

**BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT**

**REGULAR MEETING AGENDA**

**Sunday December 14, 2014; 1:30 p.m.**

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

**Regular Session**

- 1) **Call to Order**
- 2) **Roll Call**

**Closed Session**

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

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

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

**Resumption of Regular Session – approximately 1:45 p.m.**

- 3) **Adoption of Agenda**
- 4) **Approve Summary of Actions from November 16, 2014 & October 26, 2014 Meetings**

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

- 5) **Ceremonial/Presentations**

None.

- 6) **Consent Calendar**

None.

- 7) **Public Hearings**

None.

- 8) **New Business**

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

Staff recommendation: Authorize Chair to execute Agreement.

**9) Old Business**

- a. Permitting and Regulatory Process Status. (Project Manager and Engineer). Report to include project regulatory status update, including:
  - (i) Lead Agency update: CCC, SLC, and Army Corps.
  - (ii) Responsible & Consulting Agency update: RWQCB, NMFS, Cal. DFW, CalTrans, etc.
- b. Permitting Outreach & Strategy Update. (Project Manager) Report to include status update on agency advocacy, stakeholder outreach, and related matters.

**10) GHAD Officer Reports**

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

**11) GHAD Board Member Reports**

**12) Public Comment - Non-Agenda Items**

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

**13) Future Meeting**

Next Meeting: January 11, 2015; 9:00 a.m.  
Location: 31330 Broad Beach Road, Malibu, CA 90265

**14) Adjournment**

# **AGENDA ITEM 2a**

Kenneth A. Ehrlich  
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Ref: 11402-0002

ELKINS  
KALT  
WEINTRAUB  
REUBEN  
GARTSIDE LLP

December 9, 2014

**VIA E-MAIL (mlevinson@foxrothchild.com) AND U.S. MAIL**

Mark Levinson  
Fox Rothchild LLP  
1800 Century Park East, Suite 300  
Los Angeles, CA 90067

Re: Broad Beach Restoration Project ("Project");  
Magidson Residence, 30822 Broad Beach Road, Malibu, CA 90265  
("Magidson Property")

Dear Mr. Levinson:

This letter follows our recent discussions with your client's in-house counsel Jim Hornstein. The BBGHAD seeks to clarify its position to the Magidson Trust in connection with filling the revetment gap at the Magidson Property with rocks of similar or identical specification to the revetment in the area surrounding the Magidson Property ("Gap Project"). We hope that further explanation will dispel the claims in your letters and elsewhere that the BBGHAD's proposed remedial plan is "punitive" or "discriminatory" in any way. Quite simply, and despite the factual history, the BBGHAD seeks to resolve this pending issue in a fair and transparent manner, and move forward with its mission of restoring the sandy beach and dune system of all of Broad Beach.

We hope the following points lead to the Magidson Trust's further understanding of the situation:

-- In 2010, with the exception of the Magidson Trust, the Broad Beach property owners benefitting from the emergency permits issued for the revetment paid individually for their portions of the revetment; these payments were made pursuant to a uniform, consistent, and objective formula on a lineal foot basis, whether or not the homeowner was a member of the Trancas Property Owners Association.

-- The BBGHAD did not exist at the time that the revetment was permitted or constructed in 2010.

-- The BBGHAD must treat all BBGHAD property owners fairly and in accordance with applicable laws.

-- The BBGHAD Board has already shown its support for the Gap Project.

-- The BBGHAD supports the Magidson Trust's independent completion of the Gap Project if it does not impede the BBGHAD's ongoing permitting efforts and proposed construction of Broad Beach Restoration Project ("BBGHAD Project").

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-- If the parties agree on terms, the BBGHAD will undertake the Gap Project as a means to assist the Magidson Trust.

-- The BBGHAD does not seek to profit financially from the Gap Project.

-- The BBGHAD has neither budgeted nor assessed for the Gap Project.

-- Since it would be unfair and likely contrary to California law for the BBGHAD to use assessment payments from other BBGHAD property owners to pay for the Gap Project, the Magidson Trust must fund the Gap Project if the BBGHAD is to undertake the work as part of the BBGHAD Project.

