

STAFF REPORT

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12/06/19
PRC 9364.1
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D. Simpkin

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AMENDMENT AND RESTATEMENT OF LEASE

LESSEE:

Broad Beach Geologic Hazard Abatement District

AREA, LAND TYPE, AND LOCATION:

23.07 acres, more or less, of sovereign land in the Pacific Ocean at Broad Beach, Malibu, Los Angeles County.

AUTHORIZED USE:

Use and maintenance of portions of existing rock revetment shoreline protective structures (revetment); relocation of portions of existing revetment along the eastern end; placement of up to 300,000 cubic yards of sand for initial beach nourishment and dune construction; backpassing of up to 25,000 cubic yards of sand per backpassing event annually as needed; placement of up to 75,000 cubic yards of sand per subsequent interim nourishment event as needed; placement of up to 300,000 cubic yards of sand per major renourishment event as needed; use and maintenance of portions of two existing vertical access stairs from two dedicated vertical access ways; construction, use and maintenance of four storm drain outfalls to be filled with sand during the dry season and excavated during the storm season; construction, use and maintenance of bollard fencing and signage for dune habitat.

LEASE TERM:

10 years, beginning August 9, 2016.

CONSIDERATION:

Compensation for the unauthorized occupation of State Land: \$500,000.

Rent: Variable based on encroachment pursuant to the terms of the lease, as follows:

- Lessor agrees to give Lessee a grace period from August 9, 2016 to December 31, 2019, to allow Lessee sufficient time to obtain all necessary permits and authorizations to commence the proposed Broad Beach Restoration Project (Project).

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- Should Lessee complete Project construction within the grace period, including revetment relocation as described in the Lease, Lessor and Lessee agree that the placement of sand for beach nourishment and dune construction on sovereign land shall be treated as public benefit and consideration under the terms of this Lease and no monetary rent shall be owed retroactively or otherwise for existing revetment encroachment, so long as a minimum 10-foot wide continuous band of dry beach area is maintained along the waterward edge of the revetment, to allow the public unrestricted access to pass and repass along the beach.
- Lessee agrees to relocate the existing revetment off sovereign land, within the grace period, from 30760 Broad Beach Road to 30980 Broad Beach Road.
- In the event that Lessee completes the revetment relocation, as described in the Lease, during the grace period, but fails to complete the remainder of the Project, Lessee shall owe monetary rent, going forward, of \$7,929 per month based on reduced encroachment and the public use of private land seaward of the relocated revetment.
- In the event that Lessee fails to commence any Project construction within the grace period, including revetment relocation, Lessee shall owe rent in the amount of \$27,430 per month, for the full degree of encroachment, as described in the Lease, without offset or discount retroactive to the beginning date of the lease, and for each subsequent period during which no public benefit exists.

PROPOSED AMENDMENT:

Amend Section 2, Special Provisions (Restated Lease, Section 2, Paragraph 22) to include the following:

- Lessee has the option to extend the grace period described in Section 2, Paragraph 1(B) for no more than two (2) periods of one (1) year each beginning January 1, 2020, provided Lessee submits a \$50,000 option payment (an Extension Payment) for each year the grace period is extended, as follows:
 - Lessee may extend the grace period from January 1, 2020, through December 31, 2020, by submitting an Extension Payment to Lessor's staff on or before December 31, 2019. This first 1-year extension is effective upon receipt and verification of Lessee's Extension Payment by Lessor's staff.
 - Provided Lessee exercises its option to extend the grace period through December 31, 2020, Lessee may subsequently exercise its option to extend the grace period from January 1, 2021, through December 31, 2021, by submitting to Lessor's staff written notice of

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Lessee's intent to extend the grace period along with an Extension Payment on or before December 31, 2020. This subsequent extension is effective upon receipt and verification of Lessee's Extension Payment by Lessor's staff.

