

**CALENDAR ITEM
C30**

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08/09/16
PRC 5809.1
R. Collins

GENERAL LEASE – PROTECTIVE STRUCTURE USE

APPLICANT:

Thomas R. Burman and Bari Dreiband Burman, Trustees of the Burman Trust
Dated November 19, 1992

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

72 square feet, more or less, of sovereign land in the Pacific Ocean, adjacent to 5297 Austin Road, city of Santa Barbara, Santa Barbara County.

AUTHORIZED USE:

Use and maintenance of an existing 120-foot long by 12-foot high seawall with a 9-foot long by 12-foot high return wall surfaced with a 3- to 6-inch concrete veneer.

LEASE TERM:

10 years, beginning April 7, 2016.

CONSIDERATION:

\$125 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

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

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6321, and 6321.2;
California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

In December 1979, pursuant to Appeal No. 365-79, the California Coastal Commission approved the construction of a 120-foot long by 10-foot high

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concrete bag revetment at the base of the coastal bluff adjacent to 5297 Austin Road, in the city of Santa Barbara, Santa Barbara County. On March 19, 1980, the Commission authorized Lease No. PRC 5809.9, a General Lease – Protective Structure Use, for an initial term of 15 years beginning March 20, 1980. On February 5, 2007, the Commission authorized a General Lease – Protective Structure Use for a term of 10 years beginning April 7, 2006. The lease expired April 6, 2016, and the Applicant is now applying for a General Lease – Protective Structure Use.

On June 13, 2003, the California Coastal Commission approved Coastal Development Permit No. 4-01-032 (CDP) for the repair and maintenance of the existing seawall. The repair and maintenance work reconstructed 20 feet of the existing seawall by retrieving and restacking displaced concrete bags, constructed a new 9-foot long by 12-foot high poured-in-place concrete return wall, and resurfaced the seawall with a 3- to 6-inch concrete veneer. The improvements did not exceed the previously approved footprint, height, or seaward extent of the existing seawall. Pursuant to CDP Special Condition 1.A.5 “No future repair or maintenance, enhancement, or reinforcement of the shoreline protective device to protect the development approved pursuant to Coastal Development Permit 4-01-032 shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device...”

The Applicant owns the upland adjoining the lease premises. The proposed lease is for a very small area, approximately 72 square feet. The seawall is located at the base of the bluff to protect against bluff failure and protect the home on top of the bluff. Seawalls can also provide for the health and safety of the public by protecting them from bluff failure while recreating on the beach.

Adverse effects related to shoreline protective structures, such as seawalls, 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 into the beach environment. In issuing Coastal Development Permit No. 4-01-032, the California Coastal Commission found that the repair and resurfacing of the seaward surface of an existing seawall, along with the special condition to prohibit any seaward expansion of the seawall’s footprint, would not result in any intensification of the interaction between the existing shoreline protective device and wave uprush, and, therefore, would not result in any

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new adverse effects to shoreline processes, the beach profile, or public access along the beach. Commission staff concurs with this finding.

Hard armoring structures, such as seawalls, may be unable to serve their intended functional purpose as the effects of sea-level rise and other coastal climate change impacts increase in severity over time. The Commission's staff anticipates that sea-level rise adaptation and resiliency strategies will be developed during the term of the lease at both the local and state levels that may offer the lessee alternative measure for shoreline protection. Because the Commission is committed to leading innovative and responsible resource management actions that provide the highest level of public health and safety, the Commission may require the lessee to consider different options for protection and adaptation in the future if a new lease is requested upon the expiration of the currently proposed lease term. For the proposed 10-year lease term currently under consideration, proposed lease conditions require the lessee to comply with applicable provisions or standards addressing sea-level rise that may be required or adopted by local, state, or federal agencies. In this way, the Commission strives to work with its agency and municipal partners, as well as the lessee, to protect Public Trust resources under present conditions and responsibly prepare for future coastal changes.

The lease is limited to a 10-year term and does not grant the lessee exclusive rights to the lease premises. The proposed lease requires the lessee to 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 use of public land and does not alienate the State's fee simple interest or permanently impair public rights. In addition, the lessee is prohibited from conducting future repair or maintenance, enhancement, or reinforcement of the seawall that would extend the seaward footprint of the subject shoreline protective device. For all the reasons above, Commission staff believes that, on balance, the issuance of this lease is consistent with the common law Public Trust Doctrine, will not substantially interfere with the Public Trust needs at this location, at this time and for the foreseeable term of the proposed lease, and is in the State's best interests.

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

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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.

Original construction and repair and maintenance of activities requiring a permit (as defined in Cal. Code Regs., tit. 14, § 13252) was approved under Coastal Development Permit No. 4-01-032. Any work beyond repair and maintenance would require additional CEQA review.

3. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is 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 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, is consistent with the

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common law Public Trust Doctrine, and is in the best interests of the State.

