

Staff Report 20

LESSEE:

Martin Resorts, Inc.

PROPOSED ACTION:

Amendment of General Lease – Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean adjacent to 2411, 2555, 2575, and 2651 Price Street, Pismo Beach, San Luis Obispo County.

AUTHORIZED USE:

Use and maintenance of rock riprap shoreline protective structures, portions of a retaining wall, and sand fill.

TERM:

10 years, beginning August 1, 2015.

CONSIDERATION:

\$14,353 per year.

PROPOSED AMENDMENT:

- Amend Section 2, Special Provisions of the lease to delete, paragraphs 3, 4, and 5.
- Amend Section 2, Special Provisions of the lease to add a Section 2, to require the Lessee to rehabilitate the lower perimeter wall within Parcel 6 no later than December 31, 2023. Any extension of the rehabilitation deadline will require the submittal of a lease application for an amendment of the lease, minimum expense deposit and Commission authorization prior to December 31, 2023.

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:

On June 29, 2015, the Commission authorized a General Lease – Protective Structure Use to the Lessee for the use and maintenance of rock riprap shoreline protective structures, portions of a retaining wall, and sand fill ([Item 68, June 29, 2015](#)). The lease will expire on July 31, 2025.

The existing improvements are located at the base of a steep bluff and protect the Lessee's upland property and businesses, which include the Ventana Grill and Shore Cliff Hotel located in the City of Pismo Beach (City).

An existing access stairway adjacent to Lease Parcel 6 (see Exhibit B) and a bridge connecting the stairway to the bluff-top were initially damaged by a storm event in 2007. Since that time, Lease Parcel 6, which includes a low concrete perimeter wall to retain sand for use as a public recreational site has not been accessible from the bluff-top. The stairway, and the bridge were located within a public access easement outside the Commission's jurisdiction. The easement is held by the City for purposes of public ingress and egress across, over, and upon the upland leading to and from Lease Parcel 6. When the Lease was authorized in 2015, the Lessee had planned to rehabilitate the access stairway and replace the bridge; however, the stairway became severely deteriorated and only the central concrete core of the stairway remains. The access stairway/bridge site is located outside the Commission's jurisdiction.

Section 2, paragraph 3 of the existing lease requires the Lessee to submit a plan on or before August 1, 2020, for Commission review and approval to either: 1) provide an alternate means of access to Parcel 6; or 2) remove the improvements located within Parcel 6 in their entirety, and restore the parcel as provided in the Lease should the rehabilitation project not be completed by July 31, 2020.

Additionally, the lease contains the following provisions:

- Paragraph 4: In the event public access to Parcel 6 is subsequently provided, consideration and annual monetary rent for the Parcel will be adjusted to include the public use and benefit, effective on the next anniversary date of the Lease following the provision of access.

- Paragraph 5: In the event all improvements in Parcel 6 are removed and the lease area is restored, rent for the Parcel will cease effective on the next anniversary date following the restoration, and the Parcel will no longer be part of the Lease Premises.

In December 2020, the Lessee sent a letter to the City relinquishing and abandoning the portion of their 2016 Coastal Development Permit relating specifically to the stairway and bridge, but still maintaining approval to reconstruct the perimeter wall in Lease Parcel 6.

The City expressed its support for the Lessee to relinquish the stairway entitlement due to safety concerns, rising sea levels, and beach loss. The City also supports the Lessee's desire to rehabilitate the existing perimeter wall because even though it cannot be reasonably accessed from the upland, it provides a land-based refuge for recreational kayakers and paddle boarders, and for safety personnel during ocean rescue events.

Debris from the bridge and all but the central concrete core of the stairway have been removed. The lower perimeter wall is anticipated to be restored at the end of 2022. As part of this lease amendment, the Lessee will be required to complete restoration of the lower perimeter wall no later than December 31, 2023. The remaining concrete core is anticipated to be removed at the end of 2022.

Although the public access provided by the stairway and bridge is no longer available, the Lessee has completed work on a new pedestrian bridge located on the upland, at a location downcoast from Lease Parcel 6. In 2019, a pedestrian bridge between Inn at the Cove and Pismo Lighthouse Suites opened for public use. The new bridge improves and provides continuous access to the California Coastal Trail. Although not located on sovereign land, the bridge protects the scenic corridor and the natural environment. On July 3, 2019, the trail easement was donated to the City to ensure that it will remain accessible in perpetuity.