- Exercise of the two grace period extensions is Lessee's sole responsibility. No invoice or other notice will be provided by Lessor.
- Should Lessee elect to exercise its grace period extension options, the deadline date for revetment relocation shown in Lease Section 2, Paragraph 4 will coincide with the new grace period ending date.
- In no event shall an Extension Payment be credited toward any other obligation of the Lessee.

Amend Section 2, Special Provisions (Restated Lease, Section 2, Paragraph 23) to add language related to the reimbursement of Commission costs associated with the management of the lease.

All other terms and conditions of the lease shall remain in effect without amendment.

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 Analysis:

On August 9, 2016, the Commission authorized Lease No. PRC 9364.1, a General Lease – Beach Replenishment and Protective Structure Use, to the Broad Beach Geologic Hazard Abatement District (BBGHAD/Lessee) for various activities and improvements associated with its proposed Broad Beach Restoration Project (Project). The Project includes the relocation of a revetment shoreline protective structure, beach nourishment activities, and creation of a dune habitat area located along Broad Beach in Malibu ([Item C56, August 9, 2016](#)).

The Lessee is requesting an amendment to the lease to extend the grace period an additional 2 years with a new end date of December 31, 2021. Under the current grace period deadline of December 31, 2019, the BBGHAD will owe rent in the amount of \$27,430 per month for the full duration of encroachment without offset or discount retroactive to the beginning date of the lease (August 9, 2016), and for each subsequent period during which no public benefit exists. However, several unanticipated developments have occurred since the issuance of the lease that support extending the grace period.

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Litigation

In October 2015, the BBGHAD entered into an agreement with the City of Moorpark acknowledging that trucks carrying sand for the Project would travel through the city of Fillmore and unincorporated areas of Ventura County, rather than through Moorpark. The County of Ventura (County) and the City of Fillmore (City) filed suit challenging the agreement. While the litigation was resolved in the BBGHAD's favor, it delayed project implementation. While the BBGHAD may source sand from Ventura County, delivery via boat or barge is preferred. The BBGHAD continues to explore alternative sand sources.

Two additional lawsuits were brought by beachfront property owners challenging the BBGHAD's third assessment in Fall 2017. These homeowners are seeking a refund of certain assessment amounts previously paid. In the ruling, filed on September 17, 2019, the trial court ruled against the BBGHAD. The BBGHAD is considering an appeal but will follow the trial court's ruling in the interim. This litigation, and compliance with the court order, also delayed project implementation.

Coastal Commission

The BBGHAD is in discussions with California Coastal Commission (CCC) staff regarding a potential amendment to its Coastal Development Permit No. 4-15-0390 (CDP). As an alternative to public access easements or deed restrictions required by the CCC and the Malibu Local Coastal Plan (LCP), the CDP requires all BBGHAD homeowners to sign a lateral public access license agreement. To date, approximately 86 percent of the homeowners have signed the access license agreements. The BBGHAD is exploring the possibility of revising the project to include seven gaps that would not include rock revetment or sand nourishment. These gaps represent properties whose homeowners are currently in litigation or refusing to sign license agreements.

The unanticipated litigation and inability to secure 100 percent license agreement compliance from BBGHAD homeowners has hindered the BBGHAD's ability to start the Project as authorized and meet all permit and lease conditions.

In addition to the proposed amendment, staff is recommending that the Commission authorize a restatement of the lease, which will reflect the extended grace period. All other terms of the lease as authorized on August 9, 2016, will remain unchanged and in effect.

