



Monterey County

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Board Report

Legistar File Number: RES 16-048

August 23, 2016

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Matter Type: BoS Resolution

Adopt a resolution:

- a. Authorizing the Chair of the Board to execute one or more Cooperative Agreements with the Natural Resources Conservation Service for the Emergency Watershed Protection Program treatments relating to the 2016 Soberanes Fire;
- b. Approving the form of and authorizing the Resource Management Agency Director to execute agreements with property owners for the implementation of the Emergency Watershed Protection treatments; and
- c. Authorizing and Directing the County Administrative Officer, Resource Management Agency Director, RMA Deputy Director of Public Works and Facilities, Chief of Planning, Building Official, and County Counsel to take such other and further actions necessary or appropriate, consistent with this action, to implement the Emergency Watershed Protection treatments, including the modification of the form contracts based upon particular circumstances, the execution of emergency professional services or construction contracts; and the identification of grant or other funding sources to supplement the Emergency Watershed Protection Program funding.
(2016 Soberanes Fire, Carmel Highlands/Big Sur)

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution (**Exhibit A**):

- a. Authorizing the Chair of the Board to execute one or more Cooperative Agreements with the Natural Resources Conservation Service for the Emergency Watershed Protection Program treatments relating to the 2016 Soberanes Fire;
- b. Approving the form of and authorizing the Resource Management Agency Director to execute agreements with property owners for the implementation of the Emergency Watershed Protection treatments; and
- c. Authorizing and Directing the County Administrative Officer, Resource Management Agency Director, RMA Deputy Director of Public Works and Facilities, Chief of Planning, Building Official, and County Counsel to take such other and further actions necessary or appropriate, consistent with this action, to implement the Emergency Watershed Protection treatments, including the modification of the form contracts based upon particular circumstances, the execution of emergency professional services or construction contracts; and the identification of grant or other funding sources to supplement the Emergency Watershed Protection Program funding.

SUMMARY:

Federal aid is available to assist the County and residents/businesses with implementation of the Emergency Watershed Protection Program (EWPP). NRCS is not able to contract directly with individual property owners. Under the EWPP, 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 and the 2013 Pfeiffer 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 2016 Soberanes Fire in Carmel Highlands/Big Sur, 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 and the 2013 Pfeiffer Fires. The 2015 Tassajara Fire did not qualify for this program.

One of the critical challenges for this Soberanes Fire is the short period of time before the rain season begins (officially October 15). This is compounded by the need for data about the burn area watersheds provided by State or Federal agencies. Natural Resources Conservation Service (NRCS) staff has started field work, but that is limited to properties where owners invite them onto their property. A comprehensive report will be prepared by a joint State and Federal Burn Area Emergency Response (BAER) team led by the US Forest Service. However, that work is pending final resolution of the fire and the Soberanes Fire is still burning with full containment not expected until the end of August at the earliest.

DISCUSSION:

As a result of property damage from the Soberanes Fire, some properties may be susceptible to landslide and runoff damage during the winter rainy season. County staff has been working with the Natural Resources Conservation Service (NRCS) to make available funds to install Burned Area Emergency Response (BAER) treatments through funds made available through the Emergency Watershed Protection Program (EWPP). There appears to be significant potential for emergency situations and serious damage from debris flows originating in the areas destroyed by the Soberanes Fire; however, the County has not received a detailed assessment of geologic conditions to evaluate potential debris flow severity. 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.

To implement the EWPP, NRCS prepares reports assessing the damage, and potential for damage, and recommends remedial measures. This is strictly a voluntary program. A 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.

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 (**Exhibit 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 meet limited timelines, and have as much funding available for implementation as possible, the RMA 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 (**Exhibit D**). Based on actions from 2008 and 2013, a couple of form contracts have been drafted for two categories of property owners: a) those that will benefit from the protective measures (**Exhibit E-Reimbursed**); and b) those that won't benefit but on whose property some of the protective measures must be placed (**Exhibit 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. 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), County OES, Fire Warden, Health, and Environmental Health. Staff has consulted with County Counsel on legal matters.

FINANCING:

At this time Staff is not able to quantify what the financial impact will be to the County and will be working closely with the County Administrative Office on monitoring expenditures. 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.

Prepared by: Tom Moss, Senior Water Resources Hydrologist, Resource Management Agency
Approved by: Carl P. Holm, AICP, Director, Resource Management Agency

Attachments:

- A. Resolution
- B. Cooperative Agreement (NRCS)
- C. Location Map
- D. Letter to NRCS re EWP
- E. Right of Entry and Improvement Installation Agreement-reimbursed
- F. Right of Entry and Improvement Installation Agreement-unreimbursed

cc: Counter Copy; Board of Supervisors; County Counsel; Nick Chiulos; Office of Emergency Services; RMA-Public Works and Facilities; RMA-Land Use and Community Development, Monterey County Water Resources Agency, NRCS-Monterey District