

GEOLOGIC HAZARD ABATEMENT DISTRICTS (GHADS)

PREPARED BY THE CALIFORNIA ASSOCIATION OF GEOLOGIC HAZARD ABATEMENT DISTRICTS

June 2011

1. What is a GHAD?

Geologic Hazard Abatement Districts (GHADs) are governmental districts formed to address geologic hazards. GHADs may be formed for the purpose of prevention, mitigation, abatement or control of a geologic hazard and can also be formed for mitigation or abatement of structural hazards that are partly or wholly caused by geologic hazards. (Public Resources Code [*“Pub. Res. Code”*] § 26525.) A “geologic hazard” is broadly defined as an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement or any other natural or unnatural movement of land or earth. (*Pub. Res. Code* §§ 26507.)

2. History of GHADs

In 1979, the California State Legislature adopted the GHAD Law (*Pub. Res. Code* §§ 26500 - 26654) in response to the Portuguese Bend landslides in the Palos Verdes area of Los Angeles County. The GHAD law was authored by then State Senator Robert Beverly. This law gives local agencies the authority to form districts that could speedily address “an actual or threatened landslide, land subsidence, soil erosion, earthquake, or any other natural or unnatural movement of land or earth.” (*Pub. Res. Code* § 26507). The first GHAD was formed in 1981 in the Portuguese Bend area to arrest a slide and prevent homes from sliding into the Pacific Ocean.

To date, we are aware of 40 GHADs (or similar districts) that have been formed throughout the State to reduce the risk of, and when necessary abate damage caused by, landslides, land subsidence, coastal erosion and similar geologic hazards.

3. GHAD Powers

A GHAD is a political subdivision of the State. It is not an agency or instrumentality of a local agency. (*Pub. Res. Code* §§ 26525, 26570.) As such, GHADs perform certain governmental and proprietary functions as a political subdivision of the State. (*Pub. Res. Code* § 26571.)

A GHAD is governed by an elected board consisting of landowners within the district or the members of the applicable city council or board of supervisors. (*Pub. Res. Code* §§ 26567, 26583.) GHADs are authorized to acquire, construct, operate, manage or maintain improvements on public or private lands. Under GHAD Law, “improvement” means any activity that is necessary or incidental to the prevention, mitigation, abatement, or control for a

geologic hazard, including, without limitation, construction, maintenance, repair or operation of any improvement. (*Pub. Res. Code § 26505.*) GHADs may exercise the power of eminent domain. (*Pub. Res. Code § 26576.*)

In considering the formation of a GHAD, a plan of control must be prepared that describes the geologic hazards and includes a plan for prevention, mitigation, abatement and control of these hazards. This plan of control must be prepared by a Certified Engineering Geologist. The plan of control is considered by the legislative body in forming the GHAD and sets out the activities to be implemented by the GHAD.

4. Lands Included in a GHAD

There is no limitation on the number of acres that can be included in a GHAD. A GHAD may include lands in more than one local agency (city or county) and the lands may be publicly or privately owned. (*Pub. Res. Code §§ 26531, 26532.*) The lands comprising the GHAD need not be contiguous so long as all lands included within a district are specially benefited by the proposed construction to be undertaken by the GHAD in the plan of control. (*Pub. Res. Code §§ 26530, 26534.*) However, no parcel of real property shall be divided by the boundaries of the proposed district. (*Pub. Res. Code § 26533.*)

Land may be annexed to an existing GHAD following the procedures for formation of a GHAD; however, the GHAD board of directors assumes the responsibilities of the legislative body of the city or county in this annexation. Annexation is subject to the approval of the legislative body which ordered formation of the GHAD. (*Pub. Res. Code § 26581.*)

5. GHAD Financing

GHADs have numerous funding powers that allow them to finance improvements consistent with the plan of control. A GHAD's primary source of funding is through land owner assessments. (*Pub. Res. Code § 26650.*) These assessments, which attach as liens on property, may be collected at the same time in the same manner as general taxes on real property. (*Pub. Res. Code § 26654.*) All assessment proceedings must also comply with Proposition 218 adopted by the voters in 1996, the "Right to Vote on Taxes Act." (Arts. XIIC and XIID of the California Constitution.)

