

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR MEETING AGENDA

Sunday, June 3, 2012 at 8:30 a.m. (Closed Session begins)

**Private Residence-
31330 Broad Beach Road, Malibu, California 90265**

Closed Sessions Matters

Under this item, the GHAD Board shall meet in a closed session to discuss matters pursuant to Government Code Sections 54956.8 and 54956.9 (a).

- a. Negotiation of real estate issues with State Lands Commission and Coastal Commission

BBGHAD Negotiators: Chair Norton Karno, Vice Chair Marshall Grossman, Board Members Zan Marquis and Steve Levitan, BBGHAD Engineer Russ Boudreau, and GHAD Counsel Ken Ehrlich

Agency Negotiators: Curtis Fossum, Charles Lester, Eric Gilles, Shelli Haaf, Steve Hudson, Jack Ainsworth, and Alex Halperin

Real Property At Issue: Potential future seaward boundary and future seaward lateral access from mean high tide line of 6525 Point Lechuza - 30708 Pacific Coast Highway, Malibu, CA 90265 (parcels within BBGHAD)

Under Negotiation- Real estate issues related to potential BBGHAD lease of state tidelands, including lateral access easements and public/private boundary issues.

Regular Session Matters- estimated start time: 9:30 a.m.

- 1) **Call to Order**
- 2) **Roll Call**
- 3) **Adoption of Agenda**
- 4) **Approve Summary of Actions from April 29, 2012 Meeting**

Recommendation: Chair to conduct vote on approving Summary of Actions from April 29, 2012 Meeting. If passed, Chair to sign Summary of Actions.

- 5) **Ceremonial/Presentations**

None.

- 6) **Consent Calendar**

None.

7) **Public Hearings**

None.

8) **Old Business**

- a. **Permitting and Regulatory Process.** Report to include project regulatory status summary (including recent communications with RWQCB and APTR status). Guidance also sought on items related to June 7, 2012 meeting with executive and senior staffs from CCC and SLC. (GHAD Project Counsel)

Recommendation: Develop BBGHAD position and guidance on items to be discussed at June 7, 2012 meeting and related matters.

- b. **Discussion of Budget and Proposed Corrective Measures.** Discussion of current financial status, and may include Board action on interim measures to fund permitting process. (Board Members Levitan and Marquis)

Recommendation: Subject to guidance from Board.

- c. **Proposed new Moffat & Nichol Contract.** Discussion of status of new, proposed contract for coastal engineering services and guidance sought regarding entry into contract. (GHAD Project Counsel)

Recommendation: Staff recommends authorization for appropriate GHAD representative to execute new contract between BBGHAD and Moffat & Nichol in accordance with Board guidance.

- d. **Future Management of BBGHAD Website.** Current site manager leaving position. Discuss need for professional web site manager and programmer. Solicit guidance from Board regarding same (GHAD Project Counsel).

Recommendation: Staff recommends retention of professional web site manager and HTML programmer, such as Sari Karplus.

9) **New Business**

None.

10) **GHAD Boardmember Reports**

11) **GHAD Officer Reports**

- a. Treasurer's Report. (GHAD Treasurer)
- b. GHAD Manager Report (GHAD Manager)

12) Public Comment - Closed Session Item(s) and Non-Agenda Items

Communications from the public concerning matters which are in Closed Session or are not on the agenda but for which the GHAD Board has subject matter jurisdiction. The GHAD Board may not act on non-agendized matters except to refer the matters to staff or schedule the matters for a future agenda.

- a. Public Comment on Closed Session Item
- b. Public Comment on Non-Agendized Items

13) Future Meeting

Next Meeting: July __, 2012; __:00 a.m./p.m. Location: TBD, Malibu, CA

14) Adjournment

AGENDA ITEM 4.

**SUMMARY OF ACTIONS
BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT
BOARD OF DIRECTORS
REGULAR MEETING
APRIL 29, 2012
31330 BROAD BEACH ROAD, MALIBU, CALIFORNIA**

1. CALL TO ORDER

Chair Karno called the meeting to order at approximately 9:35 a.m.

