

SUMMARY OF ACTIONS
BROAD BEACH GEOLOGICAL HAZARD ABATEMENT DISTRICT
REGULAR MEETING
OCTOBER 9, 2011
31330 BROAD BEACH ROAD

1. CALL TO ORDER

Acting Meeting Leader Ken Ehrlich called the meeting to order at 9:07 a.m.

2. ROLL CALL

PRESENT: Boardmembers Marshall Grossman, Norton Karno, Steven Levitan, and Zan Marquis.

ABSENT: Boardmember Jeff Lotman

ALSO PRESENT (not Board Members and not subject to Roll Call): Lynne Norton, LuAnne Wells, Barbara Hamm, Marlene Grossman, Wini Lumsden, Avi Arad, Tom Levyn, Mark Goss, Dave Reznick and Ken Ehrlich. Uri Eliahu and Patricia Curtin attended via telephone.

3. ADOPTION OF AGENDA

The Boardmembers unanimously approved the agenda with no changes. Ehrlich reported that the meeting agenda was posted at 8:55 a.m. on Thursday, October 6, 2011, within the boundaries of the GHAD.

4. INTRODUCTION OF GHAD BOARDMEMBERS AND SELECTION OF GHAD CHAIR AND VICE CHAIR

a. Introduction of GHAD Boardmembers as They Convene First GHAD Meeting. The Boardmembers introduced themselves, and all accepted their appointments to the Broad Beach GHAD Board of Directors. Boardmember Lotman accepted his appointment in writing prior to the meeting.

b. GHAD Boardmembers Select Chair and Vice Chair. Acting Meeting Leader Ehrlich introduced the agenda item. Boardmember Grossman nominated Karno as Chair, and Boardmember Marquis seconded the nomination. Boardmember Karno nominated Grossman as Vice Chair, seconded by Boardmember Marquis. The nominations were approved 4-0.

Chair Karno assumed control of the meeting.

5. CEREMONIAL PRESENTATIONS

None.

6. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Member of the public Dave Reznick sought to give input on a potential, modest sand source. Chair Karno advised that such input would be received under Agenda Item 9.f.

Vice Chair Grossman expressed his great appreciation of the efforts of Boardmember Marquis, Ehrlich, Curtin, and the staff of ENGEO to get the beach restoration project to its current state.

Boardmember Marquis also acknowledged the important efforts of Kevin Wells and Boardmember Levitan, both of whom provided the initial idea and concept for the beach restoration as currently planned.

Chair Karno acknowledged Boardmember Grossman for his more than three decades of voluntary service in support of the Trancas Property Owners Association (TPOA) and Broad Beach in general.

7. CONSENT CALENDAR

None.

8. OLD BUSINESS

None.

9. NEW BUSINESS

a. **Report on GHAD Formation.** Chair Karno provided a summary of the GHAD formation process and stated the Malibu City Council approved the GHAD on September 12, 2011. Chair Karno also explained the purpose and role of the GHAD as a political subdivision of the state and the entity which, among other rights, has the authority to finance the restoration of Broad Beach. Chair Karno further explained that the GHAD will also administer, implement, and oversee the beach restoration process.

b. **Appointment of GHAD Officers.** Ehrlich presented the staff report on the appointment of officers and consultants and recommended approval of Resolution No. 2011/01. The recommended appointments were Barbara Hamm as GHAD Clerk and GHAD Treasurer, ENGEO as GHAD Manager, Patricia Curtin as Special GHAD Legal Counsel, Ken Ehrlich as GHAD Projects Attorney, and Moffat & Nichol as GHAD Engineer. The staff report included highlights of the qualifications and experience of those proposed for the positions.

Vice Chair Grossman suggested that the GHAD Board should appoint and retain specific law firms instead of specific lawyers to give the GHAD Board flexibility of choosing among lawyers within the specific firms. Vice Chair Grossman questioned the inclusion of information regarding Watermark Advisors in the GHAD Board packet. He further suggested that the

recommended resolution should be modified to reflect that the GHAD Treasurer's powers and responsibilities are subject to such limitations and controls as specified by the Chair (or the Vice Chair in the absence of the GHAD Chair).

Ehrlich responded that information on Watermark was included in the Board packet as a potential candidate to serve as GHAD Treasurer.

Member of the public Goss suggested that the GHAD place a dollar amount cap on checks written by the GHAD Treasurer without approval by the Chair (or Vice Chair in the absence of the Chair) and retain an outside firm to conduct independent reviews of GHAD finances at time frames to be set by the Board.

Chair Karno suggested that the Board discuss the concept of accounting reviews at an upcoming GHAD Board meeting.

Vice Chair Grossman suggested that the Board develop standards for any and all accounting reviews to be conducted.

Chair Karno asserted that he preferred the recommended resolution to reflect the retention of specific lawyers, Curtin and Ehrlich, and not their respective law firms, to reflect the desire of the Board for these specific lawyers to work on GHAD matters and also to vest these lawyers with the discretion to involve other lawyers in their respective firms on GHAD matters on an as-needed basis. Vice Chair Grossman agreed with Chair Karno's input on this matter.

