

SAN MATEO



# LOCAL AGENCY FORMATION COMMISSION

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## Action Minutes San Mateo Local Agency Formation Commission Meeting May 19, 2021

Vice Chair O'Neill called the Wednesday, May 19, 2021 meeting of the Local Agency Formation Commission (LAFCo) to order at 2:30 pm via Zoom.

Chair Slocum joined us shortly after.

### 1. Roll Call

Members Present: Commissioners Joshua Cosgrove, Ann Draper, Don Horsley (joined after roll call at 2:32 pm), Ric Lohman, Harvey Rarback, Vice Chair Mike O'Neill, Chair Warren Slocum.

Members Absent: None

Alternate Commissioners Jim O'Neill, Kati Martin and Diana Reddy were also present in the audience.

Staff Present: Martha Poyatos, Executive Officer  
Rob Bartoli, Management Analyst  
Rebecca Archer, Legal Counsel  
Angela Montes Cardenas, Commission Clerk  
Janneth Lujan, Planning Commission Secretary

### 2. Public Comment for Items Not on the Agenda

None

### 3. Consent Agenda

#### a. Approval of Action Minutes: March 17, 2021

#### b. LAFCo File No. 21-03 – Proposed Outside Service Agreement for sewer by the City of South San Francisco to an existing single-family home at 296 Country Club Drive

#### c. LAFCo File No. 21-04 – Proposed annexation of 130 Shawnee Pass, Portola Valley to

**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 ▪ DIANA REDDY, CITY ▪ JAMES O'NEILL, PUBLIC ▪ DAVE PINE, COUNTY

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

**West Bay Sanitary District and subsequent annexation to the On-site Wastewater Disposal Zone**

**d. LAFCo File No. 21-05 – Proposed annexation of 155 Meadowood Drive, Portola Valley to West Bay Sanitary District and subsequent annexation to the On-site Wastewater Disposal Zone**

**e. LAFCo File No. 21-06 – Proposed annexation of 193 Meadowood Drive, Portola Valley to West Bay Sanitary District and subsequent annexation to the On-site Wastewater Disposal Zone**

Commission Action: Vice Chair O’Neill moved to approve the consent agenda and Commissioner Draper seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O’Neill, Chair Slocum. Abstentions: None; Noes: None)

**4. Consideration of Authorization of Contract with Consulting Firm of Berkson Associates in Association with Policy Consulting Associates, LLC for Preparation of a Municipal Service Review and Sphere of Influence for the City of East Palo Alto, East Palo Alto Sanitary District and West Bay Sanitary District**

Ms. Poyatos referred to the staff report dated May 12, 2021 and summarized the scope of the project, term and expected expenses attached to the contract. She said that funds to cover MSR will be paid for by developers. She noted that execution of the contract is conditioned upon receipt of corresponding funds by developers. She said that attached to the staff report is a letter from the Sobrato organization summarizing affected pending projects in the City of East Palo Alto. She noted that the letter states they will remit fees for the MSR within two weeks of today’s hearing.

She said that on May 14, an addendum containing price proposal from Berkson Associates and Policy Consulting Associates was posted to the LAFCo website. Ms. Poyatos added that a letter from East Palo Alto Sanitary District (EPASD) Board Member, Denis Scherzer, regarding the City of East Palo Alto environmental document in the 2016 City General Plan Update was also shared with the Commission.

Ms. Poyatos stated that the recommended action responds to a request for a prioritized MSR by various developers and the City of East Palo Alto because of the inability to obtain will-serve letters from the District for new developments in the City. She summarized prior action and direction from the Commission beginning with the Request for Proposals (RFP). She said that the Commission also requested mediation between all agencies and when there was an impasse staff issued the RFP on February 19, 2021. Ms. Poyatos noted that after interviews and staff review they concluded that Berkson Associates in association with Policy Consulting Associates LLC would provide the most comprehensive

**MSR. Ms. Poyatos said the staff report includes more information on the consultants. She noted this MSR will not have any impact on LAFCo budget as MSR is being funded by developers.**

**Chair Slocum opened public comment.**

**Akin Okupe, EPASD General Manager, thanked the Commission for moving in this direction. He added that after going through the staff report it is imperative that the scope of work look at the provisions of the California constitution with regards to financing infrastructure for expansion. He added that he would like the consultant to look at the Sanitary District Act of 1923 and ensure recommendations and findings comply with provisions of the law.**

