

## Summary of Actions

### **BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT**

#### **REGULAR SESSION MEETING**

**Sunday, September 10, 2017; 9:00 a.m.  
31030 Broad Beach Road, Malibu, CA 90265**

#### **1. Call to Order**

The Vice Chair called the meeting to order at 9:07 a.m.

#### **2. Roll Call**

PRESENT: Vice Chair Marshall Grossman, Board Members Cathy Needleman and Shaul Kuba.

ABSENT: Chair Norton Karno, Board Member Jeff Marine

BBGHAD STAFF ALSO PRESENT: BBGHAD Engineer Russ Boudreau, BBGHAD Election Official Donesia Gause, Clerk/Treasurer Heike Fuchs, Malibu West Advisor Chris Spiros, Project Counsel Ken Ehrlich, and Special Counsel Amy Sparrow participated by phone.

#### **3. Adoption of Agenda**

The Vice Chair recognized Project Counsel, who reported that the Agenda was posted on September 6, 2017, at approximately 6:00 p.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Vice Chair recognized Board Member Kuba, who moved to adopt the Agenda as posted and Board Member Needleman seconded the Motion. The Motion passed 3-0.

#### **Closed Session**

At 9:09 a.m., the Vice Chair announced, without objection, that the Board would move into Closed Session.

#### **Resumption of Regular Session**

The Vice Chair resumed Regular Session at approximately 9:28 a.m., and a statement was given on the Closed Session item. The Vice Chair stated that the Board went into Closed Session early this morning due to the voluminous amount of legal materials received from various law firms in the last two to three days. The Vice Chair further stated that all materials referenced and any material received today will be accepted and will be made part of the record.

The Vice Chair explained the planned proceedings regarding the tabulation of the assessment vote, Agenda items # 5a and #5b. The Vice Chair announced that the Board decided in Closed Session, regardless of the outcome of the assessment vote, not to move forward with immediate implementation or levy of the assessment on the 2017/18 tax rolls due to the voluminous legal materials received on short notice. The Vice Chair

further stated that the Board intends to explore opportunities to work with the Reef Group to present again to CCC staff sand from the Polaris sand source for ocean delivery. The Vice Chair also stated his intention to re-engage with west end members who wish to be excluded from the BBGHAD, and expressed hope that this matter can be resolved in a timely manner.

The Vice Chair recognized Project Counsel, who reiterated the receipt of an overwhelming amount of legal advocacy materials from opponents of the Project in the last couple of days. Project Counsel further informed the homeowners that, in general, the Board has the discretion to proceed with both Resolutions, to tabulate the votes, and to consider levying on the assessment. In this instance, the Board decided to move forward with Agenda Item 5a regarding Resolution No. 2017/08 in accordance with the result of the tabulation, but the Board decided not to consider Agenda Item 5b or Resolution No. 2017/09 at this meeting..

#### **4. Approve Summary of Actions from August 27, 2017 Meeting**

The Vice Chair recognized Project Counsel, who reported that Mr. Magidson's counsel, Jim Hornstein, requested edits to the Summary of Actions on page 4 as it relates to comments made at the August 2017 Board meeting regarding the proposed production schedule and proposed sand movement from the Zuma Beach parking lot to Broad Beach. Project Counsel stated that he incorporated the edits requested by Mr. Hornstein. The Vice Chair recognized Board Member Needleman, who moved to approve the Summary of Actions from August 27, 2017, with the changes incorporated by Project Counsel. Board Member Kuba seconded the Motion, and the Motion passed 3-0.

#### **5. Public Hearings**

##### **a. Tabulation of Assessment Ballots.**

The Vice Chair recognized Project Counsel, who presented an overview of the process of tabulating the assessment ballots, and further announced that, after the staff's presentation and after the closing of public comment, members of the public have a final opportunity to cast their vote and/or change their vote.

The Vice Chair recognized Mr. Magidson's legal representative, Jim Hornstein, who asked if the votes are going to be announced. Project Counsel responded affirmatively, adding that votes will be tabulated in real time and the real time tabulation will be projected on a wall and announced by address, and/or parcel number.

The Vice Chair recognized Project Counsel, who gave a PowerPoint presentation encompassing updates on the Project, including the permitting process with the federal authorities, viable sand sources, revetment consequences, "springing" license agreement and public access, the Science Advisory Panel and related cost increase of the Project, and the overall benefit of the Project for the homeowners. At the end of his presentation, Project Counsel urged the homeowners to support the Project.

The Vice Chair announced that the Board would consider public comment and protests, if any, on the proposed new BBGHAD assessment and stated that property owner ballots would be tabulated after the closing of the public comment period.

The Vice Chair recognized Chris Spiros, Malibu West Board Advisor, who asked to verify that: a) if the Board chooses not to impose or levy the new assessment, would the new assessment, if it passes, be placed on the tax roll immediately, and b) when is the soonest that the Board could implement the new assessment? The Vice Chair responded by stating that, based on the Board's decision earlier today, the new assessment would not be levied immediately and the Board would seek to work together with the different parties to resolve all open issues.

