

SAN MATEO



LOCAL AGENCY FORMATION COMMISSION

455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

Action Minutes San Mateo Local Agency Formation Commission Special Meeting April 20, 2022

Chair O'Neill called the Wednesday, April 20, 2022, Special Meeting of the Local Agency Formation Commission (LAFCo) to order at 2:31 pm via Zoom.

1. Roll Call

Members Present: Commissioners Joshua Cosgrove, Don Horsley, Ric Lohman, Harvey Rarback, Warren Slocum, Vice Chair Ann Draper, Chair Mike O'Neill.

Members Absent: None

Alternate Commissioner Diana Reddy, and Kati Martin were also present in the audience.

Staff Present: Rob Bartoli, Interim Executive Officer
Timothy Fox, Deputy Attorney
Angela Montes Cardenas, LAFCo Commission Clerk
Janneth Lujan, Planning Commission Clerk

2. Public Comment for Items Not on the Agenda

None

3. Consent Agenda

a. Approval of Action Minutes: March 16, 2022

b. Resolution to make findings relating to remote meetings under the Brown Act

c. LAFCo File No. 22-03 – Proposed annexation of 20 Shoshone Place, Portola Valley (APN 077-331-110) to West Bay Sanitary District

Commission Action: Commissioner Lohman moved to approve the consent agenda and Commissioner Horsley seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Horsley, Lohman, Rarback, Slocum, Vice Chair Draper, Chair O'Neill.)

COMMISSIONERS: MIKE O'NEILL, CHAIR, CITY ▪ ANN DRAPER, VICE CHAIR, PUBLIC ▪ HARVEY RARBACK, CITY ▪ DON HORSLEY, COUNTY ▪ WARREN SLOCUM, COUNTY ▪ JOSHUA COSGROVE, SPECIAL DISTRICT ▪ RIC LOHMAN, SPECIAL DISTRICT

ALTERNATES: KATI MARTIN, SPECIAL DISTRICT ▪ DIANA REDDY, CITY ▪ JAMES O'NEILL, PUBLIC ▪ DAVE PINE, COUNTY

STAFF: ROB BARTOLI, INTERIM EXECUTIVE OFFICER ▪ TIMOTHY FOX, LEGAL COUNSEL ▪ ANGELA MONTES, COMMISSION CLERK

4. Consideration of Municipal Service Review Circulation Draft for the City of East Palo Alto, East Palo Alto Sanitary District, and West Bay Sanitary District

Mr. Bartoli began by saying that LAFCo initiated the process for the City of East Palo Alto, East Palo Alto Sanitary District, and West Bay Sanitary District (the “agencies”) Municipal Service Review (MSR) in May 2021 per request from developers, members of the public and the City of East Palo Alto. He noted that the last MSR for these agencies was completed in 2008-2009. He introduced consultant Richard Berkson and Jennifer Stevenson who provided an overview of the draft MSR to the Commissioners.

Mr. Berkson began by saying that this is a draft report and that they are hoping for comments on the draft. He gave a summary of the collaborations between Berkson Associates and Policy Consulting Associates. He summarized the MSR process embed in state law.

Ms. Stevenson provided an overview of what a Sphere of Influence (SOI) and Municipal Service Review (MSR) is. She also discussed the report’s approach and methodology. She said the content in the report aims to inform each of the required determination. The information for the report was obtained through information requests to agencies and agency staff interviews. She noted that agencies had an opportunity to submit comments and edits were made as a result. She said a virtual workshop was held to solicit comment on April 6, 2022.

Ms. Stevenson began the draft MSR presentation by reporting on the City of East Palo Alto. She provided a high-level overview of the various services that are provided by the City, including, police, water, and parks. Ms. Stevenson said growth within the City of East Palo Alto has been largely static the last two decades. She added that with pending developments there is a potential for growth that has been planned for in General Plan. As of December 2021, the City had 20 unconstructed development projects and that the City has received significant applications for ADUs. There is currently an impediment to the development of these projects due to the reported lack lacks connection capacity to serve new construction from the East Palo Alto Sanitary District (EPASD).

