

SAN MATEO



LOCAL AGENCY FORMATION COMMISSION

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Action Minutes San Mateo Local Agency Formation Commission Meeting October 21, 2020

Chair Cosgrove called the Wednesday, October 21, 2020 meeting of the Local Agency Formation Commission (LAFCo) to order at 2:30 pm via Zoom in accordance with Executive Order N-29-20 and N-33-20 due to COVID 19.

1. Roll Call

Members Present: Commissioners Ann Draper, Ric Lohman, Harvey Rarback (Alternate), Mike O’Neill, Vice Chair Warren Slocum and Chair Joshua Cosgrove.

Members Absent: Commissioners Don Horsley and Rich Garbarino

Alternate Commissioners Jim O’Neill and Kati Martin were also present.

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

2. Presentation on Adapting and Rising Tides by San Francisco Bay Conservation and Development Commission Staff

Dana Brechwald of the Bay Conservation and Development Commission (BCDC) presented an overview of Bay Adapt and future impacts of rising tides. She cited the sea-level rise challenges that San Mateo County and others are facing and noted that Bay Adapt was created to develop and adopt a regional, consensus-driven strategy that lays out the actions necessary to adapt the Bay Area to rising sea level to protect people and the natural and built environment. She outlined the components of Bay Adapt. She shared with the Commission BCDC’s Adapting to Rising Tides tool for San Mateo County.

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

ALTERNATES: KATI MARTIN, SPECIAL DISTRICT ▪ HARVEY RARBACK, CITY ▪ JAMES O’NEILL, PUBLIC ▪ DAVE PINE, COUNTY

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

In response to a question from Commissioner Ann Draper regarding how the Commission can help foster adaptation for this long term strategy, Ms. Poyatos stated that the most direct role LAFCo has is in municipal service reviews of the cities and districts that are affected by sea-level rise, whether they are planning for it and whether or not they are participating in regional programs.

Commissioners Ric Lohman and Mike O'Neill both voiced their concerns about the effects sea-level rise has on coastal communities. Ms. Brechwald noted that the Coastal Commission is on the leadership advisory group and they are a part of the conversation.

3. Consent Agenda

- a. Approval of Action Minutes: August 19, 2020
- b. LAFCo File No. 20-07 – Proposed annexation of 60 Valencia Court, Portola Valley (APN 079-122-170) to West Bay Sanitary District

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

4. Public Comment for Items Not on the Agenda

No written or oral comments from the public.

5. Consideration of Revisions to the Adopted 2020-2021 LAFCo Budget

Ms. Poyatos gave a report to the Commission and referred to the staff report dated October 12 that was also sent to the County, cities and independent special districts and posted on the LAFCo website. She stated that Government Code Section 56381 requires that LAFCo adopt a draft budget by May 1 and a final budget by June 15. She shared that because the budget is adopted before the end of the fiscal year, each year the Commission considers budget amendments to reflect the actual year end fund balance.

Ms. Poyatos noted that the Commission contracts with the County for staff and as part of the contract, the Commission uses the County's budget system to maintain the budget. She explained that Commission expenditures include salary and benefits for a staff of 2.5 full time positions, services and supplies, service charges for county counsel, rent, and related services. She stated that revenues include application fees, miscellaneous revenue

such as the CALAFCo stipend and intergovernmental revenue from the County, cities and independent special districts.

Ms. Poyatos noted that Government Code also sets forth a funding formula in which the Commission's net operating budget (expenditures less application fees) is funded in thirds by the County, the 20 cities and the 21 independent special districts. She noted that the changes in the recommended October revision reflect a corrected fund balance provided by the Budget office. She stated the key changes in the October revisions compared to the June adopted include;

- Excess fund balance of \$152,367 which allowed for a reduction of \$27,280 in net operating budget.
- Reserve fund has been adjusted to reflect the adjusted fund balance carry over. The reserve has been adjusted based on the corrected fund balance carry over.
- County Counsel Increase from \$20k to \$30k based on projected workload.

She noted that these adjustments resulted in reduction by \$9,093 to each of the one-third apportionments from the June adopted amount of \$190,572 for a revised amount of \$181,479. Ms. Poyatos recommended that the Commission adopt the Recommended Revised 2020-21 Appropriations Budget of \$728,840.

Chair Cosgrove opened and closed the public hearing. No comments were received.

