

# CITY OF HAYWARD

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## Cover Memo

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**DATE:** May 17, 2016

**TO:** Hayward Geologic Hazard Abatement District (GHAD) Board of Directors

**FROM:** Development Services Director

### **SUBJECT**

Board Consideration of appointment of the Chairperson, Clerk, Treasurer, Manager and Legal Counsel of the Hayward Geologic Hazard Abatement District (GHAD)

### **RECOMMENDATION**

That the Hayward GHAD Board of Directors adopts the attached resolution appointing the Chair and Officers of the District.

### **BACKGROUND**

In 2005, the Hayward City Council conditionally approved the 179-unit La Vista development (Tract 7620), with a project condition of approval, and executed Development Agreement section, requiring that a Geologic Hazard Abatement District (GHAD) be formed to address on-site geologic hazards associated with the development. State law authorizes GHADs to be formed to prevent, mitigate, abate or control geologic hazards. GHADs are typically financed by assessing property owners within their boundaries, subject to the restrictions of Proposition 218.

On November 17, 2015, the City Council approved Resolution No. 15-224, committing the City of Hayward to be subject to the GHAD law and directed the City Clerk to forward a copy of the resolution to the State Controller, which was done.

On January 26, 2016, a [work session on GHADs <https://hayward.legistar.com/LegislationDetail.aspx?ID=2555222&GUID=6795B255-EA43-4E96-9AAB-20AD166E3D94>](https://hayward.legistar.com/LegislationDetail.aspx?ID=2555222&GUID=6795B255-EA43-4E96-9AAB-20AD166E3D94) was held before the City Council, during which staff and consultant Eric Harrell of ENGEO Incorporated provided an overview of GHADs and answered questions from the City Council. One key point that was discussed at the work session is that a preferred practice is to have as many GHAD staff as possible be hired consultants rather than City employees. This arrangement provides the maximum separation of financial responsibility between the GHAD and the City of Hayward as financial issues arise in the future. The extent of the City of Hayward's liability increases in proportion to the amount of control and involvement it has with the GHAD. From a legal perspective, it is advisable to minimize the City of Hayward's control and involvement at the GHAD staff level.

On February 2, 2016, in response to a petition filed by the owner of the La Vista development, in accordance with Public Resources Code Sections 26552 and 26554, the Hayward City Council approved Resolution No. 16-016, which scheduled a Public Hearing for March 1, 2016, to consider formation of the

Hayward GHAD.

On March 1, 2016, in accordance with Public Resources Code Section 26567 and 26583, the Hayward City Council adopted Resolution No. 16-030(Attachment II), approving and ordering formation of the Hayward GHAD and appointed itself to act as the Hayward GHAD Board of Directors (Board).

## **DISCUSSION**

### *GHAD Board Chair*

As one of its duties, the GHAD Board must identify a Board Chair. The Board Chair would be authorized to execute all resolutions and official actions by the GHAD Board, to lead meetings of the GHAD Board, and to carry out the responsibilities delegated to the Chair by the GHAD Board.

To allow for the position of Chairperson to be continuously occupied and for convenience so that GHAD Board meetings can occur when Hayward City Council meetings are held, staff recommends that the Mayor serve as the Chairperson of the GHAD Board. If the Mayor is not available to serve as the Chairperson of the GHAD Board, the Mayor Pro Tempore should serve in this position.

#### *1. Required GHAD Officers*

Pursuant to Public Resources Code sections 26584 and 26585, the GHAD Board must also appoint, respectively, a Clerk and a Treasurer of the Hayward GHAD (Attachment III). As stated in Hayward City Council Resolution 16-030, the GHAD is responsible for hiring its own staff (or contracting with parties to perform staff services), including all workers involved in the operation, maintenance, replacement, and repair of the specific facilities and improvements that the GHAD is responsible for maintaining. City employees cannot perform such services for GHAD facilities and improvements unless the GHAD and the City enter into a contract that stipulates that City employees are acting as GHAD employees when providing services for the GHAD.

Staff recommends that the GHAD Board contract to perform all staff services for the GHAD, based on the unique and technical expertise needed for these roles and to avoid confusion between the functions and financial affairs of the GHAD and those of the City.

