

SUMMARY OF ACTIONS
BROAD BEACH GEOLOGICAL HAZARD ABATEMENT DISTRICT
REGULAR MEETING
JANUARY 22, 2012
30756 PACIFIC COAST HIGHWAY

1. CALL TO ORDER

Chair Karno called the meeting to order at 1:12 p.m.

2. ROLL CALL

PRESENT: Chair Karno, Vice Chair Grossman, Board Member Marquis, Board Member Levitan, Board Member Lotman, and Advisor Goss.

ABSENT: None

GHAD STAFF ALSO PRESENT (not Board Members and not subject to Roll Call):
GHAD Special Counsel Patricia Curtin (telephone), GHAD Manager Uri Eliahu (telephone),
GHAD Clerk Barbara Hamm, and GHAD Project Counsel Ken Ehrlich.

3. ADOPTION OF AGENDA

Vice Chair Grossman moved and Board Member Levitan seconded the approval of the Agenda with no changes. GHAD Project Counsel Ken Ehrlich reported that the meeting Agenda was posted at 8:50 a.m. on Thursday January 19, 2012 within the boundaries of the GHAD.

4. APPROVED SUMMARY OF ACTIONS FROM DECEMBER 11, 2011 MEETING

Vice Chair Grossman moved, and Board Member Lotman seconded, the approval of the Summary of Actions from the December 11, 2011 meeting. The motion passed 5-0.

5. CEREMONIAL PRESENTATIONS

None.

6. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

At the request of the Chair, this matter was held until after consideration of Agenda Item 10.

7. CONSENT CALENDAR

None.

8. OLD BUSINESS

At the request of the Chair, this matter was held until after consideration of Agenda Item 6.

9. NEW BUSINESS

a. Malibu West Assessment Invoicing-- In lieu of Property Tax line item.

GHAD Project Counsel Ehrlich reported that a representative of Malibu West Beach Club ("Malibu West") informed the GHAD that Malibu West does not receive property tax bills as it is a tax exempt organization. Therefore, questions arose as to how Malibu West would be billed any assessments imposed by the GHAD. GHAD Project Counsel Ehrlich reported that counsel for the GHAD have determined that, if assessments are imposed by the GHAD, Malibu West would receive a separate invoice for its assessment share. Non-payment of the bill would carry the same consequences for Malibu West as non-payment by any and all other GHAD property owners.

b. Discussion of recent correspondence exchanged with counsel for Malibu - Broad Beach S-1, LLC, a California limited liability company; Mark Magidson, as Trustee of the Mark Magidson Trust of 1987 (2006 Restatement); Kenterra VI, L.P and subsequent letter from "Friends of Broad Beach" to GHAD property owners. The Chair announced that the Board would give representatives of these GHAD properties up to 10 minutes to make any presentations to the Board.

The Chair recognized Jim Hornstein. Mr. Hornstein introduced himself as counsel for Malibu - Broad Beach S-1, LLC, a California limited liability company; and Mark Magidson, as Trustee of the Mark Magidson Trust of 1987 (2006 Restatement), owners of a parcel at the east end of Broad Beach, and spoke on their behalf. Mr. Hornstein stated that his clients support sand nourishment and dune restoration as a means to stem the tide of erosion at Broad Beach. However, his clients are concerned that California law grants GHADs eminent domain authority and his clients oppose the use of eminent domain for this project. Mr. Hornstein requested a Board resolution confirming that Board will not use eminent domain for this beach restoration project. Mr. Hornstein stated that his client's views are consistent with those of the GHAD on other aspects of the project.

The Chair recognized Allan Abshez. Mr. Abshez introduced himself as counsel for Kenterra VI L.P., owner of two parcels at Broad Beach, and "Friends of Broad Beach". Mr. Abshez stated that the proposed assessment does not comply with Proposition 218, which requires special findings prior to the imposition of an assessment on real property. Mr. Abshez contended that the assessment cannot meet constitutional requirements in part because the GHAD is basing the proposed assessment on the claim of increased property values in the future. Mr. Abshez stated that the claimed future increase in property values cannot serve as the basis for the proposed assessment and that the GHAD must show the specific special benefits for each property.

