

## **Summary of Actions**

### **BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT**

#### **REGULAR SESSION MEETING**

**Sunday July 24, 2016; 9:00 a.m.**

**31454 Broad Beach Road, Malibu, CA 90265**

#### **1. CALL TO ORDER**

The Chair called the meeting to order at 9:07 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 July 21, 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 9:08 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 11:22 a.m.

#### **7. APPROVAL OF SUMMARY OF ACTIONS FROM MAY 22, 2016 MEETING**

The Chair noted minor edits in the Summary of Actions from the May 22, 2016 Board Meeting that had been submitted to Project Counsel. Board Member Curtis moved, and Vice Chair Grossman seconded, to approve Summary of Actions subject to minor edits by the Chair. The Motion passed 3-0.

## 8. CEREMONIAL/PRESENTATIONS

The Chair recognized the Vice Chair, who asked that the Board recognize the passing of Project Counsel Ehrlich's father, who passed away. The Chair extended the Board's condolences to Project Counsel Ken Ehrlich and his family.

## 9. CONSENT CALENDAR

None.

## 10. PUBLIC HEARINGS

None.

## 11. OLD BUSINESS

- a. Permitting and Regulatory Process Status.
  - (i) Lead Agency Update: CCC, SLC, and Army Corps.

CCC

The Chair recognized the Project Engineer, who updated the Board on the progress of the final plans for the Prior to Issuance Conditions, including the Dune Restoration Plan, and the coordination with the CCC-mandated Science Advisory Panel (SAP). The Project Engineer stated that the Project's Beach Nourishment Plan, the Revetment Pullback Plan, and the Traffic & Access Plans are completed, but the Dune Restoration Plan is taking longer than expected to ensure that the plan maximizes private back yards to the extent possible. The next step is to have the CCC staff approve the Dune Restoration Plan, and then present the plan to the homeowners. The Project Engineer further stated that the Adaptive Management Plan, the plan documenting beach nourishment and backpassing activities, should be completed within one week. The Dune Monitoring and Maintenance Plan should be completed as soon as the Dune Restoration Plan is final. BBGHAD sub-consultant Keith Merkel of Merkel & Associates is the lead on the Habitat Monitoring & Mitigation Plan, which continues to be formulated through SAP meetings. The Project Engineer anticipates that a draft of this plan should be submitted to CCC staff by early September.

The Chair recognized the Vice Chair, who asked the Project Engineer to explain the process in more detail once the plans are prepared and to provide a time frame for completion. The Project Engineer responded that the plans will be submitted to CCC staff upon completion, and clarified that the Dune Restoration Plan has proven more intricate and time consuming than anticipated. To the end, the BBGHAD Engineer contemplates presenting the Dune Restoration Plan to CCC staff for feedback on approach before finalizing the plan. The Project Engineer further stated that he does not have a completion date estimate, but should have a better understanding once he receives CCC staff feedback. The Project Engineer suggested to present the Dune Restorations Plans to the homeowners to show the dune design and impact to

secondary structures-- e.g. patios, etc. The Project Engineer estimated that all plans should be submitted to CCC staff in September 2016.

The Chair asked for more detail of the format of the homeowners' meeting. The Chair recognized the Project Manager, who responded that he plans to have two (2) informational meetings within one (1) month: a) present the Dune Restoration Plan to affected homeowners, and b) discuss Temporary Springing License in smaller group meetings.

The Chair recognized the Project Manager, who opined that the SAP is the BBGHAD's biggest concern at the moment. BBGHAD staff was advised approximately four (4) weeks ago that, due to not finalizing a Habitat Monitoring & Mitigation Plan by June 30, 2016 (the deadline for establishing a Spring data baseline), the BBGHAD cannot nourish the beach until September 2017 at the earliest. The Project Manager reminded the Board that three independent scientists comprise the SAP, which makes recommendations to CCC staff on Project monitoring and potential mitigation.

