

**CITY OF OAKLAND**  
**AGENDA REPORT**

OFFICE OF THE CITY CLERK  
2006 JUN 15 PM 5:54

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community & Economic Development Agency  
DATE: June 20, 2006

RE: **Supplemental Report Regarding the Adoption Of A Resolution To Initiate Formation Of The Oakland Area Geologic Hazard Abatement District (GHAD) And Setting A Public Hearing For July 18, 2006 To Consider Formation Of The GHAD.**

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**SUMMARY**

The purpose of this supplemental report is to clarify several issues that arose from the Community and Economic Development (CED) Committee, on May 23, 2006, regarding the adoption of a resolution to initiate formation of the Oakland Area Geologic Hazard Abatement District (GHAD pronounced "GAD").

GHADs are political subdivisions of the state and are formed in specific geographic areas to address potential geologic hazards. The purpose of a GHAD is to prevent, mitigate, control, or abate defined geologic hazards through maintenance, improvements, or other means. Financing of a GHAD is accomplished through an assessment of only those property owners who live within the boundaries of the designated district. Issuing and servicing of bonds, notes, or other debentures is also authorized under a GHAD.

The Oakland Area GHAD would initially include the Siena Hill project. This project is a 32-unit attached single-family development with a private driveway. In addition, Planning and Zoning staff requests that the City Council consider initiation of the Oakland Area GHAD to include future approved projects that are deemed to have potential geologic hazards as defined in GHAD law.

**PROJECT DESCRIPTION**

As previously noted in the *Summary* section, GHADs are political subdivisions of the state and are formed in specific geographic areas to address potential geologic hazards. Planning and Zoning staff believe that both the Siena Hill project and the City of Oakland would benefit from the formation of a GHAD. The GHAD ensures that there are funds available to perform preventive inspections and maintenance on improvements within the GHAD boundaries. The GHAD also ensures that there are funds to address catastrophic failure of the improvements due to the defined geologic hazards. The key advantage here is that there is documentation of the as-built conditions, a process to collect the assessments, and a GHAD Board of Directors formed

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with the technical and organizational resources to immediately respond to the potential or unforeseen geologic hazards.

Siena Hill Project

The Conditions of Approval for the Siena Hill project, as approved by the Planning Commission, require the formation of a GHAD in order to maintain and monitor the slope stabilization, drainage and other improvements required to mitigate potential geologic hazards. The proposed district boundaries include the lands within the Siena Hill subdivision. In addition, retaining walls, and appurtenant drainage facilities are to be constructed within an off-site access easement (the western edge of the project) and, if approved, within the Keller Avenue (City) right-of-way. The GHAD will have maintenance responsibilities both within the Siena Hill boundaries and within the access easement and right-of-way areas since these improvements are part of the proposed development.

Future Development in Oakland

Once the Oakland Area GHAD is formed, additional lands may be annexed into the GHAD if those properties meet the geologic hazard criteria as defined in GHAD law. Annexation proceedings are similar to the formation procedures except that the GHAD Board of Directors acts in place of the City Council. However, the annexation must also be approved by the City Council since it initially approved the formation of the GHAD. The City Council has been through a typical annexation process with respect to Leona Quarry. Several years after the City Council formed the Leona Quarry GHAD, the project applicant petitioned the Leona Quarry GHAD to annex additional properties to the GHAD. The Leona Quarry GHAD processed and approved this request and the City Council subsequently approved that annexation. A similar process would occur to annex additional properties into the Oakland Area GHAD.

GHAD Functions

The Plan of Control is the mechanism that lays out the actual on-going work, monitoring schedule, and priority of expenditures that would need to be accomplished through the GHAD. A Plan of Control is required per California Public Resource Code Section 26553 and 26558 when proceedings have been initiated to form a GHAD. This plan describes the geotechnical hazards, their location and provides measures to prevent, mitigate, abate and otherwise control those hazards. The Plan of Control describes the geologic hazards, monitoring, and mitigations for the Siena Hill project. As other developments are annexed into the Oakland Area GHAD, the Plan of Control would be amended to include the monitoring and mitigations for those projects with similar hazards.

Financing of a GHAD is accomplished through the assessment of property owners who live within the boundaries. Issuing and servicing of bonds, notes or other debentures is also authorized under a GHAD.