While the Lessee did not provide the access contemplated in the current lease, staff believes that the pedestrian bridge and donated easement provided by the Lessee meet the intent of the Lease's special provisions to provide safe public coastal access. Additionally, the access to Lease Parcel 6 contemplated in the current lease is no longer appropriate due to safety concerns. Therefore, the existing lease provisions pertaining to the stairway are no longer relevant and staff recommends removal of Section 2, Special Provisions, paragraphs 3, 4, and 5 from the lease.

The proposed amendment does not alienate the State's fee simple interest or permanently impair public rights. The lease will expire in four years, does not grant

the Lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the Lessee may be required to remove all improvements from State land. The Lessee continues 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 occupation of the public land involved.

For all the reasons above, staff believes the issuance of this lease amendment will not substantially impair Public Trust uses or values and is in the best interests of the State.

CLIMATE CHANGE:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect open coastal areas in California. The lease area is located adjacent to Pismo Beach in San Luis Obispo County, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea-level rise.

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 Port San Luis tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for Port San Luis

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 19, State of California Sea-Level Rise Guidance: 2018 Update

Note: 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 areas. Climate

change and sea-level rise will further influence coastal areas by changing erosion and sedimentation rates as beaches and coastal landscapes are exposed to increased wave force.

The seawall, public beach area, and rock embankment protection will likely be impacted by sea-level rise and increased erosion over time. Regular monitoring and maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change, including sea-level rise.

CONCLUSION:

For the reasons stated above, staff believes the issuance of the proposed lease amendment will not substantially impair the public rights to navigation, fishing, or other 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.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application for a lease amendment 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 a trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Lessee would be required to comply with the existing lease conditions. Upon expiration or prior termination of the lease, the Lessee has no right to a new lease or to renewal of any previous lease
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Amendment of this lease is not a project as defined by the California Environmental Quality Act because it is an 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).

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the approval of the proposed amendment will not substantially interfere with the public's rights to navigation or fishing; or substantially impair Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease as amended; is consistent with the common law Public Trust Doctrine; and is in the State's best interests.

AUTHORIZATION:

Authorize the amendment of Lease Number PRC 4698.1, a General Lease – Protective Structure Use, effective October 21, 2021, to delete Section 2, Special Provisions, paragraphs 3, 4, and 5; add a Section 2, Special Provision requiring the Lessee to rehabilitate the lower perimeter wall within Parcel 6 no later than December 31, 2023. Any extension of the rehabilitation deadline will require the submittal of a lease application for an amendment of the lease, minimum expense deposit and Commission authorization prior to December 31, 2023; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 4698.1

STATE LAND LEASE PARCELS Legal Description

Six Parcels of tide and submerged lands of the State of California, situated in the Pacific Ocean, adjoining portions of Lot 8 of the subdivision of a portion of the Rancho El Pismo and San Miguelito, City of Pismo Beach, San Luis Obispo County, as said Lot 8 is designated according to the Book "A", at Page 157 of Maps in the office of the Recorder for said County, and said Six Parcels being more particularly described as follows:

Parcel 1

Commencing from NGS geodetic control Station "Beach", PID: FV1169, with State Plane Coordinate Value: North-2,252,122.04 sFT, East-5,767,087.37 sFT, NAD83 (1992), Zone 5, Epoch 1991.35;

Thence, South 51° 16' 04" East, 1368.73 feet to the **Point of Beginning**;

Thence, along the next 7 courses,

1. Thence, S 38° 26' 20" E, 20.20 feet;
2. Thence, S 20° 18' 25" E, 14.04 feet;
3. Thence, S 41° 52' 24" W, 3.17 feet;
4. Thence, N 29° 54' 12" W, 2.23 feet;
5. Thence, N 22° 17' 38" W, 16.37 feet;
6. Thence, N 57° 47' 41" W, 15.44 feet;
7. Thence, N 40° 00' 22" E, 7.88 feet to said point of beginning;

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

Parcel 2

Commencing from NGS geodetic control Station "Beach", PID: FV1169, with State Plane Coordinate Value: North-2,252,122.04 sFT, East-5,767,087.37 sFT, NAD83 (1992), Zone 5, Epoch 1991.35;

Thence, South 50° 27' 45" East, 1417.48 feet to the **Point of Beginning**;

