

**STAFF REPORT
C40**

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04/05/19
PRC 7971.1
G. Asimakopoulos

GENERAL LEASE – PROTECTIVE STRUCTURE USE

APPLICANT:

Bret Sisney and Carol Reding Sisney, as Co-Trustees of the Sisney Living Trust dated August 11, 2009; Bret Sisney; and Carol Reding Sisney

PROPOSED LEASE AREA:

AREA, LAND TYPE, AND LOCATION:

1,069 square feet, more or less, of sovereign tide and submerged land located in the Pacific Ocean, adjacent to 4660 Opal Cliff Drive, near Santa Cruz, Santa Cruz County.

AUTHORIZED USE:

Continued use and maintenance of an existing seawall and plugged sea cave previously authorized by the Commission, and an additional plugged sea cave not previously authorized by the Commission.

LEASE TERM:

10 years, beginning April 5, 2019.

CONSIDERATION:

\$8,512 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On June 28, 2007, the Commission authorized the issuance of a 10-year General Lease – Protective Structure Use to Thomas W. Smith, as Successor Trustee to the Smith 1990 Living Trust for the continued use and maintenance of an existing seawall and plugged sea cave ([Item C34, June 28, 2007](#)). Upon Mr. Smith's death in 2010, Susan M. Gray became

STAFF REPORT NO. **C40** (CONT'D)

Successor Trustee to the Smith 1990 Living Trust. The lease expired on June 14, 2017.

On March 23, 2016, the upland property was deeded to the Applicant. Shortly after acquiring the upland property, the Applicant discovered a previously plugged sea cave at the east end of the property had expanded in size. As a result, in May 2016, the sea cave was again plugged. The Commission's Boundary Unit staff conducted a jurisdictional review of the plugged sea cave and determined, based on a mean high tide line survey completed in 2016, State-owned tidelands extend throughout the existing cave. The Applicant is now applying for a General Lease – Protective Structure Use, for the continued use and maintenance of an existing seawall and plugged sea cave previously authorized by the Commission, and an additional plugged sea cave not previously authorized by the Commission. Staff recommends issuance of a new lease beginning April 5, 2019. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$25,839 for the period beginning March 23, 2016, the day title to the upland property was deeded to the Applicant, through April 4, 2019, the day preceding issuance of the proposed new lease.

The proposed lease is for approximately 1,069 square feet, more or less, and is comprised of the existing seawall located at the base of the bluff and the two plugged sea caves. Many seawalls and plugged sea caves exist along the bluff in the Santa Cruz area. While these seawalls protect the upland property on top of the bluff, they also provide for the health and safety of the public by helping to stabilize the bluff and prevent bluff failure and protect the public while recreating on the beach.

Adverse effects related to protective structures in Santa Cruz can include increased beach erosion, interference with natural sand supply, loss of public beach, and potential impacts on flora and fauna as a result of encroachment by these protective structures on the beach environment. Various beach nourishment programs have been conducted by city and regional governing bodies, and sand-loss mitigation fees have been implemented as a requirement for new Coastal Development Permits to mitigate for these impacts, by helping to maintain a sandy beach for public access and recreation. The lease is for a limited term of 10 years, which allows the Commission flexibility if the previously described impacts occur or if the Commission determines that the Public Trust needs of the area have changed over time.

STAFF REPORT NO. **C40** (CONT'D)

Based on the information known to staff at this time, the existing seawall and two plugged sea caves located on State sovereign land do not substantially interfere with Public Trust needs and values at this location. The proposed lease requires the Lessee to keep and maintain the protective structure in good order and repair, 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 occupation of the public land involved.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located in the Pacific Ocean, adjacent to 4660 Opal Cliff Drive in Santa Cruz.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Monterey tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1, below.

Table 1. Projected Sea-Level Rise for Monterey¹

Year	Projection (feet)
2030	0.8
2040	1.2
2050	1.9
2100	6.9

Source: Table 28, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), 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

STAFF REPORT NO. **C40** (CONT'D)

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.

The lease area includes an existing seawall and two plugged sea caves. The seawall within the lease area is vulnerable to the impacts from sea-level rise and more frequent and intense storms that are the result of climate change. The seawall is likely to degrade over the lease term due to increased time of exposure to wave action, storm surge, and higher total water levels. Bluff erosion as a result of precipitation, groundwater drainage, wind force, and slumping may also exert pressure on the seawall from the landward side. Therefore, the seawall may require more frequent maintenance to ensure continued function during and after storm seasons, and to reduce the potential risk to public safety should it become a source of marine debris or a coastal hazard as a result of dislodgement or structural failure.

