

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday, August 28, 2016, 9:00 a.m.

31030 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

The Chair called the meeting to order at 9:06 a.m.

2. ROLL CALL

PRESENT: Chair Norton Karno, Vice Chair Marshall Grossman, Board Member Bill Curtis (arrived 9:09 a.m.), and Board Member Jeff Marine.

ABSENT: Board Member Jeff Lotman.

BBGHAD ADVISOR &/OR STAFF ALSO PRESENT: Board Advisor Chris Spiros (arrived at approximately 11:00 a.m.), Project Counsel Ken Ehrlich, and Clerk/Treasurer Heike Fuchs.

3. ADOPTION OF AGENDA

The Chair recognized Project Counsel, who reported that the Agenda was posted on August 25, 2016, at 8:30 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. Vice Chair Grossman moved to adopt the Agenda as presented. The Chair recognized Board Member Marine, who seconded the Motion. The Motion passed 3-0 (Board Member Curtis not yet present).

Closed Session

At 9:07 a.m. the Chair announced, without objection, that the Board would move into Closed Session.

Board Member Marine departed the Board Meeting at 10:31 a.m. Closed Session recessed at 10:47 a.m.

Resumption of Regular Session

The Chair resumed Regular Session at approximately 11:00 a.m.

7. APPROVAL OF SUMMARY OF ACTIONS FROM JULY 24, 2016 MEETING

The Chair recognized Vice Chair Grossman, who moved to approve Summary of Actions from July 24, 2016, Board Meeting. The Chair recognized Project Counsel, who announced minor corrections and edits on page #5, #6, #7 and #8. Project Counsel added that he received a request from Mr. Max Factor to change the Summary of Actions as it relates to Mr. Factor's July 24, 2016 comments on the BBGHAD's course of action relating to the SAP. Project Counsel

stated that he incorporated the changes submitted by Mr. Factor to accurately reflect Mr. Factor's statement. The Chair recognized Vice Chair Grossman, who amended his motion to include the corrections and additions announced by Project Counsel. Board Member Curtis seconded the Motion, and the Motion passed 3-0.

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, SLC, and Army Corps.

SLC

The Chair recognized Project Counsel, who informed the Board that the BBGHAD received approval from the SLC on August 9, 2016 on a 3-0 vote. Project Counsel thanked the Finegood family and all the other homeowners for attending the meeting in support of the Project. Project Counsel further added that the Lease has not yet been received from SLC staff. Project Counsel asserted that SLC Commissioners thanked the BBGHAD for the Project. Project Counsel stated that the BBGHAD has now approval from two (2) major state agencies, CCC and SLC. Board Member Curtis congratulated the BBGHAD on the success achieved at the hearing.

CCC

The Chair recognized Project Counsel, who reported that the CCC process continues with the SAP, and the 7th SAP meeting was rescheduled for Friday, September 1, 2016. Project Counsel stated the SAP remains a significant concern as the BBGHAD and the SAP have not yet agreed upon a habitat monitoring and mitigation plan—and the BBGHAD has no budget estimate for implementing the habitat monitoring plan. Project Counsel reported that the Board Packet contains a "white paper" drafted by BBGHAD biologist Keith Merkel and presented to CCC staff in a lengthy August 23, 2016 meeting.

Project Counsel stated that the August 23, 2016 meeting presented the BBGHAD staff with an opportunity to voice concerns with the SAP and discuss potential methods to attempt to control the SAP's monitoring and possible mitigation costs. Project Counsel briefed the Board

that Mr. Jack Ainsworth was unable to participate in this meeting, but Mr. Steve Hudson attended, along with multiple CCC staff colleagues. At the meeting, Mr. Hudson attempted to manage BBGHAD concerns with the SAP by stating that CCC staff: a) intends to control and approve SAP recommendations, b) strongly wants habitat monitoring to occur this Fall 2016 (establishing the Fall data baseline) and for nourishment to start in Fall 2017. Project Counsel referred to SAP meeting reports included in the Board Packet and highlighted that completion of two of the CCC's Prior to Issuance condition plans remains contingent on finalizing a sand source. Consequently, until the BBGHAD finalizes a sand source, these reports cannot be completed. Project Counsel further reported that every other report is on track to be completed on time, the BBGHAD proposed Dune Plan has been presented to CCC, and has received initial support from the CCC dune consultant.

