

CITY OF OAKLAND
BOARD OF DIRECTORS OF THE OAKLAND AREA
GEOLOGIC HAZARD ABATEMENT DISTRICT
(CITY COUNCIL ACTING AS THE BOARD)
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: October 3, 2006

RE: **Adoption Of Four Resolutions By The Oakland Area Geologic Hazard Abatement District (GHAD) Board On The Following:**

I. RESOLUTION:

1. **ELECTION/APPOINTMENT OF _____ AS THE CHAIRPERSON OF THE OAKLAND AREA GHAD BOARD**
2. **APPOINTING RICHARD CLARK, AS THE TREASURER/CLERK OF THE OAKLAND AREA GHAD**
3. **APPOINTING ENGEO, INC. AS THE MANAGER OF THE OAKLAND AREA GHAD**
4. **APPOINTING PATRICIA E. CURTIN AS THE ATTORNEY OF THE OAKLAND AREA GHAD**
5. **AUTHORIZING THE CHAIRPERSON TO NEGOTIATE AND ENTER INTO A CONTRACT WITH RICHARD CLARK FOR TREASURER/CLERK SERVICES; AND**
6. **AUTHORIZING THE TREASURER/CLERK TO NEGOTIATE AND ENTER INTO CONTRACTS FOR GHAD MANAGER SERVICES AND GHAD ATTORNEY SERVICES.**

II. RESOLUTION ACCEPTING THE OAKLAND AREA GHAD PLAN OF CONTROL AND SETTING A PUBLIC HEARING TO CONSIDER OBJECTIONS TO THE PLAN OF CONTROL.

III. RESOLUTION APPROVING OAKLAND AREA GHAD BUDGET.

IV. RESOLUTION OF INTENTION TO ORDER AN ASSESSMENT FOR THE OAKLAND AREA GHAD AND SETTING A DATE FOR A PUBLIC HEARING TO CONSIDER THE PROPOSED ASSESSMENT AND PROTESTS AGAINST THE ASSESSMENT.

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Oakland Area Geologic Hazard Abatement District Board of Directors
October 3, 2006

SUMMARY

The Conditions of Approval for the Siena Hill Subdivision require the subdivider, Hillside Homes, to form a Geologic Hazard Abatement District to address certain potential geologic hazards associated with the development site. Planning and Zoning staff submitted a resolution to the City Council to form the Oakland Area Geologic Hazard Abatement District (GHAD) which would initially include the Siena Hill project. This project is a 32-unit attached single-family development with a private driveway. In addition, the Oakland Area GHAD would be available to new approved development projects that are deemed to have potential geologic hazards.

On July 18, 2006, the City Council adopted Resolution 80058 C.M.S. forming the Oakland Area GHAD. Resolution 80058 C.M.S. also appointed the members of the City Council to serve as the GHAD Board of Directors, which is a separate governmental district. Several additional steps are necessary to make the GHAD fully operational. The first step would include adoption of the four resolutions recommended to make the GHAD fully operational and funded.

Staff recommends that the Board of Directors of the Oakland Area GHAD adopt the four resolutions.

FISCAL IMPACTS

As proposed and as conditioned by the Planning Commission action to approve the Siena Hill project, the GHAD would be a self-sustaining entity and costs for maintenance and all related professional services to operate the GHAD would be recovered through the annual assessment of the property owners living within the district boundaries. The resolutions before the Board fulfill the steps that must be taken to have the GHAD fully funded and operational, including establishing all assessments, reserve funding, and/or other long term financing, and other necessary requirements. In addition, costs for storm drainage and retaining wall maintenance and other activities will be covered by the GHAD. No direct fiscal impacts on the City are therefore anticipated.

BACKGROUND

Purpose of a GHAD

GHAD's 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. GHAD financing is accomplished through an assessment of only properties within the boundaries of the designated district. GHAD's may also issue and service bonds, notes, or other debentures.

