



Due to the risk of COVID-19 transmission, local guidelines in effect for social distancing, and recent State Executive Orders allowing local government bodies to conduct meetings remotely, this meeting will only be held remotely.

**To join the meeting, click on:**  
<https://smcgov.zoom.us/j/97042039131>

**or call by phone: 669-900-6833, ID 97042039131#**

Public Comment can be submitted during the meeting via Zoom Chat or by raising your hand, speaking up at the appropriate time if joining by phone, or via email prior to 2:00 pm on the day of the Board meeting to [board@oneshoreline.org](mailto:board@oneshoreline.org); please indicate the agenda item to which your comment applies. All written comments received by 2:00 pm will be read or summarized at the meeting by the Clerk of the Board.

**San Mateo County Flood & Sea Level  
Rise Resiliency District  
Board of Directors**

**County Supervisors:**

District 3     Don Horsley  
At-Large:     Dave Pine - **Chair**

**City Representatives:**

North:         Donna Colson  
Central:        Diane Papan  
South:         Lisa Gauthier  
Coast:         Debbie Ruddock – **Vice Chair**  
At-Large       Maryann Moise Derwin

## **AGENDA**

**August 10, 2020 4:00 PM**

- 1. Roll Call**
- 2. Public Comment** This item is reserved for persons wishing to address the Board for up to two minutes on any District-related matters not listed on this agenda. Public comments for up to two minutes on matters listed on the agenda shall be heard at the time the matter is called.
- 3. Action to Set the Agenda**
- 4. Approval of Consent Agenda**
  - A. Approve Minutes of July 13, 2020 District Board Meeting (ACTION)
  - B. Authorize the Chief Executive Officer to execute an Agreement with the San Mateo County Counsel's Office for District legal counsel services through June 30, 2021, with an option to extend the term through June 30, 2022, and to execute a Notice and Waiver of Conflict (ACTION)
- 5. Chair's Report\***
- 6. CEO's Report: Brief verbal update on several projects\***
- 7. Board Member Reports\***
- 8. Items for Future Agenda**
- 9. Regular Business – Closed Session\***

Conference with Legal Counsel - Anticipated Litigation: Potential initiation of litigation pursuant to Government Code Section 54956.9(d)(4) *One case*

- 10. Adjournment**

\* There is no written staff report for this item.

**Meeting Rules and Procedures**

Please contact the Clerk of the Board by 10:00 am on the day of the Board of Directors meeting at [board@onshoreline.org](mailto:board@onshoreline.org) if you require auxiliary aids or services to attend or participate in the meeting or if you wish to submit written communication or materials to all Board Members. Public records that relate to any open session item on the agenda of a Regular Board meeting are available for public inspection at least 72 hours prior to the meeting, at the same time records are distributed to members of the Board. Public records related to a Special Board meeting are available at least 24 hours prior to that meeting. Such public records will be available at the San Mateo County Flood and Sea Level Rise Resiliency District office, 1700 South El Camino Real, Suite 502, San Mateo, CA 94402 and at [www.onshoreline.org](http://www.onshoreline.org). Should you wish to have such documents sent to you by email, please email [board@onshoreline.org](mailto:board@onshoreline.org).

**SAN MATEO COUNTY**  
**FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT**  
**Board of Directors meeting held remotely via Zoom**  
**July 13, 2020**  
**DRAFT MINUTES**

ITEM 4.A

**1. Roll Call**

Chair Pine called the meeting to order at 4:00 p.m. via Zoom video conference software. Interim Clerk of the Board Sukhmani Purewal took the roll call.

Directors Present:

Dave Pine, Representing Board of Supervisors, At Large (Chair)  
Debbie Ruddock, Representing Coastside (Vice Chair)  
Donna Colson, Representing Northern San Mateo County cities  
Maryann Moise Derwin, Representing San Mateo County cities at-large  
Don Horsley, Representing Board of Supervisors, District 3  
Diane Papan, Representing Central San Mateo County cities

Directors Absent at time of Roll Call:

Lisa Gauthier, Representing Southern San Mateo County cities

Staff Present:

Len Materman, Chief Executive Officer  
Brian Kulich, Esq., Legal Counsel  
Lucy Dong, Senior Accountant  
Colin Martorana, Associate Project Manager  
Makena Wong, Associate Project Manager  
Sukhmani Purewal, Interim Clerk of the Board  
Sherry Golestan, Deputy Interim Clerk of the Board

**2. Public Comment**

No written or verbal comments.