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## KEY ISSUES AND IMPACTS

At the CED Committee on May 23, 2006, the Committee members asked that planning staff clarify and provide additional information on several issues pertaining to the GHAD formation. These issues included:

- The criteria for property that would be annexed into the proposed GHAD
- Clarification on the percentage of property owner's participation during the GHAD formation/annexation process
- Potential Legal Liability

### Criteria for GHAD Annexation

Several Committee members were concerned with how planning staff would determine what properties qualify for annexation into the proposed GHAD. First, staff will only apply the GHAD as a condition of approval to new development projects. This could include residential, commercial, or industrial properties, etc. It would exclude the imposition of the GHAD on existing uses. Per California Public Resource Section 26507, existing property owners do have the ability to petition the GHAD board for annexation, if they so choose. A further discussion of the percentages of participation is provided further in the report.

Second, staff will use the definition of a geologic hazard as provided in GHAD law. California Public Resource Section 26507 defines a "geologic hazard" as an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement, or any other natural or unnatural movement of land or earth.

Third, staff will review the technical, environmental, peer review, and other applicable report documents pertaining to the actual or threatened geologic hazard. These documents will need to specifically require a GHAD or require a greater than normal degree of construction attention, monitoring of the site, or maintenance of project improvements.

Fourth, the development project is 200 units or less.

### Percentage of Property Owners Participation

Several Committee members were concerned about the percentage of property owners that are required to approve formation of a GHAD or annex into an existing GHAD. It is important to note that per GHAD law, a new GHAD must first be initiated and then formed. A GHAD can be initiated in one of two ways: 1) by resolution of the legislative body or 2) by petition of a property owner who wants to form or annex into a GHAD. GHAD law requires that at least 10% of real property owners sign the petition if initiation occurs via petition. Once the legislative body passes the resolution or approves the petition, the GHAD is initiated.

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The next step is to actually form the GHAD. A public notice is mailed to all owners of real property to be included within the proposed GHAD and a public formation hearing is held. If more than 50% (or a majority) of the assessed valuation of the proposed district objects to the formation the GHAD, then the GHAD Board must abandon the formation proceedings. The process is the same for annexation proceedings into an existing GHAD.

Staff has provided, as Attachment A, a proposed process and timeline of the initiation and formation of the Oakland Area GHAD.

Potential Legal Liability

The City Attorney's Office has not found any court decisions specifically addressing whether the City may be held liable for the actions or inactions of a GHAD. However, under state law, a GHAD is a separate political subdivision of the state, not an agency or instrumentality of the city or county in which it is formed and even if the City Council sits as the Board of Directors of the GHAD, the City generally would not be liable for actions or inactions of the GHAD or its Board.

Moreover, individual City Council members, sitting as the GHAD Board, generally should not be personally liable for GHAD actions/inactions. As is the case with individuals sitting as members of a city council, there are a number of immunities that apply to claims against individuals (whether council members or landowners) that serve on the board of a GHAD or other public entity. There is broad immunity for claims based on legislative actions/inactions. See Government Code § 818.2. In addition, Government Code section 820.9 provides that city councils, mayors, school boards or members of governing boards of local public entities "are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body." The only limits of this immunity are liability for "that individual's own wrongful conduct." This immunity should protect individual GHAD Board members from liability associated with the GHAD, whether they are members of the City Council or landowners.

It must be noted; however, that the potential risks of City liability would increase to the extent that the City undertakes GHAD-related functions and the distinct lines between the two governmental bodies gets blurred. If the City Council decides to proceed with the GHAD formation, among other legal requirements, the following should be reflected in the resolution forming the GHAD which will be heard on July 18, 2006: (1) the GHAD will be responsible for hiring its own staff (or contracting with non-City parties), including all workers who will undertake operation, maintenance, replacement, repair and other activities, and that no City employees shall be relied upon to perform such services for GHAD facilities and improvements; (2) the GHAD operations should be completely independent of the City, including, without limitation, no City funding, administration, or ownership of GHAD facilities or improvements; (3) the GHAD shall obtain general liability insurance and directors' insurance for the GHAD Board to the extent that the GHAD Board determines that such insurance is available. In the event subsistence insurance becomes available, the GHAD shall obtain such insurance provided that the GHAD Board determines that premiums for such insurance are a prudent expenditure of the GHAD's financial resources; (4) the GHAD will be obligated to defend, hold harmless, and

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The full authorization of assessments for the GHAD must provide for adequate funding of the indemnity and insurance requirements, and a thorough financial analysis must be prepared prior to such authorization to ensure that the assessments are sufficiently high to cover these and other GHAD financial requirements.

