

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 Meeting June 15, 2022

Chair O'Neill called the Wednesday, June 15, 2022, meeting of the Local Agency Formation Commission (LAFCo) to order at 2:30 pm via Zoom.

1. Roll Call

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

Members Absent: Commissioner Slocum (Later joined at 2:40pm)

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

Staff Present: Rob Bartoli, Executive Officer
Timothy Fox, Legal Counsel
Angela Montes Cardenas, Commission Clerk
Janneth Lujan, Planning and Building Executive Secretary

2. Public Comment for Items Not on the Agenda

None

3. Consent Agenda

- a. Approval of Action Minutes: April 20, 2022, and May 18, 2022
- b. Resolution to make findings relating to remote meetings under the Brown Act
- c. LAFCo File No. 22-04 – Proposed annexation of 315 Grove Drive, Portola Valley (APN 079-020-030)

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

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

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

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

4. Appointment of Public Member and Alternate Public Member

Mr. Bartoli gave a verbal update on regular/alternate public member appointment. He summarized the outreach staff has done to circulate nominations/elections. He added the Chairman O'Neill and Commissioners Lohman and Horsley served as in the Public Member Recruitment Committee to interview applicants. He said that after conducting interviews the Committee recommends that Ann Draper be reappointed as regular public member and Jim O'Neill be reappointed as alternate public member.

Commission Action: Commissioner Martin moved to appoint Ann Draper as regular public member and Jim O'Neill as alternate public member. Commissioner Horsley seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Horsley, Lohman, Martin, Rarback, Vice Chair Draper, Chair O'Neill. Absent: Commissioner Slocum)

Commissioner Slocum joined at 2:40pm.

5. Adoption of Municipal Service Review for City of East Palo Alto, East Palo Alto Sanitary District, and West Bay Sanitary District

Mr. Bartoli gave a verbal update to the Commission. He summarized the purpose of Municipal Service Reviews (MSRs) and Sphere of Influences (SOIs). He noted that this MSR was initiated in May 2021 in response to request from residents and developers He thanked consultants Richard Berkson from Berkson Associates and Jennifer Stephenson from Policy Consulting Associates LLC for all their work on the MSR.

Mr. Bartoli summarized the timeline of draft MSR circulation and comments received on the draft document. He summarized what the responses focused on. He noted that the comment letter and responses to the comments were included in the final MSR as appropriate. All comment letters were included in the agenda packet. He updated the Commission on the updates to the final MSR.

City of East Palo Alto

Mr. Bartoli summarized the determinations that were included in the report. Past population growth has been static in the City, but current pending development projects show future growth. Developers have indicated concerns with cost to connect to the East Palo Alto Sanitary District (EPASD) system. He said one potential option for reorganization is for EPASD to become a subsidiary district under the City.

He continued to summarize the recommendations for the City. The recommendations include:

- Ethics Training
- Form 700
- Intergovernmental Relations
- Development Environmental Review
- Budget Forecasting
- Infrastructure Improvements
- Park Planning

East Palo Alto Sanitary District

The determinations for EPASD can be found in the report on pages 150-155. Mr. Bartoli said the Addendum to the Master Plan in 2021 identifies pipeline expansion to address potential overflows. The Addendum has lack of timing, prioritization, and funding options. There is also a need for a long-term District planning document. These documents and plans would enhance transparency for ratepayers, developers, and others. As outlined in the MSR, there are funding options that can assure existing ratepayers of EPASD do not pay for infrastructure that is solely needed for new development. He said EPASD's low rates can adversely affect the services and infrastructure. Mr. Bartoli noted the types of funding options available to the District for infrastructure projects that could be used.

He summarized the recommendations in the report. Recommendations include:

- Ethics Training
- Policies and Procedures
- Update Capacity Charges
- Develop CIP Financing Plan
- Pursue Grants and Low-Interest Loans for Infrastructure Projects
- Evaluate and consider Using Revenue Debt for Major Long-Term Capital Improvements
- Facilitate New Development without Burdening Existing Ratepayers
- Improve Transparency of Budget and Financial Documents
- Budget Forecasting
- Intergovernmental Relations Meetings with the City
- Update Sewer Rates
- Independent Review of EPASD Hydraulic Analysis and Proposed Improvements

West Bay Sanitary District

Mr. Bartoli stated that determinations for the District can be found in the report on pages 176-177. He noted that the West Bay Sanitary District (WBSD) is currently undergoing a Master Plan. He said their plan will identify improvements to meet future demands. The MSR identifies that WBSD could manage the sewer district if EPASD was dissolved either by contact or annexation.

