



Council Agenda Report

To: Mayor Silverstein and the Honorable Members of the City Council

Prepared by: Rob DuBoux, Public Works Director/City Engineer

Approved by: Steve McClary, City Manager

Date prepared: June 5, 2023

Meeting date: June 26, 2023

Subject: Broad Beach Geological Hazard Abatement District Status

RECOMMENDED ACTION: Receive an update on the Broad Beach Geological Hazard Abatement District (BBGHAD).

FISCAL IMPACT: There is no immediate fiscal impact on the City. Any proposed assessments would be supported by a detailed Engineer's Report and would be paid for by the property owners within the BBGHAD.

WORK PLAN: This item was not included in the Adopted Work Plan for FY 2022-23. This project is part of normal staff operations.

DISCUSSION: For decades, various portions of Broad Beach were subjected to beach erosion and emergency repairs. In response to this, the property owners on Broad Beach approached the City to form a Geologic Hazard Abatement District for the purpose of constructing protective measures and to restore the beach area. The proposed measures included beach nourishment and rehabilitation of the dunes with associated vegetation and habitat. The project would create an approximate 65'-75' wide dry sand beach and 40'-60' wide restored dune area. The District would fund these improvements along with future beach sand replenishment.

On June 6, 2011, a petition for the formation of the BBGHAD was submitted by Kenneth Ehrlich, on behalf of the Trancas Property Owners Association (TPOA). The City Clerk verified that the signatures affixed to the petition represent owners of not less than 10 percent of the real property to be included within the proposed GHAD.

On September 12, 2011, Council held a public hearing to consider petitions for the formation of the District. Since the City did not receive a majority of the property owners objecting to the formation, Council approved the formation of the District. The BBGHAD consists of 128 property owners within a section of Broad Beach between Trancas Creek and Lachuza Point. The BBGHAD's purpose is to restore the eroded portion of the beach by placing 300,000 cubic yards of sand every five years and up to 75,000 cubic yards during other years, the restoration and maintenance of 10 acres of planted dunes and performing beach monitoring and biological studies to gauge the project performance.

The BBGHAD has obtained permits and entitlements for the project from the California Coastal Commission, State Lands Commission, Army Corps of Engineers, Regional Water Quality Control Board, Los Angeles County, and Caltrans. The representatives from the BBGHAD have been coordinating the project with the City and addressing any concerns regarding the project, including the traffic impacts.

The BBGHAD has extensively studied sand transport methods associated with the Project. Among other methods and sand sources, the BBGHAD studied offshore sand delivery by importing sand by barge or self-contained dredge from British Columbia, Mexico, or more southern areas of Santa Monica Bay. The BBGHAD has also studied countless inland sand sources which proposed to deliver sand by rail and/or truck. To date, almost all of the offshore sand sources cannot meet the sand specification required by Section 8 of the BBGHAD's CDP and transport distances render the product fatally expensive.

Similarly, transport costs have prevented the BBGHAD from negotiating with many potential inland sand providers. The BBGHAD has also studied the use of local sand (Ventura County quarries) and transport to the Project site by truck to the coast and then trans-loading the product into barges at a Ventura county harbor for final delivery. The extra handling required by trans-loading proved prohibitively expensive for the Project. The BBGHAD's current permitting includes truck transport of sand from an inland quarry to the Project site. Still, the BBGHAD continues to study potential local offshore sand sources coupled with offshore delivery, which could solve various continuing issues over trucking.

Since this date, the BBGHAD has spent more than \$23 million on project studies and permitting. Project funding is obtained by special assessments from the 128 property owners within the BBGHAD boundaries. Future funding for the sand nourishment, monitoring and studies will be obtained by a special assessment placed on the 128 property owners.

The Malibu West homeowners association owns the Malibu West Beach Club, located at south of the Broad Beach Road and Trancas Canyon Road intersection. This property is located within the BBGHAD. According to the records from the BBGHAD, the Malibu West Beach Club has paid their assessments from 2012 to 2019. Since 2019, it has not paid

any BBGHAD assessments. The property now owes over \$300,000 in delinquent assessments. If the Malibu West Beach Club does not pay their assessments, including back payments, the BBGHAD can record a lien against the property, liquidate its lien (Streets and Highway Code §§ 10403-10414). The BBGHAD has attempted to resolve this issue and has indicated they will attempt again with the hope of resolving their issues in a mutually agreeable manner.

At the April 11, 2023 City Council meeting, Council requested staff to bring back a report on the requirements for dissolution of the District. California Public Resource Code Section 26567.1(a) provides the following circumstances to dissolve an assessment district:

1. The corporate powers have not been used, there is a reasonable probability that those powers will not be used in the future, and the district holds no significant liquid assets (§ 26567.1 (a)(1));
2. By a unanimous vote to dissolve the District by the Board of Directors, or by a vote to dissolve by the property owners resulting in over 50% of the assessed value of the property in the district (§ 26567.1 (a)(2));
3. The district has not levied or collected any assessments and holds no significant assets (§ 26567.1 (a)(3); and
4. The district has not substantially complied with a material condition of the resolution of formation adopted by the City (§ 26567.1 (a)(4))

Corporate Power Have Not Been Used

Under this section, the Council may dissolve the District by a resolution if the corporate powers have not been used, there is a reasonable probability that those powers will not be used in the future, and the District holds no significant assets. The District and their Board of Directors have been working on a project design and associated permitting since 2011. The Board of Directors conducts routine meetings to discuss various project elements. The Board of Directors has been collecting special assessments from the property owners and has significant funds to perform the design of the project. Therefore, CA Public Resource Code §26567.1(a)(1) would not apply.

Vote to Dissolve

The District may dissolve by a unanimous vote of the Board of Directors of the District or by a vote of the property owners within the District. The property owner vote must result in over 50% of the assessed value of the properties within the district to dissolve the district. There has been no indication that the Board of Directors of the District seek to dissolve the District. However, Council has received several letters requesting assistance in dissolution of the District. Property owners can request the BBGHAD Board of Directors to conduct a vote to dissolve. If there is a successful vote to dissolve the District, any assessment funds would be returned to the property owners on a pro-rata share and according to the methodology outlined in the Engineer's Report.

Levied or Collected any assessments

An assessment district can be dissolved if there have been no levied or collected assessments. Based upon the District's documentation, the District has been collecting assessments and using those funds for the design of the project since 2012. Therefore, CA Public Resource Code §26567.1(a)(3) would not apply.

Substantially Complied with a Material Condition of the Resolution of Formation

Resolution 11-41, which was adopted by the City on September 12, 2011, orders the formation of the Broad Beach Geological Abatement District and appointing property owners in the District as the initial Board of Directors. Since this date, the District's Board of Directors have been actively working on a project design and permitting to replenish the beach and rebuild the dunes. There is no indication or facts that suggest that the District has not complied with a material condition of Resolution 11-41. Therefore, CA Public Resource Code §26567.1(a)(4) would not apply.

Conclusion

Based upon CA Public Resource Code §26567.1 and the available facts, the only way the District could be dissolved would be through unanimous vote of the Board of Directors of the District or by a majority vote of the property owners within the District.

If the District was dissolved, the property owners would still be required to address the concerns of the Coastal Commission in regard to the temporary rock revetment installation in accordance with their Emergency Coastal Development Permit.

ATTACHMENTS: None