

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday, September 16, 2018; 9:00 a.m.
31030 Broad Beach Road, Malibu, CA 90265

1. Call to Order

The Chair called the meeting to order at 9:19 a.m.

2. Roll Call

PRESENT: Chair Karno, Vice Chair Grossman, Board Members Marine and Kuba.

ABSENT: Board Member Needleman

BBGHAD ALSO PRESENT: Project Manager Ovrom, Project Engineer Boudreau, and Clerk/Treasurer Fuchs. Special Counsel Colantuono and Project Counsel Ehrlich participated by phone.

3. Adoption of Agenda

The Chair recognized Project Counsel, who reported that the Agenda was posted on September 12, 2018, at approximately 6:00 p.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Board Member Marine, who moved to adopt the Agenda as posted. Vice Chair seconded the Motion, and the Motion passed 4-0.

Closed Session

At 9:21 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 10:33 a.m. The Chair recognized Project Counsel, who reported on the agenda items discussed in Closed Session and that no specific actions were taken.

Special Counsel Colantuono left the meeting at approximately 10:32 a.m.

8. Approve Summary of Actions from August 12, 2018 Meeting

The Chair recognized Board Member Marine, who moved to approve Summary of Actions from August 12, 2018, with minor grammatical edits announced by the Chair. The Vice Chair seconded the Motion, and the Motion passed 3-0 (Board Member Kuba temporarily absent for vote).

9. Old Business

Board Member Kuba rejoined the meeting at approximately 10:36 a.m.

a. Sand Source Update

The Chair recognized Project Counsel, who reported that, since the August 2018 Board Meeting, BBGHAD staff met again with a delegation of Boskalis, a potential source for ocean delivered sand, to tour the Project site. Project Counsel opined that Boskalis has a much better understanding of the beach and Project and stated that the firm will continue working to get its pricing in line with the BBGHAD budget. Project Counsel further stated that he anticipates further information from Boskalis soon.

b. Permitting and Regulatory Process Status

(1) Lead Agency Update

A. CCC (incl. MHMMP/Science Advisory Panel)

1. Prior-to-Issuance Conditions compliance

The Chair recognized Project Counsel, who reported on significant developments with the CCC in the last two months. Staff has completed a series of discussions and meetings in connection with the BBGHAD's request for a reduced dune footprint, with the Senior CCC staff including its Executive Director Jack Ainsworth. The Executive Director and CCC staff informed BBGHAD staff that staff would not approve altering the dune footprint mandated by the CDP. Project Counsel further stated that the BBGHAD could submit a CDP amendment application requesting a change in the current dune footprint of the Project, but the staff could decline to process the application on the claimed basis that it entails additional adverse impacts from the previously approved CDP. Project Counsel opined that this application would not be approved by the CCC staff, and in the event staff processes the application with an adverse staff report, the CCC itself would likely follow staff's recommendation in such an instance. Therefore, Project counsel reasoned that he would not recommended submitting an application for a revised dune footprint based on present information.

Project Counsel further reported CCC staff would support the concept of amending the CDP to allow revetment owners to chose whether they want to sign the License Agreement in connection with the CDP. Project Counsel further explained that, according to a discussion with the Executive Director, the proposed CDP amendment would provide that the BBGHAD owners who sign the License Agreement would have the permitted ability to maintain the revetment seaward of their home in accordance with the CDP; if a revetment owner decides not to sign the License Agreement, the amended CDP, if approved by the CCC, would direct the removal of the revetment at that parcel. Otherwise, the Project would move forward in all other respects in accordance with the previously approved CDP and the dune footprint would remain as specified in the CDP.

Project Counsel recommended submitting a CDP amendment application that would allow the Project to proceed without 100% of revetment owners agreeing to License Agreement. Project Counsel briefed the Board on the discussions with the Executive Director and asked for further direction from the Board.

The Chair inquired about for the proposed language of the Motion. Project Counsel provided the proposed Motion language to the Board. Board discussion ensued about the implications of submitting a CDP amendment and adding a deadline for the remaining revetment owners to sign the License Agreement for the Project.

MOTION: The Chair recognized the Vice Chair, who moved to authorize Project Counsel and BBGHAD staff to prepare a CDP amendment application per input by the Board, as follows: BBGHAD Board directs BBGHAD Staff to prepare a CDP Amendment application to allow the Project to move forward without 100% of revetment owner compliance with the License Agreement provision of the CDP, which will include a provision that each respective revetment property owner will lose their permitted right granted in the CDP to maintain a revetment seaward of their parcel(s) if they do not sign, have notarized, and return to Project Counsel the License Agreement by December 31, 2018, and concurrently allow the Project to otherwise move forward as quickly as possible with as few other amendments as possible. Board Member Marine seconded the Motion. Hearing no further comments, the Chair called the question, and the MOTION passed 4-0.

The Chair recognized Board Member Kuba, who suggested sending an informative letter to the homeowners outlining the Board's decision to authorize a CDP amendment application and a December 31, 2018 deadline. The Board ensued in discussion about the content of the memo. The Board unanimously agreed to send a letter to be signed by Project Counsel and Project Manager.

2. MHMMP Compliance Proposal

The Chair recognized Project Counsel, who reported that, for the BBGHAD to consider starting the Beach Nourishment in 2019, the Fall 2018 sampling and monitoring must be completed, in accordance with the MHMMP (Marine Habitat Monitoring and Mitigation Plan), one year before the start of beach nourishment. Project Counsel recommended that the Board should decide if it wants to proceed with the Fall 2018 sampling and monitoring. Project Counsel further stated that staff recommends moving forward with the 2018 Fall sampling and monitoring.

