

**CALENDAR ITEM
C65**

A 67

06/28/10

S 35

WP 3570.1

D. Simpkin

**TERMINATION OF A GENERAL LEASE – RECREATIONAL USE AND ISSUANCE
OF A NEW GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE
USE**

APPLICANT:

Samuel H. Giesy, Jr.

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 17011 Bolero Lane, city of Huntington Beach, Orange County.

AUTHORIZED USE:

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 repair of an existing bulkhead that may include all or some of the following: (1) existing bulkhead pile repair; (2) placement of sheet piles; and (3) installation of rock slope protection.

LEASE TERM:

Ten years, beginning June 28, 2010.

CONSIDERATION:

Boat dock and access ramp: No monetary consideration pursuant to Public Resources Code section 6503.5.

Cantilevered deck: Annual rent in the amount of \$833, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

Bulkhead: The public health and safety with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:

Insurance:

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

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Other:

No permanent roof or other enclosure will be constructed on the Lease Premises. Applicant agrees that any proposed use of the Lease Premises that includes a residential extension of the actual living quarters constitutes residential use and is prohibited.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the lease premises.
2. On May 10, 2007, the Commission authorized the issuance of a General Lease – Recreational Use, PRC 3570.1, to Samuel H. Giesy, Jr. for a ten-year term, effective March 1, 2007. The lease will expire on February 28, 2017. Staff is recommending termination of the existing lease and the issuance of a new General Lease – Recreational and Protective Structure Use to Samuel H. Giesy, Jr. for a ten-year term in order to accommodate the existing facilities and the proposed bulkhead repairs, which were not covered by the lease now in effect.
3. 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 and recorded as Boundary Line Agreement 18, between the Commission and the Huntington Harbour Corporation. Appurtenances extending into these Channels are subject to lease pursuant to Public Resources Code section 6501, et seq. The Applicant's upland property is located along the Main Channel of Huntington Harbour.
4. Over the years, erosion due to localized tidal currents, recreational boat use, and periodic maintenance dredging activities in the area have undermined the bulkhead, damaged the support piles, and threatened the overall structural integrity. The Applicant is requesting that the Commission authorize repairs and reinforcement of the bulkhead adjacent to their property in order to prevent more structural damage. A portion of the repairs will take place on sovereign land waterward of the bulkhead, thus requiring the Commission's authorization.
5. Tetra Tech Inc. is currently working with 30 homeowners to repair bulkheads in Huntington Harbour. The main purpose of the bulkhead repair project is to restore the foundation of the bulkhead and to provide toe protection to inhibit any future scouring or erosion, which may expose the footing foundation and jeopardize the bulkhead's structural integrity. The repairs would be made in three phases: pile repair, placement of sheet piles, and installation of slope protection, although not all phases apply to all properties. The total project duration is estimated to take 120

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working days. The project will begin once all necessary permits/approvals have been obtained.

6. The existing boat dock and access ramp qualify for rent-free status as the Applicant is a natural person who owns the littoral land improved with a single-family dwelling pursuant to Title 2, California Code of Regulations, sections 2002 (f) and 2003 (a)(5).
7. The cantilevered deck does not qualify for rent-free status because it is not used for the mooring of boats. Therefore, that portion of the deck extending over State fee ownership within the Harbour is subject to annual rent pursuant to Title 2, California Code of Regulations, sections 2002 (b)(3) and 2003 (a)(4).
8. **Termination of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.

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

9. **Existing Boat Dock, Access Ramp, and Cantilevered Deck:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

10. **Bulkhead:** A Mitigated Negative Declaration (SCH# 2008071142) was prepared by the city of Huntington Beach and adopted on September 3, 2008, for this project. The California State Lands Commission's staff has reviewed such document. A Mitigation Monitoring Program was adopted by the city of Huntington Beach.
11. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370,

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et seq. 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.

APPROVAL OBTAINED:

City of Huntington Beach

FURTHER APPROVAL REQUIRED:

Regional Water Control Board; California Coastal Commission, California Department of Fish and Game; U.S. Army Corps of Engineers.

EXHIBITS:

- A. Location and Site Map
- B. Land Description
- C. Notice of Determination
- D. City of Huntington Beach Notice of Action (Mitigation Measures)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

TERMINATION OF LEASE:

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

EXISTING BOAT DOCK, ACCESS RAMP, AND CANTILEVERED

DECK: Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a categorically exempt project, Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

BULKHEAD: Find that a Mitigated Negative Declaration (SCH# 2008071142) and a Mitigation Monitoring Program were prepared by the city of Huntington Beach and adopted on September 3, 2008, for this project and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in Exhibit Letter D, attached hereto.

