

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday January 13, 2019; 9:00 a.m.

Juan Cabrillo Elementary School-Library
30237 Morning View Drive, Malibu, CA 90265

1. Call to Order

The Chair called the meeting to order at 9:02 a.m.

2. Roll Call

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

ABSENT: Board Member Kuba.

BBGHAD ALSO PRESENT: Project Manager Ovrom, Project Engineer Boudreau, Clerk/Treasurer Fuchs, and Project Counsel Ehrlich. Special Counsel Colantuono participated in Closed Session by phone.

3. Adoption of Agenda

The Chair recognized Project Counsel, who reported that the Agenda was posted on Wednesday January 9, 2019 at approximately 6:00 p.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Board Member Marine, who moved to adopt the Agenda as posted. Board Member Needleman seconded the Motion, and the Motion passed 4-0.

Closed Session

At 9:04 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 10:13 a.m. The Chair recognized Project Counsel, who reported on the agenda items discussed in Closed Session. Other than announcing that the Board directed Project Counsel to attempt to arrange for a meeting between CCC Executive Director Ainsworth and BBGHAD property owners regarding the BBGHAD Coastal Development Permit for the Project at a date to be determined, no specific actions were taken.

Special Counsel Colantuono left the meeting at approximately 10:04 a.m.

8. Approve Summary of Actions from December 16, 2018 Meeting

The Chair recognized Board Member Marine, who moved to approve Summary of Actions from December 16, 2018. Board Member Needleman seconded the Motion, and the Motion passed 4-0.

9. Old Business

a. Sand Source Update

The Chair recognized Project Counsel, who stated that, since the December 2018 Board meeting, there are no updates regarding sand source to report. Project Counsel further stated that Wayne Morris, a representative for Boskalis, is present at the meeting and available to update the Board on the status of the potential source for ocean delivered sand.

The Chair welcomed Mr. Wayne Morrison, who briefed the Board on the testing of potential sand for the Project from a quarry source in Ensenada, Mexico, the anticipated logistical aspects and time frame of transporting the sand (approx. 500,000 cubic meters) to the vessel in Mexico, and then ocean delivery at Broad Beach, California.

The Chair asked if Boskalis could further reduce the cost of its proposal. Mr. Morris responded that Boskalis has already secured a deal with Shell Oil Company, which reduces the price and is looking for additional deals on the West Coast to further reduce the cost of its proposal.

The Chair recognized Board Member Marine, who asked if there are any risks involved with the ocean delivered sand. Mr. Morris responded that Boskalis is an internationally highly experienced dredging company and would keep the potential risks to a minimum.

The Chair recognized Project Engineer, who inquired about the coarseness of the Mexican sand (Muriel Quarry). Mr. Morris responded that the dredged sand would have to be blended and/or sieved to meet the CDP's Section 8 specifications.

b. Permitting and Regulatory Process Status.

(1) Lead Agency Update

A. CCC (incl. MHMMP/Science Advisory Panel)

i. Prior-to-Issuance Conditions compliance & CDP
Amendment

The Chair recognized Project Counsel, who reported that there has not been significant progress with the PTI ("Prior to Issuance") conditions since last month, except for Executive Director Jack Ainsworth's offer to speak to the BBGHAD property owners on or about January 28, 2019, subject to approval by the Board. If approved by the Board, Project Counsel

recommended sending a letter to the BBGHAD homeowners notifying them of the proposed January 28, 2019 meeting with Jack Ainsworth at the Elkins Kalt offices, explaining the potential consequences if the CDP/Project fails, providing an update on the current litigation matters, specifying the April 1, 2019 deadline for the revetment homeowners to decide if they will sign the License Agreement, and then (after 4/1/19) followed by Board consideration of the status, property location, and amount of the signed License Agreements in connection with the potential re-submission of a CDP amendment application to the CCC requesting a requirement of less than 100% of the revetment property owners to sign the License Agreement—understanding that the CCC will almost certainly order owners who do not sign the License Agreement to remove the revetments seaward of their parcels.

The Chair recognized the Vice Chair, who asked Project Counsel to explain the permitting process each revetment homeowner would have to take if the Project would fail. Project Counsel responded to the Vice Chair's inquiry.