Ms. Stevenson stated that the inter-governmental committee between the City and EPASD had met regularly, however solutions were not achieved and the meetings were put on hold. A satisfactory financing plan was not developed for all parties. She said that majority of City residents (92%) are EPASD ratepayers, transition of EPASD to subsidiary district may be most practical solution to challenge. Potential improvements include the alignment of the City’s land use policies and sewer infrastructure. She said this option would allow the City the opportunity to contract with WBSD to maintain the sewer system.

Vice Chair Draper said she does not see mention of flooding and asked for the inclusion of the San Francisquito Creek collaborative efforts to solve local. She asked if the City could force solutions. Ms. Stevenson said they would include mention of efforts against flooding. She said that the report will walk the Commission through what the reorganization would like for all options. She said that there is a way for the City to move forward without support from the EPASD.

Commissioner Lohman asked what subsidiary district would entail and shared that his concern with the city taking over they would be able to raise rates. Ms. Stevenson clarified what a subsidiary district looks like. She said that as noted in the MSR, raising rates for development purposes should not be paid by current ratepayers. She said that there are needs in the infrastructure and there are questions if those rates are adequate. Mr. Berkson added that they city would have the ability to raise rates the same way the EPASD has the ability to that now and is subject to Prop 218 process.

Commissioner Horsley, in reference to the statement of that lack of sewer capacity impedes new projects, asked if the current sewer service is underfunded and who is responsible for increasing sewer capacity and are rates too low. Mr. Berkson moved on to report on EPASD in hopes of addressing Commissioner comments.

Mr. Berkson began his portion of the presentation by referring a map that depicts district boundaries for EPASD . He noted that EPASD's rates are the lowest in the County and added that property tax helps to supplement District revenue. He referred to the rates that are outlined in the report.

EPASD prepared a hydraulic analysis conducted by consultant engineers in a 2021 addendum to its 2015 Master Plan update. This 2021 addendum did model storm conditions and predicted sewer overflows for current the current system and would impact existing ratepayers. Mr. Berkson noted that the addendum identifies pipeline expansion to address potential overflows from existing to new development. However, the addendum does not identify solutions or give a priority to projects to address these system deficiencies.

Mr. Berkson went into detail on the EPASD Proposed Capital Improvement Program costs. He added that the MSR pointed out that EPASD notes there are funding options to assure existing ratepayers do not pay for new development. He agreed that is what is practiced by most districts and cities in California. He said the MSR provides framework and illustrates possibilities to allocate cost in such ways where current ratepayers are not burdened by development for new projects. He continued to by summarizing funding options and possible wats that funding may be used for improvements. Mr. Berkson said that the lack of sewer capacity prevents EPASD from serving new development in City's Master Plan. He

said that stalled development adversely affects city residents and district customers, as it is a shared constituency.

Vice Chair Draper asked if EPASD has a high-level financial officer on staff to help with all funding sources mentioned. Mr. Berkson said he does not believe they have that key person on staff, but that EPASD may hire consultants for such work. She added that she is concerned that the report may have understated vulnerabilities of existing systems and she shared her topics. Mr. Berkson addressed Vice Chair Draper's comments. Vice Chair Draper stated that it did not seem to her that EPASD had policies about asset management for existing systems on maintaining/replacing them. It is important to prioritize maintenance and asked if there is a better way to capture the vulnerability of the current system. Mr. Berkson said that EPASD could not provide them with an inventory of the pipelines and their ages. He added that when speaking to EPASD staff their position is that age is not a primary factor in planning for replacement of pipelines. He said that though he is not an engineer, this concept from EPASD is not consistent with his understanding of planning for asset management.

In response to Chairman O'Neill's question, on how the residents of Menlo Park have representation, Mr. Berkson said that is one concern of a subsidiary district that serves outside of their own city. Ms. Stevenson elaborated on possible options.

Commissioner Horsley added that it is not unusual to provide services outside of the city or district, as that is a common occurrence on the San Mateo coast.

