

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday, September 18, 2016; 9:00 a.m.

31030 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

The Chair called the meeting to order at 9:10 a.m.

2. ROLL CALL

PRESENT: Chair Norton Karno, Vice Chair Grossman, Board Member Bill Curtis, and Board Member Jeff Marine.

ABSENT: N/A

BBGHAD ALSO PRESENT: Project Engineer Russ Boudreau, Clerk/Treasurer Heike Fuchs, and Project Counsel Ken Ehrlich.

3. ADOPTION OF AGENDA

The Chair recognized Project Counsel, who reported that the Agenda was posted on September 15, 2016, at 8:30 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Board Member Curtis, who inquired about his request to agendize the issue of West End Refunds and the fact that the agenda does not reflect same. The Chair responded that, due to time constraints and the fact that the matter has been thoroughly discussed and decided on by the Board, he decided not to agendize it.

The Chair recognized Board Member Curtis, who moved to amend the agenda adding the West Ends Refunds on the Closed Session Agenda. The Chair recognized Vice Chair Grossman who suggested discussing this matter in Open Session under Board Member Reports as this matter was not agendized. The Chair recognized Board Member Curtis, who stated his preference of discussing it in Closed Session as it potentially concerns litigation prevention. Vice Chair asked Project Counsel for his advice. Project Counsel opined that Board Member Curtis' two (2) concerns about the west end Agreement (the binding of successors and the scope and breadth of the release) can be discussed in Regular Session. Project Counsel added that his understanding of the law is that an agenda can only be amended if there is a true emergency and advised to discuss it in Open Session.

The Chair recognized Board Member Curtis, who amended his Motion to keep the Agenda as presented. Board Member Marine seconded the Motion. The Chair called the question, and the Motion passed 4-0.

Board Member Curtis moved to adopt the Agenda as presented. The Chair recognized Board Member Marine, who seconded the Motion. The Motion passed 4-0.

Closed Session

At 9:14 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 10:57 a.m.

7. APPROVAL SUMMARY OF ACTIONS FROM AUGUST 28, 2016 MEETING

The Chair recognized Project Counsel, who announced minor grammatical corrections and edits on page #1, #3, #4, and page #5. The Chair recognized Board Member Marine, who moved to approve the Summary of Actions subject to the corrections announced by Project Counsel. Vice Chair Grossman seconded the Motion, and the Motion passed 4-0.

8. Ceremonial/Presentations

None.

9. Consent Calendar

None.

10. Public Hearings

None.

11. OLD BUSINESS

a. Permitting and Regulatory Process Status

- (i) Lead Agency Update: CCC (and Science Advisory Panel), SLC and Army Corps

(A) CCC (and Science Advisory Panel)

1. Budget Consequences of Draft Monitoring Plan

The Chair recognized Project Counsel, who reported that a SAP meeting occurred since the last Board Meeting. Project Counsel stated that sections of the Habitat Monitoring & Mitigation Plan ("Plan") have been sent to Moffatt & Nichol, Richard Beck of MBI International, and Project Counsel. Project Counsel stated that he hoped to have a complete Plan for the Board's review, but staff still awaits same. Project Counsel further reported that Mr. Merkel estimates \$850,000/year to implement solely the Plan. The Chair added that this estimate is for the monitoring only and does not cover any possible mitigation costs.

Project Counsel informed the Board that, as a result of this estimate, Board Member Marine and BBGHAD Manager ENGE0, have become involved in the budgeting process confirming all Project cost estimates. It has become clear that the proposed Plan costs will cause Project costs to exceed the current BBGHAD assessment. The Chair added that, based upon the current assessment, the Plan as proposed prevents the BBGHAD from moving forward with the Project. Project Counsel thanked Board Member Marine for his time and involvement.

The Chair recognized Board Member Curtis, who asked if the BBGHAD could afford the Plan, does the Plan represent a reasonable amount of testing and appropriate pricing for the monitoring as proposed by the SAP. The Chair recognized Vice Chair Grossman, who responded that there are two (2) components to Board Member Curtis' question: 1) is the Plan appropriate for the Project, and 2) does the BBGHAD need all the Plan's proposed monitoring and if so, is the pricing reasonable? The Chair recognized Project Counsel, who responded that, based on his discussions with Keith Merkel, the Plan contains an unreasonable amount of testing. Project Counsel informed the Board that at all the SAP meetings, the BBGHAD staff has informed all in attendance that the scope of work encompassed by the Plan is excessive and cost prohibitive to the Project. Project Counsel further stated that BBGHAD sub-consultant Keith Merkel prepared the Plan as directed by CCC staff and the SAP, which now allows the BBGHAD to share its concerns with CCC senior staff, and, perhaps, even the Commission itself.