He summarized the recommendations which include:

- Funding of Reserves
- Master Plan and CIP

Mr. Bartoli summarized the determinations for the Sphere of Influence. The recommendation is to reaffirm SOIs that were also reaffirmed in the 2009 MSR for all three agencies. The determinations to SOI are stated in Exhibit D of the resolution.

Two written comments were received after the publication of the June 15 agenda packet. from East Palo Alto Mayor Ruben Abrica and letter from Mark Williams representing EPASD. He addressed some of the comments in the letter and began by noting that the MSR is not a proposal for reorganization but to explore governance options. He said the MSR identifies an advisory body for residents if subsidiary district is created at a later date. He added that the creation of JPA as suggested in the letter from Mark Williams would not address infrastructure issues that EPASD faces.

The Commission allocated 15 minutes for the three agencies under review and allow the agencies to save a portion of the 15 minutes for rebuttal.

Interim City Manager Patrick Heisinger of the City of East Palo Alto introduced Councilmember Carlos Romero to present on behalf of the City.

Councilmember Carlos Romero noted that the comment letter sent to LAFCo from the City had been unanimously approved the City Council. Mr. Romero said that it was always intended for the District to become part of the City and provided additional information about the history of the incorporation of the City. He stated that for the last three years stakeholders have attempted to collaboratively work with EPASD in an effort to come up with solutions. Very little tangible progress has been made during that time period though. He said the District has failed to meet timelines on approved agreements. The MSR clearly illustrates improvements to the District are needed. He said EPASDs failure to implement CIP poses health and safety risks to current ratepayers. The City has the capacity, interest and understanding to support and improve the aging sewer infrastructure. Mr. Romero said it is imperative that the City hold ultimate land-use authority for all development within the City. He said the legacy of the failure of the District not being dissolved when the City was incorporated almost 40 years ago continues to be an impediment to the growth of the City. He also highlighted a recent development project, The Light Tree Apartments development, and the City's commitment to the project. The development is still on hold as EPASD has not held up their end of the agreement. The direction from City Council is that LAFCo adopt MSR and associated recommendations. Mr. Heisinger also provided brief comments about

the MSR.

East Palo Alto Sanitary District General Manager Akin Okupe introduced Mark Williams and James Cook who gave a verbal presentation to the Commission. Mr. Cook began by saying that EPASD should not be dissolved. He noted that Sobrato and Ravenswood Health Clinic do not want to pay for the sewer infrastructure needed for new development. Mr. Cook said that EPASD is advocating for the residents and that developers should pay for the pipes for new development. He said the MSR report makes no mention of racial inequities and how increased rates affect people of color. He concluded by saying that the best solution would be to require developers to pay for pipes.

Mr. Williams added that District has not failed to provide services to current rate payers, nor have any environmental incidents occurred, nor has a concern about governance nor about sewer rates. He said that developers and EPASD are embroiled in dispute about amount developers should pay. In his view, this dispute should be resolved in a complaint procedure or lawsuit. Mr. Williams stated that developers want to avoid that process and just want EPASD dissolved. He reminded the Commission that EPASD was formed because no one wanted to serve East Palo Alto, a community of color. He said LAFCo should resist the MSR and that EPASD be given the opportunity to have JPA with WBSD.

General Manager, Sergio Ramirez gave a brief verbal presentation to the Commission. He began by saying that WBSD is proud to be servicing the local community for the last 120, since 1902. He said they maintain a healthy relationship with all local agencies and that WBSD works closely with EPASD by providing mutual aid. Mr. Ramirez said that through the revised 2013 Master Plan WBSD have managed to replace 18 miles of pipes. He said that they are confident in their ability to manage and appropriately run a system including rehabilitation. He said WBSD is in the position to support what the community of East Palo Alto wants and that WBSD is interested in joining a JPA with EPASD.

Commissioner Lohman noted that based on what EPASD said, he has never heard of ratepayers having to pay for infrastructure related to development projects and that is paid by developers. He said that the problem is that developers don't want to pay for it and want to get away with it.

Vice Chair Draper asked why the City has not taken action previously regarding the governance structure of EPASD. Mr. Heisinger said that he was not aware if the City had independent authority to dissolve EPASD. He said the community, the City, and stakeholders are interested in embarking in MSR process to better understand the three entities in question.

Chairman O'Neill asked EPASD about the status of the Light Tree Apartment project and

accessory dwelling units. Mr. Okupe confirmed that a contract was signed with developer to provide infrastructure. He said a consultant that was hired by EPASD, referred by the City, to prepare CEQA documents for that project notified that that it was exempt from CEQA. He said that after the design was completed for the project, the consultant came back and said it was no longer exempt because a portion of the project may need approval from the US Army Corps of Engineers. Mr. Okupe said an amendment to the contract needed to be signed but the City and the developers refused. He said this problem stemmed from the City saying that the project was exempt from CEQA. Mr. Okupe said that it is not true that accessory dwelling units 's have not been permitted. He said new consultants are working on determining connection fee study for these types of projects. Mr. Cook added that nothing in the MSR nor that the City has said includes a way for the community of color to become an equitable partner.

