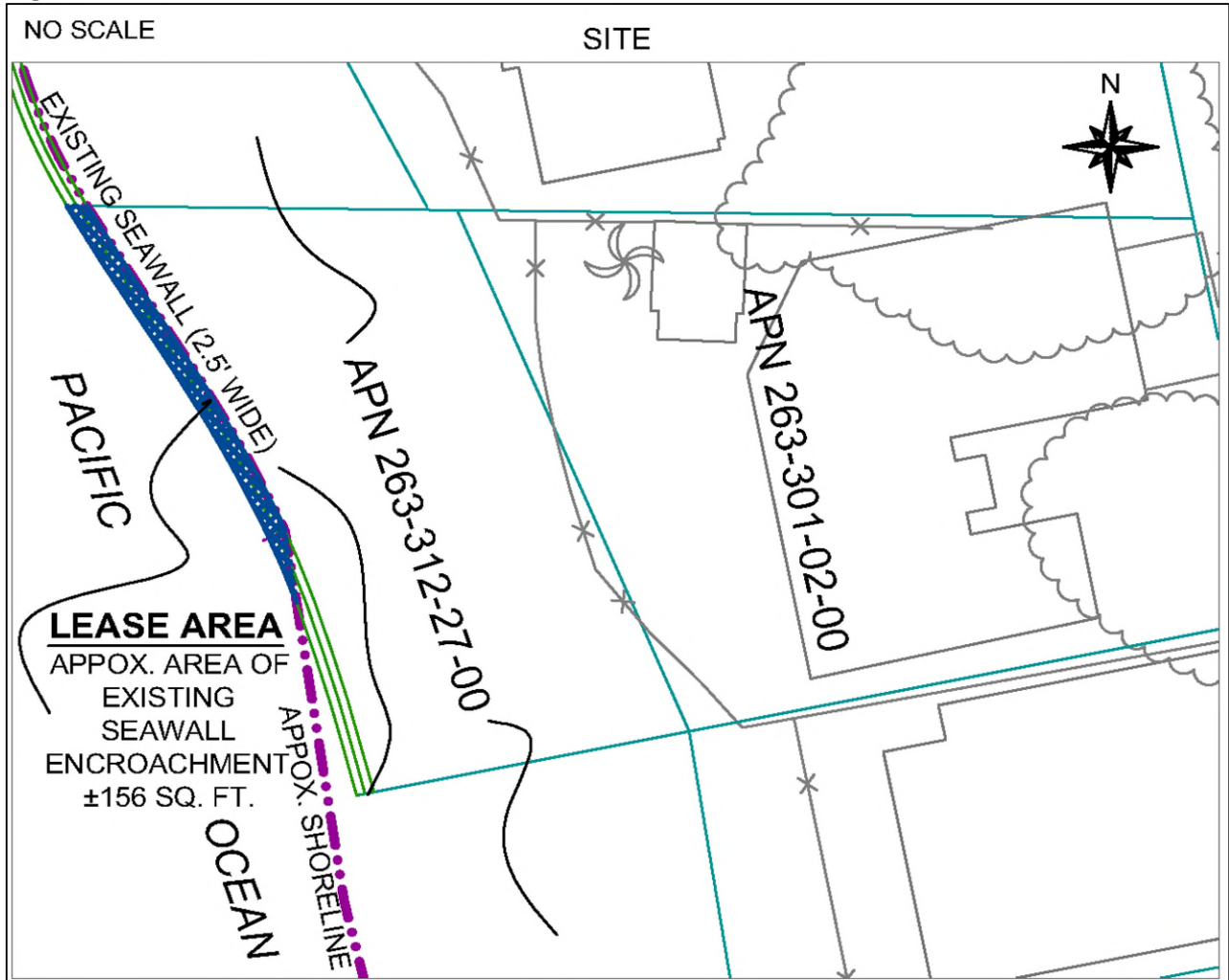


AUTHORIZED USE:

Use of an existing 138-foot long, 35-foot high, and 2.5-foot wide concrete seawall (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:

\$2,392 per year, with an annual Consumer Price Index adjustment; and \$1,062 for the unauthorized occupation of State land prior to August 15, 2024.