The Chair asked Project Counsel what the CCC senior staff told the BBGHAD concerning the habitat monitoring costs. Project Counsel responded that CCC senior staff told the BBGHAD that they would not impose anything on the Project that the BBGHAD could not afford. The Chair stated that this is a relevant statement. The Chair added that he will not support an increased assessment at this time. The Chair stated that the BBGHAD has already lost 22 homes/contributors to the assessment pool due to the CCC's elimination of the West End scope of the Project, and the remaining homeowners can not support the excessive monitoring costs, excluding possible mitigation costs, adding approximately \$20 million to the Project over 20 years period of time.

The Chair recognized Board Member Curtis, who asked if the BBGHAD could seek Court review or other third-party intervention to assist the BBGHAD's position and find, for example, that certain Plan components are unnecessary. The Chair recognized Project Counsel, who responded that some Plan aspects are only applicable to Broad Beach and some are applicable to other beaches as well. The Chair recognized the Vice Chair, who inquired if any objective third party exists who can address the legitimacy of the SAP costs to demonstrate that this program and its associated expenses are highly disproportionate and unnecessary to the Project. The Chair responded that the BBGHAD already retained as sub-consultant Keith Merkel, who is a highly sophisticated expert in this area and supports the BBGHAD's position that the SAP requirements are excessive.

The Chair again recognized the Vice Chair, who asked if staff is now equipped with all the information needed to argue the Plan requirements. The Chair recognized Project Engineer Boudreau, who responded that he is not a biologist and therefore not qualified to make these arguments, as they are very technical. The Vice Chair then asked how long it would take for biologist Merkel to outline the BBGHAD's objections to the Plan requirements. The Chair recognized Board Member Marine, who concurred with the Vice Chair adding that the

BBGHAD must counter the Plan with a viable alternative. The Chair concurred with the Vice Chair and Board Member Marine stating that the BBGHAD has to counter the Plan with: a) the BBGHAD cannot afford the Project if the projected Plan cost of \$850,000/year is imposed, and b) a viable Plan version that the BBGHAD could afford.

The Chair recognized Board Member Curtis, who asked if the CCC still wants the Project to move forward and if there is a recognized monitoring cost structure attributable to other beach nourishment projects. The Chair recognized Project Counsel, who responded affirmatively and explained known costs for the larger SANDAG beach nourishment project in San Diego. Project Counsel explained that, according to the scientists, Broad Beach has a very unique, habitat-rich bay and that the West End is a very unique and sensitive area that requires enhanced monitoring. The Chair recognized Project Engineer Boudreau, who reported that SANDAG's first project had monitoring findings showing that the project had little or no impact on the environment, and, therefore, the second SANDAG project required no additional monitoring. The Chair recognized Project Counsel, who reported that, according to the BBGHAD Engineer, SANDAG monitoring costs were approximately a quarter of the BBGHAD's proposed monitoring costs.

The Chair recognized Board Member Curtis, who asked if the real issue is: a) that the testing is appropriate, but the Board does not like the costs, or b) if the Board thinks the costs are excessive and inappropriate? The Chair recognized Project Engineer Boudreau, who stated that Broad Beach is a Marine Protected Area (MPA) and an Area of Special Biological Significance (ASBS), which raises the level of required testing. The Chair stated that BBGHAD consultant Keith Merkel must complete the draft Plan and give his expert views on the scope of work and costs. The Chair recognized the Vice Chair, who stated that, based on documents reviewed by him, Keith Merkel has very good relationships with the SAP, and the BBGHAD should let him handle the situation. The Vice Chair stated that the BBGHAD needs biologist Merkel and inquired if the BBGHAD is current on his payments. The Chair recognized Project Engineer, who responded affirmatively except for the spring monitoring (approximately \$200,000) and the latest Plan drafting work.

