

Attachment D

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MEMORANDUM

Date: September 23, 2019

To: Melanie Berretti, Special Projects Manager, County of Monterey

From: Mark Northcross

RE: Monterey County Board of Supervisors Public Hearing Requirement for FORA Bond Issue

Background. The authorizing statute for FORA provides that FORA can issue debt using the provisions of the Marks-Roos Local Bond Pooling Act of 1985(commencing CA Government Code Section 6584) (the “Mark Roos Act”). This particular statute was intended to provide clear legal authorization for a joint powers authority (“JPA”) to issue debt, and provide clear procedures required for the authorization of such debt.

One of the procedures required for the authorization of debt under the Marks Roos Act is that prior to issuance of bonds a jurisdiction within whose boundaries the public capital improvement is to be located has approved the financing of the public capital improvement and made a finding of significant public benefit in accordance with the criteria specified in Section 6586 of the Mark Roos Act. This provision was incorporated into the Marks Roos Act because of the practice in the 1980’s of “roving JPA’s” being used to fund developer focused bond transactions within the boundaries of jurisdictions that were otherwise opposed to providing such funding.

Analysis. In the case of the FORA bond issue, our bond counsel, Stadling Yocca, has concluded that the County of Monterey needs to hold such a public hearing to approve the financing of the building removal within its boundaries, which would also includes the cities of Marina and Seaside..

Stradling Yocca will prepare the form of a notice of public hearing and a resolution making the statutorily required findings and circulate a draft this week.

Schedule Requirements. The County Board needs to hold the public hearing and make the statutory findings before the FORA Board can approve the legal documents for the FORA bond issue. Since FORA Board approval is currently scheduled for October 11th, we ask that this matter be agendized with the County Board of Supervisors before then.

Please contact me with any questions.

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Duty of Care

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the public agency with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to the public agency's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the public agency; and
- d) undertake a reasonable investigation to determine that NHA Advisors, LLC is not forming any recommendation on materially inaccurate or incomplete information; NHA Advisors, LLC must have a reasonable basis for:
 - i. any advice provided to or on behalf of the public agency;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the public agency, any other party involved in the municipal securities transaction or municipal financial product, or investors in the public agency securities; and
 - iii. any information provided to the public agency or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty

NHA Advisors, LLC must deal honestly and with the utmost good faith with the public agency and act in the public agency's best interests without regard to the financial or other interests of NHA Advisors, LLC. NHA Advisors, LLC will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). NHA Advisors, LLC will not engage in municipal advisory activities with the public agency as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the public agency's best interests.