

**DATE:** January 19, 2017

**TO:** Watershed Conservation Authority Governing Board

**FROM:** Joe Gonzalez, Associate Project Manager

**THROUGH:** Mark Stanley, Executive Officer

**SUBJECT:** Item 17: Consideration of a resolution authorizing the chair or designee to negotiate and enter into a professional services contract to develop a Labor Compliance Program.

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**RECOMMENDATION:** That the Watershed Conservation Authority (WCA) Governing Board authorize the Chair, or designee, to negotiate and enter into a professional services contract for the development of a Labor Compliance Program for a total authorized value not to exceed \$50,000.

**PROJECT DESCRIPTION:** WCA has projects funded in part by Proposition 84 (the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006), that by State statute require the WCA to have a Labor Compliance Program (LCP) approved by California's Department of Industrial Relations (DIR) with respect to certain public works projects. Since WCA staff does not have the expertise to independently enforce a LCP, the WCA will award a contract to a Labor Compliance consultant to manage and supervise the interpretation and implementation of Federal and State Labor laws, as they relate to the requirements of labor compliance for Public Works.

The LCP will be developed and administered in two phases. The first phase covers the initial services up to approval of a LCP from DIR, which includes completing and submitting an application (Exhibit A), identification of skilled staff and legal support, and development of a detailed enforcement manual. The first phase will conclude at the March 16<sup>th</sup> Board Meeting with adoption of the LCP and subsequent submission of the LCP to DIR. The second phase will start after the award of the construction contract and includes the actual implementation and administration services of the LCP. The scope of labor compliance services of an approved LCP includes, but is not limited to, the following (See Exhibit B for a detailed Scope of Services example):

- Establish program protocol and procedures on behalf of WCA relative to Labor Compliance monitoring and enforcement.
- Advises contractors of all labor compliance requirements (includes pre-construction activities).
- Develop, recommend, and maintain policies, procedures, and regulations relevant to the Public Works Labor Compliance as it relates to payment of prevailing wages.
- Coordination activities with public and private agencies, and the awarding body.
- Provide required reports (monthly, annually, and close out report).
- Assists with resolving violations by contractor or subcontractor by mediating settlements between laborers and management.
- Prepare complex, in-depth audits relative to State and Federal Labor Laws and related to regulations.

- Upon completion of work, approve compliance with labor law and regulations prior to final acceptance.

WCA has been and is coordinating with LA County Department of Public Works' (DPW) Labor Compliance Officer throughout the LCP development process, to be consistent with County policies. DPW has utilized two Labor Compliance consultants in the past: Solis Group, who established DPW's LCP in 2010, and Hill International, DPW's current as-needed Labor Compliance Administrator. The WCA has requested initial proposals from Solis Group, Hill International, and Opportunity Marketing Group (another consultant used by County agencies), to determine a Labor Compliance consultant's contract's potential order of magnitude and scope for WCA's projects. An open bid process would proceed any contract award.

The Duck Farm Park Project will be the first WCA project to require a LCP before construction, with construction planned to start Summer 2017. Once the Duck Farm Project's budget and schedule are finalized, a formal request-for-proposals for Labor Compliance consultants will be released. The WCA may negotiate for discount rates for multiple projects, as the WCA has another project requiring an approved LCP (the River Wilderness Park, potentially starting in 2018), and other projects moving into construction that are subject to prevailing wage laws (including Parque Dos Rios, Walnut Creek, and Discovery Center) which could utilize on-call Labor Compliance support, all of which the WCA would like to include in a scope of services with a Labor Compliance consultant. If WCA were able to negotiate a discounted rate for multiple projects, the costs of the program would be shared amongst the different project's construction budgets by share of work.

**BACKGROUND:** Public Resources Code section 75075 requires an awarding body that will utilize Proposition 84 funding for a public works project to adopt a Labor Compliance Program (LCP) and have it approved by California's Department of Industrial Relations (DIR). The LCP is then to be enforced, or contracted with a third party to be enforced. An LCP administers prevailing wage and apprentice utilization requirements for public works projects. Prevailing wages are specific, minimum hourly wage rates determined by State or Federal government for trade workers on public works projects and include fringe benefit amounts for health insurance, vacation and pension. California Labor Code sections 1720 and 1771 define public works as work done under contract and paid for in whole or in part out of public funds that involves one or more of the following: construction, alteration, demolition, installation, repair work or maintenance work. Work performed by California Conservation Corps and certified local Corps are exempt from prevailing wages.

