

**EAST CONTRA COSTA
REGIONAL FEE AND FINANCING AUTHORITY**

Antioch – Brentwood – Contra Costa County – Oakley – Pittsburg

A JOINT EXERCISE OF POWERS AGENCY

255 Glacier Drive, Martinez, CA 94553

**AGENDA
Board of Directors**

**Special Meeting
(No In-person Meeting)**

**Wednesday, February 15, 2023
12:00 p.m.**

Tri-Delta Transit Meeting Room
801 Wilbur Avenue
Antioch, California

To slow the spread of COVID-19, in lieu of a public gathering, the East Contra Costa Regional Fee and Financing Authority Board of Directors meeting will be accessible via Zoom to all members of the public as permitted by Government Code Section 54953(e). Members of the public may participate in the meeting online, or by telephone. To participate in the meeting please use the information.

To participate by phone, dial **+17207072699 US.**

The meeting ID is **810 8718 2379** Passcode: **438303**

To participate online using Zoom, hold down CTRL + click the following:

[Join Zoom Meeting Here](#) Meeting ID: **810 8718 2379** (Passcode: **438303**).

In lieu of making public comments at the meeting, members of the public also may submit public comments before or during the meeting by emailing comments to Program Manager Dale Dennis at dodennis@theycyberjungle.com. If you have difficulty emailing a public comment, please contact Nancy Wein, Contra Costa County Public Works Department, at (925) 313-2275.

All comments submitted by email to the above email address before the conclusion of the meeting will be included in the record of the meeting. When feasible, the Board Chair, or designated staff, also will read the comments into the record at the meeting, subject to a two-minute time limit per comment.

The Board Chair may reduce the amount of time allotted to read comments at the beginning of each item or public comment period depending on the number of comments and the business of the day. Your patience is appreciated. A break may be called at the discretion of the Board Chair.

Board of Directors:

Diane Burgis, Contra Costa County – Chair
Lamar Thorpe, City of Antioch – Vice Chair
Joel Bryant, City of Brentwood
Aaron Meadows, City of Oakley
Shanelle Scales-Preston, City of Pittsburg

Authority Staff Office:

Contra Costa County
255 Glacier Drive
Martinez, CA 94553
(925) 313-2000

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To obtain a copy of a staff report or other written materials related to an open session item on the agenda, please contact Nancy Wein, at the Contra Costa County Public Works Department, by phone at (925) 313-2275, or by email to Nancy.Wein@pw.cccounty.us.

**Agenda
February 15, 2023**

1. Call to Order
2. Public Comment
3. Determination

Sand Creek Road Extension Project: The Board will consider the following:

- **FIND** that, due to unexpected cost increases in the James Donlon Extension Project (“JDE Project”) and due to construction of the Sand Creek Road Extension Project (“SCE Project”) currently proceeding, there are extenuating circumstances regarding regional priorities, and there are difficulties implementing the JDE Project as a Third Priority project.
- **APPROVE** reprioritizing the Sand Creek Road Extension Project as the Third Priority project in the ECCRFFA fee program and **APPROVE** changing the JDE Project to the Fourth Priority in the ECCRFFA fee program.

4. Consent Items.

A. APPROVE minutes of the February 9, 2023 Board of Directors meeting.

5. Boardmember Comments
6. Adjournment

The Authority will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Staff at least 24 hours before the meeting, at (925) 595-4587. Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the East Contra Costa Regional Fee and Finance Authority to a majority of members of the Board of Directors less than 72 hours prior to that meeting are available for public inspection at 255 Glacier Drive, Martinez, CA during normal business hours.

Board of Directors:

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**EAST CONTRA COSTA
REGIONAL FEE AND FINANCING AUTHORITY**

DATE: February 15, 2023

TO: Board of Directors

FROM: Dale Dennis, Program Manager *LD for*

SUBJECT: Reimbursement request from DeNova Homes, Inc., for ECCRFFA's share of the Sand Creek Road Extension project cost for the Aviano Road Segments

Recommendation: The Board will consider the following:

1. **FIND** that, due to unexpected cost increases in the James Donlon Extension Project ("JDE Project") and due to construction of the Sand Creek Road Extension Project ("SCE Project") currently proceeding, there are extenuating circumstances regarding regional priorities, and there are difficulties implementing the JDE Project as a Third Priority project.
2. **APPROVE** reprioritizing the SCE Project as the Third Priority project in the ECCRFFA fee program and **APPROVE** changing the JDE Project to the Fourth Priority in the ECCRFFA fee program.

