

**CALENDAR ITEM
C02**

A 72

01/24/13

S 34

PRC 3168.1

W. Crunk

S. Paschall

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

LESSEES:

Jerry Fuller, as Trustee of the Jerry Fuller Separate Property Trust, Dated
11/16/00

AREA, TYPE LAND AND LOCATION:

Sovereign land in Huntington Harbour, adjacent to 16572 Somerset 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 March 23, 2004.

CONSIDERATION:

Boat dock and access ramp:

No monetary consideration pursuant to Public Resources Code section
6503.5.

Cantilevered deck:

\$1,058 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.

CALENDAR ITEM NO. **C02** (CONT'D)

BACKGROUND:

1. On August 21, 1984, the Commission authorized the issuance of a Recreational Pier Lease for a 10-year term with the effective date of July 25, 1984, to Ben T. Cowles and Helen H. Cowles. This lease expired on July 24, 1994.
2. On March 23, 2004, the littoral property at 16572 Somerset Lane was deeded to Jerry Fuller, as Trustee of the Jerry Fuller Separate Property Trust, dated 11/16/00.
3. On June 20, 2005, the Commission approved a General Lease – Recreational Use for Jerry Fuller, as Trustee of the Jerry Fuller Separate Property Trust, dated 11/16/00. The lease was for the reconstruction of the existing boat dock, gangway, and a cantilevered deck. The boat dock and gangway were rent free under former Public Resources Code section 6503.5. The annual rent for the cantilevered deck was \$1,058, effective March 23, 2005. The lease had an effective beginning date of March 23, 2004.
4. On April 4, 2006, the littoral property was sold to Melton Bacon. Lessee did not contact Commission staff to notify them of the intended sale, nor to arrange assignment of the lease.
5. Mr. Bacon also owns a second home in Huntington Harbour, located at 16752 Coral Cay Lane. The home on Coral Cay Lane also has a gangway, dock, and cantilevered deck located on state-owned sovereign lands.
6. After becoming aware that the upland property on Somerset Lane had been transferred, Commission staff sent several letters to Melton Bacon, notifying him of the necessity of coming under lease. The letters were dated November 28, 2007, January 19, 2011, and June 16, 2011.
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.
9. At present, Commission staff has received no explanation as to why Jerry Fuller, as Trustee of the Jerry Fuller Separate Property Trust, dated 11/16/00 has abandoned his contractual duties, and staff has received no payments as required under the lease.

CALENDAR ITEM NO. **C02** (CONT'D)

10. Section 4, Paragraph 12 of the lease requires Lessee to remove all improvements from the lease premises on the expiration or sooner termination of this lease.

Current Uncured Defaults:

1. Lessee has not paid when due the regular lease payments for 2007, 2008, 2009, 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 Lessee, 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. Lessee has abandoned the dock in breach of the Lease.
4. Section 1 of the lease requires Lessee to maintain a liability insurance policy on the lease premises. Lessee has not provided proof that such a policy has continued in force on the lease premises.

OTHER PERTINENT INFORMATION:

1. Lessee 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.

CALENDAR ITEM NO. **C02** (CONT'D)

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 Jerry Fuller, as Trustee of the Jerry Fuller Separate Property Trust, dated 11/16/00 has defaulted on Lease No. PRC 3168.1 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 3168.1 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 Lessee's breach of Lease PRC No. 3168.1; 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 3168.1