**Dennis Scherzer, EPASD Board Member, agreed with the points made by Mr. Okupe. He said he is distressed at where we are. He stated that when the City did their general plan and draft EIR they said sewer infrastructure for new development required development projects to pay for their share of sewer infrastructure improvements necessitated by that development. He added that Sobrato's point that the District has failed to serve them is based on the fantasy that the District should have been able to predict they were coming, even though the City couldn't. He said they are a long way from integrity with this process and that is his concern. He said that they have requested a meeting with the City for 4 months and they have been put off.**

**Betsy Yanez, EPASD Board Member, stated she is very surprised at what is going on because the District is committed to transparency and to serving the community. She said they cannot allow to serve new developers that come into community to make money. She said she is astonished that things are happening and thinks the developers have enough funds to fund their own projects. She said she has gone to meetings with developers and asked them to come to the District to discuss if they have capacity to serve them and she said this never happened. She said she would like the Commission to consider that they are a poor community and they do not have funds needed to serve new developers.**

**Gale Wilkerson, East Palo Alto resident, she said she has been following this and it's confusing to her. Her conclusion is that this was brought to LAFCo because of disgruntled citizens that couldn't control the District. She added there are several other people who just moved to East Palo Alto and they also seem to be in the pockets of the developers. She said this causes confusion because on social media they brag about LAFCo having ability to dissolve the District and she later found out this was not true. She said she does not know why this is going on.**

**Adrienne Bryant, East Palo Alto resident, she said she too has been following the developments from the time they were first introduced. She said she is very confused on the developments as she is very interested in the community benefits that are afforded to the community. She said she is concerned with sewer rates going up. She said she looks forward to a peaceful resolution that can move projects forward without rate increase to the ratepayers.**

Chair Slocum closed public comment.

Commissioner Cosgrove stated that when he voted against the prioritized MSR in October of 2020 it was because there was a work plan in place for the Commission that he wanted to continue to follow. He said that now that the Commission has moved forward with it, he agrees that MSR should be paid by developers. He asked Ms. Poyatos regarding the California constitution comment whether prop 218 would be reviewed or analyzed. Ms. Poyatos confirmed that he was correct and referred to areas of determination for Government Code Section 56430 that address these issues and look at capital improvement plans. She said that among the issues the consultant would look at and study would include enabling legislation of the agency under the study, the health and safety code and provisions of the constitution that guide how rates can be established and how projects can be funded.

Commissioner Draper said she had five requests for the contract and has talked to staff about them whom believe these can all be accommodated:

1. Look at other Special District's to see how expansion of sewer services are approached and financed and review of City's and land use agencies relative to their approach.
2. Insight into administrative capacity to do service expansions and studies and implement those activities.
3. Limitations on existing funding. Is it a policy issue or legal constraint?
4. Capacity limits are the conduits or the plans, clarify what is the problem.
5. Other alternatives to the concept of putting the effluent into pipes at the moment of use.

Commissioner Horsley said he was supportive of the resolution.

Commissioner Lohman began by saying he supports everything Commissioner Draper stated as well as Commissioner Cosgrove. He said that he believes it was said that this MSR was launched because of the refusal of the EPASD to support projects. He says he does not like the phrasing of refusal, because he believes the refusal is to do it for free. He said in the investigation of California law as several have asked, the EPASD cannot provide new service for free or have existing rate payers pay those costs, as he does not believe that is legal. He asks that a complete discussion and study of what the state law allows the District to do. He

said he is supporting moving this forward, but he said in the past he does not recall seeing applicants pay for MSR.

Ms. Poyatos stated that it is unusual to have the MSR funded by developers but its not unlike developers having to fund an environmental review document. She clarified that the MSR was initiated because this is an impasse between the City, EPASD and developers.

Commissioner Rarback said that it is important to get this MSR going to straighten out the issues involved. He supports the developers paying for the MSR. He said he is in support of the proposal.

Vice Chair O'Neill asked about how new infrastructure is paid for and how those costs are divided between developers and existing rate payers. He said he supports the resolution.

