

Staff Report 43

LESSEE:

County of Santa Barbara Parks Division

APPLICANT/SUBLESSOR:

County of Santa Barbara Community Services Department

SUBLESSEE:

Miramar Acquisition Co., LLC

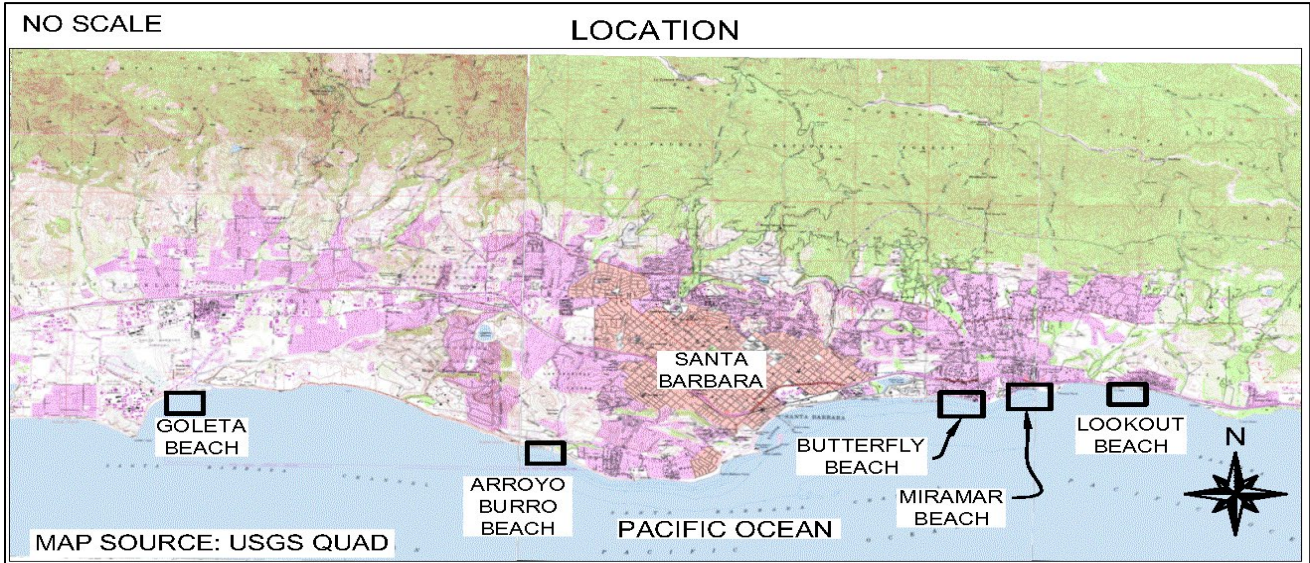
PROPOSED ACTION:

Termination and Issuance of a General Lease – Public Agency Use and endorsement of a sublease.

AREA, LAND TYPE, AND LOCATION:

Sovereign tide and submerged land in the Pacific Ocean, near Goleta, Montecito, and Summerland, Santa Barbara County (as shown in Figure 1, below).