-- To ensure that there is no financial risk for the BBGHAD, it must receive payment for the Gap Project from the Magidson Trust before any work begins.

The above points underscore BBGHAD Board's September 2014 action to assume responsibility for the Gap Project under the following terms:

1. The BBGHAD will attempt to obtain the permitting and entitlements for the Gap Project, and complete the construction work for the Gap Project as part of the BBGHAD Project, with the Gap Project rocks located at the final location approved by the various permitting agencies, all conditioned upon the Magidson Trust first providing the BBGHAD Project Manager with 1.5 times the total dollar amount of the following ("Magidson Deposit") in immediately negotiable funds within 5 days of the Magidson Trust's receipt of all of the "TBD" component amounts:

- a. hard costs of completing the Magidson Project (construction costs, material costs, including appropriate contingency amount): TBD
- b. the Magidson Trust's share of the 2010 emergency permitting soft costs and required deposits:  $\$202/\text{ft}$  for soft costs +  $\$229/\text{ft}$  for required deposits x 126' (Magidson Trust frontage) =  $\$54,306$
- c. actual costs to remove side/flanking barriers installed by neighbors to combat erosion caused by the gap: TBD
- d. estimated BBGHAD soft costs for the Magidson Project:  $\$40,000$

2. The BBGHAD Project Manager will cause the Magidson Deposit to be placed in an interest bearing account at a federally insured bank [and provide documentation of same to the Magidson Trust].

3. If the BBGHAD's efforts are unsuccessful in obtaining the necessary permitting for the Magidson Project, "a" and "c" above will be refunded to the Magidson Trust, including any interest accrued.

4. If the BBGHAD obtains the permits and entitlements necessary for the Gap Project, and the Gap Project is constructed, no later than 60 days after completion of the Gap

Mark Levinson  
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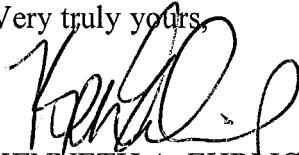
Project, the BBGHAD will refund to the Magidson Trust any remaining amount(s) of components "a", "c", and "d" of the Magidson Deposit.

5. If the BBGHAD obtains the permits and entitlements necessary for the Gap Project and the BBGHAD's Project Manager determines that amounts in excess of the Magidson Deposit will be needed to complete the Magidson Project, the Magidson Trust must provide such additional, immediately negotiable funds to the BBGHAD Project Manager within 48 hours of the BBGHAD's written request for same.

6. Under no circumstances will the Magidson Trust challenge or object to any permit or entitlement for the BBGHAD Project. If the Magidson Trust communicates any objections to either the BBGHAD Project or the Gap Project to any third-party (including, but not limited to any public agency, entity, or person who is not a signatory to a BBGHAD-Magidson Trust agreement), any agreement shall be null and void.

As time is of the essence, please provide us with your response as quickly as possible.

Very truly yours,



KENNETH A. EHRLICH,  
a professional corporation of  
Elkins Kalt Weintraub Reuben Gartside LLP

cc: Mark Goss, Project Manager  
BBGHAD Board of Directors



Fox Rothschild LLP  
ATTORNEYS AT LAW

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**William Mark Levinson**

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Email Address: [mlevinsonfoxrothschild.com](mailto:mlevinsonfoxrothschild.com)

December 9, 2014

**VIA E-MAIL: [NORTON@BBGHAD.COM](mailto:NORTON@BBGHAD.COM); [MARSHALL@BBGHAD.COM](mailto:MARSHALL@BBGHAD.COM);  
[KEHRLICH@ELKINSKALT.COM](mailto:KEHRLICH@ELKINSKALT.COM) AND UPS OVERNIGHT**

Norton Karno, Chair  
Marshall Grossman, Esq., Vice-Chair  
Broad Beech Geologic Hazard Abatement District  
4057 Minerva Avenue  
Los Angeles, CA 90066

Kenneth Ehrlich, Esq.  
Elkins Kalt Weintraub Reuben Garside  
2049 Century Park East, Suite 2700  
Los Angeles, Ca 90067

**Re: Inaccuracies contained in the BBGHAD Presentation to State Lands Commission**

Gentlemen:

We received a copy of the Broad Beach Geologic Hazard Abatement District's (the "BBGHAD") comments to the California Coastal Commission's (the "Coastal Commission") Staff Comment letter dated November 26, 2014 (the "Staff Report"). As you know, the next meeting where the Coastal Commission will hear the BBGHAD's CDP Application No. 4-12-2014 is scheduled for December 11, 2014 in Monterey.