The Project Manager further stated that SAP meetings typically include representatives of CCC staff, Army Corps staff, NMFS staff, EPA staff, California Department of Fish & Wildlife staff, SLC staff, and others—and this group continues to discuss an expanded scope of work which is likely cost prohibitive. BBGHAD staff has repeatedly reiterated to the SAP that the BBGHAD's budget is limited by the assessment and, if the allocated amount in the assessment is exceeded, the BBGHAD cannot complete the Project. The Project Manager reported that he could not presently estimate the SAP costs since the Habitat Monitoring & Mitigation Plan has not been completed. The Project Manager stated that the BBGHAD has incurred approximately \$31,000 in SAP costs to date, and has another \$60,000 payment due in August 2016. The Project Manager opined that reaching agreement with the SAP/CCC staff on the Habitat Monitoring & Mitigation Plan is not insurmountable and that, in his opinion, the CCC wants the Project to go forward.

The Chair recognized Board Member Curtis, who asked if staff received a completed scope and breadth of the Habitat Monitoring & Mitigation Plan. The Chair recognized the Project Manager, who responded that they have not, as the SAP has not come to an agreement in several sections of the plan and the BBGHAD's consultant has not drafted the complete plan. The Chair recognized Project Counsel, who added that there are certain monitoring protocols that have been contemplated, but the SAP members are still undecided on the methodology.

The Chair recognized Project Manager, who stated that the CCC has the final approval of the plans. The Chair recognized Board Member Curtis, who asked if there are any other similar beach nourishment projects that have been through the same process and asked for staff's opinion on why the BBGHAD has to undergo such a rigorous and costly process. The Chair recognized Project Counsel, who responded that no other SAP has ever been created in California, except for oceanfront nuclear power plants. Project Counsel added that other factors have caused the CCC staff and SAP to exert such scrutiny on the BBGHAD, such as: the revetment will be a permanent beach feature (unique among nourishment projects), the Project proposes to use sand more coarse than previous nourishment projects, and the BBGHAD lies

within a Marine Protected Area (MAP) and a state Area of Special Biological Significance. Therefore, different and stricter requirements exist for this area.

The Chair recognized the Vice Chair who asked, due to recent difficult dealings with the SAP, and potential costs of the Habitat Monitoring & Mitigation Plan, if the Board should consider aborting the Project and revert to relying solely on the revetment for shoreline protection—in turn, placing responsibility back to each homeowner. The Chair recognized Project Manager, who responded that he recommends not taking any actions until the BBGHAD creates a comprehensive budget based on all Project costs, including that of the SAP. The Project Manager further briefed the Board on a recent conference call with the State Controller and her Chief of Staff, who advised of recent internal challenges faced by the CCC. In addition, the Project Manager reported that Mr. Ainsworth's duties have changed and, his availability to BBGHAD has become severely limited, forcing the BBGHAD staff to work more exclusively with Steve Hudson. The Chair recognized Project Counsel, who concurred with Project Manager and added, that they were advised to be patient during the CCC's internal transition for the next 6 to 9 months and to wait until a new Executive Director is in place.

The Chair recognized Board Member Curtis, who inquired about the reason the CCC would want to move forward with the BBGHAD project. The Chair recognized Project Counsel who responded that, in his opinion, the beach nourishment project is the only answer to sea level rise, and is the only privately financed public beach nourishment project.

The Chair recognized Mr. Max Factor. Mr. Factor referred to a CCC letter dated in May 2016, suggesting that the BBGHAD should request from the CCC staff a comprehensive written proposal of the CCC staff's desired Habitat Monitoring & Mitigation Plan with the intent that the BBGHAD could respond to same, and attempt to negotiate such a CCC staff proposal with some certainty that the CCC staff would not later change its request. The Chair responded that the Board appreciates input from the public, but the Board understands that the CCC staff seeks a monitoring regime that could cost in excess of approximately \$10,000,000 over the course of the Permit and has instructed BBGHAD staff to restrict and refine the plans to keep the costs manageable.

