

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday April 10, 2016; 9:00 a.m.

31030 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

The Chair called the meeting to order at 9:04 a.m.

2. ROLL CALL

PRESENT: Chair Norton Karno, Vice Chair Marshall Grossman, and Board Member Jeff Lotman.

ABSENT: Board Member Jeff Marine and Board Member Bill Curtis.

BBGHAD STAFF ALSO PRESENT: Board Advisor Chris Spiros, Project Manager Mark Goss, Project Counsel Ken Ehrlich, and Clerk/Treasurer Heike Fuchs.

3. ADOPTION OF AGENDA

The Chair recognized the Project Manager, who reported that the Agenda was posted on April 7, 2016 at 8:30 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. Board Member Lotman moved to adopt the Agenda as presented. The Chair requested a minor edit in Section 12) (ii). The Chair recognized Board Member Lotman, who amended his Motion to include the correction announced by Chair. The Vice Chair seconded the motion, and the Motion passed 3-0.

Closed Session

At 9:08 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 10:31 a.m. Project Counsel summarized the subject matter of the Closed Session proceedings.

8. APPROVE SUMMARY OF ACTIONS FROM MARCH 13, 2016 MEETING

The Chair recognized Board Member Lotman, who moved to approve the Summary of Actions from the March 13, 2016 Board Meeting. Vice Chair Grossman seconded the Motion, and the Motion passed 3-0.

9. CEREMONIAL/PRESENTATIONS

None.

10. CONSENT CALENDAR

None.

11. PUBLIC HEARINGS

None.

12. OLD BUSINESS

a. Permitting and Regulatory Process Status.

(i) CCC, SLC, and Army Corps.

CCC

The Chair recognized the Project Manager, who reported that the sand samples from Calleguas Creek have been tested twice and that he met with the Acting CCC Executive Director Ainsworth on April 20, 2016 to discuss the Calleguas Creek sand sample findings. The Project Manager asserted that the purpose of the meeting was to persuade the CCC to approve the new sand source, sand from which is slightly coarser than the CCC specification. If approved, the Project Manager stated that Calleguas sand source could reduce costs for the BBGHAD and reduce Project carbon emissions.

The Chair recognized Project Counsel, who briefly summarized the history of, and current issues concerning, the SAP. Project Counsel briefed the Board on SAP issues relating to the scope and breadth of CCC-imposed monitoring requirements. The BBGHAD believes that the SAP is trying to impose a more extensive and expansive monitoring plan on the BBGHAD than required in the CDP. In an attempt to reach a mutually agreeable compromise, BBGHAD sub-contractor Keith Merkel has agreed to re-draft part of the proposed monitoring plan. The Project Counsel stated that the Project Manager has Mr. Merkel to clarify if the re-draft entails the same scope of work as originally contemplated by the BBGHAD-- or if it goes beyond the CDP requirements. Project Counsel then voiced a concern that the CCC staff may be attempting to expand the monitoring work and consequently increase the BBGHAD's costs for same.

The Chair recognized Project Manager, who updated the Board on the SAP proceedings. The Project Manager reported that an increasing number of agencies are participating in SAP meetings, the number of opinions has increased, and the productivity of the meetings have decreased. The Project Manager further stated that BBGHAD sub-contractor Keith Merkel is primarily responsible for creating a monitoring plan that satisfies the CCC's proposed scope and the BBGHAD budget constraints. Mr. Merkel met with the SAP Chair Pete Ramondi to further

refine the parameters of the monitoring plan and that this process has not been concluded. The Project Manager further suggested that Project Counsel and he should meet with the SAP Chair and CCC staffer (and SAP member) Jonna Engel to: a) reiterate that the BBGHAD has a limited budget for the monitoring and measuring plans and, b) further clarify the extent of the BBGHAD's ability to comply with monitoring requests. The Project Manager further stated that it remains imperative that the parties reach agreement on this issue quickly since the first monitoring survey must be completed within the May-June timeframe. The Project Manager added that he would contact Mr. Merkel on Monday to seek his input/advice on how to expedite this process.

The Chair asked the Project Manager if the BBGHAD has agreed to a budget with the CCC or if the budget can increase significantly. The Project Manager responded that the BBGHAD budget contains a limit for these tasks, but there is no maximum budget amount negotiated with the CCC or evident in the CDP.

The Chair recognized Board Advisor Spiros, who asked the Project Manager if Mr. Merkel could draft and approve a plan that exceeds the BBGHAD budget. The Project Manager asserted that Mr. Merkel well understands that: a) any monitoring plan cannot exceed the BBGHAD budge, and b) he cannot submit a monitoring plan proposal to the CCC without meeting BBGHAD approval. The Chair questioned the Project Manager if the SAP Chair is waiting for the monitoring plan submittal. The Project Manager responded affirmatively.

The Chair recognized the Vice Chair who inquired about a March 2016 Board discussion regarding the role of BBGHAD Engineer Chris Webb and his continued interaction with SAP members. The Chair responded that this issue will be covered under the New Business item on the agenda.

