

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

**Sunday July 23, 2017; 9:00 a.m.
31030 Broad Beach Road, Malibu, CA 90265**

1. Call to Order

The Chair called the meeting to order at 8:21 a.m.

3. Roll Call

PRESENT: Chair Norton Karno, Vice Chair Marshall Grossman, and Board Member Shaul Kuba.

ABSENT: Board Member Jeff Marine

BBGHAD STAFF ALSO PRESENT: Malibu West Board Advisor Chris Spiros, Clerk/Treasurer Heike Fuchs, and Project Counsel Ken Ehrlich. Tonia McMahon (BBGHAD Engineer), Uri Eliahu & Jeff Adams (BBGHAD Manager), and Special Counsel Gary Bell participated by phone.

2. Board Member Vacancy

Project Counsel reported that, as directed, he has been in contact with 2 (two) potential candidates for the Board position, Cathy Needleman and Mark Attanasio, and anticipates receiving definite answers from the candidates in the next week. Project Counsel reported that the BBGHAD has until August 25, 2017 to appoint a new Board Member to fill the vacancy before the statutory election process applies. The Chair recognized Board Member Kuba, who suggested approaching Richard Ressler about the position as well.

MOTION: The Vice Chair moved to appoint Ms. Cathy Needleman to serve as a member of the BBGHAD Board of Directors subject to her acceptance. In the event Cathy Needleman declines to serve on the BBGHAD Board by August 7, 2017, then Mr. Attanasio shall have until August 14, 2017 to accept the appointment. In the event both decline, then the Board appoints Richard Ressler to serve as a Director and Mr. Ressler shall have until August 21, 2017 to notify BBGHAD staff of his willingness to serve.

Board Member Kuba seconded the Motion. Hearing no further comments the Chair called the question, and the Motion passed 3-0. The Chair recognized Vice Chair, who requested to reflect in the minutes that the BBGHAD complied with the statutory obligations posting the vacancy notice on the BBGHAD website, posted three (3) notices within the boundaries of the BBGHAD, and notified Los Angeles County of the vacancy.

4. Adoption of Agenda

The Chair recognized Project Counsel, who reported that the Agenda was posted on July 19, 2017, at approximately 6:00 p.m., within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Board Member Kuba, who moved to adopt the Agenda as posted and Vice Chair seconded the Motion. The Motion passed 3-0.

Closed Session

At 8:30 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 9:18 a.m., and a report was given on Closed Session items.

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

The Chair recognized Vice Chair, who moved to approve Summary of Actions from June 25, 2017, with minor edits announced by Project Counsel. Board Member Kuba seconded the Motion, and the Motion passed 3-0.

8. Ceremonial/Presentations

None.

9. Consent Calendar

None.

10. New Business

a. Conflict of Interest Policy

The Chair recognized Project Counsel, who reported that BBGHAD Special Counsel advised the BBGHAD to comply with the State of California's Conflict of Interest policy ("Policy") and staff subsequently prepared a Policy and received input from the County.

MOTION: The Vice Chair moved to consent to the Policy as edited by the County and to publicize the Policy for 30-days public notice and comment. Board Member Kuba seconded the Motion. Hearing no further comments, the Chair called the question and the Motion carried 3-0.

b. Elections for Board of Directors Positions

The Chair recognized Project Counsel, who reported that elections for up to three (3) BBGHAD Board of Director positions are scheduled to occur in November 2017. Project Counsel recommended the BBGHAD retain Martin & Chapman to administer the election for no more than \$5000.00, but such amount should be less if the BBGHAD directs the Clerk to count votes instead of Martin & Chapman. The Chair recognized the Vice Chair, who sought more

information about Martin & Chapman and asked if they would be willing to sign the Policy. Project Counsel gave a brief overview of the Company, reminded Board Members that the BBGHAD retained this same firm to handle the November 2016 election, and opined that Martin & Chapman would be subject to the Policy.

The Chair recognized Mr. Jim Hornstein, legal counsel for homeowner Magidson, who asked when the nomination documents would be made available to potential candidates. Project Counsel responded that the nomination documents are going to be available online next week on the BBGHAD website.

The Chair recognized Mr. Hornstein, who asked whose Board seats will be available in November 2017. Project Counsel responded that the seats of Vice Chair Grossman, Board Member Kuba, and the former Curtis seat would be up for election.