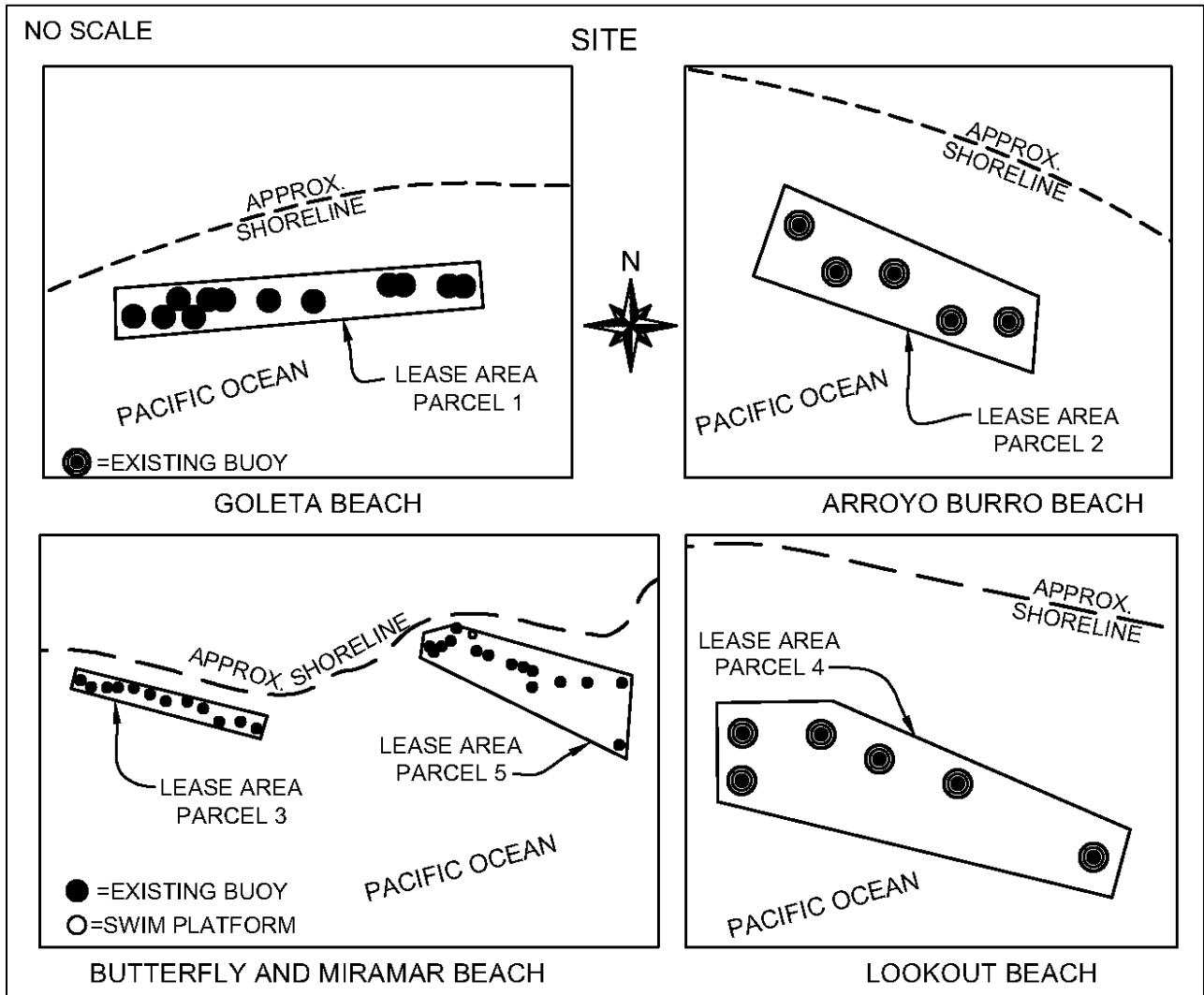
Figure 1. Location



AUTHORIZED USE:

Seasonal placement and use of swim and channel marker buoys, floats, and signs to create "Special Use Areas" at Miramar Beach, Arroyo Burro Beach, Butterfly Beach, Goleta Beach, and Lookout Beach; use of an existing boat launch corridor at Goleta Beach; and the proposed seasonal placement and use of one swim platform with two attached anchors (as shown in Figure 2, below).

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:

20 years, beginning May 1, 2024.

CONSIDERATION:

Annual rent in the amount of \$198 with an annual Consumer Price Index adjustment, with additional consideration being the public use and benefit.

SPECIFIC LEASE PROVISIONS:

- Lessee shall install or have installed the authorized seasonal facilities, including the swim platform and anchors subject to a sublease attached to the Lease as Exhibit C, on or after May 1 and shall remove or have removed said facilities on or before October 15 of each lease year.
- Kelp beds will not be disturbed during installation or removal operations.
- Lessee shall prominently display signage indicating the authorized improvements are open to the public.

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 August 17, 2017, the Commission authorized a General Lease – Public Agency Use to the Santa Barbara County Division of Parks for the seasonal placement and use of swim and channel marker buoys, floats, and signs to create “Special Use Areas” at Miramar Beach, Arroyo Burro Beach, Butterfly Beach, Goleta Beach, and Lookout Beach in Santa Barbara County, with an offshore boat launch corridor at Goleta Beach ([Item C63, August 17, 2017](#)). These areas provide a safe separation between ocean swimmers, surfers, bathers, and motorized watercraft by identifying those areas which are restricted to or off limits to motorized boats and personal watercraft. The buoy lines restrict boating traffic to no closer than 500 feet offshore. The lease will expire on April 30, 2032.

The Applicant, County of Santa Barbara Community Services Department, is a division of the County of Santa Barbara Parks Division. The Applicant is applying to terminate the existing lease and is requesting a new General Lease – Public Agency Use for the continued existing uses, and for a sublease endorsement to

Miramar Acquisition Co. LLC (Miramar) for the installation and use of a seasonal public 10.5-foot by 10-foot swim platform with two attached claw anchors (Platform). The Platform and anchors would be located at the Miramar Beach Special Use Area. Staff recommends the proposed lease begin on May 1, 2024, to coincide with the current lease anniversary date.

