

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR MEETING AGENDA

Sunday February 26, 2017; 9:00 a.m.

Private Residence: 31030 Broad Beach Road, Malibu, CA 90265

Regular Session

- 1) **Call to Order**
- 2) **Roll Call**
- 3) **Adoption of Agenda**

Closed Session

- 4) Conference With Legal Counsel; Pending Litigation
(Gov. Code § 54956.9(d)(1))

Conference with legal counsel: Discussion of County of Ventura and City of Fillmore v. City of Moorpark and Broad Beach Geologic Hazard Abatement District, Santa Barbara County Superior Court Case No. VENC100479937.

- 5) Conference With Legal Counsel; Anticipated Litigation
(Gov. Code § 54956.9(d)(4))

In the opinion of the Board of Directors on the advice of its legal counsel, a point has been reached where, based on the existing facts and circumstances, the District is deciding whether to initiate litigation.

Facts and Circumstances: Dispute over the gap in the revetment seaward of 30822 Broad Beach Road (Magidson) and responsibility for fees and costs associated with filling the gap and related activities.

Resumption of Regular Session: approximately 9:30 a.m.

- 6) **Approve Summary of Actions from January 22, 2017 Meeting**

Staff Recommendation: Chair to conduct vote on approving Summary of Actions from January 2017 meeting. If passed, Chair to sign Summary of Actions.

- 7) **Ceremonial/Presentations**

None.

- 8) **Consent Calendar**

None.

- 9) **Public Hearings**

None.

10) Old Business

- a. Permitting and Regulatory Process Status. (Project Counsel and Engineer) Report to include project regulatory status update, including:
 - (i) Lead Agency Update
 - (A) CCC (and Science Advisory Panel)
 - 1. Budget update including sand, Habitat Monitoring Plan costs (Project Counsel).
 - (B) Army Corps
 - (C) SLC
 - (ii) Responsible & Consulting Agency update: RWQCB, NMFS, Cal. DFW, CalTrans, etc.
- b. Permitting Outreach & Strategy Update. (Project Counsel) Report to include status update on agency advocacy, stakeholder outreach, and related matters.
- c. Project Manager Search Update. (Project Counsel) The Board will receive update on the search for a new Project Manager .

11) New Business

None.

12) BBGHAD Officer Report

- a. Treasurer's Report (BBGHAD Treasurer)

13) BBGHAD Board Member Reports

14) Reconsideration of Resolution of Dispute Regarding Previous Assessment Overpayments by West End BBGHAD Owners. (Project Counsel) Reconsider resolution to resolve refunds owed to West End homeowners. Among other points, Board to reconsider scope of requested release and binding successors to agreement and receive input requested from Project Counsel on proposed agreement.

15) Public Comment - Non-Agenda Items

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

16) Future Meeting

Next Meeting: March 19, 2017 (tentative)
Time: 9:00 a.m.
Location: TBD

17) Adjournment

Item 6

Summary of Actions

Summary of Actions

BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

REGULAR SESSION MEETING

Sunday, January 22, 2017; 9:00 a.m.

31030 Broad Beach Road, Malibu, CA 90265

1. CALL TO ORDER

The Chair called the meeting to order at 9:07 a.m.

2. ROLL CALL

PRESENT: Chair Norton Karno, Vice Chair Marshall Grossman, and Board Member Bill Curtis.

ABSENT: Board Members Jeff Marine and Shaul Kuba.

BBGHAD STAFF ALSO PRESENT: Project Engineer Russ Boudreau, Clerk/Treasurer Heike Fuchs, and Project Counsel Ken Ehrlich.

3. ADOPTION OF AGENDA

The Chair recognized Project Counsel, who reported that the Agenda was posted on December 19, 2017 before 9:00 a.m. within the BBGHAD boundaries and concurrently posted on the BBGHAD website. The Chair recognized Vice Chair Grossman, who moved to adopt the Agenda as presented. Board Member Curtis seconded the Motion. The Chair called the question, and the Motion passed 3-0.

Closed Session

At 9:09 a.m. the Chair announced, without objection, that the Board would move into Closed Session.

Resumption of Regular Session

The Chair resumed Regular Session at approximately 9:55 a.m., and a report was given on Closed Session items.

6. APPROVE SUMMARY OF ACTIONS FROM DECEMBER 18, 2016 MEETING

The Chair recognized Vice Chair Grossman, who moved to approve Summary of Actions from December 18, 2016 with minor edits on pages 2, 3, 6 & 10 as announced by Project Counsel. Board Member Curtis seconded the Motion, and the Motion passed 3-0.

7. Ceremonial/Presentations

None.

8. Consent Calendar

None.

9. Public Hearings

None.

10. Old Business

a. Permitting and Regulatory Process Status.

(i) Consideration of Input From January 11, 2017 Property Owner Workshop

The Chair recognized Project Counsel, who estimated that approximately 70 property owners or representatives participated in the 1/11/17 property owner workshop, with approximately forty (40) to fifty (50) homeowners present at the Elkins Kalt offices and approximately twenty (20) homeowners announced on the phone. Project Counsel opined that it was overall a productive meeting and the homeowners appeared appreciative of the information received. Project Counsel informed the Board that staff received approximately 30 responses to the informal non-binding ballots provided to the homeowners after the workshop and it appears that they remain in favor of the Project at an approximate 3:1 ratio.

The Chair recognized Board Member Curtis, who asked if the CCC was aware of the workshop. The Chair recognized Project Counsel, who responded that the Coastal Commission staff was invited to the workshop but were unable to participate. The Chair opined that the CCC should be made aware of the substantial voice of the community (approximately 25%) in favor a revetment-only Project, and the Board anticipates a substantial increase in favor of the revetment-only Project if the Project would be delayed for another year.

The Chair recognized Board Member Curtis, who suggested that the BBGHAD should inform the CCC that, if the CCC wants the Project to succeed, the agency must negotiate based on the current BBGHAD budget/assessment as the BBGHAD does not have the funding to cover the current Project costs. The Chair recognized Project Counsel, who informed the Board that CCC senior staff firmly believes that a revetment-only Project would be far more expensive than the Project due to mitigation-- and the current assessment would not even cover the expenditures for a revetment-only project.

The Chair recognized Vice Chair Grossman, who suggested that additional Project alternatives may be considered if the CCC staff retains their current position since the BBGHAD may not be able to proceed with the Project. The Chair stated that the BBGHAD needs the CCC staff to finalize their position on the Habitat Monitoring and Mitigation Plan ("Plan") in adequate time for the BBGHAD to authorize further expenditure for Spring 2017 (March-June) monitoring. The Chair alerted the Board of the very short window the BBGHAD has to start the Project in Fall 2017.

The Chair added that the unofficial balloting received was less than 50% of the homeowners.

The Chair recognized Board Member Curtis, who suggested that the BBGHAD should be more direct with CCC staff regarding Project costs and appears open to alternatives. The Chair recognized Vice Chair Grossman, who suggested that Project Counsel and Board Member Marine must communicate this message to CCC staff at tomorrow's meeting. The Vice Chair further suggested informing the CCC that the BBGHAD used to have unanimity and that there is an increasing movement in favor of aborting the Project. The Chair recognized Board Member Curtis, who offered to attend the 1/23/17 meeting with CCC staff.

The Chair recognized Board Member Curtis, who questioned if, as an alternative, the BBGHAD should reduce the size and scope of the Project. The Chair recognized the Project Engineer, who responded that anything less than 300,000 cubic yards of sand would be tough to maintain as a dry sand beach as the Project requires sand to cover the revetment and a 10' dry sand beach to prevent the springing license from being triggered, and thinks it would not be feasible to keep the revetment covered with only e.g., 150,000 cubic yards. The Chair recognized Project Counsel, who added that the budgeting process has proven that every time the BBGHAD mobilizes to bring sand to the beach is extraordinarily costly.

A discussion ensued regarding previous BBGHAD messaging to CCC staff regarding the CDP Section 6 monitoring program and the SAP process since December 2015. The Chair recognized Vice Chair Grossman, who stated his agreement with Board Member Curtis' basic position that the Project is sound, but cost is a critical issue and the BBGHAD is looking aggressively for Project alternatives and cost reductions. The Vice Chair inquired about Jack Ainsworth's participation in tomorrow's meeting. The Chair recognized Project Counsel, who responded that Mr. Ainsworth was invited and encouraged to attend, but is not expected to attend. The Vice Chair proceeded to call Mr. Ainsworth and left a personal message requesting his attendance.

The Chair stated that he also concurs with Board Members Curtis on his business strategies in general, but it may not apply for dealings with the CCC staff, the SAP, or the approximately 15 (fifteen) agencies which typically attend SAP meetings. The Chair further opined that more junior CCC staff may not support the Project and may seek to further delay the Project. The Chair further stated that he provided Project Counsel with comments on the draft cover letter to CCC staff regarding the latest version of the Plan, instructing Project Counsel to stress the time constraints, explain the growing community sentiment of impatience, and specify that the BBGHAD is not going forward with further expenditures unless the CCC staff finalizes its Plan requirements.

The Chair recognized Board Member Curtis, who asked if the revised draft cover letter could be circulated to the Board Members before its send to the CCC. The Chair responded that he had already instructed Project Counsel to do so.

A discussion ensued regarding the 1/23/17 meeting location, participants, and the BBGHAD's desired outcome of the meeting. The Chair then explained that CCC Staff has submitted a very professional response to the BBGHAD's latest proposed Plan stating that the

BBGHAD's latest proposal does not comply with CDP requirements. In response, the BBGHAD intends to thoroughly respond to the CCC staff's position and opined that this will be an important part of the meeting and should not be ignored and/or postponed. Project Counsel suggested that Board Member Curtis should present to CCC staff the frustration of the community and the eroding support of the Project if it would be delayed for another year.

The Chair recognized Board Member Curtis, who voiced frustration that BBGHAD consultants may benefit financially from either lengthening the permitting process or increased monitoring tasks. The Chair responded that the Board instructed Project Engineer, at a past Board Meeting, to obtain additional bids from competitors. The Chair recognized Project Counsel, who added that BBGHAD staff is following the CDP's directives. The BBGHAD received the CDP in October 2015, and it sets up the framework for the SAP and that SAP is following the requirements of the CDP. Project Counsel stated that, at every SAP meeting, BBGHAD staff reiterates that the Plan cost is prohibitive. Project Counsel further explained that, because the CCC staff can override the SAP, CCC staff is now attacking the reduced cost Plan in a manner not pursued by the SAP.

The Chair recognized Board Member Curtis, who asked Project Counsel to inform senior CCC staff that Board Member Curtis would appreciate a private 5-10 minute "pre-meeting" with senior CCC staff before the 1/23/17 meeting. The Chair recognized Project Counsel, who responded affirmatively.

The Chair recognized Project Engineer, who reported that, since the issuance of the BBGHAD CDP, the CCC has placed the same monitoring requirements on all new beach nourishment projects, including public projects.

The Chair recognized Vice Chair Grossman, who asked for the Project Engineer's recommendation to the Board if CCC staff rejects the reduced scope Plan. The Chair recognized Project Engineer, who responded that, if the CCC demands the spring testing identical to fall testing, then it would revert back to the \$850,000 monitoring plan and, at that point, the Project Engineer would not have any recommendation.

The Chair recognized Vice Chair, who inquired about the Army Corps status. The Chair recognized Project Counsel, who responded that the Army Corps has yet to issue its permit and the BBGHAD must submit the requested compensatory mitigation plan to respond to the Corps' proprietary interests separate from the CCC's CDP. Project Counsel further added that the Army Corps has requested an up-front compensatory mitigation plan, explaining that it includes adaptive management and compensatory mitigation in five (5) year increments if adaptive management measures do not work.

The Chair recognized Vice Chair, who asked which agency should be dealt with first, CCC or the Army Corps. The Chair opined that both agencies should be addressed simultaneously. The Chair recognized Vice Chair, who inquired about the methodology for compensatory mitigation. The Chair recognized Project Counsel, who responded that it is being determined through monitoring and accepted Corps' mitigation ratios.

The Chair recognized Board Member Curtis, who inquired about the determination of Project baseline conditions and the trigger for compensatory mitigation. The Chair recognized Project Counsel, who responded that the Project baseline, according to the law, should be the day before the emergency revetment was installed. The Chair recognized Board Member Curtis, who opined that it would be irresponsible to agree to a Project that will knowingly result in the payment of compensatory mitigation. The Chair responded that BBGHAD staff has been working diligently to put a cap of \$750,000 for compensatory mitigation and such amount has been budgeted.