MOTION: The Vice Chair moved to adopt Resolution No. 2017/06 to authorize BBGHAD staff to undertake the measures necessary to prepare for and conduct the November 2017 elections and to approve retaining Martin & Chapman to facilitate the BBGHAD election, subject to Martin & Chapman signing the Conflict of Interest policy. Board Member Kuba seconded the Motion. Hearing no further debate, the Chair called the question and the Motion passed 3-0.

c. BBGHAD Assessment CPI Increase: Increase for Current Fiscal Year Based on September 2015 Assessment

The Chair recognized Project Counsel, who reported that, in accordance with GHAD law (as exemplified by Resolution 2015/05), the Board has the power to increase the Assessment annually by the approved Consumer Price Index ("CPI") numbers. Project Counsel further reported that the Bureau of Labor Statistics' website establishes that the CPI Adjustment between July 2016 and June 2017 is 2.2% ("Fiscal Year 2017-18 Adjustment"). Project Counsel stated that for homeowners paying a 100% of the assessment it would increase to \$615.39 per foot/year and for the 25% of the assessment it would increase to \$153.85.

MOTION: Board Member Kuba moved, and Vice Chair seconded, to adopt Resolution 2017/04. Hearing no further comments, the Chair called the question and the Motion carried 3-0.

11. Old Business

a. Sand Source Update

The Chair recognized Project Counsel, who reported that the BBGHAD has currently two viable sand sources, CEMEX (Fillmore/Moorpark Quarries) and upper Calleguas Creek. Project Counsel further reported that CEMEX has received pressure from the County not to provide sand to the Project, but reiterated to staff that it remains committed to the Project.

The Chair recognized the Project Manager, who reported that he is scheduled to meet with Ventura County in the coming week to further discuss logistics and to ensure that the Calleguas Creek sand meets the BBGHAD CDP sand specifications. The Project Manager stated

that the Calleguas Creek sand source cannot fulfill the BBGHAD's requirement for full beach nourishment, but is potentially a viable sand source for interim nourishments.

The Chair recognized homeowner Alexander Haagen III, who stated his concerns regarding the current sand sources and advocated for the Polaris Sand source. Project Counsel responded by referring to email communication from CCC staff, included in the Board Packet, regarding the Polaris sand. Project Counsel explained that the BBGHAD has previously voiced its strong support for the Polaris sand source and desires to use this source, if permitted. Project Counsel further stated that Polaris is conducting its own independent discussions with CCC staff and submitted reformulated sand blend samples to CCC staff, but was rejected by the CCC due to the color of the sand.

The Chair recognized Alexander Haagen III, who added that he had 14 samples taken at the beach, at his own expense, but the CCC staff did not consider taking a meeting with Sara Wan to look at the samples. Alexander Haagen III opined that the Polaris sand would have a positive economic impact on the Project and asked the Board to help facilitate a meeting with the CCC staff.

Project Counsel and the Board discussed and answered questions from the public regarding the benefits and potential burdens of using the Polaris sand for the Project.

b. Permitting and Regulatory Process Status

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

(i) Lead Agency Update

(A) CCC

The latest Marine Habitat Monitoring & Mitigation Plan ("MHMMP") was submitted to the CCC and other related agencies early last week. Staff received positive feedback from CCC and is hopeful that it will be the final version. All other Prior-to-Issuance plans have been submitted to CCC for review. Staff has also been working with CCC on finalizing the legal description for the Springing Licenses and should be circulated to the revetment owners for signature soon.

(B) Army Corps

The Army Corps reduced its Financial Assurance request from \$1 Million to \$570,000.00. BBGHAD staff submitted its final Compensatory Mitigation Plan to the Army Corps and to the Regional Water Board ("RWQCB") for final approval. Staff received assurance from the Army Corps that they are going to process the BBGHAD permits within the next 45 to 60 days.

(C) SLC

No separate Report.

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

The RWQCB asked for an updated Septic Report, which BBGHAD Engineer Moffatt & Nichol is working on. The Project Manager reported that he met with City of Malibu and Caltrans to discuss logistics of the egress and ingress at Zuma Beach Parking lot and the configuration of the traffic light. Project Manager anticipates the Caltrans encroachment permit to be issued as scheduled.

The Chair recognized Danny Klein, who inquired about the impending Trancas Bridge construction. Project Counsel stated that the BBGHAD is aware of the plans, but is skeptical of Caltrans' stated 2018-2019 construction schedule, as they have not received any clearances and/or permits. Project Counsel and Project Manager answered questions from the public in connection with possible obstacles and/or impacts of the impending bridge construction and the BBGHAD construction schedule.

c. Permitting Outreach & Strategy Update.

No separate report.

The Chair recognized Vice Chair, who opined that the Board is receiving inconsistent messages regarding the status of the Polaris sand from staff and the Haagen Reef Group/Sara Wan. The Vice Chair requested that staff should look more closely at the Polaris sand findings from the Haagen/Reef Group. The Chair recognized Project Counsel, who stated that staff has been working with Sara Wan extensively for the last couple of months and tried to schedule a meeting with Ms. Wan and CCC staff. Project Counsel recommended working together allowing staff to review samples of the reformulated Polaris sand. The Board directed Project Counsel to work with Magidson's legal representative Jim Hornstein and to exchange information on the Polaris sand.

