



**CITY COUNCIL  
AGENDA REPORT**

**TYPE OF ITEM: Report  
AGENDA ITEM NO.: 1**

**DATE:** October 2, 2018

**TO:** City Council

**FROM:** Rosemarie Gaglione  
Public Works Director

**SUBJECT:** Approval of the Release of Seabridge CFD Escrow Funds. (5/10/5)

**CONTACT:** Rosemarie Gaglione, Public Works Director  
rosemarie.gaglione@oxnard.org, (805) 385-8055

**RECOMMENDATION:**

That the City Council

1. Approve the release of the \$250,000 deposit paid by the Developer of the Seabridge Community Facilities District (CFD), and accumulated interest, to the City of Oxnard based upon the findings of the City's water quality expert that the thresholds of water quality have fallen below the Generally Accepted State Standards per the Seabridge Development Agreement;
2. Authorize a reimbursement from Seabridge Development Deposit Z43801 to Seabridge CFD#4 (Fund 173) for expenditures related to water quality issue in amount of \$68,930; and
3. Authorize a budget appropriation for Seabridge CFD#4 (Fund 173) in the amount of \$68,930 for expenditures related to water quality issue.

**BACKGROUND**

In June 2018, the Channel Islands Harbor experienced a significant water degradation event, believed to be an algal bloom, resulting in brown, murky water, poor overall water quality conditions and some marine life death. City staff quickly mobilized, forming a response team, setting up a hotline number for the public, and performing daily water quality testing. Of particular concern were the dissolved oxygen readings, as they were well below acceptable levels and, in fact, resulted in some fish death.

Low dissolved oxygen concentrations are typically caused by the decomposition of algal biomass following an algal bloom, or during the decomposition of non-living organic matter (e.g. dead animals or discharged organic waste). Low dissolved oxygen levels are exacerbated by high

## Approval of the Release of Seabridge CFD Escrow Funds (5/10/5)

October 2, 2018

Page 2

water temperatures as the amount of oxygen dissolved in water decreases as temperature rises. Dissolved oxygen is a critical parameter for the health of all animals, and many desirable microbial species. Dissolved oxygen concentrations >7-8 mg/L (typical maximal values are ≈10 mg/L) are generally considered acceptable for many marine species. Values below 4-5 mg/L are considered stressful for many marine and freshwater organisms. Values below 1-2 mg/L are considered critically low, and can result in massive die-offs of fish and marine invertebrates if they are maintained even for a few hours. Any animal death occurring at such low dissolved oxygen levels can rapidly lead to complete loss of dissolved oxygen, due to the rapid decomposition of dead animal biomass by bacteria (which uses dissolved oxygen), which is known as the biochemical oxygen demand. Benthic (bottom-dwelling) animal species are particularly at risk during periods of low dissolved oxygen because dissolved oxygen concentrations typically decrease deeper in the water, and many of those species are less mobile and therefore cannot move out of the impacted area. If dissolved oxygen is depleted to 0 mg/L, additional problems can develop in the ecosystem. For example, in the absence of sufficient dissolved oxygen, bacteria will convert sulfate in the water to sulfide, which is toxic to animals and also causes significant odor problems.

Based upon the test results on samples collected during this seven-day period, the dissolved oxygen levels in the back basin between the Seabridge and Westport Community Facilities Districts were well below the 5 mg/L threshold and, on several occasions, were below 1 mg/L. These depressed concentrations have continued to occur intermittently through August as measured by the remote sensing device deployed on August 6 as well as manual testing performed by City of Oxnard staff.

As part of the approval process for the Seabridge development, the City of Oxnard entered into the Seabridge Development Agreement with Oly Mandalay Bay General Partnership on February 4, 2003. A portion of the development agreement discussed water quality and monitoring requirements. Specifically, according to Section 12(h)(iv) of the Seabridge Development Agreement:

“If the level of DO [dissolved oxygen] falls to below the level of the mean value of the six sampling stations or if the bacteria levels rise above the MPN numbers three times during one year, and if those instances are determined to be problems isolated to the area of the shallow bay, as opposed to conditions that affect a substantial portion of the waterways, and if recommended by a recognized expert in the field of water quality (as determined by the Maintenance Community Facilities District), then aerators and/or pumps would be installed in the vaults as discussed in Section 12(d), or other corrective measures approved by the City would be taken.”

Additionally, the City required the developer to pay \$250,000 for the installation of circulating pumps and aerators. Specifically, per Section K(d) of the Seabridge Development Agreement:

“The Water Study, also, identified the most efficient alternative for remediating water quality degradation below Generally Accepted State Standards (the “Remediation Measure”), should the water quality in the waterways, or any of them, degrade below Generally Accepted State

Approval of the Release of Seabridge CFD Escrow Funds (5/10/5)

October 2, 2018

Page 3

Standards, and the reasonably estimated cost of implementing the Remediation Measure (the “Remediation Cost”. The Seabridge Percentage Share of the Remediation Cost shall be calculated in the same manner as the Seabridge Pro Rata Share, defined in Section 1.32. The Remediation Measure includes the placement and operation of recirculating pumps and aerators in vaults to be located within the shallow recreation bay, to be part of the Seabridge Waterways. As a Project condition, and not as a mitigation measure, City has required and Developer has agreed that, as part of the initial construction of the Seabridge Waterways, in the course of construction of the Project, Developer shall construct the vaults, designed to house the circulating pumps, in the Seabridge Waterway, and, at the time that all of the Seabridge Waterways are accepted by City, shall pay to City, the amount of \$250,000, which the parties agree would be sufficient to install the circulating pumps and aerators, should water quality within the waterways degrade below Generally Accepted State Standards, as determined under Section 12(h).”

