

**STAFF REPORT
C59**

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10/18/18
W 26743
K. Connor

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Susan Blais-Hader, Trustee of the Susan Blais 1990 Family Trust

PROPOSED LEASE:

LAND TYPE AND LOCATION:

Sovereign land in the Pacific Ocean, adjacent to 19820 Pacific Coast Highway, city of Malibu, Los Angeles County

AUTHORIZED USE:

Use and maintenance of a portion of an existing deck.

LEASE TERM:

10 years, beginning October 18, 2018.

CONSIDERATION:

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

SPECIFIC LEASE PROVISIONS:

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, 6501.1, 6503;
California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

As part of the Applicant's application for a Coastal Development Permit with the City of Malibu to remodel an existing single-family residence including interior work and new roof replacement, the Applicant was required to obtain a jurisdictional review and determination from the Commission. Subsequently, the Applicant decided to not pursue the project and withdrew its Coastal Development Permit application pending with the City of Malibu. However, staff's review determined that approximately 25 square feet of the existing first story and second story decks are currently located within the Commission's leasing jurisdiction. The two decks sit on top of one another with the same footprint and are

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elevated roughly 20 feet, which allow the public to navigate or walk next to and, at lower water levels, under the decks.

The existing decks are connected to the upland residence. Residential use is generally not consistent with the Public Trust Doctrine. However, only a small portion of the decks extend onto sovereign land and, at this time and for the foreseeable term of the proposed lease, do not substantially interfere with the public right of navigation or access as the decks are elevated. Proposed rent for the decks is based on nearby upland land values to ensure the State receives appropriate compensation for use of sovereign land as an extension of the private backyard of the upland.

The privately owned uplands along this stretch of the Malibu coastline have been developed into private residences. The majority of the residences along the Malibu coastline predate the Subdivision Map Act (Gov. Code, § 66410 et seq.) and other laws intended to protect and promote public access. Accordingly, the houses are close together and do not provide any meaningful vertical public access. The nearest public access point is located approximately 0.2 mile to the west between 19958 and 20000 Pacific Coast Highway. Although the subject facilities represent a private use of public property, the relatively small portion of the existing private use encroaching onto State-owned lands would not, at this time and for a limited lease term of 10 years, substantially interfere with Public Trust needs and values, primarily access to the adjacent beach and coastline.

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.

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 open coastal areas in California. By 2030, the region could see up to 1 foot of

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sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly over 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to increased flooding and larger tidal events, and can affect erosion and sedimentation rates. 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. 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 erosion than previously experienced.

State sovereign land at this location is adjacent to a narrow strip of residential buildings on the seaward side of the Pacific Coast Highway (PCH), with a steep eroding slope on the land side of PCH. Existing homes in this area are built in close proximity to the mean high tide line (MHTL) and are supported by an assortment of seawalls, armored pilings, and rock revetment type foundations. The residence at 19820 PCH includes an existing first and second story deck where a minor portion extends below the MHTL onto State-owned sovereign land, based on the most current 2013 MHTL survey. The foundation of the residence, which is landward of the MHTL and therefore currently outside of the Commission's leasing jurisdiction at this time, is supported by armored pilings with a wood-plank seawall behind the pilings, which serves as a larger shared foundation for two additional residential units on the east side of the subject residence (hereinafter referred to as armored foundation). Scattered rocky intertidal habitat of low to medium height relief occurs seaward of the MHTL at the subject residence.

The armored foundation essentially protects against uncertainties associated with variability in shoreline change rates due to ongoing beach erosion, and significant short-term beach losses due to large seasonal fluctuations and/or severe erosion due to extreme wave events and potential long-term acceleration of beach erosion due to sea-level rise. The armored foundation is likely to degrade at a faster pace than in the past, due to increased time of exposure to wave action, storm surge, and higher total water levels. Therefore, the armored foundation may require more frequent maintenance to ensure continued function during and after storm seasons.