The Chair recognized Board Member Curtis, who asked Project Counsel about his opinion on Mr. Hudson's comment "not to be concerned about the SAP becoming an uncontrollable situation on costs". The Chair recognized Project Counsel, who explained that many stakeholders from various state, regional, and federal agencies participate in SAP meetings—and the stakeholders have various and differing interests. Project Counsel opined that some stakeholders may not want the Project to go forward, but Mr. Hudson stated that the CCC supports the Project. Project Counsel added his belief that the BBGHAD should remain directly involved in this process to attempt to guide the SAP on a realistic scope of work, costs and have more meetings with CCC staff until the mitigation plans are done and approved—particularly relating to calculations of Project impacts.

The Chair recognized Ms. Finegood, who inquired about the particular objections of the SAP. The Chair responded that the objections are covered in the reports included in the Board Packet and directed Ms. Finegood to the BBGHAD website as it is very time consuming to cover the scientific specifics in the Board Meeting.

The Chair stated that he concurs with Board Member Curtis' implicit skepticism of the SAP process and CCC Senior staff's assurance that they will prevent the Project from becoming cost prohibitive for the BBGHAD. The Chair further reminded the Board that similar statements were made by the CCC prior to the CCC hearing last year, but consequently did not always receive support as promised by some of the Senior CCC staff. The Chair urged the BBGHAD collectively to prevent the SAP from becoming a financially uncontrollable situation, consequently causing the Project to terminate.

The Chair recognized Board Member Curtis, who inquired about the decision making process of the SAP. The Chair recognized Project Counsel, who responded that only the three (3) SAP members are decision makers, but ultimately the CCC takes the recommendations from the SAP members and then makes final decisions/rules. The Chair recognized Board Member Curtis, who inquired about a timeframe of the final decision-making. The Chair recognized Project Counsel, who responded that, in his opinion, within the next 2 to 3 SAP meetings, the monitoring and mitigation plan drafts are going to be finished by BBGHAD consultant Merkel and presented to CCC staff. Project Counsel further added that BBGHAD should continue to advocate for the monitoring plans acceptable to the BBGHAD in terms of costs, scope of work, and the definition of the impact. This should be a critical issue for the next two (2) SAP meetings.

The Chair recognized Board Member Curtis, who asked if BBGHAD staff needs guidance or if Project Counsel would like for the Board Members to attend the SAP meetings. The Chair recognized Project Counsel, who responded that the Board remains welcome to participate in the meetings, which are not open to the public, but stated that he is not looking for guidance at this point. The Chair recognized the Vice Chair, who asked if it would be helpful to staff for the Board to participate in the SAP meetings. The Chair recognized Project Counsel, who responded that, in his opinion, at this time it is unnecessary, but for future meetings with Senior CCC staff, Project Counsel will reevaluate and seek guidance from the Board.

The Chair asked Project Counsel if he is comfortable with the current BBGHAD representatives at the SAP meetings to advocate the BBGHAD's position regarding scope of work, costs, and impact definition. The Chair recognized Project Counsel, who informed the Board that consultant Keith Merkel, Moffatt & Nichol's Tonia McMahon and, consultant Richard Beck of MBI International, and Project Counsel typically attend on the BBGHAD's behalf. Project Counsel further added that sufficient coverage and representation exists at the meetings, and does not believe that input from Board Members would make a difference to any of the scientist and/or bureaucrats at the meetings at this time. Project Counsel further added that Board's guidance and input will be critical following the next round of meetings with Senior CCC staff.

The Chair recognized Board Member Curtis, who asked if any of the BBGHAD staff are conflicted in so far as the Project becomes bigger their income increases. The Chair recognized Project Counsel, who responded that, in his opinion, they are not.

The Chair recognized Alan Mark, who inquired if the Malibu West Swim Club is part of the BBGHAD and if it supports the Project. The Chair responded that the Malibu West Swim Club and its members are collectively a part of the BBGHAD and there is nothing to suggest that it opposes the Project as a group. The Chair added that Mr. Spiros participates as an advisor to the Board, and Malibu West is current on assessment payments. The Chair recognized Chris Spiros, who stated that Malibu Swim Club has not questioned the individual Malibu West homeowners and, therefore, he cannot determine if the majority supports this Project or not.

