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Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday November 20, 2016; 9:00 a.m.

31030 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

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

2. SWEARING IN OF NEW BOARD MEMBER, SHAUL KUBA

The Chair stated that the new Board Member Shaul Kuba has completed the swearing-in process and now serves as a Board Member.

3. ROLL CALL

PRESENT: Chair Karno, Vice Chair Grossman, Board Members Jeff Marine, Bill Curtis, and Shaul Kuba.

ABSENT: N/A

BBGHAD STAFF ALSO PRESENT: Project Engineer Russ Boudreau, Malibu West Advisor Chris Spiros, Project Counsel Ken Ehrlich, and Clerk/Treasurer Heike Fuchs.

4. ADOPTION OF AGENDA

The Chair recognized Project Counsel, who reported that the Agenda was posted on November 17, 2016 at 8:30 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Board Member Marine, who moved to approve Agenda as presented. Vice Chair Grossman second the Motion. The Chair called the question, and the Motion passed 5-0.

Closed Session

At 9:11 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 10:22 a.m., and a report was given on Closed Session items.

7. APPROVE SUMMARY OF ACTIONS FROM OCTOBER 16, 2016 MEETING

The Chair recognized Board Member Marine, who moved to approve the Summary of Actions from October 16, 2016 Board Meeting with certain minor edits announced by Project Counsel. Vice Chair Grossman seconded the Motion, and the Motion passed 5-0.

8. Ceremonial/Presentations

None.

9. Consent Calendar

None.

10. Public Hearing

None.

11. Old Business

a. Permitting and Regulatory Process Status

(i) Lead Agency Update


(A) CCC (and Science Advisory Panel)

1. Budget update including Habitat Monitoring Plan costs


The Chair recognized Project Counsel, who reported that BBGHAD biologist Merkel submitted the reduced cost (approximately \$450,000.00 per year) Habitat Monitoring and Mitigation Plan ("Plan") to the CCC staff and they are considering it. Project Counsel further informed the Board that the CCC staff asked for a cost breakdown of the reduced cost Plan. Project Counsel further added that the CCC staff process is very slow at this moment and that he anticipates to receive a response within the next 2 (two) to 4 (four) weeks.

The Chair asked Project Engineer Boudreau if he knows of other consultants to obtain a competitive bid for the same scope of work to possibly reduce costs further. The Chair recognized Project Engineer, who reported that Mr. Merkel's lower cost Plan contains unique cost-reducing methodologies, but that he will review Merkel's Plan and attempt to obtain competitive bids. The Project Engineer reminded the Board that Merkel's Plan complies with the CDP and a further reduced scope of work might result in paying future mitigation or require a CDP modification or amendment. The Project Engineer agreed^{to} soliciting competing bids by putting out a request for proposal (RFP).

(B) SLC and Army Corps

The Chair recognized Project Counsel, who reported that the SLC Lease requires the BBGHAD to acquire \$10 million in liability insurance and post \$1,350,000 in financial security by December 7, 2016 in the form of cash, certificate of deposit (C/D), bond, or letter of credit. Project Counsel further added that he is working with the SLC staff to defer the 12/7/2016 deadline for bond and insurance purposes, and anticipates a response from the SLC soon. Project Counsel informed the Board that the SLC originally asked for \$8 million in financial security and the BBGHAD staff negotiated the amount down to \$1.35 million under the current revetment alignment and down to \$850,000 once the revetment is ~~is~~ MOVED 

A discussion ensued in connection with the BBGHAD's alternatives in complying with the SLC's financial security requirements. The Chair recognized Board Member Kuba, who suggested negotiating to have the right to replace the monies put up for security for SLC (\$1,350,000.00) with a letter of credit or some other form if the BBGHAD so desires.

 The Chair recognized Vice Chair, who suggested securing the BBGHAD's option to do a revetment-only project when putting up the \$1,350,000.00. The Chair recognized Project Counsel, who opined that the CCC would not care about the SLC's financial security requirement, but a revetment-only Project would require a modified or amended CDP from the Coastal Commission. The Chair recognized Board Member Kuba, who inquired about the possibility ^{of} the Board looking at changing the CDP. The Chair recognized Vice Chair, who responded that, compared to having no shoreline protection at all, he prefers the revetment only option and therefore would favor to have the CDP altered if the BBGHAD does not move forward with the beach nourishment aspect of the Project.

The Chair recognized Board Member Curtis, who inquired about the BBGHAD bank account balance. The Chair recognized the Treasurer, who responded that the current balance is approximately \$2,500,000.00 and an estimated \$1,200,000.00 (40% assessment) deposit is expected in December 2017. The Chair recognized Board Member Curtis, who withdrew his objection to posting cash based upon the positive cash balance.

