LEONA QUARRY GHAD BOARD
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency and Community & Economic Development Agency
DATE: March 15, 2005

RE: **SUPPLEMENTAL REPORT ON THE LEONA QUARRY SUBDIVISION PROJECT RELATED TO (1) MAKING THE LEONA QUARRY GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD) OPERATIONAL BY APPOINTING THE GHAD OFFICERS, (2) ACCEPTING PETITION AND SETTING A PUBLIC HEARING FOR PROPERTY ANNEXATION, (3) ACCEPTING AMENDMENT 1 TO GHAD PLAN OF CONTROL AND SETTING A PUBLIC HEARING, (4) APPROVING THE GHAD BUDGET AND (5) APPROVING RESOLUTION OF INTENTION TO ORDER THE GHAD ASSESSMENTS, SET A PUBLIC HEARING, AND ESTABLISH ALL ASSESSMENTS AND FUNDING.**

SUMMARY

This supplemental report and the attachments are intended to answer the questions raised on March 8, 2005 by the Public Works Agency Committee, sitting in an advisory capacity to the GHAD Board, pertaining to making the Geologic Hazard Abatement District (GHAD) operational. The changes requested by the Committee are reflected in the report and the attachments, as well as incorporated into the proposed resolutions and pertinent GHAD documents.

Item 1: **Changes to GHAD Resolutions:** The Committee requested changes to the proposed resolutions as follows:

- **Appointment of GHAD Chairperson**: The resolution has been revised to reflect that a member of the City Council will be elected and appointed as the Chairperson of the GHAD Board.
- **Appointments of GHAD officers:** The resolution has been revised to reflect that the GHAD officers will be appointed to interim positions and will serve at the pleasure of the GHAD Board.

Item 2: **Revision to Amendment 1 to the Plan of Control**: Amendment 1 to the Plan of Control (Attachment 3-A to GHAD Resolution No. 3) has been revised to reflect the changes recommended by the PWA Committee. These changes are listed below:

a. Page 20, Landslide Mitigation for existing Landslides and Erosion Features: Added 2nd and 3rd sentence.
b. Page 25, Section X, Maintenance and Monitoring Schedule: Modify fourth sentence to reflect that inspection will be scheduled to take place in August or September.

c. Page 25, Section X, Maintenance and Monitoring Schedule, Last Paragraph, Second Sentence: Remove "budget permitting".
d. Page 26, Section X, Maintenance and Monitoring Schedule, Second Bullet, Third Sentence: Remove "If possible".

Item 3: **Peer Review Comments on GHAD Documents:** The PWA Committee requested staff to include comments made by City consultants Lowney Associates, Seidelman Associates, and Harris and Associates on Amendment 1 to the Plan of Control in this supplemental report. These reports are included under Attachments A, B, and C respectively. The responses from Engeo, Inc to the City consultants' comments are also included as Attachment D.

Item 4: Public Works Committee requested staff to obtain a letter from the City's Geotechnical Peer review consultant, Lowney Associates, certifying that slope stability analysis is being done according to Professor Sitar and Mr. Seidelman's recommendations listed in the Leona Project Settlement Agreement dated December 2003. Lowney's letter is included as Attachments E.

Item 5: **City versus GHAD responsibilities** towards the maintenance of the public improvements: A document entitled an overview of Geologic Hazard Abatement Districts which provides more detailed explanation about GHAD public improvements is included as Attachment F. The specific City and GHAD responsibilities are explained below.

- **GHAD Responsibilities:** GHAD responsibilities are covered in the Plan of Control, which include but are not limited to hiring its own staff or contracting with non-City parties to perform such staff services including all workers who will undertake operation, maintenance, replacement, repair and other services for GHAD facilities and improvements. Specific GHAD maintenance responsibilities are listed in a Matrix included as Attachment G.

- **City Responsibilities**: The City will be responsible for maintaining the infrastructure improvements such as the sanitary sewers, the roadways, streetlights and accepted improvements in the public right-of-way, which are not associated with GHAD or the homeowners association.

Item 6: **More detailed explanation on budget**: A GHAD budget showing the projected revenues and annual expenditures for a six-year period is included as Attachment H.

Item 7: **Due diligence on selection of officers and questions on Conflict of Interest:** City staff received and reviewed the resumes of each of the proposed GHAD officers and found that they all have extensive and relevant experience with various GHADs in the Bay Area. Subject resumes are included as Attachment I.

Best practice requires a project applicant to hire a separate engineer (from its project engineer) to prepare and implement a Plan of Control and Engineers Report in forming a GHAD. This eliminates any potential conflict of interest.

On this project, the applicant's Geotechnical Engineer-of-Record is Berlogar Geotechnical Consultants. Berlogar has been retained by the applicant to conduct geotechnical exploration, analysis, and reports and to provide design recommendations

for the reconstruction of slopes, grading operations, and related geotechnical work in order to complete the final design in accordance with the project's conditions of approval.

Berlogar is also responsible for conducting onsite monitoring and inspection and for preparing project reports throughout the grading operations. Berlogar is required to carry E&O and General Liability Insurance and is liable under state law for design defects.

The applicant hired a separate engineering firm (Engeo, Inc.) to prepare the Plan of Control, which is mainly designed to provide for monitoring and maintaining the GHAD improvements. The applicant is funding the services of Engeo, as it is funding the costs of services of the City peer review consultants and other cost of the project. A Plan of Control and Engineer's Report are required by law to be prepared before a GHAD can become operational. The only entity available to pay for these services is the project applicant.

The Plan of Control and Engineer's Report were reviewed by City Staff members and were subject to three peer reviewers, Lowney Associates, Siedelman Associates, and Harris and Associates. Staff and peer review consultants believe these documents are objective.

A question has arisen regarding the need to have an RFP for the GHAD Manager. If this process is undertaken, and a new GHAD Manager is chosen, it is highly likely the new GHAD Manager will revise the Plan of Control and Engineer's Report. The former GHAD Manager would absolve itself of all responsibilities under its Plan of Control since it would not be the one implementing the procedures in that document. Revisions to these documents can result in a higher assessment, 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 agreed to identify 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. Engeo agreed to accomplish this.

Staff believes that Engeo is highly qualified to serve as the GHAD Manger. Staff has reviewed Engeo's credentials and has met with them on many occasions throughout this process. Staff has spoken to others who have worked with GHADs, and these individuals confirmed that Engeo is uniquely qualified to serve as a GHAD Manager. Engeo currently serves as a GHAD manager for other GHADs, and has worked with GHADs for over 20 years. Also, Uri Eliahu, President of Engeo, is one of the founding members of the California Association of Geologic Hazard Abatement Districts and serves as the chairperson of that organization. Mr. Eliahu has also been instrumental in bringing the issue regarding the desire to obtain insurance for GHADs to the forefront. Mr. Eliahu is in the process of working with brokers to assist them in preparing polices or other insurance coverage for GHADs, which currently do not exist.

Item 8: **Liability Issues Associated with the GHAD:** Members of the Public Works Committee asked for an analysis of liability issues associated with the GHAD and information regarding situations in which other cities/counties have been found liable in connection

with a GHAD. The City Attorney's office prepared an analysis of liability issues associated with the GHAD in connection with the City Council's consideration of GHAD formation in December 2002. A copy of the City Attorney's analysis is included as Attachment J to this report. The City Attorney's office has confirmed that, as was the case at the time of the City Attorney's December 2002 analysis, there are no known cases that have found a city or county liable for actions associated with a GHAD.

Notwithstanding the lack of precedent for holding a city liable for GHAD activities, it cannot be said with absolute certainty that a court would never find the City responsible for any Leona Quarry GHAD liabilities. As discussed in the City Attorney's December 2002 analysis, the GHAD is exposed to potential liability by its essential nature. Such liability would be of significant concern if it could be imputed to the City. Although it is not possible to eliminate all potential risk of exposure, the City Attorney's office recommended certain safeguards in the GHAD formation resolution and the project conditions of approval to increase the City's level of protection. Each of these recommendations was incorporated into Resolution No. 77545 C.M.S., which is included as Attachment K to this report. These include requirements for GHAD indemnity and insurance that to the City's knowledge are requirements that have not been imposed on any other GHADs in the state. To protect the City from becoming vicariously liable for GHAD actions, the GHAD formation resolution also requires the GHAD to hire its own separate staff and legal counsel and prohibits reliance on City employees for GHAD services.

Item 9: **Amendment to Resolution 77545 C.M.S. Approving Formation of GHAD:** Item 7 in Resolution 77545 C.M.S, which approved GHAD formation, specified that the GHAD would be dissolved if certain events had not occurred by October 31, 2003. This provision was included in the December 2002 GHAD formation resolution at the request of the then-owner of the Leona Quarry site, who wanted assurance that the GHAD could be dissolved if the project applicant decided not to acquire the site. Specifically, the property owner was concerned about project uncertainties associated with the litigation that was later settled in December 2003. Since that time, the project applicant has acquired the site and is proceeding with the project, making this provision unnecessary and undesirable. As a result, staff recommends that Resolution No. 77545 C.M.S. be amended to delete Item 7. This recommendation would need to be implemented by City Council resolution (not action of the GHAD Board) and would be brought forward to City Council concurrently with the GHAD's public hearings that are being set as part of the current actions.

Item 10: **Alternative Language on Insurance Requirements:** There was an open issue at the time of the Public Works Committee regarding whether ENGEO would be able to add the City as an additional insured. At the meeting, the Committee asked staff to provide alternative language to deal with this issue at the GHAD Board meeting. Since that time, ENGEO has agreed to add the City as an additional insured, thereby resolving this issue in the City's favor. Accordingly, no alternative language is necessary.

ACTION REQUESTED BY THE CITY COUNCIL

Staff recommends that the GHAD Board accept the Supplemental Report and take the appropriate action to make GHAD fully operational.

Respectfully submitted,

RAUL GODINEZ II, P.E.
Director
Public Works Agency

Respectfully submitted,

CLAUDIA CAPPIO
Director of Development
Community & Economic Development Agency

Reviewed By:
Michael Neary, P.E.
Assistant Director, Public Works Agency

Prepared By:
Fuad Sweiss, P.E.
Engineering Design & Right-of-Way Interim Manager

APPROVED AND FORWARDED TO THE
LEONA QUARRY GHAD BOARD:

OFFICE OF THE CITY ADMINISTRATOR

LOWNEYASSOCIATES
Environmental/Geotechnical/Engineering Services

Mountain View, CA
Fairfield, CA
Oakland, CA
San Ramon, CA
Fullerton, CA
Las Vegas, NV

ATTACHMENT A

February 17, 2005
Project 1993-1

Mr. Marcel Uzegbu
City of Oakland
Public Works Department
250 Frank Ogawa Plaza, Suite 430
Oakland, CA 94612

RE: GEOLOGIC HAZARD ABATEMENT DISTRICT LEONA QUARRY PROJECT

Dear Mr Uzegbu:

This letter is a follow up to our letter of February 14, 2005 regarding our review of the documentation for the Geologic Hazard Abatement District (GHAD) for the Leona Quarry Project. Since the issuance of our that letter, we have further reviewed the documentation provided to us (including a revised *Amendment 1 to the Plan of Control* prepared by ENGEO Incorporated dated January 4, 2005) and have met with City staff, the project sponsor, DeSilva Gates, and the Geotechnical designer, Berlogar Geotechnical Consultants (BGC).

We have also had a chance to review the January 7, 2005 letter report from Engeo Incorporated titled *Response to Leona Quarry Project Review of GHAD Documentation Comments*. We had not seen that letter at the time we issued the February 14, 2005 letter.

Lastly, we have had additional conversations regarding the project with Mr. Paul Seidelman of Seidelman Associates. This current letter presents additional comments on the GHAD documentation based on our additional reviews and discussions.

Condition of Approval Number 24, contained in the Oakland City Council Resolution passed on February 17, 2004, requires that the GHAD be fully operational prior to the recordation of the first final map for the project. Condition No. 24 also places several requirements on the GHAD and the Plan of Control. Primary amongst these requirements is that the method of providing long-term financing for the GHAD be established prior to map recordation so that the GHAD will be able to fulfill its responsibilities and conduct its operations.

- Condition No. 24.a. requires that the GHAD assume responsibility for all aspects of long-term maintenance at the site. It is our understanding that this responsibility will pass from the developer to the GHAD after an appropriate time has elapsed after the completion of construction. Prior to the transfer of responsibility, the developer will be responsible for maintenance and repairs. During this time, the GHAD will be collecting assessments, but will not have the responsibility for maintaining the site. This will enable the GHAD reserves to build to a level sufficient to fund the activities of the GHAD once the transfer takes place. Section VI of the revised *Plan of Control* states that the transfer will occur "two years after the first occupancy permit for the Leona Quarry Project ".

Because the construction of homes may occur over a period of several years after the first occupancy permit is issued, the City may want to consider revising the *Plan of Control* to set the transfer date at some later date.

- Because slope instability problems typically occur during the winter months, we recommend that the "waiting" period discussed above be modified to a period of time spanning at least two winter seasons. An acceptable method of accomplishing that would be to require that, if the period starts between April 15 and October 15, the waiting period would be two years, if the period starts between October 15 and April 15, the time period would be 2.5 years.

- The condition of the site at the time of transfer should be subject to review by the GHAD Manager, and by the City's independent consultant, to confirm that there are no imminent treats present, that the site monitoring and maintenance systems are in good working order, and that the actual revenue collections are consistent with the projections.

- The developer has presented a budget projection that provides a forecast of the GHAD income and expenditures through the year 2010. The projection is based on the assumption that the transfer of responsibility from the developer to the GHAD will take place on January 1, 2008. The projected annual expenditures of $423,500 (all figures are in 2005 dollars) appear to be reasonable. However, we understand that the proposed GHAD Manager is being asked to provide additional backup / quantity takeoffs to support their estimates.

- The largest portion of the annual GHAD expenditure budget is $100,000 which represents an annualized cost of performing a major repair every 10 years at a cost of $1,000,000. It is our understanding that the developer will be responsible for performing all repairs during the two-year period prior to the transfer of responsibility to the GHAD. In addition, we understand that California law holds the developer responsible for a period of ten years for defects in design or construction that lead to major repairs. Thus, if there are major repairs necessary during the first ten years of GHAD control, the GHAD has the opportunity to have the cost of those repairs borne by the developer. For the above reasons, it our opinion that the assumption of a $1,000,000 repair occurring an average of every ten years is a reasonable assumption.

- Condition 24.f. specifically requires that the GHAD budget separately identify the costs associated with (1) slope stability maintenance work; (2) drainage facilities and (3) storm water quality and (4) reserve fund. If the condition envisions that "storm water quality monitoring" includes sampling and laboratory testing of storm water, then it appears that the *Plan of Control* does not include such activities.

- To allow for sufficient reserves to be built up and maintained for the life of the GHAD, the City may want to consider requiring that the GHAD reserves be

allowed to grow to a certain minimum level (say $5,000,000) before the GHAD board is allowed to consider reducing per property assessment levels.

- The number and types of instrumentation systems (piezometers, inclinometers, etc.) assumed in the *Plan of Control* are based on the original May 15, 2003 Geotechnical Engineering reports by Berlogar Geotechnical Consultants (BGC). As we stated in our earlier letters, we recommended that the *Plan of Control* should be reviewed by BGC to ensure that the maintenance and monitoring program is consistent with their original recommendations and any recommendations issued as a result of changes made during construction. We note that BGC did issue a letter dated January 6, 2005, in which they stated that the *Plan of Control* is in agreement with their recommendations.

  We feel that the amount of instrumentation recommended by BGC may not be sufficient to adequately monitor the geotechnical performance of the site. We recommend that BGC be required to present an Instrumentation Program report, which would include a description of the types and amounts of instrumentation to be installed at the site. This report should also include action levels (quantitatively, if possible) based on readings of the instrumentation. We met with a BGC representative on February 17, 2005 and discussed their plans for the development of such a report.

- The Plan of Control should be reviewed by the Revegetation Engineer (H.T. Harvey & Associates) to ensure that the maintenance and monitoring program is consistent with their recommendations. We note that H.T Harvey & Associates did issue a letter dated January 5, 2005, in which they stated that the *Plan of Control* is in agreement with their recommendations.

- It is our understanding that the GHAD has the authority to hire technical consultants to assist them in the assessment of conditions and the design of remedial measures. It would present an inherent conflict of interest if the GHAD hired BGC or if the GHAD hired itself to perform those duties. The purpose of hiring technical consultants is to obtain an independent opinion.

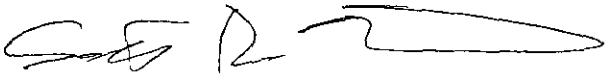
- As mentioned in our previous letters, the boundaries of the GHAD cut across slopes that may be the source of stability problems in the future. Since the GHAD has limited ability to perform maintenance or remedial measures outside of its boundaries, the Plan of Control should present a plan to address these "Offsite risks". The response to this issue given in the January 7, 2005 letter appears to contradict itself, and needs to be clarified.

- The GHAD Manager is responsible for preparing an annual report that summarizes the effectiveness of the monitoring and maintenance program and makes recommendations for activities during the upcoming year. We recommend that a part of that report should be to recommend any changes to the instrumentation program along with the maintenance and monitoring programs along with the corresponding effects on the projected GHAD expenditures.

Please contact me if you have any questions regarding this issue.

Sincerely,

LOWNEY ASSOCIATES



Scott R. Huntsman, Ph.D., G.E., CPESC
Associate / Area Manager

LOWNEY ASSOCIATES
Environmental/Geotechnical/Engineering Services

Mountain View, CA
Fairfield, CA
Oakland, CA
San Ramon, CA
Fullerton, CA
Las Vegas, NV

February 14, 2005
Project 1993-1

Mr. Marcel Uzegbu
City of Oakland
Public Works Department
250 Frank Ogawa Plaza, Suite 430
Oakland, CA 94612

RE: GEOLOGIC HAZARD ABATEMENT DISTRICT LEONA QUARRY PROJECT

Dear Mr Uzegbu:

This letter is a follow up to our letters of December 17, 2004 and December 9, 2004 regarding our review of the documentation for the Geologic Hazard Abatement District (GHAD) for the Leona Quarry Project. Since the issuance of our December 17, 2004 letter, we have further reviewed the documentation provided to us (including a revised *Amendment 1 to the Plan of Control* prepared by ENGEO Incorporated dated January 4, 2005) and have met with City staff and Mr. Paul Seidelman of Seidelman Associates. This current letter presents additional comments on the GHAD documentation based on our additional reviews and discussions.

Condition of Approval Number 24, contained in the Oakland City Council Resolution passed on February 17, 2004, requires that the GHAD be fully operational prior to the recordation of the first final map for the project. Condition No. 24 also places several requirements on the GHAD and the Plan of Control. Primary amongst these requirements is that the method of providing long-term financing for the GHAD be established prior to map recordation so that the GHAD will be able to fulfill its responsibilities and conduct its operations.

- Condition No. 24.a. requires that the GHAD assume responsibility for all aspects of long-term maintenance at the site. It is our understanding that this responsibility will pass from the developer to the GHAD after an appropriate time has elapsed after the completion of construction. Prior to the transfer of responsibility, the developer will be responsible for maintenance and repairs. During this time, the GHAD will be collecting assessments, but will not have the responsibility for maintaining the site. This will enable the GHAD reserves to build to a level sufficient to fund the activities of the GHAD once the transfer takes place. Section VI of the revised *Plan of Control* states that the transfer will occur "two years after the first occupancy permit for the Leona Quarry Project ".

  Because the construction of homes may occur over a period of several years after the <u>first</u> occupancy permit is issued, the City may want to consider revising the *Plan of Control* to set the transfer date at two years after the <u>last</u> occupancy permit is issued, or some other mutually acceptable date.

- Because slope instability problems typically occur during the winter months, we recommend that the two-year period discussed above be modified to a period of time spanning two winter seasons. An acceptable method of accomplishing that would be to require that, if the period starts between April 15 and October 15, the waiting period would be two years, if the period starts between October 15 and April 15, the time period would be 2.5 years.

- The condition of the site at the time of transfer should be subject to review by the GHAD Manager, and by the City's independent consultant, to confirm that there are no imminent treats present, that the site monitoring and maintenance systems are in good working order, and that the actual revenue collections are consistent with the projections.

- The developer has presented a budget projection that provides a forecast of the GHAD income and expenditures through the year 2010. The projection is based on the assumption that the transfer of responsibility from the developer to the GHAD will take place on January 1, 2008. The projected annual expenditures of $423,500 (all figures are in 2005 dollars) appear to be reasonable, however, it would be helpful if the proposed GHAD Manager provided additional backup / quantity takeoffs to support their estimates.

- The largest portion of the annual GHAD expenditure budget is $100,000 which represents an annualized cost of performing a major repair every 10 years at a cost of $1,000,000. It is our understanding that the developer will be responsible for performing all repairs during the two-year period prior to the transfer of responsibility to the GHAD. In addition, we understand that California law holds the developer responsible for a period of ten years for defects in design or construction that lead to major repairs. Thus, if there are major repairs necessary during the first ten years of GHAD control, the GHAD has the opportunity to have the cost of those repairs borne by the developer. For the above reasons, it our opinion that the assumption of a $1,000,000 repair occurring an average of every ten years is a reasonable assumption.

- Condition 24.f. specifically requires that the GHAD budget separately identify the costs associated with (1) slope stability maintenance work; (2) drainage facilities and (3) storm water quality and (4) reserve fund. The documents provided do not provide a description of the activities for, or cost estimates for, storm water quality monitoring.

- To allow for sufficient reserves to be built up and maintained for the life of the GHAD, the City may want to consider requiring that the GHAD reserves be allowed to grow to a certain minimum level (say $5,000,000) before the GHAD board is allowed to consider reducing per property assessment levels.

- The number and types of instrumentation systems (piezometers, inclinometers, etc.) assumed in the *Plan of Control* are based on the original May 15, 2003 Geotechnical Engineering reports by Berlogar Geotechnical Consultants (BGC).

As we stated in our earlier letters, we recommend that the *Plan of Control* should be reviewed by BGC to ensure that the maintenance and monitoring program is consistent with their original recommendations and any recommendations issued as a result of changes made during construction. We suspect that BGC may want to increase the amount of instrumentation installed on the site. We recommend that BGC be required to present an Instrumentation Program report which would include an operations and maintenance manual for the site. This report should also include action levels based on readings of the instrumentation.

- The Plan of Control should be reviewed by the Revegetation Engineer (H.T. Harvey & Associates) to ensure that the maintenance and monitoring program is consistent with their recommendations.

- It is our understanding that the GHAD has the authority to hire technical consultants to assist them in the assessment of conditions and the design of remedial measures. It would present an inherent conflict of interest if the GHAD hired BGC or if the GHAD hired itself to perform those duties. The purpose of hiring technical consultants is to obtain an independent opinion.

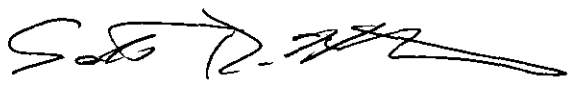
- As mentioned in our previous letters, the boundaries of the GHAD cut across slopes that may be the source of stability problems in the future. Since the GHAD has limited ability to perform maintenance or remedial measures outside of its boundaries, the Plan of Control should present a plan to manage these "Offsite risks".

- The GHAD Manager is responsible for preparing an annual report that summarizes the effectiveness of the monitoring and maintenance program and makes recommendations for activities during the upcoming year. We recommend that a part of that report should be to recommend any changes to the instrumentation program along with the maintenance and monitoring programs along with the corresponding effects on the projected GHAD expenditures.

Please contact me if you have any questions regarding this issue.

Sincerely,

LOWNEY ASSOCIATES



Scott R. Huntsman, Ph.D., G.E., CPESC
Associate / Area Manager

December 17, 2004
Project 1993-1

Mr. Marcel Uzegbu
City of Oakland
Public Works Department
250 Frank Ogawa Plaza, Suite 430
Oakland, CA 94612

RE: GEOLOGIG HAZARD ABATEMENT DISTRICT LEONA QUARRY PROJECT

Dear Mr Uzegbu:

This letter is a follow up to the letter issued December 9, 2004 regarding Lowney Associate's review of the available information on the Geologic Hazard Abatement District (GHAD) for the Leona Quarry Project.

Condition of approval number 24, contained in the Oakland City Council Resolution passed on February 17, 2004, requires that the GHAD be fully operational prior to the recordation of the first final map for the Leona Quarry project, and that all "assessments, reserve funding and/or other long-term financing" necessary to fully fund the GHAD shall be established and authorized.

Subsequent to the December 9, 2004 letter, we met (on two occasions, December 10 and December 13) with City staff, representatives from the project sponsor and representatives from the proposed GHAD Manager, GHAD Attorney and GHAD Treasurer. The purpose of these meetings was to discuss the details of GHAD operations and to address issues raised in our December 9, 2004 letter. Of specific concern was the discussions related to the funding that would allow the GHAD to complete it's annual maintenance responsibilities and to build up an adequate reserve fund to cover the cost of repairs as they become necessary.