2. ROLL CALL

PRESENT: Chair Karno, Vice Chair Grossman, Board Member Marquis, and Advisor Goss.

ABSENT: Board Members Levitan and Lotman.

GHAD STAFF ALSO PRESENT (not Board Members and not subject to Roll Call): GHAD Manager Uri Eliahu (telephone), GHAD Clerk and Treasurer Barbara Hamm, and GHAD Project Counsel Ken Ehrlich.

Closed Session: Following Roll Call, the GHAD Board (Chair Karno, Vice Chair Grossman and Board Member Marquis) went into Closed Session to give direction to negotiators Chair Karno and GHAD Project Counsel Ken Ehrlich in connection with negotiations of Moffatt & Nichol's ("M&N") proposed new contract, specifically regarding potential assignment of the existing M&N- TPOA contract and the potential entry into a new contract, including potential contract terms. GHAD Project Counsel Ehrlich announced that the GHAD negotiators are Chair Norton Karno and GHAD Project Counsel Ken Ehrlich; the M&N negotiators are Russ Boudreau, Scott Ullman and Larry Treglia.

At approximately 10 a.m., the Closed Session ended and the Board reconvened in Regular Session. At this time, GHAD Project Counsel Ehrlich announced that the Board had given him direction to negotiate a new contract with M&N and guidance regarding the indemnity and insurance provisions of the proposed new contract.

3. ADOPTION OF AGENDA

The Chair recognized the GHAD Clerk. GHAD Clerk Barbara Hamm reported that the meeting Agenda was posted on April 26, 2012 at 8:45 a.m. within the boundaries of the GHAD. Vice Chair Grossman moved, and Board Member Marquis seconded, the approval of the Agenda with no changes. The motion approving the Agenda passed 3-0.

4. APPROVED SUMMARY OF ACTION FROM MARCH 11, 2012 MEETING

Chair Karno referenced two necessary edits: 1) page 2, last line of third full paragraph, the words "marked as" should be deleted, and 2) on page 8, first line of the fourth paragraph, "995-96" should be "1995-96". Subject to these edits requested by the Chair, which were

interlineated, Vice Chair Grossman moved, and Board Member Marquis seconded the approval of the Summary of Actions from the March 11, 2012 meeting. The motion passed 3-0.

5. CEREMONIAL PRESENTATIONS

None.

6. CONSENT CALENDAR

None.

7. PUBLIC HEARINGS

None.

8. OLD BUSINESS

A. Report of Recording of GHAD Assessment Diagram. The Chair recognized Project Counsel Ehrlich. Project Counsel Ehrlich reported that, in accordance with Resolution No. 2012/04, the GHAD's surveyor, KDM Meridian, prepared and, with supervision from GHAD counsel, caused to be recorded an Assessment Diagram to reflect the March 11, 2012 assessment vote by the BBGHAD property owners. A true and correct copy of this Assessment Diagram is attached to this Summary of Action.

The Chair recognized Vice Chair Grossman. Vice Chair Grossman stated, according to his understanding, a 30-day statute of limitations existed to challenge the March 11, 2012 assessment vote for the GHAD assessment and that 30 days have passed without any known filing of a legal challenge. Vice Chair Grossman asserted that this is a positive development, and credited all GHAD property owners on this result. The Vice Chair suggested that the Chair circulate a letter to the GHAD property owners advising them of this development, thanking them for their participation the assessment process, and encouraging them to continue making voluntary payments towards the permitting of the beach restoration project. The Chair agreed to do so.

B. Permitting and Regulatory Process. The Chair recognized Project Counsel Ehrlich. Project Counsel Ehrlich reported on the status of the permitting and regulatory process for the Project. He reported that the primary pending issues remain lateral access, project duration, and alignment of the eastern 1300 feet of the existing emergency revetment. Project Counsel Ehrlich then described an April 18, 2012 letter received from the SLC which asserts that the GHAD's recent SLC re-application for a lease of state land was incomplete. Mr. Ehrlich stated that almost all of the allegedly incomplete items are technical and have either been completed or are on the cusp of completion by M&N.