The Chair directed staff to pursue obtaining a deferral of the SLC Lease's financial security requirement if possible. If the BBGHAD cannot obtain the deferral, BBGHAD staff was directed, without objection, to fulfill the requirement with cash.

The Chair recognized Project Counsel, who reported that the U.S. Army Corps submitted comments on the Plan to the CCC staff, and such comments were provided to BBGHAD staff four (4) weeks after the CCC staff received them. Project Counsel added that the Army Corps' comments raised concerns within the BBGHAD technical team as the Army Corps' technical staff included requests for additional monitoring items not discussed in SAP meetings. Project Counsel stated that BBGHAD immediately responded to the Army Corps (letter in packet). The Army Corps responded on or about November 18 and essentially recanted many of their comments. Project Counsel further explained that, based upon recent information provided by BBGHAD consultant Richard Beck, the Army Corps essentially agrees with the SAP concept and, to complete Army Corps permitting process, the BBGHAD staff is creating a mitigation

framework—a document specifying to the Army Corps the BBGAHD's mitigation strategy and commitment. Among other points, the framework will specify that, in response to any adverse monitoring findings, the BBGHAD will undertake adaptive management and other measures before addressing compensatory mitigation, which would be proposed, in concept, to be paid on the same basis and ratio as the revetment mitigation already agreed upon by the BBGHAD Board and Army Corps (and already included in the \$750,000.00 budgeted for mitigation). Project Counsel stated that BBGHAD staff seeks to obtain the Army Corps approval by early 2017.

The Chair recognized Project Counsel, who informed the Board that the focus is on obtaining the Army Corps permit, that lobbyist Vectis is relatively optimistic about the incoming Presidential administration and wants to energize Congressman Ted Lieu's office to assist, if possible, in the process.

The Chair recognized Vice Chair, who asked if special interest groups are hostile to the Project and if the Army Corps intends to issue an Environmental Assessment (shorter path) as opposed to an Environmental Impact Statement. The Chair recognized Project Counsel, who responded that he does not know of any additional issues with special interest groups and the Army Corps appears on an Environmental Assessment track, which will be made available for public comment and the BBGHAD should anticipate negative public comments.

The Chair recognized Project Counsel, who updated the Board on an Army Corps request to provide additional analysis on an existing Project alternative (Alternative 4B, bolstered revetment). The Chair asked Project Counsel if this request is consistent with CCC requirements. Project Counsel responded affirmatively, but added that the possibility remains that the Army Corps may impose other, new conditions on the Project.

The Chair recognized Vice Chair, who opined that it would be very helpful and important to meet with the newly elected CA State Senator Henry Stern to brief him on the Project and offered Marlene Grossman's help in facilitating the meeting. Project Counsel agreed to reach out to Senator Stern.

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

No Update.

b. Permitting Outreach & Strategy Update

No Report.

c. BBGHAD Insurance

The Chair recognized Project Counsel, who reported that staff continues to work with BBGHAD Manager ENGEO to obtain \$10 million insurance package and concurrently trying to get the SLC \$10 million insurance and financial security requirements deferred. Project Counsel anticipates receiving this information by next Wednesday.

12. New Business

a. Project Manager Search

The Chair recognized Board Member Marine, who reported that he joined Ryan Harter (Board Member Shaul Kuba companies' (CIM) Development Director) and Project Counsel in interviewing 3 (three) Project Manager candidates. Board Member Marine favors the proposed team of local contractor Charles Melber and his colleague Ray Files for the position. Board Member Marine opined that the BBGHAD needs a Project Manager immediately to thoroughly refine and complete the budget since Project Counsel has been performing the Project Manager role for the past months.

The Chair recognized Board Member Curtis, who asked if someone has talked with SANDAG representatives about the proposed Project Manager team and performed reference and background checking. The Chair recognized Project Engineer who offered to talk to the prime contractor of this project in San Diego, CA. Project Counsel was directed to conduct a background check for Melber and Files. The Chair recognized Board Member Kuba, who offered his firm to perform the background check and asked Project Counsel to check with Ryan Harter at CIM.

The Chair thanked Board Member Marine, Ryan Harter, and Project Counsel for interviewing the potential candidates. The Chair stated that he wants to clarify two (two) issues in their proposal: 1) the proposal received by the Board appears to be that Charles Melber and Ray Files ("the team") wants to take on specific services verses signing on as Project Manager and taking responsibility for the entire Project, and 2) the BBGHAD is uncertain if the Project is moving forward as presently proposed and needs to clarify with the team if the BBGHAD would be then responsible for the entire contract amount (approximately \$300,000.00).

