

**CALENDAR ITEM
C50**

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06/22/17
PRC 8241.1
S. Avila

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GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Del B. Brault and Andrea Margarete Brault, Co-Trustees of the Brault Family Trust, dated May 31, 1996, "Family" Trust (Exemption Trust)

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 16681 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 May 10, 2017.

CONSIDERATION:

Boat dock, access ramp, and cantilevered deck: \$1,910 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.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

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Public Trust and State's Best Interests Analysis:

On May, 10, 2007, the Commission authorized Lease No. PRC 8241.1, a General Lease - Recreational and Protective Structure Use, to Del B. Brault and Jane L. Brault as Trustees for the Brault Family Trust dated May 31, 1996, for a term of 10 years ([Calendar Item C62, May 10, 2007](#)). On December 29, 2016, interest in the upland parcel transferred to Del B. Brault and Andrea Margarete Brault, Co-Trustees of the Brault Family Trust, dated May 31, 1996, "Family" Trust (Exemption Trust). The lease expired on May 9, 2017. The Applicant is now applying for a new lease.

The prior lease authorized bulkhead repairs pursuant to Coastal Development Permit (CDP) No. 5-06-436, authorized by the California Coastal Commission (CCC) in December 2006 for 23 properties in Huntington Harbour, including the property owned by the Applicant. The bulkhead repairs were completed in February 2008 with the installation of a plastic sheet pile. As mitigation for the project, eel grass beds were planted and monitored for a 5-year period following project completion. Mitigation monitoring concluded in 2013.

The proposed lease would require the Applicant to continue to comply with all CDP special conditions. Of the nine CDP special conditions imposed for the bulkhead repair project, only Special Conditions 7 and 8 are currently applicable. Special Condition 7 requires the Applicant to submit biennial engineering reports to the CCC to monitor the bulkhead condition for the life of the repair. The most recent report was submitted to the CCC on April 14, 2010. Special Condition 8 requires the Applicant to replace the plastic sheet pile with an alternative material if new information indicates that the plastic sheet pile has harmful effects on the marine environment. It is staff's understanding that no new information is currently available; therefore, at this time the plastic sheet pile will remain in place.

The subject facilities, consisting of a boat dock, access ramp, cantilevered deck, and bulkhead protection are privately owned, maintained, and located within the Main Channel of Huntington Harbour. The boat dock and access ramp facilitate recreational boating because they are used for docking and mooring of recreational boats. 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

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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 pier head line that is 60 feet into the 400-foot-wide channel leaving the majority of the Main Channel available for navigation and public recreation. Although a cantilevered deck is not a use associated with traditional Public Trust uses, it extends no more than 5 feet over the Main Channel, and does not substantially interfere with the public right of navigation or access. The bulkhead protection is underneath the cantilevered deck and access ramp. There is no public access at this location and the bulkhead protection does not impede navigation or public recreation at this location.

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 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. Additionally, the proposed lease requires the lessee 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 payment of annual rent to compensate the people of the State for the use of public land.

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. The lease area contains a floating boat dock, adjustable access ramp, fixed cantilevered deck, and fixed bulkhead protection.

Huntington Harbour is built near sea-level elevation, and as a result is vulnerable to flooding and storm surge events. 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.

Compared to year 2000 levels, the region could see up to 1 foot of sea-level rise by 2030, 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). As stated in *Safeguarding California* (California Natural Resources Agency 2014), 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

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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. 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 boat dock and adjustable access ramp will allow them to rise and fall with tides and waves, increasing their resiliency to some sea-level rise impacts. The fixed features like the cantilevered deck and bulkhead protection may need to be raised or reinforced 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, Commission staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, or for the foreseeable term of the proposed lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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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.

3. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that 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:

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time or for the foreseeable term of the lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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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 issuance of a General Lease – Recreational and Protective Structure Use, to the Applicant, beginning May 10, 2017, 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 purposes only) attached and by this reference made a part hereof; consideration for the boat dock, access ramp, and cantilevered deck: annual rent in the amount of \$1,910, with an annual Consumer Price Index adjustment; consideration for the 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; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8241.1

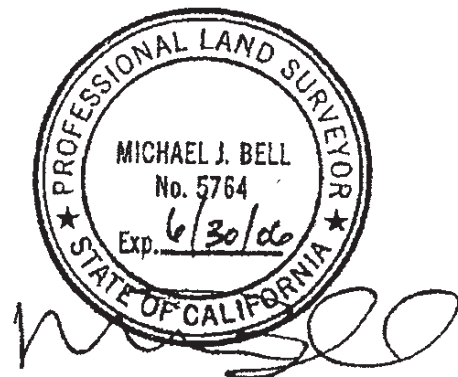
LAND DESCRIPTION

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

Beginning at the most southerly corner of Lot 144 as said lot is shown and so designated on that certain map of Tract No. 5481 filed in Book 215, Pages 11 through 22 of Miscellaneous Maps, Official Records of said County; thence along the westerly extension of the southerly line of said lot, 60.00 feet, more or less, to the pierhead line, as said pierhead line is shown on EXHIBIT 'A' of Resolution No. 5631, passed and adopted January 21, 1986 by the City Council of the City of Huntington Beach and recorded January 27, 1986 as Document 86-035081, Official Records of said County; thence northerly along said pierhead line to the westerly extension of the northerly line of said lot; thence along said extension 60.00 feet, more or less, to the most westerly corner of said lot; thence along the westerly line of said lot to the point of beginning.

