



July 11, 2012

TO: Members, Local Agency Formation Commission

FROM: Martha Poyatos, Executive Officer

SUBJECT: Addendum Report: Municipal Service Review and Sphere of Influence Update for the San Mateo County Mosquito and Vector Control District (SMCMVCD)

Summary:

At your May meeting, you received the April 18, 2012 Circulation Draft Municipal Service Review and Sphere of Influence Update for SMCMVCD, and continued the hearing to July 18 to allow additional time for the District and the public to respond and for an updated report and staff recommendation. Attached please find the June 12, 2012 Municipal Service and Sphere of Influence Update that incorporates comments on the circulation draft. (Attachment A). Recommended service review determinations from the report are found in Attachment B and recommended sphere determinations and sphere designation are found in Attachment C. Since distribution of the June 12, 2012 report that includes a recommended sphere amendment, LAFCo has received several comment letters, which are summarized below and included with this report as numbered exhibits.

LAFCo is required by State law to complete municipal service and sphere of influence reviews for all cities and special districts in the County by taking the following actions: adopt municipal service review determinations pursuant to Government Code Section 56430 (Attachment B); adopt sphere of influence Determinations pursuant to Government Code Section 56425; and reaffirm or amend the sphere of influence.

The sphere recommendation is to amend the sphere of influence for the District to that of dissolution and establish the County of San Mateo as successor. It merits emphasis that while the service review contains fiscal information on the District finances and operations and discussion of governance alternatives, it is not intended to be a comprehensive analysis of dissolution and transfer of operations and governance to the County of San Mateo. Such an analysis would be completed in preparation of an application that could be submitted by the District, the County, an affected agency (city, special district, school district) within District boundaries or by landowner or voter petition. It should also be noted that regardless of the outcome of the sphere designation, the municipal service review itself is an opportunity to identify strengths and weaknesses in an organization, potential areas of savings, opportunities for shared resources and best practices in fiscal stewardship. In that regard the service review includes extensive information on how the District has implemented financial controls in

response to alleged fraud affecting two fiscal years. Lastly, the service review studies the District in the context of broader state and local policies favoring multi-purpose government over single-purpose government and recognizes recent trends toward service sharing to maximize local government resources in the face of prolonged economic downturn.

Summary of comments received in italic with LAFCo staff comments following in plain text:

1. *City of San Carlos (June 28, 2012)*

The City of San Carlos concurs with the LAFCo staff recommendation.

2. *Joan Cassman, Hanson Bridgett, representing SMCMVCD, (July 9, 2012)*

Ms. Cassman cites section Government Code Section 56000 of the Cortese Knox Hertzberg Act, which states that governmental “responsibility should be given to the agency or agencies that can best provide governmental services,” states that the report fails to establish a basis for conclusions about the District’s governance and accountability and notes that the current recommendation contradicts the sphere designation in the 2003 LAFCo report. She states the LAFCo report oversimplifies the dissolution process and the Commission should disregard the recommendation and maintain a status quo sphere for the District. Ms. Cassman provides background on the initiatives the District has undertaken to strengthen internal financial controls and includes a report prepared by an auditing consultant with additional recommendations for improving financial controls. She notes that the District has implemented these measures and has redistributed duties to administrative staff and created an Assistant General Manager position to better implement internal controls. Ms. Cassman includes information on many agencies, including the County, which have been the victim of financial crime.

Ms. Cassman cites the staff recommendation to amend the sphere of the District to dissolution and transfer to the County as successor as a surprising change that distracts from the efforts the District has made to improve financial accountability. She questions the current recommendation which conflicts with the 2003 sphere designation, asks what has changed since 2003 and states that transfer to the County would result in the function of vector control being “lost in the County’s labyrinth.” The letter cites the San Mateo County Environmental Health Department’s support for District services.

