

## Summary of Actions

### BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

#### REGULAR SESSION MEETING

Sunday, May 22, 2016; 9:00 a.m.

31454 Broad Beach Road, Malibu, CA 90265

#### 1. CALL TO ORDER

The Chair called the meeting to order at 9:11 a.m.

#### 2. ROLL CALL

PRESENT: Chair Norton Karno, Vice Chair Marshall Grossman, and Board Member Bill Curtis.

ABSENT: Board Member Jeff Marine and Board Member Jeff Lotman.

BBGHAD STAFF ALSO PRESENT: Board Advisor Chris Spiros, Project Manager Mark Goss, Engineer Russ Boudreau, 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 May 19, 2016, at 8:30 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. Vice Chair Grossman moved to adopt the agenda as presented. The Chair recognized Board Member Curtis, who seconded the Motion. The Motion passed 3-0.

#### Closed Session

At 9:13 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 11:53 a.m. Project Counsel summarized the subject matter of the Closed Session proceedings.

#### 7. APPROVE SUMMARY OF ACTIONS FROM APRIL 10, 2016 MEETING

The Chair recognized Vice Chair Grossman, who moved to approve the Summary of Actions from April 10, 2016 Board Meeting as presented. The Chair requested minor edits. The Chair recognized the Vice Chair, who amended his motion to incorporate the corrections announced by Chair. Board Member Curtis seconded the Motion; the Motion passed 3-0.

## 8. CEREMONIAL/PRESENTATIONS

None.

## 9. CONSENT CALENDAR

None.

## 10. PUBLIC HEARINGS

None.

## 11. 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 BBGHAD staff has informed all of the permitting agencies of the Ventura County-Fillmore litigation filed against the City of Moorpark and the BBGHAD, and that the BBGHAD seeks alternative sand sources. The CCC staff has informed the BBGHAD that, if an alternative sand source is sought, a determination would be made if approval of the new source would be considered by staff or the Commission itself.

The Project Manager opined that the biggest CCC-related issue is that the SAP and BBGHAD have not yet agreed on the parameters of the monitoring plan. The Project Manager further stated that BBGHAD sub-contractor Merkel & Associates submitted three (3) monitoring plan outlines to CCC for approval and reached out to the SAP Chair Pete Raimondi to discuss, but no agreement has been achieved. The Chair recognized the Project Counsel, who briefed the Board that the framework of the SAP is formed, set up and working. The issue at hand is the approval of the habitat and dunes monitoring plans.

The Chair recognized the Vice Chair, who asked for more detail on this issue. The Chair recognized the Project Manager, who explained a disconnect exists between the BBGHAD consultant's recommendations and the CCC's monitoring plan expectations. The Project Manager further stated that, if nourishment can occur this Fall, the parties must agree on the scope and breadth of the monitoring plan by no later than June 30, 2016, which is the last day to obtain "Spring" baseline data. The Project Manager further reassured the Board that BBGHAD staff has been working diligently for the past 2-3 months on this issue with CCC staff Jonna Engel and Lauren Garske. CCC staff hasn't provided any written feedback yet. The Chair recognized Project Counsel, who stated that the Board Packet contains a copy of the latest BBGHAD monitoring proposal to the CCC.

The Chair recognized the Project Manager, who further briefed the Board on a recent conversation with CCC staff member Lauren Garske regarding the SAP. Ms. Garske informed the Project Manger that the CCC's Deputy District Manager Steve Hudson is reviewing the monitoring plan outline. Further, the BBGAHD anticipates receiving a letter within the next week stating CCC's position on the monitoring plan outline. The BBGHAD staff expects this CCC letter to state that, unless the parties come to a timely agreement on the monitoring methodology, the BBGHAD will not meet the spring measurement opportunity and consequently will not be able to begin nourishment until Fall 2017.

The Chair recognized the Project Engineer, who concurred with Project Manager's report adding that the BBGHAD biologist has very compelling argument about his approach and would like to have the opportunity to meet with SAP team to explain further. The Project Engineers opined that the CCC has been slowing down the process by requiring incredible detail in the monitoring plan.

The Chair recognized Mr. Alexander Haagen, who inquired about the level of the CCC staff's cooperation in this matter. The Chair recognized the Project Manager, who responded that the CCC staff has been cooperative, but referred the matter to CCC management to make a decision. The Project Manager further added that he asked for a meeting with senior CCC staff, but CCC staff has not yet agreed to meet.