### *Selection Process for GHAD Officers*

It is important to note that the Public Resources Code specifically exempts GHADs from the normal competitive consultant selection process which the City of Hayward normally uses. Hence, the Hayward GHAD Board of Directors may proceed, if it wishes, with selection of whomever it chooses to serve as officers of the Hayward GHAD without going through a competitive selection process.

Due to the limited number of firms that perform such work, staff recommends that the GHAD Board direct staff to negotiate contracts with consultants who have prior experience in managing GHADs for all GHAD officers to perform all staff services for the GHAD without proceeding with a competitive consultant selection process.

### *GHAD Clerk/GHAD Legal Counsel*

After the current GHAD Board meetings related to GHAD formation are completed, it is typical to have the GHAD Board meet a few times a year to be provided with an update on any technical, financial, or legal matters affecting the GHAD. Examples of typical GHAD meeting issues are: consideration and adoption of the yearly budget for the GHAD; annexations of new developments into the existing Hayward GHAD; response to possible damage caused by a geologic event (landslide, earthquake etc.); and to act upon any other GHAD matters that may be necessary.

Whenever the GHAD Board is required to meet, the agenda management function will be administered by the GHAD Clerk. In order to learn more about how much work is required by the GHAD Clerk, staff contacted the GHAD Clerks from several existing GHADs in the Bay Area. What was learned is that there is no one way that the GHAD Clerk duties are managed. In fact, there are a variety of staffing arrangements at different GHADs. In some cases, the City Clerk is appointed as the GHAD Clerk; in others, the GHAD Clerk is a contracted position outside of the City/County, and in others, the GHAD Clerk position is combined into one position with the GHAD Legal Counsel.

In the case of the combined GHAD Clerk/GHAD Legal Counsel, that person functions as the GHAD Clerk at all meetings similar to how the City Clerk functions for the City Council and also reviews all GHAD Board of Directors agenda items from a legal perspective similar to how the City Attorney provides legal advice to the City Council.

City Attorney and Development Services staffs jointly contacted the Hayward City Clerk, the GHAD Clerk for the Orinda GHAD (Orinda City Clerk), the GHAD Clerk for the Moraga GHAD (Moraga City Clerk) and Ms. Patricia Curtin (combined GHAD Clerk/GHAD Legal Counsel for several GHADs including the Leona Quarry GHAD in Oakland) to learn how they provide Clerk services to their respective GHAD Boards.

Based on those discussions, staff determined that the demands on the time of the Hayward GHAD Clerk will likely grow in the future as other developments are annexed into the Hayward GHAD or as other issues arise that the Hayward GHAD needs to address. These additional GHAD Clerk duties will add to an already busy workload for the City Clerk. For these reasons, staff recommends contracting the GHAD Clerk to an outside consultant.

During staff's discussions with Ms. Patricia Curtin, it was obvious that she is very knowledgeable of both the administrative, procedural and legal issues that are commonly encountered by a GHAD. As stated earlier, Ms. Curtin is currently serving as the combined GHAD Clerk/GHAD Legal Counsel for several Bay Area GHADS and she is also actively involved in the statewide organization that seeks to improve the implementation of the Public Resources Code sections that govern GHADs. Ms. Curtin has also written several technical and legal papers concerning both GHAD management and GHAD legal issues. Based on Ms. Curtin's unique qualifications (see Attachment IV), staff recommends that the GHAD Clerk and GHAD Legal Counsel be combined into one position and that the GHAD Board instruct staff to prepare a contract, for Hayward GHAD Board of Directors approval, with Patricia Curtin to serve as the combined GHAD Clerk/GHAD Legal Counsel for the Hayward GHAD.

### GHAD Treasurer

As stated earlier, the GHAD Treasurer position is a required position for all GHADs per the Public Resources Code. As there are considerable funds that are amassed over time from the assessments that the parcel owners pay, it is very important that the GHAD Treasurer be skilled in the management and

investment of these funds.