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Siena Hill Project

On March 2, 2005, the Planning Commission approved the planning entitlements for a 32-unit residential project with a private driveway off of Keller Avenue, between Rilea Way and Greenridge Drive. On June 1, 2005, the Planning Commission approved a Tentative Tract Map (TTM) that allows the property to be subdivided into the residential lots. As a condition of the approval, the Commission required that a GHAD be formed 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 of the proposed subdivision and improvements within the access easement and right-of-way areas since these improvements are part of the proposed development. The Conditions of Approval require that the GHAD be fully operational prior to the recordation of the final map.

The subdivider for the Siena Hill project has applied for review and approval of the final map; namely TTM7396. City staff is currently reviewing the final map and staff will present it to City Council for approval in the future.

City Council Actions

On June 20, 2006, the City Council adopted Resolution No. 79986 C.M.S. initiating the formation of the Oakland Area GHAD and setting a public hearing for July 18, 2006.

On July 18, 2006, the City Council of the City of Oakland adopted Resolution 80058 C.M.S. under which the City formed the Oakland Area GHAD to initially include the Siena Hill Project. In addition, the City Council in the Resolution stated its intent to allow newly approved development projects that are deemed to have potential geologic hazards to annex into the GHAD. Furthermore, the Resolution appointed the City Council to serve as the GHAD Board of Directors, a separate governmental district.

Adoption of Resolutions 79986 C.M.S. and 80058 C.M.S. satisfied the Conditions of Approval for the Siena Hill project in regard to the formation of the GHAD. However, there are other parts of the Conditions related to the Plan of Control and long term financing of the GHAD, which the subdivider must also satisfy before the GHAD can be fully operational. The Plan of Control is the mechanism that lays out the actual ongoing work and monitoring that will need to be accomplished through the GHAD. The plan describes the geotechnical hazards, their location, and provides measures to prevent, mitigate, abate and otherwise control those hazards. The term “geologic hazards” encompasses landslides, erosion, land subsidence, fault movement, or an earthquake. The Plan also includes GHAD’s maintenance responsibility, financial responsibility, GHAD Manager funding, indemnification and insurance responsibilities, and annual reporting responsibility.

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Peer Review of the Plan of Control and Budget

In order to satisfy the Conditions of Approval, the subdivider hired ENGEO, Inc. to prepare the Plan of Control and the Engineer's Report, and submitted them to the City for review. Planning and Zoning staff, Public Works Agency staff, and the City's Geotechnical peer review consultant, Darwin Myers and Associates, performed the initial and final review of these documents and also provided detailed recommendations. Both documents were revised by ENGEO, Inc to reflect the recommendations and to ensure strict compliance with PUD: COA 24 and TTM: COA 8. The consultants and staff have reviewed the proposed budget and assessment, and are satisfied they are adequate to support the ongoing costs and provide for unanticipated major repairs.

PROJECT DESCRIPTION

The following two steps must be taken to fulfill the requirements of Conditions of Approval 24 and 8 and to make the Oakland Area GHAD fully operational, including Proposition 218 requirements to impose and levy assessments:

STEP I: Adopt the attached four resolutions and schedule a Public Hearing date no earlier than 45 days from the first GHAD Board meeting.

STEP II: Conduct the Public Hearing and adopt additional resolutions approving the Plan of Control and confirming the GHAD assessment.

Each of these steps is fully described below.

STEP I.1) Proposed Resolution No. 1: Appointment of Chairperson and GHAD Officers:

Proposed Resolution No. 1 recommends the GHAD Board appoint a Chairperson. The Chairperson for the Leona Quarry GHAD is Henry Chang. For consistency purposes, Staff recommends that Mr. Chang also be appointed as the Chairperson for the Oakland Area GHAD.

Conditions of Approval 24 and 8 require the GHAD to be responsible for hiring its own officers and staff. A GHAD Manager, an Attorney, and a Treasurer/Clerk will need to be appointed to serve and assist the GHAD Board in its duties. The GHAD Manager shall have the duties of managing and directing on a daily basis the GHAD operations and staff. Also, the GHAD Manager shall award and execute contracts for repairs, maintenance, and improvement projects within the GHAD, and perform professional services as may be approved by the GHAD Board and set forth in the Manager Agreement.

