

**CALENDAR ITEM
C01**

A 72
S 34

01/24/13
PRC 5745.1
W. Crunk
S. Paschall

**CONSIDER THE DEFAULT AND TERMINATION OF A GENERAL LEASE –
RECREATIONAL USE**

LESSEES:

Stuart and Mary Makler

AREA, TYPE LAND AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16752 Coral Cay Lane, city of Huntington Beach, Orange County.

AUTHORIZED USE:

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

LEASE TERM:

10 years, beginning October 26, 2009.

CONSIDERATION:

Boat dock and access ramp:

No monetary consideration pursuant to Public Resources Code section 6503.5.

Cantilevered deck:

\$900 per year, with the State reserving the right to fix a different rent periodically during the lease term.

SPECIFIC LEASE PROVISIONS:

Liability Insurance:

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

Other:

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

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BACKGROUND:

1. The Commission first issued a 10-year recreational pier lease for the boat dock located adjacent to 16752 Coral Cay Lane on October 29, 1979, to Henry and Ria Lee.
2. On October 26, 1989, a new 10-year recreational pier lease was issued to Stuart and Mary Makler. This lease was renewed for another 10-year term effective October 26, 1999. Lease No. PRC 5745.9 authorized the existing boat dock and access ramp only.
3. On February 1, 2010, the Commission authorized a new lease to Stuart Makler and Mary Makler for the continued use of a boat dock and access ramp. The cantilevered deck was also authorized as an existing structure, but did not qualify for rent-free status. The new lease was effective October 26, 2009, with a term of 10 years. The Maklers paid their first year of \$900 rent as of February 26, 2010.
4. On May 11, 2010, a Memorandum of Lease was recorded in the chain of title for the upland property in the official records of Orange County.
5. Commission staff became aware that the upland property had been transferred when an invoice for annual rent sent to the Lessees went unpaid. Staff attempted to contact the lessee to inquire about the missing payment. In April 2011, Mary Makler notified Commission staff via phone that the property had been sold to Melton Bacon. Subsequent investigation by staff confirmed the upland property had been sold via a deed recorded on September 9, 2010. Commission staff was not notified in advance of this sale. Lessees did not seek authorization to assign the Lease.
6. Commission staff sent a letter on June 16, 2011, to Mr. Bacon to notifying him of the necessity of coming under lease. Mr. Bacon also owns a second home in Huntington Harbour, located at 16572 Somerset Lane. The home on Somerset Lane also has a gangway, dock, and cantilevered deck located on state-owned sovereign lands. Commission staff has sent letters to Mr. Bacon notifying him of the need to come under lease for the dock adjacent to 16572 Somerset Lane since November 28, 2007.
7. Melton Bacon has not come under lease. At the January 26, 2012 meeting, the Commission found Melton Bacon in trespass and authorized all steps necessary to seek ejectment, damages, and removal of improvements.
8. Melton Bacon has filed suit against the State of California challenging, the State's jurisdiction over the subject dock.

CALENDAR ITEM NO. **C01** (CONT'D)

9. At present, Commission staff has received no explanation as to why Stuart and Mary Makler have abandoned their contractual duties, and have received no payments as required under the lease.
10. Section 4, Paragraph 12 of the lease requires Lessees to remove all improvements from the lease premises on the expiration or sooner termination of this lease.

Current Uncured Defaults:

1. Lessees have not paid when due the regular lease payments due for 2010, 2011, or 2012. Under Section 4, Paragraph 11(a)(1) of the lease, this failure to pay rent constitutes an immediate and material default of the lease provisions, with no period to cure.
2. Section 4, Paragraph 10(c) of the lease prohibits transfer of the upland property separate from the leasehold interest. Section 4, Paragraph 10(a) of the lease prohibits assignment or transfer of the leasehold interest without authorization and approval from the Commission. Although staff has been unable to contact Lessees, at least one of these conditions has been breached.
3. Section 4, Paragraph 4(b) of the lease requires continuous use of the lease premises. Lessees have abandoned the dock in breach of the Lease.
4. Section 1 of the lease requires Lessees to maintain a liability insurance policy on the lease premises. Lessees have not provided proof that such a policy has continued in force on the lease premises.