The Chair recognized the Vice Chair, who stated that the BBGHAD has spent a considerable amount of monies on the Army Corps lobbyist and inquired if his involvement has translated into positive results. The Chair recognized Project Counsel, who opined that the BBGHAD has seen positive results from the lobbyist's activities and the lobbyist is very motivated to finalize the Army Corps permitting process. The Chair recognized Vice Chair, who asked about the status of the Environmental Impact Statement "EIS" (longer path) vs. the Environmental Assessment "EA" (shorter path). The Chair responded that Army has not made any decisions yet on this issue, has indicated that an EA will be issued, and stated that it is part of the negotiating process with Army Corps.

The Chair recognized Board Member Curtis, who asked Project Counsel to brief him on the CCC staff's backgrounds. The Chair recognized Project Counsel, who outlined their backgrounds and respective positions on the Project.

The Chair recognized Vice Chair Grossman, who stated that Staff should be extremely prudent on spending and asked about the Chair's inquiry to put a ceiling on legal spending. The Chair responded that he discussed this issue with Project Counsel. The Chair stated that Project Counsel requested to defer the Chair's request to April 1, 2017, as there are many unresolved items with the Army Corps, CCC and SAP. The Chair stated the Project Counsel will then provide an alternative legal fee proposal to the Board.

- (ii) Lead Agency Update
 - (A) CCC (and Science Advisory Panel)

1. Budget update including Habitat Monitoring Plan Costs

The Chair recognized Project Counsel, who reported that the documentation enclosed in the Board Packet is overdue and will be submitted to the CCC no later than 1/23/17. The document is a compilation of two responses to the CCC staff's comments on the Plan received on Sept. 20, 2016 and December 20, 2016 and a separate document-- a revised scope Marine Habitat Monitoring and Mitigation Plan (MHMMP). Project Counsel stated his hope that these documents serve as the basis for a resolution with the CCC on the CDP and the Plan, especially Special Condition 6.

The Chair recognized Board Member Curtis, who asked about the reason for being late submitting the documents. The Chair recognized Project Counsel, who responded that BBGHAD technical consultant was very ill during the month of December 2016. Project Counsel further

opined that the delay has been hurting the progress of the Project and asked Moffat & Nichol to make recommendations of alternative biologists to replace BBGHAD technical consultant Merkel. The Chair stated biologist Merkel is well known, well respected and highly regarded and has been the active spokesperson for the BBGHAD the entire time.

(B) SLC

No separate report.

(C) Army Corps

The Chair recognized Project Counsel, who reported that a written compensatory mitigation plan ("Mitigation Plan") is due to the Army Corps, which is included in the Board Packet. Project Counsel stated that he received input from the Chair to reduce the cap of the compensatory mitigation proposal to \$250,000.00. Project Counsel reported that this document was also delayed and that he is hopeful to submit it to the Army Corps within the next 2-3 days, after receiving all of the input from the Board. Project Counsel estimated that, as soon as this documents is submitted, that the Army Corps permitting process will be completed within the next 2-3 months.

The Chair responded that his comments on the Mitigation Plan are: a) BBGHAD staff to add their analysis, input, and thoughts on the Summary page, b) on page 23 of the draft Mitigation Plan, questions regarding the timing of the payment of the compensatory mitigation and that he prefers not to borrow monies and having to pay interest, c) inquiry into the legal process of appealing an Army Corps permitting decision, and d) reduction of the proposed cap on mitigation to \$250,000.00 with the hope of ultimately paying nothing due to adaptive management measures.

The Chair recognized Vice Chair, who asked if any of the major financial obligations of this nature (mitigation) to CCC, SLC and Army Corps could be conditioned upon the BBGHAD obtaining all of their permits under the law? The Chair recognized Project Counsel, who briefed the Board on the reasoning for the payment(s) to each agency and specified which ones are and are not dependent on the BBGHAD proceeding with the Project.

The Chair recognized Vice Chair, who asked if there another attorney at Project Counsel's firm is reviewing all of the Project contracts? Project Counsel responded affirmatively, and added that he is using lawyers with the expertise needed for each particular contract.

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

The Chair recognized Project Counsel, who reported that BBGHAD anticipates the Regional Board permit to mirror that of the Army Corps.

b. Permitting Outreach & Strategy Update.

No separate report.

The Chair recognized Board Member Curtis, who inquired if he can have his wife contact Senator Henry Stern to brief him on and asked him to expedite the Project. The Board unanimously encouraged Board Member Curtis to contact the Senator.

c. SLC Lease Package.

The Chair recognized Project Counsel, who summarized the SLC status, stating that the SLC approved the BBGHAD Project in August 2016 in accordance with terms previously approved by the Board, but that the BBGHAD Board has never formally ratified the SLC Lease as requested by the SLC. Project Counsel further stated that he inquired about ratifying the Lease at the December 2016 Board Meeting and was informed that, in light of the "revetment only" possibility and the possibility of reducing the encroachment, the Board to defer the consideration of ratification of the SLC lease. Project Counsel explained that, after the homeowners' workshop, he seeks guidance from the Board on how to handle the ratification of the SLC lease.

The Chair recognized Vice Chair Grossman, who asked about the Board's consideration at the December 2016 meeting. The Chair responded that the Board did not know if the community wanted to proceed with the Project, and if the Project was aborted, the BBGHAD may dissolve and the homeowners themselves may end up being liable for their encroachments.

The Chair recognized Vice Chair, who inquired about possible consequences of the BBGHAD not ratifying the Lease. The Chair recognized Project Counsel, who responded that Staff has not had any communications with the SLC in the past 30 days, but that the BBGHAD has deposited the financial security and still has to provide the \$10 million in general liability insurance and ratify the Lease. Project Counsel further briefed the Board that the Lease already covers scenarios if the BBGHAD proceeds with the Project or becomes a revetment-only Project, and opined that ,if the homeowners on the West End would like to eliminate/minimize the encroachment, than the BBGHAD could ask for reducing any future Lease payments.

The Chair recognized homeowner Max Factor III, who asked if it would be advantageous for the homeowners with minor encroachment and the revetment being too close to their septic systems to put in an Advanced Onsite Wastewater Technology System to eliminate the encroachment issue? The Chair recognized Project Counsel, who responded that it depends on whether the encroaching homes already have seaward septic systems in place or not. Project Counsel further added that the Engineer has stated that, except for 9 (nine) homes, the revetment can be moved regardless of where the septic systems are located.

The Chair thanked Mr. Factor for his input and asked Project Engineer about the locations of the approximately 30 homes encroaching on public land. The Chair recognized Project Engineer, who responded that these homes where the revetment cannot be pulled back are fairly evenly spread out. The Chair directed Project Engineer to translate the encroaching properties into addresses and to provide this information to Project Counsel.

The Chair stated that the Board unanimously agreed not to ratify the Lease but, instead, to remain aware of the issue in light of the Project's permitting process and Army Corps (and other agency) action.

d. Project Manager Search Update.

The Chair recognized Project Manager, who reported that at the last Board meeting Board Member Curtis met with potential Project Manager candidate, Charles Melber. Project Counsel further informed the Board that he and Board Member Marine had the impression after the meeting that it would not be appropriate to hire Mr. Melber until further consideration from the Board and input from Board Member Kuba—in light of Board Member Kuba's review of the budget.

The Chair recognized Vice Chair, who asked if the Chair believes that the BBGHAD needs to hire a Project Manager at this moment? The Chair responded that, without having Board Member Kuba's report, he is not ready to take actions, pointing out that the in-house service Board Member Kuba's firm is providing is the finest service the BBGHAD can expect and that the BBGHAD has not received any proposal back from the marine delivery options and Ventura County/Calleguas Creek.

The Chair recognized Board Member Curtis, who concurred with the Chair's position adding that, as a result of the meeting with the potential candidate(s), alternative candidates would be appreciated. The Chair thanked Board Member Curtis for his input and stated that the Board continues searching for a Project Manager.

11. New Business

None.

12. BBGHAD Officer Report

a. Treasurer's Report

The Treasurer reported, as of January 17, 2017, the BBGHAD's cash balance was \$2,147,676.40 and the estimated unpaid bills amount to \$631,088.71. The Chair added that the BBGHAD received another payment from the County in the amount of \$304,743.68 this past Friday, which is not yet reflected in the Treasurer's Report.

The Chair thanked the Treasurer for including the actual expenses paid by the BBGHAD from 2011-2016. The Chair directed the Treasurer to: a) separate out the loan as it is currently listed in the total Project expenditures, and b) reconcile the Fair Share contributions with the total amounts listed per homeowner. The Treasurer agreed to revise the documents accordingly.

The Chair recognized Vice Chair, who requested a brief recess before moving on to the next Agenda item. The Chair called for a brief recess at 1:30 p.m. and called the meeting back to order at 1:44 p.m.

13. BBGHAD Board Member Reports

The Chair reported that he attended the homeowners' workshop on January 11, 2017. The Chair thanked Project Counsel for his hospitality and opined that the workshop was very constructive and complimented Project Counsel and Project Engineer on their presentations. The Chair stated that he was very proud of how staff handled the equivalent of a rather hostile series of questions. The Chair further opined that there were approximately 50% of homeowners participating and a massive amount of practical and useful information provided to the homeowners and everyone participating had an opportunity to express their views.

The Chair apologized to Vice Chair and Board Member Curtis for not being able to attend due to the legal advice of Counsel Colantuono.

14. Reconsideration of Resolution of Dispute Regarding Previous Assessment Overpayments by BBGHAD Owners.

The Chair recognized Project Counsel, who reported that this is a reconsideration of Resolution No. 2015/06, which established the provisions for a refund of certain assessment monies paid by west end owners. Project Counsel summarized the history of the west end refund matter, stating that the BBGHAD learned in January 2015 that the BBGHAD could not permit direct sand deposition west of 31380 Broad Beach Road. The Board then determined that the west end owners should receive a credit of the difference between assessment funds paid under the 2012 assessment from January 1, 2015 to June 30, 2015 and what the same owners would have paid had the 2015 assessment been in place for that same time period. Project Counsel further reported that 1 (one) out of 22 (twenty-two) homeowners has signed the Settlement Agreement in accordance with Resolution No. 2015/06 and has not received any comments/reasons from any individual homeowners for not signing the agreement. Project Counsel further reported that Board Member Curtis raised this issue in a Board meeting a couple of months ago that: 1) the terms of requested release were too broad, and 2) successors and assigns should not be bound by the agreement.

Project Counsel stated that the parts in the agreement that are at issue are highlighted in either yellow or green in the Board Packet. Project Counsel recommended that: 1) regarding the "successors and assigns" issue", the Board should maintain the agreement's current language in the agreement, and 2) he had no recommendation for the scope of the release.

The Chair verified with Project Counsel the two contested issues: 1) the "successors and assigns" provision, and 2) the requested release of rights to contest or object to the Project and claim a refund for the BBGHAD portion of assessment paid or owing from or after July 1, 2011. Project Counsel responded affirmatively.

The Chair recognized Vice Chair, who asked for clarification on who has signed and received a refund so far. The Chair recognized Project Counsel, who responded that only 1 (one) property owner has signed the agreement, and that the other 21 (twenty-one) refunds are budgeted and being carried in the Treasurer's Report.

The Chair recognized Board Member Curtis, who opined that the intention of the agreement was not to obligate the west end to new requirements, but simply to create an assessment that accurately reflected the west end's obligations (25% of the full assessment). Board Member Curtis further opined that any other discussions about further obligations and/or releases in the agreement are inappropriate.

The Chair recognized Vice Chair, who asked Board Member Curtis if he thinks the issue should be settled based on the current Engineer's Report (25% assessment for west end owners) so it does not have to be revisited in the future? The Chair recognized Board Member Curtis, who responded that, based on information received regarding possible future mitigation, he would recommend to the other west end homeowners to agree on a flat fee rather than signing off on a percentage on "unlimited exposure".

