

**Letter to State Lands Commission on behalf of Love Lambs II, LLC**

Manager, Cortney S. Warren-Fishkin, PhD, ABPP

Current owner in Casa Blanca Beach Estates Owners Association

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Carpinteria, CA 93013

Re: State Lands Commission Meeting December 9, 2022  
Agenda Item #70  
Casa Blanca Beach Estates Owners' Association Lease - Protective Structure

Dear State Lands Commissioners and Staff,

My name is Dr. Cortney Warren-Fishkin and I'm the current resident of a home in the Casa Blanca Beach Estates Owners Association (CBBEOA). I am writing this letter in response to your agenda item 70 to be heard on Thursday, December 9<sup>th</sup> that states:

“Consider application for a General Lease – Protective Structure Use, compensation for unauthorized occupation, and authorization to take all action necessary, including litigation, to remove unauthorized improvements, of sovereign tide and submerged land located in the Pacific Ocean, adjacent to Assessor Parcel Number 005-600-018, near Carpinteria, Santa Barbara County; for existing rock revetment. CEQA Consideration: categorical exemption. (Lease 5764; RA# 2019312) (A 37; S 19) (Staff: K. Connor, B. Johnson)”

To write this letter, I reviewed relevant documents from the State Lands Commission (SLC), County of Santa Barbara (CSB), and California Coastal Commission (CCC) because all three governmental bodies are inherently involved in our current situation. As such, we need the help and cooperation of all 3 agencies to find a fair, reasonable, and legally-sound resolution. My sincerest hope is that you will take our good-faith efforts in earnest and help us find such a resolution to our current situation.

My family and I bought our home in Casa Blanca in 2014. It's a small, HOA-governed community comprised of 7 homeowners (8 lots) near the beach in Carpinteria, CA. At the time, our general understanding was that our community was built in the early 1990's immediately behind a large rock revetment that loops around the ocean-front side of our homes. The rock revetment has existed since the 1960's—before the CCC was even formed. In addition to protecting our homes, the revetment protects the railroad tracks, a number of businesses, the 101 highway, and a County historic building—a poolhouse that serves as the center of our HOA land. At the time the community of Casa Blanca was built, an Offer to Dedicate an irrevocable public access easement on the seaward side of the revetment was given to the CSB (as part of our agreement with the SLC and CCC). It was up to the CSB to accept the easement, notify CBBEOA of the acceptance, and organize permits to be pulled if they ever wanted a walkway to be constructed on the agreed-upon public easement location. In addition, a lease was signed with the SLC for \$0 a year as the official boundary line was never determined/agreed upon for use of the rock revetment (meaning that the revetment was never determined to be *on* or *not on* state lands).

When we bought our home in 2014, CSB had given us no notice—actual or constructive—that it had ever accepted the dedication. In addition, the CSB never indicated that they wanted a walkway to be built on the accepted easement location—in fact, quite the contrary: they wrote that they had no intention of building a walkway there because it would be unsafe. Furthermore, our \$0 lease with you, the SLC, was attached to our CC&Rs. That was all I knew existed. When we obtained permits in 2014/2015 to repair and remodel our home, they were issued by the CCC and CSB. No violations appeared on my Title Report when we bought our home and there was no indication that CBBEOA was anything but in perfect standing with the SLC, CCC, and CSB. All indications from these three agencies were that there were no violations or concerns of any kind.

So, you might imagine my shock and utter terror a few years later, in early 2017, when we received a letter from the CCC and CSB stating that we were in violation of the Coastal Act for failure to construct a public access walkway. In a good-faith effort to understand the situation, our HOA has been actively trying to get a fair and legal resolution ever since. In 2017, we applied for a permit to build a walkway in the legally-accepted easement location. However, CCC staff asserted that any such walkway would be too hazardous to build and the CSB has refused to accept its required maintenance and liability obligations for it. So, we have been unable to get a permit and build anything legally to date. Furthermore, the CCC has refused to conduct a hearing on the five-year old permit application despite our filing of a Statement of Defense in October, 2020, to get a hearing.

As part of our ongoing negotiations with the CCC, we were asked to submit a lease renewal application to you, the SLC. Although we have always had a lease for \$0 rent since our community was built, we needed a boundary determination from SLC to get a permit to build the public access walkway on our existing easement. Essentially, the SLC had declined to make a boundary determination in 1990. Instead, it had consented to the recordation of the subdivision, accepted the quitclaim deed for the land seaward of the rock revetment (Lot 12), and had done nothing to pursue that boundary determination for about thirty years. But, after claiming that they had jurisdiction over the permit because the revetment is allegedly located, in part, on State tidelands, CCC staff insisted that the SLC must provide a boundary determination before the CCC staff would process CBBEOA's permit application. Thus, as required by the CCC, we submitted a general lease application to you in 2020.

Since submitting the general lease application, we've been trying to work with SLC staff to get a civil and amicable resolution to our case. Some important basic facts of our case as I understand them are these:

- 1) We have no agreed-upon boundary between state tidelands and the CBBEOA-owned land. Until that's determined, there is no way to adequately value rent (if any is due).
- 2) We have had a lease agreement since the CBBEOA was built at \$0 a year. This agreement is attached to our CCR's and specifies that:
  - a. The lease remains intact on a month-to-month basis.
  - b. Only the lessee (in this case, CBBEOA) can terminate the lease—and we would not do so as it would essentially destroy our homes and equity in our community.

- c. If the SLC wants to charge us increased rent, they need to do so in writing in a specified format as outlined in the lease agreement.
- 3) We only applied for a new general lease because we were asked to by the CCC and SLC encouraged us to do so as part of a global resolution to a situation that involves 3 state agencies.
- 4) We did satisfy all the requirements of our original SLC lease, including offering an irrevocable public access easement that was accepted by the CSB, maintaining insurance, and paying our rent (which has been \$0 a year to date).

These facts appear to be quickly disregarded or ignored in the current lease agreement offered to us by the SLC—an agreement given to us literally days before the December 9<sup>th</sup> hearing is to take place. Specifically, the most recent lease agreement presented is problematic in the following ways:

- 1) It does not effectively determine an agreed-upon boundary between state tidelands and CBBEOA-owned land. Until that's determined, rent cannot be reasonably calculated nor can a claim exist that we have an "unauthorized occupation."
- 2) It does not recognize that we still have a lease agreement at \$0 a year. There has never been "unauthorized occupation" and fees for past-due rent for anything more than \$0 a year make no sense as we have never been presented with a lease agreement before now that has a value above \$0 a year.
- 3) It does not recognize that modifications to our current lease agreement must be offered in a specific format and amount consistent with the terms of the original agreement itself. These are clearly outlined in the original lease document.
- 4) It does not adequately present calculations of comparable rent values for other ocean-front property with rock revetments. Currently the comparable values presented are highly exaggerated. Even if it is determined that some of the rock revetment is on state tidelands—which was put there before our homes were built and protects other structures in addition to our homes—the extremely high value for rent is not warranted by comps nor is it at all consistent with our expectations as homeowners who bought with the understanding that rent would be similar to or increased at a reasonable rate with our historical values (i.e., \$0) and other ocean-front communities with rock revetments.
- 5) It does not recognize that public access *has* been given by the CBBEOA as required in our current lease. The fact that we have not had approvals to build on the easement we dedicated to the CSB is out of our control and not something we should be penalized for. *If we had built a walkway on our easement we would actually be in violation of the law because we have no permits or approvals to do so.* Consequently, it's impossible for us to actually build a public walkway of any kind until the state agencies agree to a feasible way to build and maintain such a walkway and grant our application for a permit to build it.
- 6) Given that the currently-accepted easement location is not safe or feasible to be built upon (and that we don't have a permit to build there because of it), we are currently working with the CSB and CCC to provide a vertical easement that is worth far more than the original. Not only is the land value exponentially higher (because it's buildable land), but a vertical access is superior to a lateral access because there is currently no vertical access to Sandyland beach for the public—anyone can walk on

the beach to get to it, take a boat, or swim there, but there is no direct accessway from the road to the beach. A vertical accessway through our CBBEOA property would offer one.

- 7) It does not recognize that we maintained insurance per the terms of the lease on the rock revetment since the CBBEOA was formed.
- 8) It does not recognize that we have been diligently trying to find a solution to this situation since we were given indication that something was perceived by the state agencies to be in violation—which was a shock to me because we had no prior knowledge that anything was perceived to be wrong. Our current lease states that the lessee must be given written notice if we are perceived by the lessor to fail to observe or perform any term, covenant or condition of the lease for a period of thirty (30) days. Furthermore, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion. Clearly, any issues with our situation have required years to untangle—something we have been trying to do since it was brought to our attention that there was an alleged problem by the CCC in 2017.

In fact, this hearing/meeting came out of nowhere for all of us. We believed we were working amicably with SLC staff to find a resolution until we were notified of this hearing/meeting with about 45 days' notice. And we were only given a copy of the initial proposed lease on the eve of the Thanksgiving holiday, with the final proposed lease given to us for review on Monday morning, December 5<sup>th</sup>—4 days before the meeting.

Unfortunately for my family, moving to Santa Barbara has turned from a dream into a nightmare. If I had known that the CBBEOA was going to be accused of being in violation for not building a public accessway that we do not have permits to build, or told to sign a SLC lease that went from \$0 a year to **\$258,300 a year in rent plus \$1,291,500 for 'unauthorized occupation' plus \$749,703 a year if we don't "irrevocably commit to provide, public access" (which we have already done!), I would never have moved here.** For our a very small group of 7 homeowners/8 lots, the new lease would equate to a cost of \$144,000 per homeowner per year (\$36,900 in rent plus \$107,100 public access fee) plus a \$184,500 unauthorized occupation fee next year. **That means each of us needs to come up with \$328,500 next year when our baseline rental agreement has always been \$0 a year.** Furthermore, my neighbors two houses down who are not part of CBBEOA (instead are part of Sandyland HOA) have a SLC lease agreement to pay \$125 a year divided by a group of homeowners more than three times the size of ours! Not only does the exorbitant rental price suggested in the new proposed lease require each individual homeowner in the CBBEOA to pay hundreds of thousands of dollars, but it reduces the value of our actual property and ability to sell our homes because future buyers will be held to an unreasonable baseline amount of rent.

To make matters worse—if that is even possible—on October 31, 2022, we received a letter from the SLC with the following statement:

“The revetment has been trespassing on State land since the previous lease expired on May 9, 2003. Without conceding that any such right exists, this letter is formal notice that



any right of occupation held by your client is terminated as of the date of this letter. If the Commission does not authorize a new lease for the revetment, or if your client does not sign the authorized lease, you must promptly remove the revetment from State property. Staff will also seek authorization to pursue trespass and ejection actions should your client fail to execute a new lease or remove improvements from State land.”

The fact that SLC staff suggests that we would need to remove the rock revetment if we do not sign this lease—which we did not build, has never been formally established to be on state lands, and was originally put there to protect our homes, local businesses, the railroad, the 101 highway, and a country historic building—is completely unethical, unfair, and terrifying. The lease can only be terminated by us—the lessee. Any new lease agreement must honor the original lease (that is still intact on a month-to-month basis) while proposing an increase in rental value that is consistent with the law. In present form, it does neither while *trying to bully us into signing something that’s unreasonable by threatening that we’ll have to remove the rock revetment, essentially destroying our homes and all equity we have in the CBBOA community.*

The stakes are high for each of us—financially, emotionally, and practically. In response to a requirement from the CCC and encouragement by the SLC, we submitted a new application for a general lease to you and now we find ourselves with a completely unfair proposed lease agreement that disregards or blatantly ignores the facts in our case. It is not only shocking that governmental agencies would treat well-intended, honest Californians this way, but also highly disturbing because of the *unethical disregard for the fact that they are in a position of power holding us hostage with threats of millions of dollars in rent, fines and fees to fix a situation that we cannot fix without their collaborative assistance.* We still need the help of all 3 agencies to get a resolution. We cannot provide public access without a boundary determination, approved permits, and cooperation from the CSB, CCC, and SLC to help us come to a fair, legal, and reasonable resolution. The fact is we can’t fix this situation without your help.

I’m not a lawyer—I’m just a homeowner desperately trying to get a reasonable and fair resolution with state agencies that I should be able to trust because they exist to serve Californians. This includes me and my fellow CBBOA neighbors. Please, work with us to get a fair, global resolution with the CCC and CSB. We have acted in good faith as an HOA and as individual homeowners throughout this process. Look at the facts of our situation and help us to resolve this issue as we establish an updated lease agreement with you. As Californians, we deserve to be treated fairly and ethically. We are trying to work with all of the governmental agencies in a reasonable and legally-fair way—please treat us with the same respect.

Thank you for your consideration,

 PWO 12/6/22

Dr. Cortney Warren-Fishkin as Manager of Love Lambs II , LLC

December 7, 2022 [by email to [CSLC.Commissionmeetings@slc.ca.gov](mailto:CSLC.Commissionmeetings@slc.ca.gov)]

Dear Members and Staff of the State Lands Commission –

We are writing on behalf of ourselves, our children and grandchildren. Our family, including our parents when they were still alive, was among the first group of homeowners to purchase property at Casablanca in 1995. We designed and built our house, with all requisite permits, and completed it in 1997. This has been a meaningful and important realization of a dream for our family – a place where we all come together.

For most of the years since then, Jay has been a member of the Board of the Casablanca Estates Owners' Association and thus am familiar with our HOA's dealings with State Lands. Importantly, our HOA inherited the **rock revetment** which protects our properties (and others inland from us, including the railroad tracks and Santa Claus Lane). We also inherited a **lease with State Lands** and a **public access easement** to the County of Santa Barbara (that turned out to be infeasible).