LAND DESCRIPTION

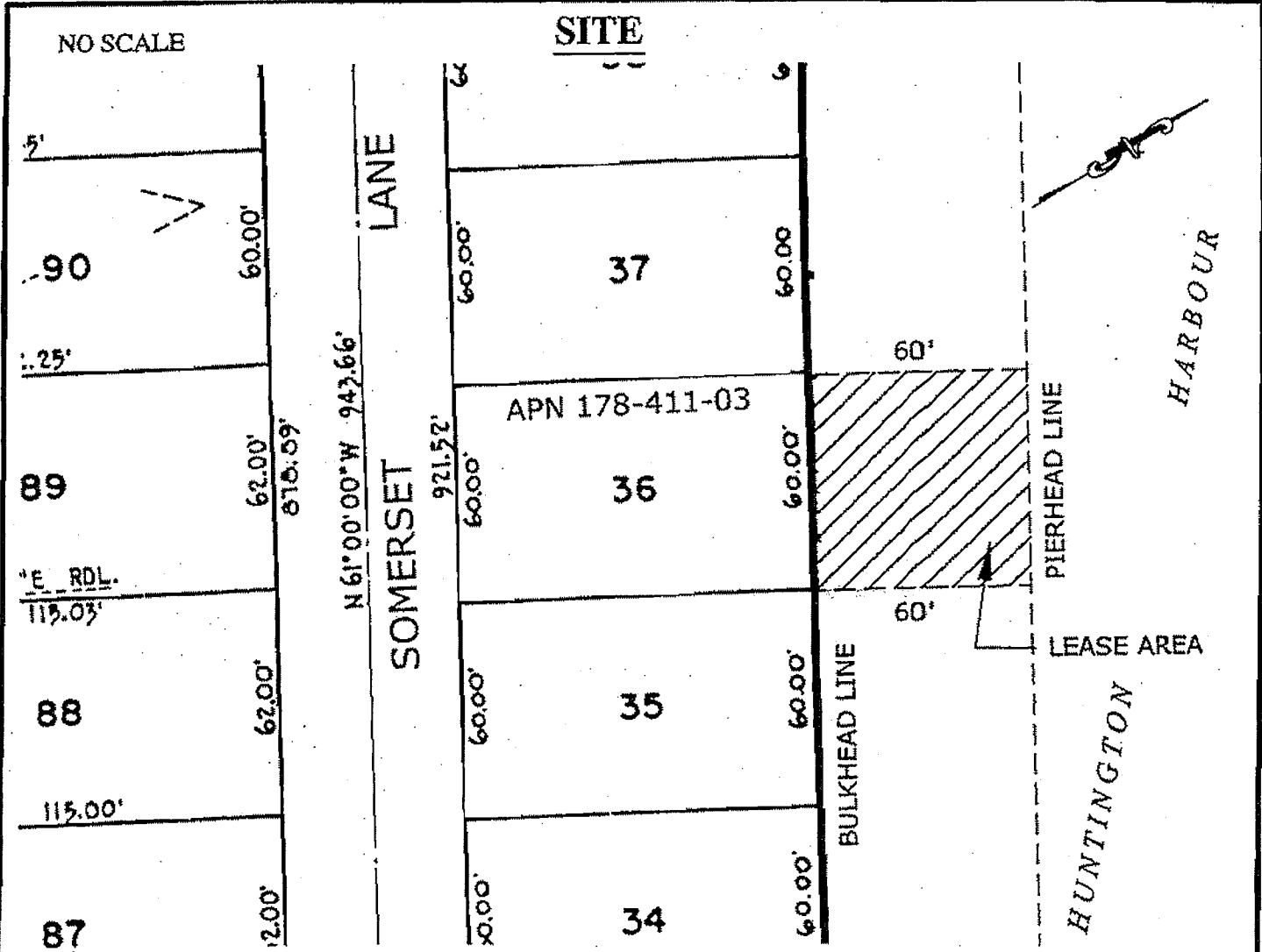
A parcel of submerged land in Huntington Harbour, in the City of Huntington Beach, Orange County, California, described as follows:

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





16572 SOMERSET LANE, HUNTINGTON BEACH

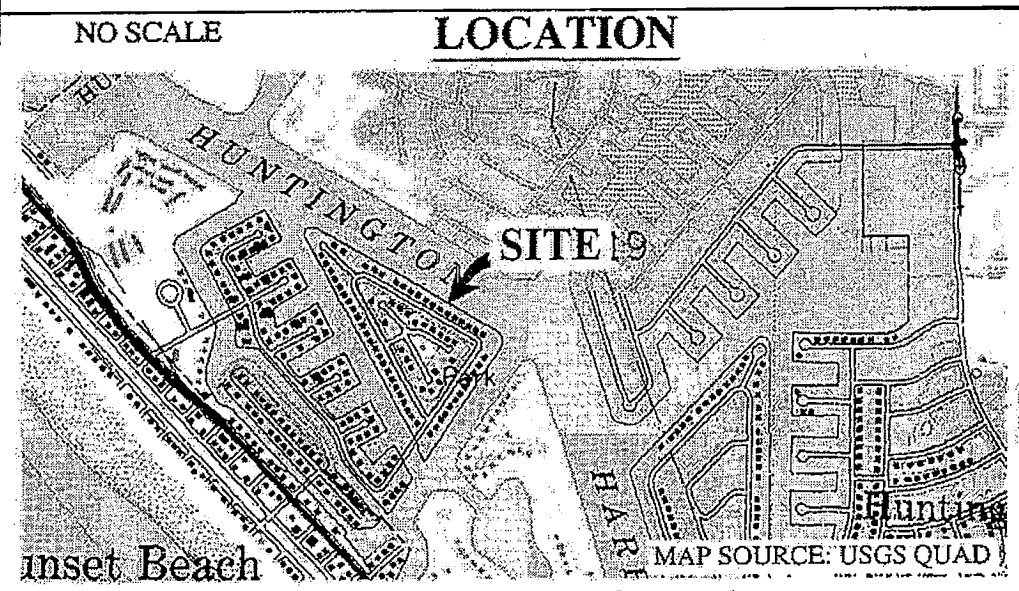


Exhibit B
 JERRY FULLER, TRUSTEE
 PRC 3168.1
 GENERAL LEASE -
 RECREATIONAL USE
 HUNTINGTON HARBOUR
 ORANGE COUNTY



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.