



SAN FRANCISQUITO CREEK

Joint Powers Authority

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East Palo Alto, Menlo Park, Palo Alto, San Mateo County Flood Control District, and the Santa Clara Valley Water District

**Notice of Special Meeting of the
SAN FRANCISQUITO CREEK JOINT POWERS AUTHORITY BOARD**

City of Menlo Park Council Chambers

701 Laurel Street, Menlo Park, California

Chairperson: Honorable Heyward Robinson

Thursday, April 29, 2010 at 4:00 p.m.

AGENDA

- 1) ROLL CALL
- 2) APPROVAL OF MEETING MINUTES: MARCH 25, 2010 BOARD MEETING
- 3) APPROVAL OF AGENDA
- 4) CONSENT CALENDAR – *None*
- 5) PUBLIC COMMENT – *Limited time for public comment on items not on the agenda.*
- 6) REGULAR BUSINESS – EXECUTIVE DIRECTOR’S REPORT
 - a) Federal government update and WRDA request letter
 - b) S.F. Bay to Highway 101 capital project update: modified design criteria
 - c) Upstream of Highway 101 capital project update: initial field survey
 - d) Options to finance future SFCJPA capital projects: presentation by SFCJPA legal counsel
- 7) BOARD MEMBER REPORTS – *Agendized reports from Board Members requesting Board action.*
- 8) BOARD MEMBER MATTERS - *Non-agendized comments, requests, or announcements by Board members, no action may be taken.*
- 9) ADJOURNMENT

PLEASE NOTE: *Agenda packet will be posted by 4:00 p.m. on Wednesday, April 28, 2010 at: www.sfcjpa.org and click on the “Meetings” tab near the top.*

NEXT MEETING: May 27, 2010, 4:00 p.m. at the East Palo Alto City Council Chambers.

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Chairperson Robinson called the meeting to order at 4:07 p.m. at the City of Menlo Park Council Chambers, Menlo Park, CA.

DRAFT

1) ROLL CALL

Members Present: Chairperson Robinson, City of Menlo Park
Director Kwok, Santa Clara Valley Water District
Director Burt, City of Palo Alto

Members Absent: Director Gordon San Mateo County Flood Control District
Director Abrica, City of East Palo Alto

Alternates Present: Director Groom, San Mateo County Flood Control District

JPA Staff Present: Len Materman, Executive Director
Kevin Murray, Staff
Miyko Harris-Parker, Staff

Legal Counsel Present: None

Others Present: Tom Zigterman, Stanford Facilities; Dennis Parker, East Palo Alto Resident; Art Kraemer, Palo Alto Resident; Trish Mulvey, Palo Alto resident; Jerry Hearn, Portola Valley Resident; Mary & John Schaefer, Palo Alto resident; Chris Elias, Santa Clara Valley Water District; Jason Christie, Santa Clara Valley Water District; Ann Stillman, San Mateo County Flood Control District; Anthony Docto, City of East Palo Alto Public Works; Joe Teresi, City of Palo Alto Public Works; Peter Castles, HDR.

2) APPROVAL OF MEETING MINUTES: January 28, 2010 Regular Meeting of the SFCJPA Board Minutes

Minutes approved 4-0.

3) APPROVAL OF AGENDA

Agenda approved 4 -0.

4) CONSENT CALENDAR

None.

5) PUBLIC COMMENT

Dennis Parker, East Palo Alto resident, addressed the Board regarding the passing of Tommie Roberts, a longtime resident of East Palo Alto. Mr. Parker read to the Board a speech he gave at the funeral service for Mr. Roberts in which he shared memories of his time spent with Mr. Roberts working on issues regarding the Creek. Mr. Parker also shared with the Board, images he had framed featuring Mr. Roberts that will be presented to Mr. Roberts's family.

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Chairperson Robinson thanked Mr. Parker for his comments and he noted that Mr. Roberts will be missed within the community. Director Kwok thanked Mr. Parker and asked that the Board adjourn today's meeting in honor of Mr. Roberts.