This has been a saga that has mostly been dormant during the past 25 years. Over that time we, as an association, have consistently acted in good faith, paying modest rents when due and carrying the insurance required by our lease. Now, SLC staff has presented us with demands to sign a lease that hugely increases the required rent for state lands that the rock revetment may (or may not) occupy and threatening to force us to remove the revetment that protects our homes if we do not sign the lease. That said, our attorney will be presenting the facts as we collectively understand them so we will focus on the potential effects of the proposed lease on our ability to retain our home and the anxieties that are generated.

In short, the numbers and potential consequences being put forward by SLC staff are devastating. The current situation has caused us tremendous emotional distress. We are very attached to our home that we built to fit our family's needs and it is no exaggeration to say that we feel sick, fear that we might lose our home because we can't afford to pay SLC hundreds of thousands of dollars a year, and find ourselves in a situation where we probably could not sell our home if we had to. We are worried and distraught, experiencing tremendous stress and our stomachs are tied in knots.

We have relied in good faith that we would be treated fairly by the SLC which represents us as citizens of California. And as citizens, we are sympathetic to the SLC protecting the public interest. Thus we have been working with your staff and the CCC to provide a much better access than was agreed to by the developer – with a vertical walkway from Santa Claus Lane to the beach.

We beg the Commission to direct staff to enter into an equitable lease agreement that charges Casablanca rents commensurate with those of the surrounding communities and would be affordable to us and our other members as well as allowing us to keep the revetment that makes our homes viable.

Thank you very much for your consideration.

Kind regards,

Jay Farbstein, PhD, FAIA

Ellie Farbstein, MA

[REDACTED]  
Carpinteria, CA 93013  
[REDACTED]

December 8, 2022

[VIA EMAIL CSLC.Commissionmeetings@slc.ca.gov](mailto:CSLC.Commissionmeetings@slc.ca.gov)

California State Lands Commission  
100 Howe Avenue Suite 100-South  
Sacramento, CA 95825

Re: Applicant: Casa Blanca Beach Estates Owners Association (CBBEOA)  
Hearing Date: December 9, 2022 – Agenda Item No. 70

Dear Honorable Commissioners,

I am writing on behalf of Lot 4 within the Casa Blanca subdivision. I am shocked and surprised by the sudden departure from ongoing discussion and negotiations to learn the SLC commissioners are considering this proposed action: “Issuance of General Lease – Protective Structure Use, acceptance of compensation for unauthorized occupation, and authorization to take all action necessary, including litigation, to remove unauthorized improvements”

What precipitated this rash departure from constructive negotiations? How can a hearing be scheduled on this matter just **four days** after a final draft lease and staff report were just provided to CBBEOA on Monday of this week (Dec. 5<sup>th</sup>)? I find the rush to a hearing without adequate time for review and discussion between SLC staff and CBBEOA experts, perplexing and quite frankly shocking. What is the rush? Why not allow CBBEOA and SLC staff a reasonable period to discuss the basis for this lease and participate in a mediation with an independent mediator? It is counterproductive to proceed with the hearing on this matter on Friday Dec. 9<sup>th</sup> without adequate time for detailed review of the basis of the lease terms. **I urge you to continue this agenda item to enable a more productive path forward.**

As a professional engineer with significant experience with valuation of difficult to value mineral assets, I know it takes time to conduct an in depth analysis to make a valuation that can be relied upon for investment or divestment. Such valuations with limited data usually present a large uncertainty range for decision makers to consider. In the case of the SLC appraisal report, it does not reflect an in depth analysis, nor does the rent reflect the uncertainty range reflected in the underlying data. The fact that the appraisal report references “Extraordinary assumptions”, and “Hypothetical Conditions” should be a red flag that this appraisal should not be relied upon to assign rent in the manner that is proposed. Especially when the rent increase being proposed is from \$0 to \$258,300. An annual lease of \$258,300 essentially condemns the property values of all Casa Blanca residences. Not to mention the additional \$749,703 annual payment until a public walkway can be built on the rock revetment (which is out of CBBEOA’s control since the location of the easement for public access is in an inherently unsafe location). Essentially an imposition of \$1,008,003 on the HOA annually. And escalated over 10 years by the CPI index which currently is at 8.6% in 2022. Over a 10 year period with the current CPI index, the rent would increase by a factor of 2.1 and the total rent paid would be about 4.44 million dollars. By year 10 the rent would be \$589,417.

Imagine if you are a local real estate agent in Santa Barbara County. Would you even show a prospective buyer a property in Casa Blanca when other nearby ocean front neighborhoods like Padaro Lane, Sand Point Road (Sandyland side), and Sandyland Cove have no rent associated with being located beach front with or without a rock revetment? What buyer would purchase a home where the HOA dues could skyrocket to hundreds of thousands of dollars a year as compared to communities with stable HOA dues on the order of hundreds to a few thousand dollars a month. The fact that the impact of the SLC lease terms on the property values was not incorporated in the SLC appraisal shows the faulty assumptions of the appraisal approach.

Valuation of ocean front real estate requires going beyond the high level numbers to account for factors such as privacy, experience (e.g., “toes in the sand”), ocean front linear feet, views, HOA or not, HOA dues and HOA reputation, architecture, zoning, historical desirability of a specific neighborhood, historical ability to sell homes in a specific neighborhood (reflected by days on market and price reductions), opinions of local realtors with expertise in ocean front real estate valuation in the area. The SLC appraisal did not consider any of these factors. The reliance on sales comps from the COVID era real estate market already distorts current market value. It is well known that the post Covid era real estate market is in the midst of a significant correction.

I quite frankly do not understand this turn of events when CBBEOA has been in **good faith** negotiations with the County, SLC, and CCC to find a resolution which provides even more valuable public access. My understanding is there have been constructive discussions including a recent site visit by CCC staff to Casa Blanca to understand the vertical access option. Why blow everything up with this flawed and unreasonable and unsupportable lease? **I encourage you to choose to take the more productive path of dialog and discussion and negotiation.**

**The public will benefit the most if an equitable resolution between all parties that is based on fairness is achieved sooner rather than later.** The public does not benefit if public access is deferred due to SLC choosing to litigate rather than negotiate or allow for a fair process with an independent mediator. SLC was able to resolve a lease with Sandyland through mediation. SLC reached an agreement with Sandyland Cove through mediation. Why not adopt the same approach with Casa Blanca? Mediation in both cases was successful in resolving the underlying issues in a fair and equitable manner. Please afford Casa Blanca the same courtesy.

Finally, please take a minute and close your eyes and imagine you are an owner in Casa Blanca. How would you feel if a state agency arbitrarily imposed a lease at an astronomical rate with poor justification? A lease that essentially condemns the value of your property while simultaneously making it impossible to manage the annual expenses for owning the property due to the sudden and unexpected drastic increase in HOA dues. Perhaps you can understand the sleepless nights and despair this is causing me. I place my faith in you to recognize the unfairness of this situation and do the right thing by continuing this agenda item to allow good faith efforts on all sides to make progress. **The public will be the beneficiary of such an effort as any public benefit will be realized sooner with such a good faith approach.**

Sincerely,

Kiran Pande, PhD, MBA



December 08, 2022

Dear Members and Staff of State Lands Commission,

I am writing on behalf of myself, my wife and our three kids age 19, 20 and 26. Two kids are still in college. Your recent action has caused devastation on our personal life.

I purchased this home in 2005 for \$5.25 million. I put all my years of life savings as down payment to purchase the house. Sole purpose for the purchase of this house was investment so near my retirement age I will be able to sell the house and have a nice retirement nest for our retirement and leave for my kids.

At no point at the time of purchase was I made aware of any rental fee being charged and absolutely could not even imagine one day will be exposed to this absurd amount of \$11,000 a month. Furthermore, Sandyland who shares the same sea wall which extends from my house to the end of sandyland is paying rental of \$125.

You have completely shaken my life with this assessment. The stress you have caused and situation you have put me and my family in I just cant explain. This action of yours is going to make me to lose my house as I dont have the ability to pay this amount. I will lose all my life savings with your action. I use this property to rent to supplement my income. This assessment will cause a huge negative cashflow which I wont be able to absorb.

Around covid I put my house for sale around \$6 million, investment of \$5.25M in 2005 15 years later I could did not get a single offer for \$6M. I took the property off the market. Now with this rental rate of \$11,000 a month per home owner you are about to assess who in their right mind will purchase our homes? Who in their right mind will buy this house even at 1/4th of the value at which the county has assessed my home.

Since we received this letter I have been under enormous stress and unable to absorb the damage you will cause in our personal lives. This is devastating to us. We dont have the ability to pay such an outrageous rental fee.



Randhir S. Tuli

Behalf of The Tuli Family Trust

  
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December 8, 2022

**VIA EMAIL [CSLC.Commissionmeetings@slc.ca.gov](mailto:CSLC.Commissionmeetings@slc.ca.gov)**

California State Lands Commission  
100 Howe Avenue Suite 100-South  
Sacramento, CA 95825

Re: Applicant: Casa Blanca Beach Estates Owners Association  
Hearing Date: December 9, 2022 – Agenda Item No. 70

Dear Honorable Commissioners,

This law firm represents the Casa Blanca Beach Estates Owners' Association ("Casa Blanca"), the applicant for the Lease – Protective Structure that you are considering today. We were told on October 31, 2022 that your staff was setting this meeting just 39 days later to consider a lease, one we had never seen and the terms of which we did not know. They assured us a draft would be sent soon. But not until late on November 23, 2022, the eve of the Thanksgiving weekend holiday, did we receive their brand new limited appraisal and their draft of the lease. After one meeting last week to discuss our concerns, **the final draft lease that you are now considering was revealed to us on Monday morning, December 5, just four days before this hearing.**

Thus, our first request is that you **continue your consideration of this highly-contested matter** so that we and your staff can have sufficient time to conduct further discussions and so that the related governmental agency reviews can have time to play out in a coordinated, fair manner.

If the matter is to be decided today, please be aware that we dispute the State Lands Commission ("SLC") staff's boundary determination, which is based on a flawed 1964 survey and which ignores substantial evidence that the boundary is, in fact, significantly seaward of the revetment. We also have significant issues with material provisions in the proposed lease which are summarized below (to the best of our ability in the incredibly short time within which we have had to respond). Moreover, proceeding in this manner violates the terms of the SLC's existing Lease with Casa Blanca.

If we cannot be offered a fair lease, we will have no choice but to file an action quieting title to our upland property and enforcing our existing Lease while simultaneously litigating the SLC's authority to impose the egregious lease terms proposed by your staff. Our preference, of course, is to continue our negotiations with SLC staff, and the staff of the California Coastal Commission and the County of Santa Barbara so that a fair and equitable resolution to the lease

and public access issues can be achieved. Casa Blanca has already proposed a major contribution of its own private property to be used for a new vertical public access to a large stretch of beach that has never had any nearby vertical access. We are surprised and confused that SLC staff would rather cram through this unsupportable proposed lease and encourage litigation, rather than work cooperatively with Casa Blanca and the other agencies to enhance public access to the coastline in this area.

Other issues of concern:

### **Consideration**

The rent of \$258,300 per year, with annual CPI adjustments, is based on a flawed limited appraisal. We dispute the validity of the SLC's "limited appraisal" which does not reflect fair market value pursuant to standard accepted appraisal methods (see further discussion below and appraiser Lance Dore's separate comments).

We also dispute the rent amount due to staff's failure to set a rate that considers other critical data we have presented. As a State agency, the SLC is obligated to treat us fairly in negotiations and to give us equal protection by treating us equally with similarly situated citizens. Furthermore, under 2 CCR §2003(a)(3), rent should be fair in comparison to rents for other similar land or facilities. This proposed rent does not compare at all to rents for similar revetments in Southern California, and even next door. For example:

#### **A. Broad Beach Lease One Year Ago**

One of the most recent Pacific Ocean Protective Structure leases approved by the SLC was an amendment to the Broad Beach Geologic Hazard Abatement District – Lease No. PRC9364 on December 8, 2021. (See Exhibit A.)

- Location: 23.07 acres at Broad Beach, Malibu, Los Angeles County, fronting 88 individual multi-million dollar properties.
- Purpose: Use and maintenance of portions of existing rock revetment shoreline protective structures (revetment), relocation of portions of the revetment
- Term: 10 years
- Compensation for unauthorized occupation: \$500,000. Here the SLC seeks \$1,291,500 for the alleged unauthorized occupation of 0.82 acres. (Triple the amount for 1/28 of the encroachment.)
- Rate: Significant discounts are offered for provision of public benefits. But even if they are not done, maximum lease rate is \$329,160/year for 23 acres of encroachment. This is \$14,268/acre, or \$0.33/SF.
- Broad Beach annual rent is shared by 88 homeowners for \$3,740/year per owner.

Casa Blanca's proposed Lease rental rate is so much more onerous, they cannot even be compared.

- **Base rental rate of \$7.20/SF for Casa Blanca vs. \$0.33/SF for Broad Beach**
- \$258,300 annual rent for only 0.82 acres shared by seven owners is **\$36,900/year per owner just for the base rent** at Casa Blanca. When the \$749,703/year in "consideration for impacts to public trust resources" is added in, then Casa Blanca is to pay \$1,008,003/year and **each owner's share is \$144,000/year.**
- Thus, each of the Broad Beach owners is paying \$3,740/year for an encroachment 28 times larger than Casa Blanca's, while each of the Casa Blanca owners is asked to pay \$144,000/year.

The Broad Beach lease clearly was not valued using the same methodology sought by SLC staff here. Either staff or the Commissioners exercised their broad discretion in the method or amount of rental that is most appropriate for Broad Beach and should do the same here to significantly reduce the requested rent. (2CCR §2000(b): "the Commission shall have broad discretion in all aspects of leasing including...which use, method or amount of rental is most appropriate...based on what it deems to be in the best interest of the State.")

## **B. County Lease Adjacent to Casa Blanca Approved in December 2018**

After attending a mediation in 2016, the SLC approved a new lease (Lease W 27217) for the County's rock revetment that serves Casa Blanca's immediately adjacent neighbor, Sandyland Protective Association. (See Exhibit B.)

