

**CALENDAR ITEM
C59**

A 78
S 39

06/28/16
PRC 8661.1
R. Collins

GENERAL LEASE – PROTECTIVE STRUCTURE USE

APPLICANT:

John D. Cumming, Trustee of the John D. Cumming Revocable Trust

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

0.02 acre, more or less, of sovereign land in the Pacific Ocean, adjacent to 371 Pacific Avenue, City of Solana Beach, San Diego County.

AUTHORIZED USE:

Use and maintenance of an existing 138 foot-long, 35 foot-high, 2 foot-wide colored and textured concrete tiedback seawall.

LEASE TERM:

10 years, beginning February 9, 2016.

CONSIDERATION:

\$1,293 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Insurance: 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 and 6321.2;
California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

In the late 1990s, sea cave and undercut fill was placed along the bluff. The subject seawall constructed at the base of the bluff was permitted by the California Coastal Commission on March 15, 2005 under Coastal Development Permit #6-04-83. The construction of the seawall was certified by the project engineer to have been constructed in conformance

CALENDAR ITEM NO. **C59** (CONT'D)

with approved plans on March 6, 2007. Only a small portion of the seawall is located on sovereign lands and has been under lease since 2006. The seawall is located approximately 400 feet south of the Tide Beach Park public access stairway and ½ mile north of Fletcher Cove.

The proposed lease is for a very small area, approximately 156 sq. ft., and the seawall is located at the base of the bluff to protect against bluff failure and protect the home on top of the bluff. Many seawalls and sea cave infills exist along the bluff in Solana Beach. These seawalls also provide for the health and safety of the public by protecting them from bluff failure while recreating on the beach.

Adverse effects related to protective structures in Solana Beach include increased beach erosion, interference with natural sand supply, loss of public beach, and potential impacts on flora and fauna as a result of encroachment by these protective structures into the beach environment. Various beach nourishment programs have been conducted by city and regional governing bodies, and sand-loss mitigation fees have been implemented as a requirement for new Coastal Development Permits to mitigate for these impacts, by helping to maintain a wide sandy beach for public access and recreation.

The lease is limited to a 10-year term and does not grant the Lessee exclusive rights to the lease premises. 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 use of public land and does not alienate the State's fee simple interest or permanently impair public rights. For all the reasons above, Commission staff believes that, on balance, the issuance of this lease is consistent with the common law public trust doctrine, will not substantially interfere with the public trust needs at this location, at this time and for the foreseeable term of the proposed lease, and is in the State's best interests.

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the uplands adjoining the lease premises.
2. On February 9, 2006, the Commission authorized a General Lease – Protective Structure Use to John Cumming, for a term of 10 years

CALENDAR ITEM NO. **C59** (CONT'D)

beginning February 9, 2006. The lease expired February 8, 2016. The Applicant is now applying for a General Lease – Protective Structure Use.

3. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.
4. The 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.

Original construction and repair and maintenance of activities requiring a permit (as defined in Cal. Code Regs., tit. 14, § 13252) was approved under Coastal Development Permit 6-04-83. Any work beyond repair and maintenance would require additional CEQA review.

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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

CALENDAR ITEM NO. **C59** (CONT'D)

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 the public trust needs and values at this location at this time; find these actions are consistent with the common law public trust doctrine and are in the best interests of the State.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Protective Structure Use to John D. Cumming, Trustee of the John D. Cumming Revocable Trust beginning February 9, 2016, for a term of 10 years, for use and maintenance of an existing 138 foot-long, 35 foot-high, 2 foot-wide colored and textured concrete tiedback seawall as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$1,293, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 8661.1

LAND DESCRIPTION

A parcel of tide and submerged land in the bed of the Pacific Ocean lying adjacent to "Solana Beach" as shown on Map No. 1749, sheet 2, filed March 5th 1923 in Official Records of San Diego County, situate in the City of Solana Beach, San Diego County, California and more particularly described as follows:

Bounded on the North by the westerly prolongation of the northerly line of Lot 35 as shown on said Map No. 1749;
Bounded on the East by the Ordinary High Water Mark of the Pacific Ocean;
Bounded on the South by westerly prolongation of the southerly line of Lot 35 as shown on said Map No. 1749;
Bounded on the West by a line a line parallel with and distant westerly, 3 feet, measured at right angles, from the Ordinary High water Mark of the Pacific Ocean.