Commission Action: Vice Chair O'Neill moved to approve by resolution, authorize the Executive Officer to execute a contract with Berson Associates in association with Policy Consulting Associates, LLC, to prepare the Municipal Service Review and Sphere of Influence Update for the City of East Palo Alto, East Palo Alto Sanitary District, and West Bay Sanitary District for the term May 19, 2021 through March 31, 2022 in an amount not-to-exceed \$129, 475 upon receipt of the corresponding funds from developers. Commissioner Draper seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

## **5. Adoption of Final Work Program and LAFCo Budget for Fiscal Year 2021-2022**

Mr. Bartoli presented the 2021-22 LAFCo budget. He said the Cortese-Knox-Hertzberg Act requires that LAFCo hold a public hearing and adopt a proposed operating budget by May 1 and final budget hearing by June 15. He stated that the final budget is being considered today. He summarized that since the March draft budget there have been three revisions. Mr. Bartoli said that the EPASD, City of East Palo Alto and WBSD MSR is being funded by developers and therefore will have no impact on the 1/3 apportionment to LAFCo member agencies.

He said the final appropriations budget for FY21-22 is \$835,420 and the one-third apportionment is \$210,848. He noted that the LAFCo reserve fund would utilize the proposed fund balance from FY20-21 budget of \$61,131 to offset agency contributions. He said that staff recommends the total budget be amended to \$896,551 to include the reserve and that revision would not change the 1/3 apportionment.

Chairman Slocum opened and closed the public hearing. No comments were received.

Commission Action: Commissioner Horsley moved to approve adoption of final work program and LAFCo budget for FY21-22. Commissioner Draper seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

## **6. Adoption of Revised LAFCo Schedule of Processing Fees**

Mr. Bartoli gave a presentation to the Commission on update to LAFCo fees. He said at the March 17, 2021 meeting staff presented draft fee schedule. He said no comments were received on proposed update increase to annexation fees by 25%. He said that today there are no new changes from the schedule presented in March.

He said LAFCo is authorized to establish a schedule of fees for processing applications and the fee should not exceed a reasonable cost for providing the service. He said the fees were last revised in 2019.

Chairman Slocum opened and closed the public hearing. No comments were received.

In response to a comment from Commissioner Horsley that the 25% increase seems like a significant increase, Mr. Bartoli stated that fees are calculated based on staff time to process application and legal fees charged, and other items, such as IT are all factored into fees and to some extent they have been lowered due to some steps now being done by Commission Clerk. He said that fees are still in line with other urban LAFCo's. He noted that San Mateo fees are based on acreage which is different from other LAFCo's with flat rates. He clarified that the developer or applicant proposing the service pays the fee.

Commission Action: Commissioner Horsley moved to adopt the Final Revised LAFCO Schedule of Processing Fees. Commissioner Draper seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

## **7. Consideration of Resolution Authorizing an Agreement with the County of San Mateo for Staffing, Legal Counsel, Office Space, and Supplies for the 2021-2022 Fiscal Year**

Ms. Poyatos summarized the staff report dated May 12, 2021. She said the Commissions adopted budget includes funds for a contract with the County for staffing, facilities, and legal counsel. She said this year the contract includes updated language that clearly describes services related to budget and accounting support, billing services for the LAFCo 1/3 apportionment and HR support. She said both LAFCo Counsel and County Counsel have reviewed the amendments to the contract.

Chairman Slocum opened and closed the public hearing. No comments were received.

Chairman Slocum asked if ISD costs are also included. Ms. Poyatos confirmed they are included.

Commission Action: Commissioner Horsley moved to authorize the Chair to execute the contract with the County of San Mateo for support services in the amount of \$760,889 for the FY21-22. Commissioner Rarback seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

**8. Consideration of Approval of the Draft Audit Prepared by R.J. Ricciardi, Inc. of the San Mateo Local Agency Formation Commission's Financial Statements for the Fiscal Year Ending June 30, 2019**

Ms. Poyatos referred to the staff report dated May 12, 2021. She said the report provides background on the Commission's budget being moved from the general fund to the trust fund. She noted that the LAFCo budget is no longer part of the County's general fund which requires an independent audit.. She said the LAFCo budget audit did not identify any deficiencies in internal controls or any instances of non-compliance.

Ms. Poyatos said that the audit did recommend that trial balances and cash balances be reviewed on a monthly basis. She said that recommendation arose from a delay in reconciling an incorrect posting that occurred. She added that in FY18-19 when LAFCo funds were transferred from the general fund to the trust fund, another \$129,109, was left in the old general fund account and there was a delay in correcting. She said the correction was done after the close of the fiscal year.

She said LAFCo will be providing quarterly updates on LAFCo financial performance.