Chairman O'Neill opened public comment.

Ms. Montes read a letter submitted by Dixie-Lee S. Specht-Schulz to Commission. In the letter she states that she supports the dissolution of EPASD.

Jeff Poetsch, public member, said he is supportive of MSR and the recommendation regarding EPASD. He mentioned people in the community that are concerned for the future of East Palo Alto

Court Skinner, public member, said EPASD is unsupportive of the community. He said he is supportive of dissolution of EPASD and supports the recommendations in the MSR.

James O'Connell, East Palo Alto property owner, said EPASD is difficult to deal with. He noted that permits from US Army Corps of Engineers has nothing to do with CEQA. He said he agrees developers should pay for their share, but ratepayers pay for upkeep of the system.

Victor Dong, East Palo Alto landowner, said he supports adoption of MSR. He said he is a small developer and that he was willing to pay portions of fees, but that EPASD came and requested a large amount based on Mr. Okupe's mood. He said he was asked to pay \$4,000,000. He said he disagrees with Mr. Okupe statement that they have approved ADUs.

Larry Moody, public member, he said that EPASD has not been honest. As former City of East Palo Alto Mayor Mr. Moody said he has worked with LAFCo and residents to find out what it takes for the City to have control of utilities. He said the City and community want to move forward. He said EPASD needs to be brought under the umbrella of the City or WBSD.

Dennis Scherzer, EPASD Board Member, he said that what Mr. Bartoli showed was based on opinions and no data backs them up. He said this report was not conducted by expert

engineers. He requested a copy of the 1985 report. He said the City should be meeting with EPASD when adopting an ADU ordinance, but that has not happened. He added that the auditor's report that EPASD submitted was not mentioned in the MSR.

Matt Schreiber , Eden Housing, he urged the Commission to adopt MSR. He said that Eden housing in 2020 paid \$2.5 million for upgrades they have yet to see.

Chairman O'Neill closed the public comment period.

Council Member Romero said the City is for good governance and that EPASD is not following the proper sewer rate procedure. He also said this is not a racial issue because the City is governed by people of color and always has been.

General Manager Ramirez clarified that if sewer pipes needs upgrades or rehabilitation and they partner with developers, WBSD required that developers pay their fair share, and the District pays their share as existing customers also benefit from these projects. . He said with connection fees, WBSD is able to set money aside for future growth and capacity.

Vice Chair Draper responded to a comment from Commissioner Lohman and shared her personal experience as former city employee. She discussed the importance of Capital Improvement Programs and impact fees to address development. She stated that this experience was an example of funding for infrastructure projects that blending impacts fees from new developers along with rates from existing customers. She said she is in support of the MSR.

Commissioner Horsley reiterated comments made by Vice Chair Draper. He said that EPASDs engineers report indicates the District has not kept pace. He said that developers should pay their fair share, but as Mr. Ramirez pointed out, needs to combine responsibility.

Commissioner Rarback said he is in support of MSR and that he is influenced by the comments from of the City of East Palo Alto Council that the City can do a better job at providing sewer services to community.

Commissioner Lohman said he is in favor of negotiating fair ratios of cost. He said the MSR does not mention that and that the report only says dissolve the District to address these issues. He said he does not support the MSR and the recommendations unless a compromise can occur.

Commissioner Martin said that EPASD needs a lot of work and help and that they should be given a chance to fix it. She said she does not support a dissolution but rather a repair of EPASD.

Commissioner Slocum said that he agrees with Commissioner Draper. He said he is interested in good governance and supports the MSR.

Commission Action: Commissioner Slocum moved to adopt the Municipal Service Review for City of East Palo Alto, East Palo Alto Sanitary District and West Bay Sanitary District. Vice Chair Draper seconded the motion which passed with 6 ayes and 1 no by roll call vote. (Ayes: Commissioners Horsley, Martin Rarback, Slocum, Vice Chair Draper, Chair O'Neill. Nays: Commissioner Lohman.)

6. CALAFCO

a. CALAFCO Newsletter, May 2022 – Information Only

Mr. Bartoli gave a brief update to the Commission and referred to the CALAFCO newsletter in the agenda packet.

7. Commissioner/Staff Reports – Information Only

Mr. Bartoli noted that Chairman O'Neill has been reappointed by the City Selection Committee for the City member position, Commissioner Martin has now been appointed as a Special District regular member

8. Adjournment

Chair O'Neill adjourned the meeting at 4:30 p.m.