OTHER PERTINENT INFORMATION:

1. Lessees no longer own 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 31, 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 obtaining a lease from the Commission pursuant to Public Resources Code section 6501.1.

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3. The staff recommends that the Commission find that the subject lease termination and issuance of a Notice of Termination and Ejectment to Lessees 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. Legal Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject lease termination and issuance of a Notice of Termination and Ejectment to Lessees is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, sections 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.

AUTHORIZATION:

1. Ratify staff's findings that Stuart and Mary Makler have defaulted on Lease No. PRC 5745.1 for failure to pay rent, failure to maintain liability insurance, abandonment of the lease premises, unauthorized transfer of the adjacent upland property separate from the leasehold estate, and/or unauthorized assignment of the leasehold interest.
2. Terminate Lease No. PRC 5745.1 and authorize staff to issue a Notice of Termination and Ejectment to Lessees for failure to cure the defaults set forth above.
3. Authorize staff of the State Lands Commission and the Office of the Attorney General to take all steps necessary, including litigation, to seek damages for Lessees' breach of Lease PRC No. 5745.1; to seek ejectment and the removal of any and all improvements from the lease premises; and to seek recovery of such other damages to which the State of California is entitled under the lease and law.

EXHIBIT A

PRC 5745.1

LAND DESCRIPTION

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

BEGINNING at the most easterly corner of Lot 45, as said lot is shown and designated on that certain map of Tract No. 8040 filed November 22, 1974, in Book 350, Pages 27 through 37, Official Records of said County; thence along the easterly prolongation of the southerly line of said lot 60.00 feet to the pierhead line, as said pierhead line is described in Resolution No. 5197, passed and adopted December 6, 1982 by the City Council of said City; thence northerly along said pierhead line 60.00 feet to the easterly prolongation of the northerly line of said lot; thence westerly along said prolongation 60.00 feet to the most northerly corner of said lot; thence southerly along the easterly line of said lot 60.00 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