However, the SLC letter also requests a mitigation plan to offset or compensate for the loss of existing lateral public access easements. Project Counsel Ehrlich related that this request served as the impetus for two (2) recent conference calls with SLC staff. During the first call, Project Counsel Ehrlich reported that SLC staff stated that the GHAD's proposed 25 foot privacy buffer beginning at the seaward toe of the restored dune and extending 25 feet seaward

(proposed to be used as "pass and repass" area only and not for recreation) was not acceptable to the SLC. On the same call, SLC counsel Shelli Haaf stated that the agency instead sought lateral access landward of the restored beach and extending 25 feet landward of the landward toe of the revetment ("Proposed Landward Access Easement"). Project Counsel Ehrlich reported that this was the first time SLC staff had ever mentioned such a landward lateral access request and BBGHAD representatives immediately rejected the proposition.

Project Counsel Ehrlich stated that, a few days after this initial telephone conference call, Board Member Marquis, Project Counsel Ehrlich, and GHAD Engineer Russ Boudreau subsequently contacted SLC Counsel Haaf to further discuss the Proposed Landward Access Easement. During this subsequent call, SLC Counsel Haaf and her colleague Ken Foster recanted the Proposed Landward Access Easement as not representing the SLC's position.

As a result of these calls with SLC staff, Project Counsel Ehrlich requested a joint meeting among BBGHAD representatives and the executive officers and senior staff of the SLC and the Coastal Commission to attempt to resolve lateral access, project duration, and revetment alignment issues. The requested joint meeting was not yet scheduled.

The Chair recognized Vice Chair Grossman. Vice Chair Grossman stated that, as the project moved toward permitting, increased coordination is needed between the GHAD and any individual property owners who do not currently have a revetment and who seek same, such as the owner of 30822 Broad Beach Road and the Malibu West Beach Club. Board Member Marquis stated that it would be optimal to do so, but the GHAD should not delay its scheduling if individual homeowners are not ready to complete revetment permitting. Advisor Goss asked if the GHAD preferred Malibu West to have a revetment, restored dune, or both? Vice Chair Grossman stated his view that the GHAD should leave it up to Malibu West. Advisor Goss suggested that Malibu West is likely leaning toward a revetment and dunes.

The Chair recognized GHAD Engineer Boudreau. GHAD Engineer Boudreau addressed the issue of the revetment alignment for the eastern 1300 feet. GHAD Engineer Boudreau stated that a pull back of 25 to 50 feet in this area of the emergency revetment appears appropriate and the minimal available under the circumstances. Vice Chair Grossman directed the GHAD Engineer to work on developing a technical case for the minimal possible pull back.

C. Proposed BBGHAD Website. The Chair recognized Project Counsel Ehrlich. Project Counsel Ehrlich described the latest reconfiguration of the BBGHAD website into an HTML platform. Vice Chair Grossman directed Mr. Ehrlich to review the content of the website, including the "Frequently Ask Questions" to ensure that the content is 100% accurate. Provided that the content is accurate, Vice Chair Grossman moved that the website be activated. Board Member Marquis seconded the motion. The motion passed 3-0.

9. NEW BUSINESS

None.

10. GHAD BOARD MEMBER REPORTS

None.

11. GHAD OFFICER REPORTS

A. Treasurer's Report. The GHAD Treasurer reported cash on hand of \$478,700 as of March 31, 2012. The GHAD Treasurer further reported that, following a recent appeal for fair share contributions, approximately \$48,000 had been collected over the past two weeks.

B. Discussion of Budget. The Chair recognized Board Member Marquis. Board Member Marquis asked that the GHAD Treasurer prepare a list of GHAD property owners who have not contributed fair share contributions in 2012. Chair Karno stated that circulating the names of property owners who have not made fair share contributions to GHAD owners may prove effective and yet others may disagree with the proposition. Board Member Marquis reminded the Board that, according to the implementation of the assessment vote, the GHAD will begin receiving assessment funds in December 2012 and, additional funds, in April 2013.

