

Staff Report 62

APPLICANT:

County of Orange

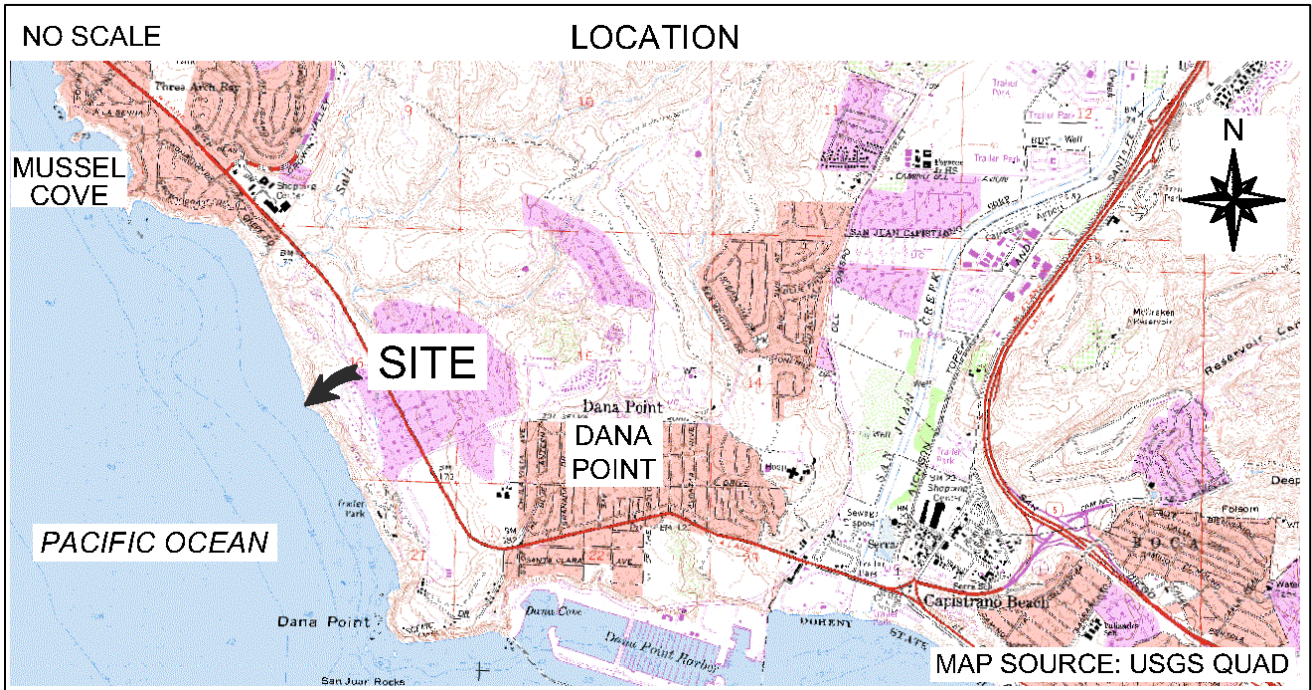
PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, adjacent to Assessor's Parcel Numbers 672-171-03 and -06 at Salt Creek Beach Park, near Dana Point, Orange County (as shown in Figure 1).

