

Staff Report 57

APPLICANT:

Broad Beach Geologic Hazard Abatement District

PROPOSED ACTION:

Amendment of General Lease – Beach Replenishment and Protective Structure Use

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. The Lessee has submitted two Extension Payments, extending the grace period to December 31, 2021.
- 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 (\$95,150/year) 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 (\$329,160/year), 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.

SPECIFIC LEASE PROVISIONS:

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

- Lessee has the further option to extend the grace period and to forestall the requirement of retroactive payment of rent, described in Section 2, Paragraph 22, for no more than three periods of one year each beginning January 1, 2022, provided Lessee submits the option payments (an Extension Payment) for each year the grace period is extended, as follows:
 - Lessee may extend the grace period from January 1, 2022, through December 31, 2022, by submitting an Extension Payment of \$100,000 to Lessor's staff on or before December 31, 2021. 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, 2022, Lessee may subsequently exercise its option to extend the grace period from January 1, 2023, through December 31, 2023, by submitting to Lessor's staff written notice of Lessee's intent to extend the grace period along with an Extension Payment of \$200,000 on or before December 31, 2022. This subsequent 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, 2023, Lessee may subsequently exercise its option to extend the grace period from January 1, 2024, through December 31, 2024, by submitting to Lessor's staff written notice of Lessee's intent to extend the grace period along with an Extension Payment of \$329,160 on or before December 31, 2023. This subsequent extension is effective upon receipt and verification of Lessee's Extension Payment by Lessor's staff.
 - Exercise of the three 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.
 - An Extension Payment will not be credited toward any other obligation of the Lessee, with the one exception. The Lessor will credit an Extension Payment made under this paragraph toward retroactive rent if retroactive rent is required by Section 2, Paragraph 1(b)(iii). Crediting of any Extension Payments made under this paragraph towards retroactive rent does not modify or limit Lessor's ability to modify the rent as otherwise contemplated in the Lease, including application of a CPI adjustment.

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:

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 segment 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.

On April 27, 2021, the Commission authorized the Acceptance of Late Extension Payment ([Item 34, April 27, 2021](#)). Acceptance of the late second Extension Payment extended the grace period from January 1, 2021 through December 31, 2021.

The Lessee is requesting an amendment to the lease to extend the grace period an additional 3 years with a new end date of December 31, 2024. Under the current grace period deadline of December 31, 2021, the BBGHAD will owe rent, effective January 1, 2022, in the amount of \$27,430 per month as provided in the lease 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.

Compensation in the amount of approximately \$1.7 million, retroactive to the beginning date of the lease (August 9, 2016) through the end of 2021 will be tolled during the grace period extensions and waived if the lessee implements the project elements in accordance with the lease terms.

Implementation of the project has been delayed well beyond that timeline envisioned at the time of lease authorization. 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, with little to no beach available during high tides. Further, there continues to occupation of state land with no compensation or public benefit. It is clear at this point that the encroachment will continue for some time with no benefit to the public. To extend the grace period for up to an additional 3 years and to compensate the public for the ongoing lack of public access, staff recommends requiring the Lessee to pay the State an escalating amount for each year it exercises its extension option. 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.

LITIGATION

A group of BBGHAD property owners filed litigation to overturn the BBGHAD's third assessment (the Reef Group Action). In response, the BBGHAD filed an action to validate the third assessment (the Validation Action). The trial court consolidated the Reef Group Action and Validation Action for trial.

The trial court granted the property owners' writ petition, denied the requested injunction, and ruled against the Validation Action. Both parties appealed the trial court's ruling.

The parties then negotiated a settlement of the Reef Action in Summer 2021 with the property owners dismissing the Reef Group Action and any appeals of the trial court rulings. Aspects of the Validation Action remain pending on appeal.

Additionally, some property owners filed litigation alleging that they were overcharged by BBGHAD assessments (the Refund Action). The Refund Action is in the early stages of litigation.

While both the Refund Action and portions of the Validation Action are pending, none of this pending litigation impacts the BBGHAD's ability to implement the project.

