

Moraga-Orinda Fire Protection District



BOARD OF DIRECTORS REGULAR BOARD MEETING MINUTES

October 16, 2019

(Approved November 20, 2019)

1. The Board of Directors convened in Closed Session at 5:37 p.m. on October 16, 2019 at the Mosaic Room, 2100 Donald Drive, Moraga, California. President Danziger called the meeting to order and requested an attendance roll call. Present were the following Directors and Staff:

Director Baitx	Director Jorgens	
Director Donner	President Danziger	Jonathan Holtzman, District Counsel
Director Jex	Dave Winnacker, Fire Chief	Patricia Edwards, Interim District Clerk

2. PUBLIC COMMENT

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

3. CLOSED SESSION

3.1 Conference with Legal Counsel – Potential Litigation

Potential litigation pursuant to subdivision (d)(2) of Government Code Section 54956.9

3.2 Conference with Legal Counsel – Existing Litigation

(Paragraph (1) of subdivision (d) of Section 54956.9)

Pacific-Mountain Contractors of California, Inc. v. Moraga-Orinda Fire District, Contra Costa County Superior Court C18-02124

3.3 Conference with Labor Negotiator

(Government Code Section 54957.6)

Agency Designated Representative: Jonathan Holtzman

Employee Organization: Local 2700 United Clerical, Technical & Specialized Employees

4. RECONVENE THE MEETING

4.1 Call the Meeting to Order

4.2 Pledge of Allegiance

4.3 Introduction of Fire Marshal Robert Montaghmi and Fuels Mitigation Manager Jeffrey Isaacs

President Danziger reconvened the regular business meeting of the Moraga-Orinda Fire District Board of Directors at 7:00 p.m. Present were the following Directors and Staff:

Director Baitx	Director Jorgens	Admin. Services Director Gloriann Sasser
Director Donner	President Danziger	HR Benefits Manager Christine Russell
Director Jex	Dave Winnacker, Fire Chief	Jonathan Holtzman, District Counsel
		Patricia Edwards, Interim District Clerk

Chief Winnacker introduced Jeffrey Isaacs as the new Fuels Mitigation Manger. He has 20 plus years of experience with CalFire in fuels reduction and wildfire firefighting. Mr. Isaacs stated that his goal is to be a "leader in fuels reduction". Chief Winnacker noted that Fire Marshal Robert Montaghmi has resigned due to family issues. The position will be reposted and staff will explore internal options to fill this position.

5. REPORT OF CLOSED SESSION ACTION

President Danziger reported that no reportable action was taken by the Board on: item 3.1 Potential Litigation pursuant to subdivision (d) (2) of Government Code Section 54956.9; item 3.2 Existing Litigation (Paragraph (1) of subdivision (d) of Section 54956.9); and item 3.3 Labor Negotiator (Government Code Section 54957.6).

6. PUBLIC COMMENT

President Danziger opened the public comment.

Melanie Light, an Orinda resident, discussed fire safety issues which occurred during the recent PG&E Public Safety Power Shutoff (PSPS). There was no power and no access to phones in the event of an emergency. She noted that City paving work continued during the high fire danger and power outage. She asked the Fire Department to urge the City Council to be proactive in the community during Red Flag warnings.

President Danziger closed the Public Comment.

7. CONSENT AGENDA

7.1 Meeting Minutes – September 18, 2019 (regular)

Staff Recommendation: Approve and File

7.2 Monthly Incident Report for September 2019

Staff Recommendation: Approve and File

7.3 Monthly Check/Voucher Register – September 2019

Staff Recommendation: Approve and File

7.4 Monthly Financial Report – August 2019

Staff Recommendation: Approve and File

Director Jex questioned the Elder Brothers expenditure. Chief Winnacker stated that is associated with the North Orinda Shaded Fuel Break (NOSFB) Project. President Danziger questioned the \$12,565 expenditure for Rescue Router (sewer line replacement). Chief Winnacker explained that this expenditure was incurred in order to bring the wash pad at Station 42 into compliance per the Contra Costa County Sanitary District.

Motion by Director Jorgens and seconded by Director Donner to approve Consent Agenda items 7.1 through 7.4. Said motion carried a 5-0 voice vote (Ayes: Baix, Jex, Jorgens, Donner, and Danziger; Noes: None; Absent: None).