Mr. Abshez also stated that his client's properties are protected by sea walls and property seaward of the sea walls belongs to the State of California. Therefore, any benefit to land owned by the State of California cannot constitute a benefit to his client or any other private landowner. Mr. Abshez also asserted that the rate and method of assessment proposed by the GHAD is not

proportional. Linear beach frontage, according to Mr. Abshez, does not fairly apportion the benefits among the properties within the GHAD.

Mr. Abshez asserted that the State of California would receive special benefits, but the state itself is not participating in the assessment, which means that the GHAD would be subsidizing the State of California. Mr. Abshez said that any court would set aside the proposed assessment if passed by the property owners.

Mr. Abshez also stated that the proposed assessment is premature because: (a) the project's permitting requirements are unknown and a proposed 20-year assessment should not be imposed until the exact permit conditions are known; (b) additional representations and warranties to the property owners are needed prior to the vote on any assessment; (c) the California Coastal Commission ("CCC") may not order the removal of the current emergency revetment upon the expiration of the ECDP for the revetment; and (d) public access advocates are arguing that the project include additional public facilities and improvements (such as trails and public toilets). Mr. Abshez said that no one knows what the relevant governmental agencies will ultimately require for the project and that the GHAD should obtain appraisals for the relevant beachfront properties assuming various scenarios, such as with and without new public facilities. Mr. Abshez further stated that the GHAD has improperly informed property owners that the current emergency revetment would need to be removed if the ECDP for the revetment expires.

Mr. Abshez also alluded to alleged "beach management" questions in the future, such as the scope and breadth of necessary lifeguards, security, maintenance and janitorial responsibilities. Mr. Abshez closed by stating that an EIR has not yet been completed and should be completed before any assessment is imposed. Mr. Abshez asked that the GHAD Board postpone any assessment vote until answers are obtained to all of his questions.

The Chair recognized Max Factor III. Mr. Factor identified himself as a Broad Beach property owner and stated that he was opposed to the proposed assessment in its present form. Mr. Factor stated that all property owners should be better informed before making any decisions on the proposed assessment and the proposed restoration project. Mr. Factor claimed that his property is in a curved cove, which has caused an improper measurement of his beach frontage. According to Mr. Factor, the situation will cause his property to be assessed more than what would be fair. Mr. Factor asserted that this error has led to an increase in costs, but not an increase in benefits from the proposed project. Mr. Factor stated that the GHAD should not rely upon the mapping and surveying work previously conducted for the project and, instead, rely on survey work conducted by each individual owner.

The Chair recognized Vice Chair Grossman. Vice Chair asked Mr. Abshez to identify the members of "Friends of Broad Beach." Mr. Abshez declined to answer. Vice Chair Grossman then asked Mr. Abshez to state the number of people or entities which are members of "Friends of Broad Beach." Mr. Abshez declined to answer, and further declined to state the number of contributors to the "Friends".

Vice Chair Grossman then confirmed with Mr. Abshez that Dakota Communications serves as the public outreach firm for Mr. Abshez' client, and then read an Internet blog entry which asserted that Dakota Communications had circulated information which failed to accurately characterize the position of Dakota's then-client on a statewide ballot proposition. Vice Chair Grossman then asked Mr. Abshez how many people were behind the "Friends of Broad Beach" recent mailer to Broad Beach property owners. Mr. Abshez declined to answer. Vice Chair Grossman asked Mr. Abshez if his client would agree that the creation of a dry, sandy beach would increase her property values. Mr. Abshez did not agree. Vice Chair Grossman then asserted that pictures used in the "Friends of Broad Beach" mailers were not of Broad Beach and that certain statements made in such mailers were false. Regarding the claim that agencies may seek additional public facilities for Broad Beach, Vice Chair Grossman then stated that a single Zuma area resident had, in fact, submitted a letter to the State Lands Commission ("SLC") seeking parking for Broad Beach on the shoulder of Pacific Coast Highway and a foot trail down the adjacent steep bluff. Vice Chair Grossman opined that such proposed parking and trail could not likely gain approval by appropriate regulatory agencies. Vice Chair Grossman then stated that, contrary to the assertion of Mr. Abshez, the emergency revetment could not be made permanent upon the expiration of the revetment ECDP unless significant mitigation was provided to the state, and that such mitigation would quite likely exceed the cost of the proposed beach and dune restoration.

