

Staff Report 43

APPLICANT:

RN Opal 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 4460 Opal Cliff Drive, Santa Cruz, Santa Cruz County (as shown in Figure 1).

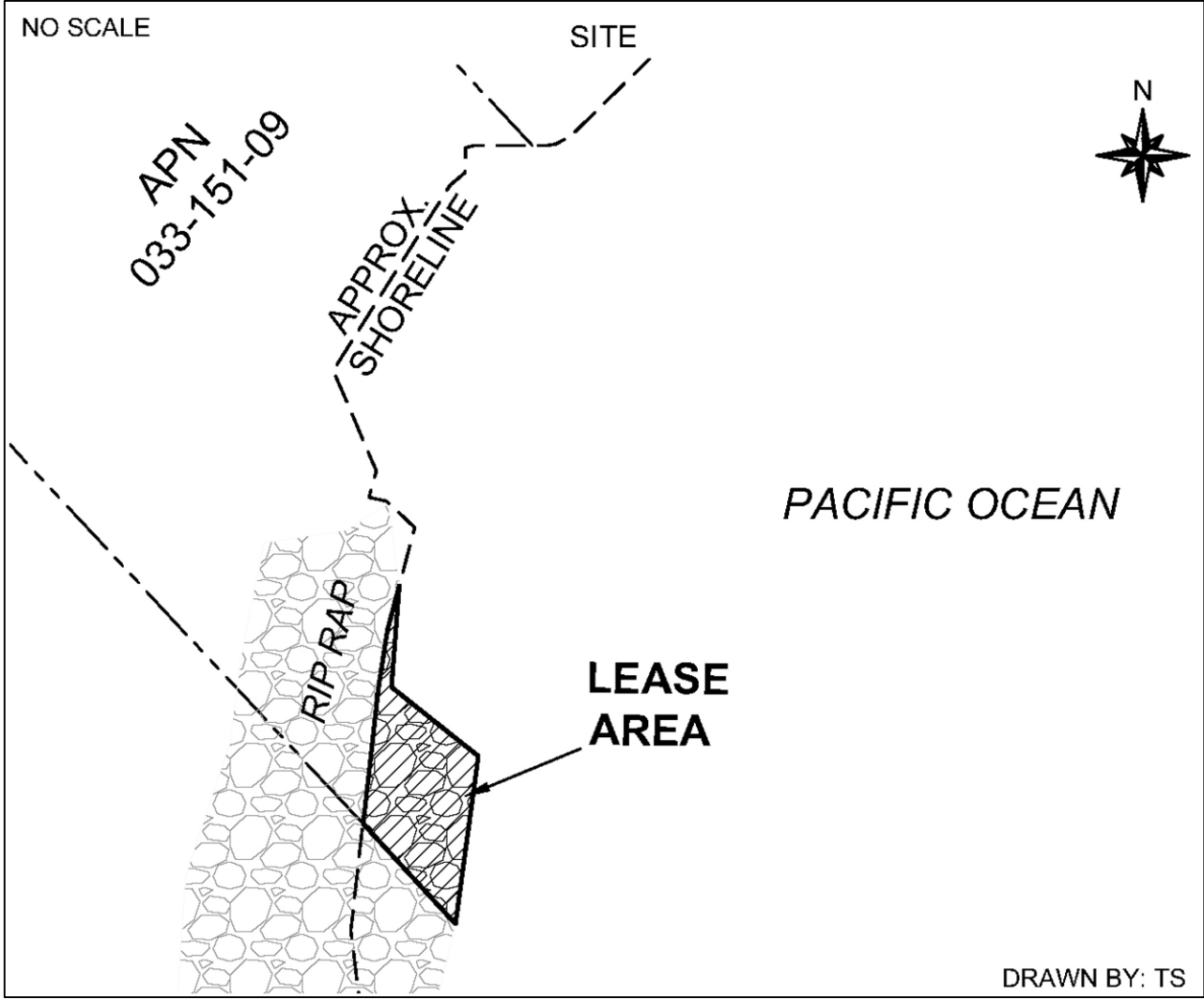
Figure 1. Location



AUTHORIZED USE:

Use 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:

10 years, beginning August 15, 2024.

CONSIDERATION:

\$1,801 per year, with an annual Consumer Price Index adjustment; and \$2,662 for the unauthorized occupation of State land prior to August 15, 2024.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall provide Lessor with plans to remove, repair, or replace the authorized rock riprap. Lessee agrees that these plans shall assess the feasibility of replacing the rock riprap on the Lease Premises with alternative adaptation strategies such as nature-based solutions or a protective structure utilizing materials that mimic rocky, intertidal habitats. Any such adaptation strategies will be consistent with Lessor’s report [Shoreline Adaptation and the Public Trust](#).