The following officers have been recommended by staff for their extensive experience in managing and operating other GHADs in the Bay Area:

1. ENGEO, Inc. (Geotechnical Engineers) as GHAD Manager,

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2. Patricia E. Curtin, Attorney-at-Law of Morgan Miller Blair as GHAD Attorney, and
3. Richard Clark of Danville Associates as GHAD Treasurer/Clerk.

City staff and its peer review consultants have reviewed the credentials of the proposed officers and found them qualified to perform the required duties. Furthermore, the GHAD Manager, Treasurer/Clerk, and Attorney shall serve at the pleasure of the GHAD Board.

This Resolution further directs the Chairperson of the GHAD to negotiate an agreement for services with the Treasurer/Clerk. In turn, the Treasurer/Clerk will negotiate service agreements with the Manager and Attorney. The GHAD law specifically authorizes the GHAD Board to enter into contracts and agreements with a private organization or person in order to carry out the purpose and mission of the GHAD. (Pub. Res. Code 26500 et seq.)

Staff recommends that the GHAD Board adopt the Resolution Appointing a Chairperson, the Treasurer/Clerk, Manager and Attorney for the Oakland Area GHAD and authorizing the negotiation of agreements for the Treasurer/Clerk, Manager, and Attorney.

In addition, Resolution 80058 C.M.S. which formed the GHAD specified that the GHAD shall defend, hold harmless and indemnify the City and its respective officers, agents and employees against any liability associated with GHAD formation and operations. This Resolution directed the GHAD to execute an indemnity agreement to establish specific details for implementing the indemnity should it be invoked. The Resolution further specified that the GHAD would obtain general liability and directors' insurance for the GHAD Board to the extent the GHAD Board determines in its sole discretion that such insurance is available at commercially available rates. It is anticipated that the GHAD Officers, once appointed, will consult with the City Attorney's office, City risk management and other City staff to review and finalize these conditions. As specified in the GHAD formation resolution, the GHAD's obligations to indemnify the City are not limited by the fact that these issues are not yet resolved.

STEP 1.2) Proposed Resolution No. 2: Accepting Plan of Control And Setting Public Hearing Date To Consider Objections:

The Plan of Control is necessary to ensure that the requirements of the Conditions of Approval are fully met. The Plan of Control includes but is not limited to GHAD maintenance responsibilities, landslide and erosion control mitigations, GHAD repair priorities, and recommendations for prevention and mitigation of potential or existing erosion hazards, maintenance and monitoring schedule. The City's consultants and staff have reviewed the Plan of Control and recommended changes which have been incorporated into the Plan.

Staff recommends that the GHAD Board adopt the Resolution Accepting the Oakland Area GHAD Plan of Control and Setting a Public Hearing to Consider Objections on the Plan of Control.

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STEP I.3) Proposed Resolution No. 3: Adoption of GHAD Budget:

A GHAD budget has been prepared as part of the Engineer's Report to identify the estimated cost of the annual maintenance budget, the total assessment that will be chargeable to the entire GHAD, the proposed assessments to be levied each year against each parcel and the description of the method used in formulating the estimated assessment related to the Oakland Area GHAD. It also includes the cost for yearly insurance and contingencies. The budget is attached to proposed Resolution No. 3 (Attachment 3A).

The subdivider has presented a budget projection that provides a forecast of GHAD income and expenditures through the year 2010. The projection is based on the assumption that the transfer of responsibility from the subdivider to the GHAD will take place on January 1, 2009. The projected annual expenditures of \$97,900 (all figures in 2006 dollars) appear to be reasonable.

