

MEMORANDUM

October 20, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD
FROM: BRIAN T. CHU
Senior Deputy County Counsel
General Litigation Division
RE: **Claim of Gary Brutsch and Tina Williams**

DATE OF INCIDENT: April 28, 2005

AUTHORITY REQUESTED: \$38,496.61

COUNTY DEPARTMENT: Department of Public Works/Flood Control

CLAIMS BOARD ACTION:

Approve Disapprove Recommend to Board of Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on November 6, 2006

SUMMARY

This is a recommendation to settle for \$38,496.61 the claim presented by Gary Brutsch and Tina Williams seeking flooding damages to their home and personal property caused by water back-up in a County-owned storm drain on April 28, 2005.

LEGAL PRINCIPLE

The County may be held liable for inverse condemnation based on a claim of property damages caused by a water back-up in a County-owned storm drain.

SUMMARY OF FACTS

On April 28, 2005, the outlet of a County-owned storm drain in Hermosa Beach became clogged with sand flowing from the beach during high tide. The clog allowed water to flood the local streets and flood into the home of Mr. Brutsch and Ms. Williams. The water caused damages to Mr. Brutsch's and Ms. Williams' house and personal property.

DAMAGES

Mr. Brutsch and Ms. Williams claim total damages categorized as follows:

Property Repairs	\$31,510.60
Economic	\$ 1,196.21
Personal Property	<u>\$ 5,789.80</u>
TOTAL	<u>\$38,496.61</u>

In the event that this matter were to be litigated, and if Mr. Brutsch and Ms. Williams were to prevail on the inverse condemnation claim, they also will be entitled to attorneys' fees and experts' costs.

STATUS OF CASE

A claim was timely filed under the California Tort Claims Act. No litigation has been filed to date.

EVALUATION

The storm drain is, and was at the time of the incident, owned and maintained by the County. During high tide, sand flows into the drain pipe. Over the course of time, sand accumulated to such an extent that it prevented water from properly flowing. As a result, the water backed up in the storm drain resulting in street flooding and flooding into Mr. Brutsch's and Ms. Williams' house. Mr. Brutsch and Ms. Williams may contend that the storm drain was not adequately maintained, which allowed the water to backup. Their total submitted damages have been substantiated and adjusted for depreciation. If they file suit

and prevail based on inverse condemnation, they will be entitled to recover attorneys' fees and experts' costs that will significantly exceed the proposed settlement amount.

RECOMMENDATION

We join our third party administrator, Carl Warren & Company, in recommending a total settlement of this matter in the amount of \$38,496.61. The Department of Public Works concurs in this settlement recommendation.

APPROVED:



RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

BTC:ac