SPECIFIC LEASE PROVISIONS:

- Lessee must comply with all conditions of Coastal Development Permit (CDP) 6-04-083.
- When requesting approval for any necessary major repairs or alterations of the authorized improvements, Lessee must assess the feasibility of implementing alternative adaptation strategies such as nature-based solutions or hybrid protective structure designs and provide written documentation of that analysis to Lessor’s staff.
- If Lessee applies for a subsequent lease, then Lessee must concurrently apply for an amendment to CDP 6-04-083 or for a new CDP to authorize the subject seawall.
- Liability insurance in an amount no less than \$1,000,000 per occurrence.

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:

On June 28, 2016, the Commission authorized a General Lease – Protective Structure Use to John D. Cumming, Trustee of the John D. Cumming Revocable Trust, for the use of an existing 138-foot long, 35-foot high, and 2.5-foot wide concrete seawall in the Pacific Ocean, adjacent to 371 Pacific Avenue, Solana Beach, San Diego County ([Item 59, June 28, 2016](#)).

On June 30, 2023, ownership of the upland property was transferred to Brigham Richard Black and Melissa Kay Black. The Commission was not notified of this change in ownership, nor was an assignment of lease sought; however, the Lessee and the Applicant contacted staff in early 2024 to inquire about transferring the lease and the Applicant submitted an application for Lease 8661 shortly thereafter.

Now, the Lessee seeks to quitclaim their existing leasehold interest and the Applicant is applying for a General Lease – Protective Structure Use for use of the existing 138-foot long, 35-foot high, and 2-foot wide concrete seawall in the Pacific Ocean, adjacent to 371 Pacific Avenue, Solana Beach, San Diego County. Staff

recommends acceptance of a Lease Quitclaim Deed from the Lessee for Lease 8661, effective August 14, 2024, and 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 June 30, 2023. Commission records indicate that during this unauthorized occupation the Lessee paid annual rent through February 8, 2024. As such, the State has already been compensated for the period of unauthorized occupation from June 30, 2023 through February 8, 2024. Therefore, no additional compensation will be required for this period. For the remaining period of unauthorized occupation, from February 9, 2023 through August 14, 2024, staff recommends accepting compensation from the Applicant in the amount of \$1,062. Additionally, the proposed lease will require that the Applicant indemnify the State for the entire period of unauthorized occupation from the acquisition of the upland property on June 30, 2023 through August 14, 2024, thereby ensuring that the State is protected.

The Applicant owns the uplands adjoining the lease premises, and the upland facilities are located atop the bluff protected by the subject seawall. The seawall is connected to and directly stabilizes the lower section of the bluff. The upper section of the bluff is indirectly stabilized by the seawall as it creates a more stable base through stabilization of the lower section. Loss or degradation of the seawall could result in failure of the bluffs, which could in turn lead to significant property damage and increased rockfall danger to beachgoers. Therefore, the presence of the seawall provides a benefit to both the upland owner and the public.

Although the existing seawall provides benefits to both the upland owner and the public, this benefit is not attained without some compromise. As with other hard armoring structures that provide a solid barrier between the land and sea to block or minimize energy from tides and waves, seawalls often lead to increased erosion along adjacent beaches due to wave reflection and refraction. Therefore, though the seawall authorized by the proposed lease protects the upland property and provides some safety benefits for public use of the beach, it also accelerates erosion to the adjacent coastline. Additional adverse impacts related to the subject seawall include interference with natural coastal processes that influence the supply of sand in the region, and potential impacts on flora and fauna due to habitat loss. To help address these impacts, various beach nourishment programs have been implemented by local governing bodies and sand-loss mitigation fees have been a requirement of new Coastal Development Permits for projects in the area. These efforts help maintain Public Trust resources in the region and help

ensure that a wide sandy beach remains available for public use. Nevertheless, as detailed in the Commission's recently adopted report, [Shoreline Adaptation and The Public Trust](#), the benefits and detriments to Public Trust resources resulting from the subject seawall should be considered by the Applicant in future design and adaptation plans, particularly as climate impacts increase over time.

