

CALENDAR ITEM

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GENERAL LEASE - PROTECTIVE STRUCTURE USE

APPLICANT:

Seacliff Beach Colony Homeowners Association
David Johnston, President
5384 Rincon Beach Park Drive
Ventura, CA 93001

AREA, LAND TYPE, AND LOCATION:

1.26 acres, more or less, of sovereign land in the Pacific Ocean at Seacliff Beach Colony, adjacent to Rincon Beach Park Drive, Ventura, Ventura County.

AUTHORIZED USE:

Repair and maintenance of an existing 2,040-foot-long rock revetment located seaward of 49 single family residences and one common lot within Seacliff Beach Colony, and repair and/or reconstruction and maintenance of three existing beach access stairways for public use.

LEASE TERM:

35 years beginning August 20, 2010.

CONSIDERATION:

\$13,132 per annum, with the State reserving the right to fix a different rent periodically during the lease term based on changes to the All Items Consumer Price Index (CPI), as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- 1) Liability Insurance with combined single limit coverage of no less than \$1,000,000.
- 2) Appropriate signage will be provided as required under the provisions of CDP #4-07-154. Additional signage will also be provided as approved by the County of Ventura and the California Coastal Commission at Hobson County Park.

CALENDAR ITEM NO. 54 (CONT'D)

- 3) Maintenance or repair work shall only occur during the late fall or winter season from October 1 to March 15 as permitted under provisions of CDP #4-07-154.
- 4) Initial revetment repairs to be completed no later than March 15, 2012.
- 5) The Commission, as set forth in Public Resources Code Section 6321.2, is to set future rents on a reasonable basis, consistent with statutes and regulations.
- 6) Lessee and Lessor agree that the Lease is not intended to establish the boundaries of State or private ownership and is made without prejudice to either party regarding any boundary claims that may be asserted presently or in the future.
- 7) The annual rental is subject to modification by Lessor on the fifth anniversary of the Lease and every five years thereafter, based on changes to the All Items Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County area.

BACKGROUND

The Seaclyff Beach Colony residential development was constructed in two phases. The first phase of the development occurred in the 1950s and the second phase was constructed in the 1980s. In 1970, the California Department of Transportation (hereinafter referred to as "Caltrans") improved a 7,000-foot section of Highway 101 upcoast of the Colony, including construction of a six-lane freeway with a "cloverleaf" off-ramp adjacent to the Seaclyff Beach Colony development. The Commission, Caltrans and the private property owners (including the then-owner of Seaclyff Beach Colony) negotiated a boundary line agreement, BLA 117, which resolved the boundary upcoast and allowed the freeway development to proceed.

At the time of the Commission approving the BLA and right-of way to Caltrans to fill portions of the ocean for the freeway in January 1970, the then property owner expressed concerns that the freeway construction might cause erosion to the shore fronting the structures being leased to various individuals. Caltrans' experts asserted that such changes were unlikely, but that Caltrans would take responsibility if the freeway caused erosion. According to the Applicant's representatives, the shoreline had already receded based upon prior winter storm events in 1969 and immediately after the construction of the highway improvements, which began in the summer of 1970, a lawsuit was filed by the homeowners against Caltrans in November 1972. The Applicant has stated that the lawsuit claimed that the oceanfront property had been damaged and a

CALENDAR ITEM NO. 54 (CONT'D)

portion of the property had eroded as a direct result of Caltrans' new freeway construction for Highway 101. According to the Applicant, to resolve the issue of responsibility, Caltrans agreed to construct a revetment in front of the existing structures in July and August of 1972. Commission staff can locate no record that it received notice of the project details so as to be able to determine whether it was to be built on private property or State owned tidelands.

Also in 1972, a Record of Survey was filed that set forth lot lines of individual leases that were subsequently used to convey the new parcels to individual purchasers. The seaward boundary of the individual lot lines were substantially the same as the location of the up-coast BLA 117, which relied on a 1927 mean high tide line (MHTL) survey. The Record of Survey depicted a separate seaward parcel that identified a 1953 MHTL survey as its seaward boundary, with the entire parcel identified as "Proposed Dedication to State of Calif."

In 1976 Caltrans extended the revetment in front of one parcel south of the existing revetment to and in front of Hobson Park owned and operated by Ventura County (County). The 1976 plans reviewed by Commission staff indicated that the proposed project was to be located landward of the mean high tide line and therefore no lease was required at that time. This is consistent with the subsequently obtained 1970 Caltrans photogrammetric survey, which indicates that in 1970 there was a substantial beach seaward of 75% of the southernmost portion of that lot. According to the Applicant, upon completion of the revetment, Caltrans entered into an agreement with the property owners of the lot and the County, in which the State was released from all liability for damage to the respective properties and from any requirements to maintain the revetment in the future, including a provision that the homeowners would be entirely responsible for the future maintenance of the revetment. Subsequently, the lawsuit was dismissed. The Commission was unaware of and not a party to the litigation, the negotiations or the settlement. According to the California Coastal Commission's (CCC) staff report for the current project, in 1983 the CCC approved a ten-lot subdivision of the single parcel south of the Seacliff Beach Colony development, which was the subject of the 1976 revetment project. The CCC's approval included a special condition that required the Seacliff Beach Colony Homeowner's Association (HOA, also Applicant) to record a deed restriction to provide two lateral public accessways seaward of all 50 residential lots in the development. One lateral public accessway was to be located on the beach between the mean high tide line and the toe of the revetment within the development and include all areas of the sandy beach between those two lines.

