

THE MARIN WILDFIRE PREVENTION AUTHORITY  
BOARD OF DIRECTORS MEETING

3:00 p.m.

Thursday, July 16, 2020

Via teleconference due to Coronavirus (COVID-19)

MINUTES

1. Call to Order. President Goines called the meeting to order at 3:00 p.m.
2. Roll Call and Introductions.

Directors In Attendance: Steve Burdo (San Anselmo), Barbara Coler (Fairfax), Kathryn Donohue (Inverness), Tom Finn (Sleepy Hollow Fire), Steve Gerbsman (Kentfield Fire), Bruce Goines (Novato Fire), Leah Green (Marinwood), Cathryn Hilliard (Southern Marin Fire), Leighton Hills (Muir Beach), David Kimball (Bollinas Fire District), Sashi McEntee (Mill Valley), Julie McMillan (Ross), Gabe Paulson (Larkspur), Gary Phillips (San Rafael), Bob Ravasio (Corte Madera), Dennis Rodoni (County of Marin), Mark White (Stinson Beach),

Staff in Attendance: Chief Jason Weber (Marin County Fire)

Chief Weber stated Mr. Kevin Yeager was behind the scenes running the Video Conference meeting. The public will have an opportunity to address the Board by using the "raise your hand" function.

3. Agenda Adjustment.

There were no adjustments to the agenda.

4. Open Time for Public Expression.

Ms. Terri Thomas, representing the Fire and Environment Resiliency Network (FERN), discussed an incident that occurred on Ring Mountain that included accidental mowing of a plant that is on the threatened species list. She applauded the authority's attempt to blend fire and environmental protection. She stated that MWPA will need to proceed carefully and to provide maps of high ecological value to staff.

5. Executive Officer's Report.

Chief Weber updated the Board on the status of the various subcommittees. He stated that he has asked Ms. Jean Bonander, former Executive Officer of the Marin Telecommunications Agency (MTA), to assist the Citizens' Oversight Committee (COC) Subcommittee in establishing and opening up the application process. The Subcommittee will submit the recommendations to the Board. He hopes to have the committee up and

running by September. The By-Laws Committee is reviewing the draft by-laws with a goal of getting the document to the Board as soon as possible. He stated he, along with Operations Committee member Schwarz, is working as “staff” to keep things moving forward.

Director Coler asked when the COC applications would be posted on the Website. Chief Weber stated probably within the next two weeks.

6. Consent Calendar.

a. Approval of minutes from June 18, 2020 MWPA Board of Directors meeting

M/S, Hilliard/McEntee, to approve the June 18, 2020 MWPA Board of Directors meeting minutes as corrected.

Ayes: 17 of 17, 100% of population (through a roll call vote)

7. Old Business.

a. Executive Officer recruitment

Operations Committee (OPS) member Pomi presented a report. Nelson Staffing received eighty-one applications during the filing period. The goal of casting a wide net was achieved. Nelson Staffing reviewed all the applications and scheduled twenty-minute interviews with twenty-four applicants who met the desired qualifications. Nelson Staffing then scheduled an additional forty-five minute interview follow up with eleven of the twenty-four candidates based on qualifications, experience, education, and understanding of the MWPA’s mission.

Nelson Staffing then provided a recommendation of the top ten candidates. On Tuesday, July 7, 2020, the Board subcommittee and the OPS subcommittee met with Nelson Staffing and reviewed all eighty-one candidates and the top ten candidates. The group unanimously recommended five of the highly qualified candidates to move on to an interview process. This interview panel will consist of the MWPA Board President, Vice-President, a Board member at large, an OPS Committee member, a Technical Advisory Committee member, and a member of the public. The five geographic regions will be evenly represented. Interviews will be scheduled in the near future. The final selection will be made by the Board at the August meeting.