The Coastal Commission approved the subject seawall through Coastal Development Permit (CDP) 6-04-083. This CDP requires the Applicant to pay an in-lieu fee to compensate for the seawall's adverse impacts to the sand supply of the adjacent beach over a 30-year period (2005 to 2035). The payments collected via this fee are used to help fund sand-replenishment projects. The CDP also requires the applicant to submit an annual monitoring report prepared by a licensed civil or geotechnical engineer in order to monitor the condition of the seawall and beach. Likewise, per the CDP, the Applicant must submit a report prepared by a licensed civil or geotechnical engineer to assess the feasibility of alternative protection methods if they apply to expand the seawall. Staff has reviewed the current CDP and concluded that its terms and conditions adequately protect public resources. To ensure consistency between the proposed lease and the CDP while also emphasizing the Commission's strategic focus, the proposed lease would incorporate the terms and conditions of the CDP while also expanding them to require an assessment of alternative adaptation strategies prior to repair or replacement of the subject seawall. Additionally, the proposed lease will require the applicant to apply for an amendment of the CDP, or for issuance of a new CDP, concurrent with any application for a new lease from the Commission. This concurrent application process will ensure that Coastal Commission staff can coordinate with Commission staff when analyzing a potential subsequent lease.

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, increased wave activity, storm events, and flooding may impact the existing seawall subject to the proposed lease, located on San Diego’s Solana Beach, adjacent to the Pacific Ocean.

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 La Jolla 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 La Jolla

Year	Projection (feet)
2030	0.9
2040	1.3
2050	2.0
2100	7.1

Source: Table 31, [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). These conditions are exposing beaches and coastal landscapes to increased wave force and run-up, resulting in greater erosion than previously experienced. Coastal bluffs are also becoming more vulnerable to erosion and landslides as higher sea levels and waves undercut the toe of the bluffs and stronger storms increase the saturation of bluff sediment.

The combination of these projected conditions could increase the likelihood of damage to the seawall and bluff-top property. The seawall will improve the resilience of the bluff-top property by providing some stability for the bluff and protecting against bluff erosion. The seawall is a fixed structure that may need to add additional reinforcement to withstand higher water levels and more frequent storm events, which will increase the seawall's exposure to inundation, erosion, and wave action. Once waves start regularly colliding with the seawall, the reflected wave energy can scour the sediment below and surrounding the seawall, leading to structural instabilities. Additionally, the segment of the bluff above the seawall is

only partially stabilized by the seawall at its base and is still vulnerable to landslides resulting from rain, groundwater drainage, and wind erosion.

While the seawall provides temporary protection against the threat of sea level rise and other climate impacts, that protection can come at the expense of the beach in front of the seawall. As sea levels rise, the seawall will accelerate the erosion and narrowing of the beach, harming critical habitats and ecosystem services, degrading the scenic quality of California's iconic coast, and impairing public beach access and recreational uses. The loss of beach area will prevent the public from accessing the beach in front of and adjacent to the seawall, exacerbating the existing inequities in coastal access that affect many disadvantaged and tribal communities ([Reineman et al., 2017](#)).

Pursuant to Special Condition #3 of the applicant's Coastal Development Permit ([CDP 6-04-083](#)), the applicant is required to pay an in-lieu fee to compensate for the seawall's adverse impacts to the beach sand supply over a 30-year period (2005 to 2035). The fee is placed into a fund administered by the San Diego Association of Governments (SANDAG) for the purpose of aiding beach nourishment projects in San Diego County. Over the past two decades, multiple beach nourishment projects have taken place near the lease premises, including SANDAG's [Regional Beach Sand Project II \(2012\)](#) and the [Solana Beach Shoreline Project \(2024\)](#). These beach nourishment projects will temporarily widen the beach in front of the seawall, increasing its resilience to sea level rise and mitigating some of its adverse effects to Public Trust resources and uses; however, beach nourishment projects are not a permanent solution, since the added sand will be lost over time, re-exposing the seawall to coastal hazards and sea level rise.

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, 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. If the Commission denies the application, the current lessee or 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. Acceptance of the lease quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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 issuance of the lease 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 a Lease Quitclaim Deed from the Lessee for Lease 8661, a General Lease – Protective Structure Use, effective August 14, 2024.
2. Authorize acceptance of Compensation from the Applicant in the amount of \$1,062 for unauthorized occupation of State land for the period prior to August 15, 2024.
3. 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 an existing 138-foot long, 35-foot high, and 2.5-foot wide concrete seawall; annual rent in the amount of \$2,392, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.