

**GRAND HARBOR PROPERTY OWNERS ASSOCIATION (GH POA)
PROPERTY EROSION CONTROL AND LAKE/CANAL SEDIMENT REMOVAL**

POLICY

I. INTRODUCTION

Grand Harbor/Harbor Side (GH/HS) is a subdivision located on the Southwestern extreme of Lake Conroe in close proximity to Montgomery, Texas. The subdivision, started in the late 1990's, contains approximately 1,000 residential properties of which about 50% are lake-front or canal-front. Without question, recreational access to and views of Lake Conroe are major elements in what makes the subdivision "Grand." It is therefore imperative the water use features be protected from degradations that can spoil the pleasures of, and otherwise affect the financial benefits from, property located on Lake Conroe. It is in that realm this GH POA policy will be defined, promulgated, and enforced.

II. AUTHORITY: EROSION CONTROL AND SEDIMENT REMOVAL

A. Subdivision Deed Restrictions

For all waterfront properties within the Grand Harbor/Harbor Side Subdivision's current eighteen sections, the "Declaration of Covenants, Conditions and Restrictions (CCRs) of Grand Harbor " (a.k.a. "Deed Restrictions") were specifically imposed on the property owners at the time of purchase. These CCRs establish fundamental property owner's responsibility for soil erosion control and erosion sediment management/removal in the context of "property use restrictions," as follows:

"ARTICLE III: Use Restrictions

Section 20. Lot/Yard Maintenance. *The front and rear yard of all Waterfront Lots, ... shall be landscaped In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them, such default continuing after ten (10) days written notice thereof, the Association or their assigns may, at their option, without liability to the Owner or occupant in trespass or otherwise,... do any other thing necessary to secure compliance with these restrictions so as to place said Lot in a neat, attractive, healthful and sanitary condition and may charge the owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the property to pay such statement immediately upon receipt thereof,...*

Section 26. Drainage. *Each owner of a Lot agrees that he will not in any way interfere with the established drainage pattern over his Lot from adjoining Lots or other Lots in the Properties. ... Each Owner agrees that he will take all necessary steps to provide for additional drainage of his Lot in the event it becomes necessary. ..."*

The enforcement of the CCRs is through exercising the powers and authority granted to the GH POA via Association Bylaws. Specifically, the "First Amended and Restated Bylaws of the GH POA, Inc.," dated March 13, 2006, contains:

Article III, Paragraph C,

Section 1 Powers. *The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers necessary for the administration of the Association's affairs.*

In addition to the duties imposed by these Bylaws, Texas law or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and for performing or causing to be performed, the following, in way of explanation, but not limitation:

(d) providing for the operation, care, upkeep and maintenance of all common areas, including entering into a contract to provide for such operation, care, upkeep and maintenance;

(e) making or contracting for the making of repairs, additions, and improvements to or alterations of the common areas in accordance with the other provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(g) making and amending rules and regulations and promulgating, implementing and collecting fines for violations of the rules and regulations”

B. County Sediment Restrictions

Elevating the POA’s “policy-to-regulate-and-enforce” argument to higher authority levels, a reinforcing reason for soil erosion and sediment management originates from the subdivision’s need to comply with “Montgomery County Subdivision Rules and Regulations” (October, 1984) which, in part, states:

IV. SEDIMENT CONTROL AND SEDIMENTATION PONDS.

The subdivider shall provide effective sediment control measures in the planning and construction of subdivisions. Practical combinations of the following technical principles should be applied:

D. Sediment basins and traps shall be installed and maintained in properly designated places to remove sediment from runoff waters on land undergoing development.

E. Provisions shall be made to accommodate the increased runoff caused by changed soil and surface conditions during and after development.