The proposed GHAD manager presented budget projections spanning from the present through the end of 2008. As presently planned, the GHAD will begin collecting assessment income in January 2006, when the first units are sold. The amount of assessment will increase as more units are sold. However, the responsibilities of the GHAD will be performed by (and be the responsibility of) the project sponsor for the first two years, through the end of 2007. The site must be in good condition before transfer to the GHAD.

At an assumed assessment rate of $970 (2004 dollars) per parcel and assuming that 292 units will be sold by the end of 2007, the reserve fund will be approximately $487,000 (inflated dollars) by the beginning of 2008, at which time the responsibility for the site will be transferred to the GHAD. In the funding model presented, the increase in the reserve fund after one year of GHAD control will be approximately $135,000 for a total reserve of approximately $622,000.

The above projection assumes the following:

- The GHAD will start collecting assessments in 2006 and that by year's end, 157 units will have been sold and paying assessments
- By the beginning of 2009, 427 units will be sold and be paying assessments
- The annual assessment collected per unit will be $970 (2004 dollars). Assessments will increase 3.5% annually.
- The average annual inflation rate (applied to expenses) will be 3.0 %
- The average rate of return on invested reserve funds will be 5.75%
- The GHAD will not incur any costs prior to January 2008; all costs prior to that time will be the direct responsibility of the project sponsor.
- The annual operating and maintenance costs of the GHAD (beginning in January 2007) will be $420,300 (2004 dollars)

The estimated annual expenditures for the GHAD include allowances for monitoring and maintenance of slopes, vegetation, subsurface drainage, streets, trails, rockfall fences, surface ditches, and the detention basin. Also included are allowances for administration, accounting and reporting. At the meetings, we reviewed the specific components of the projected expenses. It is our opinion that they are reasonable projections, and are consistent with the *Plan of Control*.

The reserve fund is intended to be available to fund periodic repair work above that included in the annual expenditure budget. The financial model presented by the proposed GHAD Manager assumes that, on the average, a major repair on the order of $1,000,000 (2004 dollars) will need to be undertaken every 10 years. If such an occurrence occurs before the reserve fund is large enough, then the GHAD will need to fund the repairs through increased assessments or borrowing (either conventional borrowing or through the issuance of bonds).

Since the project sponsor is responsible for the maintenance and operation of the project through it's first two years of operation (through December 2007), and since the site must be in an acceptable condition at the time of transfer, it is unlikely that a major repair will be necessary during the first few years of GHAD control. Therefore, the reserve fund will continue to increase due to both the collection of assessments and the return on invested funds. The financial projection predicts that if major repairs are not needed until approximately 2011 (the fourth year of GHAD control), then the reserve will be able to fully fund the repairs.

To provide assurance that the GHAD will be financially able to operate if significant repairs are necessary during the first few years, the City should consider the following recommendations:

- The project sponsor could be required to guarantee that the reserve fund will be at a specified minimum level at the time of transfer to the GHAD. Based on the financial model presented, it appears that that minimum would be on the order of $487,000 on

January 1, 2008. In addition, reductions in the GHAD income stream from the assessments should be guaranteed.

- If the reserve fund of the GHAD is not at the required level, the City could require the project sponsor to delay transfer of the site until such time as the required funding is in place.

- The condition of the site at the time of transfer should be subject to review by the GHAD Manager, and by the City's independent consultant, to confirm that there are no imminent threats present.

- The *Plan of Control* should be reviewed by the Geotechnical Engineer of Record (Berlogar Geotechnical Consultants) to ensure that the maintenance and monitoring program is consistent with their original recommendations, and any recommendations issued as a result of changes to the grading plan made during construction.

  It is assumed the *Plan of Control* is based on the fill/keyway/buttress configurations indicated in the Berlogar geotechnical investigation report. The original fill/keyway/buttress configurations should be reviewed and compared to the actual as-built constructed fill/keyway buttress configuration. If the configuration has changed significantly, consideration should be given to supplemental slope analysis to further evaluate the lateral stability of the new slopes.

  The *Plan of Control* provides for monitoring various aspects of the surface and subsurface drainage. In addition, groundwater and slope performance will be monitored with piezometers and inclinometers. Consideration should be given to providing general action levels (2 or 3 indicators) associated with changed conditions such as a decrease in the depth of ground water, or lateral slope movement.

  The action levels should provide general guidelines for further evaluation of a potential concern. An example would be a decrease in the depth of ground water. If the water level rises say 5 feet, then subdrains would be checked. If the ground water level rises 15 feet, then implementation of a dewatering scheme would be initiated and if the water level rises 30 feet a general evacuation might be initiated.

  The GHAD district boundaries appear to cut across slopes, leaving slope areas outside of, and uphill of, the GHAD. The Manager should develop a plan to identify and manage "offsite" hazards that have the potential to negatively affect properties within the GHAD.

  Consideration should be given to including periodic water quality monitoring at the detention basin outflow point as part of the GHADManager's responsibility.

  The GHAD Manager should be required to reevaluate the schedule and scope of inspection and maintenance programs on an annual basis, based on the performance of the site.

- The *Plan of Control* should be reviewed by the Revegetation Engineer (H.T. Harvey & Associates) to ensure that the maintenance and monitoring program is consistent with their recommendations.

Please contact me if you have any questions regarding this issue.

Sincerely,

LOWNEY ASSOCIATES

Scott R. Huntsman, Ph.D., G.E., CPESC
Associate / Area Manager

December 9, 2004
Project 1993-1

Mr. Marcel Uzegbu
City of Oakland
Public Works Department
250 Frank Ogawa Plaza, Suite 430
Oakland, CA 94612

RE: LEONA QUARRY PROJECT
REVIEW OF GHAD
DOCUMENTATION

Dear Mr Uzegbu:

As requested, we have reviewed the documents provided to us pertaining to the Geologic Hazard Abatement District (GHAD) for the Leona Quarry Project. The existence of the GHAD is required by condition of approval number 24 of the Conditions of Approval contained in the City Council Resolution passed on February 17, 2004.

The documents included in our review are the following:

- A letter dated August 25, 2004 from Nadia L. Costa of Bingham McCutchen LLP to Heather Lee, the Deputy City Attorney for the City of Oakland titled 'Leona Quarry Geologic Hazard Abatement District"
- An unsigned "Resolution appointing officers and approving general manager agreement for the Leona Quarry Geologic Hazard Abatement District"
- An unsigned Exhibit A, GHAD Management Agreement, Leona Quarry Geologic Hazard Abatement District
- An unsigned "Resolution Accepting Petition and Setting a Public Hearing for Annexation of Four lots into the Existing Leona Quarry GHAD"
- An unsigned "Petition for Annexation of Territory to the Leona Quarry Geologic Hazard Abatement District Pursuant to Division 17 (commencing with section 26500) of the Public Resources Code of the State of California"
- Amendment 1 to the Plan of Control for Leona Quarry Geologic Hazard Abatement District (GHAD) prepared by Engeo Incorporated, submitted to Leona LLC, dated August 13, 2004
- A letter report from Eric Harrell of Engeo Incorporated to David Chapman of The DeSilva Group dated August 2, 2004, titled "Water Quality / Detention Pond Monitoring and Maintenance, Parcel "C", Leona Quarry, Oakland, California"
- A report from H.T. Harvey & Associates (Revision date April 16, 2004) titled "Leona Quarry Slope Revegetation Plan"

- Geobrugg Service / Maintenance manual for 30 ft-ton Rockfall Barrier, dated June 28, 2002
- Geobrugg Service / Maintenance manual for 74 ft-ton to 295 ft-ton Rockfall Barrier, dated July 1, 2002
- Legal Description for Geologic Hazard Abatement District (GHAD), Leona Project, Oakland, California, dated August 11, 2004
- An unsigned "Resolution Accepting Amendment 1 to the Leona Quarry Geologic Hazard Abatement District Plan of Control and setting a Public Hearing to Consider Objections on Proposed Amendments "
- An unsigned "Resolution Approving Leona Quarry Geologic Hazard Abatement District (GHAD) Budget "
- An unsigned "Resolution of Intention to Order an Assessment for the Leona Quarry Geologic Hazard Abatement District (GHAD) and Setting Hearing Date for a Public Hearing to Consider the Proposed Assessment and Protests Against the Assessment ".
- A report by Engeo Incorporated dated August 13, 2004 titled "Engineer's Report for Geologic Hazard Abatement District, Leona Quarry, City of Oakland, California".
- An undated "Notice of Adoption of Resolution by the Board of Directors of Leona Quarry Geologic Hazard Abatement District"
- An undated "Notice of Assessment"
- An undated "Ballot"
- An undated "Resolution Approving Annexation of Four Lots on Campus Drive into the Leona Quarry Geologic Hazard Abatement District"
- An unsigned "Resolution Approving Amendments to the Leona Quarry Geologic Hazard Abatement District (GHAD) Plan of Control".
- An unsigned "Resolution Accepting Canvass of Votes for the Leona Quarry Geologic Hazard Abatement District (GHAD)".
- An unsigned Resolution "Confirming Assessment for Leona Quarry Geologic Hazard Abatement (GHAD) District and Ordering Levy and Collection Thereof.

Based on our review of the above-cited documents, we offer the following comments:

- The proposed *GHAD Management Agreement* should be reviewed by the City Attorney's office for whether or not the agreement should be in conformance with City contracting policies, insurance requirements, indemnification, etc.

- The proposed *GHAD Management Agreement* grants the Manager authority to issue subcontracts in the performance of the scope. The City Attorney should review the subcontracting provisions for compliance with City subcontracting provisions (if applicable).

- The proposed *GHAD Management Agreement* authorizes the Manager to perform construction and maintenance work at the site, either through the Manager's own forces or through subcontractors. The City Attorney should determine if the Manager needs to hold a valid State Contractor's license.

- The term of the proposed *GHAD Management Agreement* is six years. The GHAD should evaluate whether or not this term should be other than six years. The GHAD may desire to change the term of the agreement and / or solicit proposals for management services.

- The proposed *GHAD Management Agreement* includes a budget of $450,000 for the term of the agreement (6 years). A breakdown of the cost elements making up this budget was not provided. The budget presented as Exhibit A to the August 13, 2004 *Engineer's Report*, presents an annual estimate of $410,300 for GHAD expenses. A budget breakdown should be provided for review and possible comment.

- The scope of services (Exhibit A) of the proposed *GHAD Management Agreement* specifies that the Manager will perform periodic monitoring and maintenance of various aspects of the site and report on such activities annually. However, the scope of services lacks specifics on what activities will be completed.

- The scope of services (Exhibit A) of the proposed *GHAD Management Agreement* authorizes the Manager to determine the annual assessments. The GHAD should confirm that this is to be included within the Manager's scope of work.

- The *Plan of Control* is missing page No. 16

- The *Plan of Control* should be reviewed by the Geotechnical Engineer of Record (Berlogar Geotechnical Consultants) to ensure that the maintenance and monitoring program is consistent with their original recommendations, and any recommendations issued as a result of changes to the grading plan made during construction.

- It is assumed the *Plan of Control* is based on the fill/keyway/buttress configurations indicated in the Berlogar geotechnical investigation report. The original fill/keyway/buttress configurations should be reviewed and compared to the actual as-built constructed fill/keyway buttress configuration. If the configuration has changed

significantly, consideration should be given to supplemental slope analysis to further evaluate the lateral stability of the new slopes.

- The *Plan of Control* provides for monitoring various aspects of the surface and subsurface drainage. In addition, groundwater and slope performance will be monitored with piezometers and inclinometers. Consideration should be given to providing general action levels (2 or 3 indicators) associated with changed conditions such as a decrease in the depth of ground water, or lateral slope movement.

  The action levels should provide general guidelines for further evaluation of a potential concern. An example would be a decrease in the depth of ground water. If the water level rises say 5 feet, then subdrains would be checked. If the ground water level rises 15 feet, then implementation of a dewatering scheme would be initiated and if the water level rises 30 feet a general evacuation might be initiated.

- The *Plan of Control* should be reviewed by the Revegetation Engineer (H.T. Harvey & Associates) to ensure that the maintenance and monitoring program is consistent with their recommendations.

- The Manager should be required to reevaluate the schedule and scope of inspection and maintenance programs on an annual basis, based on the performance of the site.

- The GHAD district boundaries appear to cut across slopes, leaving slope areas outside of, and uphill of, the GHAD. The Manager should develop a plan to identify and manage "offsite" hazards that have the potential to negatively affect properties within the GHAD.

- The proposed GHAD budget assumes that a "major repair" will be required every 10 years (on the average) and that the cost of such repair is $1,000,000. It is possible that a multi-parcel slope repair could exceed the $1,000,000 estimate. In addition, the GHAD's ability to fund such a repair early in the life of the GHAD (before reserves are built up) could be limited. A more detailed financial analysis should be performed that investigates the feasibility of insurance coverage during the early years of the GHAD to protect against the depletion of the GHAD funds by a major repair need.

- Consideration should be given to including periodic water quality monitoring at the detention basin outflow point as part of the Manager's responsibility.

Please contact me if you have any questions regarding this issue.

Sincerely,

LOWNEY ASSOCIATES

Scott R. Huntsman, Ph.D., G.E., CPESC
Associate / Area Manager

LOWNEY ASSOCIATES
Environmental/Geotechnical/Engineering Services

Mountain View, CA
Fairfield, CA
Oakland, CA
San Ramon, CA
Fullerton, CA
Las Vegas, NV

March 10, 2005
Project 1993-1

Mr. Marcel Uzegbu
City of Oakland
Public Works Department
250 Frank Ogawa Plaza
Suite 430
Oakland, CA 94612

RE: LEONA QUARRY PROJECT
SETTLEMENT MONITORING
REPORTS

Dear Mr Uzegbu:

At the request of the City, Lowney Associates has reviewed Settlement Monitoring reports prepared by Berlogar Geotechnical Consultants (BGC) dated January 21, 2005 and February 17, 2005.

Based on the data presented in those two reports, it appears that the settlement rate of the fill soils at the Phase I area (west of "A" Street) of the site has dropped to low enough levels to allow the further development of surface features at the site.

We understand that additional settlement monitoring data will be presented in subsequent reports by BGC. We will review that data when it becomes available.

Please call if we can provide any further information.

Sincerely,

LOWNEY ASSOCIATES

Scott R. Huntsman, Ph.D., G.E., CPESC
Associate, Area Manager

Copies: Addressee
David Chapman, De Silva Group
Frank Groffie, Berlogar Geotechnical Consultants

ATTACHMENT B

SEIDELMAN ASSOCIATES, INC.
2427 CHERRY HILLS DRIVE
LAFAYETTE, CALIFORNIA 94549
(925) 930-0646
(925) 930-0828 (FAX)

---

11 February 2005

Mr. Marcel Uzegbu
Project Manager
Engineering & Design Services Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612
VIA E-MAIL: muzegbu@oaklandnet.com

no comment on proposed [illegible]

RE: Review of the Leona Quarry Geologic Hazard Abatement District Proposed Plan of Control and Organizational Structure

Dear Mr. Uzegbu:

At your request, we have completed our review of the subject documents as revised 5 January, 2005 and submitted by ENGEO, Inc. for acceptance by the City as a part of the process establishing a Geologic Hazard Abatement District for the Leona Quarry. The findings and conclusions presented herein have, in large part, been discussed during two meetings held during the week of 4 February. The findings and conclusions remain very much as they were discussed during those meetings.

The success of the Geologic Hazard Abatement District Plan of Control is very much related to the quality of the design and construction procedures employed in the rehabilitation and stabilization of the quarry slopes and adjacent open-space areas. It is assumed that, at this time, there is sufficient flexibility in the permit process to fine-tune that design and construction process that has already begun, and is proceeding in an environment that appears to be accepting of project modification in order to accomplish all of the objectives established during the planning process. We have already produced a copy of our earlier letter, dated 30 December, 2002. Several of the items in that letter have not been fully implemented into the project, but it appears that there is an acceptance of the need to take action on each item (even if that action involves additional engineering that disproves the need for design change).

Because of this, our review of the GHAD Proposal can be based on the assumption that the best possible infrastructure construction project will be accomplished. With that in mind, we have the following concerns for your consideration:

1. On page three of the ENGEO report, it is indicated that BGC Consultants have allowed for seven settlement plates, seven piezometers, and two inclinometers. It is our belief that at least a few additional piezometers are warranted, and many more inclinometers would be of value. This may have some impact of the cost of the monitoring program outlined in the GHAD Document. As we discussed in the meeting, it seems prudent to request BGC Consultants to comment in detail on the distribution of these monitoring installations. However, with the complexity of the fill and its varied thickness, it seems quite unlikely that two inclinometers would be sufficient. Additionally, piezometer installations may consist of groupings of individual piezometers measuring pore water pressures at various depths in the fill. The nature of these installations is not clearly stated in the document.

2. To avoid potential conflicts of interest, it appears reasonable to specifically exclude the GHAD Management Firm and the developer's geotechnical consultant from inclusion in the list of potential consultants to the district. If the present manager of the district were to be replaced, we see no reason to exclude that geotechnical consultant from future consulting roles to the district. The objective of this section should be clearly stated to establish independent opinions without actual or perceived conflicts of interest. Under California law, Geologic Hazard Abatement Districts have the right and duty to litigate against third parties who may be responsible for geologic processes becoming actively hazardous. This can only be realized after an independent evaluation of the technical facts. Third parties may include offsite landowners, the developer, his consultants, contractors and subcontractors.

3. As it is presented on page three of the GHAD Document, final grading work at the site will have been completed prior to the acceptance of the property by the GHAD. It should be clearly stated that acceptance of the property by the GHAD does not terminate or shorten the builder's liability under California's 10-year statute of limitations for latent defects. That statute generally begins to run on the date when a permit for grading or construction is finalized. Or, in the case of a residential structure, on the date on which a certificate of occupancy is approved. The GHAD should not be construed as a vehicle for shortening the normal responsibility periods established by state law for construction of mass housing. The acceptance dates by the GHAD delineate the point in time when the GHAD assumes responsibility for normal maintenance activities for the accepted portions of the project. Latent defects, whether caused by negligence in construction or design, or even those defects that are not necessarily tied to design or construction negligence may be the responsibility of the developer, his contractors, and design team, as allowed under California law. Similar statements are presented on page 4, wherein the GHAD takes responsibility for parcels A, C, E, F, R, and X after a period three years has passed, following the recording of the first final map affecting the GHAD property. The previous comments under this item apply equally to this transaction, and should be so stated.

4. The assessment budget, as revised on 4 January, 2005 appears reasonable, assuming this rigorous implementation of project specifications as described earlier in this letter. The item identified as annualized major repair accumulates at a rate of

$100,000 per year. Assuming builder responsibility for the initial ten years, a reserve will accumulate in the amount of one million dollars prior to district monies becoming vulnerable to the cost of repair activities. This set of conditions is essential to the reasonableness of the budget during its early years. We would also recommend that this item be allowed to accumulate essentially indefinitely, as the most dangerous and costly events that could affect the lands under GHAD management are related to earthquake-induced hillslope processes. The infrequency of severe earthquakes and the potential high cost of repair makes it apparent to us that a large, long-term dollar reserve be accumulated in the major repair budget. The remainder of the costs appear to be reasonable.

5. As it is presently written, the GHAD limits repair monies for damage on private property to a dollar amount equivalent to 10% of the cost of the geotechnical repair associated with the private property damage. We do not perceive that this document can limit the district's liability for damage to private property. This would be especially true if an instability was the result of negligent maintenance on the part of the district. We would suggest that secondary damage to private property be evaluated by the district with recommendations presented to the board in regards to the amount of monetary repair contributions being offered to the private property owner. In some instances, 10% of the geotechnical costs would be excessive, and in other instances it would amount to an infuriatingly small contribution. The district and its board should have the flexibility to evaluate such matters on a case-by-case basis, defending claims when they are defensible and covering damages that are deservedly covered.

In closing, we again emphasize the need for the best engineering and construction project possible to minimize future capital outlay by the GHAD, and to retain the GHAD as a maintenance organization to the greatest degree possible. A great deal of the construction remains ahead of us, and the ability to make it absolutely first rate is within our control.

We hope this has provided you with the information you need to proceed in this matter. Should you have any further questions, please don't hesitate to give us a call.

Sincerely,

SEIDELMAN ASSOCIATES, INC.

Paul Seidelman
President
RCE 29683

ATTACHMENT C

Harris & Associates

(Via email and US Mail)
February 15, 2005

Mr. Marcel Ozegbu
Project Manager
City of Oakland
250 Frank Ogawa Plaza Suite 4314
Oakland, CA 94512

Re: **Review of Leona Quarry Geologic Hazard Abatement District Cost Estimate**

Dear Marcel:

As per your request, Harris & Associates has reviewed the Leona Quarry Geologic Hazard Abatement District (GHAD) cost estimate prepared by ENGEO. Our scope of review was established at a meeting in your conference room on Wednesday, February 10. It is limited to the review of infrastructure maintenance costs in ENGEO's Engineer's Report revised January 4, 2005 (Exhibit A) and the related "6-Year Estimated Budget, Revised January 4, 2005". At our request, ENGEO prepared a spreadsheet documenting the methodology and source of their calculations, which we received late yesterday and we also reviewed. We also performed a cursory review of the Engineers Report and Plan of Control.

We offer the following Engineers Report observations and recommendations:

1. Exhibit A. The January 2005 revised budget is based on "2004 dollars". The base budget should be revised to 2005 dollars to create a reasonable basis going forward.
2. Exhibit A revenue and expense do not reconcile. We calculate 427 units x $974/unit + 4,000 sf x $0.25/sf = $416,898 assessment. Budget shows $423,500 expense.
3. Section IV. Item #1. Initial steps in a GHAD include development of management documents such as preventative maintenance plans, contingency plans for failure events, monitoring programs, communications program, and how to tap into FEMA funds if applicable. Any such costs incurred by the City would be reimbursed by the District. Where are these items budgeted in the first year? They could amount to $10-15,000.
4. Section IV. Does the Administration and Accounting budget include County Assessor's fees?
5. Section VI. It is noted that the Engineer assumes equal benefit to single family and multi-family residences. No explanation is given, but should be added.
6. Section VI. There is no reference to phasing of the 427 units over a number of years. Second sentence, second paragraph says: " The total number of residential units within the District is then divided into the annual District budget to develop the annual assessment amount." Report should clarify whether this "number of units" is the total (427) or only the number of units completed / occupied as of that year. If it is the lower number, the report must state what is the "trigger" for including that unit in the assessment (Issuance of building permit? Occupancy permit?).
7. Section VI. It is not stated, but assumed, that the developer contributes the required assessment on units until they are put on the tax rolls.

8. Section VI. This same paragraph does not make reference to the non-residential 4,000 sf, which is also being assessed. Rewording is needed. What is the basis for $0.25/sf?
9. Section VII. We have not made an evaluation of the sufficiency of the "$1 million per 10 years 'larger geologic' event" budget. This is for geotechnical experts to determine. However, we assert that the methodology of collecting $100,000 per year to build this reserve fund may be flawed. If a catastrophic event occurs before sufficient funds are accumulated, the "annual assessment limit" of $974 (see Section VII) would be insufficient to recover the necessary funds through an increased assessment, since it is based on only $100,000 per year contribution. We recommend setting the "annual assessment limit" at an amount that would generate $1 million per year (approximately $3,000/year), but set the actual initial annual assessment at the lower ($974) rate. If the additional monies are not needed, they won't be assessed or collected. If they are needed, the assessing authority would exist to collect the needed funds the following assessment period. An alternative might be for the developer to provide and pay for a nine-year, $1 million bond, the amount of which could be reduced by $100,000 per year as the major-event fund grows to $1 million.
10. Regarding unit prices, we believe that the estimates used by ENGEO are reasonable, based on our review of their annotated cost estimate provided to Harris yesterday. The costs seem to be well-supported by research and benchmarking other local GHADs.
11. Condition 24.d: "The applicant shall provide start-up funds for the GHAD in the amount to be determined by the City Engineer...no later than recordation of the first final map". What was meant by "start-up funds"? Is this a reference to the accumulated funds in the first two-plus years before the developer turns the GHAD over to the GHAD manager (City)? Or is it a pot of money that must be provided by the developer upon recordation of the final map? If the latter, what items is "start-up funds" intended to include, and what is the amount? It is not earmarked in ENGEO's budget.
12. Condition 24.f: Check on the terminology...The condition requires a "reserve fund" but there is no line item in the budget called "reserve fund". There should be a note indicating which items are to be so considered.
13. At our meeting, additional subdrains were being proposed to reduce the likelihood of shallow debris slides. If so, a budget item for such maintenance and repair should be added.
14. Should there be a budgeted amount for maintenance or damage repair resulting from off-site incidents? Ridgemark outcroppings were discussed as possible problems at our meeting February 10.

