

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday October 16, 2016; 9:00 a.m.

31030 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

The Chair called the meeting to order at 9:15 a.m.

2. ROLL CALL

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

ABSENT: Board Member Bill Curtis

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

3. ADOPTION OF AGENDA

The Chair recognized Project Counsel, who reported that the Agenda was posted on October 13, 2016 at 8:30 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Board Member Jeff Marine, who moved to approve the Agenda as presented. Vice Chair Grossman seconded the Motion. The Chair called the question, and the Motion passed 3-0.

Closed Session

At 9:17 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 10:32 a.m., and a report was given on Closed Session items.

6. APPROVAL SUMMARY OF ACTIONS FROM SEPTEMBER 18, 2016 MEETING

The Chair recognized Board Member Marine, who moved to approve the Summary of Actions from the September 18, 2016 Board Meeting with certain minor edits announced by Project Counsel. Vice Chair Grossman seconded the Motion, and the Motion passed 3-0.

7. CEREMONIAL/PRESENTATIONS

None.

8. CONSENT CALENDAR

None.

9. PUBLIC HEARINGS

None.

10. OLD BUSINESS

a. Permitting and Regulatory Process Status

(i) Lead Agency Update

(A) CCC (and Science Advisory Panel)

1. Budget Consequences of Draft Habitat Monitoring Plan

The Chair recognized Project Counsel, who reported that BBGHAD staff has worked for the past month to create a CDP-mandated Habitat Monitoring & Mitigation Plan (“Plan”) acceptable substantively and from a budget perspective to the BBGHAD. Project Counsel stated that the current Plan, as directed by SAP and CCC staff, would cost approximately \$850,000 per year to implement. Project Counsel further reported that BBGHAD staff submitted the Plan with provisions directed by the agency, but with a cover note stating clearly that the BBGHAD could not implement the Plan as submitted because the Plan costs exceed the current BBGHAD assessment, and requesting a meeting with CCC staff to discuss a more manageable Plan scope of work.

Project Counsel informed the Board that CCC staff agreed to meet on October 17, 2016, and Board Member Marine, BBGHAD biologist Keith Merkel, Project Counsel, and Tonia McMahon of Moffatt & Nichol staff will represent the BBGHAD at the meeting.

Project Counsel further reported that, separate from the Plan requested by CCC staff and the SAP, BBGHAD biologist Merkel submitted a reduced scope Plan that, according to Merkel, would cost the BBGHAD approximately \$450,000/year to implement, complies with the CDP, and would yield the same data as the more expensive version. Project Counsel alerted the Board that, according to Merkel, any further cost reductions on the Plan (below the \$450,000 reduced scope Plan) would require a revision to CDP Section 6.

Project Counsel asked the Board, in light of the excessive costs for the Plan and other potential Project expenses, for guidance for the October 17 meeting with CCC staff.

The Chair summarized the findings of the newly received ENGEO budget proposal based on the updated Quarry sand quote. The Chair stated that, if the most recent proposal is correct and implemented, the current assessment would have to be increased from the current \$602.14/lineal foot to approximately \$850/lineal foot, an approximate \$10,000/year increase for a 40-foot parcel, and the West End would increase to approximately \$212/lineal foot.

The Chair asked Project Counsel to verify his findings that the ENGEO budget eliminated legal fees for 2017 and onward. Project Counsel responded affirmatively. The Chair thanked everyone for putting the budget together and opined that the numbers/costs are largely understated in the proposed budget. The Chair pointed out three (3) examples of the problems with budget: a) the elimination of legal fees from 2017 on, 2) a 5% return on financing excess cash and generating an approximate \$1,000,000 in earnings is too high, 3) a 3% CPI increase for assessment is too high as CPI has averaged 1 % for quite some time. The Chair concluded that, based on the Quarry sand costs and the Plan (reduced scope), the assessment would need to be increased to the range of \$900 to \$1000 per lineal foot and \$ 225 to \$250 per lineal foot for the West End to match Project components and costs contained within the newly received ENGEO budget proposal .