Background:

On February 9, 2023, the ECCRFFA Board of Directors approved a reimbursement agreement with DeNova Homes, Inc., to authorize DeNova to be reimbursed when the SCE Project is prioritized for funding. Currently, the SCE Project is the Fourth Priority project behind the JDE Project – the current Third Priority project. The Board requested that an item be brought back to the Board at a Special Meeting on February 15, 2023 to have the Board consider reprioritizing the SCE Project as the Third Priority project, ahead of the JDE Project, which will allow DeNova to be reimbursed for ECCRFFA's share of the cost of project segments that DeNova constructed once those segments are accepted by the City of Antioch. This change in priority also will allow other parties that construct other segments of the SCE Project – a shovel-ready project – to be reimbursed for the regional share of the cost of those other segments. The JDE Project will be the Fourth

ACTION OF BOARD ON _____

APPROVED AS RECOMMENDED ___ **OTHER** ___

VOTE OF DIRECTORS

_____ UNANIMOUS (ABSENT _____)

AYES: _____ **NOES:** _____

ABSENT: _____ **ABSTAIN:** _____

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

ATTESTED _____

Secretary to the Authority

Priority in the ECCRFFA fee program.

Discussion:

Effective February 16, 2021, the ECCRFFA member agencies entered into a fourth amendment to the ECCRFFA joint exercise of powers agreement (“JEPA”) to add the SCE Project to the ECCRFFA project list, without prioritizing the project. ECCRFFA also approved the September 2020 East Contra Costa County Regional Fee Program Update in October 2020, which includes a nexus study for the SCE Project. The SCE Project nexus study determined that ECCRFFA RTDIM fee revenues can be used to fund a certain percentage of each segment of the SCE Project. The percentage varies by segment but represents approximately 31% of the overall cost of the project.

DeNova constructed two segments of the SCE Project, the Aviano – Phase II and Aviano – Phase III segments, between an extension of Dozier-Libbey Road to the west and an extension of Hillcrest Avenue to the east (together, the two segments are referred to collectively as the “Roadway Segment”). Consistent with the SCE Project nexus study and the JEPA, the portion of the Roadway Segment costs that are eligible for funding from ECCRFFA RTDIM fees amounts to \$2,499,912 (the “Reimbursable Costs”). The amount includes 28.2% of the Developer’s cost for soft costs and construction of the Roadway Segment. Under the JEPA, DeNova would be entitled to reimbursement after the SCE Project is prioritized for funding.

In July 2022, the SCE Project was prioritized as the Fourth Priority project in the ECCRFFA fee program, behind the JDE Project, the Third Priority project. At that time, based on the then-anticipated cost of the JDE Project, staff anticipated funding for the SCE Project to become available in Fiscal Year 2022/2023, considering ECCRFFA had collected approximately \$70 million to fund the projected ECCRFFA’s share of the JDE Project costs. Both of these projects were included in a Strategic Plan approved by the Board in July 2022.

Since July 2022, staff has received written information regarding significant cost increases of the JDE Project. That information shows the cost of the JDE Project to be up to \$300 million, which, if accurate, would require an ECCRFFA contribution of approximately \$200 million, and a City of Pittsburg contribution of approximately \$100 million, toward the project cost. Under the JEPA, and unless a reprioritization of projects is approved, ECCRFFA would need to set aside funds for its share of the project costs before ECCRFFA could fund any other projects. City of Pittsburg and ECCRFFA staff will be looking at the JDE Project to determine if the new cost estimate can be reduced.

