



Midpeninsula Regional
Open Space District

R-17-127
Meeting 17-30
November 15, 2017

AGENDA ITEM 4

AGENDA ITEM

Annual bond disclosure training for the members of the Board of Directors, members of the Disclosure Working Group, and Contributors.

GENERAL MANAGER'S RECOMMENDATION

A handwritten signature in black ink, appearing to be "JAG".

Receive annual training on Bond Disclosure obligations, responsibilities and potential liabilities of members of District staff and members of the Board of Directors. No Board action required.

SUMMARY

Board Policy 3.06 "Initial and Continuing Disclosures for Bond Issuances" requires annual training on Bond Disclosure obligations, responsibilities and potential liabilities of members of District staff and members of the Board of Directors conducted by the District's Disclosure Counsel with the assistance of the General Counsel.

DISCUSSION

Board Policy 3.06 "Initial and Continuing Disclosures Relating to Bond Issuances" was effective on April 1, 2015 and subsequently updated on March 22, 2017. The purpose of this Board Policy is to ensure that "*Whenever the District makes statements or releases information relating to its finances to the public that are reasonably expected to reach investors and the trading markets (including, without limitation, all Listed Event Notices, statements in the audited Financial Statements, and other financial reports and statements of the District), the District is obligated to ensure that such statements and information are complete, true, and accurate in all material respects.*"

Article I, section 1.01 (C) *Training* states: *The Disclosure Coordinator shall arrange for annual disclosure training conducted by the District's disclosure counsel with the assistance of the General Counsel, for the Board of Directors members, the Disclosure Working Group, and Contributors. Such training sessions shall include education on these Disclosure Procedures, the District's disclosure obligations under applicable federal and state securities laws, and the disclosure responsibilities and potential liabilities of members of District staff and members of the Board of Directors.*

At this evening's Board meeting (November 15, 2017), the District's Disclosure Counsel, Jacquelynne Jennings from Schiff Hardin, will provide the annual training to the members of the Board of Directors, along with members of the Disclosure Working Group (General Manager, Chief Financial Officer, Controller, and General Counsel).

In addition to the annual training requirement, the timing of this training is synchronized with the Board's upcoming review of the Preliminary Official Statement (POS) which is done in conjunction with upcoming bond issuances. A draft of the POS will be distributed as part of tonight's training and the final approval of the POS is agendaized for the Board meeting on December 6, 2017.

FISCAL IMPACT

None.

BOARD COMMITTEE REVIEW

This agenda item was not reviewed by a committee.

PUBLIC NOTICE

Notice was provided pursuant to the Brown Act. No additional notice is necessary.

CEQA COMPLIANCE

No compliance is required as this action is not a project under CEQA.

NEXT STEPS

Another training will occur in the fall of 2018. The proposed bond issuances are presented to the Board as a separate agenda item.

Attachments:

1. Board Policy 3.06 – Initial and Continuing Disclosures Relating to Bond Issuances

Responsible Manager:

Stefan Jaskulak, Chief Financial Officer

Prepared by:

Stefan Jaskulak, Chief Financial Officer

Midpeninsula Regional Open Space District

Board Policy Manual

Initial and Continuing Disclosures Relating to Bond Issuances	Policy 3.06 Chapter 3 – Fiscal Management
Effective Date: 04/01/2015	Revised Date: 03/22/2017
Prior Versions: 04/01/2015	
Attachments: A – List of Disclosure Documents, to be Amended as Necessary B – Listed Events C – Template of Information to be included in the Staff Report Transmitting Official Statement by General Manager to Board of Directors	

Purpose

Whenever the District makes statements or releases information relating to its finances to the public that are reasonably expected to reach investors and the trading markets (including, without limitation, all Listed Event Notices, statements in the audited Financial Statements, and other financial reports and statements of the District), the District is obligated to ensure that such statements and information are complete, true, and accurate in all material respects.

The disclosure policies and procedures contained herein (the “**Disclosure Procedures**”) of the Midpeninsula Regional Open Space District (the “**District**”) are intended to ensure that the District’s disclosure documents (the “**Disclosure Documents**”), as listed on Attachment A to these Disclosure Procedures, are complete, true, and accurate in all material respects, and in compliance with applicable federal and state securities laws.

