



Agenda Report

MEETING DATE: Tuesday, January 19, 2021

TO: City Council

FROM: Steve Palmisano, Public Works and Utilities Director

SUBJECT: Formation of the Pajaro Regional Flood Management Agency, a joint powers authority

STATEMENT OF ISSUES:

Consideration of formation of a regional flood risk management joint powers authority (JPA) as the most efficient and effective governance approach for reducing flood risk on the Lower Pajaro River. A single-purpose agency will be best positioned to support flood risk reduction project implementation and ensure consistent long-term operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the system.

RECOMMENDED ACTION:

- 1) A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING JOINT EXERCISE OF POWERS AGREEMENT ESTABLISHING THE PÁJARO REGIONAL FLOOD MANAGEMENT AGENCY BETWEEN THE CITY OF WATSONVILLE, THE COUNTY OF SANTA CRUZ, THE COUNTY OF MONTEREY, SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, AND MONTEREY COUNTY WATER RESOURCES AGENCY, TO REDUCE FLOOD RISK ON THE LOWER PÁJARO RIVER; AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE SAME
- 2) A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING INDEMNITY AGREEMENT REGARDING A PÁJARO RIVER FLOOD RISK MANAGEMENT PROJECT BETWEEN THE CITY OF WATSONVILLE, THE COUNTY OF SANTA CRUZ, THE COUNTY OF MONTEREY, SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, AND MONTEREY COUNTY WATER RESOURCES AGENCY; AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE SAME

DISCUSSION:

Background

The Pajaro River Federal Flood Control Project was built in 1949 by the United States Army Corps of Engineers (USACE) and is maintained jointly by the Zone 7 District and the

MCWRA. Since 1949, there have been four major floods on the Pajaro River and its tributaries -- in 1955, 1958, 1995, and 1998 -- that overtopped or breached the levees.

Congress authorized reconstruction of the Pajaro River levee system in 1966, and re-authorization was granted by the Water Resources Development Act 1990. The USACE Headquarters signed a Director's Report on December 12, 2019, confirming the federal authorization to rebuild and enhance the existing flood risk reduction facilities on the Pajaro River and Salsipuedes Creek. The Zone 7 District expects to execute a Design Funding Agreement with the USACE and a Subventions Funding Agreement with the State of California Department of Water Resources in January 2021.

The Member Agencies initiated work in 2010 to analyze the most effective and efficient way to govern, finance and implement the authorized federal project and to address long-term OMRR&R. Delays to secure approval of the Director's Report by USACE resulted in a delay for implementation of a new governance structure. Staff has coordinated closely with the Member Agencies and the Finance and Governance Committee to secure input and inform key stakeholders within the community. A final recommendation was made to establish the Pajaro Regional Flood Management Agency in 2019 and successful negotiation of a draft Joint Exercise of Powers Agreement was completed in November 2020.

Governance Analysis

A primary objective of implementing flood risk reduction projects, including the federal project, is the establishment of one or more governance entities that will fund, finance and lead implementation. A secondary objective for consideration and function of any governance entity is the long-term operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of flood risk reduction features. A third objective is continued floodplain management of the basin, in collaboration with land use agencies. Ultimately, a governance entity needs to be flexible enough to plan for and manage the flood risk reduction project in order to address and adapt to changing conditions and evolving regulatory requirements over time. The following governance options were developed and analyzed:

- Cooperation by Memorandum of Understanding (MOU) or a contract
- New Joint Powers Authority (JPA)
- New Flood Control and Water Conservation District Zones

In September 2012, Moore Iacofano Goltsman, Incorporated (MIG)¹ completed a Memorandum titled "Potential Governance Structures for the Lower Pajaro Levee Reconstruction Project" (Study) that presented a preliminary assessment of potential governance structures for the future management of the Lower Pajaro Levee Reconstruction Project. The MIG Memorandum presented initial results from stakeholders on five criteria listed below:

¹ MIG is a consulting firm of [designers, planners, engineers, and scientists](#).

1. Fair, equitable and responsive to all stakeholders
2. Organizational capability and technical effectiveness
3. Politically feasible
4. Clear lines of authority
5. Efficient use of resources

The MIG Memorandum concluded that a new joint powers authority should be formed. The MIG Memorandum and conclusions are an important backdrop and context for follow-on efforts.

In April 2019, Larsen Wurzel & Associates, Inc. (LWA²) completed a Memorandum titled “Pajaro River Flood Management Agency, Governance Options Analysis and Recommendation” that presented a final assessment of potential governance structures for the future management of the Lower Pajaro Levee Reconstruction Project. In order to evaluate the potential governance options, specific criteria for evaluation were developed. The major topic areas were focused around the goal of implementing, funding, and financing flood risk reduction projects. However, the effectiveness of the governance option to carry out aspects of long-term OMRR&R and floodplain management activities was also considered.

