

**CALIFORNIA STATE LANDS
COMMISSION**

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, Executive Officer

916.574.1800

TTY CA Relay Service: 711 or Phone **800.735.2922**
from Voice Phone **800.735.2929**
or for Spanish **800.855.3000**

Contact Phone: 916.574.1900

March 4, 2024

SCH # 2024020006

Connor Hyland
Senior Deputy City Attorney
City of Huntington Beach
Office of the City Attorney
2000 Main Street, Fourth Floor
Huntington Beach, CA 92648
connor.hyland@surfcity-hb.org



**Subject: Amendment to comment letter for the Pacific Airshow (SCH 2024020006)
from California State Lands Commission to the City of Huntington Beach**

Dear Connor Hyland,

California State Lands Commission staff submit the attached letter as part of the agency's comments on the Notice of Preparation for a Draft Environmental Impact Report for the Pacific Airshow Huntington Beach Project. Please consider the attached letter along with the previously-submitted letter and other associated attachments.

Sincerely,

A handwritten signature in black ink that reads "Nicole Dobroski". The signature is written in a cursive, flowing style.

Nicole Dobroski, Chief
Division of Environmental Science, Planning, and
Management

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

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August 10, 2023

File ref: Lease 6616

Sent via postal and E-Mail (Michael.Gates@surfcity-hb.org)

Michael E. Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

SUBJECT: Required Application for an Amendment of Lease PRC 6616, a General Lease – Public Agency Use for the Operation and Maintenance of Huntington Beach Pier

Dear Mr. Gates:

Our records indicate that that the City has permitted an operator for an event known as the Huntington Beach Pacific Airshow that will occur in and around the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity constitutes an unauthorized use of State land, under the jurisdiction of the California State Lands Commission (Commission), well outside of the City's current lease rights.

As a reminder, the Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City of Huntington Beach (City) for the operation and maintenance of an existing public municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018. Staff has become aware that a proposed event, the Huntington Beach Pacific Airshow, will utilize the Pier.

Based on the information available, the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights

City of Huntington Beach

Page 2

between 10:30 am to 4:30 pm, and a festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Pier will be closed to the general public on all three days of the event and that the event operator will only allow access to the Pier through the purchase of a ticket sold by a private vendor. The event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobic box" area, within the Commission's jurisdiction. This degree of restriction on public access and recreation along the beach and in the ocean, where boating will also be restricted, during the event is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission.

As a reminder, the City's lease acknowledges that the Premises are subject to the Public Trust and are available to members of the public. Per Section 2, Paragraph 3 of the lease:

"Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present."

The closure of the Pier to the general public requires Commission authorization through the form of an amendment to the lease. An application for a lease amendment is urgently required for the proposed event.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage the City to complete and submit an application as soon as possible. The Online Application will require the City to provide the following (at a minimum):

- Copies of all currently approved or in process permits for the event with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A description of the closure, impacts, and timeline of the event.
- Photos or diagrams showing where the closure of the pier begins.

City of Huntington Beach

Page 2

We request your cooperation in this matter and urge the City to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:
Seth Blackmon
D4AAC71802234D2

Seth Blackmon

Chief Counsel, Legal Division

cc: Al Zelinka, City Manager, City of Huntington Beach
Warren Crunk, CSLC Legal Division
Lucinda Calvo, CSLC Legal Division
Ken Foster, CSLC Land Management Division
Kelly Connor, CSLC Land Management Division

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Contact Phone: 916.574.1900

August 10, 2023

Sent via postal and E-Mail (info@pacificairshow.com)

Pacific Airshow, LLC
5252 Bolsa Avenue
Huntington Beach, CA 92649

SUBJECT: State Lands Lease Required for the Proposed Pacific Airshow in the Pacific Ocean, Huntington Beach, Orange County

Dear Pacific Airshow, LLC:

Our records indicate that you are the planned operator of the Huntington Beach Pacific Airshow that will occur in and along the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity will occupy State land under the jurisdiction of the California State Lands Commission (Commission).

As general background, the Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code §§ 6009, 6009.1, 6301, and 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit

Pacific Airshow, LLC

Page 2

of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court decision. Such boundaries may not be readily apparent from present day site inspections

Additionally, please be advised that the Pacific Ocean is subject to the Public Right of Navigation. This right provides that the public may navigate and exercise the incidents of navigation in a lawful manner. Such uses may include, but are not limited to, boating, fishing, hunting, swimming, bathing, standing, wading along the waterfront, anchoring, picnicking, bird watching, and nature study (*People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040). Events and activities are not allowed to restrict or impede the navigation and recreational rights of the public except under limited circumstances, and only with the advance approval and authorization of the Commission.

Based on the information available, staff understands that the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights between 10:30 am to 4:30 pm, and festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Huntington Beach Pier will be closed to the public on all three days of the event. There will also be restricted public recreational access along the beach and in the ocean during the event, and boating in the area will be restricted. Moreover, the event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. You are therefore required to obtain a lease from the Commission for the use of State land.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage you to complete and submit an application as soon as possible. The Online Application will require you to provide the following (as a minimum):

- Copies of all currently approved or in process permits with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A drawing of the existing activity area, including all dimensions and proposed improvements.

Pacific Airshow, LLC

Page 2

If you fail to apply to the Commission for a lease, as codified in California Public Resources Code sections 6224.3 and following, trespassing structures may be subject to administrative enforcement. After an administrative enforcement action, the Commission may impose penalties of up to \$1,000 per day until a lease is obtained or the structures are removed.

We request your cooperation in this matter and urge you to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

Seth Blackmon

D4AAC71802234D2...
Seth Blackmon

Chief Counsel, Legal Division

cc: Warren Crunk, Legal Division
Lucinda Calvo, Legal Division
Ken Foster, Land Management Division
Kelly Connor, Land Management Division