6) REGULAR BUSINESS – EXECUTIVE DIRECTOR'S REPORT

Board organization: appointments to Board

Mr. Materman provided the Board with background information regarding the JPA process for Board appointments. Chairperson Robinson nominated Director Burt to fill the open position on the Personnel Committee. Director Groom seconded the motion. Motion to appoint Director Burt to the Personnel Committee approved 4-0.

SFCJPA Proposed Fiscal Year 2010-2011 Operating Budget

Mr. Materman presented the estimated 2010-2011 Fiscal Year to the Board. Mr. Materman outlined for the Board the benefits & legal account fields that were over budget; as well as the administrative account field that had a surplus. Mr. Materman explained that he did not apply any contingency to the over budgeted fields to give the Board a clear understanding of what the agency has spent. Mr. Materman continued the presentation with a comparison of the FY2009-10 estimated total expenses vs. the 2010-11 proposed budget.

Director Kwok stated his concern about the member agency contributions staying the same as the reserves are dwindling. Director Kwok stated that we need to have a discussion in the near future regarding the member agency contributions. Director Kwok pointed out that this is the second year that employees have not received a salary increase.

Chairperson Robinson agreed with Director Kwok and stated that he is always willing to be a champion for the JPA when speaking to his City Council members as the agency is making great progress.

Director Groom motioned to approve the FY 2010-2011 SFCJPA Operating Budget. Director Kwok seconded. The motion to approve was approved 4-0.

Alternatives to provide flood protection and other benefits between Hwy. 101 and El Camino Real

Mr. Materman presented to the Board a copy of the Corps of Engineers draft 100-year Fluvial Floodplain map. Mr. Materman stated that he is hopeful that construction on a project upstream of Highway 101 can be complete in about six years. Mr. Materman said that the Board and the community have to answer the questions of what will be built and how will the project be paid for. Mr. Materman then presented a comprehensive project schedule to the Board with four alternative projects for upstream of highway 101.

Mr. Materman presented to the Board a matrix, requested by Director Groom at the previous JPA meeting, which detailed the costs and benefits of the JPA capital project alternatives upstream of Highway 101. Mr. Materman stated that the assumption is that the downstream project is being built to protect to a 100-year flow level, and the Caltrans Highway 101 project is completed, so that the entirety of the area from West Bayshore downstream is evenly protected.

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Mr. Materman asked that the Board and the public provide as many comments as possible on the presentation material as we need the feedback before presenting to the member agency Boards and Councils. Mr. Materman continued saying that the next question we need to answer is at what point do we determine that we may want a 50-year solution instead of a 100-year solution.

Chairperson Robinson asked if alternative one is upgradable to alternative two in the future. Mr. Materman responded saying yes that alternative one can be upgraded to all three of the remaining alternatives.

Director Kwok asked if the alternative is just for raising bridges. Mr. Materman explained that the alternative is for modifying the bridges in six locations, including two pedestrian bridges. Director Kwok asked if there has been consideration for a 75-year protection level and if not we should think about this as we are determining the cost of these projects as our communities need to buy into the final project option.

Director Burt suggested adding a line for funding sources to the matrix. Director Burt stated that though we don't have a cost estimate for option number four right now we should be able to get a qualitative number to have a figure in place in the matrix. Director Burt asked if we need to start looking at the issue in terms of a forward looking 100-year flood as we've always used the term as what has been calculated in the past. Director Burt stated that we need to build that in to the nomenclature that we use the different project propositions that we consider. Director Burt said that as there had been some previous discussions on having other organizations becoming members of the JPA we need to revisit that idea and also consider including former JPA Board members to join the discussion in a more formal way.

Director Groom asked if the cost figures shown in the matrix would hold up for the next 2-6 years. Director Groom stated that she is very positive that the 100-year gets an extra star and she added that it is important to also ensure that the final project adapts to Sea Level Rise. Director Groom suggested using a different format for presenting the maps as they were hard to read.

Chairperson Robinson stated that there is such a significant benefit to the project that provides 100-year protection yet we need to be able to quantify this benefit as we have to go to the public and explain why we would choose the 100 year alternative when it is not the least expensive project option. Chairperson Robinson noted that the Menlo Park City Council will be having a discussion regarding the Bohannon project which will be built in the Belle Haven neighborhood of Menlo Park, and he did not realize that the area the Bohannon project was in the floodplain.