In connection with Mr. Abshez' assertion that the proposed restoration project does not yet have a final EIR, Vice Chair Grossman stated that an EIR is being completed by a SLC contractor, but cannot be completed until completion of, among other sections, the project description and appropriate alternatives are analyzed. Vice Chair Grossman further stated that property owners and the public would be proud of the proposed beach restoration project if it comes to fruition. Vice Chair Grossman added that Broad Beach currently is, in effect, largely a public beach as the mean high tide line typically reaches the revetment and, in some cases, slightly inland of the revetment. Therefore, at present, there is little or no beach for the public or private property owners to enjoy. Vice Chair Grossman stated that the proposed project would provide significant additional dry sand beach for all to enjoy. Vice Chair Grossman stated that the project is not perfect, but is likely as good as public and private interests can get and that the GHAD will continue to work to make the project a reality.

Vice Chair Grossman then addressed Mr. Hornstein's comments. Vice Chair Grossman stated that Mr. Hornstein's comments raised serious and legitimate concerns and acknowledged that, according to California law, all GHADs have the power of eminent domain. Vice Chair Grossman added that the current project does not include the condemnation of anything. The project does not provide for or include condemnation due to a variety of policy concerns and budgetary realities.

Vice Chair Grossman then addressed Mr. Factor's statement by stating that the GHAD retained an independent survey firm to complete the initial surveying and has retained a separate, independent third party surveying firm to conduct a thorough peer review of the original surveyor's work. The peer review included both an analysis of the methodology and an investigation of the accuracy of measurements by the original surveyor. The peer review

surveyor found that the methodology was sound and the measurements were correct. Vice Chair Grossman stated that the GHAD has devoted significant time and resources to address the surveying issues and the GHAD is doing the best job possible under the circumstances.

The Chair then recognized Jane Arnault. Ms. Arnault expressed concern over the alleged constitutional issues with the proposed assessment. Ms. Arnault stated that, in her opinion, Broad Beach is composed of two different areas, the beach and the cove. Ms. Arnault stated that the GHAD proposes disproportionate benefits for beach and cove residents, and the costs are significant, \$600,000-\$700,000 for her property alone, over the 20-year proposed period of the proposed assessment. Ms. Arnault stated that her house needs foundation repairs and that she would be paying for same without public assistance from her neighbors. Ms. Arnault added that the proposed assessment would constitute a subsidy to the eastern Broad Beach homes at the expense of the western Broad Beach homes.

Vice Chair Grossman responded that the proposed assessments would be incurred over a period of 20 years and it remains a distinct possibility that bonds would be issued to cover the immediate costs of the proposed beach restoration. He further stated that significant measures were undertaken to ensure equal benefits to all property owners within the GHAD.

Chair Karno stated that he is open to a GHAD Board resolution on the condemnation issue, and the Chair would not support the use of eminent domain or condemnation in any form for the beach restoration project. All other GHAD Board members stated their agreement with the Chair's position on this point.