Policy

Article I: Key Participants and Responsibilities

Section 1.01. Disclosure Working Group.

(A) *Composition.* By adoption of these Disclosure Procedures, the District hereby establishes a disclosure working group (the “**Disclosure Working Group**”). The members of the Disclosure Working Group shall be the following:

- i. General Manager;
- ii. Chief Financial Officer
- iii. Controller; and
- iv. General Counsel.

(B) *Responsibilities.* The Disclosure Working Group shall consult with the Financing Group (as defined in Section 1.03) and other interested parties as necessary or helpful. The Disclosure Working Group shall meet as often as necessary to fulfill its obligations, but not less than once per calendar year. Members of the Disclosure Working Group may participate in meetings by telephone.

The Disclosure Working Group is responsible for:

- i. Reviewing and approving all preliminary and final official statements, private placement memoranda and remarketing memoranda relating to the District's securities, together with any supplements, for which a continuing disclosure undertaking is required (each, an "**Official Statement**") as further described in Article II, before such documents are released to the public;
- ii. Reviewing and approving the District's Financial Statements (as defined and further described in Section 3.02 below);
- iii. Reviewing and approving any other Disclosure Documents before such documents are released;
- iv. Reviewing annually the District's status and compliance with continuing disclosure undertakings including filings of Disclosure Documents and compliance with these Disclosure Procedures and the annual financial report as described in Article III below;
- v. Reviewing any other items referred to the Disclosure Working Group; and
- vi. Evaluating the effectiveness of these Disclosure Procedures and approving changes to these Disclosure Procedures as further described in Section 5.04 of this Policy.

(C) *Determination of Disclosure Document Status.* Whether or not a particular document or other communication is a Disclosure Document shall be determined by the Disclosure Working Group. At its initial meeting, the Disclosure Working Group shall establish a list of the District's recurring Disclosure Documents, which list shall be added to Attachment A to these Disclosure Procedures to the extent such documents are not already contained therein. The Disclosure Working Group shall update Attachment A to these Disclosure Procedures when appropriate.

(D) *Review and Approval.* Following receipt of a Disclosure Document from the disclosure coordinator (the "**Disclosure Coordinator**"), the Disclosure Working Group shall review the Disclosure Document for accuracy and compliance with federal and state securities laws, direct questions to the Disclosure Coordinator, and approve a substantially final form of the Disclosure Document, which approval may be evidenced by an email transmitted to the Disclosure Coordinator by the General Manager or his/her designee and a copy of which email shall be printed and maintained in the Deal File described in Section 5.01, or by such other written evidence.

The Disclosure Coordinator shall consult with the District's disclosure counsel to the extent the Disclosure Coordinator considers appropriate to perform his or her responsibilities.

Section 1.02. Disclosure Coordinator.

(A) *Appointment.* The Finance Manager is appointed as the Disclosure Coordinator. If the position of Finance Manager is vacant, the Chief Financial Officer, in consultation with the other members of the Disclosure Working Group, shall select and appoint the Disclosure Coordinator.

(B) *Responsibilities.* The Disclosure Coordinator shall be responsible for:

- i. Serving as a “point person” for personnel to communicate issues or information that should be or may need to be included in any Disclosure Document, identifying District personnel that will assist in preparing and reviewing the Disclosure Documents (the “Contributors”);
- ii. Reviewing annually all continuing disclosure undertakings, preparing a checklist of updated information to be provided;
- iii. Recommending changes to these Disclosure Procedures to the Disclosure Working Group as deemed necessary or appropriate;
- iv. Communicating with third parties, including coordination with outside consultants assisting the District in preparing and disseminating Disclosure Documents to make sure that assigned tasks are completed timely, and that the filings are accurate and made timely;
- v. Soliciting “material” information (as defined for purposes of federal securities law) from District departments to prepare Disclosure Documents;
- vi. Monitoring compliance by the District with these Disclosure Procedures, including timely dissemination of the Annual Report and Listed Event filings, and maintaining records documenting the District’s compliance with these Disclosure Procedures;
- vii. Determining when Disclosure Documents are final and ready for review by the Disclosure Working Group to the extent required by these Disclosure Procedures; and
- viii. Identifying District personnel that should receive disclosure training, and ensuring compliance with training procedures described in Section 1.02(C).