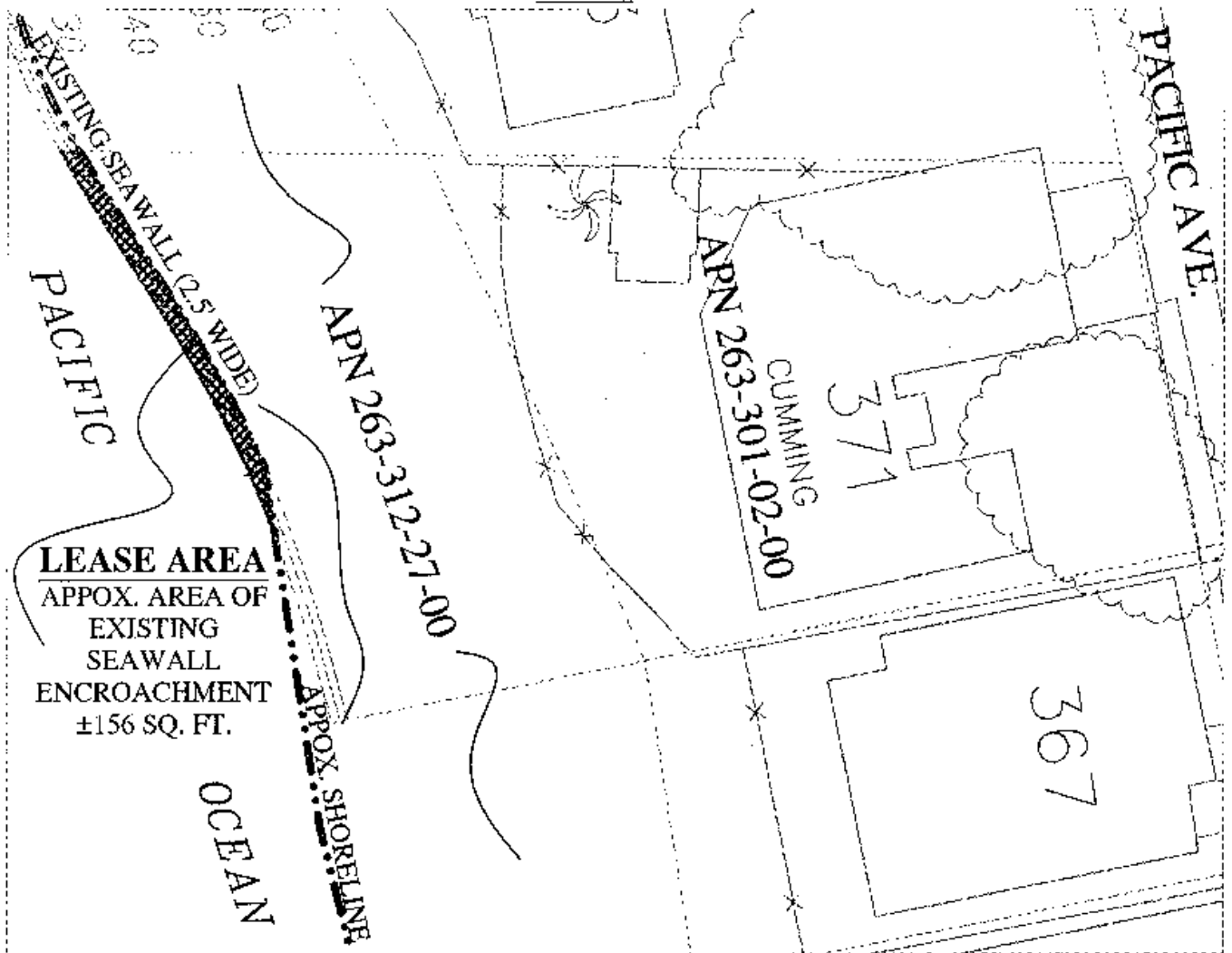
END OF DESCRIPTION

Prepared by the California State Lands Commission Boundary Staff
May 12th, 2016.



NO SCALE

SITE



LEASE AREA
 APPOX. AREA OF
 EXISTING
 SEAWALL
 ENCROACHMENT
 ±156 SQ. FT.

371 PACIFIC AVENUE, SOLANA BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 8661.1
 CUMMING
 APN 263-301-02-00
 GENERAL LEASE -
 PROTECTIVE
 STRUCTURE USE
 SAN DIEGO COUNTY



MJF 5/12/16

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.