During the research for this report, staff contacted several GHADs in the Bay Area to inquire how the GHAD Treasurer position is staffed. What was learned is that there are a variety of ways that individual GHADs select the GHAD Treasurer. In some GHADs, a senior fiscal employee of the City or County serves as the GHAD Treasurer. In others, the GHAD contracts with an outside firm to manage the financial matters of the GHAD. In general, the smaller the GHAD, the more likely it is that a City/County staff member serves as the GHAD Treasurer, and the larger the GHAD, the more likely it is that the GHAD Treasurer is an outside consultant.

Since the Hayward GHAD will have 179 units once the La Vista Plan of Control is approved, and it is highly likely that there will be additional developments that will be annexed into the Hayward GHAD in the future, staff recommend that the GHAD Treasurer position be contracted to an outside financial management firm with experience in GHAD financial affairs.

Staff further recommends that the Hayward GHAD Board of Directors direct staff to prepare a contract, for Hayward GHAD Board of Directors approval, with [Watermark Asset Management, Inc.](http://www.watermarkasset.com/) to serve as the Hayward GHAD Treasurer. Since 2009, Watermark Asset Management has served as the GHAD Treasurer for six GHADs in Contra Costa County (Blackhawk, California Tradewinds, Canyon Lakes, Hillcrest Heights, Wendt Ranch, and Wiedemann Ranch) where the members of the Contra Costa County Board of Supervisors serve as the GHAD Boards of Directors. In addition, in 2011, Watermark Asset Management, Inc. was appointed to serve as the Treasurer for the Orinda GHAD and in 2015 was appointed to serve as the Moraga GHAD Treasurer (see Watermark's qualifications, Attachment IV).

At a future Board meeting, Watermark Asset Management, if selected as the GHAD treasurer, will provide the GHAD Board with proposed investment guidelines, fees, and policies for consideration and adoption by the Hayward GHAD Board of Directors.

## 2. Recommended GHAD Officers

### GHAD Manager

In addition to the required GHAD officers mentioned above, Public Resources Code Section 26586 allows the Board to appoint other officers and delegate powers to these officers as appropriate to the GHAD's circumstances. Each of the GHADs that staff contacted employs a GHAD Manager with the authority to administer the day-to-day operations of the GHAD. The GHAD Manager is most frequently a consultant who is very experienced in how GHADs are administered, although in some cases the GHAD Manager is a City/County employee.

Based on discussions with various GHADs, it became clear to staff that ENGEIO Incorporated is, by far, the most frequently selected firm to serve as GHAD Manager. ENGEIO is currently serving as the GHAD Manager for a number of GHADs in the Bay Area, including Wiedemann Ranch, Wendt Ranch, Orinda (Wilder), Broad Beach, Santa Paula, Leona Quarry, Oakland Area, and Moraga. The Boards of Directors for these GHADs include the members of the Contra Costa County Board of Supervisors, the Orinda City Council, the Santa Paula City Council, the Oakland City Council, and the Moraga Town Council.

Based on its superior experience in the management of GHADs and to provide for the competent administration of the Hayward GHAD operations, staff recommends that the GHAD Board direct staff to prepare a contract, for Hayward GHAD Board of Directors approval, with [ENGEO Incorporated](http://www.engeo.com/) to serve as the Hayward GHAD Manager.

#### *Initial GHAD Management Responsibility*

As required by law, the developers of the La Vista project are responsible for managing and maintaining all facilities and improvements until the Hayward GHAD accepts responsibility for those improvements. Until the GHAD accumulates a pre-determined amount of financial reserves, the developer remains responsible for funding the GHAD, and payment of all GHAD liabilities. Once this reserve is achieved, responsibility for the GHAD financial affairs will transfer from the developer to the Hayward GHAD.

Based on a review of the development schedule for the La Vista project, it is likely that initial Hayward GHAD assessments will not be levied until fiscal year 2017 and the first GHAD assessment revenues will likely become available to the Hayward GHAD in December 2017. As a result, assumption of the responsibility for the monitoring, maintenance, and management activities by the Hayward GHAD (versus the developer) is not expected to occur until early in calendar year 2018 at the earliest. During this initial period of assessment accumulation, all GHAD costs will be solely the responsibility of the developer until such time as the Hayward GHAD assumes responsibility for the monitoring, maintenance and management of the GHAD.