The chair recognized Vice Chair Grossman. Vice Chair Grossman asked the GHAD Manager to undertake all appropriate measures to ensure that the County Assessor's office and others have the information necessary to ensure receipt of assessment proceeds as quickly as possible following the March 11, 2012 assessment vote. The GHAD Manager confirmed same. The GHAD Manager confirmed that approximately \$600,000 should be received in total for the 2011-2012 tax year, and that half of this amount, or approximately \$300,000, should be received by the end of 2012. The GHAD Manager further stated that approximately \$2.4 million should be received from assessment payments for the tax year 2012-2013, and half of this amount should come by the end of 2012 and the other half by approximately the end of April 2013.

12. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

13. FUTURE MEETING

The next GHAD Board meeting was tentatively set for May 20, 2012 at 9:30 a.m. at 31330 Broad Beach Road, Malibu, California 90265.

14. ADJOURNMENT

Vice Chair Grossman moved, and Board Member Marquis seconded, a motion to adjourn. The motion passed 3-0.

Approved and adopted by the Broad Beach GHAD
Board on June _____, 2012.

NORTON KARNO, Chair

ATTEST:

BARBARA HAMM, GHAD Clerk

AGENDA ITEM 8a.



7231-2
Carpesp



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

RECEIVED

MAY 22 2012

JMBM LLP

May 17, 2012

Mr. Kenneth A. Ehrlich
Broad Beach Geologic Hazard Abatement District
Trancas Property Owners Association
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067

FEES FOR WATER QUALITY CERTIFICATION FOR PROPOSED BROAD BEACH SHORE AND DUNE RESTORATION PROJECT, PACIFIC OCEAN, CITY OF MALIBU, LOS ANGELES COUNTY (File No. 11-011)

Dear Mr. Ehrlich:

The Los Angeles Regional Water Quality Control Board (Regional Board) is in receipt of your letter of April 11, 2012 in addition to your letters of September 27, 2011 and November 18, 2011. We appreciated meeting with you on April 6, 2012 to discuss your project and the applicable fees for the Clean Water Act Section 401 Water Quality Certification (Water Quality Certification).

The Broad Beach Geologic Hazard Abatement District (BBGHAD) seeks a reduced fee for the Water Quality Certification for the Broad Beach Shore and Dune Restoration Project (Project), as did the Trancas Property Owners Association (TPOA).

Only dredge and fill projects for which the *only* purpose is restoration are assessed the dredge and fill restoration fee. The annual fee schedule (23 CCR § 2200(a)(3)(G)) defines "Restoration Projects" as *"Projects undertaken for the sole purpose of restoring or enhancing the beneficial use of waters. This schedule does not apply to projects required under a regulatory mandate or to projects that include a non-restorative component, e.g. land development, property protection, or flood management."*

You have provided examples of beach renourishment projects under the authority of other Regional Boards that were assessed only the application or restoration fee (depending on when the Water Quality Certification was issued, the fee could have been \$500, \$640 or \$944). In addition to the projects cited in your letter, we reviewed other projects in California which included beach renourishment. We found that the fees assessed by the Regional Boards for beach renourishment projects depended on the specific details of the project. Not all projects including beach renourishment were determined to be restoration only. Some projects which included beach renourishment were small projects pre-certified by the State Water Resources Control Board under Regional General Permit 67 and were assessed a general order flat fee; some projects were assessed the 'restoration' dredge and fill fee; some projects were assessed the

MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/osar/goals

full dredge and fill fee; some projects were undertaken by a federal agency and, therefore proceeded without fees.

We have confirmed with San Diego Regional Board staff that for the San Diego Association of Governments, Regional Beach Sand Project, which we discussed on April 6, 2012, that public or private property protection was not a factor in their assessment of fees.