The Chair stated that Board unanimously approved Resolution No. 2015/06 inclusive of a consideration of a discretionary willingness by the Board to refund monies to the 22 (twenty-two) homeowners, who would not receive any sand nourishment in front of their properties. The Chair further stated that the Board was advised by Project Counsel that it was legally sustainable, for either approach, to provide or not to provide any refunds from the time it was realized that there would not be any sand nourishment for the 22 (twenty two) West Enders until the official reconstitution of the Project (75% east end and 25% west end). The Board unanimously stated that it was concerned about successors raising a claim for previous tax assessments paid, especially since one or two homeowners had already filed refund claims as well as the Board recognizing that there was a possibility of the Board being drawn into litigation over one or more parts of the Project, either by claim for refund or on the basis of an environmental lawsuit. The Chair summarized that the incentive of having spared the costs of litigation for the community was the basis for the Board, after thorough consideration, to exercise its discretion and provide the refund to the twenty-two homeowners. The Chair added that the BBGHAD Board did not base Resolution No. 2015/16 upon an agreement between the BBGHAD Board and the west end owners, but rather a unilateral act at the Board's discretion. The Chair stated that, due the fact that the 5 (five) Directors unanimously agreed at the time, he favors the original compromise.

The Chair recognized Board Member Curtis, who asked what the net effect would be of asking twenty-two homeowners to sign this agreement? The Chair responded that he has not talked to any of the west end homeowners, with the exception of Board Member Curtis, Ms. Jane Arnault and Max Factor III, and that he does not want to speculate.

The Chair recognized Board Member Curtis, who opined that the majority of the west end owners do not believe that they are receiving any benefits from their 25% contributions to the Project at the current assessment and resent paying for it. Board Member Curtis further added that, since the Resolution No. 2015/06 was adopted, Project costs have increased and additional mitigation risks exist going forward. Board Member Curtis stated that he would not sign and support any document binding his successor to never have the right to have issues with the Project. Board Member Curtis further added that he would not support anything that creates any future obligations for the west end owners and/or their successors.

The Chair recognized Vice Chair, who stated that the percentage (25%) of the assessment for the west end was never negotiated, but was recommended by the independent Engineer's

Report. The Vice Chair further stated that, as far as the language in Resolution No. 2015/06 precluding someone from objecting or contesting the Project, it is intended to prevent lawsuits as there were members of the community considering litigation. The Vice Chair stated that, due to the fact that 21 (twenty-one) homeowners did not sign the agreement, he would reconsider the document but feels strongly about not contesting the 25% assessment going forward, including binding the successors and assigns.

The Chair recognized Project Counsel, who stated his concern that the Board should not attempt to bind or mandate the substance of, or otherwise affect the independence of the current or future Engineer's Report, and recommended that the Engineer's Report remain independent of the content of any west end agreement.

The Chair recognized homeowner Max Factor III, who opined that a Board could not pass a resolution binding future Engineer's Reports and an ongoing government agency to what an appropriate share for the west end would be. The Chair concurred with Mr. Factor III, but stated that there is one possible exception to this general rule-- when the benefits of an agreement outweigh the outcome of future actions. The Chair recognized Max Factor, who concurred with the Chair's statement regarding the exception to the rule and opined that, due to the unknown dynamics (sand movement/mitigation) of the Project, it would be beyond the scope of the Board to enter into such an agreement.

The Chair recognized Board Member Curtis, who asked the Chair if he believes that any west end property owner would change their view in exchange for a \$7,000 or \$8,000 refund. The Chair responded that he does not know and does not want to speculate, and added that he is aware that not all west end owners have the same perspective on this issue as one of them has already signed the document.

The Chair recognized Vice Chair, who asked Board Member Curtis if he had any assurance for the remainder of the BBGHAD that none of the west end owners would challenge the 25% assessment in the future? The Chair recognized Board Member Curtis, who responded that he could not give any assurances based upon what could happen with the Project. Board Member Curtis suggested that the BBGHAD Board present the west end owners with a release stating that: a) there cannot be a "reach back" for tax assessments paid in the past except for the 6-months period from January 1, 2015 – June 30, 2015, and b), for future Engineer's Report(s), the BBGHAD must hire an independent Engineer for the BBGHAD and west end owners would hire their own engineer, and, if the two engineers could not agree on an assessment scheme, they would retain an independent third engineer to devise an assessment scheme. The Chair recognized Max Factor III, who opined that west end owners will not receive any substantial long-term benefit from the Project and, therefore, should only agree to a fixed annual assessment amount or be "bought out" of their assessment responsibilities, and that he would not agree to any percentages.

MOTION: the Vice Chair moved, and Board Member Curtis seconded, to direct Project Counsel to draft a proposed resolution embodying the thoughts and concepts expressed by Board Member Curtis and the Vice Chair regarding a west end resolution and present it to the Board for consideration at the next Board meeting. Hearing no further comment, the Chair called the question, and the Motion carried 2-1.

The Chair recognized Vice Chair, who stated his appreciation for the west end owners' views and input at Board meetings.

15. Public Comment - Non-Agenda Items

None.

16. Future Meeting

The Chair stated that the next BBGHAD meetings are scheduled for February 26, 2017 and tentatively March 19, 2017, both to start at 9:00 a.m., location to be determined.

17. Adjournment

Vice Chair Grossman moved, and Board Member Curtis seconded, to adjourn the meeting. The Motion passed 3-0 and the meeting adjourned at 3:32 p.m.

Approved and adopted by the BBGHAD
Board on _____, 2017

NORTON KARNO, Chair

ATTEST:

HEIKE FUCHS, Clerk

Item 10

Broad Beach Restoration Project Status Report

BROAD BEACH RESTORATION PROJECT STATUS REPORT – February 26, 2017

CALIFORNIA COASTAL COMMISSION (CCC)

- *Jurisdiction: Coastal Development Permit (CDP)*
- 10/9/15: **CDP with condition modifications approved at CCC hearing.**
 - BBGHAD proposed revetment alignment (Alt 4C) accepted.
 - Public access compromise identified.

Notice of Intent and Final Condition language dated 1/11/16 and received 1/29/16

Matrix prepared for "Prior to Issuance" conditions; proposed completion: Fall 2016

- 6/26/16: CCC/SAP rejects BBGHAD monitoring proposal and cancels nourishment for 2016/17.
- 8/23/16: Meeting with CCC staff re SAP progress, definition of "impacts", and MHMMP
- 9/21/16: BBGHAD submits CCC staff-mandated MHMMP
- 10/13/16: BBGHAD submits BBGHAD biologist-recommended MHMMP
- 10/17/16: Meeting with CCC staff re scope of MHMMP
- 1/23/17 & 2/14/17: Meetings with CCC staff re MHMMP
- 2/24/17: BBGHAD submission of latest draft MHMMP

CALIFORNIA STATE LANDS COMMISSION (CSLC)

- *Jurisdiction: Lease and certification of APTR*
- September 11, 2015: CSLC issued letter deeming the BBGHAD application (in support of updated project Alt 4C) incomplete.
- 2/9/16: BBGHAD response to SLC lease letter sent.
- 5/20/16: Mtg with SLC staff
- August 9, 2016: **SLC approved Project and Lease**

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. BBGHAD advocating for EA.
- Public Notice process complete.
- November 5, 2014: USACE initiated contact with tribal communities re cultural resource issues. USACE to submit cultural records search results to SHPO.
- August 5, 2015: Team submitted 404b(1) alternatives analysis to USACE; supplemented Jan 2016 in response to questions posed in 10/15.
- September 21, 2015: USACE initiated formal consultation with USFWS.
- November 2015: Cultural investigation records search and pedestrian survey requested by USACE completed.
- 2/15/16: BBGHAD received Draft Biological Opinion from USFWS.
- 3/18/16: Technical Decision Makers meeting with Congressman Ted Lieu and Colonel Gibbs.
- June 2016: Revetment mitigation negotiations complete; ACE begins participating in SAP.
- 7/11/16: NMFS issues letter re incomplete EFH consultation; BBGHAD response in process.
- 8/11/16: Meeting with senior USACE staff re finalizing permitting process; staff confirmed altvs. complete.
- 9/2/16: BBGHAD submitted response to 7/11/16 NMFS letter.

726983v1

- 9/4/16: BBGHAD submitted draft EA to Army Corps.
- 9/16/16: Revised Biological Opinion issued
- 11/14/16: Final Biological Opinion issued
- 11/22/16: BBGHAD submitted supp. revetment alternative (4B) analysis requested by USACE
- 1/24/17: BBGHAD submitted Compensatory Mitigation Plan as requested by USACE staff.
- 2/23/17: BBGHAD receives federal feedback; anticipates 1 week turnaround to implement feedback.

REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)

- *Jurisdiction: 401 certification and, potentially, waste discharge requirements (WDRs)*
- Jan. 2016: BBGHAD submitted draft Water Quality Certification. RWQCB staff review in progress.
- July 2016: BBGHAD contacted EO to expedite review and processing.
- October 2016: RWQCB staff seeks mitigation framework (identical to USACE) and anticipates 1Q 2017 certification.

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.
- 11/14/14: Permit package issued. Permit to be revised based on latest traffic plan.
- 2/23/17: Conceptual approval from CalTrans subject to BBGHAD re-submittal with minor modifications.

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. 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 USACE.

CITY OF MALIBU

- Once construction start date solidified, will coordinate re traffic permits etc.

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.*
- NMFS: Essential Fish Habitat consultation pending; BBGHAD response submitted 9/2/16.
- CDFW: Responsible for Marine Protective Areas (MPAs), including that off Broad Beach. Rep. part of SAP group. Concerned with Project effects on MPA - subtidal, intertidal, and turbidity. .
- Table below shows primary concerns with selected agencies:

Agency	Next Action	Concern
USACE	Formal consultation by NMFS and CDFW.	NEPA : Possibility that EIS will replace EA; ACE agreeable to integrating mitigation into adaptive management program; EFH pending.
CCC	Submittal of final design reports prior to permit issuance.	Substantial liaison with Science Advisory Panel (SAP) required to finalize monitoring and dune plans prior to permit issuance.
SLC	Review of final Project (Alt 4C) items	Approved 8/9/16.
RWQCB	APTR review	Potential for request of RWQCB-specific additional info.

PERMIT SCHEDULE STATUS AS OF 1/22/17

AGENCY	ACTION	DURATION ESTIMATE	COMPLETION DATE (earliest possible)
CCC	Commission consideration	1 day	October 9, 2015. CDP approved.
	Review/Negotiation of Permit Conditions/SAP	5-6 months	Fall 2016/Early 2017
	BBGHAD completion of "Prior to Issuance" Conditions	5-6 months	March 2017? Dependent on finalizing sand source
	Permit Issue	1-2 months	1Q-2Q 2017
SLC	Lease App. Completeness Notice	1 month	November 13, 2015
	Lease Negotiations	3 months - ongoing	N/A
	Commission consideration	1 day	Approved: 8/9/16
	Issue Final Lease	1 month	Fall 2016
	Lease Signature	1 week	Fall 2016
USACE	Submit 404b(1) alternatives analysis	2 months	August 5, 2015; supp 1/16/16 & 11/16 SUBMITTED & COMPLETE
	End formal biological consultations with CDFW re snowy plover	120 days (legal maximum)	Final Biological Opinion issued 11/14/16
	Finalize EA ¹	2 months	April 2017 ²
	Issue Draft Permit	1 week	May 2017
	Review/Negotiation of Draft Permit Conditions	2 weeks	January-March 2017
	Issue Final Permit	1 week	February/March 2017 ³
RWQCB	Submit draft 401 Certification	3 weeks	January 2016
	Negotiate 404/WDRs	2 month	Fall 2016/Early 2017
	RWQCB approval of 404/WDRs	1-2 months	1Q 2017
CALTRANS	Encroachment Permit	4.5 months	November 2014 ISSUED March 2017- reissuance as modified

¹ Longer duration if EIS is required.

² Timing dependent on finalizing monitoring and mitigation plan.

³ Timing dependent on finalizing monitoring and mitigation plan.

LA COUNTY	Parking Lot Permit	1 month	Unknown
CITY MALIBU	Traffic/signal approvals	Unknown	3Q2017

Item 10 a(i)(B)

Feb 2017- Item 10 (a)(i)(B)

SUMMARY OF CURRENT STATUS WITH ARMY CORPS

BACKGROUND: The BBGHAD needs a Clean Water Act Section 404 permit and NEPA clearance from the Army Corps. As a last major prerequisite of obtaining these entitlements, the Army Corps requested a Compensatory Mitigation Plan ("Mitigation Plan") from the BBGHAD. The BBGHAD submitted same on or about January 24, 2017.