8. REGULAR AGENDA

8.1 Peter J. Nowicki v. Moraga-Orinda Fire District Appeal Order Affirmed in Favor of the Moraga-Orinda Fire District

Counsel Holtzman summarized the case. Former Fire Chief Nowicki retired in January 2009. In September 2015, the Contra Costa County Employees' Retirement Association (CCCERA) reduced Nowicki's pension retroactive to his date of retirement, based on the finding that he had caused his "final average salary ... to be improperly increased at the time of retirement" in violation of the Government Code. In his suit against the District, Nowicki claimed breach of his employment contract, breach of the duty of good faith and fair dealing and estoppel. He claimed that if CCCERA were successful in reducing his pension, then the Fire District was responsible for making up the difference. The Superior Court dismissed Nowicki's case against the District finding that he had not filed a government claim (as required by the Government Claims Act) and also had not stated a claim against the District on any cause of action. The Superior Court did not dismiss Nowicki's case against CCCERA and it is continuing. On August 27, 2019, the Court of Appeal affirmed the dismissal of Nowicki's case against the District. The Court of Appeal's decision is now final. He added that the District is entitled to its costs on the appeal which do not include attorney's fees.

President Danziger opened the public comment. There were no requests to address the Board. There were no comments from the Board. President Danziger closed the Public Comment.

8.2 Approval of OPEB Valuation Report as of June 30, 2019

ASD Sasser provided the report. Government Accounting Standards Board Statement No. 75 requires the District to complete an actuarial valuation of the other post-employment benefits (OPEB) plan. As a result, the District contracted with GovInvest to complete an actuarial report calculating the long-term cost associated with the District's OPEB plan. A draft GASB 75 OPEB Valuation Report as of June 30, 2019

was presented to the Board on September 18, 2019. In 2015, the District established an OPEB trust account. The purpose of the trust account is to accumulate funds for payment of future retiree health insurance obligations. The District has made the annual required contribution every year since FY2015. As a result of the pre-funding and the cap on retiree medical benefits, the District's net OPEB liability has decreased. The balance in the OPEB trust account as of June 30, 2019 is \$1,358,338. The prior actuarial valuation as of June 30, 2018 measured the net OPEB liability at \$15,379,385. As of June 30, 2019, the net OPEB liability is \$14,850,637, a decrease of \$528,748 or 3.4%. The plan is 8.38% funded. It is assumed that the District will continue to make the annual required contribution.

President Danziger opened the public comment. There were no requests to address the Board. President Danziger closed the Public Comment. There was no discussion by the Board.

Motion by Director Jex and seconded by Director Jorgens to approve the OPEB Valuation Report as of June 30, 2019. Said motion carried a 5-0 voice vote (Ayes: Baitx, Jex, Jorgens, Donner, and Danziger; Noes: None; Absent: None).

8.3 Discussion of Standing and Ad Hoc Board Committees

Counsel Holtzman provided the report. He explained that a committee created by formal action of a legislative body (the Board) is itself a legislative body and subject to the Brown Act's open meeting requirements. An advisory committee composed solely of members of a legislative body constituting less than a quorum of the legislative body is not a legislative body unless it is a standing committee that has "a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body." An ad hoc committee is comprised of less than a quorum of the legislative body, has a specific project or set of circumstances, is not ongoing, and is not subject to the Brown Act. A standing committee can vote and take action and is subject to the Brown Act. He discussed the current Board's four committees: Audit, Facilities, Long Range Planning, and Chief's Evaluation.

Counsel Holtzman noted that the Audit Committee is comprised of one Board member, is not a committee, and does not require compliance with the Brown Act. Counsel Holtzman recommended disbanding the Audit Committee. If the Board established an Audit Standing Committee with a second Board member, the Brown Act applies. The Board discussed options for an Audit Committee. Counsel Holtzman stated that Board members could meet with the auditors provided there was not a Board quorum.

Kymerleigh Korpus, Moraga's Vice Mayor, suggested that the District establish an Ad Hoc Audit Committee, with President Danziger as a member, established for a particular project for one year. It could be reestablished the following year with a new project. Moraga has an Audit and Finance Ad Hoc Committee which complies with the Brown Act.

Director Jorgens noted that the District has a new auditor and suggested continuing the Audit Committee. President Danziger could be added to the Audit Committee which would retain its Ad Hoc status with the purpose to give guidance to the new auditors about the Board's expectations. Director Jorgens made a motion to add President Danziger to the Audit Committee with the purpose to give guidance to the newly approved auditors regarding the Board's expectations. Counsel Holtzman stated that, in order to take action, the Board would need to agendaize this item for a future meeting.

