

STAFF REPORT

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06/28/19
PRC 8834.1; A2072
D. Simpkin

GENERAL LEASE – PROTECTIVE STRUCTURE USE

APPLICANT:

Surfsong Owners Association

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located adjacent to 205-239 South Helix Avenue, City of Solana Beach, San Diego County.

AUTHORIZED USE:

Use and maintenance of an existing 120-foot-long by 35-foot-high seawall and associated sea cave/notch fill, a 55-foot-long by 37-foot-high seawall and associated sea cave/notch fill, and a 130-foot-long section of sea cave/notch fill.

LEASE TERM:

10 years, beginning August 11, 2019.

CONSIDERATION:

\$23,901 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Insurance: Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee must apply to the Commission for a new lease when the Lessee submits its application for an amended Coastal Development Permit.
- Lessee must comply with Coastal Development Permit No. 6-03-33, including any future modifications.

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.

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Public Trust and State's Best Interests Analysis:

On August 11, 2009, the Commission authorized the issuance of a General Lease – Protective Structure Use to Surf Song Owners Association (Applicant), for the retention, use, and maintenance of a 120-foot-long by 35-foot-high seawall and associated sea cave/notch fills, and a 130-foot-long section of notch fill; and the construction, use and maintenance of a 55-foot-long by 37-foot-high seawall and associated sea cave/notch fills ([Item C17, August 11, 2009](#)). The lease expires on August 10, 2019. The Applicant is now applying for a General Lease – Protective Structure Use for the continued use and maintenance of the existing seawalls and the sea caves/notch fills.

The geology along this section of coastline causes the bluffs to be susceptible to periodic bluff failures. Bluff failures are typically caused by a combination of factors, including wave action eroding the sandstone formations at the base of the bluffs, and from wind and rain which erodes looser, less cohesive layers of materials above the sandstone.

The bluff face below the subject parcel developed a series of sea caves and notches undercutting the bluff. Due to the unstable nature of a clean sand layer above the lower bluff, the collapse of the various sea caves and notch undercuts could trigger upper bluff failures which would endanger people both on top of and below the bluff.

On July 9, 2003, the California Coastal Commission (CCC) authorized Coastal Development Permit (CDP) No. 6-03-33 for the construction of a 120-foot-long by 35-foot-high seawall and associated sea cave/notch fills below 211 South Helix Avenue, as well as an approximately 342-foot-long notch fill below 233-239 South Helix Avenue. The seawall and an approximately 130-foot section of the 342-foot-long notch fill is subject to Commission jurisdiction.

On December 9, 2005, as a result of a bluff failure, the CCC issued emergency CDP No. 6-05-58-G for an additional 115-foot-long seawall and associated sea cave/notch fills adjoining the southern tip of the existing 120-foot-long seawall, but located on the Applicant's upland property below 233 South Helix Avenue and outside the Commission's jurisdiction.

On March 11, 2009, the CCC authorized CDP amendment No. 6-03-33-A5 to approve the structures constructed under the emergency CDP, and to authorize the construction of a 55-foot-long by 37-foot-high seawall and associated sea cave/notch fills below 239 South Helix Avenue, as well as

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an 83-foot-long by 37-foot-high seawall, sea cave/notch fills, and additional shoreline protective structures on the Applicant's upland property below 233 South Helix Avenue.

The existing seawalls and sea caves/notch fills protect against bluff failure and protect the 72-unit condominium complex on top of the bluff. The stabilization against bluff failure provided by the seawall and sea cave/notch fill also protects the public using the beach. Tide Beach Park access way, one of Solana Beach's primary beach parks and access ways, is located approximately one-half mile north of the subject site.

There are also some adverse effects related to seawalls and sea cave/notch fills in general. Seawalls can impact public access, increase beach erosion, and decrease natural sand supply. The City of Solana Beach (City) and the CCC required the Applicant to pay fees to mitigate these potential impacts on Public Trust resources when approving the seawall and sea cave/notch fill in 2009.

The CCC imposed conditions on CDP No. 6-03-33 to mitigate the impacts to beach supply caused by the seawall. Special Condition 3 required an in-lieu fee of \$88,709 to compensate for the sand lost due to the protective structure. This fee covers the impacts caused over the seawall's 20-year design life and is used to implement projects that provide sand to the region's beaches. In addition, the Applicant provided \$253,000 to the City's land lease fee program to address the adverse impacts of the seawall on public access and recreation.

