

Staff Report 48

APPLICANT:

The California Department of Parks and Recreation

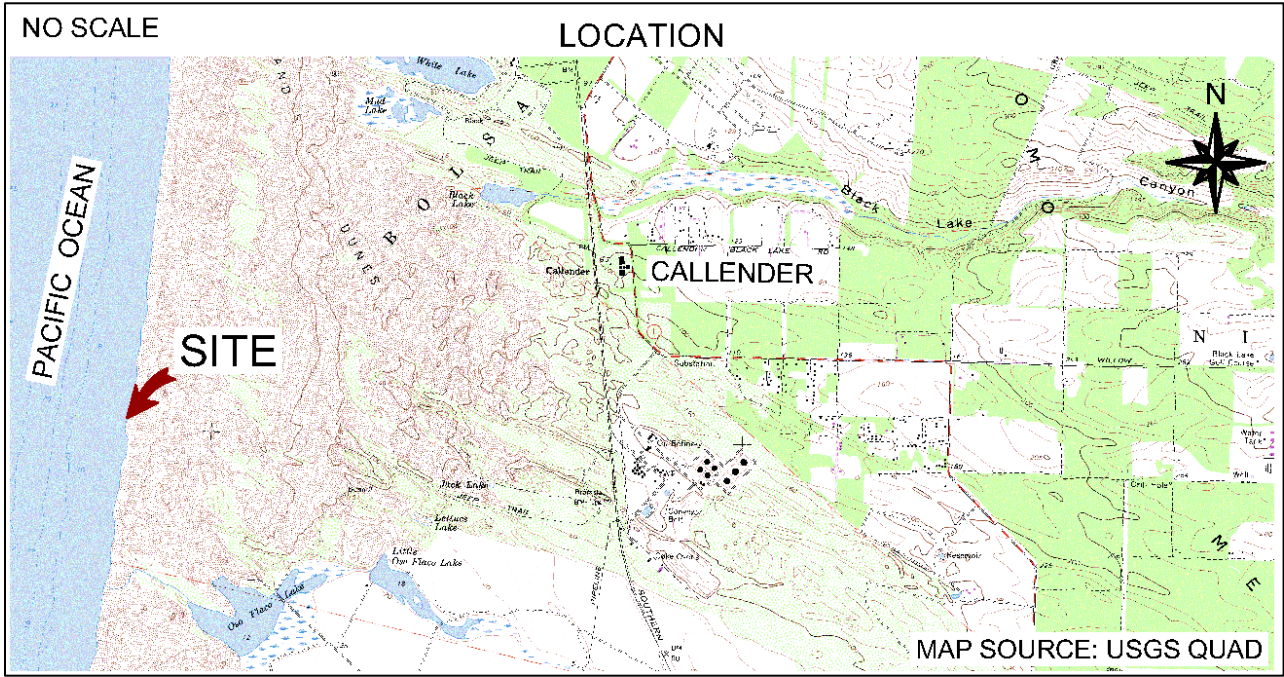
PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Pacific Ocean, adjacent to Oceano Dunes State Vehicular Recreation Area, near Oso Flaco Creek, Pismo Beach, San Luis Obispo County (as shown in Figure 1).