The Vice Chair recognized Rhea Perlman, who asked if: a) the Board would continue to try finding less expensive sand, even if the Project starts off using the CEMEX sand source, and b) if any of the Project costs decrease, would the assessment be lowered? The Vice Chair responded affirmatively, stating that the current contract negotiations with CEMEX entail a one year agreement, with an option to extend. The Vice Chair further stated that possibilities exist for the BBGHAD to negotiate and reduce certain costs with third parties, but also remains hopeful that the monitoring costs could be reduced in the future. The Vice Chair recognized the Project Engineer, who stated that he anticipates, based upon his experience, certain aspects of the beach monitoring and monitoring fees could decrease in the future.

The Vice Chair recognized Alexander Haagen, who disputed the stated views that fees could be lowered due to increase in costs for sand and fees for borrowing funds to cover Project costs. The Vice Chair responded that consultants have advised the Board that their future projections show a decrease in costs. The Vice Chair recognized the Project Engineer who added there may be additional viable sand sources in and around Santa Monica Bay in the near future which could be more cost effective. The Vice Chair recognized Project Counsel, who stated that all the financing the Board considered is based upon five year financing starting each major sand nourishment with a new financing cycle.

The Vice Chair recognized Rob Scapa, who announced himself as a legal representative for Ms. Jane Arnault. Mr. Scapa reported that Ms. Arnault filed a civil lawsuit concerning the assessment on September 6, 2017, and proceeded to serve Project Counsel with the Complaint. The Vice Chair commented that it is unfortunate that a lawsuit has been filed and that the Board's intent was to avoid expensive and time-consuming litigation. The Vice Chair encouraged Mr. Scapa and his clients to dismiss their lawsuit without prejudice at the meeting and/or in the near future.

The Vice Chair recognized Elizabeth Zaillian, who inquired about the consequences of the potential failure of the assessment vote. The Vice Chair stated that the Board has not contemplated failure but would address the serious consequences if the assessment vote fails. The Vice Chair further stated that, at the last Board meeting, Coastal Commissioner Mark Vargas asserted that, if the BBGHAD's CDP expires, it would be highly unlikely for the current composition of the CCC to reissue the CDP

with the same or similar conditions. Ms. Zaillian further inquired about the Board's intent to reduce the assessment in the future.

The Vice Chair recognized Project Counsel, who responded that the Board has the discretion to lower the assessment at any time. Project Counsel received, discussed and responded to different Project scenarios and cost related questions, and timing of the implementation of the assessment and its ramifications.

The Vice Chair recognized Elizabeth Zaillian, who inquired about the number of lawsuits filed against the BBGHAD, and what the final date would be to start the nourishment in 2017. Project Counsel responded that the BBGHAD, for over a year, has been involved in litigation over the proposed truck route for hauling Moorpark-area sand, explained that the trial court upheld the subject haul route contract, and mentioned that this suit is now on appeal. Project Counsel added that, minutes ago, the BBGHAD was served with another lawsuit, which would require separate attention. The Vice Chair recognized Project Engineer, who stated that November 1, 2017 would be the very latest to start beach nourishment this year.

The Vice Chair recognized Max Factor, who stated that the suit filed by Ms. Arnault last Friday followed three (3) settlement meetings with members of the BBGHAD Board and added that Ms. Arnault is not asking to stop the Project, but rather seeks the assessment structure to comply with California Constitution Article 13 D, paragraph 4. Mr. Factor added that he prefers a mutually acceptable outcome and that Ms. Arnault remains willing to discuss this matter further. Mr. Factor suggested posting the legal opinions of Best, Best & Krieger and the coastal engineering report on the BBGHAD website, and suggested postponing the closing of the assessment vote. Mr. Factor further renewed his request to the Board to postpone any approved plans by the CCC and other agencies.

The Vice Chair recognized Mr. Hornstein, legal representative for Mr. Magidson, who asked to confirm receipt of the letter from Mr. John Flynn with Nossaman LLP. The Vice Chair responded affirmatively. Mr. Hornstein asserted that his clients are not seeking to disband the BBGHAD, but rather seek to defer placing the assessment on tax roll to allow for a Project amendment to secure ocean-delivered Polaris sand and turn the Project "into an affordable and sustainable Project" in accordance with the opponents' opinion. Mr. Hornstein urged the property owners to vote "NO".

The Vice Chair recognized Michael Schwab, who inquired about the details of the financing of the Project. The Vice Chair deferred to Chair Karno's expertise and handling of the financing. Project Counsel also reviewed the financial details as outlined in previous Board meetings.

The Vice Chair recognized Elizabeth Zaillian, who inquired: a) about the time period, if the vote passes, the new assessment payments would be put on hold, and b) if the BBGHAD would be able to lower the Project costs in the future. The Vice Chair recognized Project Counsel, who responded that: a) it is difficult to determine the period

of time for implementation at this point because we do not know what future Board action may be, and b) the Board can lower the assessment at its discretion and, if approved today, the ceiling of the assessment would be the three (3) tiered assessment as stated in the 2017 Engineer's Report plus CPI increases, and the Board, as its discretion, could lower the assessment.