Special Condition 3 also requires the permittees to apply for a CDP amendment by March 11, 2029. The amendment will either authorize removal of the seawall or require mitigation for effects beyond the initial 20-year design life. This requirement allows the CCC to review the seawall to ensure that this project does not prejudice future shoreline planning options to address climate change and sea-level rise. The proposed lease requires the lessee to comply with any modifications to the CDP as a condition of the lease. The proposed lease also requires the Applicant to apply for a new lease from the Commission when it submits its CDP amendment application to the CCC.

The City and the CCC approvals do not restrict the Commission's ability to approve or deny a lease of State sovereign land for the seawalls and sea caves/notch fills. The proposed lease's limited 10-year term, combined with the requirement that the Applicant submit a new lease application when applying for its CDP amendment, will allow the Commission to

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review the improvements' continuing presence concurrently with the CCC. Additionally, the proposed lease requires that the Applicant insure the lease premises and indemnify the State for any liability related to the authorized seawall and sea cave/notch fill. The lease also requires payment of annual rent to compensate the people of the State for the use of public land. The lease does not alienate the State's fee simple interest or permanently impair public rights.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, increased flooding, and erosion affect both open coastal areas and inland waterways in California. The protective structures are located along a coastal bluff adjoining a tidally influenced area vulnerable to wave action at the current sea level of the Pacific Ocean. The seawall is part of a series of structures aligned along a steep eroding coastal bluff to protect upland residential properties along South Helix Avenue and Pacific Avenue in the City. A portion of the lease area includes fill material behind the seawall to infill a sea cave cavity. This area of Solana Beach is subject to wave run-up and impact during high tide periods.

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. Projected sea-level rise scenarios for the lease area (La Jolla tide gauge) are listed in Table 1.

Table 1. Projected Sea-Level Rise for La Jolla¹

Year	Projection (feet)
2030	0.9
2040	1.3
2050	2.0
2100	7.1

Source: Table 31, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a baseline of the year 2000.

The combination of these projected conditions increases the likelihood of future damage to the seawall that can jeopardize the condominiums along South Helix Avenue. As discussed in the Safeguarding California Plan: 2018 Update (California Natural Resources Agency 2018), armoring

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structures along the coast, while intended to safeguard upland properties, offers only temporary protection, eventually accelerating long-term erosion and leaving homes and property at risk. The seawall may become vulnerable to more frequent inundation during high tides, king tides, and storms, as well as from storm runoff. Bluff erosion as a result of precipitation, groundwater drainage, wind force, and slumping may also exert pressure on the seawall from the landward side, and potentially destabilize the sea cave fill material. As a result, the protective structures may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement and to reduce the potential risk it could pose to public safety, should it become a source of marine debris or a coastal hazard. In the future, the protective structures may also need additional fortification to withstand higher levels of flood exposure and sea-level rise.

The seawall has the potential to exacerbate the impacts of sea-level rise and increased storm and wave activity on State sovereign land. The beach area seaward of the seawall is subject to width reduction and loss from erosion, scour, and coastal squeeze (i.e., the reduction of beach width due to the inability of the beach to naturally migrate landward as a result of hard armoring infrastructure). 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.

Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. The lease includes an acknowledgment that the lease premises may be subject to the effects of sea-level rise and may require additional maintenance or protection as a result, for which the lessee agrees to be solely responsible.

Conclusion:

Seawalls and sea cave/notch fills can have impacts on Public Trust needs and values in the Solana Beach area. However, considering the measures already required by the City, CCC, and under the lease; the public safety benefits; and the limited term of the lease, staff believes the issuance of this lease will not substantially interfere with the Public Trust needs and values for the foreseeable term of the proposed lease and is in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the seawalls and sea cave/notch fills and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. 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.
3. 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.

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AUTHORIZATION:

Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning August 11, 2019, for a term of 10 years, for use and maintenance of a 120-foot-long by 35-foot-high seawall and associated sea cave/notch fill, a 55-foot-long by 37-foot-high seawall and associated sea cave/notch fill, and a 130-foot-long section of sea cave/notch fill, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$23,901, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8834.1

LAND DESCRIPTION

Two parcels of tide and submerged land situate in Solana Beach, San Diego County, State of California, more particularly described as follows:

PARCEL 1

Beginning at a point having California Coordinate System 83 (2004 epoch), zone 6 coordinate of N = 1941338.42, E = 6247619.29 which bears South 08°49'54" East, 379.70 feet from the northwest corner of lot 1 as shown on Map No. 8173 entitled "Surfsong" recorded September 17, 1975 on file at San Diego County Recorders Office thence along the following twenty three (23) courses:

- 1) South 11°23'47" East, 25.49 feet ;
- 2) South 22°54'31" East, 25.85 feet ;
- 3) South 17°45'25" East, 62.83 feet ;
- 4) South 21°45'09" East, 19.13 feet ;
- 5) North 01°56'53" West, 25.90 feet ;
- 6) North 04°44'56" West, 10.60 feet ;
- 7) North 03°13'48" West, 9.16 feet ;
- 8) North 06°05'51" West, 5.05 feet ;
- 9) North 41°03'50" West, 7.12 feet ;
- 10) North 24°26'06" West, 4.89 feet ;
- 11) North 221°57" West, 7.68 feet ;
- 12) North 60°36'39" West, 6.75 feet ;
- 13) North 20°51'37" West, 8.88 feet ;
- 14) North 45°41'15" East, 5.85 feet ;
- 15) North 15°23'59" East, 5.80 feet ;
- 16) North 08°51'21" West, 3.59 feet ;
- 17) North 33°56'02" West, 5.74 feet ;
- 18) North 46°16'46" West, 6.48 feet ;
- 19) North 49°22'16" West, 8.14 feet ;
- 20) North 15°47'45" West, 5.23 feet ;
- 21) North 12°58'03" West, 8.81 feet ;
- 22) North 12°33'42" West, 7.62 feet ;
- 23) South 75°03'25" West, 6.18 feet ; to the POINT OF BEGINNING

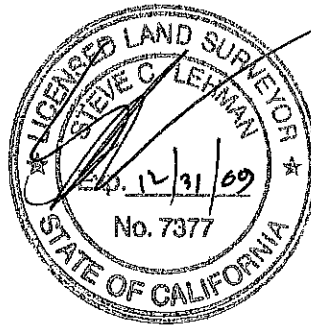
PARCEL 2

Beginning at a point having California Coordinate System 83 (2004 epoch), zone 6 coordinate of N = 1940952.31, E = 6247692.99 which bears South 09°50'11" East, 772.67 feet from the northwest corner of lot 1 as shown on Map No. 8173 entitled "Surfsong" recorded September 17, 1975 on file at San Diego County Recorders Office thence along the following eleven (11) courses:

- 1) South 14°31'03" East, 36.24 feet;
- 2) South 12°23'04" West, 39.21 feet;
- 3) South 17°46'24" East, 80.68 feet;
- 4) South 00°23'29" West, 34.40 feet;
- 5) North 86°30'07" West, 12.83 feet;
- 6) North 02°30'03" West, 16.35 feet;
- 7) North 02°41'45" East, 35.60 feet;
- 8) North 40°39'47" West, 19.09 feet;
- 9) North 13°07'23" West, 33.66 feet;
- 10) North 02°59'10" East, 21.57 feet;
- 11) North 05°09'41" East, 63.47 feet, to the POINT OF BEGINNING