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

6. Consideration of Resolution Authorizing an Agreement with the County of San Mateo for Staffing, Legal Counsel, Office Space and Supplies for the 2020-2021 Fiscal Year

Ms. Poyatos referred to written report dated October 14 and noted that the Commission contracts with the County for staffing, offices and services and each year executes an agreement that reflects the budgeted amount of these services. She stated the contract amount for Fiscal Year 20/21 is \$659,973 and differs from the budget in that it does not include reserve or outside auditing services.

Ms. Poyatos recommended that the Commission approve the agreement with County of San Mateo.

Chair Cosgrove opened and closed the public hearing. No comments were received.

Commission Action: Commissioner O'Neill moved to approve the contract with the County of San Mateo and Commission Draper seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Draper, Rarback, Lohman, O'Neill, Vice Chair Slocum and Chair Cosgrove. Abstentions: None; Noes: None)

7. Consideration of San Mateo Resource Conservation District Municipal Service Review

Ms. Poyatos referred to the staff report dated October 14 that includes the final Resources Conservation District (RCD) Municipal Service Review (MSR) and recommendations and determinations, and a table of the comments received with LAFCo responses. Ms. Poyatos noted that this is the second MSR for RCD, with the first being prepared in 2006. She noted that the report details since that time the RCD has grown significantly in size and scope of services. She stated that it is important to frame the context in which LAFCo prepares MSR's. She noted that the areas of determination are codified and require LAFCo to look at areas of administration and operation that seem secondary to the core mission of the agency. Many of the comments LAFCo received expressed concern about some of the areas of determination.

Ms. Poyatos stated that MSRs serve as a tool to help LAFCO, agencies under study, the public and other agencies to better understand public service delivery, administration, accountability, and governance in this case, with the District having excluded areas it's an opportunity to inform the SOI study and to look at what changes might be made to the SOI and the boundaries of the district to make more whole and fiscally viable.

Mr. Bartoli gave an overview of history of the District and district boundaries since formation in 1939. He stated that the original SMRCD boundaries encompassed agricultural lands in northern San Mateo County and coastal areas (less publicly owned lands and developed areas) were added to district boundaries in two subsequent annexations in 1942 and 1946. He explained that in 1954 several subdivisions were detached from the District in mid-coast area resulting in the current district boundaries having several "excluded pockets". He summarized that the District boundaries generally include western San Mateo County from the San Francisco-San Mateo County boundary to the Santa Cruz-San Mateo County boundary. He stated that the currently adopted sphere of influence for the District is conterminous with district boundaries.

Mr. Bartoli shared that the District collaborates with landowners and managers, technical advisors, local jurisdictions, government agencies, and others to protect, conserve and restore natural resources in coastal San Mateo County. He noted that the District operates similar to a non-profit organization, in that it is primarily funded through grants and contracts and that many of its services and projects are driven by the availability of funding.

Staff's preparation of the MSR included meeting with District staff, a written request for data and documents, preparation of an administrative draft for review by the District and Circulation of the draft document for comments.

Mr. Bartoli summarized the required areas of determination within the report:

- The district provides a number of conservation services with a limited amount of funding and staffing and partners with several other public agencies to complete projects, Mr. Bartoli noted that RCD is recognized as a state-wide leader in resource conservation services.
- The District would benefit for the creation of annual reports and budget narratives to increase transparency and public awareness.
- The majority of revenue for SMRCD is grant funding that has specific requirements about how it is allocated.
- Due to potential financial impacts to all agencies from COVID-19 and shelter-in-place the District should continue to explore shared services and additional revenue sources, the RCD is involved in various projects to support water resiliency, climate change, and natural hazard mitigation. The majority of these projects have multiple benefits for both natural and built environments.

Mr. Bartoli stated that letters from several public agencies that provided comment letters highlighted the work that has been undertaken in collaboration with the District and that information about these projects has been included in the final version of the MSR. He noted that three letters from residents emphasize the importance of RCD projects in San Mateo County and wished to highlight these projects in the MSR.

Chair Cosgrove opened the public hearing.

Kellyx Nelson, District Manager of RCD, gave a brief presentation to the Commission. She shared that the District leverages \$144 for each dollar of property tax it receives, with the majority of these funds directly supporting projects. She noted that the District is looking for ways to improve in efficiency and will continue to focus on delivering high quality services that are effective and responsive to community needs.

Chair Cosgrove closed the public hearing.

Staff addressed questions and comments from the Commission and recommended adopting the Municipal Service Review and to direct staff to set a hearing on November 18, 2020 for the sphere of influence update.