The seawall also has the potential to exacerbate the impacts of sea-level rise and increased storm and wave activity on State sovereign land adjacent to the lease area. The beach area seaward of the seawall is subject to width reduction and loss from erosion, scour, and coastal squeeze (the reduction of beach width due to the inability of the beach to naturally migrate landward as a result of hard armoring infrastructure). In addition to the seawall exerting an artificial influence on the natural landward migration of the beach, it is also a barrier between the naturally eroding bluffs and the beach, and effectively prevents beach replenishment via natural passive erosion. In general, seawalls increase beach scour at the toes and sides of the walls by reflecting and refracting wave energy back on to the beach with higher force due to their placement and composition. Beach loss is anticipated to increase over the term of the lease because of the combined factors of climate change impacts, natural dynamic coastal processes, and the presence of the seawall.

The 10-year lease term provides both the Commission and the Lessee an opportunity to check in after a relatively short-term interval to assess the effects of sea-level rise and evaluate the design and functionality of the existing protective structure in order to make incremental adaptation steps as necessary and appropriate.

STAFF REPORT NO. **C40** (CONT'D)

Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests 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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

STAFF REPORT NO. C40 (CONT'D)

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$25,839 for unauthorized occupation of State land for the period beginning March 23, 2016, through April 4, 2019.

2. Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning April 5, 2019, for a term of 10 years, for the continued use and maintenance of an existing seawall and plugged sea cave previously authorized by the Commission, and an additional plugged sea cave not previously authorized by the Commission, as described in Exhibit A, Land Description, and shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; consideration: \$8,512 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7971.1

LAND DESCRIPTION

Two parcels of tide and submerged lands situated in the Bay of Monterey, Pacific Ocean lying adjacent to Rancho Arroyo Del Rodeo and "Opal Cliffs" as shown on map recorded in Volume 25 of Maps at Page 12, Santa Cruz County Records, Santa Cruz County, State of California and more particularly described as follows:

PARCEL 1 - Seawall

A ten (10) foot wide strip of land lying southeasterly of the following describe line:

COMMENCING at the most northerly corner of Parcel Two as described in that certain deed recorded in Volume 1123, at Page 183 of Official Records of Santa Cruz County; thence along the northeasterly line of said parcel South 44° 02' East 148 feet more or less to the intersection with the landward edge (back) of an existing seawall, said point being the POINT OF BEGINNING; thence along the back of said seawall the following thirteen (13) courses:

1. North 66° 19' 59" East 10.60 feet;
2. South 64° 56' 56" East 8.46 feet;
3. South 55° 26' 18" East 16.05 feet;
4. North 61° 42' 19" East 48.20 feet;
5. North 65° 46' 57" East 28.47 feet;
6. South 67° 47' 31" East 22.76 feet;
7. South 74° 17' 35" East 20.12 feet;
8. North 21° 47' 40" East 16.17 feet;
9. North 17° 16' 08" East 19.29 feet;
10. North 17° 11' 53" East 15.23 feet;
11. North 19° 57' 31" East 31.82 feet;
12. North 46° 18' 41" East 29.20 feet;
13. North 32° 56' 05" West 3.82 feet to the TERMINUS of said line, also being a point herein described as Point "A".

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of said Bay of Monterey.

The sidelines of said strip to be lengthened or shortened as to begin at the northeasterly line of said Parcel Two of said deed and terminate at the northeasterly line of Lot 11 as shown on said "Opal Cliffs" map.

PARCEL 2 - Seacave

BEGINNING at the above described Point "A"; thence South 40° 35' 50" West 31.16 feet; thence North 30° 12' 42" West 50.04 feet; thence North 48° 09' 53" East 29.15 feet; thence South 45° 33' 00" East 43.13 feet; thence South 38° 38' 17" East 11.29 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of said Bay of Monterey.