The Chair suggested the following possible alternatives moving forward: 1) inform the CCC staff that the BBGHAD's proposed reduced scope Plan complies with the CDP and the BBGHAD Board would request the community for an increase of the assessment from \$600 to approximately \$1000 per lineal foot if the CCC agrees to the lower cost Plan (\$450,000.00), 2) inform CCC that the costs of complying with the Plan, even at the reduced annual cost (\$450,000) proposed by Merkel remain so high that they may destroy the viability of the Project, or 3) the BBGHAD Board will seriously consider asking the CCC to revise the CDP to allow for an even further reduced scope for the Plan, reducing the SAP monitoring costs to an amount affordable for the BBGHAD. Separately, the Chair urged BBGHAD staff to request Merkel to reduce Plan the costs to \$200,000 – \$250,000 annually, or the BBGHAD may obtain a second independent view by a new biologist.

The Chair asked Project Counsel if he agrees with the Chair's summary of possible alternatives. The Chair recognized Project Counsel, who responded affirmatively.

The Chair recognized the Vice Chair, who stated that the Chair properly identified viable alternatives and suggested to proceed with the CCC staff meeting tomorrow accepting Mr. Merkel's assessment of the Plan's costs and asking the CCC staff for alternative ideas and or suggestions for additional habitat monitoring cost reductions. The Vice Chair further asked BBGHAD staff to explore potentially less expensive alternative sand sources and identify these newly presented alternatives with CCC staff. The Vice Chair stated that, at this moment, he is not inclined to ask the BBGHAD owners for an assessment increase, and would rather scale back aspects of the Project to render the Project more viable. The Vice Chair further added that, for the upcoming TPOA meeting, the BBGHAD should update TPOA members on the Project.

The Chair asked the Vice Chair how the Vice Chair suggests presenting the BBGHAD's position, without increasing the assessment, to the CCC staff at tomorrow's meeting. The Chair recognized the Vice Chair, who responded that he would be transparent with the CCC staff, expressing the BBGHAD's desire for CCC staff to support the reduced scope Plan, and concurrently inform CCC staff that the BBGHAD has concerns, even after reducing Plan costs to \$450,000 annually, that the Project may not be viable. In addition, the Vice Chair suggested informing CCC staff that the BBGHAD seeks additional cost savings through alternative sand sources. In the interim, the BBGHAD should request the CCC staff to approve Merkel's reduced cost Plan and welcome CCC staff suggestions on further cost reductions. The Vice Chair further suggested informing CCC staff that, if the BBGHAD cannot make the necessary adjustments, then the BBGHAD Project would have to be revised dramatically, including the potential to eliminate sand nourishment.

The Chair recognized Board Member Marine, who stated that the scope of work should be revised and sent to other consultants for possible cost reductions. Board Member Marine reminded the Board that too much of a reduced scope of work might result in paying future mitigation. Board Member Marine added that the Board should not discuss a potential assessment increase with the community since BBGHAD staff and others involved in the assessment process do not have a final recommendations for a revised assessment or certain estimates of Project costs. The Chair recognized the Vice Chair, who stated his appreciation for Board Member Marine's efforts on the budget.

The Chair added that, to have any possibility of 2017 beach nourishment, the BBGHAD must decide on authorizing \$230,000.00 for Fall baseline data testing in accordance with the Plan and other guidance from CCC staff and the SAP. The Chair stated that another alternative would be to inform CCC staff that the costs for the Project exceed our budget and request further input from CCC staff.

The Chair recognized Vice Chair, who inquired about: a) the scope of work for the \$230,000.00 cost, the consequences of not completing the Fall 2017 sampling work, and if the CDP would be violated by not conducting the baseline testing. The Chair recognized Project Counsel, who responded that: a) \$230,000.00 is the cost for the Fall baseline data sampling, which needs to be completed prior to implementation of the Project, b) the costs for the immediate Fall baseline data testing will remain the same regardless of the CCC's position on the full scope or reduced scope Plan, and c) if the BBGHAD decides not to authorize the Fall baseline data sampling, no per se CDP violation would occur, but the Project would be delayed for at least a year. Project Counsel opined that delaying the Project for another year would likely increase Project implementation costs in many aspects, including increased transportation and sand costs.

