

# MARIN LOCAL AGENCY FORMATION COMMISSION

## RESOLUTION NO. 12-07

### RESOLUTION OF CONDUCTING AUTHORITY MAKING FINDINGS ON VALUE OF WRITTEN PROTEST FILED AND NOT WITHDRAWN AND ORDERING A CHANGE OF ORGANIZATION SUBJECT TO CONFIRMATION BY THE VOTERS

“Consolidation of the Alto, Almonte, Homestead Valley & Richardson Bay  
Sanitary Districts (File #1307)”

WHEREAS, on September 13, 2012 the Marin Local Agency Formation Commission (“Marin LAFCO” or “LAFCO”) held a noticed public hearing on the above noted consolidation and, based on the staff analysis and written and oral testimony presented at that hearing, adopted Resolution 12-06 approving the above noted consolidation and delegating conducting authority proceedings to the Executive Officer; and

WHEREAS, on November 15, 2012 the Executive Officer, as delegated by the Commission, acting as conducting authority, held a noticed protest hearing and received written protests signed by registered voters from each of the four sanitary districts affected by the consolidation approved by the Commission; and

WHEREAS, pursuant to Government Code Section 57113, the valid protest petition signatures by 10 percent or more of the total number of registered voters in any district affected by the approved consolidation requires that an election be held within that district to affirm or reject the consolidation; and

WHEREAS, the Executive Officer caused the protest petition forms to be examined to determine the value of written protest submitted and not withdrawn pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (hereinafter the Act) including but not limited to Government Code Sections 57051, 57075, 56707, 56708 and 56710; and

WHEREAS, on December 4, 2012, the Marin County Elections Department reported sufficient value of written protest to require an election in each of the four sanitary districts affected by consolidation as shown in the following table:

	Alto SD	Almonte SD	Homestead SD	Richardson Bay SD
Total Registered Voters	693	1,144	1,804	6,186
Signatures Required (10% of total voters)	70	115	181	619
Raw Count	332	306	258	1,006
Valid Signatures	293	266	234	935
Pct. Valid Signatures	42.3%	23.3%	13.0%	15.1%

**NOW THEREFORE**, the Marin Local Agency Formation **DOES HEREBY RESOLVE**, **DETERMINE AND ORDER** as follows:

1. This action is being taken pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.
2. In accordance with Government Code Section 57113, written protests submitted and not withdrawn were received from more than 10%, but less than 50% of the registered voters residing within the Alto, Almonte, Homestead Valley and Richardson Bay Sanitary Districts.
3. The change of organization is designated: Consolidation of the Alto, Almonte, Homestead Valley & Richardson Bay Sanitary Districts (File 1307).
4. The type of change of organization is: consolidation.
5. The reason for this change of organization is: to more efficiently and cost effectively provide sewage collection services in the affected territory.

This change of organization is subject to the following terms and conditions as stated in Marin LAFCO Resolution 12-06 as follows:

- a. The effective date of the reorganization will be one year from the date of Marin LAFCO approval.
- b. The name of the Successor District shall be the "Southern Marin Sanitary District." The terms "Successor District" and the "Southern Marin Sanitary District" have the same meaning and are used interchangeably in this resolution.
- c. All existing laws, ordinances, resolutions, actions, contracts, agreements, rules and regulations, policies and procedures, that have been enacted, adopted or passed by any of the Predecessor Districts prior to the effective date of the consolidation shall remain in effect after the consolidation until superseded, amended, modified or repealed by the Board of Directors of the Successor District. Any conflict in the application of the aforementioned issues that arise after the reorganization shall be resolved at the discretion of the Board of Directors of the Successor District.
- d. As a condition of consolidation, the boards of the Predecessor Districts shall create a governing board for the Southern Marin Sanitary District with directors being elected at large. The governing board shall be composed initially of five members in the following manner:
  1. The governing board of the Alto Sanitary District shall designate one of its members to serve until December 31, 2014.
  2. The governing board of the Almonte Sanitary District shall designate one of its members to serve until December 31, 2014.
  3. The governing board of the Homestead Valley Sanitary District shall designate one of its members to serve until December 31, 2014.