Ms. Stevenson presented on the West Bay Sanitary District (WBSD) and gave an overview of the agency. She said that WBSD operates with a high level of transparency and accountability. She noted that its Master Plan is undergoing an update. She said that WBSD could manage sewer services if EPASD were to dissolve, through a contract with the City or by annexation. She noted that WBSD, though capable, would not pursue reorganization without the agreement from EPASD.

Mr. Berkson summarized the governance options. Options include:

- The City governs as the board of a subsidiary district (possible contract with WBSD)
- Annexation of EPASD territory by WBSD
- EPASD dissolution and alignment of service areas with Menlo Park and East Palo Alto
- Detachment of developing areas and annexation by WBSD

Ms. Stevenson summarized the reorganization process. She noted what the initiation, application, protest, and possible election may look like. Mr. Berkson noted what the next steps are following the public hearing.

Commissioner Draper asked if the state created a district if the state also has power to dissolve. Ms. Stevenson said LAFCo maintains authority in dissolution and formation of special districts.

Chairman O'Neill opened public comment.

Matt Triber, Eden Housing, spoke in support of the Commission's acceptance of the draft MSR. He emphasized that without LAFCo action Light Tree Apartments is at risk of having 91 vacant affordable apartments due to nonperformance by EPASD. He added that Eden Housing is exploring new sites within the City for development of 150 units for households earning less than 50% median income. He said that despite large efforts for funding, EPASD has returned to the City for additional funding.

Jeff Poestch spoke in support of the acceptance of draft MSR. He said that the harm that has already occurred in the City due to systematic failures of EPASD to address known problems on their ability to provide adequate service capacity. He mentioned projects that have been abandoned. He said there have been agreements in place and then EPASD chooses not to abide by the agreement.

Akin Okupe, EPASD General Manager, said that in terms of Light Tree Apartments project the information provided is not accurate, he said the CEQA analysis was done by the City and the consultant for the City came back and told them that the analysis was not correct and that that project would need additional permits. He said without the permit the project could not proceed and that this was an error by the City and not EPASD. The consultant mentioned that it is against the law for excess revenue be used for development. He added that in his 25 years of practice he has never seen existing customers pay for development.

Dennis Scherzer, EPASD Board Member, said that in 1939 a sovereign local government was created and maintained for the District. He said the report ranks EPASD services equal to WBSD. He said that new flow metering devices gather engineering data. He said that the option for WBSD to take over is because the City has proved they cannot maintain storm drains or water system. He said the status quo is the best option.

Patrick Heisinger, City of East Palo Alto Assistant City Manager, said that all the City has been asking for is progress. He said that East Palo Alto is on the verge of supporting itself financially. When projects are approved that can bring more jobs to the City there is a benefit to the whole community. City is currently in a deficit but, these developments would have help fund. He said there is huge infrastructure need and the City has plans.

Gale, resident of East Palo Alto, spoke about the Primary School project. She said the Sobrato Organization, a developer, has several projects in East Palo Alto that were done

successfully. She said these are political moves and that the MSR is not accurate.

Christopher, resident of East Palo Alto, said he has been very frustrated with how these many of these projects have been approved within the last 3 years and that EPASD has been holding back the projects. He said he would love to see more housing developments in the City.

Victor Dong, landowner, supports the draft MSR. He said that it's been five years since getting all clearance from all other departments. He is now waiting for approval from EPASD, but he has been told that it will cost millions of dollars to connect to the system.

Ruben Abrica, Mayor City of East Palo Alto, said he reached out to EPASD Chair to keep communication going. He said they had a couple of difficult good meetings. He said he came to understand that the CEQA process caused misunderstanding. He said that it turned out the City and EPASD had the same consultant, and they identified a way to resolve the problem. He added that EPASD had subject itself to an agreement over the Light Trees Apartment project. He hopes to reach out and agree to solve this problem.

Mark, City of East Palo Alto resident, he said that housing problem is regional. He said that the passing of this is going to help the community and critical housing need.

