

# Staff Report 40

## APPLICANT:

24132 Lev Malibu 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 24132 Malibu Road, Malibu, Los Angeles County (as shown in Figure 1).

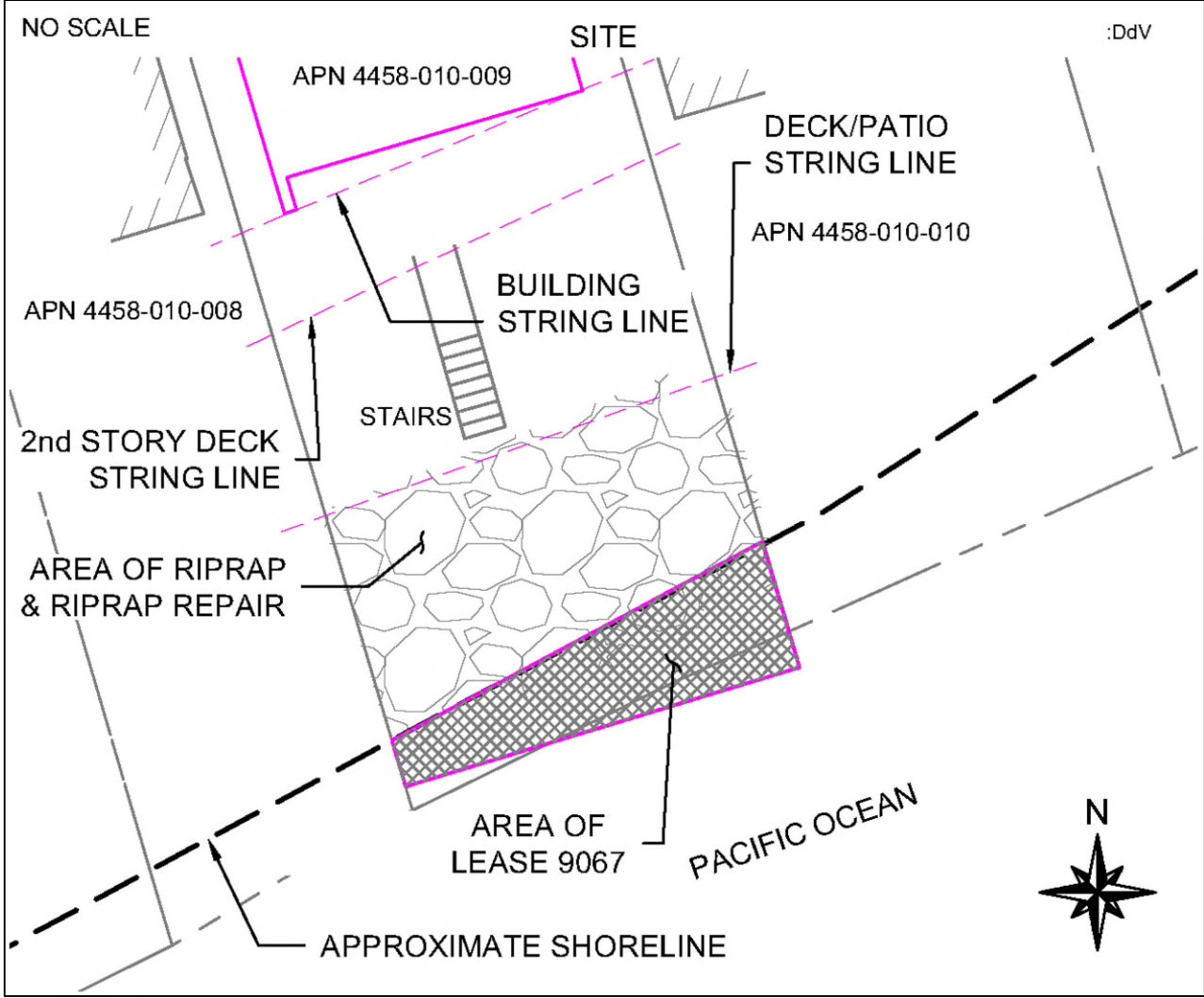
Figure 1. Location



**AUTHORIZED USE:**

Use and relocation of an existing rock revetment (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 March 1, 2025.