Army Corps

The Chair recognized the Project Manager, who reported that he and Project Counsel successfully met with Congressman Lieu, Lieu's Chief of Staff Lisa Pinto, and three Army Corps staffers to facilitates the completion of the Army Corps' review of the Project. At the meeting, the Army Corps staff appeared to agree to divide federal mitigation into two (2) components: a) the revetment and its impact, and b) significant impacts, if any, after Project construction. The BBGHAD staff proposed a mitigation ratio and received a counter proposal from the Army Corps. The Project Manager stated further negotiations should occur soon.

The Chair recognized the Vice Chair, who inquired about the dollar difference of the BBGHAD proposed mitigation and the Army Corps demand. The Chair recognized Project Counsel who recalled that the BBGHAD originally offered a revetment mitigation ratio of 1.2:1 and the Army Corps countered with a proposed 5:1 ratio. Project Counsel further stated that Richard Beck, a BBGHAD consultant, estimates a settlement ratio of between 2:1 and 3:1 with corresponding dollars approximating \$250,000. The Chair asked Project Counsel if the BBGHAD or the individual homeowner is responsible for the encroachment. Project Counsel responded that it is the GHAD's responsibility and that the BBGHAD assumed liability with the CDP.

The Chair recognized the Vice Chair. The Vice Chair suggested that the Board should accept the Army Corps mitigation conditions if total payment equates to \$100,000 to \$150,000 explaining the BBGHAD would otherwise spend those monies on lobbyist and other fees. The Vice Chair further stated that he would like to resolve the differences with the various agencies and individuals to finalize the permitting process. The Chair voiced a concern that, if the BBGHAD seeks to resolve mitigation issues for past actions with one agency, such BBGHAD action may set a precedent for future negotiations with the other agencies. The Chair inquired if the Board has taken actions authorizing a dollar amount for mitigation negotiations. The Chair recognized the Project Manager, who responded that BBGHAD staff has not received authorization for mitigation payments from the Board.

The Chair recognized the Vice Chair. The Vice Chair asked for the staff's proposed strategy for finalizing these negotiations. The Chair recognized Project Counsel, who responded by requesting guidance from the Board to settle the revetment mitigation negotiations with the Army Corps within a specific dollar amount range.

MOTION: The Chair recognized the Vice Chair, who moved that the Board approve a maximum amount of \$175,000 for the Army Corps' claimed mitigation in connection with the revetment and to direct Project Counsel and Project Manager to direct the lead negotiator, Mr. Richard Beck, to negotiate no more than a \$175,000 maximum payment to the Army Corps. If the resolution number exceeds \$175,000, Mr. Beck is not authorized to agree to it and must return to the Board for additional guidance. Board Member Lotman seconded the Motion, and the Motion passed 3-0.

SLC

The Chair recognized the Project Manager, who informed the Board that he and Project Counsel will meet with SLC staff and Commissioners on April 21 regarding the lease.

The Chair recognized the Vice Chair, who inquired about the precedential effect, if any, on the SLC of any resolution with the Army Corps. The Chair recognized Project Counsel, who responded that the SLC claims: a) the revetment has encroached on public lands for the past 6 years, and b) private property owners have solely benefitted from same. Therefore, according to the SLC staff, the BBGHAD must now pay something to mitigate for the encroachment. However, Project Counsel added that, from a jurisdiction perspective, the SLC's claimed mitigation is different from that of the Army Corps and, arguably, the SLC encroachment is less than the encroachment claimed by the Army Corps. Project Counsel added that public records would show that the BBGHAD paid monies to the Army Corps due to the revetment encroachment and, in his opinion, could set a cap on any SLC payment, as well as covering the same time period and encroachment. Project Counsel added that the SLC may, nonetheless, claim a higher amount than the Army Corps based on the SLC's alleged value of the real property encroached upon and such formulation is different from that posed by the Army Corps.

The Chair recognized Board Member Lotman who asked the Project Manager if he could provide the Board with a document listing every agency with their mitigation demands and asked if the Project has a mitigation budget. The Chair recognized the Project Manager who responded that no mitigation budget exists. The Chair followed up by questioning if there are more than 2

(two) agencies that require mitigation. The Chair recognized Project Counsel who asserted that in addition to Army Corps and SLC, the RWQCB has the authority to do so, but historically has not demanded mitigation separate from the Army Corps.

The Chair questioned the Project Manager, in his point of view, if the SLC would be entitled to more monies than Army Corps because the Army Corps' jurisdiction is the waters of the United States and SLC's jurisdiction is real property owned by the State of California. The Project Manager responded by stating that the SLC mitigation amount should likely exceed that of the Army Corps in that he understands the concept of the rock revetment encroaching on the property of the State of California for the past 6 years, but does not see the negative impact on U.S. waters. The Chair then asked if the SLC and the Army Corps follow the same formulation of the mean high tide line separating public from private property. The Chair recognized the Vice Chair, who opined that the MHTL divides private property from public property, but is not a demarcation of U.S. waters as U.S. water extend at least 12 miles out to sea. The Chair recognized Project Counsel, who explained that the Army Corps has an expanded view of its jurisdiction. The Army Corps does not use the MHTL as the limit of the encroachment, but claims that the revetment encroaches 6-10 acres into the waters of the U.S., as it purportedly limits the natural course of tidal waters.