Chair Karno summarized Vice Chair Grossman's comments and suggested revisions to the recommended resolution (Resolution No. 2011/01) as follows:

1. Curtin and Ehrlich to utilize other attorneys in their respective firms if necessary.
2. Co-signatures on checks and other financial controls will be considered by the GHAD Board at future meetings;
3. The Vice Chair shall have the Chair's financial oversight responsibilities in the Chair's absence.

Motion: Boardmember Levitan moved and Boardmember Marquis seconded the adoption of Resolution No. 2011/01 with the suggestions as proposed by Vice Chair Grossman and summarized by Chair Karno. The motion carried 4-0.

Individuals appointed as officers or consultants are referenced with their respective titles in remainder of Summary.

c. **Consider GHAD Board Rules for Meetings.** GHAD Projects Attorney Ehrlich presented the proposed "Guide to GHAD Board Meetings" which was prepared to allow GHAD

Board meetings to run in a smooth and efficient manner, and provide objective guidelines for the public in connection with the conduct of such meetings.

Member of the public Reznick suggested that the Chair or Boardmembers appoint alternate Boardmembers to serve in the absence of Boardmembers.

GHAD Special Counsel Curtin (participating by telephone) commented that, under GHAD Law, the GHAD Board does not have the authority to appoint alternates.

Chair Karno stated that three members constitute a quorum of the five-member GHAD Board so the Board can conduct business with two absences. Chair Karno stated that the allowance for up to two absences should allow proper functioning of the Board even in the event of such absences.

Member of the public Marlene Grossman asked about the procedures for the replacement of Boardmembers who resign.

GHAD Special Counsel Curtin informed that the elections or replacement process is governed by GHAD Law and recommended that the GHAD Board agendaize the election procedures for Boardmembers on a future GHAD Board agenda.

Motion: Vice Chair Grossman moved to approve the "Guide to GHAD Board Meetings" and Boardmember Levitan seconded the motion. The motion carried 4-0.

d. Consider Requesting Trancas Property Owners Association (TPOA) to Allow the GHAD to Become Applicant on Pending Applications for Beach Renourishment.

GHAD Special Counsel Curtin presented the staff report. She suggested that the GHAD Board direct her as GHAD Special Counsel and GHAD Manager to approach TPOA's counsel to negotiate a transfer, assignment, and/or acquisition of the pending project applications. She further suggested that she and the GHAD Manager negotiate these transfers on behalf of the GHAD.

Vice Chair Grossman questioned whether Section 7.3 of the Plan of Control was inconsistent with Staff's recommendation.

GHAD Manager Eliahu (participating by telephone) stated that Section 7.3 of the Plan of Control relates to the GHAD obtaining ownership of constructed improvements upon the completion of the project if constructed by someone other than the GHAD and that this item allows for the immediate assignment of the pending applications from TPOA to the GHAD before the improvements are constructed. GHAD Manager Eliahu further stated that should the GHAD Board wish to clarify the language of Section 7.3, it could do so.

Member of the public Dave Reznick asked whether it would be advisable or advantageous for the Emergency Coastal Development Permit ("ECDP") issued for the current

rock revetment seaward of 78 of the 114 properties within the GHAD to be transferred from the TPOA to the GHAD.

Vice Chair Grossman suggested that funding issues may arise if the ECDP is transferred to the GHAD.

Member of the public Lynne Norton commented that the benefits and burdens of the individual property owners within the GHAD would not be equal in the event of a transfer of the ECDP to the GHAD since the rock revetment affects only 78 of the 114 homes within the GHAD.

Chair Karno directed counsel to analyze the issue and report back to the Board on the advisability of transferring the current ECDP from the TPOA to the GHAD.

Motion: Boardmember Levitan moved, and Boardmember Marquis seconded, a motion: 1) directing the GHAD Manager and GHAD Special Counsel to approach TPOA's counsel to effectuate a transfer of the pending regulatory applications for the beach restoration project, 2) acknowledging that Ehrlich presently serves as counsel for the TPOA and as GHAD Projects Attorney and that no conflict of interest presently exists with such representations, and 3) that Ehrlich can represent TPOA in these negotiations and the GHAD Manager and GHAD Special Counsel will represent the GHAD.

e. **Indemnification for GHAD Boardmembers by GHAD Projects Attorney.** GHAD Projects Attorney Ehrlich presented the staff report for this item. He reported that it is customary for GHADs and other organizations to indemnify individual boardmembers for actions undertaken within the scope and breadth of the board. Such an indemnification incentivizes potential boardmembers to serve and grants existing Boardmembers the peace of mind knowing that their organization stands behind them in the event an issue arises following a boardmember's actions undertaken within the scope and breadth of his or her Board responsibilities.

Vice Chair Grossman specified that the proposed indemnification would be valid only for conduct undertaken within the scope and breadth of the GHAD Board's responsibilities. He further stated that he would not have become a Boardmember if the GHAD did not implement various protections for Boardmembers, such as the acquisition of Directors & Officers insurance and the contemplated indemnity.

