



COUNTY OF SAN BENITO
RESOURCE MANAGEMENT AGENCY

2301 Technology Parkway
Hollister, CA 95023
E-mail: sbcplan@planning.co.san-benito.ca.us

Phone: (831) 637-5313
Fax: (831) 637-5334

TO: San Benito County Board of Supervisors

FROM: Brent Barnes, AICP, Director

SUBJECT: Adopt Resolution Forming the San Benito Geologic Hazard Abatement District (GHAD) and Appointing the Board of Supervisors to serve as the GHAD Board of Directors.

DATE: May 10, 2016

As part of the process for the San Juan Oaks Project, the County and the developers of the Project entered into a development agreement. The development agreement calls for formation of a geologic hazard abatement district ("GHAD"). To initiate the formation of a GHAD, the landowner, San Juan Oaks, LLC, submitted a Petition for Formation of the San Benito GHAD ("Petition") attaching a draft Plan of Control ("Plan of Control").

On April 12, 2016, the Board of Supervisors accepted the Petition and Plan of Control, declared its intent to conduct a public hearing on May 10, 2016 on the proposed formation of the San Benito GHAD, and directed mailing of notice of the hearing to the owner of real property to be included within the proposed San Benito GHAD. The notice of the hearing was mailed to the owner of real property in accordance with notice provisions of Sections 26558 and 26561-63 of the Public Resources Code. The notice included a copy of the Petition and Board of Supervisors Resolution No. 2016-24 (accepting the Petition and directing this public hearing) and indicated that the draft Plan of Control could be viewed or duplicated at the County's Resource Management Agency. The notice also indicated that objections to the proposed formation should be mailed to the Director of the Resource Management Agency by 5:00 p.m. on May 9, 2016. Pursuant to Public Resources Code section 26564, objections may only be made by owners of real property within the proposed GHAD boundaries.

A. Formation Hearing and Recommended Actions

The purpose of the May 10, 2016 public hearing is to consider any objections to formation of the GHAD or the Plan of Control. If the owners of more than 50 percent of the assessed valuation of the land that is proposed to be included within the GHAD object to its formation, the Board of Supervisors must close the hearing and terminate the formation proceedings. The terms of the development agreement discuss GHAD formation and San Juan

Oaks, LLC owns more than 50 percent of the assessed valuation of the land within the proposed GHAD. Assuming the only landowner of the property to be included within the GHAD does not object, staff recommends that the Board of Supervisors adopt Resolution No. 2016- ordering formation of the GHAD (Attachment A).

Public Resources Code section 26567 requires that the resolution ordering formation of the GHAD also appoint a GHAD Board of Directors. As provided by Public Resources Code section 26557, a Board of Supervisors may appoint itself or five property owners of real property within the proposed GHAD boundaries to serve as the GHAD Board of Directors. There are fewer than five owners of real property within this particular GHAD. Thus, the County's only option in forming the GHAD is to appoint itself as the Board. There is no provision in the GHAD law to change the type of Board after formation of the GHAD.

The third action recommended by staff concerns the Plan of Control. The Board of Supervisors has been presented with a draft Plan of Control dated February 5, 2016. Staff recommends that the Board of Supervisors consider the draft Plan of Control and any objections to it that are raised at the public hearing. If necessary, the Board of Supervisors should recommend changes it would like to see at this hearing, before the Plan of Control is finalized and presented to the GHAD Board for approval.

Once the GHAD Board is formed, the Board of Supervisors will no longer have a role in overseeing GHAD activities (except for approving any annexations into the GHAD). Rather, all actions regarding the GHAD, such as approving the Plan of Control, setting an assessment level, and levying an assessment, will be taken by the GHAD Board.

It is important to note that the landowner is responsible for funding all of the GHAD activities set forth in the Plan of Control for at least three years from the date the first residential building permit is issued. After that time, if certain conditions defined in the Plan of Control are met, these activities will be funded by an assessment against the real property within the GHAD.

B. Structure and Powers of a GHAD

The GHAD is a political subdivision of the state and as such wields significant power, including eminent domain (within its boundaries). It can also levy assessments, purchase, sell or lease property, sue and be sued, enter into contracts, make, amend, or repeal bylaws, construct improvements, and exercise "all powers necessary or incidental to carry out" its function to prevent, abate, or mitigate geological hazards. Pub. Res. Code § 26574. As a subdivision of the state, the GHAD is not an instrumentality of the County. The County's contracting procedures do not apply to the GHAD. Rather, the GHAD "may negotiate improvement contracts or may award such contracts by competitive bidding pursuant to procedures approved by the board of directors." Pub. Res. Code § 26600.