10. PUBLIC HEARING

a. **Declaration of Intent to Order Assessment.** GHAD Special Curtin described the process to implement the proposed GHAD levy and assessment, and read the Staff Report for this agenda item. Special Counsel Curtin stated that the balloting process will begin with a Declaration of Intent to Order an Assessment, preparation of circulation of ballots to all GHAD property owners, and the proposed assessment itemized for each GHAD parcel. Special GHAD Counsel Curtin stated that, if approved, Resolution No. 2012/01 would supersede Resolution 2011/05 in full, open the balloting for the proposed assessment and levy, and such balloting would close on March 11, 2012 at a public hearing. If no majority protest exists, the assessment would be ordered. Special Counsel Curtin further stated that all of the benefits provided by the proposed assessment are specified in the updated Engineer's Report, which will be circulated to all GHAD property owners as part of the voting materials.

GHAD Project Counsel Ehrlich stated that, during the pendency of the voting period that began after the GHAD Board's December 11, 2011 meeting and the passage of Resolution No. 2011/05, the surveying firm retained by the GHAD identified four errors in its original survey which changed the total linear footage of the entire GHAD by one foot in the aggregate. Nonetheless, these errors needed to be corrected and the GHAD Board is presently being asked to rescind Resolution No. 2011/05, enact Resolution No. 2012/01 and, effectively, restart the balloting and election process for the proposed assessment.

GHAD Project Counsel Ehrlich specified the parcels with the surveying errors: 31500 Victoria Point Road, 31502 Victoria Point Road, 31412 Broad Beach Road, and 31418 Broad Beach Road. GHAD Project Counsel Ehrlich reported that all of these errors have been corrected, KDM Meridian has issued a new Assessment Diagram dated January 18, 2012, the new Assessment Diagram has replaced the old Assessment Diagram in the Engineer's Report, and Psomas has provided an independent, third party peer review of KDM's methodology and findings, and approved both the methodology and the findings.

The Chair opened this item to public comment, and recognized Allan Abshez. Mr. Abshez asked whether the proposed agenda item and proposed resolution meant that a new vote on the proposed assessment would be started. The Chair answered affirmatively. The Chair added that the proposed GHAD budget has not changed since the December 2011 GHAD Board meeting and the proposed \$400 per linear foot maximum levy has not changed either.

Vice Chair Grossman moved and Board Member Levitan seconded, the adoption of Resolution No. 2012/01. The motion passed 5-0.

6. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

The Chair recognized Steve Zaillian. Mr. Zaillian asked what would occur if the nourishment project moves forward based on the proposed 10-year increments for major nourishments and storms significantly erode the nourished beach in less than ten years? GHAD Engineer Russ Boudreau responded by stating that the GHAD has undertaken a significant amount of studies and research to understand Broad Beach, its shoreline, and beach dynamics. Mr. Boudreau further stated that a significant amount of work has focused on historic erosion problems at Broad Beach, which reveal an average of 20,000 cubic yards of sand lost per year until 2004 and more recent sand losses of approximately 35,000 cubic yards per year. Mr. Boudreau further stated that the project includes 600,000 cubic yards of beach-quality sand to be placed at Broad Beach, which, under the most aggressive sand loss rate known to date, would contemplate a loss of approximately 350,000 cubic yards of sand within the ten-year nourishment period and approximately 250,000 cubic yards of nourishment sand to remain on the beach.

Mr. Zaillian then asked if the GHAD should complete a pilot project to first ensure that the proposed plan would work. Mr. Boudreau responded that a pilot project is not efficient or economical in light of the amount of study completed to date and the project parameters. For example, Mr. Boudreau stated that equipment mobilization constitutes the majority of the project cost, and a pilot project and the full project would entail the same equipment mobilization. Therefore, it does not make sense to mobilize equipment more than necessary for the full project.

Mr. Zaillian asked if additional revetment rocks or armoring are part of the proposed project, and how do we know that the proposed project will work? Vice Chair Grossman stated that no more armoring or rocks are contemplated by the proposed project. GHAD Engineer Boudreau then added that the beach itself is considered a "pocket" beach, which means that it's sequestered and localized-- and, therefore, a good candidate for nourishment. The beach should also respond favorably to nourishment as it has a relatively abundant sand source nearby, such as

seaward of Marina del Rey and Dockweiler Beach. Mr. Boudreau stated that the quality of such donor sand is excellent for beach nourishment, coarse sand that should stay on the beach to maximize the amount of time between major nourishments. Mr. Boudreau stated that the project also contemplates "backpassing" of sand, which will also extend the life of the nourishment project.

