

**MONTEREY PENINSULA REGIONAL PARK DISTRICT  
BOARD OF DIRECTORS MEETING**

**DATE:** June 03, 2020  
**TO:** Board of Directors  
**FROM:** Rafael Payan, General Manager  
**SUBJECT:** Review and Approval of FORTAG Agreement

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**RECOMMENDED ACTION:**

That the Board review and approve the MPRPD Proposed Two-party Agreement between TAMC and MPRPD (**ATTACHMENT 1**).

**FISCAL IMPACT:**

Not presently applicable.

**FUNDING SOURCE:**

Not presently applicable.

**FUNDING BALANCE:**

Not presently applicable.

**DISCUSSION:**

On February 12, 2020, MPRPD's Board hosted a public Study Session focusing on the proposed Fort Ord Recreation Trail and Greenway (FORTAG) project. The meeting was held at the Loyal Order of Moose, Lodge #876, Del Rey Oaks, CA. The FORTAG project is a 30-mile long regional trail network that will connect the Monterey Bay region's Coastal Trail to Fort Ord National Monument. It is anticipated that the trail network will be accessible to people of all abilities.

MPRPD met with the Transportation Agency for Monterey County (TAMC) for several months prior to the Study Session. Concepts explored included potential routes for the trail network, means of providing accessibility for people of all abilities, possible staging areas that could replace the Frog Pond's access point located immediately adjacent to Highway 218's northern shoulder, trail surface materials, TAMC's Transportation Safety & Investment Plan (Measure X, approved by voters in 2016), and other related topics.

The Board has several options to consider. First and foremost, does MPRPD want a segment of the FORTAG project crossing a portion of the District's Frog Pond Wetland Preserve? If it does, there are several options for proceeding forward:

- (1) Approve MPRPD's Proposed Two-party Agreement between TAMC and MPRPD (**ATTACHMENT 1**); this commits MPRPD to the trail alignment described in Phase 1, as shown in Exhibit A. It does not commit MPRPD to a bike path alignment through the rest of Frog Pond;

- (2) Approve TAMC's Alternative Two-party Agreement between TAMC and MPRPD (**ATTACHMENT 2**); or
- (3) Approve TAMC's Nine-party Master Agreement between TAMC, MPRPD, and other public entities, including the cities of Marina, Del Rey Oaks, Seaside, and Monterey (**ATTACHMENT 3**).

MPRPD recognizes the many benefits this important project offers and supports the project's goals. When MPRPD received and reviewed TAMC's proposed Nine-party Master Agreement, it was determined not to be in MPRPD's best interest. TAMC was not able to address MPRPD's concerns, so MPRPD proposed the Two-party Agreement. TAMC responded with an alternative Two-party Agreement.

From MPRPD's perspective, the MPRPD proposed Two-party Agreement addresses the two (2) major problems with the Master Agreement:

1. The requirement that MPRPD defend and indemnify TAMC for any future lawsuits arising from injuries on the bike path is not acceptable. MPRPD does not believe it should be paying for TAMC's legal fees and judgments against it for personal injury lawsuits by future users of the bike path. If/when there is a lawsuit arising out of an injury on the FORTAG bike path over MPRPD property, TAMC will need to be responsible for itself if named in the action. It is not unreasonable for MPRPD and TAMC to each be responsible for defending itself in any such lawsuit, and each satisfy any liability imposed by the Court. The Court would be capable of determining to what extent any such liability is attributable to maintenance, design and/or construction of the bike path, and apportion fault as it sees fit between TAMC, MPRPD and any other persons/entities.
2. MPRPD's Board needs to retain authority to determine the bike path alignment through Frog Pond. The proposed Master Agreement would effectively lock MPRPD into the alignment through Frog Pond that was approved by TAMC when it completed its CEQA review. While MPRPD may choose TAMC's preferred alignment through Frog Pond, that is solely in the discretion of MPRPD Board. It has always been made clear between agencies, that when the MPRPD Board considers the agreement with TAMC, it will be considering among all potential alignments through Frog Pond Preserve that have been presented and discussed at prior MPRPD Board meetings.

