

**TOWN OF MORAGA
GEOLOGIC HAZARD ABATEMENT DISTRICT (GHAD)**

**July 8, 2020
MINUTES**

6:00 P.M. Special Meeting

TELECONFERENCED MEETING LOCATION ONLY

*** COVID-19 NOTICE ***

THIS MEETING WAS CONDUCTED PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPENDED CERTAIN REQUIREMENTS OF THE BROWN ACT, AND PURSUANT TO THE SHELTER IN PLACE ORDERS OF THE HEALTH OFFICER OF CONTRA COSTA COUNTY, INCLUDING THE MOST RECENT ORDER DATED JUNE 16, 2020, WHICH PERMITTED THE TOWN TO CONDUCT ESSENTIAL BUSINESS UNDER THE ORDER AS AN ESSENTIAL GOVERNMENTAL FUNCTION.

Consistent with Executive Orders Nos. N-25-20 and N-29-20 from Governor Gavin Newsom and the Contra Costa County Health Officer Shelter in Place Orders including the most recent Order dated June 16, 2020, the July 8, 2020 GHAD meeting was not physically open to the public.

All GHAD Boardmembers and Town staff participated in this meeting via teleconference.

1. CALL TO ORDER

The special meeting was called to order at 6:00 p.m. by **Chair Kymberleigh Korpus**.

ROLL CALL

Boardmembers present: Chair Kymberleigh Korpus, Vice Chair Mike McCluer, and Boardmembers Renata Sos, Steve Woehleke and Roger Wykle

Boardmembers absent: None

2. PUBLIC COMMENTS AND SUGGESTIONS

Marty McInturf, Moraga Geologic Hazard Abatement District (GHAD) Clerk, reported no public comments or suggestions had been received via e-mail at this time.

3. ADOPTION OF MEETING AGENDA

Chair Korpus introduced the GHAD Manager Eric Harrell, also participating via teleconference.

Chair Korpus reported the GHAD Manager requested that Agenda Items 7.A. 1. 2. and 3. be removed from the agenda (as they were currently structured) since he was not yet ready for the GHAD Board to move forward to take action on the contracts, as identified. To the extent there was any input on the contracts, she asked that any questions be deferred pending consideration of Agenda Item 5, GHAD Manager Update.

Chair Korpus offered a motion, seconded by **Vice Chair McCluer** to adopt the meeting agenda as presented, with the removal of Items 7.A. 1. 2. and 3. from the agenda and moving any discussion, questions or comments to Agenda Item 5, GHAD Manager Update.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments from the public had been received for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Korpus/McCluer) to adopt the meeting agenda as presented, with the removal of Items 7.A. 1. 2. and 3. from the agenda and moving any discussion, questions or comments to Agenda Item 5, GHAD Manager Update. Roll Call Vote: 5-0.

4. ADOPTION OF CONSENT AGENDA

A. Approval of Consent Items

Chair Korpus removed Consent Agenda Item 1 from the Consent Agenda.

B. Consideration of Consent Item(s) Removed for Discussion

1. Accept Minutes for the Moraga GHAD Meeting on August 26, 2015

Chair Korpus asked Boardmember Wykle about the request to approve minutes from the August 26, 2015 Moraga GHAD Meeting since he was the only member of the Board present at that time. She asked for an assessment of the accuracy of the minutes.

Boardmember Wykle advised he had read the minutes from the August 26, 2015 GHAD Meeting which had reflected the business that had been conducted at that time.

Ms. McInturf confirmed the minutes were an accurate reflection of the meeting and added that staff had structured the item so that the GHAD Board only needed to accept the GHAD Meeting Minutes of August 26, 2015, since staff was aware that four of the five current GHAD Board members had not been members of the GHAD Board in 2015.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments from the public had been received for this item.

PUBLIC COMMENTS CLOSED

ACTION: It was M/S (Wykle/McCluer) to accept Consent Agenda Item 1, as submitted. Roll Call Vote: 5-0.

5. GHAD MANAGER UPDATE

A. Informational Presentation on Geologic Hazard Abatement District (GHAD) and Current Status of the Moraga GHAD

GHAD Manager Eric Harrell, with ENGEEO, noted a GHAD Board meeting had not been held since 2015, and the GHAD had not been active in the sense of GHAD responsibilities since it had been

formed. He provided a PowerPoint presentation which detailed the background and reason for the creation of the Moraga GHAD to address geologic hazards.

Mr. Harrell explained that the Moraga GHAD had been formed in 2015 for the Bella Vista (formerly Rancho Laguna II), Hetfield Estates, and Palos Colorados developments. Only the Bella Vista development had an approved Plan of Control and Engineer's Report where the residents of the development were subject to assessment for the GHAD duties. Assessments had come online for the Bella Vista development in Fiscal Year (FY) 2019/20. Since the developers were responsible for all activities of the GHAD up to that point, there had been no actions needed by the GHAD Board. The Bella Vista development was ready for the transfer of maintenance and monitoring responsibilities to the GHAD, and staff had reinitiated the GHAD Board to provide updates.