Labor Compliance Plans are approved by the Director of Industrial Relations. The awarding body must complete and submit an application for approval to DIR, which includes: identification of skilled staff, a detailed enforcement manual, an Agency Board Resolution adopting the LCP, and competent legal support for its labor compliance program. The awarding body may use its own employees, an outside consultant, or some combination of the two to staff the program, so long as the people who will perform the work have training and expertise in prevailing wage enforcement and all the duties of an LCP.

This initial board action is to authorize the Chair, or designee, to negotiate and enter into a contract to develop the Labor Compliance Plan. Staff will bring the resulting LCP drafted under this professional services contract to the Board as a separate action to adopt in March. Upon adoption by the Board the LCP will be submitted to the California State Department of Industrial Relations Director for their review and approval of the plan. The approval process by DIR ordinarily makes a decision to approve or deny an application within 60 days.

The adoption of a Labor Compliance Program, which includes the hiring of a consultant to monitor and enforce prevailing wage requirements, will mean that the WCA has fulfilled the Prevailing Wage Laws requirement of Proposition 84.

**FISCAL INFORMATION:** The proposed action would authorize the Chair, or designee, the discretion to award a contract for Labor Compliance Program consulting services for the Duck Farm River Park Project in an amount not to exceed \$50,000.

The proposed contract will be funded by Duck Farm grant RMC3609 as part of the construction budget, and potentially shared with other projects if the WCA is able to negotiate a contract for a discounted rate for multiple projects and on-call services.

**Suggested format of  
Application to Director for Approval of Awarding Body’s Labor Compliance Program  
(8 CCR §16425)**

NOTE: If necessary, you may attach additional sheets.  
The Director may ask for additional documentation as to any information provided or any other information that may have a bearing on your ability to do labor compliance enforcement.

Awarding Body Seeking Approval:

\_\_\_\_\_ Name

\_\_\_\_\_ Address

Awarding Body’s Contact Person:

\_\_\_\_\_ Name

\_\_\_\_\_ Address

\_\_\_\_\_ Phone Fax E-Mail

A. Identify the individuals who will be enforcing the Labor Compliance Program (LCP).  
(Note: If using outside consultants or an approved third party contract provider, identify the awarding body personnel who will monitor or supervise the outside work as well as the individuals and affiliations of the individuals who will perform the enforcement work.)

1. \_\_\_\_\_ Name

\_\_\_\_\_ Title

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furthermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.

\_\_\_\_\_

Name

\_\_\_\_\_

Title

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furthermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

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\_\_\_\_\_  
\_\_\_\_\_

3.

\_\_\_\_\_

Name

\_\_\_\_\_

Title

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furthermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. State the average number of public work projects the awarding body annually administers:

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C. State whether the proposed LCP is a joint or cooperative venture among awarding bodies; and, if so, how the resources and expanded responsibilities of the LCP compare to the awarding bodies involved:

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D. Describe the awarding body's record of taking cognizance of Labor Code violations in the preceding five years, including any withholding of funds from public works contractors pursuant to LC 1726.

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E. Identify the attorney or law firm available to provide legal support for the LCP, including handling of the LCP's responsibilities during the administrative review process set forth in Labor Code Section 1771.6.

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Attorney/Law Firm Name

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Address

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Contact Person & Phone Number

F. Identify the method by which the LCP will notify the Labor Commissioner of willful violations as defined in Labor Code Section 1777.1(d):

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G. Indicate whether the Awarding Body has established its own Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and subchapter 4 of chapter 8 of Title 8 of California Code of Regulations or has contracted with a third party that has been approved by the Director to operate a Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and subchapter 4 of chapter 8 of Title 8 of California Code of Regulations. If the Awarding Body has contracted with one or more persons or entities to operate all or any part of the Awarding Body's Labor Compliance Program, please identify (name, address, telephone, and principal contact) all of those persons or entities.

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H. Indicate whether the Awarding Body intends to enforce labor compliance on all of its public works projects (*i.e.*, not limited to projects that are funded by bonds or other statutes that require the Awarding Body to have an LCP as a condition of funding). If not, please indicate the kinds of projects on which you intend to enforce labor compliance and whether you are required to have a labor compliance program as a condition for obtaining funding for the project or projects.