There were a number of decisions made at our February 10 meeting with City staff, your geotechnical consultant Lowney Associates, and Paul Seidelman that relate to geotechnical and maintenance issues, and operation of the GHAD. We have not addressed these items in this letter as they were sufficiently documented at the meeting. If you need any additional review, please let me know.

Sincerely,

HARRIS & ASSOCIATES

Bob Guletz, PE
Vice President

ATTACHMENT D

ENGEO INCORPORATED

GEOTECHNICAL
ENVIRONMENTAL
WATER RESOURCES
CONSTRUCTION SERVICES

Project No.
5188.1.001.02

February 17, 2005

Mr. David Chapman
The DeSilva Group
P.O. Box 2922
Dublin, CA 94568

Subject: Leona Quarry
Oakland, California

RESPONSE TO LEONA QUARRY PROJECT REVIEW OF GHAD DOCUMENTATION – LOWNEY ASSOCIATES COMMENTS

References:

1. Lowney Associates, Leona Quarry Project, Review of GHAD Documentation, December 9, 2004; Project 1993-1.
2. Lowney Associates, Leona Quarry Project Geologic Hazard Abatement District, December 17, 2004; Project 1993-1.
3. ENGEO Inc., Response to Leona Quarry Project Review of GHAD Documentation Comments, Leona Quarry, Oakland, California Project No. 5188.1.001.02, January 7, 2005.

Dear Mr. Chapman:

At your request we have reviewed comments provided by Lowney Associates in their letter dated February 17, 2005, responding to the Leona Quarry Geologic Hazard Abatement District (GHAD) documents provided to the City of Oakland on August 25, 2004 (revised January 5, 2005), and issues raised in subsequent meetings. The comments provided by Lowney Associates are shown in *italics*. We have the following responses.

Lowney Associates Comment: Condition No. 24.a. requires that the GHAD assume responsibility for all aspects of the long-term maintenance at the site. It is our understanding that this responsibility will pass from the developer to the GHAD after an appropriate time has elapsed after the completion of construction. Prior to the transfer of responsibility, the developer will be responsible for maintenance and repairs. During this time, the GHAD will be collecting assessments, but will not have the responsibility for maintaining the site. This will enable the GHAD reserves to build to a level sufficient to fund the activities of the GHAD once the transfer takes place. Section VI of the revised Plan of Control states that the transfer will occur "two years after the first occupancy permit for the Leona Quarry Project ".

Because the construction of homes may occur over a period of several years after the first occupancy permit is issued, the City may want to consider revising the Plan of Control to set the transfer date at some later date

ENGEO Response: It is our understanding that the City of Oakland, Discovery Builders, Inc., and The DeSilva Group agree that one of the conditions to transfer responsibility for GHAD activities to the GHAD will occur a minimum of 2 years after the acceptance of GHAD improvements. The Plan of Control has been revised to reflect this agreement.

Lowney Associates Comment: Because slope instability problems typically occur during the winter months, we recommended that the two-year period discussed above be modified to a period spanning two winter seasons. An acceptable method of accomplishing that would be to require that, if the period starts between April 15 and October 15, the waiting period would be two years, if the period starts between October 15 and April 15, the time period would be 2.5 years.

ENGEO Response: Please see our previous response. We anticipate that the under the conditions provided in the Plan of Control that the site slopes will experience a minimum of two winter seasons prior to the acceptance of responsibility by the GHAD.

Lowney Associates Comment: The condition of the site at the time of transfer should be subject to review by the GHAD Manager, and the City's independent consultant, to confirm that there are no imminent threat present, that the site monitoring and maintenance systems are in good working order, and that the actual revenue collections are consistent with the projections.

ENGEO Response: We concur that the condition of the facilities to be transferred to the GHAD should be reviewed by the GHAD and by an independent consultant prior to the GHAD assuming monitoring and maintenance responsibilities.

Lowney Associates Comment: The developer has presented a budget projection that provides a forecast of the GHAD income and expenditures through the year 2010. The projection is based on the assumption that the transfer of responsibility from the developer to the GHAD will take place on January 1, 2008. The projected annual expenditures of $423,500 (all figures are in 2005 dollars) appear to be reasonable. However, we understand that the proposed GHAD Manager is being asked to provide additional backup / quantity takeoffs to support their estimates.

ENGEO Response: We provided additional estimated budget details to Harris and Associates and our response to their comments is provided in a separate letter and the revised Engineer's report. Harris and Associates stated in their letter, "Regarding unit prices, we believe that the estimates used by ENGEO are reasonable, based on our review of their annotated cost estimate provided to Harris yesterday. The costs seem to be well-supported by research and benchmarking other local GHADs."

Lowney Associates Comment: The largest portion of the annual GHAD expenditure budget is $100,000 which represents an annualized cost of performing a major repair every 10 years at a cost of $1,000,000. It is our understanding that the developer will be responsible for performing all repairs during the two-year period prior to the transfer of responsibility to the GHAD. In addition, we understand that California law holds the developer responsible for a period of ten years for defects in design or construction that lead to major repairs. Thus, if there are major repairs necessary during the first ten years of GHAD control, the GHAD has the opportunity to have the cost of those repairs borne by the developer. For the above reasons, it our opinion that the assumption of a $1,000,000 repair occurring an average of every ten years is a reasonable assumption.

ENGEO Response: In a separate letter please refer to the opinion from Mr. Dan Curtin of Bingham McCutchen, an attorney specializing in California land use law, provides a response on the question of the responsibility of the GHAD in relation to developer liability for defects in design or construction.

Lowney Associates Comment: Condition 24.f. specifically requires that the GHAD budget separately identify the cost associated with (1) slope stability maintenance work; (2) drainage facilities; (3) storm water quality and (4) reserve fund. If the condition envisions that "storm water quality monitoring" includes sampling and laboratory testing of storm water, then it appears that the Plan of Control does not include such activities.

ENGEO Response: We are not aware of existing post-construction storm water quality monitoring requirements for the Leona Quarry project that would be the responsibility of the GHAD. Periodic water quality monitoring of the discharge from the detention basin could be completed by the GHAD if directed by a regulatory agency or if on-site conditions indicate that this would be prudent. However, is should be noted that the Water Quality/Detention Pond Monitoring and Maintenance program as outlined in Appendix C of Amendment 1 to the Leona Quarry Plan of Control should allow for proper maintenance and operation of the pond as designed.

Lowney Associates Comment: To allow for sufficient reserves to be built up and maintained for the life of the GHAD, the City may want to Consider requiring the GHAD reserves to be allowed to grow to a certain minimum level (say $5,000,000) before the GHAD board is allowed to consider reducing per property assessment levels.

ENGEO Response: We concur that the reserve should be allowed to build up over time due to the unpredictable nature of geologic events and the potential repair costs involved with these events. However, GHADs are political subdivisions of the State of California and are not an agency or instrument of a local agency, in this instance the City of Oakland. Therefore, it would not be reasonable for the City to obligate the GHAD to this budget condition.

Lowney Associates Comment: The number and types of instrumentation systems (piezometers, inclinometers, etc.) assumed in the Plan of Control are based on the original May 15, 2003 Geotechnical Engineering reports by Berlogar Geotechnical Consultants (BGC). As we stated in our earlier letters, we recommended that the Plan of Control should be reviewed by BGC to ensure that the maintenance and monitoring program is consistent with their original recommendations and any recommendations issued as a result of changes made during construction. We note that BGC did issue a letter dated January 6, 2005, in which they stated that the Plan of Control is in agreement with their recommendations.

We feel that the amount of instrumentation recommended by BGC may not be sufficient to adequately monitor the geotechnical performance of the site. We recommend that BGC be required to present an Instrumentation Program report, which would include a description of the types and amounts of instrumentation to be installed at the site. This report should also include action levels (quantitatively, if possible) based on readings of the instrumentation. We met with a BGC representative on February 17, 2005 and discussed their plans for the development of such a report.

ENGEO Response: The instrumentation information contained in the Plan of Control is based on a review of the Geotechnical Engineering Report by BGC dated May 15, 2003, and, as stated in the Plan of Control, additional planned instrument installations based on January 2005 discussions with BGC. It is our understanding, confirmed by the BGC letter dated January 6, 2005, that the Plan of Control instrumentation information represents the currently available information from the Leona Quarry geotechnical consultant. We are of the opinion that some additional instrument monitoring could be accommodated within the budget item for scheduled site monitoring events.

Lowney Associates Comment: The Plan of Control should be reviewed by the Revegetation Engineer (H.T. Harvey & Associates) to ensure that the maintenance and monitoring program is consistent with their recommendations. We note that H.T Harvey & Associates did issue a letter dated January 5, 2005, in which they stated that the Plan of Control is in agreement with their recommendations.

ENGEO Response: H.T. Harvey has prepared a letter of concurrence on the revised Plan of Control that was provided in our January 7, 2005, letter.

Lowney Associates Comment: It is our understanding that the GHAD has the authority to hire technical consultants to assist them in the assessment of conditions and the design of remedial measures. It would present an inherent conflict of interest if the GHAD hired BGC or if the GHAD hired itself to perform those duties. The purpose of hiring technical consultants is to obtain an independent opinion.

ENGEO Response: In a separate letter, please refer to the opinion that Mr. Dan Curtin of Bingham McCutchen, an attorney specializing in California land use law, provides on the question of the GHAD Manager providing an evaluation, making recommendations or providing designs for corrective work.

Lowney Associates Comment: As mentioned in our previous letters, the boundaries of the GHAD cut across slopes that may be the source of stability problems in the future. Since the GHAD has limited ability to perform maintenance or remedial measures outside of its boundaries, the Plan of Control should present a plan to address these "Offsite risks". The response to this issue given in the January 7, 2005 letter appears to contradict itself, and needs to be clarified.

ENGEO Response: As stated under GHAD law and as reflected in Amendment 1 of the Plan of Control, areas receiving a benefit from the GHAD must be subject to the supplemental assessment, and therefore, it is outside of the ability of the GHAD to use District funds to manage hazards that are outside of the district's limits, except to protect improvements within the District. As provided in the Plan of Control, the GHAD will provide for the prevention, mitigation, and abatement or control of geologic hazards that threaten or have the potential to threaten on-site improvements even if they originated off site.

Lowney Associates Comment: The GHAD Manager is responsible for preparing an annual report that summarizes the effectiveness of the monitoring and maintenance program and makes recommendations for activities during the upcoming year. We recommend that a part of that report should be to recommend any changes to the instrumentation program along with the maintenance and monitoring programs along with the corresponding effects on the projected GHAD expenditures

ENGEO Response: We have included a reference to a review of the instrumentation program in the annual report section of the Plan of Control.

Please contact us if you have any questions regarding this information.

Very truly yours,

ENGEO INCORPORATED

Eric Harrell

eh/jf:response

Reviewed by:

Uri Eliahu

ATTACHMENT D

ENGEO INCORPORATED

GEOTECHNICAL
ENVIRONMENTAL
WATER RESOURCES
CONSTRUCTION SERVICES

Project No.
5188.1.001.02

February 17, 2005

Mr. David Chapman
The DeSilva Group
P.O. Box 2922
Dublin, CA 94568

Subject: Leona Quarry
Oakland, California

RESPONSE TO LEONA QUARRY PROJECT REVIEW OF GHAD DOCUMENTATION - SEIDELMAN ASSOCIATES COMMENTS

Reference: Seidelman Associates, Inc., Review of the Leona Quarry Geologic Hazard Abatement District Proposed Plan of Control and Organizational Structure, February 11, 2005.

Dear Mr. Chapman:

At your request we have reviewed comments provided by Seidelman Associates in response to the Leona Quarry Geologic Hazard Abatement District (GHAD) documents provided to the City of Oakland dated August 25, 2004, and revised January 5, 2005. The comments provided by Seidelman Associates are shown in *italics*. We have the following responses.

Seidelman Comment: On page three of the ENGEO report, it is indicated that BGC Consultants have allowed for seven settlement plates, seven piezometers, and two inclinometers. It is our belief that at least a few additional piezometers are warranted, and many more inclinometers would be of value. This may have some impact of the cost of the monitoring program outlined in the GHAD Document. As we discussed in the meeting, it seems prudent to request BGC Consultants to comment in detail on the distribution of these monitoring installations. However, with the complexity of the fill and its varied thickness, it seems quite unlikely that two inclinometers would be sufficient. Additionally, piezometer installations may consist of groupings of individual piezometers measuring pore water pressures at various depths in the fill. The nature of these installations is not clearly stated in the document.

ENGEO Response: The instrumentation information contained in the Plan of Control is based on a review of the Geotechnical Engineering Report by BGC dated May 15, 2003, and, as stated in the Plan of Control, additional planned instrument installations based on January 2005 discussions with BGC. It is our understanding, confirmed by the BGC letter dated January 6, 2005, that the Plan of Control instrumentation information represents the currently available information from the Leona Quarry geotechnical consultant.

It is our understanding that Lowney Associates has recommended that BGC be required to present an Instrumentation Program report, which would include a description of the types and amounts of instrumentation to be installed at the site. As requested, this report should also include action levels based on readings of the instrumentation. When completed, a copy of this report should be provided for incorporation in the District's monitoring program. We are of the opinion that some additional instrument monitoring could be accommodated within the existing budget for scheduled site monitoring events.

Seidelman Comment: To avoid potential conflicts of interest, it appears reasonable to specifically exclude the GHAD Management Firm and the developer's geotechnical consultant from inclusion in the list of potential consultants to the district. If the present manager of the district were to be replaced, we see no reason to exclude that geotechnical consultant from future consulting roles to the district. The objective of this section should be clearly stated to establish independent opinions without actual or perceived conflicts of interest. Under California law, Geologic Hazard Abatement Districts have the right and duty to litigate against third parties who may be responsible for geologic processes becoming actively hazardous. This can only be realized after an independent evaluation of the technical facts. Third parties may include offsite landowners, the developer, his consultants, contractors and subcontractors.

ENGEO Response: Mr. Dan Curtin of Bingham McCutchen, an attorney specializing in California land use law, in a separate letter has provided a response on the question of the GHAD Manager providing an evaluation, making recommendations or providing designs for corrective work.

Seidelman Comment: As it is presented on page three of the GHAD Document, final grading work at the site will have been completed prior to the acceptance of the property by the GHAD. It should be clearly stated that acceptance of the property by the GHAD does not terminate or shorten the builder's liability under California's 10-year statute of limitations for latent defects. That statute generally begins to run on the date when a permit for grading or construction is finalized. Or, in the case of a residential structure, on the date on which a certificate of occupancy is approved. The GHAD should not be construed as a vehicle for shortening the normal responsibility periods established by state law for construction of mass housing. The acceptance dates by the GHAD delineate the point in time when the GHAD assumes responsibility for normal maintenance activities for the accepted portions of the project. Latent defects, whether caused by negligence in construction or design, or even those defects that are not necessarily tied to design or construction negligence may be the responsibility of the developer, his contractors, and design team, as allowed under California law. Similar statements are presented on page 4, wherein the GHAD takes responsibility for parcels A, C, E, F, R, and X after a period three years has passed, following the recording of the first final map affecting the GHAD property. The previous comments under this item apply equally to this transaction, and should be so stated.

ENGEO Response: Mr. Dan Curtin of Bingham McCutchen LLP, an attorney specializing in California land use law provides a response to the comment presented by the reviewer in a separate letter.

Seidelman Comment: The assessment budget, as revised on 4 January, 2005 appears reasonable, assuming this rigorous implementation of project specifications as described earlier in this letter. The item identified as annualized major repair accumulates at a rate of $100,000 per year. Assuming builder responsibility for the initial ten years, a reserve will accumulate in the amount of one million dollars prior to district monies becoming vulnerable to the cost of repair activities. This set of conditions is essential to the reasonableness of the budget during its early years. We would also recommend that this item be allowed to accumulate essentially indefinitely, as the most dangerous and costly events that could affect the lands under GHAD management are related to earthquake-induced hillslope processes. The infrequency of severe earthquakes and the potential high cost of repair makes it apparent to us that a large, long-term dollar reserve be accumulated in the major repair budget. The remainder of the costs appear to be reasonable.

ENGEO Response: Based on meetings with the City of Oakland, Discovery Builders, Inc. and The DeSilva Group or their appointed successor(s) agree that one of the conditions to transfer responsibility for GHAD activities to the GHAD will be to provide that the reserve at the time of transfer is, at a minimum, $1,000,000.00. A $1,000,000.00 minimum at the time the GHAD assumes responsibility for the site monitoring, maintenance and repair activities appears to meet the concern of the reviewer for the GHAD to meet a major repair obligation during the initial period of GHAD responsibilities.

We concur on the second point that the reserve should be allowed to build up over time due to the unpredictable nature of geologic events and the potential repair costs involved with these events.

Seidelman Comment: As it is presently written, the GHAD limits repair monies for damage on private property to a dollar amount equivalent to 10% of the cost of the geotechnical repair associated with the private property damage. We do not perceive that this document can limit the district's liability for damage to private property. This would be especially true if an instability was the result of negligent maintenance on the part of the district. We would suggest that secondary damage to private property be evaluated by the district with recommendations presented to the board in regards to the amount of monetary repair contributions being offered to the private property owner. In some instances, 10% of the geotechnical costs would be excessive, and in other instances it would amount to an infuriatingly small contribution. The district and its board should have the flexibility to evaluate such matters on a case-by-case basis, defending claims when they are defensible and covering damages that are deservedly covered.

ENGEO Response: The section in the Plan of Control addressing GHAD Funding or Reimbursement for Damaged or Destroyed Structures or Site Improvements is intended as a benefit

to property owners within the District. As stated in the Plan of Control, "...the GHAD may fund, or reimburse the property owner for the expenses necessary to repair or replace the damaged or destroyed structure, site improvement or landscaping. Unless authorized by the Board of Directors, the dollar amount of the GHAD funding or reimbursement may not exceed an aggregate of ten percent (10%) of the costs incurred by the GHAD in preventing, mitigating, abating or controlling the geologic hazard responsible for the damage." This provision allows for the GHAD to provide this benefit without board authorization. This section does not restrict the GHAD Board of Directors from allocating additional funds for this purpose nor does this provision or GHAD law usurp liability responsibilities available under other statutes.

Please contact us if you have any questions regarding this information.

Very truly yours,

ENGEO INCORPORATED

Eric Harrell
eh/jf:response

Reviewed by:

Uri Eliahu

ENGEO INCORPORATED

GEOTECHNICAL
ENVIRONMENTAL
WATER RESOURCES
CONSTRUCTION SERVICES

Project No.
5188.1.001.02

February 17, 2005

Mr. David Chapman
The DeSilva Group
P.O. Box 2922
Dublin, CA 94568

Subject: Leona Quarry
Oakland, California

RESPONSE TO LEONA QUARRY PROJECT REVIEW OF GHAD DOCUMENTATION – HARRIS AND ASSOCIATES COMMENTS

Reference: Harris and Associates, Review of the Leona Quarry Geologic Hazard Abatement District Cost Estimate, dated February 16, 2005.

Dear Mr. Chapman:

At your request we have reviewed comments provided by Harris and Associates in response to the Leona Quarry Geologic Hazard Abatement District (GHAD) documents provided to the City of Oakland dated August 25, 2004 and revised January 5, 2005. The comments provided by Harris and Associates are shown in *italics*. We have the following responses.

Harris and Associates Comment: Exhibit A. The January 2005 revised budget is based on "2004 dollars". The base budget should be revised to 2005 dollars to create a reasonable basis going forward.

ENGEO Response: The Consumer Price Index for the 4-month period between the original budget preparation and the revised date rose approximately 1%; therefore we have adjusted the budget accordingly to reflect the current condition.

Harris and Associates Comment: Exhibit A revenue and expense do not reconcile. We calculate 427 units x $974/unit + 4,000 sf x $0.25/sf = $416,898 assessment. Budget shows $423,500 expense.

ENGEO Response: Exhibit A represents a 1-year budget based on the expenses for the site at the completion of construction in 2005 dollars to estimate the appropriate initial assessments level. As shown on the 6-year budget projection, the levying of assessments will occur over a 3-year period following the issuance of building permits. In addition, the 6-year budget projection shows that this income/expense condition will not occur, but that the budget, when calculated with the expense deferral period including the annualized expenses in the Exhibit A budget and the earning on the

GHAD reserve, will result in the accumulation of the appropriate reserves while meeting ongoing administration, accounting, monitoring and maintenance functions.

Harris and Associates Comment: Section IV. Item #1. Initial steps in a GHAD include development of management documents such as preventative maintenance plans, contingency plans for failure events, monitoring programs, communications program, and how to tap into FEMA funds if applicable. Any such costs incurred by the City would be reimbursed by the District. Where are these items budgeted in the first year? They could amount to $10-15,000.

ENGEO Response: As stated in the Conditions of Approval for the Leona Quarry project, the City of Oakland will not be involved in any manner with the operation of the GHAD; therefore, the development of GHAD management and maintenance documents, other than the Plan of Control, will be the responsibility of the GHAD Manager. The GHAD management agreement provides monies for this work which will be funded by the project developer during the deferral period and by the Leona Quarry GHAD after the transfer of monitoring and maintenance responsibilities to the District.

Harris and Associates Comment: Section IV. Does the Administration and Accounting budget include County Assessor's fees?

ENGEO Response: As shown on the 6-year Estimated Budget, the County Assessor's Fee is under the Administration and Accounting heading and budget.

Harris and Associates Comment: Section VI. It is noted that the Engineer assumes equal benefit to single family and multi-family residences. No explanation is given, but should be added.

ENGEO Response: Single and individual units in multi-family units are assessed equally since, as provided in the Plan of Control, long-term maintenance and stability of the GHAD Property will protect the open space, which is an amenity that will benefit all of the current and future property owners.

Harris and Associates Comment: Section VI. There is no reference to phasing of the 427 units over a number of years. Second sentence, second paragraph says:" The total number of residential units within the District is then divided into the annual District budget to develop the annual assessment amount." Report should clarify whether this "number of units" is the total (427) or only the number of units completed / occupied as of that year. If it is the lower number, the report must state what is the "trigger" for including that unit in the assessment (Issuance of building permit? Occupancy permit?).

ENGEO Response: The trigger for levying the assessment is the issuance of the building permit and the absorption schedule for the units has been accounted for in the 6-year budget.

Harris and Associates Comment: Section VI. It is not stated, but assumed, that the developer contributes the required assessment on units until they are put on the tax rolls.

ENGEO Response: As provided for in Section VI of the Plan of Control, the assessment will be levied the first fiscal year following the issuance of a building permit. Prior to the issuance of a building permit, the assessment would not be levied for that parcel. The owner of the parcel would be responsible for payment of the GHAD assessment.

Harris and Associates Comment: Section VI. The same paragraph does not make reference to the non-residential 4,000 sf, which is also being assessed. Rewording is needed. What is the basis for $0.25/sf?

ENGEO Response: We have revised the Engineer's Report to include a reference to non-residential units. On a square-foot basis, the nonresidential habitable building areas are assessed at a similar rate as the residential units.

Harris and Associates Comment: Section VII. We have not made an evaluation of the sufficiency of the "$1 million per 10 years 'larger geologic' event" budget. This is for geotechnical experts to determine. However, we assert that the methodology of collecting $100,000 per year to build this reserve fund may be flawed. If a catastrophic event occurs before sufficient funds are accumulated, the "annual assessment limit" of $974 (see Section VII) would be insufficient to recover the necessary funds through an increased assessment, since it is based on only $100,000 per year contribution. We recommend setting the "annual assessment limit" at an amount that would generate $1 million per year (approximately $3,000/year), but set the actual initial annual assessment at the lower ($974) rate. If the additional monies are not needed, they won't be assessed or collected. If they are needed, the assessing authority would exist to collect the needed funds the following assessment period. An alternative might be for the developer to provide and pay for a nine-year, $1 million bond, the amount of which could be reduced by $100,000 per year as the major-event fund grows to $1 million.

ENGEO Response: It is not critical to the GHAD budget estimates when a major repair event occurs. Rather, it is important to properly estimate the average frequency and magnitude of such events. Based on our experience, the geology and the planned grading of the site are such that we expect that this is an appropriate interval. Review comments received from Seidelman and Associates Inc., and Lowney Associates have concurred with the major repair frequency estimates provided in the budget.

The GHAD would have the ability to fund a $1,000,000 repair at any time after the transfer of responsibilities to the GHAD based on the existing reserve, the ability to incur indebtedness or a combination of the two methods. The GHAD could issue bonds or incur other indebtedness, if

necessary, to fund a repair if existing reserves were not sufficient. Repayment of the indebtedness would be secured through the obligation of the future assessments. Based on the secure revenue source and the ability to issue tax-free debt instruments, the borrowing rate would likely be relatively low, currently near the level of inflation. Therefore, the budget as presented remains valid.

Harris and Associates Comment: Regarding unit prices, we believe that the estimates used by ENGEO are reasonable, based on our review of their annotated cost estimate provided to Harris yesterday. The costs seem to be well-supported by research and benchmarking other local GHADs.

