

**CALENDAR ITEM
C76**

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S 34

10/14/14
PRC 3168.1
A. Franzoia

GENERAL LEASE - RECREATIONAL USE

APPLICANT:

Melton L. Bacon and Katherine L. Bacon, Trustees of the Melton Bacon and Katherine L. Bacon Family Trust

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Main Channel of Huntington Harbour, adjacent to 16572 Somerset Lane, Huntington Beach, Orange County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning October 14, 2014.

CONSIDERATION:

Rent for the entire 10-year term in the amount of \$23,830 due at the commencement of the Lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

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

Bond:

A bond is required by December 20, 2014, unless Lessee sells the upland property before December 19, 2014. The bond amount shall be \$100,000 or an amount sufficient to cover all expenses detailed in the higher of two bids from reputable, licensed contractors for removal of all improvements. Bids must be deemed acceptable by the Executive Officer of the State Lands Commission.

Other:

No permanent roof or other enclosure will be constructed on the Lease Premises. Applicants agree that any proposed use of the Lease Premises

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that includes an extension of the actual living quarters constitutes residential use and is prohibited.

OTHER PERTINENT INFORMATION:

1. The Applicants own the upland adjoining the Lease premises.
2. The State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1962 as a result of a land exchange entered into between the Commission and the Huntington Harbour Corporation, recorded as the Amended Agreement for the Exchange of Lands in the Sunset Beach Area, Orange County, California, and recorded on March 7, 1963 in Book 6457, Page 819, 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 Applicant's upland property is located along the Main Channel of Huntington Harbour.
4. The Commission first authorized improvements adjacent to 16572 Somerset Lane in July 1974. The occupants of this property were under lease with the Commission for the improvements in the Main Channel until Mr. Bacon purchased the property in March of 2006. Mr. Bacon refused to come under lease despite multiple attempts by Commission staff.
5. Mr. Bacon owned another property on the Main Channel of Huntington Harbour at 16752 Coral Cay Lane (Coral Cay Property). On September 7, 2012, the Huntington Harbour Sheriff's Marine Patrol noticed a worker modifying the dock adjacent to the Coral Cay property without a building permit. The City of Huntington Beach refused to issue a building permit for the dock modifications without a lease from the Commission as landowner, and eventually issued a stop work order on the Coral Cay Property dock.
6. On October 12, 2012, Mr. Bacon filed suit against the Commission claiming property rights in the Main Channel adjacent to the Coral Cay Property and that the Commission could not charge rent against either the Coral Cay or Somerset Properties.
7. On May 1, 2014, Mr. Bacon moved to dismiss his claims of easement. At the May 22, 2014, Mandatory Settlement Conference, Commission staff and Mr. Bacon reached a tentative settlement agreement where Mr. Bacon would submit lease applications for the Coral Cay and Somerset properties; pay \$42,117 in back rent, penalties and interest; and pay

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\$17,883 in attorney's fees to the Office of the Attorney General. The settlement also provided that in the event the Commission approved leases for the encroachments, Mr. Bacon will prepay all 10 years of rent at the commencement of the Lease, and will post a bond sufficient to remove all improvements if he still owns either property in six months.

8. The Commission authorized this settlement agreement at the June 19, 2014, Commission meeting. Once Mr. Bacon has performed all requirements of the settlement agreement, the Executive Officer will execute such documents as necessary to finalize the settlement and dismiss the litigation against Mr. Bacon as per Commission authorization.
9. Staff received applications for both properties on July 21, 2014. Since that time, Mr. Bacon has sold the Coral Cay Property. Mr. Bacon's application for that property has been terminated. The new owner of the Coral Cay Property has submitted an application.
10. At the time this staff report was prepared, Mr. Bacon still owns the Somerset Property. In the event Mr. Bacon sells the upland property, the new owner may apply for an assignment of the remaining term of this Lease, or may apply for a new lease.
11. The 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.

12. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

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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).

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:

1. Authorize issuance of a General Lease-Recreational Use to Melton L. Bacon and Katherine L. Bacon, Trustees of the Melton Bacon and Katherine L. Bacon Family Trust beginning October 14, 2014, for a term of 10 years, for a boat dock, access ramp, and cantilevered deck as described on Exhibit A and shown on Exhibit B attached and by this reference made a part hereof; compensation in the amount of \$23,830 for full payment of the entire Lease term due at the commencement of the Lease; liability insurance in the amount of no less than \$1,000,000 per occurrence; and a bond is required by December 20, 2014, unless Lessee sells the upland property before December 19, 2014. The bond amount shall be \$100,000 or an amount sufficient to remove all improvements as detailed in the higher of two bids from reputable licensed contractors submitted by Lessee and deemed acceptable by the Executive Officer.
2. Authorize the Executive Officer to review bids submitted by Lessee and deem such bids acceptable on behalf of the Commission.

EXHIBIT A

PRC 3168.1

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 northerly corner of Lot 36, as said lot is shown and so designated on that certain map of Tract No. 4677 filed in Map Book 168, Pages 14 through 18, Official Records of said County; thence along the northeasterly extension of the northwesterly line of said lot 60.00 feet, more or less, to the pierhead line as said pierhead line is described in Resolution No. 5908, passed and adopted August 1, 1988 by the City Council of said City; thence southeasterly along said pierhead line to the northeasterly extension of the southeasterly line of said lot; thence southwesterly along said extension 60.00 feet, more or less, to the most easterly corner of said lot; thence northwesterly along the northeasterly line of said lot to the point of beginning.

END OF DESCRIPTION

Prepared 06/06/2005 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

STATE OF CALIFORNIA 400' CHANNEL



EXISTING BOAT DOCK

EXISTING ACCESS RAMP

LEASE AREA

EXISTING CANTILEVERED DECK 5' X 47' 235 SQ. FT.

APN 178-411-03

BULKHEAD LINE

16572 SOMERSET LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3168.1

BACON TRUSTEES

APN 178-411-03

GENERAL LEASE -
RECREATIONAL USE
ORANGE COUNTY



SITE

TS 08/12/14

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.