Trish Mulvey, Palo Alto resident, stated that she loved the presentation but agrees the maps are hard to read. Mrs. Mulvey reminded the Board that in the strategic planning process it was discussed that the watershed does not have a Resource Conservation District and while the Board is considering looking at a Financing District they should consider looking at a possible conservation district. Mrs. Mulvey stated that the determination of whether or not to create a Financing District needs to be put aside until it is decided what the exact proportionate balance of who will be paying what is determined.

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Kent Steffens, City of Menlo Park Deputy City Manager, stated that he has been involved in this Creek process for 11 years and that this year has been a breakthrough as the JPA staff and the member agencies staff are working together more closely to find out more about the creek. Mr. Steffens said that we are making a lot of progress right now.

Director Burt stated that when he purchased his home, the FEMA maps stated that water would flow to the center line of Channing which he did not believe was accurate and on the morning of the 1998 flood he walked down and sure enough there was water to the centerline of Channing.

S.F. Bay to Highway 101 capital project Communications Plan

Mr. Materman and Mr. Murray introduced Peter Castles of HDR who made a presentation of the SF Bay to Highway 101 capital project communications plan. Mr. Murray stated that the JPA will be working in the public more than we have ever been getting out the word and helping the public understand the process of the project. Mr. Castles noted that the JPA will be the face of communications on the project and that HDR will be assisting in the background. Mr. Castles outlined the task to be performed within the community including phone calls, mailings, and workshops and that the website will be a clearinghouse for us throughout the whole process.

Director Burt stated that perhaps there should be a segment added to the Communications Plan that gives some insight on the areas that are at greatest risk to human life.

Chairperson Robinson urged staff to make a special one on one presentation for Director Abrica.

Director Groom stated that the faith community and the PTA community are key communities to target.

Director Kwok stated that there needs to be a section outlining the funding received from Federal agencies.

7) BOARD AND ASSOCIATE MEMBER REPORTS - Agendized reports from Board and/or Associate Members requesting Board action.

None.

8) BOARD AND ASSOCIATE MEMBER MATTERS - Non-agendized comments, requests, or announcements by Board and/or Associate members, no action may be taken.

Mrs. Mulvey thanked Mr. Parker for his presentation on Tommy Roberts and she expressed her desire to designate a trail along in Creek in Mr. Roberts name. Mrs. Mulvey thanked everyone who participated the cleaning of the creek.

9) ADJOURNMENT:

Chairperson Robinson adjourned the meeting at 5:47 pm in honor of Mr. Tommy Roberts.

Minutes Prepared by Clerk of the Board: Miyko Harris-Parker

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Executive Director's Report

With the help of Kevin Murray and Miyko Harris-Parker, I am pleased to submit the following:

a) Federal government update and WRDA request letter

I spent April 14, 15 and 16 in Washington, DC with Palo Alto Vice Mayor Sid Espinosa and Councilmember Larry Klein. Palo Alto's lobbyist in Washington scheduled two days of meetings on issues of importance to the City, including SFCJPA federal requests, another City appropriation request, and high-speed rail.

The SFCJPA, City of Palo Alto, and Santa Clara Valley Water District all included an appropriations request of \$2 million for the Corps of Engineers Feasibility Study. Both Senators Feinstein and Boxer submitted this request to the Senate's Energy and Water Subcommittee on Appropriations. Congresswoman Eshoo submitted a request of \$1 million to the House's Energy and Water Subcommittee. Over the summer, the appropriations subcommittees in the Senate and House will "mark up" their bills, and each determine their level of funding before reconciling their numbers. We met with staff in the offices of Feinstein and Boxer, Eshoo and Congressman Mike Honda (who sits on the Appropriations Committee and has championed our requests).

The other SFCJPA issue on our agenda was our request for authorization in the next Water Resources Development Act for our Comprehensive Project, which includes our Bay-101 project, Caltrans' Highway 101 project, and our projects upstream of Highway 101. We discussed this issue with Rep. Eshoo's staff and with staff from Senator Boxer and the Environment and Public Works Committee (EPW) chaired by Boxer, which is writing the WRDA bill in the Senate.