The Chair recognized the Vice Chair, who asked if the BBGHAD is paying BBGHAD consultant Keith Merkel \$200,000 to \$300,000 annually in addition to the SAP. The Chair recognized Project Engineer Boudreau, who responded that Mr. Merkel, in addition to working with the SAP and preparing the monitoring plan, completed very effective pilot monitoring for approximately \$30,000.00 and a very labor-intensive spring monitoring for approximately \$200,000. The Project Engineer further explained that these are annual costs and are part of the projected monitoring expenses. The Chair further explained that there are at least three (3) components to the monitoring program: 1) administrative costs, 2) monitoring program, and 3) mitigation.

The Chair recognized Project Engineer Boudreau, who stated that he concurs with Project Counsel that the Plan drafting process has been too slow, but it is breaking new ground and Mr. Merkel is doing a very good job in preparing the document in accordance with feedback received from Moffatt & Nichol staff. The Chair explained that Mr. Merkel is preparing the Plan draft at the direction of the SAP, which amounts to the \$850,000 in annual monitoring costs. Technically, Mr. Merkel is doing a good job, but fundamentally Mr. Merkel does not support

much of the Plan content and is trying to scale back on Plan requirements, addressing the areas where he believes the scope of work and costs are excessive.

The Chair recognized Board Member Curtis, who opined that Keith Merkel may be conflicted as it relates to the Plan because as the Plan becomes bigger his income increases. Board Member Curtis suggested that the BBGHAD may have another biologist conduct the negotiations with the SAP and CCC staff. The Chair responded that the BBGHAD has not made a commitment to Keith Merkel to do the monitoring program yet and the Board does not believe that Mr. Merkel is misusing his position to make the monitoring program deliberately bigger than necessary.

The Chair recognized the Vice Chair, who asked how long it would take for the biologist to clarify in writing all of the elements of the SAP that are not necessary for the Project, the elements that should be scaled back, and the elements that are necessary for the Project. The Chair recognized Project Engineer, who responded that Mr. Merkel could produce this document within a two (2) week time frame.

The Chair recognized Board Member Curtis, who asked if there is another biologist available to the BBGHAD as, in his opinion, Mr. Merkel has been either ineffective or is conflicted. The Chair recognized Project Engineer, who responded that he believes Mr. Merkel has not been ineffective because he has failed to convince the SAP/CCC staff to scale back the Plan scope of work. The Chair recognized Project Counsel, who stated that Mr. Merkel continues to advocate for reduced scopes of work, but has been dismissed by CCC staff, SAP members, and other agencies. Project Counsel opined that Mr. Merkel has done good job acting on the BBGHAD's behalf arguing the technical issues of the Project. Project Counsel further stated that negotiations are now at a different stage and the BBGHAD needs an advocate reaching out to the CCC staff and asking to address the BBGHAD's concerns with the SAP and to take control.

The Chair recognized Vice Chair Grossman, who asked Project Engineer about his recommendations in which areas of the monitoring program to scale back. The Chair recognized Project Engineer, who responded that he concurs with the Vice Chair that consultant Merkel should identify the areas he believes are absolutely necessary, areas that can be scaled back, and areas that are unnecessary, revisit the budget and formulate arguments to create a budget affordable for the BBGHAD.

The Chair stated that there are three (3) SAP members, CCC junior staff, and other agencies, all of whom may be biased at the meetings. This leaves only the BBGAHD biologist advocating on behalf of the BBGAHD and this process has come to a logical conclusion that is unacceptable to the BBGHAD. The Chair suggested that the resolution has to be either through CCC senior staff or the CCC itself.

The Chair recognized Vice Chair, who asked if the BBGHAD is obligated to use the draft Plan document under any circumstances, and that it is a work product protected document through Moffatt & Nichol. The Chair recognized Project Counsel, who responded that he doubts that it is a work-protected document, but that the BBGHAD has an Expert Retention letter with Moffatt & Nichol. Vice Chair asked Project Engineer to ensure that Mr. Keith Merkel's work for

the BBGHAD is considered to be part of Moffatt & Nichol and a work product protected document.

The Chair asked Project Engineer about his professional opinion for the next five (5) year cycle forecast of the additional nourishments and backpassing after year 1 as they are major factors in Project costs and may determine if the community should consider a higher assessment. The Chair opined that these steps should be taken before arguing the SAP monitoring costs before the CCC. The Chair recognized Board Member Marine, who added that he has been working on the BBGHAD assumptions for the past two (2) weeks and learned that many variables exist in the budget and it is difficult to anticipate the costs for years after initial nourishment. Board Member Marine opined that, if the BBGHAD successfully nourishes the beach, an increased chance exists that the community would support a future assessment increase.