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In 2014, staff prepared the Revised Analysis of Impacts to Public Trust Resources and Values (APTR) document, to analyze Project elements and their potential to adversely impact Public Trust resources. The APTR is on file in the Sacramento Office of the Commission and is available on the Commission's [website](#). The [Public Trust and State's Best Interest Analysis](#) prepared in August 2016 is still applicable. Staff believes that the Project, once constructed and maintained, will provide a regional and statewide public benefit by recreating a wider beach for the use and enjoyment of the people of California

The failure to implement any of the project components authorized in the lease and CDP continues to limit public access opportunities along Broad Beach Road. The public's use of the beach is limited to low tide conditions. Little to no beach is available during high tides. To extend the grace period for up to an additional 2 years, the Lessee has agreed to pay the State \$50,000 for each year it exercises its extension option. Each payment will be in addition to the \$500,000 compensation required under the lease for the prior unauthorized occupation of State Land and will not replace or offset the retroactive rental payments required under the lease if the Project is not commenced by the deadline. The Lessee will continue to provide liability insurance in an amount no less than \$10,000,000 per occurrence. In addition, the Commission is in receipt and will continue to hold a performance deposit in the amount of \$1,350,000 for removal/relocation of any revetment encroachment off the Lease Premises.

Conclusion:

For all the reasons above, staff believes amendment of this lease will not substantially interfere with the Public Trust needs at this location, at this time, and the foreseeable 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. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.
2. These actions are 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

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and resources under the Commission's jurisdiction; and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

3. Staff recommends that the Commission find that this activity is exempt from the requirements of California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves specific actions to prevent or mitigate an emergency.

Authority: Public Resources Code sections 26601 and 21080, subdivision (b)(4) and California Code of Regulations, title 14, section 15269, subdivision (c). (County of Ventura v. City of Moorpark (2018) 24 Cal.App.5th 377.)

EXHIBITS:

- A. Land Description
- B1. Project Site and Location Map
- B2. Proposed Revetment Relocation 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 statutorily exempt project pursuant to Public Resources Code sections 26601 and 21080, subdivision (b)(4), and California Code of Regulations, title 14, section 15269, subdivision (c), specific actions necessary to prevent or mitigate an emergency.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the Amendment and Restatement of Lease No. PRC 9364.1, a General Lease – Beach Replenishment and Protective Structure Use, of sovereign land in the Pacific Ocean at Broad Beach, Malibu, Los Angeles County, to provide two 1-year options to extend the Project commencement grace period from December 31, 2019, to December 31, 2021; and to add language related to the reimbursement of Commission

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costs associated with the management of the lease; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 9364.1

LAND DESCRIPTION

Four (4) parcels of tide and submerged land, whether filled or unfilled, situate in the bed of the Pacific Ocean and adjacent to those lands as patented in Rancho Topanga Malibu Sequit, approved August 19, 1872, County of Los Angeles, State of California, and more particularly described as follows:

Parcel 1 – Revetment Encroachment Area 1

Bounded on the northeast by the ordinary high water mark of said ocean; bounded on the southwest by a line lying parallel with and 20 feet southwesterly from the ordinary high water mark of said ocean; bounded on the northwest by a line lying parallel with and 100 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Quitclaim Deed recorded April 8th, 2010 in Document No. 20100480006, Official Records of said county; bounded on the southeast by a line lying parallel with and 10 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded October 25, 2013 in Document No. 20131529517, Official Records of said county.

Parcel 2 – Revetment Encroachment Area 2

Bounded on the northeast by the ordinary high water mark of said ocean; bounded on the southwest by a line lying parallel with and 35 feet southwesterly from the ordinary high water mark of said ocean; bounded on the northwest by the northwesterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded March 4th, 2011 in Document No. 20110342456, Official Records of said county; bounded on the southeast by a line lying parallel with and 20 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Quitclaim Deed recorded April 8th, 2010 in Document No. 20100480006, Official Records of said county.