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The armored foundation also has the potential to exacerbate the impacts of sea-level rise and increased storm and wave activity on State sovereign land adjacent to the lease area. The beach area seaward of the armored foundation is subject to width reduction and loss from erosion, scour, and coastal squeeze (the reduction of beach width due to the inability of the beach to naturally migrate landward as a result of hard armoring infrastructure). In addition, the armored foundation in combination with the upper hardscaping of the residential units and presence of the PCH on the landward side of the residences also prevents the shoreline from naturally eroding, and effectually prevents beach replenishment via natural passive erosion. Beach loss is anticipated to increase over the term of the lease, because of the combined factors of climate change impacts, natural dynamic coastal processes, and the presence of the armored foundation. The continued strip of residential buildings with armored foundations to the west of the subject residence, although slightly further landward of the MHTL, will also contribute to these impacts.

Therefore, the foundation of the subject residence should be subject to ongoing maintenance due to elevated risk of failure. A coordinated effort between local and state agencies and among multiple adjacent property owners is recommended to consider additional future alternatives for shoreline protection that protects Public Trust values and resources. Given the presence of rocky intertidal habitat seaward of the subject residence, and potential close proximity of other nearshore sensitive habitats, this area may not be a good candidate for beach nourishment. Conversely, the presence of rocky intertidal and subtidal natural armoring may provide some level of wave energy dissipation relief.

Given the potential impacts of sea-level rise on the Commission's ownership boundaries, the relatively short-term lease (10 years) will allow the Commission and the lessee an opportunity to evaluate the effects of sea-level rise and the design and functionality of the armored foundation adjacent to the lease area in order to make incremental adaptation steps as necessary and appropriate.

Regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation. 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 effects of climate change, including sea-level rise.

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Conclusion:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. 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.
2. 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.

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 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:

1. Find that the existing and, for a limited period, continuing use and maintenance of a portion of a deck, is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and,
2. Find that issuing the proposed lease is in the best interests of the State.

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AUTHORIZATION:

Authorize issuance of a General Lease - Recreational Use to the Applicant beginning October 18, 2018, for a term of 10 years, for the use and maintenance of an existing deck 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 \$293, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 26743

LAND DESCRIPTION

A parcel of tide and submerged land lying in the bed of the Pacific Ocean adjacent to Lot 47 as shown on Tract Map No. 24026, recorded November 27, 1957 in Book 625, Pages 73 to 75, in Los Angeles County Recorder's Office, situated in the City of Malibu, Los Angeles County, State of California and more particularly described as follows:

Bounded on the northeast by the southeasterly prolongation of the northeasterly line of that certain parcel of land described in Individual Grant Deed recorded February 25, 2004 in Document No. 04 0430676 in Official Records of said County;

Bounded on the southwest by the southeasterly prolongation of the southwesterly line of that certain parcel of land described in said Individual Grant Deed;

Bounded on the northwest by the Ordinary High Water Mark of the Pacific Ocean.

Bounded on the southeast by the southeasterly line of said Lot 47 as shown on said Tract Map No. 24026.