ENGEO Response: No response required.

Harris and Associates Comment: Condition 24.d: "The applicant shall provide start-up funds for the GHAD in the amount to be determined by the City Engineer...no later than recordation of the first final map". What was meant by "start-up funds"? Is this a reference to the accumulated funds in the first two-plus years before the developer turns the GHAD over to the GHAD manager (City)? Or is it a pot of money that must be provided by the developer upon recordation of the final map? If the latter, what items is "start-up funds" intended to include, and what is the amount? It is not earmarked in ENGEO's budget.

ENGEO Response: Based on meetings with the City of Oakland, Discovery Builders, Inc. and The DeSilva Group or their appointed successor(s) agree that one of the conditions to transfer responsibility for GHAD activities to the GHAD will be to provide that the reserve at the time of transfer is, at a minimum, $1,000,000. The reserve amount will include cash and receivables from the Alameda County Tax Collector. The developers may choose, as stated in the Plan of Control, to extend the transfer date to allow reserves to reach the specified level. Alternatively, the site developers may elect to contribute to the reserve fund to allow the transfer to occur at a time of their choosing after the conditions stated within the Plan of Control have been satisfied.

Harris and Associates Comment: Condition 24.f: Check on the terminology...The condition requires a "reserve fund" but there is no line item in the budget called "reserve fund". There should be a note indicating which items are to be so considered.

ENGEO Response: We have revised Exhibit "A" to show the Major Repair (Annualized) item at $100,000 per year as a reserve fund entry since this expense item is for infrequently occurring major repairs outside of normal monitoring, maintenance and minor repair expenditures. In addition, the GHAD could apply any funds that are not used to fund ongoing operations to the reserve fund as they are available.

Harris and Associates Comment: At our meeting, additional subdrains were being proposed to reduce the likelihood of shallow debris slides. If so, a budget item for such maintenance and repair should be added.

ENGEO Response: The current budget provides for $500 annually for the repair of 9 planned subdrain outlets. Based on the relatively simple maintenance required for these low flow outlets, we are of the opinion that additional subdrain outlet maintenance could be accommodated within this budget item assuming that the outfalls are located in areas approved by the project geotechnical engineer. Low maintenance discharge points would likely include concrete-lined drainage ditches, storm drain inlets, gutters or other engineered dissipater structures.

Harris and Associates Comment: Should there be a budgeted amount for maintenance or damage repair resulting from off-site incidents? Ridgemark outcroppings were discussed as possible problems at our meeting February 10.

ENGEO Response: The GHAD budget has categories for monitoring and maintenance of open space areas within the District including slope stabilization and erosion repair totaling $60,000 per year, excluding major repair expenses, which are provided for at an annualized rate of $100,000. As provided in the Plan of Control, the GHAD will provide for the prevention, mitigation, and abatement or control of geologic hazards that threaten or have the potential to threaten on-site improvements even if they originated off site.

Please contact us if you have any questions regarding this information.

Very truly yours,

ENGEO INCORPORATED

Eric Harrell

eh/jf:response

Reviewed by:

Uri Eliahu

ENGEO INCORPORATED

GEOTECHNICAL
ENVIRONMENTAL
WATER RESOURCES
CONSTRUCTION SERVICES

Project No.
5188.1.001.02

January 7, 2005

Mr. David Chapman
The DeSilva Group
P.O. Box 2922
Dublin, CA 94568

Subject: Leona Quarry
Oakland, California

RESPONSE TO LEONA QUARRY PROJECT REVIEW OF GHAD DOCUMENTATION COMMENTS

References:
1. Lowney Associates, Leona Quarry Project, Review of GHAD Documentation, December 9, 2004; Project 1993-1.
2. Lowney Associates, Leona Quarry Project Geologic Hazard Abatement District, December 17, 2004; Project 1993-1.

Dear Mr. Chapman:

At your request we have reviewed comments provided by Lowney Associates in response to the Leona Quarry Geologic Hazard Abatement District (GHAD) documents provided to the City of Oakland on August 25, 2004, and at subsequent meetings on December 10 and 13, 2004. The comments provided by Lowney Associates are shown in *italics*. Some review comments in the December 9, 2004, letter were restated in the December 17, 2004, and we have provided response comments listed under the December 9, 2004, heading. We have the following responses.

LETTER OF DECEMBER 9, 2004

Comment: The proposed GHAD Management Agreement should be reviewed by the City Attorney's office for conformance with City contracting policies, insurance requirements, indemnification, etc.

Response: GHADs are political subdivisions of the State of California and are not an agency or instrument of a local agency, in this instance the City of Oakland. For the Leona Quarry GHAD, conformance with the City of Oakland policies related to the listed items would not necessarily be applicable. In addition, the City of Oakland has made it evident within the Conditions of Approval for the Leona Quarry project that there is a strict separation between activities of the Leona Quarry GHAD and the City of Oakland. City personnel, as city employees, are not to be involved with operation of the GHAD.

Comment: The proposed GHAD Management Agreement grants the Manager authority to issue subcontracts in the performance of the scope. The City Attorney should review the subcontracting provisions for compliance with City subcontracting provisions.

Response: As stated in the previous response, GHADs are political subdivisions of the State of California and are not required to conform with the City of Oakland policies related to the hiring of subcontractors. As envisioned within the original legislation, GHADs were intended to be streamlined organizations since they are not only charged with routine maintenance duties but also with emergency response. Therefore, to maintain this structure, the subcontracting provisions within the GHAD Management agreement should not require review by the City Attorney for conformance with City subcontracting provisions.

Comment: The proposed GHAD Management Agreement authorizes the Manager to perform construction and maintenance work at the site, either through the Manager's own forces or through subcontractors. The City Attorney should determine if the Manager needs to hold a valid State Contractor's license.

Response: The GHAD manager will hire State of California licensed contractors when it is necessary to complete work requiring such licensure within the district. As such, we do not consider it necessary that the GHAD manager hold a State Contractor's license.

Comment: The term of the proposed GHAD Management Agreement is six years. The GHAD should evaluate whether or not this term should be other than six years. The GHAD may desire to shorten the term of the agreement and / or solicit proposals for management services.

Response: The 6-year management agreement will include a minimum initial period of 2 years where the owner of the developable parcels within the Leona Quarry GHAD will be responsible to perform all the activities of the GHAD, even though the GHAD has been formed and will likely be levying assessments on a portion of the parcels. We anticipate that the GHAD manager's functions during this period of at least 2 years will be considerably less than later on when the site has been fully developed and the GHAD has responsibility for site activities as defined within the Plan of Control.

Comment: The proposed GHAD Management Agreement includes a budget of $450,000 for the term of the agreement (6 years). A breakdown of the cost elements making up this budget was not provided. The budget presented as Exhibit A to the August 13, 2004 Engineer's Report, presents an annual estimate of $410,300 for GHAD expenses.

Response: The 6-year GHAD Management Agreement budget has been set to include expenses listed under Administration & Accounting and Technical Consultants as provided in Exhibit A in the Engineer's Report dated August 13, 2004. In addition, it is anticipated that during the transfer period there may be some one-time expenses that relate to acceptance of the GHAD properties and improvements.

Comment: The scope of services (Exhibit A) of the proposed GHAD Management Agreement specifies that the Manager will perform periodic monitoring and maintenance of various aspects of the site and report on such activities annually. However, the scope of services lacks specifics on what activities will be completed.

Response: The complete Monitoring and Maintenance Section within the Amendment 1 to the Plan of Control is not repeated in its entirety within Exhibit A of the GHAD Management Agreement; however, the Scope of Services section lists specific items having monitoring, maintenance or reporting requirements and references that the Plan of Control should be referred to for additional items to be included within the scope of services.

Comment: The scope of services (Exhibit A) of the proposed GHAD Management Agreement authorizes the Manager to determine the annual assessments. The GHAD should confirm that this is to be included within the Manager's scope of work.

Response: As stated in the Engineer's Report for the Leona Quarry GHAD, the annual assessment limit within the district will escalate annually based on the San Francisco-Oakland-San Jose Consumer Price Index plus an additional 0.5 percentage points. Item No. 3 in the GHAD Management Agreement simply states that the GHAD manager will provide this adjustment information to the County Auditor-Controller to allow collection of the appropriate amount to be levied.

Comment: The Plan of Control is missing page No. 16

Response: The Plan of Control amendment section that includes Page 16 has been provided to the reviewer and will be included in future reproductions of Amendment 1 to Leona Quarry Plan of Control.

Comment: The Plan of Control should be reviewed by the Geotechnical Engineer of Record (Berlogar Geotechnical Consultants) to ensure that the maintenance and monitoring program is consistent with their original recommendations, and any recommendations issued as a result of changes to the grading plan made during construction.

Response: Geotechnical related sections of the Plan of Control, dated November 22, 2002, were provided to Berlogar Geotechnical Consultants during the review process for the currently adopted Plan of Control. The geotechnical related sections of Amendment 1 to the Leona Quarry GHAD Plan of Control were provided to Berlogar Geotechnical Consultants for their review. Berlogar Geotechnical Consultants provided a letter that states that the geologic and geotechnical aspects of the Plan of Control are in substantial agreement with the project reports. The Berlogar Geotechnical Consultant letter dated January 6, 2005, is provided as an attachment to this letter.

Comment: It is assumed the Plan of Control is based on the fill/keyway/buttress configurations indicated in the Berlogar geotechnical investigation report. The original fill/keyway/buttress configurations should be reviewed and compared to the actual as-built constructed fill/keyway/buttress configuration. If the configuration has changed significantly, consideration should be given to supplemental slope analysis to further evaluate the lateral stability of the new slopes.

Response: As defined in the Plan of Control, the GHAD would have the responsibility to perform activities of the GHAD a minimum of two years after the first occupancy permit or two years after the completion and city approval of the site grading and provided the improvements have been constructed. Therefore, we expect that any revisions to the planned site corrective grading based on the actual field conditions encountered or changes to the civil grading plans will have been reviewed by the City of Oakland and their independent consultant prior to acceptance and transfer of monitoring and maintenance responsibilities to the GHAD.

Comment: The Plan of Control provides for monitoring various aspects of the surface and subsurface drainage. In addition, groundwater and slope performance will be monitored with piezometers and inclinometers. Consideration should be given to providing general action levels (2 or 3 indicators) associated with changed conditions such as a decrease in the depth of ground water, or lateral slope movement.

The action levels should provide general guidelines for further evaluation of a potential concern. An example would be a decrease in the depth of ground water. If the water level rises say 5 feet, then subdrains would be checked. If ground water levels rise 15 feet then implementation of a dewatering scheme would be initiated and if the water level rises 30 feet a general evacuation might be initiated.

Response: We agree that a rise in groundwater levels is potentially a cause for concern and that an increase in the site water levels should be monitored, evaluated and action taken as necessary. The Plan of Control provides guidelines for monitoring of this critical element of slope stability. In addition, the Plan of Control provides that a management plan will be developed to identify details of the monitoring program. We anticipate that the management plan will draw from geologic and geotechnical exploration reports developed for the site as well as field-verified plans and testing and observation reports. In addition, we expect that the management plan would incorporate supplemental recommendations from the geotechnical engineer of record based on actual field conditions. In our opinion, the variety of slope conditions on the site would prevent developing a uniform standard related to ground water levels that could be applied to all the site slopes. A rise in groundwater levels should be evaluated based on whether the factor of safety has moved below the design standards for the site. The GHAD will evaluate such conditions and take action as necessary.

Comment: The Plan of Control should be reviewed by the Revegetation Engineer (H.T. Harvey & Associates) to ensure that the maintenance and monitoring program is consistent with their recommendations.

Response: A copy of Amendment 1 to the Leona Quarry GHAD Plan of Control was provided to H.T. Harvey and Associates for their review and comment. H.T. Harvey has prepared a letter of concurrence on the revised Plan of Control that has been provided as an attachment to this letter.

Comment: The Manager should be required to reevaluate the schedule and scope of inspection and maintenance programs on an annual basis, based on the performance of the site.

Response: Within Amendment 1 to the Plan of Control, Section X - The Monitoring and Maintenance Schedule, guidelines are provided for monitoring and maintenance of facilities and improvements. As stated within this section, the actual scope and frequency of monitoring shall be at the discretion of the GHAD manager.

Comment: The GHAD district boundaries appear to cut across slopes, leaving slope areas outside of, and uphill of, the GHAD. The Manager should develop a plan to identify and manage "offsite" hazards that have the potential to negatively affect properties within the GHAD.

Response: Under GHAD law and as reflected in the Amendment 1 of the Plan of Control, areas receiving a benefit from the GHAD must be subject to the special assessment, and therefore, it is outside of the ability of the GHAD to use District funds to manage hazards that are outside of the district's limits. The GHAD will provide for the prevention, mitigation, and abatement or control of geologic hazards that threaten or have the potential to threaten on-site improvements even if they originated off site as provided for in the Plan of Control.

Comment: The proposed GHAD budget assumes that a "major repair" will be required every 10 years (on the average) and that the cost of such repair is $1,000,000. It is possible that a multi-parcel slope repair could exceed the $1,000,000 estimate. In addition, the GHAD's ability to fund such a repair early in the life of the GHAD (before reserves are built up) could be limited. A more detailed financial analysis should be performed that investigates the feasibility of insurance coverage during the early years of the GHAD to protect against the depletion of the GHAD funds by a major repair need.

Response: While we agree that timing of potential slope instability and the repairs that such movement may require is not possible, it is our opinion that the major repair interval and amount presented in the Engineer's Report is prudent based on our experience with other hillside GHAD's and developments in the San Francisco Bay Area. If a major repair of the amount listed occurred in prior to GHAD accumulating sufficient reserves, the GHAD has the ability to borrow money or issue bonds to allow for the completion of the repair work, if needed. The debt would be financed through the levy of on-going assessments within the district. It should also be noted that the budget allows for $40,000.00 per year in slope stabilization work, not related to major repair work. With

the ability of the GHAD to prioritize repair work, obtain and finance debt and having a predictable income stream, it is our opinion that insurance coverage is not required for operation of the GHAD. An estimated budget covering the first six years of the project has been prepared and is provided as an attachment to this letter.

Comment: *Consideration should be given to including periodic water quality monitoring at the detention basin outflow point as part of the Manager's responsibility.*

Response: Periodic water quality monitoring of the discharge from the detention basin could be completed by the GHAD if directed by a regulatory agency or if on-site conditions indicate that this would be prudent. However, is should be noted that the Water Quality/Detention Pond Monitoring and Maintenance program as outlined in Appendix C of Amendment 1 to the Leona Quarry Plan of Control should allow for proper maintenance and operation of the pond as designed.

LETTER OF DECEMBER 17, 2004

Comment: *The project sponsor could be required to guarantee that the reserve fund will be at a specified minimum level at the time of transfer to the GHAD. Based on the financial model presented, it appears that that minimum would be on the order of $487,000 on January 1, 2008. In addition, reductions in the GHAD income stream from the assessments should be guaranteed.*

Response: It is our understanding that Discovery Builders, Inc., and The DeSilva Group or their appointed successor(s) agree that one of the conditions to transfer responsibility for GHAD activities to the GHAD will be to provide that the reserve at the time of transfer is, at a minimum, the projected amount shown on the attached 6-Year Estimated Budget at the conclusion of 2007. As shown, this figure is about $473,000. The difference between the figure stated by the reviewer and as currently shown is due to revisions to the budget requested by the City of Oakland. The reserve amount will include cash and receivables from the Alameda County Tax Collector. The developers may choose, as stated in the Plan of Control, to extend the transfer date to allow reserves to reach the specified level. Alternatively, the site developers may elect to contribute to the reserve fund to allow the transfer to occur at a time of their choosing after the conditions stated within the Plan of Control have been satisfied.

It is anticipated that at the time of transfer from the site developer to the GHAD, the conditions required to activate an individual assessment, i.e. the issuance of a building permit for that parcel, will have occurred. If the issuance of building permits is delayed past 2008 and full project build-out has not been achieved, we expect that although the GHAD will have a reduction in revenues there will be a commensurate reduction in expenses. Therefore, we are not aware of a condition where the developer would need to guarantee that the projected income would not be reduced.

Comment: *If the reserve fund of the GHAD is not at the required level, the City could require the project sponsor to delay transfer of the site until such time as the required funding is in place.*

Response: As outlined in the previous response, the site developers may choose, as stated in the Plan of Control, to extend the transfer date to allow reserves to reach the specified level. Alternatively, the site developers may elect to contribute to the reserve fund to allow the transfer to occur at a time of their choosing after the conditions allow as stated within the Plan of Control have been met.

Comment: The condition of the site at the time of transfer should be subject to review by the GHAD Manager, and by the City's independent consultant, to confirm that there are no imminent threats present.

Response: We concur that the condition of the facilities to be transferred to the GHAD should be reviewed by the GHAD and by the City of Oakland's consultant prior to the GHAD assuming monitoring and maintenance responsibilities.

Please contact us if you have any questions regarding this information.

Very truly yours,

ENGEO INCORPORATED

REGISTERED GEOLOGIST
ERIC WAYNE HARRELL
No. 2189
Exp. 08/05
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

Eric Harrell

eh/ue/cc:response

Reviewed by:

Uri Eliahu

Attachments: Berlogar Geotechnical Consultants, January 6, 2005, correspondence
H.T. Harvey & Associates, January 5, 2005, correspondence
Leona Quarry GHAD 6-year Estimated Budget, revised January 4, 2005

Via Facsimile and Mail

January 6, 2005
Job No. 2420.300

BGC
BERLOGAR
GEOTECHNICAL
CONSULTANTS

Mr. Jim Summers
The DeSilva Group
11555 Dublin Boulevard
P.O. Box 2922
Dublin, California 94568

Subject: Review of GHAD Plan of Control
Leona Quarry
Mountain Boulevard
Oakland, California

Dear Mr. Summers:

As requested by Mr. David Chapman, with The DeSilva Group, we reviewed the document titled *Amendment 1 to the Plan of Control for Leona Quarry Geologic Hazard Abatement District (GHAD)* ..., by ENGEO Incorporated, marked *draft* and dated December 22, 2004.

Based on our review, our opinion is the geologic and geotechnical aspects of ENGEO's document are in substantial agreement with our 2003 report for the project and supplemental recommendations we have presented in later letters and reports. Our 2003 report was titled *Geotechnical Investigation, Leona Quarry, Mountain Boulevard, Oakland, California*, and was dated May 15, 2003.

We trust this letter provides you with the information you require at this time. If you have any questions, please call one of us at 925-484-0220.

Respectfully submitted,

BERLOGAR GEOTECHNICAL CONSULTANTS

REGISTERED GEOLOGIST
FRANK J. GROFFIE
No. 1539
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

Frank Groffie
Principal Geologist
R.G. 4930, C.E.G. 1539

REGISTERED PROFESSIONAL ENGINEER
FRANK BERLOGAR
No. 20383
CIVIL
STATE OF CALIFORNIA

Frank Berlogar
RCE 20383, Exp. 9/30/05

FJG/FB:fjg\pv
Copies: Addressee (1)
The DeSilva Group (2)
Attention: Mr. David Chapman
DeSilva-Gates Construction (1)
Attention: Mr. Kent Peyton
Discovery Builders (1)
Attention: Mr. Albert Seeno III
word/letter/15733

H.T. HARVEY & ASSOCIATES
ECOLOGICAL CONSULTANTS

January 5, 2005

The DeSilva Group
11555 Dublin Boulevard
P.O. Box 2922
Dublin, CA 94568
Attn: David Chapman

Subject: Letter of concurrence on revised GHAD Plan of Control for Leona Quarry

Dear David,

Following review of the revised Amendment 1 to the Plan of Control for Leona Quarry Geologic Hazard Abatement District (GHAD), H.T. Harvey & Associates is issuing this letter of concurrence. H.T. Harvey & Associates acknowledges that ENGEO has addressed our comments and incorporated them into the revised GHAD Plan. The revised GHAD plan is written so that maintenance and monitoring activities will be in compliance with the Leona Quarry Revegetation Plan (H.T. Harvey & Associates 2004).

Sincerely,

Mark Bushard

Mark Bushardo
Project Manager
Senior Restoration Ecologist

cc: Eric Harrell, ENGEO Incorporated
Frank Berlogar, Berlogar Geotechnical Consultants
Dan Stephens, Pat Reynolds, Joe Howard, Matt Quinn, H.T. Harvey & Associates

Reference:
H.T. Harvey & Associates 2004. Leona Quarry Slope Revegetation Plan (dated April 2004). Prepared for The DeSilva Group. Project No. 1950-05

ATTACHMENT D

BINGHAM McCUTCHEN

Daniel J. Curtin, Jr.
Direct Phone: (925) 975-5351
daniel.curtin@bingham.com

February 18, 2005

Via Facsimile

Marcel Uzegbu, P.E.
Project Manager, Facilities Planning & Development Division
City of Oakland
Public Works Agency
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

Bingham McCutchen LLP
Suite 210
1333 North California Blvd.
PO Box V
Walnut Creek, CA
94596-1270

925.937.8000
925.975.5390 fax

bingham.com

Re: Leona Quarry Geologic Hazard Abatement District

Dear Mr. Uzegbu:

At the request of our client, The DeSilva Group, our firm has been asked to give our comments on certain aspects of Lowney Associates' letter to you dated February 14 2005, and Seidelman Associates, Inc.'s letter to you dated February 11, 2005. In particular, we have been asked to comment on bullet points 5 and 10 in the Lowney letter and points 2, 3 and 5 of the Seidelman letter.

In both letters, there is reference to the California law creating a 10-year statute of limitations for claims relating to latent defects in design or construction (Code of Civil Procedure § 337.15). Obviously, the creation of a Geologic Hazard Abatement District (GHAD) by the City and its implementation does not in itself change any of the responsibilities under that State law. The GHAD's responsibilities and duties are basically set forth in the GHAD law (Public Resources Code section 26500 *et seq.*) and as also set forth in the Plan of Control for the Leona Quarry GHAD.

Further, both letters make reference to whether or not it would be a possible conflict of interest if the GHAD hired Berlogar Geotechnical Consultants (BGC) or itself to perform duties of a technical nature, especially in relation to the assessment of conditions and the design of remedial measures. There is nothing in the GHAD law that specifically addresses that issue. That decision is left up to the governing Board of the GHAD on a case-by-case basis using its discretionary judgment.

Under item 2 of the Seidelman letter, there is reference that under California law GHADs have the "right and duty to litigate against third parties who may be responsible for geologic processes becoming actively hazardous." Per se, the GHAD law does not set forth such a right or duty. Under Public Resources Code section 26574, a GHAD may sue or be sued, but there is no statutory duty to litigate; that is a discretionary call for the GHAD Board.

As to item 3 of the Seidelman letter, there is reference again to the California 10-year statute of limitations for latent defects. Again, the GHAD law and its implementation does not affect any rights and obligations under that State law.

As to item 5 of the Seidelman letter, the Plan of Control and its statement on page 16 does not limit liability. In fact, those statements merely establish a policy regarding expenditures of funds by the GHAD. As you will note, the GHAD Board may adjust that amount (see fifth line of page 16).

Bingham McCutchen LLP
bingham.com

If you have any further questions, please advise.

Sincerely yours,

Daniel J. Curtin, Jr.

cc: Uri Eliahu
David Chapman
Patricia Curtin
Heather Lee

30169752_1.DOC

LOWNEY ASSOCIATES
Environmental/Geotechnical/Engineering Services

Mountain View, CA
Fairfield, CA
Oakland, CA
San Ramon, CA
Fullerton, CA
Las Vegas, NV

ATTACHMENT E

March 10, 2005
Project 1993-1

Mr. Marcel Uzegbu
City of Oakland
Public Works Department
250 Frank Ogawa Plaza
Suite 430
Oakland, CA 94612

RE: LEONA QUARRY PROJECT
SETTLEMENT MONITORING
REPORTS

Dear Mr Uzegbu:

At the request of the City, Lowney Associates has reviewed Settlement Monitoring reports prepared by Berlogar Geotechnical Consultants (BGC) dated January 21, 2005 and February 17, 2005.

Based on the data presented in those two reports, it appears that the settlement rate of the fill soils at the Phase I area (west of "A" Street) of the site has dropped to low enough levels to allow the further development of surface features at the site.

We understand that additional settlement monitoring data will be presented in subsequent reports by BGC. We will review that data when it becomes available.

Please call if we can provide any further information.

Sincerely,

LOWNEY ASSOCIATES

Scott R. Huntsman, Ph.D., G.E., CPESC
Associate, Area Manager

Copies: Addressee
David Chapman, De Silva Group
Frank Groffie, Berlogar Geotechnical Consultants

LOWNEYASSOCIATES
Environmental/Geotechnical/Engineering Services

Mountain View, CA
Fairfield, CA
Oakland, CA
San Ramon, CA
Fullerton, CA
Las Vegas, NV

March 9, 2005
Project 1993-1

Mr. Marcel Uzegbu
City of Oakland
Public Works Department
250 Frank Ogawa Plaza
Suite 430
Oakland, CA 94612

RE: LEONA QUARRY PROJECT
SETTLEMENT AGREEMENT
DECEMBER, 2003

Dear Mr Uzegbu:

As part of our ongoing peer review responsibilities, we have reviewed the Leona Quarry Settlement Agreement (Dated December, 2003) to verify that the developer is in compliance with the obligations stated in that agreement.