Parcel 3 – Revetment Encroachment Area 3

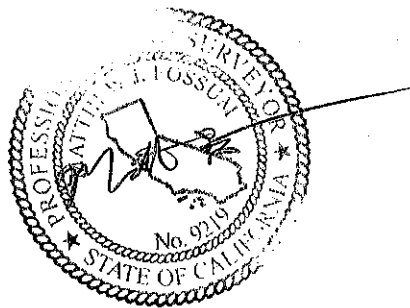
Bounded on the north and northeast by the ordinary high water mark of said ocean; bounded on the south and southwest by a line lying parallel with and 35 feet southerly and southwesterly from the ordinary high water mark of said ocean; bounded on the west by the westerly line and the southerly prolongation thereof, of "Parcel 1" as described in "Exhibit A" of that Grant Deed recorded December 13, 2012 in Document No. 20121928708, Official Records of said county; bounded on the southeast by the northwesterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded March 4th, 2011 in Document No. 20110342456, Official Records of said county.

Parcel 4 – Beach Replenishment, Dune and Temp. Construction Areas

Bounded on the north and northeast by the ordinary high water mark of said ocean; bounded on the south and southwest by a line lying parallel with and 200 feet southerly and southwesterly from the ordinary high water mark of said ocean; bounded on the west by a line lying parallel with and 20 feet westerly from the westerly line and the southerly prolongation thereof, of "Parcel 1" as described in EXHIBIT "ONE" of that Grant Deed recorded January 28, 2003 in Document No. 20030254326, Official Records of said county; bounded on the southeast by a line lying parallel with and 550 feet southeasterly from the southeasterly line and the southwesterly prolongation thereof, of that parcel as described in "Exhibit A" of that Grant Deed recorded October 25, 2013 in Document No. 20131529517, Official Records of said county.

