

Summary of Actions

BROAD BEACH GEOLOGICAL HAZARD ABATEMENT DISTRICT REGULAR MEETING

Sunday, September 14, 2014; 9:00 a.m.
31330 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

Chair Karno called the meeting to order at 9:34 a.m.

2. ROLL CALL

PRESENT: Chair Karno, Vice Chair Grossman, Board Member Levitan, and Board Member Rosenbloom (arrived approximately 9:40 a.m.)

ABSENT: Board Member Lotman

BBGHAD STAFF ALSO PRESENT (not Board Members and not subject to Roll Call): Project Manager Mark Goss (telephone), BBGHAD Engineers Russ Boudreau and Chris Webb, and Project Counsel Ken Ehrlich.

Upon calling the Roll, the Chair agreed to a request from counsel for the Magidson Trust and directed the Board to consider Agenda Item 8 out of order.

8. NEW BUSINESS

a. Magidson Trust- 30822 Broad Beach Road

The Chair recognized Project Counsel, who introduced the matter. Project Counsel summarized the dispute and outlined the fact that the Magidson Trust ("Trust") chose not to purchase its portion of the emergency revetment in 2010 and now has asked the BBGHAD to include the filing of the revetment gap in the BBGHAD Project. The Trust has also represented various positions related to the costs associated with the permitting and installation of revetment rocks at the Trust parcels, and has yet to assume responsibility for same.

The Chair recognized counsel for the Trust, Neil Gauger. Mr. Gauger outlined the Trust's position, including the claim that the BBGHAD is legally responsible to install revetment rocks at the Trust's parcels. The Vice Chair asked the Trust's counsel to explain why the Trust property is the only property within the revetment area that does not have rocks. Trust counsel Mark Levinson stated that the Trust seeks to focus on "current facts" and move forward, and added the claim that the CCC staff is concerned that the revetment is not complete. The Trust's counsel argued that Public Resources Code Sections 26574 and 26580 grant the BBGHAD with the authority to build the revetment at the Trust property.

The Chair asked who would pay for the permitting of the rocks to fill the gap. The Trust's counsel, Mr. Levinson, stated that the Trust would pay for the rocks themselves and asserted that the BBGHAD should do the work. The Trust's counsel added that the Trust awaits the BBGHAD to facilitate rocks at the Trust property. The Chair recognized Board Member Levitan, who stated that, if the BBGHAD decides to undertake the work, the Trust should pay

for the permitting and the work before the effort begins. The Trust's counsel stated that the "mechanics of any deal can be resolved at a later date."

The Chair asserted that he is inclined to ensure that the Trust pays for "soft costs" associated with filling the revetment gap as well as construction costs and is not inclined to give a special preference to the Trust that was not afforded to other property owners within the span of the revetment. The Chair recognized the Vice Chair, who stated that, in general, he believes that the BBGHAD strongly supports the proposition that the revetment gap should be filled, and that he knows that the Trust was informed in or around 2010 that the Trust should apply for a Coastal Development Permit (CDP) for rocks to fill the gap. The Vice Chair added that, since its inception, the Project has been a sand and dune restoration project and not a rock placement project, which substantiates the years old request that the Trust assume the CDP responsibilities. The Chair recognized Board Member Levitan, who asserted that he would feel more comfortable if the BBGHAD undertakes the permitting and construction work associated with filling the gap and having the Trust pre-pay the BBGHAD for the costs of the permitting and construction efforts. Board Member Rosenbloom added that the Trust's pre-payment should include the Trust's share of 2010 revetment-associated soft costs, current permitting costs, and current construction costs. Trust counsel Levinson stated that the Trust would conceptually agree to pay its "fair share" once a "permanent plan" is developed.

MOTION: The Chair recognized Board Member Levitan, who moved to cease discussion on this item at this time and to re-convene discussion on this Agenda item after the Closed Session item. The Vice Chair seconded the Motion. The Chair called the question, and the Motion passed 4-0. The Chair invited the Magidson Trust representatives to return after the conclusion of Closed Session at or about 11:30 a.m.

3. ADOPTION OF AGENDA

Project Counsel reported that, according to the Project Manager, the meeting Agenda was posted at approximately 8:30 a.m. on Thursday, September 11, 2014 within the BBGHAD boundaries and concurrently posted on the BBGHAD website. Board Member Levitan moved for, and Board Member Rosenbloom seconded, the approval of the Agenda. The Motion approving the Agenda passed 4-0.

