



Moraga-Orinda Fire District
BOARD OF DIRECTORS
REGULAR BOARD MEETING MINUTES
 June 15, 2022
 (APPROVED JULY 20, 2022)

1. OPENING CEREMONIES

The Board of Directors convened a teleconference Open Session at **6:01 p.m.** on **June 15, 2022**, via the Zoom application <https://us02web.zoom.us/j/85692432189>, webinar id: 85692432189 and by phone 669-900-6833. This meeting was conducted by webinar and teleconference only in accordance with AB 361. The meeting was not available for in-person attendance.

President Donner requested Vice President Danziger preside over the meeting due to illness. Vice President Danziger called the meeting to order and requested an attendance roll call.

President Donner	Director Jex (<i>Absent</i>)	Gloriann Sasser, Admin. Services
Director Baitx (<i>Absent</i>)	Director Jorgens	Jonathan Holtzman, District Counsel
Director Danziger	Dave Winnacker, Fire Chief	Marcia Holbrook, District Clerk

2. CONSENT AGENDA (audio 2:05)

2.1 Adopt Resolution 22-18 Re-Ratifying Findings and Determining A Need to Continue Holding Remote Meetings By Teleconference

Vice President Danziger opened Public Comment. There were no requests to address the Board. Vice President Danziger closed Public Comment.

Motion by Director Jorgens and seconded by Director Donner to adopt Resolution 22-18 Re-Ratifying Findings and Determining A Need to Continue Holding Remote Meetings By Teleconference. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None).

3. PUBLIC COMMENT (audio 3:22)

Vice President Danziger opened Public Comment on the Closed Session Items. There were no requests to address the Board. Vice President Danziger closed Public Comment.

At **6:04 p.m.**, the Board adjourned to Closed Session.

4. CLOSED SESSION

4.1 Conference with Legal Counsel - Existing Litigation
 (Paragraph (1) of subdivision (d) of Section 54956.9)
 Name of case: *Nowicki v. Contra Costa County Employees' Retirement Association et al.*, U.S. District Court, California
 Northern District Case No. 3:17-cv-00629-EDL

At **6:39 p.m.**, the Board adjourned the Closed Session.

5. RECONVENE THE MEETING (audio 6:52)

Vice President Danziger reconvened the regular business meeting at **7:02 p.m.**, requested an attendance roll call, and led the pledge of allegiance.

President Donner	Director Jorgens	Christine Russell, HR Manager
Director Baitx (<i>Absent</i>)	Dave Winnacker, Fire Chief	Jonathan Holtzman, District Counsel
Director Danziger	Gloriann Sasser, Admin. Services Director	Mariam Morley, District Counsel
Director Jex (<i>Absent</i>)	Jeff Isaacs, Fire Marshal	Marcia Holbrook, District Clerk

6. REPORT OF CLOSED SESSION ACTION (audio 8:39)

Vice President Danziger stated that the Board took no reportable action on agenda item 4.1

7. PUBLIC COMMENT - ITEMS NOT ON THE AGENDA (audio 8:50)

Vice President Danziger opened the public comment.

Jonathan Goodwin, Canyon resident, reported a fire hazard along Canyon Road from Pinehurst Road to Valle Vista Staging area. Mr. Goodwin requested assurance that the desiccated brush would be removed. Vice President Danziger asked if the District was aware of the brush. Fire Chief Winnacker confirmed the brush is part of the Tunnel East Bay Hills fuel break and scheduled for a prescribed burn.

There were no additional requests to address the Board. Vice President Danziger closed public comment.

8. ANNOUNCEMENTS (audio 12:23)

8.1 Brief information only reports related to meetings attended by a Director at District expense (Government Code Section 53232.3(d)). No Report.

8.2 Questions and informational comments from Board members and Staff. Vice President Danziger attended the Wilder Health and Safety Fair on June 12, 2022. Other agencies in attendance (Red Cross, East Bay Regional Parks, East Bay Municipal District, City of Orinda, and CERT).

8.3 Communications Received. Fire Chief Winnacker reported correspondence received from East Bay Regional Park District, which was forwarded to the directors and included on the website.

8.4 Fire Chief Updates**a. Finance Report**

Administrative Services Director Sasser provided the report and presented the status of OES reimbursements, attached to these minutes, item 8.4(a).

b. Human Resources

Human Resources Manager Russell provided the report. Firefighter/Paramedic interviews are in progress—total of 41 applicants, with 33 advancing to the oral board interviews. The panel will identify candidates to advance to the paramedic evaluation. Vice President Danziger asked if the candidates included lateral transfers. HR Manager Russell answered no as the three lateral applicants did not qualify. Fire Chief Winnacker added that this was the second time the District had similar results with a small number of laterals, one of whom was moved forward and then declined the interview. President Donner asked about the disqualifying factor for the three candidates. HR Manager Russell explained candidates had to be currently employed by a fire department, non-probationary in current standing, and have 18 months of continuous experience. The candidates did not meet these qualifications.

c. Fire Marshal

Fire Marshal Isaacs provided the report and outlined the statistics in the Monthly Fire Prevention report included in the Board packet. Fire Chief Winnacker discussed the 3 feet roadside and 15 feet vertical clearance violations and shared that the District drove all major evacuation routes with a 14-foot fishing pole to identify trees that were overhanging the road and found over 700 trees in violation. Pre-citations have been trending at 200 per day since June 1. Staff expects to see those numbers continue through the end of the month. Initial inspections will be done by the end of June, at which time Staff will turn to responding to complaints received and follow-up inspections. Fire Chief Winnacker stated many parcels have recurrent violations and are waiting for the District to inspect their parcel as the prompt to begin their annual work. This reluctance in completing the annual abatement work prevents the District from expanding efforts into new areas of the District and limits the District's ability to advance the goal of community fire safety. Fire Chief Winnacker encouraged parcel owners to complete the work and not wait for an inspection. Vice President Danziger asked at what point are the property transfer inspections performed. Fire Chief Winnacker explained a seven-month window to obtain a compliance certificate, from six months before the sale to one month after. Vice President Danziger inquired when the school's state-mandated inspections are performed. Fire Marshal Isaacs answered during the school year when conditions accurately reflect the fire risk posed to students and staff.

d. Operations

Fire Chief Winnacker provided the report and shared a PowerPoint presentation, attached to these minutes, item 8.4(d). Crews completed multi-company evolutions at St. Mary's College. Fire Chief Winnacker expressed appreciation to St. Mary's College for allowing the use of their facilities. On May 23, 2022, Engine 343 responded as part of an intra-county strike team to assist San Ramon Valley FPD and CAL FIRE with a mutual-aid request for a vegetation fire near Camino Tassajara. MOFD conducted an intra-agency sand table exercise to review BART operations. Representatives from BART, Oakland FD, and Contra Costa County FPD participated in a sand table drill focused on BART train updates, emergency action plans, and department policy updates. Staff participated with members of the North Bay, South Bay, and East Bay Incident Management teams. MOFD hosted a mutual-aid response drill with Oakland Fire and East Bay Regional Park District at Sibley Park.

Fire Chief Winnacker reported Captain Ford was assigned to New Mexico on the Calf Canyon Fire as a Communication Technical Specialist. Firefighter/Engineer Rogness was reassigned from the Graham Fire in Lassen National Forest to the Sheep Fire in the Angeles National Forest as a GISS. Captain Marquardt returned from his assignment as Safety Officer for the Graham Fire. Fire Chief

Winnacker reported Staff completed 95% of the annual fire hydrant maintenance and 50% of fire trail grading (some delays due to the late rains).

On June 5, 2022, MOFD responded to a citizen in active childbirth and delivered a healthy baby girl. Fire Chief Winnacker concluded the 25th Anniversary flags had been distributed to each station. Fire Chief Winnacker commented on the Fire Marshal's role on the Zone 0 committee. The Board of Forestry State committee is developing standards for Zone 0 (0 to 5 feet), one of the most critical areas for a home's survivability. The District has advanced Zone 0 with the adoption of the 2-foot by 1-foot box, the area where homes are most likely to burn. Fire Marshal Isaac's participation on this State committee is critical to ensure the District's voice is heard. Fire Chief Winnacker shared he has been named as the California Fire Chiefs Association representative on the Wildfire Prepared Community Working Group.

Vice President Danziger opened Public Comment for items 8.1-8.4.

Jonathan Goodwin, Canyon resident, expressed support for the multi-agency drills.

Charles Porges, Orinda resident, inquired about the statistics for the chipper program and if the numbers included both the city of Orinda and MOFD chipper. Mr. Porges reported dead trees by the San Pablo Reservoir.

Fire Chief Winnacker answered the chipper program statistics only include the MOFD chipper. The Measure R chipper is reported separately by the city of Orinda. Fire Chief Winnacker discussed the dead trees by the San Pablo Reservoir are due to the die-off of the Monterey Pine Plantation. These are SRA lands with 1/2 - 1/3 of the area falling within the District. The East Bay Municipal District, East Bay Regional Parks District, and the University of California have asserted that the Fire District has no authority over SRA lands other than enforcement of the fire code's provisions directly related to structures. If those assertions are correct, the 2500 dead trees in that area are beyond the District's jurisdiction, even though they are within the District boundaries as recognized by LAFCO. Unfortunately, there are no State minimum requirements regarding fuel mitigation measures on undeveloped parcels. Anything beyond 100 feet from a structure is essentially unregulated by the state minimums for open space.

