

**CALENDAR ITEM
C62**

A 67
S 35

10/19/12
PRC 3080.9
R. Collins

AMENDMENT OF LEASE

LESSEE:

Gary and Ruth J. Leibowitz

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Midway Channel of Huntington Harbour adjacent to 3422 Gilbert Drive in the City of Huntington Beach, Orange County.

AUTHORIZED USE:

Use and maintenance of a boat dock, access ramp, and cantilevered deck extending no more than five feet waterward of the bulkhead.

LEASE TERM:

Ten years, beginning October 1, 2007.

CONSIDERATION:

As to the boat dock and access ramp, no monetary consideration pursuant to Public Resources Code Section 6503.5; as to the use and maintenance of the existing cantilevered deck, annual rent in the amount of \$1,013, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Combined single limit liability insurance coverage in the amount of no less than \$1,000,000.

PROPOSED AMENDMENT:

Authorize the removal of the cantilevered deck and rescind the consideration associated with the cantilevered deck effective September 30, 2012. All other terms and conditions of the lease shall remain in effect without amendment.

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OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. The State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1961 as a result of a land exchange entered into between the Commission and the Huntington Harbour Corporation, recorded as Sovereign Lands Location No. 34. Dated December 22, 1960 and recorded on January 231, 1961 in Book 5611, Page 470, Official Records, Orange County, California. Projects, including new development or maintenance of existing facilities, extending into these Channels beyond the bulkhead line require a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicants' upland property is located along the Midway Channel of Huntington Harbour.
3. On September 13, 2007, the Commission authorized a General Lease – Recreational Use to Gary and Ruth J. Leibowitz for the continued use and maintenance of an existing boat dock, access ramp, and cantilevered deck extending no more than five feet waterward of the bulkhead. The lease will expire on September 30, 2017. Lessees have removed from the lease premises the cantilevered deck. Staff is recommending amendment of the lease to delete from the lease under “Authorized Use” the cantilevered deck and to delete from the lease under “Consideration” the rent associated with the deck.
4. On October 8, 2011, Chapter 585, Statutes of 2011 became law. The law took effect on January 1, 2012. This new law repeals section 6503.5 of the Public Resources Code, which had allowed rent-free use of State-owned land by certain private parties for their recreational piers. It replaced the former section with a new section 6503.5 which provides that the State Lands Commission “shall charge rent for a private recreational pier constructed on state lands.” The law provides for two exceptions to the imposition of rent. Those exceptions are for:
 - a. A lease in effect on July 1, 2011 through the remaining term of that lease. If a lease in effect on July 1, 2011 expires or is otherwise terminated, any new lease will be subject to rent; and
 - b. A lease for which the lease application and application fees were submitted to the Commission prior to March 31, 2011.

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Because the lease was in effect on July 1, 2011, it meets the statutory requirements for an exception to recently enacted changes to Section 6503.5 of the Public Resources Code, and existing boat dock and access ramp are therefore not currently subject to rent.

5. The staff recommends that the Commission find that the subject lease amendment does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject lease amendment is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize the Amendment of Lease No. PRC 3080.9, a General Lease - Recreational Use, of land as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, to remove from the authorized use of the cantilevered deck and rescind the consideration associated with the cantilevered deck effective September 30, 2012; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 3080.9

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 southerly corner of Lot 19, as said lot is shown and so designated on that certain map of Tract No. 4677 filed in Book 168, Pages 14 through 18 of Miscellaneous Maps, Official Records of said County; thence southeasterly along the southeasterly extension of the southwesterly line of said lot to a line parallel with and 30.00 feet southeasterly, measured at a right angle, of the southeasterly line of said lot; thence northeasterly along said parallel line to the southeasterly extension of the northeasterly line of said lot; thence northwesterly along said southeasterly extension to the most easterly corner of said lot; thence along said southeasterly line of said lot to the point of beginning.