The Chair recognized Board Member Curtis, who asked if the Board believes the CCC will reduce the Monitoring Plan scope based on the BBGHAD's budget. The Chair responded that, in his opinion: 1) there is no absolute answer to the need of scientific study and that this is in an area of subjective perspectives, and 2) senior CCC staff and the CCC want this Project as it is a privately funded project benefiting the public. The Chair added, that, in his opinion, the BBGHAD must communicate to senior CCC staff that the Plan may cause the termination of the Project, especially in light of the BBGHAD's prior expenses (approximately \$13 million) and budget.

The Chair recognized Max Factor III, who stated that the BBGHAD's challenge is to argue the excessive costs in light of property values. Mr. Factor stated that approximately \$600,000 per year for monitoring is not that much of an increase for each homeowner when considered in light of the belief that the nourishment may significantly increase Broad Beach property values. Mr. Factor suggested that the BBGHAD argue that: the Project seeks to manage sea level rise, the beach nourishment is only temporary as the beach has to be re-nourished every 5 years, the BBGHAD has already spent \$13 million dollars, not including the costs for moving the revetment, the CCC-imposed license agreement will have a significant impact on the owners and property values, and that, the BBGHAD will spend millions of dollars benefitting the public and the environment.

The Chair recognized the Vice Chair, who concurred with Max Factor III adding that the BBGHAD should argue the benefit to the public. If the Project fails to go forward, the public will continue without a beach. The Chair added that the BBGHAD also has to conduct a septic study within a 3-year timeframe.

The Chair recognized Vice Chair, who added another argument that some homeowners have become increasingly comfortable with the rock revetment as a means of protecting their homes. Vice Chair asked Project Counsel to be prepared to argue all of the facts and the Chair added that the homeowners each have paid well over \$100,000 for the process that has not put any sand on the beach yet.

The Chair recognized the Vice Chair, who opined that the best person to develop the message is Board Member Marine. The Chair recognized Board Member Marine, who agreed to

participate in the upcoming meeting with the CCC staff. Board Member Marine asked Project Counsel for his opinion of the likely senior CCC staff response to Board Member's Marine position. The Chair recognized Project Counsel, who opined that the CCC is going to state that they support the Project and want the Project to move forward, maintain that they need a robust monitoring program, and are going to take all the information into consideration and respond with a 20% to 40% reduction in costs.

The Chair recognized Board Member Curtis, who inquired about how the BBGHAD could get the information required more timely from Keith Merkel. The Chair recognized Project Counsel, who responded that he is going to put the request in writing and going to call Mr. Merkel immediately after the meeting. Project Counsel further explained that he does not have an explanation for the delay of the report, but is hopeful that Mr. Merkel will provide the requested information timely.

The Chair instructed Project Counsel to raise the stakes with consultant based on timing, establishing the fall data baseline requirements, and to tell biologist Merkel that the Board is very distraught over not having been able to review Mr. Merkel's draft and that time is of the essence. The Chair instructed Project Counsel to report back to the Board by Tuesday September 20th when the Mr. Merkel's draft is going to be available for review by the Board and, additionally, request a report from Merkel reflecting the BBGHAD's position of the monitoring program. The Chair recognized Board Member Curtis, who asked to provide a copy of Mr. Merkel response to all Board Members. Project counsel agreed to do so.

The Chair recognized the Project Engineer, who stated that there is a benefit to having a robust monitoring program. The monitoring is not for science only, but the agencies may also use this information to determine if the BBGHAD will have any mitigation obligations. The findings from the monitoring program may support a defense against possible mitigation demands. The Chair inquired if the SAP recommends mitigation at the end of the 5-year time frame, is it possible for the BBGHAD to inform CCC that the Project has become unaffordable and is going to terminate the Project? The Chair recognized Project Counsel, who responded that this is a possibility.

The Chair recognized Max Factor III, who stated that studies show that the change in water temperature may cause fish life/species to move to different locations and Mr. Factor voiced his concern that the CCC is going to demand mitigation from the BBGHAD. The Chair recognized Project Engineer, who responded that Moffatt & Nichol monitors nearby reference sites and, if water temperatures rise, it would also affect the reference sites and the BBGHAD would not be imposed with mitigation solely due to this claim.