4. APPROVED SUMMARY OF ACTIONS FROM AUGUST 3, 2014 MEETING

Board Member Levitan moved, and Vice Chair Grossman seconded, the approval of the Summary of Actions from the August 3, 2014 Board meeting. The Motion passed 4-0.

5. CEREMONIAL PRESENTATIONS

None.

6. CONSENT CALENDAR

None.

7. PUBLIC HEARINGS

None.

8. NEW BUSINESS

a. Magidson Trust- 30822 Broad Beach Road

The Chair called the matter, but representatives of the Magidson Trust were not present. The Chair stated that the Board would consider other matters and come back to Item 8 later in the meeting.

9. OLD BUSINESS

a. Permitting and Regulatory Process

CCC- The Project Manager asserted that the BBGHAD is engaged in final negotiations with the CCC staff with an anticipated hearing date of October 8-10, 2014. The Project Manager reported that the BBGHAD: (a) is working to minimize or avoid intertidal impact at the West End, (b) has tentatively agreed to the CCC's suggested concept of splitting the 600,000 cy nourishment into 2 phases— a 300,00 cy deposition at the beginning of the Project and a 300,000 cy deposition at or around 5 years after the initial nourishment, and (c) has discussed the concept of preparing a plan to remove septic systems at year 10 and implement removal of septic systems by year 20. The Project Manager reported that other agencies appear supportive of these concepts. The chair recognized the Vice Chair, who asserted that the BBGHAD should ensure that the CCC will not use the planned lack of septic leach fields in the future as a basis for moving the revetment farther landward— i.e., the BBGHAD should attempt to negotiate a permanently fixed revetment placement.

The Chair asked if the BBGHAD contemplates permitting the revetment for 20 years. Project Counsel responded affirmatively, and added that the BBGHAD advocated for a longer permit, but the CCC refused.

The Project Manager further reported that the Army Corps has circulated its Public Notice for the Project, and that the BBGHAD continues to try to reduce the 135-day maximum time frame allotted by the Army Corps for consultation with habitat and species agencies for the Project.

Project Counsel reported that BBGHAD staff has had multiple meetings with habitat agencies and other stakeholders regarding potential mitigation for loss of surfgrass and kelp habitat at the West End, and determined from these meetings that mitigation will not be feasible for these habitat losses. There is no known in-kind mitigation for loss of surfgrass and the costs and multiples associated with the implementation of out-of-kind mitigation exceed the means of the Project.

The Chair recognized Shaul Kuba, who asked if the BBGHAD has control over the septic systems at Broad Beach and also asserted that the issue of removing septic systems from Broad Beach likely focuses on costs and logistics. The Chair recognized Board Member Levitan, who asserted that the BBGHAD should not involve itself in septic systems if at all possible. The Chair then recognized Mark Attanasio. Mr. Attanasio stated concerns with the plan to nourish less at the West End as he believes that end of the beach will encounter accelerated post-nourishment erosion and such a plan may affect property values at that end of

the beach. The Board then discussed various points regarding potential effects of less nourishment than originally planned for the West End. [The Vice Chair exited the meeting at 11:30 a.m.].

The Chair recognized Jane Arnault, who asked if West End BBGHAD property owners would receive assessment refunds if the amount of sand at the West End is reduced. The Chair responded that such a determination has not been made but it will be considered as the Project continues through the permitting process. The Chair recognized Max Factor III, who asked if the Project contemplates additional vertical access. Project Counsel responded in the negative.

The Chair recognized Mark Attanasio, who asserted that Project permitting costs have been expensive and, for these costs to be beneficial, the Project needs to be implemented as soon as possible. Board Member Levitan agreed, and added that the BBGHAD remains committed to completing the Project as quickly as possible.

The Project Manager added that BBGHAD staff will meet with RWQCB staff next week to discuss water quality certification issues.

b. Project Outreach

No report was presented.

10. GHAD OFFICER REPORTS

a. Project Manager

No additional report was presented.

b. Treasurer Report

In light of the Treasurer's absence, the Chair reported that the monthly financial report is attached as Item 10b to the Board Packet, and the Project Manager confirmed the accuracy of the financial report, with \$1,062,806 anticipated cash on hand at the end of September 2014.