On July 5, 2018, the City entered into an agreement with Scott Johnson, Scientist with Aquatic Bioassay and Consulting Laboratories, in coordination with Dr. Dave Caron, USC Professor of Biological Sciences to assist the City with the ongoing efforts with this issue. Based upon the test results described above, it is their expert opinion that the water quality thresholds outlined within the Seabridge Development Agreement have been met. It is also their expert opinion that these results are below the Generally Accepted State Standards, which means standards promulgated by the State of California or its appropriate State agency with respect to water flows and water quality for coastal harbors. Attached is a letter from the City’s consultants to that affect.

City staff is requesting the release of the \$250,000 plus interest to be utilized by the Seabridge CFD for water quality remediation measures. A portion of these funds totaling \$68,929.97 will be utilized to reimburse the Seabridge CFD for expenditures already incurred in the current FY 18/19 budget as well as anticipated expenditures for the water quality issue as follows:

1 High Flow Air 7TM diffuser style aeration system	\$14,298.47
1 RBRCconcerto C.T.chi-aOOD/Wifi Remote Sensor	\$24,980.00
Electrical costs for running aerators	\$ 2,500.00
Completion of a Nutrient Study (pro rata share)	<u>\$27,151.50</u>
	\$68,929.97

Additional funds will be utilized within the boundaries of the Seabridge CFD for remediation efforts. Outreach will begin once remediation options are identified. City staff will return to the City Council for any additional expenditures requests.

**STRATEGIC PRIORITIES**

This agenda item is a routine operational item or does not relate to the four strategic plans adopted by City Council on May 17, 2016.

**FINANCIAL IMPACT**

Approval of the Release of Seabridge CFD Escrow Funds (5/10/5)

October 2, 2018

Page 4

There is no impact on the City's General Fund. The development deposits in amount of \$250,000 are currently being held and tracked via Project Z43801 Seabridge Waterway TR5266 Trust Account. The current interest earned on deposit to date is \$37,069. With approval of this item, \$68,930 will be utilized to reimburse the Seabridge CFD for expenditures already incurred for the water quality issue and to fund a portion of the nutrient study in the Channel Islands Harbor. City staff will return to the City Council for any additional expenditure requests.

*Prepared by Sandra Burkhardt, Special Districts Manager*

**ATTACHMENTS:**

Attachment A - Aquatic Bioassay and Consulting Letter

Attachment B: BA Seabridge Developer's Deposit

Date: August 29<sup>th</sup>, 2018

To: Sandra Burkhart  
City of Oxnard  
Special Districts Manager

From: Scott Johnson  
Aquatic Bioassay & Consulting Laboratories, Inc.  
Laboratory Director/Senior Scientist



Beginning on June 23, 2018, the City of Oxnard, in consultation with Aquatic Bioassay and Consulting Laboratories, Inc., began testing water quality in the Channel Islands Harbor after receiving numerous complaints about brown, murky water. Twenty-five locations were sampled all across the Channel Islands Harbor on a daily basis for seven consecutive days, and additional testing has occurred since that time.

According to Section 12(h)(iv) of the Seabridge Development Agreement dated February 4, 2003:

“If the level of DO [dissolved oxygen] falls to below the level of the mean value of the six sampling stations or if the bacteria levels rise above the MPN numbers three times during one year, and if those instances are determined to be problems isolated to the area of the shallow bay, as opposed to conditions that affect a substantial portion of the waterways, and if recommended by a recognized expert in the field of water quality (as determined by the Maintenance Community Facilities District), then aerators and/or pumps would be installed in the vaults as discussed in Section 12(d), or other corrective measures approved by the City would be taken.

Based upon the test results collected during this seven-day period, the dissolved oxygen levels in the back basin between the Seabridge and Westport Community Facilities Districts was well below the 5 mg/L threshold and on several occasions, were below 1 mg/L. These depressed concentrations have continued to occur intermittently through August as measured by the remote sensing device deployed on August 6 as well as manual testing performed by City of Oxnard staff.

Based upon the test results described above, it is our expert opinion that the thresholds outlined within the Seabridge Development Agreement have been met. It is also our expert opinion that these results are below the Generally Accepted State Standards, which means standards promulgated by the State of California or its appropriate State agency with respect to water flows and water quality for coastal harbors.