This Broad Beach Project was originally presented, and certified, as a project to protect private property (homes and associated on-site waste facilities) on a temporary basis via a rock revetment. As this project has been secondarily revised to provide for beach expansion, this project cannot be considered a restoration project for the purpose of fees.

In addition, we will note that this Project is, indeed, a dredging project. 600,000 cubic yards of material will be removed from the seafloor by dredging. As you can see in the fee schedule, the 'restoration' project category is a sub category of 'dredge and fill' projects. No other category of discharge includes a 'restoration' sub-category. If the Project was not a dredging project, discussion of whether or not it was restoration would not be entertained.

We also wish to bring to your attention that the Water Quality Certification, File No. 10-003, issued for the rock revetment on January 21, 2010 and modified on February 3, 2010, includes a requirement for annual progress reports on the plan for sewage management.

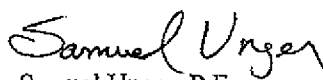
Attachment A, Item 7:

The rock revetment will stay in place through the development of the Long-Term Beach Nourishment and Sewage Management Plan (Plan). The plan shall be completed and ready for implementation by June 30, 2013. Annual progress reports regarding the status of the Plan will be required on June 30th of each year, commencing on June 30, 2010.

No reports have been received and the omission is subject to enforcement action.

In conclusion, the proposed Project does not meet the definition of a restoration project per the applicable regulations. Therefore, it is not eligible for the reduced fee. Please note that fees are neither negotiable nor discretionary. Any Clean Water Act Section 401 Water Quality Certification is conditioned upon total payment of any fee required pursuant to Title 23, Chapter 28 of the CCR. If you have additional questions regarding this issue, please contact Dr. LB Nye at (213) 576-6785.

Sincerely,


Samuel Unger, P.E.
Executive Officer

cc. Frances McChesney, Office of Chief Counsel, State Water Resources Control Board

AGENDA ITEM 8b.

Broad Beach GHAD
 Detail for the answer to the Questionnaire
 AS of: 5/25/12

Category/Account	Transferred, 2011	Nov & Dec, 2011	JAN - Mar, 2012	Apr, 2012	May, 2012	Jun, 2012	Jul, 2012	Aug, 2012	Sep, 2012	Oct, 2012	Nov, 2012	Dec, 2012	Totals
Uses:													
Expenses transferred from FS acct-2011													2,392,211
Moffatt & Nichols-Approved		40,000	132,702										172,702
Moffatt & Nichols-Projected		84,063	115,202	8,626	99,422	115,000	39,000	43,000	30,000	17,090	17,000	65,000	613,313
Moffatt & Nichols-Final Engr & Constr Documents/Bid						60,000	60,000	60,000	45,000	25,000	20,000		270,000
Moffatt & Nichols-Constr Support/Mgmt/Monitor/Surveys											100,000	150,000	250,000
Project Construction-Hard Cost													-
Project Construction-20% Contingency													-
GHAD Bond Legal													-
GHAD Bond Underwriting													-
Jeffer Mangels	75,000		176,484	112,153	90,591	40,000	40,000	40,000	40,000	40,000	40,000	40,000	784,169
ENGEO	16,077		22,594	4,029	2,981	7,697	7,500	7,500	7,500	7,500	7,500	7,500	98,378
Morgan, Miller & Blair			13,189										13,189
Bell, McAndrews & Hiltachk			7,900										7,900
Wendel Rosen			25,917	4,093	9,614								39,624
Calantuono & Levin, PC					1,945								1,945
PSOMAS			8,137		(8,137)								-
Fee-City of Malibu													-
Fee- Coastal Commission						30,000							30,000
Fee-Water Board						40,000							40,000
Fee-Fish & Game						7,172							7,172
Fee-Army Corp of Engr 7													-
Fee- LA County Fees for using Bulldozer on beach?													-
Fee- State Lands Commission additional Permit fees													-
State Lands Comm-Staff Costs	10,067		24,895		21,080	24,099	10,000						90,141
EIR Consultant-AMEC Earth & Environ			36,059		40,425	186,646	122,221						385,352
Quality Mapping			1,176										1,176
Topanga Underground					7,000								7,000
ADN-E&D Insurance													-
Office / Phone/Web Sites/Coping/Transcripts			3,878	1,207	37								5,123
Accounting Administration			7,755		2,610	7,159	1,800	1,800	1,800	1,800	1,800	1,800	28,524
Soft Cost Contingency													-
Total Uses	2,392,211	205,207	570,489	130,109	376,800	-	-	-	-	-	-	-	5,120,379
Sources of Cash:													
Expenses Transferred from FS Acct-2011	1,580,278	66,250	928,500	47,200	376,800								2,999,028
Advances from TPOA General Fund	267,579												267,579
Advances from TPOA General Fund	550,000	200,000											750,000
GHAD Bond													-
GHAD ASSESSMENTS													-
Additional Source of Cash-Possible line of Credit/loan													-
Repayment of Advances to Homeowners													-
Repayment of Advances to TPOA General Fund													-
Total Sources	2,397,857	266,250	928,500	47,200	376,800	-	-	-	-	-	-	-	4,010,607
Current Year Running Balance	55,646	31,057	378,700	35,997	505,000								1,109,700