The Chair further opined that staff is doing the right thing by: a) enlisting the consultant, Mr. Keith Merkel, who is tremendous advocate of the Project, b) trying to constrain the subject and expedite the SAP process, and c) conforming to the process as presented. The Chair suggested, if there is no progress with the SAP, to wait until the beginning of 2017 for the new Executive Director to take office, reach out to commission and inform them that CCC staff has not succeeded, that time is of the essence, and to direct CCC staff to come to an agreement on the scope and breadth of the monitoring plan so it can be completed before December 2017.

The Chair recognized the Vice Chair, who asked for more detail on the alleged environmental impacts of the Project as discussed in recent SAP meetings. The Chair recognized Project Counsel, who responded that the BBGHAD is: a) placing more sand per square foot than any other beach nourishment project in southern California, b) working in a habitat rich area (west end) and potentially affecting that area, c) using more coarse than typical sand for a nourishment project, and d) breaking new ground in that there has never been a beach

nourishment with an existing revetment. All of these factors create unique habitat and access challenges, and make determining and analyzing impacts fairly difficult. The SAP states that the foregoing points have to be monitored and studied in order to determine the impacts of the Project.

The Chair recognized Max Factor, who asked if the signing of the Springing Temporary Licensing Agreement required by the CDP could potentially become an issue. The Chair recognized Project Counsel, who responded that the CDP requires all property owners behind the revetment to sign the license. The Chair recognized the Vice Chair, who added that homeowners could face sanctions and penalties from the CCC if they do not sign. The Chair recognized Board Member Curtis, who asked what the sanctions could mean to each homeowner. The Chair recognized Project Counsel, who responded that staff was told by CCC they would issue monetary violations of the Coastal Act in the amount of approximately \$30,000-\$35,000 per day.

The Chair recognized the Vice Chair, who placed the content of the springing license into perspective and explained that it will take effect only if: a) the BBGHAD falls short on the beach nourishment and the revetment becomes exposed 3 out of any 5 years, b) the license is limited to 10 feet landward of the landward revetment edge, and c) the area will be roped off and marked with signage approved in the CDP. The Vice Chair opined that the public currently trespasses this area frequently, but the nourished beach should prevent such trespass.

The Chair recognized Max Factor, who asked why the CCC would facilitate the monetary sanctions on the homeowners. The Chair recognized the Vice Chair, who responded that the CCC wants the Project. The Chair recognized Project Counsel, who added that the CCC is more in favor of additional beach access and scientific data.

### SLC

The Chair recognized Project Manager, who 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 lease negotiations continue, and may even continue after the August 9, 2016 meeting. The Project Manager further reported that he and Project Counsel have met repeatedly with the Commissioners and their designees. The Project Manager opined that, after a recent phone conversation with the State Controller and her Chief of Staff, they favor the Project. The Chair recognized the Vice Chair, who asked the Project Manager if he expects a resolution approving the Project. The Project Manager responded affirmatively.

The Chair recognized Project Counsel, who suggested inviting the homeowners to the SLC hearing to show support, similar to the powerful homeowner showing at the CCC hearing. Additionally, Project Counsel stated that an overall Project update to BBGHAD owners appears timely. The Chair directed Project Counsel to draft a memo, signed by the Chair to the homeowners, asking for support at the SLC hearing on August 9, 2016.

The Chair recognized Board Member Curtis, who asked for an informational property owner meeting as there had not been any recent Project update to all. The Chair responded that

the homeowners are always invited to the Board Meetings and Project updates are posted on the BBGHAD website. The Chair agreed that there should be an informational homeowners meeting summarizing the anticipated good news resulting from the SLC hearing, an update on the beach nourishment rescheduled for Fall 2017 and the dune presentation, to be scheduled after the SLC hearing.