There were no additional requests to address the Board. Vice President Danziger closed Public Comment.

Fire Chief Winnacker requested moving Regular agenda item 10.9, MOFD Authority in SRA and Fire Road 42-13 Update to before Item 10.1 on the Regular agenda in deference to District Counsel in attendance. Vice President Danziger agreed. All Directors concurred.

9. CONSENT AGENDA (audio 39.31)

9.1 Meeting Minutes – May 18, 2022 (Regular)/Staff Recommendation: Approve and File

9.2 Monthly Incident Report – May 2022/Staff Recommendation: Approve and File

9.3 Monthly Check/Voucher Register – May 2022/Staff Recommendation: Approve and File

9.4 Monthly Financial Report – May 2022/Staff Recommendation: Approve and File

9.5 Reject Claim from State Farm Mutual Automobile in the Amount of \$2,149.73/Staff Recommendation: Reject Claim from State Farm Mutual Automobile in the Amount of \$2,149.73

Vice President Danziger opened the public comment for the consent agenda items 9.1-9.5. There were no requests to address the Board. Vice President Danziger closed public comment.

Vice President Danziger requested item 9.5 be pulled from the Consent Agenda.

Motion by Director Jorgens and seconded by Director Danziger to approve Consent Agenda items 9.1 through 9.4. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None).

9.5 Reject Claim from State Farm Mutual Automobile in the Amount of \$2,149.73

Vice President Danziger asked for Staff to review the incident. Fire Chief Winnacker reported the crew left a wheel chock in the road in error during a late night/early morning call, and a vehicle struck the wheel chock, which caused damage to the vehicle. ASD Sasser explained rejecting the claim against the District is a matter of course as the reimbursement request needs to go through insurance and not through the District directly. Director Jorgens recommended adding the procedural information to future staff reports to prevent the item from being pulled.

Vice President Danziger opened the public comment for the consent agenda item 9.5. There were no requests to address the Board. Vice President Danziger closed public comment.

Motion by Director Jorgens and seconded by Director Donner to approve Consent Agenda item 9.5. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None).

10. REGULAR AGENDA

10.9 MOFD Authority in SRA and Fire Road 42-13 Update (audio 44:31)—~~out of order requested by Chief Winnacker.~~

Fire Chief Winnacker provided the report. At the May 2022 board meeting, a member of the public expressed concern that the fire trail 42-13 connecting Bollinger Canyon with San Ramon is out of service due to a minor slide that occurred in 2019. The fire code requires fire trails to be maintained; however, East Bay Regional Park District (EBRPD) has responded to MOFD's request to repair the slide by stating the trail is "not a priority." As with the question of enforcing fuel mitigation standards required by Ordinance 22-02, with the exception of structures, EBRPD does not recognize MOFD's authority on SRA lands within the fire district's boundaries (articulated in a letter received from EBRPD under public comment during the adoption of Ordinance 22-02). District Counsel sought to clarify the assertions with CAL FIRE made in EBRPD's letter regarding CAL FIRE's exclusive authority. The response received from CAL FIRE did not address the questions posed regarding the authority to enforce local standards which meet or exceed state minimums. Additional public comment was received from EBRPD, attached to these minutes.

Fire Chief Winnacker summarized the correspondence, stating that the District may only respond to the Park District lands under the MOFD/EBRPD Cooperative Fire Operations and Mutual Response Area (MRA) Agreement entered January 1, 2016 (Cooperative Agreement). The correspondence is a statement of independence asserting that the EBRPD SRA lands within the District's recognized exterior boundaries are outside of the District's authority and the District's more restrictive local amendments to the fire code and local ordinances adopted in accordance with PRC 4117 cannot be enforced. Fire Chief Winnacker stated these areas are recognized by the LAFCO formation maps as being within the fire district. The fire district law of 1987 states that the EBRPD does not have fire code authority or regulatory powers and no enforcement ability. Fire Chief Winnacker expressed concern with the current ambiguity, which lends itself to a sense that the EBRPD is self-regulating and is not subject to the District's oversight. If jurisdiction is left unclarified, the issue becomes such that after a fire, the District may discover that the District is responsible and accountable for failure to enforce the District's local ordinances and fire code amendments as a reasonable person would understand to be the District's jurisdiction by virtue of the LAFCO map and formation documents.

Fire Chief Winnacker contended that if the Board directs that the District does not recognize these claims of autonomy and does not enforce the District's local ordinances in SRA, the District should begin redrawing the borders to exclude the SRA. Redrawing the borders will eliminate ambiguity about the District's responsibility to enforce local ordinances and fire code amendments within the District's jurisdiction. Fire Chief Winnacker stated that given the incomplete nature of the response from CAL FIRE and lack of a resolution from the State, Staff requests direction regarding how to proceed with enforcement of Ordinance 22-02 in SRA.

Vice President Danziger requested that SRA be defined for the public. Fire Chief Winnacker explained that the District has two categorizations in the land, LRA and SRA. Local Response Areas (LRA) are the lands within the incorporated borders of the City of Orinda and the Town of Moraga. State Responsibility Area (SRA) is the grass, brush, or timber-covered lands not within a municipality. A significant portion of the 42 square miles of the District is located in SRA. These areas have very low population density, and a vast majority of these lands do not generate property tax revenue due to the limited number of structures. The major landowners are tax-exempt government entities, specifically EBMUD and EBRPD.

Director Jorgens asked if the EBRPD argument is that nobody has authority, or only CAL FIRE has the authority over the SRA lands outside of a city limit. Fire Chief Winnacker stated the answer is nuanced. EBRPD's initial letter submitted during public comment on March 16, 2022, argued that except for structures, only CAL FIRE had authority over SRA and that CAL FIRE's primary fiscal responsibility is clearly outlined in State law and which EBRPD equated to exclusive responsibility. This argument is a novel concept and not in alignment with interpretations being followed in other jurisdictions. As an example, the Fresno County Fire Protection District has CAL FIRE employees under contract to enforce more restrictive local fuel mitigation measures in SRA. The initial EBRPD letter submitted on March 16, 2022, articulated that only CAL FIRE could enforce fire safety regulations in SRA. The letter submitted for Public Comment on June 15, 2022, suggests that the EBRPD fire department, technically a fire brigade because it does not have fire code authority or a fire code official, was responsible.

Fire Chief Winnacker noted the important caveat to this statement. State law provides clear authority for local government authority with regard to structures in SRA. The District has the primary responsibility for structures within a fire district. Fire Chief Winnacker opined what is unknown is where the responsibility for a structure stops and that it may stop at the exterior walls of the structure (per a CAL FIRE statement made during a Building Standards Commission meeting), at the 100-foot limit of defensible space, or the property line. The property line can be a significant distance from the structure on some larger parcels. The delineation of where responsibility for structures ends is unknown; however, the authority around structures belongs to MOFD, to include on lands owned by both the EBRPD and EBMUD. EBRPD and EBMUD building permits are submitted to, reviewed, and approved by the District.

Fire Chief Winnacker summarized the discussion of authority around structures was clearly understood. What is not understood is where the responsibility for structures end (at the walls, 100 feet, or at the property line). This question has not been previously resolved because no other agencies have asserted that CAL FIRE has exclusive authority. There has not been a situation where it has become contentious about a fire district's authority away from structures in SRA.

Director Jorgens asked if the District treats EBRPD a certain way, will it require the District to treat Canyon the same. Fire Chief Winnacker confirmed the initial letter submitted on March 16, 2022, was a statement of lack of authority in SRA over undeveloped lands and is not specific to park district land, which is why the District held off on issuing citations in SRA. The District wanted to ensure that the District provided a uniform application of the ordinance.

Director Jorgens commented on some of the potentially large parcels in Canyon with houses. Fire Chief Winnacker stated the residential parcels in Canyon are relatively small, high-density, and close together, with one or two exceptions. There are more single houses on large parcels in Bollinger. Fire Chief Winnacker restated the ambiguity of authority around structures.

Director Jorgens concluded that redrawing the District lines is not the most desirable solution considering the District's objectives. Fire Chief Winnacker agreed and would not recommend that as a primary course of action. However, if the District were drawing the lines to exclude the SRA, CAL FIRE does have the primary fiscal responsibility for fire prevention and suppression in SRA. That is the plain language of the appropriate laws and statutes. If the District were to redraw its borders to only cover the LRA, those SRA areas would default to CAL FIRE for the primary fiscal responsibility for the prevention and suppression of fire.

Director Jorgens stated part of the District's responsibility is to the rest of the community. If a fire occurs in SRA and the District does not respond and if CAL FIRE does not have the local staff to deal with the fire, this endangers the rest of our community. Fire Chief Winnacker concurred and requested that the statement be expanded to include fire prevention as many elements of a successful fire fighting operation will be determined before a fire starts. The fire prevention activities that occur months or years before the fire give the suppression resources a chance to make a stand against a fire. Director Jorgens agreed.