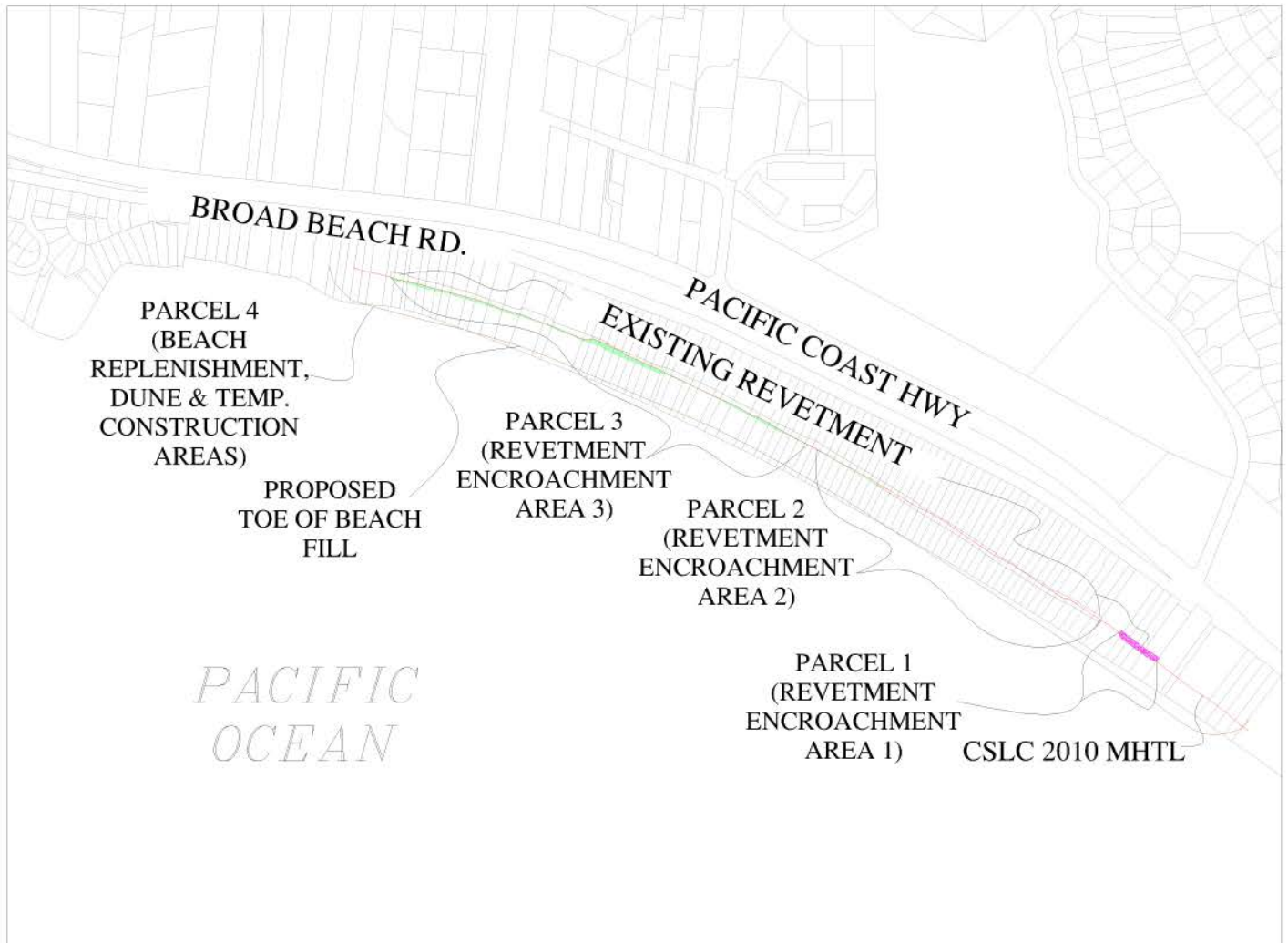
END OF DESCRIPTION

PREPARED 5/03/19 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

SITE



Broad Beach, 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-1

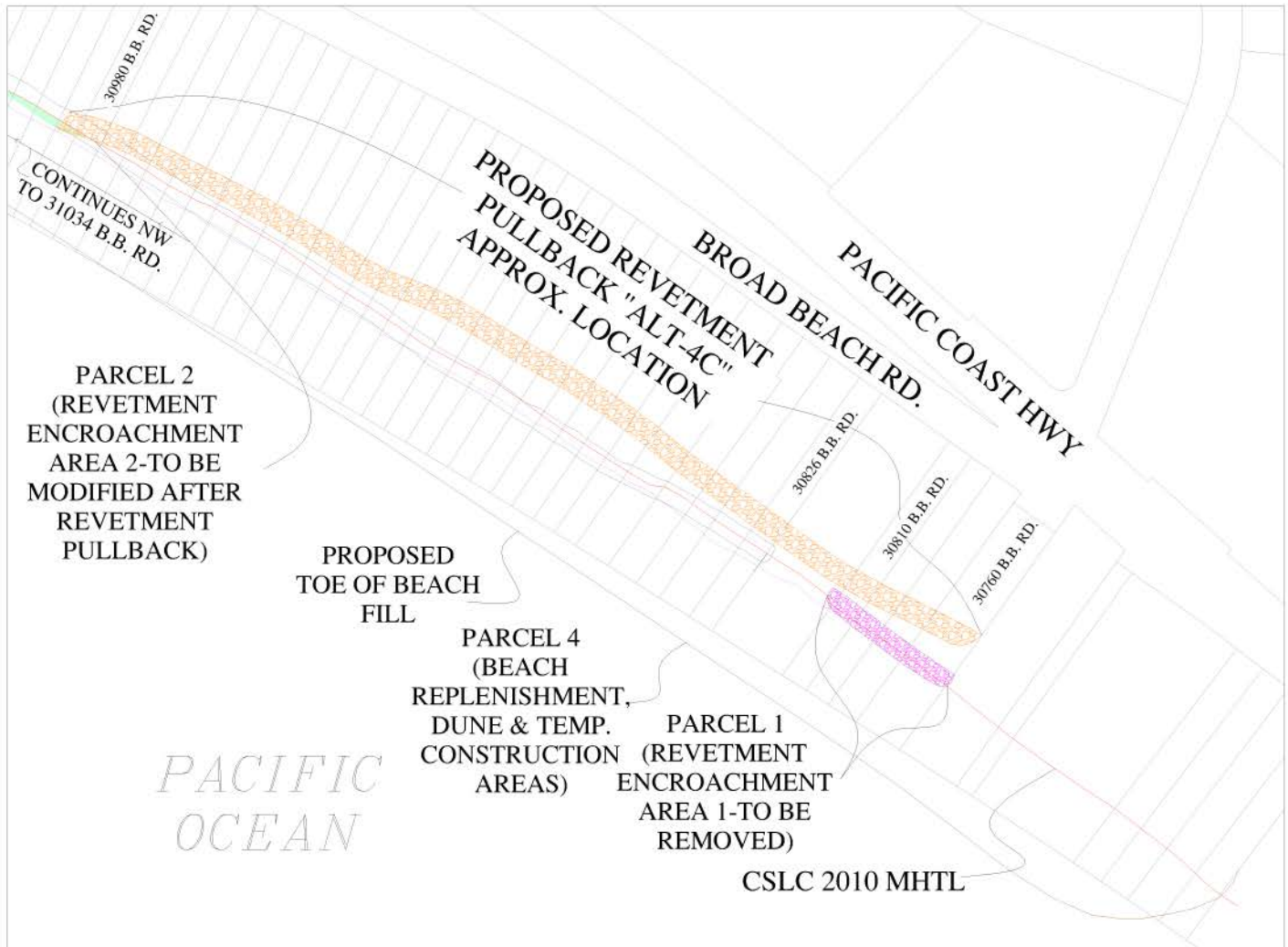
PRC 9364.1
BROAD BEACH GEOLOGIC
HAZARD ABATEMENT DISTRICT
GENERAL LEASE -
BEACH REPLENISHMENT &
PROTECTIVE STRUCTURE USE
LOS ANGELES COUNTY



