

Staff Report 52

APPLICANT:

Emerald Bay Community Association

PROPOSED ACTION:

Issuance of a General Lease – Recreational Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, Gulf of Santa Catalina, at Emerald Bay, adjacent to 600 Emerald Bay, Laguna Beach, Orange County (as shown in Figure 1).

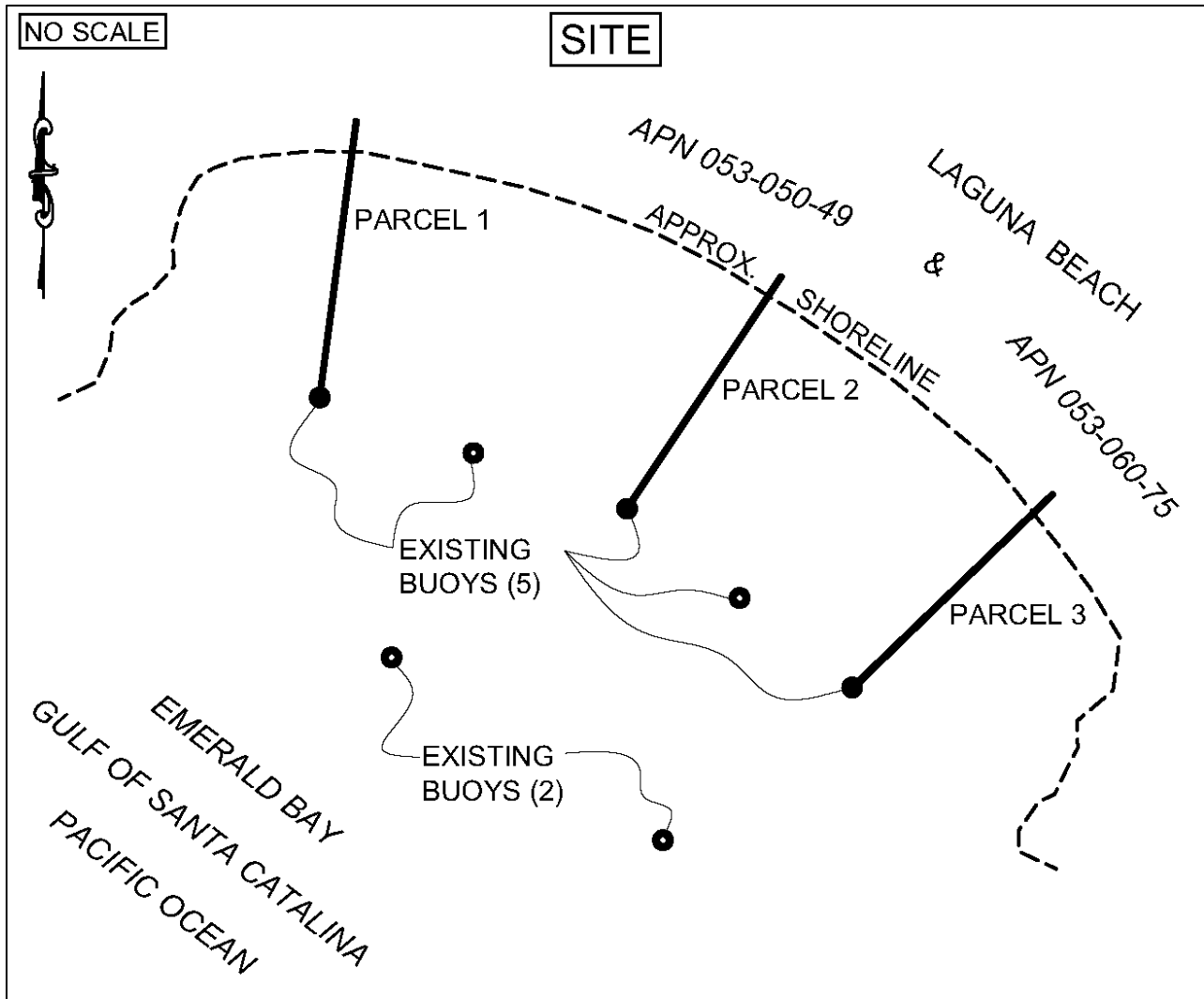
Figure 1. Location



AUTHORIZED USE:

Use and maintenance of seven existing seasonal marker buoys and three seasonal swimmer safety lines (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

10 years, beginning February 22, 2023.

CONSIDERATION:

\$2,283 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$3,000,000 per occurrence.

- The improvements authorized by this lease are only to be used seasonally, from April 1 through October 31 of each year.
- Lessee shall install the authorized improvements no sooner than April 1 each year and shall remove these areas no later than October 31 each year. Lessee shall provide Lessor with date-stamped, photographic evidence of the installation and removal of the authorized improvements within three days of either operation.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On February 22, 2013, the Commission authorized a General Lease - Recreational Use to Emerald Bay Community Association for the use and maintenance of seven marker buoys and three swimmer safety lines in the Pacific Ocean, Gulf of Santa Catalina, at Emerald Bay, adjacent to 600 Emerald Bay, Laguna Beach, Orange County ([Item C72, February 22, 2013](#)).

On November 29, 2017, staff performed a rent review on this lease as directed by lease terms and conditions ([Item C53, November 29, 2017](#)). This rent review resulted in the modification of annual rent from \$1,608 to \$1,856. This Lease expired on February 21, 2023.

The Applicant is now applying for a General Lease – Recreational Use for the use and maintenance of the seven existing seasonal marker buoys and three seasonal swimmer safety lines. Staff recommends issuance of a General Lease – Recreational Use to the Applicant, to take effect on February 22, 2023.

The marker buoys and swimmer safety lines authorized by this lease are used seasonally from April 1st through October 31st each year. Rent for these improvements has been appropriately prorated to account for this seasonal use.

The subject facilities are privately owned and maintained and have existed at this location for many years. The seven marker buoys and three swimmer safety lines

facilitate recreational swimming. Recreational swimming is water-dependent and is generally consistent with the common law Public Trust Doctrine.

The proposed lease does not alienate the State’s fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the leased premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee’s activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the use of public land.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, increased wave activity, storm events, and flooding may impact marker buoys and swimmer lines located in Emerald Bay in Laguna Beach.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Los Angeles tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea Level Rise for Los Angeles

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

Source: Table 28, [State of California Sea-Level Rise Guidance: 2018 Update](#).

Note: Projections are with respect to a 1991 to 2009 baseline.

As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms

can result in increased flooding conditions and damage from storm created debris. Climate change and sea level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine areas will be exposed to increased wave force and run up, potentially resulting in greater beach or bank erosion than previously experienced.

This increase in sea level combined with more frequent and stronger storm events will likely expose the lease area to higher flood risks, comprised of greater total water levels for longer periods of time. However, the marker buoys and swimmer lines will rise and fall with tides and waves and are placed seasonally, increasing their resiliency to some sea level rise impacts.

Regular maintenance, as referenced in the lease, may reduce the likelihood of dislodgement of these facilities. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea level rise.

CONCLUSION:

For all the reasons above, Commission staff believes the issuance of this lease will not substantially interfere with 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. Approval or denial of an application 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 Applicant may be required to remove the existing marker buoys and swimmer safety lines and restore the premises to their original condition. The lessee has no right to a new lease or renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

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

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning February 22, 2023, for a term of 10 years, for the use and maintenance of seven existing seasonal marker buoys and three seasonal swimmer safety lines; annual rent in the amount of \$2,283, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$3,000,000 per occurrence.