



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, DCD and Lewis Broschard, Fire Chief
Date: January 10, 2023

Subject: Tolling Agreements with Discovery Builders, Inc., West Coast Home Builders, Inc., Albert D. Seeno Construction Co., and Cities of Oakley & Brentwood

RECOMMENDATION(S):

1. RATIFY the Conservation and Development Director's execution of an amendment to extend a tolling agreement with Discovery Builders, Inc., West Coast Home Builders, Inc., and the Contra Costa County Fire Protection District to toll the limitations period for potential litigation related to fire protection facilities fees through December 31, 2023.
2. RATIFY the Fire Chief's execution of amendments to extend five tolling agreements with Discovery Builders, Inc., West Coast Home Builders, Inc., Albert D. Seeno Construction Co., the Cities of Oakley and Brentwood, and Contra Costa County to toll the limitations periods for potential litigation related to fire protection facilities fees through December 31, 2023.

FISCAL IMPACT:

None.

BACKGROUND:

On November 3, 2020, the Board of Supervisors adopted Ordinance No. 2020-27, an ordinance that establishes fire protection facilities fees for that portion of the County that is located within the boundaries of the former East Contra Costa Fire Protection District

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **01/10/2023** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Ken Carlson, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: January 10, 2023

Monica Nino, County Administrator and Clerk of the Board of Supervisors

By: Antonia Welty, Deputy

Contact: Jason Crapo (925)
655-2800

cc:

("ECCFPD"). The ordinance authorizes the County to impose the fees and authorized ECCFPD to collect, retain, and expend the fees. Fee amounts are specified in the ordinance and must be paid before a building permit is issued for new residential or commercial construction. At the same meeting, the Board also approved a fee administration agreement between the County and ECCFPD that established the terms and conditions for ECCFPD to collect, retain, and expend the fees. Under the fee administration agreement, ECCFPD was required to indemnify the County against all lawsuits related to the fees and the fee ordinance, including any challenge to the validity of the fees, any challenge to ECCFPD's use of the fees, and any challenge related to compliance with the Mitigation Fee Act. The Cities of Oakley and Brentwood adopted similar ordinances and entered into similar fee administration agreements with ECCFPD.

BACKGROUND: (CONT'D)

ECCFPD was annexed to the Contra Costa County Fire Protection District (“ConFire”) effective June 30, 2022. Prior to the annexation, ECCFPD, Discovery Builders, Inc., West Coast Home Builders, Inc., and Albert D. Seeno Construction Co. were in a dispute over the fee amounts in the ordinance. These parties were engaged in discussions to try to resolve their differences without incurring the cost and expense of litigation. At the request of the parties, the County previously entered into a tolling agreement to toll (suspend) the statutory limitations period for filing a lawsuit related to fire protection facilities fees from February 24, 2021, through April 30, 2021. The parties and the County subsequently agreed to amend the tolling agreement to extend the tolling period through April 30, 2022, and again through December 31, 2022. In addition, ECCFPD had entered into and extended four other tolling agreements, for a total of five, with Discovery Builders, Inc., West Coast Home Builders, Inc., and Albert D. Seeno Construction Co. Three of these extended tolling agreements relate to and include as a party the City of Oakley. One of these extended tolling agreements relates to and includes as a party the City of Brentwood.

As the successor agency to ECCFPD, ConFire has succeeded to the revenues previously received by ECCFPD, including the fees provided for in the County and city ordinances. ConFire has also assumed the contractual obligations and liabilities of ECCFPD, including those resulting from the fee administration agreements with the County, Oakley, and Brentwood, and the five tolling agreements previously executed by ECCFPD with Discovery Builders, Inc., West Coast Home Builders, Inc., Albert D. Seeno Construction Co., the County, and the cities. ConFire staff has since engaged in discussions with Discovery Builders, Inc., West Coast Home Builders, Inc., and Albert D. Seeno Construction Co. regarding the ongoing dispute over the fee amounts in the County and city ordinances to try to resolve the matter without incurring the cost and expense of litigation.

Discovery Builders, Inc., West Coast Home Builders, Inc., Albert D. Seeno Construction Co. have requested that the County agree to amend the one tolling agreement to which the County is a party to extend the tolling period through December 31, 2023, and that ConFire agree to amend all five of the tolling agreements to extend the tolling periods through December 31, 2023.

The Conservation and Development Director executed the amendment to the one tolling agreement to which the County is a party on December 22, 2022. The Fire Chief executed the amendments to all five tolling agreements on December 22, 2022.

CONSEQUENCE OF NEGATIVE ACTION:

The Conservation and Development Director’s execution of the amendment to extend the tolling agreement would not be ratified. The Fire Chief’s execution of the amendments to extend all five tolling agreements would not be ratified.