Counsel Holtzman stated that the Facilities Committee was previously focused on rebuilding Station 43. If the Committee is going to be focused solely on Station 41, it could remain an Ad Hoc Committee but should be renamed. President Danziger asked if the District's only facilities issue would be Station 41. Chief Winnacker responded affirmatively. Director Jorgens recommended repurposing the Committee.

Motion by Director Baitx and seconded by Director Donner to rename the Facilities Committee as the Facilities Station 41 Ad Hoc Committee. Said motion carried a 5-0 voice vote (Ayes: Baitx, Jex, Jorgens, Donner, and Danziger; Noes: None; Absent: None).

Counsel Holtzman recommended making the Long Range Planning Committee a Standing Committee if the Committee continues its operation on a long-term basis. Although purely advisory, its function is

potentially ongoing and is charged with making recommendations that figure centrally in the District's budget and future staff and activities. Director Jorgens noted that the Committee worked as a "process" and is no longer needed for that function. Director Jex said that the expectation is that the Committee be updated annually. Counsel Holtzman suggested that the Long Range Planning Committee is part of the Finance Committee. Director Jorgens noted that MOFD has a Finance Committee which has not met in a year. President Danziger suggested combining the Audit and Finance Committees. Counsel Holtzman noted that the Board could take action to eliminate the Finance Committee at the November meeting. President Danziger questioned combining the Audit and Finance Committees. Director Jorgens suggested combining the Long Range Planning and Finance Committees. Director Jex stated that the Finance Committee was not a Finance Committee but a budget process committee. Director Jorgens stated that it makes more sense to combine the Finance and Long Range Planning Committees. Counsel Holtzman recommended agendaizing the item for a future meeting.

Counsel Holtzman recommended retaining the Chief Evaluation Ad Hoc Committee as it will be needed for Chief Winnacker's evaluation.

8.4 Update on North Orinda Shaded Fuel Break Project

Chief Winnacker provided the report. He stated that the hand crew completed Phase One and Firestorm and their crew completed their work and the Fire Camp is being broken down. He noted that this portion of the project included 35,400 labor hours over 89 days with no reportable injuries. The project is 77% complete and includes 1,094 acres with 18.1 (94%) linear miles of line constructed. He described the remaining work to be done including tree removal in Tilden Park, Wild Cat Canyon, Sleepy Hollow and Wagner Ranch schools. The District will continue to investigate opportunities for additional funding to enhance the work that has been done. He reviewed the project financial numbers and anticipated future invoices.

Chief Winnacker stated that several controlled burns are planned and each burn requires a fire burn plan. The next scheduled prescribed burn will be at Wagner Ranch on October 20, 2019 if the weather holds. This burn ties into the work that has been done and aligns with one of the major routes of fire moving up the San Pablo Dam Drainage into the community and restores fire to the nature area. It will be an opportunity to educate students and the community about the positive effects of fire. Notices will be sent to Friends of Wagner Ranch, School District, MOFD and Orinda social media accounts, and signage. President Danziger asked about the trees on Happy Valley Road. Chief Winnacker stated that they are on private property and MOFD has access agreements with the homeowners.

President Danziger opened the public comment. There were no requests to address the Board. President Danziger closed the Public Comment. There was no discussion by the Board.

9. COMMITTEE REPORTS

9.1 Finance Committee (Directors Danziger and Jorgens)

No report.

9.2 Audit Ad Hoc Committee (Director Jex)

No report.

9.3 Long Range Financial Plan Ad Hoc Committee (Directors Donner and Jorgens)

No report.

9.4 Facilities Ad Hoc Committee (Directors Baitx and Donner)

No report.

9.5 Fire Chief Performance Evaluation Ad Hoc Committee (Directors Baitx and Donner)

No report.

10. ANNOUNCEMENTS

10.1 Brief information only reports related to meetings attended by a Director at District expense (Government Code Section 53232.3(d))

No report.

10.2 Questions and informational comments from Board members and Staff

Director Baitx recognized the crew who fought the Merrill Fire for their exceptional performance. He also relayed a thank you from the folks on Sanders Ridge. Director Jorgens noted that PG&E turned

the power off in the middle of the Merrill Fire. He suggested that the area needs a forum to discuss options when the cable networks do not work, cell phone service was not available, and the Caldecott Tunnel proposed closure. Director Donner stated that there were additional issues with the County Warning System and reverse 911 so that many residents did not receive notification. Chief Winnacker stated that there were issues with the Nixle system. That area is a cell service dead zone. Director Jorgens stated that many folks lost cell reception.