**CONSIDERATION:**

\$12,956 per year, with an annual Consumer Price Index adjustment; and \$5,018 for the unauthorized occupation of State land prior to March 1, 2025.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Prior to submission of future applications for the improvements authorized by this lease, should any such applications be necessary, or when requesting approval for Major Repairs or Alterations, Lessee agrees to assess the feasibility of replacing the rock riprap on the Lease Premises with alternative adaptation strategies such as nature-based solutions or hybrid protective structure designs such as those discussed in the Lessor’s report *Shoreline Adaptation and the Public Trust*, and as amended.
- 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.
- Between February 1, 2026, and April 30, 2026, Lessee shall provide Lessor with a report detailing progress of the revetment relocation 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. Lessee shall also provide such a report to Lessor for each subsequent lease-year until the project is completed.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**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 21, 2013, the Commission authorized a General Lease – Protective Structure Use to Ocean Surf LLC for the repair and relocation of an existing rock revetment and removal of existing stairs located in the Pacific Ocean, adjacent to 24132 Malibu Road, Malibu, Los Angeles County ([Item 75, June 21, 2013](#)). Although

repair of the existing rock revetment and removal of the existing stairs was authorized at this time, no such project was ever implemented.

On June 21, 2018, staff performed a rent review on this lease as directed by lease terms and conditions ([Item 66, June 21, 2018](#)). This rent review resulted in the modification of annual rent from \$1,027 to \$1,357. This lease expired on June 20, 2023.

On April 14, 2021, ownership of the adjacent upland property was transferred to 24132 Lev Malibu LLC, the current Applicant. Ocean Surf LLC did not notify staff of this change in ownership nor was an assignment of lease sought.

The Applicant is now applying for a General Lease – Protective Structure Use for the relocation of the existing rock revetment off State property, and for interim use of the revetment until said relocation work is complete. Staff recommends issuance of a General Lease – Protective Structure Use to the Applicant, to take effect on March 1, 2025.

The proposed lease includes removal of all portions of the existing rock revetment currently on State land, as well as continued use of the revetment until the removal project is completed. The removed portions of the revetment will be used to reinforce the remaining portions of the revetment which will be located on the upland and outside of the Commission's jurisdiction.

The revetment relocation will be implemented as part of a larger project that includes the construction of a single-family residence on the upland parcel. The proposed project does not include plans for removal of the existing stairs; however, the most recent mean high tide line (MHTL) survey indicates that the existing stairs do not currently encroach onto State land, and it is anticipated that all improvements encroaching onto State land will have been removed upon completion of the proposed project. As the MHTL is an ambulatory boundary, it is possible that the existing stairs or the remaining portions of the rebuilt rock revetment will eventually be located on State land. Should this occur, the Lessee will be required to obtain a lease for these improvements from the Commission.

Pursuant to the proposed lease, upon conclusion of the proposed project the Applicant will be required to submit a set of "as-built" plans and photographs depicting the final location of the rock revetment and any other improvements that are on or adjacent to State land. The proposed lease also requires the Applicant to conduct a post-project MHTL survey and to provide this survey to staff. Staff will use this survey to determine whether any improvements encroach onto

State land following completion of the project. Staff recommends that the Commission authorize the Executive Officer, or designee, to accept a Quitclaim deed from the Applicant if this post-project MHTL survey indicates that no improvements encroach onto State land, thereby allowing the Applicant to be released from the obligations of the lease.

Although the Applicant proposes to remove all portions of the existing revetment on State land, if some portion of the revetment remains on State land at the end of the 5-year lease term, then a new lease from the Commission will be required to authorize the remaining improvements. If the Commission does not authorize a new lease, the lessee is required to remove any remaining improvements upon lease expiration and return the lease premises to its original condition.