F. The permanent final vegetation and structures shall be installed as soon as practical in the development.

C. San Jacinto River Authority Lake Conroe Restriction

County requirements are buttressed by the San Jacinto River Authority (SJRA) rules and regulations imposed on all Lake Conroe waterfront properties. The SJRA is a governmental agency and a political subdivision of the State of Texas, created by the Texas Legislature under authority of Article XVI, Section 59, of the Texas Constitution. As such, the SJRA oversees condition of the lake ecosystem and maintains the health and safety of both the Lake’s water consumers and recreational users. The SJRA “Lake Conroe Reservoir Rules and Regulations,” dated September, 1999, last amended August, 2003, states:

VIII. SANITATION

B. No person shall throw, discharge or deposit refuse in the Reservoir or upon lands owned or controlled by the Authority.

along with the definition of “Refuse” as:

II. DEFINITIONS

When used in this Resolution and rules adopted herein, the following words and terms shall have the following meaning unless expressly indicated otherwise:

F. **Refuse.** Means ... ashes, cinders, **sand**, gravel, tar, asphalt, plastic and plastic products; ... paper or paper products; ... grass clippings, sawdust, trash, garbage, pesticides, insecticides, fungicides or other household or lawn or garden chemicals or agents; human, animal, domestic ... wastes or wastewater; ... or any other refuse matter of any kind or description whatever.

In summary, all of the above discourse clearly shows that unabated lakefront property soil erosion and in-water sediment buildup in the Grand Harbor canal/lakefront system is not allowed by multiple authorities who have definitive mandates and controlling authority.

III. GH POA EROSION CONTROL/SEDIMENT REMOVAL ENFORCEMENT

The GH POA recently put in place a revised “GH POA DEED RESTRICTION POLICY AND PROCEDURE” (P&P), dated May 4, 2011. This P&P, approved by the Board of Directors and filed in the MC Courthouse records, details the process by which property owners who do not adhere to Subdivision deed restrictions are first notified by email, telephone and/or mail, and, when the restriction violations are not corrected, are then assessed fines (or other more significant legal action), frequently along with preemptive correction by the POA of certain critical violations. It is within the framework of this deed restriction violation/correction P&P that lake-front and canal-front bank soil erosion and in-water sediment buildup issues will be addressed.

IV. EROSION SEVERITY AND SEDIMENT LEVEL DETERMINATION

Within GH/HS, the waterfront lot tally provides insight into the potential size of the erosion control and sediment removal problem.

APPROXIMATE WATER-FRONT LOT COUNT	
<i>Developed Properties on a Canal</i> -----	216
<i>Undeveloped Properties on a Canal</i> -----	218
<i>Developed Properties Fronting Open Water</i> -----	77
<i>Undeveloped Properties Fronting Open Water</i> -----	12
<i>Total Subdivision Properties</i> -----	1,012

A. Determination of Erosion Hazard and Sediment level

As a foundation for the determination process, an impartial, controlled, subdivision-wide assessment will need to be made. Over a period of time, on behalf of the GH POA, each and every lake/canal property should be visited, photographed, and rated in a quantitative fashion by a qualified third-party. Two property conditions must be estimated:

- (1) Erosion Hazard (EH): How much of the property’s surface area in proximity of water frontage has visible erosion, and,
- (2) Sediment Level (SL): What is the runoff sediment volume attributable to the erosion that remains in the immediate vicinity of the individual property.

B. Intervention

With EH and SL values for individual properties at hand, whether a property warrants deed restriction violation intervention or not can be derived. Such derivations are needed to:

- (1) convince owners of eroded and sediment impaired properties that they are not being singled out in an arbitrary fashion, and
- (2) develop prorated shares of sediment removal costs within a "convenient grouping" of properties (e.g., all lots along a defined canal's length).

C. Remediation

After consultation with independent officials, a threshold would have to be established for activating the deed violation process. From this point, the GH POA DEED RESTRICTIONS ENFORCEMENT POLICY AND PROCEDURE would then be utilized. Within the P&P, the violation would be either "LY03," or "AC24 procedure Type B violations, with at least the following charges to the violator:

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Type B Violation:

1 st Violation	\$150.00 + admin fee (+ 10% of base fine added as per-day surcharge when required)
2 nd Violation	\$200.00 + admin fee (+ 10% of base fine added as per-day surcharge when required)
3 rd and Subsequent	\$400.00 + admin fee (+ 10% of base fine added as per-day surcharge when required)

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V. CONCLUSION

THE OVERARCHING POLICY OF GH POA PROPERTY EROSION CONTROL AND CANAL SEDIMENT REMOVAL:

- A. Encompasses approximately 50% of all properties in the subdivision,
- B. Seeks to maintain water-front property's value and benefits,
- C. Receives its controlling authority from property deed restriction enforcement and higher-order regulations and rules,
- D. Triggers remediation action and fines when objectively and impartially assessed and implemented.