MJF 5/03/19

NO SCALE

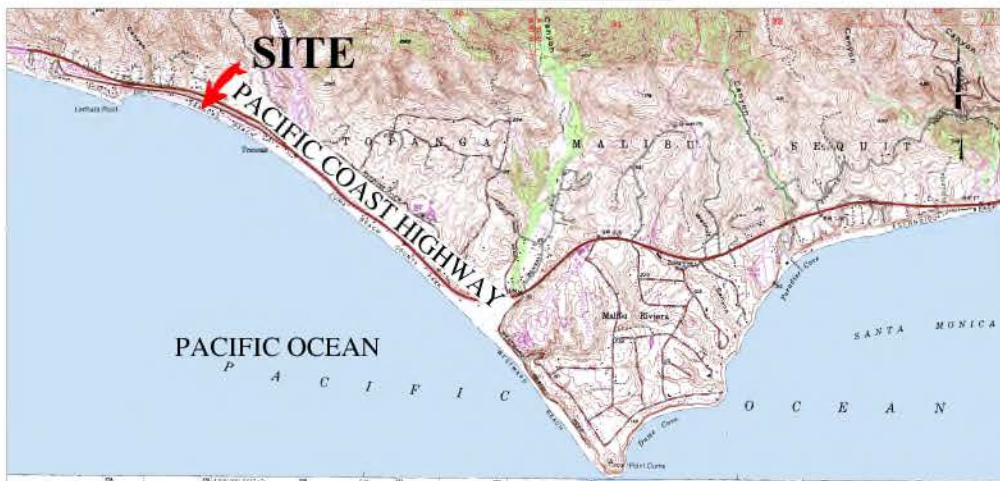
SITE



Broad Beach, Malibu

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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Exhibit B-2

PRC 9364.1
BROAD BEACH GEOLOGIC
HAZARD ABATEMENT DISTRICT
GENERAL LEASE -
BEACH REPLENISHMENT &
PROTECTIVE STRUCTURE USE
LOS ANGELES COUNTY



MJF 5/03/19