4. The governing board of the Richardson Bay Sanitary District shall designate two of its members to serve until December 31, 2014.
5. If any Predecessor District fails to so designate members for inclusion on the Southern Marin Sanitary District board of directors within 60 days of LAFCO's resolution approving consolidation, the County Board of Supervisors shall appoint residents of that Predecessor District to serve on the board.
- e. All terms of office for board members appointed according to the above provisions shall expire December 31, 2014. Election for terms beginning January 1, 2015 shall be for a governing board of five members, three to be elected for four-year terms and thereafter for four-year terms and two shall be elected for two-year terms and four-year terms thereafter, as determined by lot.
- f. The Successor District shall create an Advisory Committee for purposes of assisting the Successor District in matters of consolidation relating to the structure and operation of the Successor District. Members of the governing boards of the Predecessor Districts not designated to serve on the Successor District's board of directors under Term and Condition d. above, shall serve on the Advisory Committee. The Advisory Committee shall meet as necessary at the call of the President of the Successor District Board of Directors. The Successor District shall compensate Advisory Committee members for attending meetings of the Committee in accordance with the compensation schedule that applied to each member for meeting attendance at his or her Predecessor District. The Advisory Committee shall cease to exist when the initial terms of office of the members of the Successor District's governing board appointed or designated under these Terms and Conditions have expired.
- g. The appropriation limit of the Successor District for Fiscal Year 2011/2012 shall be the sum of the appropriations limits of the four Predecessor Districts.
- h. The sphere of influence of the Southern Marin Sanitary District shall include all geographic areas of the spheres of influence of the Predecessor Districts.
- i. Subject to the limitations set forth in Terms and Conditions j. and k. below, the Southern Marin Sanitary District shall have the discretionary authority to impose and collect all charges, fees, and assessments previously approved, imposed and collected by the Predecessor Districts.
- j. The Southern Marin Sanitary District shall establish and maintain separate rate or billing zones for each Predecessor District's collection system service operations (the "Billing Zones") until such time as rates among the zones are substantially equal, reserves in balance, and infrastructure condition within each zone is substantially in balance as determined by the successor district governing board.
- k. All (1) debts, liabilities, and obligations, (2) known litigation demands, claims and assessments asserted by or against each Predecessor District, (3) performance due on contractual obligations, and (4) maintenance, replacement and reconstruction due for capital facilities (collectively, the "Legacy Obligations") shall be transferred and assigned to the Southern Marin Sanitary District. The Southern Marin Sanitary District shall provide evidence to the satisfaction of LAFCO that separate account(s) for funds previously held by the Predecessor

Districts have been established and are being maintained for the restricted purpose of fulfilling Legacy Obligations in the territory of the Predecessor District for whom the account is being held and maintained. Funds held in trust by the Southern Marin Sanitary District for Legacy Obligations shall be used only for that prescribed purpose. Upon the effective date of the consolidation, all delinquent fees, charges, and any other collections or assets that would have accrued to the Predecessor Districts shall accrue and be transferred to the Southern Marin Sanitary District and be deposited into the appropriate billing zone account. Debts and/or expenses incurred by the Southern Marin Sanitary District for Legacy Obligations of a Predecessor District, which exist as of the effective date of the Consolidation, shall be treated internally as debts or expenses of that Predecessor District, and funds for the repayment or recoupment of such debt or expenses shall be collected solely from customers in the Billing Zone for such Predecessor District to the greatest extent feasible. Notwithstanding the foregoing, debt and expense incurred in upgrading the Southern Marin Sanitary District's facilities for the common benefit of the District shall be repaid and borne equally by all customers of the Successor District.

- I. Notwithstanding Term and Condition k. the respective reserve account balances of each Predecessor Districts as of the effective date of consolidation shall be held and maintained exclusively for the benefit of the Billing Zone corresponding to the respective customers of the Predecessor District and for the Legacy Obligations of that Predecessor District.
- m. The Southern Marin Sanitary District shall arrange for collection of revenues sufficient to pay principal and interest and for payment of debt service when due. Any assets securing the Predecessor Districts' debts liabilities, contracts, or obligations assigned or transferred to the Southern Marin Sanitary District shall continue to secure the payment and discharge of such prior debts, liabilities, contracts, and obligations to the extent they are determined to be properly due and owing. Any assessments levied on behalf of a Predecessor District or any bills or statements rendered by or on behalf of a Predecessor District shall continue to be a debt or obligation of the person or property against whom it is levied, assessed, or rendered unless relieved by the Southern Marin Sanitary District.
- n. This consolidation shall not impair any rights of any bondholder or creditor of the Predecessor Districts.
- o. To the extent possible, the general managers and all employees of the Predecessor Districts will become contractors or employees of the Southern Marin Sanitary District. The managers and employees so employed shall be employed under the same terms of employment as pertained to their employment by the Predecessor Districts (including salary, benefits [if any] and status as contract or regular employees), however, they may not be terminated except for cause for a period of one year following the effective date of consolidation. All vested vacation, sick leave and any other personal leave time remaining on the books of any employee of the Predecessor Districts before they become contractors or employees of the Successor District shall remain in effect or be redeemed by the Successor District.
- p. All available ad valorem-based property tax revenue levied and collected from properties located in Marin County, previously payable to the Predecessor Districts shall be transferred to the Southern Marin Sanitary District, which shall account for said funds separately in the established Billing Zones.

