

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR MEETING AGENDA

Sunday January 11, 2015; 9:00 a.m.

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

Regular Session

- 1) **Call to Order**
- 2) **Roll Call**
- 3) **Adoption of Agenda**
- 4) **Approve Summary of Actions from October 26, 2014, November 16, 2014, and December 14, 2014 Meetings**

Recommendation: Chair to conduct vote on approving Summary of Actions from October 26, 2014, November 16, 2014, and December 14, 2014 meetings. If passed, Chair to sign Summary of Actions for each meeting.

- 5) **Ceremonial/Presentations**

None.

- 6) **Consent Calendar**

None.

- 7) **Public Hearings**

None.

- 8) **New Business**

- a. Consideration of Agreement with City of Moorpark. (Project Manager). Agreement regarding truck traffic management during sand nourishments.

Staff recommendation: Authorize Chair to execute Agreement.

- 9) **Old Business**

- a. Permitting and Regulatory Process Status. (Project Manager and Engineer). Report to include project regulatory status update, including:
 - (i) Lead Agency update: CCC, SLC, and Army Corps.
 - (ii) Responsible & Consulting Agency update: RWQCB, NMFS, Cal. DFW, CalTrans, etc.

- b. Permitting Outreach & Strategy Update. (Project Manager) Report to include status update on agency advocacy, stakeholder outreach, and related matters.

10) GHAD Officer Reports

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

11) GHAD Board Member Reports

12) Public Comment - Non-Agenda Items

Communications from the public concerning matters that 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.

13) Future Meeting

Next Meeting: February 8, 2015; 9:00 a.m.
Location: 31330 Broad Beach Road, Malibu, CA 90265

Closed Session

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. **Discussion of potential litigation – *Magidson Trust***

The BBGHAD Board is authorized to discuss this matter in closed session pursuant to Government Code Sections 54956.9, 11126(e)(2)(A), 11126(e)(2)(B) and (2)(C).

a. **Discussion of potential litigation – *BBGHAD West End homeowners***

The BBGHAD Board is authorized to discuss this matter in closed session pursuant to Government Code Sections 54956.9, 11126(e)(2)(A), 11126(e)(2)(B) and (2)(C).

Resumption of Open Session

14) Adjournment

AGENDA ITEM 4

Summary of Actions

BROAD BEACH GEOLOGICAL HAZARD ABATEMENT DISTRICT REGULAR MEETING

Sunday, October 26, 2014; 9:00 a.m.
31330 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

Chair Karno called the meeting to order at 9:03 a.m.

2. ROLL CALL

PRESENT: Chair Karno, Vice Chair Grossman, and Board Member Rosenbloom

ABSENT: Board Members Levitan and Lotman

BBGHAD STAFF ALSO PRESENT (not Board Members and not subject to Roll Call):
Project Manager Mark Goss, and BBGHAD Engineers Russ Boudreau and Chris Webb.

After Roll Call, the Chair adjourned the Regular Session as the Board began Closed Session. Regular Session re-convened at 9:22 a.m.

3. ADOPTION OF AGENDA

The Project Manager stated that the meeting Agenda was posted at approximately no later than 9:00 a.m. on Thursday, October 23, 2014 within the BBGHAD boundaries and concurrently posted on the BBGHAD website. Board Member Rosenbloom moved, and the Vice Chair seconded, the approval of the Agenda. The Motion approving the Agenda passed 3-0.

4. APPROVED SUMMARY OF ACTIONS FROM SEPTEMBER 14, 2014 MEETING

Board Member Rosenbloom moved, and Vice Chair Grossman seconded, the approval of the Summary of Actions from the September 14, 2014 Board meeting. The Motion passed 3-0.

5. CEREMONIAL PRESENTATIONS

None.

6. CONSENT CALENDAR

None.

7. PUBLIC HEARINGS

None.

8. NEW BUSINESS

None.

9. OLD BUSINESS

a. Permitting and Regulatory Process

The Chair recognized the Project Manager, who reported on various aspects of the Project. Discussion ensued regarding the placement of the revetment. The BBGHAD Engineer presented a drawing of three (3) iterations of the proposed revetment line which were viewed by Board Members and members of the public. The revetment alignments reviewed included: the most landward line ("Hudson Line"), and "middle" alignment ("Ainsworth Line") and the seaward-most alignment proposed by the BBGHAD ("BBGHAD Line").

MOTION: Chair Karno moved to accept the "Ainsworth" line provided the following conditions were agreed by CCC staff: (a) nourishment at the West End in the manner as the BBGHAD Board had previously approved and removal of the "boulder field" condition; (b) no easements to be granted by BBGHAD property owners; (c) revetment to remain in agreed-upon location for the duration of the Project; and (d) no re-permitting necessary until year twenty. The Vice Chair seconded the Motion. The Chair called the question, and the Motion was approved 3-0.

b. Project Outreach

No report was presented.

10. GHAD OFFICER REPORTS

a. Project Manager

The Project Manager reported on trucking cost increases and potential increases to the cost of monitoring the trucking operation.

b. Treasurer Report

No report was given as a quorum was about to be lost.

11. BBGHAD BOARD MEMBER REPORTS

No report was given as a quorum was about to be lost.

12. PUBLIC COMMENT: NON-AGENDA ITEMS

None.

13. FUTURE MEETING

The Chair stated that the next BBGHAD Board meeting will be on November 16, 2014 at 9:00 a.m. at a private residence located at 31330 Broad Beach Road, Malibu, CA.

14. ADJOURNMENT

MOTION: The Vice Chair moved to adjourn. Board Member Rosenbloom seconded the Motion. The Motion passed 3-0, and the meeting adjourned at 12:13 p.m.

Approved and adopted by the Broad Beach GHAD
Board on December ____, 2014.

NORTON KARNO, Chair

ATTEST:

BERNADETTE O'NEILL, Clerk

Summary of Actions

BROAD BEACH GEOLOGICAL HAZARD ABATEMENT DISTRICT
REGULAR MEETING

Sunday, November 16, 2014; 9:00 a.m.
31330 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

Chair Karno called the meeting to order at 9:01 a.m.

2. ROLL CALL

PRESENT: Chair Karno, Vice Chair Grossman, Board Member Levitan, and Board Member Rosenbloom (arrived approximately 9:06 a.m.)

ABSENT: Board Member Lotman

BBGHAD STAFF ALSO PRESENT (not Board Members and not subject to Roll Call):
BBGHAD Engineers Russ Boudreau and Chris Webb, and Project Counsel Ken Ehrlich.

3. ADOPTION OF AGENDA

Project Counsel reported that, according to the Project Manager, the meeting Agenda was posted at approximately 8:30 a.m. on Thursday, November 13, 2014 within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Vice Chair moved, and Board Member Levitan seconded, the approval of the Agenda. The Motion approving the Agenda passed 3-0 (Board Member Rosenbloom did not vote).

4. APPROVED SUMMARY OF ACTIONS FROM OCTOBER 26, 2014 MEETING

No Summary of Actions have been submitted from the October 2014 Board Meeting.

5. CEREMONIAL PRESENTATIONS

None.

6. CONSENT CALENDAR

None.

7. PUBLIC HEARINGS

None.

8. NEW BUSINESS

None.

9. OLD BUSINESS

a. Permitting and Regulatory Process

The Chair recognized Project Counsel, who presented the following summary:

CCC- In anticipation of the CCC's consideration of the Project at its December 2014 meeting and at the request of CCC staff, the BBGHAD has submitted additional materials to the CCC staff in the form of another revised revetment alignment, revised nourishment and backpassing triggers, and a revised dune plan. The BBGHAD has also submitted a technical paper supporting its position that the "Boulder Field" at the Project's west end should be nourished and refuting the CCC staff's contentions that the habitat value should prevent nourishment at this area.

SLC- The SLC staff has informed the BBGHAD that SLC staff may not provide additional lease input until the CCC and the BBGHAD agree on nourishment and revetment boundaries. Otherwise, the SLC appears set to consider the BBGHAD project at its December 2014 meeting in Los Angeles.

Army Corps- A meeting is scheduled for November 25, 2014 with Army Corps regulatory supervisors and senior staff with the goal of expediting the Army Corps' consideration of the Project.