Mr. Harrell reported that Hetfield Estates was in the process of going through its approvals on its Plan of Control through the Town to meet its conditions of approval, and Palos Colorados also had a condition of approval for a GHAD. Bella Vista (formerly Rancho Laguna II) encompassed 27 lots, Hetfield Estates had seven lots, and Palos Colorados had 123 lots, and all had been conditioned to require GHADs given that all three were hillside developments. The GHAD was an acknowledgement that no matter how well the developments had been engineered and designed, hillside developments could and did need maintenance over time. The GHAD allowed for an organization to provide both preventative maintenance, monitoring of any geologic hazards, and repairs if any geologic hazards were to occur.

Mr. Harrell highlighted the benefits of a GHAD, the Moraga GHAD structure, plan of control, financing, long-term GHAD financing, transfer process and progress, GHAD Board duties, GHAD Manager Operations, and Maintenance and Emergency Response of the GHADs.

Responding to the GHAD Board, Mr. Harrell confirmed that one of the advantages of the GHAD was protection of open space or land benefitting the public without the use of public funds via the assessments from homeowners. All Moraga GHAD funds would be in one account, with assessment to be adjusted throughout based on the risks and services, and with the pooling of all assessments to allow efficiency in the long term and to equalize the benefit based on the assessment. The assessment would be specific to each development based on the Engineer's Report, and subject to Proposition 218 criteria, where the special benefit must equal exactly what one was receiving.

Mr. Harrell noted the process to change an assessment would require a majority vote for the increase in assessment. He explained the Town Council had been identified as the GHAD Board of Directors since it was a seated Board familiar with the Brown Act and the processes of a public agency. He spoke to the challenges affecting smaller GHADs where commitment from Boardmembers was often difficult. As a result, for a GHAD the size of the Moraga GHAD, the best solution was that the members of the Town Council sit as the GHAD Board.

Boardmember Wykle offered his perspective on why the Town Council had been determined to be the best option to serve as the GHAD Board, based on input from the GHAD Manager, and the forecast at that time that the three developments would come online at different times and the Town Council would be the mature and steady entity to oversee the GHAD.

Mr. Harrell commented that GHAD law was silent on the topic of transfer. He had heard some opinions when the GHAD Board had been seated that it was a fixed entity for that GHAD. He also confirmed that Bella Vista had a Plan of Control which had been adopted in 2015, and was available as part of the public record. That information and other public documents could be provided to the GHAD Board.

Mr. Harrell reiterated that as stated in the Engineer's Report, all funding for the GHAD would be the responsibility of the developer until transferred to the GHAD. The GHAD must collect approximately \$237,000 before the GHAD would be able to accept transfer of monitoring and maintenance to the GHAD to ensure the GHAD operated efficiently on day one. He noted that several public Boards had decided to obtain Director's Officers insurance although most had not, which had been an individual Board decision.

Mr. Harrell reported the Moraga GHAD fund balance was currently around \$4,000. He commented that developers may decide to hold onto their responsibilities for a number of years and allow the assessments to reach the minimum account balance. As an alternative, the developer could write a check to the GHAD in the amount of \$237,000. Both options would satisfy the GHAD's requirements. Any expenses up and until the date of the transfer would be the developer's responsibility.

In terms of whether the assessments were currently high enough and the potential liability on the part of the GHAD in the event of an emergency, Mr. Harrell explained that the Engineer's Report planned for long-term and large events. As long as the intervals occurred correctly under the assumption that they would occur approximately every ten years, and as long as the frequency was correct, the GHAD had money to borrow or pay the cost of a repair.

The GHAD, as a public agency, and GHAD law, allowed a GHAD to borrow or issue bonds, although that was not the intention as part of the Moraga GHAD budget, and Mr. Harrell had not seen that occur in his years of experience for budgeting for hillside GHADs. If the GHAD had an expense in excess of what it had in reserve, and if repairs were needed now, the GHAD would have to borrow to provide the cost for that repair, to be repaid through the service of the debt and there would be an incoming revenue stream through the assessments.

Mr. Harrell explained that the GHAD was a public entity and would not pay taxes. He again described the GHAD Board process and the budget process which would be approved by the GHAD Board each year. Any large repairs would be included in the budget. In the event of a repair, the GHAD Manager would respond to protect life, health, and safety and would go back to the Board to advise of the need for supplemental information or funds to respond to any work.

Mr. Harrell reported that most GHADs had contractor(s) on call to provide emergency responses. In the event of a mud flow, or flooding, as examples, the contractor(s) would be on two to six, eight-hour windows where the contractor(s) would have to respond and the GHAD would be present to mitigate the situation. If the GHAD Board decided not to continue utilizing GHADs, there was a dissolution process under GHAD law and specific actions the GHAD Board would have to take to consider a dissolution. In the event of a dissolution, the Town of Moraga, the local formation agency, would become responsible for any obligations of the GHAD, and there would have to be good reasons to dissolve the GHAD. He was aware of only one or two GHADs that had been dissolved over the course of GHAD law since 1979. He described the history of GHADs in the Bay Area and the benefits of a GHAD for hillside developments.