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

There were no comments or questions from the Board.

b. Citizens' Oversight Committee

Chief Weber noted comments were made about this item during the Executive Officer's Report. He reiterated the hiring of Ms. Bonander and the goal of bringing the candidates to the Board in August. The COC committee will consist of nine members, five of whom will represent the geographic areas, one from a non-partisan civic affiliation, one from the environmental community, one from the Fire Safe community, and one from a tax advocacy organization. The goal is to have the committee on board by September 1, 2020.

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

There were no comments or questions from the Board.

8. New Business

a. Proposal to provide Legal Services to the Marin Wildfire Prevention Authority

Chief Weber presented the report. The authority will need legal assistance and he thanked Mr. Steven Raab, County Counsel, for his assistance. Staff received three proposals to provide legal services including Marin County Counsel, Epstein and Holtzapple, and Burke, Williams, and Sorenson.

Mr. Brian Washington, Marin County Counsel, and Mr. Brendon Halter, Deputy County Counsel, gave a presentation. Mr. Washington stated there were twenty-three staff members in his office. He discussed the backgrounds and experiences of the various attorneys and noted they represent a wide array of legal practice areas. Their offices also represent a number of special districts. The County Counsel bills for services at \$241 per hour. Mr. Halter stated they have experience with administrative litigation matters, appearing before administrative boards, statutory compliance, transactional work, public governance. The County Counsel's office does everything in-house.

Director Gerbsman asked if the authority would be paying for the attorney and the partner-in-charge on any given matter. Mr. Washington stated they would pay for whoever they are using.

Director Finn stated the Sleepy Hollow Fire Protection District uses County Counsel as legal counsel and he asked if this possible conflict could be resolved by a waiver if an MWPA project touches upon a Sleepy Hollow interest. Mr. Washington stated "yes" but they would also create an "ethical wall" between attorneys.

Director Phillips asked what type of legal services the Board will need and what the annual cost might be. Mr. Washington stated since the MWPA will be doing a lot of

projects expertise will be needed in contracting, CEQA compliance, employment law issues, and Brown Act compliance. He would need to talk to the authority's staff about the annual cost, but he would guess it will be between \$15,000 and \$30,000 depending on the level of activity.

President Goines thanked Mr. Washington and Mr. Halter for their presentation

Ms. Megan Acevedo, representing Epstein and Holtzapple, gave a presentation and stated she would be the point person if selected. She gave a PowerPoint presentation. She briefly discussed the history of the firm and her background. There are ten attorneys in the firm, three of whom contract as City Attorneys in Marin County. The office is based in San Rafael and primarily represents Marin County entities. She frequently deals with CEQA matters, election issues including tax measures, and emergency response issues.

Director McEntee noted the firm was small and she asked Ms. Acevedo if she was confident CEQA issues could be handled in-house or if the Board would need to get additional legal support. Ms. Acevedo stated she feels very confident in her experience handling CEQA issues. There are people in her firm who handle litigation exclusively. They would, however, reach out to outside counsel who may be more familiar with a particular issue.

Director Rodoni noted their rate is \$240 per hour and asked when the special rate of \$300 per hour would be applied. Ms. Acevedo stated that would be for litigation of matters that go beyond the expected scope of work of attending meetings and hearings and preparing for meetings.

Director Paulson asked Ms. Acevedo to further discuss her experience with public contracting and employment law and what matters she thought she might be addressing and how long that would take. Ms. Acevedo stated she has not done a lot of employment law and it is not her area of expertise. Once the Executive Director is hired, she figured her work would take about ten hours per month.

Director Berdo asked Ms. Acevedo what distinguishes her firm from the others. Ms. Acevedo stated her firm is extremely invested in its clients and its priority is responsiveness.

President Goines thanked Ms. Acevedo for her presentation.

Ms. Samantha Zutler, representing Burke, Williams, and Sorenson, gave a presentation and stated she started her practice as a labor employment lawyer representing Public Safety personnel. She has been a City Attorney for several years. There are one hundred lawyers in the firm, with ten offices, representing over two hundred agencies. The firm focuses on public law. She brought up the issue of "double billing" and stated they try to be efficient with their time. She would be the General Counsel. Ms. Erica Vega stated she is also a City Attorney and would handle the CEQA issues.