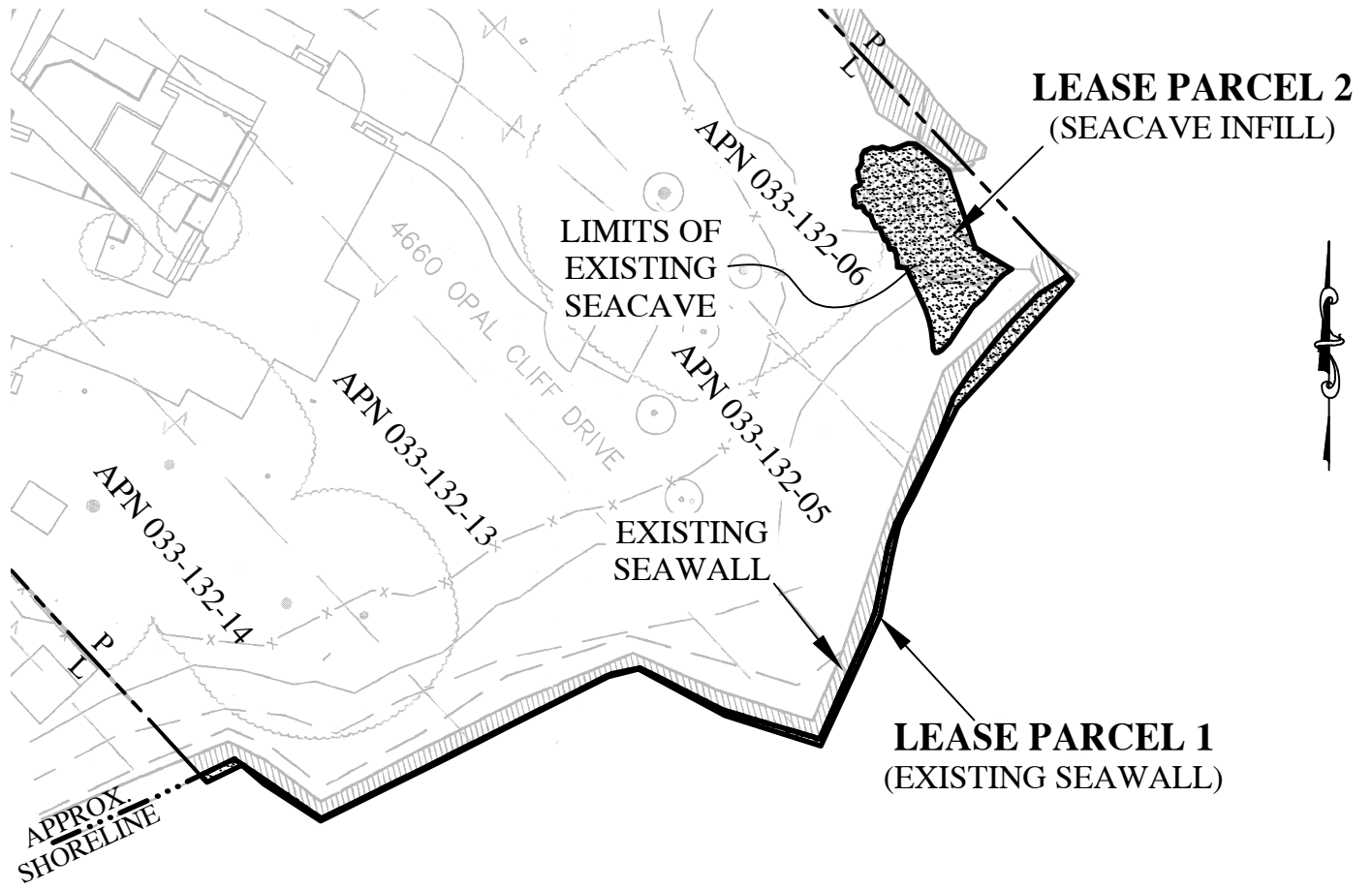
END OF DESCRIPTION

Prepared 03/26/19 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

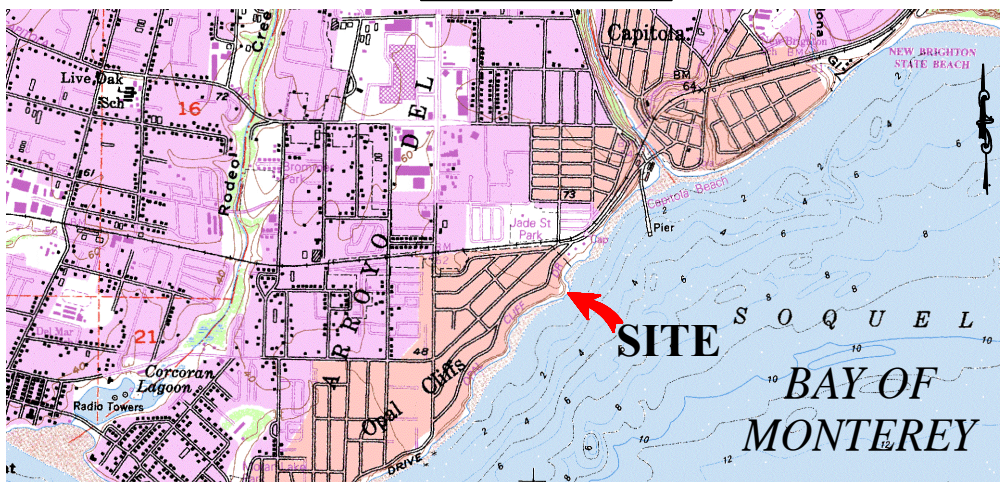


BAY OF MONTEREY

4660 OPAL CLIFF DRIVE, SANTA CRUZ

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7971.1
 SISNEY LIVING TRUST
 APNs 033-132-05, -06, -13, -14
 GENERAL LEASE -
 PROTECTIVE STRUCTURE USE
 SANTA CRUZ 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.