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I. Attach a copy of the Awarding Body’s resolution adopting the LCP and, if applicable, any other resolution approving any contracts with persons or entities identified in G above.

J. Attach the proposed manual outlining the responsibilities and procedures of the LCP.

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Awarding Body’s Representative  
Name and Signature

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Date Signed

Mail two copies of this form and attachments to:

**OFFICE OF THE DIRECTOR  
DEPARTMENT OF INDUSTRIAL RELATIONS  
455 GOLDEN GATE AVENUE, 10<sup>th</sup> FLOOR  
SAN FRANCISCO, CA 94102  
ATTENTION: EXECUTIVE ASSISTANT TO THE DIRECTOR**

March 30, 2010

**ATTACHMENT 1**  
**AS-NEEDED THIRD PARTY LABOR COMPLIANCE MANAGEMENT SERVICES**  
**AWARD OF CONSULTANT SERVICES AGREEMENT**  
**THE SOLIS GROUP**

**Scope of Services**

The services to be rendered by the Consultant shall include, but not be limited to, all services typically rendered when providing As-Needed Third Party Labor Compliance Manager Services. Except as may be required to the contrary by this Agreement, the Scope of Services shall be as outlined in the County's Request for Proposal dated July 13, 2009, and the Consultant's Cost Proposal attached here.

**Schedule**

The contract period will be for THREE years commencing on the date of the initial Notice to Proceed. At the County's option and with mutual agreement of Consultant, the contract may be extended for two (2) one-year renewal options, with no change in the established contract not to exceed amount. The term of the contract and associated costs may be extended to meet any projects under construction at the end of the agreement term through project completion in order to be compliant with State statutes.

**Compensation**

After issuance of a written Notice to Proceed, the Consultant shall submit, on a monthly basis, a payment request for all work completed. Invoices shall conform to Public Works' invoicing instructions. All assignments shall be billed at the fee schedule outlined in Exhibit A and Exhibit B. Fees outlined in Exhibit A shall stay consistent with the California State Allocation Board's Labor Compliance Fee Guidelines. For multiple projects, County may negotiate with Consultant to discount Exhibit A Fees.

Fees outlined in Exhibit B shall remain unchanged for the first year. Starting one year after the date of the initial Notice to Proceed, Consultant may request on a yearly basis a Cost of Living Adjustment (COLA) from the County for Exhibit B fees. County shall limit COLAs to the lesser of: 1) the average salary increase or decrease granted to COUNTY employees or 2) the increase or decrease from the previous fiscal year's U.S. Department of Labor Bureau of Labor Statistics' Urban Consumer Price Index for Los Angeles-Riverside-Orange COUNTY, CA. If the COLA is based on the CPI, the adjustment shall be based on the change in the CPI from time of execution of this contract to the time at which the COLA is to be made. In the event fiscal circumstances ultimately prevent the Board of Supervisors from approving any increase in employee salaries for a fiscal year, Consultant will not receive a COLA for the contract period which coincides with that fiscal year.

The Consultant's total basic service fee shall not exceed \$2,000,000 for the five-year period. Mileage and other direct costs (meals, equipment, copy machine, etc.) are not reimbursable.



## Proposal to Provide Labor Compliance Services to Los Angeles County for the Construction of Various Projects

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### COST PROPOSAL

The Solis Group (TSG) proposes to provide Labor Compliance Program (LCP) services to Los Angeles County during the construction of various projects with an estimated range of construction value of \$2.5 million to \$200 million.

The proposed lump-sum, not-to-exceed fee for services is determined in conformance with the State Allocation Board's (SAB) fee guidelines as approved on July 2, 2003 (Exhibit "A").

Should the County request that TSG also proposes to provide as need staff to meet their Labor Compliance needs, TSG will assign a staff person at the fully-burdened hourly rate identified herein (Exhibit "B").