Director Paulson asked which agencies in Marin County the firm works with. Ms. Zutler stated they represent the Town of Tiburon, the Town of Ross, the City of San Rafael, and do special counsel work with various other Marin cities. They are familiar with Marin County issues.

Director McEntee stated CEQA laws are somewhat vague and difficult to comply with proactively and she asked what advice they would give the Board to make sure they are following best practices. Ms. Vega stated for projects where they are the lead agency, they need to do an early and thorough assessment to determine the strength of the evidence and whether or not a Negative Declaration will be supportable. She noted the standard of review on a challenge is favorable towards the petitioner and not the public agency. When taking the role of a responsible agency she also suggests early involvement in monitoring.

Director Rodoni asked Ms. Zutler to discuss travel time and costs. Ms. Zutler stated there would not be any travel costs as her firm does not bill for travel.

Director Gerbsman asked what the authority should budget for the first year. Ms. Zutler stated that is difficult to say. The first few months could include thirty to forty hours per month with a drop off after that.

Director Coler referred to the CEQA issue and stated the authority will not be undertaking development projects. She noted the authority would often be the responsible agency and not the lead agency. Ms. Vega stated her experience with development in the inland areas involved clearing of habitats and possible impacts to species. The skills developed being a CEQA practitioner working on private development projects is translatable. Ms. Zutler stated the firm has a robust land use practice in Northern California.

President Goines thanked Ms. Zutler and Ms. Vega for their presentation

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

Director McEntee stated she liked the comment made by Ms. Zutler about ramp up costs and is inclined to go with a full-service firm that has the in-house expertise. She acknowledged the ethical fire walls that County Counsel would have. All three firms are excellent.

Director Coler stated she likes the idea of using the services of County Counsel. A smaller firm might not be able to help the authority with human resources issues. Her second choice would be Ms. Zutler's firm.

Director Hilliard stated she was very impressed with Ms. Vega's resume as she has experience dealing with controversy. Her preference would be Burke, Williamson, Sorenson, then County Counsel, and then Epstein and Holtzapple.

Director Phillips wondered if this selection was premature since the Executive Director would be working closely with legal counsel and perhaps should be a part of this decision. President Goines stated they are hoping to conduct interviews next week and make recommendations to the Board. They hope to get the position filled by early September.

Director Burdo stated these are three qualified firms. He has experience with the firm of Epstein and Holtzapple and thought there would be a benefit to hiring a smaller firm in terms of responsiveness. He would vote for Epstein and Holtzapple.

Director Rodoni noted the potential budget impact of five hours a month would equate to \$18,000 per year. He stated he works with County Counsel every day. They would get better service from a local firm. His vote would be for County Counsel and then Epstein and Holtzapple.

Director Ravasio agreed with Director Rodoni and would lean towards hiring County Counsel. He stated that being able to work effectively in Marin County will be important.

Director Gerbsman stated he would vote to retain the services of Ms. Zutler's firm. He is concerned about the County's "firewall" and wants independent counsel to provide guidance.

Director McMillan stated the firm of Burke, Williams, and Sorenson has a deep bench of experience. Ms. Acevedo's presentation was outstanding. She reviewed all the authority's documents and her focus is on transparency and collaboration. She suggested recommending the top two firms to the Executive Director.

Director Hills stated his entity recently hired Epstein Holtz for a special project and found the firm's expertise very helpful. They are experienced and responsive.

Director Rodoni noted the authority would need a law firm to negotiate the contract with the Executive Director. He would like to move forward today. Director McEntee agreed.

Director Gerbsman stated the law firm would report to the Board of Directors and suggested that the Board should make this decision today.

Director Phillips stated he would go along with moving forward today and would put a pitch in for the firm of Epstein and Holtzapple.

Director White stated these were three excellent firms, but he is leaning in favor of County Counsel. He would like to move forward tonight.

