

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

**Sunday, October 1, 2017; 9:00 a.m.
31030 Broad Beach Road, Malibu, CA 90265**

1. Call to Order

The Chair called the meeting to order at 9:10 a.m.

2. Roll Call

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

ABSENT: Board Member Shaul Kuba.

BBGHAD STAFF ALSO PRESENT: BBGHAD Engineer Russ Boudreau, Project Counsel Ken Ehrlich, and Clerk/Treasurer Heike Fuchs. BBGHAD Election Official Donesia Gause and Special Counsel Colantuono participated by phone.

3. Adoption of Agenda

The Chair recognized Project Counsel, who reported that the Agenda was posted on September 27, 2017, at approximately 6:00 p.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website.

The Chair recognized Vice Chair, who moved to adopt the Agenda as posted, but to delete Agenda item 10.a., Confirmation of Assessment and Authorization of the Levy and Collection of the Assessment for the BBGHAD, from today's Agenda and defer to the next Board meeting. Board Member Marine seconded the Motion and the Motion passed 4-0.

Closed Session

At 9:12 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 at 10:27 a.m., and the Chair announced that the Board decided to delete Agenda item 10.a, Confirmation of Assessment and Authorization of the Levy and Collection of the Assessment, from the meeting's Agenda.

The Chair recognized Project Counsel, who reported on the agenda items discussed in Closed Session. As a result of the Board's deliberations in Closed Session, Project Counsel recommended for the Board to consider limiting receipt of written submissions to the

administrative record associated with the 2017 Assessment, including the pending Reef Group and 31506 Victoria Point litigation matters, to October 31, 2017. Project Counsel suggested that the BBGHAD would circulate the written statements to the public and receive written statements until October 31, 2017 and for the BBGHAD to have the opportunity to respond to the submissions. After this process, the administrative record would be complete.

MOTION: The Chair recognized the Vice Chair, who moved, as recommended by Special Counsel, to set the following deadlines for submissions to the administrative record for the 2017 Assessment, including the Reef group and Arnault/31506 Victoria Point litigation matters: 1) October 31, 2017: last day for public to submit written submissions, 2) November 12, 2017: last day for BBGHAD to submit written responses to submissions from public, and 3) November 12, 2017 Board of Directors meeting: time to be allotted for oral responses from public to BBGHAD written responses to public written submissions. Board Member Marine seconded the Motion. The Chair opened the Motion for public discussion.

The Chair recognized Jim Hornstein, a legal representative for Magidson, who objected to the process as he opined that it would provide an unfair advantage to the BBGHAD as the schedule and BBGHAD-imposed deadlines may prevent his client from responding to new information produced by the BBGHAD on or about November 12, 2017. The Chair recognized Special Counsel Colantuono, who recommended following this procedure as customary with public agencies.

The Chair recognized Max Factor, who agreed with Mr. Hornstein's position, adding that any Public Record Act ("PRA") request that has not been responded to by the BBGHAD should be included in the record. Hearing no further comment, the Chair called the question and the Motion passed 4-0.

7. Approve Summary of Actions from September 10, 2017 Meeting

The Chair recognized Board Member Marine, who moved to approve Summary of Actions from September 10, 2017, with minor, non-substantive edits. Vice Chair Grossman seconded the Motion, and the Motion passed 4-0.

8. Old Business

a. Sand Source Update

The Chair recognized Project Counsel, who reported on the BBGHAD's recent meeting with City of Moorpark staff regarding Project truck traffic. Project Counsel anticipates hearing from the City within a few weeks on its position on the terms for hauling sand from the CEMEX facilities through area highways.

Project Counsel further reported that Malibu City Council passed a resolution to send a letter to CCC in support of having marine delivery sand for the BBGHAD Project instead of a land delivery. Project Counsel stated that staff remains engaged with Polaris and a joint meeting with the CCC is scheduled for October 25, 2017, to persuade the CCC to accept the reformulated Polaris sand.

b. Permitting and Regulatory Process Status

The Chair recognized Project Counsel, who updated the Board on:

(i) Lead Agency Update

(A) CCC

Project Counsel reported that staff will submit the final Prior to Issuance (“PTI”) reports to the CCC, and as soon as plans are submitted the information will be posted on the website, as requested. Project Counsel further reported that staff has received approximately 25-30 signed Springing Licenses.