**3. Action to Set the Agenda**

**4. Approval of Consent Agenda**

- A. Approve Minutes of June 8, 2020 Board Meeting (ACTION)
- B. Adopt a resolution adopting the San Francisco Bay Area Integrated Regional Water Management Plan October 2019 Update (ACTION)
- C. Adopt resolutions adopting FY 2020-21 Water Pollution Control Service Charges Reports for Flood Zone One - Countywide, and Flood Zone Two - City of Pacifica (ACTION)

Director Lisa Gauthier, Representing Southern San Mateo County cities joined the Zoom meeting.

Director Colson made the motion to set the agenda, approve consent agenda items 4A and 4B, and move 4C to regular agenda for discussion.

Seconded by Director Horsley.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Ruddock, Pine

Noes: None                      Absent: None

Vote: 7-0-0

4. C. Adopt resolutions adopting FY 2020-21 Water Pollution Control Service Charges Reports for Flood Zone One - Countywide, and Flood Zone Two - City of Pacifica (ACTION)

Speakers: CEO Len Materman, Director Pine, Jim Porter (Director of Public Works, San Mateo County), Matt Fabry (SMC Water Pollution Prevention Program Manager), and Director Papan.

No written or verbal public comments.

Motion/Second: Pine/Gauthier moved to approve the resolutions.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Ruddock, Pine

Noes: None                      Absent: None

Vote: 7-0-0

5. **Regular Agenda**

- A. Bayfront Canal and Atherton Channel Project: update on project status, including a potential Memorandum of Understanding to share in the costs and responsibilities of preparing for construction, completing construction, and conducting five years of post-construction activities.

Speakers: CEO Len Materman, Director Pine, Director Ruddock, Director Gauthier, Director Papan, Jim Porter (Director of Public Works, San Mateo County), Jerry Hearn (Portola Valley resident).

- B. Discuss, create, and determine membership of potential standing and ad hoc committees of the Board of Directors.

Speakers: CEO Len Materman, Director Pine, Director Colson, Director Horsley, Brian Kulich (Counsel).

Motion/Second: Pine/Gauthier moved to create the following two (2) committees:

Standing Finance Committee consisting of Directors Colson, Gauthier, and Horsley

*Ad hoc* Strategic Planning Committee consisting of Directors Pine, Ruddock, and Papan

Director Derwin volunteered for the other committee discussed but not created at this time, a Committee to Evaluate the Performance of the CEO.

Ayes: Colson, Derwin, Gauthier, Horsley, Papan, Ruddock, Pine

Noes: None                      Absent: None

Vote: 7-0-0

No written or verbal public comments.

6. **Chair's Report**

Director Pine mentioned that the climate resiliency bond is off the table. Director Ruddock mentioned that there may be a statewide economic recovery ballot measure that could include funding for climate adaption efforts, perhaps through Senate Bill 795, and the deadline to put something on the ballot is July 25th.

## 7. **CEO's Report**

CEO Materman provided the following report. Lucy Dong, who handles District finances, has been working hard to establish financial independence for the agency as of July 1<sup>st</sup> by building a new accounting system that can grow with the District and save us considerable resources.

CEO Materman introduced and welcomed Associate Project Manager Makena Wong to the team. Mr. Materman has worked with Ms. Wong, who just completed a master's degree in environmental engineering from Stanford.

Ms. Wong introduced herself to the board and shared her background in engineering and passion for climate policy.

CEO Materman mentioned that the District is in the process of completing its branding work.

## 8. **Board Member Reports**

Director Horsley commended the District regarding the Bayfront Canal, which he said is a great equity project.

## 9. **Items for Future Agenda**

None.

## 10. **Adjournment**

The meeting adjourned at 5:17 p.m.