The second recorded lateral public accessway is located between the landward edge of the revetment and the seaward lot boundary of the residential lots. The second accessway follows an existing dirt path which runs the entire length of the

CALENDAR ITEM NO. 54 (CONT'D)

revetment. The purpose of the path is to ensure that the public has access along this stretch of beach even during higher tide events when all areas of the sandy beach seaward of the toe of the revetment become inundated. The HOA is responsible for maintaining both of these accessways. In 1996 and in 1998, the HOA completed minor repairs to the revetment through Coast Development Permits issued by Ventura County.

Prior to 2006, individual homeowners leased the land underneath their individual homes from the Seacliff Land Company. After a dispute over an increase in annual rent, a settlement was reached that resulted in homeowners purchasing the underlying land. The up-coast portion of the revetment is located on a parcel assessed to the Applicant. The Ventura County Assessor map indicates the State of California is the owner of the parcel seaward of the ten down-coast lots.

Current Situation

The Applicant now proposes to retrieve dislodged rocks from the beach and to deposit the rocks back on the revetment. The HOA also proposes to add approximately 5,000 tons of new rock in order to restore the revetment to its original design height of +11 feet above mean sea level (MSL) along 1,600 linear feet of the western section and to its original +14 feet in height above MSL along the 440 linear foot eastern section. No rock is proposed to be placed seaward of the pre-existing toe of the revetment. The project also includes removal of 19 existing unpermitted private beach access stairways located between the existing public trail and the beach. Additionally, improvements are to be made to three existing beach access stairways for public use. Based on surveys, including one provided by the Applicant's consultant, portions of the revetment and beach access stairways are located on sovereign lands.

The landward line of the revetment is approximately the same as the MHTL described in a grant deed to Grace Smith from A. L. Hobson dated September 30, 1927. It is unclear when the original shoreline protection was constructed in front of the homes, but photographs provided by the Applicant's representatives show shore protection devices existing at least as early as the 1960's. A 1979 study of erosion in this region discusses the existence of shore protection devices having existed prior to the revetment being placed in the 1970s.

A lease with the Applicant for this project has been agendaized and pulled from two prior Commission meetings at the request of the Applicant. See October 16, 2008 Calendar Item 32; December 3, 2008 Calendar Item 28.

Staff of the Commission and representatives of the HOA vigorously dispute the true boundary separating state owned tidelands and adjacent private property.

CALENDAR ITEM NO. 54 (CONT'D)

Caltrans, which constructed the revetment in 1970 and 1976, through its representatives asserts that they believed the ownership of the land on which the revetment was built was private property. Because of the dispute as to the location of the boundary, the involvement of another state agency and the above referenced public access benefits provided by the Applicant, staff is recommending that the Commission accept a rental rate discounted from 9% of value of the land as set forth in CCR, Title 2, Div. 3, Section 2003 (a) (4) and waive a portion of the rent commensurate with the public benefit associated with the revetment, as authorized by Section 2003 (a) (4) (B) and Public Resources Code Section 6321.2.

In June and August 2010, in an effort to resolve disagreement over the terms of the proposed lease, Commission staff, Caltrans staff, and Attorney General staff met with representatives of the Seacliff Beach Colony Homeowners Association . As a result of the meeting, the parties were able to agree to the terms as noted above.

OTHER PERTINENT INFORMATION:

1. The Applicant, Seacliff Beach Colony Homeowners Association (HOA), through its individual members, owns the uplands adjoining the lease premises.
2. The HOA, a non-profit organization, represents the upland residential property owners. The HOA is proposing to make extensive repairs to the revetment and has obtained a Coastal Development Permit (CDP No. 4-07-154) issued with conditions and approved by and from the CCC on June 11, 2008. One of the conditions of the CDP requires that the HOA obtains all other local, state or federal permits necessary for all aspects of the project or evidence that no such approvals are required. Upon review of the proposed site plan, Commission staff advised the HOA and the CCC that a portion of the revetment is located within the leasing jurisdiction of the Commission and that an application for a lease would be required.
3. On June 11, 2008, the California Coastal Commission (CCC) granted Coastal Development Permit # 4-07-154 (with conditions) for this project under its certified regulatory program [Title 14, California Code of Regulations, section 15251 (c)].
4. Commission staff reviewed the document and determined that the conditions, as specified in Title 14, California Code of Regulations, section 15253 (b), were met for the Commission to use the environmental analysis

CALENDAR ITEM NO. 54 (CONT'D)

document certified by the CCC as a Mitigated Negative Declaration equivalent in order to comply with the requirements of the CEQA.

5. This activity involves lands which have not been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. However, the Commission declared that all sovereign lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code sections 6370, et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by Title 2, California Code of Regulations, section 2954 is not applicable.

APPROVALS OBTAINED:

California Coastal Commission

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers
Regional Water Quality Control Board

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that an Environmental Analysis Document, California Coastal Commission (CCC) Permit # 4-07-154, was adopted for this project by the CCC under its certified program [Title 14, California Code of Regulations, Section 15251 (c)], and that the California State Lands Commission has reviewed and considered the information therein and concurs in the CCC'S determination.

AUTHORIZATION:

Authorize issuance of a General Lease - Protective Structure Use to the Seacliff Beach Colony Homeowners Association beginning August 20, 2010, for a term of 35 years, for the use, repair, and maintenance of an existing 2,040 foot long rock revetment and repair and maintenance of three beach access stairways for public use as shown on Exhibit A (for

CALENDAR ITEM NO. **54** (CONT'D)

reference purposes only) and as described on Exhibit B attached and by this reference made a part hereof; annual rental in the amount of \$13,132, with the State reserving the right to fix a different rent periodically during the lease term based on the All Items Consumer Price Index, as provided in the lease; liability insurance with coverage of no less than \$1,000,000.