

# Staff Report 34

## **LESSEE:**

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Broad Beach Geologic Hazard Abatement District

## **PROPOSED ACTION:**

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Acceptance of Late Extension Payment

## **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 accessways; 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.

## **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).
- On December 6, 2019, the lease was amended to allow the Lessee the option to extend the grace period described above for no more than two periods of 1 year each beginning January 1, 2020, provided that the Lessee submitted a \$50,000 option payment (Extension Payment) for each year the grace period is extended.
- 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.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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:**

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 56, August 9, 2016](#)).

On December 6, 2019, the Commission authorized an amendment and restatement of Lease PRC 9364.1 ([Item 22, December 6, 2019](#)). Section 2, Special Provisions of the lease was amended to allow the Lessee the option to extend the grace period described in Section 2, Paragraph 1(B) for no more than two periods of 1 year each beginning January 1, 2020, provided that the Lessee submitted a \$50,000 option payment (Extension Payment) for each year the grace period is extended. The first 1-year Extension Payment was made on time, extending the grace period from January 1, 2020, through December 31, 2020. The second Extension Payment to extend the grace period for the second year, from January 1, 2021, through December 31, 2021, was due on or before December 31, 2020. The Lessee failed to make the second Extension Payment on time.

Under the terms of the lease, failure to extend the grace period results in rental due in the amount of \$1,645,800. Annual rent in the amount of \$329,160 would be due beginning August 6, 2021, and every year thereafter on or before August 6. Staff informed Lessee on March 2, 2021, that the second Extension Payment had not been received pursuant to the lease terms.

The Lessee represents that the failure to make the payment was a mistake and requests that the Commission accept its late payment to extend the grace period from January 1, 2021, through December 31, 2021. The Lessee also submitted \$50,000 to be held until Commission action. Acceptance of the late Extension Payment would allow the Lessee to forego paying annual rent and continue working towards implementation of the Project. The Lease was amended to grant up to two extension periods because of unanticipated litigation and project delays

outside of the Lessee's control. The Project work is ongoing, and the State is being compensated for the extension. Factors impacting project progress include ongoing litigation between the BBGHAD and property owners concerning the BBGHAD's power to assess properties and collect funds, compliance with Coastal Development Permit conditions; and securing a viable sand source. Acceptance of the late Extension Payment will not alter the current use or impacts to Public Trust uses or values.

If the grace period is not extended, the Lessee owes back rent in the amount of \$1,645,800, and annual rent in the amount of \$329,160 would be due beginning August 6, 2021. The Lessee states that these rental payments would prevent the Project's completion. Staff believes acceptance of the late payment is in the State's best interest to allow the Lessee to continue to implement the Project. The Project, if implemented, will provide valuable scientific data regarding beach nourishment activities and coastal processes. Specifically, the data collection aspects of this Project are fairly unique and will benefit the State by providing agencies with data not currently available that can be applied to future nourishment projects and future mitigation measures. Further, staff believes that the Project, once constructed and maintained, will provide regional and statewide public benefit by recreating a wider beach that is capable of being used and enjoyed by the people of California.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the request 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 Lessee is required to pay annual rent as required in the lease. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Acceptance of a late Extension Payment is not a project as defined by the California Environmental Quality Act 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, section 15378, subdivision (b)(5).

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed acceptance of late Extension Payment will not substantially impair the public rights to navigation and fishing or 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 acceptance of the second grace period Extension Payment in the amount of \$50,000, on April 27, 2021, to extend the grace period from January 1, 2021, through December 31, 2021.