

**STAFF REPORT
C57**

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04/05/19
PRC 8652.1
K. Connor
B. Johnson

S 34

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Iris M. Schuster, Trustee of the Schuster Residence Trust I and II, u/d/t March 6, 2001

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 16661 Carousel Lane, Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, access ramp, cantilevered deck, and bulkhead protection.

LEASE TERM:

10 years, beginning April 5, 2019.

CONSIDERATION:

Boat dock, access ramp, and cantilevered deck: \$2,622 per year, with an annual Consumer Price Index adjustment.

Bulkhead protection: The public health and safety; with the State reserving the right to set a monetary rent if the lessor finds such action to be in the State's best interests, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

Lessee must pay compensation in the amount of \$8,196 for the prior unauthorized use of State land by May 5, 2019, or the lease will automatically terminate.

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STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6224.3, 6224.4, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 1911, 2000, 2003, and 3000 through 3016.

Background:

On December 8, 2005, the Commission authorized the issuance of Lease No. PRC 8652.1, a General Lease – Recreational and Protective Structure Use, to Iris M. Schuster, Trustee of the Schuster Residence Trust I and II, u/d/t March 6, 2001, for a term of 10 years ([Item C65, December 8, 2005](#)). The lease term began December 8, 2005, with consideration for the existing cantilevered deck to be annual rent in the amount of \$900. This lease was executed on December 28, 2005.

The Lessee failed to pay annual rent ~~for 3 lease years~~ starting December 8, 2009. Staff sent multiple letters to the Lessee requesting lease compliance, including the payment of rent and submittal of proof of insurance. On August 8, 2011, staff sent a letter to the Lessee setting forth the defaults and requesting each be cured. On December 27, 2011, staff notified the Lessee that failure to cure defaults would result in staff taking an enforcement action that could include terminating the lease and seeking appropriate legal remedies.

On January 26, 2012, the Commission found that the Lessee was in immediate default for failure to pay rent and failure to provide proof of insurance ([Item C85, January 26, 2012](#)). The Commission authorized staff to issue a Notice of Termination and Ejectment and, if the defaults were not cured within 15 days, terminate the lease and file a civil suit. However, a Notice of Termination and Ejectment was not filed, and the lease subsequently expired on December 7, 2015.

Despite staff's efforts, the Lessee did not apply for a lease or pay past-due rent after the lease's expiration. As authorized by Public Resources Code sections 6224.3 and 6224.4 and the Commission's regulations, staff posted and mailed a Notice of Violation on December 26, 2018, to begin an administrative enforcement action against the Lessee. In response, the Lessee is now applying for a new General Lease – Recreational and Protective Structure Use.

On February 5, 2019, the Executive Officer approved a stay of the administrative enforcement process while staff processed the lease application. Should the Commission approve the issuance of this lease,

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staff recommends the Commission continue the enforcement stay for 30 days after the approval of this lease to allow the Applicant to execute, notarize, and return the signed lease to the Commission. If Applicant performs these conditions within this 30-day period, staff recommends the Commission authorize staff to terminate enforcement matter AH-002 under California Code of Regulations, title 2, section 3005.

The proposed lease requires the Applicant to pay \$8,196 to reimburse the public for the Applicant's prior unauthorized use of State land from the expiration of the previous lease to the beginning of the proposed lease term. The proposed lease requires the Applicant to make this payment by May 5, 2019, but allows staff to extend this deadline if needed. If the Applicant does not pay the compensation by the deadline and the deadline is not extended, then the lease automatically terminates.

Public Trust and State's Best Interests Analysis:

The subject facilities, consisting of a boat dock, access ramp, cantilevered deck, and bulkhead protection are privately owned and maintained and located within the Main Channel of Huntington Harbour. The boat dock and access ramp are used for recreational boating. 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 Main 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 boat dock extends to the pierhead line, which is 60 feet into the 400-foot-wide channel, leaving the majority of the Main Channel available for navigation and public recreation.

The existing cantilevered deck is connected to the upland residence. 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 right of navigation or access. Proposed rent for the cantilevered deck is calculated using a benchmark rate based on nearby upland land values to ensure the State receives appropriate compensation for use of sovereign land as the deck serves as an extension of the upland property's private backyard.

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

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and does not grant the lessee exclusive rights to the lease 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 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. Past flood events reached almost halfway up the exposed height of the pilings, which do not extend more than a few feet above the dock, as evidenced by photos included with the lease application. 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 Angeles¹

| 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: ¹ Projections are with respect to a 1991 to 2009 baseline.