The Settlement Agreement contains several obligations that the developer is responsible for. We have limited our comments herein to those contained in Section 4, "Geology."

Section 4 of the Settlement Agreement requires that the developer respond to items 1 and 2 of a memo from Dr. Nicholas Sitar to Councilman Richard Spees dated November 15, 2003, and to implement recommendations from Lowney Associates as to the appropriate steps to be taken to adequately respond to Dr. Sitar's comments. Furthermore, the Agreement stipulates that Lowney Associates will report to the City as to the adequacy of the developer's response.

Section 4 further requires that the developer implement (as directed by Lowney Associates) the recommendations contained in the Sitar memo as items 3-5, and the recommendations contained in a letter from Seidelman Associates, Inc. to Ms. Claudia Cappio dated December 30, 2002, and an email from Mr. Paul; Seidelman to Councilman Richard Spees dated November 16, 2003.

For completeness, the Sitar memo and the Seidelman letter and e-mails have been attached to this current letter.

Upon completion of substantial completion of grading at the project, Lowney Associates is to deliver, to the City, a letter confirming that the work has been completed in substantial conformance with our recommendations.

In response to Items 1 and 2 of the Sitar memo, we recommend that the developer require their geotechnical design consultant, Berlogar Geotechnical Consultants (BGHC) to submit a supplemental geotechnical report specifically addressing these two items. We will then review the submitted letter and offer our opinion as to the adequacy of the response.

We have reviewed the letter submitted by BGC dated December 17, 2004 to the DeSilva Group titled *Second Supplemental Geotechnical Conclusions and Recommendations, Northwest Slope, Leona Quarry, Mountain Boulevard, Oakland, California.* We previously issued a review letter in response to that document dated February 22, 2005. It is our opinion that the BGC report adequately addresses Items 3 and 4 of the Sitar memo for the North Slope area. We recommend that BGC issue a supplemental letter responding to Sitar items 3 and 4 for the other slopes at the site, as the grading for those slopes is completed..

Item 5 of the Sitar memo requires that there be competent review by a competent Certified Engineering Geologist (CEG) during construction of the slopes at the project. Mr. Thomas McCloskey, CEG, a Principal Geologist with Lowney Associates has been providing, and will continue to provide, that peer review for the remainder of the project construction.

In regards to the issues raised in the Seidelman email and letter, we recommend that the developer require their geotechnical design consultant, Berlogar Geotechnical Consultants (BGHC) to submit a supplemental geotechnical report specifically addressing Mr. Seidelman's concerns. Several of the comments have been addressed in other correspondence, but we recommend that a comprehensive report be assembled to address all of the comments in a single document.

In summary, the developer is in the process of demonstrating compliance with the requirements of Section 4 of the Settlement Agreement. It is our opinion that they are in substantial compliance at this time. Lowney Associates will continue to work with City staff and the developer to document such compliance during the remainder of the construction.

Please call if we can provide any further information.

Sincerely,

LOWNEY ASSOCIATES

Scott R. Huntsman, Ph.D., G.E., CPESC
Associate, Area Manager

Copies: Addressee
David Chapman, De Silva Group
Frank Groffie, Berlogar Geotechnmical Consultants

Nicholas Sitar, Ph.D.
64 Donna Maria Way
Orinda, CA 94563

November 15, 2003

To: Mr. Richard Spees

From: Nicholas Sitar, Ph.D. Nicholas Sitar

Re: Review of Geologic and Geotechnical Issues for the proposed Leona Quarry Development

As requested by you, I reviewed the results of the latest geotechnical investigation and the recommendations contained in the May 15, 2003, report prepared on behalf of the DeSilva Group by Berlogar Geotechnical Consultants.

In general, I find the report a substantial addition to the pre-existing information and the recommendations contained in the report are on the whole consistent with the proposed use of the site. Nevertheless, there are still certain technical details of the slope stability analyses and, more importantly, construction and post-construction issues related to slope stability that will require continued monitoring and evaluation. In this review, I first address certain aspects of the slope analyses that I believe are not fully resolved and then I address the issue of what may be the most reasonable approach as the project goes into construction.

Comments on Slope Stability Analyses.

In general, the slope stability analyses, as performed, suggest adequate static and seismic slope stability with respect to the possibility of deep-seated landsliding. This, conclusion is consistent with the fact that there is no evidence of deep-seated in the bedrock underlying the quarry slopes. However, the analyses do not reflect the worst possible scenario in all cases, as follows:

1. The strength parameters selected for tuff are at the upper limit of laboratory test data. A lower bound approach would be more reflective of the degree of uncertainty in material parameters. Similarly using a high cohesion and high friction angle for the rhyolite is unconservative. Either the cohesion or the friction angle should be reduced to more conservatively reflect the rock mass behavior.

2. The quarried North Face was analyzed assuming a seismic coefficient of .15. The analysis should be based on determining yield acceleration and then an evaluation of deformations using the Newmark approach.

3. Curved/circular failure surfaces are appropriate for fill slopes and the deformation computations as given in the report are acceptable. However, rock slopes tend to fail along planes and wedges. Thus, planar or by-planar failure surfaces should be analyzed at some point in order to evaluate the possibility of failures along such surfaces. These results should then be used to assess the potential need for slope stabilization using nails or rock bolts.

Nicholas Sitar, Ph.D.
64 Donna Maria Way
Orinda, CA 94563

4. The mitigation measures suggesting the combination of removal and energy absorbing barriers are very appropriate. However, the use of spot or pattern rock bolting should also be included in the mix of possible mitigation measures.

5. The report correctly notes that some of the actual design decisions regarding the treatment of the potential rock fall/rock slide hazard has to be tailored to the actual conditions exposed during construction. This will require a very competent peer review by a CEG (Certified Engineering Geologist) with experience with high rock slopes.

Impact on the Project and Recommendations.

While the above comments suggest that somewhat different and possibly lower factors of safety may indeed exist on some of the rock slopes, there is no evidence that any of the slopes would be likely to experience any significant instability except under the design earthquake event. More importantly, such failures are most likely to involve localized rock falls rather than deep sliding and the mitigation of such hazards involves the same approach regardless of the stage of the project at which they are identified.

Consequently the recommended solution/approach would be to proceed with construction with concurrent detailed mapping of the discontinuities, joints and fractures, on the newly exposed surfaces. This is consistent with the approach proposed by Berlogar Geotechnical Consultants. However, it is important to stress that the purpose of the mapping should be to continue the evaluation of the possible existence of a planar surface that could lead to a general slope failure, to continue identify possible unstable wedges, and to refine the estimate of the maximum likely block/boulder size that could ravel. This information should then be used to refine existing analyses of slope stability, taking into account the technical comments in items 1-3; and, also, it should be used to refine the design parameters for the design of the energy absorbing barriers.

It is important that this process be carefully peer reviewed during all stages (as noted above), since the ultimate treatment of the slopes will be tailored to the final constructed slope conditions. Also, it is important that all parties understand that additional analyses will be necessary during the construction phase and that the results of these analyses coupled with the field observations may require changes in the proposed/expected slope treatment. In some cases, this may result in lesser level of support than originally anticipated, while in other cases substantially greater slope stabilization measures and/or energy absorbing barriers may be required. Therefore, adequate provisions should be made to anticipate the potential financial and scheduling impacts on the project.

Finally, the effectiveness of the proposed slope stabilization measures and the energy absorbing barriers in particular is very much a function of adequate maintenance. Thus, adequate provisions have to be made for access to the up slope side of the energy absorbing barriers in order to clean out the accumulated debris on a periodic basis.

Mike Willcoxon

From: Richard Spees [RLspees@msn.com]

Sent: Sunday, November 16, 2003 2:14 PM

To: 101550@msn.com; Mike Willcoxon; David Chapman; Comact@Oaklandvet.com; Smalmstrom@earthlink.net; Jim Summers; Pdow@mindspring.com; accsparkz@yahoo.com

Subject: Fw: leona

Attached is the latest Email from Paul Seidelman for discussion this evening. Dick

---- Original Message ----
From: paul seidelman
To: Richard Spees
Sent: Sunday, November 16, 2003 2:01 PM
Subject: leona

Dick,

Thanks for forwarding Dr Sitar's most recent letter. I concur with the points he raises, several of which were raised in my letter of last December and my earlier note today. All of these comments (Dr. Sitar's and mine from December 2002(attached report) and today) must be tracked through the process. A failure to do so could be very costly in personal injury or in unexpected maintenance costs both in the near term and long term management of the project. *This is easier said than done because political and administrative control* of the project tends to vary depending upon the individuals in authority. The management of the construction and maintenance, inclusive of Dr. Sitar's and my own concerns, is essential to the project's overall success. A long time line with constancy in project oversite is necessary for the success of this project. Finding the correct design for the management of the project will rival the design of the quarry slopes in complexity and importance. I strongly recommend that the engineering issues be tracked in detail at construction permit stage and continuously during construction itself.

- There seems to be close agreement that the stability of the north slope will require some areas of rock bolting and physical modification in addition to the safety fencing. Design details are needed.
- Maintenance access design is essential to remove soil and rock debris manage slopes and to clean drainage facilities.
- Settlement and ground water monitoring plans are needed for all fill areas.
- Estimates for maintenance costs for these and other systems is needed to establish funding of the GHAD district.
- Procedures for tracking geotechnical concerns through the construction phase of the project are needed.

In my opinion all of these concerns can be mullified by careful project management and engineering design.

Sincerely

Paul Seidelman

SEIDELMAN ASSOCIATES, INC.
2427 CHERRY HILLS DRIVE
LAFAYETTE, CALIFORNIA 94549
(925) 930-0646
(925) 930-0828 (FAX)

December 30, 2002

City Of Oakland
Attn: Claudia Cappio
Frank H. Ogawa Plaza, Ste. 3330
Oakland, CA 94612-2032

RE: Leona Quarry

Dear Ms. Cappio:

On December 11, 2002 I met with representatives of the De Silva Group and Berlogar Geotechnical Consultants to discuss the additional geotechnical work necessary to resolve issues in preparation for submission of grading permits for the Leona Quarry PUD. Prior to discussing issues at specific locations, I indicated the City's desire that geologic hazard conditions be reduced to maintenance type items so that the GHAD would be in large part devoted to monitoring and maintenance of hill slope and drainage conditions within the development. I have attempted to group concerns by area starting with parcel C and advancing to the westerly portion of parcel D and so forth.

The parcel C is located along the extreme west flank of the project and is composed of highly man altered terrain mixed with nearly natural terrain, most of the concerns are related to the highly man altered terrain. The higher slopes in parcel C, in the altered portion of parcel C, consists of bare rock exposures that are very steep, exceeding 1:1 in many locations. Two areas that have produced debris torrents, rock raveling and minor rock falls are visible as two grooves in the upper slope with talus fans resting on the Quarry bench below the base of rock outcrop. Immediately north of these evident instabilities, there is a shallow debris slide, both of these instabilities will require mitigation, both to avoid present hazards and to restrict the future potential for instability.

Also present in parcel C is a shallow retention pond, which is no longer accessible to vehicular access for maintenance purposes. It appears that a tractor road formally existed from the main quarry road running northerly across parcel C to the pond. This service road has been obliterated by slide debris originating higher on the slope. The old service road separates the up slope rock outcrop areas from extensive side cast fill deposits that are situated between the service road and the old quarry road. The long-term maintenance of the pond will require equipment access to the pond area. Additionally, the service road for the pond will serve to intercept dry ravel in other slope sediment. The road can also serve to de-water the slope and reduce the amount of surface

run off that would otherwise enter the side-cast fill area. I have asked Berlogar to address these issues in their final report associated with permit applications.

The western portion of parcel D contains severely over steepened man altered terrain, some of which may have produced rock falls, while another area shows evidence of recently active landsliding, both of these issues are of primary concern and will be addressed in the final Berlogar report. Specifically slope stability analysis before and after mitigation is applied to the landslide area. Additionally, proposals for the mitigation of rock fall hazards. Barriers will be designed to retain specific rock sizes and velocities.

The remainder of parcel D consists of significant cuts and fills. The permit report will address issues associated with major cut and fill operations. These will include subsurface drainage, especially as it pertains to the long range performance and reliability of the underdrain system. Special considerations to enhance subdrainage properties will include drainage redundancy, the ability to maintain the drain, and the ability to monitor the performance of the drainage system. It is anticipated that the drainage system will include multiple outlets and the appropriate sweep bend clean outs. Water sampling to determine the presence of sulfate and carbonate ions will facilitate understanding of the potential for long term salt contamination of the drain system. Use of storm drain manholes will also facilitate acid washing of the subdrain if needed.

Additionally, we discussed the potential for short term perched water tables to develop and mitigation of accumulated near surface water by using subdrains as well as concrete lined V-ditches on the construction benches.

The report will discuss the expected amount and timing of consolidation and settlement of the fills and the mitigative effects of the original fill density and moisture content. Ground water, inclinometer and settlement monitoring installations will also be discussed.

We discussed seismic design parameters for both the buildings and the evaluation of slope stability. We have concluded that further research on both our parts may be necessary to arrive at the appropriate accelerations for buildings and slope stability analysis. I am presently comfortable with the 1997 building code. However, the consultant has several papers indicating different ways of addressing seismicity and seismic coefficients. We are going to review these papers during the first few weeks of the year and will keep you advised of our findings.

We have reviewed the consultants work in regards to evidence of active fault rupture on the site and concur that there is no conclusive evidence that fault rupture has occurred in the active past. The shear zone shown in the earlier Golder report was not found as a continuous lineation in the field.

Fault rupture will always remain a hazard because of the close proximity of the Hayward fault. However, absent an identifiable fault trace there is no specific ground to be avoided. The best mitigation then becomes a careful foundation design and structural design.

In areas designated for housing and roadways the effects of non-uniform fill thickness will be analyzed along with other soil conditions that will effect differential settlements within house

foundation perimeters. Final foundation and grading recommendations will be designed to mitigate these problems.

We also discussed home drainage including the need for foundation drains at the perimeter of each building foundation. Subdrainage associated with sidewalks designed to keep near surface water out of pavement base rock was also discussed as a mitigative measure. Additionally, we discussed the potential for storm, water line and sanitary sewer trenches to convey water in undesirable ways. These can be fairly readily mitigated with a subdrain system.

We discussed providing estimations as to the annual maintenance cost associated with surface and subsurface drainage maintenance as well as inclinometer, settlement, and pieziometric data collection and analysis. These estimates will assist in providing information to establish funding levels for the GHAD.

During the meeting we discussed the need for professional as well as technical monitoring during construction to ensure that the care taken in developing properly engineered plans is converted into an engineering reality during construction. The developers' consultants will provide recommendations concerning the amount and type of professional and technical monitoring needed during the construction process.

Obviously, we will be available to review these documents as they are submitted and to work with your staff in developing the best possible final designs. Hopefully this letter report will serve as a punch list of items peculiar to this project that should be addressed in final design.

We hope this has provided you with the information you need to proceed in this matter. Should you have any further questions, please don't hesitate to give us a call.

Sincerely,

SEIDELMAN ASSOCIATES, INC.

Paul Seidelman
President
RCE 29683
CEG 1086
GE 761

cc: Frank Berlogar

OVERVIEW OF GEOLOGIC HAZARD ABATEMENT DISTRICTS

Prepared by
Daniel J. Curtin, Jr.
(February 2005)

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London
Los Angeles
New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

I. GHADs -- PURPOSES AND DESCRIPTION[1]

GHADs are governmental districts formed specifically to address geologic hazards and related concerns. The law, authored by then State Senator Robert Beverly, authorizing the formation of GHADs (Public Resources Code sections 26500 *et seq.*)[2] was enacted in 1979 to address the aftermath of the Portuguese Bend landslides in the Palos Verdes area of Southern California. Under this law, a GHAD may be formed for the purpose of prevention, mitigation, abatement or control of a geologic hazard; also for mitigation or abatement of structural hazards that are partly or wholly caused by geologic hazards. (Section 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. (Section 26507) A GHAD is a political subdivision of the State and is not an agency or instrumentality of a local agency. (Section 26570)

A GHAD is empowered to acquire, construct, operate, manage or maintain improvements on public or private lands. "Improvement" is defined to mean any activity that is necessary or incidental to the prevention, mitigation, abatement, or control of a geologic hazard, including, but not limited to, all of the following:

(a) Acquisition of property or any interest therein;

(b) Construction;

---

[1] *See* article Daniel J. Curtin, Jr. and Shawn Zovod, *Geologic Hazard Abatement Districts: California's Experience with Hazard Mitigation through Special Districts*, 55 Land Use Law & Zoning Digest, No. 6 (APA June 2003).

[2] All code references are to the Public Resources Code unless otherwise noted.

(c) Maintenance, repair, or operation of any improvement;

(d) Preparation of geologic reports required for multiple projects within an earthquake fault zone or zones.

(e) Issuance and servicing of bonds, notes, or debentures issued to finance the costs of the improvements specified in subdivisions (a), (b), (c), and (d). (Section 26505)

Such improvements shall be with the consent of the owner, unless effected by the exercise of eminent domain. Also, the GHAD may accept such improvements undertaken by anyone. (Section 26580) A GHAD may exercise the power of eminent domain. (Section 26576)

A GHAD may include lands in more than one local agency (city or county) and the lands may be publicly or privately owned. (Sections 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. (Sections 26530, 26534) However, no parcel of real property shall be divided by the boundaries of the proposed district. (Section 26533) Land may be annexed to an existing GHAD following the procedure for formation of a GHAD; however, the board of directors shall assume the responsibilities of the legislative body of the city or county. Nonetheless, annexation shall be subject to the approval of the legislative body which ordered formation of the district. (Section 26581)

A GHAD is authorized to finance improvements through the Improvement Act of 1911, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915. (Section 26587) A GHAD may also accept financial or other assistance from any public or private source (Section 26591) and may borrow funds from a local agency, and the state and federal governments. (Section 26593)

A GHAD may assess landowners for operation and maintenance of improvements acquired or constructed under the GHAD law. (Section 26650) These assessments, which attach as liens on property, may be collected at the same time and in the same manner as general taxes on real property. (Section 26654)

All assessment proceedings must also comply with Proposition 218 adopted by the voters in 1996, the "Right to Vote on Taxes Act." (Arts. XIIIC and XIIID of the California Constitution)

II. ADVANTAGES OF FORMING A GHAD

GHADs are public agencies that operate locally for the sole and specific purpose of addressing geologic hazards and related concerns. As such, they offer several distinct advantages.

A. Focus On Prevention.

Through the development and implementation of a Plan of Control (discussed below), a GHAD acts to prevent damage resulting from earth movement by identifying and monitoring potential geologic hazards and undertaking improvements as appropriate.

B. Ability To Respond To Unforeseen Events.

When unforeseen hazards arise, GHADs, as existing agencies, are in place with the technical and organizational resources and funding capability needed to respond quickly and effectively.

C. Improved Method Of Collecting Assessments.

GHADs are authorized to collect assessments along with the general property tax. This avoids requiring separate collection by a private entity, such as a homeowners' association.

D. Concerns Over Liability Less Likely To Discourage Needed Actions.

In addition, under state law (Government Code sections 865 *et seq.*), GHADs are given a degree of immunity from liability for actions they undertake. The Legislature intended that these provisions encourage local public entities to take remedial action to abate earth movement. In addition, the Tort Claims Act (Government Code section 810 *et seq.*) in general provides immunities to GHADs as it does to other local public agencies.

III. PROCEDURE FOR FORMATION

Under the GHAD law, when a proposed GHAD is located in more than one local agency (city or county), the local agency with the portion of the proposed GHAD with the greater assessed valuation will initiate and conduct formation proceedings.

The GHAD law contains a normally used routine procedure for formation (Section 26525 *et seq.*) and an emergency formation procedure. (Section 26568 *et seq.*)

The basic steps for routine formation are:

A. The applicant or local agency prepares a Plan of Control. The Plan of Control must 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.

B. Before forming its first GHAD, the legislative body of the city or county must adopt a resolution declaring that it will be subject to the

statutory provisions for initiating formation proceedings and forward a copy of such resolution to the State Controller. (Section 26550)

C. Proceedings for formation are initiated either by a petition signed by the owners of at least 10 percent of the real property to be included within the district or by resolution of the legislative body. The Plan of Control must be attached to the petition (*see* section 26553). (Section 26550.5)

1. The petition for formation is formally accepted by the legislative body at a noticed public hearing.

D. The legislative body conducts a public hearing after at least 20 days notice to property owners within the GHAD area on formation. Property owners within the proposed GHAD may object to formation. (Section 26564) If it appears that owners of greater than 50 percent of the assessed valuation of the GHAD area object, the legislative body must abandon the formation proceedings. (Section 26566)

1. The date for the hearing on formation is generally set when the legislative body accepts the petition for formation.

E. The legislative body determines after the close of the formation hearing or within 60 days of the close of the formation hearing whether to order formation. If the legislative body desires to order formation, it does so by adoption of a resolution. (Section 26567)

F. If the legislative body orders formation, it must also select an initial board of directors for the GHAD. The legislative body may choose either to select five landowners from the GHAD area to serve on the initial GHAD board or appoint itself to act as the board of directors. If the legislative body selects five landowners, the initial term shall be four years; after that, the landowner GHAD board shall be elected from the district. (Sections 26567, 26583) Otherwise, the legislative body stays as the governing body if it selects itself to so serve.

Notwithstanding any other provision of law, proceedings for GHAD formation are exclusive. (Section 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"). (Section 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. (Section 26601)

IV. PLAN OF CONTROL

The Plan of Control is one of the most important documents governing the functions of a GHAD and it spells out the duties and

responsibilities of the GHAD. Section 26509 provides that a Plan of Control is a report prepared by an engineering geologist certified pursuant to section 7822 of the Business and Professions Code or a firm of engineering geologists which describes in detail a geologic hazard, its location and the area affected thereby, and a plan for the prevention, mitigation, abatement, or control thereof. The Plan of Control serves as a "general plan" or "constitution" for the GHAD and 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 of facilities. (Section 26509)

V. POST-FORMATION PROCEDURES

After the GHAD is formed, it must take a number of steps before it becomes operational, including passing a budget, appointing a clerk, a treasurer and other officers (Sections 26584, 26585, 26586) and levying assessments. Proposition 218, enacted in the November 1996 general election, makes it more time consuming and procedurally complex to levy the assessments. GHADs are also subject to the provisions of the Ralph M. Brown Act. (Section 26582)

A. Procedure For Levying Assessments

1. The special benefit to each of the properties within the GHAD is calculated by an engineer and set forth in a detailed engineering report. In accordance with Proposition 218, the "Right to Vote on Taxes Law," the amount of the assessment levied on each property is proportionate to the special benefit to the property.

2. Before assessments can be levied, the GHAD board must calculate the assessment, adopt a resolution of intention to order the assessment, hold a hearing on the proposed assessment with at least 14 days notice to all property owners within the district and allow the affected property owners to vote on it.

3. After at least 45 days notice, the GHAD board conducts a public hearing on the proposed assessment. A ballot giving each affected property owner the opportunity to vote on the assessment is mailed to each affected property owner along with notice of the hearing. Ballots may be mailed in before the hearing or submitted at the hearing. At the public hearing, all protests against the assessment are considered and the ballots may be tabulated at, or after, the hearing. If there is a majority protest, which exists if the ballots submitted in opposition to the assessment exceed the ballots submitted it its favor, the GHAD board cannot impose the assessment. In tabulating the ballots, they are weighted according to the proportional financial obligation of the affected property owner.