At the SFCJPA's request, last December Rep. Eshoo submitted our request to the House Committee writing the WRDA bill. Last week, the EPW Committee sent a letter to senators inviting them to submit requested projects. We will ask Senators Feinstein and Boxer to submit our request to the Committee, and currently, I am working with senior managers in the Corps of Engineers San Francisco District to draft recommended language and will ask the SFCJPA Board to approve a letter regarding this.

Senator Feinstein's staff took note of the fact that this project was specifically requested by the SFCJPA and Santa Clara County agencies, but not agencies from the San Mateo County side. They strongly urged us to travel to DC again with an elected representative of East Palo Alto. In the coming months, I will be working on these issues, including planning such a trip for the fall.

b) S.F. Bay to Highway 101 capital project update: modified design criteria

In order to remove properties in a 100-year fluvial floodplain influenced by tides from the flood insurance requirement, FEMA requires that they be protected from a 100-year fluvial event occurring with a Mean Higher High Water (MHHW) tide level (the average of the higher high water height of each tidal day), plus three feet of "freeboard".

At an April 15, 2010 meeting Kevin Murray attended with staff from HDR (the engineering design consultant on the Bay-101 project) and FEMA's regional office, the FEMA staff indicated that they may soon require the 100-year tide coincident with 100-year fluvial event because of the tendency for high tides to accompany major storms.

Also, the currently accepted 100-year tide level at the mouth of San Francisquito Creek and at other locations within its Shoreline Study area may be changing. For the past year, the Corps of Engineers has been working to calculate a new 100-year tide level.

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On April 22, the Bay-101 Project Team discussed these developments and the need for us to keep informed of the progress of the Corps and FEMA on these issues. But keeping informed of federal agency activities, and waiting for a decision by them, are two different things. Thus, at that meeting I instructed HDR to not wait for the Corps to produce a new "definitive" number for the 100-year tide, and also to not wait for FEMA to decide if they will require a 100-year tide rather than the MHHW level.

I asked HDR to develop a preliminary project design that will provide the maximum known level of protection at this time: three feet of freeboard during a 100-year fluvial event concurrent with a 100-year tide, including the most extreme predicted height of Sea Level Rise during the 50-year life of the project (26 inches). This conservative approach is designed to ensure that property owners are removed from the fluvial floodplain influenced by tides (importantly, it will not remove them from the tidal floodplain). We do not believe this new approach will influence the current design progress on the Highway 101 bridge replacement by Caltrans. HDR's draft design will be presented to the SFCJPA Board at the May 27, 2010 meeting, and it can be modified between then and early July when the CEQA process will begin.

In order completely remove the estimated 6,000 parcels in the San Francisquito Creek floodplain east of El Camino Real from an obligation to pay to the National Flood Insurance Program (NFIP), the SFCJPA will request that FEMA approve new floodplain maps following the implementation of the following SFCJPA projects: 1) Bay-101 project, 2) Caltrans Highway 101 overcrossing replacement, 3) upstream of Highway 101 project, and 4) shoreline project to protect against tidal flooding independent of the Creek.

Completing the first three projects listed above can remove from the NFIP requirement over 3,000 properties that are only in the fluvial floodplain and not in the tidal floodplain.

c) Upstream of Highway 101 capital project update: initial field survey

During the time period between the last SFCJPA Board meeting when I presented project alternatives upstream of Highway 101 and the July 22 Board meeting when I intend to recommend to the Board a preferred alternative, we have scheduled presentations to the governing bodies of the Member Agencies and community groups.

While this outreach is taking place, we are continuing to gather information that allows us to advance the planning and design of this project. This information is coming from tasks within the Corps Feasibility Study, such as the delineation of the floodplain and environmental and cultural studies, and from locally driven work such as field surveying.

Beginning in early May, Santa Clara Valley Water District staff will survey portions of San Francisquito Creek and surrounding areas from Highway 101 to El Camino Real. This survey will determine exact location of Water District easements and private property lines relative to the potential work to remove bottlenecks from the channel, modify bridges, build a bypass culvert and/or floodwalls (two of these are potential building blocks for the alternative that includes upstream detention).