The Chair recognized Board Member Marine, who asked, if the BBGHAD conducts the Fall baseline data testing now, can the resulting data be used for beach nourishment in the future (beyond 2017). The Chair recognized Project Engineer, who opined that the BBGHAD would probably not be able to use the same data for 2018 beach nourishment because the beach environment is so dynamic.

The Chair stated that the BBGHAD should remain consistent on its message to the CCC staff and opined that, if the BBGHAD spends the money for the Fall testing, it would send the message that the BBGHAD still has complete confidence in going forward with the Project.

The Chair recognized Vice Chair, who inquired about any possibility of reducing the costs for the Fall baseline data testing. The Chair recognized Project Engineer, who responded that, in his opinion, the costs could not be reduced substantially since there is only a small window for Fall testing. The testing must be completed by October 31, 2016, and it takes time sourcing new sub-contractors to sample eelgrass and other tasks.

The Chair recognized a representative of a BBGHAD homeowner, who stated that the Project appears quite important to the CCC and suggested additional negotiation points such as: a) the BBGHAD's pioneering efforts, which will be directly applicable to other California coastal communities, and b) questioning the frequency of testing of the beach to reduce costs.

The Chair responded by explaining that, due Broad Beach's location in an environmentally sensitive habitat area, the CCC imposed the Science Advisory Panel- and its costly and strict monitoring Plan- on the BBGHAD.

The Chair recognized Vice Chair, who asked Project Engineer if other qualified contractors could consider the Plan and submit competitive bids for implementation. The Chair recognized Project Engineer, who stated that Merkel's Plan contains unique elements and other biologists might not be able to meet the scope of the monitoring Plan and implement the many innovative and cost-reducing techniques proposed by Merkel.

The Chair recognized the Vice Chair, who asked for the Chair's position on authorizing the Fall baseline testing for the Plan. The Chair responded that the Board must decide today due to the relatively late date to implement the work and have it validated by the SAP. The Chair stated that, based on his view on the possibility of cost reduction, and bringing down the costs to a viable range of the current assessment, he is undecided at this moment and would support the other Board Members' decision on this matter.

The Chair recognized Vice Chair, who asked the Board if it would be helpful to adopt a resolution instructing BBGHAD staff to reevaluate the Project by eliminating the sand replenishment component, and if it would be within the BBGHAD's authority to do so, report back by next Board Meeting, and then share this information with CCC staff. The Chair requested the Vice Chair's position on implementing the Fall testing for the Plan and potentially counteracting the impact of spending the \$230,000.00 by adopting a resolution calling for an entire reevaluation of the Project. The Vice Chair responded affirmatively.

The Chair recognized Board Member Marine, who stated that he does not favor authorizing the Fall baseline testing, but he would agree to it if it is confirmed that Plan

costs and overall Project costs would be significantly reduced since such significant reductions would give the Board a better understanding of the total budget. Board Member Marine stated that the community may be more receptive to a smaller increase than presently discussed, in the \$700-\$750 per lineal feet range for those parcels paying the full assessment.

The Chair explained that the CCC staff would not provide immediate or definitive input on the BBGHAD's proposals. Instead, CCC staff would likely take months to respond and the passage of time would hurt the BBGHAD and the Project.

The Chair asked the Project Engineer how long it would take to receive definitive answers regarding the additional costs and other aspects of the alternative sand source from British Columbia. The Chair recognized Project Engineer, who responded that he anticipates receiving useful information regarding the marine delivery option within the next few days to weeks. The Project Engineer further reminded the Board that, if the BBGHAD decides to use the marine delivery option, the CDP must be amended- and such an amendment would take 3-6 months to process.