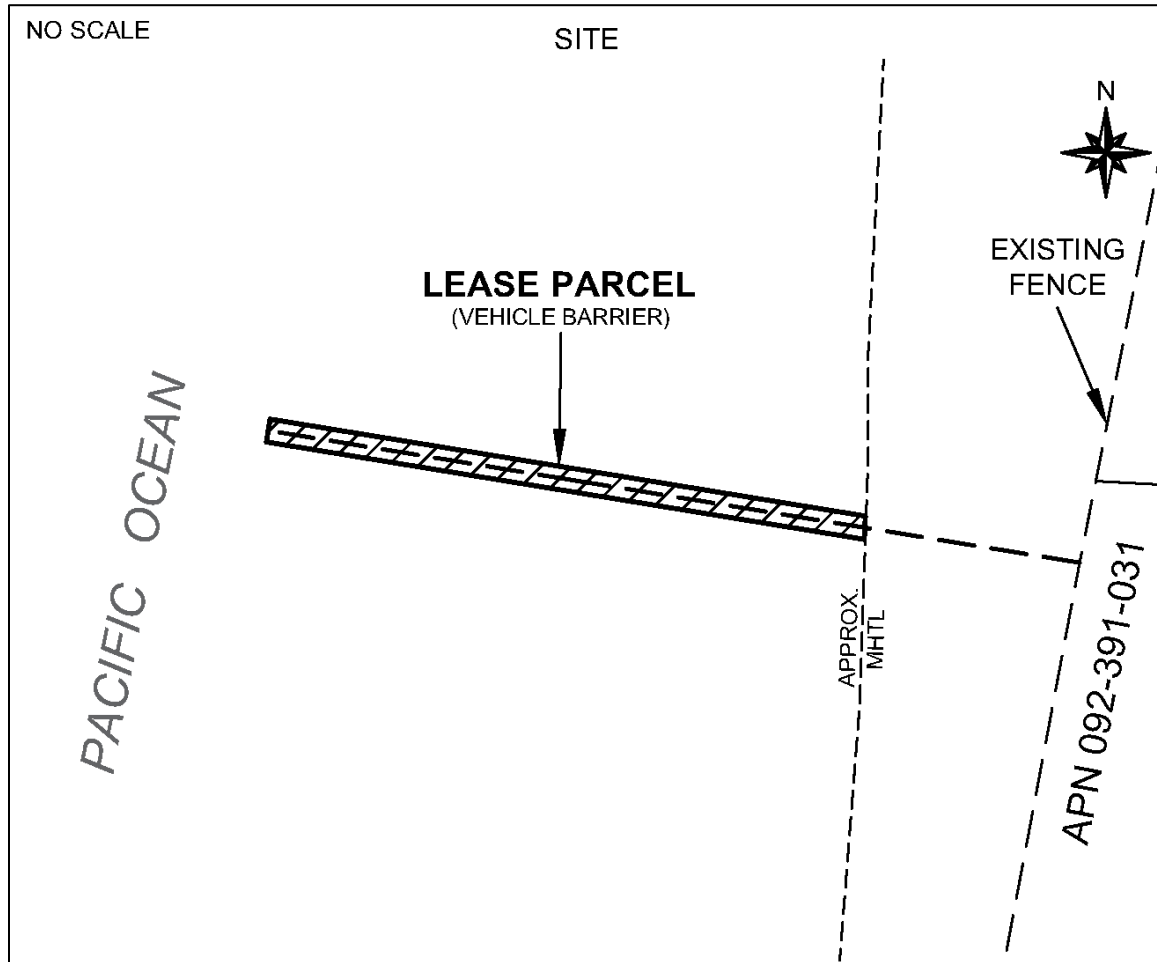
Figure 1. Location



AUTHORIZED USE:

Use of an existing bollard and cable vehicle barrier (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:

20 years, beginning June 7, 2024.

CONSIDERATION:

The public use and benefit, with the State reserving the right to set a monetary rent if the Commission finds such an action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

- Lessee shall not add, or allow the placement by any other party, any improvements on the Lease Premises without the prior express written consent of Lessor.
- No refueling or maintenance of vehicles, equipment, or watercraft shall take place within the Lease Premises.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 2005, the Commission authorized issuance of a General Lease – Public Agency Use to the California Department of Parks and Recreation (CDPR) for the use of an existing vehicle barrier in the Pacific Ocean, adjacent to the Oceano Dunes State Vehicular Recreation Area, near Oso Flaco Creek, Pismo Beach, San Luis Obispo County ([Item 49, April 26, 2005](#)). The lease expired September 30, 2023.

Now, the Applicant is applying for a General Lease – Public Agency Use for use of this existing bollard and cable vehicle barrier. Staff recommends issuance of a General Lease – Public Agency Use to the Applicant, effective June 7, 2024.

The vehicle barrier was originally installed pursuant to a California Coastal Commission permit issued to CDPR in June 1982 and is designed to prevent vehicle access to the environmentally sensitive dune habitat located south of the barrier. Pedestrian access to the dune area south of this barrier was permitted for many years, except for during nesting season from March 1 through September 30; however, this area is now closed to public use year-round to ensure the environmentally sensitive dune habitat is more fully protected. The dune habitat south of the vehicle barrier is considered especially valuable due to the important role it serves within the coastal ecosystem. Because this habitat can be easily disturbed or degraded by human activities, the vehicle barrier provides a public benefit by protecting this area from vehicular traffic and human interference.

The Applicant has occupied State land since the previous lease expired. However, both the previous lease and the proposed lease do not require monetary rent

because the subject improvement provides a significant public benefit by supporting the preservation of an environmentally sensitive habitat, and this public benefit is sufficient compensation for the State. Therefore, staff do not recommend that the proposed lease require monetary compensation for the Applicant's occupation of State land following the prior lease expiration. Nevertheless, the proposed lease will require that the Applicant indemnify the State for the entire period of unauthorized occupation prior to June 7, 2024, to ensure that the State is protected from potential liability.

The proposed Lease does not alienate the State's sovereign interest or permanently impair public rights. The lease is limited to a 20-year term, does not grant the lessee exclusive rights to the lease premises, and will have no significant impact on Public Trust-consistent uses or resources in the area. Upon termination of the lease, the lessee may be required to remove any improvements from State land and restore the lease premises to their original condition. The proposed lease requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

CLIMATE CHANGE:

Climate change impacts, including sea level rise, increased wave activity, storm events, and flooding may impact an existing vehicle barrier subject to the proposed lease, located on Pismo Beach, San Luis Obispo 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 Port San Luis tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea Level Rise for Port San Luis

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

Source: Table 19, [State of California Sea-Level Rise Guidance: 2018 Update](#)

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

As stated in 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 coastal flooding 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. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches and coastal landscapes will be exposed to increased wave force and run up, potentially resulting in greater beach 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. The lease area contains a vehicle barrier, which is a fixed structure that may need additional reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events. The barrier prohibits vehicle access to an environmentally sensitive dune area but does not restrict natural changes and movements due to coastal processes, sea levels, and climatic conditions.

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 approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the term of the lease; 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 must remove the improvements and restore the property to its 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. 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 interfere with Public Trust needs and values at this location, at this time, and for the term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning June 7, 2024, for a term of 20 years, for the use of an existing bollard and cable vehicle barrier; consideration being the public use and benefit, with the State reserving the right to set a monetary rent if the Commission finds such an action to be in the State’s best interests.