Regional Water Quality Control Board- This agency has informed the BBGHAD that it awaits additional coordination with the Army Corps, and that its permit and conditions should issue with 4-6 weeks of the Army Corps' permit.

The Chair recognized the Vice Chair, who added that he is confident that the SLC will favorably consider the Project. The Vice Chair also discussed his views on the CCC staff's position on the Project, highlighting various points about revetment location, lateral access, permit duration, west end nourishment, and the likely phasing of the major nourishments in the form of one 300,000 cubic yard nourishment approximately every 5 years.

The Chair recognized Board Member Levitan, who stated that the Boulder Field should not warrant special attention from the CCC; this area should receive nourishment. A discussion of potential west end nourishment scenarios ensued. Subject to an approved CDP form from the CCC, the Chair requested an opinion letter from the BBGHAD Special Counsel specifying: (a) the BBGHAD's ability to implement a tiered or scaled assessment, (b) the BBGHAD's ability to refund assessment funds paid by property owners whose property may not receive nourishment, and (c) the BBGHAD's duties, if any, to refund assessment funds already paid by property owners who may not get sand nourishment at their homes. The discussion of west end nourishment continued with the BBGHAD Engineer expressing various points regarding post-nourishment sand dispersion and the longevity of sand in a smaller, phased Project.

A discussion of the revised dune plan ensued, focusing on: (a) the CCC staff's request for, and the BBGHAD's submission of, a plan showing at least 2.5 acres of "protected" (non-sacrificial) dunes within the Project area, and (b) the scope and breadth of property owners'

paths from their homes to the beach.

b. Project Outreach

No report was presented.

10. GHAD OFFICER REPORTS

a. Project Manager

No report was presented.

b. Treasurer Report

In light of the Treasurer's absence, the Chair reported that the monthly financial report is attached as Item 10b to the Board Packet, which reflects a balance of \$1,261,650.50 as of September 1 and expenses in the amount of approximately \$198,000 during the month of September—leaving a balance of \$1,062,000 at the end of September 2014.

11. BBGHAD BOARD MEMBER REPORTS

None.

12. PUBLIC COMMENT: NON-AGENDA ITEMS

None.

13. FUTURE MEETING

The Chair stated that the next two BBGHAD Board meetings will be on December 14, 2014 at 1:30 p.m. and January 11, 2015 at 9:00 a.m. Both meetings will be held at a private residence located at 31330 Broad Beach Road, Malibu, CA.

The Chair added that the Trancas Property Owners Association will hold its annual General Meeting on December 14, 2014 at the Malibu West Beach Club at 9:00 a.m.

14. ADJOURNMENT

MOTION: Board Member Levitan moved to adjourn. The Vice Chair seconded the Motion. The Motion passed 4-0, and the meeting adjourned at 12:36 p.m.

Approved and adopted by the Broad Beach GHAD
Board on December ____, 2014.

NORTON KARNO, Chair

ATTEST:

BERNADETTE O'NEILL, Clerk

Summary of Actions

BROAD BEACH GEOLOGICAL HAZARD ABATEMENT DISTRICT REGULAR MEETING

Sunday, December 14, 2014; 1:30 p.m.
31330 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

Chair Karno called the meeting to order at 1:39 p.m.

2. ROLL CALL

PRESENT: Chair Karno, Vice Chair Grossman, Board Member Levitan, and Board Member Rosenbloom.

ABSENT: Board Member Lotman.

BBGHAD STAFF ALSO PRESENT (not Board Members and not subject to Roll Call): Project Manager Mark Goss, BBGHAD Engineers Russ Boudreau and Chris Webb, and Project Counsel Ken Ehrlich.

3. ADOPTION OF AGENDA

Project Counsel reported that the meeting Agenda was posted at approximately 1:30 p.m. on Wednesday December 10, 2014 within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Vice Chair moved, and Board Member Rosenbloom seconded, the approval of the Agenda. The Motion approving the Agenda passed 3-0.

9. OLD BUSINESS

a. Permitting and Regulatory Process

The Chair recognized the Project Manager, who presented the following summary:

CCC- The CCC considered the Project in a 6+ hour hearing on December 11, 2014. The Project Manager reported that the Commission was prepared to approve the Project with Special Conditions that required, among other points, a 10-year permit, a relocated revetment alignment within 15' of seaward septic systems on the BBGHAD's east end, an extensive array of recorded easements to be granted by property owners landward of the revetment, nourishment to be limited at the BBGHAD's west end at 31880 Broad Beach Road, an accelerated feasibility study of the removal of individual septic systems and a 7-10 year timetable to replace individual septics with a package plant or other advanced waste treatment system, and an extensive adaptive management and monitoring program estimated by BBGHAD staff at +\$18,000,000 over the ten (10) year permit period.

These CCC-proposed Special Conditions exceeded that which the BBGHAD Board had previously deemed acceptable, and were beyond the limits of discretion previously granted by the BBGHAD Board. Therefore, the BBGHAD withdrew its Coastal Development

Application without prejudice to re-filing same in the future. The Project Manager described post-consideration conversations between Project Counsel and senior CCC staff, which appeared to lay the foundation for future substantive discussions on potential compromises on the key remaining issues.

The Chair recognized Board Member Levitan, who stressed the need to add a real estate development professional to the BBGHAD staff negotiating with the senior CCC staff. After discussion, consensus was reached that BBGHAD staff should continue to consult with real estate professionals, as they have done in recent months, to aid in their negotiations with CCC senior staff, but such professionals need not attend future meetings with CCC senior staff.

The Board received the following input on the primary open issues:

1. Septics- The BBGHAD should be able to complete septic study within CCC's proposed timeframe (3-5 years), but potential conversion to a new community-wide waste treatment system should be driven by findings of the feasibility study. The BBGHAD should also attempt to receive a realistic estimate of the cost and timetable for both the feasibility study and the potential wastewater treatment conversion.

2. Easements- The BBGHAD cannot grant easements, and should commit to maintain at least a 10' wide sand path seaward of the toe of the restored dune and offer a financial instrument to support the commitment, and cap the financial commitment over the term of the CDP. [Board Member Levitan left the meeting at 3:12 p.m.]

3. West End Nourishment- CCC supports ending nourishment at 313880 Broad Beach Rd. BBGHAD should seek compromise agreement to place 40' wide band of sand, placed as far inland as possible and out of sensitive habitat area, between 31880 Broad Beach Road and 31502 Victoria Point.

4. Monitoring- The Project Manager suggested that the BBGHAD should: (a) budget up to \$500,000 per year for monitoring costs for the duration of a CDP, and (b) meet further with CCC staff in search of a compromise. The BBGHAD should attempt to pursue habitat-based monitoring instead of species-based monitoring as recommended by CCC staff.

5. Alignment- The BBGHAD should use best efforts to minimize the number of east end houses affected by the CCC staff's proposed revetment pullback and similarly minimize the amount of the pullback.

The Chair recognized Paul Owadhi, who identified himself as the owner of two (2) parcels on Victoria Point within the BBGHAD. Mr. Owadhi stated that his homes, and that of his immediate neighbors, are on a bluff above the beach level and would not benefit from the amount of west end sand nourishment proposed by the CCC staff. Mr. Owadhi further asserted that his parcels and those of his neighbors should not be subsidizing others within the BBGHAD, and should be removed from the BBGHAD.

At this time Board Member Rosenbloom stated he needed to leave the meeting, which would cause a loss of quorum.

14. ADJOURNMENT

MOTION: The Vice Chair moved to adjourn, and Board Member Rosenbloom seconded the Motion. The Motion passed 3-0, and the meeting adjourned at 3:41 p.m.

Approved and adopted by the Broad Beach GHAD
Board on January __, 2015

NORTON KARNO, Chair

ATTEST:

BERNADETTE O'NEILL, Clerk

AGENDA ITEM 8a

**AGREEMENT BETWEEN THE BROAD BEACH
GEOLOGIC HAZARD ABATEMENT DISTRICT AND THE
CITY OF MOORPARK REGARDING TRUCK HAUL
ROUTES AND MONITORING IN CONNECTION WITH
THE BROAD BEACH SHORELINE PROTECTION AND
SAND REPLENISHMENT PROJECT**

This Agreement (“Agreement”) is made and entered into this ____ day of January, 2015 by and between the Broad Beach Geologic Hazard Abatement District (“BBGHAD”), formed under California Public Resources Code Section 26500 *et seq.*, and the City of Moorpark, a California municipal corporation (“City”) (collectively the “Parties”), to address and resolve the potential impacts of the Broad Beach Shoreline Protection and Sand Replenishment Project (“Project”) on the City.