Budgeted Time Frames assume GHAD Bond closing in Dec, 2012 and Start of construction Feb, 2013
 Assumes GHAD assessments to HO to start in Dec 2012

**Broad Beach GHAD
Cash Flow**

Cash in Bank : 3/31/12 478,699.53

Sources of Cash:

Advances from Individual Homeowners (Actuals)-APR 47,200.00

All Invoices Paid thru 2/28/12

Oct/Nov Invoices

Paid

Morgan Miller Blair	13,189.25	6,689.25
Moffatt & Nichols		8,625.83
Jeffer Mangels		112,153.33
ENGEO		4,029.00
Wendel Rosen		4,093.28
TSG-transcripts for GHAD Vote meeting		1,207.10

Cash Paid Out (130,108.54)

Cash Balance as of 4/30/12 395,790.99

Sources of Cash:

Advances from Individual Homeowners - May 376,800.00
(Have resubmitted request for 2012 FS funding to Homeowners)

Current Payables in hand:

ENGEO	1	968.39
Jeffer Mangels	1.00	90,531.25
Moffatt & Nichol	1	75,897.86
PSOMAS	1	(8,137.00)
Wendel Rosen	1	9,309.00
State Lands Commission	1	61,504.88
Verizon	1	37.44
Colantuono & Levin		1,945.00
Barbara Hamm-reimb Mar & Apr	1	1,286.07
Topanga Underground	1	7,000.00
Total Invoices Due		<u>(240,342.89)</u>

Forecasted Invoices thru May

Moffatt & Nichols	23,524.31
ENGEO	2,012.50
Wendel Rosen	304.50
Accounting Administration	1,324.00
Total Forecasted	<u>(27,165.31)</u>

Estimated Net Cash Flow Needed thru 5/31/12 505,082.79

AGENDA ITEM 8c.

TO: BOARD OF DIRECTORS OF BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

FROM: GHAD Project Counsel

DATE: May 30, 2012

ITEM NO. June 3, 2012 GHAD Board Meeting-- Item 8c

SUBJECT: Contract Negotiation with Moffat & Nichol

RECOMMENDED ACTIONS:

1. **Review and summarize contract negotiations with Moffat & Nichol ("M&N"):**
Review includes M&N's request for a new contract.
2. **Recommendation:** The GHAD can enter into a new agreement with M&N with following terms (assuming all other terms acceptable to BBGHAD):
 - a) indemnity from M&N does not require a prior Court determination of M&N's liability before its contract duty to defend or indemnify becomes operative;
 - b) BBGHAD and its affiliates shall be additional insureds on all M&N insurance policies except for Professional Liability and Workers Compensation;
 - c) M&N increases its liability limits to \$3,000,000 on general liability and Professional Liability coverages; and
 - d) where applicable for M&N subconsultants, BBGHAD consents in writing to the waiver of the \$3M insurance liability limit and/or listing of BBGHAD affiliates as additional insureds on a case-by-case basis, such as where the subconsultant at issue is a solo or relatively small entity (such as Gary Griggs or Bill King).
3. **Review M&N's Proposed and Previous Scopes of Work to determine if new scope is needed.** Since retained in June 2009 by the TPOA, M&N's scope of work has evolved through contract amendments in an iterative manner reflecting the restoration project's progress. The initial scope included:
 - identification of data and technical gaps
 - developing a design basis to assist permitting effort
 - initial permitting and stakeholder outreach to assist in defining preferred permanent restoration project.

Subsequent, expanded work scopes have been implemented through amendments to the June 2009 M&N-TPOA contract; at no time prior to Fall 2011 did M&N request a new contract. The amendments since June 2009 have covered the following tasks:

- preparation of MHTL survey and full topographic survey of shoreline
- engineering and permitting support for emergency revetment
- construction management for installation of emergency revetment
- biological monitoring
- sand source survey, offshore investigation, and beach profile program
- initial biological assessments
- baseline dune habitat assessment
- preparation of 30% design for restoration project permitting
- preparation of GHAD legal description
- prepare as-built survey of emergency revetment
- preparation of materials supporting permitting effort
- attend agency meetings
- conduct additional offshore sand source investigation

The proposed new scope of work attached to the new contract proposed by M&N includes certain work **already completed**, such as:

- twice-yearly beach profile surveying
- biological assessments of proposed offshore borrow sites (Dockweiler and Trancas)
- Broad Beach dune and habitat assessment reconnaissance
- bathymetric survey of offshore borrow sites
- archeological assessment of offshore borrow sites

The proposed new scope of work attached to the new contract proposed by M&N includes certain work **to be completed in the future**, such as:

- Preparation of CDP permit application
- Support for CDP process and other permitting processes
- Support for permitting agencies' environmental review of project
- Finalizing Technical Report and complete 30% design plans to include finalized dune plans

4. **Review of M&N Cost Schedules.** The first M&N cost schedule I have received came with Amendment 1 in January 2010. The cost structure appears identical to the cost schedule attached by M&N to its latest contract proposal. It does not appear that M&N is seeking to increase its recovery of rates or costs by proposing a new contract.

BACKGROUND:

The TPOA retained M&N in June 2009 as its Engineer of Record to conduct various studies in support of a beach-wide restoration project. M&N amended its contract by adding supplemental scopes of work on nine (9) occasions over the next 2.5 years. The TPOA agreed to each amendment and has paid M&N in full. Following the creation of the BBGHAD in September 2011, M&N approached the GHAD with a request to enter into a new contract-- and not simply assign the TPOA contract or amend the existing contract as had been done in the past.

In response, and consistent with a contract provision in the original M&N-TPOA contract, the TPOA assigned its position in the M&N-TPOA contract to the BBGHAD in writing on February 21, 2012. M&N claims that the assignment is not valid, and the parties must enter into a new contract. BBGHAD has paid M&N in full to date. The GHAD seeks an amicable resolution. However, in a previous contract proposal, M&N included a provision that would require a Court determination before M&N's duty to defend or indemnify the BBGHAD would become operative. The BBGHAD objected to this provision. M&N has since indicated it will proceed with a new Agreement without the express "Court determination" language.

The BBGHAD wishes to continue working with M&N on the restoration project in the future. Therefore, in Closed Session at the April 29, 2012 BBGHAD Board Meeting¹, the Board directed counsel to attempt to obtain the following changes in any new Agreement:

a. Remove the express "Court determination" language (Section 12 indemnity) that would require a Court determination that a defense or indemnity exist prior to M&N agreeing to defend or indemnify;

b. Have BBGHAD, BBGHAD Board Members, TPOA, and their respective agents, assigns, etc. constitute additional insureds on all of the MN insurance policies and those of MN's subconsultants referenced in the contract; and

c. Have MN and its subconsultants increase the limits on their respective Professional Liability and general liability insurance to \$3,000,000.