The Chair recognized Max Factor III, who asked if the recent judgment in an Orange County Superior Court case against the CCC in favor of a property owner who sought to rebuild a damaged seawall strengthens the BBGHAD's position. The Chair recognized Project Counsel, who responded that the case is interesting and pro-property rights, but BBGHAD Project has already been permitted. Project Counsel further reported that this ruling shows that courts may view shoreline protection devices differently than the CCC. Project Counsel further added that another case, Lynch v. CCC, is pending before the California Supreme Court, which may have a stronger impact on the CCC's powers regarding shoreline protective devices than the recent trial court decision.

Army Corps

The Chair recognized Project Counsel, who reported that the U.S. Army Corps of Engineers is the primary agency which has not yet issued its necessary permit to the BBGHAD. Project Counsel summarized an August 8th, 2016 meeting with Army Corps staff, including regulatory supervisor Aaron Allen. At this meeting Army Corps staff confirmed that: 1) the BBGHAD alternative analysis is complete, 2) the Army Corps is currently inclined to issue an Environmental Assessment as the NEPA compliance document as opposed to an Environmental Impact Statement, but no final decision has been made and, 3) the Army Corps will accept BBGHAD assistance in completing pending essential fish and biological consultations with separate federal agencies. Project Counsel further stated that the U.S. Army Corps and BBGHAD appear to agree on a framework for finalizing the Project's federal permitting.

Project Counsel further summarized the latest phone conference hosted by Congressman Lieu's office with the following participants: BBGHAD, Army Corps, NMFS, and NOAA. In this call, NMFS and NOAA confirmed that they have all of the current BBGHAD Project materials on hand, including the Alternative 4C documents. Project Counsel further stated that the BBGHAD should expect a favorable Biological Opinion finding no significant impacts to any species. Project Counsel added that NMFS will present a greater challenge based on its July 11, 2016 letter in the Board Packet. Project Counsel stated that the BBGHAD staff intends to forward its response letter by September 2, 2016. Further, the BBGHAD intends to submit a draft Environmental Assessment to the Army Corps in the next week.

The Chair recognized Board Member Curtis, who asked to give more detail on NMFS' involvement in the Project. The Chair recognized Project Counsel, who explained that the NMFS does not issue a Project, but instead consults with the Army Corps as part of the Army Corps' permitting process. NMFS has jurisdiction over essential fish habitat (EFH), which covers the intertidal area where the water meets the sand and seaward from there. Project Counsel stated that NMFS asserts in its July 11, 2016 letter, without specification, that the BBGHAD Project will adversely affect fish life in these areas, and consequently recommends mitigation. Project Counsel further stated that the BBGHAD is responding in writing to all of NMFS' arguments.

The Chair recognized Board Member Curtis, who inquired if NMFS seeks to stop the Project or to argue for significant mitigation. The Chair recognized Project Counsel, who responded that the agency seeks mitigation. Project Counsel further explained that, if the Army Corps disagrees with NMFS' recommendation, an agency-to-agency consultation process begins. Project Counsel further opined that he does not know the scope and breadth of the agency-to-agency consultation required, but has been informed by the BBGHAD technical staff that NMFS has been less vocal in the past two SAP meetings.

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

The Chair recognized Project Counsel, who reported that staff continues to communicate with various RWQCB staff members regarding the Section 401 water quality certification, and has been informed that the RWQCB is on the same timeframe as the Army

Corps. The Chair recognized Vice Chair, who inquired what the projection for the RWQCB approval is. The Chair recognized Project Counsel, who responded that the RWQCB appears to agree with Army Corps' framework and scheduling, which means the BBGHAD should expect RWQCB to process its permit by the end of 2016.

b. Permitting Outreach & Strategy Update.

The Chair recognized Project Counsel, who reported that entitlements are required from Caltrans and the City of Malibu for a temporary signal at PCH and Guernsey. Project Counsel recommended expediting this process at this time to ensure that the BBGHAD obtains all permits for the scheduled Fall 2017 beach nourishment. The Chair recognized Vice Chair, who asked what Project Counsel proposes. The Chair recognized Project Counsel, who suggested to have Moffat & Nichol, BBGHAD traffic engineer, meet with the City of Malibu and Caltrans to discuss and confirm the plan. The Chair recognized Vice Chair, who asked if Project Counsel needs support from the homeowners association. The Chair recognized Project Counsel, who responded that he welcomes support from neighbors and the TPOA, but no other assistance is needed at the present time.