The increased costs of the JDE Project presents a substantial difficulty in implementing the JDE Project as a Third Priority project because it could take another estimated 4-5 years to collect sufficient funds to fund ECCRFFA’s share of the newly estimated cost of that project (assuming no other projects were funded during that time), and the impacts to the ECCRFFA fee program would need to be evaluated by ECCRFFA. This could significantly delay the construction or funding of other projects that would benefit the region and mitigate the impacts of new development in east Contra Costa County.

Due to these extenuating circumstances regarding regional priorities, and also due to the difficulties with implementing the JDE Project as the Third Priority project, the Board will consider whether to reprioritize the SCE Project ahead of the JDE Project to allow the SCE Project to be funded now. ECCRFFA's share of the total cost of that project is approximately \$10.8 million (December 2019 cost estimate). Reprioritizing that project will allow ECCRFFA to reimburse DeNova for the cost of the segments of the SCE Project that they constructed following acceptance of those segments into the City of Antioch's road system. Other segments of the SCE Project also could be funded. ECCRFFA will continue to set aside approximately \$70 million for the regional share of the cost of the JDE Project while ECCRFFA staff works with City of Pittsburg staff to evaluate the JDE Project construction cost estimate to determine whether the cost estimate can be reduced.

**EAST CONTRA COSTA
REGIONAL FEE AND FINANCING AUTHORITY
Antioch - Brentwood - Oakley - Pittsburg and Contra Costa County**

JOINT EXERCISE OF POWERS AGENCY

February 9, 2022

To slow the spread of COVID-19, in lieu of a public gathering, the EAST CONTRA COSTA REGIONAL FEE AND FINANCING AUTHORITY (ECCRFFA) Board of Directors meeting was accessible via Zoom to all members of the public as permitted by Government Code Section 54953(e). Members of the public were permitted to participate in the meeting online, or by telephone, and in lieu of making public comments at the meeting, members of the public could submit public comments before or during the meeting through dodennis@theycyberjungle.com.

The meeting was called to order at 7:23 P.M.

ROLL CALL

PRESENT: Juan Banales (Pittsburg), Joel Bryant (Brentwood), Aaron Meadows (Oakley), Lamar Thorpe (Antioch), and Vice Chair Diane Burgis (Contra Costa County)

ABSENT: None

STAFF: Dale Dennis, Program Manager
Stephen Siptroth, Deputy County Counsel

DETERMINATION

- A. **Teleconference Meetings:** CONSIDER and ADOPT Resolution No. 2023/01 to authorize the Board of Directors to conduct teleconference meetings under Government Code Section 54953(e) and make related findings set forth in the resolution; and DETERMINE that the Authority will hold virtual meetings for the end of February 28, 2023.

No written comments were submitted, or oral comments made, by any member of the public.

On motion by Director Bryant, seconded by Director Meadows, the Authority ADOPTED Resolution No. 2023/01 to authorize the Board of Directors to conduct teleconference meetings under Government Code Section 54953(e) and made related findings set forth in the resolution; and DETERMINED that the Authority will hold virtual meetings for the end of February 28, 2023. The motion carried by the following Roll Call vote:

AYES: Banales, Bryant, Meadows, Thorpe, Burgis
NOES: None
ABSTAIN: None
ABSENT: None

ELECTION OF OFFICERS

Chair

On motion by Director Thorpe, seconded by Director Meadows, the East Contra Costa Regional Fee and Financing Authority elected ***Diane Burgis*** as Chair of the East Contra Costa Regional Fee and Financing Authority for 2023, carried by the following Roll Call vote:

AYES: Banales, Bryant, Meadows, Thorpe, Burgis
NOES: None
ABSTAIN: None
ABSENT: None

Vice Chair

On motion by Chair Burgis, seconded by Director Meadows, the East Contra Costa Regional Fee and Financing Authority elected ***Lamar Thorpe*** as Vice Chair of the East Contra Costa Regional Fee and Financing Authority for 2023, carried by the following Roll Call vote:

AYES: Banales, Bryant, Meadows, Thorpe, Burgis
NOES: None
ABSTAIN: None
ABSENT: None

PUBLIC COMMENT

No written comments were submitted, or oral comments made, by any member of the public.

