

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 Special Commission Meeting February 7, 2024

Chair Martin called the Wednesday, February 7, 2024, Special Meeting of the Local Agency Formation Commission (LAFCo) to order at 2:30 pm at the San Mateo County Board of Supervisors Chambers, 400 County Center, Redwood City, CA. Members of the public were also able to participate in the meeting remotely via Zoom.

1. Roll Call

Members Present: Kati Martin, Tygarjas Bigstycck, Virginia Chang-Kiraly, Harvey Rarback, Warren Slocum, Jim O'Neil, Noelia Corzo

Members Absent: Ann Draper, Ray Mueller

Staff Present: Rob Bartoli, Executive Officer
Timothy Fox, Legal Counsel
Sofia Recalde, Management Analyst
Angela Montes Cardenas, Clerk

2. Public Comment for Items Not on the Agenda

None.

3. Consent Agenda

a) Approval of Action Minutes: January 17, 2024

Commission Action: Commissioner Chang-Kiraly moved to approve the consent agenda with the correction to 9 of the January 17, 2024, Action Minutes which corrects the minutes to reflect that the auditor has conducted four audits for San Mateo LAFCo. Commissioner Rarback seconded the motion. Motion passed unanimously by roll call vote. (Ayes: Commissioners Martin, Bigstycck, Chang-Kiraly, Rarback, Slocum, O'Neil, Corzo; Noes: None)

4. Reconsideration of LAFCo File No. 22-09 – 1) City of East Palo Alto Proposal: To establish the East Palo Alto Sanitary District (EPASD), an independent special district, as a subsidiary district of the City of East Palo Alto (City). 2) East Palo Alto Sanitary District Alternative Application: To retain the District's governance model; amend its Sphere of

COMMISSIONERS: KATI MARTIN, CHAIR, SPECIAL DISTRICT ▪ RAY MUELLER, VICE CHAIR, COUNTY ▪ VIRGINIA CHANG-KIRALY, SPECIAL DISTRICT
▪ HARVEY RARBACK, CITY ▪ TYGARJAS BIGSTYCK, CITY ▪ WARREN SLOCUM, COUNTY ▪ ANN DRAPER, PUBLIC

ALTERNATES: CHRIS MICKELSEN, SPECIAL DISTRICT ▪ ANN SCHNEIDER, CITY ▪ JAMES O'NEILL, PUBLIC ▪ NOELIA CORZO, COUNTY

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

Influence (SOI) to be coterminous with its geographic service boundaries; and remove the District's territory from the SOI of the West Bay Sanitary District.

Rob Bartoli, Executive Officer, noted that a revised agenda packet dated February 1 corrected the LAFCo meeting date from November 17, 2023, to November 15, 2023, in the staff report. Mr. Bartoli presented the staff report for the item.

On November 15, 2023, the San Mateo LAFCo Commission approved LAFCo File 22-09 to establish the East Palo Alto Sanitary District (EPASD), an independent special district, as a subsidiary district of the City of East Palo Alto and related actions, including adopting a resolution approving the subsidiary district proposal with terms and conditions, adopting findings and determinations pursuant to the California Environmental Quality Act (CEQA), and declining to approve the alternative application submitted by EPASD.

On December 15, 2023, LAFCo received a letter via email dated December 15, 2023, from Ludis D. Sominskaia, Attorney with Burke, Williams & Sorensen, LLP. Ms. Sominskaia's letter requested that in light of recent actions taken by the EPASD Board of Directors, the Commission should reverse the action taken on November 15, 2023, by 1) Denying the City's Proposal and 2) Approving the District's Alternative Proposal filed with San Mateo LAFCo on September 19, 2023, which proposed to (i) retain EPASD current governance structure, (ii) amend the District's Sphere of Influence to be coterminous with its service boundaries, and (iii) remove EPASD's territory from the Sphere of Influence of the West Bay Sanitary District.

The December 15, 2023 letter from Ms. Sominskaia proposed that four actions that EPASD has taken since the adoption of the LAFCo resolution on November 15, 2023 warrant the Commission's reconsideration: A recently adopted Capital Improvement Plan (CIP), recent steps to undertake a process to lower sewer capacity fees, process to increase sewer rates, and the future direction to draft an ordinance setting forth a process for negotiating and approving will service letters and development agreements.

LAFCo Staff recommended that the Commission disapprove the reconsideration. This recommendation is based on several reasons. LAFCo staff does not believe that the District had provided new or different facts that could not have been presented previously. The CIP document is largely comprised of data and documents that were presented to the LAFCo Commission at the November 15, 2023, meeting as part of EPASD's Alternative Application.

