

**CALENDAR ITEM
C103**

A 29
S 17

12/18/15
PRC 7344.1
D. Simpkin

**ACCEPTANCE OF A QUITCLAIM DEED AND ISSUANCE
OF A GENERAL LEASE – PROTECTIVE STRUCTURE USE**

LESSEE:

Stephen Murray Dart, Trustee of the Guy Michael Dart Family Trust dated March 23, 1988; Jane Dart Tucker, Trustee of the Jane Dart Tucker Revocable Trust dated April 19, 2000; and Stephen M. Dart, Trustee of the Stephen M. Dart 2001 Family Trust dated July 12, 2001

APPLICANT:

EI Why Square, LLC

AREA, LAND TYPE, AND LOCATION:

0.015 acre, more or less, of sovereign land in the Pacific Ocean, adjacent to 3168 17 Mile Drive, Assessor's Parcel Number (APN) 008-491-021, near Pebble Beach and Cypress Point, Monterey County.

AUTHORIZED USE:

The continued use and maintenance of two concrete-grouted rock revetment shoreline protective structures.

LEASE TERM:

10 years, beginning December 18, 2015.

CONSIDERATION:

\$2,402 per year, with an annual Consumer Price Index (CPI) adjustment.

SPECIFIC LEASE PROVISIONS:

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

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. On June 28, 2010, the Commission authorized a General Lease – Protective Structure Use to Stephen Murray Dart et al., for continued use

CALENDAR ITEM NO. **C103** (CONT'D)

and maintenance of two concrete-grouted rock revetment shoreline protective structures. That lease will expire on September 30, 2019. On October 8, 2015, the upland was deeded to El Why Square, LLC. The Applicant is now applying for a General Lease – Protective Structure Use.

3. The Lessee executed a quitclaim deed releasing their interest in the Lease to the State. Staff recommends acceptance of the quitclaim deed and issuance of a new lease.
4. The public's right to use California's waterways for navigation, fishing, and water-borne commerce is protected by the common law Public Trust Doctrine. Historically, the Public Trust ensures the right of the public to use its waterways to engage in "commerce, navigation, and fisheries." More recently, the Doctrine has been broadened by various court decisions to include various forms of water recreation, visitor-serving facilities, and preservation of lands in their natural state in order to protect scenic and wildlife habitat values. The Public Trust, as a common law doctrine, is not static but is continuously evolving to protect the public's needs and values inherent in the use of California's waterways.
5. The proposed application seeks authorization for the continued use and maintenance of two existing concrete-grouted rock revetment shoreline protective structures. The shoreline protective structures are part of a larger rock riprap and retaining wall structure that was constructed to protect the private upland residence and cypress trees from wave action and is located outside the Commission's jurisdiction. The shoreline protective structures have existed at this location since 1983, when they were originally constructed and are authorized under Coastal Development Permit 3-87-254. Private residences located adjacent to a steep and rocky shoreline comprise the majority of development in this part of Cypress Point and the improvements do not interfere with the public's ability to access the shoreline adjacent to the improvements since the shoreline is not conducive for public recreation and access. Additionally, sea-level rise projections for the next ten years would have a minimal impact on the existing improvements and public recreation and access opportunities at the site. Based on the short lease term and limited access to the site, the existing shoreline protective structure does not negatively impact the needs and values of the Public Trust Doctrine at this location.
6. Acceptance of the quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an

CALENDAR ITEM NO. **C103** (CONT'D)

administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

7. The staff recommends the Commission find that issuance of the lease is exempt from the requirements of 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.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize acceptance, effective December 17, 2015, of a quitclaim deed for Lease No. PRC 7344.1, a General Lease – Protective

CALENDAR ITEM NO. **C103** (CONT'D)

Structure Use issued to Stephen Murray Dart, Trustee of the Guy Michael Dart Family Trust dated March 23, 1988; Jane Dart Tucker, Trustee of the Jane Dart Tucker Revocable Trust dated April 19, 2000; and Stephen M. Dart, Trustee of the Stephen M. Dart 2001 Family Trust dated July 12, 2001.