**San Mateo County Flood and Sea Level Rise Resiliency District  
Agenda Report**

**Date:** August 10, 2020

**To:** San Mateo County Flood and Sea Level Rise Resiliency District Board of Directors

**From:** Len Materman, CEO

**Subject:** Authorize the Chief Executive Officer to execute an Agreement with the San Mateo County Counsel's Office for District legal counsel services through June 30, 2021, with an option to extend the term through June 30, 2022, and to execute a Notice and Waiver of Conflict (ACTION)

**Recommendation:**

That the San Mateo County Flood and Sea Level Rise Resiliency District (District) Board of Directors authorize the Chief Executive Officer (CEO) to:

- execute an Agreement with the Office of County Counsel for San Mateo County (County Counsel) for District legal counsel services through June 30, 2021, with an option to extend the term through June 30, 2022, for a total amount not to exceed \$200,000; and
- amend the Agreement to modify County Counsel services and to modify the District's fiscal obligation by no more than \$20,000; and
- execute a Notice and Waiver of Conflict.

**Background and Discussion:**

The proposed Agreement is similar to the previous agreement for legal services and advice provided by the County Counsel, which was approved by the District Board on January 13, 2020. The term of that agreement ended on June 30, 2020 and was extended by the CEO through August 10, 2020. At this time, a new agreement is necessary for the District to continue to be represented by the County Counsel.

The Agreement provides that County Counsel will perform legal services and representation, including advice and the handling of litigation, as may be requested by the District. The Agreement has an initial term through June 30, 2021, during which time the attorney billing rate is \$242/hour billed and the paralegal billing rate is \$133/hour, all in in tenth-hour increments. The District will be responsible for extraordinary costs, such as the costs of filings, depositions, transcripts, etc. but will not be required to pay for regular overhead charges. By mutual agreement, the initial term may be extended by up to one year (through June 30, 2022). The not-to-exceed amount through June 30, 2022 is \$200,000.

The Agreement includes a Notice and Waiver of Conflict, which advises the District of potential conflicts of interest and provides that, should a conflict arise between the District and County, County Counsel will withdraw from its representation of the District and may represent the County. In this case, and potentially in other matters at the sole discretion of the District, the District may engage outside legal counsel. In fact, outside counsel has been retained by the District for the purpose of reviewing this Agreement.

I request authorization to execute the attached Agreement and Notice and Waiver of Conflict. County Counsel specializes in representing local governmental entities and is uniquely situated to represent the District, having advised it during its transition to an independent district and over the past seven months. This expertise and experience will be just as important going forward. Moreover, County Counsel's rates are reasonable when compared to private law firms in the San Francisco Bay Area. In addition, I request authorization to potentially execute future amendments to modify the term of, or services provided, under the Agreement, or to modify the District's fiscal obligation by no more than \$20,000.

**Impact on District Resources:**

Staff estimates that costs under this Agreement's initial term through June 30, 2021 will be approximately \$70,000, funding that has been included within the District's Fiscal Year 2020-21 Operating Budget.

**Attachment:** Agreement with County Counsel for the legal services and Notice and Waiver of Conflict

**AGREEMENT BETWEEN  
SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT  
AND SAN MATEO COUNTY COUNSEL'S OFFICE  
FOR THE PROVISION OF GENERAL LEGAL SERVICES FOR THE PERIOD  
AUGUST 10, 2020 THROUGH JUNE 30, 2021 WITH RIGHT TO EXTEND FOR  
THE PERIOD JULY 1, 2021 THROUGH JUNE 30, 2022**

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**THIS AGREEMENT** is entered into and effective as of August 10, 2020 by and between the San Mateo County Counsel's Office ("County Counsel") and San Mateo County Flood and Sea Level Rise Resiliency District ("District") (together, the "Parties").

**RECITALS:**

County Counsel currently provides legal service and advice to the District, and has done so since the District was a dependent district of the County of San Mateo (the "County"); and

County Counsel remains ready and able to continue providing legal service and advice to the District, and the District wishes to retain County Counsel to perform legal services with respect to certain matters; and

It is reasonable and necessary to set forth the various obligations and responsibilities of the parties in light of the District's payment for County Counsel's legal services.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions as hereinafter set forth, the Parties hereby agree as follows:

1. County Counsel shall perform legal services and legal representation for the District, including general advice and the handling of litigation. Litigation services shall not include litigation for which the District has coverage counsel under insurance.