MPRPD's recognizes TAMC's challenges and efforts to bring together the individual interests of the nine separate public entities in the proposed one all-purpose multi-party Master Agreement. However, to the extent other agencies (1) are financially comfortable defending and indemnifying TAMC; and (2) have approved the chosen path alignment approved by TAMC, MPRPD's interests are not in alignment with them.

MPRPD proposed a Two-party Agreement to TAMC over two months ago. Since March of this year, MPRPD's and TAMC's respective Legal Counsel and Staff have been working towards achieving a solution that works for TAMC and protects MPRPD's interests. A reasonable solution is for MPRPD and TAMC to enter the recommended Two-party Agreement that supports and advances the project, rather than having MPRPD enter an agreement that could be detrimental to MPRPD. The proposed Two-party Agreement also removes terms applicable to municipalities — but not regional park districts. As such, the proposed Two-party Agreement between TAMC and MPRPD has been drafted for the MPRPD Board's approval. TAMC responded to MPRPD's Two-party Agreement with their own proposed Two-party Agreement.

Further, MPRPD Board has not yet made any decision regarding whether or where FORTAG passes through the park, though it did receive substantial information and public comment on this at its February 12 Study Session. Please recall that TAMC representatives have repeatedly stated that MPRPD is under no obligation to have the FORTAG corridor cross District property and that MPRPD has the final say where the trail alignment is on the District's property.

The MPRPD Two-party Agreement before the Board would commit MPRPD only to the Phase 1 bike path alignment, which only passes through the NW corner of Frog Pond, as shown in Exhibit A to the Agreement. TAMC describes Phase 1 as follows:

“Phase 1 of the Canyon Del Rey/State Route 218 Segment includes design and construction of the proposed trail alignment through the City of Del Rey Oaks from Safeway to Del Rey Woods Elementary in the City of Seaside. A tunnel is proposed under Canyon Del Rey Blvd. between Del Rey Oaks City Hall and the existing staircase entrance to the Frog Pond. A 12-foot wide raised pathway would be constructed to connect trail users from the tunnel to Carlton Drive at an accessible grade. The trail would extend northeast up Carlton Drive to Plumas Avenue. Along Carlton Drive the trail would consist of a new 12-foot wide multi-use sidewalk, with a 5-foot wide buffer, on the west side of the road. Along Plumas Avenue the trail would follow the existing PG&E easement up to Del Rey Woods Elementary.

The tunnel landing and the raised pathway are the only project elements expected to be designed and constructed within the Frog Pond as part of Phase 1. Final design, including public workshops, for Phase 1 is expected to begin in Summer 2020. Construction is expected to begin in Fall 2022. Phase 2 would be a continuation of the trail along Canyon Del Rey Blvd. to the Monterey Bay Coastal Trail, including access for Seaside's Laguna Grande Park. An application for Prop 68 Recreational Trail and Greenways grant funding was submitted to California Natural Resources Agency on October 16, 2019; a determination is expected shortly. Funding for design and construction has not been identified for the remaining proposed trail alignment within the Frog Pond, including the proposed undercrossing at General Jim Moore Blvd. that would connect to the Park District's Natural Expansion Area east of the Frog Pond. It is expected that

the Cal State Monterey Bay North and South Loop segments, the National Monument segment, and the North Marina segment would be funded prior to additional work in the Frog Pond area.”

MPRPD supports the FORTAG project and wants to see it advanced thus, MPRPD’s Board is respectfully requested to approve MPRPD’s Proposed Two-party Agreement in lieu of TAMC’s Alternative Two-party Agreement or Master Agreement.

**ATTACHMENTS:**

1. [MPRPD Proposed Two-party Agreement between TAMC and MPRPD](#)
2. [TAMC Alternative Two-party Agreement between TAMC and MPRPD](#)
3. [TAMC Master Agreement](#)



# EXHIBIT A



FORTAG Bike and Pedestrian Trail - Del Rey Oaks Segment