2. Authorize issuance of a General Lease – Protective Structure Use to El Why Square, LLC, beginning December 18, 2015, for a term of 10 years, for the continued use and maintenance of two concrete-grouted rock revetment shoreline protective structures, 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 \$2,402 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A
LAND DESCRIPTION

Two parcels of tide and submerged land within the Pacific Ocean adjacent to the community of Pebble Beach, and adjacent to the 2.981 acre tract described in the deed recorded in Reel 649, at Page 735, said tract being a portion of El Pescadero Rancho, in Monterey County, California, said parcels more particularly described as follows:

Parcel 1

COMMENCING at a point distant 89.15 feet North and 120.50 feet West from a monument numbered 3132, as said monument is shown on the map titled "Licensed Surveyor's Map of El Pescadero and Point Pinos Ranchos" filed January 12, 1922 in Volume 3 of Surveys, at Page 3, records of Monterey County, California, said point of commencement also being the most easterly corner of said 2.981 acre tract; thence along the southeasterly boundary of said parcel S 53°00'00" W, 452.11 feet; thence leaving said boundary S 85°09'43" W, 26.47 feet to the ordinary high water mark of the Pacific Ocean and being the POINT OF BEGINNING; thence following said ordinary high water mark the following seven (7) courses:

- 1) N 2°58'50" E, 9.40 feet
- 2) N 35°42'14" W, 6.71 feet
- 3) N 31°54'23" W, 4.73 feet
- 4) N 54°27'22" W, 6.50 feet
- 5) N 62°25'29" W, 11.52 feet
- 6) S 66°43'12" W, 6.44 feet
- 7) S 79°13'26" W, 11.81 feet;

thence leaving the ordinary high water mark S 59°12'54" E, 45.34 feet to the POINT OF BEGINNING.

Parcel 2

COMMENCING at a point distant 89.15 feet North and 120.50 feet West from a monument numbered 3132, as said monument is shown on the map titled "Licensed Surveyor's Map of El Pescadero and Point Pinos Ranchos" filed January 12, 1922 in Volume 3 of Surveys, at Page 3, records of Monterey County, California, said point of commencement also being the most easterly corner of the 2.981 acre tract described in the deed recorded May 7, 1970 in Reel 649, at Page 735, Official Records of Monterey County, California; thence along the southeasterly and southwesterly boundaries of said parcel the following three (3) courses:

- a) S 53°00'00" W, 452.11 feet
- b) N 42°12'00" W, 18.14 feet
- c) N 50°21'00" W, 129.29 feet;

thence leaving said boundary S 87°29'43" W, 32.44 feet to the ordinary high water mark of the Pacific Ocean and being the POINT OF BEGINNING; thence following said ordinary high water mark the following six (6) courses:

- 1) N 16°04'20" W, 5.80 feet
- 2) N 7°17'28" W, 7.11 feet
- 3) N 20°12'06" W, 7.94 feet
- 4) N 12°10'26" W, 5.01 feet
- 5) N 29°43'45" W, 7.14 feet
- 6) S 52°59'26" W, 8.94 feet;

thence leaving said ordinary high water mark S 26°35'00" E, 11.52 feet; S 35°16'39" E, 9.75 feet; S 39°29'13" E, 9.75 feet to the POINT OF BEGINNING.