Other key issues identified by Ms. Cassman include application of Proposition 218 regarding continuation of taxes or fees by successor, uncertainties regarding treatment of ad valorem tax revenues, selection of successor agency and lack of compliance with the California Environmental Quality Act (CEQA). Ms. Cassman asserts that the District should not be the subject of an experiment by LAFCo and concludes that based on the District’s progress in mending organizational weaknesses that contributed to the embezzlement, the Commission should vote to maintain the status quo sphere of influence.

LAFCo response:

Oversimplification of dissolution process and transfer of revenue streams:

The District incorrectly interprets sections of the Cortese Knox Hertzberg Act relating to dissolution of a district, establishing the successor agency and application of Revenue and Tax Code 99. To be clear, there are two basic types of dissolutions. In one case for example, a water district may sell the district's water system to a private water provider and apply for dissolution because it no longer provides the service for which it was formed. In that case, in approving dissolution, LAFCo is required by section 57451 to designate a successor agency for the purpose of winding down the short-term affairs of the dissolved district. In such a case, Section 57451 sets forth that the successor shall be a city or county, whichever includes the greater assessed value of territory located in the dissolving district's boundaries. Also, in such a case, the property tax of the District is redistributed to agencies sharing the boundaries of the dissolved district proportionately. However, Section 57451 does not apply to a dissolution in which a district is dissolved and the service responsibility of that district is transferred to another entity in order to continue providing that service.

The second type of dissolution, as proposed in the recommended sphere, is dissolution of a district and continuation of services previously provided by that district by designating a long-term successor agency to provide the service. In that case, Section 56886 (m) provides LAFCo authority to designate a successor. Section 57302 sets forth that specific conditions imposed pursuant to 56886 supersede the general provisions of Part 5, which is where 57451 resides.

In regard to revenue streams, the mechanisms by which the County allocates base property tax, incremental growth in property tax and assessments are well established and date back to implementation of Proposition 13. Base property tax for the county, each city and each special district that receives property tax were established on a countywide level upon implementation of Proposition 13 and have been adjusted annually by adding the annual incremental property tax calculated at a tax rate area level. The county and each city and district have an account number that correlates to the tax rate areas that apply to territory in their boundary. The County Controller also calculates benefit assessments and parcel taxes attributable to each agency by account number. Section 56886 (t) that authorizes LAFCo to condition approval of an organizational change on extension or continuation of a previously authorized charge fee, assessment or tax by the successor would require that the County Board of Supervisors, by resolution,¹ to establish a distinct countywide special fund with an account number that would supplant SMCMVCD for this purpose to be successor to these revenues.

2003 Recommended Sphere versus Current Recommended Sphere

¹ This may require an amendment to the County ordinance code regarding county organizational structure.

First and foremost, it is important to understand that the 2003 municipal service review and sphere update report reflect a point in time at which there was a need to rapidly respond to the anticipated threat of West Nile Virus and augment funding in the newly annexed area to provide for countywide service. The most expeditious way to do both was annexation to the District conditioned upon passage of a benefit assessment in the annexation area.² The District's single-purpose focus on garnering support for an assessment to fund prevention of West Nile Virus as a public health threat contributed to the success of the annexation and benefit assessment, as did a more stable local government fiscal climate in which voters were not facing the multitude of competing funding measures they face in the present day. In regard to governance and accountability, the 2003 report cited that annexation would result in a representative from each city in the annexation area being added to the board providing for countywide representation.

What has changed since that time? In 2003, District operations were successfully expanded countywide with adequate, dedicated funding and public health officials and others commenting on the service level considered it effective and responsive. Subsequent transfer of vector control services from the County to the District resulted in assigning a revenue stream under District operation for what had been a General Fund subsidy for the County. As the District exists today, the stable and segregated funding source (property tax, special tax and benefit assessment) has enabled the district to develop and maintain a single-purpose focus on effective and specialized mosquito and vector control programs. Given this countywide revenue stream, without discounting the level of dedication of District personnel or Board of Trustees to the District's mission, there is no evidence that the 21-member appointed board of trustees is more accountable for this success than a directly elected board or five member board of supervisors would have been or would be in the future.