We continue to review the BBGHAD comments to the Staff Report.

My colleague Ken, Kecskes, had a useful conversation with Ken Ehrlich today. We will forward our comments to the Staff Report this afternoon. I am writing to you now to highlight a critical misrepresentation regarding our client, The Mark Magidson Trust (the "BBGHAD Property Owner") and its property at 30822 Broad Beach Road, Malibu, CA (the "Property") contained in the PowerPoint that



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Norton Karno  
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Kenneth Erlich  
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accompanies the BBGHAD comments. Ken discussed the issue with Ken today. Specifically, item number 9 at page 17 in the section of the PowerPoint entitled "Compromise with CCC Staff (cont'd)", states:

Fill revetment gap caused by 30822 property owner's refusal to participate in emergency program and refusal to permit rocks since 2010.

This statement is false. As you are well aware through many letters, meetings and personal conversations, the BBGHAD Property Owner, at no time, has refused to participate or refused to permit rocks to be installed at the Property since 2010. Since 2010, the BBGHAD Property Owner, at considerable expense, has actively pursued the TPOA or the BBGHAD, as successor to the TPOA, to discharge its obligations under the emergency permit to close the current gap at the Property. The gap was created by the TPOA in violation of its emergency permit. As a governmental agency and assignee of all materials relating to the permit, we are deeply concerned that the BBGHAD has violated and is violating its obligations to the BBGHAD Property Owner by distorting, miscommunicating and misrepresenting the facts of this matter as they relate to our client and maligning the character of our client before the Commission. Such actions damage the BBGHAD Property Owner and its representatives and give the appearance that the BBGHAD seeks to embarrass our client before other property owners within the BBGHAD.

While our strong preference is to cooperate and work with the BBGHAD to achieve the best result possible with respect to the beach re-nourishment and shoreline protection program, we demand the BBGHAD immediately confirm with us that the item 9 will be removed from the BBGHAD comments and the Coastal Commission asked to update their materials.

We look forward to receiving your confirmation of our request by 11 o'clock a.m. (Pacific Time), Wednesday, December 10, 2014. We will be present at the Coastal Commission hearing to, if necessary, correct the BBGHAD's error before the Coastal Commission through a detailed discussion with supporting exhibits placed in the record. We would prefer, however, to focus our efforts with those of the BBGHAD.

Very truly yours,

Mark Levinson

WML/ik

cc: Ken Kecskes, Esq.



# **AGENDA ITEM 4**

Summary of Actions

BROAD BEACH GEOLOGICAL HAZARD ABATEMENT DISTRICT  
REGULAR MEETING

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

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

ABSENT: Board Member Lotman

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

**3. ADOPTION OF AGENDA**

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

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

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

**5. CEREMONIAL PRESENTATIONS**

None.

**6. CONSENT CALENDAR**

None.

**7. PUBLIC HEARINGS**

None.

**8. NEW BUSINESS**

None.

## **9. OLD BUSINESS**

### **a. Permitting and Regulatory Process**

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

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

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

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

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

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

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

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

paths from their homes to the beach.

**b. Project Outreach**

No report was presented.

**10. GHAD OFFICER REPORTS**

**a. Project Manager**

No report was presented.

**b. Treasurer Report**

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

**11. BBGHAD BOARD MEMBER REPORTS**

None.

**12. PUBLIC COMMENT: NON-AGENDA ITEMS**

None.

