

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

**Sunday August 27, 2017; 9:00 a.m.
31030 Broad Beach Road, Malibu, CA 90265**

1. Call to Order

The Chair called the meeting to order at 9:09 a.m.

2. Roll Call

PRESENT: Chair Norton Karno, Vice Chair Marshall Grossman, Board Members Jeff Marine, Cathy Needleman and Shaul Kuba.

BBGHAD STAFF ALSO PRESENT: BBGHAD Engineer Russ Boudreau, Clerk/Treasurer Heike Fuchs, Project Counsel Ken Ehrlich, and Special Counsel Amy Sparrow participated by phone.

3. Adoption of Agenda

The Chair recognized Project Counsel, who reported that the agenda was posted on August 23, 2017 at approximately 6:00 p.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Vice Chair Grossman, who moved to adopt the Agenda as posted and Board Member Marine seconded the Motion. The Motion passed 5-0.

Closed Session

At 9:10 a.m., the Chair announced, without objection, that the Board would move into Closed Session.

Resumption of Regular Session

The Chair resumed Regular Session at approximately 10:22 a.m., and a report was given on Closed Session items.

7. Approve Summary of Actions from July 23, 2017 Meeting.

The Chair recognized Vice Chair Grossman, who moved to approve Summary of Actions from July 23, 2017, with edits regarding a date on Agenda Item #2 of the Summary and other grammatical edits as announced by Project Counsel. Board Member Marine seconded the Motion, and the Motion passed 5-0.

8. Ceremonial/Presentations

None.

9. Consent Calendar

None.

10. New Business

a. **Moffatt & Nichol Proposed Participation in Trancas Creek Restoration.**

The Chair recognized Project Counsel, who reported that BBGHAD Engineer has the opportunity to work for the Resource Conservation District of the Santa Monica Mountains (RCDSMM) in connection with the proposed Trancas Creek Restoration and seeks the BBGHAD Board's consent to work on this project.

MOTION: Board Member Marine moved for the Board to grant Moffatt & Nichol's ("M&N") request as long as no conflict of interest exists with the BBGHAD Project, and in future, if a conflict arises, M&N should be required to disclose same and resign from the Trancas Lagoon project. Hearing no further comments, the Chair called the question and the Motion carried 5-0.

b. **Consideration of Retaining Part-Time Election Official**

The Chair recognized Project Counsel, who reported that the Reef Group has raised issues regarding the September 10, 2017 assessment vote ("Vote") and the election of up to three (3) members of the BBGHAD Board of Directors Election in November 2017 and requested the BBGHAD to retain a neutral third-party to serve as Election Official. Project Counsel stated that staff conducted a thorough search for a candidate and found Ms. Donesia Gause, a certified Election Official.

The Chair recognized Vice Chair, who asked Ms. Gause to share her background information with the Board. The Chair recognized Ms. Gause, who stated that she is a former City of Carson City Council member, an experienced municipal clerk and election official, and has administered elections in four (4) different jurisdictions for the past seventeen (17) years.

A discussion ensued where specific questions regarding the voting for both elections were asked by homeowners and their legal representatives and answered by Ms. Gause and Project Counsel. Among other questions, Rob Scapa, counsel for Mr. Haagen asked Ms. Gause if, prior to her contact by the BBGHAD, she has ever known or worked with any members of the BBGHAD Board. Ms. Gause responded "no".

MOTION: The Vice Chair moved, and Board Member Marine seconded, to adopt Resolution 2017/07 appointing Ms. Donesia Gause as the Election Official to conduct the Elections, and authorizing Project Counsel to negotiate and enter into a necessary contract with Government Staffing Services, dba Munitemps.

The Chair opened the Motion for Board's comments. The Chair recognized Vice Chair, who stated that he read all the materials distributed by the BBGHAD, Mr. Haagen and the Reef Group, and other letters from homeowners, opining that the Project cannot afford any further delays, that the Board accommodated the Reef Group's request for an eight (8) weeks delay to generate a report for the proposed artificial reef, which has not yet materialized and that he does not want any further delay unless required by the law.