The Chair asked Project Engineer's opinion of the deadline to decide on the Fall baseline data testing. The Chair recognized Project Engineer, who responded that Merkel must know by tomorrow, October 17th, if the BBGHAD is going forward with the Fall baseline data testing to meet the CDP-imposed deadlines.

The Chair characterized the Project's overall viability as the critical factor in considering the Fall testing. The Chair recognized Vice Chair, who stated that economic and collateral consequences would exist if the Board chooses not to authorize the Fall testing. The Chair concurred with Vice Chair, adding that: a) the Project construction could not begin in Fall 2017 if the current testing is not completed, and 2) another year delay could increase Project costs another 10% or more.

The Chair recognized Board Member Marine, who asked Project Counsel if he believes that is it viable to start the Project in 2017 if the BBGHAD chooses to amend approvals and applications to a marine delivery option. The Chair recognized Project Counsel, who responded that the Project Description would have to be changed and it would take approximately six (6) months to process with agencies. Therefore, a less than 50% chance exists for the Project to start in September 2017 if the BBGHAD pursues a change to marine delivery.

The Chair recognized Max Factor, who stated that it appears that the CCC prefers grain size closely matching existing beach. Mr. Factor asked if viable sand sources exist closer to Broad Beach than those under current consideration. The Chair responded by stating that a potentially viable new alternative sand source exists from British Columbia, and the vendor can blend the sand to any coarseness specification, but color may be uncertain.

Mr. Factor stated that the coarseness of the sand appears to trigger mitigation as stated in CCC's October 2015 staff report and suggested that a smaller grain size would

please the SAP and the CCC, allowing the BBGAD to have more productive negotiations. The Chair concurred, stating that the marine delivery option, if viable, would also eliminate the estimated 22,000 truck trips and reduce Project impacts.

The Chair called the question on the Fall sampling mandated by the Plan. The Chair recognized Vice Chair, who stated that he favors authorizing the sampling to preserve the potential of beginning construction in 2017. The Chair concurred with the Vice Chair and sought Board Member Marine's input. The Chair recognized Board Member Marine, who concurred with the Chair and Vice Chair in favor of authorizing the \$230,000.00 payment for the Fall baseline data testing.

The Chair recognized Vice Chair, who asked the members of the public for their suggestions in this matter. The Chair recognized Max Factor, who stated that he does not have sufficient information to opine on the matter. Mr. Factor also voiced his concern about the Project budget and stated that an assessment increase appears inevitable to implement the Project as presently envisioned.

The Chair recognized Patt Healy, who asked how much the costs would increase if the Project would be postponed for another year. The Chair recognized Project Counsel, who responded that the BBGHAD could not predict the costs, as many variables affect pricing—including sand costs, trucking rates, and shipping costs for marine delivery.

The Chair recognized a homeowner representative, who suggested asking the CCC staff to allow the Fall 2016 baseline data testing to remain valid for two (2) years to reduce the costs for annual testing. The Chair recognized Project Counsel, who responded that the beach is a dynamic environment and changes are assured over the course of a year. Typically, the more technical information the BBGHAD provides to the SAP/CCC staff, the better the result for the BBGHAD. For example, if the beach size changes next year, more sand or less sand on the beach, the BBGHAD can use this information as a baseline to argue the numbers to benefit the BBGHAD relative to the Plan's reference sites.

The Chair asked Project Counsel if he is clear on the directions given to BBGHAD staff. The Chair recognized Project Counsel, who answered affirmatively.

MOTION: Vice Chair Grossman moved, and Board Member Marine seconded, that the Board approve the completion of Fall 2016 baseline sampling as required by the Plan. Hearing no further discussion, the Chair called the question, and the Motion passed 3-0.

The Chair recognized Project Counsel, who stated that he acknowledges the directions from the Board for tomorrow's meeting.

(B) SLC and Army Corps.

No report.

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

No Update.

b. Permitting Outreach & Strategy Update

No Report.

c. BBGHAD Insurance

No Update.