2. The Parties understand that County Counsel has been retained to represent the interests of the District as a whole, and County Counsel shall render such legal advice to the District as may be requested by the District and/or its designated representative(s). Attendance of counsel at meetings of the District Board shall be upon request of the District Chief Executive Officer ("CEO") or Chair of the District Board. The District is retaining the office of County Counsel, not any particular attorney in that office, and the attorney services to be provided to the District will not necessarily be performed by a particular attorney.

3. County Counsel shall periodically update the District on legal issues and shall be available to provide training as requested by the District.

4. This Agreement is for an initial term commencing August 10, 2020 and extending through June 30, 2021 ("Initial Term"). The Initial Term may be extended by the CEO for an additional

one-year term from July 1, 2021 through June 30, 2022 (“Extended Term”) by providing thirty (30) day’s advance written notice to County Counsel. This Agreement may be terminated by either Party, at any time and for any reason, upon providing thirty (30) days’ advance written notice of such intention to terminate the Agreement to the other Party. County Counsel may withdraw at any time as permitted under the Rules of Professional Conduct of the State of California.

5. The District shall pay for services rendered during the Initial Term at an attorney hourly rate of \$242 and a paralegal hourly rate of \$133. Additionally, the District shall pay the actual costs of any out-of-pocket and extraordinary regular costs incurred by County Counsel in connection with the provision of its legal services, e.g., filing fees, extraordinary mailing costs, deposition costs, transcript costs, etc. The District shall not be required to pay for standard overhead charges, such as copies, scanning, facsimiles, and online legal research fees.

6. Charges for services rendered pursuant to the terms and conditions of this Agreement, including the Extended Term, shall not exceed Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). Time will be billed in tenth-hour increments, rounded off for each particular activity to the nearest tenth-hour. The minimum charged for any particular activity will be one-tenth-hour. Charges shall be billed one month in arrears, and payment shall be made by the District within thirty (30) days of the invoice date.

7. The District understands that the County is County Counsel’s primary client. Should there be a conflict between District and the County in a matter, the District hereby provides its consent to and waiver of such conflict and acknowledges that County Counsel will represent the County in such matter, unless such representation is inconsistent with state law.

8. Upon execution of this Agreement, the District agrees to execute the Notice and Waiver of Conflict attached hereto as **Exhibit A**, incorporated herein by this reference, so that County Counsel may continue to represent County and the District in the absence of actual conflict, as described more fully in **Exhibit A**.

9. This Agreement contains the entire agreement of the District and County Counsel, and no other agreement, statement, or promise made before the effective date the Agreement will be binding on the District or County Counsel.

10. If any provision of this Agreement is held, in whole or in part, to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

11. This Agreement may be amended by a writing signed by both the District and County Counsel. If extended beyond June 30, 2022, County Counsel may provide the District with updated hourly attorney and paralegal billing rates.

12. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument. Further, the Parties agree that, for the purposes of this Agreement, an electronic signature have the same force and effect as an original signature.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the day and year first above written.

Dated: \_\_\_\_\_ JOHN C. BEIERS, COUNTY COUNSEL

By: \_\_\_\_\_  
John C. Beiers

Dated: \_\_\_\_\_ SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE  
RESILIENCY DISTRICT

By: \_\_\_\_\_  
Len Materman, CEO

## **EXHIBIT A**

### **Notice and Waiver of Conflict**

This waiver of conflict is requested from the San Mateo County Flood and Sea Level Rise Resiliency District (the “District”) by the San Mateo County Counsel’s Office (“County Counsel”) in connection with the Agreement Between County Counsel and San Mateo County Flood and Sea Level Rise Resiliency District For the Provision of General Legal Services for the Period August 10, 2020 through June 30, 2021 With Right to Extend for Period July 1, 2021 Through June 30, 2022 (the “Agreement”).

County Counsel also serves as general counsel for the County of San Mateo (the “County”) and its departments, agencies, and boards. It is County Counsel’s understanding that the District has or plans to enter into a number of possible arrangements with the County, including but not limited to, an agreement for the County to provide staffing, advice, and expertise regarding flood control activities undertaken or continued by the District (collectively, “Matters”).

In accordance with Rule 1.7 of the Rules of Professional Conduct, this Notice and Waiver informs the District of the implications of County Counsel representing both the District and the County in connection with the Matters and to seek the District’s consent to such representation. In County Counsel’s opinion, the District and County are not presently directly adverse to each other. In addition, County Counsel believes it can concurrently represent both the District and the County without significant risk that the representation of either client will be materially limited by County Counsel’s responsibilities to or relationships with the other client.