The same procedures were followed for the Leona Quarry GHAD. As an added measure of protection, both the Siena Hill project’s conditions of approval and future project’s conditions of approval will require the applicant to indemnify the City and the GHAD.

**ACTION REQUESTED OF THE CITY COUNCIL**

The Planning Commission recommends, and staff concurs, that the City Council adopt the resolution entitled: Resolution to Initiate Formation of the Oakland Area Geologic Hazard Abatement District (GHAD) and Setting a Public Hearing for July 18, 2006 to Consider Formation of the GHAD.

Respectfully submitted,



**CLAUDIA CAPPIO**  
Development Director  
Community & Economic Development Agency

Reviewed by:  
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Planning & Zoning Division

Prepared by:  
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Planning & Zoning Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

  
OFFICE OF THE CITY ADMINISTRATOR

**ATTACHMENTS:**

A: Proposed Process and Timeline for Initiation and Formation of the Oakland Area GHAD

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Outline of Process for the Initiation and Formation of the Proposed Oakland Area GHAD

The following are the actions that must take place in order to form the Oakland Area GHAD. As noted, some of the meetings and hearings have been scheduled.

**1. City Council Meeting on June 6**

Adopt the Resolution to Initiate the Formation of the Oakland Area Geologic Hazard Abatement District (GHAD) and Setting A Public Hearing for July 18, 2006 to Consider Formation of the GHAD.

- Consistent with Public Resources Code Sect. 26561, notice of the hearing on the formation of the GHAD must be mailed at least 20 days preceding the hearing date. The “formation hearing” cannot occur until 20 days after the Council adopts the Resolution to Initiate Formation.

**2. City Council Hearing on July 18, 2006**

Adopt the Resolution Approving Formation of the Oakland Area GHAD and Appointing the City Council of the City of Oakland as the GHAD Board of Directors.

**3. GHAD Board Meeting**

At the first available meeting of the GHAD Board, the GHAD Board would take the following actions:

- a. Adopt a Resolution for the:  
GHAD Board,
  1. Election/Appointment of a Chairperson for the Oakland Area
  2. Appointment of a GHAD Treasurer/Clerk,
  3. Appointment of a GHAD General Manager,
  4. Appointment of a GHAD Attorney,
  5. Authorization to allow the Chairperson to negotiate and enter into a contract with the Treasurer/Clerk services, and
  6. Authorization to allow the Treasurer/Clerk to negotiate and enter into contracts for GHAD General Manager services and GHAD Attorney services.
- b. Adopt a Resolution Accepting the Oakland Area GHAD Plan of Control and Setting a Public Hearing to Consider Objections on the Plan of Control. *Attachments:*
  - Plan of Control

- Notice
- c. Adopt a Resolution Approving the GHAD Budget. *Attachments:*
- GHAD Budget
- d. Adopt a Resolution of Intention to Order an Assessment for the Oakland Area GHAD, and Setting a Public Hearing to Consider the Proposed Assessment and Protests Against the Assessment. *Attachments:*
- Map of GHAD boundaries (which must identify parcels to be assessed);
  - Engineer's Report (including the total assessment that will be chargeable to the entire GHAD, the proposed estimated assessment to be levied against each parcel within the GHAD, and a description of the method used in formulating the estimated assessments);
  - Budget (which is included in the Engineer's Report);
  - Notice of Assessment;
  - Notice of Adoption of Resolution;
  - Ballot.

#### 4. **GHAD Board Public Hearing**

On the first available hearing date (after providing 45 days notice), the GHAD Board would take the following actions:

- a. Adopt a Resolution Approving the Plan of Control for the Oakland Area GHAD. *Attachments:*
- Plan of Control
- b. Open and hold the public hearing on the proposed assessment;
- c. Close the hearing and consider any protests against the assessment;
- d. Direct the GHAD Clerk to open and tabulate the assessment ballots;
- e. Adopt a Resolution Accepting the Canvass of Votes;
- f. Adopt a Resolution Confirming the Assessment, and Ordering the Levy and Collection of the Assessment. The GHAD Clerk shall then cause to be recorded a notice of assessment, whereupon the assessment shall attach as a lien upon the property.