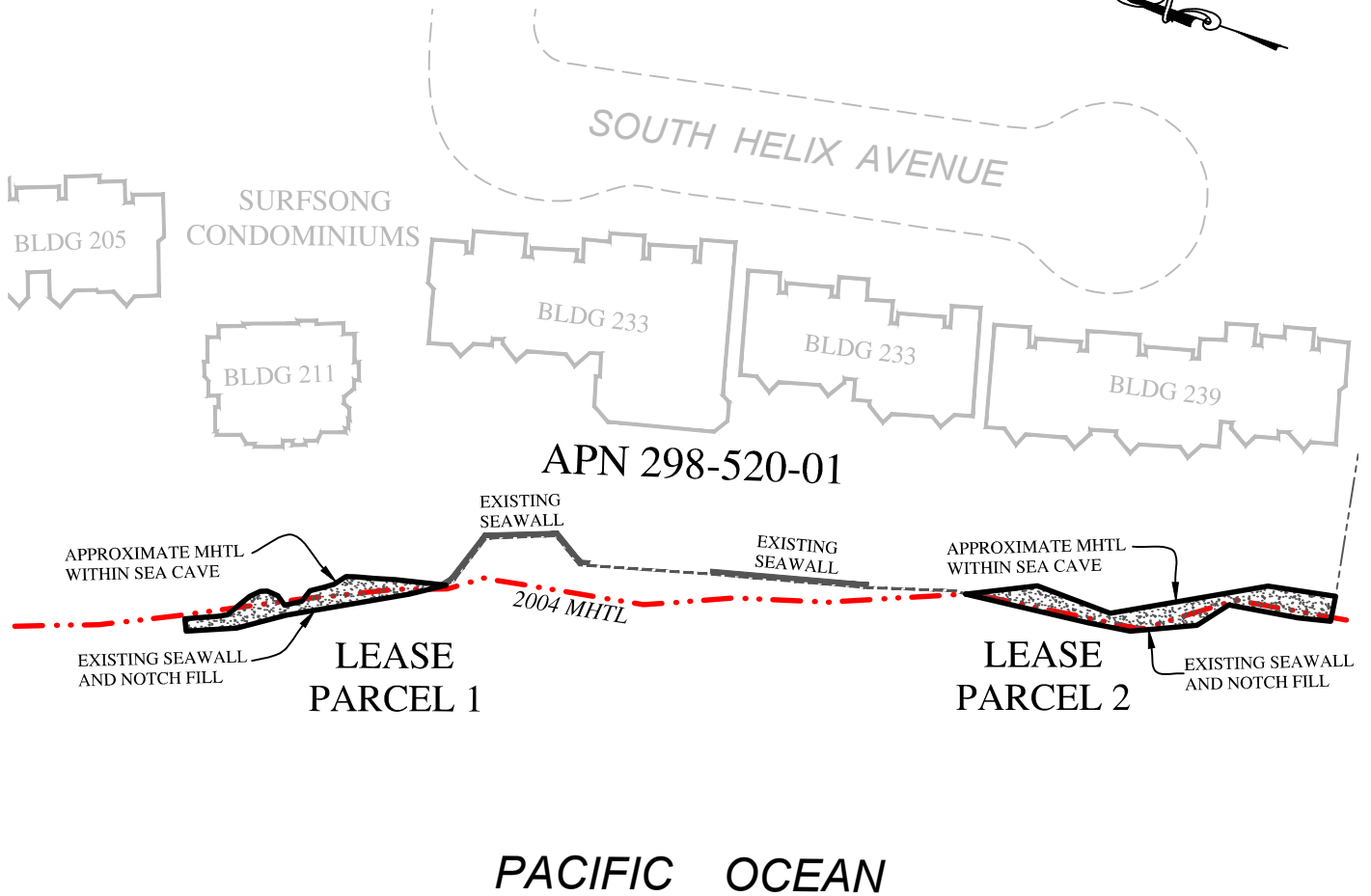
EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the Pacific Ocean

END OF DESCRIPTION



NO SCALE

SITE



205-239 SOUTH HELIX AVENUE, SOLANA BEACH

NO SCALE

LOCATION

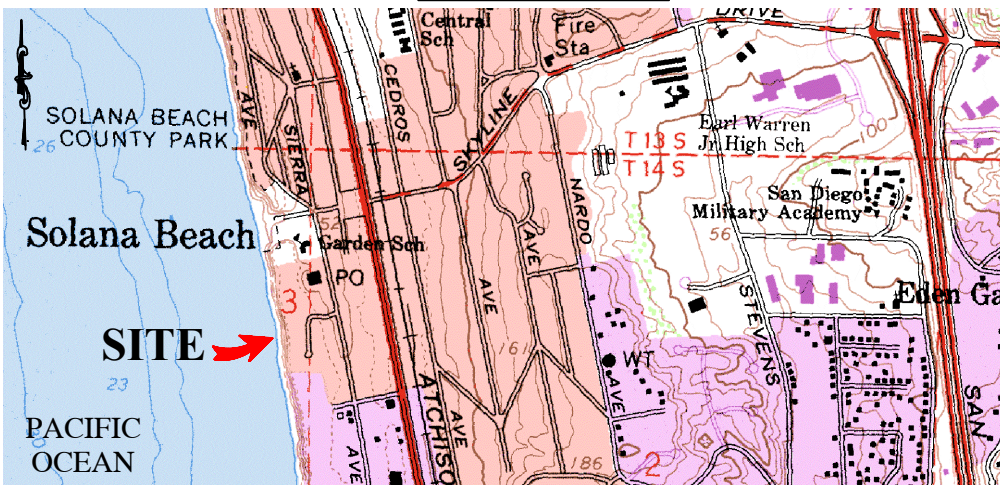


Exhibit B

PRC 8834.1
 SURFSONG OWNERS
 ASSOCIATION
 APN 298-520-01
 GENERAL LEASE -
 PROTECTIVE STRUCTURE USE
 SAN DIEGO 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.