VI. DISSOLUTION

As of January 1, 1998, the GHAD law has its own dissolution procedure. (Sections 26567.1-26567.3) The legislative body of the city or county may order the dissolution based on specific findings set forth in Section 26567(a). After dissolution, the board of directors of the GHAD shall return any liquid assets of the district to the landowners and local agencies in the same proportion they have contributed to the revenue of the district and shall provide by resolution for the distribution of any capital improvements and assets of the district. (Section 26567.3)

ATTACHMENT G

Leona Quarry Geologic Hazard Abatement District
Long-Term Management Matrix

FACILITY/FUNCTION	MAINTENANCE ENTITY	FUNDING	OWNERSHIP
1. Open Space			
a. Potential Alameda Whipsnake Habitat – Fences/Signs	GHAD	GHAD Assessment	GHAD
b. Vegetation – Slope Revegetation Materials	GHAD	GHAD Assessment	GHAD
c. Vegetation – Fire Management Zones	GHAD	GHAD Assessment	GHAD
d. Slope and Trail Maintenance Including Trash Removal	GHAD	GHAD Assessment	GHAD
e. Emergency Vehicle Access (EVA) Roadways	GHAD	GHAD Assessment	GHAD
f. Debris Benches and Surface Drainage Facilities	GHAD	GHAD Assessment	GHAD
g. Storm Drain Facilities – Maintenance and Replacement	GHAD	GHAD Assessment	GHAD
h. Subsurface Drainage Facilities.	GHAD	GHAD Assessment	GHAD
i. Rock Catchment Fence	GHAD	GHAD Assessment	GHAD
j. Retaining Walls	GHAD	GHAD Assessment	GHAD
2. Detention Basin	GHAD	GHAD Assessment	GHAD
3. Channel Corridor - Common Area	GHAD	GHAD Assessment	HOA
4. Storm Drains Within Public Right of Ways - Maintenance	GHAD	GHAD Assessment	City of Oakland
5. Storm Drains Within Public Right of Ways - Replacement	City of Oakland	City of Oakland	City of Oakland
6. Street Sweeping	GHAD	GHAD Assessment	City of Oakland
7. Retaining walls – Common Areas	HOA	HOA Assessment	HOA
8. Landscape – Common Areas	HOA	HOA Assessment	HOA

ATTACHMENT H

Leona Quarry Geologic Hazard Abatement District

6-Year Estimated Budget - Latest Revision February 17, 2005

	[1] 2005	[1] 2006	[1] 2007	[1] 2008	[1] 2009	[1] 2010
Cumulative No. of Units	0	157	292	427	427	427
A. INCOME						
Assessment	-	160,084	308,157	466,398	482,722	499,617
Annual Assessment per Unit (Inflation Adjusted)	983	1,012	1,043	1,074	1,106	1,139
B. PROJECTED EXPENSES						
1. Administration and Accounting	-	-	-	66,219	68,206	70,252
County Fees	-	-	501	628	647	666
2. Consultants	-	-	-	33,110	34,103	35,126
3. Operation and Maintenance	-	-	-	115,884	119,360	122,941
4. Slope Stabilization	-	-	-	48,009	49,449	50,933
5. Erosion Protection	-	-	-	59,597	61,385	63,227
6. Repair	-	-	-	-	-	-
7. Miscellaneous Expenses	-	-	-	42,381	43,653	44,962
8. Debt Service	-	-	-	-	-	-
SUBTOTAL - EXPENSES	-	-	501	365,828	376,803	388,107
RESERVE	-	160,084	307,656	100,570	105,919	111,510
EARNINGS	-	-	9,205	27,424	34,784	42,874
CUMULATIVE RESERVE	-	160,084	476,945	604,939	745,642	900,027

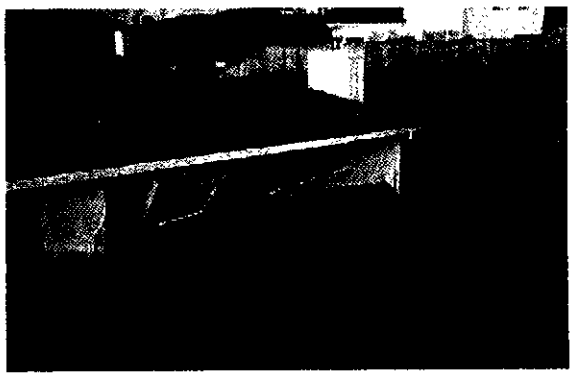
ASSUMPTIONS

Total No. of Units	427
Annual Assessment per Unit	$983
Total Non-Residential Building Area (square foot)	4,000
Annual Assessment per non-residential (square foot)	$0.25
Annual Adjustment in Assessment	3.5%
Inflation	3.0%
Investment Earnings	5.75%
Frequency of Large-Scale Repair (years)	10
Cost of Large-Scale Repair (current dollars)	$1,010,000

ESTIMATED ANNUAL EXPENSES IN 2005 DOLLARS		PROFORMA CATEGORY
Administration, Accounting and Clerk-Treasurer	60,600	Administration & Accounting
Technical Consultants	22,725	Consultants
Open Unlined Channel Monitoring & Maintenance	3,535	Operations and Maintenance
Detention Basin Maintenance	30,300	Operations and Maintenance
Subdrain Outfall Maintenance/Repair	505	Operations and Maintenance
Concrete Lined Drainage Ditch Maintenance	15,150	Operations and Maintenance
Emergency Vehicle Access Road Maintenance/Overlay	3,030	Operations and Maintenance
Storm Drain Pipeline Maintenance	2,020	Operations and Maintenance
Trail Maintenance Including Trash Removal	2,525	Operations and Maintenance
Mowing/Fire Suppression	15,150	Operations and Maintenance
Potential Alameda County Whipsnake Habitat -Fences/Signs	505	Operations and Maintenance
Insurance	8,080	Operations and Maintenance
Sediment Removal Storm Drain Inlets	9,090	Operations and Maintenance
Sediment Removal Public Streets	16,160	Operations and Maintenance
Slope Stabilization (incl. minor landsliding)	40,400	Slope Stabilization
Catchment Fence Replacement	3,535	Slope Stabilization
Erosion Repairs	20,200	Erosion Protection
Open Space Storm Drain Pipeline Replacement	10,100	Erosion Protection
Replacement/Repair, Concrete Lined Drainage Ditches	24,240	Erosion Protection
Major Repair (Annualized)	101,000	Repair
Miscellaneous, Legal & Contingency (10%)	38,785	Miscellaneous Expenses
TOTAL	427,635	

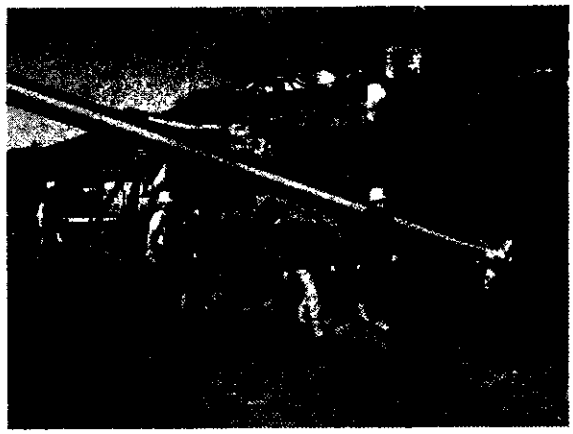
[1] Figures are based on 2005 estimate and adjusted for inflation

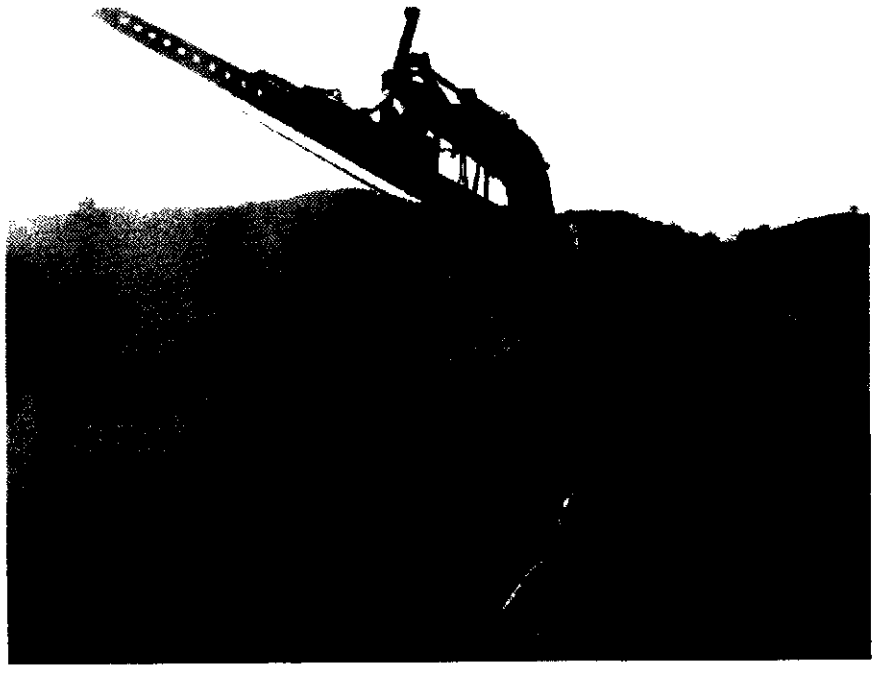
ATTACHMENT I

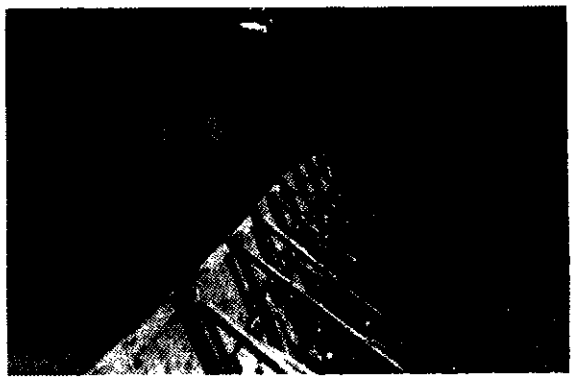


Statement of Qualifications

General Manager for the Leona Quarry Geologic Hazard Abatement District







ENGEO INCORPORATED

Expect Excellence

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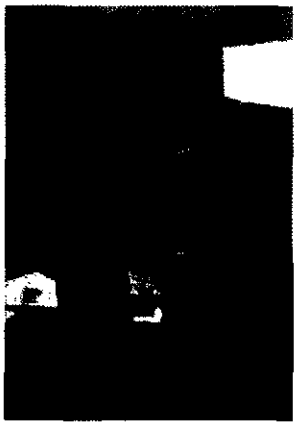
1. QUALIFICATIONS AND EXPERIENCE



At ENGEO, we have developed a keen awareness of the technical, political, regulatory, and financial issues that are so critical to project success. ENGEO has fostered strong relationships with local, state and federal agencies, and this rapport has helped to bring about timely and efficient progress to our projects. We have provided innovative solutions to earthwork, transportation, water supply, water treatment and conveyance, seismic site stabilization, and demolition/recycling projects, as well as establishment of perpetual funding vehicles for open space management, geologic hazard abatement, seismic damage mitigation, wetland maintenance and habitat management.

Founded in 1971, ENGEO Incorporated is a comprehensive provider of geotechnical, environmental, geologic, hydrologic engineering and construction services with a diverse range of public and private clients.

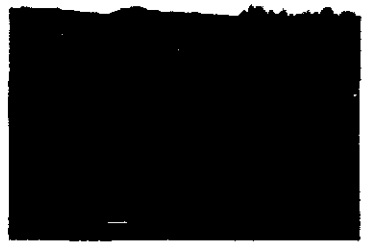
We have seven Northern California offices located in San Ramon, San Francisco, San Jose, Tracy, Roseville, Mare Island, and Vacaville. ENGEO comprises a team of professionals and specialists performing services in the areas of:

- ✓ *Geotechnical Engineering*
- ✓ Environmental Engineering
- ✓ Engineering Geology
- ✓ Construction Management/Project Management
- ✓ Construction-Phase Testing & Observation
- ✓ *Special Inspections & Materials Testing*
- ✓ Water Resources & Hydrology
- ✓ Storm Water Pollution Prevention Plans
- ✓ Storm Water Management Plans
- ✓ GIS/GPS

ENGEO has more experience in GHAD policy development and best practices than any other firm. We have been involved in nearly all of the GHAD properties in Northern California. With a staff of registered Geotechnical Engineers and Certified Engineering Geologists that is second to none, and with over 500 combined years of specific, related experience, Geologic Hazard Abatement is a core business for ENGEO.

Our firm is organized into client-based, multi-disciplined teams. We place client service as the absolute highest priority, and that philosophy is apparent in the satisfaction of our clients and in our 95 percent rate of repeat business. Further, our long experience with the terrain and geologic conditions in the San Ramon Valley makes it possible for us to provide uniquely insightful and cost-efficient solutions for geologic abatement. With more than 30 years of accumulated data on literally thousands of landslides, foundation design schemes, and other components in the San Ramon Valley, we have vast knowledge of the area's geologic conditions.

Canyon Lakes Development and GHAD Activities



ENGEO is the only entity that has been continuously involved with Canyon Lakes since it was conceived 25 years ago. ENGEO served as Geotechnical Engineer from early planning through completion of this widely acclaimed mixed-use development with 3,500 units on 1,050 acres. **ENGEO received the Award for the Outstanding Project by the Soil and Foundation Engineers Association** for Canyon Lakes. In addition, the **California Council of Civil Engineers and Land Surveyors honored ENGEO with the Project of the Year Grand Award of Excellence**. This golf course community contains an elementary school, a 300-bed hospital complex, and a commercial center. A major feature is the 13-acre artificial lake that enhances the 6,379-yard public golf course.

With this unparalleled knowledge of the conditions at the Canyon Lakes development, ENGEO has been in the lead position for implementation and monitoring of this GHAD since its inception in 1986. ENGEO has provided on-going monitoring services for this GHAD in accordance with the Plan of Control. Our services have included: extensive engineering and geologic consultation and repair recommendations, development of instrumentation monitoring and bi-annual reconnaissance to observe and report the general conditions of the slopes adjacent to the development; assessment of conditions of site drainage in the open space and common areas; and preventive maintenance and operations. ENGEO has also conducted public meetings with GHAD representatives and homeowners.

Since 1984, ENGEO has provided periodic monitoring and reporting of the horizontal drains and piezometers within the Canyon Lakes development. Currently we are working with the Canyon Lakes GHAD to provide an evaluation of all the horizontal drain and piezometers on site. In addition, we are working with the GHAD on additional horizontal drains for slopes within the Canyon Lakes development to aid in lowering ground-water levels.

Budgeting, both initial assessment determination and annual cost analysis, is critical to the long term success of a Geologic Hazard Abatement District. ENGEO has prepared numerous GHAD budgets and Engineer's Reports. ENGEO's model for determining GHAD funding levels provides for on-going operations and maintenance and the establishment of an appropriate level of reserve to address probable future geologic events. ENGEO has also prepared numerous reserve studies for existing or planned GHAD's at the request of Contra Costa County and the City of San Ramon (GHAD 1990-01). A number of ENGEO-prepared GHAD budgets have gone through successful third party review during the GHAD formation process.

Experience with Public Presentations

ENGEO has delivered many GHAD presentations and symposia. We have developed a comprehensive PowerPoint presentation and also utilize foam boards and other visual aids. In addition, our sophisticated AutoCAD capabilities enable us to provide all visual aids at a fraction of their usual cost. Our intent is to be informative and available through open communication and personal contact, and not through the generation of expensive media materials. We have delivered GHAD presentations to the following Public Agencies:

- City of San Ramon
- City of Fairfield
- City of Oakland
- Glendale DPW
- City of Santa Monica
- City of Milpitas
- Contra Costa County
- City of San Leandro
- City of Hercules
- City of La Canada Flintridge
- City of Newport Beach
- Town of Danville

Selected GHAD Experience

West Branch (1990-01) City of San Ramon GHAD, San Ramon, CA
ENGEO has provided on-going services for this City of San Ramon managed GHAD with two Plans of Control since the early 1990s. In 2003, ENGEO prepared a unified Plan of Control and reserve study for the West Branch, Gale Ranch and Windemere properties. Our services have included:

- Site reconnaissance twice a year to satisfy the monitoring requirements of the GHAD
- Design and construction QA/QC services during the repair of a large landslide in an open space area of the West Branch GHAD with the potential to impact Reedland Circle
- Timely and cost effective repairs for several affected areas.

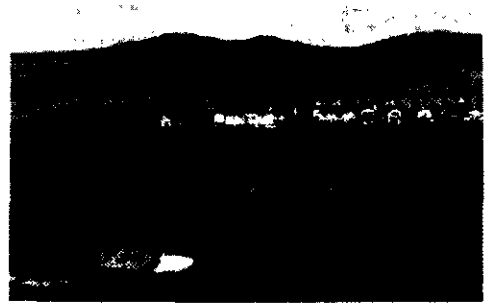
Blackhawk GHAD, Contra Costa County, CA
This and Canyon Lakes are the first GHADs in Northern California and the first GHADs to be applied to new developments. ENGEO has led the implementation and monitoring of this GHAD since the mid-1980s. ENGEO has provided on-going monitoring services for this GHAD in accordance with the Plan of Control. Our services have included:

- Extensive engineering, geologic consultation and numerous repair recommendations;
- Development of instrumentation monitoring and bi-annual reconnaissance to observe and report the general conditions of the slopes adjacent to the development;
- Assessment of conditions of site drainage in the open space and common areas;

- Preventive maintenance and operations:
- Initial incident response and evaluation;
- Inclinometer measurements not related to on-going projects;
- Data collection and maintenance of GHAD weather station;
- Serial photography review; and
- General consultation on landslide and erosion hazards, analysis and mitigation schemes.
- Public meetings with GHAD representatives, homeowners and/or the Blackhawk Homeowners Association;
- Accumulation of nearly 30 years of geotechnical and other site data for the Blackhawk community.

Gale Ranch GHAD, Dougherty Valley, San Ramon, CA

Since the mid-1990s, ENGEO has prepared the Plan of Control. ENGEO serves as the Geotechnical Engineer of Record for this large land development project. ENGEO has performed site reconnaissance to satisfy the monitoring requirements of the GHAD. Some of the items addressed during the monitoring events include:



- Monitoring of sophisticated instruments;
- Reconnaissance of slopes located adjacent to improvements;
- Observation of areas of known landslide repair;
- Observation of subdrain outlets;
- Observation of the lined surface drainage ditches and catch basin inlets for debris;
- Creeks;
- Observation of selected curb and gutter alignments, and
- Engineering, geologic and repair recommendations for landslides and areas of slope instability.

Moller Ranch GHAD, City of Pleasanton, CA

ENGEO has provided on-going monitoring services for this City of Pleasanton-governed GHAD since its inception in 1998. ENGEO is performing periodic site reconnaissance to satisfy the monitoring requirements of the GHAD. Some of the items addressed during the monitoring events include:

- Reconnaissance of common area cut slopes located adjacent to improvements;
- Observation of areas of known landslide repair undertaken during the mass grading operations;
- Observation of subdrain outlets;
- Observation of the lined surface drainage ditches and catch basin inlets for debris;
- Observation of curb and gutter alignments, and
- Review of areas of potential slope instability documented in earlier geotechnical studies and located adjacent to existing improvements.

Laurel Creek Estates GHAD, City of Pleasanton, CA
ENGEO has prepared and implemented the Plan of Control for this GHAD since its inception in 1997. Items addressed during ENGEO's monitoring events include:

- A reconnaissance of common area cut slopes located adjacent to improvements;
- Observation of areas of known landslide repair undertaken during the mass grading operations;
- Observation of known, readily accessible subdrain outlets installed during the mass grading;
- Observation of the lined surface drainage ditches and catch basin inlets for debris; and
- Observation of selected curb and gutter alignments.

Golden Eagle Estates GHAD, City of Pleasanton, CA
ENGEO prepared the Plan of Control and has provided on-going monitoring services for the City of Pleasanton-managed GHAD since the mid-1990s. Some of the items that are addressed during the monitoring events include:

- A reconnaissance of common slopes located adjacent to improvements;
- Observation of subdrain outlets installed during the mass grading;
- Observation of the lined surface drainage ditches and catch basin inlets for debris; and
- Observation of selected curb and gutter alignments.

Oak Tree Farm Property GHAD, City of Pleasanton, CA
ENGEO prepared the Plan of Control and has provided on-going services for this City of Pleasanton-managed GHAD since 1998. Some of the items addressed during the monitoring events include:

- Reconnaissance of slopes;
- Observation of areas of known landslide repair undertaken during the mass grading operations;
- Observation of known, readily accessible subdrain outlets installed during the mass grading;
- Observation of the lined surface drainage ditches and catch basin inlets for debris;
- Observation of selected curb and gutter alignments; and
- Review areas of potential slope instability that were documented in earlier geotechnical studies and that are located adjacent to existing improvements.

Southwest Pittsburg GHAD, City of Pittsburg, CA
ENGEO has prepared the Plans of Control for this GHAD since its inception in 1992. In addition, ENGEO has provided on-going monitoring services and repair recommendations since 1993.

California Highlands Geologic Hazard Abatement Program, Donlan Canyon, Dublin, CA

ENGEO has provided on-going monitoring services since 1999. Our services have included bi-annual reconnaissance to observe and report the general conditions of the slopes adjacent to the development and the conditions of site drainage in the open space and common areas. Our services relate to:

- Drainage courses and detention/retention basins;
- Catchment walls for debris;
- Areas of potential slope instability that were documented in earlier geotechnical studies;
- Areas of known landslide repair undertaken during the mass grading operations;
- Lined surface drainage ditches and catch basin inlets for debris;
- Common area and open space slopes and swales; and
- Accessible subdrain outlets.

Experience in Managing Full-Scope Programs

Windemere and the Dougherty Valley GHADs, Contra Costa County, CA

Since 1985, ENGEO has been the lead geotechnical consultant for Dougherty Valley, a new 5,000-acre community in Contra Costa County. We are responsible for environmental permitting assistance, geotechnical and geologic investigations, hydrologic design, development of foundation design criteria, and construction inspection and testing. During the development process ENGEO led the establishment of the GHAD with City, County and regulatory personnel.

The Dougherty Valley GHAD has evolved into the largest in existence. ENGEO planned and executed the formation of a Geologic Hazard Abatement District (GHAD) for projects within the Dougherty Valley. Services included preparation of assessment levels and proposed budgets to allow for adequate reserve accumulation. The Plan of Control documents prepared by ENGEO for GHADs within the Dougherty Valley allow for prioritization of GHAD expenditures based on the potential impact to improvement.

Preventive maintenance and monitoring sections within the Plan of Control include: Monitoring of sophisticated instruments, reconnaissance of slopes located adjacent to improvements; observation of areas of known landslide repair; management of creek banks and detention basins; observation of subdrain outlets; observation of the lined surface drainage ditches and catch basin inlets for debris; and observation of selected curb and gutter alignments.

Conifer Terrace Landslide Repair Project, Blackhawk Contra Costa County, CA
The project involved the construction of an innovative tieback anchor system on an unstable slope located between Conifer Terrace and Sequoia Terrace in Blackhawk. With ENGEO's oversight, the tieback installation successfully arrested the movement of a large landslide that directly threatened about 15 homes.

Prior to the start of construction, ENGEO was involved with an evaluation of multiple alternatives for stability improvements on the hill slope. Based on the time of year, the site conditions, risks and an analysis of the costs associated with each repair method, ENGEO recommended a unique tieback anchor system that was successfully constructed. ENGEO prepared cost estimates for the GHAD for design, construction and monitoring services for their use in the bid process. ENGEO participated in meetings involving the Blackhawk GHAD, Blackhawk Home Owner's Association and individual homeowners.

During construction, ENGEO provided on-site quality control services, cost saving recommendations and review services for suggestions by the contractor. ENGEO participated with the Blackhawk GHAD to modify its existing fee schedule to allow for more efficient coverage of the project. In addition, agreements with the GHAD allowed oversight functions which extended beyond concrete, steel and soil testing and observation.

Cree Court Landslide Repair Project, San Ramon, CA
An active landslide within a residential neighborhood was directly affecting four homes on Cree Court. ENGEO's efforts on this project started in 1996 and were completed in 1999.

ENGEO's early efforts included preparation of a design to arrest the sliding and stabilize the four affected lots with the installation and monitoring of inclinometers and groundwater extraction wells. When it became necessary to provide remedial designs for the landslide, ENGEO provided design alternatives, design services, bid documents for the City of San Ramon's use and testing and observation services. ENGEO conducted meetings with the City of San Ramon, East Bay Regional Parks Service, East Bay Municipal Utilities District and homeowners.

Engineer's cost estimates related to the project design, construction and testing and observation services were prepared by ENGEO and included with the City of San Ramon's bid package. Technical specifications for the Capital Improvement Bid package were also completed by ENGEO.

2. LICENSES AND CERTIFICATES

Name	Registration Number	Expiration Date
Uri Eliahu	GE 2166	12/31/05
	CE 39522	12/31/05
Eric Harrell	RG 6909	08/31/05
	CEG 2189	08/31/05
Ray Skinner	RG 3972	02/28/07
	CEG 1239	02/28/07
Debra Carey	RG 4147	12/31/05
	CEG 1556	12/31/05
Josef Tootle	CE 58282	06/30/06
	GE 2677	06/30/06

3. KEY STAFF

Uri Eliahu, PE, GE – President
Under his leadership, ENGEO has become Northern California's premier geotechnical, geologic, hydrologic and environmental firm. He has been involved with GHADs since their introduction in Northern California in 1985, and is a Founding Director and President of the California Association of Geologic Hazard Abatement Districts (GHADs). Mr. Eliahu is a leading authority on GHADs and has led the evolution of modern Plans of Control. He has developed methodologies for estimating appropriate reserves and budgets.