President Donner asked if CAL FIRE would inspect properties on the District's behalf on SRA lands. Fire Chief Winnacker confirmed when this issue began last year, and the District submitted a written request to CAL FIRE to conduct LE-100s around the SRA buildings; CAL FIRE could not fulfill the request due to staffing shortage. Pre COVID, the District and CAL FIRE would share information and outreach efforts with the CAL FIRE inspectors in Canyon. However, due to the staffing shortage, CAL FIRE could not support these efforts during and post COVID.

Director Jorgens commented that outside the District, dead trees are allowed on properties because it is not against the Contra Costa Fire Protection District fire code and assumed the State fire code is no stricter than the District's fire code standards. It would not serve the District's purpose to lower the District's standards for areas inside the District. Fire Chief Winnacker affirmed that the District's local amendments exceed State minimums. Director Jorgens stated CAL FIRE only enforces its fire code standards. Fire Chief Winnacker confirmed that CAL FIRE can only enforce State minimums.

Vice President Danziger acknowledged the request from Tamara Galanter to speak about the EBRPD position.

Tamara Galanter, a partner at Shute, Mihaly & Weinberger, outside Counsel to the EBRPD (static - inaudible), stated the District could not regulate completely within the SRA; rather, the District cannot regulate within the undeveloped areas of SRA. Ms. Galanter explained that means the District can regulate structures and not just the border of the structure, but the defensible space around structures. (static) Vice President Danziger announced the audio was not working. Ms. Galanter asked if the Board

could hear her statement, if she should start over or where the Board could last hear her statement. Vice President Danziger asked Ms. Galanter to begin at the regulating 100 feet out from structures.

Ms. Galanter stated that Park District agrees that the Fire District has the ability to regulate developed areas within SRA, regulate the defensible space, and dictate where that defensible space is around structures. The Park District's position is that the Fire District's enabling legislation states the Fire District has the ability to regulate within developed areas of SRA. It is CAL FIRE that has jurisdiction within the undeveloped areas. The concern raised about other undeveloped areas in the SRA is only EBRPD and EBMUD have undeveloped areas within the SRA. The other areas referred to earlier are residential areas, so the Fire District should be regulating around those structures which would be completely consistent with the jurisdiction. The legislation that allows for stricter regulation is still limited. It gives cities the ability to regulate and have stricter standards, but does not mean that cities can have stricter standards outside their jurisdiction. The cities do not have authority. Likewise, the Fire District does not have jurisdiction. (static - inaudible). Director Jorgens asked if Ms. Galanter was still there. District Counsel Holtzman stated whatever that noise heard earlier came back and asked if Ms. Galanter was still there. Ms. Galanter acknowledged and stated she did not hear the noise, and her computer did not indicate any problems. Ms. Galanter asked if the Board wanted her to start at some point.

Vice President Danziger stated she could continue from there. Ms. Galanter stated she was finished as she was stating EBRPD's position, which was not previously accurately reported. District Counsel Holtzman inquired about the first letter EBRPD submitted to MOFD. A portion of the sentence quoting the health and safety code 13811 was cut in half. Mr. Holtzman expressed curiosity about the basis of EBRPD's position when looking at the whole sentence. The whole sentence reads, "Upon inclusion of a state responsibility area in a district, whether by formation or annexation, the state shall retain its responsibility for fire suppression and prevention on timbered, brush, and grass-covered lands." (HSC § 13811). The Fire District interprets this to mean its fiscal responsibility.

Mr. Holtzman continued to read the remainder of the sentence, "The district shall be responsible for fire suppression and prevention for structures." Mr. Holtzman stated this is where the EBRPD cut off the sentence in their letter. Mr. Holtzman read the rest of the HSC § 13811 code "and may provide the same services in the state responsibility area as it provides in other areas of the district." Mr. Holtzman expressed curiosity about why EBRPD left this language out of the letter and EBRPD's interpretation of the rest of the sentence. Ms. Galanter explained that EBRPD left that portion of the sentence out for a very good reason. The reason is services are very different than regulations. Services are for suppression or the fire district's work that Fire Chief Winnacker described. Regulation is something different, and that sentence really is not relevant to regulation itself, and no one would ever interpret regulation as being a service.

District Counsel Holtzman inquired about EBRPD's opinion on the code section that states any Park District within the bounds of a Fire Protection District is subject to the regulation of the Fire Protection District. Ms. Galanter opined there is no question about the boundaries. That does not mean the District has unlimited jurisdiction to do anything they would like to do within those boundaries because that is not what the District's enabling legislation allows. Director Jorgens commented that legislation allows the Fire District to write codes. Ms. Galanter agreed and stated the District is allowed to write codes, but the question is, where do the codes apply? The codes can apply to all of the structures and can apply within the LRA, but the codes do not apply to undeveloped areas within the SRA. Ms. Galanter stated that EBRPD also inquired with CAL FIRE to clarify this issue, and CAL FIRE refused to give any guidance on this subject.

District Counsel Holtzman opined that EBRPD is wrong on this issue without expanding into an extensive legal debate. The issue is a policy call for the Fire Board of Directors about whether the Board wanted to exercise jurisdiction. Mr. Holtzman stated he believed the Fire District has jurisdiction.

Vice President Danziger asked about the May 20, 2022, letter from CAL FIRE giving the enforcement authority to the Fire District. Fire Chief Winnacker explained that authority was specific to public resources code (PRC) 4290, which is limited to several topics, one of which is the standard for green belts and fuel breaks currently undergoing review and final approval by the Board of Forestry. Fire Chief Winnacker explained his involvement in that process, and the legislator has directed CAL FIRE to publish a standard on or after July 1, 2021. When that standard is published, the delegation of PRC 4290 will relate to the State minimum for green belts and fuel breaks. The delegation PRC 4290 is relevant in specific areas but, in its current form, not in the area of the discussion of MOFD Ordinance 22-02.

Director Jorgens requested District Counsel explain the legislation that gives the District authority to write codes. District Counsel Morley explained what Mr. Holtzman was referring to PRC 5561.6, which states the districts are primarily responsible for the prevention and suppression of all fires on any lands in their possession and control. Therefore, the Parks District is primarily responsible for the prevention and suppression of all fires on its lands except when those lands fall within a municipality or a Fire Protection District. Director Jorgens asked if that meant the District is responsible for protection and prevention as well as suppression in our entire District. District Counsel Morley confirmed prevention and suppression.

Director Jorgens conjectured that would include writing and enforcing codes. District Counsel Morley confirmed the promulgation and enforcement of fire prevention regulations in the District. Director Jorgens asked why it would not apply to what EBRPD is arguing. District Counsel Morley stated that District Counsel believes that it does apply.

Director Jorgens asked if EBRPD had a response to the application of the PRC. Ms. Galanter answered that it applies and that is why EBRPD entered into a Mutual Aid and Cooperative Agreement with the Fire District, and that is how that is implemented through that agreement. The Appellate Court has recently found that the Park District, the East Bay Regional Park District specifically, under its enabling legislation, has authority for what it does within its jurisdiction. EBRPD not only has its enabling legislation but has a court decision that gives the Park District those rights, recognizing that the Park District straddles many counties and numerous fire districts. The Park District would have a checkerboard of regulations that would be imposed on the Park District. The Park District would have to comply with all sorts of different regulations in different areas. The courts recognized that and found that based on that, under the Park District's enabling legislation, the Park District does have the authority to regulate within its jurisdiction.

Director Jorgens stated that the EBRPD argument would state that the District did not have the authority to regulate housing and the 100 feet around a house. Ms. Galanter answered the courts might find that, but EBRPD is not taking that position. EBRPD is saying that based on the District's enabling legislation, the Park District can see that the Fire District can regulate around (static – inaudible). Director Jorgens stated that is cherry-picking and picking the parts the Park District likes. Ms. Galanter responded her answer was explaining what the Court said and EBRPD's position. EBRPD recognizes that the District provides a valuable service, especially around structures. The Park District has structures, and it is agreed that EBRPD will comply with the Fire District's regulations around structures. Director Jorgens responded that it sounds like this is going to be a better thing to take care of in courts rather than in a public meeting. There were no further discussions or questions for Ms. Galanter.

Vice President Danziger opened the public comment.

District Clerk Holbrook announced one additional written public comment was received by 3:00 p.m. from Suzanne Jones, Bollinger Canyon Improvement Association Secretary, regarding the mudslide on the fire trail connecting Bollinger Canyon to San Ramon and making it impassable to vehicular traffic, including emergency vehicles. The Association considers its repair an urgent matter for the safety of the residents and hence dismayed to read EBRPD's recent letter to MOFD outlining its position regarding District Ordinance 22-02. The comment was forwarded to the Board of Directors and made available for viewing on the District website, attached to the minutes as item 10.9 public comments.

Jonathan Goodwin, Canyon resident, expressed sympathy to the Park District's desire not to be subject to the other public entities. Mr. Goodwin stated that the Park District acknowledged the Fire District has authority around development. A fire road seems to be a form of developed improvement of an area. Mr. Goodwin inquired about the legal process moving forward.