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:

Authorize issuance of a General Lease – Protective Structure Use to Thomas R. Burman and Bari Dreiband Burman, Trustees of the Burman Trust Dated November 19, 1992, beginning April 7, 2016, for a term of 10 years, for use and maintenance of an existing 120-foot long by 12-foot high seawall with a 9-foot long by 12-foot high return wall surfaced with a 3- to 6-inch concrete veneer 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 \$125, with an annual Consumer Price Index adjustment; and liability insurance in an amount of no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 5809.1

LAND DESCRIPTION

A parcel of tide and submerged land in the Pacific Ocean situated in Santa Barbara County, California, being adjacent to Lot 26 of Beguhl Tract No.2, recorded in Book 63 at Page 87 of Records of Surveys, Santa Barbara County Records, said parcel being more particularly described as follows:

COMMENCING at the southeast corner of said lot 26 as shown on said map; thence North $58^{\circ} 57' 04''$ West 87.66 feet to the TRUE POINT OF BEGINNING; thence South $83^{\circ} 18' 05''$ West 2.31 feet; thence North $90^{\circ} 00' 00''$ West 4.48 feet; thence North $86^{\circ} 11' 32''$ West 4.99 feet; thence North $81^{\circ} 38' 53''$ West 5.71 feet; thence South $81^{\circ} 52' 58''$ West 3.52 feet; thence South $72^{\circ} 34' 48''$ West 6.09 feet; thence South $65^{\circ} 15' 37''$ West 4.75 feet; thence South $59^{\circ} 34' 35''$ West 2.44 feet; thence North $83^{\circ} 33' 21''$ East 31.74 feet; thence North $55^{\circ} 21' 32''$ East 1.92 feet, more or less to the TRUE POINT OF BEGINNING.

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

END OF DESCRIPTION

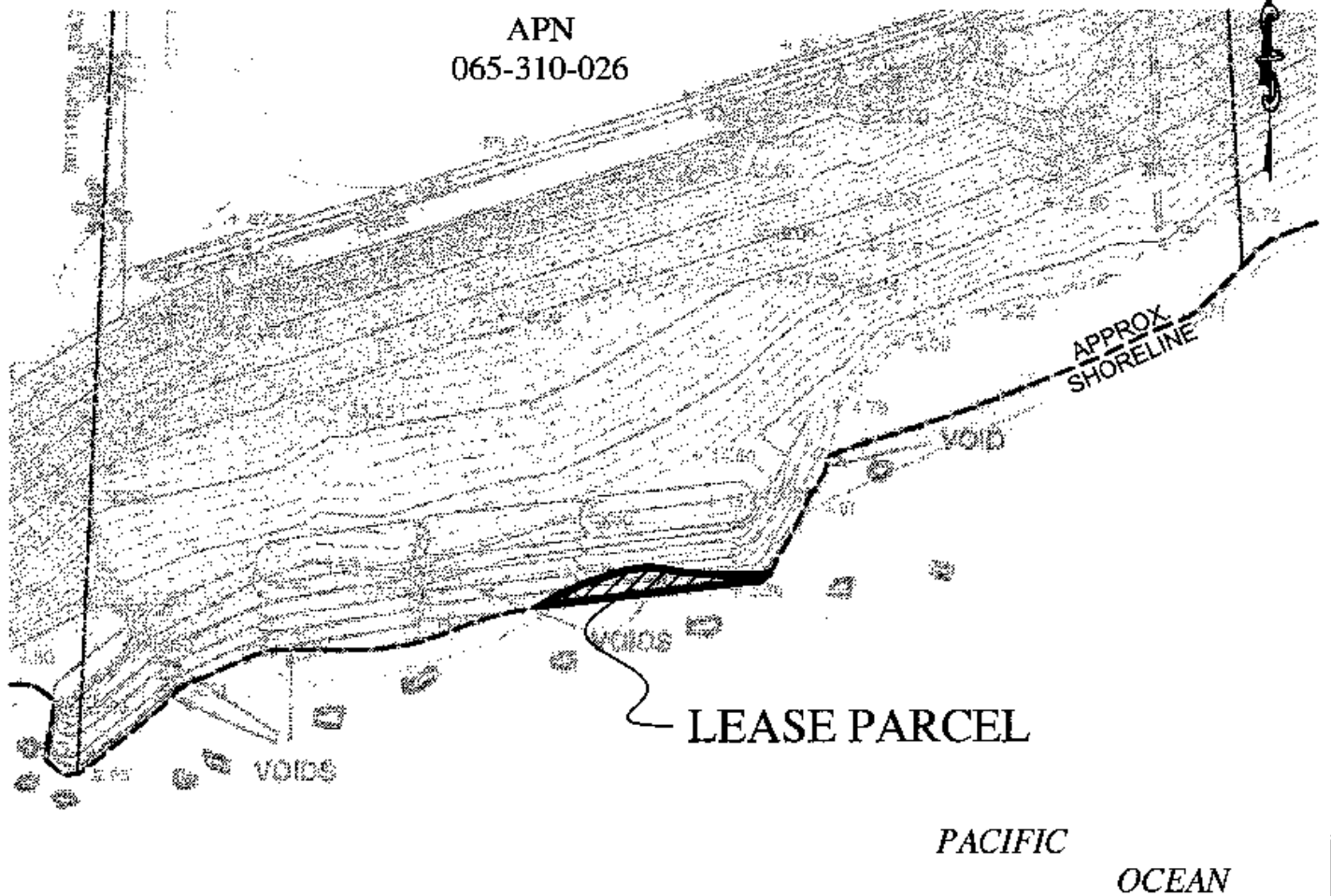
Prepared 9-07-2004 by the Boundary Unit of the California State Lands Commission.



NO SCALE

SITE

APN
065-310-026



5297 AUSTIN ROAD, SANTA BARBARA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

PRC 5809.1
BURMAN TRUST
APN 065-310-026
GENERAL LEASE -
PROTECTIVE
STRUCTURE USE
SANTA BARBARA COUNTY



TS 05/31/16