

GEOLOGIC HAZARD ABATEMENT DISTRICT FINANCING OF GENERAL AND CONSERVATION EASEMENT ACTIVITIES

PREPARED FOR THE CALIFORNIA ASSOCIATION OF GEOLOGIC HAZARD ABATEMENT DISTRICTS

July 2011

I. Introduction

We prepared this document to address issues concerning the general financing of Geologic Hazard Abatement Districts (“GHADs”) with an emphasis on funding of Conservation Easement (CE) activities. First, we provide a brief overview of the GHAD law with emphasis on financial aspects and the GHAD’s role as a property-tax-secured financing mechanism. Second, this paper compares the funding of a CE through an endowment or as part of the GHAD assessment.

II. Geologic Hazard Abatement District Structure

Geologic Hazard Abatement Districts (GHADs) were created in California in 1979 by the Beverly Act to enable property owners to 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 such agencies, including:

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

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 POC is included with the GHAD Petition for Formation and is adopted by the GHAD Board of Directors as part of the formation process. For this discussion, it is important to note that, in addition to other items, the POC will typically contain a prioritization of expenditures.

Based on the scope of services within the POC and to allow for accumulation of an adequate reserve, an estimated budget is prepared to provide assessments that are adequate for the GHAD operations at the time the GHAD assumes responsibility for site monitoring, maintenance and repair activities. Figures from the estimated budget are used to prepare the Engineer's Report. The Engineer's Report documents the scope of the GHAD services; the assessment allocation for parcels within the district, the assessment amount with inflation adjustment, and the timing for levying the assessment. GHAD property-tax assessments must comply with Proposition 218, adopted by state initiative in 1996 as the "Right to Vote on Taxes Act."

To meet the requirements of Proposition 218, the assessments are applied and collected for items that represent a special benefit to property owners within the GHAD. The special benefit is allocated among the assessed property owners based on the benefit received. Funds collected by the GHAD remain within the GHAD and are not subject to transfer to another agency.

III. Funding

Once a GHAD is formed, it is typically financed through the collection of property tax assessments. In accordance with state law, each fiscal year the GHAD provides the county auditor with a listing of the parcels and the amounts to be charged to each parcel on the property tax roll. The district also provides the auditor with a resolution authorizing the placement of the charge on specific parcels. The county auditor must place the special assessment charge on a secured property tax bill.

Secured taxes are those that are assessed against real property. The tax is a lien that is "secured" by the land/structure even though no document is officially recorded. This means that if the taxes remain unpaid after a period of 5 years, the property may be sold to cover the taxes owed, therefore; this tends to be a stable funding source.

IV. Conservation Easement Funding

Generally, CE funding has been accomplished through the use of an endowment to fund the required activities. Often, endowments have been required to be "nondepleting" with respect to the initial principal amount. This generally requires that only the interest generated from the endowment be used to fund the CE activities, preserving the initial principal amount. As evident from historic market and endowment returns, the amount generated by an endowment can vary greatly from year to year. To be successful in the long term, an endowment must be managed in a manner that allows for principal amount to increase over time to compensate for inflation and generate funds to provide for ongoing operations. This may be challenging when volatile market and interest rate conditions exist.

The table below provides a comparison of CE activities funded through an endowment or through a GHAD assessment.

Issue	Endowment	GHAD Assessment
Funding Source	Up front principal deposit required, but earnings from principal deposit fund ongoing management	Levy of annual assessment on secured tax bill
Holder of principal or funding authority.	Typically private entity	GHAD, a state-level agency
Annual funds available for required tasks	Based on return on investments	Secure, inflation-adjusted funding based on adopted Engineer's Report and assessment
Inflation adjustment	None. Real revenue is based on investment returns relative to inflation rate.	Annual adjustment based on CPI or other index as selected

Issue	Endowment	GHAD Assessment
Additional funding	Not available	Issuance of bonds, commercial loan, or a majority vote of the property owners within the GHAD (Proposition 218)
Responsibility for CE activities as described in the OSMP	Qualified third-party natural lands manager as specified in OSMP and CE	Qualified third party natural lands manager as specified in OSMP, CE, and Plan of Control
Ownership of land covered by conservation easement	HOA or GHAD	GHAD
Assurance and reliability of funding stream	Requires preservation of the principal amount of the endowment including compensation for inflation.	Funding of the CE activities, described in the adopted Engineer's Report, would be a contractual obligation of the GHAD. Budgets and financial projections used to determine the assessments are modeled to allow for the GHAD to be an enduring agency.

Copyright © 2011 By ENGEO Incorporated. This document may not be reproduced in whole or in part by any means whatsoever, nor may it be quoted or excerpted without the express written consent of ENGEO Incorporated. For more information please contact the California Association of Geologic Hazard Abatement Districts. Haley Trindle @ (925) 230-9544