Fire Chief Winnacker answered the District has engaged LAFCO and confirmed the District maps and enabling formation documents were correct. LAFCO was unwilling to provide any analysis, review, or opinion on the situation. Fire Chief Winnacker answered there are no State minimums regarding the fire roads. Local amendments to the fire code or local ordinances allow for the enforcement of fuel mitigation and fire safety standards in undeveloped areas.

Director Jorgens added the discussion is more than about the fire road. This discussion is about enforcing the local fire code in the District. Mr. Goodwin replied that the discussion became that, but the genesis of the discussion was a fire road. Fire Chief Winnacker clarified that the fire road was a discussion raised last month by a resident. The broader issue goes back to MOFD's efforts to enforce the fire code in 2021 and comments received from the East Bay Regional Park District, East Bay Municipal District and by the University of California around the adoption of MOFD Ordinance 22-02.

Rachel Sater, Assistant General Counsel of East Bay Regional Park District, stated that EBRPD was unaware of the concern about what the person believed to be a fire road and learned of the concern from the MOFD staff report and public comment. Ms. Sater clarified that what Ms. Jones identified as a fire road is an old ranch road. A road which predates the Park District's ownership of the parcel and was not used as a fire access route by the Park District. The Park District maintains its fire roads to standards for emergency fire equipment use. This road is not one of those routes. It is essentially a spur and exists on a slide-prone hillside. Ms. Sater stated it is not accurate to call it a small slide, it is a major slide that has affected that bit of an old ranch road, and that slide is evident in other land movements on that entire Hillside. The Park District has attempted to fix this area a few times in the last ten years and continuously washes out. The Park District does not recommend Park District roads as evacuation routes to the public. Those roads are not intended or safe for that purpose.

Mark Evans, Orinda resident, expressed disappointment in EBRPD's response and stated it is due to a lack of funding. Mr. Evans suggested gaining compliance by having representatives pressure the State to manage the urban forests and remove the dead wood for the community's safety.

District Counsel Holtzman asked Ms. Sater about her comments that the road had not been designated as a fire road, inquired who makes that designation, and put forth that the fire code official makes the designation. Ms. Sater answered that the Park District's fire department makes the designation. The Park District has roads that the Park District has identified in their 125,000 acres of land that are managed as necessary fire access routes. Ms. Sater encouraged public members interested in the Park District's fuels management activities to visit their website.

Fire Chief Winnacker asked Ms. Sater what the standards are for maintaining the fire roads/fire trails and under what authority these standards are adopted. Ms. Sater responded that she could not provide the technical specifications; however, she knows that the Park District maintains them so their fire equipment can access the roads. Fire Chief Winnacker explained that the fire code is where the designation and standards to which fire roads are maintained are derived and are exclusive purview of the fire code official. Within MOFD exterior boundaries, there is one Fire Code Official (Fire Chief) or their designee (typically the Fire Marshal). The position being advanced is outside the bounds of the Fire Code. East Bay Regional Park District does not (and cannot) have a Fire Code Official, does not (and cannot) adopt the Fire Code, does not have Fire Code enforcement authorities, and is choosing to unilaterally enforce elements of the Fire Code in a manner of their choosing.

Charles Porges, Orinda resident, commented that the state legislators should clarify and encouraged the Board to contact the State legislators to explain this confusion and try to get them to pass some legislation that hands authority to somebody. Mr. Porges recommended going through the legislative process if the lawyers cannot agree.

There were no additional requests to address the Board. Vice President Danziger closed public comment.

Fire Chief Winnacker responded that the District has engaged with elected local representatives on this issue over the last year and a half, and they have been unresponsive. Fire Chief Winnacker added that the District believes the legislator has answered this question under PRC 4117, where the legislator's intent is explained in plain language "It is not the legislator's intent that this legislation shall preclude a local jurisdiction from passing more restrictive measures when local fire conditions require it."

Director Jorgens stated the request for direction is to provide a recommendation regarding enforcement. Our duty as a fire board and District is to protect the citizens from fire danger and emergency services. The District cannot disavow ownership of that duty. The Board must do everything in its power to enable the enforcement of the fire code that the State has given the authority to enforce. Director Jorgens opined that there are two ways to enforce the code, go to Court or elect people who are willing. Director Jorgens expressed concern and recommended the Board move ahead soon.

Vice President Danziger agreed and stated it is outrageous that EBRPD does not recognize MOFD Ordinance 22-02. Vice President Danziger encouraged citizens to contact EBRPD elected representative (Dee Rosario (DRosario@ebparks.org), representing Ward 2). Vice President Danziger asked if this issue has come up for other jurisdictions. Fire Chief Winnacker confirmed. The resolution would have statewide implications and impact how the fire code and local fire safety ordinances are applied in many places. Many people are watching the resolution because everyone has the same problem: the concern about Wildfire spreading from undeveloped lands to developed lands, threatening lives and property.

Vice President Danziger inquired about the possibility of issuing an Administration Citation. District Counsel Holtzman answered every case is different. The fact that there is a disagreement on this issue does not mean that the District should delay pursuing what the District thinks is the right course of action. District Counsel Holtzman deferred to Fire Chief Winnacker.

District Counsel Holtzman stated that the law is not a model of clarity. District Counsel interprets the law to give the District authority. In addition, from a very common-sense perspective, it does not make sense to say that the District is responsible for putting out fires in certain areas but cannot regulate fire safety in those areas. Furthermore, the purpose of the regulation is to prevent these fires and when the District fights those fires, to make them safer, and to make the situation less severe. It seems very counterintuitive that the District's fire prevention enforcement powers would differ from the District's fire suppression obligations. District Counsel Holtzman agreed that if this area all burns down, somebody will say it was the Fire District's responsibility. District Counsel Holtzman advised the District legally has a strong case.

Fire Chief Winnacker reminded the Board when Ordinance 22-02 was adopted in light of the concerns raised; the direction from the Board was for Staff hold off on enforcement of that ordinance as it applied in the SRA lands pending resolution of the assertions made by EBRPD, EBMUD, and the University of California. The pending resolution was for an answer from CAL FIRE regarding the assertions made on CAL FIRE's exclusive Authority in SRA. While the District received a response from CAL FIRE, both parties agreed that the response received did not answer the question of exclusive authority. Fire Chief Winnacker requested direction on moving forward with enforcement of Ordinance 22-02 in the SRA lands that would apply to all SRA lands within the MOFD jurisdiction.

Director Jorgens asked if EBRPD has many parcels or one big parcel. Fire Chief Winnacker answered many parcels. Director Jorgens asked if the District would need to issue a citation for each parcel. Fire Chief Winnacker confirmed. Director Jorgens supported enforcement of Ordinance 22-02 in all SRA lands. President Donner and Vice President Danziger agreed and supported the enforcement of Ordinance 22-02 in all SRA lands. Vice President Danziger asked if the District called 42-13 a fire trail. Fire Chief Winnacker confirmed that 42-13 has been designated as a fire trail. Vice President Danziger inquired if Staff needed to come back to the next meeting to explain how Ordinance 22-02 would be enforced. President Donner stated the Board had already adopted the code, and the Fire Chief is to enforce the codes in the ordinance. Director Jorgens agreed. Vice President Danziger asked if the Fire Chief had enough direction. Fire Chief Winnacker concurred. All directors agreed to enforce Ordinance 22-02. No further discussion by the Board.

10.1 Working Group Report Single Role EMT and Paramedic Positions. (audio 01:41:56)

Fire Chief Winnacker provided the report. At the May 2022 regular board meeting, staff was directed to form a working group to develop a proposal to implement single-role paramedics to increase ambulance staffing. The working group was also tasked with exploring the creation of a single-role EMT position and the appropriate supervisory structure. A working group comprised of President Donner, Director Baitx, L1230 representatives, and Fire Chief Winnacker met on May 27. At this meeting, it was determined that L1230 did not support the proposal. The Directors were concerned with the firefighting weight of attack implications associated with reducing daily FF/PM staffing. The meeting was adjourned without further discussion.

Vice President Danziger opened the public comment.

Mark Evans, Orinda resident, inquired about the background of the agenda item. Vice President Danziger provided a brief background from the May 2022 board meeting and referred Mr. Evans to the May meeting. Mr. Evans requested more information on the pros and cons of the issue.

Jonathan Goodwin, Canyon resident, expressed surprise that there was no look at the financial impact. Mr. Goodwin did not understand the staff report as it did not produce the pros and cons and requested the working group do more work. Vice President Danziger clarified the item was extensively discussed at our May Board meeting and previously discussed in prior years. The item was only referring to a group that was going to discuss the topic and findings. That working group did not meet to discuss the idea of increasing Staffing and having dedicated Staffing at station 45 in Orinda for an Ambulance. From reading the staff report, L1230 did not want to discuss Staffing that ambulance with other than firefighters/paramedics, and that is why there was no meeting.

Charles Porges, Orinda resident, expressed disappointment in the Union's response. Mr. Porges stated the discussion should be held in an open public meeting, and the public should hear the opinions.