END DESCRIPTION

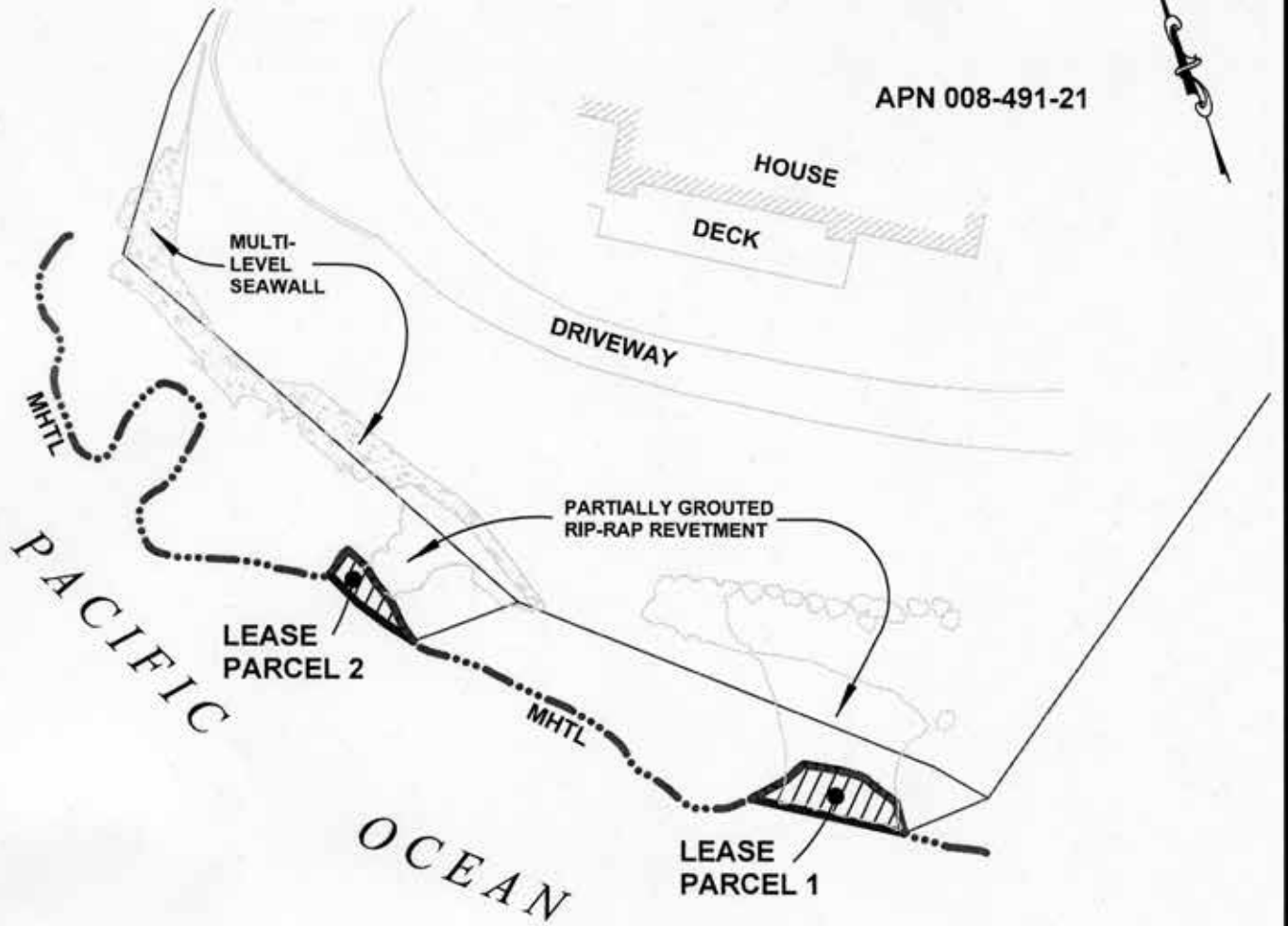
Prepared by the California State Lands Commission Boundary Unit on May 13, 2010, and based upon the description prepared July 30, 1989.



NO SCALE

SITE

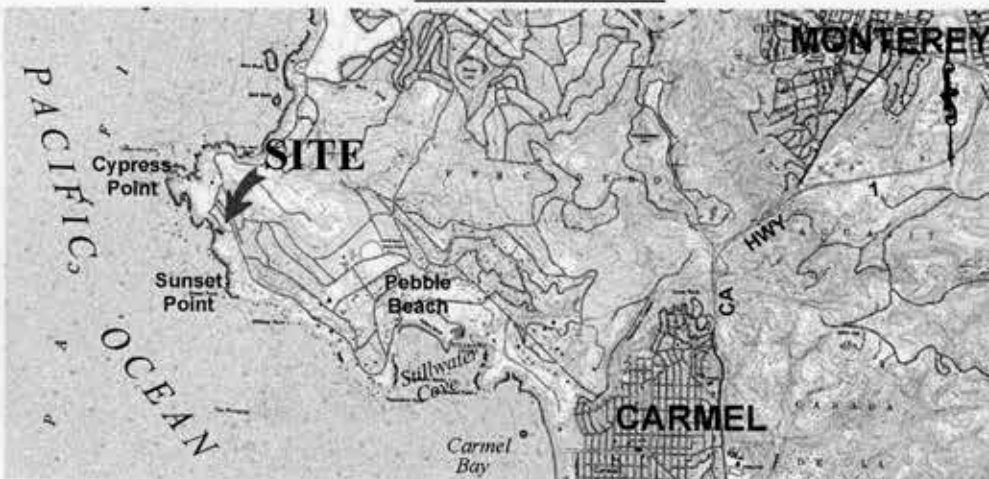
APN 008-491-21



DART REVETMENT, PEBBLE BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7344.1
 EL WHY SQUARE, LLC
 APN 008-491-21
 GENERAL LEASE
 PROTECTIVE STRUCTURE
 MONTEREY 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.