12. Public Hearing

a. Draft Engineer's Report

The Chair recognized Project Counsel, who reported that the current BBGHAD assessment does not generate enough funds to cover the Project costs and, therefore, the BBGHAD staff was tasked, guided by Board Member Marine, to determine the actual objective costs for various construction/sand source scenarios. For purposes of the Engineer's Report, the quarry sand is the basis of the budget as it is the most viable and CDP approved sand source.

Based on these costs, the Project Engineer and ENGEIO created the June 2017 Engineer's Report which proposes a three (3) tiered assessments (100%, 75% and 25%) that, according to the engineers' opinions and technical data/inputs, would best represent the benefits (sand) each homeowner will be receiving. Project Counsel briefly explained the background information for deferring of the Prop. 218 vote on the June 2017, Engineer's Report for up to eight (8) weeks to receive a feasibility study on the reef completed for the Reef Group. Project Counsel further reported that he received an email from Max Factor III on behalf of Ms. Arnault, Mr. Haagen III

and Mr. Schwab stating their case as to why the calling for the opening of the Prop. 218 Vote should not be considered at today's Board Meeting, as well as a letter from Mr. Magidson's Counsel with legal and factual arguments as to why the new Engineer's Report should not be put forward at the July 2017 Board meeting. Project and Special BBGHAD Counsel considered all of the legal arguments and recommend that the opponents' arguments should not deter the BBGHAD Board from moving forward with the proposed vote. Special Counsel recommended as follows: a) a Motion to reconsider the Motion of the deferral for up to eight (8) weeks, and if that reconsideration passes, then b) the Board should consider Resolution No. 2017/05 Resolution, which would open the assessment vote.

The Chair recognized Vice Chair, who recommended hearing public comments first before making any Motion regarding Resolution No. 2017/05. The Chair agreed and opened the item for public comment.

The Chair recognized the Vice Chair, who inquired why it is of importance not to proceed with waiting another two (2) to four (4) weeks? Project Counsel responded by stating the timeline requirements if the Project was to start this year. Project Counsel asserted that, due to the construction schedule, voting and assessment submission deadlines, if there is any further delay in opening the Prop. 218 vote, that the beach nourishment would be delayed for another year.

The Chair recognized Board Member Kuba, who asked if Resolution No. 2017/05 could be amended to reflect a refund to the homeowners of the difference of the current assessment and the newly proposed assessment (if it passes) collected if the Project does not start in 2017. Project Counsel suggested simplifying the process by the Board giving an assurance to the homeowners not to levy the full assessment if the Project does not start in 2017.

The Board heard extensive comments from the public and their representatives on this issue and responded to the questions. The Board deliberated the legal aspects, different administrative scenarios and the feasibility of amending the Resolution No. 2017/05 to reflect Board Member Kuba's proposal with input from Special Counsel Gary Bell and the BBGHAD Manager.

MOTION: Board Member Kuba moved to adopt Resolution No. 2017/05 subject to amending the language in the Resolution as follows: If the new assessment passes and if the Board levies the full amount of the assessment, then, if the Project is implemented in Fall 2017/winter 2018, the full assessment will be allocated towards the Project. If the Project is not implemented by the time the BBGHAD receives the assessment funds paid pursuant to the new assessment, the incremental amount over the current assessment (implemented in 2015) will be refunded to the homeowners. The Chair seconded the Motion and opened this item to public comment.

Mark Levinson, legal representative for Mr. Magidson, opined that the Motion had substantially changed and therefore is not in compliance with California law. Project Counsel responded that the Special BBGHAD Counsel disagrees with him.

The Chair recognized Vice Chair, who moved to approve a substitute Motion to adopt the Resolution No. 2017/05 in its existing form. The Chair recognized Board Member Kuba, who

asked Vice Chair to reconsider amending the Motion to give the homeowners the assurance that funds will be refunded if the Project does not start in Fall 2017/Winter 2018.

The Chair indicated that Mr. Magidson's counsel expressed that the concept may be in violation with California law, consequently would not be enforceable. The Chair asked for Project Counsel's opinion on whether Board Member Kuba's proposed motion is legal under California law. Project Counsel responded that he is uncertain and would like to confer with Special Counsel Gary Bell.

The Chair called for a brief recess at 12:53 p.m.

The Chair reconvened Regular Session at 1:09 p.m. and stated that he seconded Vice Chair's substitute Motion 2017/05 as he learned from Special Counsel that Board Member Kuba's proposed motion would improperly bind future Boards and would not be legally enforceable. The Chair opened Vice Chair's substitute motion for public comment. There was no vote on this Motion.