COASTAL COMMISSION

As an alternative to public access easements or deed restrictions required by the California Coastal Commission and the Malibu Local Coastal Plan (LCP), Coastal Development Permit No. 4-15-0390 requires all property owners within the BBGHAD to sign a lateral public access license agreement. To date, 82 out of the 88 property owners have signed the access license agreements. The BBGHAD will continue to secure lateral public access license agreements with the remaining 6 homeowners. The license agreements are the last major requirement prior to issuance of the CDP. Assuming all the required license agreements are obtained in the near future, the BBGHAD now anticipates project construction beginning in Fall 2023.

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 lease amendment 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 and back 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. Amendment of the lease to extend the Project commencement grace period 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)

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:

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 of Lease Number PRC 9364.1, a General Lease – Beach Replenishment and Protective Structure Use, effective December 8, 2021, to provide three 1-year options to extend the Project commencement grace period from December 31, 2021 to December 31, 2024 upon timely submittal of an Extension Payment for each 1-year option; 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

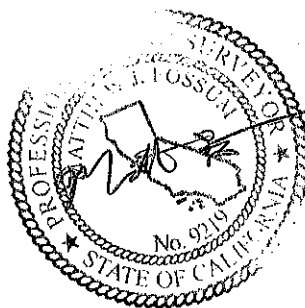
Bounded on the north and northeast by the ordinary high water mark of said ocean; bounded on the south and southwest by a line lying parallel with and 35 feet southerly and southwesterly from the ordinary high water mark of said ocean; bounded on the west by the westerly line and the southerly prolongation 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.