Mr. Zaillian then asked about the prospect of regulatory agencies, such as the CCC, imposing onerous conditions on the project and if such conditions could affect the project. Chair Karno responded that the GHAD would not be obligated to accept onerous conditions such as public trails, public toilets, and additional public improvements on the beach. If such improvements are proposed to be conditions of the project, the GHAD can simply reject such conditions and further negotiate project approvals. Vice Chair Grossman added that a community forum is contemplated once regulatory agency conditions are fully known.

The Chair then recognized Doug Baron. Mr. Baron thanked the Board for its hard work and for correcting the inaccuracies of Mr. Abshez' presentation. Mr. Baron asked for a count of the number of participants in "Friends of Broad Beach" and said that Mr. Abshez' refusal to answer this question shows that the group is suspect. Mr. Baron stated that the proposed project should increase property values of the area and further stabilize beach conditions, which will only help private and public enjoyment of the community.

The Chair then recognized Lynn Norton. Ms. Norton stated that she represents Malibu West and Malibu West does not currently have an emergency rock revetment. Ms. Norton asked if the GHAD's beach restoration project includes requests for rock revetments at parcels which do not currently have same. Vice Chair Grossman stated that the proposed beach restoration project does not include additional revetment rocks or armoring of any kind, but individual property owners remain free to submit permit applications for their own revetments so that, if timed properly, such revetments could be permitted and installed prior to the construction of the sand nourishment and dune restoration.

The Chair then recognized Brian Emmert. Mr. Emmert identified himself as a resident of Malibu West and asked if the GHAD engineer knew of any failures of beach nourishment in California and the reason for such failures. GHAD Engineer Boudreau responded that, to an extent, the previous beach nourishment at Encinitas, California, was a failure due to the fact that the nourished beach eroded fairly quickly. Mr. Boudreau stated that the use of improper sand (too fine grained) was the cause of such failure and that this project should avoid such failure by using more coarse sand.

Mr. Emmert also asked if the sand nourishment would adversely affect wave conditions. GHAD Engineer Boudreau stated that sand would be placed on the beach and spread out evenly across the beach such that the contour of the beach would be managed as part of the project. There are no contemplated adverse effects to waves or the shoreline as part of the project.

At this time, Board Member Lotman left the meeting.

8. OLD BUSINESS

a. **Report on TPOA Certification of Amount of Pre-November 6, 2011 Beach Restoration Expenses Transferred to GHAD.** GHAD Project Counsel Ehrlich confirmed that, in accordance with Resolution No. 2011/04, a letter has been received from the TPOA Treasurer confirming the amount incurred by the TPOA on the restoration project, \$2,332,211.

b. **Report on Agency Response to Letters Describing Application Transfers from TPOA to GHAD and Requested Follow-Up.** GHAD Project Counsel Ehrlich reported that letters were mailed to the SLC, CCC, Regional Water Quality Control Board, and the United States Army Corps of Engineers requesting that the applicant for the future restoration project be transferred from the TPOA to the GHAD. Mr. Ehrlich reported that the SLC has responded with a letter outlining the process to be followed to effectuate the transfer of the application. Mr. Ehrlich reported that Moffatt & Nichol and his office were completing the necessary work to accomplish the transfer, and that such transfer would necessarily include a new reimbursement agreement through which the GHAD would assume responsibility to pay the SLC's oversight and project costs for this project.

At this time, Board Member Levitan left the meeting.

c. **Consider Financial and Accounting Checks, Balances and Reviews.** The GHAD Manager reported that his firm has forwarded an exemplar of financial control documents to the GHAD Board and that such documents are in the board packets for this meeting. The Chair noted that the Board has received the proposed ENGEO financial protocols for further consideration.