The Disclosure Coordinator is authorized to file or cause to be filed the following documents with the Municipal Securities Rulemaking Board (the “MSRB”), without prior review and approval of the Disclosure Working Group, but only after prior review and approval from the Chief Financial Officer: those Disclosure Documents that (i) the District is contractually obligated to file with the MSRB pursuant to written undertakings as a result of the occurrence of a Listed Event (as defined in Attachment B), or (ii) as a result of the failure to timely file the required annual financial report.

(C) *Training.* The Disclosure Coordinator shall arrange for annual disclosure training conducted by the District’s disclosure counsel with the assistance of the General Counsel, for the Board of Directors members, the Disclosure Working Group, and Contributors. Such training sessions shall include education on these Disclosure Procedures, the District’s disclosure obligations under applicable federal and state securities laws, and the disclosure responsibilities and potential liabilities of members of District staff and members of the Board of Directors. Such training sessions may be conducted using a recorded presentation.

Each member of the Board of Directors, and new members of the Finance Department shall be required to participate in disclosure training as part of his or her new member orientation.

Section 1.03. Financing Group.

General. The General Manager or his/her designee shall identify a Financing Group (the “**Financing Group**”) for each financing (the composition of which may differ for each financing), which shall include, at a minimum, the following individuals:

- i. Disclosure Working Group;
- ii. Disclosure Coordinator;
- iii. The District’s bond counsel and disclosure counsel;
- iv. The District’s financial advisor (if any);
- v. The District’s underwriter, placement agent, remarketing agent (as applicable);
- vi. The District’s dissemination agent (if any);
- vii. Such other such District staff as the General Manger or his/her designee determines to be appropriate; and
- viii. Such other consultants retained by the District as the General Manager or his/her designee determines to be appropriate.

It is the District’s policy to establish continuing working relationships with professional advisors with expertise in the area of public finance and federal securities laws applicable to the issuance of securities by the District.

Article II: Review and Approval of Official Statements

Section 2.01. Responsibilities of Financing Group. The Financing Group shall prepare the Official Statement

and confirm that the Official Statement: (a) has been reviewed and accurately states all information relating to the District, (b) confirm that any information in the Official Statement other than the information described in the previous clause (a) will be addressed by a closing certificate or opinion by an appropriate person, (c) contains a description of any failures of the District during the last five yars to comply with its continuing disclosure undertakings; and (d) is in substantially final form and is in a form ready to be “substantially final” by the Board of Directors, as evidenced by a Certificate executed and delivered by a member of the Financing Group pursuant to Rule 15c2-12, promulgated by the Securities and Exchange Commission. The Financing Group shall have at least one all-hands meeting or conference call to review the Official Statement.

Section 2.02. Responsibilities of General Counsel. The General Counsel (or a designee) shall review the Official Statement and shall draft for the Official Statement descriptions of (i) any material current, pending or threatened litigation, (ii) any material settlements or court orders and (iii) any other legal issues that are material information for purposes of the Official Statement.

Section 2.03. Responsibilities of Controller and Chief Financial Officer. The Controller and Chief Financial Officer shall review the Official Statement, identify any material difference in presentation of financial information from the Financial Statements and ensure there are no misstatements or

omissions of material information in any sections that contain descriptions of information prepared by the Controller and/or Chief Financial Officer or other Contributors or of relevance to the finances of the District.

In addition, the Controller and/or Chief Financial Officer shall determine whether the District's then-available Financial Statements are appropriate to be included in the Official Statement and whether to seek the consent of the District's auditor to include the Financial Statements in the Official Statement.