It is conceivable, however, that the interests of the District and the County could become directly adverse to one another in the future. Potential conflicts include, for example, the following:

- Either the District or the County could request contractual or other terms in connection with the Matters that adversely impact the other;
- The District and the County’s interests may diverge in connection with the Matters;
- A dispute could arise over the application or interpretation of terms of an existing agreement between the District and the County;
- As a result of new information, facts, law, rules, or any other circumstances, County Counsel believes that its representation of one client will materially limit its ability to represent the other client; and/or
- Either the District or the County could request that material information regarding the representation or Matters be kept confidential from the other.

To the last point above, because County Counsel would be representing the District and the County jointly, County Counsel must inform each client of significant developments relating to the Matters and may not withhold information provided by one client from the other. Moreover, under California Evidence Code Section 962 and California case law, in cases of joint representation there is no attorney-client privilege between or among joint clients so that neither client can claim its communications with County Counsel are privileged or confidential as to the other client with respect to the Matters.

At this time, County Counsel believes it is able to represent both the District and the County and to fulfill County Counsel’s ethical obligations to each client. Aside from the potential conflicts described above, County Counsel sees no actual conflicts between the District and the County, nor has either informed County Counsel of any actual conflict. During the joint representation of the District and the County, whenever County Counsel identifies any significant areas or issues, in addition to those described above, that have the potential to create a conflict of interest, County Counsel will point them out to both clients and, if necessary, advise both on the need for separate counsel as to any such issues. However, if an actual conflict arises between the District and the County, the District acknowledges that County Counsel will withdraw from its representation of the

District and may continue its representation of the County, and the District consents to such representation. It is possible that, at some point, the County and the District may become adverse in a Matter. If such a dispute arises, it is possible that County Counsel would provide advice to the County that is contrary to advice provided to the District by other legal counsel representing the District in such Matter. If a dispute resulted in litigation, County Counsel would not represent either client in such litigation. The District should consider any concern about the effect of such a limitation on County Counsel's representation. The District should also consider whether it wants to obtain the advice of an independent attorney concerning County Counsel's ability to represent its interests adequately in view of these limitations.

By executing this letter where indicated below, the District confirms that it has been fully informed as to the nature of the potential conflicts resulting from the joint representation of both the District and the County; that it has been provided a reasonable opportunity to seek the advice of independent counsel of its choice regarding these potential conflicts and waiver thereof; and that it understands that a conflict may arise in the future which may require an additional disclosure and waiver by the District, or, alternatively, County Counsel's withdrawal from representation of the District.

Additionally, the District confirms that it will take the opportunity to retain independent counsel in the event it has any reservations regarding the joint representation, the issues arising from that representation, the waiver of the potential conflict of interest, or for any other reason deemed necessary by the District. Assuming the foregoing accurately reflects the District's understanding, please sign and date where indicated below, and return the executed Waiver of Conflict to the Office of the County Counsel to the attention of Brian E. Kulich, Lead Deputy County Counsel.

**Waiver of Conflict**

I, Len Materman, Chief Executive Officer of the District, on behalf of the District, hereby acknowledge that I have carefully read the foregoing letter, informing me that the District's interests may potentially be in conflict with those of the County in connection with County Counsel's representation of the District's and County's interests in connection with the Matters.

I expressly acknowledge that the concurrent representation by County Counsel of the District's and the County's interests constitutes the representation of potentially conflicting interests, to the extent that the District's and the County's interests are potentially adverse.

I nevertheless knowingly and voluntarily consent on behalf of the District to such concurrent representation by County Counsel. I further acknowledge that, if an actual conflict arises between the District and the County, County Counsel will withdraw from its representation of the District and may continue its representation of the County, and I consent to such representation, to the extent authorized by State law.

Finally, I expressly acknowledge that the District has been advised that the District has the right to seek independent legal counsel in connection with the advisability of waiving said conflict, and that the District has had a reasonable opportunity to do so.

SAN MATEO COUNTY FLOOD AND SEA LEVEL RISE RESILIENCY DISTRICT

By: \_\_\_\_\_  
Len Materman, CEO

Dated: \_\_\_\_\_