The BBGHAD's consultant received initial feedback on the Mitigation Plan from the Army Corps on or about February 22, 2017. The Army Corps' primary comments include those from NMFS, and are as follows:

- Overall, the Mitigation Plan appears sound the agency comments primarily focus on points of clarification.
- The agencies request a cost for each credit type- BBGHAD consultant confirmed that a "price range" is sufficient.
- The Corps has asked us to prepare a mitigation checklist form for each party and habitat type. We will do so quickly.
- Army Corps requested monitoring data generated to date, including that from Fall 2016 and Spring 2017. Agencies are concerned that the pre-Project baseline monitoring has moved forward without the approved monitoring plan.
- **Army Corps staff has indicated an approximate 2- month process to complete the EA. This starts when BBGHAD submits a final monitoring plan, final mitigation plan, and sand source location.** No other open items are required to complete Essential Fish Habitat (EFH) consultation and/or the Individual Permit Process. Minor points of clarification will be needed during the finalization of the EA, but that is normal and insignificant.
- Army Corps staff has no outstanding requests for information from the Regional Board.

BBGHAD ACTION ITEMS:

1. BBGHAD Consultant to review comments and detail and revise/update mitigation plan. The bulk of the adjustments will be made prior to 2/28/17.

2. Keith Merkel to submit available monitoring data immediately. We need to make sure all agencies accept our current monitoring for the baseline condition- or we are delayed until 2018. Also, on the agency calls, apparently none of the agencies like the drone idea. Remote sampling and sensing has been dropped in latest iteration of Habitat Plan.

3. BBGHAD to restart would be good to restart our Congressional calls- monthly is best to issuance of permit. I'd like to invite the Regional Water Board.

4. BBGHAD must finalize the sand source ASAP as this needs to be included in the EA.

5. The Corps and NMFS see their "compromise" on mitigation to be the monitoring plan. They made it clear that the monitoring plan will not dictate the plan of action, but rather the agencies will. They are OK using the monitoring plan to lower mitigation requirements.

Item 10 a(ii)

- Recent letter conditionally approving revised truck traffic plan and temporary signal.

DEPARTMENT OF TRANSPORTATION

DISTRICT 7, OFFICE OF PERMITS
100 S. MAIN STREET, MS 9
LOS ANGELES, CA 90012
PHONE (213) 897-3631
FAX (213) 897-0420



Serious drought.
Help save water!

November 18, 2016

CERTIFIED MAIL

716-NMC-1827

07-LA-1-PM 56.66

Broad Beach Geologic Hazard and Abatement District
Attn: David Shender
20931 Burbank Boulevard, Suite C
Woodland Hills, CA 91367

Dear Mr. Shender,

We have completed our review of the above referenced application for the permit to install a temporary traffic signal and paved deceleration lane to facilitate the hauling of 600,000 cubic yards of sand to Broad Beach in the vicinity of Guernsey Avenue and Pacific Coast Highway, State Route 1, in the city of Malibu. We regret to inform you that your permit cannot be issued at this time due to insufficient information and/or incompatible design. The following items must be addressed and submitted for further review:

Design

1. Show and call out State Right-of-way line on all plan sheets.
2. Provide truck turn template for all turning movements.
3. Provide cross section for the new driveway across Guernsey Ave. Show dimensions and cross slopes.
4. Is the wall/fence being removed at the driveway entrance?
5. Include a note saying: "Existing condition will be restored after construction/hauling of sand has been completed."
6. See attached red marks on plan Sheets #2, 3, and 4

Traffic Engineering

7. It appears that power poles are on the proposed deceleration lane. Please address.

Permits, Electrical

8. Luminaires shall be 137W LED.
9. Pedestrian heads shall be countdown type.
10. Pushbuttons shall be APS.

Permits, Electrical Inspector

11. Pole B Type 15 TS, mount Traffic Signal indication at 17'. See red marks on Sheet S2.

Permits

12. The existing power poles in the area of the proposed deceleration lane are fixed objects and

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

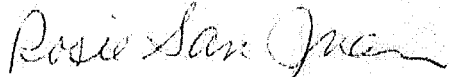
appear to be on or very close to the proposed deceleration lane. Provide a cross section detail in the area of the proposed deceleration lane where the power poles are located (near STA 3251+00 and 3249+10) showing the dimension between the proposed edge of pavement and the existing poles. Mitigation may be required.

13. Sheet S1: Revise sign M4-9b (LT) (MOD) on plan view.

Submit six (6) complete sets of revised plans (individually folded 8½ x 11). Civil engineers stamp and Signature is required on all plans. One set of plans must have a wet stamp and signature. The other sets can be copies of the original. There may be further comments or more information may be requested based on the submittal. Please return red marked plans with your submittal.

If you have any questions, call me at (213) 897-3218. Please be advised that if you do not respond within 45 days from receipt of this letter, your application is subject to cancellation without prejudice.

Sincerely,



Rosie San Juan
Permit Coordinator

Attachments: Red marked Sheets C-102, C-103, S1, S2

cc: Hung Nguyen, Design
Jeff Aragaki, Permits, Electrical
Ralph Griffo, Permits, Electrical Inspector
Elias Fayad, Inspector
File

Item 10

- Recent San Diego article about the benefits of sand nourishment

Local

B2 Local reports B5 Obituaries B6-7 Editorial & Opinion



LOGAN JENKINS
Columnist

La Jolla has become a sanctuary town for seals

Some conflicts cannot be resolved by human will. They're wired into the human psyche. God must perform an act to restore peace.

A tsunami might do it. Or a sea change in human nature.

San Diego's Exhibit A of perpetual strife is, not coincidentally, located in arguably its most beautiful stretch of coastline.

This is our Helen, the face that launched a thousand ad hominem attacks as well as a slate of lawsuits.

Let's go back to the first shot of this Hundred Years' (or so it seems) War.

In February 1988, two dozen years ago, the San Diego City Council voted to create the city's first marine mammal reserve, a 14-acre offshore area called Seal Rock.

"The seals deserve a piece of the rock, too," joked Councilman John Hartley. Councilman Tom Belt, defending the zone by La Jolla's Children's Pool (aka Cass Beach), said it "will be just a little blip on the radar screen."

Untrue words have never been spoken.

Over time, cute harbor seals and larger sea lions have commandeered the whole Rock of Gibraltar — and the surrounding Mediterranean.

They've scoured the ocean shores, turning a teeming ecosystem into a ghost habitat.

Since the mid-'90s, the sea critters have multiplied, turning the area from Cass to the sea-lion-infested Cove into a marine intruder that not only stinks but poses a health risk to swimmers.

San Diego is not a sanctuary city for immigrants, but La Jolla has evolved into a church that rules out pinniped deportation.

Despite a series of badly-hooded solutions — opening the sunnyside for flushing.

SEE JENKINS • B4

PANEL TO MAKE CALL ON JUDGE'S BANTER

Lawyers deliver arguments at discipline hearing

BY DANA LITTLEFIELD

SAN DIEGO

While presiding over misdemeanor cases in a San Diego courtroom four years ago, Judge Gary Kreepp made comments to attorneys, defendants and others that, at best, were inappropriate and



Gary Kreepp

at worst, could constitute sexual harassment, according to evidence presented at a disciplinary hearing this month.

On Thursday, about three weeks after the hearing began, lawyers in the case delivered their oral arguments, which focused on a long list of accusations against Kreepp. They include making remarks from the bench about a Mexican-American lawyer's ethnicity, addressing attorneys and interns by the nicknames

SEE JUDGE • B2

SUIT SETTLED FOR \$1M IN BORDER DEATH

U.S. to pay family of Mexican man who died after he was beaten, Tased by officers at San Ysidro station

BY KRISTINA DAVIS

SAN DIEGO

The U.S. government has agreed to pay \$1 million to settle a lawsuit that accuses federal border officers of beating and Tasing a hand-

cuffed Mexican man at the San Ysidro Port of Entry in a confrontation that ended in his death.

The settlement would be split among the five children of Anastasio Hernandez Rojas, and about a quarter of the amount would pay at-

torney costs and fees. The terms must be approved by a federal judge because there are minors involved. A hearing is set for March 2.

The lawsuit, filed in San Diego federal court, is in its seventh year and was being appealed to the 8th U.S. Circuit Court of Appeals on an issue, meaning the case was unlikely to wrap up any time soon.

"I didn't think denying relief to

the family was worth it, especially in light of the possibility of protracted litigation," said the family's attorney, Eugene Iredale. "I think the world knows and the settlement amount attests that Anastasio was wrongfully killed ... due to the conduct of the Border Patrol and CBP. It is really a badge of shame."

The U.S. Attorney's Office in San Diego is handling the case. SEE LAWSUIT • B5



HOWARD LIPIN UT PHOTOS

Waves produced by El Niño swept away much of the sand at Torrey Pines State Beach in 2015-16, leaving mostly cobblestones.

ADDING SAND FOUGHT EROSION

El Niño's big waves last year took a toll on Torrey Pines, but other areas that had sand replenished fared better

BY DEBORAH SULLIVAN BRENNAN

Last year's El Niño may have produced weak rainfall, but it triggered powerful waves that took a bite out of West Coast beaches, according to a study published this month by researchers with Scripps Institution of Oceanography and the U.S. Geological Survey.

The study, published in the Journal of Coastal Research, found that winter beach erosion was 78 percent higher than normal at 29 beaches from Washington to Southern California.

In San Diego County, four beaches

were included in the report, and three of them — Imperial, Cardiff and Solana Beach — fared relatively well amid the pounding waves. Torrey Pines Beach, however, crumbled under the ocean's onslaught. Waves swept away the sand, cutting into the shoulder of Highway 101, and leaving a rocky shoreline flanked by boulders.

The difference is related to the type and timing of sand replenishment projects at those beaches, said Scripps post-doctoral researcher Bonnie Ludka, a co-author on the study.

"We did see that extreme erosion

SEE SAND • B2



The heavy waves last year also cut into the side of Highway 101, eroding the shoulder.

PENTAGON BRASS SEEK INNOVATIONS IN WEAPON ACQUISITION PROGRAMS

Admirals, general call for greater oversight by the services to lower costs

BY CARL PRINE

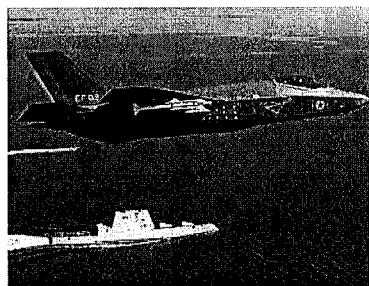
When retired Navy Vice Adm. David "Decoy" Dunaway thinks about failures in the Pentagon's procurement programs, he also contemplates what killed once-great civilizations.

"They get incredibly bureaucratic. There's a fair amount of corruption that occurs in their bureaucracies. They get invested in huge amounts of infrastructure that they can't maintain and sustain, and it's too expensive to update. And they're run by a bunch of Jennings," said Dunaway, the moderator of an introspective gathering of the nation's top military procurement bosses this week at West 2017.

Dunaway's fears played a minor chord in a lyric that has buzzed through the halls of San Diego's downtown convention centers during the course of the annual military convention and trade show: The Navy and Marine Corps need to do more to fix readiness problems as rival nations loom to challenge their military superiority.

Military acquisition is the way the armed forces' bureaucracies manage the procurement process to buy products and services. Congressional legislation scripts some of that process, but other regulations stem from the Pentagon itself.

While the goal for all the military branches is to deliver the best weap-



An P-35 jet flies over the guided-missile destroyer Zumwalt on Chesapeake Bay, Md.

ons for troops at reasonable prices for taxpayers, in recent years many programs have been plagued by massive cost overruns and long delays. Those include the much-maligned Joint Strike Fighter program, the Gerald R. Ford aircraft carrier, the Zumwalt class of destroyers and the littoral combat ships.

Dunaway, a career fighter pilot, also served as a test pilot and helmed the Naval Air Systems Command in Patuxent River, Md. So when he called for the services to "blow the culture up," he was taking direct aim at a process he knew intimately.