**13. FUTURE MEETING**

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

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

**14. ADJOURNMENT**

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

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

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NORTON KARNO, Chair

ATTEST:

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BERNADETTE O'NEILL, Clerk

# **AGENDA ITEM 8a**

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

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

**RECITALS**

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

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

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

## **TERMS AND CONDITIONS**

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

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



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

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

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

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

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

\_\_\_\_\_  
BBGHAD

\_\_\_\_\_  
City

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

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

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

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

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City

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

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

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

TO CITY:

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

TO BBGHAD:

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

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

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

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

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

City of Moorpark

By: \_\_\_\_\_  
Janice S. Parvin, Mayor

Attest:

\_\_\_\_\_  
Maureen Benson, City Clerk

Broad Beach Geologic Hazard Abatement District

By: \_\_\_\_\_  
President of the Board

Attest:

\_\_\_\_\_  
Secretary

# **AGENDA ITEM 9a**



## **BROAD BEACH RESTORATION PROJECT STATUS REPORT – December 14, 2014**

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

### **CURRENT ENTITLEMENT STATUS WITH PERMIT AGENCIES**

#### **CALIFORNIA COASTAL COMMISSION (CCC)**

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

#### **CALIFORNIA STATE LANDS COMMISSION (CSLC)**

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

#### **US ARMY CORPS OF ENGINEERS (USACE)**

- *Jurisdiction: National Environmental Policy Act (NEPA) Compliance and certification; Section 10 and 404 permits*
- Degree of NEPA compliance: Unknown. Staff Environmental Assessment (EA) now, but may insist on more cost- and time-intensive Environmental Impact Statement (EIS).
- Public Notice process complete.
- Team submitted reduced project (Alt 4B) to USACE on 11/10/14.
- Conf call set for 12/18/14.

#### **REGIONAL WATER QUALITY CONTROL BOARD (RWQCB)**

- *Jurisdiction: 401 certification and, potentially, waste discharge requirements (WDRs)*
- BBGHAD provided updated technical documents in December 2013.
- Status Update Owed to RWQCB: 'Long Term Beach Nourishment and Sewage Management Plan' is required by the 401 cert. modification issued for the emergency revetment. A yearly update on this plan is required and an implementation date of June 30, 2013 was identified.

Staff has received En Situ analyses. BBGHAD may want to consider submitting an updated status report to fulfill that requirement and prevent being in violation of the emergency permit.

- Meeting with RWQCB occurred on September 19, 2014. Member of RWQCB legal team now tasked with reviewing ASBS question. Certification template shared by RWQCB and under BBGHAD review.
- Team is drafting certification language for submittal to RWQCB by mid Dec.
- Team submitted reduced project (Alt 4B) to RWQCB on 11/10/14.

#### CALTRANS

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

#### LA COUNTY DEPT OF BEACHES AND HARBORS

- *Jurisdiction: Owner of Zuma Parking Lot 12 (Project Staging Area); BBGHAD needs Right of Entry Permit to use parking lot; LACDBH also coordinates with Caltrans and City of Malibu on traffic issues.*
- Right of Entry Permit Application to be submitted following 4/29 traffic engineering meeting. GHAD Counsel advised holding off on submitting LA County permit application until dates of construction are better defined (dependent on timing of all other permits).
- Permit anticipated: December 2014.

#### CONSULTING AND COORDINATING AGENCIES

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

- *Jurisdiction: No discretionary permits, but consult with and provide input to permitting agencies.*
- Jan 28, 2014: NMFS, CDFW, CCC, RWQCB, USACE and CSLC conducted inter-agency meeting to discuss project; BBGHAD excluded from attendance. Preliminary results: subtidal and intertidal habitat impacts at the west end are primary issues.
- NMFS: BBGHAD staff met with staff on January 15, 2014, provided follow-up technical information. NMFS issued letter 3/31/14 reiterating need for additional BBGHAD work to assess baseline intertidal and subtidal conditions. NMFS reviewed additional bio survey work plan.
- GHAD approved \$30K to cover cost of conducting additional survey work to NMFS specifications; dive work completed week of June 2, 2014, abalone survey occurred June 16 and no abalone were found at project site.
- Biological consultation with CDFW and NMFS can take up to 165 days based on December 15, 2013 USACE staff input.
- CDFW: Responsible for Marine Protective Areas (MPAs), including that off Broad Beach. Concerned with Project effects on MPA - subtidal, intertidal, and turbidity. Not presently anticipated that a streambed alteration agreement will be required. Conference call on 2/7/14 with Becky Ota and Craig Shuman. Becky Ota confirmed 2/12/14 that Bill Paznokas will be primary CDFW contact. CDFW still reviewing BBGHAD's submittals. BBGHAD met with Bill

Paznokas on September 11, 2014 to discuss SMCA and mitigation. Team submitted reduced project (Alt 4B) to CDFW on 11/10/14.