The Chair asked Project Counsel if the BBGHAD implements the Project exactly as permitted, but it is later determined that such actions negatively impact the beach, does the SAP have the right to recommend mitigation? Project Counsel responded that the SAP has the right to recommend mitigation to be confirmed by the CCC. Project Counsel further added that BBGHAD staff is arguing with CCC staff on the definition of an "impact". The BBGHAD position is that within the Project footprint we should not be asked to do mitigation except if the Project has an adverse impact beyond the BBGHAD footprint.

The Chair recognized Project Counsel, who reported that the permit requires the BBGHAD to compare data to reference sites, and part of the annual expense of \$850,000 monitoring expense is the monitoring of the reference sites.

The Chair asked the Project Engineer to present the most probable scenario of nourishing and managing the beach for the next 5 years. The Chair recognized Project Engineer, who responded that, in his professional opinion, the BBGHAD will nourish 300,000 cu. yds. (months 1-12), backpass 25,000 cubic yards (months 13-24), backpass 12,500 cu. yds. (months 25-36), followed by interim nourishment 75,000 cu. yds. (months 37-48), and backpass 12,500 cu. yds. (months 48-60). The Project Engineer further reported that the updated BBGHAD budget estimate reflects this estimate and the represent his best professional projection.

The Chair instructed Project Counsel to get an updated Post Brothers quote for beach construction costs in 2017, and updated quotes for 2017 from the quarries.

The Chair thanked Max Factor III for his input/comments.

(B) SLC and Army Corps.

The Chair recognized Project Counsel, who reported that the BBGHAD received the first invoice from the SLC in the amount of \$50,000 for back rent due October 7, 2016, and the lease package, which he has not reviewed fully as of yet. The Chair asked if the lease has been executed yet and if the \$50,000 invoice is tied into the approval of the monitoring plan. The Chair recognized Project Counsel, who responded that the lease has not been executed yet, but his understanding is that the \$50,000 is the first installment for back rent and that the payment is independent of the monitoring plan.

The Chair recognized Project Counsel, who reported that the BBGHAD submitted the draft Environmental Assessment (EA) to the Army Corps. Project Counsel informed the Board that staff had preliminary discussions and were told that the Army Corps intends to issue an Environmental Assessment as the NEPA compliance document, that the Army Corps considers its alternatives analysis complete and will not require more alternatives analysis. Project Counsel further reported that the Army Corps is in the process of reviewing and editing the BBGHAD's EA and other documents. Project Counsel opined that the proposal is currently pending and will remain so for the next weeks while under review by Army Corps.

Project Counsel further reported that the BBGHAD received an updated biological opinion, included in the Board Packet, stating that the Project is not going to have an adverse impact on the snowy plover, but they proposed additional conditions, which our technical consultant Richard Beck is currently reviewing. Project Counsel added that staff is still waiting for the essential fish habitat (EFH) consultation from NMFS, which staff expects to receive within the next couple of weeks.

Project Counsel further reported that staff has a conference call scheduled with Congressman Ted Lieu and his staff at the end of the week to keep everyone accountable and on schedule. Project Counsel explained that the Army Corps typically demands mitigation before a project starts if it believes that the project will have a negative impact. The Army Corps has

agreed to change this framework, subject to the SAP findings, but Project Counsel alerted the Board that the Army Corps is not obligated to change mitigation demands even if the CCC would chose to do so. Project Counsel stated that the Army Corps suggested a mitigation fund, bond or a line of credit, which is included in the BBGHAD budget, not to exceed \$750,000 (opined by BBGHAD consultant Richard Beck). The Chair recognized Vice Chair, who stated that, in order to maintain integrity and transparency with the stakeholders, it is essential that the BBGHAD inform Richard Beck and the Army Corps of all developments with the SAP.

The Chair recognized Project Counsel, who opined that it is a critical time for the Project as many reports are coming to a close and are being finalized. The Chair asked Project Counsel to estimate the timing on the Army Corps' NEPA decision and if the BBGHAD must confirm a sand source before the Army Corps will do so. The Chair recognized Project Counsel, who responded that the mid-range for a response to EA path is 45 days and responded affirmatively that the BBGHAD has to confirm a sand source at this time, but that the Army Corps, for their purposes of analysis, assumes that the BBGHAD will use quarry sand.