Director Baitx asked if there was an update on the third ambulance. Chief Winnacker responded no. Director Baitx questioned the cancellation of the October 12, 2019 Open House. Chief Winnacker stated that the power was still out, District resources were tapped on the fire, the District was short people available to work the event, so the Open House was cancelled. Director Baitx said that many residents were disappointed that they could not come to say thank you.

President Donner said that a byproduct of the planned power outage is a wakeup call for residents and that they were better prepared with emergency supplies. Director Jorgens said that there was no way to report an emergency. President Danziger said that he enrolled in the new CERT class and personal radios are recommended. Director Donner noted that ham radio operators are instrumental in the event of a major catastrophe. Chief Winnacker provided the statistics for the Community Warning System's (CWS) efforts to contact residents: 276 accounts in the area and 74% of the calls were successful. Reverse 911 was 63% successful with 143 attempts. Outreach efforts also included: 506 emails and texts and 246 text messages were sent. Chief Winnacker noted that there were evacuation advantages because the area was relatively small, the homes are relatively easy to access with relatively short driveways and reasonably narrow lots and good access. The Police Department was in charge of the evacuation. The fire behaved erratically consistent with Red Flag conditions. MOFD benefitted substantially from prepositioned resources in the area including Alameda, Contra Costa, Solano, Alameda EOS.

Captain Michael Lacy from Station 45 provided an overview of the efforts to fight the fire. The left side of the fire was very active and dangerous. It increased very quickly to 50 acres but stalled on the ridgeline. The firefighters used 6,000 feet of hose. Fighting the fire at night with 19 mph winds and 19% humidity was very challenging. He noted that the citizens should be proud of what was accomplished. Director Jex asked how the prepositioning occurred. Chief Winnacker replied that the threat was identified in red flag conditions. When the criteria was met, prepositioned support was provided and paid for by the state. Chief Winnacker noted that daylight was needed to fully assess the situation. Director Jex asked what started the fire. The Moraga Police Department stated that it was accidental. Director Jorgens asked what was predone. Chief Winnacker responded that strike teams were in place and ready to respond when we requested crews. President Danziger questioned the use of sirens as a warning option. Chief Winnacker stated that evacuation is a police department function per state law. Chief Winnacker noted that only approximately 30% of the community has signed by for the Community Warning System.

Chief Winnacker noted that the firefighters are busy picking up the hoses from the Merrill Fire.

There was a significant accident on San Pablo Dam Road.

On October 15, 2019, seven firefighters were sent to the refinery fire in Crockett. Crockett has a volunteer fire department. The Incident Commander is a schoolteacher.

Chief Winnacker reported that the District has conducted 855 inspections, issued 507 citations, and that 245 sites have passed. He noted that 111 sites had failed inspection because no work was done. The program will ramp up with the newly hired staff. The District's goal is voluntary compliance and liens will be a last resort.

10.3 Fire Chief Updates

a. Human Resources

HR Benefits Manager Russell reported that five fuels mitigation aides have been hired. A firefighter/paramedic recruitment was opened on October 1, 2019 and 70 applications have been

received. Approximately 44% meet the minimum job qualifications. One firefighter/paramedic will be attending the Berkeley Academy.

b. Website Redesign

Chief Winnacker stated that the website will be ADA compliant and the new design will be streamlined. Director Jorgens suggested that the first page contain a link to the Community Warning System.

10.4 Communications Received

Chief Winnacker reported that there have been a deluge of positive comments by residents. He noted that there have been no complaints about the quality of care provided by the District in the approximately two years of his tenure. President Danziger stated that he received an email from Jill Cordy, an Orinda resident, about paving work being done during the Red Flag Warning. He requested that it be included in the meeting notes. Chief Winnacker stated that paving is a city function. He can speak to the City Manager and the Police Department but not to the City Council. Director Jorgens asked what would be a reasonable action to take on Red Flag Days. Chief Winnacker responded that there should be no parking on narrow streets, maintain awareness of evacuation plans, prepare defensible space, and do not engage in potentially dangerous outdoor activities. Director Jorgens asked if the first two items have been communicated to the cities. President Danziger stated that he is willing to speak to the Orinda City Council. Counsel Holtzman noted that the city can pass an Ordinance prohibiting parking on narrow streets on Red Flag Days. Chief Winnacker stated that it is important to take action pre-Red Flag event. President Danziger stated that he will speak to the Orinda and Moraga Councils with the Board's direction. Board members unanimously concurred.

10.5 Future Agenda Items

President Danziger requested that a future Board agenda continue the third ambulance discussion and the NOSFB biological and cultural reports. Director Donner noted that October 17, 2019 is the 30th anniversary of the Loma Prieta earthquake. He requested a moment of silence in remembrance of those lost in this disaster.