- q. Upon the effective date of this consolidation, all assets (including but not limited to all real or personal property, all water systems, cash on hand, long and short term investments, reserve funds, and monies due but uncollected, and all assets included in and allocated according to the Sewerage Agency of Southern Marin (SASM) Joint Exercise of Powers Agreement) of the Predecessor Districts shall be transferred to the Southern Marin Sanitary District.
- r. The capacity entitlements in the treatment plant and other jointly used SASM capital facilities owned by the Predecessor Districts, including those capacity entitlements increased pursuant to Section 19.5 of the SASM Joint Exercise of Powers Agreement ("SASM JEPA"), shall be allocated and assigned to the Southern Marin Sanitary District.
- s. The Southern Marin Sanitary District shall succeed the Predecessor Districts as member of the SASM JEPA, with all the rights and obligations of the Predecessor Districts in the SASM JEPA.
- t. In the event that any dispute arises between one or more of the Predecessor Districts regarding the terms and conditions of this Resolution ("Dispute"), or the consolidation of Predecessor Districts into the Southern Marin Sanitary District, following the date that the resolution approving the consolidation of the Predecessor Districts into the Successor District is recorded by LAFCO and prior to the effective date of consolidation, any Predecessor District can compel the commencement of binding arbitration, in which all Predecessor Districts shall participate, as follows:
- (a) *Demand.* The Predecessor District wishing to commence arbitration (the "Demanding District") shall serve written notice of the demand to arbitration, including the name of a retired special district general manager, the Demanding District proposes to use as arbitrator (the "Arbitrator") by registered or certified mail to all other Predecessor Districts. The Arbitration Notice shall include the date and time of the arbitration, the identity of the Arbitrator (as defined and described in more detail in section (b) below), the fee for the arbitration, the Demanding District's plain statement of the Dispute and the resolution requested by the Demanding District, and shall attach all relevant documents, if applicable. No later than 7 days following deposit of the Arbitration Notice in the mail as specified above, each other Predecessor District shall deliver its own plain statement of the Dispute, together with its requested resolution and documents it considers relevant to the Demanding District and all other Predecessor Districts. All Predecessor Districts shall split the Arbitrator's fee equally and each District shall promptly forward its share of the fee to the Demanding District at the termination of the arbitration proceedings for delivery to the Arbitrator.
- (b) *Selection of Arbitrator.* If any Predecessor District disagrees with the Arbitrator selected, it shall provide written notice to all other Districts no later than 5 days after the Arbitration Notice is served, and shall specify the preferred Arbitrator and the basis for its objection. No later than 5 days thereafter, a designated representative of each Predecessor District shall meet and work together in good faith to select an Arbitrator satisfactory to all parties. In the event that the parties cannot select an Arbitrator, the matter shall be submitted to Judicial

Arbitration and Mediation Services (JAMS) for selection of a JAMS panel arbitrator in accordance with applicable JAMS procedures.

- (c) *Schedule for Arbitration.* The Arbitrator shall schedule, and the parties shall attend, a pre-arbitration conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations and narrow the issues. The arbitration shall commence at 9:00 a.m. on the date specified in the Arbitration Notice, or some other date agreed upon by all parties, and shall be completed in no more than 4 consecutive days, unless the parties agree to, or the Arbitrator orders, an additional period of time beyond four (4) days for its completion.
6. This consolidation involves an exchange or reallocation of property tax. The regular Marin County assessment roll will be utilized in the event that there is any need therefore.
  7. No existing bonded indebtedness shall be affected by this consolidation.
  8. The four separate affected territories in which elections are to be held are described as the jurisdictional areas of each of the following local government agencies:
    - Alto Sanitary District
    - Almonte Sanitary District
    - Homestead Valley Sanitary District
    - Richardson Bay Sanitary District
  9. The required vote for confirmation of the consolidation is a simple majority of the registered voters voting in each of the four above listed local government agencies' territory.
  10. The consolidation is ordered, subject to confirmation by registered voters residing within the affected territories as described above.
  11. The Board of Supervisors of the County of Marin is hereby requested to call a special election on the above noted question and to direct the County Registrar of Voters to conduct the elections consistent with the provisions of this resolution, the Cortese-Knox-Hertzberg Act, and other applicable law. At the election, there shall be included on the ballot to be marked by the voters entitled to vote, in addition to any other matters required by law, ballot language in the following form:

Shall the order adopted on September 13, 2012 by the Local Agency Formation Commission of the County of Marin, ordering the consolidation of the Alto, Almonte, Homestead Valley and Richardson Bay Sanitary Districts into a single district known as the Southern Marin Sanitary District be confirmed subject to the terms and conditions specified in the order?
  12. The Executive Officer is hereby authorized and directed to execute and deliver any documents and to perform all acts necessary to place the measures set forth in paragraph eleven of this resolution on the ballot, including making any revisions,

**PASSED AND ADOPTED** by the Marin Local Agency Formation Commission on this 13<sup>th</sup> day of December 2012 by the following vote:

AYES: Commissioners Adams, Blanchfield, Heller, Sears, Rodoni, Condon

NOES: None

ABSENT: Commissioner Arnold



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JEFFRY BLANCHFIELD, Chairperson

ATTEST:



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PETER V. BANNING, Executive Officer