RECITALS

- A. As proposed, the Project involves the transport of approximately 600,000 cubic yards of sand over the life of the project from sand and rock quarries immediately north of the City to replenish Broad Beach in the City of Malibu, California. The staff of the California Coastal Commission (“CCC”), one of the agencies with permitting jurisdiction over the Project, has recommended that the Project be split into two (2) roughly equal sand deposition events of 300,000 cubic yards each (“Reduced Project”), one at the inception of the Project and one in approximately Project year five (5). For purposes of this Agreement, the duration of the Project shall not exceed ten (10) years, 600,000 cubic yards of sand or soil, or more than 81,000 one-way sand hauling truck trips, unless during the 10-year period of the Project, interim nourishment sand deposition events are approved by the BBGHAD and applicable permitting agencies, including but not limited to the CCC, in which case each interim nourishment sand disposition event shall be limited to 50,000 cubic yards of sand or soil and involve no more than 6,000 one-way sand hauling truck trips. For purposes of this Agreement, the term “Project” includes interim nourishment and deposition events that occur during the 10-year period of the Project.
- B. As proposed, the Project would involve an estimated 81,000 one-way trips by sand hauling trucks over the course of approximately six months between the hours of 7:00 a.m. and 9:00 p.m. five days per week. For each major sand nourishment contemplated in the Reduced Project, approximately 40,000 one-way sand hauling truck trips would occur. Two of the three sand and rock quarries (Grimes Rock and CEMEX) proposed as sources of the Project sand are located immediately north of the City in unincorporated Ventura County. The BBGHAD originally proposed haul routes to and from those two quarries that included using Walnut Canyon Road, Moorpark Avenue and Grimes Canyon Road south of Broadway Road that are located in or immediately adjacent to the City.
- C. The City has objected to the use of Walnut Canyon Road, Moorpark Avenue and Grimes Canyon Road south of Broadway Road as potential haul routes for the Project because of the significant impacts those routes would have on the City, including but not limited to:

a disproportionate impact on the lower-income, disadvantaged and Latino portion of the community through which those trucks would travel; dangers caused to school children arising from the existence of eight school bus stops located along Grimes Canyon Road, the lack of sidewalks along portions of those roads which are used by school children to walk to and from two elementary schools, a middle school, the City library, local parks and other uses in close proximity to those routes; the sand, dust and other particulate matter emanating from the trucks that contribute to air pollution and may cause excess debris along local roads; the noise pollution from the high volume of trucks and times of day of the hauling operation; and the fact that both routes would cross active railroad tracks used by Amtrak and Metrolink as well as freight trains.

- D. On June 11, 2014, Mayor Janice Parvin of the City sent a letter to the Board of the BBGHAD objecting to the proposed haul routes for the Project through or adjacent to the City and asserting that use of those haul routes would constitute a public nuisance for which the City would seek to abate.
- E. On July 25, 2014, Mayor Janice Parvin of the City sent letters to the members of the California Coastal Commission and the State Lands Commission asking for each Commission to impose conditions on the respective permits required for the Project to preclude the use of truck hauling routes through or adjacent to the City.
- F. Since July 25, 2014, staff representatives of the BBGHAD and the City have met on several occasions to review and address the City's concerns with the proposed and potential haul routes and to develop a plan and system for using acceptable alternative and northerly haul routes that do not involve truck routes through or adjacent to the City, along with monitoring compliance with those alternative routes.
- G. BBGHAD staff and technical consultants have informed the City that a northerly route using State Highways 23 and 126 through the City of Fillmore, which avoid the City, are feasible and acceptable alternative routes for hauling sand from both the Grimes Rock and CEMEX quarries.
- H. The parties now desire to resolve the dispute over the truck routes for the Project and to formalize their agreement on which haul routes shall be used and not used and how compliance with the approved routing plan will be monitored and enforced.

TERMS AND CONDITIONS

In consideration of the matters set forth above, and for a full and valuable consideration, the Parties agree as follows:

1. Recitals. The Recitals above are true and correct, and are incorporated into the terms of this Agreement.
2. Prohibited Haul Routes. Trucks used for sand hauling in connection with the Broad Beach Restoration Project ("Project") are prohibited from using Walnut Canyon Road, Grimes Canyon Road south of Broadway Road or any other highway, road or street in or immediately adjacent to the City of Moorpark, except in cases of

“emergency,” as defined in Section 5 below. This includes truck trips to and from the quarries at the beginning or end of the work shift.

3. Staging and Parking of Trucks. All trucks used for sand hauling in connection with the Project shall not be staged or parked in the City or immediately adjacent to the City, at anytime for the duration of the Project.
4. Permitted Haul Routes. All sand hauling trucks for the Project shall use Grimes Canyon Road (State Route 23) to State Highway 126 through Fillmore as the haul route from the Grimes Rock quarry and/or the CEMEX quarry to the Project site and the same route from the Project site to the Grimes Rock quarry and/or CEMEX quarry. If the Grimes Rock quarry is used, trucks will only enter and exit the northern entrance of this quarry.
5. Emergency Exception to Haul Route Prohibitions. An “emergency” exists, for purposes of Sections 2 and 6, only when a first responder (a fire or law enforcement official from an agency with applicable jurisdiction) determines all lanes on State Highway 126 west of State Highway 23 or State Highway 23 north of the quarry are closed to truck traffic. An emergency ceases to exist when a first responder determines that at least one lane becomes available to truck traffic on portions of State Highway 126 and State Highway 23 referenced above. If only one direction of travel is affected, the use of this Emergency Exception shall apply only to the direction of travel that is blocked and truck travel shall continue to use the permitted haul route in the direction that is not blocked. If an emergency exists that precludes the use of the permitted haul route, then Grimes Canyon Road south of Broadway may be used and but not Walnut Canyon Road unless Grimes Canyon Road south of Broadway is also blocked due to an emergency condition, and then only for the blocked direction of travel.
6. Requirements for Use of Emergency Exception. In the event of an emergency as defined in Section 5 above, use of routes through or adjacent to Moorpark may occur only between the hours of 7 A.M. and 8:15 P.M., Monday through Friday, except holidays. The BBGHAD shall provide City with immediate notice of the commencement of the Emergency Exception (not more than one hour after a determination of emergency). The notice of commencement of the Emergency Exception shall be provided by electronic mail to the City’s City Manager (currently at SKueny@MoorparkCA.gov) and Community Development Director (currently at DBobardt@MoorparkCA.gov) and by way of telephone to the City’s Community Development Director (currently at (805) 517-6281. During the period that any hauling is allowed or directed through Moorpark, the BBGHAD shall prohibit its contractors and subcontractors from using haul trucks with compression release engine brakes, known as “jake brakes” within the City (except under emergency operating conditions).
7. Duration of Haul Route Prohibitions. The haul route prohibitions shall apply to the BBGHAD’s use of the Grimes Rock Quarry and CEMEX Quarry throughout the

duration of the Project. The BBGHAD shall provide City notice of the commencement and completion of each of the sand deposition events for the Project.