Chairman O'Neill closed public comments.

Commissioner Cosgrove thank all parties for their hard work on the draft MSR. He said that this came forward when it did due to development and sewer connection fees. Mr. Berkson clarified what the report refers to. Mr. Bartoli clarified that part of the issue is that there are discrepancies between the written reports from EPASD regarding existing deficiencies what EPASD staff has told LAFCo. This issue has impacted the issue of what ratepayers and new developments are funded and paid for. Commissioner Cosgrove clarified that the EPASD is required to have developers pay for cost. Mr. Berkson assured that there are challenges with the system regardless of who is charge. He said EPASD has not come up with a prudent plan that would help find solutions under the current District plan. Mr. Berkson clarified what the discrepancy mentioned in report is in regard to. Mr. Bartoli stated this MSR is very similar to the 2009 SOI with additional details and findings. Commissioner Cosgrove summarized by saying that it seems the system is working well aside from a few deficiencies.

Commissioner Horsley said he does not believe the system is working well at all. He said rates are artificially low and that EPASD has a plan to address deficiencies, but that is not being acted on.

Commissioner Rarback agreed with Commissioner Horsley and believed EPASD has been an impediment to the City progressing. He said he is in favor of the City taking over the service.

Commissioner Draper said that she is concerned that EPASD has not acted on CIP and agrees with Commissioner Horsley that this is not a well-run district. She said she is seeing similar actions to what happened to the Florida apartment complex that collapsed.

Commissioner Cosgrove clarified his comment regarding well-run in that he does not see sewer overflows from EPASD. He said the District appears to not be spending an amount equal to depreciation. He added that there is room for improvement there.

Commissioner Lohman said he sees an unsolvable problem without negotiation. He says the report needs to show what cost would be for new development and updates to current system. Mr. Berkson referred Commissioner Lohman to page 133 of the report that discussed this issue.

Chairman O'Neill said that long term aspects need to be looked at and the EPASD does not seem to be looking at the future.

Mr. Bartoli thanked consultants and all agency staff. He clarified the recommendation before the Commission.

Commission Action: Commissioner Horsley moved to direct the Executive Officer to schedule Final MSR review for City of East Palo Alto, East Palo Alto Sanitary District for public hearing at the June 15, 2022, Commission meeting and circulate it with any necessary amendments and West Bay Sanitary District and Commissioner Slocum seconded the motion which passed by majority roll call vote, 6-1. (Ayes: Commissioners Cosgrove, Horsley, Rarback, Slocum, Vice Chair Draper, Chair O'Neill. Nays: Commissioner Lohman)

5. Legislative and Policy Committee

a. Legislative Report – Information Only

Mr. Bartoli have a brief overview of the 28 bills that are currently being tracked by CALAFCO. He highlighted new bill SB 1449.

6. Commissioner/Staff Reports – Information Only

None

7. Adjournment

Chair O'Neill adjourned the meeting at 4:40 p.m.

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Action Minutes San Mateo Local Agency Formation Commission Meeting May 18, 2022

Chair O'Neill called the Wednesday, May 18, 2022 meeting of the Local Agency Formation Commission (LAFCo) to order at 2:30 pm via Zoom.

1. Roll Call

Members Present: Commissioners Joshua Cosgrove, Don Horsley, Ric Lohman, Harvey Rarback, Vice Chair Ann Draper, Chair Mike O'Neill.

Members Absent: Commissioner Slocum and Commissioner Horsley

Alternate Commissioner Jim O'Neill and Diana Reddy were also present in the audience.

Staff Present: Rob Bartoli, Interim Executive Officer
Timothy Fox, Deputy Attorney
Angela Montes Cardenas, Commission Clerk

2. Public Comment for Items Not on the Agenda

None

3. Consent Agenda

a. Resolution to make findings relating to remote meetings under the Brown Act

Commission Action: Commissioner Cosgrove moved to approve the consent agenda and Vice Chair Draper seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Lohman, Rarback, Vice Chair Draper, Chair O'Neill. Absent: Commissioner Slocum, Horsley.)