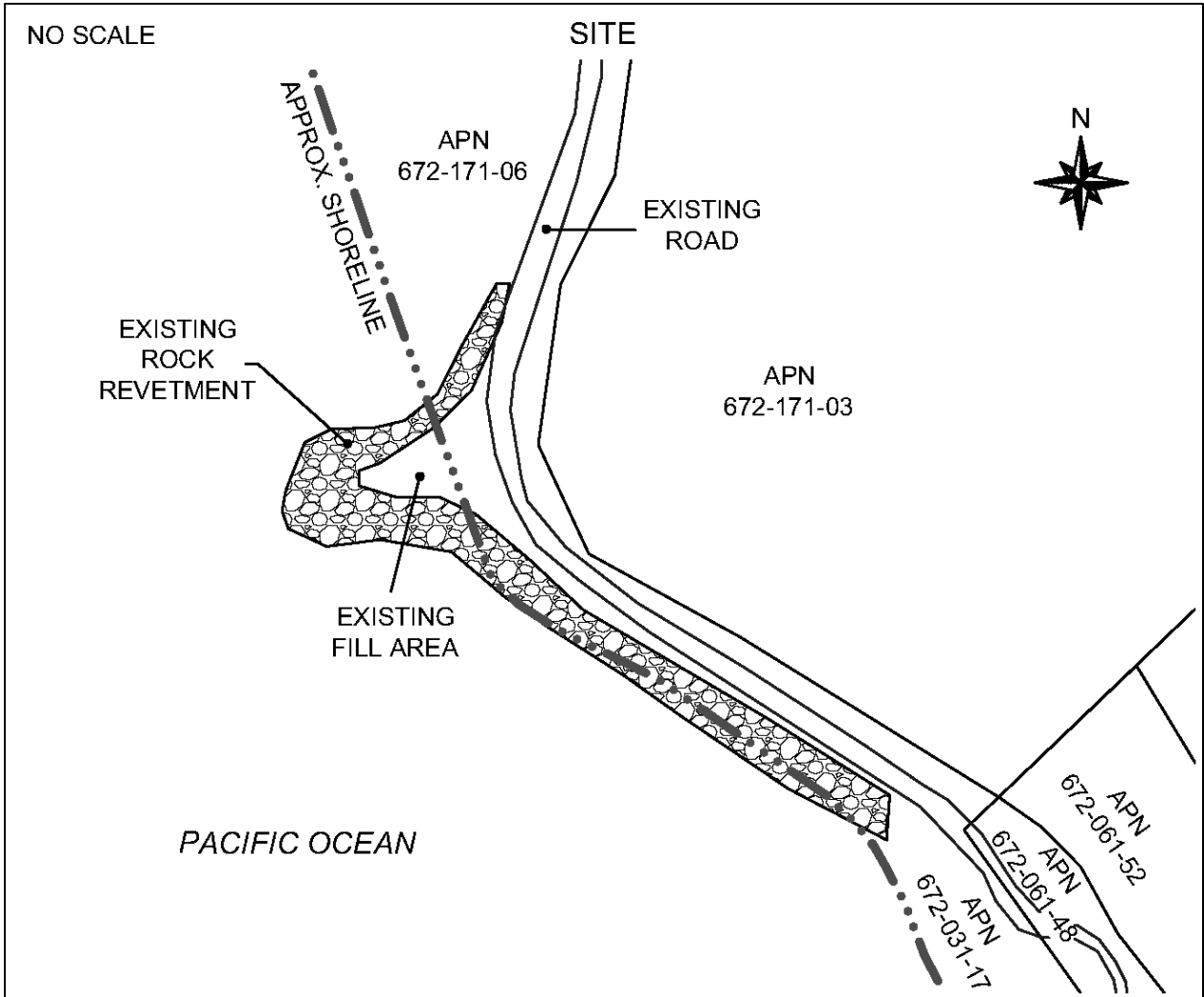
Figure 1. Location



AUTHORIZED USE:

Use of an existing rock revetment and fill (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:

5 years, beginning February 27, 2023.

CONSIDERATION:

\$140 per year and the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- Lessee agrees and acknowledges that the hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- By February 27, 2026, Lessee must provide Lessor's staff with a plan for adapting the improvements on the lease premises for sea level rise and other climate change impacts.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On October 7, 1988, the Commission authorized a General Lease – Public Agency Use to Orange County (County) for the repair and maintenance of the rock revetment and fill which were placed by the Laguna Niguel Corporation sometime prior to 1970 following severe winter storms ([Item C05, October 7, 1988](#)). On February 27, 2018, the Commission authorized a General Lease – Public Agency Use to the County for the use of the existing rock revetment and fill ([Item C66, February 27, 2018](#)). The lease expired on February 26, 2023. The Applicant is now applying for a General Lease – Public Agency Use for the use of the facilities.

At high tide there is no public access connectivity between two beaches waterward of the rock revetment. The fill protected by the rock revetment acts as a bridge to connect the two public recreational areas. The rock revetment, located at the Salt Creek Beach Regional Park (Park), also prevents erosion which could negatively impact a County lifeguard station and road located immediately upland of the proposed lease premises. The lifeguard station is operated year-round and is located on the fill which is higher and further landward from the adjacent shoreline to provide a better vantage point of the water and beaches on either side. The road provides the public with a safe path from the Salt Creek Beaches (North Beaches) to the Bluff Park and Selma Road Entrances and to the Dana Strands Beaches (South Beaches). Most beach visitors park in an upland parking lot located near the North Beaches and walk on the road adjacent to the rock revetment and fill to access the South Beaches. A smaller, lesser known, public parking lot is located in a residential neighborhood near the South Beaches and is filled quickly by surfers and those attending day-camps and lifeguard programs on

the beaches. The protected roadway is also used for county maintenance activities, emergency, and law enforcement vehicle access to the beaches.