The Vice Chair recognized Diane Sherman, who asked if the assessment could go up depending of the monitoring results and if the CCC could request additional conditions on the BBGHAD, and asked if there is a limit/ceiling to the new assessment? The Vice Chair responded that, if there would be a need for new CDP, then the costs would be determined by the terms and conditions of the new CDP, adding that the Board is not in favor of seeking a new CDP, but rather be supportive of a possible amendment of the current CDP to accept a less expensive sand source.

The Vice Chair recognized Alexander Haagen, who asked about more details with respect to the financing of the Project. The Vice Chair recognized Project Counsel, who referred to the BBGHAD budget distributed to all the homeowners, stating that the financing details are incorporated in the budget and the Chair's preliminary discussions with City National Bank. Project Counsel stated that the loan could only be finalized when the Project is fully permitted and the assessment is in place to support the budget.

The Vice Chair recognized Elizabeth Zaillian, who stated her concern with respect to the NO-voters, which could reflect negatively on the community as a whole and could potentially have a negative impact with the CCC. The Vice Chair recognized Mr. Hornstein, a legal representative of Mr. Magidson, who opined that the "No" votes would send a message to CCC staff and the CCC that the community does not embrace the current CDP and could gain leverage to possibly amend the CDP to add the less expensive sand source, Polaris.

The Vice Chair called for a brief recess at 10:57 a.m. At approximately 11:04 a.m., the Vice Chair called the meeting back to order.

The Vice Chair recognized Mr. Hornstein, who inquired about the status of the filings of Form 700 by the required filers. The Vice Chair recognized Project Counsel, who responded that the County has yet to finalize the BBGHAD's conflict of interest policy, but the forms completed to date are available from the Clerk. Project Counsel also reminded Mr. Hornstein that all Board candidates in the pending Board election are required to complete Form 700s and send them to the Election Official as well. Project Counsel stated, that all completed forms will be made available online, and the Clerk agreed to email copies to Mr. Hornstein directly.

The Vice Chair recognized Rhea Perlman, who asked Mr. Alexander Haagen, if he would accept the Vice Chair's offer, to present the alternative Polaris sand source as a group to the CCC. Mr. Alexander Haagen responded affirmatively.

a. Tabulation of Assessment Ballots

Hearing no additional questions or comments, the Vice Chair called for the tabulation of the ballots. The BBGHAD Election Official Ms. Donesia Gause and Project Counsel then counted the ballots. Upon the completion of the manual counting and tabulation by Ms. Gause, Project Counsel announced that a majority protest does not exist and the assessment vote passed with 57 owners representing 2280.79' voting in favor and 39 owners representing 1931.25' voting against.

MOTION: Following the BBGHAD Election Officials' announcement, Board Member Needleman moved for the Board to adopt Resolution No. 2017/08 and accept the Election Official's statement of assessment ballots. Board Member Kuba seconded the Motion, and the Motion passed 3-0.

The Vice Chair recognized Project Counsel, who announced that Resolution No. 2017/08 should become effective immediately upon passage and adoption, and the Vice Chair and Clerk signed Resolution No. 2017/08.

- b. Resolution 2017/09: Confirmation of Assessment and Authorization of the Levy and Collection of the Assessment for the BBGHAD

No consideration.

## 6. Ceremonial/Presentations

None.

## 7. Consent Calendar

None.

## 8. New Business

None.

## 9. Old Business

The Vice Chair recognized Project Counsel, who reported that updates on the following were provided in today's PowerPoint presentation.

- a. Sand Source Update
- b. Permitting and Regulatory Process Status
  - (i) Lead Agency Update
    - (A) CCC
    - (B) Army Corps
    - (C) SLC

- (ii) Responsible & Consulting Agency update: RWQCB, NMFS, Cal. DFW, CalTrans, etc.

c. Permitting Outreach & Strategy Update

No Updates

**10. BBGHAD Officer Report**

a. Treasurer's Report

The Treasurer reported that, as of September 5, 2017, the cash balance was \$2,109,541.25 and the estimated unpaid bills amounted to \$159,258.96.

**11. BBGHAD Board Member Reports**

No Reports.

**12. Public Comment - Non-Agenda Items**

No Comments.

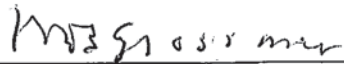
**16. Future Meeting**

The Vice Chair stated that the next BBGHAD meeting is scheduled for October 1, 2017, to start at 9:00 a.m., and location to be determined.

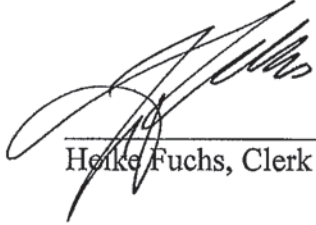
**17. Adjournment**

The Vice Chair recognized Board Member Needleman, who moved to adjourn Regular Session. Board Member Kuba seconded the Motion. The Vice Chair called the roll, and the Motion passed 3-0. Regular Session adjourned at 12:38 p.m.

Approved and adopted by the Broad Beach GHAD  
Board on December 10, 2017

  
Marshall Grossman, Vice Chair

Attested



---

Heike Fuchs, Clerk