DETERMINATION

- A. **Sand Creek Extension Project**: AUTHORIZE the Program Manager to negotiate and execute a reimbursement agreement with DeNova Homes, Inc., to reimburse DeNova Homes, Inc. \$2,499,912, plus interest added on January 1, 2024 and each January 1 thereafter until fully paid (3 percent or the percentage change in the consumer price index for the 12-month period ending the prior September 30), for ECCRFFA's share of the costs associated with the Sand Creek Extension Project – the Fourth Priority Project – with reimbursement commencing after the Third Priority Project and after the DeNova Homes, Inc. road segments are accepted into the City of Antioch's road system.

Program Manager Dale Dennis presented the background related to ECCRFFA's established authority in this case and explained as part of the fourth amendment through the ECCRFFA JEPAs, three priorities had been established. Priorities One and Two had been completed, and the Third Priority was the James Donlon Extension Project. The Fourth Priority was for projects to be established by the Board of Directors and a process had been established where the priority could be changed. He stated it also provided for a change in priority order, although no change could be made unless there were extenuating circumstances and a unanimous vote by the full Authority Board, with all members of the Board to be present.

Mr. Dennis stated that In July 2022, the ECCRFFA Board had approved an updated Strategic Plan that had prioritized the Sand Creek Road Extension Project as the Fourth Priority after the James Donlon Extension Project. There had been a request from DeNova Homes for the ECCRFFA share of the Sand Creek Road Extension project or \$2,499,912, and in considering the request the status of the James Donlon Extension Project had been identified by the City of Pittsburg with an estimated cost of \$300 million for construction. As to whether the cost estimate could be reduced, he stated staff would be working with City of Pittsburg staff to evaluate the James Donlon Extension Project construction cost estimate to determine whether the cost estimate could be reduced. In the meantime, in accordance with the JEPAs, as amended, ECCRFFA must continue setting aside funds for the James Donlon Extension Project and was unable to fund any lower priority projects.

Mr. Dennis reported that staff had received two letters regarding this item, one from DeNova Homes and one from the Building Industry Association (BIA). Staff had also received an e-mail from Discovery Builders. All three items had been distributed to members of the Board before the meeting. Copies could be provided to members of the public on request.

Stephen Siptroth, Deputy County Counsel, referred to the legal and factual background of ECCRFFA's governing documents which identified the options available to approve the staff recommendation and take no further action, to approve the staff recommendation with the Board to return at a future meeting to consider project priority, or to continue both to a future meeting. The letter from DeNova Homes requested a change to the priority of the James Donlon and Sand Creek Road Extension Projects so that the Board could approve the reimbursement agreement immediately. Mr. Siptroth reported that a third communication from Discovery Builders had no objection to the agenda item and did not state anything about a change in project priority. Mr. Siptroth explained that a reprioritization could not be approved at this meeting and would need to be agendaized for a future meeting.

Mr. Siptroth clarified that the action taken in July 2022 to identify the funding to potentially fall in line this fiscal year for the Sand Creek Road Extension Project did not constitute a change in project priority since it was part of the Strategic Plan, which had not been approved by a full Board. Pursuant to the JEPAs, the full Board would have to change the priority of projects.

Chair Burgis verified that the Board could approve the item as written and the agreement with DeNova Homes would provide reimbursement after the James Donlon Extension Project had been fully funded, although the actual payment would be delayed. She asked if there could be a special meeting as soon as possible to deal with the priorities, to then move the Sand Creek Road Extension Project as the Third Priority with the James Donlon Extension Project that was still being worked on to then become the Fourth Priority project.

Mr. Siproth stated that could be done and the item could come back at a special meeting.

Mr. Dennis identified the balance in the ECCRFFA fund as about \$103 million. He stated the issue was that the cost information from the City of Pittsburg had indicated the cost had gone up to as much as \$300 million, and if the cost could be lowered the 68 percent that ECCRFFA was obligated to fund could be ensured. At this point, the \$70 million ECCRFFA had set aside for the project did not meet 68 percent of the current cost estimate. He added there was a provision to reprioritize projects within ECCRFFA if meeting the two conditions of extenuating circumstances and a unanimous vote by the full Authority Board.