Hearing no further Board commentary, the Chair called the question and the Motion passed 5-0.

11. Old Business

a. Sand Source Update.

The Chair recognized Project Counsel, who reported that staff continues negotiations regarding the sand sources with CEMEX, Ventura County (Calleguas Creek) and Polaris. Project Counsel stated that CEMEX is in the process of retaining its CUP for its Moorpark facility, which caused a delay in finalizing the commercial deal between the BBGHAD and CEMEX.

The Chair recognized Vice Chair, who asked if Polaris has made any progress with the CCC staff regarding acceptance of its reformulated sand, and if the Polaris sand source is still a viable option? The Chair recognized Project Counsel, who responded that the CCC staff's position on the Polaris sand has not changed and that the Reef Group is assisting Polaris to reformulate the sand to meet the CDP's specifications.

The Chair recognized Mr. Hornstein, a legal representative for homeowner Magidson, who invited the Board and the Public to view two (2) sand boxes (8'x8') installed at 30822 Broad Beach Road, with a square of two (2) tons of Polaris sand and a square of Broad Beach sand for comparison. The Reef Group, with the help of Polaris consultant Sara Wan, is going to conduct measurements on heat retention of the two (2) boxes. It is the Reef Group's intention, with the help of the Board and Project Counsel, to approach CCC staff to schedule and receive a fair hearing and review of the Polaris sand.

The Chair recognized Project Counsel, who added that BBGHAD's technical staff never received guidance from the CCC staff on how to objectively determine the heat retention for the Polaris vs. Broad Beach sand.

The Chair recognized Mr. Hornstein, who stated that the Reef Group intends to agendize a presentation of the Polaris sand source at Malibu City Council meeting Monday night and invited the Board to participate.

The Chair recognized Coastal Commissioner Mark Vargas, who introduced himself and offered his neutral advice and perspective on the Project to everyone. Commissioner Vargas further stated that the Commission discussed the sand specifications and possible impacts on the habitat at length and contemplated the amounts of trucks before granting the CDP to the BBGHAD in 2015. Commissioner Vargas stressed the value to the BBGHAD of its existing

Coastal Development Permit and opined that this permit should not be relinquished.

The Chair recognized homeowner Ms. Rae Finegood, who advocated for the Polaris sand source, as it would be more environmentally friendly than trucked quarry sand.

The Chair recognized Mr. Hornstein, legal representative for homeowner Magidson, who inquired about more details of the proposed construction schedule and the proposed movement of sand from the Zuma Beach parking lot to the nourished beach. Project Counsel and Project Engineer responded that the Project Manager and contractor have developed detailed plans for the placement of sand and the logistics of such placement. Mr. Hornstein asked the Board to observe Ronald Reagan's oft quoted statement, "trust but verify".

The Chair recognized Alexander Haagen, who stated his concerns regarding various aspects of the Project, including a claimed lack of traffic planning and the claimed lack of direct beach-work experience possessed by the Project Manager.

The Chair recognized homeowner Ms. Judy Tannen, representative for Steve Lawrence, who inquired about the Springing License and how the Project could move forward without a 100% of the homeowners' signatures? The Chair recognized Project Counsel, who explained that the Springing license issue pertains only to the 78 revetment owners and described the challenge of finalizing the document with CCC staff and legal representatives. Project Counsel further stated that the final Springing Licenses were mailed last Friday and copies will be emailed to the 78 revetment owners on Monday.

The Chair recognized Alexander Haagen, a revetment owner, who stated that he will not sign the Springing License and asked how the Board continues to go forward if the Board knows that the Project is not going to receive 100% of the signature needed to comply with the CDP? The Chair recognized Vice Chair, who responded that the CCC is aware that 100% of the signatures will be difficult to attain and the CCC will have to deal with this issue on how to proceed with the homeowners who do not sign the Springing License. The Vice Chair stated that some homes have already granted lateral access to property seaward of their homes and, if these homeowners sign the Springing License, neither the CCC nor the SLC will enforce the existing lateral access easements. The Chair recognized Mr. Hornstein, who stated that the Reef Group disagrees with the interpretation of the Board's take of the term for lateral access easement.