Section 2.04. Review by Disclosure Working Group. Following receipt of the Official Statement from the Financing Group, the Disclosure Working Group shall evaluate the Official Statement for accuracy and compliance with federal and state securities laws, and shall, have an opportunity to ask questions of the Financing Group and of any Contributor or other person who reviewed or drafted any section of the Official Statement. The Disclosure Working Group may direct or request revisions and/or may instruct the Financing Group to solicit contributions from additional Contributors, as they deem necessary or appropriate.

Section 2.05. Approval by Disclosure Working Group. Approval of the Official Statement by the Disclosure Working Group shall be evidenced by delivery of the Official Statement to the General Manager for docketing for a meeting of the Board of Directors as provided in Section 2.07.

Section 2.06. Submission of Official Statements to Board of Directors for Approval. As part of the docketing process, the General Manager shall submit all Preliminary Official Statements to the Board of Directors for approval using a staff report that includes the information in the template attached as Attachment C to these Disclosure Procedures. The approval of an Official Statement by the Board of Directors shall be docketed as a new business matter and shall not be approved as a consent item. The Board of Directors shall undertake such review as deemed necessary, following consultation with the Controller, to fulfill the responsibilities of the Board of Directors under applicable federal and state securities laws. In this regard, the Controller shall consult with the District's disclosure counsel to the extent necessary.

Article III: Continuing Disclosure Filings

Section 3.01. Overview. Under the continuing disclosure undertakings the District has entered into in connection with its debt offerings, the District is required each year to file Annual Reports with the Electronic Municipal Market Access ("**EMMA**") system maintained by the MSRB in accordance with such undertakings. Such Annual Reports are required to include certain updated financial and operating information, and the District's audited financial statements.

The District is also required under its continuing disclosure undertakings to file notices of certain events (as summarized in Attachment B to these Disclosure Procedures) with EMMA.

Section 3.02. Financial Statements. The Chief Financial Officer shall submit the District's audited financial statements ("**Financial Statements**"), as they are available, to the Disclosure Working Group. The Disclosure Working Group shall review the audited Financial Statements according to these Disclosure Procedures and, when reviewed and approved for disclosure, shall transmit the audited Financial Statements to the Board of Directors.

If the District does not have audited Financial Statements available in time to file the Annual Report, the Chief Financial Officer shall submit the District's unaudited financial statements as provided in each specific continuing disclosure undertaking.

Section 3.03. Annual Reports. The Disclosure Coordinator shall ensure that the preparation of the District's Annual Report shall commence in enough time so that they are filed no later than 210 days following the end of the fiscal year of the District, or as otherwise required under each specific continuing disclosure undertaking. Before any Annual Report is submitted to EMMA, the Disclosure Coordinator shall review outstanding continuing disclosure undertakings, prepare a checklist of information to be updated, supervise the preparation of the Annual Report, and confer with the Disclosure Working Group as needed regarding the content and accuracy of any such report.

Section 3.04. Disclosure of Listed Events. Pursuant to Rule 15c2-12(b)(5)(i)(C), the District is obligated to disclose to the MSRB notice of certain specified events with respect to the District's securities (a "**Listed Event**"). Each member of the Disclosure Working Group shall notify the other members of the Disclosure Working Group if he or she becomes aware of the occurrence of any of the Listed Events listed in the District's continuing disclosure undertakings. The Disclosure Working Group may meet to discuss the event and to determine, in consultation with disclosure counsel to the extent determined by the Disclosure Coordinator, whether a filing is required or is otherwise desirable. If such a filing is deemed necessary, the Disclosure Coordinator shall cause a notice of the Listed Event (a "**Listed Event Notice**") that complies with Rule 15c2-12 to be prepared, and the Disclosure Coordinator shall file or cause to be filed the Listed Event Notice as required by Rule 15c2-12.

Article IV: Public Statements Regarding Financial Information

Section 4.01. Financial Information. Whenever the District makes statements or releases information relating to its finances to the public that are reasonably expected to reach investors and the trading markets (including, without limitation, all Listed Event Notices, statements in the audited Financial Statements, and other financial reports and statements of the District), the District is obligated to ensure that such statements and information are complete, true, and accurate in all material respects. The Chief Financial Officer shall have primary responsibility for ensuring that such financial statements and information are accurate and not misleading in any material respect.