As to the designation of a GHAD Clerk, Mr. Harrell recognized the Town Clerk currently served in that position. He cited the City of Oakland which had two GHADs and which jurisdiction decided to separate the GHAD from the City's functions. Oakland's City Attorney had prepared a paper outlining why that decision had been made. In that case, a private attorney performed the GHAD Clerk duties, which individual was paid out of GHAD funds. Contra Costa County also followed the same process separating the GHAD from the County's functions.

Chair Korpus was not interested in having the Town Clerk serve as the GHAD Clerk and favored separating those duties to have the GHAD be fully responsible for noticing and the like. In terms of the contracts related to Agenda Item 7.A., when the item returned, she wanted to see

comparisons between the terms and other GHADs and other providers since a Request for Proposal (RFP) on the contracts had not been done and she had no information upon which to base a decision. She was also concerned the Town could run afoul of Assembly Bill, AB 5 legislation in California where no one was an independent contractor but an employee unless they met certain requirements, which raised concerns with the contracts. She was also not interested in a Joint Powers Agreement (JPA) for the use of Town staff.

Boardmember Woehleke also had questions related to the scope of the contract and would contact Mr. Harrell via e-mail.

6. DISCUSSION

- A. Consider Moraga Geologic Hazard Abatement District (GHAD) Legal Services and Provide Direction to Staff

Mr. Harrell provided the staff report and asked the GHAD Board to provide direction to staff on the following:

1. Consider issuance of a Request for Proposals (RFPs) for GHAD legal services. The RFP process was not required under GHAD law.
2. Request that GHAD Manager provide the name or names of qualified individuals or firms familiar with GHAD law for Board consideration.
3. Utilize the Town of Moraga provider of legal services.
4. Consider not engaging a GHAD Attorney at this time or provide alternative direction to Staff.

Boardmember Sos suggested it would be helpful in making a decision to have more information on the attorneys who already had GHAD experience versus the costs of an RFP, whether the RFP was needed, and a better understanding of what legal services would be needed and at what points in time.

Mr. Harrell confirmed that a scope could be prepared. He noted that GHADs were not subject to public contracting procedures and the GHAD could choose how it would like to select staff.

Vice Chair McCluer questioned the need since it had not been needed for the past five years. He suggested the need should be identified on an as-needed basis.

Boardmember Woehleke favored bringing on an attorney recognizing the Town was dealing with geologic hazards which may result in future litigation and the Town may want someone on retainer. He too would like more data to allow for a good decision.

Boardmember Wykle agreed more data was needed and clarified with Mr. Harrell all operations of the GHAD were currently being funded by the developer.

Assistant Town Attorney Denise Bazzano commented that while her firm believed it could provide the legal services, her firm recommended that if the GHAD Board was inclined to retain separate legal services, that should be done through an outside firm.

PUBLIC COMMENTS OPENED

Ms. McInturf reported no comments from the public had been received for this item.

PUBLIC COMMENTS CLOSED

Chair Korpus agreed the GHAD Board needed an attorney, and that a cost benefit analysis of an RFP versus informal proposals should be provided.

7. REQUESTS FOR ACTION AND OTHER BUSINESS

- A.** Approving Agreement with ENGEO for GHAD Manager Services, Authorizing a Change in GHAD Treasurer and Approving Agreement with GHAD Treasurer Inc.; and Discuss Form of Agreement with the Town of Moraga for GHAD Clerk Services and Provide Direction to Staff
1. Consider Resolution __-2020 Approving Agreement between the Moraga GHAD and ENGEO Incorporated to provide GHAD Manager Services and Authorizing the Board Chair to Execute the Agreement; and
 2. Consider Resolution __-2020 Approving the Change in GHAD Treasurer Designation from Watermark Asset Management, Inc. to GHAD Treasurer, Inc. and Authorizing the Board Chair to Execute a Contract with GHAD Treasurer, Inc.; and
 3. Discuss Form of Agreement with the Town of Moraga for GHAD Clerk Services and Provide Direction to Staff

Items 7.A. 1. 2. and 3. were removed from the agenda.

8. GHAD BOARD REQUESTS FOR FUTURE AGENDA ITEMS

ACTION: It was M/S (Korpus/Sos) to request a future agenda item to include a discussion at a future date whether or not to continue to designate the Town Clerk as the GHAD Board Clerk. Roll Call Vote: 5-0.

9. COMMUNICATIONS

There were no communications.

10. ADJOURNMENT

ACTION: It was M/S (Woehleke/McCluer) to adjourn the GHAD Board meeting at 7:02 P.M. Roll Call Vote: 5-0.

Respectfully submitted by:



Marty C. McInturf, Board Clerk

Approved by the GHAD Chair:



Kimberleigh N. Korpus, Chair