8. Hauler Agreements. The BBGHAD shall include the haul route prohibitions in any agreements entered into between the BBGHAD, the quarries, and any contracted haulers and require contracted haulers to include such terms in their agreements with their subcontracted haulers involved in the Project. The City of Moorpark shall be a named beneficiary of this term in those contracts.
9. GPS Tracking Devices. The BBGHAD shall require all truck owners and operators used in the Project to place and maintain GPS tracking devices in each truck used for this Project, with a penalty imposed on truck hauler companies, subcontractors and independent contractors by BBGHAD and paid to City by BBGHAD, as provided in Section 12, for failure to use, removal or tampering with the GPS device while the truck is being used for this Project.
10. Computer Monitoring. Prior to the commencement of the first sand deposition event for the Project, the BBGHAD or its contractor or consultant shall, at BBGHAD's cost, provide, install, make operational and maintain in working order for the duration of the Project, software for at least one City-owned and operated computer that allows the City to monitor by web-based GPS the location of all BBGHAD-related truck traffic in real time from the City-owned computer.
11. License Plate Monitoring. On or before the first day of the third and subsequent interim nourishment sand deposition event during the term of the Project, and at the beginning of each day of that event, the BBGHAD shall provide City with the license plate numbers of all trucks hauling sand that day on BBGHAD's behalf to assist City with additional monitoring and enforcement of the interim nourishment sand deposition events. The requirements of this Section shall be in addition to, and not as a substitute for computer monitoring under Section 10 or any other provision of this Agreement.
12. Penalties on Haulers who Violate Terms. The BBGHAD shall establish and enforce penalties, including monetary penalties, for any violations of the haul routes by the owners and operators of trucks engaged in Project hauling operations. Penalties shall be paid to the City, as provided in Section 13.
13. Liquidated Damages. In the event a truck engaged in the Project for the BBGHAD is determined and documented by the City as operating on a prohibited haul route as defined in Section 2, parking or staging in the City as prohibited by Section 3, or violating the terms of the emergency exception as provided in Sections 5 and 6, the BBGHAD shall pay to City the sum of \$100.00 for each such documented truck trip or violation that occurs in the first ten (10) days of operation, \$200.00 for each such documented truck trip violation that occurs in the eleventh (11th) through thirtieth (30th) day of operation, \$250.00 for each such documented truck trip violation that occurs in the thirty-first (31st) through sixtieth (60th) day of operation, and \$500.00 for each subsequent truck trip violation, as liquidated damages for the violation. The

amounts shall be paid to City within ten (10) days of the City's submittal to BBGHAD of the evidence of the violation. This amount shall be accepted by City as liquidated damages and not as a penalty and as City's sole and exclusive remedy for damages (but City shall not be prohibited from seeking specific performance or injunctive relief in addition to obtaining such liquidated damages, as provided in Section 14.) For purposes of this Agreement a violation is documented if there is a recorded incident of the violation as detected and documented from the computer monitoring software as provided in Section 10, photographic and dated evidence collected by the City, by a copy of a Sheriff Department, California Highway Patrol or City Code Enforcement incident report or citation, or by other means sufficient to prove a violation as provided by the City to BBGHAD. The BBGHAD hereby stipulates and agrees that such amount is a reasonable estimate of damages that will be incurred by City in the event of such violation, pursuant to California Civil Code Section 1671 *et seq.*, and that the exact amount of such damages would be extremely difficult and impractical to determine. BBGHAD desires to limit the damages for which it might be liable for such violations of this Agreement and the Parties desire to avoid the costs and delays they would incur if a lawsuit were commenced to recover damages. The Parties acknowledge this provision by placing their initials below:

BBGHAD

City

14. Additional Remedies and Enforcement. In addition to the provisions of Section 13, the remedies for breach of the Agreement by City shall also include injunctive relief and/or specific performance.
15. Notice of Changes to the Project. The BBGHAD shall provide written notice to the City not less than five days after the submittal by the BBGHAD of a request to the CCC or the State Lands Commission to modify the Project in a manner that affects the use of truck haul routes, the duration of the use of those routes or the quantities of truck trips used in the Project.
16. Third Party Beneficiaries. No term or provision of this Agreement is intended to or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.
17. Defense and Indemnity. The BBGHAD agrees to defend, indemnify, and hold harmless City, at BBGHAD's sole expense, with counsel reasonably acceptable to City, any claim, lawsuit, or cause of action brought to challenge the City's approval of this Agreement. The BBGHAD further agrees to reimburse City for any costs and/or attorneys' fees which City may incur as a result of any such action. City may, at its sole discretion, participate in the defense of any such action at City's cost, but such participation shall not relieve the BBGHAD of its obligations under this Section.
18. City Release of Claims. Except with respect to enforcement of the terms of this Agreement, City hereby waives and releases the BBGHAD, its officers, employees, agents, attorneys and consultants, (collectively "BBGHAD Released Parties"), and

each of them, of and from any and all claims, demands, disputes, damages, liabilities, causes of action, and other claims or rights to relief, legal or equitable, of every kind and nature, whether known or unknown, past or present, which City has or may have against the BBGHAD Released Parties, arising out of, or in any way related to the Project.

19. City Waiver of Cal. Code Civ. Proc. Section 1542. City being fully aware of the meaning of Cal. Civil Code §1542, and on the risks attendant with waiver thereof, expressly waives any rights it may have, or claims to have against the BBGHAD Released Parties, or any of them, under the provisions of Cal. Civil Code §1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

City

20. Joint Drafting and Mutual Interpretation. This Agreement shall be construed and interpreted in a neutral manner. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against a particular party based on the assumption or contention that the Agreement was drafted by one of the Parties. In this regard, the provisions of Cal. Civil Code § 1654 are waived and deemed inapplicable to the interpretation of this Agreement.
21. Right to Independent Counsel. The Parties acknowledge and represent that they have had the right to and benefit of consultation with independent legal counsel and expert consultants. The Parties have read and understand the entirety of this Agreement, and have been advised as to the legal effects of this Agreement, as to, for example, their rights and obligations, and hereby willingly and voluntarily agree to every term of this Agreement.
22. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the matters addressed in it and incorporated herein, and supersedes any and all oral agreements between or among the Parties regarding the matters resolved herein, which are hereby merged into this final Agreement. There are no representations, covenants, or undertakings other than those expressly set forth or expressly incorporated herein. The Parties acknowledge that no Party, or any agent or attorney of any Party has made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce any other Party to execute this Agreement. The Parties acknowledge that they have not executed this Agreement in reliance on any promise, representation, or warranty not specifically contained herein or expressly incorporated herein. The Parties, and each of them,

fully represent and declare that they have carefully read this Agreement and all exhibits hereto, and that they have voluntarily signed this Agreement.

23. Severability. Should any provision of this Agreement be declared or determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement and the remainder of the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.
24. Governing Law and Venue. The validity of this Agreement and the interpretation of any of its terms or provisions shall be governed by the laws of the State of California. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the appropriate court having jurisdiction in the County of Ventura.
25. Change in State Law or Other Event Materially Affecting Agreement. If a change in state law occurs that materially affects the Parties' obligations or rights under this Agreement or under the Pass Through Agreement, whether such change occurs through enactment of a statute or by virtue of a final judicial decision, the Parties shall have the duty to take such actions as may be reasonably necessary to modify such agreement(s) so that the Parties' duties and rights under such agreement(s) are consistent with any such change in law.
26. Amendments or Modifications. This Agreement may be amended or modified only by the mutual agreement of the Parties and only when all Parties memorialize in writing their consent to amend or modify.
27. Notices. Any notice required to be given, except for immediate notices of the invocation of the Emergency Exception as provided in Section 5 and 6 which has its own notice provisions, shall be deemed to have been given by depositing such notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:

City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attention: City Manager

TO BBGHAD:

Mark Goss
c/o Elkins Kalt, et al
2049 Century Park East, Suite 2700
Los Angeles, CA 90067
tel.: (310) 699-9666
email:
markchristiangoss@gmail.com

Kenneth A. Ehrlich
Elkins Kalt et al.
2049 Century Park East, Suite 2700
Los Angeles, CA 90067
tel. (310) 746-4400
email: kehrlich@elkinskalt.com

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

28. No Admission of Liability. Nothing in this Agreement shall be construed as an admission of liability or wrongdoing by any Party to this Agreement or an admission of any claim against any Party hereto.
29. Effective Date. This Agreement shall become effective on the date that both parties have executed this Agreement.
30. Attorneys' Fees Provision. If any of the Parties breach any of the provisions of this Agreement, necessitating the filing of a civil action or any other proceeding to enforce any or all of the terms of this Agreement, the prevailing party may recover reasonable attorneys' fees and costs incurred in enforcing the terms and provisions of this Agreement.
31. Captions and Interpretations. Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement.
32. Counterparts. This Agreement may be signed in counterparts and the executed counterparts shall together form the executed Agreement. A facsimile version of any Parties' signature shall serve as an original thereof.
33. Copy Admissible. In any action or proceeding relating to this Agreement, the Parties stipulate that a copy of the Agreement may be admissible to the same extent as the original Agreement, unless the exceptions set forth in Section 1521 of the Cal. Evidence Code are found to be applicable.
34. Signatories. Each signatory warrants and represents that he or she is competent and authorized to execute this Agreement on behalf of the party for whom he or she purports to sign.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