### SCOPE OF SERVICES

TSG will provide labor compliance services in complete compliance with its Department of Industrial Relations (DIR) approved 3rd Party Labor Compliance Program (LCP). The scope of services includes, but is not limited to, the following:

#### **Advise Contractors of All Labor Compliance Requirements**

TSG will conduct the following activities related to pre-construction activities:

- Inform the contractor(s), via pre-bid and/or pre-construction meetings of the California Labor Code requirements, including but not limited to:
  - Payment of prevailing wages
  - Use of apprenticeships
  - Required submittals (Certified Payroll Records and related documents, Apprenticeship program participation forms (DAS-140 and CAC-2)
  - Non-Discrimination in Employment Practices
  - Placement of required posters
  - Anti-kickback provisions
  - Subcontractor listing requirements
  - Licensing requirements
  - Unfair Competition Requirements
  - Worker's Compensation Insurance requirements
  - Penalties





## Proposal to Provide Labor Compliance Services to Los Angeles County for the Construction of Various Projects

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- Provide the contractor(s) with the applicable prevailing wage determination(s) for the project.
- Provide the contractor(s) with appropriate blank forms, document submittal schedule and checklist for submitting applicable documents.
- Provide technical assistance to the contractor(s) and awarding body, including contact telephone number for contractors to call for assistance and dedicated email address where contractors and L.A. County staff can send or request information.

### **Compliance Monitoring**

TSG will conduct the following activities related to monitoring and enforcement of prevailing wages and apprenticeship requirements:

- TSG will receive, securely store, review and audit Certified Payroll Records (CPR's), Fringe Benefit Statements, Trustee Reports, DAS-140 and CAC-2, and related documents.
- Verify payments by conducting regular and timely spot audits and, when necessary complete audits, of compliance documents and cross check the information with related documents.
- Request supporting documents including but not limited to: Inspector Logs, Job Logs, timesheets, sign-in sheets (when available), and contact Trust Funds (if applicable), when required.
- Conduct weekly interviews of workers. Interviews will be conducted by TSG's bilingual staff, using TSG's Field Survey form, which is available in English and Spanish, and will consist of a representative sample of all crafts involved in the project. This information will be crosschecked against the CPR's and related documents.
- TSG will also review workers compensation and verify with the Contractor's State License Board if the contractor's license is current. Any deficiencies will be promptly reported to the County.



## Proposal to Provide Labor Compliance Services to Los Angeles County for the Construction of Various Projects

### Compliance Enforcement

The following enforcement activities will be conducted:

- Monthly notification of missing or delinquent documents and corrective actions through the use of a Delinquent Documents Form to both the contractor and awarding body.
- Notification of wages and penalties due through the used of a Prevailing Wages Audit Worksheet.
  - When documents are not received, TSG will inform the awarding body of recommended penalty-related contract amounts to be withheld for contractor(s) failure to submit timely documents.
- Provide copies of all related correspondence and notifications to the awarding body.
- Notification to the contractor(s) of Right to Obtain a Review of Assessment and/or conduct Settlement Meeting.
- Collect and distribute wage restitutions to affected employees.
- Notify awarding body of underpayment amounts and recommended assessment of liquidated damages and penalties to be withheld.
- Collect labor compliance affidavits from the prime and all subcontractors prior to the closeout of the project for release of final payments to the subcontractors.
- Provide a final summary at end of project of items due

It is TSG's practice to not assess penalties resulting from violations of the California Labor Code until an impasse has been reached with the contractor and the assessment of penalties is the next step in the resolution process.



## Proposal to Provide Labor Compliance Services to Los Angeles County for the Construction of Various Projects

### Coordination activities with public and private agencies, and the awarding body

- Provide copies of compliance and enforce action notices and correspondence to the awarding body.
- Respond to inquiries and request for copies of documents such as Certified Payroll Records. Copies of such records will be redacted according the California Labor Code before release.
- Coordinate investigations and enforcement actions (e.g., California Labor Commissioner)
- Coordinate enforcement actions and Settlement Meetings with the awarding body's legal Counsel.

### Provide Required Reports

TSG will provide the following reports:

- A Monthly Activity Report that will include the following:
  - An Executive Summary for the reporting period
  - Identification of enforcement activities taken and results
  - Restitution wages, penalties and liquidated damages assessed and collected
  - A matrix identifying current issues and their status
- An annual report, including but not limited to:
  - An Executive Summary for the year
  - Number and value of contracts awarded subject to the LCP
  - Identification enforcement activities taken and results
  - Restitution wages, penalties and liquidated damages assessed and collected
- Project Close out Report, composed of the elements included in the Annual Report, and including items that may be due but do not affect the completion of the project.