MOTION: Board Member Marine moved to authorize Project Counsel to send a letter to the BGHAD homeowners notifying them of the proposed January 28, 2019 meeting with Jack Ainsworth at Elkins Kalt offices, explaining the potential consequences if the CDP/Project fails, updating property owners on the current litigation matters, specifying a April 1, 2019 deadline for the revetment homeowners to sign, notarize, and deliver to the BBGHAD the License Agreement, and (after 4/1/19) followed by Board consideration of the status, final number, and property location of signed License Agreements in connection with the potential re-submission of a CDP amendment application to the CCC requesting a requirement of less than 100% of the revetment property owners to sign the License Agreement— understanding that the CCC will almost certainly order owners who do not sign the License Agreement to remove the revetments seaward of their parcels. The Vice Chair seconded the Motion.

The Chair asked if the April 1, 2019 date would be last definitive day for the homeowners to sign the License Agreement? Project Counsel responded that the BBGHAD Board has set the April 1, 2019 deadline and, as far as the BBGHAD is concerned, that is a hard deadline, and reiterated that the BBGHAD needs definitive information to resubmit the CDP amendment application.

Hearing no further comments, the Chair called the question and the Motion passed 4-0.

The Chair recognized Project Counsel, who briefed the Board on correspondence with the Counsel for the Lemon Trust, who asked specific questions about the Springing Licenses and made other allegations. Project Counsel stated that the letters are included in the Board Packet.

ii. Discussion of Coastal Frontiers contract for 2018/19

No discussion.

B. Army Corps

No report.

C. RWQCB

No report.

D. SLC

The Chair recognized Project Counsel, who reported that staff remains in communication with the SLC about seeking an extensions of its permit expiring in 2020.

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

No report.

10. New Business

- a. Addition of Associate to BBGHAD Project Counsel's Firm

The Chair recognized Project Counsel, who reported that Elkins Kalt et al. seeks to employ Monica Briseno as an Associate. Ms. Briseno was previously employed as an associate at another law firm, which formerly provided services to the owners of three (3) BBGHAD parcels regarding the Project. Elkins Kalt seeks Board consent to waive possible conflicts of interest required for Elkins Kalt to employ Ms. Briseno, subject to certain conditions, including an ethical screen.

MOTION: The Vice Chair moved to pass Resolution No. 2019/01 authorizing the Chair or Vice Chair to sign the waiver of conflicts/consent on BBGHAD's behalf. Board Member Marine seconded the Motion.

The Chair recognized homeowner Arnault, who asked Project Counsel to define the term “ethical screening”. The Chair recognized Project Counsel, who responded that Ms. Briseno would not have any access to any of his offices' electronic and/or any physical records regarding the BBGHAD.

The Chair recognized Max Factor III, who asked if the Ms. Briseno has made a commitment not the share her knowledge on the two homeowners. Project Counsel responded affirmatively.

Hearing no further comments, the Chair called the question and the Motion passed 4-0.

11. BBGHAD Officer Report

- a. Project Manager

- (1) 2016 & 2017 BBGHAD Financial Audit

The Chair recognized the Project Manager, who introduced Mr. Richard Kikuchi of Lance, Soll, and Lundgard CPAs ("LSL"). The Chair recognized Mr. Kikuchi, who gave a brief overview of his company, which specializes in accounting for governmental entities, including the completion of governmental audits. Mr. Kikuchi stated that the BBGHAD engaged LSL to complete a financial audit from the inception of the BBGHAD to December 31, 2016, and a separate audit for calendar year 2017. Mr. Kikuchi stated that the objective of the audits is to give the Board assurance that the financial results are properly reported.

Mr. Kikuchi reported that the results of the 2016 and 2017 audits are an unmodified opinion, also called a "clean" opinion. He added that, as a result of its testing and analysis process, LSL feels the amounts stated in the 2016 & 2017 financial statements are materially correct. Mr. Kikuchi further stated that, as a result of the audit, LSL feels comfortable with the financial statements, but recommended the preparation of annual financial statements as well as implementing certain written internal control policies.

The Chair recognized Board Member Marine, who asked Mr. Kikuchi for his recommendation on internal control policies. Mr. Kikuchi recommended that the Project Manager contact LSL to obtain samples of appropriate internal control policies.

The Chair recognized Vice Chair, who asked if the BBGHAD could retain the same engagement team for future audits. Mr. Kikuchi responded affirmatively.