The Applicant has occupied State land without authorization since taking ownership of the adjacent upland property on April 14, 2021. However, during this time rent was paid by the previous lessee for the period of April 14, 2021 through June 20, 2021. As such, the State has already been compensated for this period and staff does not recommend additional compensation. For the remaining period of unauthorized occupation, from June 21, 2021 through February 28, 2025, staff recommend that the Applicant be charged compensation in the amount of \$5,018. Additionally, the proposed lease will require that the Applicant indemnify the State for the entire period of unauthorized occupation to ensure that the State is protected from liability.

The Applicant owns the uplands adjoining the lease premises and the existing rock revetment helps prevent erosion to the coastline on which the upland parcel is located. Loss or degradation of the revetment could allow natural erosion of the shoreline directly adjacent to the lease premises, which could lead to a significant reduction in developable land on the upland parcel or significant property damage if such erosion occurred after the proposed residence has been built. Therefore, the presence of the rock revetment primarily provides a benefit to the upland owner.

Nevertheless, the revetment does not substantially inhibit access along the beach in this area, and the lease's purpose is to remove the revetment from State property. Additionally, removal of the revetment from State Land will return the lease area to its pre-improved condition, whereby it will once more be available for public use. Therefore, considering that the proposed lease would only authorize the revetment for a short term during which it will be removed from the State's

property, the proposed lease will not substantially interfere with Public Trust uses and values.

The Applicant has applied to the City of Malibu for a Coastal Development Permit (CDP) for the proposed project. To account for the processing time required by the City to issue a permit and for the Applicant to complete the project, staff recommend a lease term of 5 years.

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. Should any improvements remain on State land following conclusion of the proposed project, then 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 rock revetment protective structure located along the coastline of Los Angeles County, near the city of Malibu.

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 Los Angeles 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 Los Angeles**

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

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 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 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 proposed activity includes removing rock from the lease area that had previously been placed upland of the MHTL, and redesigning and repairing the rock revetment so that all elements of the fixed structure are located above the MHTL. However, due to the risk of flood exposure and frequent storm events, additional maintenance may be necessary to ensure that the repaired protective structure remains in good condition. In the future, the applicant should consider alternative strategies to protect the upland property and preserve the beach. These strategies include nature-based solutions (also referred to as 'natural shoreline infrastructure') and relocating vulnerable structures further inland. These alternative strategies can be more effective long-term because they interfere less with dynamic coastal processes, which help to maintain the width of the beach, preserve public access and natural resources, and protect the upland property by buffering coastal hazards. Coordinating with adjacent properties and local governments to develop a regional approach could further enhance the effectiveness of these strategies.

The Commission encourages the Applicant to routinely monitor the status and integrity of the protective structure to ensure no elements impact areas below the MHTL. Any elements of the structure located within the area below the MHTL will require a new lease from the Commission. In addition, any future construction or activities on State land would require a separate authorization from the Commission.

**CONCLUSION:**

For all the reasons above, staff believe approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, nor for the term of the proposed lease; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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. **Existing protective structure:** Staff recommend 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.

**Revetment repair and relocation:** Staff recommend 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 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

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

**APPROVAL REQUIRED:**

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- City of Malibu CDP



## **RECOMMENDED ACTION:**

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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 through the combination of the following exemptions: Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301, and Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

### **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 \$5,018 for unauthorized occupation of State land for the period prior to March 1, 2025.
2. Authorize issuance of a General Lease – Protective Structure Use to the Applicant beginning March 1, 2025, for a term of 5 years, for the use and relocation of an existing rock revetment; annual rent in the amount of \$12,956, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
3. Authorize the Executive Officer, or designee, to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following the proposed project.
4. Authorize the Executive Officer, or designee, to accept a Quitclaim Deed from the Applicant if the post-project MHTL survey indicates that no improvements encroach waterward of the surveyed MHTL.