The Platform would be located shoreward of the approximate location of a previous swim platform that, based on photographic evidence, is estimated to have been in use in the early 1900s. The proposed Platform would be anchored using two attached, 33-pound claw anchors, each with 75-feet of 5/16-inch chains. The chains and claw anchors will be placed and removed with the Platform. Two existing unused anchors that may have been used for the previous platform were recently discovered. Because ownership of these anchors is currently unknown, they are not included in the proposed lease; however, the Applicant has agreed to investigate the feasibility of their removal.

The Platform would be placed adjacent to the Rosewood Miramar Beach Resort, owned by Miramar, to benefit public recreation. The sublease being considered by the Commission for endorsement is known as the Master Agreement (Agreement), which the Applicant and Miramar have not yet executed. The Agreement, as contemplated, includes a 10-year term with two 5-year extensions at the Applicant's discretion. Should the Applicant approve any extensions of the Agreement, these extensions will not exceed the term of the existing lease to Applicant and are subject to the conditions and limitations of the lease. The proposed sublease endorsement is contingent on Applicant's execution of the proposed lease being considered in this action. The Agreement also provides that Miramar will install, operate, and maintain the Platform between May 1 and October 15 each year. The other seasonal facilities will be in place during the same timeframe. The Platform would also be removed during periods of anticipated sustained inclement weather or rough current. Signage reading "Public Swim Platform" will be placed at the public entrance to Miramar Beach, adjacent to the resort, and on the beach's lifeguard tower. A "No Rough Play" sign will be attached to the Platform.

Except for the boat launch corridor, the improvements provide safe areas for non-motorized recreational uses in the nearshore waters at the public beaches by prohibiting motorized watercraft within the lease premises. Staff believes the public safety benefits outweigh the minor restrictions on some Public Trust uses and the current and proposed uses are generally consistent with the common law Public Trust Doctrine. The California Legislature has identified recreational swimming as an authorized use of Public Trust land. (Pub. Resources Code, § 6503.5).

The lease is limited to a 20-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, 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 insure the lease premises and indemnify the State for any liability incurred as a result of the lessee’s activities thereon. In addition to the public benefit provided, the lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, more frequent and intense storm events, increased flooding and erosion, and changes in sand deposition, affect open coastal areas in California. The facilities are located in the Pacific Ocean in tidally influenced sites located off of Miramar Beach, Arroyo Burro Beach, Butterfly Beach, Goleta Beach, and Lookout Beach in Santa Barbara County.

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 Santa Barbara 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 Santa Barbara

Year	Projection (feet)
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: Projections are with respect to a 1991 to 2009 baseline.

As stated in the [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.

The buoys and floats are adaptable to variable water levels and extreme weather and are unlikely to be affected during extreme high tides accompanied by high surf or storm surges. The proposed floating swim platform would also adjust to sea level rise and would be removed annually and during periods of anticipated sustained inclement weather or rough current. Therefore, it is also unlikely to be affected by climate change.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. 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, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine; will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the proposed lease; is consistent with the 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 lease premises to their original condition. The lessee has no right to a new lease or to 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. Termination of the lease and endorsement of a sublease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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).

4. **Buoys, Floats, Signs, and Boat Launch Corridor:** Staff recommends that the Commission find that this activity is exempt from the requirements of the 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).

Proposed Swim Platform with Anchors: 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

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

APPROVALS REQUIRED:

Regional Water Quality Control Board (RWQCB)
California Coastal Commission (CCC)
U.S. Army Corps of Engineers (USACE)

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); and Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

Find that the whole of the project is categorically exempt from the requirement for the preparation of environmental documents through the combination of categorical exemptions listed above.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

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

AUTHORIZATION:

1. Authorize termination of Lease Number PRC 7082, a General Lease – Public Agency Use, effective April 30, 2024, issued to the County of Santa Barbara Parks Division.
2. Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning May 1, 2024, for a term of 20 years, for the seasonal placement and use of swim and channel marker buoys, floats, and signs to create “Special Use Areas” at Miramar Beach, Arroyo Burro Beach, Butterfly Beach, Goleta Beach, and Lookout Beach; for an existing boat launch corridor at Goleta Beach; and for the proposed seasonal placement and use of one swim platform with two attached anchors, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$198 with an annual Consumer Price Index adjustment, and with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease, with additional consideration being the public use and benefit.
3. Authorize the endorsement of a sublease between the County of Santa Barbara Community Services Department and Miramar Acquisition Co., LLC effective on or after the beginning date of the lease, for a portion of Lease 7082, for the seasonal placement and use of one swim platform and two attached claw anchors at Miramar Beach.