The Chair questioned specific language of the audit in connection with the pre-BBGHAD creation of a "Revetment Fund". The Chair stated that, contrary to the current language of the audit report, the Revetment Fund was created by an extra 2009 or 2010 allocation of revetment costs on certain east end owners for the potential relocation of the revetment (as specified in the ECDP for the revetment) and asked Mr. Kikuchi to change the characterization in the report. Mr. Kikuchi agreed to do so.

The Chair recognized the Vice Chair, who asked if the audit reports and correspondence are part of the BBGHAD's public records. The Chair recognized the Project Manager, who responded that the 2016 and 2017 audit will be posted on the BBGHAD website.

The Chair asked the Treasurer if she could prepare the annual financial statements for the BBGHAD in the future, as recommended by LSL, or if additional training is needed. The Treasurer responded that she has received sufficient training to prepare the financial statements.

The Chair recognized the Vice Chair, who thanked Project Manager, LSL, and the Treasurer for completing the audits successfully.

The Chair recognized Project Counsel, who stated that he changed the language of proposed Resolution No. 2019/02 to reflect the changes regarding the description of

the Revetment Fund on page 2, number 1, as follows: “the 2012-2016 Audit and 2017 Audit are hereby received, subject to a factual clarification regarding the purpose of the Revetment Fund.”

The Chair recognized Ms. Arnault, who asked about the amount of the Revetment Fund and whether the funds have been used. Project Counsel responded to Ms. Arnault’s questions. The Chair added that the beginning balance of the Revetment Fund was approximately \$180,000 and, according to the audit report, the current remaining balancing is approximately \$178,000.

MOTION: Board Member Marine moved, and Board Member Needleman seconded, to adopt Resolution No. 2019/02 as amended by the Chair and the Vice Chair regarding the Revetment Fund, and to authorize LSL's engagement for a 2018 audit. Hearing no further comment, the Chair called the question and the Motion carried 3-0-1.

b. Treasurer's Report

The Treasurer reported, that as of January 7, 2019, the BBGHAD's cash balance was \$3,680,597.99 and the estimated unpaid bills amount to \$182,533.20. The Treasurer further reported that the total fees and costs incurred through December 2018 for the *Reef Group* litigation amounts to \$315,762.91, \$163,041.32 for the *Arnault/Factor* litigation, and \$345,371.25 for the *Validation Action*. The Treasurer further stated that the BBGHAD has received a total of \$262,763.04 in defense cost reimbursement for attorney’s fees and costs for the *Arnault/Factor* and *Reef Group* litigation.

12. BBGHAD Board Member Reports

No reports.

13. Public Comment - Non-Agenda Items

The Chair recognized Max Factor, who referred to the December 16, 2018 Summary of Actions where the Project Engineer opined that sand costs would decrease if more frequent storms impacted coastal communities which, in turn, would cause more coastal communities to nourish their beaches. Mr. Factor asked if the Project Engineer based his statement on information received from the CCC. The Project Engineer responded that his statement was solely based on his professional experience and that he expects increased beach nourishments on the West Coast due to sea level rise and the prospect of more frequent than normal storms.

The Chair recognized Jane Arnault, who asked if there are other communities conducting beach nourishment without the benefit of public funds? The Project Engineer responded that he is not aware of any in California, but cited that the western part of Santa Monica Bay is challenged with narrowing beaches and such private efforts could begin in the future. Project Counsel added that he has heard that a community in San Diego County formed a GHAD for the purpose of beach nourishment.

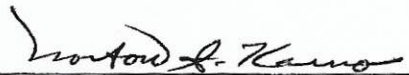
14. Future Meeting

The Chair stated that the next meetings are scheduled for February 10, 2019, and tentatively March 10, 2019, both meetings to start at 9:00 a.m. with locations to be determined. The Chair announced that there will be a special non-BBGHAD Board meeting January 28, 2019 with CCC Executive Director Jack Ainsworth at a time to be announced.


15. Adjournment

The Chair recognized Board Member Marine, who moved to adjourn Regular Session. Board Member Needleman seconded the Motion. The Chair called the question, and the Motion passed 4-0. Regular Session was adjourned at 11:32 a.m.

Approved and adopted by the Broad Beach GHAD Board


Norton S. Karno, Chair

Attest:


Heike Fuchs, Clerk