City of Moorpark

By: _____
Janice S. Parvin, Mayor

Attest:

Maureen Benson, City Clerk

Broad Beach Geologic Hazard Abatement District

By: _____
President of the Board

Attest:

Secretary

**AGREEMENT BETWEEN THE BROAD BEACH
GEOLOGIC HAZARD ABATEMENT DISTRICT AND THE
CITY OF MOORPARK REGARDING TRUCK HAUL
ROUTES AND MONITORING IN CONNECTION WITH
THE BROAD BEACH SHORELINE PROTECTION AND
SAND REPLENISHMENT PROJECT**

This Agreement (“Agreement”) is made and entered into this ____ day of ~~December~~January, ~~2014~~ 2015 by and between the Broad Beach Geologic Hazard Abatement District (“BBGHAD”), formed under California Public Resources Code Section 26500 *et seq.*, and the City of Moorpark, a California municipal corporation (“City”) (collectively the “Parties”), to address and resolve the potential impacts of the Broad Beach Shoreline Protection and Sand Replenishment Project (“Project”) on the City.

RECITALS

- A. As proposed, the Project involves the transport of approximately 600,000 cubic yards of sand over the life of the project from sand and rock quarries immediately north of the City to replenish Broad Beach in the City of Malibu, California. The staff of the California Coastal Commission (“CCC”), one of the agencies with permitting jurisdiction over the Project, has recommended that the Project be split into two (2) roughly equal sand deposition events of 300,000 cubic yards each (“Reduced Project”), one at the inception of the Project and one in approximately Project year five (5). For purposes of this Agreement, the duration of the Project shall not exceed ten (10) years, 600,000 cubic yards of sand or soil, or more than 81,000 one-way sand hauling truck trips, unless during the 10-year period of the Project, interim nourishment sand ~~disposition~~deposition events are approved by the BBGHAD and applicable permitting agencies, including but not limited to the CCC, in which case each interim nourishment sand disposition event shall be limited to 50,000 cubic yards of sand or soil and involve no more than 6,000 one-way sand hauling truck trips. For purposes of this Agreement, the term “Project” includes interim nourishment and ~~disposition~~deposition events that occur during the 10-year period of the Project.
- B. As proposed, the Project would involve an estimated 81,000 one-way trips by sand hauling trucks over the course of approximately six months between the hours of 7:00 a.m. and 9:00 p.m. five days per week. For each major sand nourishment contemplated in the Reduced Project, approximately 40,000 one-way sand hauling truck trips would occur. Two of the three sand and rock quarries (Grimes Rock and CEMEX) proposed as sources of the Project sand are located immediately north of the City in unincorporated Ventura County. The BBGHAD originally proposed haul routes to and from those two quarries that included using Walnut Canyon Road, Moorpark Avenue and Grimes Canyon Road south of Broadway Road that are located in or immediately adjacent to the City.
- C. The City has objected to the use of Walnut Canyon Road, Moorpark Avenue and Grimes Canyon Road south of Broadway Road as potential haul routes for the Project because of the significant impacts those routes would have on the City, including but not limited to:

a disproportionate impact on the lower-income, disadvantaged and Latino portion of the community through which those trucks would travel; dangers caused to school children arising from the existence of eight school bus stops located along Grimes Canyon Road, the lack of sidewalks along portions of those roads which are used by school children to walk to and from two elementary schools, a middle school, the City library, local parks and other uses in close proximity to those routes; the sand, dust and other particulate matter emanating from the trucks ~~the~~that contribute to air pollution and may cause excess debris along local roads; the noise pollution from the high volume of trucks and times of day of the hauling operation; and the fact that both routes would cross active railroad tracks used by Amtrak and Metrolink as well as freight trains.

- D. On June 11, 2014, Mayor Janice Parvin of the City sent a letter to the Board of the BBGHAD objecting to the proposed haul routes for the Project through or adjacent to the City and asserting that use of those haul routes would constitute a public nuisance for which the City would seek to abate.
- E. On July 25, 2014, Mayor Janice Parvin of the City sent letters to the members of the California Coastal Commission and the State Lands Commission asking for each Commission to impose conditions on the respective permits required for the Project to preclude the use of truck hauling routes through or adjacent to the City.
- F. Since July 25, 2014, staff representatives of the BBGHAD and the City have met on several occasions to review and address the City's concerns with the proposed and potential haul routes and to develop a plan and system for using acceptable alternative and northerly haul routes that do not involve truck routes through or adjacent to the City, along with monitoring compliance with those alternative routes.
- G. BBGHAD staff and technical consultants have informed the City that a northerly route using State Highways 23 and 126 through the City of Fillmore, which avoid the City, are feasible and acceptable alternative routes for hauling sand from both the Grimes Rock and CEMEX quarries.
- H. The parties now desire to resolve the dispute over the truck routes for the Project and to formalize their agreement on which haul routes shall be used and not used and how compliance with the approved routing plan will be monitored and enforced.

TERMS AND CONDITIONS

In consideration of the matters set forth above, and for a full and valuable consideration, the Parties agree as follows:

1. Recitals. The Recitals above are true and correct, and are incorporated into the terms of this Agreement.
2. Prohibited Haul Routes. Trucks used for sand hauling in connection with the Broad Beach Restoration Project ("Project") are prohibited from using Walnut Canyon Road, Grimes Canyon Road south of Broadway Road or any other highway, road or street in or immediately adjacent to the City of Moorpark, except in cases of

“emergency,” as defined in Section 5 below. This includes truck trips to and from the quarries at the beginning or end of the work shift.

3. Staging and Parking of Trucks. All trucks used for sand hauling in connection with the Project shall not be staged or parked in the City or immediately adjacent to the City, at anytime for the duration of the Project.
4. Permitted Haul Routes. All sand hauling trucks for the Project shall use Grimes Canyon Road (State Route 23) to State Highway 126 through Fillmore as the haul route from the Grimes Rock quarry and/or the CEMEX quarry to the Project site and the same route from the Project site to the Grimes Rock quarry and/or CEMEX quarry. If the Grimes Rock quarry is used, trucks will only enter and exit the northern entrance of this quarry.
5. Emergency Exception to Haul Route Prohibitions. An “emergency” exists, for purposes of Sections 2 and 6, only when a first responder (a fire or law enforcement official from an agency with applicable jurisdiction) determines all lanes on State Highway 126 west of State Highway 23 or State Highway 23 north of the quarry are closed to truck traffic. An emergency ceases to exist when a first responder determines that at least one lane becomes available to truck traffic on portions of State Highway 126 and State Highway 23 referenced above. If only one direction of travel is affected, the use of this Emergency Exception shall ~~only~~ apply only to the direction of travel that is blocked and truck travel shall continue to use the permitted haul route in the direction that is not blocked. If an emergency exists ~~the~~ that precludes the use of the permitted haul route, then Grimes Canyon Road south of Broadway may be used and but not Walnut Canyon Road unless Grimes Canyon Road south of Broadway is also blocked due to an emergency condition, and then only for the blocked direction of travel.
6. Requirements for Use of Emergency Exception. In the event of an emergency as defined in Section 5 above, use of routes through or adjacent to Moorpark may ~~only~~ occur only between the hours of 7 A.M. and 8:15 P.M., Monday through Friday, except holidays. The BBGHAD shall provide City with immediate notice of the commencement of the Emergency Exception (not more than one hour after a determination of emergency). The notice of commencement of the Emergency Exception shall be provided by electronic mail to the City’s City Manager (currently at SKueny@MoorparkCA.gov) and Community Development Director (currently at DBobardt@MoorparkCA.gov) and by way of telephone to the City’s Community Development Director (currently at (805) 517-6281. During the period that any hauling is allowed or directed through Moorpark, the BBGHAD shall prohibit its contractors and subcontractors from using haul trucks with compression release engine brakes, known as “jake brakes” within the City (except under emergency operating conditions).
7. Duration of Haul Route Prohibitions. The haul route prohibitions shall apply to the BBGHAD’s use of the Grimes Rock Quarry and CEMEX Quarry throughout the duration of the Project. The BBGHAD shall provide City notice of the

