Meeting Date: 10/21/26
Lease Number: PRC 9364
Staff: K. Connor

Staff Report 43

LESSEE:

Broad Beach Geologic Hazard Abatement District

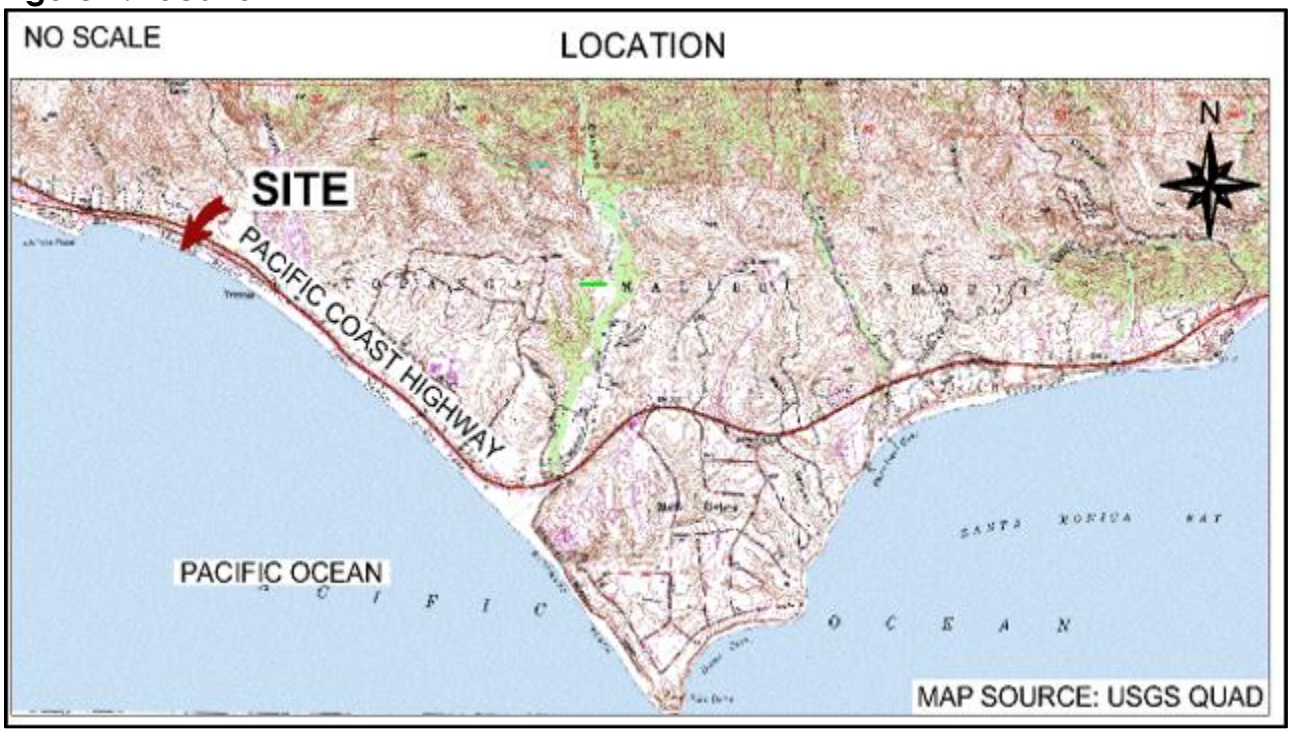
PROPOSED ACTION:

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 (as shown in Figure 1).