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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. The lease area contains fixed features, including pilings, an overhanging deck, and bulk protection, 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 to withstand future conditions; in particular, the bulkhead underneath the deck serves to stabilize the bank, and loss or degradation of this structure would result in property damage and public safety concerns within the lease area and the surrounding waterways.

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 required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland 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 the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time,

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and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. 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.

EXHIBITS:

- A. Land Description
- B. Site And Location Map

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 and maintenance of the existing boat dock, access ramp, and bulkhead protection will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance 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; and

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

AUTHORIZATION:

1. Authorize acceptance of compensation in the amount of \$8,196 for unauthorized use of State land following the prior lease's expiration.
2. Authorize issuance of a General Lease - Recreational and Protective Structure Use to Iris M. Schuster, Trustee of the Schuster Residence Trust I and II, u/d/t March 6, 2001, beginning April 5, 2019, for a term of 10 years, for the use and maintenance of an existing boat dock, access ramp, cantilevered deck, and bulkhead protection, as described in Exhibit A and shown on Exhibit B (for reference purposed only) attached and by this reference made a part hereof; annual rent in the amount of \$2,622, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. Authorize staff to terminate the pending administrative enforcement action against Iris M. Schuster, Trustee of the Schuster Residence Trust I and II, u/d/t March 6, 2001, if the Applicant submits, by May 5, 2019, a properly executed and notarized lease.

EXHIBIT A

PRC 8652.1

LAND DESCRIPTION

A parcel of submerged land in Huntington Harbour, in the City of Huntington Beach, Orange County, California, described as follows:

Beginning at the most westerly corner of Lot 142, as said lot is shown and so designated on that certain map of Tract No. 5481 filed in Book 215, Pages 11 through 22, Official Records of said County; thence along the westerly extension of the northerly line of said lot 60.00 feet, more or less, to the pierhead line as said pierhead line is described in Resolution No. 5631, passed and adopted January 21, 1986 by the City Council of said City; thence southerly 50.00 feet along said pierhead line to the westerly extension of the southerly line of said lot; thence along said extension 60.00 feet, more or less, to the most southerly corner of said lot; thence northerly along the westerly line of said lot to the point of beginning.

END OF DESCRIPTION

Prepared 11/08/2005 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

State of California Channel

LEASE AREA

EXISTING PROTECTIVE STRUCTURE

60'

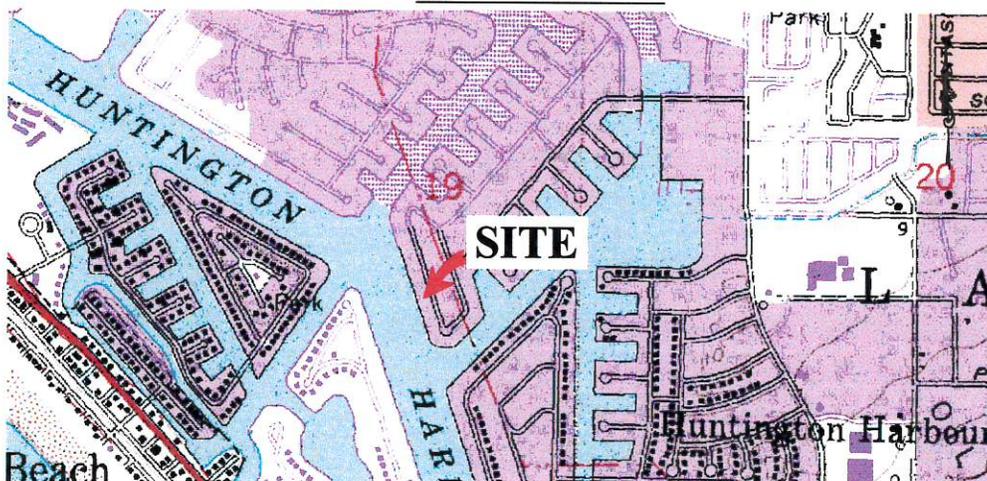
APN 178-053-04

EXISTING CANTILEVERED DECK 5'X40' 200 SQ. FT.

16661 CAROUSEL LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 8652.1
 SCHUSTER TRUST I & II
 APN 178-053-04
 GENERAL LEASE -
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 ORANGE COUNTY



MJJ 2/01/19