

SAN MATEO



LOCAL AGENCY FORMATION COMMISSION

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January 13, 2021

To: LAFCo Commissioners

From: Martha Poyatos, Executive Officer *M. Poyatos*

Subject: Update on Potential Municipal Service Review for East Palo Alto Sanitary District, West Bay Sanitary District, and City of East Palo Alto

Summary

On October 14, 2020 the Commission received a report regarding a request to initiate a Municipal Service Review for East Palo Alto Sanitary District (EPASD), West Bay Sanitary District (WBSD), and City of East Palo Alto. The request was initiated in by developers and residents of the City of East Palo in response to their inability to obtain sewer connections for pending development projects in the City. At the October meeting, the Commission considered the staff report, correspondence and public comment and directed staff to prepare a Request for Proposals (RFP) for a Municipal Service Review covering the East Palo Alto Sanitary District, West Bay Sanitary District, and City of East Palo Alto and to move forward with the MSR with two conditions. First, the Commission directed that preparation of the MSR be conditioned upon the Developers funding the costs of staff time to prepare the request for proposals and the cost of a consultant prepared MSR and second, the Developers, the City of East Palo Alto and EPASD should pursue mediation and an agreement on the capital improvement cost methodology and issuance of will serve letters to City approved projects before issuing a request for proposals and awarding a consulting contract.

As detailed in the attached e-mail correspondence from the Sobrato organization, as recommended by the Commission, Sobrato and MidPen Housing/EPACANDO sent the City of East Palo Alto and EPASD letters requesting renewed discussions regarding capital cost methodology necessary for a will serve and third-party mediation. Subsequently, there were direct conversation between Sobrato and MidPen Housing/EPA CAN DO EPASD regarding the fair share cost for improvements. At this meeting EPASD committed to preparing a letter with the District's position of cost allocation by the end of 2020. Per Sobrato and MidPen Housing/EPA CAN DO, no response by the District has yet been received.

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

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

STAFF: MARTHA POYATOS, EXECUTIVE OFFICER ▪ TIM FOX, LEGAL COUNSEL ▪ ROB BARTOLI, MANAGEMENT ANALYST ▪ ANGELA MONTES, CLERK

In November 2020, the Intergovernmental Committee, consisting of two City Council members from the City of East Palo Alto and two board members from EPASD, met to continue discussions regarding coordinating growth within the City. At the conclusion of this meeting, it was agreed that the full EPASD Board would review a report prepared by its consultant that detailed financial options including potential development capacity fees or clear required financial developer's participation guidelines for funding these future capital improvements. While a report was presented at a January 7 EPASD board meeting, the item did not include detailed specifics or a recommended action for the Board to take.

In addition to correspondence from the Sobrato Organization and MidPen Housing/EPA CAN DO, LAFCo has been contacted by representative of the Emerson Collective regarding their proposed developments at 2535 Pulgas Avenue of an office building for JobTrain and a 52-acre site along the bayfront near Illinois Street proposed to be developed with office, residential, R&D, and recreational uses.

Correspondence indicates that the need for a MSR for East Palo Alto Sanitary District, West Bay Sanitary District, and City of East Palo Alto is not solely driven by the current development projects, but also the need for the City and EPASD to establish a viable plan to serve current and planned development necessary for the economic viability of both entities. A MSR will allow the Commission, members of the public, and government agencies a more complete picture of the level of service provided by the City and the two special districts and potential paths to address service capacity, efficiencies and governance alternatives.

Representatives from Sobrato, MidPen Housing/EPACANDO and the Emerson Collective have confirmed their commitment to fund the RFP and the MSR. Based on this commitment and the lack of an agreement between the City, EPASD, and developers on fair share costs for capital projects, it is recommended that a request for proposals be prepared and issued for a MSR covering East Palo Alto Sanitary District, West Bay Sanitary District, and City of East Palo Alto, conditioned upon remittance of \$2,800 toward the cost of preparing the RFP.

Recommended Commission Action by Resolution

By motion, direct staff to produce and issue a Request for Proposals for a Municipal Service Review for East Palo Alto Sanitary District, West Bay Sanitary District, and City of East Palo Alto upon receipt of a deposit in the amount of \$2,800.

Attachments

- A. Tim Steele, Sobrato Organization e-mail dated January 12, 2021
- B. Duane Bay, EPA CAN DO and Lillian Lew-Hailer, MidPen Housing Corp. e-mail dated January 13, 2021

CC: Duane Bay, EPA CAN DO

Lillian Lew-Hailer, MidPen Housing Corp.