Thence, along the next 10 courses,

1. Thence, S 79° 11' 57" E, 28.96 feet;
2. Thence, S 43° 21' 53" E, 3.57 feet;
3. Thence, S 79° 32' 40" W, 13.89 feet;

4. Thence, S 57° 51' 17" W, 2.91 feet;
5. Thence, S 10° 14' 59" W, 5.90 feet;
6. Thence, S 72° 54' 31" W, 4.88 feet;
7. Thence, N 42° 11' 10" W, 8.55 feet;
8. Thence, N 05° 52' 25" E, 6.43 feet;
9. Thence, N 67° 58' 41" W, 5.42 feet;
10. Thence, N 13° 00' 13" E, 4.68 to said point of beginning;

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

Parcel 3

Commencing from NGS geodetic control Station "Beach", PID: FV1169, with State Plane Coordinate Value: North-2,252,122.04 sFT, East-5,767,087.37 sFT, NAD83 (1992), Zone 5, Epoch 1991.35;

Thence, South 51° 27' 54" East, 1506.41 feet to the **Point of Beginning**;

Thence, along the next 77 courses,

1. Thence, N 60° 16' 21" E, 5.90 feet;
2. Thence, N 02° 39' 46" E, 10.90 feet;
3. Thence, S 88° 05' 16" E, 70.93 feet;
4. Thence, S 82° 14' 52" E, 20.40 feet;
5. Thence, S 73° 39' 34" E, 16.28 feet;
6. Thence, S 33° 35' 17" E, 12.36 feet;
7. Thence, S 57° 35' 52" E, 23.27 feet;
8. Thence, S 05° 20' 00" E, 12.51 feet;
9. Thence, S 20° 07' 50" E, 20.17 feet;
10. Thence, S 65° 21' 34" E, 2.81 feet;
11. Thence, S 78° 55' 08" E, 6.30 feet;
12. Thence, S 32° 49' 06" E, 9.00 feet;
13. Thence, S 09° 00' 00" W, 7.33 feet;
14. Thence, S 27° 35' 38" E, 3.10 feet;
15. Thence, S 50° 33' 51" E, 13.27 feet;
16. Thence, S 29° 47' 19" E, 18.17 feet;
17. Thence, S 22° 50' 29" E, 15.04 feet;
18. Thence, S 06° 24' 04" E, 9.64 feet;
19. Thence, S 45° 01' 14" W, 5.84 feet;
20. Thence, S 69° 32' 45" W, 6.83 feet;
21. Thence, N 70° 30' 08" W, 5.38 feet;
22. Thence, S 87° 33' 17" W, 3.62 feet;
23. Thence, S 41° 21' 52" W, 7.25 feet;
24. Thence, S 43° 41' 38" W, 12.03 feet;
25. Thence, S 22° 05' 24" E, 9.20 feet;
26. Thence, S 34° 47' 49" W, 1.97 feet;

27. Thence, S 68° 33' 16" E, 1.34 feet;
28. Thence, S 86° 02' 33" E, 4.27 feet;
29. Thence, N 77° 23' 36" E, 4.28 feet;
30. Thence, S 69° 43' 17" E, 4.07 feet;
31. Thence, S 10° 38' 28" E, 8.71 feet;
32. Thence, S 28° 53' 34" E, 5.02 feet;
33. Thence, S 13° 02' 17" W, 3.92 feet;
34. Thence, S 15° 06' 19" E, 6.90 feet;
35. Thence, S 25° 19' 02" E, 4.34 feet;
36. Thence, S 33° 15' 41" E, 7.54 feet;
37. Thence, S 45° 01' 14" W, 6.79 feet;
38. Thence, N 85° 45' 18" W, 5.53 feet;
39. Thence, S 47° 23' 53" W, 12.76 feet;
40. Thence, S 63° 26' 14" W, 23.02 feet;
41. Thence, N 43° 12' 39" W, 8.25 feet;
42. Thence, N 23° 43' 04" E, 5.44 feet;
43. Thence, N 09° 44' 04" W, 8.63 feet;
44. Thence, N 66° 59' 21" W, 5.29 feet;
45. Thence, N 21° 35' 06" E, 5.62 feet;
46. Thence, S 73° 18' 43" E, 2.54 feet;
47. Thence, N 03° 52' 53" W, 7.19 feet;
48. Thence, N 65° 14' 25" W, 3.48 feet;
49. Thence, N 14° 43' 30" W, 12.44 feet;
50. Thence, N 45° 01' 14" W, 6.02 feet;
51. Thence, N 10° 49' 50" W, 8.42 feet;
52. Thence, N 24° 29' 52" E, 14.96 feet;
53. Thence, N 72° 48' 01" E, 6.87 feet;
54. Thence, N 21° 40' 47" E, 5.04 feet;
55. Thence, N 68° 39' 54" E, 13.58 feet;
56. Thence, N 05° 39' 54" W, 20.81 feet;
57. Thence, N 80° 32' 39" E, 6.44 feet;
58. Thence, N 07° 36' 00" W, 6.40 feet;
59. Thence, N 90° 00' 00" W, 8.26 feet;
60. Thence, N 25° 09' 38" W, 11.45 feet;
61. Thence, N 47° 15' 05" E, 11.53 feet;
62. Thence, N 78° 56' 15" W, 9.92 feet;
63. Thence, N 14° 02' 45" W, 6.98 feet;
64. Thence, N 85° 25' 45" W, 10.62 feet;
65. Thence, N 06° 47' 38" W, 8.95 feet;
66. Thence, N 68° 13' 46" W, 21.92 feet;
67. Thence, N 38° 05' 33" W, 6.56 feet;
68. Thence, S 47° 29' 21" W, 14.96 feet;
69. Thence, N 78° 14' 23" W, 4.23 feet;
70. Thence, N 05° 04' 59" W, 7.78 feet;
71. Thence, N 25° 27' 36" E, 8.21 feet;
72. Thence, N 64° 22' 30" W, 24.50 feet;