Ethelburg Dunaway were Navy Vice

Adm. Thomas Moore of Naval Sea Systems Command, Rear Adm. David Lewis of San Diego's Space and Naval Warfare Systems Command, Rear Adm. DeWolfe "Bulter" Miller III of the Office of the Chief of Naval Operations, U.S. Coast Guard assistant commander Rear Adm. Bruce Baffler and Brig. Gen. Joseph Shirader of Marine Corps Systems Command.

Moore pointed to the gutting of the Navy's ranks of uniformed and civilian design engineers and other technological experts — from 1,300 in 1990 to fewer than 250 in 2005. That

SEE ACQUISITION • B5

SDG&E BEING PROBED FOR POTENTIAL LOBBYING VIOLATIONS

Regulators say utility didn't have approval

BY JOSHUA EMERSON SMITH

State regulators said they're investigating San Diego Gas & Electric's efforts to influence the local adoption of government-run electricity programs, saying the company doesn't have permission to do so yet.

Officials with SDG&E and its parent company, Sempra Energy, said they've done no wrong. They said the California Public Utilities Commission cleared their specially designated marketing division to lobby on community choice aggregation, or CCA, a program that would give residents and businesses a government-run alternative to SDG&E.

Until Wednesday night, the commission didn't say it had undertaken a probe of the utility. The agency and Sempra also have spent this week giving fuller explanations for their opposing positions.

At stake are the statewide standards for how investor-owned utilities can weigh in on the program, which a growing number of cities and

SEE SDG&E • B9

LOCAL REPORTS

CRIME & PUBLIC SAFETY

Body found after car fire extinguished in Lakeside

LAKESIDE

A burned body was found inside a carengulfed in flames at the end of Mast Boulevard in Lakeside late Wednesday, a sheriff's official said.

The death is being investigated as suspicious.

Authorities had not determined as of Thursday morning whether the deceased person was a man or a woman, sheriff's homicide Lt. Ken Nelson said. He said investigators were trying to contact the registered owner of the destroyed Lexus.

The vehicle fire was reported about 11:10 p.m. where Mast ends in a cul-de-sac west of Marathon Parkway. The area is surrounded by rocky open space, low shrubs and dirt trails.

Firefighters put out the fire, then found the body, Nelson said. He would not say where in the car the body was located.

Homicide detectives were working with the arson unit, Nelson said. An autopsy will be conducted.

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Woman killed after running into freight train in Encinitas

ENCINITAS

A woman died after running into the side of a moving freight train in Encinitas Wednesday night, a sheriff's official said.

Her friends found her lying near the tracks, severely injured, and called 911 about 10:30 p.m. She died at a hospital, sheriff's Sgt. Jason King said.

He said the case appears to be a suicide, but that will be determined by the Medical Examiner's Office.

The woman, believed to be in her late 20s or early 30s, was with friends near Const. Highway 101 and Diana Street, King said.

As a southbound BNSF Railway freight train went past around 50 mph, the woman ran straight toward it. She hit the side of a car and was knocked away, King said.

The engineer didn't know the train had hit anyone, but was notified by the North County Transit District, which operates the tracks. The train stopped before reaching Solana Beach, King said.

No passenger trains were disrupted during the investigation.

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High school student arrested after social media threat

CORONADO

A social media threat against Coronado High School on Thursday prompted a school lockdown until a student was taken into custody.

The 16-year-old boy was found at home. He never went to school in the morning, a police spokeswoman said.

The threat of violence on the campus had been posted on social media and was seen by other students. They brought it to the attention of school administrators, police and Coronado Unified School District officials said.

No information about the nature of the threat was released.

Coronado police issued a social media lockdown notice about 10:35 a.m.

A second notice was issued at 10:55 a.m., saying the lockdown had been lifted and the campus was safe.

Officers traced the suspect through

the social media posting, police spokeswoman Len Corbin said.

The student was booked into Juvenile Hall on suspicion of making criminal threats.

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Scripps Mercy Hospital nurse finds missing boater there

MILLCREEK

A two-day search for a boater in Mission Bay ended Wednesday night after a Millcreek nurse saw news reports about the missing man and realized he was a patient.

Garrett Ferguson, 36, was found hospitalized, in stable condition, at Scripps Mercy Hospital. No details about his health were available.

"At this point we don't know how he got there, or why," Coast Guard spokesman Petty Officer Robert Simpson said Wednesday night.

San Diego lifeguards and the Coast Guard began looking for the Huntington Beach resident Tuesday morning after an unoccupied dinghy was found half a mile or so west of the Mission Bay channel jetty. The 8-foot inflatable boat held sand, a fishing bag, clothes and Ferguson's ID card.

Coast Guard crews were still searching for Ferguson when the nurse called San Diego police about 8:30 p.m. Wednesday, Simpson said. Police officers went to the hospital and helped the Coast Guard verify that the patient was Ferguson.

Soon after, the search was called off and Ferguson's family was notified.

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MILITARY

San Diego designated as 'Coast Guard City'

DOWNTOWN SAN DIEGO

As Rep. Scott Peters put it, San Diego Mayor Kevin Faulconer got a promotion Thursday morning. He's now in charge of an officially designated "Coast Guard City."

The Coast Guard's 29th commandant, Adm. Paul Zubik, honored San Diego with the title during a pomp-filled ceremony at the San Diego Convention Center.

San Diego becomes the nation's 21st "Coast Guard City" and the largest metropolis on the list. The award recognizes San Diego's commitment to erecting monuments to the maritime service, organizing civic celebrations and helping to boost the morale, welfare and recreational opportunities for Coast Guard personnel in the region.

The designation — bestowed with approval from Congress — lasts for five years and then will be re-evaluated.

Praising both the service and San Diego for the commendation, Peters said as American military forces continue pivoting to the Pacific region, the role of the Coast Guard within the larger military strategy will grow.

"San Diego and the Coast Guard will be at the center of their plan to reinforce the maritime strategy," said Peters, D-San Diego.

San Diego has a long relationship with the Coast Guard. In 1835, the city gave 23 acres to the service to establish its station.

Last year, the Coast Guard — part of the U.S. Department of Homeland Security — conducted 444 search and rescue missions in the San Diego region.

Zubik has long lived in San Diego, too. The commandant married his wife, Fran, 27 years ago in the city.

On Thursday, he pointed to the Coast Guard's role in protecting the city from potential terrorist attacks by sea and its ongoing work with municipal, county, federal and Mexican agencies in keeping the bustling San Diego port open for business.

Faulconer called the designation exciting and very important to San Diego. "Our city supports the men and women who served, or have retired from, the Coast Guard and their families. And we're darned proud of that," he said.

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SOUTH COUNTY

Champions to be feted at athlete training center

Chula Vista city officials, in partnership with the Chula Vista Elite Athlete Training Center, is throwing a party for its champions.

The free, public event is from 10 a.m. to 2 p.m. Saturday, and it also celebrates the ownership transfer of the former U.S. Olympic Training Center to the city.

A previously advertised fun run was canceled, however there are many other activities for attendees to participate in.

They include a festival with Olympic sports demonstrations and hands-on activities, tours of the facility, music, food trucks and more.

Attendees can learn to ride BMX bikes between 10 a.m. and 11 a.m., take archery lessons between 10 a.m. and 2 p.m., or take tours of the facility at 10 a.m., noon and 1 p.m.

There will also be kid-friendly recreational activities available.

Chula Vista champions in athletics, academics, arts, community service and other areas will be recognized for their accomplishments.

People were able to nominate themselves, an individual or team as a champion to be recognized at the event.

More than 150 individuals have been nominated.

The ceremony with city officials, members of the U.S. Olympic Committee, Elite Athlete Services employees and representatives from Point Loma Trust, will celebrate the transition at 11 a.m. in the Visitors Center courtyard.

The U.S. Olympic Committee used to be responsible for operations of the center, which is now being maintained for high-caliber athletes by Chula Vista.

The transfer of ownership was official Jan. 1, but as part of the deal with the city the Olympic Committee made a timeline funding athletic programming at least through 2020.

Point Loma Trust was selected last year by Chula Vista to operate the center. The trust will be responsible for selecting center staff that will support athletes and others training at the facility as well as programming, recruitment, revenue generation and a host of other tasks.

For more information about the Chula Vista Elite Athlete Training Center, visit www.EATCChulaVista.com.

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NORTH COUNTY

Epp named Escondido's interim city manager

ESCONDIDO

The Escondido City Council this week appointed City Attorney Jeff Epp as interim city manager, effective March 9.

City Manager Graham Mitchell announced his resignation in October after having only held the job for a year. He said his decision was made for personal reasons, but agreed to stay on until the end of 2016.

Twice the council has asked to Mitchell remain in the position until they can find a permanent replacement. Mitchell has told them his last day will be March 8 at the conclusion of that night's council meeting.

Mayor Sam Abad said last week that more than 70 candidates have applied for the permanent job.

Epp, who has been city attorney since 1996 and an Escondido employee since 1985, said he expects a hire will be made in May or June.

"The search process is going well, but we want to make sure we get the right person for the job," Epp said.

Mitchell said he has accepted another job but is not at liberty to say where just yet.

Assistant City Attorney Michael McGuinnis will serve as interim city attorney during the transition.

Mitchell, 46, was initially hired to replace Charles Gittman, who retired in early 2015 as assistant city manager in Escondido.

Several months later, Mitchell was named as the replacement for longtime Escondido City Manager City Phillips, who also retired.

Before that, Mitchell was Lemon Grove's city manager for almost 12 years and was earning \$181,824.88, plus an annual \$6,000 put into a deferred-compensation plan, when he left that post.

His starting salary in Escondido was \$203,000, and that was boosted to a base salary of roughly \$234,000 when he took over as city manager.

Before coming to Lemon Grove, a city of 26,000, Mitchell spent three years as city manager in Farmersville, a city of 10,000 east of Visalia in Tulare County.

Escondido has a population of nearly 150,000 people.

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HEALTH

Padres charity biking event raises \$2 million

SAN DIEGO

Organizers of Padres Pedal the Cause have announced that the charity event raised \$2 million for cancer research in its fourth year, besting its previous year's total by \$300,000.

The new amount is being used to fund 19 grants for four San Diego research institutions.

The coordinators recently said they had raised \$2,031,989, which was 100 percent of the money collected from the cycling event held at Petco Park on Nov. 12-13. On those days, about 1,500 cyclists embarked on rides that ranged in length from 12 to 160 miles.

Since its inception in 2013, when 531 riders participated, the event has raised a total of \$4.7 million to pay for a range of cancer research.

The money generated from the 2016 event is going to scientists at UC San Diego's Moores Cancer Center, the Sanford Burnham Prebys Medical Discovery Institute, the Salk Institute for Biological Studies and Rady Children's Hospital.

Specific grant topics aren't expected to be made public until the spring. In 2015, grants funded a range of projects from testing new drug combinations to treat metastatic lung cancer to studying drug resistance in ovarian cancer.

To date, the cycling event has funded 13 grants from 2013 through 2015. Grants generally require collaboration between award recipients at different institutions.

The nonprofit has worked to make sure that its donors can feel comfortable that their contributions are ending up in the hands of actual researchers.

Sponsorships from the Korman Family Foundation, BD, Sanofi-Emory, Wells Fargo and Qualcomm made it possible for 100 percent of 2016 donations to go toward cancer research for the first time since the event's four-year history.

This year, Padres Pedal the Cause is scheduled to take place on Nov. 11-12. It's expected to include the opportunity to bike across the San Diego-Coronado Bridge.

Registration will start in April. For more details, visit pedal.org.

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SAND

FROM B1

at Torrey Pines, but... we saw such different results for the beaches that were nourished with replacement sand, Ludka said.

The Nature Communications study pooled results from numerous West Coast scientists who were studying beach conditions in their areas, to create a regional record of sand loss.

"We combined our data sets to look at this phenomenon," Ludka said. "I think it's really important to understand how these El Niños affect the coast."

The authors analyzed those figures to reveal the unseen impact of El Niño in 2015-16. West Coast residents might have concluded that El Niño fizzled when it failed to produce predicted rains, but record heat was rolling in the water, forcing waves that crashed ashore and dragged beach sand out to sea.

The public perception was that nothing happened, but the waves were among the largest ever recorded, so the beaches responded accordingly," said lead author Patrick Bernard, a coastal geologist with the USGS.