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

8. Consideration of Adoption of Update of Procedures for Evaluation of Proposals

Mr. Bartoli referred to the staff report dated October 14 and reported that the Procedures for the Evaluation of Proposals are intended to provide detailed information about the procedures for applications to LAFCo and the evaluation of the application by the Commission and staff. He shared that in several cases, sections in the draft were revised in response to a comment letter from the City of Pacifica to use the exact language from the Act instead of paraphrasing the sections. He noted that LAFCo staff agrees that using the language from the Act provides better cohesion between Government Code and the local LAFCo procedures.

Mr. Bartoli stated that the only comment that was not incorporated was related to the posting of the notification of a proposal at a physical location within the proposal area. When notification is required, the Act states that notification be posted near the hearing room, published in the local newspaper, and mailed to affected agencies, property owners and voters in proposal area, property owners and voters within 300 feet of the proposal area, the chief petitioners, and other persons requested notice. He said the City of Pacifica suggested LAFCo consider posting a notice near the proposal area, particularly when the area is inhabited. Mr. Bartoli stated that in staff's view this may be impractical for large annexation areas, or for areas that may be difficult to gain access to. He said that the addition of notice at a site may also expose LAFCo to legal action if the notification is not properly posted at the site or if members of the public feel that the posting is inadequate. He noted that staff recommends adhering to the adopted state regulations. Mr. Bartoli addressed questions and comments from the Commission.

He concluded that staff recommended that the Commission adopt the update for the Procedures for the Evaluation of Proposals.

Commission Action: Commissioner Lohman moved to approve the Adoption of Updated Procedures for Evaluation of Proposals and Commission O'Neill seconded the motion which passed unanimously by roll call vote. (Ayes: Commissioners Draper, Rarback, Lohman, O'Neill, Vice Chair Slocum and Chair Cosgrove. Abstentions: None; Noes: None)

9. Request Initiation of Municipal Service Review for East Palo Alto Sanitary District

Ms. Poyatos referred to the staff report dated October 14, and addendum report dated October 20 and various letter requesting preparation of an MSR for the East Palo Alto Sanitary District. She stated that the memo also included a letter and technical memorandum regarding an addendum to the March 2015 East Palo Alto Sanitary District (EPASD) Master Plan update from EPASD. She noted that the letter from the District

discusses the adequacy of their system for current connections, concerns about the City of East Palo Alto general plan and environmental review as they relate to the District. She stated that the letter from EPASD states that the MSR is not necessary at this time.

Ms. Poyatos emphasized that an MSR is a study and not a proposal to dissolve or reorganization local government agencies. She stated it does look at overlapping service boundaries and duplication of service and provides an opportunity to look at alternative governance, but those recommendations would need to be implemented by a willing successor agency.

She noted that EPASD is an independent sanitary district serving the majority of East Palo Alto and a small area of Menlo Park. She noted that the District operates pursuant to Health and Safety Code and is governed by a locally elected board of directors. She stated that West Bay Sanitary District (WBSD) serves north eastern areas of city of East Palo Alto. She stated that LAFCo completed an MSR for the two districts in 2009 and made recommendations in several areas for both districts and identified governance two potential alternatives. She said the first was to establish EPASD as a subsidiary district of the City and the second was to dissolve the District and annex the service area to WBSD. She reported that at the time, WBSD indicated they were not interested. And no action was taken by the City to initiate a subsidiary district proposal.

Ms. Poyatos noted that most recently, LAFCo has received five letters requesting the initiation of an MSR for the EPASD and two stating the MSR is not necessary. She shared that the commenters cite several concerns with EPASD including appropriate cost allocations for infrastructure upgrades, public meeting transparency and a lack of response to inquiries from project applicants

Ms. Poyatos shared information on required determinations per Government Code Section 56430. She also shared which projects in East Palo Alto are currently being affected.

Staff's recommendation is that the Commission authorize a Request for Proposals for a consultant prepared Municipal Service Review that would include East Palo Alto Sanitary District, City of East Palo Alto and West Bay Sanitary District conditioned upon a commitment from interest developers to fund operation of MSR.

Chair Cosgrove opened public comment.

Akin Okupe, EPASD General Manager, stated that the City has updated their General Plan and added new developments that will require new infrastructure updates. He said that the cost of upgrades would be \$40 million and that developers have requested that the District transfer cost of upgrades to existing rate payers. Mr. Okupe stated this would result in rate increases to existing District customers to serve these developers. Mr. Okupe stated that the EPASD is not mandated by law to charge existing customers for development of new

projects and that developers want to transfer cost of their developments to existing rate payers. He asked the Commission to consider this in their decision.