Two or three person survey crews will access the Creek and privately-owned property in some locations. A small amount of brush trimming may be necessary in some areas for line-of-sight purposes, but no power tools will be used for this purpose and any brush trimming will be in accordance with the published Water District guidelines in areas where they possess an easement. A letter describing this work will be sent from me to property owners shortly.

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d) Options to finance future SFCJPA capital projects: presentation by SFCJPA legal counsel

As has been discussed at previous SFCJPA Board meetings, we are working to develop a full picture of the funds required to plan, design, and construct our capital projects, and those that are available for these purposes.

The required funds will depend on the construction cost estimate of our Bay-101 project that HDR will provide us this summer, an estimate of any costs related to Caltrans' work on the Highway 101 overcrossing, and the preferred alternative to provide protection upstream of Highway 101 to be chosen by the SFCJPA Board at the July Board meeting or shortly thereafter.

The funds available for the planning, design and construction of these projects include already secured funds from the member agencies for this purpose, including funds collected through *ad valorem* taxes and Measure B by the Santa Clara Valley Water District, property related revenues collected by the San Mateo County Flood Control District, and funds collected by the three cities. Potentially, State grants could be found for this purpose and we are looking into those funding streams. Also, of course, the federal government may contribute substantially towards the construction cost when a project is authorized through WRDA now or as a result of the Feasibility Study process. Even with these secured and potential sources of funding, in order to achieve our goal of providing 100-year protection to residents within the three cities, additional funding sources must be secured by the SFCJPA or its member agencies.

In September of 2009, I began discussing with the SFCJPA's legal firm, which has attorneys that specialize in municipal finance, the options that are available to joint powers authorities to raise funds for capital projects, maintenance and operations. In the intervening months, they and I did research on this topic and met several times to discuss our options. Below is a summary of the two best options before the SFCJPA. Before the end of this year, I anticipate asking the Board to move forward in a particular direction on this topic, though it is unlikely that I will ask the Board to formally create a new financing district until we complete our design and environmental documents on the last of our capital projects.

Two widely used financing options that are available for a joint powers authority to finance flood control improvements are assessments against real property pursuant to the Municipal Improvement Act of 1913 (1913 Act) and special taxes on property pursuant to the Mello-Roos Community Facilities District Act of 1982 (Mello-Roos Act). At the Board meeting, we will discuss the differences between these.

Assessment against real property

An assessment is a charge imposed by a local government agency against real property based on the special benefit conferred upon the real property by the public improvement being financed by the assessment. The 1913 Act allows the SFCJPA to establish an assessment district, which is merely an area of benefit and not a separate legal entity, and levy assessments on properties in the assessment district to finance flood control improvements.

The Authority may only assess for special benefits. A special benefit is defined as a "particular and distinct benefit over and above general benefits conferred on real property located in the [assessment district] or to the public at large." General enhancement of property value does not constitute special benefit. Furthermore, no assessment may be levied against a parcel that exceeds the reasonable cost of the proportional special benefit conferred on the parcel. Funds other than assessment proceeds must be used to pay for the general benefits associated with a project.

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Pursuant to a related act, the Improvement Bond Act of 1915, the Authority may issue assessment bonds secured by the assessments, which are collected along with property taxes and are liens against property in the district. The following is a brief summary of the proceedings that the Authority must follow prior to the issuance of the assessment bonds.

A registered professional engineer must prepare a report that, among other things, (i) identifies all parcels which will have a special benefit conferred upon them by the improvement, (ii) determines the proportionate special benefit derived by each parcel in relation to the entire cost of the improvement being built, (iii) separates the general benefits from the special benefits conferred upon each parcel, and (iv) identifies the amount of the assessment to be levied against each parcel.

The Authority must hold a hearing prior on the proposed assessment. At least forty-five days prior to the hearing, the Authority must mail notice to all property owners who will be subject to the assessment. This notice must include a statement of the amount of the proposed assessment on the parcel and an assessment ballot. The assessment may not be imposed if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. Ballots are weighted according to the proportional financial obligation that the property would bear if the assessment were imposed.