Director Finn stated he is familiar with all three firms. He noted he would abstain from any vote involving Epstein and Holtzapple since he is represented by the firm in a personal capacity. He would like the autonomy of having a private, young, and smaller firm.

President Goines opened the meeting to public comments.

Ms. Pamela Meigs stated a larger firm would increase costs. She supported the hiring of County Counsel.

President Goines closed the meeting to public comments.

President Goines stated the consensus was to move forward today.

Director Gerbsman stated he would like some indemnification regarding the "firewall" if they decide to hire County Counsel. He was concerned about potential conflicts of interest.

Chief Weber suggested a straw poll and called the roll:

Kimball- Epstein and Holtzapple;  
McEntee- Burke, Williams, Sorenson;  
Phillips- Epstein and Holtzapple;  
Paulson- County Counsel;  
Rodoni- County Counsel;  
Gerbsman- Epstein and Holtzapple;  
Green- County Counsel;  
Hills- Epstein and Holtzapple;  
Goines- Burke, Williams, Sorenson;  
Finn- abstain;  
Hilliard- Burke, Williams, Sorenson;  
White- County Counsel;  
Ravasio- County Counsel;  
Coler- County Counsel;  
McMillan- Epstein and Holtzapple;  
Burdo- Epstein and Holtzapple.

Director Finn stated he is represented by Mr. Holtzapple in a trust matter, but he does not believe there is a conflict of interest. He would be willing to cast a vote.

M/S, Coler/Paulson, to eliminate the firm of Burke, Williams, and Sorenson and take another straw poll.

Ayes: 17 of 17, 100% of population (through a roll call vote).

Chief Weber called the roll for a second straw vote.

Kimball- Epstein and Holtzapple;  
McEntee- Epstein and Holtzapple;  
Phillips- Epstein and Holtzapple;  
Paulson- County Counsel;  
Rodoni- County Counsel;  
Gerbsman- Epstein and Holtzapple;  
Green- County Counsel;  
Hills- Epstein and Holtzapple;  
Goines- County Counsel;  
Finn- Epstein and Holtzapple;  
Hilliard- Epstein and Holtzapple;  
White- County Counsel;  
Ravasio- County Counsel;  
Coler- County Counsel;  
McMillan- Epstein and Holtzapple;  
Burdo- Epstein and Holtzapple.

M/S, Rodoni/Burdo, to hire Epstein and Holtzapple for legal services with the same firewall protections implemented by the County of Marin.

Ayes: 16 of 16, 100% of population (through a roll call vote)

- b. Agreement with Southern Marin Fire District to provide financial, administrative services and office space to the Authority

Chief Weber presented a report and displayed a more defined scope of work agreement as requested by Director Coler.

OPS Committee member Tubbs stated the OPS Finance Subcommittee looked at MERA as a model in terms of the scope of the work. The first year will be time intensive since they will need to set up the accounting system, open up accounts, etc. Built into the proposal are the estimated costs with no profits.

Director Finn asked what protections would be in place to ensure security in the event of a breach. OPS Committee member Tubbs stated he has not had a discussion with the District's Finance Director, but they do host financial information on a server and remotely. He would envision taking the same security precautions for the JPA. Director Finn would like the agreement to include a description of those obligations. In the event of a termination of the agreement all the information shall remain accessible to the JPA post-termination. OPS Committee member Tubbs stated he would follow-up on that request.

Director McEntee stated the proposal was for \$101,000, for a maximum of 1,005 hours between the three professionals, which would equate to \$100 per hour. That seemed like a lot. She asked if this would include the preparation of a Comprehensive Annual Financial Report (CAFR) that would be presented to the auditors and the public. OPS



Committee member Tubbs discussed the hourly rate of the individuals who would be working on the JPA finances. They did not build the CAFR into the estimate or the cost of an independent audit. The support work for the audit is included. Director McEntee asked if the auditor would prepare the CAFR. OPS Committee member Tubbs stated there has been no stipulation that a CAFR would be required. The audit is statutorily required and the CAFR is not.