- Location: 211,680 square feet, or 6 times the size of the Casa Blanca lease area, immediately adjacent to Casa Blanca (in fact, part of the Sandyland revetment is connected to part of the revetment serving Casa Blanca)
- Purpose: Repair, operation and maintenance of existing rock revetment
- Term: 10 years
- Compensation for unauthorized occupation: None.
- Rate: \$125/year, plus the public benefit that the County would not interfere with any other party's efforts to secure legal public access to the beach and ocean or the public's use thereof.
- County pays lease. Sandyland owners pay nothing.

No appraisal is attached to the lease and staff's recommendation of the \$125/year minimum annual rent is not explained other than with reference to the parties' disagreement over the location of the boundary. Casa Blanca also disputes the alleged boundary and is in no way deserving of different treatment for its revetment immediately adjacent to the County's revetment at Sandyland.



### **C. The Sandyland Cove Settlement in 1995**

Sandyland Cove (just south/east of Sandyland Protective Association) reached a title agreement and boundary line settlement on October 29, 1995 which obviated the need for any lease for their rock revetment.

### **D. Additional Equal Protection Violations**

The imposition of this Lease will lead to additional obvious anomalies in treatment between Casa Blanca and its neighbors. For example:

**Example 1:** 867 Sand Point Road is in Casa Blanca. 845 Sand Point Road is in Sandyland. These properties are adjacent and both are most immediately protected by the Sandyland revetment, not the Casa Blanca revetment. The 867 owner will pay the State rent of \$144,000/year. The 845 owner will pay the State no rent.

**Example 2:** 879 Sand Point Road is in Casa Blanca. 849 Sand Point Road is immediately adjacent to the north/west. Both are protected by an adjoining revetment. The 879 owner will pay the State \$144,000/year. The 849 owner will pay the State no rent.

Casa Blanca respectfully requests that this Commission instruct its staff to return to the drawing board in determining a fair and equitable rent for the revetment.

### **Compensation for Unauthorized Occupation**

The proposed lease seeks a one-time payment of \$1,291,500 (five year's base rent) for the "unauthorized occupation of state-owned lands prior to the beginning date of this Lease." But **there has been no "unauthorized occupation."**

Even if these are state-owned lands, the revetment, built in 1964, has remained in place since 2003 under the provisions of Lease No. WP 5764.9 (the "1993 Lease"), which had an initial term from May 10, 1993 through May 9, 2003 at \$0 annual rent. (See Exhibit C.) The 1993 Lease provided at paragraph 14:

**"HOLDING-OVER:** Any holding-over by Lessee after the expiration of the Lease term, *with or without the express or implied consent of Lessor*, shall constitute a **tenancy from month to month** and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty five percent (25%)." (Emphasis added.)

Thus, **the revetment has remained under a month-to-month tenancy from May 9, 2003 to the present (and into the future)**, and as 125% of \$0 is \$0, no compensation is due for that tenancy under the express terms of the 1993 Lease.

The 1993 Lease has never been terminated. The 1993 Lease did not give the SLC the unilateral right simply to terminate the Lease at its sole option. While the SLC staff on October 31, 2022, for the first time purported to terminate “any right of occupation held by” Casa Blanca “as of the date of [the] letter,” that notice did not and could not have purported to terminate the existing 1993 Lease, so any purported termination was ineffective. Even if it were effective, there would be no justification for charging Casa Blanca “back rent” during the holdover term of the existing 1993 Lease.

Your staff does not address the 1993 Lease at all in your Staff Report, leaving you in the dark on this issue. However, we believe that, if asked, SLC staff will claim that Casa Blanca is not holding over under the 1993 Lease because it has not submitted proof of insurance each year. Casa Blanca understands that proof of insurance would have routinely been submitted to the SLC, and SLC has never over 30 years notified Casa Blanca that proof of insurance was not received or was inadequate. Moreover, the Lease states that a default occurs only if the insurance is not maintained. Failure to submit evidence annually is not a default. Casa Blanca has maintained, and continues to maintain, the required insurance, and the SLC has never provided any notice of any default based on the insurance requirement. This simply is not a basis to claim that Casa Blanca has not held-over under provisions of the 1993 Lease, or that the 1993 Lease does not remain in effect.

Staff also has claimed to us, but not in your Staff Report, that the public benefit consideration for the 1993 Lease was not realized, so that there is no holding over. This refers to Section 2, Provision 1 of the 1993 Lease, which provides:

“Lessee hereby agrees to offer to dedicate to the County of Santa Barbara and to construct an accessway for lateral pedestrian access for public use along and over the seawall on the leased premises.”

This argument by staff is disingenuous. SLC staff knows, but has not reported to you, that:

- (a) Casa Blanca’s predecessor **did** dedicate the easement for the walkway referenced in the 1993 Lease;
- (b) The dedication for the walkway easement was not accepted by the County until 2011, **eight years after the initial term of the 1993 Lease expired**;
- (c) Casa Blanca was not notified of the County’s acceptance until 2017; and
- (d) Upon being notified of the easement’s acceptance, Casa Blanca promptly applied for a permit to build the walkway in 2017 but the Coastal Commission has refused to schedule a hearing on the application recognizing that it would be too hazardous to use, and the County has refused to accept its obligations under the dedication to maintain and accept liability for the walkway when built.

Thus, Casa Blanca has complied with the first part of the public benefit consideration and has been prevented by the County and the Coastal Commission from performing the rest. Casa Blanca has not failed to provide the public benefit consideration under the 1993 Lease.

Furthermore, even if one were to stretch credulity to claim that it had, the SLC has never given Casa Blanca the notice of default that would be required to terminate the 1993 Lease. Casa Blanca has legally held over under the terms of 1993 Lease since 2003 and there has been no unauthorized occupation of state-owned land. No court would allow a landlord to claim, 30 years after the commencement of a lease under which the tenant has continuously occupied the premises, that the tenant has secretly been in default the whole time. An alleged default that it is not asserted is waived. And certainly no court would enforce a payment of \$1,291,500 for an “unauthorized occupation” that is authorized under an existing lease.

### **Consideration for Impacts to Public Trust Resources**

The proposed Lease alleges, without proof, that there has been a “loss of beach caused by the rock revetment.” Casa Blanca has provided staff with evidence that the revetment helped prevent the remarkable depletion of sandy beach up and down the Santa Barbara Coast caused directly by the City of Santa Barbara’s 1927 construction of the Santa Barbara Harbor. Staff has provided you with none of this information. There is no evidence that Casa Blanca has interfered with public access. (The few aerial photos presented by staff show no such thing, as they only show the height of the surf at one particular moment in time. They do not, and cannot, show where the Mean High Tide Line is if properly surveyed and measured.)

Nevertheless, the proposed lease plans to punish Casa Blanca for its efforts to enhance public access to the coast. Paragraph 3 provides that “If Lessee does not provide public access [without any definition of what that entails], or irrevocably commit to providing that access to Lessor’s staff’s satisfaction, on or before December 7, 2023, then Lessee must deposit \$749,703 into the Kapiloff Land Bank Fund on December 8, 2023,” plus make annual payments of \$749,703 every year for the term of the Lease until Lessee meets the condition.

This is a shocking provision in the proposed Lease. This revetment has been in place since 1964, and has been subject to various leases with the SLC since the 1970’s until the present, and *never before* has the SLC notified Casa Blanca that there are any impacts on public trust resources or that Casa Blanca had failed to provide any required public access. Casa Blanca’s members have lived in their homes for decades with knowledge of the existing leases requiring none or nominal rent and SLC has provided them with no notice that there is any violation or issue concerning the revetment. For the SLC to suddenly, and with just a few days’ notice, hit Casa Blanca with a nearly \$750,000 annual penalty unless it provides a new public access is not in keeping with its obligation to protect Casa Blanca’s members’ civil rights, nor their reasonable expectations under their existing 1993 Lease.

Casa Blanca applied for this new Lease at the urging of SLC staff and was told that the application would be “well-received.” Now, instead of rewarding Casa Blanca for offering to provide unprecedented and valuable public access to a beach with no nearby vertical access, this Lease proposes to punish Casa Blanca.

Specifically, SLC staff is aware, but the Commissioners likely are not, that Casa Blanca has made a good faith offer to the California Coastal Commission, the County of Santa Barbara and the SLC to provide a vertical access to the beach along the eastern side of its property, providing the only available vertical access to Sandyland Beach (inaccessible on its eastern end because of the Carpinteria Salt Marsh) for miles. (See Exhibit D.) If Casa Blanca's neighbor, the Sandyland Protective Association, were to provide a short connection from Casa Blanca's property to Santa Claus Lane, this vertical access would connect from a public road and a newly constructed public bike path to the beach in an area otherwise completely unserved by vertical access. Casa Blanca has provided expert reports showing that this access would be worth millions in public recreational value. Casa Blanca invited the SLC to use that offer of public access as an offset to the rental rate it charges Casa Blanca pursuant to 2 CCR §2003(e)(4). Instead, this proposed Lease befuddlingly *penalizes* Casa Blanca unless the vertical access is accepted by the other agencies and achieved.

The proposed Lease also ignores, and gives Casa Blanca no credit for, the significant public benefit that the revetment itself provides. The Staff Report states, in error, in its Conclusion, that the revetment "provides only private benefit to small number of coastal property owners...." Casa Blanca's Lease Application explained that, in fact:

"The existing rock revetment seawall provides public benefit to the state and the region. It provides protection to the Southern Pacific railroad tracks and to State Highway 101. The railroad right-of-way is within 200-400 feet of the revetment, and the highway is within 500-600 feet of the revetment.

"The revetment also provides protection for the Casa Blanca Natatorium, County Historical Landmark No. 28.

"In addition, the revetment is a continuation of the revetment that protects the entire Santa Claus Lane commercial strip. Per the County's recently completed coastal resilience studies and USGS Flood maps, removal of the portion of the revetment in front of Casa Blanca would expose the other protected properties along Santa Claus Lane."

Additionally, the proposed Lease is too vague. It states that this \$749,703 payment can be waived if Casa Blanca provides a commitment to provide alternative public access to the satisfaction of the SLC staff. We have asked, but have received no answer, as to what would constitute such a "commitment."

Finally, even if there were a basis to charge Casa Blanca anything under this provision, the \$749,703 is based on the SLC staff's anonymous assessment of "Loss in Annual Recreational Value." It assumes attendance of 0.83 people/SF/year, or 29,774 visitors per year in the space inhabited by the revetment. That's 82 visitors per day, every day, all year long. Experts Dr. Phil King and Sarah Jenkins will further explain the fallacies in this analysis.



### **Indemnity**

The proposed Lease requires Casa Blanca to indemnify the State for any death or injury on the revetment. Yet Civil Code § 846 makes private landowners immune from liability for injuries suffered by people who enter their land free of charge for recreational purposes. The State has similar protection in Government Code §831.7, providing immunity from injury claims by those using state lands for “hazardous recreational activity” including, but not limited to, diving (where there is signage prohibiting it), rock climbing, surfing, and other recreational activities listed in §846. If the State is going to force Casa Blanca to allow the dangerous use of the revetment for public recreational purposes, and the dedicated easement provides that the County is responsible for maintenance and liability, there is no basis for Casa Blanca to have to take on any personal liability or to indemnify the State.

### **Right to Exclude the Public from Hazardous Usage of the Revetment**

Paragraph 5(e) of the proposed Lease provides that the Lease is “non-exclusive” and that Casa Blanca may exclude persons from the revetment only when their presence or activity constitutes a material interference with Casa Blanca’s use and enjoyment of the Lease Premises.

Likewise, Paragraph 6(a)(2) purports to reserve a new easement for the public to travel across the revetment to other State-owned lands located near or adjacent to the Lease Premises.

Both of these provisions create a dangerous condition. Casa Blanca must have the right to exclude the public from entering onto the revetment as it is extremely hazardous for pedestrians.

### **November 8, 2022 “Limited Appraisal”**

Earlier in this letter, we showed that simply using an appraised value of the premises to set a rental rate is not in keeping with the SLC’s mission under 2 CCR §2003(a)(3) to set a rent that is fair in comparison to rents for other similar land or facilities, and its obligation to give California citizens due process and equal protection. It also unfairly does not give Casa Blanca any offset for the highly valuable vertical access it has offered to provide.

We further want to point out that the SLC staff’s calculation of that appraised value is highly suspect and not supportable. It overstates the value by many multiples.

Casa Blanca presented SLC staff with a complete formal appraisal of the appropriate market rental value of the revetment property by expert appraiser Lance Dore, who specializes in appraising submerged land. That appraisal was dismissed by SLC staff in favor of its “limited appraisal,” prepared by an in-house appraiser certified only in residential appraisal, which by its own terms, contains “limited detail and analysis” and does not comply with the Uniform Standards of Professional Appraisal Practice.

Mr. Dore will testify about his own findings. But the Commission should be initially aware of the following points regarding the SLC “appraisal.”:

**p.3:** The appraised area is 0.82 acres (or 35,872 square feet). Casa Blanca disputes that this area is sovereign land and has presented evidence, wrongly dismissed by SLC staff, that the MHTL is seaward of the revetment.

**p.17:** The SLC’s “appraisal” wrongly states that the subject property and the upland parcels are zoned 10-R-1 (1 single-family home per 10,000 square feet). They are zoned DR-1.8 (1.8 dwelling units per acre). The entire appraisal is suspect as the appraiser has this basic information incorrect.

**p.19:** The SLC’s “appraisal” incorrectly concludes that “the highest and best use of the subject property is concluded to be for residential uses in conjunction with the adjoining upland.” The property is subject to the restrictions of its subdivision map and its CC&Rs which limit the use of the entire HOA parcel to common area amenities. The property is therefore legally prohibited from being used for residential uses. Additionally, the land is submerged, making it physically unable to be used for residential uses.