Tamsen Plume and Kevin J. Ashe, Holland & Knight LLP

Jaime M. Fontes, City of East Palo Alto

Akintunde A. Okupe, East Palo Alto Sanitary District

Sergio Ramirez, West Bay Sanitary District

Tim Steele, The Sobrato Organization

Lorenzo Brooks, Emerson Collective

From: Tim Steele <tsteele@sobrato.com>

Sent: Tuesday, January 12, 2021 2:33 PM

To: Martha Poyatos <mpoyatos@smcgov.org>

Cc: tamsen.plume@hkklaw.com; Kevin.Ashe@hkklaw.com; Robert Tersini <rtersini@sobrato.com>; Tom Morse <tmorse@bkf.com>; Victoria Wong <vwong@midpen-housing.org>; Duane Bay <dbay@epacando.org>; Tim Steele <tsteele@sobrato.com>

Subject: Update on EPASD

Martha,

I wanted to follow up on our ongoing conversations and efforts regarding the East Palo Alto Sanitary District and various efforts to begin good faith discussions to support new sanitary connections for currently approved and future projects the City would anticipate approving under its most current General Plan.

At your Commission's board meeting of October 29, 2020 under agenda item #9, they discussed the request for a Municipal Service Review (MSR) with respect to the East Palo Alto Sanitary District (EPASD), West Bay Sanitary District and the City of East Palo Alto. My understanding was that one or two commissioners suggested that the Developer (s) and EPASD meet and discuss in good faith or agree to initiate mediation to try and come to an agreeable arrangement to allow the approved developments to proceed with their projects and receive Will Serve letters to allow sanitary district system connects. These commissioners also suggested to give this a couple of months and if not resolved they would support moving ahead with the MSR.

There are currently two fully approved projects. 965 Weeks which is an affordable housing project and the University Plaza Phase II office project at University Ave and Donohoe. Representatives of the two projects submitted letters dated October 27, 2020 (attached) to the General Manager and each individual EPASD board member confirming our openness and willingness to participate in these good faith discussions. Furthermore, representatives of both developments also suggested the same during public comment at the full EPASD board meeting. On October 22, 2020. There were no discussions nor responses indicating similar interest expressed by the General Manager, the collective board or individual board members.

On November 18th, the General Manager reached out to me directly to inquire about a meeting to discuss negotiations. He confirmed this was specifically to discuss the University Plaza project and that he would also be contacting someone independently from the 965 Weeks project to initiate a similar discussion specific to their project. We met on December 1, 2020 via Zoom. The call included the GM and one EPASD board member, Dennis Scherzer. After some initial discussion I suggested that for us to move forward with good faith and fruitful negotiations we needed for them to give us their detailed position or counter position to our Fair Share analysis that we presented through a letter dated June 24, 2020 and a presentation to the full board on July 16, 2020. Dennis committed that he agreed and that the GM would have a letter with their official position to us before the end of the year. As of today, January 12, 2021 we have not received this letter, only a one-line email from the General Manager on January 4th, which unfortunately does not reflect the discussion or indicate any progress (attached).

On November 27 the Intergovernmental Committee that includes two EPA City Councilmembers and two EPASD board members met to continue its discussions with respect to the two agencies and the

past difficulties the two have had with coordinating the City's General Plan growth plans with EPASD's review and capital improvement plans not anticipating and planning for such growth. Discussions previously have centered around coordination and options for EPASD to approach funding the anticipated need for capital improvements. At the conclusion of this meeting it was agreed that the GM for the District would have its consultant present to its full board in December/January detailed financial options including potential development capacity fees or clear required financial developer's participation guidelines for funding these future capital improvements. This Special EPASD board meeting was conducted January 7, 2021. Unfortunately, the presentation by the District's consultant was at a very high general level with no financial nor specific recommendations by the consultant nor the General Manager. Though promised, there were no proposed connection fee options proposed nor discussed. Additionally, the board had no meaningful discussions about the presentation nor what they would consider next steps. The item was accepted with no actions taken.

I would like to clarify one point for your commission. This is a much larger City-wide issue and not limited to just the two development projects that have been approved by the City of East Palo Alto for over two years now with no resolution or defined option on how to move these projects forward. This is a City of East Palo Alto city-wide challenge (except the small portion currently served by the West Bay District. The City recently and processed and updated its General Plan which anticipates the City's future opportunities to grow and address the needs of its community. This was through a multiple year extensive community process that included mandatory noticing of all public agencies within the City as well as many community meetings to discuss the desired outcomes and potential impacts. EPASD did not participate nor take this information and consider this potential for growth and demands on its systems in its future capital plans and thus has not put in place an ability to accommodate the General Plan growth. At the January 7, 2021 Special Board meeting, the District's consultant and board members acknowledged this fact and effectively EPASD's lack of a plan for its system is a **moratorium** on the City's potential for future growth and development.

I have attached a link to the EPASD Special Board meeting from January 7, 2021 (<http://www.epasd.com/about-epasd/board-of-directors/board-meeting-agendas-and-minutes>). I would suggest your commissioners, if interested, take the time to watch this video

Finally, I would like to reinforce our earlier discussions. We continue to suggest that we will reimburse LAFCo for the expense of this MSR and support LAFCo initiating this review. We remain committed to paying our fair share for EPASD service based on clear legal and technical information.

