

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

**Sunday June 25, 2017; 9:00 a.m.
31030 Broad Beach Road, Malibu, CA 90265**

1. Call to Order

The Chair called the meeting to order at 9:06 a.m.

2. Roll Call

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

ABSENT: Board Member Shaul Kuba

BBGHAD STAFF ALSO PRESENT: Project Engineer Russ Boudreau, Malibu West Advisor Chris Spiros, Project Counsel Ken Ehrlich, Clerk/Treasurer Heike Fuchs and Counsel Michael Colantuono (participated by phone).

3. Adoption of Agenda

The Chair recognized Project Counsel, who reported that the Agenda was posted on June 21, 2017 at approximately 6:00 p.m. and that the Special Meeting Agenda was posted on June 23, 2017, at approximately 6 p.m., both within the BBGHAD boundaries and concurrently posted on the BBGHAD website.

The Chair recognized Board Member Curtis, who asked if the FPPC Form 700 (Conflict of Interest Form) was agendized as part of the Closed Session Agenda. The Chair recognized Project Counsel, who responded that this issue had been resolved during prior discussions with Special Counsel Colantuano. The Board received additional advice from Special Counsel Colantuono on this issue. The Chair recognized Board Member Curtis, who moved to adopt the Agenda as posted. The Vice Chair seconded the Motion, and the Motion passed 4-0.

Closed Session

At 9:26 a.m. the Chair announced, without objection, that the Board would move into Closed Session and concurrently convene the Special Meeting, as noticed on June 23, 2017.

Resumption of Regular Session

The Chair resumed Regular Session at approximately 10:15 a.m., and a report was given on Closed Session/Special Meeting items. Project Counsel further announced, that at the end of

Closed Session and unrelated to the substance of any BBGHAD matter, Board Member Curtis resigned from the BBGHAD Board.

5. Approve Summary of Actions from May 21, 2017 Meeting

The Chair recognized Vice Chair, who moved to approve Summary of Actions from May 21, 2017, as presented. Board Member Marine seconded the Motion, and the Motion passed 3-0.

6. Ceremonial/Presentations

None.

7. Consent Calendar

None.

8. Old Business

a. Sand Source Update

The Chair recognized Project Counsel, who reported that the BBGHAD continues to work with 3 (three) viable sand sources: 1) Polaris Sand from Canada, which has been rejected by the CCC due to the color of the sand, 2) Fillmore/Moorpark quarries, which have been approved by the CCC and other permitting agencies, and 3) Upper Calleguas Creek, from which the BBGHAD awaits a proposal from Ventura County staff for Project-ready sand, including weed removal and sieving.

The members of the public asked question related to the delivery methods of the current viable sand source, the difference in costs, and about possible litigation regarding the trucking of the sand. The Chair stated that all land based sand sources would be transported by truck. Project Counsel added that the BBGHAD is not aware of any current litigation threats if the BBGHAD uses quarry sand and the Court-approved route and/or the Upper Calleguas sand and its truck route (which is not subject to litigation). Project Counsel further stated that the cost for Upper Calleguas Creek and the quarries sand is almost identical, but Upper Calleguas cannot fulfill the BBGHAD's permitting limit of 300,000 cubic yards. Project Counsel added that the costs for the Canadian sand, is less than the other sources, but negotiations have ceased due to the CCC staff's disapproval of the sand color.

b. Permitting and Regulatory Process Status

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

(i) Lead Agency Update

(A) CCC

BBGHAD staff has forwarded the remaining open CDP Prior-to-Issuance (PTI) Condition reports and plans to the CCC staff for evaluation.

(B) Army Corps

BBGHAD staff is in the process of finalizing the financial assurance package with the Army Corps. The Army Corps requested \$1,000,000 in financial assurance to be posted over a 2-4 year period, and BBGHAD staff contests this amount. Project Counsel further stated that the Army Corps identified just 2 (two) habitats, out of 6 habitats at Broad Beach, that have potential for adverse impact.

The Army Corps informed BBGHAD staff that, if any mitigation is required after the end of first 5 (five) years and could not be resolved through Adaptive Management, the Army Corps would seek a single mitigation payment and not require any subsequent mitigation for the particular habitat.

(C) SLC

The States Lands Commission requested an additional report on drainage, which BBGHAD staff has submitted.

(ii) RWQCB

The RWQCB has committed to grant the 401 permit at the same time as the Army Corps, hopefully in July or August 2017.

c. Permitting Outreach & Strategy Update

No separate report.

9. Public Hearing

a. Draft Engineer's Report

The Chair recognized Project Counsel, who briefly presented background information on the current assessment. Project Counsel reported that, after considering the costs of implementing all the programs, investigations, monitoring requirements, and reports imposed upon the Project by the permitting agencies, the BBGHAD staff has concluded that the current assessment cannot fund the Project as presently permitted and contemplated. Therefore, as instructed by the Board, the BBGHAD's technical consultants prepared a new, revised Engineer's Report and a corresponding budget and assessment for the homeowners to vote on. Project Counsel stated that the Engineers came up with the most fair and appropriate proposal equalizing the benefits among all the homeowners within the BBGHAD, generating a three (3)-tier assessment: a 25% assessment = \$343.75/linear foot/year, a 75% assessment = \$1031.25/linear foot/year, and 100% = \$1,375/linear foot/year.