### Army Corps

The Chair recognized the Project Manager, who reported that BBGHAD consultant Vectis, Congressman Ted Lieu and his staff have been very helpful advocating for an EA (shorter path) vs. EIS (longer process) with the U.S. Army Corps. The Project Manager further reported that staff has received a troubling letter from a federal consultative agency (National Marine Fisheries Service or "NMFS") recommending additional consultation and an EIS to the Army Corps. In addition, Aaron Allen with the U.S. Army Corps returned from his temporary transfer and is scheduled to meet with Project Counsel and others on August 11, 2016. The Project Manager opined that the Army Corps will ultimately decide upon an EA for the Project. The Chair recognized the Vice Chair who inquired about the timeframe for the EA path. The Chair recognized Project Counsel who responded that, according to BBGHAD consultant MBI, the process should be completed by Thanksgiving 2016.

The Chair recognized Project Counsel who explained that the Army Corps has several smaller agencies with whom it must consult as part of the permitting process. Here, NMFS has jurisdiction over an essential fish habitat evaluation for the Project. Project Counsel further stated that the BBGHAD received a 10- page letter dated July 11, 2016 from NMFS, which recommends that the BBGHAD pay mitigation as well as build an artificial reef due to purported Project impacts. Project Counsel asserted that the letter does not specify how the Project is harmful to the fish life in this area, but still argues for significant mitigation. Project Counsel stated that the Army Corps must consult with NMFS on this issue and the Army Corps ultimately has discretion to adopt NMFS recommendations. If a disagreement exists between these agencies, an ascending federal inter-agency dispute resolution process exists to break the disagreement.

Project Counsel further reported that, at the SAP meetings, a strong alliance has become apparent between Bryant Chesney of NMFS and the Project's Army Corps Project Manager, Bonnie Rogers. The BBGHAD staff is addressing its concern with Ms. Rogers superiors at the Corps and with Congressman Lieu. Project Counsel opined that, if the Army Corps adopts NMFS' recommendations or if disagreement exists between the agencies, the Project schedule may not be met.

The Chair asked staff to approach Congressman Lieu on this matter and bring to his attention that the BBGHAD must comply with the CCC's prior to issuance conditions by December 31, 2017, and that the BBGHAD believes if an EIS path is recommended, the BBGHAD cannot meet the CCC's deadline for prior-to-issuance conditions. If the conditions are not met, the CDP will expire unless the BBGHAD succeeds in getting the deadline extended.

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

The Chair recognized Project Manager, who reported that there have been no meetings with the RWQCB, as the RWQCB permitting will occur following the Army Corps permitting process.

The Chair recognized Project Manager, who stated his concern regarding the Trancas Bridge repair. The Project Manager reported that, in the past CalTrans' estimate for the bridge repair was scheduled for 2018, but the date had been moved since then. The Project Manager opined that the Trancas Bridge repair could cause logistical issues as the date for the BBGHAD nourishment has been moved to Fall 2017 and that he will meet with CalTrans to determine the updated bridge repair schedule.

b. Permitting Outreach & Strategy Update.

(i) County of Ventura and City of Fillmore v. City of Moorpark and Broad Beach Geologic Hazard Abatement District.

The Chair recognized Project Counsel, who reported that Mr. Max Factor requested an update on the Ventura County litigation. The case has been transferred to Santa Barbara County Superior Court and a new and third judge was assigned to the case in the past week. Project Counsel further stated that the case is moving forward and is optimistic that the hearing will take place in Fall 2016. Project Counsel reported that staff is in concurrent resolution discussions with Ventura County and that Ventura County is trying to fulfill their commitment to clear Calleguas Creek for flood control issues. Project Counsel further explained that the Calleguas Creek material could be usable for the BBGHAD Project and that staff is in discussion with the County about the pricing and logistical details.