Article V: Miscellaneous

Section 5.01. Documents to be Retained. The Disclosure Coordinator, working with the District Clerk as needed, shall be responsible for retaining records demonstrating compliance with these Disclosure Procedures. The Disclosure Coordinator shall retain an electronic or paper file ("**Deal File**") for each Annual Report and notice of Listed Events filed or caused to be filed by the District. Each Deal File shall include final versions of Disclosure Documents, the transcript of proceedings prepared in connection with the issuance of financial instruments. The Deal File shall be maintained in a central depository for a period equal to the later of the date of maturity or defeasance of the securities referenced in the Disclosure Document.

Section 5.02. Waivers. In addition to the General Manager's authority to adopt an Administrative Procedure to make this Board Policy more specific, any provision of this Board Policy or any related administrative procedure may be waived at any time by the General Manager, with the written confirmation to the members of the Disclosure Working Group. This authority to waive a provision of this policy is triggered only if such waiver is necessary for timely and effective compliance with disclosure laws. Any waivers made under this provision shall be reported to the Board of Directors, with

conforming revisions recommended for the Board's consideration at the next update of this Board Policy and no later than within three months of implementation of such waiver.

ATTACHMENT A

LIST OF DISCLOSURE DOCUMENTS, TO BE AMENDED AS NECESSARY

1. Preliminary and final official statements, private placement memoranda and remarketing memoranda relating to the District's securities, together with any supplements.
2. Financial Statements.
3. Filings made by the District with the Municipal Securities Rulemaking Board, whether made pursuant to a continuing disclosure undertaking to which the District is a party or otherwise.
4. Press releases and other information distributed by or on behalf of the District for public dissemination to the extent that such releases are reasonably expected, in the determination of the Disclosure Working Group, to reach investors and the trading markets for municipal securities.
5. Rating agency presentations.
6. Postings on the investor information section of the District's website, if any.
7. Such portions of the District's published adopted annual budget as the Disclosure Working Group determines to be appropriate.
8. Any other communications that are reasonably expected, in the determination of the Disclosure Working Group, to reach investors and the trading markets for municipal securities.

Amendments:

[Date]

ATTACHMENT B

LISTED EVENTS

Occurrence of any of the following events require the District to make a filing on EMMA within ten (10) business days of their occurrence:

1. principal and interest payment delinquencies
2. unscheduled draws on debt service reserves reflecting financial difficulty
3. unscheduled draws on credit enhancements reflecting financial difficulty
4. substitution of credit or liquidity providers, or their failure to perform
5. adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other events affecting the tax-exempt status of the security
6. tender offers
7. defeasances
8. rating changes
9. bankruptcy, insolvency, receivership or similar event of the obligated person

The occurrence if any of the following events require the District to file a notice on EMMA within ten (10) days after their occurrence, if they are determined to be material by the Disclosure Working Group:

1. non-payment related defaults
2. modifications to the rights of security holders
3. bond calls
4. release, substitution or sale of property securing repayments of the securities
5. the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms
6. appointment of a successor or additional trustee or the change of name of a trustee

ATTACHMENT C

Information to be Included in the Staff Report Transmitting Official Statement by General Manager to Board of Directors

Transmittal staff report shall include, but is not limited to, the following information:

The attached Preliminary Official Statement has been reviewed and approved for transmittal to the Board by the District's Disclosure Working Group. The distribution of the Preliminary Official Statement by the District is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the Obligations. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Obligations. If the Board of Directors concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the Obligations, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been "deemed final."

The Securities and Exchange Commission (the "SEC"), the agency with regulatory authority over the District's compliance with the federal securities laws, has issued guidance as to the duties of the elected body with respect to its approval of the Preliminary Official Statement. In its "Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors" (Release No. 36761 / January 24, 1996) (the "Release"), the SEC stated that, if a member of the elected body has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the Obligations, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC stated that the steps that a member of the elected body take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

Section 1. *Purpose of Financing.*

Section 2. *Documents for Approval; Security for the Obligations.*

Section 3. *Risks Relating to Repayment and Tax-Exempt Status of the Obligations.*

Section 4. *Requested Approvals.*