The Chair recognized the Vice Chair, who inquired further about the BBGHAD's apparent lack of understanding of the requirements for the monitoring plan. The Project Manager responded by explaining that BBGHAD sub-contractor Merkel & Associates delivered the most economical and concise data collection outline to CCC staff in accordance with CDP Special Condition 6, but the CCC rejected the submission without allowing SAP members to review the submission. The Chair further clarified that the CCC staff apparently seeks an expanded scope of work, which would be cost prohibitive and the BBGHAD consultant provided the CCC with a condensed version that is still compliant with Special Condition 6.

The Chair recognized the Vice Chair who asked if the CCC Chair should get involved in this matter. The Chair recognized the Project Manager, who opined that, before reaching out to the CCC Chair, the BBGHAD should first: a) review the promised CCC staff letter to understand the exact differences in the BBGHAD methodology and CCC staff position, and then propose a quick solution, and b) then push for a meeting with the 3 (three) principal SAP members, and the CCC staff.

The Chair recognized the Vice Chair, who asked about the extent of Interim Executive Director Ainsworth's involvement in this process. The Chair recognized the Project Manager, who reported that Mr. Ainsworth has recommended that the BBGHAD continue working with CCC staff to resolve this matter and, if an agreement cannot be reached, then get him involved.

The Chair recognized Board Member Curtis, who asked staff to further clarify the information sought by CCC staff for the monitoring plan. The Chair recognized Project Counsel, who responded by using an example of the different approaches used by BBGHAD and CCC but producing the same results and further stated that the BBGHAD's approach should yield more accurate and technically advanced information than the CCC's requested methodology. Board

Member Curtis questioned if the BBGHAD's consultant outline should be presented differently. The Chair recognized Project Counsel, who reported that he significantly edited and revised the sub-contractor's cover letter and monitoring proposal to present the BBGHAD's position in the most compelling manner. The Chair recognized Project Manager, who reiterated to the Board that staff strongly desires to meet with CCC staff and the SAP in an effort to allow them to fully understand the scope and breadth of the BBGHAD's monitoring proposal.

The Chair recognized the Vice Chair, who asked about the difference in cost of the different methodologies. The Chair recognized the Project Manager, who responded that he does not have the exact dollar amount, but expects the CCC methodology to be significantly more expensive and time-consuming. The Chair asked the Project Engineer the same question; the Project Engineer concurred with the Project Manager.

The Chair recognized the Vice Chair, who suggested the staff contact the Governor's appointed, ex-officio CCC Commissioner to assist the BBGHAD. The Chair recognized the Project Manager, who opined that the BBGHAD should do so after the staff understands the content of the promised CCC staff letter and proceed from there.

The Chair directed staff to ask CCC to send the letter by email, have the BBGHAD's consultant Keith Merkel respond to the letter immediately to have it available for the Executive Director to review upon his return and get Executive Director Ainsworth involved to intercede on BBGHAD's behalf. The Chair further instructed staff to communicate the BBGHAD's issues and solutions to Mr. Ainsworth based on our expert's approach and to solicit Mr. Ainsworth's assistance in permitting an immediate meeting with the BBGHAD staff, SAP and CCC to have the outline approved before losing another year of protection of the homes, and to then reach out to the Governor's ex-officio CCC Commissioner if the Executive Director declines to assist. The Chair recognized Project Counsel, who stated that time is of the essence, the BBGHAD should not wait for Mr. Ainsworth to return from vacation, and the BBGHAD respond to the letter immediately.

The Chair recognized the Project Engineer, who reported that his office has been working on the Prior to Issuance Condition schedule and there are a number of items required to be submitted to CCC, such as a) plans for beach nourishment, b) revetment pullback, c) dune plans & marine monitoring plan, and d) sediment analysis plan. The Project Engineer stated that his office intends to have the plans completed in early July 2016.

The Chair recognized the Vice Chair, who asked the Project Engineer if he has a calendar with the due dates of all the conditions that must be met prior to CDP issuance. The Chair recognized the Project Manager, who reported that he maintains a spreadsheet with the prior to issuance conditions and a timeframe for completing it. The Chair recognized the Vice Chair, who directed Project Manager to provide each Board Member with an updated copy of the spreadsheet to have it available at future Board meetings.