Chair Karno stated that: 1) Directors & Officers insurance was bound prior to the meeting, and 2) the GHAD Board seeks a more detailed presentation from staff of options and recommendations for Directors & Officers insurance at a future GHAD Board meeting.

Motion: Boardmember Marquis moved, and Boardmember Levitan seconded, a motion directing GHAD Special Counsel to prepare an indemnification agreement between the GHAD and GHAD Boardmembers.

f. **Engineering Report, Assessment, and Budget Update.** GHAD Manager Eliahu presented a status report of the Engineer's Report and GHAD budget. He reported that the Engineer's Report and budget are in the process of being finalized, and ENGEIO is consulting with GHAD Engineer Moffat & Nichol and others to perfect the draft documents. In response to questioning from Chair Karno, GHAD Manager Eliahu informed that a draft of the Engineer's Report and budget should be ready for legal review within 30 days. GHAD Manager Eliahu informed that the documents could not be completed until the negotiations between TPOA and the GHAD on the applications are concluded.

Member of the public Reznick stated that 2000 cubic feet of sand may become available from the dredging of Zuma Creek within the near future.

Boardmember Marquis stated that the information was appreciated, but the amount seems fairly nominal in light of the 600,000 cubic yard need for the proposed restoration.

Chair Karno requested another update on the Engineer's Report and budget at the next meeting.

10 PUBLIC HEARINGS

a. **Consider GHAD Plan of Control, Dated March 30, 2011.** GHAD Special Counsel and GHAD Manager presented the staff report and recommended that the Plan of Control be reviewed and approved with the adoption of proposed Resolution No. 2011/02.

Vice Chair Grossman presented comments and various suggestions regarding the Plan of Control. Vice Chair Grossman suggested that Section 2.2 reflect both public, county-owned walkways for vertical access and lateral access from adjacent Zuma Beach to the east. Vice Chair Grossman also suggested that Section 5.1 is too broad by referring to "existing storm drains" since such storm drains are owned by public agencies and not by the GHAD, TPOA or private property owners. Vice Chair Grossman also suggested a rewording or editing of Section 6.1 and clarification of Section 8.0 in connection with the maintenance of erosion hazards and drainage improvements. Vice Chair Grossman expressed concern that the GHAD not assume any responsibilities already vested in other public entities which own or control such erosion hazards or drainage improvements.

Boardmember Levitan reminded the Board and audience that the revetment extends to only 78 homes, and not to all 114 homes within the GHAD and that maintenance of the revetment may entail different tasks than maintenance of current or future dunes that do not have a revetment under them. He mentioned the consideration of different assessment amounts for various properties and if certain property owners could be required to maintain certain beach restoration improvements. GHAD Special Counsel Curtin responded that such practice is not advisable as it could conflict with the special benefit requirement in Proposition 218 relating to real property assessments. GHAD Manager also stated that the revertment project as currently designed is to provide equal special benefits for all properties in the GHAD.

Chair Karno opened the item to public comment.

Member of the public Reznick asked the Board to clarify that the GHAD is not responsible for storm water treatment within the GHAD boundaries, and does not want the GHAD to assume such responsibilities in the future.

Chair Karno closed the item to public comment.

Motion: Vice Chair Grossman moved, and Boardmember Marquis seconded, to direct counsel and consultants to review the specific Plan of Control sections referenced by Vice Chair Grossman, and suggest changes to the Plan of Control at the next scheduled GHAD Board meeting, and reconsider the Plan of Control with any suggested revisions at the next GHAD Board meeting. The motion passed 4-0.

b. Consider GHAD Board Voluntary Advisor Position for Malibu West Swim Club Designee. GHAD Projects Attorney Ehrlich presented a staff report outlining the September 12, 2011 request by Malibu West to serve on the GHAD Board and the recommendation of the same date by the City Council that the GHAD Board consider adding a Malibu West designee as an advisor to the Board.

Vice Chair Grossman excused himself from the meeting.

Chair Karno opened the item to public comment.

Member of the public Goss questioned the wording of the proposed resolution and suggested that the word "member" be deleted from the resolution when referencing the advisory position.

Chair Karno closed the item to public comment.

Chair Karno agreed with Goss' recommendation.

Motion: Boardmember Levitan moved for, and Boardmember Marquis seconded, the adoption of the resolution appointing Mark Goss as a representative of Malibu West as an advisor to the GHAD Board with the revisions suggested by Goss. The motion passed 3-0.

11. GHAD BOARD REPORTS

Boardmember Levitan reported that the time has come to increase voluntary commitments from individual property owners to loan the GHAD funds prior to the issuance of any bonded indebtedness. Boardmember Levitan is hopeful contributions will come in from Malibu West and its members.

Boardmember Marquis reported that fundraising is critical at this juncture in order to meet the projected October 2012 construction start date.

12. ADJOURNMENT

The regular meeting of the Broad Beach GHAD was adjourned at 11:30 a.m.

Approved and adopted by the Broad Beach GHAD
Board on November 6, 2011.



NORTON KARNO, Chair

ATTEST:



BARBARA HAMM, GHAD Clerk