COMMISSIONERS: MIKE O'NEILL, CHAIR, CITY ▪ ANN DRAPER, VICE CHAIR, PUBLIC ▪ HARVEY RARBACK, CITY ▪ DON HORSLEY, COUNTY ▪ WARREN SLOCUM, COUNTY ▪ JOSHUA COSGROVE, SPECIAL DISTRICT ▪ RIC LOHMAN, SPECIAL DISTRICT
ALTERNATES: KATI MARTIN, SPECIAL DISTRICT ▪ DIANA REDDY, CITY ▪ JAMES O'NEILL, PUBLIC ▪ DAVE PINE, COUNTY
STAFF: ROB BARTOLI, INTERIM EXECUTIVE OFFICER ▪ TIMOTHY FOX, LEGAL COUNSEL ▪ ANGELA MONTES, COMMISSION CLERK

4. LAFCo File No. 22-02 – Proposed Minor Sphere of Influence amendment and annexation of 3343 Alpine Road, Unincorporated Santa Clara County (APN 142-15-008) to West Bay Sanitary District

Mr. Bartoli presented the proposed minor Sphere of Influence (SOI) amendment and annexation of 3343 Alpine Road Unincorporated Santa Clara County (APN 142-15-008) to West Bay Sanitary District (WBSD) to allow the construction a single-family house. The property is currently outside of the SOI of WBSD and an SOI amendment is required. He said approval from both Santa Clara and San Mateo LAFCos required.

He shared a map in his presentation and summarized the boundaries of the parcel. He noted that in 2016 the San Mateo County Department of Environmental Health determined that any development on the site, for future use, an onsite wastewater system was not feasible due to configuration challenges. The parcel is located within Santa Clara County and the Sanitary district is located primarily in San Mateo County. He added that San Mateo LAFCo is considered the principal LAFCo. He said that all Santa Clara County departments have recommended approval of the annexation. Santa Clara LAFCo considered the application at their April 6, 2022, regular Commission meeting and recommended approval of the annexation.

Mr. Bartoli summarized the SOI amendments history for WSBD for parcels in Santa Clara County and discussed the areas of determination .

Chairman O’Neill opened and closed the public comments. No comments were received.

Commission Action: Vice Chair Draper moved to approve LAFCo File No 22-02 – proposed minor SOI amendment and annexation of 3343 Alpine Road, Unincorporated Santa Clara County (APN 142-15-008) to West Bay Sanitary District. Commissioner Lohman seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Lohman, Rarback, Vice Chair Draper, Chair O’Neill. Absent: Commissioner Slocum, Horsley.)

5. Adoption of Municipal Service Review for County Service Area 11 (Pescadero)

Mr. Bartoli presented the final version of the report to the Commission. He summarized what MSRs are. He gave a historical overview of County Service Area 11 (CSA 11). He clearly noted the final updates to MSR from the draft report. He highlighted key issues for CSA 11. He noted the MSR determinations and recommendations which include:

Growth & Population

Growth may be limited by constraints

Recommended that the County consider the preparation of an area or community plan for Pescadero

That the County reevaluate the buildout projected in the LCP and General Plan for Pescadero

Capacity & Adequacy of Public Facilities & Services

The aquifer that CSA 11 wells rely on is considered to be in overdraft

It is estimated that the CSA 11 wells would still be able to provide water into the future CSA 11 should continue to monitor water levels and develop long term plans for the continued operation of the CSA 11 water system

If a community plan is created, the plan should explore how the CSA 11 system to meet fire flow and evaluate the financial costs to implement the project

Financial Ability

Current CSA 11 water rates do not support year-to-year operation of the water system and will continue to negatively impact the District's fund balance

Recommended that County staff prioritize a review of the rates for CSA 11

CSA 11 should identify long-term capital projects that will be needed and evaluate ways that project could be funded

Mr. Bartoli noted that these did not change from the draft MSR. He noted the public outreach and comment period for the MSR.