- SMBRC: BBGHAD should schedule individual meeting ASAP.
- BBGHAD issued to all agencies on March 20, 2014 a copy of CCC requested alternatives with cover letter stating:
  - that analysis was conducted purely to meet CCC submittal needs,
  - alternatives will not be covered in APTR and
  - list reasons why said alternatives are not feasible projects and are not proposed.
- 4/29/14: Meeting hosted by BBGHAD to discuss bio resource impact concerns. SLC, CCC, RWQCB, USACE, NMFS, CDFW were represented. Additional west end bio survey action plan identified as an action item. Plan submitted to USACE, NMFS and CDFW on 4/16/14 and input received from agencies and processed. Survey work conducted in May and June in accordance with plan.
- The table below shows concerns regarding processing by agencies.

Agency	Next Action	Concern
USACE	Bio impacts analysis by NMFS and CDFW.	Possibility EIS will replace EA for NEPA analysis.
CCC	CCC Hearing- pushed back to December 2014	Scheduling of CCC meeting to consider Project.
SLC	Revise APTR including new biology data	May push schedule back by one to two months and cause hearing to occur after the CCC rather than before.
RWQCB	APTR review	Potential for request of RWQCB-specific additional info.

#### PERMIT SCHEDULE STATUS AS OF 11/14/14

AGENCY	ACTION	DURATION ESTIMATE	COMPLETION DATE (earliest possible)
CCC	CDP App. Complete		CDP app. withdrawn w/o prejudice 12/11/14
	Prepare Staff Report	180 days (legal maximum)	n/a
	Review/Negotiation of Permit Conditions; can be concurrent with prep of Staff Report	1-2 months	n/a
	Commission consideration	1 week	12/11/14: Considered and app. withdrawn
	Permit Issue	1-2 months	n/a
SLC	Lease App. Completeness Notice	1 month	February 7, 2014 <b>RECEIVED</b>
	Revision of APTR (if new bio data included)	3 months	July 14, 2014- <b>completed</b>
	Public Comment on APTR	1-2 months	September 2014
	Lease Negotiations	3 months - ongoing	N/A
	Commission consideration		off calender pending CDP re-

			application
	Issue Final Lease	1 month	N/A
	Lease Signature	1 week	N/A
<b>USACE</b> [all dates uncertain pending further pursuit of permitting]	Revise application based on revised Section 404 and 10 jurisdictional limits	3 weeks	March – April 2015
	Issue Public Notice for Draft NEPA	1 month	September 11, 2014 <b>ISSUED</b>
	DMMT review of quarry sand	1 day	July 23, 2014
	End formal biological consultations with NOAA, MFS and CDFW	165 days (legal maximum)	March 2015
	Finalize EA <sup>1</sup>	2 weeks	January 2015
	Issue Draft Permit	1 week	May-June 2015
	Review/Negotiation of Draft Permit Conditions	2 weeks	Summer 2015
	Issue Final Permit	1 week	Summer 2015
<b>RWQCB</b>	404 and WDRs	2 months post APTR circ.	Unknown pending CCC re-application
	Negotiate 404 and WDRs	1 month	Unknown
	Board approval of 404 and WDRs	1-2 months	Unknown
<b>CALTRANS</b>	Encroachment Permit	4.5 months	November 2014 <b>ISSUED</b>
<b>LA COUNTY</b>	Parking Lot Permit	1 month	Unknown

<sup>1</sup> Longer duration if EIS is required.