The Chair referred to the biological opinion on the snowy plover, included in the Board Packet, regarding, among other points, the requirement to enforce leashed dogs on the beach. The Chair recognized Vice Chair, who stated that L.A. County law prohibits dogs on every public beach and that the County is responsible to enforce the law. The Vice Chair added that the BBGHAD is not a law enforcement agency, but the homeowners should be reminded that it is against the law to have dogs on the beach.

The Chair recognized Board Member Curtis, who stated that it is unreasonable for the BBGHAD to assume responsibility for conditions beyond the BBGHAD's control. The Chair instructed Project Counsel to check if there are any other conditions or implication of mitigation exposure to be defensive of the BBGHAD. The Chair recognized Project Counsel, who reported that consultant Richard Beck asked to discuss the revised biological opinion and proposed conditions at the BBGHAD's weekly conference calls. The Chair recognized Board Member Curtis, who asked Project Counsel to notify the Board if staff finds conditions that have nothing to do with the Project. Project Counsel responded affirmatively.

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

The Chair recognized Project Counsel, who reported that he met with the RWQCB Executive Officer of the Water Board last week. The EO stated that that the RWQCB is working on the Project's Water Quality Certification, and that the Water Board is ensuring that they are on the same time frame as the Army Corps.

- b. Permitting Outreach & Strategy Update.

No Report.

c. BBGHAD Insurance.

The Chair recognized Project Counsel, who reported that staff is working with BBGHAD Manager ENGEO to develop a \$10 million liability insurance package and a separate Directors & Officers insurance package for the BBGHAD and its employees and staff, and anticipates a quote shortly. The Chair recognized Vice Chair, who asked Project Counsel to specify the insurance. Project Counsel responded that he is discussing the following insurance products: Directors & Officers insurance, Property, Liability, and coverage for independent contractors as well.

12. New Business

a. Procedure for Filling Vacancy on BBGHAD Board of Directors.

The Chair recognized Project Counsel, who reported that Board Member Lotman has resigned from the BBGHAD Board as of September 13, 2016. Project Counsel explained that GHAD law gives the Board 60 days to appoint a new Board Member to serve out the remaining term of Mr. Lotman, which concurrently ends with the Vice Chair's term on December 31, 2017. Project Counsel further stated that, if the BBGHAD Board appoints a new Board Member within the 60 days, the BBGHAD can avoid an election. If this appointment does not take place, then a special election must occur in accordance with California law.

The Chair asked if there has been any interest from BBGHAD members to serve as Board Member. Project Counsel responded that Mr. Barry Sholem inquired about scope of the commitment and is considering the position.

The Chair recognized Vice Chair, who stated that the vacant office should be made available to everyone in the BBGHAD. The Chair concurred with Vice Chair instructing Project Counsel to post the vacant office on the BBGHAD website and inform the public that it is very probable that an appointment is made at the next Board Meeting, as well as sending out an email to the homeowners.

The Chair stated that Jeff Lotman called him before he emailed his resignation due to his inability to attend any of the Board Meetings. The Chair sent a note to Mr. Lotman thanking him and expressing appreciation on behalf of the BBGHAD Board.

The Chair recognized Board Member Curtis, who asked if a Board Member sells their home and then rent on Broad Beach if they would still qualify to serve on the Board. The Chair responded that they no longer would qualify to serve on the Board. Board Member Curtis recommended compiling a list with potential new candidates.

b. Project Manager Search

The Chair recognized Project Counsel, who reported that he received two (2) potential recruiting firms from the Clerk. In addition Project Counsel prepared a Project Manager job

description with the guidance of the Chair, Vice Chair, and Project Engineer. The job description has been circulated, posted on the BBGHAD website, and is included in the Board Packet.

Project Counsel further reported that he has received four (4) interested candidates and their resumes are included in the Board Packet. Project Counsel explained that two (2) of the candidates are applying as a team and are recommended by homeowner Jack Pritchett. Matt Finegood recommended the other two (2) candidates.