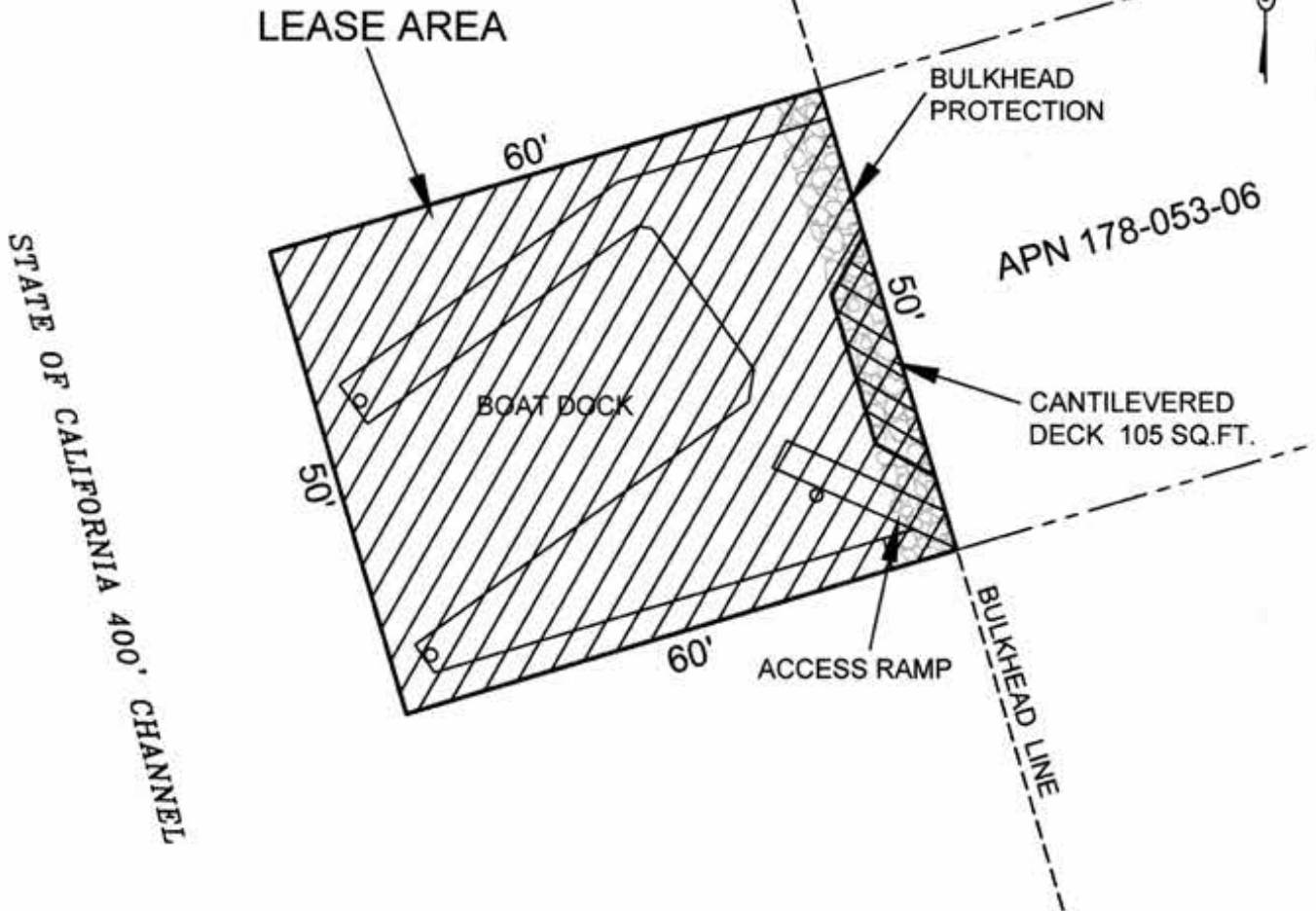
END OF DESCRIPTION

Prepared 02/07/2005 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



16681 CAROUSEL LANE, HUNTINGTON HARBOUR

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8241.1
 BRAULT TRUST
 APN 178-053-06
 GENERAL LEASE-
 RECREATIONAL AND
 PROTECTIVE STRUCTURE 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.

TS 03/28/17