(B) Army Corps

Project Counsel reported that he anticipates the Army Corps and the Regional Water Board issuing their permits by the end of this month or in early November.

C) SLC

No report.

(ii) Responsible & Consulting Agency update:

Project Counsel reported that staff anticipates final approval from Caltrans for the temporary signal at PCH/Guernsey, and that staff will finalize the terms of the license for the Zuma parking lot pending the outcome of the finalization of the sand source.

The Chair recognized Lynn Norton, who asked about possible challenges regarding ocean delivered sand. Project Counsel responded that no permitting agency has ever before evaluated ocean delivery of sand for a project in an ocean environment like Broad Beach, and that BBGHAD Engineer Moffatt & Nichol has already provided a lot of input in this regard.

c. Permitting Outreach & Strategy Update

Project Counsel stated that this item has already been covered with the City of Malibu resolution on sand transport.

d. Board of Director Election Update

The Chair recognized Project Counsel, who reported that the Election Official detected an error in Resolution 2017/06, calling for 3 Directors for a full term of 4 years Board seats. As a remedy, the Election Official recommends the adoption of Resolution No. 2017/10, which would function to create have 2 Board seats with four-year terms and 1 shorter term for the third place finisher-- serving out the remaining term for the Bill Curtis/Cathy Needleman seat.

MOTION: The Vice Chair moved to adopt Resolution No. 2017/10 as recommended by the Election Official and supported by staff.

The Chair recognized Jane Arnault, who asked Project Counsel to explain the Board election process and if it is possible to have write-in candidates. Project Counsel gave an overview on the process and Election Official Gause added that they were originally 6 applications for candidacy, but that Mr. Chris Spiros' nomination was eliminated due to his property not being within the boundaries of the BBGHAD. The Election Official further stated that a write-in period opens 54 days before the Election and closes 14 days before the Election. Project Counsel stated that interested parties should contact the Election Official directly for more information.

The Chair recognized Mr. Hornstein, a legal representative for Mark Magidson, who asked from whom the Election Official received legal advice to eliminate Mr. Spiros as a candidate. Project Counsel responded that the office of Special Counsel Colantuono provided advice. Mr. Hornstein stated that his client objects to the elimination of Mr. Spiros' candidacy by the Election Official due to receiving advice from Special Counsel Colantuono's office.

The Chair recognized Lynn Norton, who stated that upland Malibu West property owners own a percentage of the Malibu West Beach Club and would like to see the details for the basis of Mr. Spiros' elimination in writing. The Chair recognized Doug Baron, who asked Ms. Norton if Mr. Spiros would represent all of the homeowners. Ms. Norton responded that he would not.

The Chair recognized Mr. Hornstein, who opined that Mr. Spiros' disqualification to run for a Board seat equates to "taxation without representation".

The Chair recognized Special Counsel Colantuono, who stated that the BBGHAD Board has no authority regarding the qualifications of the candidates; the Election Official possesses such authority. Special Counsel further stated that this process is governed by statute and that the Election Official made her decision based on Mr. Spiros not being a landowner within the BBGHAD, and that he did not discuss this issue with the BBGHAD Board.

The Chair recognized Mr. Hornstein, who stated that Mr. Spiros authorized him to speak on his behalf.

The Chair recognized Doug Baron, who inquired about the candidates running for the Board representing the Reef Group and, at the same time, suing the BBGHAD. The Chair responded that the Mr. Alex Haagen and Mr. Mark Magidson meet the qualification to run for the Board, as per the Election Official.

Hearing no further comments, the Chair called the questions and the Motion carried 4-0.

9. New Business

None.

10. Public Hearing

- a. Confirmation of Assessment and Authorization of the Levy and Collection of the Assessment for the BBGHAD

As announced at the beginning of Regular Session, the Board deleted this item from the Agenda.