Regards,

Tim Steele
Sr VP Real Estate Development

From: Victoria Wong [<mailto:vwong@midpen-housing.org>]
Sent: Wednesday, January 13, 2021 1:19 PM
To: Martha Poyatos <mpoyatos@smcgov.org>
Cc: EPA CAN DO (dbay@epacando.org) <dbay@epacando.org>; Lillian Lew-Hailer <llewhailer@midpen-housing.org>; tamsen.plume@hkllaw.com; Kevin.Ashe@hkllaw.com; rtersini@sobrato.com; Tom Morse <TMorse@BKF.com>; Tim Steele <tsteele@sobrato.com>
Subject: Updates for San Mateo Local Agency Formation Commission (LAFCO) Municipal Service Review Recommendation for Will Serve Letter

Good afternoon Ms. Poyatos,

I am sending this email on behalf of Duane Bay of EPA CAN DO and Lillian Lew-Hailer of MidPen Housing Corp.

Dear Ms. Poyatos,

East Palo Alto Community Alliance and Neighborhood Development Organization ("EPA CAN DO") and MidPen Housing Corporation ("MidPen") are developers of the 965 Weeks Street affordable housing development ("Project") in the City of East Palo Alto ("City").

We wanted to follow up on our ongoing conversations and efforts regarding the East Palo Alto Sanitary District ("EPASD") and engagement for good faith discussions to support new sanitary connections for currently approved and future projects the City would anticipate approving under its most current General Plan.

At your Commission's board meeting of October 29, 2020 under agenda item #9, they discussed the request for a Municipal Service Review (MSR) with respect to EPASD, West Bay Sanitary District and the City of East Palo Alto. Our understanding is that one or two commissioners suggested that the Developer (s) and EPASD meet and discuss in good faith or agree to initiate mediation to try and come to an agreeable arrangement to allow the approved developments to proceed with their projects and receive Will-Serve letters to allow sanitary district system connections. These commissioners also suggested to give this a couple of months, and if not resolved, they would support moving ahead with the MSR.

There are currently two fully approved projects. 965 Weeks which is an affordable housing development, planned to provide 136 new rental homes to low-income families and individuals in East Palo Alto, and the University Plaza Phase II office project at University Ave and Donohoe. Representatives of the two projects submitted letters dated October 27, 2020 (attached) to the General Manager, each individual EPASD board member, and each individual City Council Member, confirming our openness and willingness to participate in these good faith discussions. Furthermore, representatives of both development teams also suggested the same during public comment at the full EPASD board meeting on October 22, 2020. We hope to also see EPASD initiate discussions specific to moving forward development projects.

On October 27, 2020, the Intergovernmental Committee that includes two EPA City Councilmembers and two EPASD board members met to continue its discussions with respect to the two agencies and the past difficulties the two have had with coordinating the City's General

Plan growth plans with EPASD's review and capital improvement plans not anticipating and planning for such growth. At the conclusion of this meeting it was agreed that the General Manager for the District would have its consultant present to its full board in December/January detailed financial options including potential development capacity fees and the required financial developer's participation guidelines for funding these future capital improvements. This Special EPASD board meeting was conducted January 7, 2021. Unfortunately, the presentation by the District's consultant was at a very high general level with no financial nor specific recommendations by the consultant nor the General Manager. Though promised, there were no proposed connection fee options proposed nor discussed. Additionally, the District's Board had no meaningful discussions about the presentation nor what they would consider next steps. The item was accepted with no actions taken.

We understand that Sobrato met with the EPASD General Manager on December 1, 2020 at the request of the General Manager. Since we had not received any correspondence for a similar meeting for the 965 Weeks development, our MidPen Project Manager reached out on December 3, 2020 to schedule a Zoom meeting for January 2021. Our meeting is scheduled for January 14, 2021 and we will provide an update afterwards on the outcome.

We would like to highlight a key point to the Commission. This is a much larger City-wide issue and not limited to just the two development projects that have been approved by the City of East Palo Alto for over two years now with no resolution or defined option on how to move these projects forward. This is a City of East Palo Alto city-wide challenge (except the small portion currently served by the West Bay District). At the January 7, 2021 Special Board meeting, the District's consultant and board members acknowledged this fact and effectively EPASD's lack of a plan for its system is a moratorium on the City's potential for future growth and development.

We have attached a link to the EPASD Special Board meeting from January 7, 2021 (<http://www.epasd.com/about-epasd/board-of-directors/board-meeting-agendas-and-minutes>). We would recommend your commissioners, if interested, to take the time to watch this video.

Finally, we would like to reinforce our earlier discussions. We continue to be willing to, along with Sobrato, reimburse LAFCo for the expense of this MSR and support LAFCo initiating this review. We remain committed to paying our fair share for EPASD service based on clear legal and technical information.

We appreciate LAFCo's review of this situation to ensure the necessary services can be provided to important community-serving developments in the County of San Mateo, including 965 Weeks.

Sincerely,

Duane Bay
Executive Director
EPA CAN DO

Lillian Lew-Hailer
Vice President of Housing Development
MidPen Housing Corp.

Victoria Wong | Project Manager
MidPen Housing Corp.

1970 Broadway, Suite 100, Oakland, CA 94612

I am currently working remotely. Please use 650-477-5568 if you need to call me. Thank you.

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