The 2003 LAFCo report noted that at that time the advantages of focused mosquito control services outweighed benefits that would be achieved in dissolution and transfer to the County. Since 2003 mosquito and vector control programs, operations and revenue streams are now well established and could be transferred to the County eliminating the overlap of governing bodies with identical service area. In regard to the District's assertion that this action would bury mosquito and vector control in the 'labyrinth of the County services,' see the organizational chart for the Environmental Health Division on the next page which includes the programs of Hazardous Materials, Pollution Prevention, Water Programs, Housing Programs, and Food Program and a total of 75 full time equivalent employees. Each of these programs is under the oversight of the Environmental Health Director and each has a separate budget and staffing with specific expertise and relationship with the public they serve. Because each has a

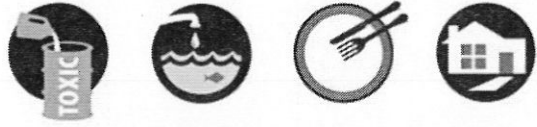
² The 2003 report explains that as a result of Proposition 13 annexations for non-enterprise districts such as the SMCMVCD would either require cities and the county to transfer property tax or establish a benefit assessment. Because property tax transfers are the result of transfer of service responsibility, a tax transfer did not apply to this expansion and a benefit assessment was established as the appropriate funding tool.

separate and distinct budget and non-general fund revenue stream, programs do not compete with each other for funding or resources.

The determination on page 33 of the service review addresses visibility and accountability of the board of trustees and administration to tax payers and voters and is based on the distinction between the County Board of Supervisors' countywide oversight of public health services that includes extensive agenda posting, agenda subscription and televised meetings. In addition, the Environmental Health Division has a well-established practice of public outreach and collaboration with cities. The District's boundaries are coterminous with the County and therefore dissolution of the District and transfer of service responsibility and dedicated revenue streams to the County would consolidate mosquito and vector control with other public health functions with a guaranteed funding source. This is consistent with recent trends among local agencies in service sharing and consistent with Section 56000 assigning responsibility to the agency that can best provide governmental services.