The Chair recognized Board Member Curtis, who asked if the recruiter has done a market study to find out what the salary requirements are based upon Project Counsel's job description. The Chair suggested asking potential candidates for their salary requirements up front. The Chair asked Project Engineer about his thoughts on required skills for the new Project Manager. The Chair recognized Project Engineer, who opined that the BBGHAD needs a person with a strong construction background, strong negotiations skills, and project management background, as the BBGHAD permitting process is almost finalized. The Chair concurred with Project Engineer and opined that the Project needs a candidate who can source, secure and conclude Project sand and negotiate the transportation in addition to overseeing the routine and administrative work of the Project.

The Chair expressed his confidence in Board Member Marine's ability to screen potential Project Managers. The Chair recognized Board Member Marine, who agreed to help in the process of narrowing it down to 1-2 candidates, but have the Board make the decision collectively.

13. BBGHAD Officer Report

a. Treasurer's Report

The Treasurer reported that, as of September 13, 2016 the cash balance was \$3,038,028.04 and estimated that unpaid bills amount to \$467,230.76.

14. BBGHAD Board Member Reports

The Chair recognized the Vice Chair, who reported that the City of Malibu acquired the Trancas Field parcel across PCH for approximately \$11 million. The Vice Chair summarized the history of this vacant land, and its significance. The Vice Chair stated that it took a lot of litigation, but the City of Malibu purchasing the property is very good news for the community. The Chair thanked Marshall Grossman on behalf of the TPOA for spearheading and taking the lead role in this matter.

The Chair recognized Board Member Curtis, who summarized Resolution 2015/06 passed in October 2015, under which west end owners receive a refund of the difference between the amounts paid under the 2012 assessment from January 1, 2015 and June 30, 2015 and the amount that would have been owed had the 2015 assessment been in place for the same time period-- but must release any right to contest or object to the Project. Board Member Curtis stated that he agrees with the aspects of the agreement except for the release. Board Member

asked the Board to modify the release to state that the homeowner received the credit and the acceptance of receipt.

The Chair recognized the Vice Chair, who asked Board Member Curtis to specify his request. Board Member Curtis responded that the full extent of the release should confirm that west end owners paid a certain amount from the inception of the BBGHAD assessment until June 30, 2015, and should release claims based on the original assessment in exchange for the refund.

The Chair recognized Max Factor III, who suggested that the west end owner refund should be agendized for the next Board Meeting to be properly discussed for possible revisions.

The Chair stated that Board Member Curtis requested to agendize it, but the Chair declined due to: a) existing agenda items were anticipated to be lengthy discussions, and b) this matter had been previously raised and discussed by the Board Members for many hours, and it represents a repeat of a matter already fully considered by the Board.

The Chair recognized Board Member Curtis, who inquired about the philosophy of the extended release. The Chair responded that if a west end owner receives a refund, the Board decided that it would not be appropriate for that owner to object to the Project and potentially file a lawsuit and stop the Project, and b) a 4 year statute of limitation exists for refund claims on assessments, meaning that owners could file a claim in September 2016 for property tax refund of taxes paid in, for example, 2012, and the Board does not want the homeowners to claim more refunds after they have received the refund in accordance with Resolution 2015/06. The Board's policy consideration was not to have any further dispute with the west end owners after having received the refund.

The Chair recognized Board Member Curtis, who inquired if the Board believes that rights of the 22 West End Homeowners should differ from the rest of BBGHAD members.

The Chair stated that the determination was made by the unanimous vote, including west end owners' representatives, to adopt resolution 2015/06.

The Chair recognized the Vice Chair, who asked if Board Member Curtis would agree to a scenario where the end result caused past claims to be released and prevented west end owners to challenge the legality of the current assessment. Board Member Curtis responded that, in his opinion, that would be a fair resolution to all.

The Chair reiterated that the Board decided on the resolution for refunds given, regardless of the amount, to ensure finality to the issue. The Chair stated that he would not vote to revise Resolution No. 2015/06, but, if the majority of the Board wants to consider revising it, then it should be agendized for next Board Meeting. The Chair recognized Board Member Marine, who responded that he is not prepared to vote as he has not studied the matter.

The Chair recognized Vice Chair, who invited Board Member Curtis and Mr. Factor to suggest language in a potential agreement that, in their opinion, would be acceptable to west end owners.

The Chair recognized Jane Arnault, who summarized her belief of the essence of the west end owners' position. Ms. Arnault claimed that west end paid for outside counsel who advised the homeowners that, if there is no benefit received, benefit being defined as "the sand", then the BBGHAD cannot impose an assessment. Ms. Arnault further stated that this information was given to the Board, but the Board still asserted that west end owners benefitted from the Project.