Sincerely,



Scott C. Johnson



**Scott Johnson**

**Laboratory Director, Senior Scientist**

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[www.aquaticbioassay.com](http://www.aquaticbioassay.com)

REQUEST FOR BUDGET APPROPRIATION

Department: Public Works  
 Project/Program \_\_\_\_\_  
 Manager: Sandra Burkhart

Date: October 2, 2018  
 Phone: (805) 385-7496


**Reason for Appropriation:**

1) Transfer of \$68,930 from Seabridge Developer's Deposit Z43801 to reimburse Seabridge Maint CFD#4 for water quality related expenditures incurred and anticipated 2) appropriate funding to CFD #4

<u>Accounts and Descriptions</u>	<u>AMOUNT</u>
<b>Fund: 541 - CASH DEPOSIT TRUST FUND</b>	
<b>Revenues/Transfers In</b>	
541-4391-581.75-15 MISCELLANEOUS REVENUES / OTHER REIMBURSEMENT	(68,930)
Sub-total Revenues	(68,930)
<b>Net Change to Fund Balance</b>	<b>(68,930)</b>

**Fund: 173 - CFD #4-SEABRIDGE MAINT.FD**

<b>Revenues/Transfers In</b>	
173-1901-581.75-19 MISCELLANEOUS REVENUES / OTHER REIMBURSEMENT	68,930
Sub-total Revenues	68,930
<b>Expenditures/Transfers Out</b>	
173-1606-805.82-29 CONTRACTS & SERVICES / PROF SRVC-SPECIAL PROJ	41,778
173-1606-805.82-09 CONTRACTS & SERVICES / SVCS-OTHER PROF/CONTRACT	27,152
Sub-total Expenditures	68,930
<b>Net Change to Fund Balance</b>	<b>0</b>
<b>Net Appropriation Change</b>	<b>68,930</b>

<b>Approvals</b>	
Department Director	_____
Chief Financial Officer	 _____
City Manager	_____

# APPROVAL OF THE RELEASE OF SEABRIDGE CFD ESCROW FUNDS

Presented to:  
City Council

October 2, 2018





## BACKGROUND

- In June 2018, the Channel Islands Harbor experienced a water degradation event, resulting in brown, murky water and some marine life death
- City staff quickly mobilized, forming a response team, setting up a hotline number for the public, and performing daily water quality testing in 26 locations across the harbor
- Bacteria samples have been collected on a monthly basis and to date, all results have come back within state limits and there is no threat to healthy and safety

## BACKGROUND

- As part of the approval process for the Seabridge development, the City of Oxnard entered into the Seabridge Development Agreement with Oly Mandalay General Partnership in 2003.
- A portion of the development agreement discussed water quality and monitoring requirements, as well as the requirement for the developer to pay the City \$250,000 for the installation of circulating pumps and aerators.

## BACKGROUND

In order to meet the water quality thresholds established in the Developer Agreement:

- 5 sampling locations were tested for dissolved oxygen, enterococcus, total coliform and fecal coliform
- Once the thresholds were met, this triggered the release of the escrow funds which were to be utilized for remediation measures, specifically:

***“if recommended by a recognized expert in the field of water quality*** (as determined by the Maintenance Community Facilities District), then aerators and/or pumps would be installed in the vaults as discussed in Section 12(d), or other corrective measures approved by the City would be taken.”

## BACKGROUND

- The City required the developer to pay \$250,000 for the installation of circulating pumps and aerators as follows:

“Waterways are accepted by City, shall pay to City, the amount of \$250,000, which the Seabridge parties agree would be sufficient to install the circulating pumps and aerators, should water quality within the waterways degrade below Generally Accepted State Standards, as determined under Section 12(h).”

## BACKGROUND

- Scott Johnson, Scientist with Aquatic Bioassay and Consulting Laboratories, in coordination with Dr. Dave Caron, USC Professor of Biological Sciences stated that it is their expert opinion that the water quality thresholds outlined within the Seabridge Development Agreement have been met.
- Their full recommendation letter is attached to the agenda packet

## USE OF A PORTION OF THE SEABRIDGE ESCROW FUNDS

- A portion of these funds totaling \$68,929.97 will be utilized to reimburse the Seabridge CFD for expenditures already incurred in the current FY 18/19 budget as well as anticipated expenditures as follows:

1 High Flow Air diffuser style aeration system	\$14,298.47
1 Wifi Remote Sensor	\$24,980.00
Electrical costs for running aerators	\$2,500.00
Completion of a Nutrient Study (Seabridge share)	<u>\$27,151.50</u>
	\$68,929.97

- City staff will return to the City Council for any additional expenditure requests.

## RECOMMENDATION

That the City Council

- Approve the release of the \$250,000 deposit paid by the Developer of the Seabridge Community Facilities District, and accumulated interest, to the City of Oxnard based upon the findings of the City's water quality expert that the thresholds of water quality have fallen below the Generally Accepted State Standards per the Seabridge Development Agreement.
- Authorize a reimbursement from Seabridge Development Deposit Z43801 to Seabridge Maintenance CFD#4 Fund 173 for expenditures related to water quality issue in amount of \$68,930.
- Authorize a budget appropriation for Seabridge CFD#4 Fund 173 in the amount of \$27,152 for the Seabridge CFD portion of a nutrient study in the Channel Islands Harbor.



# QUESTIONS