The Chair recognized homeowner Bill Curtis, who asked Commissioner Vargas about his perspective on the Springing Licenses and the proposed Artificial Reef by the Reef Group. The Chair recognized Commissioner Vargas, who suggested that the Springing License issue is an essential aspect of the Project's CDP as it ensures mutual understanding of the permit's access provisions. the Commissioner deferred further comment to counsel for the CCC. Commissioner Vargas further opined that the proposed artificial reef has merit but alerted the public of the process, which could take several years to complete a permit application and additional time for the CCC itself to consider the application. The Commissioner stressed that the BBGHAD already has a valid CDP and that the CCC has since adopted a new sea level rise policy, taking into account the changing dynamic of climate change, and that it will become even more difficult in the future for the CCC to approve new applications. Commissioner Vargas further opined that the CCC has been very supportive of the Project.

The Chair recognized Mr. Scapa, a legal representative for Alexander Haagen, who inquired about the Board moving forward with the assessment vote despite the fact that it is uncertain that all prior to issuance (PTI) conditions of the CDP have been met. The Chair responded stating that the Board position is that most of the PTI conditions have been met and that CCC Senior staff CCC is supportive of the Project. The consensus of the Board is to conduct the assessment vote and to move forward with the Project.

The Chair recognized Mr. Scapa, who inquired about the status of the financing of the Project. The Chair stated that there have been discussions but it has not been finalized yet as financial institutions will not loan monies unless the assessment is in place to cover the Project costs.

The Chair recognized homeowner Max Factor, who asked the Board to confirm the receipt of the his recent mailing of a document highlighting claimed errors and omissions in the 2017 Engineer's Report, as well as the legal opinion from Best, Best & Krieger. The Chair confirmed receipt of the documents.

The Board and Project Counsel discussed, received and answered questions from homeowners regarding the increase in Project costs and the financial aspects of the Project.

The Chair recognized the Vice Chair, who suggested working together and to meet with the Reef Group to discuss potential resolution of issues. The Vice Chair stated that he favors the BBGHAD supporting the Reef Group concept for a limited time period and work toward a common project provided that, if joint effort fails in achieving the Reef Group's desired goals, then the Reef Group would support the Project.

The Chair recognized Alexander Haagen, who opined that the BBGHAD and the Reef Group should get together regardless of any conditions and without such an agreement to discuss the various issues the Reef Group has and to seek common ground. The Board discussed, with input from the public, possible formats for a meeting with the Reef Group. The Chair recognized the Vice Chair, who stated that he does not favor postponing the assessment vote but is supportive of future BBGHAD discussions with the Reef Group without any preconditions on either side. The Chair recognized Alexander Haagen, who reiterated holding off on the assessment vote, as lenders will not finance the Project in light of possible litigation.

The Chair recognized Board Member Kuba, who stated his concerns regarding the threat of litigation and opined that a lot of consideration and tremendous efforts and work has been put into the Project to secure the CDP and other permits, and opined that the Reef Group is adding more obstacles on the Project. Board Member Kuba concurred with Vice Chair Grossman to move forward with the assessment vote, explaining his concern that, if the BBGHAD CDP expires, the CCC will not likely reissue the Permit with the same conditions. The Chair concurred with Vice Chair and Board Member Kuba to proceed with assessment vote and is also in favor to meet with the Reef Group without any preconditions.

The Board and the Reef Group agreed to an unconditional "mediation-settlement" meeting with two (2) Board Members, and one (1) Counsel for each group, next Tuesday at 2:00 p.m.

b. Permitting and Regulatory Process Status

The Chair recognized Project Counsel, who update the Board on:

(i) Lead Agency Update:

(A) CCC

No separate report.