Vincent Wells, Local 1230 Union President, opposed how the meeting was summarized. Mr. Wells stated L1230 has been requesting to restore staffing levels to a permanently staffed second ambulance (one in Moraga and one in Orinda). Mr. Wells reviewed the downside to cross-staffing the ambulance (if permanently staffed ambulances are on a fire or transporting to a hospital that ambulance is not available). The District has the Budget and revenue to restore the ambulance. L1230 opposed the single-role paramedic or a non-firefighter paramedic. L1230 is not interested in discussing single-role paramedics but is interested in discussing the restoring of a permanently staffed ambulance.

There were no additional requests to address the Board. Vice President Danziger closed public comment.

Director Jorgens commented that the topic on the agenda is a report about the task given to the Staff, which included gathering data on the economics and the pros and cons of having a single-role paramedic. Director Jorgens supported the idea of having more Staffing for an ambulance but did not agree with some deployment concepts. The District also wants to be consistent with what the San Ramon District does and other people worldwide because the Board has to worry about economics. The concept of a single-role paramedic has been in the MOU for the last three negotiations. The Board owes it to the community to understand the economics of all the alternatives so the Board can make a reasonable, logical decision based on what is best for our community and the best allocation of resources for our community. Director Jorgens stated the Board needs to figure out how to support Staff and whatever mechanism is needed to go back and gather the data.

Vice President Danziger commented that the data has already been provided in previous reports. Director Jorgens added that the Board discussed extensively in the May meeting how it needs the data on the economics of the single-role paramedic. Once the Board has this information, the Board can discuss and compare with the other alternatives. Vice President Danziger agreed and asked if the item should be continued next month for additional information. Vice President Danziger and Director Jorgens defined the additional information as the same questions the working committee was asked to gather. To understand the economics of having a single-role paramedic, the alternative of an EMT and a paramedic or two paramedics, and to review how many personnel the District would have to hire and the supervision structure. Director Jorgens inquired if Staff would be able to gather that data.

Fire Chief Winnacker confirmed and asked for clarification about the composition of a working group or if the direction is to proceed independently and develop something that would then be the basis of ongoing discussions. Fire Chief Winnacker explained there are numerous meet and confer elements that will require additional discussion. Fire Chief Winnacker requested clarification if the task is to form a new working group to develop these elements or if the task is to price EMT paramedics single function and make a proposal that would be the starting point of future discussions. Director Jorgens deferred the decision to Staff. If the parties do not want to come to the table, information is needed to figure out what can be done and have something more concrete for people to understand and react to the information.

Vice President Danziger asked if the Fire Chief has the authority to do a single-role paramedic. Fire Chief Winnacker answered that the District has the position and the pay scale. The meet and confer and details of how that would be implemented have never been developed. The District has a pay scale and name for the position in the MOU. Vice President Danziger asked if that only existed for paramedics, not EMTs. Fire Chief Winnacker confirmed.

President Donner asked if the San Ramon, Berkeley, and South San Francisco are doing paramedic-paramedic or paramedic EMT. Fire Chief Winnacker answered EMT paramedic mix. Having an EMT to assist on-scene and then drive is beneficial and has been seen as beneficial by those agencies that have adopted that model. Fire Chief Winnacker explained the benefits are cost savings (EMTs are paid less than paramedics) and the size of the recruiting pool. There are a lot more EMTs than paramedics. EMTs can be ingested into the system, trained to become paramedics, and eventually hired as firefighter-paramedics. Creating the EMT position unlocks the opportunity for a hiring pipeline and a career progression element to get folks in earlier in their career.

Vice President Danziger concluded that the item does not need to come back next month and that a working group is unnecessary. For discussion, the Board needs to look at the single-role EMT and paramedic model on each ambulance, Staffing two ambulances, and the model of two paramedics. The District already has the cost and needs to know how many the District would need to hire. This could be the discussion for the Board. If an agreement or consensus is determined, the item can go to the next level as a meet and confer. Director Jorgens agreed. Fire Chief Winnacker concurred.

District Clerk Holbrook announced that a member of the public had raised their hand after the close of public comment.

Vice President Danziger re-opened the public comment.

District Clerk Holbrook announced Anthony Stephens by name and promoted the attendee to panelist to speak. Mr. Stephens did not respond after multiple announcements of his name. No further discussion by the Board

10.2 Resolution 22-15 Adopting a Modified Schedule of Cost Recovery Fees for Emergency Medical Services (audio 2:03:24)

Administrative Services Director Sasser provided the report. Emergency medical services are partially paid for by ambulance transport cost recovery fees, and non-transport emergency medical services cost recovery fees. Staff recommended the Board increase ambulance transport fees based on the Consumer Price Index (CPI) for the San Francisco – Oakland – Hayward, CA area. The April 2022 CPI increased 5.00%. Staff recommended the Board adopt Resolution 22-15 Adopting a Modified Schedule of Cost Recovery Fees for Emergency Medical Services effective July 1, 2022.

Vice President Danziger opened the public comment. There were no requests to address the Board. Vice President Danziger closed public comment.

Director Jorgens inquired about adding a fuel recovery fee. Fire Chief Winnacker answered Staff would need to research the inquiry to determine if fuel recovery is permissible and bring a modification to the fee schedule back to the Board if allowed.

Motion by Director Jorgens and seconded by Director Donner to adopt Resolution 22-15 Adopting a Modified Schedule of Cost Recovery Fees for Emergency Medical Services. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None. No further discussion by the Board.

10.3 Resolution 22-16 Establishing the District's Annual Appropriations Limit for Fiscal Year 2022/23 (audio 2:05:50)

Administrative Services Director Sasser provided the report. Each year the Board of Directors is required to establish an appropriations limit for the District per California Government Code Section 7910. In accordance with the calculation formula established in the Government Code, the District's appropriations limit for Fiscal Year 2022/23 is \$36,207,281. Staff recommended the Board adopt Resolution 22-16 Establishing the District's Annual Appropriations Limit for Fiscal Year 2022/23.

Vice President Danziger opened the public comment. There were no requests to address the Board. Vice President Danziger closed public comment.

Vice President Danziger inquired about the formula for the percent change in population in conjunction with the percentage change. ASD Sasser explained the percentage change in per capita personal income was 7.55%, and the population change in Contra Costa County was -.41%. Those two factors are used to add to the last year's limit and to calculate this year's limit. Vice President Danziger asked if the equation is to subtract the negative -.41% from 7.55%. ASD Sasser confirmed.

Motion by Director Jorgens and seconded by Director Donner to adopt Resolution 22-16 Establishing the District's Annual Appropriations Limit for Fiscal Year 2022/23. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None. No further discussion by the Board.

10.4 Adopt Resolution 22-17 Establishing the Fiscal Year 2022/23 Fire Flow Tax Rates for the Orinda and Moraga Service Zones (audio 2:09:22)

Administrative Services Director Sasser provided the report. Every year the District is required to set the rate for the Fire Flow Tax in each of the District's two service zones. In order to place the tax on the County Assessor's rolls for fiscal year 2022/23, the tax rate must be established by Board action and then levied against each parcel. The current year FY2021/22 Fire Flow Tax Rate was established at six cents (\$.06) in both the Moraga and Orinda service zones. Staff recommended the Board adopt Resolution 22-17, adopting the Fire Flow Tax rate of six cents (\$.06) in both the Moraga and Orinda service zones.

Vice President Danziger opened the public comment.

District Clerk Holbrook announced one written public comment was received by 3:00 p.m. from Steve Cohn, Orinda resident, requesting the Board set the Fire Flow Tax Rates to their maximum level, 6 cents for the Orinda Zone and 30 cents for the Moraga Zone. The comment was forwarded to the

Board of Directors and made available for viewing on the District website, attached to the minutes as item 10.4 public comments.

Charles Porges, Orinda resident, concurred with Mr. Cohn's comments that Moraga was not paying its fair share and requested the Board discuss raising Moraga's fire flow tax rate.

There were no additional requests to address the Board. Vice President Danziger closed public comment.

Director Jorgens commented that the fire district happens to be a place where the two cities intersect. Moraga and Orinda pay the same property taxes and the same amount toward the fire district. The services provided by the fire district are equivalent throughout the District. Vice President Danziger agreed. The staff report showed that the amounts are equitable between the two cities.

Motion by Director Jorgens and seconded by Director Donner to adopt Resolution 22-17 Establishing the Fiscal Year 2022/23 Fire Flow Tax Rates for the Orinda and Moraga Service Zones. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None). No further discussion by the Board.

10.5 Authorize Acceptance of the FY2021 State Homeland Security Grant Program Grant in the amount of \$250,000 to Purchase one Water Tender and Authorize Staff to Enter Into a Memorandum of Understanding with the County of Contra Costa Office of the Sheriff (audio)

Fire Chief Winnacker provided the report. The District has been awarded a grant as a sub-recipient of an FY 2021 Homeland Security Grant Program awarded to Contra Costa County in the amount of \$250,000. The District intends to purchase a single rear axle water tender. Total cost to purchase the water tender is projected to be \$365K. This includes upfitting (radio, emergency lights, striping, and unit identification.) The grant will reimburse the District for the purchase cost of up to \$250K, resulting in a net use of Capital Projects Fund reserves of \$115,000. These amounts have been included in the proposed FY2023 Budget. Staff recommended authorizing the acceptance of the FY2021 State Homeland Security Grant Program Grant in the amount of \$250,000 to Purchase one Water Tender and Authorize Staff to Enter into a Memorandum of Understanding with the County of Contra Costa Office of the Sheriff. Fire Chief Winnacker noted the significant lag in these grants and price pressures on fire apparatus during and in the current State of the COVID pandemic. The grant submitted three years ago was intended for a fully outfitted water tender. The cost for the water tender is not the current cost. There is significant uncertainty around the cost. As Staff proceeds, if the cost has increased beyond the proposed \$365K, Staff will return to the Board and suggest the grant be returned.