The largest portion of the annual GHAD expenditure budget is \$50,000, which represents an annualized cost of performing a major repair every 15 years at a cost of \$750,000. This expense is placed into a reserve fund. Additional annual expenditures are incurred due to ongoing monitoring and maintenance of improvements, including retaining walls, erosion management, water detention facilities, revegetation, and minor slope stabilization. Additionally, the budget includes expenditures associated with GHAD staff administration, accounting, technical consultant fees, and attorney fees. The Subdivider is responsible for performing all maintenance required under the Plan of Control during the three-year period prior to transfer of responsibility to the GHAD. In addition the Plan of Control notes that, in conformance with California Law, the developer will be responsible for any major repairs related to latent defects for 10 years following completion of the GHAD improvements. This provides GHAD an opportunity to require subdivider to bear all costs if there are any defects in design or construction that may lead to major repairs within the 10-year period.

Staff recommends that the GHAD Board adopt the Resolution Approving the GHAD Budget.

STEP I.4) Proposed Resolution No. 4: Assessment and Schedule Public Hearing:

Conditions of Approval 24 and 8 require that the assessments authorized for the GHAD must be determined by the GHAD Board following a thorough financial analysis and must include adequate funding for the indemnity and insurance obligations. Also, the GHAD Attorney and the City's Attorney must review the adequacy of the funding for indemnity and insurance and may make recommendations regarding such funding. The engineer's estimate contains the assessment proposed for each property. In order to allow sufficient reserves to be built up and maintained for the life of the GHAD, the City's consultants have recommended that the GHAD reserves be allowed to grow to a minimum level of \$1,000,000 (2006 dollars) before the GHAD Board may consider reducing the property assessment levels.

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Staff recommends that the GHAD Board adopt the Resolution of Intention to Order an Assessment for the Oakland Area GHAD and Set a Hearing Date for a Public Hearing to Consider the Proposed Assessment and Protests Against the Assessment. (Note: This resolution directs the GHAD Treasurer/Clerk to mail notice of the public hearing and to mail the assessment ballots.)

STEP II) During Public Hearing:

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

1. Open and hold the Public Hearing on the proposed Plan of Control and proposed assessment;
2. Close the Public Hearing and consider any objections/protests against the Plan of Control and assessment;
3. Adopt the Resolution accepting the Plan of Control;
4. Direct the GHAD Treasurer/Clerk to open and tabulate the assessment ballots;
5. Adopt the Resolution Accepting the Canvass of Votes for the Oakland Area GHAD;
6. Adopt the Resolution Confirming the Assessment for Oakland Area GHAD and Ordering the Levy and Collection Thereof. The GHAD Treasurer/Clerk shall then cause to be recorded a notice of assessment, whereupon the assessment shall attach as a lien upon the property.

This hearing shall be scheduled for December 5, 2006.

KEY ISSUES AND IMPACTS

GHAD Officers

Proposed Resolution No. 1 includes the appointment of GHAD Officers—a Treasurer/Clerk, Manager and Attorney. The GHAD law requires the GHAD Board to appoint a treasurer and clerk (Pub. Res. Code §§26584, 26585) and other necessary officers and delegate such powers to those officers as the Board deems appropriate (Pub. Res. Code §26586). This process is not required to undergo a competitive selection process; the law directs the Board to “appoint” these officers. Also, there is not sufficient time to undergo such a process since the officers are necessary to perform services immediately. Specifically, the Manager and Attorney are already involved in the process and have prepared and/or assisted in preparing the proposed Plan of Control, Engineer’s Report, budget, staff reports and resolutions. It was essential to engage the services of these individuals at the outset in order to ensure separation between the City and the GHAD for liability reasons. The Officers shall serve at the pleasure of the GHAD Board and can be replaced at any time.

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If a competitive process is undertaken and a new Manager and Attorney are chosen, it is highly likely the new Manager and Attorney will revise the Plan of Control and Engineer's Report. The former Manager and Attorney would absolve themselves of all responsibilities under the Plan of Control and Engineer's Report since they would not be implementing the procedures in those documents. Revisions to the documents will result in delay in making the GHAD operational, and may result in higher assessments which would require a new Proposition 218 election. Also, such revisions would need to be reviewed and considered by the GHAD Board.