As a result, most California beaches eroded "beyond historical extremes," the study stated, warning that this could become the new normal.

The exceptions were San Diego beaches that received sand shipments, as well as

some Pacific Northwest shorelines that had built up naturally during previous mild winters.

"The lesson there is that these wide beaches, whether they're wide naturally or were artificially created, are the first line of protection against storm erosion and flooding," Bernard said. "And for the most part they did their job."

Beaches depend on creeks and rivers that wash sediment downstream, renewing the sand supply each year.

That process faces a triple threat: The watersheds are blocked by dams and parched by drought, leaving beaches exposed to increasingly intense winter storms.

"If severe El Niño events become more common in the future as some studies suggest, this coastal region, home to more than 25 million people, will become increasingly vulnerable to coastal hazards, independently of projected sea-level rise," the study stated.

An earlier study published by Ludka and other Berkeley researchers in a journal of the American Geophysical Union last year suggested that strategic use of sand replacement could forestall those effects.

Torrey Pines Beach was one of a dozen San Diego beaches shored up in 2015 with grains similar in size to its natural sand. The offshore-constructed beach pad, however, washed away in a single, ordinary storm that winter.

During last year's El Niño, heavy waves further whittled the coastline, carving chunks

of sand from the beach and strewing cobbles along the strand.

By contrast, coarse grain sand was added to Imperial, Cardiff and Solana Beach in 2015. That replenished sand lasted several years and weathered last year's El Niño better than expected, with wide stretches of sand left intact.

"The coarser grains are harder for waves and currents to move around," Ludka said. "That's true because after the sand is lifted up into the water column, those grains fall more quickly to the bed than finer grains."

The three beaches, on average, remained 30 feet wider last year than they did during the previous El Niño year in 2009-10, Ludka said.

"Those were subject to a barrage of really big waves, and were more resilient to erosion," she said.

Although the findings suggest that beach replenishment could be a long-term strategy for fighting erosion, they also illustrate the challenges ahead for California beaches, researchers said.

"We've modified these watersheds in dramatic ways," Bernard said. "We're in a drought, and droughts of this magnitude are expected to occur more frequently. And on top of that, you've got sea level rising. We're going to have an even more limited sand supply, and we're going to need a lot more of it."

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JUDGE

FROM B1

"Bunhead," "Dimples" and "Shorty," and commenting on lawmakers' behavior during the trial.

Keep's lawyer, James A. Murphy, conceded the judge had made mistakes early in his service as San Diego Superior Court judge, particularly when he served in a busy misdemeanor department downtown.

But the attorney said Keep learned from those errors and tried not to repeat them.

"He's hard-working, he's industrious and he tries to do his best," Murphy said in the three-judge panel appointed by the state Supreme Court to preside over the hearing.

The attorney representing the San Francisco-based Commission on Judicial Performance, which initiated the formal hearing, disagreed with Keep's contention that he hadn't had enough formal instruction on how to run the department he had been assigned to in 2013, and that he tried to make it more "user-friendly" by engaging in informal banter.

"Judge Keep was an attorney for almost four decades before he assumed the bench," said Mark Llanragra, trial counsel for the commission. "It doesn't make any sense... He should have understood that this was improper."

The three-judge panel is expected to submit a report to the full commission on its findings. If they determine that

the charges have been proved by clear and convincing evidence, Keep could face a range of punishments from censure to removal from the bench.

Keep, formerly a private attorney with a practice in Escondido, was elected to the San Diego Superior Court in June 2012. When he decided in February of that year to run for an open seat on the bench, he was a longtime conservative legal activist. His past included working on cases challenging same-sex marriage, anti-abortion cases and whether President Barack Obama was born in U.S. citizen.

Among many accusations, the commission charged Keep with stating falsely on his campaign website that he was president of the Family Values Coalition and president of two political action committees.

The commission also charged that in May 2012, Keep signed and sent fundraising letters from United States Justice Foundation, which he founded and was its executive director, opposing Obama's re-election.

Keep was also accused of improperly spending \$41,796 from his personal bank account on the judicial race and not initially reporting matter expenses, which he later corrected.

The State Fair Political Practices Commission in-

vestigated the campaign violations and fined him \$6,000 in 2015.

In addition to the alleged ethics violations, which Keep denies, he is accused of engaging in conduct that "reflected a lack of proper court decorum or was otherwise improper," according to the commission.

Former Deputy City Attorney Terri Winbush, who is African-American, testified that Keep had often referred to her as "Star Parker" when she entered his courtroom. Parker is an African-American author and conservative activist.

Winbush said Keep once told her she should be flattered by the comparison and described Parker as his "beautiful."

He told her his friends had tried to set him up on a date with Parker, but it did not work out.

Winbush testified that the comments had made her uncomfortable.

Murphy argued Thursday that Keep had tried to be "collegial" while running a misdemeanor arraignment department at the downtown courthouse. Later, after Keep was named to the commission was investigating him, he was counseled by another judge against using nicknames in court and making other comments that could be deemed inappropriate.

He was too informal and he acknowledged that he was too informal," Murphy said.

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Item 12a

Treasurer's Reports

Broad Beach GHAD
Disbursements
2011 through December 31, 2016

	Expenses transferred from Fair Share account 2011	Actuals Paid 2011 (Chase)	Actuals Paid 2012 (Chase/City)	Actuals Paid 2013 (Chase/City)	Actuals Paid 2014	Actuals Paid 2015	Actuals Paid 2016	Totals
Sources of cash:								
L.A.County/GHAD Assessment/Malibu West Swim Club				\$ 3,294,658.64	\$ 2,614,517.02	\$ 3,818,816.06	\$ 3,091,324.06	\$ 12,819,315.78
Advances from homeowners/TPOA fund	\$ 2,391,857.00	\$ 266,250.00	\$ 1,378,637.00					\$ 4,036,744.00
West End Refunds/Revetment Acct					\$ 195,530.47		\$ (167,600.64)	\$ 27,929.83
Income Total:	\$ 2,391,857.00	\$ 266,250.00	\$ 1,378,637.00	\$ 3,294,658.64	\$ 2,810,047.49	\$ 3,818,816.06	\$ 2,923,723.42	\$ 16,883,989.61
Loan Advances 2012/Repayment 2013			\$ 1,216,000.00					
Administration/Accounting & Insurance								
Project Manager				\$ 18,984.38	\$ 133,471.39	\$ 149,753.08	\$ 97,329.91	\$ 399,538.76
Clerk/Treasurer			\$ 11,822.68	\$ 3,489.11	\$ 7,968.27	\$ 21,218.35	\$ 22,616.73	\$ 67,115.14
D& O Insurance/AON Ins.	\$ 6,286.00	\$ 7,509.00	\$ 7,947.00	\$ 7,947.00	\$ 7,947.00	\$ 7,947.00	\$ 8,283.00	\$ 45,919.00
L.A. County fees/Bank fees/Interest/subscriptions		\$ 2,644.09	\$ 2,529.24	\$ 84.00	\$ 171.74	\$ 175.25		\$ 5,604.32
/Print/Office/Phone/Room Rental/Internet		\$ 3,648.11	\$ 1,122.01	\$ 1,953.58	\$ 454.28			\$ 7,177.98
Transfer to Revetment Trust account					\$ 195,530.47			\$ 195,530.47
TTL Administration & Accounting	\$ 6,286.00	\$ 25,623.88	\$ 34,071.74	\$ 151,424.24	\$ 375,074.92	\$ 128,404.89		\$ 720,885.67
Annual Monitoring								
SAP/California Marine Sanctuary Foundation - Managing fees						\$ 177,902.00		
SAP/California Marine Sanctuary Foundation - Monitoring Fees								
Total						\$ 177,902.00		\$ 177,902.00
Permitting Fees								
Lobbyist Fees: Neish Inc. - CCC/Kindel Kagan/AMEC EIR	\$ 190,324.00			\$ 6,500.00	\$ 171,068.81	\$ 152,533.96	\$ 9,070.26	\$ 529,497.03
Vectis Strategies-U.S. Army Corps					\$ 10,736.95		\$ 120,000.00	\$ 130,736.95
Legal Fees:Jeffer Mangels/Elkins Kalt	\$ 346,060.00	\$ 75,000.00	\$ 720,357.41	\$ 526,454.59	\$ 570,230.93	\$ 673,062.10	\$ 686,053.55	\$ 3,597,218.58
other Legal Fees: Morgan, Miller/Colantuono								
Highsmith & Whatley/Linscott Law/Judge Reiner	\$ 55,284.00		\$ 24,400.88	\$ 41,206.98	\$ 82,187.52	\$ 79,081.50	\$ 10,427.76	\$ 292,588.64
Engineering Fees: Moffat & Nichol	\$ 1,569,530.00	\$ 104,063.25	\$ 1,197,181.99	\$ 882,222.16	\$ 828,513.78	\$ 753,623.45	\$ 1,255,162.53	\$ 6,590,297.16
ENGEO	\$ 49,867.00	\$ 16,076.92	\$ 42,177.06	\$ 5,638.15	\$ 1,102.50	\$ 40,567.50	\$ 13,607.50	\$ 169,036.63
Quality Mapping/Topanga Underground/Ramboll Envir	\$ 17,934.00		\$ 16,313.00	\$ 84,191.10	\$ 30,943.03	\$ 2,050.00	\$ 12,860.66	\$ 164,291.79
U.S. Army Corps Mitigation: The Bay Foundation							\$ 215,500.00	\$ 215,500.00
CA State Lands Commission (Back Rent)	\$ 79,343.00	\$ 10,066.67	\$ 344,217.54	\$ 321,038.98	\$ 233,253.34		\$ 51,693.48	\$ 1,039,613.01
CA State Lands Commission Financial Sec. deposit							\$ 1,350,000.00	
California Coastal Commission	\$ 17,584.00		\$ 40,000.00	\$ 37,472.00		\$ 78,912.00		\$ 173,968.00
State Water Control Board			\$ 58,340.00					\$ 58,340.00
Total Permitting Fees	\$ 2,325,926.00	\$ 205,206.84	\$ 2,442,987.88	\$ 1,904,723.96	\$ 1,928,036.86	\$ 1,779,830.51	\$ 3,724,375.74	\$ 14,311,087.79
Expense Total:	\$ 2,332,212.00	\$ 205,206.84	\$ 2,468,611.76	\$ 1,938,795.70	\$ 2,079,461.10	\$ 2,154,905.43	\$ 4,030,682.63	\$ 15,209,875.46

Fair Share Contributions:	
Advances from Individual Homeowners	3,017,028
Advances from TPOA General Fund	750,000
Total	3,767,028

#	Address	Name	Fair Share	Donation	Total FS & Donation
31528 VP		Gary Wilson	\$ 16,000.00	\$ 10,000.00	\$ 26,000.00
30944 /30948BBR		Arad	\$ 70,500.00		\$ 70,500.00
30724 PCH		Ross Family Trust	\$ 36,250.00		\$ 36,250.00
30800 BBR		Finegood	\$ 37,000.00	\$ 10,000.00	\$ 47,000.00
31376 BBR		Glaser	\$ 50,000.00		\$ 50,000.00
31232 /31236BBR		Pepperdine	\$ 79,500.00	\$ 17,500.00	\$ 97,000.00
31220 BBR		P.J. Dejoria	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
31330 BBR		Wini Lumsden	\$ 33,000.00		\$ 33,000.00
31346 BBR		Friedman	\$ 46,000.00		\$ 46,000.00
31444 BBR		Levitan	\$ 18,000.00	\$ 14,000.00	\$ 32,000.00
30708 /30760 BBR		Klein	\$ 90,000.00	\$ 10,000.00	\$ 100,000.00
31130 &31134BBR		Broad Beach LLC	\$ 34,500.00		\$ 34,500.00
31280 /31284BBR		Luanne Wells	\$ 117,500.00	\$ 17,500.00	\$ 135,000.00
31038 BBR		Mendoza	\$ 16,000.00		\$ 16,000.00
30956 BBR		Maynard	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
31368 BBR		Platt	\$ 50,000.00		\$ 50,000.00
30916 BBR		Nathanson	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
31272 BBR		Spears	\$ 75,000.00		\$ 75,000.00
30852/30856/30860		Rosenbloom	\$ 102,000.00	\$ 13,500.00	\$ 115,500.00
30940 BBR		E. Glazer	\$ 16,000.00		\$ 16,000.00
30940 BBR		Mellon	\$ 24,000.00	\$ 10,000.00	\$ 34,000.00
31030 BBR		Grossman	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
30904 BBR		Ray Romano	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
31016 BBR		Baron/Oakmont	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
31108 BBR		Jill Grey	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
31214 BBR		N. Karno	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00