As noted above, the GHAD is governed by the GHAD Board, which must appoint a clerk and treasurer, and may appoint any other officers and delegate any of its powers. It is common practice among GHADs to appoint a GHAD Manager (a registered professional engineer or engineering firm) to perform the GHAD activities defined in the Plan of Control and to prepare the annual budget and Engineer's Report, and to appoint a GHAD Attorney. If the GHAD Board

would like County staff to undertake any GHAD activities (e.g., if the GHAD wants to appoint the Clerk of the Board as the GHAD Clerk, or to enlist Public Works employees for certain maintenance activities), the GHAD should enter into agreement with the County and contract with the County for the services of its employees.

The Plan of Control defines the physical boundaries within which the GHAD conducts its activities and may exert its powers. The GHAD may annex other territory to the district through essentially the same process as formation – either by petition of landowners or by order of the “legislative body,” with the GHAD Board serving in the role of the “legislative body.” *See* Pub. Res. Code § 26581. After the GHAD Board orders annexation of territory, the Board of Supervisors must approve the annexation by resolution. Any territory may be annexed to the GHAD, even if it is not within the County or contiguous to the existing GHAD.

C. GHAD Funding

Funding for GHAD activities that abate or mitigate geological hazards will be based on an assessment on certain property within the San Benito GHAD. County funding or monies will not be used by the GHAD or for any GHAD purposes.

At the first meeting of the GHAD Board, it is contemplated that the Board will adopt a resolution declaring its intention to levy an assessment and setting a public hearing for protests to the proposed assessment. An Engineer’s Report will be prepared establishing the assessment level, and describing how that level was calculated, and including a budget. The Budget would include both an operations fund (for maintenance, monitoring, remediation, and administration) and a reserve fund (for responding to infrequent large scale events).

D. GHAD Liability

As a potential property owner and manager of works and improvements, the GHAD will be exposed to some liability, similar to the County. Potential sources of liability include tort or negligence claims associated with property or improvements owned or undertaken by the GHAD, or inverse condemnation claims based on the argument that GHAD activities (or inactivity) were a substantial factor in causing damage to private property. (Such claims could arise as a result of landslides, drainage failures, or other problems.) However, the GHAD would be protected by an array of governmental immunities which would limit the GHAD’s liability. For instance, a public entity such as a GHAD is not liable for injury caused by condition or use of an unpaved recreational road which is not a street or highway. Cal. Gov’t Code § 831.4. Nor would the GHAD be liable for a dangerous condition on its property, if it could establish that the act or omission creating the condition, or the action taken to protect against the condition, was reasonable. Cal. Gov’t Code § 835.4.

In the event that the GHAD is found liable, it is highly unlikely that the judgment would be imputed to the County as long as the GHAD acts as a separate entity. The GHAD must act as a separate legal entity with its own powers to sue and be sued, own property, and incur indebtedness in its own name. Furthermore, the statute providing the formation of the GHAD specifically identifies it as a separate entity that is not an instrumentality of the County. The relevant legal authorities indicate that given these features of the GHAD, it would be highly

unlikely that a court would hold the County responsible for the GHAD's actions. However, staff recommends taking certain precautions to maintain the distinction between the two entities. In particular, we recommend that the Board of Supervisors specify in the GHAD formation resolution that the GHAD will not rely on County employees to perform services for the GHAD unless the County and the GHAD enter into an agreement that makes clear that the County employees are acting as GHAD employees when performing such services. Similarly, any contract between the GHAD and County employees would make this distinction clear. The GHAD should appoint and/or hire its own staff separate and apart from the County to clearly maintain its separate entity status.

E. Plan of Control

The Plan of Control serves as the governing document for the GHAD. County staff has reviewed the draft Plan of Control and after working with its preparer (ENGEO) is now satisfied that it is adequate. It has been presented to the Board of Supervisors in draft form because the GHAD Board, not the Board of Supervisors, is the entity that will ultimately approve the Plan of Control. If further changes to the Plan of Control are necessary, the Board of Supervisors should recommend that ENGEO make those changes in consultation with County staff prior to presenting it to the GHAD Board.

Recommended Actions:

Staff recommends that the Board of Supervisors take the following actions:

1. Adopt Resolution Forming the San Benito Geologic Hazard Abatement District.