### **ECONOMIC AND FISCAL IMPACTS**

#### *Before the GHAD assumes management and financial responsibility*

The GHAD is initially funded 100% through the developer. At a later date, the responsibility for funding all GHAD management and financial responsibility will transfer to the Hayward GHAD. By law, this transfer of management and financial responsibility will occur a minimum of one year after the issuance of the first residential building permit and the meeting of the required financial reserve amount. The financial reserve amount is determined by the GHAD Treasurer and is achieved through the collection of yearly assessments levied on all properties within the GHAD. Therefore, there will be no impact on the City General Fund.

After the GHAD accepts monitoring and maintenance responsibilities, the GHAD will continue to fund GHAD monitoring, maintenance and management activities through the annual levying of assessments on all of the property owners within the GHAD.

#### *GHAD yearly budget and financial reserve information*

One of the first responsibilities of the GHAD Treasurer will be to present the proposed budgets for fiscal year 2017 to the Hayward GHAD Board of Directors.

In addition, the GHAD Treasurer will present the required financial reserve for the Hayward GHAD to the GHAD Board for review and approval. As stated earlier, this financial reserve amount is the trigger that allows transfer of management and financial responsibility from the developer to the Hayward GHAD.

### Anticipated yearly cost for consultant GHAD officers

Until such time as the Hayward GHAD Board approves contracts with consultants to perform duties as Hayward GHAD officers, the actual cost of these services is unknown. Staff contacted the GHAD Manager for the Leona Quarry GHAD in Oakland to ask about the yearly consultant costs. The adopted fiscal year 2016 budget for the Leona Quarry in Oakland for consultant GHAD management, accounting and outside professional services is \$84,800 (or approximately 10% of the yearly GHAD budget). Staff believes that the costs for the Hayward GHAD will likely be similar to the Leona Quarry GHAD.

Once the Council has determined whether to contract for the officers of the GHAD outlined in this report, staff will negotiate contracts with each entity and return to Council for approval of these contracts. Council may at that point choose to make a different determination about the staffing mechanism for the GHAD based on the costs of the proposed contracts.

## **ENVIRONMENTAL REVIEW**

Under State law, GHAD formation is exempt 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).

## **PUBLIC CONTACT**

The property owner of the La Vista development, the Hayward Area Recreation and Park District (HARD), and the owners of all properties adjacent to the La Vista Development were notified in writing of the March 1, 2016 Public Hearing to create the Hayward GHAD. Planning staff did not receive any correspondence from any party objecting to the creation of the Hayward GHAD, nor were any objections raised by the public during the March 1, 2016 Public Hearing. No additional outreach was conducted for this item.

## **NEXT STEPS**

Future required actions of the Hayward GHAD Board of Directors will include:

- Approval of contracts for the GHAD Clerk/Legal Counsel, GHAD Treasurer, and GHAD Manager
- Consideration of proposed investment guidelines and policies provided by the GHAD Treasurer
- Consideration and adoption of the Hayward GHAD yearly budgets for the remainder of fiscal year 2016 and for fiscal year 2017
- Consideration and adoption of the La Vista Plan of Control
- Consideration and approval of the Engineer's Report for the Hayward GHAD

- Authorization of a Notice to Order an Assessment
- Holding a Public Hearing to consider adoption of the assessments
- Approval of a yearly budget for the Hayward GHAD (after the GHAD accepts monitoring, maintenance and ownership responsibilities from the La Vista developer)

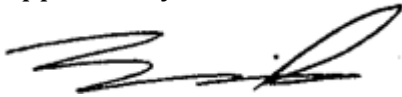
Once the GHAD staff members/contractors are in place, and the initial assessments are approved, it is anticipated that the GHAD Board will need to meet yearly to adopt the GHAD budget and perhaps one to two times per year to conduct other GHAD business.

*Prepared by:* Peter Rei, PE, PLS Contract Development Review Engineer

*Reviewed by:* Sara Buizer, AICP, Planning Manager

*Recommended by:* David Rizk, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I      Resolution appointing Chairperson, Clerk/Legal Counsel, Treasurer and Manager of the Hayward GHAD

Attachment II Resolution 16-030

Attachment III      Public Resources Code Sections 26583 through 26586

Attachment IV      Resumes/Qualifications for Patricia Curtin, Watermark Asset Management, and Engeo, Inc.