The Chair inquired about feedback about the acceptability from CCC regarding the sand coarseness. Project Counsel responded that Project Manager requested approval, but had not heard back from CCC staff. Project Counsel opined that he is not optimistic that the CCC staff would approve a more coarse sand specification. If CCC staff does approve more coarse sand, clearly the BBGHAD would be responsible for any mitigation associated with impacts caused by the more coarse sand. The Chair recognized Project Manager, who agreed with Project Counsel. The Chair recognized the Vice Chair, who inquired if the BBGHAD would have to start over the process if the Project would use the coarser sand. The Chair recognized Project Manager, who responded that he does not believe that we would have to start over again, but he assumes that the SAP would want to study the impact of the coarser sand on the beach.

c. BBGHAD Insurance: Scope of Directors & Officers Coverage, Potential Addition of Liability Coverage, and Indemnity and "Additional Insured" Provisions.

The Chair recognized Project Counsel, who updated the Board on the current status of a more comprehensive Directors & Officers' Policy for the BBGHAD. The Board asked Board Member Curtis to serve as the point person to obtain a proposal for property, liability and a revised D&O insurance policy with the Broker of Record, HUB Intl. Project Counsel reported that he has been communicating and responding to Board Member Curtis' questions regarding the scope and breadth of the BBGHAD's potential liability to third parties, and state law regarding indemnity of public employees and public officials. Project Counsel reported that he asked Counsel Michael Colantuono for his input in this. Mr. Colantuono suggested that insurance in general is useful to the BBGHAD to the extent that the BBGHAD does not have its own resources to rely upon if it finds itself in position to defend and/or indemnify an officer and/or employee. Mr. Colantuono advised that he is more concerned about those obligations than liability itself. The Chair recognized Board Member Curtis who inquired if someone can sue the Board Members and/or the BBGHAD for bodily injury and property damage or if the BBGHAD is protected as a government organization. Project Counsel responded that anyone could sue anyone for anything. Project Counsel further stated that there is a series of statutory protections and case law protections limiting the liability of public entities such as the BBGHAD.

The Chair recognized the Vice Chair, who stated that the government indemnity may not be absolute and questioned the areas the BBGHAD is unprotected, and whether the Board should seek more protection and whether Mr. Colantuono addressed these areas. Project Counsel responded affirmatively, adding that there are potential exposures for Board Members and the BBGHAD and therefore should have additional coverage. Mr. Colantuono suggested contacting the Special District Risk Management Authority, an insurance pool created by the State of California, that provides liability and property insurance for special districts. This agency may also consult the BBGHAD on how much additional coverage is needed. Project Counsel reported that he started the process with an underwriter, Wendy Tucker, who informed Project Counsel that they are aware of GHAD's and that they have rejected them before as they are usually located in landslide areas. Project Counsel informed Ms. Tucker that the BBGHAD is different and submitted a Project Description. Project Counsel expects to hear back from Ms. Tucker shortly. Project Counsel also reached out to the GHAD trade group to receive more information and contacts.

The Chair recognized Vice Chair, who inquired if Project Counsel can deal with Ms. Tucker, although the BBGHAD signed a BOR agreement with HUB. The Chair recognized Board Member Curtis, who stated that he will direct HUB to withdraw and Vice Chair agreed to do the same with AON. The Chair opined that this is an existing format with knowledgeable personnel and instructed Project Counsel to move forward with Ms. Tucker.

The Chair recognized Board Member Curtis who asked Project Counsel if a document exists stating that the Board Members and its operators are covered by the current D&O policy. Project Counsel responded that he has seen the declarations sheet form the current policy and it specifies that Board Members are covered. The Chair recognized Vice Chair, who asked to have Mr. Colantuono send a letter to that effect and to have Mr. Colantuono check on the Plan of Control. The Chair added that he believes that the BBGHAD adopted a resolution stating the



BBGHAD is protecting its officers and Board Members from liability relating to the Project. The Board directed Project Counsel to look for the resolution to that effect.

## 12. NEW BUSINESS

a. BBGHAD Assessment CPI Increase: March 2012- September 2015.

The Chair recognized Project Counsel, who briefed the Board on the proposed resolution regarding the Consumer Price Index (CPI) increases March 2012 through 2015. Project Counsel stated that he was advised by Mr. Colantuono to have the Board retroactively approve the past increases since the BBGHAD's inception.