11. BBGHAD BOARD MEMBER REPORTS

Board Member Rosenbloom asserted that the Project will create a public beach and the BBGHAD needs to publicize this fact and support continual nourishment if necessary.

Board Member Levitan suggested that the Project Manager notify BBGHAD owners via e-mail of the CCC meeting and encourage owners to participate in the process.

12. PUBLIC COMMENT: NON-AGENDA ITEMS

None.

13. FUTURE MEETING

The Chair stated that the next BBGHAD Board meeting will be on October 5, 2014. The meeting will be at 9:00 a.m. at a private residence located at 31330 Broad Beach Road, Malibu, CA.

8. NEW BUSINESS

a. Magidson Trust- 30822 Broad Beach Road

The Chair re-called the matter, and representatives of the Magidson Trust were not present. The Chair recognized Board Member Levitan, who stated that the Magidson Trust should pay the BBGHAD up front to handle the permitting and installation of the gap rocks. Board Member Rosenbloom stated that the gap has harmed neighboring parcels and the Magidsons should be responsible for the problems.

MOTION: Board Member Rosenbloom moved as follows:

1. The BBGHAD Board agrees with the Magidsons that the “gap” in the revetment at the Magidson property should be filled with rocks (“Magidson Project”) similar in specification to that of the remaining portion of the revetment in the area of the Magidson Trust property.

2. The BBGHAD Board supports the Magidson Trust’s efforts to obtain the permitting necessary for the Magidson Project provided that such permitting and/or construction does not impede the BBGHAD’s ongoing permitting efforts and proposed construction of Broad Beach Restoration Project (“Project”). If the Magidson Trust proceeds with its own permit application and it is consistent with the overall Project, then the BBGHAD Board would support the Magidson Project with regulatory authorities.

3. If the Magidson Trust does not agree, or fails, to obtain the necessary permits to fill the gap on its own and at its own expense, then the BBGHAD Board authorizes the following:

(a) The BBGHAD will attempt to obtain the permitting and entitlements for the Magidson Project, and complete the construction work for the Magidson Project as part of the Project, with the Magidson Project rocks located at the final location approved by the various permitting agencies, all conditioned upon the Magidson Trust first providing the BBGHAD Project Manager with 1.5 times the total dollar amount of the following (“Magidson Deposit”) in immediately negotiable funds within 5 days of the Magidson Trust’s receipt of all of the “TBD” component amounts:

(1) hard costs of completing the Magidson Project (construction costs, material costs, including appropriate contingency amount): TBD

(2) the Magidson Trust’s share of the 2010 emergency permitting soft costs and required deposits: \$202/ft for soft costs + 229/ft for required deposits x 126’ (Magidson Trust frontage) = \$54,306

(3) actual costs to remove side/flanking barriers installed by neighbors to combat erosion caused by the gap: TBD

(4) BBGHAD soft costs for the Magidson Project: \$40,000.

(b) The BBGHAD Project Manager will cause the Magidson Deposit to be placed in an interest bearing account at a federally insured bank.

(c) If the BBGHAD's efforts are unsuccessful in obtaining the necessary permitting for the Magidson Project, "a" and "c" above will be refunded to the Magidson Trust, including any interest accrued.

(d) If the BBGHAD obtains the permits and entitlements necessary for the Magidson Project, and the Magidson Project is constructed, no later than 60 days after completion of the Magidson Project, the BBGHAD will refund to the Magidson Trust any remaining amount(s) of components "(1)", "(3)", and "(4)" of the Magidson Deposit.

(e) If the BBGHAD obtains the permits and entitlements necessary for the Magidson Project and the BBGHAD's Project Manager determines that amounts in excess of the Magidson Deposit will be needed to complete the Magidson Project, the Magidson Trust must provide such additional, immediately negotiable funds to the BBGHAD Project Manager within 48 hours of the BBGHAD's written request for same.

The Chair seconded the Motion. Hearing no further discussion, the Chair called the question. The Motion passed 3-0.

14. ADJOURNMENT

MOTION: Board Member Rosenbloom moved to adjourn. Board Member Levitan seconded the Motion. The Motion passed 3-0, and the meeting adjourned at 12:48 p.m.

Approved and adopted by the Broad Beach GHAD
Board on October ____, 2014.

NORTON KARNO, Chair

ATTEST:

BERNADETTE O'NEILL, Clerk