The Chair recognized the Vice Chair, who asked Project Counsel to explain to the public why the beach nourishment has been delayed. The Chair recognized Project Counsel, who explained that the CCC staff advised BBGHAD staff in late June 2016 that, due to the incomplete status of the Habitat Monitoring & Mitigation Plan as of June 30, 2016 (the deadline for establishing a Spring data baseline), the BBGHAD could not nourish the beach until September 2017 at the earliest. The Chair added that the CCC staff unilaterally decided to postpone the Project due to the incomplete status of the Habitat Monitoring Plan. The Chair further explained that the CCC controls the timing of the process and the BBGHAD was not allowed to complete the process on time.

The Chair stated that the most frustrating part of the SAP process is missing the deadlines for the Prior-to-Issuance conditions of the Project's Coastal Development Permit due to the SAP trying to impose a more extensive and expansive monitoring plan that would cost approximately \$10 million every 10 years. The Chair stated that the Board and staff continue to fight the battle to keep the monitoring plan within the BBGHAD's budget, and seek a final agreement with the CCC staff as soon as possible.

The Chair recognized Vice Chair, who further explained that the SAP is comprised of scientists who look at the Project as a rare opportunity to turn it into an extensive and costly science project. As a result, the BBGHAD attempts to cut down the monitoring plan in terms of size, time and expense.

The Chair recognized Matt Finegood, who inquired if the BBGHAD has a proposed plan for the physical implementation of the Project. The Chair recognized Project Counsel, who responded affirmatively, explaining that the agencies have the BBGHAD's engineering plans and the plans are also available on the BBGHAD website. Project Counsel offered to discuss this further after the Board meeting.

The Chair recognized Board Member Curtis, who asked if the BBGHAD is confident about meeting the fall data baseline testing. The Chair recognized Project Counsel, who responded that the BBGHAD technical consultant, Keith Merkel, believes that the BBGHAD will reach agreement with the SAP on the Habitat Monitoring & Mitigation Plan, which will allow the BBGHAD to complete the Fall testing on/or before November 30, 2016. The Chair recognized Vice Chair, who asked Project Counsel if the costs are going to be included in the finalized plan. Project Counsel responded affirmatively stating that the budget will be included in the plan and BBGHAD consultant Keith Merkel is responsible for producing the plan and the implementation cost estimate.

c. BBGHAD Insurance

The Chair recognized Project Counsel, who updated recent activity on appropriate types and the limits of insurance coverage for the BBGHAD and the Board. Project Counsel reported, that he spoke with various insurers created by the state of California, recommended by Michael Colantuono, to determine if they would insure the BBGHAD. Project Counsel explained that he contacted two (2) different insurance pools who represent Special Assessment districts, but both insurance pools denied coverage to the BBGHAD on the basis that they do not insure GHADs.

Project Counsel further reported that BBGHAD Manager ENGEO recommended that the BBGHAD join the state GHAD trade group for a nominal fee of approximately \$250/year and, in return, the BBGHAD would receive insurance coverage including property, liability, and D&O coverage. The typical coverage limits provided through the trade group's carrier are lower than the \$10 million sought by the BBGHAD. Project Counsel stated that the BBGHAD awaits a quote from the trade group's insurer. The Chair recognized Vice Chair, who stated that, in general, sovereign immunity offers very high protection within California.

The Chair recognized Project Counsel who recommended to re-new the AON application to continue the BBGHAD's current D&O coverage. Project Counsel informed the Board that, if the BBGHAD cancels the current insurance policy if coverage is obtained through the trade group, the BBGHAD would receive a pro rata refund of the insurance premium. The Board instructed Treasurer to renew the AON policy and process the payment.

12. New Business

a. Consideration of Potential New Project Manager

The Chair recognized Project Counsel, who reported that Mark Goss resigned as Project Manager at the end of July. Project Counsel further stated that the BBGHAD staff learned that the Project Manager received double compensation for the month of March 2016. Upon questioning from BBGHAD staff, Mr. Goss admitted the receipt of double payment and resigned as the Project Manager. The BBGHAD is pursuing Mr. Goss to repay the double payment, which totals \$10,000.00. The BBGHAD is soliciting input on the skill set necessary for a new Project Manager.

The Chair recognized the Vice Chair, who stated that the BBGHAD may not require a new Project Manager immediately considering the current status of the permitting process. The Chair recognized Project Counsel, who generally agreed but stressed the need for a Project Manager for the commercial and administrative aspects of the Project. Recommendations received from Project Engineer Russ Boudreau underscore the need for a significant construction management background, project management background, and thorough experience in the trucking industry.