Subsequently, MN accepted all of the GHAD's suggested changes, **EXCEPT**: 1) naming the GHAD and its affiliates as additional insureds on Professional Liability and Workers Compensation policies (MN has stated that its insurance broker claims that underwriting practices prevent additional insureds from being added to these policies), **and** 2) instead of agreeing that MN's subconsultants must list BBGHAD and its affiliates as additional insureds and increasing their insurance limits to \$3,000,000, MN has requested that BBGHAD consent in writing to the waiver of these conditions on a case-by-case basis, such as where the subconsultant at issue is a solo or relatively small entity (such as Gary Griggs or Bill King).

¹ A questions exists as to whether the M&N contract was an appropriate item for Closed Session. Therefore, it is proposed the BBGHAD Board review this item de novo in open session.

AGENDA ITEM 8d.

Ehrlich, Kenneth A.

From: Sari Karplus [sari.karplus@gmail.com]
Sent: Friday, May 25, 2012 3:15 PM
To: Ehrlich, Kenneth A.
Subject: Re: FW: BBGHAD Web Site management

Hi Ken,

Thanks for all the info regarding the BBGHAD site. If you would like to move forward to have me update the site, I would project we could do a \$300 start up cost of fixing any odds and ends (moving the FAQs, fixing up the image slideshow, etc.) and then \$150/month to do the standard updates. We can readjust this a few months down if it feels like the workload is more or less than we envisioned. And if we decide it's best to move the site to a better hosting situation, we can discuss the cost of that. But it won't be very complicated. Like you say, it's a simple site.

Just a heads up, I will be out of town and unavailable June 10th - 24th for my wedding and honeymoon. But I am available outside of that for work.

Let me know if/when you'd like to proceed. We can get started as early as next week-- Just hit me up on Tuesday.

Have a great weekend!

Sari

5/31/2012

Ehrlich, Kenneth A.

From: Jeff Adams [jaa@engeo.com]
Sent: Thursday, May 31, 2012 10:47 AM
To: Ehrlich, Kenneth A.
Subject: RE: BB GHAD website
Ken -

Sure. Her name is Tiraporn Olsen. Contact info as follows:

Tiraporn Olsen
Happy Pixel Studio, LLC
3685 Mt. Diablo Blvd., #310
Lafayette, CA 94549

Cell: 925-978-7227
Email: tolsen@happypixelstudio.com
Website: www.happypixelstudio.com

From: Ehrlich, Kenneth A. [mailto:KAE@JMBM.com]
Sent: Thursday, May 31, 2012 9:57 AM
To: Jeff Adams
Subject: Re: BB GHAD website

Thanks. I was given a another terrific referral for \$120/month- pretty cheap for a very experienced, top person. Pls forward your person as well so Bd can have more than one person to consider.

Kenneth A. Ehrlich
Jeffer Mangels Butler & Mitchell LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Telephone: (310) 785-5395
Fax: (310) 203-0567
E-mail: kae@jmbm.com
Internet Web Site: <http://www.jmbm.com>

This e-mail message and any attachments are confidential and may be attorney-client privileged. If you are not the intended recipient, please notify Jeffer Mangels Butler & Mitchell LLP immediately by telephone at (310) 785-5395 or by e-mail to kae@jmbm.com and destroy all copies of this message and any attachments.

Sent from my BlackBerry Wireless Handheld

From: Jeff Adams
To: Ehrlich, Kenneth A.
Sent: Thu May 31 09:56:39 2012
Subject: BB GHAD website
Ken -

Uri suggested I give you a heads up. Regarding the BB GHAD website, we can make a recommendation

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if desired for a really good designer/webmaster if desired. We have a good person in place for the California Association of GHADs website. Let me know if you want me to fwd info to you or daylight if the matter comes up on Sunday.

Thanks!
Jeff

Jeffrey A. Adams, PhD, PE, REA I
Associate



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5/31/2012