The Chair recognized Project Manager, who stated that the BBGHAD's lead Marine Biologist firm's, Rincon Consultants, proposal has decreased from \$321,938 to \$266,000.00 for the first phase, without processing the results. The Project Manager further stated that, if the Board decides not to do the 2018 Fall sampling, then the earliest the BBGHAD could start the Project would be 2020.

The Chair recognized BBGHAD Marine Biologist Derek Lerma of Rincon Consultants, who briefed the Board on the minimum technical requirements and minimum effort required prior to January 1, 2019 on all the beaches requiring to be tested (Broad Beach and reference

sites). Mr. Lerma stated that Rincon could reduce the scope of work by approx. \$60,000 at this time by delaying the processing of the data collected at a later time. Mr. Lerma further stated that Rincon could not minimize its efforts any further as they have to comply with the MHMMP.

The Chair stated that the Board does not intend to renegotiate Rincon's proposal, but concerns exist about placing sand on the beach in 2019. The Chair reiterated the Board's confidence and appreciation in Rincon's services, performance and assistance in moving forward. Mr. Lerma received and responded to technical, logistical and budgetary questions from the Board.

Further discussion ensued about the procedural context of the litigation pending against the BBGHAD regarding the 2017 assessment and the prospects of resolving the litigation short of trial.

The Chair asked Mr. Lerma if he would agree to the Board authorizing the full scope of work, with Rincon agreeing not to exceed \$20,000 in time and materials until October 1, 2018? Mr. Lerma responded affirmatively.

MOTION: The Chair recognized Board Member Kuba, who moved to authorize the Rincon Consultants' contract, subject to a termination right on October 1, 2018, and not to exceed \$20,000 in time and materials by October 1, 2018 when it is anticipated the BBGHAD will have further direction for Rincon. Board Member Marine seconded the Motion. Hearing no further Board comments, the Chair called the question, and the Motion passed 4-0.

The Chair suggested to reconvene Closed Session immediately after Regular Session to discuss litigation strategy. The Chair recognized Project Counsel, who reported that the Board could reconvene Closed Session as the specific topic has already been agendaized; it could simply be interpreted as the Chair's re-ordering of the Agenda.

B. Army Corps

No report.

C. RWQCB

No report.

D. SLC

No report.

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

No update.

10. New Business

None.

11. BBGHAD Officer Report

a. Project Manager

No report.

b. Treasurer's Report

The Treasurer reported that, as of September 10, 2018, the BBGHAD cash balance was \$2,613,061.55 and the estimated unpaid bills in the amount of \$251,772.61. The Treasurer further reported that the total fees and costs incurred through August 2018 for the Reef Group litigation amounts to \$256,533.60, \$150,725.70 for the Arnault/Factor litigation, and \$287,055.61 for the Validation Action.

The Treasurer further reported that AON, BBGHAD's insurance broker, submitted a renewal proposal for the Hiscox Directors & Officers insurance, noting that the premium proposal has increased from \$8,200.00 to approximately \$25,000.00 annually, and the retention from \$25,000 to \$150,000, due to the pending claims.

MOTION: The Vice Chair moved, and Board Member Marine seconded, to authorize Treasurer to instruct AON Risk Services to bind insurance as described in the Renewal Proposal. Hearing no further comment, the Chair called the question, and the Motion passed 4-0.

12. BBGHAD Board Member Reports

The Chair recognized Board Member Kuba, who opined that Board Member Marine and he had a very positive meeting with Mark Magidson and Alex Haagen. Board Member Kuba recommended to continue meeting with them on a regular basis to further settlement discussions.

13. Public Comment - Non-Agenda Items

The Chair recognized Pat Healey of Malibu West, who inquired about the rationale behind the CCC's position on the dune seaward of Malibu West. The Chair recognized Project Counsel, who responded that CCC staff intends to maximize the restored dune habitat and wants to have as few gaps as possible. Project Counsel further stated that there was no specific discussion in connection with Malibu West during the most recent contacts with CCC staff, and that the BBGHAD would prefer Malibu West to directly negotiate with the CCC. The Vice Chair stated that the BBGHAD fought very hard for the CCC to revise the dune footprint and recommended for Malibu West to directly communicate its specific needs to the CCC.

14. Future Meeting

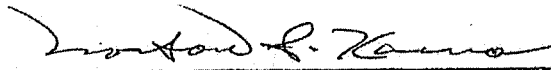
IMMEDIATELY PASSED
The Chair stated that the next meetings are scheduled for October 21, 2018, and November 18, 2018, both meetings to start at 9:00 a.m. The November 18th meeting will coincide with a TPOA Annual Meeting, with locations to be determined.

15. Adjournment

The Chair recognized Board Member Marine, who moved to adjourn Regular Session. Board Member seconded the Motion. The Chair called the question, and the Motion passed 4-0. Regular Session was adjourned at 12:06 p.m.

The Chair announced, without objection, that the Board would reconvene Closed Session to deliberate on a topic that had already been agendized.

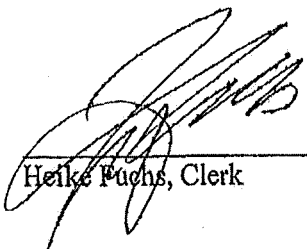
Approved and adopted by the Broad Beach GHAD Board



Norton S. Karno, Chair

Dated: October 21, 2018

Attest:



Heike Fuchs, Clerk