President Donner asked about the capacity of the current water tender. Fire Chief Winnacker answered 3500, and the Staff is looking at 1800. President Donner asked if our water tender is worth anything on the used vehicle fire apparatus market. Fire Chief Winnacker answered there is not a lot of value for used fire apparatus. Director Jorgens asked if there were reasons the District would not want to have both water tenders. Fire Chief Winnacker answered that would be one of the recommendations worthy of the Board's consideration. Vice President Danziger asked if it takes two people to go on a water tender. Fire Chief Winnacker answered the minimum is one, but two is ideal. Director Jorgens commented if the District is not going to get a lot for selling the old one, it would be fine to keep the old one since it is still in good shape. Fire Chief Winnacker acknowledged.

Vice President Danziger opened the public comment.

Johnathan Goodwin, Canyon resident, prefers when the Board takes public comment after board discussion. Mr. Goodwin supported the District in purchasing a more appropriate water tender.

Charles Porges, Orinda resident, expressed support for purchasing a new water tender and keeping the old water tender. The District needs something versatile enough to get up the narrow Orinda roads.

There were no additional requests to address the Board. Vice President Danziger closed public comment.

Motion by Director Jorgens and seconded by Director Donner to Authorize Acceptance of the FY2021 State Homeland Security Grant Program Grant in the amount of \$250,000 to Purchase one Water Tender and Authorize Staff to Enter Into a Memorandum of Understanding with the County of Contra Costa Office of the Sheriff. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None). No further discussion by the Board.

10.6 Adoption of Annual Operating Budget Fiscal Year 2023 (audio 2:22:07)

Administrative Services Director Sasser presented the Budget and a Powerpoint Presentation, attached to these minutes, item 10.6. In April 2022, a public board budget workshop was held to review the Budget in detail and obtain public input and board direction. In May 2022, the Budget was reviewed in detail and discussed for the second time to obtain additional public input and additional board direction. Staff stated the Budget was scheduled for adoption. The latest date the Board can adopt the Budget is October 2022.

Vice President Danziger commented on the \$500K Home Hardening Grant Program and asked if Staff would provide additional information on how the program would work. Fire Chief Winnacker responded the Board provided direction at the May 2022 meeting (\$1,000 cap, limited to two vents, striking the portion having to do with roofs). Once the Budget is passed, Staff intends to execute in accordance with the Board's direction beginning on July 1, 2022. Vice President Danziger understood direction was provided but was unclear how it would be rolled out. Vice President Danziger requested to see how the program would work and how the installations would be confirmed. Director Jorgens stated Staff to come back to the Board with a description of how the program will work. Fire Chief Winnacker requested clarification if the requested information is an informational only item briefing out on the program implementation or is it a program for approval with a board vote in July. Vice President Danziger confirmed informational only. Director Jorgens suggested adding gutter guards to the program. Vice President Danziger responded the vents are specific with two options (brands) for retrofitting and replacing vents. The gutter guards have many options and suggested discussing gutter guards in the future. Director Jorgens agreed and stated the program could be modified once it gets going.

Vice President Danziger opened the public comment.

Jonathan Goodwin, Canyon resident, expressed appreciation to administrative staff for making the Budget more accessible than it has been in the past. Mr. Goodwin inquired about the salary and overtime pay of the Emergency preparedness position. Fire Chief Winnacker explained the overtime for this employee is for out-of-county deployments and is reimbursed by the State. Mr. Goodwin asked if that was for everybody participating. Fire Chief Winnacker answered it was only for that employee. Deployments are 14-21 days, 24 hours per day. Mr. Goodwin asked if the \$138K goes to the District or the employee. Fire Chief Winnacker answered the employee. The actual amount depends on fire activity.

Mark Evans, Orinda resident, expressed support for the Home hardening program and keeping the program to vents, as well as the need to deploy the program. Mr. Evans commented there is a lot of community interest and the importance of transparency. Fire Chief Winnacker noted it was premature to take action before the Board approved the Budget. Vice President Danziger commented on Mr. Goodwin's statement and shared that President Donner stated he was ill at the beginning of the meeting and requested Vice President Danziger to preside.

There were no requests to address the Board. Vice President Danziger closed public comment.

Vice President Danziger inquired about the Emergency preparedness position and Lafayette's funding for that position. Fire Chief Winnacker answered that Lafayette informed the District of their intent to withdraw from the cooperative agreement where the position was shared between Lafayette and MOFD. Vice President Danziger asked about the impact on the Lamorinda CERT program. Fire Chief Winnacker explained Lamorinda CERT is sponsored by MOFD but provides services throughout Lamorinda. The staff underpinning of that was the shared position that oversaw both. With the change, that is something Staff will have to re-evaluate. The staff is not positioned to answer that question with great detail now, mainly because of drum sales and other activities; CERT is almost exclusively self-sustaining, minus the staff element.

Motion by Director Jorgens and seconded by Director Donner to Adoption of Annual Operating Budget Fiscal Year 2023.

Vice President Danziger stated he had edits for the Directors Purpose and Standard of Level of Performance page and asked if it was acceptable to submit after the adoption of the Budget. Director Jorgens commented that the Board is approving the numbers. The rest of the document is mostly boilerplate and could easily change by board decree later. District Counsel Holtzman asked if there was an administrative impact. ASD Sasser stated the Budget is not printed and is an electronic PDF that goes on the website and is viewed electronically. District Counsel Holtzman asked if there was a deadline for finalizing that document. ASD Sasser answered October. Director Jorgens commented that the Budget needs to start being executed in three weeks and proposed approving the entire Budget except for the language that Director Danziger is questioning about the duties and responsibilities of the Directors. Vice

President Danziger asked if that was allowed. District Counsel Holtzman stated no present reason it would not be allowed. Vice President Danziger reiterated he is changing the standard level of performance and perhaps two goals. He will submit it within the next week to Staff to include on the agenda. Just words, nothing to do with numbers. District Counsel Holtzman stated no issue. Director Jorgens proposed the Board approve the Budget as written except for the description of the Board of Directors, which could be discussed at the next board meeting if submitted. Vice President Danziger agreed.

Amended Motion by Director Jorgens and seconded by Director Donner to Adopt the Annual Operating Budget Fiscal Year 2023 as written, except for the description of the Board of Directors. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None). No further discussion by the Board.

10.7 Adopt Resolution 22-19 Ordering Even - Year Board of Directors Election; Consolidation of Elections; and Specifications of the Election Order (audio 2:43:08)

Fire Chief Winnacker provided the report. The terms of office for three members of the Board of Directors in Divisions 1, 3, and 4 will conclude in December of 2022. California Elections Code requires a general district election to be held in each District to choose a successor for each elective officer whose term will expire on the first Friday in December. Staff recommended that the Board adopt Resolution 22-19, and in the event of a tie vote, the winner will be determined by a lot at a time and place designated by this Board. Director Jorgens supported limiting candidate statements to 400 words, and in the event of a tie vote, the winner will be determined by a lot at a time and place designated by this Board.

Vice President Danziger opened the public comment.

Jonathan Goodwin, Canyon resident, suggested the District have a page on the website for candidates to provide information on their candidacy and make their declarations.

There were no further requests to address the Board. Vice President Danziger closed public comment.

Motion by Director Jorgens and seconded by Director Donner to Adopt Resolution 22-19 Ordering Even - Year Board of Directors Election; Consolidation of Elections; and Specifications of the Election Order. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None). No further discussion by the Board.

10.8 Update on District Funded Work and Special Assessments (audio 2:50:03)

Fire Marshal Isaacs provided the report, and an overview of the District funded work and special assessments. Since 2015, the District Board has ordered the abatement of 28 properties. Of the 28 properties abated, Staff has filed paperwork for 26 of these properties. The two properties abated in 2021 will have their paperwork filed in July of this year. Of the 26 properties that have been abated using District funds, the District has received payments for 24 of them. In October 2021, the County informed the Fire District that two properties (APN-273-083-031, APN- 273-083-033) would not be paid under the Teeter plan. The reason was that the property's underlying value does not support the levy charges. The County will hold a tax sale in June 2022, attempting to sell the listed properties, and if the properties sell, the District may receive the lien charges. A summary of the liens placed on the properties from 2015-current as outlined in the staff report.

Vice President Danziger asked, prior to placing the liens on the properties was there any way to know that this would occur. Fire Marshal Isaacs answered that before Staff brings a property to the Board, a review of the county records is performed to see if the property owner is paying property taxes. That indicates activity on the property, but there is no way to ascertain if the owner has stopped paying their property tax or if the County will sell those properties. Vice President Danziger asked, assuming that the property sells, who then pays the lien charges. Fire Chief Winnacker answered the lien is settled from the proceeds of the sale.