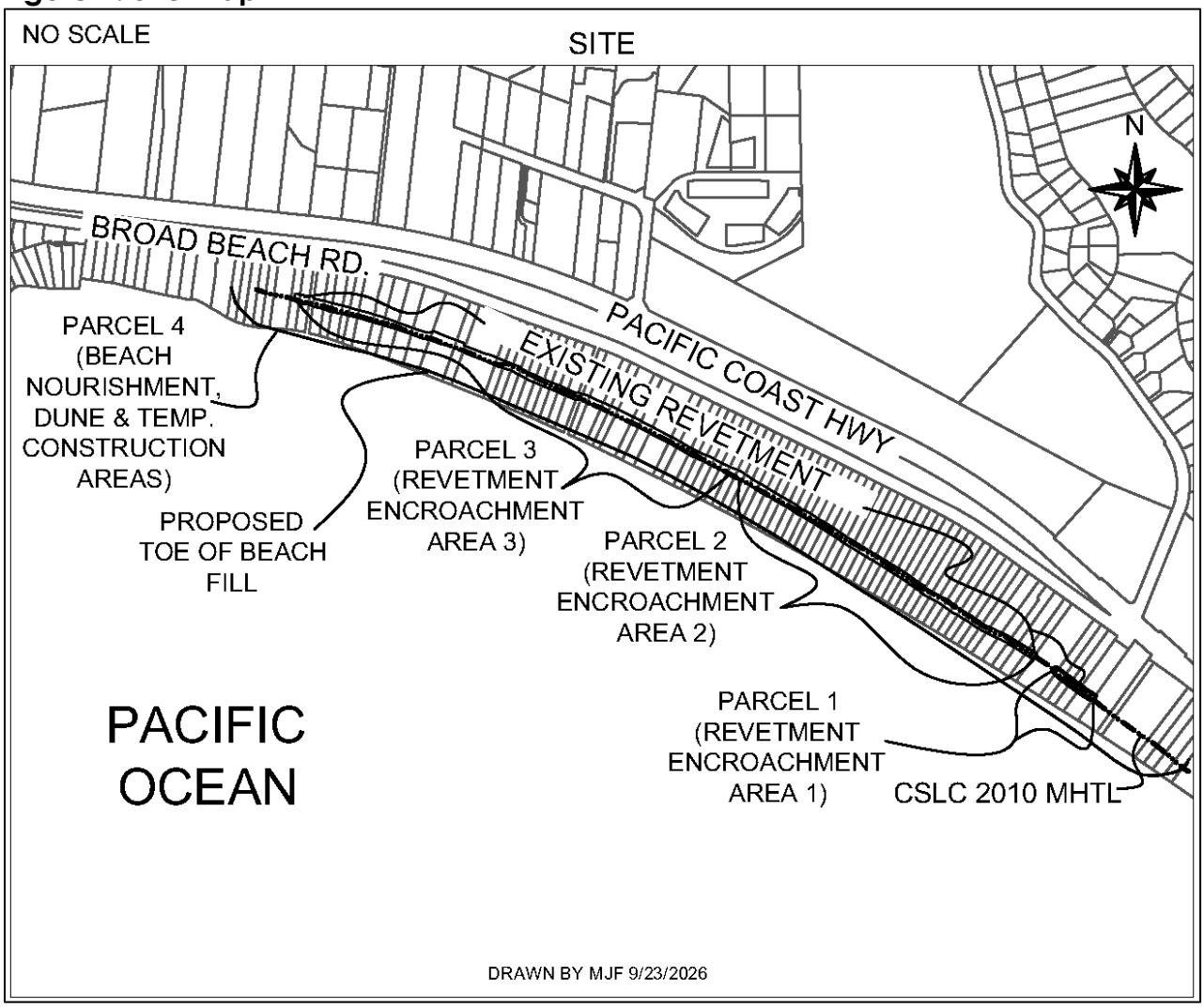
Figure 1. Location



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 (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:
10 years, beginning August 9, 2016, with a subsequent two-year extension ending August 8, 2028.

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.
- On December 8, 2021, the lease was amended to allow the Lessee the option to extend the grace period described above for no more than three periods of one year each beginning January 1, 2022. The Lessee has submitted three Extension Payments, totaling $629,160, extending the grace period to December 31, 2024.
- On December 17, 2024, the lease was amended to allow the Lessee the option to extend the grace period described above for more than two periods of one year each beginning January 1, 2025. The Lessee has submitted two Extension Payments, totaling $658,320, extending the grace period to December 31, 2026.
- 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.

PROPOSED AMENDMENT:

- Amend Section 1, Basic Provisions, (Restated Lease, Section 1, Basic Provisions, Term) to extend the lease term an additional two years, ending August 8, 2030.
- Amend Section 2, Special Provisions (Restated Lease, Section 2, Paragraph 22) to include the following:
    - Lessee may extend the grace period from January 1, 2027 through December 31, 2027, 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, 2026. 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, 2027, Lessee may subsequently exercise its option to extend the grace period from January 1, 2028 through December 31, 2028, 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, 2027. 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.
- An Extension Payment will not be credited toward any other obligation of the Lessee, with 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 Payment 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.