The letter from Ms. Sominskaia states that these "recent changes crystallize the District's position as the agent that can best provide sewer service to local ratepayers." However, other factors led to the Commission's approval of the City's Proposal, including consistency with past LAFCo actions, a plan for service from the City, future growth, and State policy preference for the provision of municipal services within city boundaries.

Three of the four actions taken by the EPASD Board on December 14, 2023, only authorized staff to begin work on increasing sewer rates, lowering connection fees, and drafting an ordinance setting forth a process for negotiating and approving will serve letters and development agreements.

Lastly, Staff does not believe that an agency's actions subsequent to the LAFCo decision can constitute "new or different facts that could not have been presented previously." The four actions taken by the EPASD Board on December 14, 2023, seemed to be reactions to the Commission's determinations on November 15. The District could have initiated these actions before the November 15, 2023 meeting if they desired to.

Commissioner Chang-Kiraly commented that a letter from the WBSD was received regarding unreported sewer spills and asked if LAFCo staff has received similar information from EPASD. Mr. Bartoli confirmed that the staff had not received information from EPASD and no further follow-up was conducted the week before the meeting.

Joan Cox, Attorney with Burke, Williams & Sorensen, LLP, presented their request for reconsideration. She stated that LAFCo law supports EPASD as the best equipped to provide sanitary sewer services. In her presentation, Ms. Cox noted that EPASD has made several changes since the LAFCo meeting on November 15, 2023, which included the adoption of a new Capital Improvement Plan (CIP), service rates, and ordinance regarding transparent and consistent development approvals. The CIP included detailed financial projections for operation, maintenance, and expansion needs. EPASD raised the service rates to \$660 based on a previously approved 2019 rate study to be effective on July 1, 2024. Ms. Cox stated that the City's proposal will remove the ability of Menlo Park residents to engage in leadership and only one seat on an advisory board is insufficient. Ms. Cox mentioned that a sewer spill was reported by WBSD on January 19, 2024, to the State, but records do not reflect this information.

Antonio Lopez, Mayor of the City of East Palo Alto, stated that EPASD has not been a cooperative partner with the City in moving development forward. Actions made by EPASD since November 15, 2023, do not offer further clarity regarding how they plan to reduce connection fees while increasing rates when over 90 percent of the system needs repair. John Le, EPA City Attorney, noted that the City's position was that reconsideration is not needed because the request and payment of fees were done in an untimely manner and supported LAFCo staff's recommendation that no new information had been provided by EPASD as part of the request for reconsideration. City Attorney Le corrected previously distributed information by EPASD such as a mailer sent to all ratepayers regarding a rate of \$1200 by the City as not true because the proposed increase would need a vote through the Prop 218 process. Mr. Le also shared direct communication with the State revealed that the January 19, 2024 spill was not recorded because the District report was late and incomplete.

Ms. Cox countered that the late fee was due to the LAFCo website not listing a fee for reconsideration and asserted that a 2019 rate study adopted under Prop 218 empowered the District to increase rates up to \$720. The EPASD District General Akin Okupe stated that the sewer overflow and spill were reported on time, but a glitch in the State's system delayed reporting.

Commissioner Martin asked about a \$720 rate increase, which Ms. Cox explained that the rate study approved a rate increase over 5 years.

Chair Martin opened public comment.

Gail Wilkerson – Resident, in favor of EPASD’s reconsideration request

Dennis Sherzer – President of EPASD, in favor of EPASD.

Luisa Buada – Former CEO of Ravenswood Family Health Network in EPA and current director of capital projects for the health center, in favor of the City’s proposal.

Ruben Abrica – Councilmember of EPA, in favor of City

Adrian Bryant – a resident, made a public records act request to San Mateo LAFCo for all staff reports and agendas related to anyone who has paid for an MSR. Wants info in the next 10 days. In favor of EPASD.

Mark Dinan – resident of EPA and EPASD customer, Chair of Dept of PW/Transportation, speaking as a resident. In favor of City.

Christopher Kao – EPA PW and Transportation Commission and resident. In support of the City’s proposal.

Carlos Romero – City council member, speaking as a resident. In support of the City’s proposal.

Chair Martin closed the public comment period.

Commission discussion:

Chang-Kiraly reiterated her concern about Menlo Park representation and asked how collaboration between WBSD and the City can be ensured. Melvin Gaines, City of East Palo Alto City Manager, responded that the City has gone through the RFP process and selected WBSD as the sewer service provider. The City is also committed to providing open communication to customers through its operations and will be reaching out to the City of Menlo Park.