The Chair further stated that he should not be negotiating their contract as stated in Resolution No. 2016/05 and is prepared to rely on the committee of 3 (three) to negotiate the contract.

The Chair recognized the Vice Chair, who asked if the team is currently employed and, if so, can they perform the Project Manager assignment on a part time basis? The Chair recognized Project Counsel, who responded affirmatively. The Chair asked who is going to handle the agreement. The Chair recognized Board Member Marine, who suggested for Project Counsel to revise the agreement as per Board's instructions.

MOTION: The Chair recognized Vice Chair, who moved to authorize Board Member Marine to: a) negotiate the terms of retaining Charles Melber to become Project Manager with the assistance from Ray Files, on terms agreed upon at the November 20, 2016 Board meeting, b) secure Melber's services consistent with the BBGHAD working budget, a 30-day termination notice provision, subject to Project Manager having his own insurance coverage, listing the BBGHAD as an additional insured, providing the Board with proof of insurance, c) ensure that

Melber serves as an independent contractor, and d) confirm that the retention is subject to reference and background checking. Board Member Curtis seconded the Motion. Hearing no further debate, the Chair called the question. The Motion passed 5-0.

13. BBGHAD Officer Report

a. Treasurer's Report

The Treasurer reported that, as of November 15, 2016 the cash balance was \$2,582,826.71 and the estimated unpaid bills amount to \$593,180.26. The Chair recognized Vice Chair, who inquired about the two (2) largest bills of the unpaid bills. The Chair recognized the Treasurer, who stated that the two largest unpaid bills are the Army Corps mitigation bill (\$214,500.00, check drawn and held by Project Counsel) and the West End Refunds (totaling \$167,600.64). The Chair recognized Project Counsel, who explained that the Army Corps bill (mitigation for revetment) was approved by the Board approximately five (5) months ago and the West End Refunds remain subject to obtaining signed Agreements from affected owners. The Chair recognized Vice Chair, who asked if any of the homeowners have signed the release yet. The Chair recognized Project Counsel, who responded that 1 (one) homeowner has. The Chair instructed Project Counsel to mail the refund to this person.

14. BBGHAD Board Member Reports

None.

15. Reconsideration of Resolution of Dispute Regarding Previous Assessment Overpayments by West End BBGHAD Owners

The Chair recognized Project Counsel, who introduced the matter. Project Counsel reported that the Board passed Resolution No. 2015/06, which specifies that, subject to signing a Settlement Agreement, west end owners would receive a credit of assessment funds paid or owing under the 2012 Assessment (where all BBGHAD parcels paid 100% of the assessment) from January 1, 2015 (the date on which direct west end sand deposition became impossible) through June 30, 2015 for those amounts exceeding the levy for West End Parcels according to the 2015 Engineer's Report (west end owners responsible for 25% of the total assessment formulated in that Engineer's Report). Project Counsel added that the Board: a) directed that the agreement memorializing the refund to apply to all successors and assigns of the subject west end parcels, and b) conditioned the refund on west end owners releasing any rights they may have to: (a) contest or object to the Project or any assessment required to fund the Project, or (b) claim a refund for the BBGHAD portion of assessment paid or owing from or after July 1, 2011, including the withdrawal or dismissal of any such refund claims submitted to date.

Project Counsel added that a BBGHAD Board Member and certain BBGHAD owners have requested the BBGHAD Board to reconsider certain aspects of the settlement terms authorized by Resolution No. 2015/06. The Chair directed that, due to the late hour and the danger of losing a quorum, consideration of this item would be deferred to December 2016.

16. Public Comment - Non-Agenda Items

None.

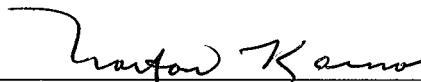
17. Future Meeting

The Chair suggested tentative future meeting dates of December 18, 2016 and January 15, 2017.

18. Adjournment

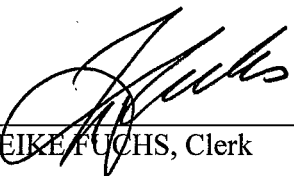
The Vice Chair moved, and Board Member Marine seconded, to adjourn. The Motion passed 5-0. The meeting adjourned at 12:19 p.m.

Approved and adopted by the Broad Beach GHAD
Board on December 18, 2016



NORTON KARNO, Chair

ATTEST:



HEIKE FUCHS, Clerk