Director McEntee asked if the current JPA attorney was fine with the insurance liability coverage requirements. OPS Committee member Tubbs stated both the JPA and the District attorneys approved the requirements.

Director Gerbsman stated the Executive Director would not start until September and he asked when they could begin to work on a “bottoms-up, go forward” forecast. It is important for the Board to know where the money is being spent and what the projections are. OPS Committee member Tubbs stated it is important to get the infrastructure set up so the Board has a clear picture of the finances. The accounting and reporting systems need to be on track before the Executive Director is on board.

Director Coler stated the agreement includes a payment of \$101,000 to the provider regardless of whether they use fewer hours or personnel. There is no “maximum, not to exceed” provision other than the office space. She requested a rate sheet for all people who are included in the billing. They should not get billed for the full amount if it is not used. OPS Committee member Tubbs stated the number that is proposed in the contract represents a “maximum, not to exceed” figure. They are not opposed to the suggested tracking of time and would be willing to make good faith estimates. He hoped it would not be an onerous task for staff. Director Coler stated it should not be that daunting and could be done on an Excel spreadsheet.

Director Finn asked if the Executive Director would have the ability to log in and track financial matters. OPS Committee member Tubbs stated the Executive Director would be working in the same building as the Finance Manager. He would follow up on whether or not the Executive Director could do this tracking remotely.

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

Director McEntee referred to Section 2.02, Fees, and stated she would like to delete the “annual renewal” clause since they do not know what they will be doing over the next year or what their needs will be. She supported the proposal from Southern Marin Fire.

Director Finn asked Director McEntee if she thought the amount should be reviewed annually independent of the roll-over of the agreement.

Director McEntee stated they should review how they are doing it since they will know more in a year. Director Finn stated Section 1.03 requires that they make a decision after six, and not twelve months, or it will roll-over for another year. Director McEntee reiterated she did not want to commit to an evergreen contract.

Director Coler suggested the following wording: "The term *may* be extended on an annual basis". Director McEntee stated she liked that suggestion. She suggested a provision that provides for three months written notice.

Director Burdo stated review of any entity providing services was the Board's job and they could shorten the length of notice. He did not read this as an evergreen provision. He could support the language as is.

Director McEntee asked about the preparation of a CAFR.

Director Rodoni stated it was a good idea, but they could wait until they get the Citizens' Oversight Committee in place. They could make this decision at a later time. Director Phillips agreed.

Director Gerbsman stated they should modify the six-month time period to three months which is not unreasonable.

Director Hilliard asked the Board to keep in mind, for the first year, what it takes to do a startup.

M/s, Phillips/Burdo, to approve the agreement with Southern Marin Fire District to provide financial, administrative services and office space to the Authority, with an adjustment from six months to three months, an understanding that the data is owned by MWPA and accessible after termination of the contract, that the figure of \$101,000 represents a "not to exceed" number, and delaying a decision on the CAFR.

Ayes: 15 of 16, 89.3% of population (through a roll call vote)  
Abstain: Hilliard

The Board took a 5-minute break at 5:30 p.m.

c. Resolution No. 20-04 election of Treasurer

Chair Goines presented a report. He noted the Finance Director for the Southern Marin Fire District has agreed to accept this responsibility.

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

M/S, Rodoni/Kimball, to adopt Resolution No. 20-04 and elect the Finance Director for the Southern Marin Fire District as the MWPA Treasurer.

Ayes: 15 of 16, 89.3% of population (through a roll call vote)

Abstain: Hilliard

- d. Resolution No. 20-05 authorizing Board President to enter into agreement with Marin County Department of Finance for bridge funding from Marin County Pool

Chief Weber presented a report. The Finance Committee has looked at potential cash flow issues as they arise. He noted agencies have expressed a willingness to carry funding for the local projects proposed in the Work Plan. This would allow the MWPA to borrow the least amount of money possible. The resolution specifies an “up to” \$4 million figure with a maximum of \$48,000 interest incurred.