(ii) RWQCB, NMFS, Cal. DFW, CalTrans, etc.

The Chair recognized Project Manager, who reported that he has a meeting with Caltrans in 2 (two) weeks and that BBGHAD consultant, Michael Baker International, is handling the RWQCB.

The Chair recognized the Vice Chair who followed up on tasks assigned to BBGHAD staff during the Old Business discussion at the March 13, 2016 Board meeting regarding the inclusion of the side letter in the Board Packet, updated schedule by BBGHAD Engineer Moffat & Nichol, follow up with Caltrans and the SLC predecessor. The Chair recognized Project Counsel and Project Manager who explained the completion of the tasks and referred the Board to same.

The Chair recognized the Vice Chair, who asked the Board to retain the insurance coverage item on the May Board Meeting Agenda.

13. NEW BUSINESS

a. BBGHAD Engineer

The Chair recognized the Project Manager, who updated the Board on the BBGHAD's relationship with BBGHAD Engineer Moffat & Nichol ("MN"). The Project Manager reported that MN senior executives have expressed concerns with the BBGHAD due to: a) the BBGHAD requesting a significant reduction on recent MN fees, b) MN's recent resolution of a litigation claim unrelated to the BBGHAD involving a private property owner adjacent to a coastal area nourished by the SANDAG II project. The Project Manager further stated that the BBGHAD Engineer reassured the BBGAHD staff that MN remains interested in working on the Project.

The Project Manager informed the Board that he has 2 (two) concerns with the BBGHAD Engineer: a) the BBGHAD Engineer's desire to change the language in the contract regarding liability and indemnity issues, and b) a lack of confidence in the talent and capabilities of certain MN staffers other than Russ Boudreau. The Project Manager further reported that he and Project Counsel have discussed with Richard Beck of Michael Baker International ("MBI") the potential of an expanded MBI role on the Project in the event that the Board chooses to limit MN's continuing Project role, especially certain administrative tasks. The Chair asked about Mr. Beck's qualifications. The Chair recognized Project Counsel, who stated that he has worked with Mr. Beck on the Project for more than six months and found him completely professional and quite effective at the tasks assigned to him. Project Counsel added his belief that the subcontractor could add value to the Project by performing the overall Project and program Management and facilitation with the SAP, freeing the BBGHAD Engineer to focus on key coastal engineering and technical issues.

The Chair recognized the Project Manager who updated the Board on BBGHAD Engineer staff member performance and the potential liability factor for the BBGHAD. The Board discussed various approaches to solve this problem. The Chair voiced his concern regarding the completion of the CCC's prior-to-issuance conditions and questioned the Project Manager's recommendation on how to move forward with the BBGHAD Engineer. The Project Manager responded by asking for direction from the Board on contractual issues and language with the BBGHAD Engineer.

MOTION: The Chair recognized the Vice Chair, who moved to direct staff to: a) instruct BBGHAD Engineer to remove Engineer Chris Webb from the Project immediately, b) transfer administration of the SAP to MBI, c) reject any third-party vendor add-on fees by MN or MBI, d) maintain the current contract indemnification language with MN, and, e) enter into a direct contract with MBI for the tasks delegated to MBI, f) withhold further payment to MN until the Board receives an updated schedule for completion of the CDP's prior-to-issuance conditions. Board Member Lotman seconded the motion. Hearing no further debate, the Chair called the question. The Motion passed 3-0.

14. BBGHAD OFFICER REPORTS

a. Project Manager Report

None.

b. Treasurer's Report

The Treasurer reported that, as of April 5, 2016, the cash balance was \$3,075,517.69 and the estimated unpaid bills amount to \$51,293.04.

15. BBGHAD BOARD MEMBER REPORTS

None.

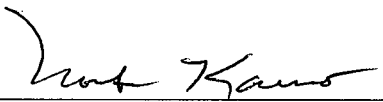
16. PUBLIC COMMENT

Although quorum was lost, the Chair and Vice Chair fielded questions from the public for approximately 10 minutes. Board Advisor Spiros asked the Board if mitigation payment to the agencies is contingent upon completion of the Project. The Chair recognized Project Counsel who stated that monies are typically paid upfront. More questions and answers primarily covered comments, input and opinions of the indemnity issues and relationship with the BBGHAD Engineer, as well as the lifeguard issue with Malibu West.

17. FUTURE MEETING


The Chair suggested future meetings for May 22, 2016, and June 26, 2016, with 9:00 a.m. start times for both. At 11:58 a.m., Board Member Lotman departed the meeting and a quorum was lost.

Approved and adopted by the Broad Beach GHAD
Board on MAY 22, 2016



NORTON KARNO, Chair

ATTEST:


HEIKE FUCHS, Clerk