Application of Proposition 218

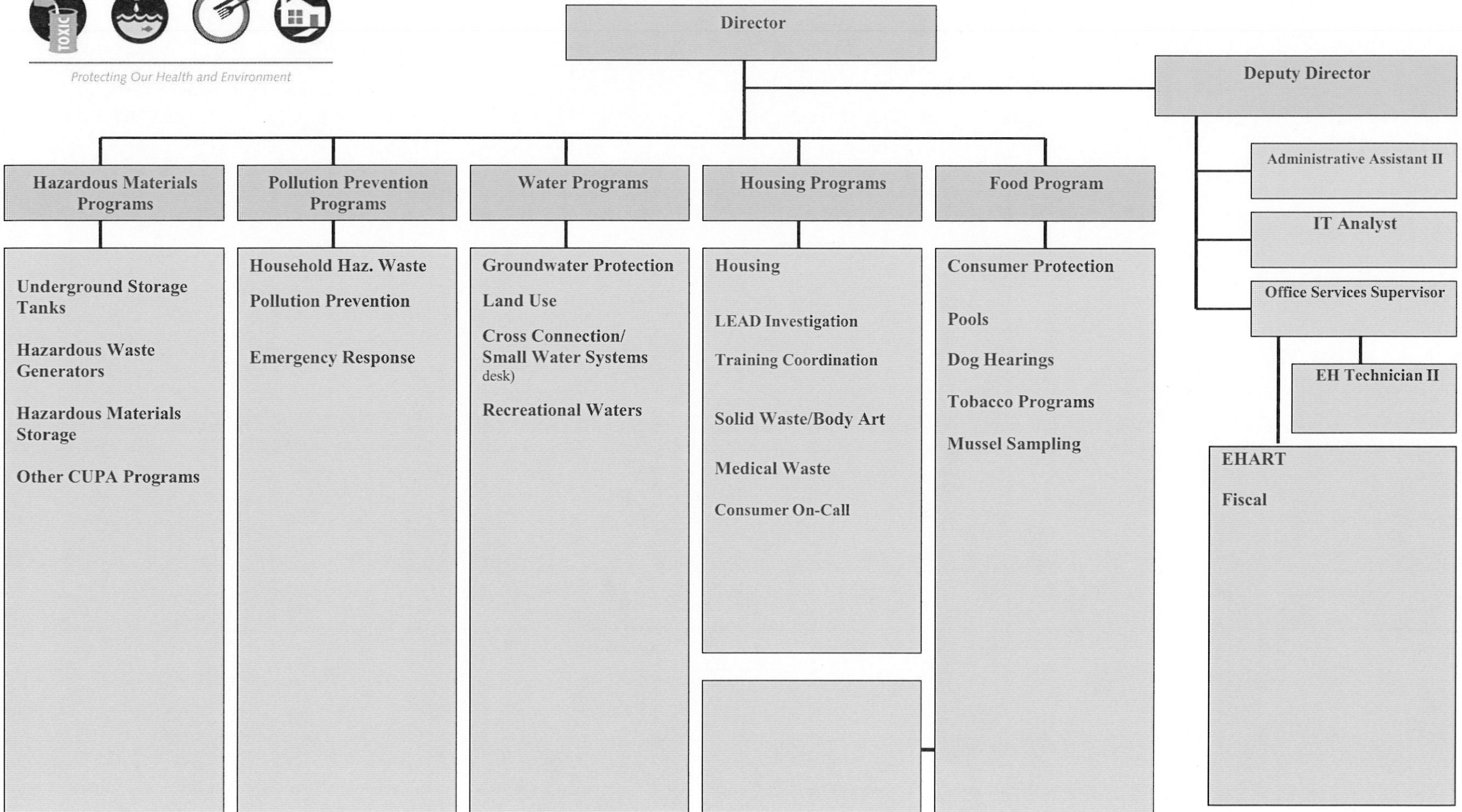
California Attorney General Opinion 99-602 dated October 6, 1999 found that Proposition 218 does not apply to LAFCo conditions of approval of a change of organization or reorganization relating to a subject agency levying or fixing and collecting a previously established and collected tax, benefit assessment or property-related fee or charge.



Protecting Our Health and Environment

**ENVIRONMENTAL HEALTH SERVICES DIVISION
ORGANIZATIONAL CHART**

07/10/2012



California Environmental Quality Act (CEQA)

The municipal service review and sphere update includes a recommendation to amend the District's sphere of influence and establish the County as successor agency. There is no proposed change in service area boundaries. Pursuant to CEQA Guidelines Section 15320, changes in organization of public agencies are exempt from CEQA where the changes do not change the geographical area in which previously existing powers are exercised. Examples include, but are not limited to: establishment of a subsidiary district, consolidation of two or more agencies with identical powers, merger of a city with a district lying entirely within the boundaries of the city. (Sections 21083 and 21084 of Public Resources Code).

3. *San Mateo County Health System, Dean D. Peterson, Director, Environmental Health Division (July 6, 2012)*

Mr. Peterson states that should LAFCo amend the District's sphere to dissolution and establish the County as successor agency the County would need to look at what structure could be put into place. He states that if the Environmental Health Division should be tasked with this function, the Division believes it could perform them along with other duties noting that it would be imperative that the current revenue sources be transferred and protected for the sole purpose of mosquito and vector control. The letter states that the San Mateo County Health System does not support dissolution as the District has fulfilled its mission of effectively controlling mosquitos and vectors and it would be unfortunate to lose the strong reputation and identity in the community.