The Chair recognized Board Member Kuba, who asked the Board not to eliminate his concept, but rather to work on the language in his Motion to make it legally enforceable. The Chair recognized the Vice Chair, who suggested adding a statement to Resolution No. 2017/05 expressing that it is strong intent of the Board to return to Broad Beach homeowners amounts in excess of the current assessment if funds are not used in furtherance or defense of the Project. The Chair recognized Board Member Kuba, who agreed with Vice Chair's additional language to Resolution No. 2017/05 but asked to have "defense" removed from the paragraph. The Vice Chair responded affirmatively.

After hearing extensive public comments and responding to the questions and the Board's continued discussion of the modification(s) of the Motion, Board Member Kuba suggested the following language be added to Resolution No. 2017/05: "It is strong intent of the Board to return to Broad Beach homeowners fund amounts in excess of the current assessment unless such funds are used in direct implementation or construction of the Project."

The Chair recognized Mark Levinson, who reiterated his previous statement regarding the legality of Board Member Kuba's suggested language. The Chair recognized Project Counsel, who stated that Special Counsel disagrees with Mr. Levinson's statements opining that Board Member Kuba's language is completely legal to add this language to both the Resolution and the notices that would be sent to homeowners if the motion passed containing the language suggested by Board Member Kuba.

The Chair recognized Vice Chair, who expressed his approval of the concept supported by Board member Kuba, but has concerns with Board Member Kuba's proposed language and recommended keeping the two (2) resolutions separate.

MOTION: The Vice Chair moved to adopt the original Resolution No. 2107/05. Board Member Kuba seconded the Motion. The Chair opened the Motion for public comment.

The Chair recognized Jim Hornstein, counsel for Haagen/Magidson, who stated that this Motion does not reflect Board Member Kuba's original concept-- to refund a portion of the levied funds to homeowners if the Project does not start at a certain date.

The Chair recognized homeowner Bill Curtis, who stated his concerns regarding the timing and scheduling of the Project and suggested that the Board should wait another year to start the Project.

The Chair recognized homeowner Paul Owhadi, who concurred with Bill Curtis. Mr. Owhadi stated his belief that the Board too closely follows BBGHAD staff recommendations, and advocated property owners working together and better communications among homeowners and the BBGHAD to eliminate friction and legal expenses.

The Chair recognized Board Member Kuba, who stated that he appreciates Mr. Curtis' concept of waiting another year, but is concerned that there are going to be additional, unknown obstacles if the Board delays the Project for another year.

The Chair recognized Jane Arnault, who asked Board Member Kuba if he could amend his motion to include the constitutional issues stated in the letter emailed to the Board by her and Max Factor in 2015. Board Member Kuba responded that he seeks to include discreet items included in the Agenda and materials specifically, but suggested that this issue should be resolved through some other means.

Hearing no further public comment, the Chair called the question and the Motion to adopt Resolution No. 2017/05 passed 3-0.

MOTION: Board Member Kuba moved that, in adopting Resolution No. 2017/05, it is the strong intent of the Board to return to BBGHAD property owners assessment funds paid during fiscal year 2017-18 in excess of the current 2015 assessment, unless used in direct implementation of construction of the Project. The Vice Chair seconded the Motion. Hearing no further public comments, the Chair called the question and the Motion passed 3-0.

13. BBGHAD Officer Report

a. Project Manager Report

No Report.

b. Treasurer's Report

The Treasurer reported that, as of July 18, 2017, the cash balance was \$ 2,541,769.50 and the estimated unpaid bills amounted to \$223,047.08.

14. BBGHAD Board Member Reports

No Reports.

15. Public Comment - Non-Agenda Items

The Chair recognized homeowner Bill Curtis, who suggested for the Board to address Jane Arnault and Max Factor's constitutional concerns on the proposed Engineer's Report and assessment. The Vice Chair stated that it would be helpful if Max Factor could provide the Board with his specific constitutional arguments. Project Counsel stated that Counsel Colantuono

responded to letters from Mr. Factor's counsel in 2015 in connection with the 2015 Engineer's Report and such letters and responses remain available for review on the BBGHAD website. The Chair recognized Mr. Factor, who responded that he seeks a legal opinion of the Board that the June 22, 2017, Engineer's Report is lawful under Prop. 218.

16. Future Meeting

The Chair stated that the next BBGHAD meetings are scheduled for August 27, 2017, and, September 10, 2017, both to start at 9:00 a.m., locations to be determined.

17. Adjournment

The Chair recognized Vice Chair, who moved to adjourn Regular Session. Board Member Kuba seconded the Motion. The Chair called the ~~Motion~~ ^{QUESTION}, and the Motion passed 3-0. Regular Session adjourned at 2:41 p.m.

Approved and adopted by the Broad Beach GHAD

Board on July 27, 2017

Norton S. Karno
Norton S. Karno, Chair

ATTEST:

Heike Fuchs
Heike Fuchs, Clerk