- commencement and completion of each of the sand ~~disposition~~deposition events for the Project.
8. Hauler Agreements. The BBGHAD shall include the haul route prohibitions in any agreements entered into between the BBGHAD, the quarries, and any contracted haulers and ~~required~~require contracted haulers to include such terms in their agreements with their subcontracted haulers involved in the Project. The City of Moorpark shall be a named beneficiary of this term in those contracts.
 9. GPS Tracking Devices. The BBGHAD shall require all truck owners and operators used in the Project to place and maintain GPS tracking devices in each truck used for this Project, with a penalty imposed on truck hauler companies, subcontractors and independent contractors by BBGHAD and paid to City by BBGHAD, as provided in Section 12, for failure to use, removal or tampering with the GPS device while the truck is being used for this Project.
 10. Computer Monitoring. Prior to the commencement of the first sand ~~disposition~~deposition event for the Project, the BBGHAD or its contractor or consultant shall, at BBGHAD's cost, provide, install, make operational and maintain in working order for the duration of the Project, software for at least one City-owned and operated computer that allows the City to monitor by web-based GPS the location of ~~the~~ all BBGHAD-related truck traffic in real time from the City-owned computer.
 11. License Plate Monitoring. On or before the first day of the third and subsequent interim nourishment sand ~~disposition~~deposition event during the term of the Project, and at the beginning of each day of that event, the BBGHAD shall provide City with the license plate numbers of all trucks hauling sand that day on BBGHAD's behalf to assist City with additional monitoring and enforcement of the interim nourishment sand ~~disposition~~deposition events. The requirements of this Section shall be in addition to, and not as a substitute for computer monitoring under Section 10 or any other provision of this Agreement.
 12. Penalties on Haulers who Violate Terms. The BBGHAD shall establish and enforce penalties, including monetary penalties, for any violations of the haul routes by the owners and operators of trucks engaged in Project hauling operations. Penalties shall be paid to the City, as provided in Section 13.
 13. Liquidated Damages. In the event a truck engaged in the Project for the BBGHAD is determined and documented by the City as operating on a prohibited haul route as defined in Section 2, parking or staging in the City as prohibited by Section 3, or violating the terms of the emergency exception as provided in Sections 5 and 6, the BBGHAD shall pay to City the sum of \$100.00 for each such documented truck trip or violation that occurs in the first ten (10) days of operation, \$200.00 for each such documented truck trip violation that occurs in the eleventh (11th) through thirtieth (30th) day of operation, \$250.00 for each such documented truck trip violation that occurs in the thirty-first (31st) through sixtieth (60th) day of operation, and \$500.00 for each subsequent truck trip violation, as liquidated damages for the violation. The

amounts shall be paid to City within ten (10) days of the City’s submittal to BBGHAD of the evidence of the violation. This amount shall be accepted by City as liquidated damages and not as a penalty and as City’s sole and exclusive remedy for damages (but City shall not be prohibited from seeking specific performance or injunctive relief in addition to obtaining such liquidated damages, as provided in Section 14.) For purposes of this Agreement a violation is documented if there is a recorded incident of the violation as detected and documented from the computer monitoring software as provided in Section 10, photographic and dated evidence collected by the City, by a copy of a Sheriff Department, California Highway Patrol or City Code Enforcement incident report or citation, or by other means sufficient to prove a violation as provided by the City to BBGHAD. The BBGHAD hereby stipulates and agrees that such amount is a reasonable estimate of damages that will be incurred by City in the event of such violation, pursuant to California Civil Code Section 1671 *et seq.*, and that the exact amount of such damages would be extremely difficult and impractical to determine. BBGHAD desires to limit the damages for which it might be liable for such violations of this Agreement and the Parties desire to avoid the costs and delays they would incur if a lawsuit were commenced to recover damages. The Parties acknowledge this provision by placing their initials below:

BBGHAD

City

14. Additional Remedies and Enforcement. In addition to the provisions of Section 13, the remedies for breach of the Agreement by City shall also include injunctive relief and/or specific performance.
15. Notice of Changes to the Project. The BBGHAD shall provide written notice to the City not less than five days after the ~~submitted~~-submittal by the BBGHAD of a request to the CCC or the State Lands Commission to modify the Project in a manner that affects the use of truck haul routes, the duration of the use of those routes or the quantities of truck trips used in the Project.
16. Third Party Beneficiaries. No term or provision of this Agreement is intended to or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.
17. Defense and Indemnity. The BBGHAD agrees to defend, indemnify, and hold harmless City, at BBGHAD’s sole expense, with counsel reasonably acceptable to City, any claim, lawsuit, or cause of action brought to challenge the City’s approval of this Agreement. The BBGHAD further agrees to reimburse City for any costs and/or attorneys’ fees which City may incur as a result of any such action. City may, at its sole discretion, participate in the defense of any such action at City’s cost, but such participation shall not relieve the BBGHAD of its obligations under this Section.
18. City Release of Claims. Except with respect to enforcement of the terms of this Agreement, City hereby waives and releases the BBGHAD, its officers, employees, agents, attorneys and consultants, (collectively “BBGHAD Released Parties”), and

each of them, of and from any and all claims, demands, disputes, damages, liabilities, causes of action, and other claims or rights to relief, legal or equitable, of every kind and nature, whether known or unknown, past or present, which City has or may have against the BBGHAD Released Parties, arising out of, or in any way related to the Project.

19. City Waiver of Cal. Code Civ. Proc. Section 1542. City being fully aware of the meaning of Cal. Civil Code §1542, and on the risks attendant with waiver thereof, expressly waives any rights it may have, or claims to have against the BBGHAD Released Parties, or any of them, under the provisions of Cal. Civil Code §1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

City

20. Joint Drafting and Mutual Interpretation. This Agreement shall be construed and interpreted in a neutral manner. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against a particular party based on the assumption or contention that the Agreement was drafted by one of the Parties. In this regard, the provisions of Cal. Civil Code § 1654 are waived and deemed inapplicable to the interpretation of this Agreement.
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22. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the matters addressed in it and incorporated herein, and supersedes any and all oral agreements between or among the Parties regarding the matters resolved herein, which are hereby merged into this final Agreement. There are no representations, covenants, or undertakings other than those expressly set forth or expressly incorporated herein. The Parties acknowledge that no Party, or any agent or attorney of any Party has made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce any other Party to execute this Agreement. The Parties acknowledge that they have not executed this Agreement in reliance on any promise, representation, or warranty not specifically contained herein or expressly incorporated herein. The Parties, and each of them,

fully represent and declare that they have carefully read this Agreement and all exhibits hereto, and that they have voluntarily signed this Agreement.

23. Severability. Should any provision of this Agreement be declared or determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement and the remainder of the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.
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25. Change in State Law or Other Event Materially Affecting Agreement. If a change in state law occurs that materially affects the Parties' obligations or rights under this Agreement or under the Pass Through Agreement, whether such change occurs through enactment of a statute or by virtue of a final judicial decision, the Parties shall have the duty to take such actions as may be reasonably necessary to modify such agreement(s) so that the Parties' duties and rights under such agreement(s) are consistent with any such change in law.
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TO CITY:

City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attention: City Manager

TO BBGHAD:

Mark Goss
c/o Elkins Kalt, et al
2049 Century Park East, Suite 2700
Los Angeles, CA 90067
tel.: (310) 699-9666
email:
markchristiangoss@gmail.com

Kenneth A. Ehrlich
Elkins Kalt et al.
2049 Century Park East, Suite 2700
Los Angeles, CA 90067
tel. (310) 746-4400
email: kehrlich@elkinskalt.com

