

**STAFF REPORT
C79**

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08/23/18
PRC 3562.1
K. Connor

AMENDMENT OF LEASE

LESSEE:

Anthony Bartoli and Rosemary Bartoli as Trustees of the “Anthony Bartoli and Rosemary Bartoli 2001 Trust” dated April 4, 2001

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Main Channel of Huntington Harbour, adjacent to 16452 Malden Circle, Huntington Beach, Orange County.

AUTHORIZED USE:

Continued use and maintenance of an existing boat dock, access ramp, and cantilevered deck.

LEASE TERM:

10 years, beginning March 27, 2017.

CONSIDERATION:

\$4,046 per year, with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

Amend the lease to:

1. Remove the existing boat dock and access ramp.
2. Install, use, and maintain a new boat dock and access ramp.
3. Increase the annual rent to \$4,121 to reflect the updated dimensions of the existing cantilevered deck effective March 27, 2019.
4. Include special lease provisions related to construction.
5. Replace the existing Exhibit A, ~~Site and Location Map~~Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, ~~Site and Location Map~~Land Description, and Exhibit B, Site and Location Map (for reference purposes only).

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All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

On December 6, 2016, the Commission authorized the issuance of Lease No. PRC 3562.1, a General Lease – Recreational Use for an existing boat dock, access ramp, and cantilevered deck to Anthony Bartoli and Rosemary Bartoli as Trustees of the “Anthony Bartoli and Rosemary Bartoli 2001 Trust” dated April 4, 2001 ([Item C38, December 6, 2016](#)).

The lessee is now applying for a lease amendment to authorize the removal of the existing boat dock and access ramp, and its replacement with a new boat dock and ramp in the same configuration with no changes to the footprint. For the boat dock replacement, the existing boat dock would be floated away by boat to the contractor's facility for disassembly and a new boat dock would be floated in its place, using the same pilings as the existing dock. None of the pilings would be replaced or removed.

When the lessee submitted the application for a lease amendment, staff became aware that the dimensions of the existing cantilevered deck were incorrect and were therefore replaced with correct dimensions provided by the lessee's contractor. These updated dimensions are reflected within the exhibits. With the increased dimensions of the cantilevered deck, annual rent has been increased to reflect the larger surface area, effective March 27, 2019.

Both the existing boat dock and access ramp and the proposed replacement are and will be privately owned and maintained and located within the Main Channel of Huntington Harbour. The boat dock and access ramp facilitate recreational boating because they are used for the 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 Huntington Harbour development 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 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.

At the time of the application it was discovered that the dimensions of the cantilevered deck were different than that originally reported. 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. The terms of the proposed lease prohibit use of the cantilevered deck as living quarters. Proposed rent for the cantilevered deck is based on nearby upland land values to ensure the State receives appropriate compensation for use of sovereign land as an extension of the private backyard of the upland.

The proposed amendment 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, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The 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 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. 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 the year 2030, 2 feet by 2050, and possibly over 5 feet by

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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 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 and an overhanging deck, and movable features, including a floating recreational dock and access ramp, 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 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. 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 structures under the Commission's jurisdiction because it serves to stabilize the bank. Therefore, any loss or degradation of the bulkhead 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 in an area that may be subject to the effects of climate change, including sea-level rise.

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Conclusion:

For all the reasons above, Commission staff believes the issuance of this lease amendment will not substantially interfere with Public Trust needs at this location, at this time and for the foreseeable term of the proposed lease; and is in the best interest 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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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 2, Replacement or Reconstruction; California Code of Regulations, title 2, section 2905, subdivision (b).

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 and access ramp will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and,

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2. Find that the existing and, for a limited period, continuing use and maintenance of the cantilevered deck is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,
3. Find that the proposed amendment is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 3562.1, a General Lease – Recreational Use, effective March 27, 2018, for the removal of the existing boat dock and access ramp and for the installation, use, and maintenance of a new boat dock and access ramp, to include special lease provisions related to construction; to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).; rent to be revised from \$4,046 to \$4,121 per year to reflect the updated dimensions of the existing cantilevered deck, effective March 27, 2019;

EXHIBIT A

PRC 3562.1

LAND DESCRIPTION

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

BEGINNING at the most northerly corner of Lot 48, as said lot is shown and so designated on that certain map of Tract No. 4677 filed in Book 180, Pages 14 through 18 of Official Records of said County; thence along the northeasterly extension of the northwesterly line of said lot 60.00 feet 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 the City of Huntington Beach; thence southeasterly along said pierhead line to the northeasterly extension of the southeasterly line of said lot; thence along said extension 60.00 feet, to the most southerly corner of said lot; thence northwesterly along the northeasterly line of said lot to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared July 2, 2018 by the California State Lands Commission Boundary Unit.