Special tax

A special tax is a tax that is imposed for specific purposes. The Mello-Roos Act, allows the Authority to establish a community facilities district (CFD) and to levy a special tax upon properties within the CFD to finance the cost of flood control improvements. The CFD is a legal entity established for the sole purpose of financing the improvements.


The Mello-Roos Act allows flexibility in determining the rate and method of apportionment of the special tax. The tax must, in every case, have a stated maximum. The formula must have a reasonable basis and cannot be based on the assessed value of the taxed property.

The SFCJPA may issue bonds secured by the special taxes, which are often collected along with property taxes and are liens against the property in the CFD. The following is a brief summary of the proceedings that the Authority must follow prior to the issuance of special tax bonds.

Prior to beginning proceedings, the Authority must adopt local goals and policies concerning the use of the Mello-Roos Act. To begin the proceedings, the SFCJPA adopts a resolution of intention to form the CFD and publishes a notice of a public hearing. At the hearing, the Authority may adopt a resolution forming the CFD unless a majority protest is filed. If 50 percent or more of the registered voters residing within the proposed CFD, or the owners of 50 percent or more of the area of land within the proposed CFD subject to the special tax file written protests against the establishment of the CFD, then proceedings must be abandoned for at least one year.

Following formation of the CFD, the SFCJPA must submit the special tax to the registered voters of the proposed CFD, and it must be approved by a two-thirds vote.

Again, at the Board meeting, we will have a presentation by the SFCJPA legal firm's attorneys with expertise in this area.

Submitted by: 
Len Materman
Executive Director



SAN FRANCISQUITO CREEK

Joint Powers Authority

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East Palo Alto, Menlo Park, Palo Alto, San Mateo County Flood Control District, and the Santa Clara Valley Water District

May 3, 2010

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

As elected leaders from the cities of East Palo Alto, Menlo Park, and Palo Alto, and the counties of San Mateo and Santa Clara, and as members of the San Francisquito Creek Joint Powers Authority (SFCJPA) Board of Directors, we unanimously write to thank you for your efforts to protect local residents in the twelve years since a flood damaged approximately 1,700 properties in our watershed. We especially appreciate your efforts this year to secure FY 2011 appropriations to the Corps for their continued work on our Feasibility Study. This Study will provide fluvial and tidal protection to areas at great risk, and it continues the Corps' Shoreline Study into San Mateo County, the most vulnerable county to Sea Level Rise and tidal influence in California.

We write at this time to request that you once again champion this cause by seeking to include a comprehensive SFCJPA led capital project in the *Water Resources Development Act of 2010*.

Eight years ago, Congress directed the Corps of Engineers to take up the issue of flooding on San Francisquito Creek, yet today the Study is only one-third complete. Because of this, and the fact that the flooding threat has increased over time, the SFCJPA with the support of the Corps is taking on Study tasks that the SFCJPA can do more quickly and for less cost than the Corps, such as formulating the Study's primary work product, a comprehensive plan for flood protection, ecosystem restoration and recreation. The 2010 WRDA request we make to you today is the authorization of this locally preferred comprehensive plan. This request is modeled after a section in the last WRDA bill that authorized another local sponsor's plan and instructed the Corps to assess that plan's feasibility.

Within this comprehensive plan are several large capital projects. With local funds, in 2011 we plan to begin construction on a project to provide 100-year flood protection (combined with Sea Level Rise) for East Palo Alto residents living in homes that are behind – and with rooflines below – an uncertified levee, as well as for major federal and local infrastructure of regional significance. We are also working with Caltrans so that their project to rebuild the U.S. Highway 101 overcrossing of the Creek accommodates a 100-year flow, and we are designing a project upstream of U.S.101. Together, these projects make up the SFCJPA's Comprehensive Flood Protection Project that will benefit over 6,000 properties in the Creek's 100-year floodplain.

Thank you for your consideration of this request. If you have any questions, please contact SFCJPA Executive Director Len Materman at 650-561-4580 or len@sfcjpa.org.

Sincerely,

Ruben Abrica
Councilmember, East Palo Alto

Patrick Burt
Mayor of Palo Alto

Heyward Robinson
Councilmember, Menlo Park

Richard Gordon
President, San Mateo County Board of Supervisors

Patrick Kwok
Director, Santa Clara Valley Water District