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

28. No Admission of Liability. Nothing in this Agreement shall be construed as an admission of liability or wrongdoing by any Party to this Agreement or an admission of any claim against any Party hereto.
29. Effective Date. This Agreement shall become effective on the date that both parties have executed this Agreement.
30. Attorneys' Fees Provision. If any of the Parties breach any of the provisions of this Agreement, necessitating the filing of a civil action or any other proceeding to enforce any or all of the terms of this Agreement, the prevailing party may recover reasonable attorneys' fees and costs incurred in enforcing the terms and provisions of this Agreement.
31. Captions and Interpretations. Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement.
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33. Copy Admissible. In any action or proceeding relating to this Agreement, the Parties stipulate that a copy of the Agreement may be admissible to the same extent as the original Agreement, unless the exceptions set forth in Section 1521 of the Cal. Evidence Code are found to be applicable.
34. Signatories. Each signatory warrants and represents that he or she is competent and authorized to execute this Agreement on behalf of the party for whom he or she purports to sign.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

City of Moorpark

By: _____
Janice S. Parvin, Mayor

Attest:

Maureen Benson, City Clerk

Broad Beach Geologic Hazard Abatement District

By: _____
President of the Board

Attest:

Secretary

AGENDA ITEM 9a

BROAD BEACH RESTORATION PROJECT STATUS REPORT – January 11, 2015

The project team continues working to develop the right project to meets the goals of the BBGHAD, permitting agencies, consulting agencies, BBGHAD owners, the public, and the environment. Current Project status:

CURRENT ENTITLEMENT STATUS WITH PERMIT AGENCIES

CALIFORNIA COASTAL COMMISSION (CCC)

- *Jurisdiction: Coastal Development Permit (CDP)*
- Latest Developments: CDP application deemed complete 4/4/14.
- CCC considered Project 12/11/14: Motion and second to approve with Staff's conditions. Significant input received from all Commissioners on septics, alignment, easements, west end nourishment, and monitoring.
- BBGHAD withdrew CDP application without prejudice.

CALIFORNIA STATE LANDS COMMISSION (CSLC)

- *Jurisdiction: Lease and certification of APTR*
- CSLC issued letter deeming the BBGHAD application complete on February 7, 2014.
- Lease negotiations: Draft lease received and BBGHAD reviewing same. Revised *Analysis of Impacts to Public Trust Resources* (APTR) document circulated July 14, 2014. BBGHAD submitted comment letter on September 15, 2014 as CSLC extended comment period
- CSLC issued letter on May 20, 2014 requesting data on current bio survey work and extended schedule. BBGHAD response submitted June 20, 2014.
- Commission consideration – off calender pending re-application with CCC.

US ARMY CORPS OF ENGINEERS (USACE)

- *Jurisdiction: National Environmental Policy Act (NEPA) Compliance and certification; Section 10 and 404 permits*
- Degree of NEPA compliance: Unknown. Staff Environmental Assessment (EA) now, but may insist on more cost- and time-intensive Environmental Impact Statement (EIS).
- Public Notice process complete.
- Team submitted reduced project (Alt 4B) to USACE on 11/10/14.
- 12/18/14: Orally requested additional Alternatives and other analyses; written request not received yet.
- Essential Fish Habitat consultation to be completed 1/7/15
- Biological consultation to be completed 3/20/15.

REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)

- *Jurisdiction: 401 certification and, potentially, waste discharge requirements (WDRs)*
- BBGHAD provided updated technical documents in December 2013.
- Fall 2014: Water Quality Certification template shared by RWQCB and under BBGHAD review.

- Team submitted reduced project (Alt 4B) to RWQCB on 11/10/14.
- 1/15: Meeting to be set to discuss septic issue and effect on revetment alignment pending CCC re-application.

CALTRANS

- *Jurisdiction: Encroachment permit for temporary traffic signal on PCH*
- Requires full engineering of the signal, a deceleration lane, an access to the west Zuma lot, and an egress point out of the west Zuma lot.
- Permit package issued 11/14/14.

LA COUNTY DEPT OF BEACHES AND HARBORS

- *Jurisdiction: Owner of Zuma Parking Lot 12 (Project Staging Area); BBGHAD needs Right of Entry Permit to use parking lot; LACDBH also coordinates with Caltrans and City of Malibu on traffic issues.*
- Right of Entry Permit Application to be submitted following 4/29 traffic engineering meeting. GHAD Counsel advised holding off on submitting LA County permit application until dates of construction are better defined (dependent on timing of all other permits).
- Permit pending progress w/CCC and Army Corps.

CONSULTING AND COORDINATING AGENCIES

National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), & SM Bay Restoration Commission (SMBRC)

- *Jurisdiction: No discretionary permits, but consult with and provide input to permitting agencies.*
- Jan 28, 2014: NMFS, CDFW, CCC, RWQCB, USACE and CSLC conducted inter-agency meeting to discuss project; BBGHAD excluded from attendance. Preliminary results: subtidal and intertidal habitat impacts at the west end are primary issues.
- BBGHAD completed additional survey work to NMFS specifications; dive work completed week of June 2, 2014, abalone survey occurred June 16 and no abalone were found at project site.
- Essential Fish Habitat consultation to be completed 1/7/15
- Biological consultation to be completed 3/20/15.
- CDFW: Responsible for Marine Protective Areas (MPAs), including that off Broad Beach. Concerned with Project effects on MPA - subtidal, intertidal, and turbidity. Not presently anticipated that a streambed alteration agreement will be required. Conference call on 2/7/14 with Becky Ota and Craig Shuman. Becky Ota confirmed 2/12/14 that Bill Paznokas will be primary CDFW contact. CDFW still reviewing BBGHAD's submittals. BBGHAD met with Bill Paznokas on September 11, 2014 to discuss SMCA and mitigation. Team submitted reduced project (Alt 4B) to CDFW on 11/10/14.
 - BBGHAD issued to all agencies Alt 4(b) in Nov 2014.
- The table below shows concerns regarding processing by agencies.

Agency	Next Action	Concern
USACE	Bio impacts analysis by NMFS and CDFW.	Possibility EIS will replace EA for NEPA analysis.
CCC	CCC Hearing- pushed	Scheduling of CCC meeting to consider

	back to December 2014	Project.
SLC	Revise APTR including new biology data	May push schedule back by one to two months and cause hearing to occur after the CCC rather than before.
RWQCB	APTR review	Potential for request of RWQCB-specific additional info.

PERMIT SCHEDULE STATUS AS OF 11/14/14

AGENCY	ACTION	DURATION ESTIMATE	COMPLETION DATE (earliest possible)
CCC	CDP App. Complete		CDP app. withdrawn w/o prejudice 12/11/14
	Prepare Staff Report	180 days (legal maximum)	n/a
	Review/Negotiation of Permit Conditions; can be concurrent with prep of Staff Report	1-2 months	n/a
	Commission consideration	1 week	12/11/14: Considered and app. withdrawn
	Permit Issue	1-2 months	n/a
SLC	Lease App. Completeness Notice	1 month	February 7, 2014 RECEIVED
	Revision of APTR (if new bio data included)	3 months	July 14, 2014- completed
	Public Comment on APTR	1-2 months	September 2014
	Lease Negotiations	3 months - ongoing	N/A
	Commission consideration		Off calender pending CDP re-application
	Issue Final Lease	1 month	N/A
	Lease Signature	1 week	N/A
USACE [all dates uncertain pending further pursuit of permitting]	Revise application based on revised Section 404 and 10 jurisdictional limits	3 weeks	March – April 2015
	Issue Public Notice for Draft NEPA	1 month	September 11, 2014 ISSUED
	DMMT review of quarry sand	1 day	July 23, 2014
	End formal biological consultations with NOAA, MFS and CDFW	165 days (legal maximum)	March 2015
	Finalize EA ¹	2 weeks	March 2015
	Issue Draft Permit	1 week	May-June 2015

¹ Longer duration if EIS is required.

	Review/Negotiation of Draft Permit Conditions	2 weeks	Summer 2015
	Issue Final Permit	1 week	Summer 2015
RWQCB	404 and WDRs	2 months post APTR circ.	Unknown pending CCC re-application
	Negotiate 404 and WDRs	1 month	Unknown
	Board approval of 404 and WDRs	1-2 months	Unknown
CALTRANS	Encroachment Permit	4.5 months	November 2014 ISSUED
LA COUNTY	Parking Lot Permit	1 month	Unknown

MEMORANDUM

ATTORNEY WORK PRODUCT

TO: BBGHAD Board

FROM: Project Counsel

DATE: January 8, 2015

RE: Broad Beach Restoration: Summary of December 18, 2014 Conference Call with Army Corps Staff

FILE NO.: 11402-0002

Mark Goss and I conducted a conference call with Army Corps staff (David Van Dorpe, David Castanon, Aaron Allen, Dan Swenson, and Bonnie Rogers) on December 18, 2014. It was an important call as it highlighted significant technical materials that the Army Corps needs from the BBGHAD to complete the Army Corps' analysis. Regardless of CCC's comments and views, we must remain equally mindful of the Army Corps' unique position and process.