**p.20:** The assumption that “if a residential property sold for \$1,000,000 and had an improvement percentage of 40%, then the allocated value of the land is 60%, or \$600,000” is not based on sound appraisal principles.

**pp.21-22:** All comps are valued in comparison to the subject property as though the subject property is zoned 10-R-1, when it is actually zoned DR-1.8. Also, none of the comps are within Casa Blanca. Expert appraiser Lance Dore indicates that this is fallacious – the upland property itself should be valued in order to find a rental value for the submerged property. It should not be compared to other nearby upland properties.

### **Conclusion**

Casa Blanca has been working diligently with staff from the California Coastal Commission, the County of Santa Barbara, and the SLC for nearly six years to find a solution that benefits the people of the State of California without unduly burdening the residents at Casa Blanca for the quagmire that was caused when the County waited 21 years to accept the dedication of the walkway easement, then did so in secret with the stated intention of *not* asking Casa Blanca to build the walkway at any time in the near future, and then when the Coastal Commission and the County nevertheless six years later blamed the lack of a walkway in the easement on Casa Blanca.

Casa Blanca immediately sought a permit to build the walkway but discovered that it was impossible to build. The Coastal Commission agreed and the County agreed but have not permitted Casa Blanca to provide viable access or in lieu fees as a substitute. Now the SLC’s staff has suddenly decided, after years of knowledge of and participation in these negotiations, that they should require Casa Blanca to sign a punitive new lease or threaten to remove the revetment altogether, a “solution” that would result in the destruction of seven beautiful homes, a historic resource (the beautiful Moorish-style Natatorium) and damage to the commercial users

and other residences along the adjacent Santa Claus and Sandyland beaches. And to what end? Removing the revetment would not increase public access to either of those beaches but would ensure the destruction of many existing homes and businesses.

Casa Blanca respectfully requests that this Commission continue this matter, authorize no lease at this time, and instruct its staff to engage in productive negotiations with Casa Blanca, the Coastal Commission and the County to arrive at a solution that resolves all of the outstanding issues in a consistent and fair manner.

Sincerely,

GAINES & STACEY, LLP

*Lisa A. Weinberg*

By

LISA A. WEINBERG

# Exhibit A



# Staff Report 57

## **APPLICANT:**

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Broad Beach Geologic Hazard Abatement District

## **PROPOSED ACTION:**

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Amendment of General Lease – Beach Replenishment and Protective Structure Use

## **AREA, LAND TYPE, AND LOCATION:**

23.07 acres, more or less, of sovereign land in the Pacific Ocean at Broad Beach, Malibu, Los Angeles County.

## **AUTHORIZED USE:**

Use and maintenance of portions of existing rock revetment shoreline protective structures (revetment); relocation of portions of existing revetment along the eastern end; placement of up to 300,000 cubic yards of sand for initial beach nourishment and dune construction; backpassing of up to 25,000 cubic yards of sand per backpassing event annually as needed; placement of up to 75,000 cubic yards of sand per subsequent interim nourishment event as needed; placement of up to 300,000 cubic yards of sand per major renourishment event as needed; use and maintenance of portions of two existing vertical access stairs from two dedicated vertical accessways; construction, use, and maintenance of four storm drain outfalls to be filled with sand during the dry season and excavated during the storm season; construction, use, and maintenance of bollard fencing and signage for dune habitat.

## **TERM:**

10 years, beginning August 9, 2016.

## **CONSIDERATION:**

Compensation for the unauthorized occupation of State Land: \$500,000.

Rent: Variable based on encroachment pursuant to the terms of the lease, as follows:

- Lessor agrees to give Lessee a grace period from August 9, 2016, to December 31, 2019, to allow Lessee sufficient time to obtain all necessary permits and authorizations to commence the proposed Broad Beach Restoration Project (Project).
- On December 6, 2019, the lease was amended to allow the Lessee the option to extend the grace period described above for no more than two periods of 1 year each beginning January 1, 2020, provided that the Lessee submitted a \$50,000 option payment (Extension Payment) for each year the grace period is extended. The Lessee has submitted two Extension Payments, extending the grace period to December 31, 2021.
- Should Lessee complete Project construction within the grace period, including revetment relocation as described in the Lease, Lessor and Lessee agree that the placement of sand for beach nourishment and dune construction on sovereign land shall be treated as public benefit and consideration under the terms of this Lease, and no monetary rent shall be owed retroactively or otherwise for existing revetment encroachment, so long as a minimum 10-foot-wide continuous band of dry beach area is maintained along the waterward edge of the revetment, to allow the public unrestricted access to pass and repass along the beach.
- Lessee agrees to relocate the existing revetment off sovereign land, within the grace period, from 30760 Broad Beach Road to 30980 Broad Beach Road.
- In the event that Lessee completes the revetment relocation, as described in the Lease, during the grace period, but fails to complete the remainder of the Project, Lessee shall owe monetary rent, going forward, of \$7,929 per month (\$95,150/year) based on reduced encroachment and the public use of private land seaward of the relocated revetment.
- In the event that Lessee fails to commence any Project construction within the grace period, including revetment relocation, Lessee shall owe rent in the amount of \$27,430 per month (\$329,160/year), for the full degree of encroachment, as described in the Lease, without offset or discount retroactive to the beginning date of the lease, and for each subsequent period during which no public benefit exists.

**SPECIFIC LEASE PROVISIONS:**

Amend Section 2, Special Provisions (Restated Lease, Section 2, Paragraph 22) to include the following:

- Lessee has the further option to extend the grace period and to forestall the requirement of retroactive payment of rent, described in Section 2, Paragraph 22, for no more than three periods of one year each beginning January 1, 2022, provided Lessee submits the option payments (an Extension Payment) for each year the grace period is extended, as follows:
  - Lessee may extend the grace period from January 1, 2022, through December 31, 2022, by submitting an Extension Payment of \$100,000 to Lessor's staff on or before December 31, 2021. This first 1-year extension is effective upon receipt and verification of Lessee's Extension Payment by Lessor's staff.
  - Provided Lessee exercises its option to extend the grace period through December 31, 2022, Lessee may subsequently exercise its option to extend the grace period from January 1, 2023, through December 31, 2023, by submitting to Lessor's staff written notice of Lessee's intent to extend the grace period along with an Extension Payment of \$200,000 on or before December 31, 2022. This subsequent extension is effective upon receipt and verification of Lessee's Extension Payment by Lessor's staff.
  - Provided Lessee exercises its option to extend the grace period through December 31, 2023, Lessee may subsequently exercise its option to extend the grace period from January 1, 2024, through December 31, 2024, by submitting to Lessor's staff written notice of Lessee's intent to extend the grace period along with an Extension Payment of \$329,160 on or before December 31, 2023. This subsequent extension is effective upon receipt and verification of Lessee's Extension Payment by Lessor's staff.
  - Exercise of the three grace period extensions is Lessee's sole responsibility. No invoice or other notice will be provided by Lessor.
  - Should Lessee elect to exercise its grace period extension options, the deadline date for revetment relocation shown in Lease Section 2, Paragraph 4 will coincide with the new grace period ending date.
  - An Extension Payment will not be credited toward any other obligation of the Lessee, with the one exception. The Lessor will credit an Extension Payment made under this paragraph toward retroactive rent if retroactive rent is required by Section 2, Paragraph 1(b)(iii). Crediting of any Extension Payments made under this paragraph towards retroactive rent does not modify or limit Lessor's ability to modify the rent as otherwise contemplated in the Lease, including application of a CPI adjustment.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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 August 9, 2016, the Commission authorized Lease No. PRC 9364.1, a General Lease – Beach Replenishment and Protective Structure Use, to the Broad Beach Geologic Hazard Abatement District (BBGHAD/Lessee) for various activities and improvements associated with its proposed Broad Beach Restoration Project (Project). The Project includes the relocation of a segment of a revetment shoreline protective structure, beach nourishment activities, and creation of a dune habitat area located along Broad Beach in Malibu ([Item 56, August 9, 2016](#)).

On December 6, 2019, the Commission authorized an amendment and restatement of Lease PRC 9364.1 ([Item 22, December 6, 2019](#)). Section 2, Special Provisions of the lease was amended to allow the Lessee the option to extend the grace period described in Section 2, Paragraph 1(B) for no more than two periods of 1-year each beginning January 1, 2020, provided that the Lessee submitted a \$50,000 option payment (Extension Payment) for each year the grace period is extended. The first 1-year Extension Payment was made on time, extending the grace period from January 1, 2020 through December 31, 2020. The second Extension Payment to extend the grace period for the second year, from January 1, 2021 through December 31, 2021, was due on or before December 31, 2020. The Lessee failed to make the second Extension Payment on time.

On April 27, 2021, the Commission authorized the Acceptance of Late Extension Payment ([Item 34, April 27, 2021](#)). Acceptance of the late second Extension Payment extended the grace period from January 1, 2021 through December 31, 2021.

The Lessee is requesting an amendment to the lease to extend the grace period an additional 3 years with a new end date of December 31, 2024. Under the current grace period deadline of December 31, 2021, the BBGHAD will owe rent, effective January 1, 2022, in the amount of \$27,430 per month as provided in the lease for the full duration of encroachment without offset or discount retroactive to the beginning date of the lease (August 9, 2016), and for each subsequent period during which no public benefit exists.

Compensation in the amount of approximately \$1.7 million, retroactive to the beginning date of the lease (August 9, 2016) through the end of 2021 will be tolled during the grace period extensions and waived if the lessee implements the project elements in accordance with the lease terms.

Implementation of the project has been delayed well beyond that timeline envisioned at the time of lease authorization. The failure to implement any of the project components authorized in the lease and CDP continues to limit public access opportunities along Broad Beach Road. The public's use of the beach is limited to low tide conditions, with little to no beach available during high tides. Further, there continues to occupation of state land with no compensation or public benefit. It is clear at this point that the encroachment will continue for some time with no benefit to the public. To extend the grace period for up to an additional 3 years and to compensate the public for the ongoing lack of public access, staff recommends requiring the Lessee to pay the State an escalating amount for each year it exercises its extension option. The Lessee will continue to provide liability insurance in an amount no less than \$10,000,000 per occurrence. In addition, the Commission is in receipt and will continue to hold a performance deposit in the amount of \$1,350,000 for removal/relocation of any revetment encroachment off the Lease Premises.

#### **LITIGATION**

A group of BBGHAD property owners filed litigation to overturn the BBGHAD's third assessment (the Reef Group Action). In response, the BBGHAD filed an action to validate the third assessment (the Validation Action). The trial court consolidated the Reef Group Action and Validation Action for trial.

The trial court granted the property owners' writ petition, denied the requested injunction, and ruled against the Validation Action. Both parties appealed the trial court's ruling.

The parties then negotiated a settlement of the Reef Action in Summer 2021 with the property owners dismissing the Reef Group Action and any appeals of the trial court rulings. Aspects of the Validation Action remain pending on appeal.

Additionally, some property owners filed litigation alleging that they were overcharged by BBGHAD assessments (the Refund Action). The Refund Action is in the early stages of litigation.

While both the Refund Action and portions of the Validation Action are pending, none of this pending litigation impacts the BBGHAD's ability to implement the project.

**COASTAL COMMISSION**

As an alternative to public access easements or deed restrictions required by the California Coastal Commission and the Malibu Local Coastal Plan (LCP), Coastal Development Permit No. 4-15-0390 requires all property owners within the BBGHAD to sign a lateral public access license agreement. To date, 82 out of the 88 property owners have signed the access license agreements. The BBGHAD will continue to secure lateral public access license agreements with the remaining 6 homeowners. The license agreements are the last major requirement prior to issuance of the CDP. Assuming all the required license agreements are obtained in the near future, the BBGHAD now anticipates project construction beginning in Fall 2023.

**CONCLUSION:**

For all the reasons above, staff believes amendment of this lease will not substantially interfere with the Public Trust needs at this location, at this time, and the foreseeable term of the lease and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the 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 trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Lessee is required to pay annual rent and back rent as required in the lease. 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 the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Amendment of the lease to extend the Project commencement grace period 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:**

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- A. Land Description
- B1. Project Site and Location Map
- B2. Proposed Revetment Relocation Site and Location Map

**RECOMMENDED ACTION:**

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It is recommended that the Commission:

**PUBLIC TRUST AND STATE’S BEST INTERESTS:**

Find that the proposed amendment 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.

**AUTHORIZATION:**

Authorize the amendment of Lease Number PRC 9364.1, a General Lease – Beach Replenishment and Protective Structure Use, effective December 8, 2021, to provide three 1-year options to extend the Project commencement grace period from December 31, 2021 to December 31, 2024 upon timely submittal of an Extension Payment for each 1-year option; all other terms and conditions of the lease will remain in effect without amendment.

## EXHIBIT A

PRC 9364.1

### LAND DESCRIPTION

Four (4) parcels of tide and submerged land, whether filled or unfilled, situate in the bed of the Pacific Ocean and adjacent to those lands as patented in Rancho Topanga Malibu Sequit, approved August 19, 1872, County of Los Angeles, State of California, and more particularly described as follows:

#### Parcel 1 – Revetment Encroachment Area 1

Bounded on the northeast by the ordinary high water mark of said ocean; bounded on the southwest by a line lying parallel with and 20 feet southwesterly from the ordinary high water mark of said ocean; bounded on the northwest by a line lying parallel with and 100 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Quitclaim Deed recorded April 8th, 2010 in Document No. 20100480006, Official Records of said county; bounded on the southeast by a line lying parallel with and 10 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded October 25, 2013 in Document No. 20131529517, Official Records of said county.

#### Parcel 2 – Revetment Encroachment Area 2

Bounded on the northeast by the ordinary high water mark of said ocean; bounded on the southwest by a line lying parallel with and 35 feet southwesterly from the ordinary high water mark of said ocean; bounded on the northwest by the northwesterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded March 4th, 2011 in Document No. 20110342456, Official Records of said county; bounded on the southeast by a line lying parallel with and 20 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Quitclaim Deed recorded April 8th, 2010 in Document No. 20100480006, Official Records of said county.

