

**THE BOARD OF DIRECTORS OF THE BROAD BEACH  
GEOLOGIC HAZARD ABATEMENT DISTRICT**

Adopted this Resolution on October 18, 2020 by the following vote:

**AYES:** Karol, Grossman, Kuba, Marine, Needleman

**NOES:** Ø

**ABSENT:** Ø

**ABSTAIN:** Ø

**RESOLUTION NO. 2020/06**

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**RESOLUTION CANCELLING THE ASSESSMENT PROCESS STARTED BY  
RESOLUTION NO. 2020/04**

**WHEREAS**, on September 12, 2011 the Malibu City Council adopted Resolution No. 11-41 approving and ordering the formation of the Broad Beach Geologic Hazard Abatement District ("BBGHAD") and appointing five landowners to serve as the initial Board of Directors of the BBGHAD (BBGHAD Board);

**WHEREAS**, the BBGHAD is: a) a political subdivision of the State of California, governed in accordance with GHAD Law (Pub. Res. Code §§ 26500 *et seq.*); and b) a legal entity separate and distinct from the City of Malibu, and the BBGHAD's operations are independent of the City of Malibu;

**WHEREAS**, on November 6, 2011, the BBGHAD Board approved the Plan of Control, the document that describes the duties and responsibilities of the BBGHAD;

**WHEREAS**, in order to pay for the cost and expenses of constructing and operating the improvements for the BBGHAD, as described in the Plan of Control, pursuant to Public Resources Code sections 26500 *et seq.*, it will be necessary to provide for a reliable source of funding;

**WHEREAS**, Public Resources Code sections 26587 and 26650 *et seq.* authorize, after a noticed public hearing, the levy and collection of an assessment pursuant to the Municipal Improvement Act of 1913, Streets & Highways Code sections 10000 *et seq.*, upon specially benefited property within the GHAD to pay for the construction, improvement, maintenance and operation of BBGHAD improvements (the "Project"). Article XIII D of the California Constitution identifies additional requirements for the levy and collection of assessments;

**WHEREAS**, on January 22, 2012, the BBGHAD Board held a public hearing and adopted Resolution No. 2012/01, which, among other points, declared the BBGHAD Board's intent to order a proposed assessment within the territory of the BBGHAD and fixed a hearing date of March 11, 2012 to consider the proposed assessment and any protests thereon; the

assessment was based on the Engineer's Report dated January 18, 2012 and attached to Resolution No. 2012/01.

**WHEREAS**, on March 11, 2012, the BBGHAD Board held a public hearing and, among other actions, adopted Resolution Nos. 2012/03 (accepting the Statement of Assessment Ballots) and 2012/04 (confirming the assessment and authorizing the levy and collection of the assessment within the BBGHAD);

**WHEREAS**, the Assessment specified in Resolution Nos. 2012/03 and 2012/04 contemplated the BBGHAD's placement of significant sand nourishment throughout the BBGHAD's boundaries, including the western portion of the BBGHAD;

**WHEREAS**, in or about January 2015 and prior to the BBGHAD securing final permits to conduct the contemplated beach restoration, the BBGHAD learned of facts and permitting realities demonstrating that a portion of the west end, west of 31380 Broad Beach Road, could not receive direct sand nourishment as part of the Project because the Project, as originally conceived, cannot achieve regulatory approval without changes to its design and without significant mitigation;

**WHEREAS**, on July 19, 2015, the BBGHAD Board held a public hearing and adopted Resolution No. 2015/03, which, among other points, declared the BBGHAD Board's intent to order a proposed assessment within the territory of the BBGHAD and fixed a hearing date of September 6, 2015 to consider the proposed assessment and any protests thereon ("2015 Assessment"); the 2015 Assessment is based on the Engineer's Report dated July 15, 2015 ("2015 Engineer's Report"), and attached to Resolution No. 2015/03.