As the recommended GHAD Manager, ENGEO has expressed willingness to indemnify the GHAD, its Board, officers and employees, the City and City Council as an additional insured on its general liability insurance policy. It should be noted that a different GHAD Manager may not be willing or able to similarly cover the City and City Council in its policy. It is uncommon to name a non-contracting party (such as the City and City Council) as an additional insured.

Staff believes the proposed Officers are highly qualified to serve the GHAD Board. The proposed Officers are the same individuals that serve as the respective officers for the Leona Quarry GHAD. Their credentials and abilities were thoroughly discussed during the formation of the Leona Quarry GHAD and are outlined in proposed GHAD Resolution No. 1. Having the same officers on both GHADs will allow for consistent implementation of the GHAD Board duties and responsibilities.

Engineer's Report

Submission of an Engineer's Report is required as part of the GHAD. This report, along with all the other geotechnical and other analysis required by the City, enabled a specific set of measures to be developed for ongoing maintenance, monitoring, and inspection. It is one of the key sources of information upon which the GHAD operating and reserve budget is based. The Engineer's Report was prepared by ENGEO, Inc., a licensed geotechnical engineer with full consideration of the state requirements and site geotechnical conditions. The report builds on the site specific geotechnical analyses already completed for the site and the project. City staff and the City's Geotechnical peer review consultant, Darwin Myers and Associates reviewed the Engineer's Report and work program to ensure that the GHAD minimizes, to the maximum extent feasible, any risk of geotechnical problems or failure.

Under recommendations contained in the GHAD resolution, the GHAD Board of Directors, at their sole discretion, has the final authority to review and approve the report, along with the operating budget, and the maintenance and monitoring plan developed from this report.

Adequacy of the GHAD Budget, Reserves, and Financial Analysis

As described above, the annual budget for GHAD includes funding for the following programs:

- Preventive Maintenance and Operations Program: The Preventive Maintenance and Operations Programs are designed to provide funding for daily operations of the GHAD

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as well as funding for preventive maintenance activities oriented at preventing and/or minimizing damage from geologic hazards. The Preventive Maintenance elements of the Program Budget includes funding for the GHAD to respond to and evaluate reports of geologic hazards as well as items such as erosion repair, revegetation, surface and subsurface drainage facility maintenance, and retaining wall maintenance. The Operations portion of the Program Budget may include funding for ongoing operations and related activities including GHAD liaison with residents, local homeowners associations and other groups.

- Major Repair Program: This portion of the Program Budget provides funding for major repairs as may be required. The funds are placed into the GHAD reserve until they are needed. As described above, an annual expenditure of \$50,000 has been allocated in the Program Budget for the major repair program.
- Administration: This portion of the Program Budget provides funding for the overall administration of the GHADs. Support for the General Manager function, as well as related expenses including, but not necessarily limited to, accounting and bookkeeping support services and office related expenses (rent, telephones, office equipment and supplies) are included in this portion of the budget. Also included in the administrative budget is funding for outside legal counsel, technical consultants, and local agency support services as may be required.

As with the formation of any budget, it is necessary to estimate future costs such that the budget will remain solvent over the life of the GHAD. This estimation has been completed by performing an actuarial analysis of risk based on past experience at similar properties with similar geotechnical and geologic conditions. In order to determine a sufficient budgetary reserve, four parameters have been considered: the number of assessed units in the GHAD, the level of geotechnical risk within the GHAD boundaries, the average value of assessed properties, and the relative density of construction.

Under the requirements established in the Conditions of Approval for the Siena Hill project, the project applicant is required to fund the initial amount of reserves. In addition, the Conditions require that the GHAD budget must separately identify the projected costs associated with the 1) geotechnical slope stability maintenance work; 2) drainage facilitates including the storm inlets, drainage ditches, etc., and maintenance; 3) storm water quality maintenance; and 4) a reserve fund. As part of the initial budget submittal, staff also recommends that a pro forma financial analysis be included which would set forth revenue and expenditure projection, the amount of reserves that are projected to be established over time, and an assessment of the type and amount of bonding capacity that could be relied upon in the event of an emergency. The GHAD Board will have the sole authority and discretion to set the amount of reserves and establish the assessment.