#	Address	Name	Fair Share	Donation	Total FS & Donation
30962 BBR	Sitrick	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	
30712 BBR	Lotman	\$ 30,250.00		\$ 30,250.00	
31316 BBR	Douglas Kevin&Micl	\$ 44,000.00	\$ 10,000.00	\$ 54,000.00	
31020 /31022BBR	Pearlman/De Vito	\$ 77,000.00	\$ 17,500.00	\$ 94,500.00	
30918 BBR	Zaillian	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	
30974/30978/30980	Ovitz	\$ 96,000.00		\$ 96,000.00	
31138 BBR	Roski	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	
31042 BBR	Hill	\$ 50,000.00	\$ 10,000.00	\$ 60,000.00	
31212 BBR	Kauffman/Skloff	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	
30970 BBR	Sheinberg	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	
30874 BBR	Needleman	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	
30952 BBR	30952 Broad Beach	\$ 16,000.00		\$ 16,000.00	
30908 BBR	Themba Partners	\$ 39,500.00		\$ 39,500.00	
31260 BBR	Marine	\$ 16,000.00		\$ 16,000.00	
30924/30928/30930	Hess	\$ 110,999.97	\$ 17,500.00	\$ 128,499.97	
31336 BBR	Chubak	\$ 50,000.00		\$ 50,000.00	
31034 BBR	Meeham/Goldberg	\$ 40,000.00		\$ 40,000.00	
31054 BBR	Hoffman	\$ 24,000.00	\$ 10,000.00	\$ 34,000.00	
30866 BBR	Sherman	\$ 32,077.00	\$ 10,000.00	\$ 42,077.00	
30830 BBR	Koenig	\$ 20,000.00		\$ 20,000.00	
31380 BBR	Kurland	\$ 34,000.00		\$ 34,000.00	
31224 BBR	31224BBR Trust	\$ 3,000.00		\$ 3,000.00	
31058 BBR	Novograder	\$ 28,000.00	\$ 10,000.00	\$ 38,000.00	
30756 PCH	Malibu West	\$ 40,000.00		\$ 40,000.00	
31012 BBR	Brown	\$ 16,000.00		\$ 16,000.00	
30846 BBR	Ressler/Gertz	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	
31064 BBR	Smidt	\$ 40,000.00	\$ 10,000.00	\$ 50,000.00	

#	Address	Name	Fair Share	Donation	Total FS & Donation
31356/31364/31365	Bright		\$ 113,999.99	\$ 25,000.00	\$ 138,999.99
31310 BBR	Marquis		\$ 16,000.00		\$ 16,000.00
31100/31070 BBR	S.A.M Trust		\$ 48,000.00		\$ 48,000.00
31418/31430 BBR	2XMD Partners		\$ 100,000.00		\$ 100,000.00
31000 BBR	Haft		\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
30718 BBR	Coastline Properties		\$ 16,000.00		\$ 16,000.00
30900 BBR	Kelton		\$ 40,000.00	\$ 10,000.00	\$ 50,000.00
30838 BBR	Lowell		\$ 8,000.00		\$ 8,000.00
30842 BBR	Thompson		\$ 12,000.00		\$ 12,000.00
30870 BBR	Lemmon		\$ 8,000.00	\$ 10,000.00	\$ 18,000.00
30936 BBR	West		\$ 4,000.00	\$ 10,000.00	\$ 14,000.00
31240 BBR	Douglas		\$ 26,000.00	\$ 10,000.00	\$ 36,000.00
30966 BBR	Sinatra		\$ 8,000.00		\$ 8,000.00
31008/31520	Mark		\$ 11,000.00	\$ 5,000.00	\$ 16,000.00
31026 BBR	Martin		\$ 24,000.00	\$ 10,000.00	\$ 34,000.00
31048 BBR	Lawrence		\$ 12,000.00		\$ 12,000.00
31052 BBR	Stoneburner		\$ 8,000.00	\$ 10,000.00	\$ 18,000.00
31112/31118 BBR	Brosnan/Middleton		\$ 7,000.00		\$ 7,000.00
31202/31206 BBR	Attanasio		\$ 74,000.00	\$ 25,000.00	\$ 99,000.00
31250 BBR	Borman		\$ 33,000.00	\$ 17,000.00	\$ 50,000.00
31302 BBR	Kaplan Living Trust		\$ 6,000.00		\$ 6,000.00
31322 BBR	Reisbord		\$ 24,000.00		\$ 24,000.00
31324 BBR	Gottlieb		\$ 10,000.00	\$ 10,000.00	\$ 20,000.00
31340 BBR	Bauer		\$ 26,000.00		\$ 26,000.00
31350 BBR	Fenton		\$ 12,000.00		\$ 12,000.00
31368 BBR	Mutchnik		\$ 8,054.00		\$ 8,054.00
31454 BBR	Curtis		\$ 8,000.00	\$ 10,000.00	\$ 18,000.00

#	Address	Name	Fair Share	Donation	Total FS & Donation	.
31228 BBR		Arnold				
30826 BBR		O'Connor				
30810 BBR		Leigh				
			\$ 3,021,130.96	\$ 509,500.00		

Item 14

Reconsideration of West End Refund Resolution

Feb 2017- Item 14

Reconsideration of West End Refunds

BACKGROUND: In January 2015 and February 2015, the Board contemplated a new assessment in light of the then-recently learned information that the CCC and other agencies would not permit direct sand deposition west of 31380 Broad Beach Road. The Board determined that, to be fair to west end owners in any future assessment scheme where the west end would not receive direct sand deposition, the west end owners should receive a credit of assessment funds paid or owing under the 2012 Assessment (where all BBGHAD parcels paid 100% of the assessment) from January 1, 2015 (the date on which direct west end sand deposition became impossible) through June 30, 2015, for those amounts exceeding the levy for West End Parcels in the 2015 Engineer's Report (west end owners responsible for 25% of the total assessment formulated in that Engineer's Report). By its own terms, the 2015 assessment passed by BBGHAD owners in September 2015 is retroactive to July 1, 2015.

In October 2015, the Board passed Resolution No. 2015/06, which establishes the refund outlined above, and:

- directed that the agreement memorializing the refund to apply to all successors and assigns of the subject west end parcels;

- conditions the refund on west end owners releasing any rights they may have to: (a) contest or object to the Project or any assessment required to fund the Project, or (b) claim a refund for the BBGHAD portion of assessment paid or owing from or after July 1, 2011, including the withdrawal or dismissal of any such refund claims submitted to date.

To date, 1 of 22 affected property owners has signed the Settlement Agreement in accordance with Resolution No. 2015/06. A BBGHAD Board Member and certain BBGHAD owners have requested that the BBGHAD Board reconsider certain aspects of the settlement terms authorized by Resolution No. 2015/06. At the January 2017 Board meeting, the Board directed Project Counsel to propose a resolution of the issue reflective of the input received at the January 2017 Board meeting.

PROPOSED RESOLUTION:

The attached, revised West End Agreement captures Project Counsel's current thinking and reflects the January 2017 Board discussion. See red-lined language highlighted in green in Section 3. Overall, in exchange for a refund of a portion of assessment monies paid covering the period of January 1, 2015 to June 30, 2015, the West End Owners would to release and waive claims:

a) associated with the Project, including those related to the BBGHAD assessment, up to the date of signing the proposed Agreement;

b) associated with the Engineer's Reports upon which the BBGHAD assessment has been based since 2012, including the current Engineer's Report which was approved and ratified in September 2015.

PROJECT COUNSEL'S ANALYSIS:

1. It seems fair for west end owners to waive all claims against the Project up to the date of signing the Agreement. The statutes of limitation for most or all such claims have likely expired in any event. For example, the CCC's adoption of the October 2015 CDP and the SLC's August 2016 Lease Agreement appear beyond challenge. It is not recommended to ask west end owners to waive potential or actual future rights they may have associated with future entitlements to be received for the Project or events associated with the Project-- especially when other, non-west end owners and third parties (including environmental groups) have such rights.

2. It seems fair for west end owners to waive all claims associated with all Project-related assessments paid by west end owners through the date of signing the proposed Agreement. West end owners would receive their refund of the "overpayment" from 1/1/15 to 6/30/15. If any west end owners claim an entitlement to more than this refund, it could be viewed as overreaching or an attempt to gain a windfall. Further, west end owners would retain rights regarding future assessment payments associated with future Engineer's Reports (see below).

3. The previously proposed agreement asked west end owners to waive their rights/claims to any and all refunds of BBGHAD assessment payments made from the inception of the BBGHAD and to waive any claim for future refunds. This provision may have dissuaded some from signing. As a compromise, it appears fair for west end owners to waive all refund claims associated with the current Engineer's Report ("ER") (as enacted in Resolution Nos. 2015/04 and 05) and the prior ER (enacted 2012). In other words, west end owners would waive all

prior BBGHAD refund claims and waive all refund claims associated with the ER to date. As long as the current ER is in place, west end owners would also waive refund claims. This seems fair since the current ER assesses west end owners at only 25% of the full assessment. In the proposed scenario, west end owners would retain rights associated with any future Engineer's Reports-- just like other BBGHAD owners.

**BOARD OF DIRECTORS OF THE BROAD BEACH
GEOLOGIC HAZARD ABATEMENT DISTRICT**

RESOLUTION NO. 2017/01

**RESOLUTION AUTHORIZING REVISED SETTLEMENT WITH OWNERS OF
REAL PROPERTY WEST OF 31380 BROAD BEACH ROAD**

WHEREAS, on September 12, 2011 the Malibu City Council adopted Resolution No. 11-41 approving and ordering the formation of the Broad Beach Geologic Hazard Abatement District ("BBGHAD") and appointing five landowners to serve as its initial Board of Directors (BBGHAD Board);

WHEREAS, the BBGHAD is a political subdivision of the State of California, governed in accordance with GHAD Law (Pub. Res. Code §§ 26500 *et seq.*); and a legal entity separate and distinct from the City of Malibu and BBGHAD operations are independent of City functions;

WHEREAS, on November 6, 2011, the BBGHAD Board approved the Plan of Control, the document that describes the duties and responsibilities of the BBGHAD;

WHEREAS, Public Resources Code sections 26587 and 26650 *et seq.* authorize, after a noticed public hearing, the levy and collection of an assessment pursuant to the Municipal Improvement Act of 1913, Streets & Highways Code sections 10000 *et seq.*, upon specially benefited property within the BBGHAD to pay for the construction, improvement, maintenance and operation of BBGHAD improvements. Article XIII D of the California Constitution identifies additional requirements for the levy and collection of assessments;

WHEREAS, on January 22, 2012, the BBGHAD Board held a public hearing and adopted Resolution No. 2012/01, which, among other points, declared the BBGHAD Board's intent to order a proposed assessment within the territory of the BBGHAD and fixed a hearing date of March 11, 2012 to consider the proposed assessment and any protests thereon; the assessment was based on the Engineer's Report dated January 18, 2012 ("2012 Engineer's Report") and attached to Resolution No. 2012/01;

WHEREAS, on March 11, 2012, the BBGHAD Board conducted a public hearing in accordance with Public Resources Code § 26650 *et seq.* and Article XIII D of the California Constitution and thereafter enacted Resolution Nos. 2012/03 and 2012/04 which, among other actions: (a) confirmed the BBGHAD Clerk's certification of the tabulation of assessment ("2012 Assessment") ballots, (b) based upon the Clerk's tabulation of the ballots, found that a majority protest did not exist on the 2012 Assessment within the meaning of Article XIII D, of the California Constitution, and (c) confirmed the 2012 Assessment against each BBGHAD parcel as provided in the 2012 Engineer's Report;

WHEREAS, the 2012 Assessment, which was levied at the uniform annual rate of \$400 per linear foot of beach frontage (plus cost of living increases which, as of 2015, increased the assessment to approximately \$418 per linear foot of beach frontage), contemplates the BBGHAD's placement of significant sand nourishment throughout the BBGHAD's boundaries, including the western portion of the BBGHAD;

