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 Lynne Bourgault, General Counsel | Jason Rosenberg, Asst. General Counsel | Rachel J. Sater, Asst. General Counsel

June 14, 2022

Via Electronic Mail Only (info@mofd.org)

Board of Directors
 Moraga-Orinda Fire Protection District
 1280 Moraga Way
 Moraga, CA 94556

Re: Comments on June 15, 2022 Board Meeting Item 10.9 MOFD Authority in SRA

Dear President Donner and Members of the Board:

We appreciate the opportunity to comment on Meeting Item 10.9 regarding MOFD’s authority in the State Responsibility Area (SRA). For the reasons explained in our March 11, 2022 letter to the Board, which is attached to the Staff Report for this item, we urge the MOFD Board to direct staff not to enforce Ordinance 22-02 against the East Bay Regional Park District (Park District) within undeveloped areas of the SRA and to direct staff to amend the ordinance accordingly.

The Park District shares the same goals as MOFD to reduce the risk and spread of wildfires and has worked and remains committed to working collaboratively with MOFD to reduce the risk of wildfires. Moreover, it is committed to a coordinated response to and suppression of wildfires through the MOFD/EBRPD Cooperative Fire Operations and Mutual Response Area (MRA) Agreement entered January 1, 2016 (Cooperative Agreement).

As you know, the Park District has its own fire department, which manages fire risk within its parks by reducing fuel loads and managing vegetation, including within defensible space around structures. In addition, the Park District annually maintains its fire roads to fire equipment access standards through grading and vegetation management.

With respect to the trail in Bollinger Canyon mentioned in the Staff Report, this is not a fire road or fire trail but rather a short stretch of an old ranch road. This spur of old ranch road was there when the Park District acquired the property and is within a highly slide-prone area. It is not used by the Park District for fire access. The Park District effectively manages fuel in this area of parklands through cattle grazing. The adjacent private property is largely undeveloped wildland that can be accessed through existing public and private roads.

Regardless, as explained in our prior correspondence to MOFD, MOFD does not legally have the ability to enforce the fuel mitigation standards in Ordinance 22-02 against the Park District’s undeveloped parcels within the SRA. Public Resources Code section 4117 does not provide MOFD with this authority; it does not allow MOFD to adopt fire prevention regulations that go beyond the authority it is granted in its enabling legislation, specifically Health and Safety Code section 13811. Thus, MOFD may adopt stricter fire prevention regulations for structures,

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June 14, 2022
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which would apply in the SRA. And while MOFD can respond to and suppress fires (as recognized by the Cooperative Agreement), it has no regulatory jurisdiction over the Park District's undeveloped parcels within the SRA.

We urge you to direct staff not to enforce the ordinance against the Park District within undeveloped areas within the SRA and to amend the ordinance consistent with this direction. The Park District remains committed to working with MOFD to reduce fire risk within the East Bay hills.

Sincerely,

A handwritten signature in cursive script that reads "Rachel J. Sater".

Rachel J. Sater
Assistant General Counsel

cc: Lynne Bourgault, EBRPD, General Counsel