Advisor Goss suggested that, even if the GHAD implements certain financial controls, such as two-signature requirements on checks, most banks do not recognize or police such requirements. Advisor Goss suggested that the GHAD Board research various banks to determine which ones, if any, police the two-signature requirement.

MOTION: Chair Karno moved that the Board modify the current required signature arrangement on GHAD checks to limit the signators to the five GHAD Board members, delete the GHAD Clerk as an approved signator, and require, at least until further motion, two board member signatures on all checks. Vice Chair Grossman seconded the motion.

Chair Karno opened the motion for public comment. No members of the public sought to comment on this agenda item. Advisor Goss stated that it makes good sense to require two signatures on checks even without the GHAD Clerk and even if banks will not police same. Vice Chair Grossman suggested that the GHAD Board may consider having two bank accounts with different ceiling amounts or limits on checks. The Chair called the question. The motion carried 3-0.

d. **Report on Permitting and Regulatory Process, Including CCC Visit of Broad Beach.** GHAD Project Counsel Ehrlich reported that the regulatory process continues apace. Mr. Ehrlich stated that the CCC and its staff and others, including members of the Malibu City

Council, visited Broad Beach on January 12, 2012 for approximately 30 minutes at the east vertical access stairs. At this visit, CCC Staff Member Steve Hudson briefed those assembled on the current status of Broad Beach and the general parameters of the proposed project. Mr. Ehrlich conveyed that one of the commissioners questioned whether the removal of septic systems and replacement with a package sewage treatment plant should be part of the current project. Mr. Ehrlich then stressed the need for the GHAD and its technical team to finalize the technical report addressing this issue, including the cost and viability of same.

e. **Discussion of Budget Shortfall and Proposed Corrective Measures.** The GHAD Treasurer presented a financial report. She reported that, as of January 22, 2012, the GHAD had cash on hand of \$73,085 and current payables of \$243,000. The GHAD Treasurer anticipates the amount of GHAD payables to increase to in excess of \$500,000 by the end of February 2012, and projects an approximately \$600,000 budget shortfall in the first quarter of 2012.

The GHAD Treasurer further reported that fair share contribution requests will be circulated shortly to all GHAD property owners with a request to cover the anticipated shortfall and provide funding for the remainder of the project permitting and entitlement process. Board Member Marquis reported that the anticipated shortfall at the end of 2012 should amount to approximately \$2,000,000 and, therefore, approximately \$2,000,000 of new money will be needed to cover restoration project permitting and entitlement costs. Advisor Goss suggested that all GHAD agendas and Board packets in the future include financial reports.

Vice Chair Grossman stated that the GHAD faces a challenge of raising sufficient funds to accomplish project permitting. Chair Karno responded that the Board has discussed three alternative means of fundraising prior to reliance on any income stream provided by levies or assessments: 1) assess a portion of the 2011/2012 tax year if the proposed assessment vote passes; 2) borrowing from private sources, such as a select group of Broad Beach homeowners willing to loan approximately \$2,000,000 to the GHAD; or 3) obtain financing from a private financial institution, such as City National Bank. The Chair further requested that the GHAD Board agendaize for its March 2012 meeting the concept of a special assessment for collecting assessments for the period from March 2012 through and including June 30, 2012.

11. GHAD BOARD MEMBER REPORTS

None.

12. FUTURE MEETINGS.

The next GHAD Board meeting will be on February 12, 2012 at 9:00 a.m. at 31330 Broad Beach Road, Malibu, California 90265.

The following meeting will be on March 12, 2012; 1:00pm. at 30756 Pacific Coast Highway, Malibu, California.

13. ADJOURNMENT

Board Member Marquis moved, and Vice Chair Grossman seconded, that the meeting be adjourned. The motion carried 3-0. The meeting adjourned at approximately 4:15 p.m.

Approved and adopted by the Broad Beach GHAD
Board on February 27, 2012.


NORTON KARNO, Chair

ATTEST:


BARBARA HAMM, GHAD Clerk