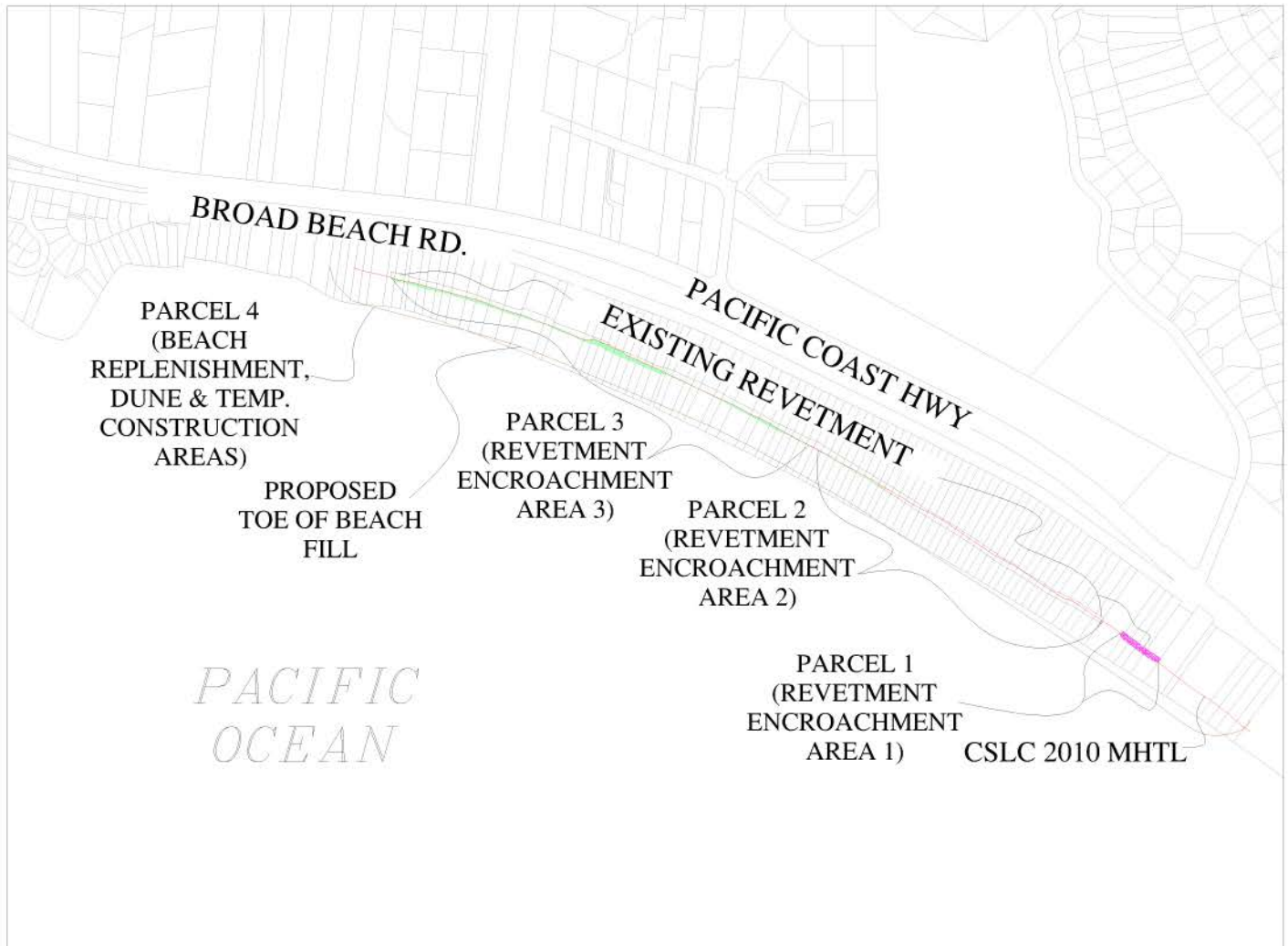
END OF DESCRIPTION

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



NO SCALE

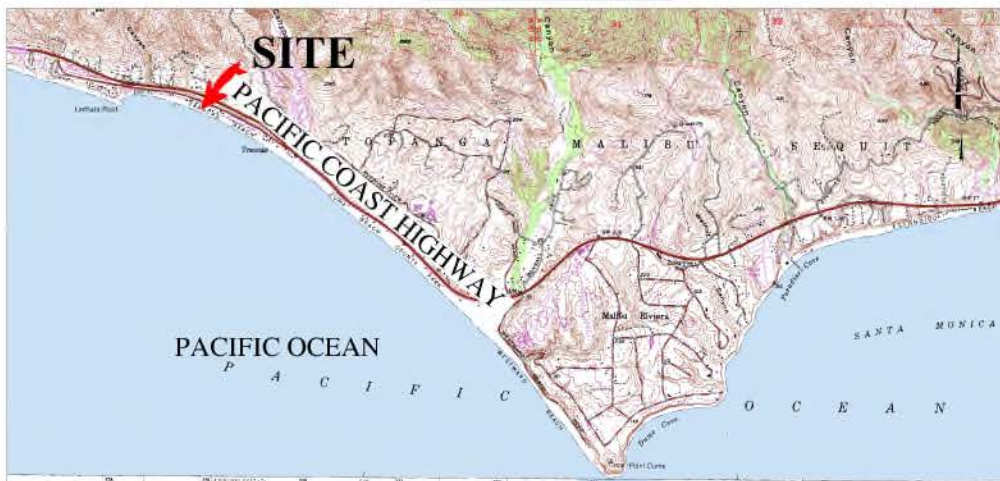
SITE



Broad Beach, Malibu

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B-1

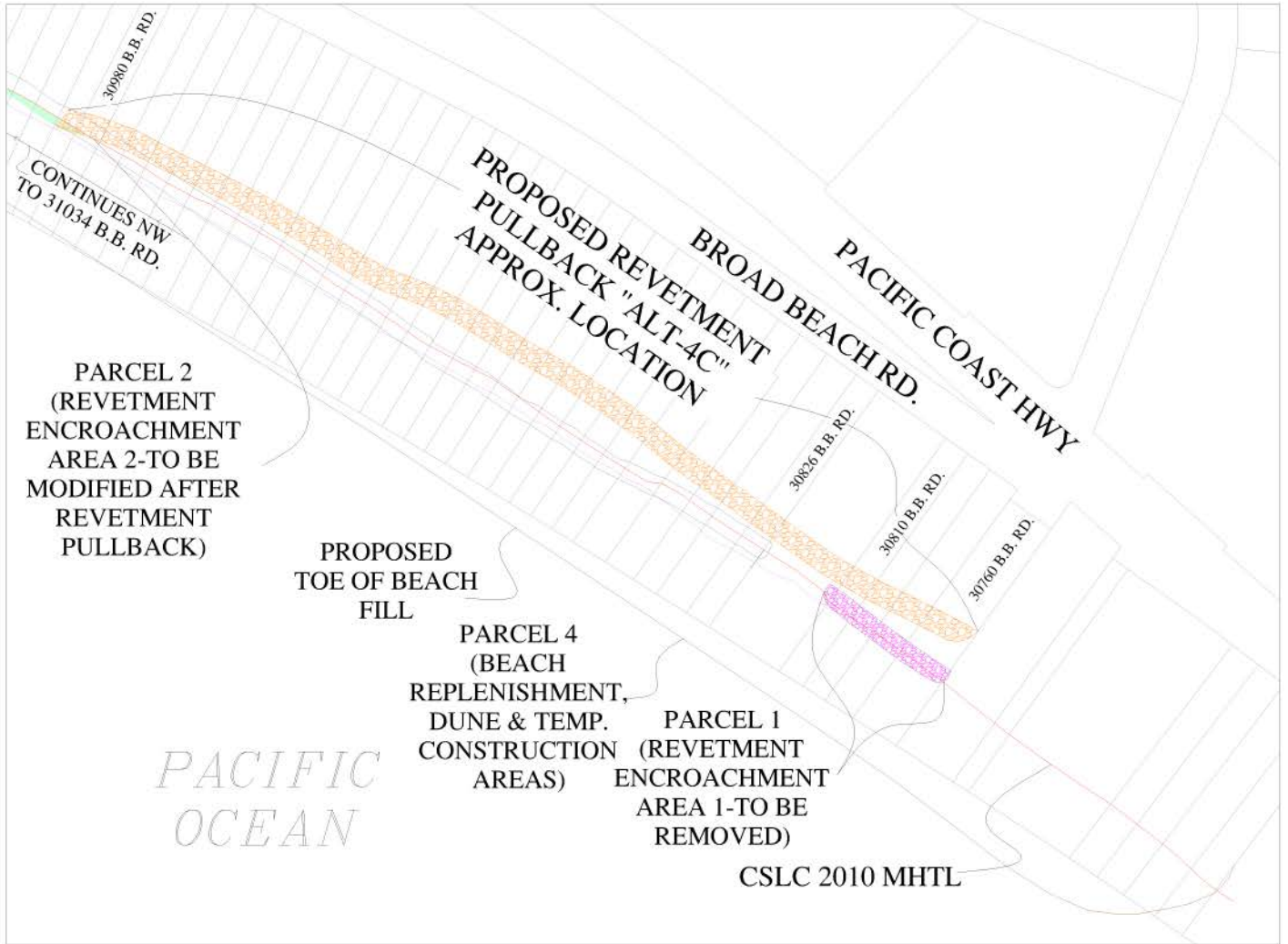
PRC 9364.1