He has 25 years of experience on many of Northern California's most complex projects. Mr. Eliahu is a Civil Engineering graduate from the University of California at Berkeley, and is a Registered Geotechnical Engineer in California and a Registered Civil Engineer in California and Nevada.

Eric W. Harrell, *RG, CEG*
Mr. Harrell has 17 years of experience as a Geologist and Project Manager in the San Ramon Valley. His GHAD experience includes numerous phases of the Blackhawk GHAD—including the Sequoia / Conifer Terrace landslide repair project. His GHAD expertise includes Plans of Control, slope stability analysis, testing and observation, site reconnaissance, conceptual structural design, operations and maintenance manuals and open space area studies. Additional GHAD experience includes the Gale Ranch GHAD and Canyon Lakes GHAD for the City of San Ramon, and the Wiedmann Ranch GHAD.

He is responsible for geologic mapping during mass grading as well as observation, removal and repair of more than 75 landslides. His areas of expertise include geologic hazard evaluation and mitigation, including landslide removal and repair. Mr. Harrell has

a B.S. in Geology from Humboldt State University and is a Registered Geologist and a Certified Engineering Geologist in California.

Josef Tootle, PE, GE
Mr. Tootle has more than 10 years of experience in Project Management, including Project Manager for Wendt Ranch. He specializes in hydrologic issues, probabilistic seismic hazard analysis, large hillside grading design, and design of foundation criteria for large commercial buildings. He is especially skilled in watershed design criteria for mixed-use developments in environmentally sensitive areas, including riparian corridors. His relevant GHAD experience includes the Wendt Ranch GHAD. Mr. Tootle prepared the Stormwater Pollution Prevention Plan (SWPPP) for the project and described best management practices (BMPs) consisting of pollution prevention measures for reducing sediment and pollutants in storm-water discharges from the construction site during construction and post-construction. In addition, the SWPPP presented a maintenance and monitoring program suitable for implementation during construction of the project. Post construction monitoring will be handled at this site by a Geologic Hazard Abatement District (GHAD). Mr. Tootle holds a B.S. in Civil Engineering from San Jose State University and an M.S. in Civil Engineering from the University of California at Berkeley.

Debra Carey, RG, CEG – Certified Erosion Control Specialist
Ms. Carey performed virtually all of the detailed geologic mapping for Canyon Lakes, and she has extensive experience in hydrology and creek design, particularly the design of the two creeks that border Wendt Ranch. She provided input for establishment of the Blackhawk GHAD. Ms. Carey is a Project Manager with expertise in management for all phases of geotechnical studies for small to large-scale residential, commercial and multi-use developments. Ms. Carey is certified to provide erosion control recommendations and prepare erosion control maps. Ms. Carey specializes in geologic and seismic hazard studies, including estimations of earthquake recurrence interval, estimated earthquake magnitudes, and ground response; she conducts Stormwater Pollution Prevention (SWPPP) studies and she is experienced in landslide mapping and in performing geotechnical feasibility studies for land planning purposes, including the preparation of site specific geologic maps. She has a BS in Geology from UC Davis.

Raymond P. Skinner, RG, CEG
Mr. Skinner is a renowned Engineering Geologist with more than 25 years of experience on a wide variety of challenging projects involving complex issues. His vast and in-depth knowledge of Northern California geology qualifies him as an expert in many areas including fault mapping, slope stability, landslide mitigation and geologic hazards. Mr. Skinner's areas of expertise include tunneling, geologic hazard evaluation, landslides, faulting, slope stability, evaluation of construction aggregate resource potential, and rock slope stability evaluation. He has a B.A. in Geology from the University of Delaware and is a Registered Geologist and Certified Engineering Geologist in California.

4. CLIENT REFERENCES

Project	Reference
1. Laurel Creek Estates and Oak Tree Estates GHADs	Mr. West Jost City of Pleasanton (925) 484-8041
2. Bay O-Vista GHAD	Mr. Uchenna Udemezue City of San Leandro (510) 351-3179
3. Canyon Lakes GHAD	Mr. Roy Clark Blackhawk Services (925) 736-1571
4. Blackhawk GHAD Incident Response	Mr. Mike Sands Kleinfelder, Inc. (925) 485-4755
5. Dougherty Valley GHAD	Herb Moniz, City Manager City of San Ramon (925) 973-2531
6. River Islands GHAD	Ms. Susan Dell'Osso River Islands (209) 879-7900
7. Spanish Trails GHAD	Mr. Rick Clark Contra Costa County (925) 838-0805
8. Southwest Pittsburg, GHAD II	Mr. Wally Gerard City of Pittsburg (925) 602-7263
9. Wendt Ranch GHAD	Mr. Dan Coleman Shapell Industries of Northern California (408) 946-1550
10. Windemere GHAD	Mr. Brian Olin Lennar Communities (925) 242-0811
11. Cree Court Landslide Repair	Mr. Mike Talley City of San Ramon (925) 973-2654

List of Services

Geotechnical Engineering

Foundation Engineering
Grading Design
Slope Analysis and Stabilization
Subsurface Characterization
Seismic Analysis
Earthquake Engineering
Dam Design
Slope Instrumentation and Monitoring
Construction-Phase Testing and Observation
Laboratory Testing
Soil Stabilization
Pavement Analysis and Design
Sulfate Testing

Materials Testing & Field Inspection

Construction Phase Testing & Observation
Steel, Concrete and Masonry Testing
Special Inspections
Asphalt Testing
QA/QC
Soils

Project Management

Construction Management
Multi-Disciplined Design Project Management
Environmental Impact Reports

Other Services

Survey-Accuracy GPS
Earthwork Quantity Take-Offs
Web-Based Project Delivery Systems
Structural Engineering

Environmental Engineering

Phase I & II Environmental Site Assessments
Preliminary Endangerment Assessments
Underground Storage Tank Consultation
Soil and Groundwater Characterization
Groundwater Monitoring Well Installation and Sampling
Health Risk Assessments
Soil and Groundwater Remediation Consultation
Input for EIR/EIS
HAZMAT Assessments
Hydrogeologic Characterization
Asbestos Surveys and Monitoring

Geology

Geologic Hazard Appraisals
Geologic Assessments
Earthquake Fault Studies
Geologic Mapping
Landslide Delineation
Geophysical Surveys
Aggregate Resource Evaluation
Rock Slope Stability Studies
Rock Rippability Analysis
Geologic Hazard Abatement District Plans (GHAD)
Mine Suitability Studies
Bedrock Stability Studies

Water Resources

Hydrologic Modeling
Restoration and Hydraulic Design
Creek Restoration and Realignment
Erosion Control
Storm Water Pollution Prevention Plans (SWPPPs)
Stormwater Management
Basin Management Plans
Water Quality Management Plans
Water Supply Studies
Wetland Design

ENGEO
INCORPORATED

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Mare Island, Vallejo, CA 94592
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Fax (707) 562-0032

425 Merchant Street, Suite 101
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Placer County
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(916) 786-8883
Fax (916) 786-7891

San Joaquin County
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(209) 835-0610
Fax (209) 835-0675

Santa Clara County
6288 San Ignacio Avenue, Suite A
San Jose, CA 95119
(408) 574-4900
Fax (408) 574-4902

Richard Clark

PROFILE:

Since 1984, principal and owner of Danville Associates, a private financial services company offering advice and task completion to corporations and domestic and offshore high-net-worth individuals. Services offered include real estate acquisition, management, and disposition; corporate finance consultation; capital allocation; accounting review; asset valuation; and investment analysis.

Since 1989, a member of the Contra Costa County Planning Commission serving twice as Chair (a total of 29 months). Proposals processed included a diverse list of such items as a new General Plan, several new Specific Plans, major district re-zonings, a BART Area Specific Plan, hillside protection policies, airport land use reviews, and hazardous materials handling ordinances. Applications processed included more than twelve thousand new residential units. During this time, worked diligently to increase the adoption of GHAD related conditions of approval. This effort included attending educational presentations about GHADs and requesting several study sessions for the County Planning Commission about GHAD creation, merger, management, and financing.

Since 1985, an adjunct member of the faculty of The University of Phoenix teaching graduate and undergraduate business courses in accounting, finance, and law.

EDUCATION:

- JD, Law — Golden Gate University, San Francisco, CA
- MBA, Finance — California State University, Hayward, CA
- BA — Colgate University, Hamilton, NY

AFFILIATIONS:

- Member of the Contra Costa County Planning Commission since 1989
  2004 California County Planning Commissioner of the Year
- Member of the Board of Regents of John F. Kennedy University
- Licensed Real Estate Broker and Realtor®
- Trustee of the California Shakespeare Theater
- Adjunct Instructor for the University of Phoenix

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Richard Clark

PROFILE:

Since 1984, principal and owner of Danville Associates, a private financial services company offering advice and task completion to corporations and domestic and offshore high-net-worth individuals. Services offered include real estate acquisition, management, and disposition; corporate finance consultation; capital allocation; accounting review; asset valuation; and investment analysis.

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PATRICIA E. CURTIN

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EDUCATION

McGEORGE SCHOOL OF LAW
University of the Pacific, Sacramento, California,
Juris Doctor, May 1987
American Jurisprudence Award, Administrative Law, 1986
Finalist, Top Oral Advocate/Written Competition, Nat'l Moot Court, 1985-86
Member, Traynor Competition Team, 1986-87
Member, Executive Moot Court Board

CALIFORNIA STATE UNIVERSITY, CHICO,
Chico, California
Bachelor of Arts, Political Science, 1984
Dean's Honor List

WORK EXPERIENCE

OF COUNSEL
REED SMITH LLP 1/03 - present
CROSBY, HEAFEY, ROACH & MAY, Oakland, California 01 - 12/02
Represent clients throughout land use and environmental review process. Clients include residential, commercial and industrial developers, landowners, public agencies, schools, hospitals and other health care providers, wineries, major corporations, and citizen groups. Provide direction and assistance on political aspects of the process. Work with opposition to resolve disputes.

ATTORNEY/SHAREHOLDER 10/89 - 3/01
GAGEN, MCCOY, MCMAHON & ARMSTRONG, Danville, California
LAND USE/ENVIRONMENTAL LAW - Represent private and public sector clients throughout environmental review and planning process; extensive experience in CEQA, litigation, and preparation of EIRs, specific plans, general plans and initiatives, development agreements, annexation and other boundary changes, zoning ordinances and development application submittals.

PROFESSOR OF ENVIRONMENTAL LAW 1988 - 1989
CALIFORNIA STATE UNIVERSITY, Sacramento, California
Professor and prepared course book. Subjects covered: NEPA, CEQA, Williamson Act, Public Trust Doctrine, Endangered Species Acts, Clean Air and Water Acts, Hazardous Waste, Proposition 65 - Safe Drinking Water and Toxic Enforcement Act, and Land Use and Planning laws.

LAW CLERK/ATTORNEY 7/86 - 10/89
LAW OFFICES OF GREGORY D. THATCH, Sacramento, California
LAND USE/PUBLIC AGENCY LAW: Advise and represent clients throughout environmental review and planning process; consult with government officials; represent clients at public hearings; draft pleadings and briefs; updated the City and County general plans; prepare real estate contracts; extensive experience in CEQA, wetlands, flood control, developer fees and Williamson Act contracts. General Counsel to a Joint Powers Agency responsible for employment and training; prepare policies and procedures with respect to AIDs, harassment, drugs in the workplace, and child abuse; assist in personnel matters; prepare Conflict of Interest Code.

ADDITIONAL EXPERIENCE

University of California Extension, Davis, Instructor of land use and environmental law courses.

Lecturer on the California Environmental Quality Act and Land Use law for various organizations, including the International Municipal Law Association. Prepared and presented paper on Alternative Dispute Resolution in Land Use Law to IMLA

Co-author of National Land Use Book, "State & Local Government Land Use Liability" updated annually and published by West Group.

Past Chair of the Zoning and Land Use Subsection for Northern California of the State Bar Real Property Law Section.

Founding Board of Director and Secretary of California Association of Geologic Hazard Abatement Districts (GHADs).

Crime Prevention Commissioner for the City of Lafayette.

URI ELIAHU, PE, GE

PRESIDENT

As President of ENGEO, Mr. Eliahu implements extraordinary client service throughout the firm. Under his leadership, ENGEO has become Northern California's consultant of choice for master planned, mixed-use Greenfield development projects and for redevelopment of industrial sites and military bases. Mr. Eliahu is an Engineering graduate from the University of California at Berkeley, and is a Registered Geotechnical Engineer in California and a Registered Civil Engineer in California and Nevada. He is a Founding Director of the California Association of Geologic Hazard Abatement Districts (GHADs) and its current President.

Geologic Hazard Abatement Districts (GHADs)
Mr. Eliahu coordinated the establishment of most of Northern California's Geologic Hazard Abatement District properties, including the largest GHAD in the state. In all, Mr. Eliahu has overseen the formation of more than 18 GHADs.

Greenfield Development
Mr. Eliahu directed the geotechnical engineering, engineering geology, environmental services, and construction services for nearly 100,000 acres of new, mixed-use development, including 50,000 new homes; infrastructure including bridges, roadways, tunnels, sewer and water; more than 1 million square feet of commercial space; and more than 20 new schools. Representative projects include:

- Dougherty Valley, San Ramon
- Mid-Coyote Valley, San Jose
- Blackhawk, Danville
- Canyon Lakes, San Ramon
- Eagle Ridge, Gilroy
- River Islands, Lathrop

Military Base Reuse Projects
Mr. Eliahu is responsible for geotechnical engineering, engineering geology, environmental services, and construction services for the redevelopment of large industrial and military properties throughout Northern California.

- ***Mare Island Naval Shipyard Reuse and Redevelopment***—a 1,000-acre former navy base in

Education

B.S. Civil Engineering, U.C. Berkeley

Registrations

Registered Geotechnical Engineer in California, 2166

Registered Civil Engineer in California, 39522; Nevada, 12441

Specializations

- Developing and managing numerous Geologic Hazard Abatement Districts (GHADs) in northern California
- Expertise in development of large mixed-use and residential developments
- Project Manager or Principal in Charge for more than 100,000 acres of hillside development projects including more than 100 million cubic yards of mass grading and repair of more than 1,000 landslides

Affiliations

- President and Founding Director, Northern California Association of GHADs
- American Society of Civil Engineers
- California Geotechnical Engineers Association
- Contra Costa Council
- Home Builders Association
- GEO Institute
- National Civil Engineering Honor Society

Solano County. Major issues include redevelopment of the entire utility system for the island (wet and dry).

- ***Fort ORD East Garrison Development —Parcel One, Monterey, CA*** - Geotechnical Exploration and Supporting Engineering services for a multi-phase redevelopment of about 800 acres with up to 3,100 homes at build-out.

- ***Hamilton Air Force Base Reuse***—Provided design criteria for utilities and roadways for this $200 million project.

- ***Hunter's Point Naval Shipyard***—Services include geotechnical services during design of the development process, geotechnical explorations for planned residential developments and subsurface exploration to analyze existing landslide above Building 813 and recommend a repair scheme.

- ***Alameda Point (formerly Alameda Naval Air Station)***—ENGEO is currently reviewing 10 years of geotechnical reports and providing hydrologic and GIS / GPS services.

- ***Suisun Waterfront Redevelopment***—ENGEO has provided geotechnical and environmental services, including design of marina upgrades and Phase I and II Environmental Site Assessments for former industrial sites.

- ***Hercules Redevelopment Area***—A 167-acre site involving World War Two era oil and gas refineries and a former DuPont manufacturing facility. Planned development includes residential and commercial development.

Treasure Island and Yerba Buena Island Reuse Project, Treasure Island, CA

ENGEO conducted geotechnical review and provided on-going engineering consultation with respect to reuse for future development on the previous Naval Base sites. Significant geotechnical hazards and risks exist on these islands including: extensively widespread and deep deposits of loose "man-made" fills (up to 45 feet thick) considered liquefiable when subject to

References

Dan Coleman
Shapell Industries of Northern CA
Milpitas, CA
(408) 956-1550

Herb Moniz
City of Colma
(650) 997-8300

Richard Clark
Danville Associates
(925) 838-0806

strong ground shaking; thick natural deposits of soft, highly compressible Young Bay Mud deposits (over 100 feet) considered susceptible to large settlements with new loads; slope stability and seismic deformation of large marine landslides along dikes along the perimeter of Treasure Island; presence of shallow ground water. These geotechnical and geologic conditions provide many developmental constraints, and special requirements for site mitigation for anticipated reuse of the properties.

ENGEO has provided preliminary consultation with regards to various mitigation approaches, foundations and redevelopment stratagies including comparative cost versus risk analyses for low density and high density development alternatives, mainline utilities and arterial streets, and perimeter stabilization methods for marine landslide and dike failure areas.

Norris Canyon Road Widening, Contra Costa County, CA
Mr. Eliahu was the Principal- in- Charge for this project. Between 1999 and 2001, ENGEO provided testing and observation services during the grading, utility trench backfill, street subgrade preparation, aggregate base rock placement and retaining wall construction. The street improvements were provided to enhance access to the Wiedemann Ranch (Norris Canyon Estates) project. ENGEO provided pavement design sections and provided testing and observation services during the site grading in the area north of Norris Canyon Road between Stations 50+50 and 51+75. We provided observation services during excavation and provided supplemental geotechnical design parameters for the uphill retaining walls within the City of San Ramon. We reviewed the design packet for the sound walls located along the south side of Norris Canyon Road.

Summit Bridge, San Ramon, CA
Uri Eliahu was Principal- in- Charge for the following inspection and testing services: concrete cylinder testing, compression testing, tendon and reinforcing steel placement inspection, observation of concrete placement, review of post tension gauge and jack calibration data.

Wiedemann Ranch, Contra Costa County, CA
Uri Eliahu was the Principal- in- Charge for this 1,137-acre area that is developed for 371 residential units. The mitigation of landslides within the project was the most frequent geotechnical concern addressed during grading; however, areas of the site also contained soils with liquefaction and unacceptable settlement potential.

Grading at the site also included areas for four water storage reservoirs, numerous retaining walls (Keystone, soil nail and soldier beam with wood lagging), creek crossings and 1:1 reinforced earth slopes up to 50 feet high. Engineered fills at the site are up to approximately 125 feet in depth. A monitoring program is ongoing at the site to assess the fill performance.

We identified and classified nearly 1,000 landslides on the property and performed the hydrogeologic evaluation for a 60-acre artificial lake. In addition, Mr. Eliahu planned and assisted with the formation of a Geologic Hazard Abatement District (GHAD), which shielded the owner from the liability of potentially costly litigation.

Northern Contra Costa Study Area, Contra Costa County, CA
Uri Eliahu was the Principal- in- Charge for the preliminary field exploration. He was also involved in the evaluation of geologic hazards, site mapping and subsurface exploration.

Cargill Redwood City Plant Site, Redwood City, CA
The site, consisting of approximately 500 to 600 acres, exists as the underutilized remnants of a salt pond complex. The proposed scope of the project consists of a medium to high density mixed-use development. ENGEO will perform preliminary geotechnical, groundwater and storm water related consulting services for the subject property to be used for due diligence in site acquisition. ENGEO has been selected as a member of the consulting team as a result of its significant past experience assisting clients in the successful development of projects on reclaimed marshland, highly compressible Bay Mud, and former salt ponds in many areas of Northern California.

Alternative Water Supply Systems Report, Chevron Shale Oil Co., CA
Mr. Eliahu was the Project Manager and lead design engineer responsible for the consolidation of key studies performed for the development of Chevron Shale Oil Co. (CSOC)'s water supply system and for identifying the most viable water system staging alternatives. He consolidated reports addressing intake structures, pumping, pipelines, reservoirs, well-field systems, water supply systems, diversions and augmentation systems. Mr. Eliahu provided conclusions and recommendations that specifically addressed the water supply solutions that would best meet the needs of CSOC, including mesa water impoundment systems, pumping systems, pipelines and well-field systems. He identified the future work items to be undertaken as part of the tasks leading to the Water Supply System Master Plan. These work items included a community water supply study; a water supply alternatives study; reservoir cost analyses; infrastructure upgrade and relocation alternatives; diversion options; intake-related pre-design work; conceptual reservoir studies; well-field systems; flood studies; diversion and storage alternatives; and pipeline route selection.

Engineering Services
Developed leading-edge techniques for foundation design, fill embankment design, earth reinforcement, and instrumentation.

Project Management
Evaluated and supervised development projects, coordinated multiple engineering teams, and directed work of outside design professionals and contractors for Chevron Corporation. Also provided project management services to projects and organizations of varying sizes.

Design Experience

Provided engineering design and technical support for industrial projects, developed remedial measures for highly-varied engineering problems, and implemented contractual agreements to execute large-scale modifications and new construction.

Construction Experience

Responsibilities included contract administration, cost control, construction coordination, and scheduling multiple contractors for major projects valued over $500,000,000. Responsibilities also included structural and foundation designs and preparation of bid and construction documents.

Legal Services

Provided expert analysis and testimony on a wide variety of geotechnical matters.

Dougherty Valley, Contra Costa County, CA: some highlights:

- 11,700 homes
- 6 elementary and middle schools
- a high school
- a community college
- light rail
- many tunnels, bridges, divided highways, etc.
- Village Center
- over 1 million sq. ft. of commercial
- several hundred landslides
- faults
- over 100 million cubic yards of earthwork
- over 1000 acres of habitat preserve
- the largest GHAD ever created
- total value at completion: approx $7 billion
- project required a 20-yr approval process, over 10 yrs of design, and a very arduous coordination process with at least 20 federal, state, and local agencies.

Mare Island, Vallejo, CA

This is a very ambitious military reuse project, and the first of its kind in Northern CA. The many challenges include:

- site contamination from 150 yrs of navy shipyard activities
- very large deposits of compressible Bay Muds
- Disparate interests of the Navy, other Fed agencies (e.g. USFWS), State, City (e.g. DFG, DTSC, State Lands, etc.) and developer
- the need for off-site borrow sources
- total project value ~$1 billion

Shale Oil Project, CO

Although we completed the design, the project was never built. It would have included 11 retort structures, a very large dam and reservoir, a complete company town housing approx 30,000 people, and facility capable of processing 250,000 tons of shale per day. Total value: well over $10 billion.

Additional Experience

- Construction Management for very large office parks
- Forensic investigative work (domestic and international)
- Consultation on permitting efforts
- Offshore platforms
- Refineries
- Runways

ATTACHMENT J

CITY OF OAKLAND

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John A. Russo
City Attorney

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December 3, 2002

HONORABLE CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council

Subject: Liability Issues – Leona Quarry Geologic Hazard Abatement District

I. INTRODUCTION

At the November 19, 2002 Community and Economic Development Committee meeting, Councilmember Brunner asked that the City Attorney's office provide a written opinion regarding (1) the extent of City liability associated with the proposed Geologic Hazard Abatement District ("GHAD") for the Leona Quarry project; and (2) measures to ensure that the City and individual council members are fully indemnified and otherwise protected from liability that may be associated with the GHAD. This office also was asked whether the GHAD governing structure could be established so that landowners (rather than the City Council) would serve as the GHAD Board of Directors or assume positions as the Board of Directors for the GHAD at some later time.

Please note that this opinion *does not* address the validity of the Planning Commission approvals or of the CEQA document prepared for this project.

II. QUESTIONS

1. What is the potential liability of the City and individual Council members if the City Council approves the staff proposal that the City Council serve as the Board of Directors for the proposed Leona Quarry GHAD?

2. Could the GHAD Board consist entirely of landowners at the outset or, alternatively, could the GHAD be structured so that the City Council would serve as the GHAD Board for a finite period of time (e.g., until the first lots are sold) and the landowners would serve as the Board of Directors thereafter?

3. What legal measures would ensure that the City and/or individual Council members are fully indemnified and otherwise protected from liability that may be associated with the GHAD?

III. SUMMARY OF ANSWERS

Answer to Question No. 1

We have found no cases that address this issue with respect to GHADs; therefore we cannot say with absolute certainty that a court would never rule that the City is responsible for the GHAD's liabilities. However, because a GHAD is an independent governmental district, legally distinct from the City, the City should not be liable for the GHAD actions/inactions that are independent of the City. The potential risks of City liability would increase to the extent that the City undertakes GHAD-related functions.

Recommendation: If the Council ultimately decides to form the GHAD as proposed by staff, the City Attorney's Office recommends that the GHAD formation resolution and conditions of approval specify that the GHAD will be responsible for hiring its own staff (or contract 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.* The GHAD operations should be completely independent of the City, including, without limitation, no City funding, administration or ownership of facilities or improvements. In addition, adequate funding for these costs must be fully provided for in the GHAD budget and in the assessment authorization.

Answer to Question No. 2

By definition, a GHAD board consists either of five landowners or the City's governing body. At this juncture, one landowner owns all of the land in the project area and, therefore, could not serve as the Leona Quarry GHAD Board. The GHAD enabling statute, which provides the exclusive means for formation of GHADs, does not provide a mechanism for, nor appear to authorize, the transfer of Board membership from the City Council to landowners. Based on our review of the GHAD Statute, the City Attorney's Office believes that the GHAD governing structure cannot be established so that the City Council acts as the initial Board of Directors and transfers those positions to landowners at some later time.