Chairman O'Neill opened and closed the public comment period. No comments were received.

Commission Action: Commissioner Lohman moved to adopt the Municipal Service Review for CSA 11. Commissioner Rarback seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Lohman, Rarback, Vice Chair Draper, Chair O'Neill. Absent: Commissioner Slocum and Horsley.)

6. Adoption of Final Work Program and LAFCo Budget for Fiscal Year 2022-2023

Mr. Bartoli gave a verbal presentation to the Commission. He summarized the final proposed FY 22-23 budget and the changes to the budget since the Commission last reviewed at their March 2022 regular meeting. He highlighted the changes and shared a

table depicting the changes to the budget which totaled \$29,024 increase for Appropriates and Net Operating and one-third apportionment increase of \$9,147. He continued to summarize the budget revisions and increase.

He gave a summary of the Work Plan and the MSRs that LAFCo will focus on for FY22-23. As part of the work plan, a special study will be conducted for the Broadmoor Police Protection District along with an MSR for the San Mateo County Harbor District

In response to Commissioner Rarback, Mr. Bartoli clarified he expects the Harbor District will go to the Commission early 2023.

Chairman O'Neill opened and closed the public comment period. No comments were received.

Commission Action: Vice Chair Draper moved to direct the Executive Officer to distribute to the County, cities, and independent special districts and forward to the County Controller to invoice funding agencies. Commissioner Lohman seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, , Lohman, Rarback, Vice Chair Draper, Chair O'Neill. Absent: Commissioner Slocum and Horsley.)

7. Consideration of a Resolution Authorizing an Agreement with the County of San Mateo for Staffing Legal Counsel, Office Space, and Supplies for the 2022-2023 Fiscal Year

Mr. Bartoli gave a verbal update to the Commission. He noted that LAFCo annually adopts a contract with San Mateo County for staffing, facilities and legal counsel. He said those services include coordination between the LAFCo and County budget, billing services for the LAFC one-third apportionment, and HR support. He said there were no amendments to the contract other than the not-to-exceed amounts.

Chairman O'Neill asked if the Commission should codify and figure out with the County who hires the Executive Officer. Mr. Fox clarified that the issue that came up was the order of events. He added that it may be worth having a discussion about whether or not we propose amendments to the language to better match the Commissions interests and expectations. Mr. Bartoli added that this may be something to add to work plan in the future.

Chairman O'Neill opened and closed the public comment period. No comments were received.

Commission Action: Commissioner Lohman moved to authorize the Chair to execute agreement with the County of San Mateo for support services in the amount of \$654,467 for the 2022-23 fiscal year. Commissioner Rarback seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Lohman, Rarback, Vice Chair Draper, Chair O’Neill. Absent: Commissioner Slocum and Horsley)

8. Appointment of Public Member and Alternate Public Member

This item was continued to June 15, 2022, special meeting.

9. Legislative and Policy Committee

a. Legislative Report – Information Only

Mr. Bartoli gave a brief update to the Commission. He said there are 28 bills being tracked. He noted the LAFCo specific bills.

10. Commissioner/Staff Reports – Information Only

None

11. Resolution honoring Commissioner Joshua Cosgrove for his service

Chairman O’Neill wished Commissioner Cosgrove a fond farewell and wished him and his family well.

Vice Chair Draper thanked him for his service and said she appreciates all the time he spent on LAFCo items.

Commissioner Lohman seconded Vice Chair Draper’s comments.

Chairman O’Neill congratulated Commissioner Cosgrove for his attendance on the Commission.

Mr. Bartoli thanked Commissioner Cosgrove for all his help. He said he always provided great input and asked great questions. He said he brought a lot of expertise and knowledge. He added that he will be missed on the Commission.

Commissioner Cosgrove thanked everyone for their kind words. He said he appreciated working with Martha for many years and said she was a great Executive Officer. He wished everyone well.

12. Adjournment

Chair O'Neill adjourned the meeting at 3:10 p.m.