Project Counsel emphasized that, if the Board adopts Resolution No. 2017/03 to approve the new Engineer's Report at this Board meeting, then staff would circulate the ballots to each homeowner to vote on the new assessment. Depending on the outcome of the votes, the Board then would determine the next steps.

The Chair recognized Vice Chair, who recommended hearing public comments first before making any motion regarding Resolution No. 2017/03. The Board accepted the Vice Chair's recommendation unanimously.

The Chair opened the item for public comment, and asked commenters to limit their comments to 3 minutes due to high volume of comments and questions.

The Chair recognized Malibu West Advisor Chris Spiros, who asked for the reasoning behind the 3-tier assessment. The Chair recognized Project Engineer, who explained that the 3-tier model is based upon how much beach width each property is receiving in comparison to other properties within the BBGHAD in addition to the anticipated amount of erosion between major nourishments based on modeling.

The Chair recognized Counsel for owner Magidson, who asked about the consequences if the BBGHAD does not receive 100% of the signatures required for the temporary license agreement. The Chair recognized Project Counsel, who explained the concept of the springing license which would only take effect temporarily if the revetment would be exposed 3 out of any 5 years, which is unlikely in light of the BBGHAD's ability and desire to conduct major nourishments of 300,000 cubic yards every 5 years and at least 1-75,000 cubic yard interim nourishment in other years. Project Counsel stated that the BBGHAD remains hopeful of obtaining 100% compliance after having had the opportunity to explain the license to the homeowners. The Vice Chair added that about half of the homeowners already have a lateral access conditions attached to their properties and that these easements in place would not be enforceable for the duration of the Project.

The Chair recognized owner Max Factor III, who questioned if the 75,000 cu ft. interim nourishment year 2 (two) is included in the Engineer's Report, asked for more details on the loan, and followed up on his request for financial disclosure statement (conflict of interest code) of all the Board Members. Mr. Factor further opined that he deems the newly proposed Engineer's Report unconstitutional. The Chair recognized Project Counsel, who responded to the questions in order. Project Counsel further stated that counsel and staff have vetted the proposed Engineer's Report and believe it meets legal requirements in all respects.

The Chair recognized Jim Hornstein, representing owner Magidson, who asked the Board to defer the vote on Resolution No. 2017/03 for 4-6 weeks due to: a) receiving the Engineer's Report too late for review, b) not having the conflict of interest code on file, and c) for the opportunity to have the Board consider a reef ball system feasibility study, paid for by owners Magidson and Haagen.

The Chair recognized Don Schmitz, a representative of owners Magidson and Haagen III, who stated that the estimated costs for the artificial reef amount to \$9 to \$10 million and are in

addition to the existing Project, but the reef proponents believe that, with a reef, fewer nourishments would be required.

The Board received additional public comment and questions regarding the newly proposed assessment/Engineer's Report, budgeting items and the design of the dunes, to which the Board and staff responded.

MOTION: The Vice Chair moved to defer consideration of the new, proposed Engineer's Report for no more than 8 weeks to allow the Board to receive and evaluate a study prepared at the direction of two BBGHAD owners (and not the BBGHAD) of the feasibility of a proposed offshore Broad Beach artificial sand retention reef and to obtain CCC staff input on same. Board Member Marine seconded the Motion. Hearing no additional comments, the Chair called the question and the Motion passed 2-0, with the Chair abstaining.

10. New Business

None.

11. BBGHAD Officer Report

- a. Project Manager Report

No Report

- c. Treasurer's Report

The Treasurer reported that, as of June 20, 2017, the cash balance was \$ 3,010,629.57 and the estimated unpaid bills amount to \$476,944.85.

A quorum was lost at 12:35 p.m. when Board Member Marine left the meeting.

12. BBGHAD Board Member Reports

No Reports

13. Public Comment - Non-Agenda Items

No Comments.

14. Future Meeting

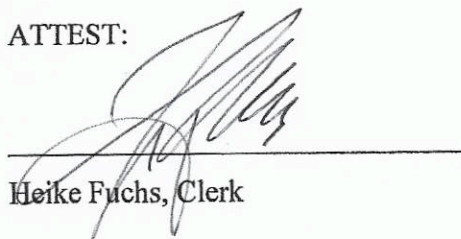
The Chair stated that the next BBGHAD meeting is scheduled for July 23, 2017, and, tentatively, August 13, 2017, both to start at 9:00 a.m., locations to be determined.

Approved and adopted by the Broad Beach GHAD
Board on July 23, 2017



Norton S. Karno, Chair

ATTEST:


Heike Fuchs, Clerk