11. BBGHAD Officer Report

- a. Treasurer's Report

The Treasurer reported that, as of September 26, 2017, the cash balance was \$1,911,258.29 and the estimated unpaid bills amounted to \$268,205.47.

The Chair recognized Jim Hornstein, who inquired about 2 payments to the City of Moorpark. Project Counsel responded, that the 2 payments are for indemnity obligations in regards to the City of Ventura/Fillmore/Moorpark litigation.

The Chair recognized Michael Schwab, who asked for a copy of the check register from the beginning of the BBGHAD. The Chair directed the Treasurer to provide a report to Mr. Schwab and Ms. Arnault and to post the report online.

12. BBGHAD Board Member Reports

The Vice Chair requested that, if the public has documents for the Board to discuss at the meetings, to provide the documentation 5 – 7 days in advance as it is difficult for the Board to review hundreds of pages within hours of the start of the Board meeting.

13. Public Comment - Non-Agenda Items

The Chair recognized Dolly Martin, who informed the Board that she sold her Broad Beach home and asked the Board to return her \$10,000 "Fair Share" contribution made in 2009. Project Counsel stated that the Board has been mindful of the "Fair Share" contributions debt and that the budget calls for the repayment of this money in Project year 6. Project Counsel added that he has concerns legally disbursing public funds to one particular homeowner as litigation already asserts a disparity of benefits within the Project. A discussion ensued regarding the repayment of the "Fair Share" contribution. The Chair stated that the BBGHAD does not have the ability to repay the Fair Share Contributions at this moment. Project Counsel announced, that two people agreed to pay Ms. Martin her \$10,000.00 "Fair Share" contribution and these people will receive an assignment of this Fair Share contribution from Mrs. Martin.

The Chair recognized Mr. Rob Scapa, who announced himself as legal representative for Mr. & Mrs. Haagen, and stated that the Reef Group is not against the Board, but seeks for an alternative solution to keep sand on the beach. Mr. Scapa criticized the transparency of the Board claiming that the public had not been fully informed that approximately 12 CDP "Prior to

Issuance" (PTI) conditions were not satisfied before the Board considered the recent vote on the assessment increase.

The Vice Chair stated that Mr. Scapa's statements were a misleading and an inaccurate presentation of facts, and strongly disagrees with the statements.

The Chair recognized Alan Mark, who stated his concerns regarding the Reef Group's plan to put in an artificial reef while impeding all the efforts and permitting progress made by the BBGHAD. Mr. Mark also commented on the Reef Group's failure to produce its' promised feasibility study in a timely manner.

The Chair recognized Lynn Norton, who referred to a 2009-2016 chart by BBGHAD Engineer Moffatt & Nichol depicting East End sand loss over the past years and asked if the revetment caused this loss. The Project Engineer responded that the engineers base their data on existing wave data. Ms. Norton stated her belief that the east end had more sand naturally before the revetment was put into place.

The Chair recognized Mr. Alex Haagen, who stated that the BBGHAD sent its CDP extension request to the CCC staff 3 days after the assessment vote and asked why the public was not notified. The Chair recognized Project Counsel, who responded to Mr. Haagen's question in detail, and added his belief that the CDP extension request was discussed at prior Board meetings.

14. Future Meeting

The Chair stated that the next Board meetings are scheduled for November 12, 2017 and, tentatively, December 10, 2017. The December 10th meeting will coincide with a TPOA Annual Meeting, with locations to be determined.

15. Adjournment

The Chair recognized Vice Chair, who moved to adjourn Regular Session. Board Member Marine seconded the Motion. The Chair called the Roll, and the Motion passed 4-0. Regular Session adjourned at 12:19 p.m.

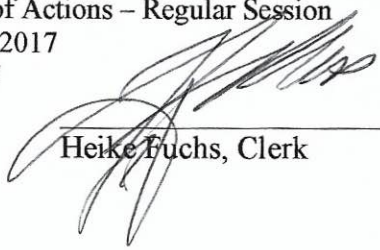
Approved and adopted by the Broad Beach GHAD

Board on _____



Norton S. Karno, Chair

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Heike Fuchs, Clerk