Director McEntee stated she would like to see more detail on how this money will be used. She asked who would decide on how much to borrow, etc. Chief Weber stated the budget was approved and some of those projects are underway, including Chipper Days. The chipper costs are averaging about \$40,000 per week and are moving rapidly. MWPA’s intent is to do a one-time, up-front loan of \$1 million and work on half-million dollar increments after that. The intention is to borrow the least amount possible. Director McEntee asked how much was pass through. Chief Weber stated 20% was the pass through.

Director Gerbsman stated they approved a “big picture” budget and \$1 million should cover them through October 2020. He would like to know the “bottoms-up” numbers before MWPA borrows more than the initial \$1 million. Director McEntee agreed.

Director Hilliard stated the budget was approved with delineated projects and she asked if the Finance Committee could submit the detailed information requested by Director Gerbsman.

Director Gerbsman stated he would like to know what is spent on a monthly basis. He supported borrowing the initial \$1 million and further borrowing should be approved by the Board.

Director Rodoni agreed that the Finance Committee could work on a cash flow report for the next several months.

Director Phillips was in favor of adopting the resolution as the MWPA needs to move forward.

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

M/S Phillips/Hilliard, to adopt Resolution No. 20-05 authorizing the Board President to enter into an agreement with the Marin County Department of Finance for bridge funding from Marin County Pool in the amount of \$4 million.

Ayes: 15 of 15, 100% of population (through a roll call vote)

Director McEntee asked President Goines if the Finance Committee would follow up with cash flow projections. President Goines stated "yes".

- e. California Environmental Quality Act (CEQA) Overview and MWPA's commitment to Ecologically Sound Practices.

President Goines presented the report. The JPA received a letter from the Fire and Environment Resiliency Network (FERN) expressing concerns about the project approval process and asking for the commitment to Ecologically Sound Practices (ESP). He, along with Chief Weber, met with representatives of FERN with the intention of facilitating communication between the environmental community and the JPA. He clarified policies regarding environmental practices and compliance and he and Chief Weber identified actions that would resolve the issues. They made significant progress.

Chief Weber noted that the member agencies need to understand the legal obligation to CEQA. This is a reminder that projects in the Work Plan need to go through environmental compliance. The Marin Conservation League will be holding a seminar with land management agencies focusing on the CEQA process.

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

There were no questions or comments from the Board.

## 9. Committee Reports.

- a. MWPA Board of Directors By-laws Committee

Director Finn reported he submitted a draft of possible By-laws to Chief Weber. The draft was supplemented with some boilerplate provisions from other JPAs and circulated to the members of the By-Laws Subcommittee for review and comment.

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

There were no questions or comments from the Board.

#### 10. Financial Reports.

There were no reports.

#### 11. Informational Items.

##### a. Update from FIREsafe Marin on program of work

OPS Committee member Shortall gave an update on the progress being made by FIREsafe. The Board approved nineteen projects for FIREsafe Marin, and Mr. Shortall reported they are making very good progress. FIREsafe Marin plans to do a monthly Webinar, with the first one being held on July 28, 2020 at 6:00 p.m. He noted the Board was sent a copy of the FIREsafe Newsletter. The biggest program is Chipper Day and they started in the Town of Ross on July 6, 2020.

President Goines thanked OPS Committee member Shortall for the great work they are doing!

President Goines opened the meeting to public comments.

There were no comments.

President Goines closed the meeting to public comments.

#### 12. Board Members Request Future Agenda Items.

Director McEntee stated she would like the issue of preparation of a CAFR placed on a future agenda.

Director McMillan asked if the standing Board meeting date was the third Thursday of the month at 3:00 p.m. President Goines stated "yes".

#### 13. Adjournment.

President Goines adjourned the meeting at 5:55 p.m. The next regular meeting would be held on Thursday, August 20 at 3:00 p.m.

Respectfully submitted,  
Toni DeFrancis,  
Recording Secretary