Director Thorpe asked how the obligation would ever be able to be met if the costs continued to go up every year, and Mr. Dennis stated to move forward with the new larger number the Board would have to consider that situation because it would be an extremely impactful cost to the program. At this point, the Board was not being asked to contribute 68 percent of the \$300 million; the City of Pittsburg had just recently transmitted in writing that was the current cost estimate. The City was currently looking at ways to reduce the cost and a discussion would have to take place as to whether the project was a viable cost under the ECCRFFA Program.

Chair Burgis clarified that the City of Pittsburg had sued ECCRFFA to identify the James Donlon Extension Project as a priority, and a couple of years ago an Assemblymember had pursued this issue and there had been an understanding that other money would become available for the other projects, which has not happened.

Mr. Dennis explained that while the James Donlon Extension Project had originally been estimated to cost \$40 million in 2005, it was \$55 million in 2013 or so, and approximately \$100 million four to five years ago or so, and the cost had continued to increase. The \$300 million was a new number and if that cost held, the City of Pittsburg would have to come up with \$100 million of that total, so the City was evaluating the situation as it stands. Staff was working with the City as to the viability of the project due to cost.

Director Banales stated that when getting closer and closer in terms of build ready the Engineer's Estimate would be further refined. The City of Pittsburg was critically evaluating the situation and understood the time pressure of holding up other projects. He would take the comments from this meeting back to the Pittsburg City Council.

Chair Burgis recommended a special meeting.

PUBLIC COMMENTS

BRUCE OHLSON stated that East County bicyclists needed to be assured there would be bike lanes on the new segment of Sand Creek Road, and the pedestrian community wanted all four quadrants to get a crosswalk at each signalized intersection.

DAVE SANSON, DeNova Homes, stated that DeNova Homes had been paying into ECCRFFA since 1994 and had been waiting the last ten years to get the full funding for the James Donlon Extension Project. In 2018, there had been concerns that Sand Creek Road had not been built and people were dying trying to get to Kaiser at Deer Valley Road and the intersection of Sand Creek Road, and DeNova Homes had gone to work with those affected to discuss the addition of that roadway as a regional benefit to service the hospital and move it up in priority both in ECCRFFA and in the DeNova Homes organization. He stated the agreement with the Seeno Company, the City of Pittsburg, and others was that DeNova was put in priority order behind the James Donlon Extension Project. The intent was that when the James Donlon Extension Project got funded up to the cap, and once the \$70.8 million estimated at that time had been set aside in the ECCRFFA fund, the next priority would be Sand Creek Road.

Mr. Sanson explained that last summer in good faith DeNova Homes had accelerated the construction of Sand Creek Road to get emergency vehicles to the hospital and had applied for the refund, which should have been acted upon last year. Doing that process, the City of Pittsburg had raised the point that the James Donlon Extension Project was running out of control. He stated they were all paying into the regional funding and wanted to see all the projects move forward. The James Donlon Extension Project had been fully funded up to the \$70 million (68 percent of what had been the approved budget).

While the cost may have gone up, Mr. Sanson stated no one had been privy to any approved estimate or planning, which was why there had been a letter from the BIA because they too had been concerned on behalf of all builders in East County. He stated he had volunteered his services to consider the issue that James Donlon was not a \$300 million road. No action had to be taken to change the priority on the item involved in that the study could go on for months and years because there was nothing as to what the James Donlon Extension Project would be. He added that the Seeno Company had given its blessing that it did not want to hold up funding as long as the \$70 million had been funded.

Mr. Sanson added that DeNova Homes had spent the money and had built the segments of Sand Creek Road and while the cost of the road had increased, DeNova Homes was not asking for more money for the road, they were just asking for what had been agreed upon.

Counsel for DeNova Homes, DANA TSUBOTA, referred to the July 14, 2022 memo from Dale Dennis which explained that when the Strategic Plan had been adopted there would be three steps of funding, and that since \$70.8 million had been set aside for the James Donlon Extension Project, Sand Creek Road could be funded without a change in project priority since it could be funded at the same time.