Recommendation: As a policy matter, the Council must decide whether the risk of liability associated with the GHAD is outweighed by the benefits associated with approving the project. Because the CEQA document and Planning Commission project approvals depend upon the GHAD, the project could not go forward at this time if a GHAD is not formed.

Answer to Question No. 3

By its essential nature, any GHAD is exposed to potential liability. This would be of significant concern if the potential liability were ever imputed to the City. At this juncture, it is not possible for this office to ascertain the full extent of potential exposure posed by the GHAD. Ultimately, the feasibility and safety of the project, and the attendant liability risks, depend largely on the accuracy and detail of the engineering, design and other technical information and specifications. Some of this information has been completed, but additional engineering, design and other technical data will be prepared as and when the project proceeds. The information developed in this process must be scrutinized by technical experts who are both qualified and independent from the applicant.

Recommendation: If the Council decides to form the GHAD, we recommend that the GHAD formation resolution and conditions of project approval incorporate additional indemnification provisions and require insurance or other security in amounts that would cover any potential City liability. It is critical to require insurance or other security, because indemnification is only effective to the extent that the indemnitor has adequate resources to cover the indemnitee's costs. As noted above, this Office does not have the expertise to determine the extent of such potential liability and therefore must rely upon the evaluations and analyses of technical and insurance experts. As discussed below in Section V(C) of this report, indemnification and insurance will help mitigate the City's potential exposure. However, as in many ventures, indemnification and insurance will not completely insulate the City from liability.

IV. BACKGROUND

The Leona Quarry project proposes construction of a 477 unit residential development on a 128-acre active quarry site. The project includes extensive reclamation, restoration and revegetation of the quarry site, involving re-engineering of slopes and stabilization of slope areas along the western edge of the project site.

After an intensive EIR process extending over approximately an 18-month period, on October 23, 2002, the Planning Commission certified the EIR and approved land use entitlements for the project. The conditions of approval that the Planning Commission adopted include provisions for (1) project applicant indemnification of the City for challenges associated with the project approvals; (2) project applicant indemnity of the City for claims arising from project implementation, except for public improvements when the claims arise after City accepts the improvements.

The Planning Commission conditions further direct the City staff to evaluate the possibility of long-term developer indemnity for problems that arise *after* the project is complete and developer has moved on.

V. DISCUSSION

A. ISSUES WITH THE GHAD STRUCTURE AND GOVERNANCE

1. GHAD Nature and Function.

A GHAD is an independent governmental district formed specifically to address geologic and related issues. A GHAD is responsible for routine maintenance of the common areas, including planting and restoring vegetation, monitoring sensitive areas, clearing ditches and drains, and other activities intended to mitigate the potential for geologic hazards. GHADs also are responsible for remediation of geologic hazards.

GHADs are authorized by state law, Public Resources Code § 26500, *et seq.* (the "GHAD Statute"). There are very few court decisions that provide guidance regarding GHADs, their structure, authority, and liability issues associated with them.

A GHAD has been proposed for the Leona Quarry area because it is anticipated that a GHAD would be more effective than a homeowners' association to address the geologic hazards associated with development of this site. In the absence of a GHAD, the common areas for a project of this nature ordinarily would be owned and maintained by a homeowners' association established through the subdivision process.

It should be noted that the original legislative intent behind the GHAD Statute was to provide a mechanism for landowners to abate an immediate hazard threatening an existing neighborhood. Given the paucity of legal guidance, a reviewing court likely would look to legislative history in interpreting the GHAD Statute. It is our understanding that the increased use of GHADs for newly-formed and, as yet, unoccupied subdivisions is a relatively recent development in GHAD law, and one which was not necessarily contemplated by the original GHAD legislation. However, there are a number of such GHADs in Northern California, and we are not aware of any challenge to such a use of the GHAD law.

In terms of addressing geologic hazards, GHADs have certain distinct advantages over homeowners' associations. These include:

- GHADs are public agencies operated for the sole and specific purpose of addressing geologic and related issues. A homeowners' association generally addresses a variety of neighborhood concerns but does not have any specific expertise or authority to manage a geologically sensitive area.

- GHADs have numerous powers to enable them to quickly and effectively address geologic issues. These include powers to assess landowners (in accordance with

Proposition 218) for the acquisition, operation and maintenance of improvements acquired under the GHAD Statute, and the powers of eminent domain.

- The GHAD Statute requires that a GHAD have a "Plan of Control," prepared by a certified engineering geologist, which is implemented by the GHAD to prevent hazards resulting from earth movement. A homeowners' association is not obligated to prepare or implement a Plan of Control and frequently does not have the expertise or resources necessary to do so.

2. *The GHAD Statute Specifies That Either The City Council Or Five Landowners Shall Act As The GHAD Board Of Directors But Does Not Authorize Transfer Of Board Membership From The City Council To Property Owners*

If the City Council decides to form the proposed Leona Quarry GHAD, the GHAD Statute requires that the resolution of formation appoint a Board of Directors. The statute specifies that the resolution ordering formation of a GHAD shall appoint an initial Board of Directors. Pub. Res. Code § 26567. The statute specifies that this initial Board shall either be five property owners within the district or the legislative body itself (i.e., the City Council). If five property owners are appointed, they are appointed for an initial term not to exceed four years, after which time, the directors shall be elected by the landowners.[1]

The GHAD Statute establishes the exclusive means for formation and governance of GHADs. Pub. Res. Code § 26560. The formation provisions of the statute are the only provisions that address the composition of the Board. The GHAD Statute does not authorize any configuration of Board membership other than five property owners or the City Council. It also does not expressly authorize the transfer of Board functions from the City Council to the property owners subsequent to GHAD formation. Although an argument could be advanced that a decision to shift governance is within the inherent powers of the district to restructure the Board, the exclusivity of the GHAD provisions for district formation undermine such an interpretation.

Under the current proposal, the City Council would serve as the Board of Directors for the Leona Quarry GHAD. Staff has proposed City Council governance of the GHAD, in part, because this approach would provide the City with more power to properly manage geologic and drainage hazards. In addition, the only statutorily authorized alternative form of governance—appointing a Board of five landowners—is currently unavailable, because there is only one landowner within the proposed GHAD boundaries.[2]

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[1] We understand that in the early years following enactment of the GHAD Statute, districts ordinarily were governed by property owners. There is a trend toward city councils and county boards of supervisors assuming the role of GHAD board.

[2] It is our opinion, as well as the opinion of the applicant's counsel, that the legality of appointing a landowner GHAD board consisting of less than five members is unclear and, therefore, inadvisable.

As discussed below, however, this approach poses certain risks, which the City Council must weigh against the benefits.

3. The City is a Separate Legal Entity from the GHADs, and, Provided that the GHAD Functions are Truly Separate from the City, the City Should Not Be Liable for the GHAD's Actions/Inactions.

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. Pub. Res. Code § 26570. Accordingly, 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.

In analyzing the extent of the City's potential liability associated with the GHAD, we have reviewed case law that addresses the question of the liability of a governmental body, such as the City Council for the liabilities of another governmental body that the Council forms.[3] In general, the question of liability of such separately formed bodies hinges on the extent to which the separately formed body is truly separate and distinct from the body that created it, or as one court put it, whether or not the one entity enjoys a "legal personality" separate from the body that formed it. *Bauer v. County of Ventura*, 45 Cal. 2d 276 (1955).

A reviewing court looks not only at the City Council's action to form the GHAD but at the *true independent nature* of the entity. An entity's independence is determined from such factors as: (1) whether there is an express statutory declaration that the entity is a body corporate and politic; (2) whether the entity has a separate governing body; and (3) whether it has the statutory power to own property, levy taxes, or incur indebtedness in its own name.

If the City Council established a landowner managed GHAD that does not rely on City resources for operation, maintenance, repair or any other functions, we believe there is a strong likelihood that the City would be shielded from GHAD liability. First, as noted above, the GHAD Statute specifies that a GHAD is a political subdivision of the state and is not an agency or instrumentality of a local agency. Second, the GHAD's governing body would be completely independent of the City. Finally, the GHAD would have statutory power to own property, levy assessments and incur indebtedness in its own name and, additionally, would enjoy independent powers of eminent domain.

However, if the City Council elects to manage the GHAD, it is not clear that the City would be shielded from liability. Although the GHAD would have an express statutory declaration that it is a separate body corporate and politic and would have statutory powers to

[3] As noted above, there is very little case law on GHADs, and this Office's research has revealed no cases interpreting the specific questions of City or individual public official liability associated with GHADs.

own property, levy taxes, incur indebtedness and exercise eminent domain powers, its independence with respect to governance would not be as clear as that of a landowner managed GHAD.

City/GHAD independence may become even murkier over an extended period during which the City Council manages the GHAD. For example, the extent to which (1) the City Council includes City staff in the activities of the GHAD, (2) the Council enforces City policies through the meetings and activities of the GHAD, and (3) City/GHAD functions are interwoven will affect the likelihood that a court would conclude these entities are "independent." Over time, the more that a City Council managed GHAD takes on trappings of a City run affair, the greater the probability that any protection the City obtains by creating an independent government body could be eroded.

In addition, as is the case with any other development, it should be noted that the City itself will assume potential liability risks to the extent that it accepts public improvements and/or undertakes operation, maintenance, replacement or repair functions in connection with the project that are not the responsibility of the GHAD. For example, similar to other hillside development, the City's acceptance of public streets, drainage facilities or other improvements associated with the project could expose the City to potential liability

In essence, the extent of City liability increases in proportion to the amount of control and involvement it has with the GHAD. From a legal perspective, it would be advisable to minimize the City's control and involvement. In terms of the City's potential liability, it appears to be more advantageous to form the GHAD as a landowner-managed entity, rather than designating the City Council as the Board of Directors. We recognize, however, that potential liability is not the only factor the Council will consider, and, as discussed below, there are potential ways to reduce substantially (but not eliminate) some of the risks through indemnity and insurance.

If the Council ultimately decides to form the GHAD as proposed, we recommend, at a minimum, specifying in the GHAD formation resolution that the GHAD will be responsible for hiring its own staff, 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.* In addition, adequate funding for any such staffing must be fully provided for in the GHAD budget and in the authorization of assessments that must occur prior to the filing of any division of the property (i.e., final subdivision maps).

B. POTENTIAL BASES OF LIABILITY ASSOCIATED WITH THE GHAD

1. GHAD Liability

By its essential nature, any the GHAD will be exposed to potential liability. This would pose significant concerns if the liability ever were imputed to the City or the Council. A primary purpose of GHADs is to facilitate mitigation of hazardous geologic conditions by spreading the

costs (and associated risks) of prevention and remediation of such hazards across the ownership of the GHAD area.

The GHAD will be accepting a number of improvements within the open space areas of the project site, including restored slopes, drainage improvements and the detention basin. It also will have an array of on-going maintenance and monitoring responsibilities for these improvements. There are a host of unknown liability risks associated with these improvements, and with the project generally, which largely will be assumed by the GHAD.

Potential sources of liability include tort or negligence claims associated with construction, operation, maintenance or repair of improvements owned by or otherwise undertaken by the GHAD. There are a number of governmental immunities available for such claims, which may limit City (and GHAD) liability in connection with such claims.[4] For example, the City is immune from liability associated with the decision to form or not to form a GHAD. Government Code § 818.2 (public entities immune from liability for adopting, or failing to adopt, an enactment (including an ordinance or resolution), or failing to enforce any such law.[5] *See also Bogan v. Scott-Harris*, 523 U.S. 44 (1998) (local legislators are entitled to absolute immunity for their legislative activities).

In addition, there is potential GHAD liability for inverse condemnation. Such claims commonly arise as a result of landslides, drainage failures and similar problems. Generally, if a public work or improvement is a substantial factor in causing damage to a private property, the public entity will be strictly liable (i.e., liable without regard to fault or the reasonableness of its improvement). In such cases, the fact that an improvement (such as a drainage line, culvert, roadway, etc.) was actually constructed by a private party will not insulate a public entity if the system has been adopted for use by the public entity.

2. The Full Extent of Potential Liability Cannot Be Ascertained At this Time.

The full extent of potential exposure posed by the GHAD depends heavily upon the determinations of engineers and other technical experts regarding the feasibility and safety of the project. Accordingly, attendant liability risks depend largely on the accuracy and detail of the technical information provided to date and that will be developed in the future. The GHAD Plan of Control, as currently proposed, is very general and does not provide details regarding the relationship of the City and GHAD with respect to property ownership. It is our understanding that these details will be developed at later stages of the project, through amendments to the Plan

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[4] A detailed analysis of such immunities is outside the scope of this memorandum.

[5] Similarly, the City is immune from liability for injury resulting from the issuance or denial of permits relating to the project. Gov't Code § 818.4.

of Control and development of more detailed management plans. Once these details have been further developed, it may be possible to provide a more specific risk analysis.

3. Individual Councilmembers, Sitting As The GHAD Board, Are Generally Immune From Liability

Individual members of the City Council, sitting as 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 councilmembers or landowners) that serve on the board of a GHAD or other public entity. As noted above, there is broad immunity for claims based on legislative actions/inactions. 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.

C. ISSUES REGARDING INDEMNITY AND INSURANCE

Recognizing that it is not possible to eliminate all potential risk to the City, we have explored options for indemnity and insurance to recommend as additions to the indemnity provisions already contained in the Planning Commission adopted conditions of project approval.

Although we can draft and recommend these requirements, they cannot entirely immunize the City against all potential risk, nor can they account for all unknown potential sources of liability. All development projects present some measure of risk, and, as discussed above, the greater the City's degree of involvement or control, the greater the possibility that some liability will be incurred.

For example, we have been asked about the feasibility of requiring the applicant (and its successors) to indemnify, defend and hold harmless the City for liability associated with the GHAD and development in Leona Quarry. Although we recommend the addition of further indemnification provisions, it should be noted that there are some limitations on any such indemnity. First, indemnity is only as effective as the indemnitor—i.e., if the applicant lacks sufficient funds to indemnify or if the claims arise subsequent to completion of the project (i.e., once the applicant has moved on), an indemnity will have no practical value. Second, it is unclear whether such an indemnity could remain in place in perpetuity. Thus, the practical difficulties with this approach are (1) identifying an acceptable duration for this obligation; and (2) securing performance, especially after the project is complete.

We also have considered the possibility of requiring the applicant and the GHAD to obtain insurance to secure performance and indemnify the City in the event of financial shortfalls (such as might be associated with a catastrophic event). Although we see this as an area of potential promise, it is unclear whether an adequate amount of insurance could be identified or obtained. While no insurance for GHADs currently is available, we believe such policies are under development in other jurisdictions.

Recognizing these limitations, we believe indemnity and insurance requirements can greatly increase the City's protection; accordingly, if the Council decides to form the GHAD, we recommend adding such provisions to the GHAD formation resolution and/or project conditions of approval. Specifically, we recommend requiring the project applicant to indemnify the City and the GHAD until the GHAD has sufficient funding to enable it to indemnify the City. The GHAD also should be obligated to indemnify the City for the duration of its existence.[6] Both the applicant and the GHAD should be required to carry insurance (if and when available), or other security determined adequate (in the City's sole discretion) to secure this obligation and to provide for any financial shortfalls. Adequate general liability insurance and insurance for unforeseen or catastrophic events also should be required.

The full authorization of assessments for the GHAD must provide for adequate funding of the indemnity and insurance requirements, and a thorough financial analysis (as well as a Proposition 218 analysis by the City Attorney's office) must be prepared prior to such authorization to ensure that the assessments are sufficiently high to cover these and other GHAD financial requirements. The City should retain the authority to suspend the project if the insurance or other security is not provided prior to the first final subdivision map, or at any time thereafter if at any time the City determines the security is inadequate.

We will provide specific recommended language for these conditions, which should be incorporated into the formation resolution and project conditions of approval, at the December 3, 2002 City Council hearing.

VI. CONCLUSION AND RECOMMENDATIONS

The City Council's decision to form a GHAD and appoint the Council as the GHAD Board of Directors creates some risks of potential liability. At this juncture, there is no alternative form of governance than to appoint the City Council as the GHAD Board, because there is only one landowner within the proposed GHAD boundaries. The law does not provide a mechanism for shifting Board membership from the Council to the landowners.

[6] Again, the GHAD's indemnification of the City is only as effective as the funding that supports it.

The City's risk hinges upon the degree to which the GHAD is truly independent of the City. The Council must weigh the risks against the project benefits in reaching its decision regarding whether to form the GHAD.

If the Council ultimately decides to form the GHAD as proposed, we recommend the inclusion of the following conditions of approval, the specific language of which will be developed for inclusion in the formation resolution and/or project conditions of approval (as appropriate) and provided at the December 3, 2002 City Council hearing on GHAD formation:

- 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. The GHAD operations should be completely independent of the City, including, without limitation, no City funding, administration or ownership of facilities or improvements. In addition, adequate funding for these costs must be fully provided for in the GHAD budget and in the authorization of assessments that must occur prior to the filing of any division of the property (i.e., final subdivision maps).

- The project applicant shall indemnify the City and the GHAD until the GHAD has sufficient funding to enable it to indemnify the City. The GHAD also should be obligated to indemnify the City for the duration of its existence.

- Both the applicant and the GHAD should be required to carry insurance (if and when available), or other security determined adequate (in the City's sole discretion) to secure their indemnification obligations. Adequate general liability insurance and insurance for unforeseen or catastrophic events (including normally excluded events, such as earth movement, subsidence, etc.) also shall be required. The full authorization of assessments for the GHAD provide for adequate funding of this insurance or other security.

- The full authorization of assessments for the GHAD must provide for adequate funding of the indemnity and insurance requirements, and a thorough financial analysis (as well as a Proposition 218 analysis by the City Attorney's office) must be prepared prior to such authorization to ensure that the assessments are sufficiently high to cover these and other GHAD financial requirements.

- The City should retain the authority to suspend the project if insurance or other security determined by the City Attorney and Risk Manager is not provided prior to the first final subdivision map, or at any time thereafter if at any time if the City determines the security is inadequate.

Respectfully submitted,

for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Heather B. Lee

ATTACHMENT K

Klee

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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OAKLAND CITY COUNCIL

RESOLUTION NO. 77545 C.M.S.

REVISED
12-3-02

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION APPROVING FORMATION OF THE LEONA QUARRY GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD) AND APPOINTING THE CITY COUNCIL OF THE CITY OF OAKLAND AS THE GHAD BOARD OF DIRECTORS.

WHEREAS, pursuant to the provisions of Section 26550 of the California Public Resources Code, the City Council adopted Resolution No. declaring that the City Council is subject to the provisions of Division 17 (Sections 26500 *et seq.*) of the Public Resources Code, and forwarded a copy of Resolution No. to the State Controller; and

WHEREAS, pursuant to Division 17 of the Public Resources Code, a Petition dated October 25, 2002, was filed with the Clerk of the Council for the formation of the Leona Quarry Geologic Hazard Abatement District (GHAD); and

WHEREAS, on November 12, 2002, the City Council adopted Resolution No. accepting the Petition, initiating the proceedings for the formation of the GHAD and setting a hearing on the Petition for Formation on December 3, 2002 at 7:02 p.m.; and

WHEREAS, notice of the hearing on the filed Petition for Formation was given in accordance with the provisions of Public Resources Code Sections 26557-58 and 26561-63; and

WHEREAS, a public hearing before the City Council on the formation of the GHAD was held on December 3, 2002 at 7:00 p.m.; and

WHEREAS, at the time set for the hearing, no owner of real property within the proposed GHAD had made a written objection to its formation in accordance with the provisions of Public Resources Code Section 26564; and

WHEREAS, at the hearing, the owners of more than 50 percent of the assessed valuation of the real property within the proposed GHAD did not object to the GHAD's formation; the City Council closed the hearing; and

WHEREAS, upon adoption of this Resolution, the GHAD shall be immediately formed as a governmental district, a political subdivision of the State of California, governed in accordance with Public Resources Code § 26500, et seq., and a legal entity entirely distinct and separate from the City of Oakland.

NOW, THEREFORE, the City Council resolves and orders that:

1. The City Council approves and orders the formation of the Leona Quarry Geologic Hazard Abatement District as described in the petition dated October 25, 2002 and in the GHAD Plan of Control dated November 21, 2002.

2. In addition to all other legal requirements, the GHAD shall be subject to the following:

   (a) The GHAD shall defend, hold harmless and indemnify the City and its respective officers, agents and employees (whether the action is on behalf of the City, the GHAD or otherwise) ("Indemnified Parties") and their insurers against any and all liability, damages, claims, demands, judgments, losses or other forms of legal or equitable relief related to the formation and operation (including, without limitation, maintenance of GHAD-owned property) of a GHAD and in the case of the City Council members, actions taken by said members while acting as the GHAD Board of Directors ("Indemnified GHAD Claims"). This indemnity shall include, without limitation, payment of all litigation expenses associated with any action herein. The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the GHAD's expense, in the defense of any action specified herein. The Indemnified Parties shall take all reasonable steps to promptly notify the GHAD of any claim, demand, or legal actions that may create a claim for indemnification. Within 90 days of formation of the GHAD, the GHAD shall be required to enter into an Indemnification Agreement in a form acceptable to the City Attorney to establish in more specific detail the terms and conditions of the GHAD's indemnification obligations set forth herein. Any failure of any party to timely execute such Indemnification Agreement shall not be construed to limit any right or obligation otherwise specified herein.

   (b) The GHAD shall obtain general liability insurance and directors' insurance for the GHAD Board of Directors to the extent that the GHAD Board determines in its sole discretion that such insurance is available at commercially reasonable rates. In the event subsidence insurance becomes available, the GHAD also shall obtain such insurance provided that the GHAD Board of Directors determines that the premiums for such insurance are a prudent expenditure of the GHAD's financial resources.

   (c) 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 set forth in this resolution. The GHAD's attorney and the City's attorney shall also review the adequacy of the funding for the indemnity and insurance and may make recommendations regarding such funding.

   (d) The GHAD will be responsible for hiring its own staff (or contracting with non-City parties to perform such staff services), including all workers who will undertake operation, maintenance, replacement, repair and other activities of the GHAD, and no City employees, including employees of the City Attorney's office, shall perform such services for GHAD facilities and improvements. Further, the City shall not fund or otherwise administer any of the GHAD's operations, property or facilities.

3. The Conditions of Approval for the Leona Quarry Project (PUD 02-437) are hereby revised to incorporate provisions presented to and considered by this Council relating to the Project Applicant's indemnification of the City for any liability associated with the GHAD, which revisions are incorporated into Exhibit C to Resolution No. C.M.S., dated December 3, 2002, entitled "Resolution Denying the Appeal of Maureen Dorsey and Sustaining the Decision of

the City Planning Commission in Approving the Application of the DeSilva Group to Close the Leona Quarry, Reclaim It and Redevelop the Site for 477 Residential Units at 7100 Mountain Boulevard."

4. In accordance with Public Resources Code Section 26567, the City Council appoints itself as the Board of Directors of the Leona Quarry GHAD (GHAD Board).

5. The Council determines that the GHAD shall be fully consistent with and comply with all conditions, requirements and other standards as set forth in the Conditions of Approval for the Leona Quarry Planned Unit Development (PUD 02-437) as approved by the City Council on December 3, 2002 with the adoption of Resolution No. .

6. This resolution shall become effective immediately upon its passage and adoption. The GHAD shall become operational only after the parcels within the boundaries of the GHAD have been successfully assessed in accordance with Public Resources Code Section 26650 and Article XIII(D) of the California Constitution. The GHAD Board intends to adopt separate Resolutions to initiate the establishment and authorization of an assessment on the real property included in the GHAD.

7. In the event that all of the following have not occurred on or before October 31, 2003, (i) the City of Oakland has not approved the Leona Quarry project, (ii) a grading permit has not been issued pursuant to Condition of Approval 13, Construction Phase B, for the Leona Quarry project, and (iii) the first Final Map for the Leona Quarry project has not been approved by the City of Oakland and recorded in the Official Records of Alameda County, and if the petitioner for formation of the Leona Quarry GHAD owns 100 percent of the assessed valuation of the real property within the GHAD, the GHAD shall be dissolved pursuant to the procedures set forth in Sections 26567.1 et seq. of the Public Resources Code.

FURTHER, the Council finds that the formation of the GHAD is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) in accordance with Public Resources Code Sections 21080(b)(4) and 26559 and directs staff to file a Notice of Exemption with the Alameda County Clerk.

FURTHER resolved that, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 3rd floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

FURTHER resolved that, the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, **DECEMBER 3, 2002**

PASSED BY THE FOLLOWING VOTE:

AYES- **BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN, AND PRESIDENT DE LA FUENTE –7**

NOES- **-0**

ABSENT- **-0**

ABSTENTION- **NADEL –1**

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California