Director Jorgens stated that Staff needs to figure out what the property is worth and see if somebody else has liens on the property before the District proceeds with District funded work. Fire Chief Winnacker agreed and stated the broader issue is whether or not they are paying the property taxes. It is generally reasonable to assume that the District will recoup the money if they are paying their property taxes and not in arrears. Staff has encountered several small parcels that are in arrears. The County has not sold those properties, and Staff is cautious about moving forward with lien-funded work because there is a very low probability that the District will recoup the taxpayer dollars used to mitigate the parcel.

Director Jorgens stated that one would assume that most property around the District is probably worth quite a bit. Fire Chief Winnacker explained that there are some orphaned parcels that are left over when an HOA was carved up or something like that and are essentially unowned land.

Vice President Danziger opened the public comment.

Marc Evans, Orinda resident, asked about the Oak Road properties with no addresses and if they have already been abated. Fire Marshal Isaacs confirmed the properties have already been abated. Fire Chief Winnacker explained that a property might not have an address for various reasons. The APN is the unique identifier.

Charles Porges, Orinda resident, commented that even if there is no owner or the property is worth less than it will cost to abate, the District still has a duty to abate.

Vice President Danziger agreed with Mr. Porges. Director Jorgens asked what would happen with the County if the taxes were not paid. Fire Chief Winnacker explained that the County decides whether to move it to a tax sale. Some parcels have not paid taxes (ever) that Staff can tell remain unsold to collect the back taxes. In those cases, the County leaves them because they determine the property is unsellable. Director Jorgens concluded the property is left abandoned that nobody owns. The District might have to make that part of the District's overhead. Fire Chief Winnacker expressed caution that the District currently has an obligation to enforce. With Board direction, the District could take on an obligation to mitigate. Staff would need to provide research to allow the Board to make an informed decision about how large an obligation the District could be taking on if the District were to move beyond citations and into mitigation of parcels where the owner is either unresponsive or has not been identified.

Mark Evans, Orinda resident, shared a hazard concern about a house on Los Amigos.

There were no further requests to address the Board. Vice President Danziger closed public comment. No further discussion by the Board.

10.9 MOFD Authority in SRA and Fire Road 42-13 Update (audio 44:31)—*Moved before item 10.1 on the agenda*

10.10 Authorize Payment of Reinstated and Retroactive Pension Payments to Peter Nowicki in the Amount of \$514,790.61 (audio 3:01:47)

District Counsel Holtzman provided the report. CCCERA entered a proceeding with Mr. Nowicki to reduce his pension based on spiking and similar activities. CCCERA prevailed in reducing Mr. Nowicki's pension in their own administrative proceeding. The California Court of Appeals reversed that decision. During the period after CCCERA ruled that Mr. Nowicki's pension should be reduced CCCERA directed MOFD to cease paying a supplemental payment paid to retirees whose pensions exceeded the IRS limit. CCCERA proceeded against Mr. Nowicki to claw back funds from Mr. Nowicki, some of which the District paid and some of which were paid by CCCERA. The District received correspondence attached in the Staff report from CCCERA after losing the case, indicating that the District should pay Mr. Nowicki back for the \$514K, and his supplemental pension. In addition, CCCERA is asking that the District repay Mr. Nowicki another \$300K that CCCERA had clawed back and an additional \$100K in interest. CCCERA has indicated in all three cases, the District would be paid back by reducing the District's upcoming contribution for the next year to CCCERA by the amounts. Counsel recommended the Board authorize the payment of Reinstated and Retroactive Pension Payments to Peter Nowicki in the Amount of \$514,790.61.

District Counsel Holtzman stated regarding the amounts that CCCERA clawed back, CCCERA asserts that they cannot pay that money directly back to Mr. Nowicki because of tax law limitations. Counsel is still researching that issue and will return to the Board to discuss the outcome. Regarding the interest payments, MOFD has taken the position with CCCERA that it was CCCERA's decision to reduce Mr. Nowicki's pension. CCCERA should bear the interest costs. Counsel does not recommend that the District pay that amount at this time. CCCERA is asking the District to pay roughly \$1M. District Counsel recommended the District pay \$500K, and counsel will continue to work on the amounts clawed back and whether those can be paid directly by CCCERA or need to be paid by the District. Vice President Danziger reiterated the District would be reducing the contribution to CCCERA to account for the payment. It is about a seven-year period when the District would have paid this amount through our payments directly to Mr. Nowicki. Director Jorgens added this was a decision by the 2007 Board. There is contention about how that process worked. The amounts the District is paying are the amounts that were previously agreed upon, pre-court case agreed to pension and are not the present value or interest. CCCERA is effectively paying it by reducing the District's regular pension obligation. Vice President Danziger asked about the accounting. Director Jorgens stated reserves.

Vice President Danziger opened the public comment. There were no requests to address the Board. Vice President Danziger closed public comment.

Motion by Director Jorgens and seconded by Director Donner to Authorize Payment of Reinstated and Retroactive Pension Payments to Peter Nowicki in the Amount of \$514,790.61. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None).

No further discussion by the Board.

11. COMMITTEE REPORTS (audio 3:11:45)

11.1 **Audit Committee** (Directors Danziger and Jex). No Report

11.2 **East Bay Hills Wildfire Prevention and Vegetation Management Joint Powers Agency Meetings** (Directors Danziger and Jorgens).

Director Jorgens reported current discussions are about who would be allowed to participate. Vice President Danziger commented he was not on the committee and thought it was President Donner. Director Jorgens affirmed Director Danziger was on the committee. Vice President Danziger did not receive an invite and would follow up.

11.3 **Facilities Station 41 Ad Hoc Committee** (Directors Baitx and Donner). No Report.

11.4 **Joint Fire Prevention Ad Hoc Committee w/City of Orinda** (Directors Donner and Jorgens).

Director Jorgens reported the committee has a meeting scheduled in July. The committee met in June. The Chief and City manager are working on developing a grant program. The City of Orinda extended its policy on red-flagged days and no parking. Director Jorgens reviewed the value of the committee.

11.5 **MOFD 25th Anniversary Celebration Ad Hoc Committee** (Directors Danziger and Jex). Vice President Danziger thanked Staff for purchasing and flying the 25th-anniversary flags. The City of Orinda honored the District with a proclamation. The Town of Moraga is scheduled to honor the MOFD. The official date is July 1, 2022. Director Danziger suggested activities during the City and Town events (handing out cookies). All directors agreed.

Vice President Danziger opened the public comment. There were no requests to address the Board. Vice President Danziger closed public comment.

12. ANNOUNCEMENTS (audio 3:17:58)

12.1 **Future Agenda Items**. No Report.

Vice President Danziger opened the public comment.

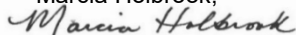
Jonathan Goodwin, Canyon resident, stated there had been a great deal of emphasis by the fire district (inaudible) preparing for a potentially serious fire. Mr. Goodwin asked if the fire district was doing things for the same purpose. Mr. Goodwin shared the fire incident details from 1991. Mr. Goodwin expressed concern that there will not be sufficient firefighting weight because dispatch is having difficulties and District personnel are already committed somewhere else. Mr. Goodwin requested firefighting personnel to remain in the area and remain available in the area on red flag days. Mr. Goodwin requested a presentation about things the District is doing to prepare for this specific scenario. Vice President Danziger said as his elected representative, he would reach out to him directly to discuss.

There were no further requests to address the Board. Vice President Danziger closed public comment.

13. ADJOURNMENT

At 10:21 p.m., Director Jorgens motion and seconded by Director Donner to adjourn the meeting. Said motion carried 3-0-2-0 roll call vote (Ayes: Donner, Jorgens, and Danziger; Noes: None; Absent: Baitx and Jex; Abstain: None).

Marcia Holbrook,



District Secretary/District Clerk

To: MOFD Board of Directors
Cc: Orinda City Council
From: Steve Cohn, resident of Orinda
Subject: June 15, 2022 MOFD Board Meeting Agenda item 10.4
Establishing the Fiscal Year 2022/23 Fire Flow Tax Rates
for the Orinda and Moraga Service Zones

I request that the Board set the Fire Flow Tax Rates for the both the Orinda and Moraga Service Zones to their maximum level, 6 cents for the Orinda Zone and 30 cents for the Moraga Zone.

This year property taxes to MOFD from Orinda properties totaled \$20.6 million, \$20 million allocated from ad valorem taxes and \$615,000 from fire flow parcel taxes. This equated to \$2,900 per household for the 7,150 Orinda households.

In comparison, property taxes to MOFD from Moraga and Canyon properties totaled \$10.8 million, \$10.3 million allocated from ad valorem taxes and \$480,000 from fire flow parcel taxes. This equated to only \$1,900 per household for the 5,750 Moraga and Canyon households.

When this topic was discussed three years ago at your May 15, 2019 meeting, Richard Olsen, who was involved in the formation of MOFD back in 1997, stated “it would be a violation of the requirements for the approval of the formation of the District to charge Moraga residents more than Orinda residents for the District’s services.” I was not involved as Mr. Olsen was in the formation of MOFD, but I assume that if it would be a violation to charge Moraga residents more for services, it would also be a violation to charge Orinda residents more.