Commissioner Bigstyk is not convinced that the two entities would cooperate which is a key factor for the Commission’s reconsideration. Commissioner Bigstyk questioned if the pipes are properly maintained and if coordination with development is being performed. In favor of the City.

Commissioner Rarback stated that the arguments for reconsideration were not persuasive. In favor of the City.

Commissioner Corzo stated that she opposes reconsideration.

Commissioner Chang-Kiraly commented that no new substantive information has been provided by EPASD to be reconsidered. Any recent actions seem reactionary and not proactive.

Commission Action: Commissioner Slocum moved to disapprove the EPASD request for reconsideration for LAFCo File No. 22-09. Commissioner Rarback seconded the motion. Motion passed unanimously by roll call vote. (Ayes: Commissioners Martin, Bigstyk, Chang-Kiraly, Rarback, Slocum, O’Neil, Corzo; Noes: None)

5. Study Session on Future Municipal Service Review (MSR) Workplan

Sofia Recalde, Management Analyst, stated the staff proposal to create and adopt a multi-year MSR schedule to ensure that San Mateo LAFCo can evaluate the availability and adequacy of services delivered by agencies in an organized manner. Work plans are currently adopted by the Commission annually and include a list of MSR/SOIs proposed for the upcoming year. Ms. Recalde presented research on other LAFCo MSR Multi-Year work plans for comparison.

Commissioner Chang-Kiraly commented that subject agencies and the public should have a better understanding of when MSRs for specific agencies will be prepared.

Chair Martin opened public comment.

Public comment from Adrian investigated a special study on allowing outside entities to pay for MSRs and how it impacts and disenfranchises residents.

Chair Martin closed public comment.

Commission Action: Commissioner Chang-Kiraly moved to have the budget committee work with LAFCo staff with input from the public and commission to develop the work plan based on resources outlined by staff. Commissioner Rarback seconded the motion. Motion passed unanimously by roll call vote. (Ayes: Commissioners Martin, Bigstyk, Chang-Kiraly, Rarback, Slocum, O'Neil, Corzo; Noes: None)

6. Consideration Authorizing the Executive Officer to Execute an Engagement Letter with O'Connor & Company for auditing services for the Fiscal Year ending June 30, 2023

Sofia Recalde, Management Analyst, explained that the letter proposes a fee of \$9,800 which would be payable in the 2023-24 and 2024-24 Fiscal Years.

Commissioner O'Neil asked if the auditing service fee increased from previous reports and Rob Bartoli, Executive Officer, confirmed that the rate has been consistent.

Commissioner Chang-Kiraly asked if the fifth report audit report will have the same audit team and Mr. Bartoli clarified that some previous audits were conducted by a different company but moving forward O'Connor & Company will confirm if the same team can be used.

Chair Martin opened and closed public comment. No written or oral comments were received.

Commission Action: Commissioner Chang-Kiraly moved to authorize the Executive Officer to execute the attached engagement letter with O'Connor & Company for auditing services for the Fiscal Year ending June 30, 2023. Commissioner Rarback seconded the motion. Motion passed unanimously by roll call vote. (Ayes: Commissioners Martin, Bigstyk, Chang-Kiraly, Rarback, Slocum, O'Neil, Corzo; Noes: None)

7. Legislative and Policy Committee – Legislative Report

Sofia Recalde, Management Analyst, presented the legislative report. CALAFCO is currently tracking twelve bills, none of which are new in 2024. The only significant update to the existing legislation from 2023 is regarding AB 805 which would authorize the state board, if sufficient funds are available, to order the consolidation of sewer service with the consolidation of drinking water systems when both the receiving and subsumed water systems provide sewer service and after the state board engages in certain activities, including, but not limited to, consulting with the relevant regional water board and the receiving water system and conducting outreach to ratepayers and residents served by the receiving and subsumed water systems, as provided. The bill would also authorize the state board to require the administrator to provide administrative, technical, legal, or managerial services for any sewer service provided by the designated water system.

Chair Martin opened and closed public comment. No written or oral comments were received.

8. CALAFCO Quarterly Newsletter for January 2024

Rob Bartoli, Executive Officer, noted that the newsletter outlines future dates for LAFCo retreats.

Chair Martin opened and closed public comment. No written or oral comments were received.

9. Commissioner/Staff Reports

Rob Bartoli, Executive Officer, announced LAFCo staffing updates which included new member, Diane Estipona, who joined as the new LAFCo clerk to replace Angela Montes. Sofia Recalde accepted a new county position and will no longer be with LAFCo. LAFCo staff and the Commission thanked Sofia for all her work.

Chair Martin opened and closed public comment. No written or oral comments were received.

10. Adjournment

Chair Martin adjourned the meeting at 4:38pm.