11 ADJOURNMENT

At 8:55 P.M., Director Jorgens motion to adjourn the meeting was seconded by President Danziger. Said motion carried a 5-0 voice vote (Ayes: Baitx, Jex, Jorgens, Donner, and Danziger; Noes: None; Absent: None).

Attachment A: Email received from Jill Cordy on October 15, 2019

For an audio recording of this and other Board meetings, please visit the MOFD District Board Meeting webpage <http://www.mofd.org/board/meetings>

Extreme Hazard

From: Jill Cordry (jill.cordry@gmail.com)

To: dwinnacker@mofd.org; gbaitx@mofd.org; mmjjex@gmail.com; danzi26@yahoo.com; stevedformofd@gmail.com; mdonnermofd@gmail.com; Craig.Jorgens@gmail.com; ssalomon@cityoforinda.org; dcook@cityoforinda.org; ltheis@cityoforinda.org; imiller@cityoforinda.org; aworth@cityoforinda.org; dgee@cityoforinda.org; ephillips@cityoforinda.org; nkosla@cityoforinda.org

Date: Tuesday, October 15, 2019, 12:31 PM PDT



Via Farallon facing away from the T-junction with La Cuesta Road, October 10, 1:30 PM

Dear Officials,

On October 10th, during the Red Flag Warning, DeSilva Gates Paving blocked the entire T-junction of Via Farallon and La Cuesta for the full working day. This left the residents with only one means of egress: driving downhill on Via Farallon. They also blocked access to the homes on La Cuesta causing residents to park their cars on Via Farallon. Conditions on this 17 foot wide street did not allow for us to escape and firetrucks to reach us at the same time.

As you are aware, we were experiencing weather events that could result in extreme and rapid fire behavior where a simple spark can cause a devastating and deadly fire. Thursday morning, DeSilva Gates began using heavy equipment to cut through and remove the existing asphalt paving. The Ranch Fire of 2018 was caused by a single rancher with a metal hammer and a metal stake. Using metal equipment against asphalt, can likewise create sparks.



Worker using a shovel against asphalt at the T-junction of Via Farallon and La Cuesta, October 10, 1:30 PM

To complicate matters, no signage was put at the bottom of Via Farallon to indicate that the street was closed. A steady stream of vehicles approached the top of the street and endeavored to turn around or back-up among the parked cars: more potential for metal on metal resulting in a spark.

I called the Orinda / Moraga Fire District at 1:00 PM and they instructed me to call the Orinda police department. It took eleven calls and twenty minutes to get through. I was transferred to Public Works and Engineering, who transferred me to Farah Khorashadi, the Paving Program Project Manager for whom I left a message. When Ms. Khorashadi returned my call, I told her about DeSilva Gates operating heavy machinery and blocking our evacuation routes. She explained that in an emergency, the heavy equipment would be removed. The option of residents following heavy equipment to outrace a wildfire needs to be re-thought. When I explained the problem of cars parked on Via Farallon, she said she would send an inspector immediately.

The inspector, Bob Addiego arrived about 15 minutes later at 2:15 PM. He immediately assessed the situation as extremely dangerous and unacceptable. He informed the DeSilva Gates crew that they could not park vehicles and equipment in the actual T-intersection. He said that signs should have been put up so that parking could only be on one side of the street and was incredulous that a "road closed to through traffic" sign had not been placed at the bottom of the street. Bob said that work would be stopping soon and proper signage and procedures followed in the coming days.

As an architect, I understand construction schedules. However, if DeSilva Gates or the City of Orinda think it too costly to cease repaving activity during Red Flag Warnings, imagine the cost in lives and lawsuits that could result. It is imperative that the Orinda / Moraga Fire District and the City of Orinda work together to eliminate unnecessary risk. I would like to see a

- Moratorium on repaving activity during Red Flag Warnings.
- Moratorium on heavy equipment use during Red Flag Warnings.
- Moratorium on road closures during Red Flag Warnings.
- Fire District review of all planned road closures regardless of fire danger forecast.
- More oversight of De Silva Gates to make sure proper safety procedures are followed (see picture below taken today).
- Better non-911 phone access to the Orinda Police Department.

Please feel free to contact me for more information on the situation,

Jill Cordry
51 Via Farallon
Orinda, CA. 94563
510-410-8790

DeSilva Gates workers park on the wrong side of the street and sometimes in the middle. October 15, 2019