

Martha Poyatos, Executive Officer
 LAFCo
 455 County Center, 2nd Floor
 Redwood City, CA 94063

Dear Ms Poyatos,

I have read your January 13, 2021 report to the Commission which indicates that developers and *residents* of the City of East Palo Alto have complained of ...“their inability to obtain sewer connections for pending development projects in the City”.

Now and historically, sewer connections are immediately available to all residents of EPASD.

The inability of *developers* to obtain sewer connections has thus far been based on the actions of their own consultants, attorneys, and City staff. During the preparation of the CEQA checklist required for the EIS on Mid Pen’s Light Tree Apartments, highly paid consultants indicated on the CEQA checklist that there would be “No Significant Impact” on EPASD infrastructure from that proposed project. EPA City staff signed off on this as well.

The conclusion of “No Significant Impact” was reported to Mid Pen, Sobrato, and EPA City Council by the same/similarly affiliated consultants and City staff without any contact with EPASD staff, engineers, or Board of Directors. Developers, EPA City Council, and others who relied upon such reports suffered considerable upset when they encountered the actual tasks and related costs of providing sanitary sewer service for their projects.

Mr. Tim Steele, Senior VP for Real Estate Development at the Sobrato Organization, stated in a January 12, 2021 email (attached to today’s Commission Agenda) that, “The City recently and (sic) processed and updated its General Plan which anticipates the City’s future opportunities to grow and address the needs of the community.” Mr. Steele continues, “EPASD did not participate nor take this information and consider the potential for growth and demands on its system in its future capital plans and thus has not put in place an ability to accommodate the General Plan growth.”

Mr. Steele’s organization suffers from what Ms. Poyatos’ report describes as an ...“ inability to obtain sewer connections for pending development projects in the City”. EPASD, having exactly considered “the potential for growth and demands on its system” has aptly demonstrated its “ability to accommodate the General Plan growth.” It’s simply a matter of who pays for the construction costs required by increases in system capacity necessary to serve specific developments. Mr. Steele believes that EPASD should bear the cost of new sewer construction for the benefit of Sobrato’s development project.

EPASD has no role in the City’s land use decisions:

The City’s General Plan, regardless of its accuracy or completeness, is actually a theoretical document. The City, through its Planning Commission and City Council, control land use policy. EPASD does not involve itself in land use decisions considered by the City.

It isn’t until an application is made to EPASD describing a specific project that the process of providing sanitary sewer service to that property can actually begin. (Somebody has to say that they want our service.) The reality of our wastewater business is that if EPA or Menlo Park approves a project, EPASD will serve it. If it requires construction of new and larger sewers to serve a new project, the cost is borne by the applicant.

Although the cost is borne by the applicant, representatives of development applicants, and City staff, have insisted that EPASD charge existing ratepayers for infrastructure costs solely for those applicants' future benefit. EPASD has repeatedly explained to these applicants and City staff that the California Constitution forbids EPASD from charging our ratepayers more for sewer services than it costs to provide them.

All members of the EPASD Board of Directors have taken the Constitutional Oath, and have sworn to uphold and protect the US and California Constitutions. EPASD collects its Sewer Service Charges (SSC) on the San Mateo County property tax roll. The process of assessing SSC is governed by the California Constitution at Article XIID, Section 6.a-b.

XIIID.6.b.1-4:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.

EPASD is forbidden by the California Constitution from increasing SSC's to fund infrastructure financing for development projects both speculative and real. It is hoped that the Commission recognizes that the EPASD Board of Directors takes the Constitutional Oath seriously and we are duty bound to uphold and protect both the US and California Constitutions.

EPASD has established a "fair share" agreement for replacement of existing sewer lines that are currently well-maintained, yet too small to accommodate proposed development projects. The EPASD collection system is in excellent condition and is expected to function for an additional 40-50+ years. Applicants pay construction costs, EPASD will pay for the physically larger pipes required to convey the sewage generated by applicants of City approved new development projects. A simple and fair solution.

The full EPASD Board reviewed a report prepared by its financial consultant, Bartle Wells Assoc. (BW) at a January 7, 2021 Special Board Meeting. BW compared EPASD's ongoing capital improvement program (based on reasonable small annual rate increases) which commits \$1 – 2 Million per year towards upgrades and repairs to our system with a model of severe rate increases necessary to finance sewer infrastructure for new major development.

Our consulting civil engineer predicts that total retrofit of our current system, would cost approximately \$23 Million. Much of that work will not soon be necessary as most of the system has a life span exceeding 50 years. We will cover \$15-20 Million of that cost in the next ten years by existing construction schedules. The report confirmed that EPASD's scheduled repairs and maintenance continue to provide a highly efficient and cost effective Capital Improvement Program.

Rates would exceed \$1000 minimum per household in 3 years.

Additionally, your report states that LAFCo has been contacted by representative of the Emerson Collective regarding their proposed office, residential, R&D, and recreational use development at 2535 Pulgas Avenue. This 52-acre site is almost entirely within the West Bay Sanitary District. Serving that area becomes a *de facto* annexation of a portion of WBSD's service area by EPASD.

Article XIII A of the California Constitution describes the methodology for forming "Special Assessment Districts". The City of EPA could be the template for such a District that could include the entire development area within EPASD and WBSD. The "Special" benefit would be sanitary sewer infrastructure development financed by the affected property owners.

Since XIII A stipulates that the cost of participation should be proportional to the benefit afforded a property owner within such a district, existing ratepayers would merely be assessed the actual SSC that they otherwise would be paying. Large new developments would pay substantially more because they reap the greatest benefit. This concept was introduced in our meeting last week. It offers the City a long-term solution for development infrastructure financing.

EPASD will continue to provide leadership in this process and render viable solutions for providing quality sanitary sewer services for the City and its approved development projects.

Thank you for your time and consideration.

In Unity,

Dennis C. Scherzer, Director
East Palo Alto Sanitary District