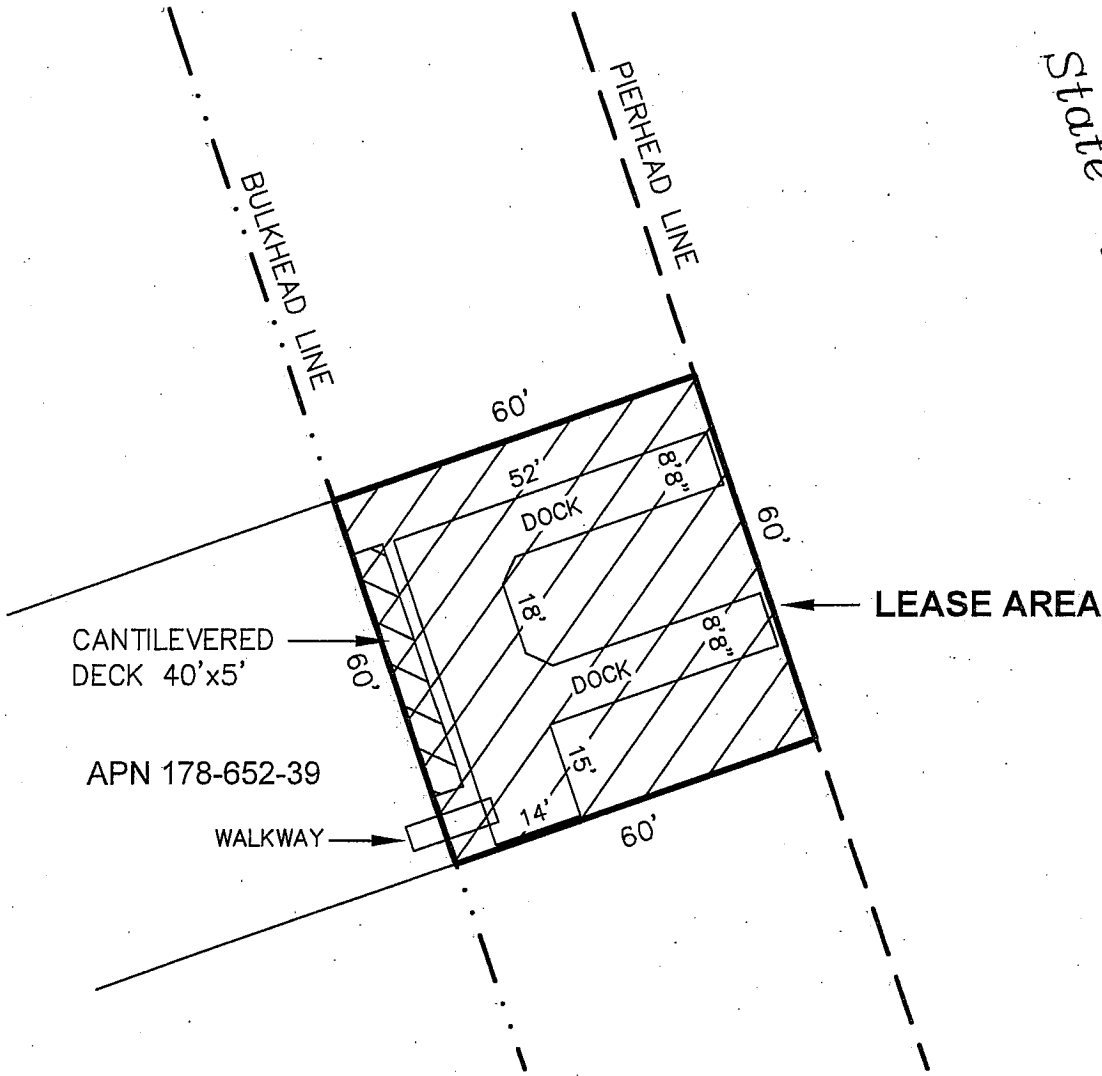
Prepared 1/11/2010 by the California State Lands Commission Boundary Unit



Michael J. Bell

NO SCALE

SITE



State of California Channel

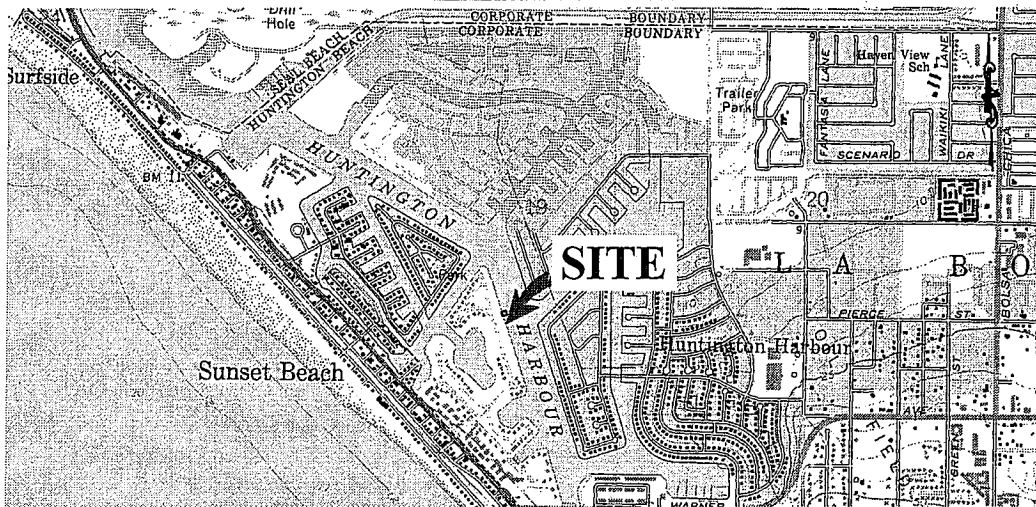


APN 178-652-39

16752 CORAL CAY LANE, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 5745.1
 MAKLER
 APN 178-652-39
 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.