

GHAD OWNERSHIP OF OPEN SPACE

PREPARED FOR THE CALIFORNIA ASSOCIATION OF GEOLOGIC HAZARD ABATEMENT DISTRICTS

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I. INTRODUCTION

This document is intended to address issues concerning the fee title ownership of open space by a Geologic Hazard Abatement Districts (“GHADs”) within its boundaries. First, the paper provides a brief overview of the GHAD law and the unique role a GHAD plays in addressing geologic hazards where such districts have been formed. Second, this paper discusses liability, management, and public policy issues related to open space ownership.

II. GEOLOGIC HAZARD ABATEMENT DISTRICTS

Geologic Hazard Abatement Districts, or GHADs, were created in California in 1979 by the Beverly Act to enable local residents to collectively mitigate geological hazards which pose a threat to their properties. Statutes pertaining to GHADs are presented in California Public Resources Code Division 17. GHADs are designed to handle long-term abatement and maintenance of real property potentially threatened by geologic hazards.

When established, a GHAD is an independent political subdivision of the State. It is not an agency or instrument of a local agency, and therefore is not subject to control by a local agency. It is granted similar authority as other local agencies, including:

- Taxing ability
- Bonding ability
- Certain legal immunity
- Can sue and/or be sued
- May exercise eminent domain

A GHAD is intended to address the prevention, mitigation, abatement, and control of geologic hazards on designated land within its boundaries. For the purposes of a GHAD, a “geologic hazard” as defined in California resources Code § 26507, “means an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement, or natural or unnatural movement of earth.” Further, as a prudent landowner, a GHAD is able to acquire, construct, operate, manage, or maintain improvements on any land it specifically owns. There are no limits or requirements pertaining to size, number of units, or contiguous boundaries (i.e. a GHAD may contain numerous non-contiguous parcels).

As required by the Beverly Act, a GHAD is governed by a Plan of Control (POC). The Beverly Act requires that a California Certified Engineering Geologist (CEG) prepare the POC. A typical POC may address the following.

- Boundary description, geotechnical data base
- Plans (including drainage and corrective grading)
- Criteria for GHAD involvement
- Maintenance and monitoring plan
- Prioritization of expenditures
- Identification of Board structure (note: often the BOD is the legislative body which forms the GHAD)

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In order to develop a POC, the CEG reviews previous or current data pertaining to site history, historical performance, inspections, surveys, engineering analyses, and conclusions with regard to geologic or geotechnical issues that may affect the site. Once reviewed, and after appropriate input from project team consultants, landowner(s), local agencies, and other project stakeholders, the report will be completed.

Once a GHAD is formed, it is typically financed through the collection of supplemental tax assessments. The revenue is typically split between an ongoing operations/maintenance fund and the accumulation of a reserve for less frequent major repair items. A separate Engineer's Report is developed and serves as the basis for the operating budget. Funds collected by the GHAD remain within the GHAD and are not subject to transfer to another agency.

III. LIABILITY ISSUES

A common argument against GHAD ownership of open space is that it increases liability exposure to the GHAD and/or the city or county. Considering the alternatives, this is often a fallacy. Liability to the GHAD from geologic hazards exists regardless of ownership. Since it is the entity which is charged with abatement, prevention, control, and mitigation of such hazards, it has general, albeit limited, responsibility for the consequences of such hazards. As property owner, it is better able to control use of the open space and reduce the risk of injury or property damage. As a result, GHADs are able to access low-cost liability insurance through the California Association of GHADs. Moreover, under Homeowners' Association (HOA) ownership, there is a significantly greater likelihood that, in the event of earth movement, legal action against the GHAD and County would be initiated.

IV. OPEN SPACE MANAGEMENT

It has been our experience that open space which is owned by an HOA is not managed as prudently as GHAD-owned lands. Often, activities which are destabilizing (e.g. excessive grazing, discing, trails, motorized vehicles, poor fuel management, etc.) are unwittingly allowed to occur. In addition, because of competing demands for HOA funds, appropriate financial resources are often not devoted to properly manage open space resources including vegetation, soils, wetlands and habitat. This, in turn, increases the GHAD's financial exposure and subjects the City or County to greater liability.

It should be noted that the GHAD, as a landowner, may have responsibilities that are outside of those directly related to geologic hazard abatement. These responsibilities may include repair and replacement of fences, gates, and locks; removal of incidental and dumped litter and debris; control of site access for unauthorized activities such as off-road motorcycle riding; and vegetation management for fire suppression. The GHAD budget should anticipate and provide funds for these additional responsibilities.

As discussed above, a "geologic hazard" as defined in the Public Resources Code includes soil erosion or natural or unnatural movement of earth. Left unchecked, flooding can obviously have serious consequences of erosion or sediment deposition in low-lying areas. Additionally, typical wave action on waterside flood control structures, such as seawalls, levees, or berms, may affect the structural integrity of these improvements, reducing the efficacy of these facilities, or even leading to catastrophic failure.

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V. PUBLIC POLICY ISSUES

In general, it is our belief that public open space most properly belongs in public ownership. Given the myriad constraints imposed by local, state, and federal agencies, the need to protect public improvements, the requirements to preserve natural resources, and the desire to provide limited, controlled public access, a locally elected HOA board is ill-equipped to accept this responsibility, and will necessarily give these issues lower priority than the more tangible, traditional improvements such as landscaping, streets, etc.

VI. CONCLUSION

Because of their legal status, focus on preventive measures, and proven effective use for over 30 years, GHAD ownership of open space has become a valuable tool in effective management of GHADs.

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