Chairman Slocum opened and closed the public hearing. No comments were received.

Commission Action: Commissioner Lohman moved to approve draft audit prepared by R.J. Ricciardi, Inc. of the San Mateo Local Agency Formation Commission's Financial statements for the fiscal year ending June 30, 2019. Commissioner Draper seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

**9. Consideration of Authorizing the Executive Officer to Execute an Engagement Letter with R.J. Ricciardi, Inc. for Auditing Services for the Fiscal Year ending June 30, 2020**

Ms. Poyatos summarized the staff report dated May 12, 2021. She said the letter proposes a fee of \$7,700 for auditing services for fiscal year ending June 20, 2020

Commission Action: Commissioner Horsley moved to authorize the Executive Officer to execute the attached engagement letter with R. J. Ricciardi, Inc. for audit services for the fiscal year ending June 30, 2020. Vice Chair O'Neill seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

#### **10. Adoption of LAFCO Budget Policy**

Ms. Poyatos referred to staff report dated May 12, 2021. She said the proposed policy would memorialize existing practices such as budget adoption, 1/3 apportionment billing, existing practice of following County accounts payable, receivable and budget practices including segregation of duties, and Budget Committee recommendation for reserve not to exceed 10%. She said the audit helped outline these practices. She said no comments were received on circulated draft budget policy.

Chairman Slocum opened and closed the public hearing. No comments were received.

Commission Action: Vice Chair O'Neill moved to approve adoption of LAFCo budget policy. Commissioner Lohman seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

#### **11. Adoption of Updates to Procedures for Outside Service Agreement (OSA) Policy Relating to City Water Extensions**

Mr. Bartoli summarized the staff report dated May 12, 2021 mission. He reported that in 2019 the Commission adopted updated OSA policy for instances when a district or city is requesting water or sewer services to a property owner outside of an agency's boundaries. He said LAFCo can authorize these extensions if the territory is within the SOI of the service provider or to address any public health threat the property might be facing. He said for incorporated areas that receive water services from another municipality, this would require a detachment from one city to another and Government code 56133 is not applicable in these situations.

He said that draft policy was brought to the Commission at March meeting. He noted that Bay Area Water Supply & Conservation Agency does not set service boundaries, so this section was removed from policy. He said that the city of Redwood City submitted a



comment letter on the policy requesting a change to the policy that requires written correspondence to LAFCo to confirm that the water extension is exempt as it could present an administrative burden. He stated that LAFCo staff recommends removing this requirement and replacing it with requesting a courtesy notification to LAFCo upon approval of the service by the City.

Chairman Slocum opened and closed the public hearing. No comments were received.

Commission Action: Vice Chair O'Neill moved to adopt the proposed revised Outside Service Agreement Policy to City water extensions. Commissioner Lohman seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

## **12. Legislative and Policy Committee**

### **a. Legislative Report**

Mr. Bartoli gave an update to the Commission regarding pending State legislation. He said CALAFCO is tracking 32 bills, 6 in which they support of SB 273, SB 274, AB 1581. He said that SB 403 and AB 1053 are two bills that CALAFCO opposes unless they are amended. He summarized other bills CALAFCO has under watch.

Chairman Slocum opened and closed the public hearing. No comments were received.

### **b. Letter of Support for AB 1581**

Mr. Bartoli gave an update to the Commission and referred to the draft letter of support for bill AB 1581, which includes technical changes to the Cortese-Knox-Hertzberg Act. He said these changes help the Commissions and make the law as clear as possible.

Chairman Slocum opened and closed the public hearing. No comments were received.

Commission Action: Vice Chair O'Neill moved to authorize draft letter of support for AB 1581. Commissioner Lohman seconded the motion which was and passed unanimously by roll call vote. (Ayes: Commissioners Cosgrove, Draper, Horsley, Lohman, Rarback, Vice Chair O'Neill, Chair Slocum. Abstentions: None; Noes: None)

## **13. Commissioner/Staff Reports**

Commissioner Draper requested that staff share with LAFCo when it is projected to go back to in person meeting.

Ms. Poyatos announced that County offices will be consistent with the States reopening of June 15, 2021. The office will be opened in a modified manner to avoid staff overcrowding and she said after June 15 she anticipates hearing when the Board Chambers will be available for use.

#### **14. Adjournment**

Chair Slocum adjourned the meeting at 3:42 p.m.