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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 sections 6370, et seq.

AUTHORIZATION:

Authorize termination, effective June 27, 2010, of Lease No. PRC 3570.1, a General Lease – Recreational Use, issued to Samuel H. Giesy, Jr.

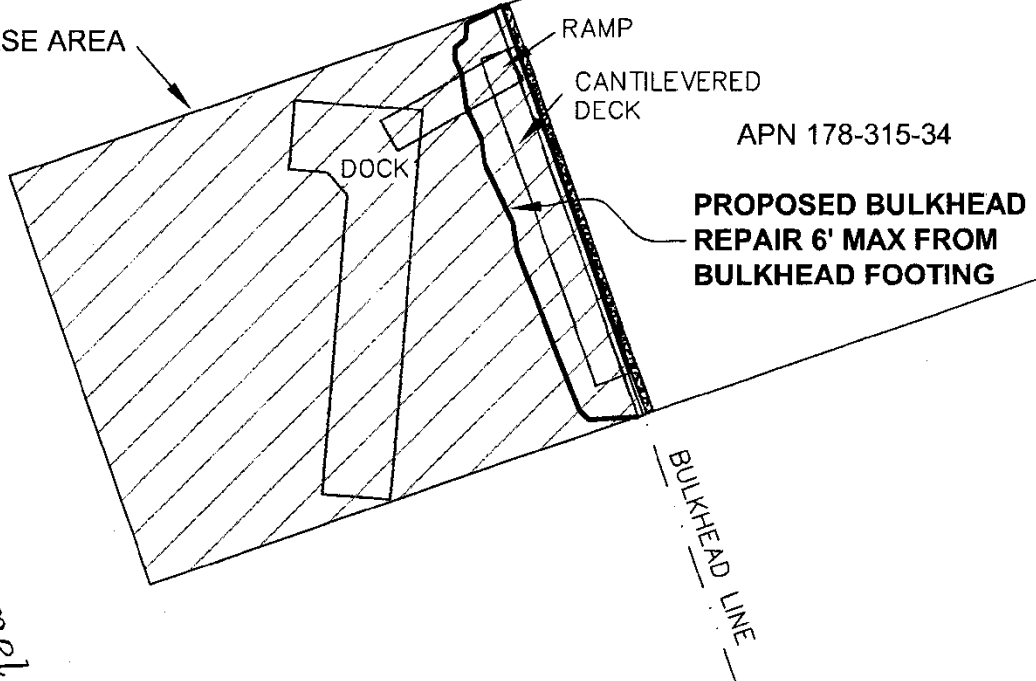
Authorize issuance of a General Lease – Recreational and Protective Structure Use to Samuel H. Giesy, Jr. beginning June 28, 2010, for a term of ten years, for the continued use and maintenance of an existing boat dock, access ramp, cantilevered deck, and for repairs of an existing bulkhead, that may include all or some of the following: (1) existing bulkhead pile repair; (2) placement of sheet piles; (3) installation of rock slope protection as shown on Exhibit A attached (for reference purposes only) and as described on Exhibit B attached and by this reference made a part hereof; consideration for the boat dock and access ramp: no monetary consideration pursuant to Public Resources Code section 6503.5; consideration for the cantilevered deck: annual rent in the amount of \$833, with the State reserving the right to fix a different rent periodically during the lease term as provided in the lease; consideration for the bulkhead repairs: the public health and safety, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest; combined single limit liability insurance coverage in the amount of no less than \$1,000,000.

NO SCALE

SITE

State of California Channel

LEASE AREA



* ALL STRUCTURES SHOWN ARE EXISTING UNLESS NOTED OTHERWISE.

17011 BOLERO LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

PRC 3570.1
 GIESY
 APN 178-315-34
 GENERAL LEASE
 RECREATION & PROTECTIVE
 STRUCTURE USE
 ORANGE COUNTY



SITE

DJF 05/10

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 3570

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 35, as said lot is shown and so designated on that certain map of Tract No. 5264 filed in Book 185, Pages 27 through 34 of Miscellaneous Maps, Official Records of said County; thence along the southwesterly extension of the southeasterly line of said lot to the pierhead line, as said pierhead line has been determined by the city council of said city; thence northwesterly along said pierhead line to the southwesterly extension of the northwesterly line of said lot, thence northeasterly along said extension to the most westerly corner of said lot; thence southeasterly along the southwesterly line of said lot to the point of beginning.