Dennis Scherzer, EPASD Director, stated that his concerns are based on the environmental review document the City adopted that shows no significant impacts to the District's sewers. He noted that EPASD and the City are not in agreement and further negotiation is necessary. He stated that applicants have not yet exhausted their administrative remedies and suggested that this matter be continued to March 2021 to allow all parties to negotiate further.

Larry Moody, East Palo Alto City Councilmember, stated that the East Palo Alto community wants to take control of their utilities to allow development in the City. The City Council has formed an inter-governmental committee to work with EPASD and identify where barriers are in terms of approving fair connection rates for development projects, the idea of capacity related to treatment plan and the future of East Palo Alto. Mr. Moody continued that after eight meetings there has been no movement and that the District had almost stopped an affordable housing project. He stated that East Palo Alto needs to be able to move their projects forward, develop their economic zone and create a new level of confidence for their residents. He stated he is supportive of preparing an MSR.

Shareefa Wilson, East Palo Alto resident, supports Director Scherzer's recommendation of holding off on the MSR until March. She shared that conversations between EPASD, developers and City boil down to who is going to pay the cost for upgrading the system. Ms. Wilson stated that while she was on City Council, they did not look closely at infrastructure and capacity. She stated that she does not support a review at this time.

Chair Cosgrove closed public comment.

Commissioner Draper noted that growth and development plans of the City are not the same as the District and they should come together quickly for the benefit of all parties. She said that there appears to be a clear communication barrier between all parties.

Commissioner Lohman shared his support for the District. He shared that to his knowledge and experience the development is required to pay for all sewer, water, pipe enhancement or anything that will augment the system. He said by developers declining, is not fair to pass on costs to existing rate payers. He stated that he did not support the request for an MSR at this time. He also agreed with the proposal for all parties to work an agreement that does not require current residents to pay for developments.

Commissioner Mike O'Neill stated that MSR would be good for common impartial analysis of what the issue is. He said he assumes rate payers are also tax payers and the MSR will give common basis for a starting point decision to be made. He stated that the MSR should move forward noting that a delay for entities to come together as late as March could affect construction costs and feasibility of affordable housing with budget cuts.

Commissioner Rarback, suggested that an MSR is appropriate, and that his concern is that development occur in a sustainable way.

Vice Chair Slocum stated that he supports the MSR and asked staff for clarification on why the City would be included.

Ms. Poyatos responded that the MSR would include EPASD, WBSD and City because they share common territory and the CKH Act directs that the MSR should include all agencies that provide service.

Chair Cosgrove stated though he is supportive of a future MSR, he does not want to disrupt the currently adopted work plan of the Commission. He noted that projects and development upgrades should be undertaken by the developers.

Commission Action: Vice Chair Slocum moved to direct staff to issue a Request for Proposals (RFP) for a consultant prepared MSR on EPASD, the City of East Palo Alto and West Bay Sanitary District and proceed with the MSR conditioned upon the developers funding preparation of the RFP and the MSR, with the caveat that the MSR would be postponed if the developers, City of East Palo Alto and EPASD have reached an agreement on the capital improvement cost methodology and issuance of will serve letters to City approved projects. Commission Draper seconded the motion which passed 4 to 2 by roll call vote. (Ayes: Commissioners Draper, Rarback, O'Neill and Vice Chair Slocum. Abstentions: None; Noes: Commissioners Lohman and Chair Cosgrove.)

10. Legislative and Policy Committee

a. Legislative Report

Mr. Bartoli gave a brief presentation and referred to written report dated October 14. He shared that CALAFCO is now tracking 11 bills, most of which did not move forward at the end of the legislative year on August 31. He noted that one such bill was SB 414, would allow the State Water Resources Control Board (SWRCB) to form, dissolve, or consolidate failing water systems that have either less than 3,000 service connections. He stated that CALAFCo and San Mateo LAFCo sent letters opposing the bill to the bill's author and the Assembly Appropriations Committee and SB 414 did not move out of the committee. He noted however that CALAFCO anticipates that a similar bill will be introduced in the next legislative year.

He concluded noting that reports from the Senate and Assembly on legislation that signed into law are anticipated to be completed by the end of the year and will be shared with the Commission.

11. Commissioner/Staff Reports

The 2019 San Mateo County Crop Report was presented in the Commission packet.

12. Adjournment

Chair Cosgrove adjourned the meeting at 4:30 p.m.