

REVISED MEMORANDUM

Member Agencies:

County of Monterey

County of San Benito

County of Santa Clara

County of Santa Cruz

Monterey County Water
Resources Agency

San Benito County
Water District

Santa Clara Valley
Water District

Santa Cruz County Zone
7 Flood Control District

TO: PRWFPA Board of Directors

FROM: Lidia Gutierrez, Gutierrez Consultants

SUBJECT: Soap Lake Floodplain Preservation Project
Update

MEETING DATE: June 3, 2016

RECOMMENDATION:

The Staff Working Group is recommending Board approval of an amendment to the terms of the \$1,882,500 contingent grant award to the Open Space Authority (OSA). The recommended amendment to the condition is shown in redline below:

Approve OSA grant award of \$1,882,500 and direct staff to proceed with grant contracting with OSA, contingent upon OSA's satisfaction of all of the following conditions precedent:

- (a) OSA entering into and fully executing a purchase and sale agreement with the sellers for fee title acquisition of the Leung Property by no later than February 29, 2016,*
- (b) If required by the State of California Department of Water Resources (DWR), OSA obtaining an updated appraisal that supports the specified grant award amount and is approved by the State of California Department of Water Resources, Pajaro Valley Water Management Agency, and FPA,*
- (c) OSA closing escrow and completing the transaction (acquisition of fee title of the Leung Property) by no later than **November 30, 2016**,*

- (d) *OSA executing a Grant Agreement for Acquisition of Fee Interest with the FPA in form approved by FPA, which incorporates the Proposition 50 Grant Agreement Between State of California Department of Water Resources (DWR) and Pajaro Valley Water Management Agency (PVWMA), Agreement Number 4600007652 Under Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (“Proposition 50 Grant Agreement”), and the Standard Conditions incorporated therein (including, but not limited, Standard Conditions D.6, Budget Contingency, D.16, Income Restrictions, and D.23, Prohibition Against Disposal of Project Without State Permission), and includes any conditions relating to environmental site conditions and CEQA review required by the DWR, and*
- (e) *Approval of the invoices (by FPA, Pajaro Valley Water Management Agency and the State) and availability and disbursement of funds from the State under the Proposition 50 Grant Agreement.*

BACKGROUND:

At the February 2016 Board of Directors meeting, the Pajaro River Watershed Flood Prevention Authority (FPA) approved a conditional grant award of \$1,882,500 to the Open Space Authority for the fee title purchase of the 100-acre Leung property in the Soap Lake Floodplain. The grant award was contingent upon four conditions.

The first condition required that OSA enter into and fully execute a purchase and sale agreement with the sellers for fee title acquisition of the Leung Property by no later than February 29, 2016. All parties signed the purchase and sale agreement by February 16, 2016 and the OSA submitted a copy of the fully executed agreement to the FPA. So this condition has been met.

The second condition required that OSA close escrow and complete the transaction (acquisition of fee title of the Leung Property) by no later than June 1, 2016. During the due diligence period, OSA consultants confirmed the presence of an underground fuel tank on the property. OSA is currently in the final phases of soil and groundwater testing to confirm the extent of contamination and evaluate the options and requirements for moving forward with the acquisition. As part of this process, OSA may (if and as required by the DWR) also need to obtain an updated appraisal to reflect this newly discovered information and support the requested grant amount. Given the additional time required to complete the site investigation, evaluate the options, obtain the updated appraisal (if required by the DWR), and potentially

complete the Leung property acquisition, OSA has requested an extension to the time allowed to close escrow. FPA staff, consultant, and legal counsel have been working with DWR and PVWMA to extend the term of the Proposition 50 Grant Agreement to allow OSA additional time to complete the Leung acquisition. DWR has given preliminary approval of a six-month extension, extending the term of the grant to December 31, 2016. DWR is processing the extension and final approval is expected by the end of June 2016. In parallel with the DWR extension, the FPA would also be required to amend the terms of the conditional grant award to OSA to extend the deadline for closing escrow. The SWG is recommending a six-month extension to the required close of escrow date, extending the deadline to December 1, 2016.

The third condition required that OSA execute a Grant Agreement for Acquisition of Fee Interest with the FPA in form approved by FPA, which incorporates the Proposition 50 Grant Agreement Between State of California Department of Water Resources and Pajaro Valley Water Management Agency, Agreement Number 4600007652 Under Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (“Proposition 50 Grant Agreement”), and the Standard Conditions incorporated therein (including, but not limited, Standard Conditions D.6, Budget Contingency, D.16, Income Restrictions, and D.23, Prohibition Against Disposal of Project Without State Permission). A draft agreement has been developed by the FPA attorney and distributed to the OSA for their review and we are working with the Department of Water Resources to get clarification on a couple of items (including the potential inclusion of additional conditions relating to environmental site conditions and CEQA review). We expect that this agreement will be ready to execute immediately following close of escrow.

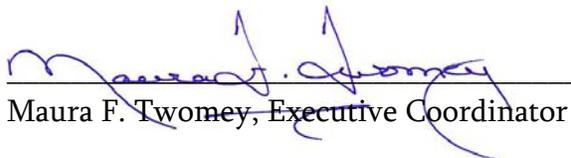
The fourth condition required that the OSA invoices be submitted to and approved by FPA, PVWMA and DWR and payment of the invoices were subject to the availability and disbursement of funds from DWR under the Proposition 50 Grant Agreement.

The SWG will provide an update at the September 2016 Board meeting.

FISCAL DISCUSSION

There is no fiscal impact from the extension to the conditions of the OSA grant award or the term of the grant agreement. The environmental site assessment and subsequent appraisal may have an impact on the grant award amount.

APPROVED BY:


Maura F. Twomey, Executive Coordinator