### SLC

The Chair recognized Project Manager, who reported that the lease negotiations were discussed in Closed Session. BBGHAD staff has had a series of meetings with the SLC staff and

Commissioners, and is progressing with negotiating the lease. The Project Manager further informed the Board that the SLC will consider the Project at its August 9, 2016 meeting at the Port of Los Angeles headquarters in San Pedro. The Chair recognized Project Counsel, who added that, in Closed Session, staff received directions from the Board regarding certain negotiation points and asserted that staff will be carrying out the direction received.

The Chair recognized Vice Chair, who asked if there is a draft of the current lease agreement and if the springing license language is included. The Chair recognized Project Counsel, who responded that a draft of the lease agreement is included in the Closed Session package without the Springing License language. Project Counsel reported that an updated version of the Springing License was sent to the Chair and Vice Chair approximately 10 days ago. The Vice Chair asked Project Counsel to resend the information to each Board Member. Project Counsel agreed to do so.

#### Army Corps

The Chair recognized the Project Manager, who informed the Board that the BBGHAD staff has succeeded in dividing the federal mitigation into two (2) components. In accordance with prior Board direction, BBGHAD staff negotiated a \$214,500 mitigation fee payable to the Bay Foundation for the revetment and its alleged impacts to the waters of the United States. The Project Manager further stated that Congressman Lieu and his staff assisted greatly in reaching an agreement with the Army Corps. Further, BBGHAD consultant Richard Beck (of Michael Baker International) and David Haerbst of Vectis continue to negotiate with the Army Corps. The Project Manager anticipates that the BBGHAD will soon learn the Army Corps' proposed level of NEPA compliance (EA v. EIS).

The Chair recognized the Vice Chair, who suggested the Chair send a letter to Congressman Lieu thanking him for assistance in this process. The Project Manager suggested waiting to send the letter until the formal letter regarding EA/EIS Path is received. The Chair asked the Project Manager to draft the letter and wait for further instructions.

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

The Chair recognized the Project Manager, who reported that there have been no meetings with these agencies, as the RWQCB permitting will occur following the Army Corps permitting process. The Project Manager stated that Richard Beck has communicated with the agencies and suggested that Project Counsel get involved to ensure no new issues arise.

The Chair recognized Vice Chair, who asked if staff believes that the RWQCB will conform its analysis to that of the Army Corps. The Chair recognized Project Counsel, who responded that he believes so and hopefully it will take 6 to 8 weeks.

The Chair expressed the Board's satisfaction with the Project Manager's report providing tangible information of the Army Corps proceedings and the Board is encouraged that the project can start within this year. The Chair questioned the Project Manager if he thinks it is still feasible to start the beach nourishment this year. The Project Manager responded that he

thinks it is feasible if all the matters get resolved and that he is encouraged by the SLC and Army Corps' progress. The Chair asked Project Counsel the same question. Project Counsel concurred with Project Manager, but expressed concern about the SAP process and the delay in finalizing the sand source. A change of sand source would require, among other tasks, a speedy analysis of the emissions profile and carbon footprint to submit to all the agencies to integrate into their permitting packets.

The Chair recognized the Vice Chair, who asked if it would be possible to start a portion of the Project with a reduced sand amount. The Chair recognized Project Engineer, who expressed concerns with such a prospect. The Project Engineer explained that, due to the less protective sand mass in front of the dunes, the BBGHAD would risk losing the dune planting and the revetment sand cover with a reduced major nourishment amount.

The Chair recognized the Project Manager. The Project Manager summarized the sand source situation at Calleguas Creek and the Moorpark quarries litigation and that BBGHAD staff is actively looking for alternative sand sources.

b. Permitting Outreach & Strategy Update.

No separate report.

c. BBGHAD Insurance

The Chair recognized Board Member Curtis, who updated and summarized his findings on updated and expanded BBGHAD insurance coverage. Board Member Curtis recommended that the BBGHAD indemnify the BBGHAD Board and BBGHAD staff for their actions in connection with BBGHAD business. Board Member Curtis also expressed his belief that the BBGHAD should expand its insurance coverage for both the BBGHAD and the BBGHAD Board. Board Member Curtis further reported that the current BBGHAD insurance policy with Hiscox excludes "bodily injury" and destruction to property, and that more expansive coverage is difficult to obtain. Board Member Curtis asked the Board to authorize HUB International as the BBGHAD's Broker of Record (BOR) to find a proper insurance solution for the BBGHAD, the Directors & Officers, and the BBGHAD staff.

The Chair questioned Board Member Curtis if the BBGHAD or the Board is covered by the current insurance policy. Board Member Curtis responded that neither is adequately insured since the Hiscox policy covers \$ 1million in aggregate coverage that excludes bodily injury and property damage.