 BROAD BEACH GEOLOGIC
 HAZARD ABATEMENT DISTRICT
 GENERAL LEASE -
 BEACH REPLENISHMENT &
 PROTECTIVE STRUCTURE USE
 LOS ANGELES COUNTY



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.

NO SCALE

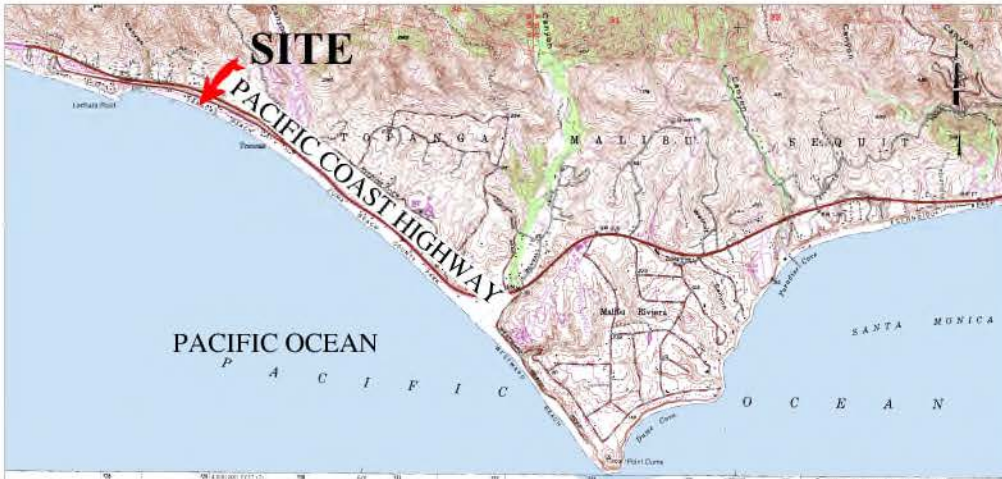
SITE



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