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 February 22, 2013, the Commission authorized a General Lease – Protective Structure Use to Richard H. Novak, of the Richard H. Novak Trust dated December 3, 1986, for the use of existing rock riprap in the Pacific Ocean, adjacent to 4460 Opal Cliff Drive, Santa Cruz, Santa Cruz County ([Item 64, February 22, 2013](#)).

On February 27, 2018, staff performed a rent review of this lease as directed by lease terms and conditions ([Item 54, February 27, 2018](#)). This rent review resulted in the modification of annual rent from \$389 to \$915. This lease expired on February 21, 2023.

On July 30, 2019, ownership interest in the upland property was transferred to RN Opal LLC. Staff was not notified of this change in ownership, nor was an assignment of lease sought; however, the previous owner of the upland property exercises controlling authority over the LLC that now holds title to the property. Therefore, although the property is now owned by a different entity, the same individual retains control.

The Applicant is now applying for a General Lease – Protective Structure Use for use of the existing rock riprap in the Pacific Ocean, adjacent to 4460 Opal 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 has occupied State land without authorization since taking ownership of the adjacent upland property on July 30, 2019. However, Commission records indicate that annual rent was paid for the full term of the lease. Therefore, the State has already been compensated for unauthorized occupation during the period of July 30, 2019 through February 21, 2023. As such, the Applicant will not be charged any additional compensation for this period. For the remaining period of unauthorized occupation, from February 22, 2023 through August 14, 2024, staff recommends that the Applicant be charged compensation in the amount of \$2,662. Additionally, the proposed lease will require that the Applicant indemnify the State for the entire period of unauthorized occupation, thereby ensuring that the State is protected.

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. Therefore, the rock riprap provides a benefit to the upland owner. However, this benefit is not attained without impacts. As with many similar protective structures along the coast, the subject rock riprap likely has negative impacts on the adjacent beach because such structures exacerbate coastal erosion and occupy an area that would otherwise be available for Public Trust uses, including public access. However, as the existing riprap does not prohibit or substantially reduce access to the narrow beach in this area, it does not significantly impact Public Trust resources, needs, or values in this location and is not inconsistent with the Public Trust at this time. Additionally, though the condition of the rock riprap is currently sufficient to stabilize the adjacent bluffs for the term of the lease, enough of it has become dislodged that its functionality as a protective structure has been diminished and it occupies a larger area of the adjacent beach than is necessary. As such, it is in the best interests of both the Applicant and the public to ensure that the riprap is repaired, replaced, or removed within the term of any subsequent lease. Therefore, the proposed lease includes a provision requiring that the Lessee provide plans to repair, replace, or remove the authorized rock riprap at least two years prior to expiration of the proposed lease. Furthermore, when preparing these plans, the Lessee will be required to assess the feasibility of replacing the rock riprap with alternative adaptation strategies that are consistent with the Commission's report [Shoreline Adaptation and the Public Trust](#), as it may be amended or updated.

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 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, stronger and higher waves, storm events, and flooding affect existing protective structures located on the open coast.

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 region 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 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. Climate change and sea level rise will further influence coastal and riverine areas

by changing erosion and sedimentation rates. Beaches and coastal bluffs 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. The cliff behind the rock riprap protective structure is eroding and is likely to erode at an accelerated pace as climate impacts increase annually. The protective structure may become ineffective over time. The lease area contains a riprap wall that is meant to fortify the base of a seawall. The seawall is located upland of the lease premises, and constructed up against the toe of the cliffs that back the beach. The riprap structure is fragmented in places and some pieces are dislodged from their original placement. The current footprint of the riprap is therefore likely larger than it was originally, due to the increased spacing between the blocks. This increased footprint potentially amplifies negative impacts on uses consistent with the Public Trust, such as beach recreation and access to the water, because the riprap is taking up a greater amount of beach area.

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. In addition, the proposed lease includes a provision requiring the Applicant to submit a plan at least one year prior to the proposed lease's expiration to remove, repair, or replace the rock riprap authorized by this lease. The plan shall assess the feasibility of replacing the rock riprap on the lease premises with alternative adaptation strategies such as nature-based solutions or a protective structure utilizing materials that mimic the textures and chemical composition of rocky intertidal habitats. Any such adaptation strategies must be consistent with the Commission's [Shoreline Adaptation and the Public Trust](#) report.

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, or 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 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. 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 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

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 14, section 15301.

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 acceptance of Compensation from the Applicant in the amount of \$2,662 for unauthorized occupation of State land for the period prior to August 15, 2024.
2. Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning August 15, 2024, for a term of 10 years, for the use of existing rock riprap; annual rent in the amount of \$1,801, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.