END OF DESCRIPTION

Prepared 02/20/2007 by the California State Lands Commission Boundary Unit



Exhibit C

NOTICE OF DETERMINATION

To:

- Office of Planning and Research
P.O. Box 3044
Sacramento, Ca 95812-3044
- Orange County Clerk Recorder's Office
Public Services Division
P.O. Box 238
Santa Ana, CA 92702

From:

City of Huntington Beach
Planning Department
2000 Main St., 3rd Flr.
Huntington Beach, CA 92648
(Contact) Jennifer Villasenor
(Contact Phone) 714-374-1661

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number: 2008071142

Project Title: Mitigated Negative Declaration No. 08-010 (Huntington Harbour Bulkhead Repair Project).

Applicant Name and Address: Natalie Chan, Tetra Tech Inc., 401 E. Ocean Blvd., Suite 420, Long Beach, CA 90814.

Project Location (include county): 30 single-family residential properties, Huntington Harbour, City of Huntington Beach, County of Orange.

Project Description: The purpose of the project is to restore the foundation of the bulkhead at 30 existing single-family residential properties in Huntington Harbour and provide toe protection to inhibit any future scouring or erosion, which may jeopardize the bulkhead's structural integrity. The bulkheads in Huntington Harbour are made of reinforced cast-in-place concrete and untreated timber piles supporting the footings. Due to the time span of design and construction, there are slight differences in bulkhead design among the properties. Some sections of the bulkhead have a cutoff wall below the bulkhead and some do not have a cutoff wall. Over the years, erosion due to localized tidal currents, recreational boat use and periodic maintenance dredging activities in the area have undermined the bulkhead, damaged the support piles and threatened the overall structural integrity. Properties located on the main channel show the greatest erosion levels.

The repair project would consist of three phases: pile repair, placement of sheet piles and installation of slope protection, although not all phases would apply to all properties. All three phases will be staggered and performed concurrently at certain stages to minimize total project duration. The total duration of the project is estimated to take 120 working days.

This is to advise that the City of Huntington Beach Zoning Administrator has approved the above described (Lead Agency or Responsible) project on September 3, 2008 and has made the following determinations regarding the above described project:

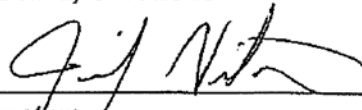
1. The project will, will not, have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation Measures were, were not, made a condition of approval of the project.
4. A mitigation reporting or monitoring plan was, was not, adopted for this project.
5. A statement of Overriding Considerations was, was not, adopted for this project.
6. Findings were, were not, made pursuant to the provisions of CEQA.

Fee: Exempt per Govt. Code Section 6103

This is to certify that the final Environmental Impact Report, Negative Declaration, with comments and responses and record of the project approval is available to the General Public at:

City of Huntington Beach
Department of Planning
2000 Main Street, Huntington Beach, CA 92648

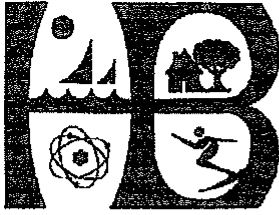
September 3, 2008
Date of Final Action



Signature

Associate Planner
Title

Exhibit D



OFFICE of the ZONING ADMINISTRATOR CITY OF HUNTINGTON BEACH • CALIFORNIA

P.O. BOX 190

CALIFORNIA 92648

NOTICE OF ACTION

(714) 536-5271
September 4, 2008

Natalie Chan
Tetra Tech, Inc.
401 E. Ocean Blvd., Suite 420
Long Beach, CA 90814

SUBJECT: MITIGATED NEGATIVE DECLARATION NO. 08-010
(HUNTINGTON HARBOUR BULKHEAD REPAIR
PROJECT):

APPLICANT: Natalie Chan, Tetra Tech, Inc.

REQUEST: To analyze the potential environmental impacts associated with repair of the bulkhead at 30 existing single-family residential properties within Huntington Harbour. The purpose of the project is to restore the foundation of the bulkhead and provide toe protection to inhibit any future scoring or erosion, which may jeopardize the bulkhead's structural integrity. The repair project would consist of three phases: pile repair, placement of sheet piles and installation of slope protection, although not all phases would apply to all properties. The proposed project is subject to approval of a coastal development permit from the California Coastal Commission.