LAFCo Response:

LAFCo staff notes that willingness on the part of the proposed successor agency is essential in implementation of a sphere of influence. While the response does not recommend dissolution, it acknowledges that the County could assume service if accompanied by dedicated revenue. It should also be noted that the Board of Supervisors has not considered a position on becoming successor agency.

If the sphere of the District is amended and there is a subsequent application to dissolve the District, the application would include a plan for providing service indicating the level and range of services, how service would be provided including disposition or transfer of current District employees, how service would be funded (proposed budget) and when services could commence. Implementation would require amendment of the County's salary ordinance for employees that are transferred from the District.

5. *James Counts, Retired SMCMVCD Operations Manager (July 8, 2012)*

Mr. Counts disagrees with statements made by special counsel Joan Cassman, renews concerns that the alleged embezzlement was the result of failure to follow District policies and raises personnel issues related to use of sick and vacation leave.

LAFCo Response:

LAFCo staff believes issues raised by Mr. Counts have either been raised in previous correspondence to the Commission or are personnel matters that are not within LAFCo authority, but are under the purview the Board of Trustees.

6. Letters from the following residents in opposition of the recommended sphere amendment and praising the District's service:

*Carolyn A. Livengood, San Bruno
Nancy Mori, San Bruno
Ruth Reynolds, San Bruno
Victor Spano, Pacifica
Pam Riechel, San Bruno*

7. Telephone call from District employee asking what the Commission action to amend the sphere would mean to the employees

LAFCo staff explained that the Commission would consider either reaffirming the District's sphere of influence of status quo or amending it to dissolution and transfer to the County of San Mateo along with revenues and assets. Staff explained that the sphere of influence is a policy designation and would not change the status of the District unless an agency (the District, an affected agency including the County, a city, district or school district sharing boundaries of the district, or petition by landowner or voter) submitted an application to LAFCo for dissolution and transfer to the County. That application would include a service plan outlining how services would be provided and which employees of the District could be transferred to newly created comparable positions at the county.

Recommendation:

Staff renews the recommendation of an amended sphere of influence of dissolution and establishing the County of San Mateo as successor. Staff submits that the forgoing information and attached Municipal Service Review and the Sphere of Influence Update provide foundation for this recommendation. The service review and sphere update further provide a framework for the San Mateo County Mosquito and Vector Control District, County of San Mateo and cities as appointing bodies to further examine how the mosquito and vector control needs of San Mateo County residents can best be met.

Whether or not the sphere is amended or reaffirmed, staff recommends that the County and cities as appointing bodies become more engaged with District finance and operations through their appointed trustees and that the County Controller regularly review audits prepared for the District. Staff reiterates that an amended sphere of influence does not impede the District from continued operations because implementation of the sphere requires application by the District, County, city or other affected agency or by landowner or voter petition. Staff believes that the attached municipal service review, sphere of influence update, and recommended determinations are consistent with Government Code Sections 56430 and 56425 and with LAFCo's mission to promote logical boundaries and efficient service delivery. It is therefore respectfully recommended that the Commission take the following actions:

- 1) Accept the report and public comment;
- 2) Adopt the Municipal Service and Sphere of Influence Report (Attachment A) including the determinations and desired amendments (Attachment B and C); and
- 3) Adopt CEQA finding contained above and amend the sphere of influence of the San Mateo County Mosquito and Vector Control District establishing the County of San Mateo as successor agency with the condition that any proposal to dissolve the District be conditioned upon transfer of revenues to the County, segregated for the sole purpose of mosquito abatement and vector control as permitted by the enabling legislation.