WHEREAS, while the BBGHAD has not yet secured all permits to conduct the contemplated beach restoration as specified in California Coastal Commission Coastal Development Permit No. 4-15-0390 and various permits and entitlements from other governmental agencies (the "Project"), the BBGHAD has recently learned of facts and permitting realities that a portion of the west end of the BBGHAD, west of 31380 Broad Beach Road ("West End Parcels," as identified in Exhibit A) will not receive direct sand nourishment as part of the Project because the Project, as originally conceived, cannot achieve regulatory approval without changes to its design and without significant mitigation;

WHEREAS, on July 19, 2015, after receiving input from some owners of West End Parcels ("West End Owners") and others, and having conducted significant outreach to all BBGHAD property owners regarding the BBGHAD's inability to deposit sand nourishment west of 31380 Broad Beach Road as part of the Project, the BBGHAD Board adopted Resolution No. 2015/03, declaring its intention to assess against the BBGHAD parcels for 2015 and subsequent years all or part of the amounts specified in the Engineer's Report dated July 15, 2015 ("2015 Engineer's Report") and called for a BBGHAD property owner vote on the new assessment ("2015 Assessment") in accordance with Resolution No. 2015/03, the 2015 Engineer's Report, and Article XIII D of the California Constitution;

WHEREAS, the 2015 Engineer's Report recommends an annual levy of \$595 per linear foot of beach frontage for each residential parcel beginning at 31380 Broad Beach Road and all parcels eastward. Based on reduced special benefit arising from the District's inability to directly place sand on West End Parcels, the 2015 Engineer's Report recommends an annual levy of 25% of that amount, or \$148.75 per linear foot of beach frontage, for the West End Parcels;

WHEREAS, on September 6, 2015, the BBGHAD Board of Directors ("BBGHAD Board") held a public hearing on the 2015 Assessment. After the close of the public hearing, the BBGHAD Clerk opened the sealed ballots that had been submitted and not withdrawn prior to the close of the hearing and tabulated them to determine the vote on the proposed assessment. In tabulating the ballots, the BBGHAD Clerk weighted them according to the proportional financial obligation of the affected parcels. The BBGHAD Clerk certified the tabulation of the ballots and the BBGHAD Board accepted this certification pursuant to Resolution No. 2015/04;

WHEREAS, Based on that tabulation, the BBGHAD Board found that a majority protest within the meaning of Article XIII D of the California Constitution did not exist and confirmed the 2015 Assessment pursuant to Resolution No. 2015/05;

WHEREAS, some West End Owners raised concerns about amounts paid under the 2012 Assessment, in light of the fact that the area of the BBGHAD west of 31380 Broad Beach Road will not receive direct sand nourishment as part of the Project;

WHEREAS, among other principles, the BBGHAD Board seeks to ensure that the BBGHAD: a) complies with all legal requirements, b) levies and collects assessments commensurate with the special benefits received by each and every real property owner within the BBGHAD, and c) treats each and every BBGHAD property owner in a fair, just, and equitable manner;

WHEREAS, on October 25, 2015, the BBGHAD Board passed Resolution No. 2015/06 authorizing a settlement with BBGHAD owners west of 31380 Broad Beach Rd.;

WHEREAS, at the request of a BBGHAD Board Member and certain BBGHAD owners, the BBGHAD Board has reconsidered certain aspects of the settlement terms authorized by Resolution No. 2015/06; and

WHEREAS, although the BBGHAD has valid defenses against any refund claims asserted by West End Owners, the BBGHAD Board desires to settle potential claims to avoid the delay, expense and uncertainty of litigation.

NOW THEREFORE, The Board of Directors of the BBGHAD HEREBY RESOLVES THAT:

1. Provided that West End Owners execute a written settlement agreement ("Agreement") containing the relevant terms specified in this Resolution, including, among other provisions, a provision specifying that the Agreement shall be binding upon successors in interest to the BBGHAD real estate owned by the West End Owners, the BBGHAD will credit West End Owners assessment funds paid or owing under the 2012 Assessment from January 1, 2015 through June 30, 2015, to the extent that those amounts exceed the levy recommended for West End Parcels in the 2015 Engineer's Report, PROVIDED, HOWEVER, THAT the property owner receiving such a credit waives and releases, in a written form reasonably acceptable to the BBGHAD's Project Counsel, any rights he, she, or it may have to: (a) contest or object to the Project or any assessment required to fund the Project as of the execution date of the agreement, and (b) claim a refund for the portion of the BBGHAD assessment paid or owing from or after July 1, 2011 through and including all assessments associated with the levy adopted by BBGHAD Board Resolution No. 2015/05, including the withdrawal or dismissal of any such refund claims (administrative or otherwise) submitted to date.

2. Project Counsel is directed to prepare revised, written Agreements in accordance with this Resolution.

3. This Resolution shall become effective immediately upon its passage and adoption.

DATED: February __, 2017

NORTON KARNO, Chair

I, Heike Fuchs, Clerk of the Broad Beach Geologic Hazard Abatement District, hereby certify that the foregoing resolution was duly adopted by the Board of Directors of the District at a regular meeting held on the 22h day of January 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Heike Fuchs, Clerk of the BBGHAD
Board

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this day of , 20176 (Execution Date), between the Broad Beach Geologic Hazard Abatement District ("District"), a district formed under GHAD law (Pub. Res. Code §§ 26500 et seq.) and [name] ("Landowner"), the owner of property located at [address], (collectively "Parties").

RECITALS

A. On September 12, 2011 the Malibu City Council adopted Resolution No. 11-41 approving and ordering the formation of the District, a legal entity separate and distinct from the City of Malibu;

B. Public Resources Code sections 26587 and 26650 *et seq.* authorize, after a noticed public hearing, the levy and collection of an assessment pursuant to the Municipal Improvement Act of 1913, Streets & Highways Code sections 10000 et seq., upon specially benefited property within the District to pay for the construction, improvement, maintenance and operation of District improvements. Article XIII D of the California Constitution identifies additional requirements for the levy and collection of property related assessments;

C. On January 22, 2012, the District Board ("Board") held a public hearing and adopted Resolution No. 2012/01, which, among other points, declared the Board's intent to order a proposed assessment within the territory of the District and fixed a hearing date of March 11, 2012 to consider the proposed assessment and any protests thereon; the assessment was based on the Engineer's Report dated January 18, 2012 ("2012 Engineer's Report") and attached to Resolution No. 2012/01;

D. On March 11, 2012, the Board conducted a public hearing in accordance with Public Resources Code § 26650 et seq. and Article XIII D of the California Constitution and thereafter enacted Resolution Nos. 2012/03 and 2012/04 which, among other actions: (a) confirmed the District Clerk's certification of the tabulation of assessment ("2012 Assessment") ballots, (b) based upon the Clerk's tabulation of the ballots, found that a majority protest did not exist on the 2012 Assessment within the meaning of Article XIII D, of the California Constitution, and (c) confirmed the 2012 Assessment against each District parcel as provided in the 2012 Engineer's Report;

E. The 2012 Assessment, which was levied at the uniform annual rate of \$400 per linear foot of beach frontage (plus cost of living increases which, as of 2015, increased the assessment to approximately \$418 per linear foot of beach frontage), contemplates the District's placement of significant sand nourishment throughout the District's boundaries, including the western portion of the District ("Project");

F. While the District has not yet secured all permits to conduct the contemplated beach restoration as specified in California Coastal Commission Coastal Development Permit No. 4-15-0390 and various permits and entitlements from other governmental agencies (the "Project"), the District has recently learned of facts and permitting realities that a portion of the

west end of the District, located west of 31380 Broad Beach Road ("West End Parcels") will not receive direct sand nourishment as part of the Project because the Project, as originally conceived, cannot achieve regulatory approval without changes to its design and without significant mitigation;

G. On July 19, 2015, after receiving input from some owners of West End Parcels and others, and having conducted significant outreach to all District property owners regarding the District's inability to deposit sand nourishment west of 31380 Broad Beach Road as part of the Project, the Board adopted Resolution No. 2015/03, declaring its intention to assess against District parcels for 2015 and subsequent years all or part of the amounts specified in the Engineer's Report dated July 15, 2015 ("2015 Engineer's Report") and called for a property owner vote on the new assessment ("2015 Assessment") in accordance with Resolution No. 2015/03, the 2015 Engineer's Report, and Article XIII D of the California Constitution;

H. The property located at [address] is a West End Parcel;

I. The 2015 Engineer's Report recommends an annual levy of \$595 per linear foot of beach frontage for each residential parcel beginning at 31380 Broad Beach Road and all parcels eastward. Based on reduced special benefit arising from the District's inability to directly place sand on West End Parcels, the 2015 Engineer's Report recommends an annual levy of 25% of that amount, or \$148.75 per linear foot of beach frontage, for the West End Parcels;

J. On September 6, 2015, the Board held a public hearing on the 2015 Assessment. After the close of the public hearing, the Board Clerk opened the sealed ballots that had been submitted and not withdrawn prior to the close of the hearing and tabulated them to determine the vote on the proposed assessment. In tabulating the ballots, the Board Clerk weighted them according to the proportional financial obligation of the affected parcels. The Board Clerk certified the tabulation of the ballots and the Board accepted this certification pursuant to Resolution No. 2015/04;

K. Based on that tabulation, the Board found that a majority protest within the meaning of Article XIII D of the California Constitution did not exist and confirmed the 2015 Assessment pursuant to Resolution No. 2015/05;

L. Some owners of West End Parcels have raised concerns about amounts paid under the 2012 Assessment, in light of the fact that the West End Parcels will not receive direct sand nourishment as part of the Project;

M. Among other principles, the Board seeks to ensure that the District: a) complies with all legal requirements, b) levies and collects assessments commensurate with the special benefits received by each and every real property owner within the District, and c) treats each and every District property owner in a fair, just, and equitable manner;

N. Although the District has valid defenses against any refund claims asserted by owners of West End Parcels, the Board desires to settle potential claims to avoid the delay, expense and uncertainty of litigation.

NOW THEREFORE, the Parties agree as follows:

1. **Incorporation by Reference.** Recitals A – N above are incorporated by this reference.
2. **Limited Refund.** The District will refund to Landowner for assessment funds paid or owing under the 2012 Assessment from January 1, 2015 through June 30, 2015 to the extent that those amounts exceed the levy recommended for West End Parcels in the 2015 Engineer's Report ("Refund").
3. **Waiver and Release of Rights.** Landowner waives and releases, any rights [he, she, or it] may have to: (a) contest or object to the Project or any assessment required to fund the Project as of the Execution Date, and (b) claim a refund for the portion of the BBGHAD assessment paid or owing from or after July 1, 2011 through and including all assessments associated with the levy adopted by BBGHAD Board Resolution No. 2015/05. Further, Landowner agrees to withdraw or dismiss any claim for a refund submitted prior to the date hereof.
4. **No Legal Action.** Upon execution of this Agreement, Landowner agrees that [he, she, or it] will not pursue any legal action to claim or enforce any rights waived and released under this Agreement.
5. **Release.** In exchange for the Refund, and subject to the other terms and conditions of this Agreement, Landowner releases, waives, acquits, remises, and forever discharges 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 Landowner has or may have against the BBGHAD Released Parties, arising out of, or in any way related to the 2012 Assessment or the Project, except as provided in this Agreement.
6. **Waiver of Cal. Code Civ. Proc. § 1542.** Landowner being fully aware of the meaning of California Civil Code §1542, and on the risks attendant with waiver thereof, expressly waives any rights he, she, or it may have, or claims to have against the BBGHAD Released Parties, or any of them, arising out of, or in any way related to the Refund and/or the 2012 Assessment 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."

Landowner

7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of California.
8. **Binding on Successors.** All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their assigns, heirs, administrators, executors, successors and affiliates.
9. **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, Cal. Civil Code § 1654 is waived and deemed inapplicable to the interpretation of this Agreement.
10. **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.
11. **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 other than those expressly specified 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.
12. **Effective Date.** This Agreement shall become effective on the date that both parties execute this Agreement.
13. **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.

14. **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.

DATED: _____, 2017~~6~~

[Landowner]

BROAD BEACH GEOLOGIC HAZARD
ABATEMENT DISTRICT

By: _____
NORTON KARNO, Chairman of the Board