At our November 25, 2014 Army Corps meeting, David Castanon recited the Clean Water Act section 404 (b) (1) guidelines¹ regarding impact avoidance and minimization, and the need for the Project and its alternatives to be analyzed through the prism of these factors. After the meeting, MN was asked to undertake this task using Alternative 4b as our Project. Now, Army Corps is asking for this information and much more. We will receive a letter documenting the info below in January 2015, but we should get a head start on it now as it will affect Project schedule.

The following summarizes the December 18, 2014 conference call:

1. NEPA and Water Quality Certification Analysis
 - a. BBGHAD requested to provide Army Corps with documentation of compliance with Section 404(b)(1) guidelines regarding impact avoidance and minimization, and advocating for the least damaging alternative. The following alternatives must be analyzed in this manner:

¹http://water.epa.gov/lawsregs/rulesregs/cwa/upload/CWA_Section404b1_Guidelines_40CFR230_July2010.pdf

(1) No action- no nourishment and removal of revetment. Army Corps agreed with my comment that we will conclude that this alternative thwarts the purpose and function of the Project—shoreline protection for homes with documented need for same, beach nourishment, recreational opportunities thwarted, etc. Still, we need to complete this and other analyses.

(2) Alt 4b as proposed by BBGHAD

- a. Alt 4b as revised in CCC staff report
- b. Alt 4b without backpassing

(3) Alternative with Maximum Avoidance of Waters of the US: revetment pulled “as far back to the houses as possible”, sand nourishment and planting on revetment, and 25’ of sand seaward of revetment toe.

(4) Alternative Avoiding West End Nourishment — USACE to provide map, but I sense this alt will end nourishment at western end of revetment.

- a. 300,000 cy in year 1, 300,000 cy in year 5
- b. 150,000 cy in year 1, 150,000 cy in year 5
- c. 75,000 cy in year 1, 75,000 cy in year 5

b. Significance threshold-- Army Corps does not accept our 1’ of burial for a year analysis—or BBGHAD has not sufficiently justified it. Instead, Army Corps wants BBGHAD to analyze the overall effect of our proposed nourishment on the “community” of species and habitat at the west end—rocky reef, intertidal, etc. Agency wants our analysis on how fast these communities/species will recover under various burial scenarios.

c. Mitigation-- BBGHAD’s Alt 4b still specifies something like 0.3 acres of permanent direct impact to sensitive intertidal habitat. According to Army Corps, this means that BBGHAD MUST mitigate for this impact. Army Corps is willing to defer evaluation of indirect impacts through monitoring activities, but direct permanent impacts must be mitigated up front, especially if we want "finding of no significant impact" and Environmental Assessment only—and no EIS. Therefore, Army Corps is perplexed as to why BBGHAD has proposed a Project for which mitigation is mandatory, yet BBGHAD continues to assert that it has no money to mitigate. In my estimation, we need to handle this issue promptly and not further skirt the mitigation/no mitigation issue. In my estimation, and based on current BBGHAD assessment, the BBGHAD should propose a Project that is ultimately permissible without mitigation to be paid up front. If we expect an EA and no EIS, we need to propose a project with no permanent direct impacts at West End. Whatever we propose needs to satisfy the 404(b)(1) guidelines and analysis.

2. Schedule

a. Essential Fish Habitat- consultation started 11/8 and should be done within 60 days.

b. Fish & Wildlife- consultation started 11/5, and will take 135 days. Complete approx April 2015.

c. Tribal and SHPO- letters sent, and no issues anticipated.

d. Army Corps anticipates completing its process within 2-3 months of receiving the materials requested in Section 1 above.

AGENDA ITEM 10b

Broad Beach GHAD**Cash Flow**

Cash in Bank : 12/1/14	780,284.57
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Sources of Cash:

GHAD Assessment funds	20,932.50
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Invoices Paid thru 12/31/14**Paid**

DB Neish	16,894.13
Administration	12,007.00

Total Invoices Due	<u>(28,901.13)</u>
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Cash Balance as of 12/1/14	772,315.94
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Sources of Cash:

GHAD Assessment funds	
Broad Beach GHAD/Balance Transfer	195,530.47

Current Payables in hand:

DB Neish	15,000.00
Moffatt & Nichol	155,738.31
Elkins Kalt	39,904.38
Colantuono Highsmith & Whatley	2,515.00
Linscott Law	3,306.70
Administration	12,118.98

Total Invoices Due	<u>(228,583.37)</u>
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Estimated Cash on Hand 1/31/15	739,263.04
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Broad Beach GHAD
 Projection thru 1/31/15
 AS of 1/09/15

These budget numbers have not been adjusted yet	Rev		Actuals Paid		Projection Jan-15
	Budget	Adjustments	Transferred, 2011	Nov 2011- Dec2014	
Uses:					
M&N Preliminary Planning/Support/booklet/aerial	465,391	426,411	465,391	\$ 426,411	
M&N 2.0 Field Investigation/Sand Survey	1,219,002	983	585,054	\$ 817,725	
M&N 3.0 Project Entitlement	572,115	389,866	215,085	\$ 1,562,255	155,738.21
M&N 4.0 Preliminary Engr & Schematic Design	336,000	-	304,000	\$ 32,000	
M&N 5.0 Final Engineering & Constr Documents	-	338,102	-	\$ 234,856	
JMBM/Elkins Kalt-GHAD Admin & Assessments	146,884	497,452	244,158	\$ 495,529	9,908.10
JMBM/Elkins Kalt-Beach Restoration Permitting & Entitlements	587,535	404,562	101,902	\$ 1,334,375	29,996.28
ENGEO	115,232	8,176	49,867	\$ 64,994	
ENSITU				\$ 87,450	
Quality Mapping	14,934	1,170	14,934	\$ 1,176	
Topanga Underground	3,000	7,000	3,000	\$ 7,000	
Morgan, Miller & Blair	65,039	61,576	53,590	\$ 13,189	
Bell,McAndrews & Hiltachk/Kindel Gagan	1,694	-	-	\$ 10,265	
Wendel Rosen	-	-	1,694	\$ 39,798	
Colantuono & Levin, PC	-	-	-	\$ 31,158	2,515.00
<i>Fee-City of Malibu</i>	17,584		17,584		
Fee- Coastal Commission	30,000	35,000		\$ 77,472	
Fee-Water Board	40,000	18,340		\$ 58,340	
Fee-Fish & Game	7,172	2,000			
Fee-Army Corp of Engr	-				
Fee- State Lands Commission Permit fees/Oversight Fee	-			\$ 198,573	
State Lands Comm-Staff Costs	176,384	196,546	79,343	\$ 247,406	
EIR Consultant- AMEC Earth & Environ	549,949	283,818	190,324	\$ 606,099	3,306.70
GHAD Bond Legal/Underwriting	400,000	(370,000)			
Tax Exempt Opinion	-	25,000			
Line of Credit-fee/costs/Interest	-	16,000		\$ 35,411	
AON-E&O Insurance	6,286	15,513	6,286	\$ 22,403	
Office / Phone/Web Site/Coping/Transcripts	-	6,150		\$ 6,127	
Accounting Administration	27,000			\$ 181,596	12,118.98
Soft Cost Contingency/Advocacy Representation	100,000	(50,000)		\$ 181,517	15,000.00
Total Uses	19,009,000	2,313,665	2,332,212	\$ 6,773,124	228,583.27
Sources of Cash:					
Advances from Individual Homeowners (Actuals)			1,580,278	1,436,750	
Addtl Advances from Individual Revetment Homeowners			261,579		195,530
Advances from TPOA General Fund			550,000	200,000	
GHAD ASSESSMENTS				5,849,046	
Total Sources			2,391,857	7,485,796	195,530
Cummulative Running Balance			59,645	772,317	739,264