#### Parcel 3 – Revetment Encroachment Area 3

Bounded on the north and northeast by the ordinary high water mark of said ocean; bounded on the south and southwest by a line lying parallel with and 35 feet southerly and southwesterly from the ordinary high water mark of said ocean; bounded on the west by the westerly line and the southerly prolongation thereof, of "Parcel 1" as described in "Exhibit A" of that Grant Deed recorded December 13, 2012 in Document No. 20121928708, Official Records of said county; bounded on the southeast by the northwesterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded March 4th, 2011 in Document No. 20110342456, Official Records of said county.

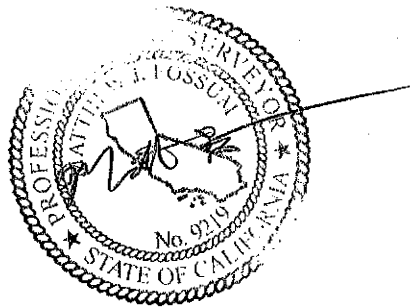


Parcel 4 – Beach Replenishment, Dune and Temp. Construction Areas

Bounded on the north and northeast by the ordinary high water mark of said ocean; bounded on the south and southwest by a line lying parallel with and 200 feet southerly and southwesterly from the ordinary high water mark of said ocean; bounded on the west by a line lying parallel with and 20 feet westerly from the westerly line and the southerly prolongation thereof, of "Parcel 1" as described in EXHIBIT "ONE" of that Grant Deed recorded January 28, 2003 in Document No. 20030254326, Official Records of said county; bounded on the southeast by a line lying parallel with and 550 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded October 25, 2013 in Document No. 20131529517, Official Records of said county.

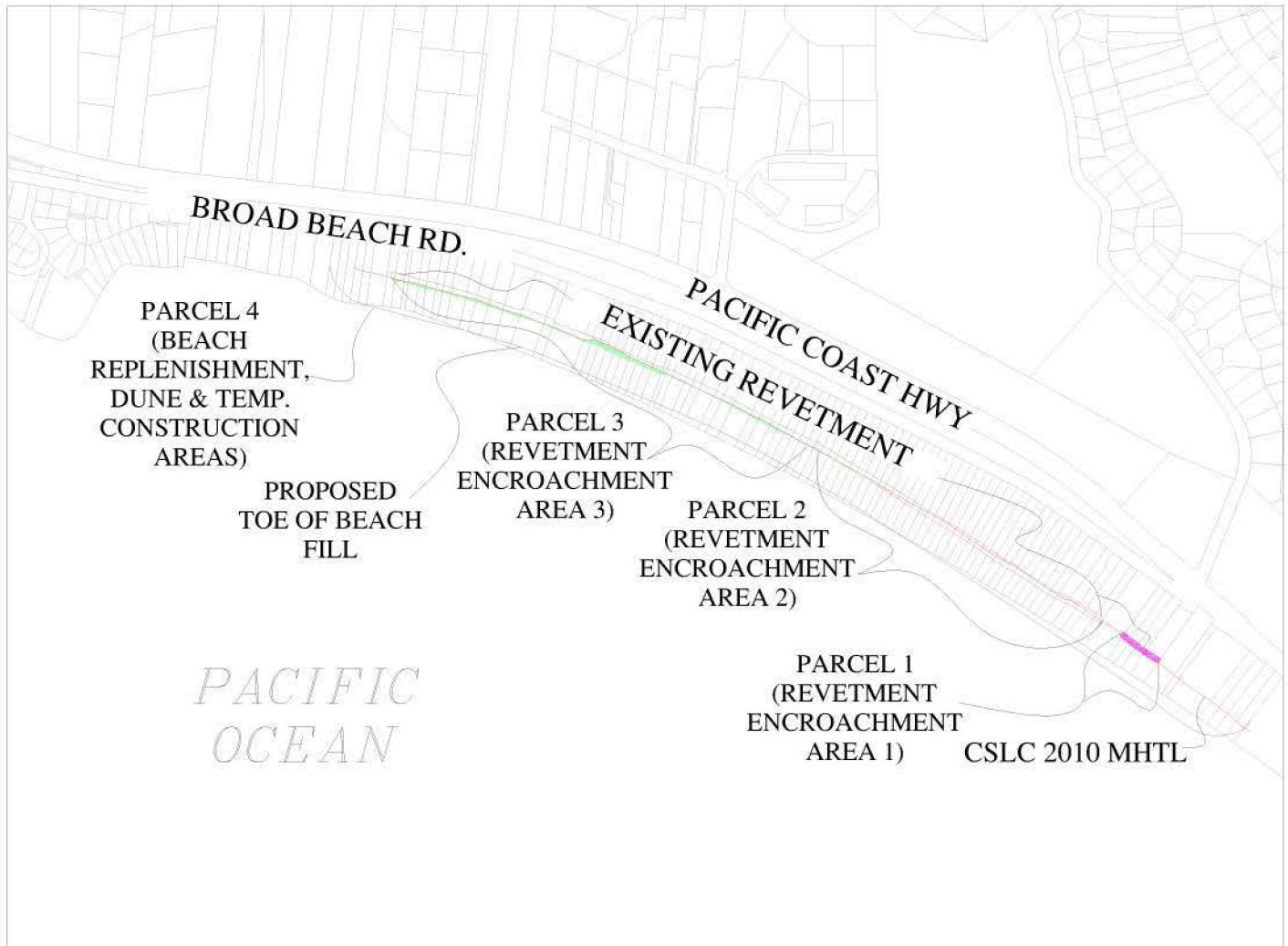
**END OF DESCRIPTION**

PREPARED 5/03/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

# SITE



Broad Beach, Malibu

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B-1

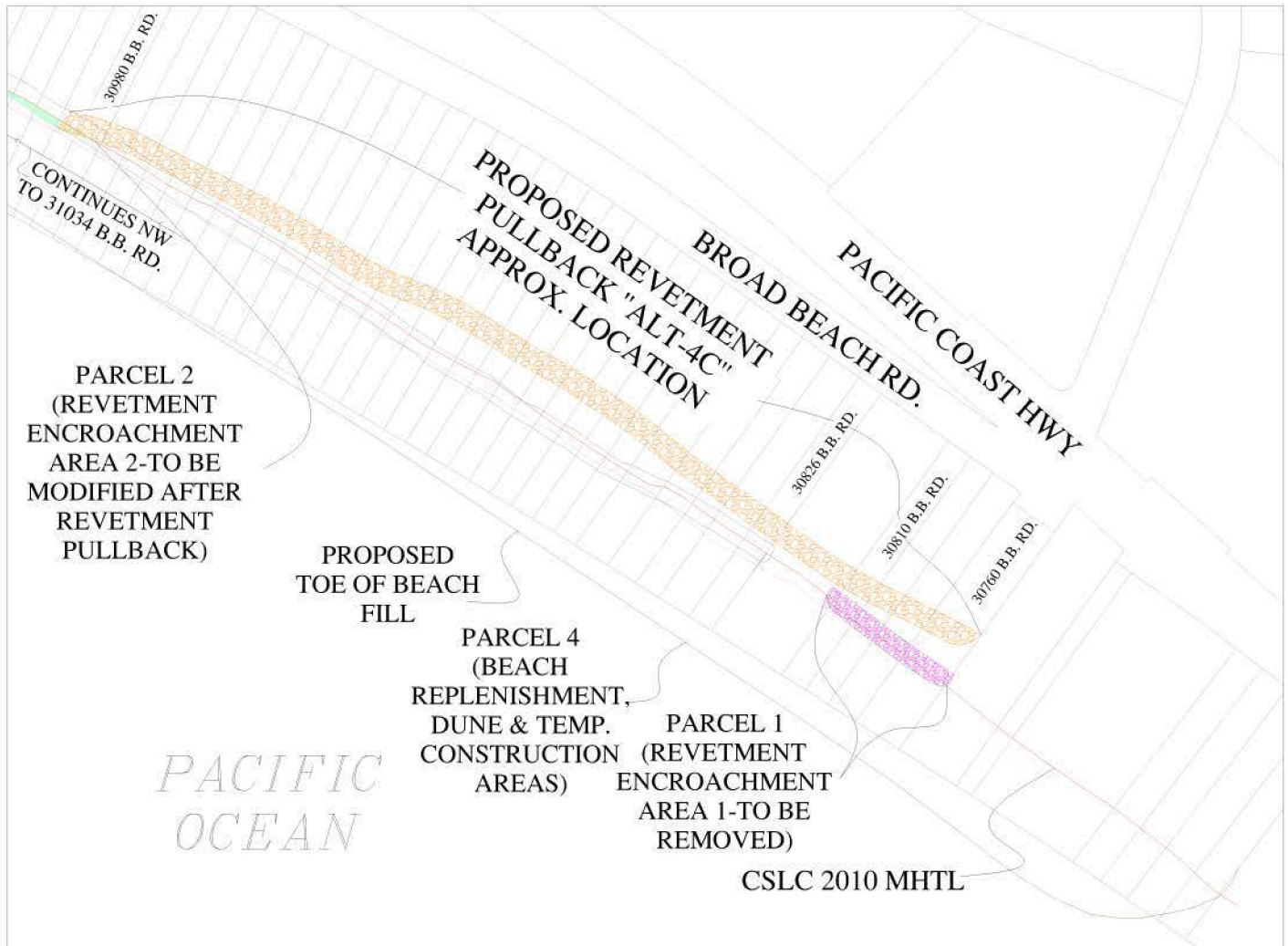
PRC 9364.1  
 BROAD BEACH GEOLOGIC  
 HAZARD ABATEMENT DISTRICT  
 GENERAL LEASE -  
 BEACH REPLENISHMENT &  
 PROTECTIVE STRUCTURE USE  
 LOS ANGELES COUNTY



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.

NO SCALE

# SITE



## Broad Beach, Malibu

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-2

PRC 9364.1  
 BROAD BEACH GEOLOGIC  
 HAZARD ABATEMENT DISTRICT  
 GENERAL LEASE -  
 BEACH REPLENISHMENT &  
 PROTECTIVE STRUCTURE USE  
 LOS ANGELES COUNTY



MJF 5/03/19

# Exhibit B



**STAFF REPORT  
C54**

A 37  
S 19

12/03/18  
W 27217  
G. Kato

**GENERAL LEASE – PUBLIC AGENCY USE**

**APPLICANT:**

County of Santa Barbara

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in the Pacific Ocean, southwest of Sand Point Road, near Carpinteria, Santa Barbara County.

*AUTHORIZED USE:*

Repair, operation, and maintenance of an existing rock revetment.

*LEASE TERM:*

49 years, beginning December ~~113~~, 2018.

*CONSIDERATION:*

\$125 per year plus the public benefit; with the State reserving the right at any time to adjust the monetary rent if the Commission finds such action to be in the State's best interests.

*SPECIFIC LEASE PROVISIONS:*

- Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the lease premises.
- Lessee agrees that it shall support and facilitate, to the extent allowed by law, public access to and along the Lease Premises and not attempt to prevent, restrict, or otherwise interfere with:
  - Any other party's efforts to secure legal public access to the coastal beach and the Pacific Ocean along and adjacent to the Lease Premises;
  - The public's use of any legal public access to the coastal beach and the Pacific Ocean along and adjacent to the Lease Premises; or
  - The public's use of the coastal beach and the Pacific Ocean along and adjacent to the Lease Premises.

STAFF REPORT NO. **C54** (CONT'D)

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6321, and 6321.2;  
California Code of Regulations, title 2, sections 2000 and 2003.

**Public Trust and State's Best Interests Analysis:**

The existing rock revetment was originally constructed by the County of Santa Barbara (County) in 1964. At the time of the construction, the County Board of Supervisors established the Sandyland Seawall Maintenance District Number 1 (District) pursuant to provisions of the Improvement Act of 1911, Division 7 of the Streets and Highways Code of the State of California. The District is administered by the County, with expenses for maintaining the rock revetment paid by the upland property owners through assessments. The rock revetment was repaired and expanded seaward in 1983. The rock revetment was further repaired in 1994 and 1998.

The location and extent of the State's fee-owned sovereign lands are generally defined by reference to the ordinary high water mark of tide and submerged lands, as measured by the mean high tide line. The boundary remains ambulatory except where there has been fill or artificial accretion or the boundary has been fixed by agreement or court decision.

The Commission and the upland property owners have conflicting claims as to ownership of the real property located under portions of the rock revetment. The upland property owners contend that the legal boundary between the privately-owned upland property and the sovereign state tidelands is seaward of the lease premises. Commission staff contends that the legal boundary between the privately-owned uplands and the sovereign state tidelands is generally along the mean high tide line surveyed in 1964 in certain areas and the 1983 interpolated mean high tide line in other areas. The 1983 mean high tide line is interpolated from contours depicted on County of Santa Barbara Project No. F88009 & F88010 seawall improvement plans titled "Construction Plans for Seawall Improvements" dated June 24, 1983. The State Lands Commission and the upland property owners vigorously deny each other's contentions of the unique facts and law applicable to this particular section of coastline within Santa Barbara County.

Commission staff and the upland owners have been involved in extended discussions over many years, including mediation in 2016. To avoid potential costly, protracted litigation with uncertain results, the parties are prepared to accept the proposed lease between the Commission and the

## STAFF REPORT NO. C54 (CONT'D)

County with no prejudice as to the determination of jurisdiction, ownership or boundaries.

The presence of the rock revetment, which provides primarily a private benefit to the upland homeowners, may represent an impediment to public access and enjoyment of the adjacent beach; however, the lease expressly requires that the lessee shall support and facilitate public access and not prohibit, interfere, or otherwise restrict the public's access, use, and enjoyment of any areas of state-owned lands within or adjacent to the lease premises.

