

Staff Report 23

APPLICANT:

1307 West Cliff Holdings LLC

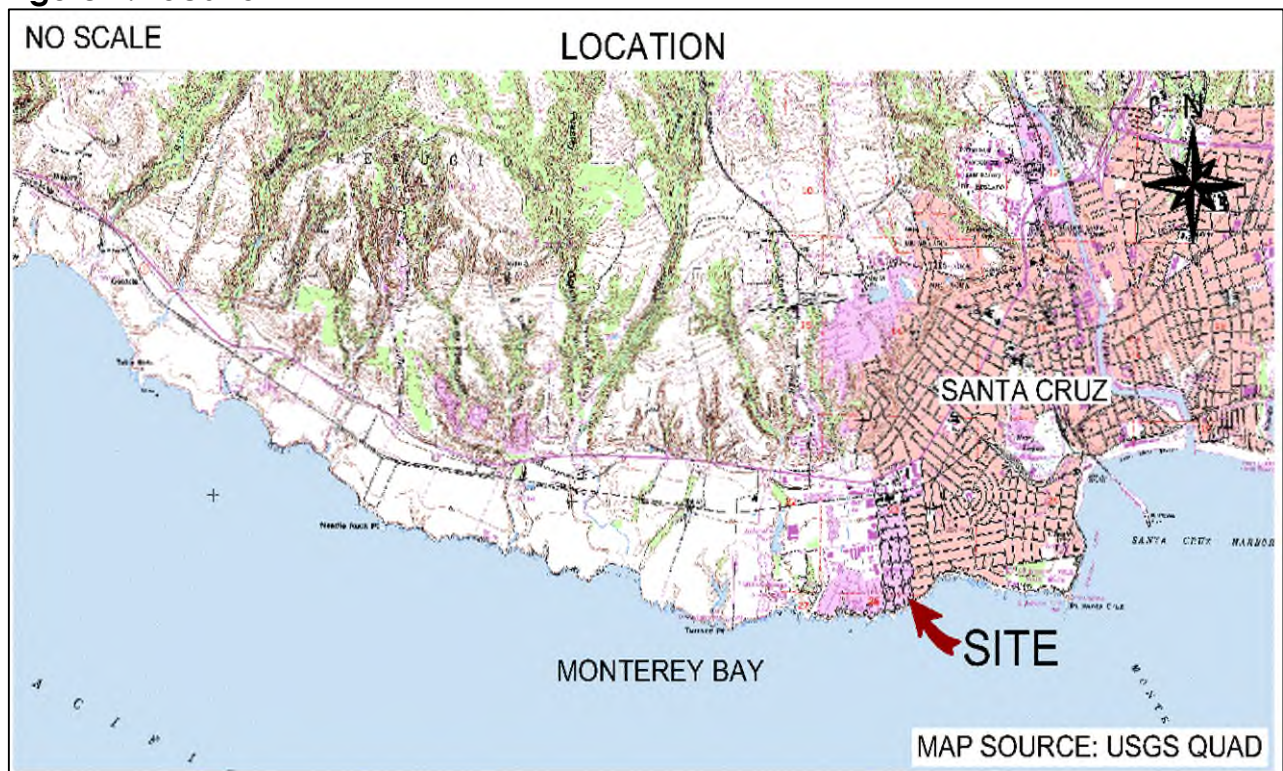
PROPOSED ACTION:

Issuance of a General Lease – Protective Structure Use.

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Pacific Ocean, adjacent to 1307 West Cliff Drive, Santa Cruz, Santa Cruz County (as shown in Figure 1).