Attachments: Municipal Service Review & Sphere of Influence Update with comments (Attachment A)
 Recommended Municipal Service Review Determinations (Attachment B)
 Recommended Sphere of Influence Determinations (Attachment C)
 Exhibits 1 – 10
 Please see www.sanmateolaftco.org for April and June reports and attachments

Distribution: SMCMVCD
 Board of Supervisors
 Cities
 John Maltbie, County Manager
 Jean Frasier
 Dean Peterson

1. Recommended Determination regarding Population and Growth Projections:
 - a. Regardless of the rate of population growth, demand for mosquito and vector control services will continue in both urban and rural areas.

2. Recommended Determinations- Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies
 - a. The District's Burlingame and Redwood City facilities are newly constructed and the District no debt for these facilities.
 - b. Opportunities may exist for the District to partner with other agencies on the Coastsides or North Peninsula to share facilities that would allow the District to respond more quickly to mosquito and vector control specific emergencies.

3. Recommended Determinations Regarding Financial Ability of Agency to Provide Services:
 - a. The District's revenue sources of property tax, special tax and benefit assessment allow the District to meet mosquito and vector control needs of the County while building a general fund balance and retiring debt
 - b. General Fund Expenditures grew by \$916,592 or 33% from \$2,719,086 in Fiscal Year 2007-08 to \$3,635,678 in 2010-11 while General Fund Revenues grew by \$37,926 or less than 1%, indicating a need to focus on cost containment
 - c. Establishing policies for fund balance, reserves or contingencies will assure sufficient cash flow and provide for unanticipated events or shortfalls.
 - b. The Board is taking appropriate action regarding budgeting for Other Post Retirement Benefits.

4. Recommended Determinations regarding status of, and opportunities for, shared facilities,
 - a. Based on the small size of District administration and the need to have internal controls made possible by segregation of duties, opportunities may exist for the District to receive payroll or other accounting services from the county or another agency, or in the alternative increase staffing levels to facilitate segregation of duties.
 - b. The District has identified the challenge of maintaining the District's website and updating it in a timely manner, indicating a potential need for contracting website maintenance with another agency.

5. Recommended Determinations regarding accountability for community service needs, including governmental structure and operational efficiencies:
 - a. The record in the municipal service review indicates the District is effectively providing mosquito and vector control services to best meet the public health and safety needs of County residents.
 - b. The size of the Board of Trustees and the method of appointment as required by enabling legislation constrain accountability, visibility and responsiveness to the public compared to that of a the County Board of Supervisors, city councils or directly elected special district boards.
 - c. The District's administration and governing board duplicate administration and governance that could be provided by the County of San Mateo in the same manner the County provides services such as County environmental health programs.

July 11, 2012
Draft

**Attachment C: Recommended Sphere of Influence Determinations
San Mateo County Mosquito and Vector Control District Draft**

The present and planned land uses in the area, including agricultural and open-space lands:

Encompassing the whole of San Mateo County, land uses include open space, agriculture, residential, commercial, and institutional land use designations. While some areas are projected to experience more development and growth than others, the need for mosquito abatement service will not diminish.

The present and probable need for public facilities and services in the area:

The need for mosquito and vector control service within the District's boundaries is necessary in order to protect residents from mosquito and vector borne diseases now and in the future.

The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide:

The District provides a full range of vector control services to the area within district boundaries at levels necessary to protect the residents.

The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency:

There is a countywide community of interest in protecting public health through mosquito and vector control services. District Administration and Governance by a twenty-one member board of trustees duplicates administration and governance already provided by the County of San Mateo and District operations could be transferred to the County along with segregated revenues for that purpose.

Recommended Sphere of Influence:

Based on the foregoing it is recommended that the District's sphere of influence be amended to that of dissolution and transfer of service responsibility, assets, liabilities and revenues to the County of San Mateo. It is recommended that if the Commission amends the District's status quo sphere of influence to that of "dissolution and transfer to the County of San Mateo as Successor Agency" that it be conditioned upon said proposal resulting in transfer of all assets, liabilities and revenues in segregated funds separate and distinct from other county funds and to be used solely for the purposes of services authorized by health safety code to be provided by Mosquito and Vector Control Districts.