The Park beaches receive over 2 million visitors each year and are one of the County's top surfing beaches where the public can also enjoy swimming, body surfing, sunbathing, tidepools, fishing, and the view. The rock revetment, fill, and upland property are owned and maintained by the County and the facilities are open for public recreation. The upland portion of the Park is a large grassy area with picnic tables, walking paths, a paved parking area, restrooms, showers, and concessions offering food and beach supplies to the public. Water-related recreational uses are generally consistent with the common law Public Trust Doctrine.

The proposed lease is limited to a 5-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust consistent uses. The limited term will provide the Commission with greater flexibility in evaluating any future impacts that might occur, or if Public Trust needs and values at this location have changed over time. Upon Lease termination, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition. The proposed lease requires the lessee to keep and maintain the rock revetment in good order and repair, insure the lease premises, and indemnify the State for any liability incurred as a result of the lessee's activities thereon. Staff recommends rent to be set at the minimum rent for Public Agency Use so long as the improvements are used to provide public access and to protect public safety.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, increased wave activity, stronger and more frequent winter storm events, and accelerated erosion affect this lease premise and will continue to in the future. The existing revetment structure subject to the lease is located on tidelands adjacent to the Park, and functions as shoreline protection to reduce upland erosion and prevent upland flooding.

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 increasing the frequency and severity of natural disasters like flooding, drought, and storms (especially when coupled with sea level rise). The lease area 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.

The existing revetment protects the access road used for maintenance, emergency, and law enforcement vehicles and the trail system that connects Salt Creek beaches, which are used by the public for recreation. However, while hard armoring structures provide temporary protection against the threat of sea level rise, they disrupt natural shoreline processes, accelerate long-term erosion, cause loss of beach and other critical habitats and corresponding ecosystem benefits, as well as impair beach access and recreational uses. The impacts that hard armoring can have on tidelands are compounded by the climate change impacts discussed previously. Shoreline conditions in this area are very dynamic already and the variability of the lease area and resources is likely to continue to increase on track with climate projections. Therefore, staff recommends a short lease term for this revetment so that it can assess the site again in a few years and review the functionality of the structure, the condition of the lease premise and develop ideas with the lessee to ensure the long-term viability of public access and recreation at this location.

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. Additionally, pursuant to the proposed lease, by February 27, 2026, the Applicant must provide Commission staff with a plan for adapting the improvements on the lease premises for sea level rise and other climate change impacts.

CONCLUSION:

Structures such as rock revetments disrupt natural shoreline processes and can impair or destroy the public's ability to access beaches. In some situations, staff may recommend additional consideration to compensate the public for these impacts to the public's land. More specifically, when the hard armoring provides only private benefits, staff generally recommend monetary rent and other consideration for protective structures based on the appraised value of the sovereign land and the impacts to Public Trust resources. In the present case, the revetment does disrupt the natural shoreline processes, but it protects and maintains public access to and between the Salt Creek Beaches to the Dana Strands Beaches. If the armoring was removed, the public would lose access to the continuity of the beaches and critical municipal services, like the County lifeguard station and emergency response access could be negatively impacted. The Applicant is a public entity charged with serving the public interest in its jurisdiction, and the revetment protects public access at this time. After reviewing all of the associated impacts and benefits of this revetment, at this unique location, staff has determined that the impacts to public access from the revetment are outweighed by the public access benefits provided by the revetment and that the minimum rent recommended and the continued maintenance of the public access road and the lifeguard station are sufficient consideration for the proposed lease.

The proposed lease is only for 5 years, providing the Commission the opportunity to reevaluate the public benefits of the revetment and the need for additional monetary rent or other consideration in the near future.

For all the reasons above, 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; is consistent with common law Public Trust Doctrine; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the 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 improvements and restore the premises to their original condition. The lessee has no right to a new lease or a renewal of any previous lease.

2. This action is consistent with the “Meeting Evolving Public Trust Needs” and “Leading Climate Activism” 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 the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning February 27, 2023, for a term of 5 years, for use of an existing rock revetment and fill; annual rent of \$140, with the State reserving the right, at any time, to set a monetary rent as specified in the lease if the Commission finds such action to be in the State’s best interests.