MOTION: The Vice Chair moved, and Board Member Curtis seconded, that the Board adopt Resolution 2016/02 as presented. The Chair called the question and the Motion passed 3-0.

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

The Chair recognized Project Counsel, who briefed the Board on the proposed resolution regarding the July 1, 2016 CPI increase (1.2%) in assessment, to be reflected on next property tax bill.

MOTION: The Vice Chair moved, and Board Member Curtis seconded, that the Board adopt Resolution 2016/03 as presented. The Chair called the question and the Motion passed 3-0.

c. Project Manager Advance Compensation.

The Chair recognized Board Member Curtis who asked the Board to amend the Motion and issue a \$10,000 Bonus to the Project Manager based upon his hours, efforts and performance on the Project. The Chair responded that the Project Manager's total compensation is not on the Agenda and therefore out of order. The Chair recognized Project Counsel, who agreed with the Chair's statement that discussing the Project Manager's compensation is inappropriate and the bonus should be agendized separately.

The Chair recognized Project Counsel, who briefed the Board that in June 2016 it had come to his attention that the Project Manager asked for an advance of his June compensation and that the advance was paid to the Project Manager. The Chair added that the Board has never made any decision in this matter, and that two (2) people paid the advance without authority and knowledge that it was probably in violation of the law.

Project Counsel reported that he was then directed by the Board to ensure that the Board would properly consider the advance and to document what had happened leading up to the June advance payment, to agendize it for the August 2016 Board Meeting, and to draft an agreement documenting the past advance payment and authorizing future advance payments until the end of 2016. The agreement in the Board Packet facilitates Project Manager's request and authorizes retroactively the June 2016 advance payment. The Chair requested a provision to put into the

agreement stating that the Advance Agreement does not change the current compensation agreement, embodied in Resolution No. 2013/04.

MOTION: The Chair recognized the Vice Chair, who moved, and Board Member Curtis seconded, to approve compensation agreement with Project Manager as amended by the Board. Hearing no further discussion, the Chair called the question and the Motion passed 3-0.

### **13. BBGHAD OFFICER REPORTS**

#### a. Project Manager Report

None.

#### b. Treasurer's Report

The Treasurer reported that, as of July 18, 2016, the cash balance was \$3,540,506.59 and the estimated unpaid bills amount to \$394,760.30.

The Chair recognized Vice Chair, who asked if staff tracks all BBGHAD expenses to ensure the BBGHAD is on budget. The Chair responded that the Board directed the Project Manager and Clerk/Treasurer to produce a new spreadsheet, starting FY 2015/16 with the new assessment numbers at the May 22, 2016, Board Meeting. The Chair recognized the Treasurer, who reported that the Project Manager is reviewing a draft of the new spreadsheet created by the Treasurer. The Chair directed the Project Manager to provide the new spreadsheet at next Board Meeting.

### **14. BBGHAD BOARD MEMBER REPORTS**

The Chair recognized Board Member Curtis, who requested to put Project Manager's Compensation Agreement/Bonus on the Agenda for next Board Meeting. The Chair directed Project Manager to agendaize it, under New Business, for next Board Meeting.

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

None.

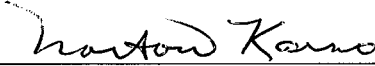
### **16. FUTURE MEETING**

The Chair suggested future meetings for tentatively August 28, 2016, September 18, 2016, and October 16, 2016 with 9:00 a.m. start times.

**17. ADJOURNMENT**

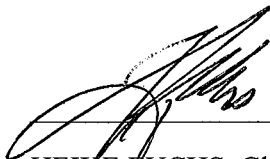
Board Member Curtis moved, and Chair Karno seconded, to adjourn the meeting. Hearing no objections, the Chair called the question and the motion passed 3-0. The meeting adjourned at 2:19 p.m.

Approved and adopted by the Broad Beach GHAD  
Board on August 28, 2016



NORTON KARNO, Chair

ATTEST:

  
\_\_\_\_\_  
HEIKE FUCHS, Clerk