Based on the evaluation completed by LWA and previous work completed by MIG, the consensus from the key stakeholders was a joint powers authority (JPA) would accomplish the primary objective of project implementation in the lower Pajaro River watershed. It could also be structured and empowered to carry out OMRR&R and basin-wide flood management.

Some of the key findings that led the Member Agencies to recommend formation of the PRFMA are summarized below:

1. The JPA aligns and focuses purpose, and telegraphs the importance and priority of the long-term capital and O&M investment to the Federal and State governments and to the community;
2. Both the State and Federal Government prefer to sign agreements with a single project sponsor;
3. The [Revolutionize USACE Initiative](#) has identified strong interest in P3 (public private partnership), and has identified JPAs as an ingredient to the P3 model;
4. A JPA whose geographic boundary encompasses the Pajaro River watershed within the Counties of Santa Cruz and Monterey reduce the number of benefit assessment district votes required to raise capital and/or O&M funds;
5. Flood risk reduction JPAs are common to California and are the tried and true model for financing, designing and implementing flood risk reduction projects.

² LWA of Sacramento provides finance, program and project management consulting services to public and private entities with the goal of efficiently and cost effectively implementing public infrastructure improvements and services.

Joint Exercise of Powers Agreement

Included for your consideration is a Joint Exercise of Powers Agreement negotiated by the Member Agency staff, management, each with their own legal counsel have developed this initial agreement by revising other flood management agency joint exercise of powers agreements and adapting to the needs of the Member Agencies. The proposed Joint Exercise of Powers Agreement (JPA Agreement) will form the Pajaro Regional Flood Management Agency to reduce flood risk to lives and property. The JPA Agreement allows the Member Agencies to exercise common powers independently or in cooperation with the United States, the State of California or any other entity. While authorization to execute the JPA Agreement would originate with the County of Santa Cruz Board of Supervisors action, the PRFMA would be formed only after all Member Agencies have approved and executed the JPA Agreement.

Indemnity Agreement

Also included for your consideration, is an Indemnity Agreement negotiated by the Member Agencies staff, management, and legal counsel. Some Member Agencies have existing risks or obligations if there were flooding. The Watsonville city government has little or no liability risk from flooding. The Member Agencies are therefore recommending entering into the Indemnity Agreement so that, from the creation of the JPA from now until the completion of new facilities, the City of Watsonville is indemnified for any liability by the creation of or its participation in the JPA or any other Member Agencies' conduct in maintenance or operation of any existing facilities of the current system.

Next Steps

Most flood risk management JPAs were established before member agencies fully funded the independent general administration and oversight functions. During the initial start-up phase, the JPA functions that are critical to legal establishment of the JPA can be administered by member agency staff. The benefits of executing the JPA Agreement and establishing the JPA include the ability to easily and quickly execute federal cost share agreements and advance the Proposition 218 benefit assessment ballot proceeding process. Upon formation, the JPA will need to address administrative and policy issues prior to initiating the benefit assessment formation process. The following lays out a high-level summary of the current JPA startup plan.

*Step 1: Establish JPA (**Current Step**)*

Member agencies obtain necessary approvals to execute the Joint Exercise of Powers Agreement and the and the Indemnity Agreement. Send notice to Secretary of State of formation, file notice of formation with the State's Roster of Public Agencies, file with County Clerk Registry, and notify LAFCO.

Step 2: Interim JPA Staffing by Member Agencies

Member agency staff provide support, as needed and on an interim basis, to complete the administrative processes required to establish the JPA and advance the Proposition 218 benefit assessment formation process. The interim staff support could be provided through a services agreement between the JPA and one or more Member Agencies. This services agreement could include providing staff support for all services needed to start-up

the JPA.

Step 3: Implement Long-term Staffing Plan for JPA

Upon a successful Proposition 218 benefit assessment formation, the JPA Board of Directors decides how to staff the JPA on a permanent basis. Member agency staff would support the JPA through this process and recommend a staffing plan reflective of the available assessment district budget.

Step 4: Transition OMRR&R to JPA (Can be completed in parallel with Step 3)

Operations, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) responsibilities will be transitioned from Santa Cruz County Flood Control and Water Conservation District Zone 7 and the Monterey County Water Resource Agency to the JPA.

STRATEGIC PLAN:

Formation and approval of the new joint powers authority meets the following Strategic Plan goals set forth for by the Council.

03-Infrastructure & Environment

06-Public Safety

FINANCIAL IMPACT:

No financial impact is immediately expected due to the formation of the JPA. Member agencies will continue to direct staff to support formation and start-up of the Agency until the JPA Board decides when and how to permanently staff and fund the agency.

ALTERNATIVE ACTION:

There is no alternative Action.

ATTACHMENTS AND/OR REFERENCES (If any):

1. None.

CITY COUNCIL ACTION RECOMMENDED:

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