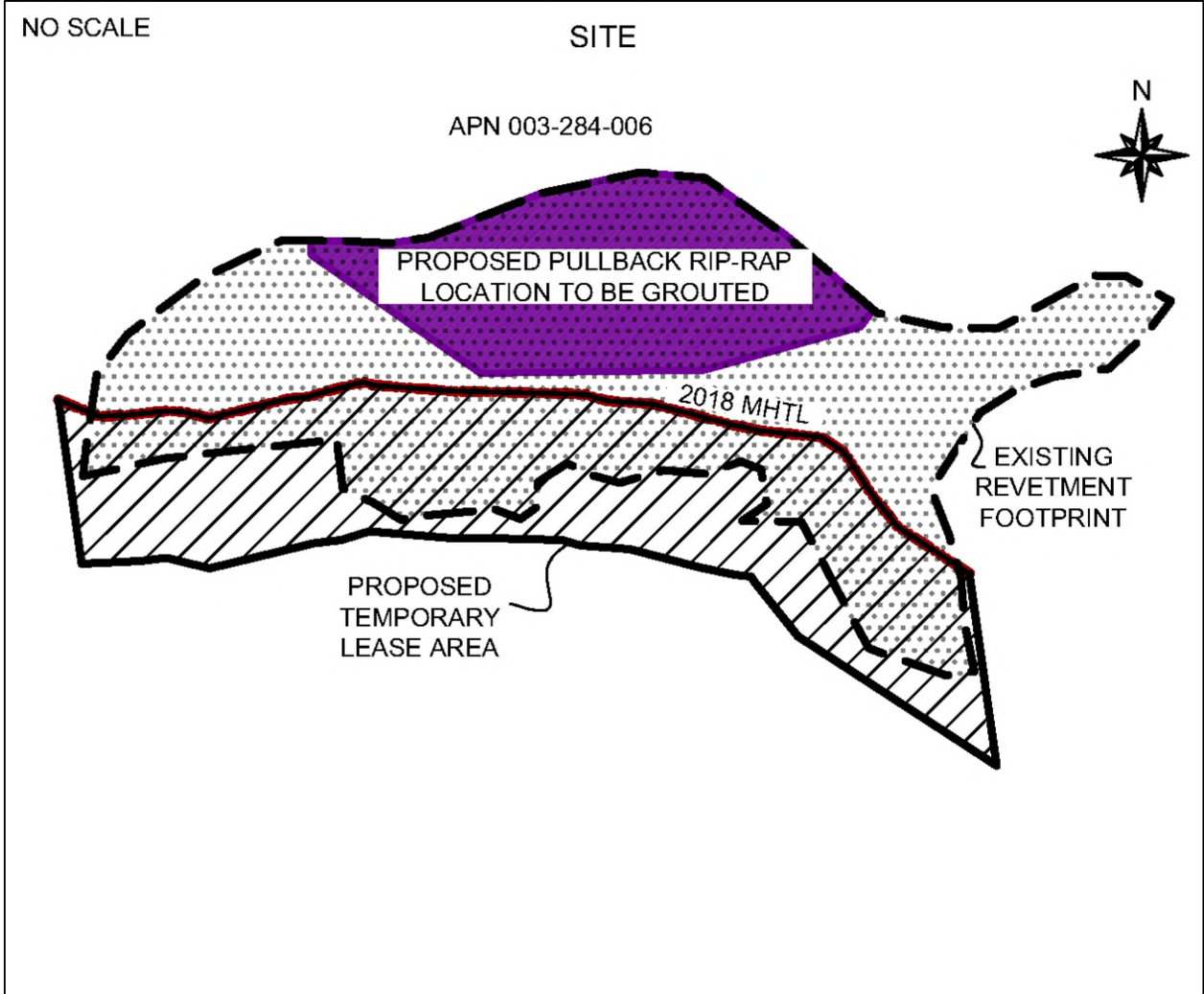
Figure 1. Location



AUTHORIZED USE:

Use of existing rock riprap and removal of existing rock riprap (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 August 15, 2024.

CONSIDERATION:

Variable pursuant to the terms of the lease.