Moving forward they had reached agreement on the amount due. There was no written cost estimate of \$300 million for the James Donlon Extension Project before ECCRFFA, which was not a real cost estimate at this point. Ms. Tsubota added that the Strategic Plan that had been adopted provided for a cap, which would fund 68 percent of the James Donlon Extension Project up to \$70.829 million, the limit on how much James Donlon would be funded.

Ms. Tsubota asserted that without a new cost estimate or an updated Strategic Plan, there was no reason why both projects could not be funded simultaneously. Approval was requested with the understanding that the Strategic Plan had been approved by the Board with funding up to \$70.8 million to then be able to move on to the next priority, which was the Sand Creek Road Extension Project.

In response to Vice Chair Thorpe's question about the documents cited by Ms. Tsubota and whether the Board had established a cap on James Donlon funding in July 2022, Mr. Siptroth stated the JEPA, which had prioritized the James Donlon Extension Project as a Third Priority project, had been based on a nexus study that had not specified a hard cap on dollars; the nexus study established a funding percentage. When the Board had approved the Strategic Plan in 2022, it had been based on the estimated cost of the project at that time and when funding might come on-line for the next priority project when James Donlon had been funded.

Mr. Siptroth explained that the Strategic Plan could not supersede the nexus study and JEPA, which established obligation to contribute 68 percent of the cost of James Donlon. Based on the new estimates for James Donlon, it appeared that ECCRFFA did not have the necessary funds to satisfy its funding obligation for the project, as required under the JEPA and nexus study.

Director Banales reported that the City of Pittsburg was okay with reimbursing DeNova Homes in the amount stated in the reimbursement agreement, and if that meant a reprioritization of projects with follow up with a special meeting, the City of Pittsburg was okay with that and understood the scale and supported the action at this time with a follow-up at a special meeting.

On what a special meeting would do, it was clarified that the agenda for a special meeting would include an item to reprioritize the Sand Creek Road Extension Project ahead of the James Donlon Extension Project to allow DeNova Homes to be reimbursed now (assuming the reimbursement agreement was approved).

Director Bryant did not want to delay the reimbursement of Sand Creek Road, which was important. He was interested in a special meeting if that was the only way to get the item approved with reimbursement right away.

On motion by Director Thorpe, seconded by Director Bryant, the Authority AUTHORIZED the Program Manager to negotiate and execute a reimbursement agreement with DeNova Homes, Inc., to reimburse DeNova Homes, Inc. \$2,499,912, plus interest added on January 1, 2024 and each January 1 thereafter until fully paid (3 percent or the percentage change in the consumer price index for the 12-month period ending the prior September 30), for ECCRFFA's share of the costs associated with the Sand Creek Road Extension Project – the Fourth Priority Project – with reimbursement commencing after the Third Priority Project and after the DeNova Homes, Inc. road segments are accepted into the City of Antioch's road system, with the prioritization of the projects to be discussed at a special meeting scheduled for Wednesday, February 15, 2023 at 12:00 Noon. The motion carried by the following Roll Call vote:

AYES: Banales, Bryant, Meadows, Thorpe, Burgis
NOES: None
ABSTAIN: None
ABSENT: None

CONSENT ITEM

- A. APPROVE minutes of the December 8, 2022 Board of Directors meeting. (*January 2023 meeting cancelled.*)

On motion by Director Bryant, seconded by Director Meadows, the Authority APPROVED the Consent Item, as shown. The motion carried by the following Roll Call vote:

AYES: Banales, Bryant, Meadows, Thorpe, Burgis
NOES: None
ABSTAIN: None
ABSENT: None

BOARDMEMBER COMMENTS

There were no comments.

ADJOURNMENT

The meeting was adjourned at 8:12 P.M. by Chair Burgis to the special meeting scheduled for Wednesday, February 15, 2023, at 12:00 Noon.

Respectfully submitted,

Anita L. Tucci-Smith
Minutes Clerk