**WHEREAS**, on or about September 6, 2015, the BBGHAD Board held a public hearing and, among other actions, adopted Resolution Nos. 2015/04 (accepting the Statement of Assessment Ballots) and 2015/05 (confirming and adopting the 2015 Assessment and authorizing the levy and collection of the assessment within the BBGHAD);

**WHEREAS**, the Assessment specified in Resolution Nos. 2015/04 and 2015/05 contemplated the BBGHAD's placement of significant sand nourishment east of 31380 Broad Beach Road, and no direct sand placement west of this address;

**WHEREAS**, since the adoption of the 2015 Assessment, the BBGHAD has continued to obtain certain permits and pursue other permits necessary to implement the Project; during this permitting period, the BBGHAD staff has concurrently finalized commercial arrangements for, among other items, sand source, sand transportation to Project area, and actual construction of the Project;

**WHEREAS**, due to added Project costs imposed by the various permits for the implementation of the Project, the BBGHAD staff determined that such costs exceeded those contemplated in the 2015 Assessment and 2015 Engineer's Report;

**WHEREAS**, on July 23, 2017, the BBGHAD Board held a public hearing and adopted Resolution No. 2017/05, which, among other points, declared the BBGHAD Board's intent to order a proposed assessment within the territory of the BBGHAD and fixed a hearing date to

consider the proposed assessment and any protests thereon (“2017 Assessment”); the 2017 Assessment is based on the Engineer’s Report dated June 22, 2017 (“2017 Engineer’s Report”), and attached as Exhibit 1 to Resolution No. 2017/05.

**WHEREAS**, on or about September 10, 2017, the BBGHAD Board held a public hearing and, among other actions, adopted Resolution No. 2017/08 (accepting the Statement of Assessment Ballots) and on or about November 12, 2017, adopted Resolution No. 2017/09 (confirming and adopting the 2017 Assessment and authorizing the levy and collection of the assessment within the BBGHAD);

**WHEREAS**, following the implementation of the 2017 Assessment, owners of four (4) BBGHAD-assessed parcels filed litigation challenging the 2017 Assessment, Mark Magidson, Trustee of the Magidson Revocable Trust of 1987 (2006 Restatement), and Malibu-Broad Beach S-1, LLC a California Limited Liability Company through its Manager Mark Magidson; Alexander Haagen III, as Managing Member of 30956 BB, LLC and BB Malibu Place LLC; Mike Schwab; Cheryl Schwab; Andrew Leigh; Barbara Leigh v. Broad Beach Geologic Hazard Abatement District; Board of Directors of the Broad Beach Geologic Hazard Abatement District, Los Angeles County Superior Court Case No. BS170769 (“Reef Group Action”), and the BBGHAD subsequently filed litigation seeking the Court’s validation of the 2017 Assessment, Broad Beach Geologic Hazard Abatement District v. All Persons Interested in the Validity of Resolution No. 2017/09 of the BBGHAD Board, LASC Case No. BC 684646 (“Validation Action”). The Court consolidated the writ claim included in the Reef Group Action and the Validation Action for trial;

**WHEREAS**, on or about September 17, 2019, the Court issued its Order Granting Writ Claim and Order Denying Validation (“Order”) granting certain of the relief requested by the property owners in the Reef Group Action and denying the Validation Action;

**WHEREAS**, on or about January 22, 2020, the Court supplemented Statement of Decision in connection with the Reef Group Action and the Validation Action, and subsequently issued its Order Granting Petition for Writ of Mandate in the Reef Group Action and entered Judgment in the Validation action;

**WHEREAS**, the BBGHAD has since filed a Notice of Appeal, appealing both the Order Granting Petition for Writ of Mandate in the Reef Group Action and the Judgment in the Validation Action;

**WHEREAS**, after additional trial Court hearings, briefing on various matters, and additional trial Court process, the trial Court issued its Amended Judgment in the Validation Action and Amended Order Granting Writ Claim on or about July 21, 2020;