# **AGENDA ITEM 10b**

**Broad Beach GHAD  
Cash Flow**

Cash in Bank : 11/1/14 1,062,806.36

**Sources of Cash:**

GHAD Assessment funds

**Invoices Paid thru 8/31/14**

	<b><u>Paid</u></b>	
Moffatt & Nichol	84,239.09	
Elkins Kalt	129,173.83	
AON	7,947.00	
Environ	2,814.51	
DB Neish	30,000.00	
Linscott Law & Greenspan Administration	3,908.80	
	24,438.56	
Total Invoices Due		<u>(282,521.79)</u>

Cash Balance as of 12/1/14 780,284.57

**Sources of Cash:**

GHAD Assessment funds 20,932.50

**Current Payables in hand:**

DB Neish	16,894.13	
Administration	12,007.00	
Total Invoices Due		<u>(28,901.13)</u>

Estimated Cash on Hand 12/31/14 772,315.94

**Broad Beach GHAD**  
 Projection thru 12/31/14  
 AS of 12/12/14

These budget numbers have not been adjusted yet

**Uses:**

M&N Preliminary Planning/Support/booklet/aerial  
 M&N 2.0 Field Investigation/Sand Survey  
 M&N 3.0 Project Entitlement  
 M&N 4.0 Preliminary Engr & Schematic Design  
 M&N 5.0 Final Engineering & Constr Documents  
 JMBM/Elkins Kalt-GHAD Admin & Assessments  
 JMBM/Elkins Kalt-Beach Restoration Permitting & Entitlements  
 ENGE0  
 ENSITU  
 Quality Mapping  
 Topanga Underground  
 Morgan, Miller & Blair  
 Bell,McAndrews & Hiltachk/Kindel Gagan  
 Wendel Rosen  
 Colantuono & Levin, PC  
 Fee-City of Malibu  
 Fee- Coastal Commission  
 Fee-Water Board  
 Fee-Fish & Game  
 Fee-Army Corp of Engr  
 Fee- State Lands Commission Permit fees/Oversight Fee  
 State Lands Comm-Staff Costs  
 EIR Consultant- AMEC Earth & Environ  
 GHAD Bond Legal/Underwriting  
 Tax Exempt Opinion  
 Line of Credit-fee/costs/interest  
 AON-E&O Insurance  
 Office / Phone/Web Site/Coping/Transcripts  
 Accounting Administration  
 Soft Cost Contingency/Advocacy Representation

	Budget	Rev Adjustments	Actuals Paid FS Transferred, 2011	Actuals Paid Nov 2011-Nov2014	Projection Dec-14
	465,391	426,411	465,391	\$ 426,411	
	1,219,002	983	585,054	\$ 817,725	
	572,115	389,866	215,085	\$ 1,562,255	
	336,000	-	304,000	\$ 32,000	
	-	338,102	-	\$ 234,856	
	146,884	497,452	244,158	\$ 495,529	
	587,535	404,562	101,902	\$ 1,334,375	
	115,232	8,176	49,867	\$ 64,994	
	14,934	1,170	14,934	\$ 87,450	
	3,000	7,000	3,000	\$ 1,176	
	65,039	61,576	53,590	\$ 7,000	
	1,694	-	1,694	\$ 13,189	
	-	-	-	\$ 10,265	
	-	-	-	\$ 39,798	
	17,584	-	17,584	\$ 31,158	
	30,000	35,000	-	\$ 77,472	
	40,000	18,340	-	\$ 58,340	
	7,172	2,000	-		
	-	-	-		
	-	-	-		
	176,384	196,546	79,343	\$ 198,573	
	549,949	283,818	190,324	\$ 247,406	
	400,000	(370,000)	-	\$ 606,099	
	-	25,000	-		
	-	16,000	-	\$ 35,411	
	6,286	15,513	6,286	\$ 22,403	
	-	6,150	-	\$ 6,089	
	27,000	-	-	\$ 169,627	38.00
	100,000	(50,000)	-	\$ 164,622	11,969.00
	19,009,000	2,313,665	2,332,212	\$ 6,744,223	16,894.13
<b>Total Uses</b>					28,901.13
<b>Sources of Cash:</b>					
Advances from Individual Homeowners (Actuals)			1,580,278	1,436,750	
Addtl Advances from Individual Revetment Homeowners			261,579	200,000	
Advances from TPOA General Fund			550,000	5,828,112	20,933
GHAD ASSESSMENTS					
<b>Total Sources</b>			2,391,857	7,464,862	20,933
<b>Cummulative Running Balance</b>			59,645	780,285	772,316