(B) Army Corps

The Chair recognized Project Counsel, who reported that the Army Corps and Regional Water Quality Control Board ("RWQCB") should issue their permits in the next 60 days and Congressman Ted Lieu is personally involved in the Army Corps permitting process. Unrelated to the BBGHAD or staff, the finalization of the Marine Habitat Monitoring & Mitigation Plan ("MHMMP") is now affecting the completion of the Army Corps permitting process, but the final MHMMP will be submitted to the Army Corps, NMFS, CCC staff and others on Monday.

(C) SLC

No separate report.

(ii) Responsible & Consulting Agency update:

The RWQCB asked for and received an updated Septic Report and reassured BBGHAD staff that its permitting schedule for the BBGHAD is identical to that of the Army Corps.

The City of Malibu provided some minor comments to the Caltrans permitting documents related to the temporary signal at Guernsey. Staff anticipates for it to be completed within the next couple of days.

c. Permitting Outreach & Strategy Update.

No separate report.

12. Public Hearing

a. Pending Assessment Vote

The Chair recognized Project Counsel, who reported that his office received approximately 55-57 assessment vote envelopes to date and that he is going to meet with the new Election Official Ms. Gause to discuss the Vote and update her on the details.

The Chair recognized Mr. Hornstein, who asked if Project Counsel could confirm that each homeowner received a ballot? Project Counsel confirmed that the law was complied with and the ballots were sent to the recorded address for the parcel.

13. BBGHAD Officer Report

a. Project Manager Report

No Report.

b. Treasurer's Report

The Treasurer reported that, as of August 22, 2017, the cash balance was \$ 2,350,074.01 and the estimated unpaid bills amounted \$302,239.44.

14. BBGHAD Board Member Reports

The Chair welcomed the newly appointed Board Member Cathy Needleman and Vice Chair Grossman stated his appreciation for Ms. Needleman serving on the Board. Ms. Needleman introduced herself to the public.

15. Public Comment - Non-Agenda Items

The Chair recognized Lynn Norton, who inquired about the Board Members' intentions regarding returning funds to the homeowners if the Project does not start in Fall 2017. Vice Chair Grossman responded to Ms. Norton's question.

The Chair recognized Commissioner Vargas, who stated his appreciation for the Board for all of its efforts and work securing Project permits and also stated his appreciation for the Reef Group. Vice Chair asked Mr. Vargas if he has any recommendation for a possible approval timeline for the Polaris sand and/or the artificial reef. Mr. Vargas recommended looking at the past, in which the BBGHAD spent approximately 3 ½ years in the CCC's permitting process and reiterated that it should not be assumed that the existing BBGHAD Permit would be extended or issued again. Mr. Vargas opined that there could be an opportunity for a Project modification, but it appears that there is still a lot of work to accomplish. Commissioner Vargas received and answered more questions and offered his personal cell phone number to discuss further. Commissioner Vargas stated that the CCC's priority is ensuring that the public has access to the coast, the CCC reacts to public applications, and also enforces violations of the Coastal Act.

16. Future Meeting

The Chair stated that the next BBGHAD meetings are scheduled for September 10, 2017, and, tentatively October 1, 2017, both to start at 8:00 a.m., locations to be determined.

17. Adjournment

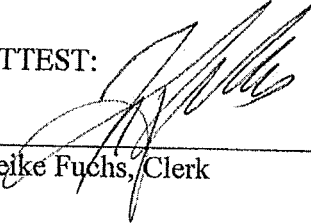
The Chair recognized Board Member Marine, who moved to adjourn Regular Session. Vice Chair Grossman seconded the Motion. The Chair called the Roll, and the Motion passed 5-0. Regular Session adjourned at 1:43 p.m.

Approved and adopted by the Broad Beach GHAD

Board on December 10, 2017

~~M B Grossman~~
VICE Chair ~~Norton S. Karno~~
Marshall Grossman

ATTEST:



Heike Fuchs, Clerk