73. Thence, S 73° 10' 40" W, 3.57 feet;
74. Thence, N 53° 31' 05" W, 13.16 feet;
75. Thence, N 81° 17' 55" W, 23.77 feet;
76. Thence, N 72° 22' 51" W, 25.73 feet;
77. Thence, N 34° 37' 21" W, 9.51 feet to said point of beginning;

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

Parcel 4

Commencing from NGS geodetic control Station "Beach", PID: FV1169, with State Plane Coordinate Value: North-2,252,122.04 sFT, East-5,767,087.37 sFT, NAD83 (1992), Zone 5, Epoch 1991.35;

Thence, South 48° 29' 09" East, 1906.59 feet to the **Point Of Beginning**;

Thence, the next 33 courses,

1. Thence, N 18° 33' 31" E, 8.82 feet;
2. Thence, N 40° 16' 29" E, 7.30 feet;
3. Thence, N 33° 08' 29" E, 30.32 feet;
4. Thence, N 61° 08' 38" E, 8.48 feet;
5. Thence, N 79° 01' 05" E, 12.99 feet;
6. Thence, S 83° 38' 28" E, 8.66 feet;
7. Thence, S 65° 38' 03" E, 24.14 feet;
8. Thence, S 50° 07' 10" E, 11.62 feet;
9. Thence, S 29° 54' 42" E, 8.45 feet;
10. Thence, S 05° 46' 59" W, 17.92 feet;
11. Thence, S 21° 28' 31" E, 6.92 feet;
12. Thence, S 25° 42' 26" W, 9.98 feet;
13. Thence, N 34° 08' 26" W, 7.86 feet;
14. Thence, S 74° 56' 30" W, 4.34 feet;
15. Thence, N 12° 05' 08" W, 15.95 feet;
16. Thence, N 71° 03' 57" W, 7.59 feet;
17. Thence, S 48° 39' 11" W, 4.78 feet;
18. Thence, N 77° 34' 57" W, 3.24 feet;
19. Thence, S 76° 17' 13" W, 9.49 feet;
20. Thence, S 09° 50' 26" W, 4.08 feet;
21. Thence, S 33° 10' 00" W, 6.69 feet;
22. Thence, N 49° 48' 25" W, 4.83 feet;
23. Thence, N 26° 16' 28" E, 2.80 feet;
24. Thence, N 37° 04' 32" W, 2.06 feet;
25. Thence, S 58° 22' 01" W, 5.75 feet;
26. Thence, S 81° 15' 36" W, 4.85 feet;
27. Thence, N 69° 44' 16" W, 11.22 feet;
28. Thence, S 66° 22' 14" W, 7.35 feet;

29. Thence, N 73° 43' 33" W, 3.11 feet;
30. Thence, N 10° 57' 42" W, 2.11 feet;
31. Thence, S 57° 34' 43" W, 4.68 feet;
32. Thence, S 75° 42' 08" W, 5.15 feet
33. Thence, N 80° 32' 03" W, 2.03 feet to said point of beginning;