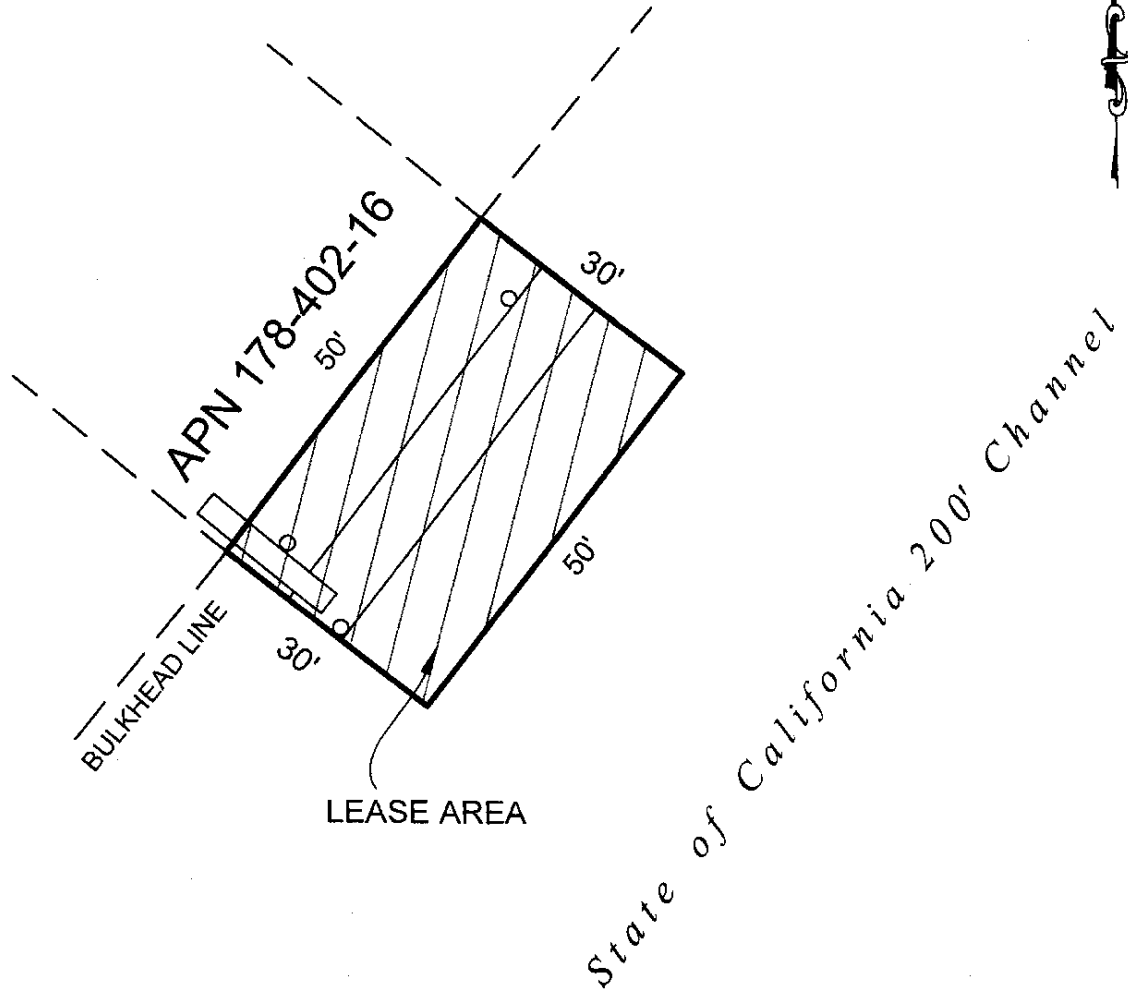
END OF DESCRIPTION

Prepared 07/11/2007 by the California State Lands Commission Boundary Unit



NO SCALE

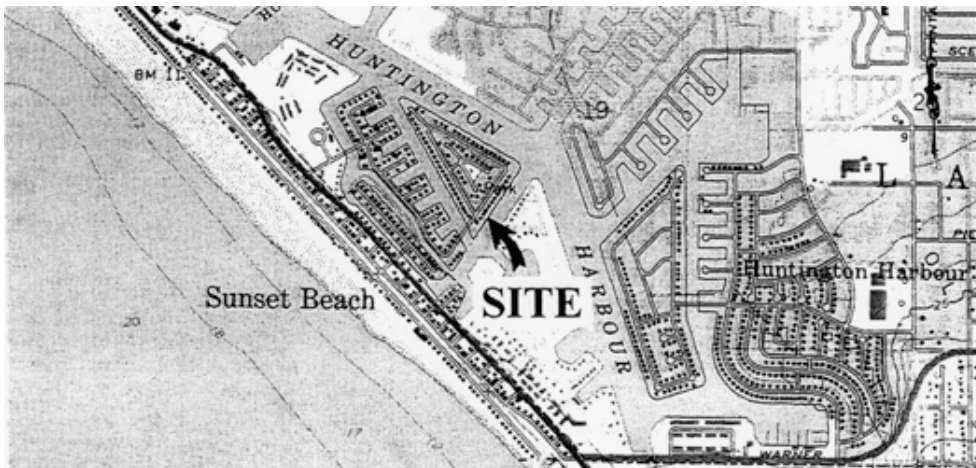
SITE



3422 GILBERT DRIVE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3080.9
 LEIBOWITZ
 APN 178-402-16
 GENERAL LEASE -
 RECREATIONAL USE
 ORANGE COUNTY



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.