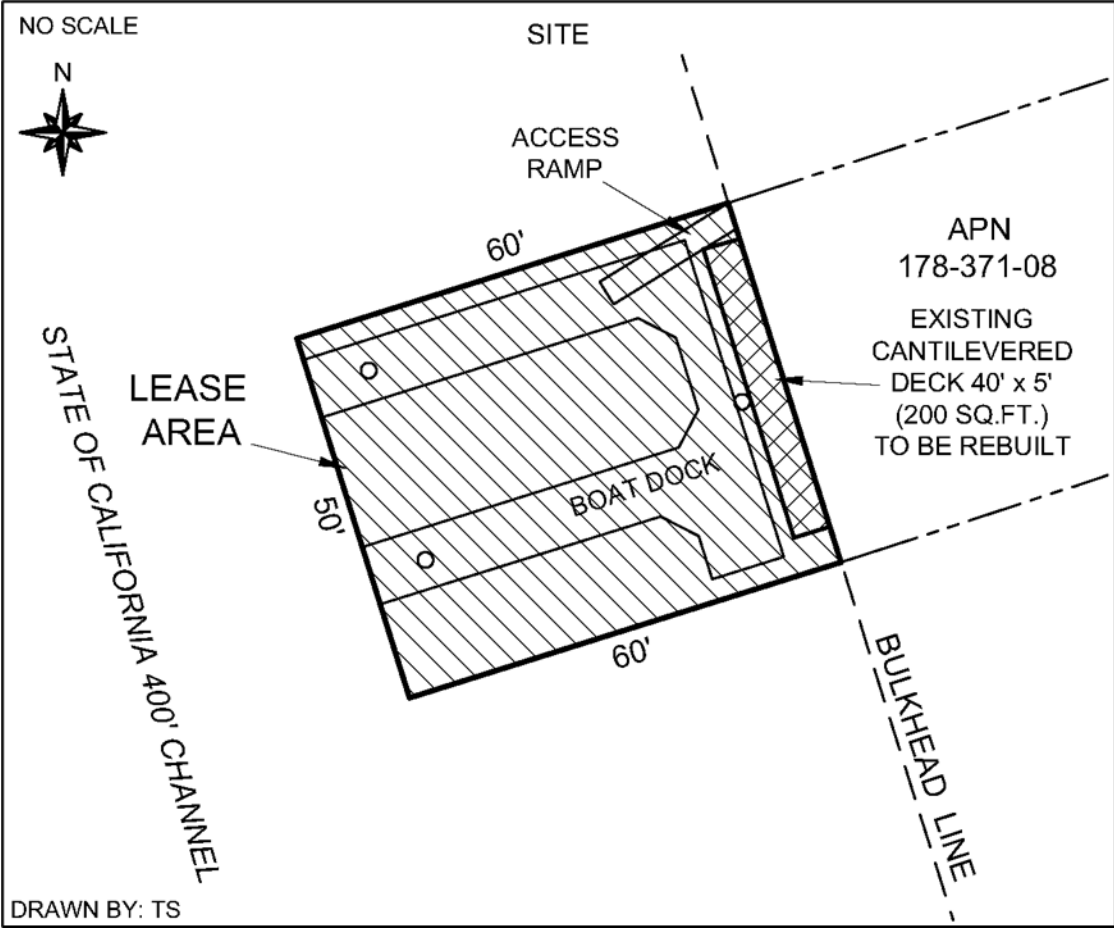
**CONSIDERATION:**

\$3,324 per year, with an annual Consumer Price Index adjustment.

**PROPOSED AMENDMENT:**

- Authorize the reconstruction of a cantilevered deck, adjacent to 16791 Bolero Lane, near Huntington Beach, Orange County (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.

- Within 60 days of completing the construction of the cantilevered deck, Lessee will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed. Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only) in the Lease. Once approved by the Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Exhibit A, Land Description, and Exhibit B, Site and Location Map, are replaced with a new Exhibit A, Land Description, and Exhibit B, Site and Location Map, attached and made a part hereof.
- Reconstruction of the cantilevered deck may begin upon Lessee's receipt of all required approvals and permits from the appropriate regulatory bodies and must be completed in conformance with the conditions and limitations of these permits.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 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 23, 2022, the Commission authorized a General Lease – Recreational Use to Carolyn Marie Healy and Steven Anthony Healy, as Successor Co-Trustees of the Peter N. Healy and Rita L. Healy Family Trust dated February 16, 1983, Trust As, as to an undivided 50% interest; Carolyn Marie Healy and Steven Anthony Healy, as Successor Co-Trustees of the Peter N. Healy and Rita L. Healy Family Trust dated February 16, 1983, Trust B, as to an undivided 45.54% interest; and Carolyn Marie Healy and Steven Anthony Healy, as Successor Co-Trustees of the Peter N. Healy and Rita L. Healy Family Trust dated February 16, 1983, Trust C, as to an undivided 6.46% interest, for the use and maintenance of an existing boat dock, access ramp,

and cantilevered deck ([Item 28, August 23, 2022](#)). On June 7, 2024, the Commission authorized the assignment of that lease to Bolero HH, LLC, a California Limited Liability Company ([Item 52, June 7, 2024](#)). The Lease will expire on August 13, 2032.

Since the assignment of the Lease, the house occupying the adjacent upland parcel has been substantially demolished, and the Applicant is seeking to construct a new home there. The dock and access ramp remain unchanged. The cantilevered deck which is part of the authorized improvements in the existing lease has been removed, and the Applicant is seeking to rebuild it to the same dimensions as the previously existing deck. The Applicant is now seeking to amend the General Lease – Recreational Use for the proposed reconstruction of a cantilevered deck. Staff recommends the amendment of the General Lease – Recreational Use, to be effective April 2, 2025.

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 as a result of a land exchange between the Commission and the Huntington Harbour Corporation. Any projects, including new development or use of existing facilities extending into the Main Channel beyond the bulkhead require a lease from the Commission.

The proposed cantilevered deck will be connected to the upland residence and serve 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. The lease contains provisions to restrict the placement of a permanent roof or enclosing the cantilevered deck. There will be no change to rent because the current rent already includes compensation for the cantilevered deck that has been removed but will be replaced in the same footprint with this proposed amendment.

The proposed amendment of lease does not alienate the State's fee simple interest or permanently impair public rights. The lease term is limited to ten years and 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 occupation of the public land involved.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, increased wave activity, storm events, and flooding are not limited to the open coast. The proposed cantilevered deck replacement and reconstruction project, subject to the lease amendment, 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 ([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).

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 proposed lease amendment is for a fixed, overhanging deck proposed for replacement. 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.

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 Commission's jurisdictional area because 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 existing 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 believe the issuance of this amendment 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:**

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1. Approval or denial of an amendment 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 will not be permitted to construct the cantilevered deck. The lessee has no right to a new lease or amendment 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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

## **APPROVAL REQUIRED:**

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- California Coastal Commission

## **RECOMMENDED ACTION:**

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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 2, Replacement or Reconstruction; California Code of Regulations, title 14, section 15302.

### **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 does not substantially interfere with Public Trust

needs and values at this location and is consistent with the common law Public Trust Doctrine.

2. Find that the construction and use of the proposed 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 the amendment of Lease Number 9006, a General Lease – Recreational Use to authorize the reconstruction and use of a cantilevered deck; to include certain special provisions related to permitting and construction; and to replace the existing lease Exhibit A, Land Description, and lease Exhibit B, Site and Location Map; all other terms and conditions of the lease shall remain in effect without amendment.
2. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.