SPECIFIC LEASE PROVISIONS:

- Lessee shall be provided a grace period beginning with the authorization date of the proposed lease until August 15, 2028 to allow Lessee sufficient time to obtain all necessary permits and authorizations for the proposed removal of the existing rock riprap on the Lease Premises, and to complete this proposed project.
- Should Lessee complete the proposed project within the grace period then the removal of the subject rock riprap from sovereign land and the restoration of said land to an unimproved condition shall be considered as public benefit and sufficient consideration under the lease terms, with no monetary rent owed retroactively or otherwise, so long as the public is allowed unrestricted access along the beach and public areas.
- If Lessee fails to complete the Project within the grace period, then Lessee shall owe monetary rent in the amount of \$16,415 per year, with an annual Consumer Price Index adjustment, without offset or discount, retroactive to the beginning date of the lease and for each subsequent lease year during which the Project remains incomplete.
- If the Project fails to fully remove all improvements encroaching on State land, then rent may be adjusted upon Lessor's review of as-built plans and a Mean High Tide Line (MHTL) survey submitted by Lessee.
- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Prior to submission of future lease applications, if any, Lessee agrees to assess the feasibility of replacing the rock revetment on the Lease Premises with alternative adaptation strategies such as nature-based solutions, sand retention structures, or managed retreat. Any such adaptation strategies that are considered will be consistent with Lessor's report *Shoreline Adaptation and the Public Trust*.
- No refueling, repairs, or maintenance of vehicles or equipment will take place on the Lease Premises.
- All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all other agencies.
- Construction may not begin until Lessee has obtained all required permits from the appropriate regulatory bodies.
- Any equipment used on the Lease Premises is limited to that which is directly required for the authorized activities.

- All debris shall be promptly removed from the Lease Premises.
- Lessee shall provide an annual report detailing the progress of the protective structure modification and removal project. This report shall include a description of any approvals or permits that have been applied for, any approvals or permits that have been obtained, any work that has been implemented, and a timeline for anticipated completion of the project.
- Within 60 days of completing the protective structure project that includes the removal of rock riprap authorized by this lease, Lessee will provide photographs and a set of “as-built” plans that depict where the improvements have been placed or removed.
- Within 60 days of completing the protective structure project that includes the removal of rock riprap authorized by this lease, Lessee will provide a post-project Mean High Tide Line Survey for the lease premises.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

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

PUBLIC TRUST AND STATE’S BEST INTERESTS:

The Applicant is applying for a General Lease – Protective Structure Use for use of existing rock riprap, and for removal of existing rock riprap in the Pacific Ocean, adjacent to 1307 West Cliff Drive, Santa Cruz, Santa Cruz County. Staff recommends issuance of a General Lease – Protective Structure Use to the Applicant, effective August 15, 2024.

The Applicant assumed ownership of the adjacent upland property on July 14, 2020 and submitted an application for the subject rock riprap shortly thereafter. Although this riprap has existed for many years, staff was only recently able to determine the extent to which it encroaches onto State lands. Consequently, it has never been under lease. The applicant proposes to remove the rock riprap that is currently situated on State lands as part of a larger protective structure modification project. Much of the removed riprap will be disposed of in an approved offsite disposal area, with the riprap that is retained being restacked along the adjacent bluff face to reinforce the existing protective structure there.

The retained riprap will have a surface gradient that is no steeper than 1:1, and voids in this riprap will be filled with colored concrete grout to further stabilize the protective structure.

The overall proposed protective structure modification project will include the removal of approximately 646 cubic yards of riprap and approximately 93 linear feet of gabion baskets. The removal of these improvements will lead to a significant increase in the available beach area on the lease premises. Upon completion of the proposed project, 910 cubic yards of riprap will be retained in a reduced footprint along with 42 linear feet of gabion baskets. The retained protective structure is expected to be situated landward of the Mean High Tide Line (MHTL) and outside of the Commission's leasing jurisdiction.

Upon conclusion of the proposed project, the Applicant will be required to submit photographs of the finished protective structure and a set of as-built plans depicting where the improvements have been placed or removed. The Applicant will also be required to conduct a post-project MHTL survey, the results of which will be provided to staff, to confirm that no improvements encroach onto sovereign land following project completion. Staff recommends that the Commission authorize the Executive Officer, or designee, to accept a Quitclaim deed from the Applicant if staff concludes that this post-project MHTL survey indicates that no improvements encroach onto State land, thereby allowing the Applicant to be released from further obligations under the lease.