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

Parcel 5

Commencing from NGS geodetic control Station "Beach", PID: FV1169, with State Plane Coordinate Value: North-2,252,122.04 sFT, East-5,767,087.37 sFT, NAD83 (1992), Zone 5, Epoch 1991.35;

Thence, South 50° 21' 25" East, 2157.13 feet to the **Point Of Beginning**;

Thence, along the next 15 courses,

1. Thence, N 29° 30' 49" E, 2.23
2. Thence, N 67° 54' 29" E, 7.31 feet;
3. Thence, N 45° 45' 40" E, 7.46 feet;
4. Thence, S 67° 03' 03" E, 7.78 feet;
5. Thence, N 88° 32' 39" E, 7.04 feet;
6. Thence, N 60° 30' 12" E, 15.62 feet;
7. Thence, S 45° 35' 54" E, 12.82 feet;
8. Thence, S 15° 32' 19" W, 8.77 feet;
9. Thence, S 42° 19' 23" E, 10.95 feet;
10. Thence, S 15° 47' 30" E, 5.11 feet;
11. Thence, N 86° 21' 57" W, 11.56 feet;
12. Thence, S 70° 24' 40" W, 6.29 feet;
13. Thence, N 74° 32' 21" W, 14.79 feet;
14. Thence, N 50° 01' 59" W, 18.02 feet;
15. Thence, N 81° 57' 36" W, 11.19 feet to said point of beginning;

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

Parcel 6

Commencing from NGS geodetic control Station "Beach", PID: FV1169, with State Plane Coordinate Value: North-2,252,122.04 sFT, East-5,767,087.37 sFT, NAD83 (1992), Zone 5, Epoch 1991.35;

Thence, South 50° 30' 15" East, 1278.93 feet to the **Point Of Beginning**;

Thence, along the next 10 courses,

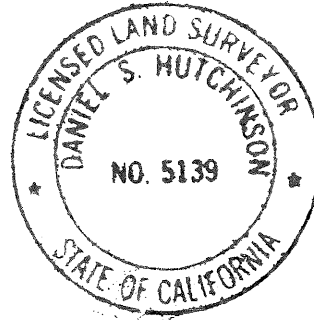
1. Thence, N 72° 38' 02" E, 16.96 feet;
2. Thence, S 74° 37' 42" E, 3.12 feet;
3. Thence, S 12° 41' 03" E, 18.40 feet;
4. Thence, S 41° 39' 56" E, 4.82 feet;
5. Thence, S 79° 29' 51" E, 17.71 feet;
6. Thence, S 43° 19' 24" E, 6.50 feet;
7. Thence, S 26° 18' 53" E, 12.32 feet;
8. Thence, S 65° 09' 29" E, 12.21 feet;
9. Thence, N 76° 18' 39" W, 66.76 feet;
10. Thence, N 00° 00' 00" E, 25.65 feet to said point of beginning;

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

END OF DESCRIPTION

Prepared by:


Daniel S. Hutchinson, LS 5139

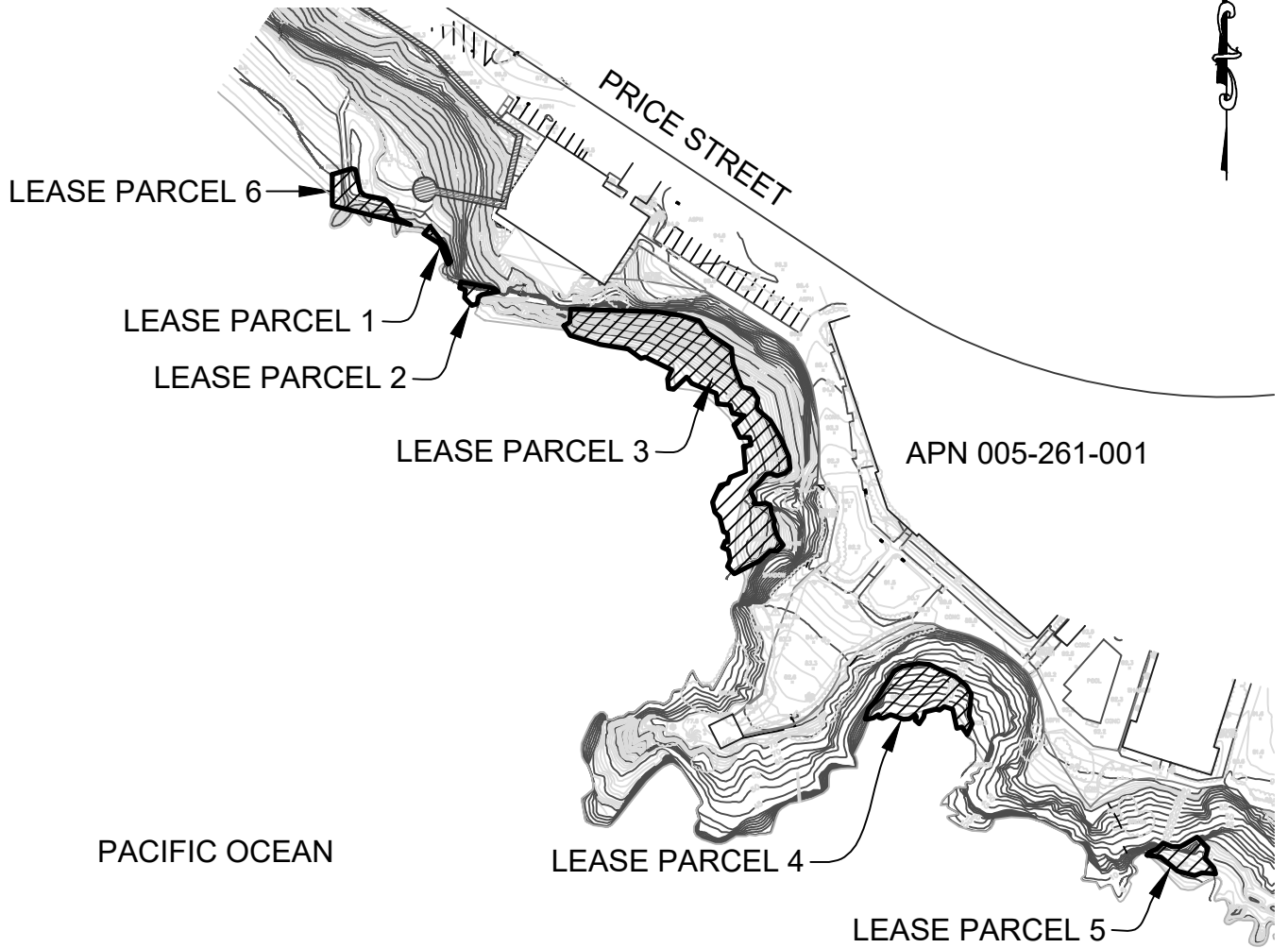


Date:

MARCH 18TH, 2015

NO SCALE

SITE



2555 PRICE STREET, PISMO BEACH

NO SCALE

LOCATION

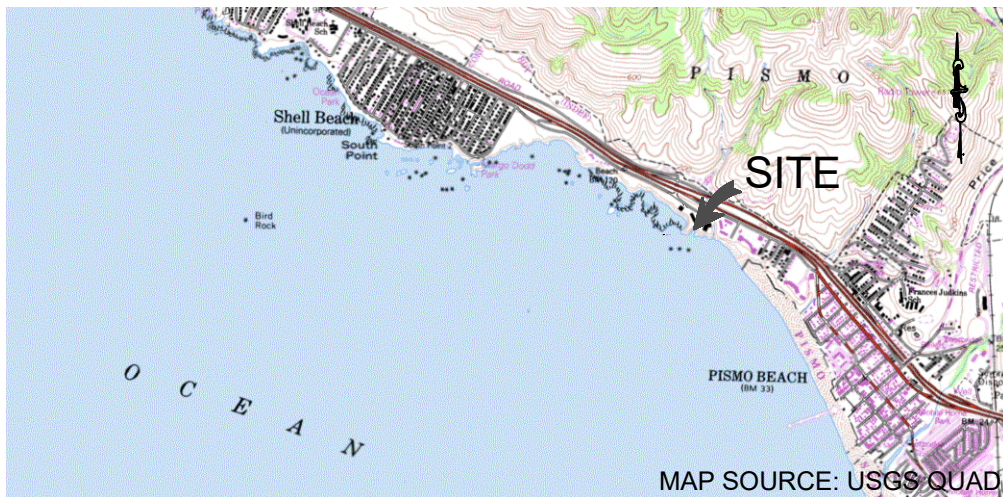


EXHIBIT B

PRC 4698.1
 MARTIN RESORTS
 APN 005-261-001
 GENERAL LEASE -
 PROTECTIVE STRUCTURE USE
 SAN LUIS OBISPO COUNTY



SITE

DJF 9/8/2021

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.