The Chair recognized Board Member Curtis, who recommended not waiting to hire a Project Manager as the BBGHAD should allow time for the new Project Manager to get familiar with the Project. The Chair stated that he concurs with the Vice Chair that the Project Manager is not indispensable for the permitting process, but opined that the BBGHAD is concurrently focusing on sand procurement from different sources and related transportation costs, and, therefore, a time constraint exists and the BBGHAD should not delay the hiring of a Project Manager. Board Member Curtis also suggested hiring a recruiter to generate and evaluate candidates.

MOTION: The Chair recognized the Vice Chair, who moved, and Board Member Curtis seconded, to: a) direct the Clerk/Treasurer to conduct research and propose potential recruiters for the Board's review and consideration; b) concurrently encourage BBGHAD staff to solicit candidates from all sources, including current consultants and sub-consultants for the position of Project Manager; c) encourage staff to solicit assistance from BBGHAD owners with expertise in this area; and d) direct Project Counsel to create and circulate a proposed job description for the Project Manager position. Hearing no further debate, the Chair called the question. The motion passed 3-0.

13. BBGHAD Officer Reports

a. Project Manager Report

None.

b. Treasurer's Report

The Treasurer reported that, as of August 23, 2016, the BBGHAD's cash balance was \$3,408,295.91 and estimated that unpaid bills amount to \$719,446.57.

14. BBGHAD Board Member Reports

None.

15. PUBLIC COMMENT

The Chair recognized Board Advisor Chris Spiros, who stated that Martin Curtin of Curtin Maritime Construction contacted him to discuss the use of Curtin Maritime-controlled barges to deliver sand to the beach. Mr. Spiros inquired why the Board chose not to consider this option of sourcing sand offshore. The Chair recognized Project Counsel, who stated that the

BBGHAD had numerous conversations with Mr. Curtin and others in connection with offshore delivery of sand for the Project. Project Counsel further stated that the discussions never materialized because the Project lies within a Marine Protected Area (MPA) and an Area of Special Biological Significance (ASBS), and multiple agency staffs and environmental groups stated that they would oppose the offshore landing for the Project. Project Counsel further reported that the BBGHAD staff told Mr. Curtin that, if he can find a way to overcome these issues with the regulatory agencies and environmental groups, BBGHAD staff would welcome a proposal from Mr. Curtin or any other offshore sand provider. The Chair added that, in or about 2013, the BBGHAD considered various sources of offshore sand sources and landing the sand from offshore—and ceased such consideration once it became known that the permitting and regulatory agencies would oppose this practice. The Chair and Vice Chair also explained of previous, failed Board efforts to use offshore sand sources for the Project.

The Chair recognized Ms. Finegood, who noted additional, new sand at Zuma Beach and dunes are built overnight. The Chair recognized Vice Chair, who explained that the County of Los Angeles has a renewable license and the sand is placed in front of their Lifeguard structures to protect them. Project Counsel added that he thinks LA County moves the sand from the lower part of the beach. The Chair recognized Ms. Theresa Finegood, who asked if the dunes built at Zuma Beach impacts the Broad Beach Project. The Chair responded that BBGHAD studies and others reveal that sand at Broad Beach typically moves down the coast from west to east, and that Zuma Beach constitutes the most direct beneficiary of the Project other than BBGHAD owners.

16. FUTURE MEETING

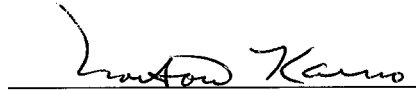
The Chair suggested future meetings for September 18, 2016, and October 16, 2016, both to start at 9:00 a.m. The Chair instructed the Clerk/Treasurer to confer with Board Members regarding their availability for November and December 2016, and with the Malibu West Swim Club for available dates for room rental in November/December 2016.

17. ADJOURNMENT

Vice Chair Grossman moved, and Board Member Curtis seconded, to adjourn the meeting. Hearing no objections, the Chair called the question and the motion passed 3-0. The meeting was adjourned at 12:33 p.m.


Approved and adopted by the Broad Beach GHAD

Board on September 18, 2016



NORTON KARNO, Chair

ATTEST:



HEIKE FUCHS, Clerk