



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 20-203

December 01, 2020

Introduced: 11/17/2020

Current Status: Agenda Ready

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Matter Type: BoS Resolution

- a. Authorize the Chair of the Board to execute one or more Cooperative Agreements with the United State Department of Agriculture - Natural Resources Conservation Service (USDA-NRCS) for the Emergency Watershed Protection (EWP) Program treatments relating to the River Fire, Carmel Fire, and Dolan Fire of 2020;
- b. Approve the form of and authorize the Director of Public Works, Facilities and Parks (PWFP) to execute agreements with property owners for the implementation of the EWP treatments; and
- c. Authorize and direct the County Administrative Officer (CAO), Director of Public Works, Facilities and Parks and his/her designee(s) and staff, and the Office of the County Counsel-Risk Manager to take such other and further actions necessary or appropriate, consistent with this action, to implement the EWP treatments, including the modification of the form contracts based upon particular circumstances, the execution of emergency professional services agreements and/or construction contracts; and the identification of grant or other funding sources to supplement the EWP Program funding.

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a Resolution to:

- a. Authorize the Chair of the Board to execute one or more Cooperative Agreements with the United State Department of Agriculture - Natural Resources Conservation Service (USDA-NRCS) for the Emergency Watershed Protection (EWP) Program treatments relating to the River Fire, Carmel Fire, and Dolan Fire of 2020;
- b. Approve the form of and authorize the Director of Public Works, Facilities and Parks (PWFP) to execute agreements with property owners for the implementation of the EWP treatments; and
- c. Authorize and direct the County Administrative Officer (CAO), Director of Public Works, Facilities and Parks and his/her designee(s) and staff, and the Office of the County Counsel-Risk Manager to take such other and further actions necessary or appropriate, consistent with this action, to implement the EWP treatments, including the modification of the form contracts based upon particular circumstances, the execution of emergency professional services agreements and/or construction contracts; and the identification of grant or other funding sources to supplement the EWP Program funding.

SUMMARY:

Federal aid is available to assist the County and residents/businesses with implementation of the Emergency Watershed Protection (EWP) Program. USDA-NRCS is not able to contract directly with individual property owners. Under the EWP, a local agency (e.g. County) must enter into contracts for the performance of necessary protective measures and must be contractually responsible for a matching payment of twenty-five percent (25%), which may include a combination of cash and

in-kind services. Following the 2008 Basin Complex Fires, the 2013 Pfeiffer Fire, and the 2016 Soberanes Fire, the County participated in this program. The County, in turn, shifted any financial burden to the benefited property owners, and contractually limited the County's liability exposure.

Staff recommends implementing a program to protect against an imminent threat to health, life and property as a result of the Fires of 2020, and to prepare for potential landslide/runoff damage that may occur during the winter rainy season. The program format noted above was implemented following the 2008 Basin Complex, the 2013 Pfeiffer Fire, and the 2016 Soberanes Fire. The 2015 Tassajara Fire did not qualify for this program.

One of the critical challenges for this series of fires is the short period of time before the rainy season begins (officially October 15). This is compounded by the need for data about the burn area watersheds provided by State or Federal agencies. The USDA-NRCS staff has started field work, but that is limited to properties where owners invite them onto their property.

Comprehensive reports have been prepared by the State in non-Federal lands called the Watershed Emergency Response Team (WERT) report, and on Federal land through the Federal Burn Area Emergency Response (BAER) report, led by the US Forest Service. The River Fire (commencing on August 16, 2020) and Carmel Fire (commencing on August 18, 2020) were contained in early-September, with the Dolan Fire (commencing on August 18, 2020) expected to be contained around November 30, 2020.

DISCUSSION:

As a result of property damage from the River Fire, Carmel Fire, and Dolan Fire, some properties may be susceptible to landslide and runoff damage during the winter rainy season. County staff has been working with the USDA-NRCS to make funds available to install BAER treatments and WERT treatments through the EWP Program. There appears to be significant potential for emergency situations and serious damage from debris flows originating in the areas destroyed by the fires. US Forest Service, Cal Fire and County staff have met to discuss the report and a possible first phase to address the northern burn area, which is the area of most concern for County staff at this point.

Steps to implement the EWP Program include:

- 1) WERT Report.
- 2) County letter to NRCS asking to participate. Letter sent on September 22, 2020.
- 3) Property Owner calls NRCS to ask to participate. This is strictly a voluntary program.
- 4) NRCS prepares reports assessing the damage, and potential for damage, and recommends remedial measures. This Damage Survey Report (DSR) is prepared for each property, where NRCS is invited, including the drainage basin or area that is expected to experience runoff, including properties downhill from the burn area that were not directly impacted but could be subject to subsequent erosion impacts from the burn area. DSRs can be completed by NRCS at no cost to the property owner.
- 5) Property Owner enters into agreement with County to participate and implement the work in the DSR.
- 6) County contracts for the work in the agreement and DSR to be completed.