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ENVIRONMENTAL DETERMINATION

GHAD formations are exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to California Public Resource Code Section 26559 (GHAD law that specifically exempts the application of CEQA to GHADs).

SUSTAINABLE OPPORTUNITIES

The consideration of a GHAD, in and of itself, does not present sustainable opportunities.

Economic: Economically, the GHAD will assure the appropriation of adequate resources to manage potential geotechnical, drainage, and other potential problems. Furthermore, the GHAD will ensure that the required services are provided in a responsible manner for those properties within the district.

Environmental: The GHAD's purpose is to prevent, mitigate, control or abate defined geologic hazards through maintenance, improvements, or other means. These geologic hazards include landslides, mudslides, steep slopes, and soil erosion all of which could impact Oakland's creeks, riparian corridors, native plant communities, wildlife habitat, and water quality. The GHAD ensures that there are adequate resources to address these problems and will mitigate or minimize environmental impacts on Oakland's creeks, plant and wildlife communities, and water quality, thereby serving to create a safer environment for all of Oakland.

Social Equity: All properties deemed to exhibit potential geologic hazards could request to annex into the GHAD. However, the GHAD requires field-verified geologic mapping, detailed as-built construction documents, and an assessment from the property owners that may discourage many economically disadvantaged properties from joining the GHAD.

DISABILITY AND SENIOR CITIZEN ACCESS

The formation of the GHAD will not directly affect accessibility for people with disabilities or senior citizens. Any new development in the area would be subject to the Americans with Disabilities Act (ADA), as provided for in the Uniform Building Code (UBC), and in Title 24 of the California State Code.

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ACTION REQUESTED OF THE GHAD BOARD OF DIRECTORS

Staff recommends that the GHAD Board adopt the attached four resolutions and set the date of December 5, 2006, as the Public Hearing in order to fulfill the requirements of PUD: COA 24 and TTM: COA 8 and to make the Oakland Area GHAD fully operational, including Proposition 218 requirements to impose and levy assessments.

Respectfully submitted,



CLAUDIA CAPPIO
Development Director
Community & Economic Development Agency

Reviewed by:
Gary Patton, Deputy Director of Planning
Planning & Zoning Division

Prepared by:
Heather Klein, Planner III
Planning & Zoning Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



OFFICE OF THE CITY ADMINISTRATOR

ATTACHMENTS:

1. GHAD Resolution No. 1:
 1. Election/Appointment Of _____ As The Chairperson Of The Oakland Area GHAD Board
 2. Appointing Richard Clark, Of Danville Associates, As The Treasurer/Clerk Of The Oakland Area GHAD
 3. Appointing EN GEO, Inc. As The Manager Of The Oakland Area GHAD
 4. Appointing Patricia E. Curtin As The Attorney Of The Oakland Area GHAD

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Oakland Area Geologic Hazard Abatement District Board of Directors
October 3, 2006

5. Authorizing The Chairperson To Negotiate And Enter Into A Contract With Richard Clark For Treasurer/Clerk Services; And
 6. Authorizing The Treasurer/Clerk To Negotiate And Enter Into Contracts For GHAD Manager Services And GHAD Attorney Services.
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2. GHAD Resolution No. 2:

Resolution Accepting The Oakland Area GHAD Plan Of Control And Setting A Public Hearing To Consider Objections To The Plan Of Control
 3. GHAD Resolution No. 3:

Resolution Approving Oakland Area GHAD Budget
 - Oakland Area GHAD Budget
 4. GHAD Resolution No. 4:

Resolution Of Intention To Order An Assessment For The Oakland Area GHAD And Setting A Date For A Public Hearing To Consider The Proposed Assessment And Protests Against The Assessment
 - Map of Oakland Area GHAD Boundaries
 - Engineer's Report
 - Notice of Adoption of Resolution
 - Ballot