11. NEW BUSINESS

a. Vacancy on BBGHAD Board of Directors

The Chair recognized Project Counsel, who reported that due to Jeff Lotman's resignation, the BBGHAD posted the necessary notices, provided necessary information, and also informed L.A. County about the BBGHAD's intention to appoint a new director. Project Counsel further reported that he placed a significant amount of phone calls to BBGHAD members and, as a result, two (2) members appeared interested in serving as a Director: Shaul Kuba, an owner of 31388 & 31406 Broad Beach Road, and Ms. Kathy Needleman, an owner of 30874 Broad Beach Road. The Chair asked Project Counsel if he has confirmation from both candidates of their willingness to serve. The Chair recognized Project Counsel, who responded affirmatively. The Chair stated that Mr. Kuba's properties are located on the West End and, if appointed, the Board would have two (2) west end homeowner representatives.

The Chair recognized Board Member Marine, who informed the Board that Mr. Kuba is partner in a large real estate investment and development firm and opined that Mr. Kuba would be a strong addition to the Board. The Chair recognized the Vice Chair, who opined that both candidates are very qualified to serve on the Board, pointing out that Ms. Needleman has been an active member of the TPOA for a long time and owns and manages significant real estate holdings and other business ventures. The Vice Chair stated that he would be pleased with either candidate joining the Board.

The Chair recognized Board Member Marine, who reminded the Board that Board Members Curtis' home is for sale and a possibility exists of another Board vacancy fairly soon. Board Member Marine recommended Mr. Kuba for the immediate position, followed by Ms. Needleman when the Curtis parcel is sold. The Chair stated that he respects both of the candidates and recognizes that Mr. Kuba has significant real estate expertise and is undecided because of the issue of representation for the west end. The Chair recognized Vice Chair, who stated that he understands the Chair's concern, but that he trusts that everyone on the Board is looking out for the best interest of the entire beach, and it appears that Mr. Kuba could be immediately helpful to the Board.

MOTION: Board Member Marine moved, and Vice Chair seconded, to adopt Resolution No. 2016/04 to appoint Mr. Shaul Kuba to serve as a member of the BBGHAD Board of Directors, filling the currently vacant Board position. Hearing no further comment, the Chair called the question, and the Motion passed 3-0.

The Chair instructed Project Counsel to convey to Ms. Needleman that the Board appreciates Ms. Needleman's willingness to serve on the Board, inform Ms. Needleman that the Board was torn between the candidates, and that there is a strong possibility of a vacancy on the Board fairly soon as one of the Board Member's has his home for sale. Project Counsel agreed to do so.

b. Project Manager Search

The Chair recognized Board Member Marine, who reported that he, Project Counsel and possibly newly appointed Board Member Kuba will begin the screening process for a new Project Manager in the coming days and then plan to interview the top candidates. The Chair asked Board Member Marine to invite the potential candidates to the next Board Meeting for the Board to make a decision.

12. BBGHAD OFFICER REPORT

a. Treasurer's Report

The Treasurer reported that, as of October 11, 2016, the cash balance was \$2,889,778.12 and the estimated unpaid bills amount to \$ 593,180.26.

13. BBGHAD BOARD MEMBER REPORTS

None.

14. PUBLIC COMMENT - NON-AGENDA ITEMS

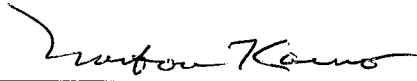
A quorum was lost at 12:35 p.m. when Board Member Marine left the meeting. The Chair asked Project Counsel to update those in attendance on bypassed agenda items. The Chair recognized Project Counsel, who reported that the Army Corps has indicated that it is withholding final Project consideration until it is satisfied with the BBGHAD's final habitat monitoring plan and mitigation framework.

15. FUTURE MEETING


The Chair stated that the next BBGHAD meetings are scheduled for November 20, 2016 (combined with TPOA Annual Meeting) and December 18, 2016, both to start at 9:00 a.m., location to be determined.

Approved and adopted by the Broad Beach GHAD

Board on November 20, 2016


NORTON KARNO, Chair

ATTEST:


HEIKE FUCHS, Clerk