The County must “sponsor” the program, which means that the County is responsible for preparing plans and specifications for the installation of the protective measures, such as K-Rail diversion barriers. The County must also contract for the installation of the protective measures and contribute 25% (cash and in-kind) towards the program (**Attachment B, Cooperative Agreement**). In no case may the benefited private property owner contract with the NRCS or cause the protective measures to be installed, and still be eligible for program assistance. To implement the program, the County enters into a contract with NRCS for each or multiple DSRs, and in turn must approve plans and specifications for the protective measures, obtain any permits, and receive permission from property owners to install the protective measures.

Staff has been working diligently with federal and state officials, and residents, to put the program in place, but the implementation of the program presents liability issues for the County, and the Board must make certain policy decisions regarding any County financial contribution to the program. A separate Board item has been drafted to consider a rebuild program where permit fees are deferred pending insurance payments, and potentially waived in certain cases. Recommendations from NRCS include engineering for short-term, interim water diversion and are not designed for permanent protections. In order to meet limited timelines and have as much funding available for implementation as possible, the Director has agreed to accept NRCS plans without requiring additional engineering.

With the limited timeframe before the rain season, the County Administrative Officer sent a letter to the NRCS State Conservationist to request Federal assistance under provisions of Section 403, Agricultural Credit Act of 1978 (Title 16 United States Code section 2203) and its implementing regulations, to provide for various slope stability, debris removal, erosion control, and canyon clearance projects within Monterey County (**Attachment D**). Based on actions from 2008 and 2013 and 2016, a couple of form contracts have been drafted for two categories of property owners: a) those that will benefit from the protective measures (**Attachment E-Reimbursed**); and b) those that won't benefit but on whose property some of the protective measures must be placed (**Attachment F-Unreimbursed**).

The agreement further calls for the owner to reimburse the County for a proportionate share of the County's required 25% match of the program, subject to any hardship relief received by the owner. The owner must also reimburse the County for maintenance and removal, subject to any hardship waiver; although, the current draft calls for the County to maintain at County expense for the first six months.

Monterey County's participation in this program creates potential liability exposure should the protective measures fail, or even exacerbate any damage. Agreements have been drafted with the greatest protection possible in that event:

- Non-benefited owners - provides that the County may place the protective measures on the property in return for a complete waiver of liability and indemnification by the County, and that the owner is not financially obligated.
- Benefited owners - contains a complete release and hold harmless clause by which those owners release any claims against the County that may arise from the program, except for the gross negligence or willful misconduct of County officials or employees. In addition, the owner agrees to release any claims against any non-benefited owner on whose property protective

measures were placed.

These agreements have been drafted with the greatest protection possible in that event, but there may be property owners with whom the County does not contract that experience damage, and the County would not have the benefit of any waivers in those instances. In addition, the County is agreeing to indemnify non-benefited owners from any damage, understanding that the County anticipates the benefited owners agreeing to obligations that benefit their property.

OTHER AGENCY INVOLVEMENT:

Efforts on these actions have included coordination between staff from County Administrative Office; Resource Management Agency (RMA) and now Public Works, Facilities and Parks; County OES; Fire Warden; Health; and Environmental Health. Staff has consulted with the Office of the County Counsel-Risk Manager regarding legal matters.

FINANCING:

At this time Staff is not able to quantify what the financial impact will be to the County since it depends on the number and nature of properties that participate. Staff will be working closely with the County Administrative Office on monitoring expenditures. Staff recommends the County cash flow the costs, subject to reimbursement from USDA-NRCS and property owners, from the General Fund, Fund 001, Office of Emergency Services Appropriation Unit CAO005. Once staff is able to quantify the fiscal impacts, staff will return to the Board requesting additional funding and associated increases to appropriations. The funds would be used towards projects, staff costs and professional services, necessary to provide the technical expertise needed in the timeframe required (e.g. engineering, hydrogeology, etc.).

As currently drafted, the agreements call for the County to pay for the first six months of maintenance and provide relief in hardship cases. It is difficult at this time to estimate the full cost to the County of such participation, as the DSRs are not prepared or approved, and thus no full cost estimate for the entire program has been prepared.


BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The recommended action will enable options that would address the River Fire, Carmel Fire, and Dolan Fire damages through repair projects. The listed projects would repair and/or reconstruct some of the County's infrastructure damaged as a result of the fires of 2020 resulting in restoration of service and accessibility to the public, as well as ways for the public to remedy their fire-damaged properties from further damages.

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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The following attachments are on file with the Clerk of the Board:

Attachment A - Draft Resolution

Attachment B - Cooperative Agreement (NRCS)

Attachment C - Location Map

Attachment D - Letter to NRCS re EWP

Attachment E - Right of Entry and Improvement Installation Agreement-reimbursed

Attachment F - Right of Entry and Improvement Installation Agreement-unreimbursed