The Chair asked Project Counsel if the BBGHAD, as a subdivision of California, is exempt from liability. Project Counsel responded that according to research done years ago, the BBGHAD Board has equal immunities as state boards and commissions, City Councils, Board of Supervisors, etc.

The Chair questioned if there are any financial obligations to hire HUB International as the Broker of Record, if its rates are competitive, and if there are any negatives in hiring it as BOR. Board Member Curtis responded that, to his knowledge, HUB is not charging any higher

premiums, and signing the Broker of Record documents is required for HUB to obtain price quotes on the BBGHAD's behalf. BOARD Member Curtis added that there are no financial obligations to the BBGHAD for beginning this process.

The Chair questioned the Project Manager if he informed HUB that the BBGHAD is going to get coverage from future vendors or service providers. The Project Manager responded that HUB understands that the BBGHAD will only employ vendors and service providers that will have coverage. The Chair recognized Board Member Curtis, who added that he asked HUB to submit a proposal to review future, anticipated transportation insurance policies to ensure adequate coverage.

**Motion:** The Chair recognized the Vice Chair, who moved, and Board Member Curtis seconded, to engage HUB International, Ms. Karen Silverman, as the Broker of Record for the purpose of exploring and presenting insurance options to the BBGHAD with respect to the entity, its Directors & Officers, and staff. Hearing no request for further discussion, the Chair called the question and the Motion passed 3-0.

The Chair recognized Vice Chair, who stated that Board Member Curtis should be recognized for taking on this task to obtain adequate protection for the BBGHAD and its Members.

The Chair recognized Board Member Curtis, who provided the Board with a copy of HUB's research completed to date. The Chair asked Board Member Curtis to provide a copy of the BOR to BBGHAD staff for the Chair to review and sign the BOR signature page.

The Chair recognized Board Member Curtis, who requested proper indemnification by the BBGAHD for the individual directors, officers and staff. The Chair questioned Project Counsel if the BBGHAD had not already passed an indemnification resolution. Project Counsel responded that, to his recollection, the BBGHAD signed an indemnification resolution in 2011, but will look up the records. The Chair recognized the Vice Chair, who asked Project Counsel to supply a copy of the indemnification resolution to the Board Members, agendaize it for next Board meeting and have BBGHAD counsel, Michael Colantuono, review the resolution.

## **12. NEW BUSINESS**

None.

## **13. BBGHAD Officer Reports**

### **a. Project Manager Report**

The Chair recognized the Project Manager, who reported that there is an outline of payments to the SAP members due and no expenses have been paid so far. The Project Manager asked the Board to make a payment for first installment of expenses alone to the SAP in the amount \$ 60,000.00.

b. Treasurer's Report

The Treasurer reported that, as of May 17<sup>th</sup>, 2016, the BBGHAD's cash balance was \$3,447,602.92 and the estimated unpaid bills amount to \$58,259.59.

The Chair recognized Max Factor, who suggested presenting an overall budget and a spreadsheet with the accumulative disbursements as historically done by the BBGHAD staff. The Chair directed Project Manager and Clerk/Treasurer to produce and maintain a new spreadsheet starting with the new assessment numbers and most recent adopted budget and thanked Mr. Factor for bringing this issue to the Board's attention.

**14. BBGHAD BOARD MEMBER REPORTS**

None.

**15. PUBLIC COMMENT - NON-AGENDA ITEMS**

The Chair recognized Project Counsel, who provided updated information regarding the TPOA's emergency revetment repair project. Project Counsel reported that the final accounting has been completed and approximately \$66,000.00 remains to be returned to participating property owners within the next week. Project Counsel thanked the participating homeowners. The Chair stated that, although it is not a BBGHAD project, the Board expressed its appreciation to everybody who participated in this project.

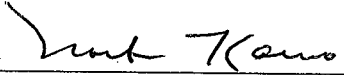
**16. FUTURE MEETING**

The Chair suggested future meetings for tentatively June 26, 2016, and July 24, 2016, both to start at 9:00 a.m.

**17. ADJOURNMENT**

Vice Chair Grossman moved, and Board Member Curtis seconded, to adjourn the meeting. Hearing no objections, the Chair called the question and the motion passed 3-0. The meeting adjourned at 1:47 p.m.

Approved and adopted by the Broad Beach GHAD  
Board on July 24, 2016

  
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NORTON KARNO, Chair

ATTEST:

  
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HEIKE FUCHS, Clerk