- Amend Section 2, Special Provision, (Restated Lease, Section 2, Paragraph 20):
  - Lessee agrees to submit no later than two years prior to the expiration of this lease, or at such time that the California Coastal Commission approves a new Coastal Development permit, whichever is sooner, either (a) an application and approximate expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term, pursuant to Section 3, Paragraph 12(a)(3) of this Lease.

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, a General Lease – Beach Replenishment and Protective Structure Use, to the Broad Beach Geologic Hazard Abatement District (BBGHAD or 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).

On December 6, 2019, the Commission authorized an amendment and restatement of Lease PRC 9364.1 (Item 22). 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 Extension Payment has since increased to $329,160 per year. The first 1-year Extension Payment was made on time, extending the grace period from January 1, 2020 through December 31, 2020. The second $50,000 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). Acceptance of the late second Extension Payment extended the grace period from January 1, 2021, through December 31, 2021.

On December 8, 2021, the Commission authorized an amendment of the lease 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 (Item 57). The Lessee submitted timely Extension Payments, totaling $629,160, extending the grace period a total of three years, ending December 31, 2024.

On December 17, 2024, the Commission authorized an amendment of the lease to extend the lease term to August 8, 2028, and to provide two 1-year options to extend the Project commencement grace period from December 31, 2024, to December 31, 2026, upon timely submittal of an Extension Payment for each 1-year option (Item 43). The Lessee submitted timely Extension Payments, totaling $658,320, extending the grace period a total of two years, ending December 31, 2026.

The Lessee is requesting an amendment to the lease to extend the lease term an additional 2 years to August 8, 2030, and to extend the grace period an additional 2 years, with a new grace period end date of December 31, 2028. Under the current grace period deadline of December 31, 2026, the BBGHAD would owe rent, effective January 1, 2026, 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 $3.2 million, retroactive to the beginning date of the lease (August 9, 2016) through the end of 2026, has been tolled during the grace period extensions and would be waived if the lessee implements the project elements in accordance with the lease terms.

Implementation of the project has been delayed well beyond the timeline envisioned at the time of lease authorization. The failure to implement any of the project components authorized in the lease and California Coastal Commission Coastal Development Permit (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 be the 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 2 years and to compensate the public for the ongoing lack of public access, staff recommends requiring the Lessee to pay the State for each year it exercises its extension option. The lease authorizes the Commission to review and revise the rent on the fifth anniversary, or any anniversary after the fifth, and allows the Commission to modify the bond amount. Next year, staff will review the rent and bond and, if necessary, propose revisions effective August 9, 2027, to ensure the rent and bond due under the lease continues to appropriately compensate and protect the state.
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 of 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). Additionally, some property owners filed litigation alleging that they were overcharged by BBGHAD assessments

(the Refund Action). Both pieces of litigation are resolved, but delayed project implementation.

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), CDP No. 4-15-0390 requires all property owners within the BBGHAD to sign a lateral public access license agreement. To date, 83 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 5 homeowners. The license agreements are the last major requirement prior to issuance of the CDP. Project modifications and a CDP amendment would be required if any property owners refuse to execute a public access license agreement. Assuming all the required license agreements are obtained in the near future, the BBGHAD now anticipates project construction beginning in 2028.

CONCLUSION:

Despite the delays, staff believe the proposed project will provide public benefits by enhancing beach access while protecting upland residences. If the grace period is not extended, the cost of the retroactive rent may make the project economically infeasible to pursue. If the lease expires, the lessee will lose authorization to implement the project. Therefore, staff recommends amending the lease to offer grace period extensions through 2028, and extending the term of the lease to 2030, to provide a full opportunity to implement the project.

For all the reasons above, staff believes the 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 lease term and modify the 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

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 term of the lease; and is in the best interests of the State.

AUTHORIZATION:
Authorize the amendment of Lease Number PRC 9364, a General Lease – Beach Replenishment and Protective Structure Use, effective October 21, 2026, to extend the lease term an additional 2-years, ending August 8, 2030 and provide two 1-year options to extend the Project commencement grace period from December 31, 2026 to December 31, 2028, upon timely submittal of an Extension Payment in the amount of $329,160 for each 1-year option; all other terms and conditions of the lease will remain in effect without amendment.