The proposed lease requires the County to maintain the revetment in good order and repair and indemnify the State for any liability incurred as a result of repairing, operating, and maintaining the revetment. While staff rarely recommends a such a long lease term, the public benefit associated with this proposed lease includes the preservation of the state's current or future ownership and boundary claims and is in settlement of potentially costly, protracted litigation with uncertain results over the boundary and title contentions between the upland property owners and the Commission.

### **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 rock revetment is located in a tidally influenced area vulnerable to wave action at the current sea level of the Pacific Ocean. This rock revetment, made up of large boulders, helps protect 24 upland residences along Sand Point Road. Information submitted with the lease application indicates that a Wave Uprush Study was prepared for the rock revetment in 2006, and sea-level rise was determined to be negligible along this segment of the Santa Barbara coastline, with regional geologic uplift offsetting the effects of long-term sea level rise. The following is an overview of current sea-level rise projections and effects for the lease area.

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 proposed lease area (Santa Barbara tide gauge) are listed in Table 1.

STAFF REPORT NO. **C54** (CONT'D)

**Table 1. Projected Sea-Level Rise for Santa Barbara<sup>1</sup>**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.7
2040	1.1
2050	1.8
2100	6.6

Source: Table 22, State of California Sea-Level Rise Guidance: 2018 Update

Note: <sup>1</sup> 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 rock revetment that can jeopardize the residences along Sand Point Road. As discussed in the *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), armoring 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 rock revetment area proposed to come under lease may become vulnerable to more frequent overtopping or inundation during high tides, king tides, and storms, as well as from storm runoff. As a result, the rock revetment may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement. In the future and subject to regulatory review and approvals, the rock revetment may also need additional fortification to withstand higher levels of flood exposure and sea-level rise. Given the low elevation of the lease area and upland properties, with Carpinteria Salt Marsh bordering the inland north side of the residential properties, the rock revetment may also be subject to rising ground water levels as a result of sea-level rise, which may have potential to affect the subsurface foundation stability of the revetment.

The revetment also has the potential to exacerbate the impacts of sea-level rise and increased storm and wave activity on State sovereign land within and adjacent to the lease area. The beach area seaward of the revetment 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 rock revetment. The long-term presence of the revetment in the active littoral cell could also entrap coastal sediment, disrupting nourishment of downcoast shorelines.



## STAFF REPORT NO. C54 (CONT'D)

Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. The proposed lease includes an acknowledgement 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:**

It is anticipated that sea level rise, coastal processes, and the existing rock revetment will contribute to the reduction in beach width and potentially impact public access. However, on balance, staff is recommending the proposed lease as a settlement mechanism to preserve the state's current and future ownership and boundary claims and avoid litigation (such as an action to quiet title) with unclear and unreliable results for this unique section of California's coast. For the reasons stated above, staff believes that the issuance of this lease 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 best interests of the State.

### **OTHER PERTINENT INFORMATION:**

1. The proposed 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.
2. Commission staff is in receipt of a letter (2015) from the California Coastal Commission (Coastal) Enforcement Staff indicating that portions of the existing rock revetment are not permitted and expressing Coastal staff's concern that the revetment is not consistent with the goals of the Coastal Act. According to the letter, a 2008 application from the County seeking after-the-fact authorization from 's prior application with Coastal for the revetment was returned in 2010 as incomplete, and no subsequent authorization was sought or obtained. The issue remains unresolved. The lease requires the County to obtain all other necessary permits for the rock revetment and any related activities. Consistent with that requirement, the not acted upon due to various factors. The County has indicated it will apply to Coastal for the required Coastal Development Permit, and Coastal will conduct an independent analysis of the revetment and its potential adverse impacts to public beach access and other resources pursuant to its own authority through that permitting process. Nothing in the proposed lease would prejudice Coastal's independent authority to review an application for after-the-fact

STAFF REPORT NO. **C54** (CONT'D)

authorization of the revetment and to condition any approval to ensure the revetment is consistent with the Coastal Act (e.g., require relocation or other mitigation of the revetment impacts) through its permitting process. Nor does the proposed lease affect Coastal's ability to take appropriate enforcement actions for any pre-authorization violation associated with the revetment. The lease requires the County to obtain all other necessary permits for the rock revetment and any related activities.

3. Staff recommends that the Commission find that this activity 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

**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 14, section 15301.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that issuance of the proposed lease will not substantially interfere with 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.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning December 113, 2018, for a term of 49 years, for repair, operation, and maintenance of an existing rock revetment as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; rent in the amount of \$125 per year plus the public benefit; with the State reserving the right at any time to adjust the monetary rent if the Commission finds such action to be in the State's best interests.

**EXHIBIT A**

**W 27217**

**LAND DESCRIPTION**

A strip of tide and submerged land lying in the Pacific Ocean, situate in the County of Santa Barbara, State of California, and lying 35.00 feet northeasterly and 30.00 feet southwesterly of the following described line:

COMMENCING at a point on the easterly boundary of Parcel B of Parcel Map No. 12350, filed in Book 17 of Parcel Maps, at Pages 71 thru 73, Records of said county, said point being the northerly terminus of that certain course depicted as N 1°05'00" E 599.25 feet on said map; thence along said boundary and southerly prolongation thereof, South 1°05'00" West 226.97 feet to a point on the Seawall Centerline as depicted on County of Santa Barbara Project No. F88009 & F88010 seawall improvement plans titled "Construction Plans for Seawall Improvements" and dated June 24, 1983, said point being the POINT OF BEGINNING; thence along said Seawall Centerline the following seven (7) courses:

- (1) South 47°32'19" East 133.53 feet;
- (2) South 41°32'19" East 550.00 feet;
- (3) South 43°32'19" East 473.00 feet;
- (4) South 44°32'19" East 577.00 feet;
- (5) South 42°38'39" East 1022.00 feet;
- (6) South 40°49'19" East 428.00 feet; and
- (7) South 41°38'55" East 73.09 feet to a point on the easterly boundary of Parcel One as described in that grant deed recorded July 18, 2007 as Instrument No. 2007-0053402, Official Records of said county, said point being the terminus of herein described line.

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

The sidelines of said strip shall be prolonged or shortened to terminate on the northwest at the easterly boundary and southerly prolongation thereof of said Parcel B, and to terminate on the southeast at the easterly boundary and southerly prolongation thereof of said Parcel One.

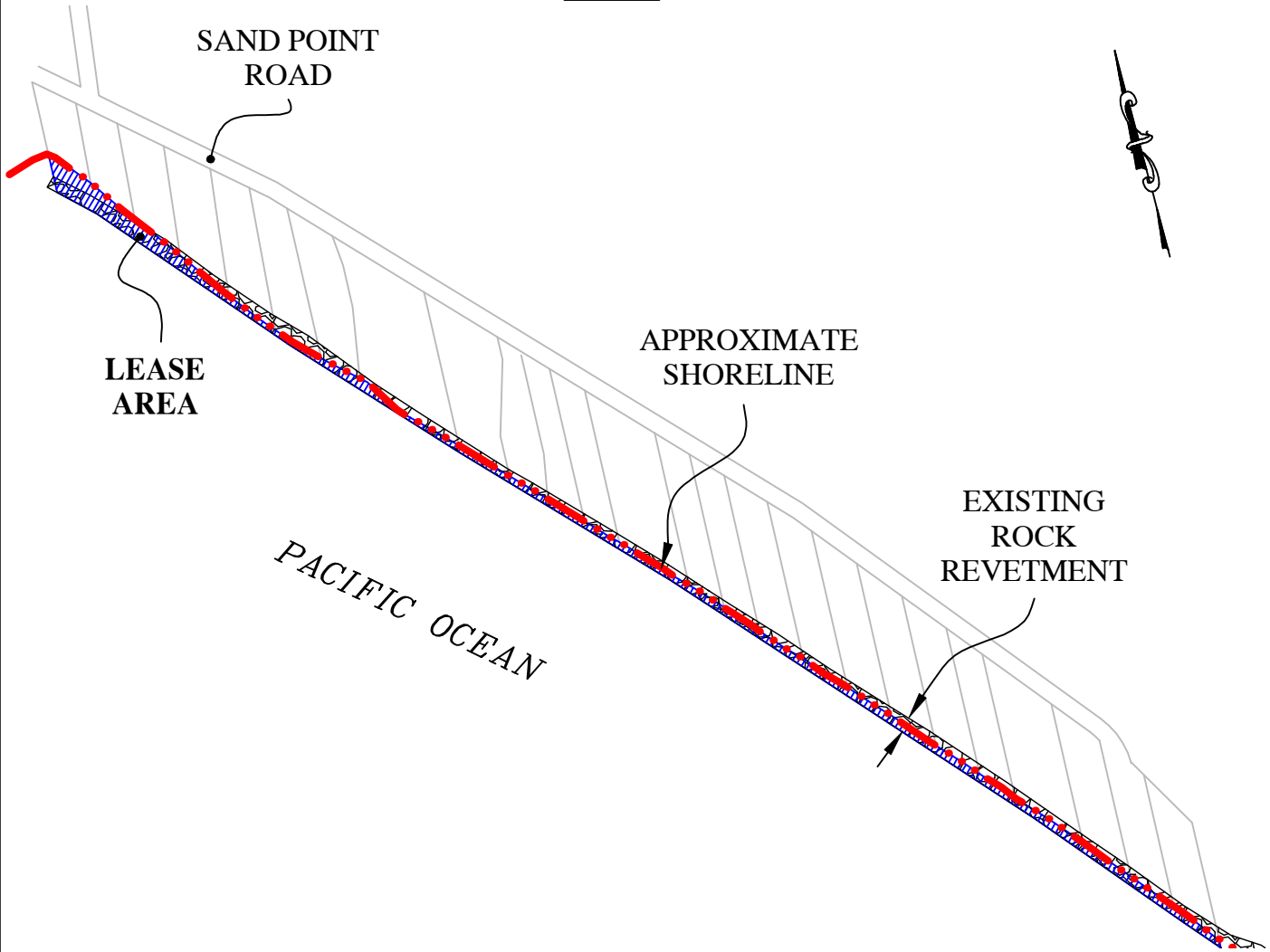
**END OF DESCRIPTION**

Prepared 11/20/2018 by the California State Lands Commission Boundary Unit.



# SITE

NO SCALE



539 THRU 845 SAND POINT ROAD, CARPINTERIA

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

W 27217  
COUNTY OF SANTA  
BARBARA  
GENERAL LEASE - PUBLIC  
AGENCY USE  
SANTA BARBARA COUNTY



JWP 11/20/18

# Exhibit C

RECORDING REQUESTED BY  
CHICAGO TITLE

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code Section 27383

960512-1-12

96-040816  
Recorded  
Official Records  
County of  
Santa Barbara  
Kenneth A Pettit  
Recorder  
8:00am 5-Jul-96  
Rec Fee 77.00  
AU2 2.00  
PCO 20.00  
A.R. 99.00  
CTIT CC 25

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WP 5764.9

LEASE NO. PRC 5764.9

This Lease consists of this summary and the following attached and incorporated parts:

- |           |   |
|-----------|---|
| Section 1 | Basic Provisions  |
| Section 2 | Special Provisions Amending or Supplementing Section 1 or 4 |
| Section 3 | Description of Lease Premises                               |
| Section 4 | General Provisions  |

SECTION I

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the STATE LANDS COMMISSION (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to:

CASA BLANCA PROJECT LENDERS, L.P.-I, a California Limited Partnership, et al.,  
(see attached Exhibit "A" for Lessees)

hereinafter referred to as Lessee:

WHOSE MAILING ADDRESS IS: 3892 State Street  
Santa Barbara, CA 93105



those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

**LEASE TYPE:** General Lease - Protective Structure

**LAND TYPE:** Tide and Submerged

**LOCATION:** Pacific Ocean, Carpinteria, Santa Barbara County

**LAND USE OR PURPOSE:** Continued use and maintenance of existing rock revetment seawall

**TERM:** 10 years; beginning May 10, 1993; ending May 9, 2003, unless sooner terminated as provided under this Lease.

**CONSIDERATION:** Public use and benefit; with the State reserving the right at any time to set a monetary rental if the Commission finds such action to be in the State's best interest.

Subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

**AUTHORIZED IMPROVEMENTS:**

Protective Seawall

**EXISTING:**

**TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY: N/A**

**AND BE COMPLETED BY: N/A**

**LIABILITY INSURANCE:** \$500,000 Combined Single Limit Coverage

**SURETY BOND OR OTHER SECURITY:** N/A

---

**SECTION 2**

**SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:**

1. Lessee hereby agrees to offer to dedicate to the County of Santa Barbara and to construct an accessway for lateral pedestrian access for public use along and over the seawall on the leased premises.

provided by Pitney Bowes





SECTION 3

SEAWALL LEASE

DESCRIPTION

PARCEL 1

That portion of Lot 2 as shown on that map recorded in Book 146 Page 95 of Records of Survey in the Office of the County Recorder of Santa Barabra County, California, described as follows:

Beginning at the westerly-most corner of said Lot 2;

Thence 1<sup>st</sup>: along the southerly line of said Lot, S. 41° 57'23" E. a distance of 40.23 feet;

Thence 2<sup>nd</sup>: continuing along the southerly line of said Lot S.34°34'52" E. a distance of 69.99 feet;

Thence 3<sup>rd</sup>: continuing along the southerly line of said Lot S. 33°34'02" E. a distance of 120.15 feet;

Thence 4<sup>th</sup>: continuing along the southerly line of said Lot S. 40°44'24" E. a distance of 41.66 feet;

Thence 5<sup>th</sup>: continuing along the southerly line of said Lot S. 30°33'20" E. a distance of 30.94 feet;

Thence 6<sup>th</sup>: continuing along the southerly line of said Lot S. 30°41'26" E. a distance of 38.75 feet;

Thence 7<sup>th</sup>: continuing along the southerly line of said Lot S. 38°56'35" E. a distance of 43.31 feet;

Thence 8<sup>th</sup>: continuing along the southerly line of said Lot S. 24°54'13" E. a distance of 38.80 feet;

Thence 9<sup>th</sup>: continuing along the southerly line of said Lot S. 37°36'13" E. a distance of 37.66 feet;

Thence 10<sup>th</sup>: continuing along the southerly line of said Lot S. 43°19'46" E. a distance of 36.33 feet;

Thence 11<sup>th</sup>: continuing along the southerly line of said Lot S. 61°17'24" E. a distance of 19.72 feet;

Thence 12<sup>th</sup>: continuing along the southerly line of said Lot S. 66°16'22" E. a distance of 30.69 feet;

Thence 13<sup>th</sup>: continuing along the southerly line of said Lot S. 52°22'14" E. a distance of 26.26 feet;

Thence 14<sup>th</sup>: continuing along the southerly line of said Lot S. 76°36'04" E. a distance of 29.75 feet;

Thence 15<sup>th</sup>: continuing along the southerly line of said Lot S. 85°01'49" E. a distance of 38.59 feet;

Thence 16<sup>th</sup>: continuing along the southerly line of said Lot N. 70°30'28" E. a distance of 27.05 feet;

Thence 17<sup>th</sup>: continuing along the southerly line of said Lot N. 64°04'20" E. a distance of 39.98 feet;

Thence 18<sup>th</sup>: continuing along the southerly line of said Lot N. 74°03'33" E. a distance of 15.74 feet;

Thence 19<sup>th</sup>: continuing along the southerly line of said Lot N. 28°55'57" E. a distance of 28.84 feet;

W.O. 8526.00

April 26, 1996

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Thence 21<sup>st</sup>: continuing along the southerly line of said Lot N. 07°36'21" E. a distance of 28.02 feet;

Thence 22<sup>nd</sup>: continuing along the southerly line of said Lot N. 21°42'38" E. a distance of 18.41 feet;

Thence 23<sup>rd</sup>: continuing along the southerly line of said Lot S. 38°54'55" E. a distance of 35.50 feet;

Thence 24<sup>th</sup>: continuing along the southerly line of said Lot S. 51°48'41" E. a distance of 57.97 feet to the southeasterly corner of said Lot 1;

Thence 25<sup>th</sup>: Along the easterly line of said Lot 1, N. 01°05'00" E. a distance of 85.53 feet;

Thence 26<sup>th</sup>: Leaving said easterly line, N. 89°42'30" W. a distance of 45.82 feet;

Thence 27<sup>th</sup>: S. 79°33'31" W. a distance of 43.05 feet;

Thence 28<sup>th</sup>: S. 52°37'07" W. a distance of 17.94 feet;

Thence 29<sup>th</sup>: S. 70°08'19" W. a distance of 54.34 feet;

Thence 30<sup>th</sup>: S. 88°53'44" W. a distance of 76.42 feet;

Thence 31<sup>st</sup>: N. 79°03'17" W. a distance of 19.88 feet;

Thence 32<sup>nd</sup>: N. 54°37'10" W. a distance of 41.94 feet;

Thence 33<sup>rd</sup>: N. 10°47'21" W. a distance of 32.46 feet;

Thence 34<sup>th</sup>: N. 35°57'38" W. a distance of 134.26 feet;

Thence 35<sup>th</sup>: N. 36°12'19" W. a distance of 126.37 feet;

Thence 36<sup>th</sup>: N. 68°47'12" W. a distance of 9.04 feet;

Thence 37<sup>th</sup>: N. 34°10'20" W. a distance of 53.79 feet;

Thence 38<sup>th</sup>: N. 86°21'31" W. a distance of 7.60 feet;

Thence 39<sup>th</sup>: N. 04°38'52" E. a distance of 14.52 feet;

Thence 40<sup>th</sup>: N. 19°05'17" E. a distance of 12.34 feet;

Thence N. 32°04'03" E. a distance of 6.09 feet;

Thence N. 36°09'58" W. a distance of 109.06 feet to a point on the westerly line of said Lot 1;

Thence S. 33°10'41" W. a distance of 84.07 feet to the Point of Beginning.

## PARCEL 2

A strip of Tide and Submerged Land, 25 feet in width, lying southerly of, immediately adjacent to and parallel with the southerly boundary of the here-in-above described PARCEL 1.



W.O. 8526.00

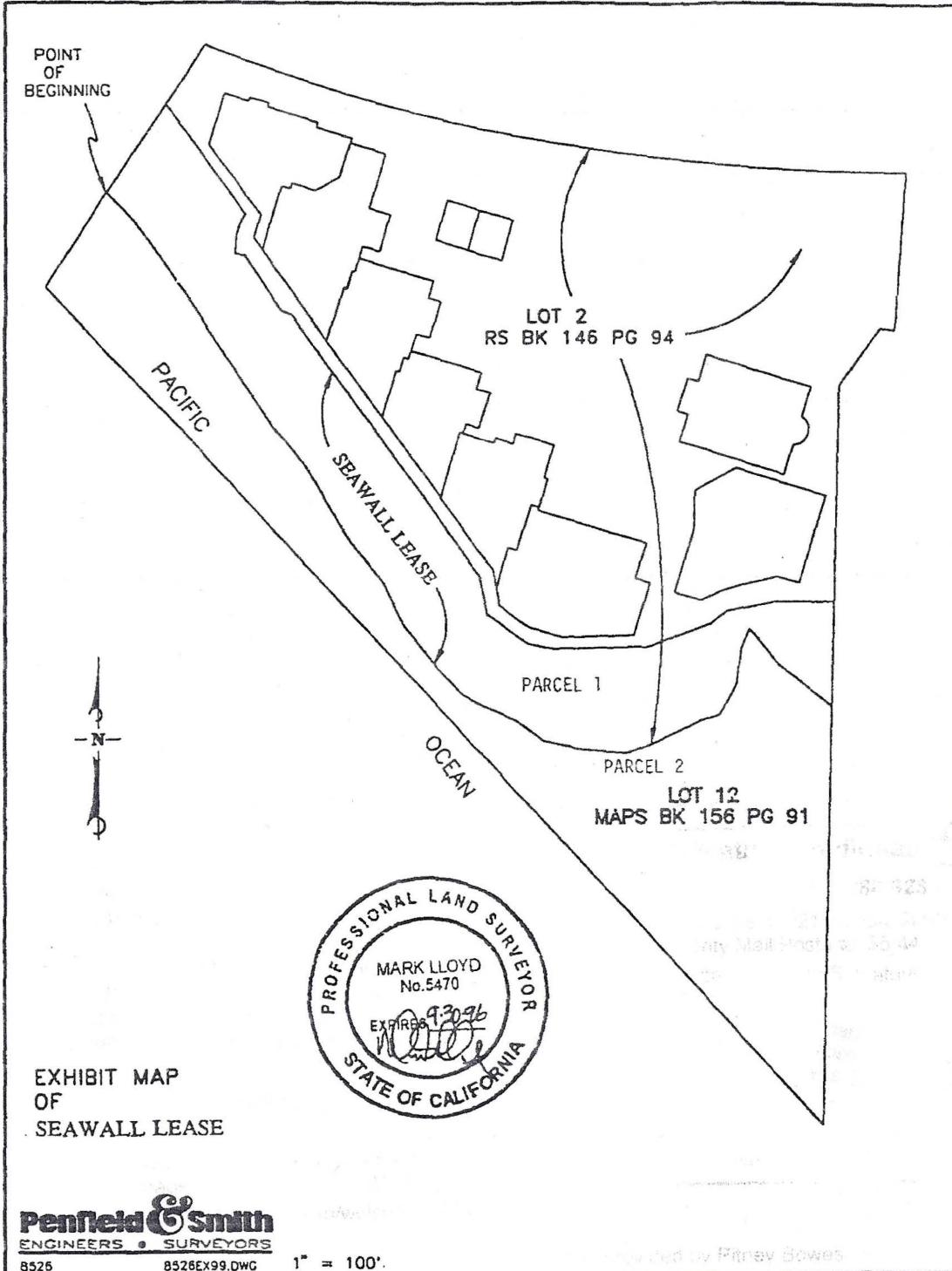
April 26, 1996

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SECTION 3





## SECTION 4

### GENERAL PROVISIONS

#### 1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

#### 2. CONSIDERATION

##### (a) Categories

###### (1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

###### (2) Non-Monetary Consideration

If the consideration to Lessor for this lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

##### (b) Modification

Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

##### (c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

#### 3. BOUNDARIES

This lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

#### 4. LAND USE

##### (a) General

Lessee shall use the Lease Premises only for the purpose

or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

##### (b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

##### (c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

##### (d) Additions, Alterations and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

##### (e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

##### (f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully

responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

(g) **Enjoyment**

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises as provided under this Lease.

(h) **Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) **Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

**5. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY**

(a) **Reservations**

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable

passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) **Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

**6. RULES, REGULATIONS AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

**7. INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

**8. INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of



California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

**9. SURETY BOND**

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

**10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING**

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights

granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any

hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated used, placed disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

#### 11. DEFAULT AND REMEDIES

##### (a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or
- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or

performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

##### (c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

#### 12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the lease term require Lessee to conduct at its own expense and by a contractor



approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

**13. QUITCLAIM**

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

**14. HOLDING-OVER**

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty five percent (25%).

**15. ADDITIONAL PROVISIONS**

**(a) Waiver**

- (1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.
- (2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

**(b) Time**

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

**(c) Notice**

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

**(d) Consent**

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed

to be a consent to any subsequent occurrence of the same or any other transaction or event.

**(e) Changes**

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

**(f) Successors**

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

**(g) Joint and Several Obligation**

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

**(h) Captions**

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

**(i) Severability**

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

/  
/  
/

City Mail Photo & 30 44  
to

provided by Pitney Bowes



STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 5764.9

This lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

CASA BLANCA PROJECT LENDERS, L.P.-1,  
a California Limited Partnership,  
et al.

By: \_\_\_\_\_

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By: \_\_\_\_\_

Chief, Division of  
Land Management

Title: \_\_\_\_\_

Date: \_\_\_\_\_

JUN 06 1996

( See attached signature pages )

ACKNOWLEDGEMENT OF SIGNATURES  
REQUIRED

This lease was authorized by the  
State Lands Commission on

May 9, 1996

Recorder's Office  
County of  
Santa Barbara

**Joseph E. Holland**  
Recorder

1 OFFICIAL RECORD, REGULAR COP 24.00

TOTAL 24.00

CASH 25.00

CHANGE ed by Pitney Bowes 1.00

10/15/2010 9:56AM 2010101500043  
KM MXL0221WNR

Thank You  
Have a Nice Day!