PROPERTY OWNER: Various

LOCATION: 30 properties in Huntington Harbour, City of Huntington Beach (includes properties on Davenport Island, Trinidad Island, Gilbert Island, Humboldt Island, Edgewater Lane and Morning Star Drive.)

PROJECT PLANNER: Jennifer Villasenor

DATE OF ACTION: September 3, 2008

On Wednesday, September 3, 2008 the Huntington Beach Zoning Administrator took action on your application, and your application was approved. Attached to this letter are the findings and mitigation measures.

Please be advised that the Zoning Administrator reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements

prior to commencement of the project. It is recommended that you immediately pursue completion of the mitigation measures and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Zoning Administrator becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the Secretary of the Planning Commission within ten (10) calendar days of the date of the Zoning Administrator's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand Two Hundred Eighty-Seven Dollars (\$1287.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and One Thousand Five Hundred Sixty-Nine Dollars (\$1569.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is September 15, 2008, at 5:00 PM.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has begun.

Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020.

If you have any questions regarding this Notice of Action letter or the processing of your application, please contact Jennifer Villasenor, the project planner, at (714) 374-1661/ JVillasenor@surfcity-hb.org or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,



Ricky Ramos
Zoning Administrator

RR:JV:kdc
Attachment

c: Honorable Mayor and City Council
Chair and Planning Commission
Paul Emery, Interim City Administrator
Scott Hess, Director of Planning
William H. Reardon, Division Chief/Fire Marshal
Terri Elliott, Principal Civil Engineer

ATTACHMENT NO. 1

FINDINGS AND MITIGATION MEASURES

MITIGATED NEGATIVE DECLARATION NO. 2008-010

FINDINGS FOR APPROVAL – MITIGATED NEGATIVE DECLARATION NO. 2008-010

1. Mitigated Negative Declaration 2008-010 has been prepared in compliance with Article 6 of the California Environmental Quality Act (CEQA) Guidelines. It was advertised and available for a public comment period of 30 days. Comments received during the comment period were considered by the Zoning Administrator prior to action on Mitigated Negative Declaration No. 08-010.
2. Mitigation measures avoid or reduce the project's effects to a point where clearly no significant effect on the environment will occur. Mitigation measures address water quality, potential impacts to eelgrass and the loss of soft bottom habitat. Mitigation measures were generally designed to minimize impacts to the flora and fauna of Huntington Harbour.
3. There is no substantial evidence in light of the whole record before the Zoning Administrator that the project, as mitigated through the attached mitigation measures, will have a significant effect on the environment. The structural integrity of the bulkheads in Huntington Harbour has been threatened due to erosion over the years. The purpose of the project is to restore the foundation of the bulkhead and provide slope protection, which will inhibit any future scouring or erosion. The project does not propose any new development or uses, and potential impacts resulting from construction of the project are temporary and intermittent or can be adequately mitigated.

MITIGATION MEASURES FOR ENVIRONMENTAL CONCERNS:

1. During all phases of the project, Best Management Practices (BMPs) will be implemented to prevent and control turbidity. BMPs may include installation of a silt curtain.
2. If turbidity is observed at a distance of 100 feet or greater from the actual work site, either the work will be stopped until the water returns to normal or, if deemed necessary, a silt curtain will be installed until turbidity returns to normal.
3. An anchor management plan shall be prepared and implemented to avoid damage to eelgrass.
4. A pre-construction eelgrass survey shall be conducted to confirm that no impacts to eelgrass will occur within the area of construction as a result of the project.
5. Any reduction in acreage of eelgrass habitat shall be mitigated according to State and Federal environmental policies, which include the in-kind replacement of habitat.
6. The 11 properties requiring sheet pile installation, and impacting 401.5 square feet of soft bottom habitat, shall participate in the Soft Bottom Mitigation Plan, as approved by the California Coastal Commission under Coastal Development Permit 5-01-020. Confirmation from the California Department of Fish and Game (CDFG) shall be provided to ensure the

availability of credits in the "mitigation bank" for the required square footage to be mitigated for the project. In the event that sufficient credit is unavailable, the applicant must mitigate the impacted area of soft bottom habitat at a 2:1 ratio. Any new mitigation plan shall be approved by the CDFG and the California Coastal Commission.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.