**WHEREAS**, among other principles, the BBGHAD Board seeks to ensure that the BBGHAD: a) complies with all legal requirements, including those specified in the Order and Statement of Decision to the extent they survive appeal, b) levies and collects an Assessment commensurate with, and no greater than, the special benefits received by each and every real property owner within the BBGHAD; and c) treats each and every BBGHAD property owner in a fair, just, and equitable manner;

**WHEREAS**, to these ends, and while the trial Court ruling was in the process of being finalized, the BBGHAD adopted Resolution No. 2019/07 on or about December 22, 2019 and circulated a new DRAFT Engineer's Report and soliciting public comment;

**WHEREAS**, the BBGHAD has received various written questions and comments on the new DRAFT Engineer's Report and, where it deemed appropriate, revised the new, proposed Engineer's Report accordingly;

**WHEREAS**, in or about February 2020, Resolution No. 2020/01 declared, pursuant to Streets & Highways Code section 10200 and Public Resources Code section 26651, the Board's intention to: a) order a new assessment, b) adopt and notify all interested parties of the availability of a new Engineer's Report ("2020 Engineer's Report"), and c) fix a hearing for no earlier than April 1, 2020 to consider the proposed assessment and any protests;

**WHEREAS**, the COVID-19 pandemic has adversely affected Los Angeles County and, in or about March 2019, the Los Angeles County Board of Supervisors issued its initial "Stay at Home" order, which, among other things, restricted and limited the gathering of persons and required the closure of non-essential shops, malls, children's playgrounds, and non-essential retail businesses in an effort to stem and slow the spread of COVID-19 in the region;

**WHEREAS**, the BBGHAD Board desires, if possible, for the BBGHAD community to provide in-person input on the proposed 2020 Engineer's Report and, through Resolution No. 2020/02, continued the public hearing on the 2020 Engineer's Report, its proposed assessment and any protests to August 2, 2020;

**WHEREAS**, since various state and county "Stay at Home" orders remained in place for all of Los Angeles County and it appears impossible for the BBGHAD community to meet in-person to consider the 2020 Engineer's Report, it became impossible for the BBGHAD Board to move forward in-person on the proposed assessment and any protests on August 2, 2020;

**WHEREAS**, on July 12, 2020 the BBGHAD Board enacted Resolution No. 2020/04, which, among other provisions, cancelled the assessment process enacted by Resolution No. 2020/02, adopted a Restated and Revised Engineer's Report, and set the assessment vote on the Restated and Revised Engineer's Report for October 25, 2020;

**WHEREAS**, the BBGHAD has received significant public comment on the 2020 Engineer's Report and other documents prepared and shared with the BBGHAD community pursuant to the assessment process started by Resolution No. 2020/01;

**WHEREAS**, this action is exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*) in accordance with Public Resources Code sections 21080(b)(4) [mitigation of emergencies] and 26559 [GHAD services].

**The Board of Directors of the BBGHAD HEREBY RESOLVES THAT:**

1. The BBGHAD Board hereby rescinds Resolution Nos. 2020/01 and 2020/04, and terminates the October 25, 2020 public hearing.

2. This Resolution shall become effective immediately upon its passage and adoption.

DATED: October 18, 2020

  
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NORTON KARNO, Chair

I, Heike Fuchs, Clerk of the Broad Beach Geologic Hazard Abatement District, hereby certify that the foregoing resolution was duly adopted by the Board of Directors of the District at a regular meeting held on the 18th day of October 2020 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

\_\_\_\_\_  
Heike Fuchs  
Clerk of the BBGHAD Board

2. This Resolution shall become effective immediately upon its passage and adoption.

DATED: October 18, 2020

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NORTON KARNO, Chair

I, Heike Fuchs, Clerk of the Broad Beach Geologic Hazard Abatement District, hereby certify that the foregoing resolution was duly adopted by the Board of Directors of the District at a regular meeting held on the 18th day of October 2020 by the following vote:

AYES: Karno, Grossman, Kuba, Marine, Needelman

NOES: Ø

ABSENT: Ø

ABSTAIN: Ø

ATTEST:

  
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Heike Fuchs  
Clerk of the BBGHAD Board