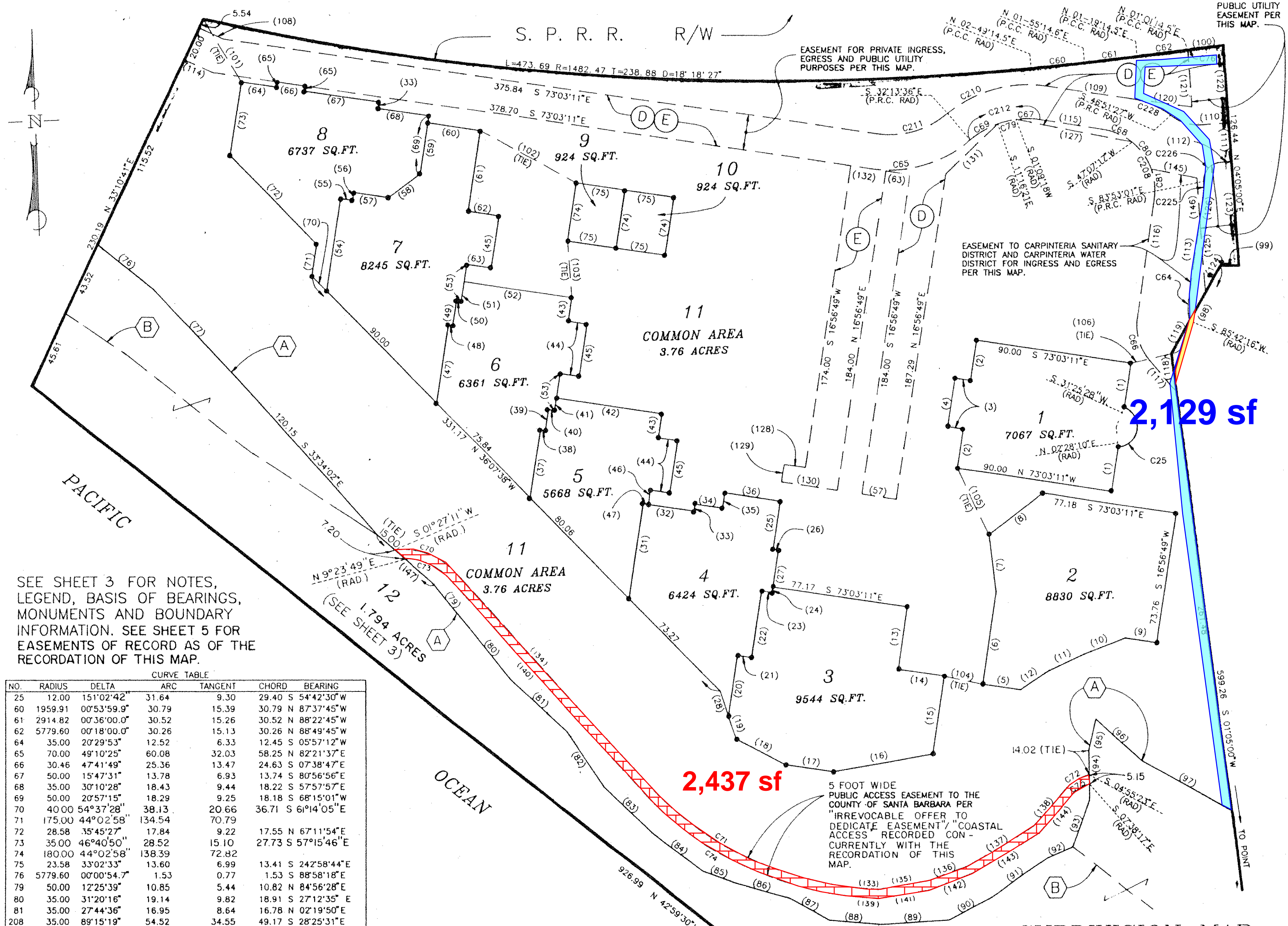
Requested By:  
harten, gerald w

# Exhibit D



TANGENT TABLE		
NO.	DISTANCE	BEARING
1	25.38	S 16°56'49"W
2	23.00	N 16°56'49"E
3	9.00	N 73°03'11"W
4	28.00	N 16°56'49"E
5	21.94	N 73°03'11"W
6	52.28	N 16°56'49"E
7	32.83	N 01°11'41"E
8	38.75	N 61°56'49"E
9	17.89	N 73°03'11"W
10	25.52	S 77°49'29"W
11	22.46	S 74°31'27"W
12	19.57	S 65°06'44"W
13	35.50	S 16°56'49"W
14	26.50	S 73°03'11"E
15	44.92	S 16°56'49"W
16	57.37	S 88°34'24"W
17	27.61	N 73°03'11"W
18	30.98	N 53°23'19"W
19	13.96	N 09°49'47"W
20	34.61	N 16°50'41"E
21	8.00	S 73°03'11"E
22	38.00	N 16°56'49"E
23	5.92	S 73°03'11"E
24	3.00	N 16°56'49"E
25	27.50	S 16°56'49"W
26	3.00	S 73°03'11"E
27	24.00	S 16°56'49"W
28	14.95	N 09°49'47"W
29	15.42	N 36°07'38"W
30	57.85	N 36°07'38"W
31	54.24	N 16°56'49"E
32	29.08	S 73°03'11"E
33	4.00	N 16°56'49"E
34	15.75	S 73°03'11"E
35	8.50	N 16°56'49"E
36	31.33	S 73°03'11"E
37	39.15	N 16°56'49"E
38	2.83	S 73°03'11"E
39	12.00	N 16°56'49"E
40	3.50	S 73°03'11"E
41	7.00	N 16°56'49"E
42	60.67	S 73°03'11"E
43	14.00	S 16°56'49"W
44	11.00	S 73°03'11"E
45	30.00	S 16°56'49"W
46	8.00	S 16°56'49"W
47	45.00	N 16°56'49"E
48	2.48	S 73°03'11"E
49	14.58	N 16°56'49"E
50	2.50	S 73°03'11"E
51	11.25	N 16°56'49"E
52	62.00	S 73°03'11"E
53	21.25	S 16°56'49"W
54	53.01	N 16°56'49"E
55	6.91	S 73°03'11"E
56	4.50	N 16°56'49"E
57	20.00	S 73°03'11"E
58	22.65	N 62°11'13"E
59	29.05	N 16°56'49"E
60	30.08	S 73°03'11"E
61	45.75	S 16°56'49"W
62	17.83	S 73°03'11"E
63	14.00	N 73°03'11"W
64	20.44	S 73°03'11"E
65	2.97	N 16°56'49"E
66	16.00	S 73°03'11"E
67	43.00	S 73°03'11"E
68	29.58	S 73°03'11"E
69	33.05	S 16°56'49"W
70	12.00	N 36°07'38"W
71	18.60	N 16°56'49"E
72	70.22	N 36°32'09"W
73	42.91	N 16°56'49"E
74	33.00	S 16°56'49"W
75	28.00	N 73°03'11"W
76	40.23	S 41°57'23"E
77	69.99	S 34°34'52"E
78	41.66	S 40°44'24"E
79	30.94	S 30°33'20"E
80	38.75	S 30°41'26"E

TANGENT TABLE		
NO.	DISTANCE	BEARING
81	43.31	S 38°56'35"E
82	38.80	S 24°54'13"E
83	37.66	S 37°36'13"E
84	36.33	S 43°19'46"E
85	19.72	S 61°17'24"E
86	30.69	S 66°16'22"E
87	26.26	S 52°22'14"E
88	29.75	S 76°36'04"E
89	38.59	S 85°01'49"E
90	27.05	N 70°30'28"E
91	39.98	N 64°04'20"E
92	15.74	N 74°03'33"E
93	28.84	N 28°55'57"E
94	28.02	N 07°36'21"E
95	18.41	N 21°42'38"E
96	35.50	S 38°54'55"E
97	57.97	S 51°48'41"E
98	57.46	N 36°51'13"E
99	10.60	S 81°59'20"E
100	18.50	N 88°58'46"W
101	42.05	S 22°31'35"E
102	62.20	S 53°17'24"E
103	32.55	S 03°59'28"W
104	22.49	S 69°22'14"E
105	41.13	S 17°22'10"E
106	23.30	N 85°13'59"E
107	20.00	N 33°11'30"E
108	14.89	S 56°48'30"E
109	48.86	S 73°03'11"E
110	15.29	S 85°55'00"E
111	22.18	S 04°15'08"W
112	6.20	N 85°55'00"W
113	46.44	S 16°12'08"W
114	17.74	S 56°48'30"E
115	36.93	S 73°03'11"E
116	69.43	S 16°12'08"W
117	23.59	S 31°29'41"E
118	21.86	N 01°05'00"E
119	21.28	N 36°51'13"E
120	35.93	S 73°03'11"E
121	33.28	N 04°05'00"E
122	45.04	S 04°00'02"W
123	59.21	S 04°05'00"W
124	17.41	S 36°51'13"W
125	42.08	N 04°05'00"E
126	12.97	N 16°12'08"E
127	68.19	N 70°39'11"W
128	12.00	N 73°03'11"W
129	10.00	S 16°56'49"W
130	32.00	S 73°03'11"E
131	40.91	N 54°46'02"E
132	11.93	N 73°03'11"W
133	8.17	S 77°58'20"E
134	165.42	S 33°55'21"E
135	28.37	N 89°23'44"E
136	24.79	N 77°46'56"E
137	43.51	N 67°06'23"E
138	26.71	N 49°19'11"E
139	8.73	S 77°58'20"E
140	165.42	S 33°55'21"E
141	29.43	N 89°23'44"E
142	25.76	N 77°46'56"E
143	44.76	N 67°06'23"E
144	27.49	N 49°19'11"E
145	26.13	S 70°39'11"E
146	23.51	S 04°05'00"W
147	41.66	S 40°44'24"E



SEE SHEET 3 FOR NOTES, LEGEND, BASIS OF BEARINGS, MONUMENTS AND BOUNDARY INFORMATION. SEE SHEET 5 FOR EASEMENTS OF RECORD AS OF THE RECORDATION OF THIS MAP.

CURVE TABLE						
NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
25	12.00	151°02'42"	31.64	9.30	29.40	S 54°42'30"W
60	1959.91	00°53'59.9"	30.79	15.26	30.79	N 87°37'45"W
61	2914.82	00°36'00.0"	30.52	15.26	30.52	N 88°22'45"W
62	5779.60	00°18'00.0"	30.26	15.13	30.26	N 88°49'45"W
64	35.00	20°29'53"	12.52	6.33	12.45	S 05°57'12"W
65	70.00	49°10'25"	60.08	32.03	58.25	N 82°21'37"E
66	30.46	47°41'49"	25.36	13.47	24.63	S 07°38'47"E
67	50.00	15°47'31"	13.78	6.93	13.74	S 80°56'56"E
68	35.00	30°10'28"	18.43	9.44	18.22	S 57°57'57"E
69	50.00	20°57'15"	18.29	9.25	18.18	S 68°15'01"W
70	40.00	54°37'28"	38.13	20.66	36.71	S 61°14'05"E
71	175.00	44°02'58"	134.54	70.79		
72	28.58	35°45'27"	17.84	9.22	17.55	N 67°11'54"E
73	35.00	46°40'50"	28.52	15.10	27.73	S 57°15'46"E
74	180.00	44°02'58"	138.39	72.82		
75	23.58	33°02'33"	13.60	6.99	13.41	S 24°25'44"E
76	5779.60	00°00'54.7"	1.53	0.77	1.53	S 88°58'18"E
79	50.00	12°25'39"	10.85	5.44	10.82	N 84°56'28"E
80	35.00	31°20'16"	19.14	9.82	18.91	S 27°12'35"E
81	35.00	27°44'36"	16.95	8.64	16.78	N 02°19'50"E
208	35.00	89°15'19"	54.52	34.55	49.17	S 28°25'31"E
210	70.00	49°10'25"	60.08	32.03	58.25	N 82°21'37"E
211	50.00	49°10'25"	42.91	22.88	41.61	N 82°21'37"E
212	50.00	49°10'25"	42.91	22.88	41.61	N 82°21'37"E
225	50.00	10°05'09"	8.80	4.41	8.79	S 11°09'33"W
226	10.00	87°58'01"	15.35	9.65	13.89	S 50°05'59"W
227	25.00	42°46'27"	18.66	9.79	18.23	S 64°31'46"E
228	50.00	29°54'38"	26.10	13.36	25.81	S 58°05'52"E

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**SUBDIVISION MAP**  
OF  
**TRACT No. 14,026**  
COUNTY OF SANTA BARBARA, CALIFORNIA  
SCALE: 1" = 40' AUGUST 1989  
SHEET 4 OF 5 SHEETS W.O. 8526.08

**KEY**  
Area in **RED** across the bottom is the unusable easement dedicated in 1990

Area in **BLUE** on the right shows the approximate location of the vertical access easement offered by Casa Blanca since 2020 (with the short red portion in the middle showing a small strip of it that is on Sandyland Protective Association property)

LAW OFFICE OF  
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ATTORNEY AT LAW

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December 8, 2022

By E-mail: [CSLC.Commissionmeetings@slc.ca.gov](mailto:CSLC.Commissionmeetings@slc.ca.gov)

California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA. 95825

**Re: Applicant: Casa Blanca Beach Estates Owners Association**  
**Hearing Date: December 9, 2022 – Agenda Item No. 70**

Dear Honorable Commissioners:

I represent one of the original homeowners in the Casa Blanca community, a residential community of 8 lots, who is a member of the Casa Blanca Owners' Association. My client, who is now a widow, and her husband purchased a lot in Casa Blanca and built their home there in the mid 1990s. My client and her husband purchased their lot and build their home in reliance on the presence of the Rock Revetment and on the 1993 Lease ("Lease") between the Association (through its predecessor) and the State Lands Commission ("SLC"), which Lease is recorded and is part of the Association's recorded CC&Rs. The Rock Revetment, existing long before the Association ever existed or my client and her husband ever purchased their property, is critical for the safety of my client's home and all of the other homes in the community, including the historic landmark pool house in the community, as well as other surrounding homes and properties including the railroad tracks and nearby public road and walkways.

The provisions of the Lease are important and were relied on by my client and her husband and all other homeowners purchasing property in Casa Blanca; the Lease is part of the chain of title to all homes in the community.

The Lease specifically provides that SLC would not be able simply to terminate it unilaterally. The Lease provides that after the end of the 10-year term, the Lease continues on a month-to-month basis on the same terms, which it has for the last two decades.

The Lease provides that the rent is \$0, in consideration for the public benefits provided by the Rock Revetment. Although the Lease provides for the possibility for the rent to be increased if the SLC follows specific provisions (which the SLC never has), since the rent is \$0 in consideration for the public benefit provided by the Rock Revetment, and the Rock Revetment continues to provide the same public benefits that it has since 1993 and



before, the only reasonable construction and expectation would be that the rent would not increase. And indeed, it never has for the last 30 years, consistent with the Lease terms.

To the extent that the public benefit is construed to be the provision that the Lessee offer a public dedication of a walkway on the Rock Revetment, the Lessee complied with this provision and made that offer decades ago. That dedication provided for a specific 5-foot easement walkway on the Rock Revetment, as required by Santa Barbara County. Moreover, after the County belatedly accepted the easement, without notice to the Association or its members, it made clear that was not approving that the walkway be built until it subsequently agreed, which it never did. The terms of the dedication, including the location of the five-foot walkway, and the requirement that the County approve and accept liability and maintenance of the walkway, were recorded conditions on which my clients relied when they purchased their property.

The Association and its members have stood ready to provide and build the walkway easement that they agreed to provide, but it has not been permitted by any permitting authority and has proven to be infeasible. Moreover, the Association and its members have further agreed, although not required, to provide an alternative vertical beach access through the community, as a good-faith effort to resolve the easement issue.

To the extent that the SLC could establish any right to increase rent, assuming they followed the process specified in the Lease, any such rent would clearly have to be reasonable and consistent with the reasonable expectations of the parties under the Lease. The astronomical rent unilaterally demanded by SLC (in amounts that have swung massively by something like 150% over a few weeks), does not resemble any reasonable market rent, and is so unreasonable as to be far outside of any reasonable expectations of the parties to the Lease, and the families, such as my client, who have purchased and improved property in Casa Blanca in reliance on the terms of the Lease.

The massive unreasonable rent, and other sums, proposed to be charged, would be unaffordable by my client, who is a senior citizen, and cause her to lose her home.

The attempt by the SLC unilaterally to replace the Lease with the proposed Lease containing a variety of onerous, and one-sided terms, is contrary to the provisions of the existing Lease which remains in effect.

The further suggestion that the SLC should take action to recover alleged back rent, which is not due under the terms of the Lease, or possession of the land under the Rock Revetment would be a patent violation of the Lease.

For all of these reasons, the SLC should not approve the resolution before it, and instead direct its staff to act in accordance with the terms of its Lease.

Sincerely yours,

/s/

JAMES P. BALLANTINE

JPB/lp