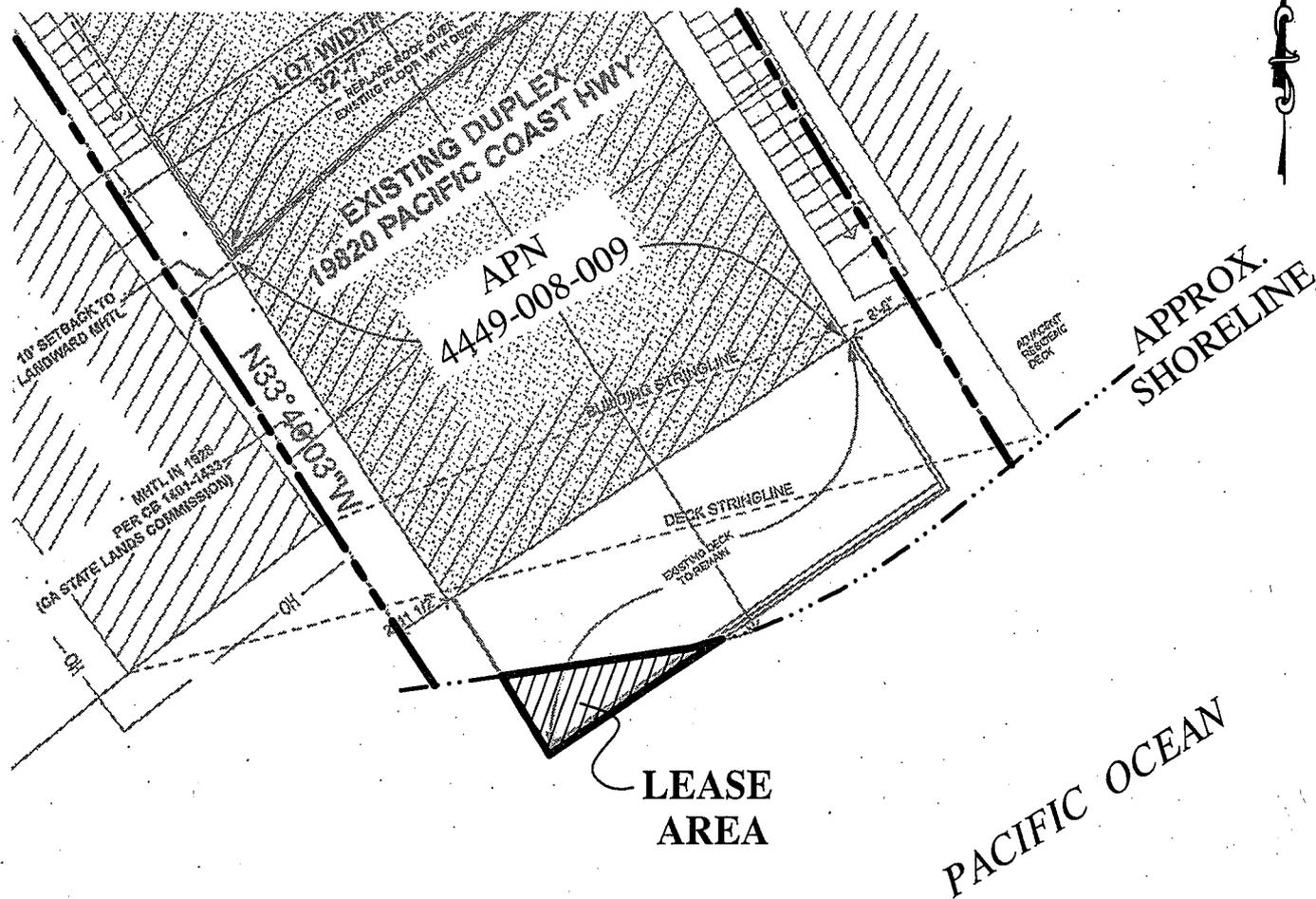
END OF DESCRIPTION

Prepared 08/02/18 by the California State Lands Commission Boundary Unit.



NO SCALE

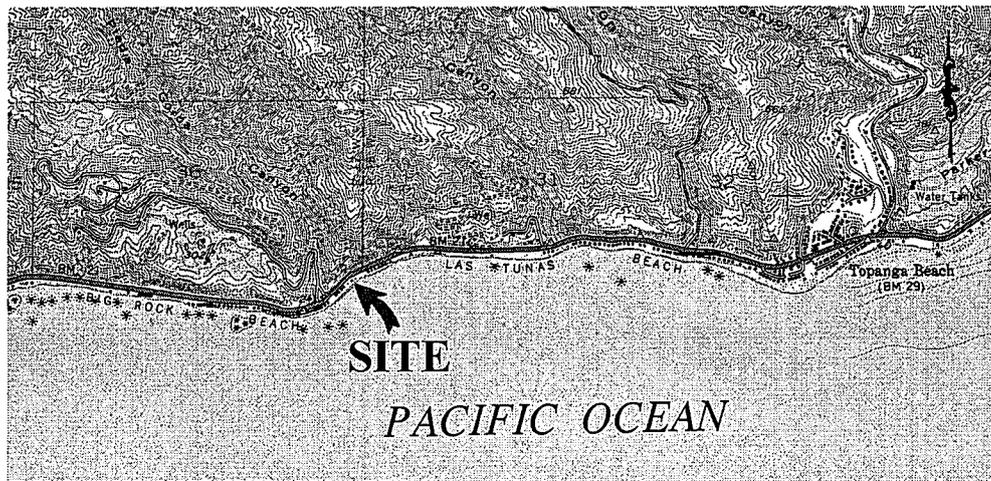
SITE



19820 PACIFIC COAST HWY., MALIBU

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit B

W 26743
 BLAIS 1990 FAMILY TRUST
 APN 4449-008-009
 GENERAL LEASE -
 RECREATIONAL USE
 LOS ANGELES COUNTY



TS 08/02/18