## Proposal to Provide Labor Compliance Services to Los Angeles County for the Construction of Various Projects

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- The following databases will be maintained and provided with the reports
    - A database of employees interviewed and findings, wage restitutions, and liquidated damages assessed and collected

The following services are **included** in the proposed fee for labor compliance services:

In the event that an investigation and informal settlement conference with the affected contractor(s) fails to resolve an apparent violation, TSG will prepare the following on behalf of the Awarding Body:

- A. An audit
- B. Summary of the findings and investigation
- C. Notice of Withholding of Contract Payments
- D. Notice to the California Labor Commissioner Requesting Approval of Forfeitures, and
- E. Transmittal of Notice of Forfeitures to the affected contractor(s)

The following services are **not included** in the proposed fee for labor compliance services. They are provided at additional costs.

In the event that an affected contractor or subcontractor fails to resolve the apparent violation and requests a hearing before the Department of Industrial Relations, upon written authorization of the Awarding Body, TSG will provide any support required to participate in or prepare the County for hearing(s) before the Department of Industrial Relations or any appeals of any DIR findings. Compensation for services related to assisting with a hearing shall be at TSG's hourly rates and at the direct cost for TSG's Labor attorney services.



## Proposal to Provide Labor Compliance Services to Los Angeles County for the Construction of Various Projects

### EXHIBIT "A"

The Solis Group will provide the Los Angeles County Labor Compliance services, in complete compliance with its DIR-approved Labor Compliance Program. The fee basis is consistent with the California State Allocation Board's Labor Compliance Fee Guidelines, as approved on July 2, 2003, and presented herein, which "shall be calculated on the total project costs, exclusive of site acquisition costs," as follows:

Fee/Percentage	Project Cost	Calculation Basis
\$16,000	\$ 1,000,000	For the first \$1 million or any part thereof, plus
1.60%	\$ 1,000,000	Of the next \$1 million or any part thereof, plus
0.25%	\$ 1,000,000	Of the next \$1 million or any part thereof, plus
0.15%	\$ 1,000,000	Of the next \$1 million or any part thereof, plus
0.32%	\$ 2,000,000	Of the next \$2 million or any part thereof, plus
0.31%	\$ 2,000,000	Of the next \$2 million or any part thereof, plus
0.46%	\$ 5,000,000	Of the next \$5 million or any part thereof, plus
0.44%	\$ 5,000,000	Of the next \$5 million or any part thereof, plus
0.42%	\$ 30,000,000	Of the next \$30 million or any part thereof, plus
0.40%		Of any remaining portion (above \$30,000,000)

Furthermore, should this be a Program-wide service (multiple projects), TSG may negotiate a discount which will be applied to all fees calculated as indicated above.



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The Solis Group  
LAC Proposal  
Revised 12.22.09

January 19, 2017 - Item 17

**RESOLUTION 2017-07**

**RESOLUTION OF THE WATERSHED CONSERVATION AUTHORITY TO AUTHORIZE THE CHAIR, OR DESIGNEE, TO NEGOTIATE AND ENTER INTO A PROFESSIONAL SERVICES CONTRACT TO DEVELOP A LABOR COMPLIANCE PROGRAM.**

**WHEREAS**, the Watershed Conservation Authority (WCA) has been established as a joint powers agency between the Rivers and Mountains Conservancy and the Los Angeles County Flood Control District; and

**WHEREAS**, the Watershed Conservation Authority (WCA) has further been established to focus on projects which will provide open space, habitat restoration, and watershed improvement projects in both the San Gabriel and Lower Los Angeles Rivers watershed; and

**WHEREAS**, this action authorizes the Chair, or designee, to negotiate and enter into a professional services contract to develop a Labor Compliance Program; and

**WHEREAS**, the proposed action is exempt from the provisions of the California Environmental Quality Act (CEQA); NOW

*Therefore, be it resolved that the WCA hereby:*

1. FINDS that the actions contemplated by this resolution are exempt from the environmental impact report requirements of the California Environmental Quality Act (CEQA).
2. ADOPTS the staff report dated January 19, 2017.
3. AUTHORIZES the Chair, or designee, to enter into a professional services contract to develop a Labor Compliance Program for a total authorized value not to exceed \$50,000.

*~ End of Resolution ~*

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Motion \_\_\_\_\_ Second: \_\_\_\_\_

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_ Abstentions: \_\_\_\_\_

Resolution 2017-07

Passed and Adopted by the Board of the  
**WATERSHED CONSERVATION AUTHORITY**  
ON January 19, 2017

\_\_\_\_\_  
Governing Board Chair

ATTEST: \_\_\_\_\_  
David Edsall  
Deputy Attorney General