If the Moraga Zone parcel tax rate was increased to 30 cents, the revenue per household in Moraga would increase from \$1,900 to \$2,200. Still not the \$2,900 Orinda residents are paying, but closer.

Please consider this action.

Sincerely,

Steve Cohn



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OFFICE OF THE GENERAL COUNSEL | 510.544.2005 (Phone) | 510.569.1417 (Fax)
Lynne Bourgault, General Counsel | Jason Rosenberg, Asst. General Counsel | Rachel J. Sater, Asst. General Counsel

June 14, 2022

Via Electronic Mail Only (info@mofd.org)

Board of Directors
Moraga-Orinda Fire Protection District
1280 Moraga Way
Moraga, CA 94556

Re: Comments on June 15, 2022 Board Meeting Item 10.9 MOFD Authority in SRA

Dear President Donner and Members of the Board:

We appreciate the opportunity to comment on Meeting Item 10.9 regarding MOFD’s authority in the State Responsibility Area (SRA). For the reasons explained in our March 11, 2022 letter to the Board, which is attached to the Staff Report for this item, we urge the MOFD Board to direct staff not to enforce Ordinance 22-02 against the East Bay Regional Park District (Park District) within undeveloped areas of the SRA and to direct staff to amend the ordinance accordingly.

The Park District shares the same goals as MOFD to reduce the risk and spread of wildfires and has worked and remains committed to working collaboratively with MOFD to reduce the risk of wildfires. Moreover, it is committed to a coordinated response to and suppression of wildfires through the MOFD/EBRPD Cooperative Fire Operations and Mutual Response Area (MRA) Agreement entered January 1, 2016 (Cooperative Agreement).

As you know, the Park District has its own fire department, which manages fire risk within its parks by reducing fuel loads and managing vegetation, including within defensible space around structures. In addition, the Park District annually maintains its fire roads to fire equipment access standards through grading and vegetation management.

With respect to the trail in Bollinger Canyon mentioned in the Staff Report, this is not a fire road or fire trail but rather a short stretch of an old ranch road. This spur of old ranch road was there when the Park District acquired the property and is within a highly slide-prone area. It is not used by the Park District for fire access. The Park District effectively manages fuel in this area of parklands through cattle grazing. The adjacent private property is largely undeveloped wildland that can be accessed through existing public and private roads.

Regardless, as explained in our prior correspondence to MOFD, MOFD does not legally have the ability to enforce the fuel mitigation standards in Ordinance 22-02 against the Park District’s undeveloped parcels within the SRA. Public Resources Code section 4117 does not provide MOFD with this authority; it does not allow MOFD to adopt fire prevention regulations that go beyond the authority it is granted in its enabling legislation, specifically Health and Safety Code section 13811. Thus, MOFD may adopt stricter fire prevention regulations for structures,

Board of Directors

Colin Coffey President Ward 7	Beverly Lane Vice-President Ward 6	Dennis Waespi Treasurer Ward 3	Elizabeth Echols Secretary Ward 1	Dee Rosario Ward 2	Ellen Corbett Ward 4	Ayn Wieskamp Ward 5	Sabrina B. Landreth General Manager
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Board of Directors
Moraga-Orinda Fire Protection District
June 14, 2022
Page | 2

which would apply in the SRA. And while MOFD can respond to and suppress fires (as recognized by the Cooperative Agreement), it has no regulatory jurisdiction over the Park District's undeveloped parcels within the SRA.

We urge you to direct staff not to enforce the ordinance against the Park District within undeveloped areas within the SRA and to amend the ordinance consistent with this direction. The Park District remains committed to working with MOFD to reduce fire risk within the East Bay hills.

Sincerely,

A handwritten signature in cursive script that reads "Rachel J. Sater".

Rachel J. Sater
Assistant General Counsel

cc: Lynne Bourgault, EBRPD, General Counsel

From: [Suzanne Jones](#)
To: [Info](#)
Subject: Agenda Item 10.9, 06.15.22
Date: Wednesday, June 15, 2022 9:07:39 AM

Dear MOFD Board of Directors,

I'm unable to attend your meeting [tonight](#), but ask that the following comment be read aloud into the record.

I am contacting you on behalf of the Bollinger Canyon Improvement Association for which I serve as Secretary. I commented in this capacity at your last regular meeting regarding a unrepaired landslide on EBRPD land at the end of unincorporated Bollinger Canyon Road.

This minor slide occurred several years ago, and while it is small, it has rendered the fire trail connecting Bollinger Canyon to San Ramon impassible to vehicular traffic, including emergency vehicles. We consider its repair an urgent matter for the safety of our residents and hence were dismayed to read EBRPD's recent letter to MOFD outlining its position regarding District ordinance 22-02.

It would appear from CalFire's letter dated [May 20](#), 2022, that CalFire has delegated the authority to enforce state forest and fire laws to MOFD within the SRA. As such, we ask the District to move forward with enforcement with respect to repair of the slide on EBRPD land so that the functionality of this fire trail for emergency vehicle access and as a potential evacuation route may be restored.

Thank you for your consideration,

Suzanne Jones
Secretary
Bollinger Canyon Improvement Association
P.O. Box 411
Moraga, CA 94556

Finance Report June 15, 2022



- Strike Team Receivable Update:

	Estimated <u>2021-2022</u>
OES Strike Team Receivable	\$1,523,673
OES Payments Received	<u>\$1,433,368</u>
Net Receivable Outstanding	\$ 90,305

- Other Items

- MOFD applied for and received an additional \$176k in HRSA Provider Relief Funds (funds received 6/3/22)
- Data Ticket – the District received our first Citation payments via the Data Ticket system

Item 8.4 (d) Operations Report

MOFD Board Update
June 15, 2022



MORAGA
F D
ORINDA
1997 25 YEARS OF SERVICE 2022



Item 8.4 (d) Operations Report



Item 10.6 Annual Operating Budget Presentation

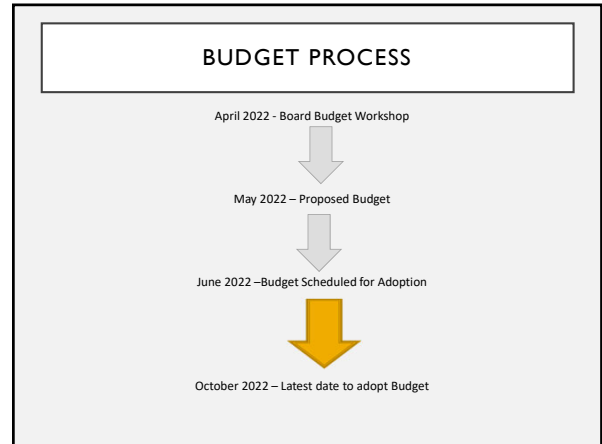
**MORAGA-ORINDA FIRE DISTRICT
2023 ANNUAL OPERATING BUDGET**



**MORAGA-ORINDA FIRE DISTRICT
ANNUAL OPERATING BUDGET
FISCAL YEAR 2023**



Board of Directors Meeting
June 15, 2022



BUDGET OVERVIEW

- General Fund surplus \$252K
- Capital Projects Fund surplus \$1.955M
- Debt Service Fund deficit \$1.7M
- Tunnel East Bay Hills Fuel Break surplus \$360K

BOARD DIRECTION

- Continue the fuels mitigation program including 3 Fuels Mitigation Specialist positions
- Add one new position in Fire Prevention: Fire Inspector/Plans Examiner
- Expand service with a new pilot program in Fire Prevention for home hardening grants \$500K
- Include the Capital Projects Fund expenditures as presented

STAFFING SUMMARY

- Safety roster strength: 57 positions (same as prior year)
- Fire Prevention: 6 positions (one new position Fire Inspector/Plans Examiner)
- Administration: 5.6 positions (same as prior year)
- Tunnel East Bay Hills Fuel Break: 2 new positions

DISCRETIONARY/CONTINUATION OF EFFORT

Transfer to Capital Projects Fund	\$3,100,000
Pension rate stabilization trust contribution	2,108,577
Salaries and benefits - Fuels Mitigation staff	558,000
Home hardening grants	500,000
OPEB trust contribution	350,923
Emergency Preparedness/CERT	277,937
Fuels mitigation operating expenses	110,000
Fire chief contingency	100,000
GIS mapping	85,500
Discretionary training	25,000
Exercise equipment	12,000
Drones and supplies	11,400
Total discretionary	\$7,239,337

Item 10.6 Annual Operating Budget Presentation



CAPITAL PROJECTS FUND EXPENDITURES

Station 41/Administration Rebuild - Phase I	\$1,000,000
Water Tender (reimbursed \$250K)	365,000
Ambulances (quantity 2)	350,000
Fire Engine Type VI	250,000
County-wide Evacuation Software (reimbursed)	164,250
Floor Replacement - Stations 42 and 44	70,000
Ford Rangers for Fire Prevention (quantity 2)	70,000
County-wide evacuation software	64,190
Total	2,333,440