In recognition of the public benefit that would be accrued through implementation of the proposed project and the resulting return of State sovereign lands to an unimproved condition that increases their availability for public use, staff recommends that the Applicant be granted a grace period for monetary rent. This grace period would begin on the date of lease issuance, August 15, 2024, and would extend to August 15, 2028. This period will allow the Applicant sufficient time to obtain all necessary permits and authorizations for the proposed project and to implement said project. During the grace period, rent for the existing improvements on the lease premises will be deferred. If the Applicant completes the proposed project within the grace period, then removal of the subject rock riprap from sovereign land and the restoration of said land to an unimproved condition will be considered as public benefit and sufficient consideration under the lease terms with no monetary rent owed, retroactively or otherwise, as long as the public is allowed unrestricted access along the beach and public areas. However, if the Applicant fails to complete the project within the grace period, then the Applicant will owe monetary rent in the amount of \$16,415 per year, with an annual

Consumer Price Index adjustment, without offset or discount, retroactive to the beginning date of the lease and for each subsequent lease year during which the project remains incomplete. Finally, if the proposed project fails to fully remove all improvements encroaching on State land, then rent may be adjusted to account for the extent of any remaining encroachment based on staff's review of post project as-built plans and an MHTL survey submitted by the Applicant, and the Applicant will be required to continue paying rent per the terms of the lease for the ongoing occupation of sovereign land.

The Applicant owns the uplands adjoining the lease premises and the existing rock riprap serves to stabilize the adjacent bluffs atop which the upland facilities are located. Loss or degradation of the rock riprap could result in failure of these bluffs, which could in turn lead to significant property damage. The presence of the rock riprap primarily provides a benefit to the upland owner, but as the riprap does not prohibit existing access to the narrow beach in this area it also does not have a significant negative impact on current Public Trust uses in this location. Upon successful completion of the proposed riprap removal project, a significant area of beach is expected to be restored to pre-improved conditions and a larger beach area will be available for public use. Therefore, staff believes the proposed riprap removal project does not negatively impact Public Trust resources in the area, but rather improves public access, increasing the beach area available for Public Trust consistent uses.

To ensure that the State is protected from third party liability, the proposed lease will require the Applicant to indemnify the State for the entire period during which the Applicant has occupied State land without authorization

The proposed Lease does not alienate the State's sovereign interest or permanently impair public rights. The 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. 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. 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, and increased flooding and erosion, affect both open coastal areas and inland waterways in California.

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 Monterey 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 Monterey

Year	Projection (feet)
2030	0.8
2040	1.2
2050	1.9
2100	6.9

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 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.

The proposed lease would involve removing a portion of riprap currently located on State lands. The riprap would be retained and restacked along the adjacent bluff face to reinforce the existing protective structure that is located outside of State lands. Consistent with the Commission's 2023 report, [Shoreline Adaptation and the Public Trust](#), in locations where nature-based strategies or managed retreat are feasible mid- or long-term strategies, hard armoring should be avoided or only

be used for temporary purposes while the mid- and long-term strategies are implemented. The lessee should assess the feasibility of eventually removing and replacing the rock revetment with alternative adaptation strategies, such as nature-based solutions, sand retention structures, and/or managed retreat. In the meantime, the Applicant should regularly maintain the rock revetment during and after storm events to ensure it does not encroach upon State lands once more.

The Commission encourages the Applicant to select plans for adapting the subject improvements prior to submission of future applications for this lease. The selected adaptation strategies should be consistent with the Commission's report [Shoreline Adaptation and the Public Trust](#).

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, nor 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. 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 4, Minor Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061 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 4, Minor Alteration to Land; California Code of Regulations, title 2, section 2905, subdivision (d)(3).

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; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning August 15, 2024, for a term of 5 years, for the use of existing rock riprap and removal of rock riprap; consideration variable pursuant to the terms and conditions specified in the lease; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize the Executive Officer or designee to replace, if needed, Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following the proposed project.
3. Authorize the Executive Officer or designee to accept a Quitclaim deed from the Applicant and terminate the lease if staff review concludes that the required post-project MHTL survey indicates that no improvements encroach waterward of the surveyed MHTL.