The Chair responded that the Board itself never asserted that the west end owners would benefit or not benefit from the Project's sand placement. Instead, the Board relied upon the expertise of independent parties such as ENGEO and Moffatt & Nichol to determine the appropriate allocation of benefits under a new assessment, and the Board never gave input or recommendations in this process. The Chair further stated that the Board adopted the independent parties' recommendation as to what the allocation should be, which resulted in the 2015 Engineer's Report.

The Chair recognized Max Factor III, who stated that he intended to leave the meeting because he disagreed with the Chair's comments and he believed the comments offended his spouse, Ms. Arnault. Mr. Factor further asserted that he provided the Board with information from a coastal engineer retained by Mr. Factor, and this coastal engineer concluded that the 2015 assessment was higher than appropriate on west end owners. Mr. Factor added that the release letter should state that west end owners are being paid a refund for monies paid after learning that the 22 parcels would not receive direct sand nourishment.

The Chair recognized Board Member Curtis, who asked that the Board agendaize this matter, and asked Project Counsel to research the release letter and come up with a resolution to resolve this matter.

The Chair apologized to Ms. Jane Arnault, and Ms. Arnault accepted the apology and apologized for using the wrong terminology. The Chair responded to Board Member Curtis' request that he does not want to spend any more legal fees on the west end refund issue. The Chair recognized Project Counsel, who opined that there is no legal assignment associated with changing the language of the agreement, but rather Project Counsel is looking for guidance from the Board for what the scope of the release should be.

The Vice Chair asked Mr. Factor why he and Ms. Arnault are choosing to leave the meeting. Mr. Factor responded that this issue is not going to be discussed in a public meeting.

The Chair recognized Vice Chair, who stated his view of trying to keep harmony on the beach, even if he disagrees strongly with some points made during the discussion, and he seeks a resolution reflective of everyone's interest. The Vice Chair stated that he agrees with the Chair's position that this matter has been argued and discussed at length, but he is open to re-examine this issue. The Vice Chair suggested narrowing the release and to agendaize this matter for Closed Session, if appropriate. The Board unanimously agreed to reconsider this issue at a later Board meeting.

The Chair stated that claims for refunds were filed against the BBGHAD Board, but were not acted upon within six (6) months. The Chair added that he has never been informed that those claims were withdrawn, meaning that the claims still exist.

15. Public Comment - Non-Agenda Items

Project Counsel announced that Ms. Wini Lumsden, who has been very instrumental to the Project, the TPOA and Broad Beach in general, has accepted an offer to sell her house and is scheduled to move in October.

16. Future Meeting

The Chair stated that the next BBGHAD meetings are scheduled for October 16, 2016 and November 20, 2016 to start at 9:00 a.m., location to be determined.

17. Adjournment

Board Member Marine moved, and Board Member Curtis seconded, to adjourn the meeting. The Motion passed 4-0, and the meeting was adjourned at 2:08 p.m.

Approved and adopted by the Broad Beach GHAD
Board on _____

NORTON KARNO, Chair

ATTEST:

HEIKE FUCHS, Clerk

Project Counsel announced that Ms. Wini Lumsden, who has been very instrumental to the Project, the TPOA and Broad Beach in general, has accepted an offer to sell her house and is scheduled to move in October.

16. Future Meeting

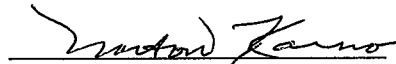
The Chair stated that the next BBGHAD meetings are scheduled for October 16, 2016, and November 20, 2016, ~~combined meeting with TPOA meeting, both~~ to start at 9:00 a.m., location to be determined.

17. Adjournment

Board Member Marine moved, and Board Member Curtis seconded, to adjourn the meeting. The Motion passed 4-0, and the meeting was adjourned at 2:08 p.m.

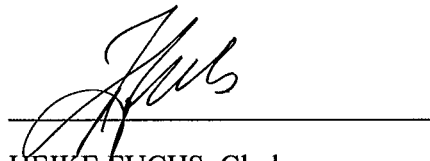
Approved and adopted by the Broad Beach GHAD

Board on October 16, 2016



NORTON KARNO, Chair

ATTEST:



HEIKE FUCHS, Clerk