A GHAD is also authorized to finance improvements through the California Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915. (*Pub. Res. Code § 26587.*) In addition, a GHAD may accept financial or other assistance from public or private sources (*Pub. Res. Code § 26591*) and may borrow funds from private sources or local, state and federal government. (*Pub. Res. Code § 26593.*)

6. General Formation Process for GHADS

Notwithstanding any other provision of law, proceedings for GHAD formation are exclusive. (*Pub. Res. Code § 26560.*) Under State law, GHAD formation is exempt from both the need for approval by the Local Agency Formation Commission (LAFCO) (see *Las Tunas Beach Geologic Hazard Abatement District v. Superior Court (City of Malibu)*, 38 Cal. App. 4th 1002 (1995)) and from review under the California Environmental Quality Act (CEQA). (*Pub. Res. Code*

§ 26559.) Also, improvements caused to be undertaken under the GHAD Law and all activities in furtherance or in connection therewith are exempt from review under CEQA. (Pub. Res. Code § 26601.)

The following are the processes that must be taken in forming a GHAD.

- a. Before a GHAD can be formed, the local agency must adopt a resolution declaring that it is subject to the GHAD Law and forward this resolution to the State Controller. (*Pub. Res. Code* § 26550.)
- b. A plan of control must be prepared by a Certified Engineering Geologist. The plan must describe geologic hazards, their location, the GHAD boundaries, and include a plan for prevention, mitigation, abatement and control of these hazards. (*Pub. Res. Code* § 26509.) The plan should also identify the activities that are not covered by the GHAD such as individual drainage systems. The plan is the basic document that addresses the GHAD's ongoing activities, including the monitoring of geologic conditions, identification of geologic hazards, construction of needed improvements, and the maintenance, repair and replacement to facilities. (*Pub. Res. Code* §§ 26509 et. seq.) The plan is required to be attached to the formation petition and, thus, is before the public and the legislative body throughout the petition, protest, hearing and decision making stages.
- c. Proceedings for the formation of a GHAD may be initiated by either (a) a petition signed by the owners of at least 10 percent of the property within the proposed GHAD (*Pub. Res. Code* §§ 26552, 26554); or (b) resolution of the legislative body. (*Pub. Res. Code* § 26558.)
- d. The legislative body adopts a resolution setting a hearing and noticing by mail the owners of real property to be included within the proposed GHAD boundaries. These property owners may object to formation. (*Pub. Res. Code* § 26564.) If it appears at the time of the hearing that owners of more than 50 percent of the assessed valuation of the GHAD area object, the proceedings must be abandoned. (*Pub. Res. Code* § 26566.) The legislative body closes the public hearing and decides whether or not to form a GHAD. The legislative body must determine within 60 days of the close of the formation hearing whether to order formation. (*Pub. Res. Code* § 26567.)
- e. If the legislative body orders formation, it must also select an initial board of directors for the GHAD. The legislative body may either select five landowners from the GHAD area or select itself. If the legislative body selects five landowners, the initial term shall be four years; after that, the landowners GHAD board shall be elected from the new GHAD. (*Pub. Res. Code* §§ 26567, 26583.) Otherwise, the legislative body stays as the governing body if it selects itself.
- f. Before a GHAD can operate, the board of directors must pass a budget, appoint officers and if appropriate, levy an assessment. Proposition 218 makes it more time consuming and procedurally complex to levy an assessment.

7. Benefits in Forming GHAD

GHADS offer many benefits. First, through a plan of control GHADs act to prevent damage resulting from earth movement by identifying and monitoring potential geologic hazards and undertaking improvements as appropriate.

Second, a GHAD can quickly respond to a geologic hazard if one occurs due to its funding capability and technical expertise through the plan of control.

Third, a GHAD assessment can be easily collected since the assessment can be collected along with the general property tax. This avoids requiring separate collection by a private entity, such as a homeowners' association.

Fourth, GHADs are provided a degree of immunity from liability for actions they undertake. (Government Code § 865.) This degree of limited liability encourages the formation of GHADs and to pursue remedial action to abate the hazard.

Disclaimer: The materials provided are for informational purposes only, and are not offered as, and do not constitute engineering or legal advice or legal opinions and do not form a professional services relationship. Due to the changing nature of this area and the importance of individual facts, readers should not act or rely upon the information without seeking the advice of a lawyer. For more information please contact the California Association of Geologic Hazard Abatement Districts. Barbara Mahoney @ (925) 395-2537

HAYWARD GHAD (LA VISTA DEVELOPMENT) OUTLINE OF GHAD FORMATION PROCESS

