

MARIN LOCAL AGENCY FORMATION COMMISSION

RESOLUTION NO. 12-06

**RESOLUTION MAKING DETERMINATIONS AND APPROVING
CONSOLIDATION OF THE ALTO, ALMONTE, HOMESTEAD VALLEY AND
RICHARDSON BAY SANITARY DISTRICTS**

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

WHEREAS, a proposal for the consolidation of certain territory of the Southern Marin Sewer Districts in the County of Marin has been filed with the Executive Officer of this Local Agency Formation Commission pursuant to Title 5, Division 3, commencing with Section 56000 of the Government Code; and

WHEREAS, said proposal was made in the form of a resolution of application adopted by the Marin Local Agency Formation Commission pursuant to Government Code Section 56375(a)(2); and

WHEREAS, at the time and in the form and manner prescribed by law, the Executive Officer has given notice of public hearing by this Commission upon said proposal; and

WHEREAS, the public hearing on said proposal was held by this Commission upon the date and at the time and place specified in said notice of public hearing, and all interested persons present were afforded an opportunity to speak and be heard on this matter; and

WHEREAS, this proposal consists solely of changes in the organization of local governmental agencies where the changes do not alter the geographical area in which previously existing powers of local government agencies are exercised and is therefore exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15320 of the State CEQA Guidelines; and

WHEREAS, the Executive Officer has reviewed the proposal and prepared a report, including a recommendation thereon, and the proposal and report having been presented to and considered by this Commission.

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

Section 1. The Alto, Almonte, Homestead Valley and Richardson Bay Sanitary Districts (hereinafter referred to as “Predecessor Districts”) shall be consolidated into the Successor District subject to the terms and conditions contained herein:

- a. The effective date of the reorganization will be one year from the date of Commission 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. 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.

- l. 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 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 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 4 days for its completion.

Section 2. Pursuant to Government Code Section 56881(b)(1) and (b)(2), the Commission finds that the proposed consolidation will result in public service costs that are less than or substantially similar to the costs of alternative means of providing the service and that the proposed consolidation promotes public access and accountability for community services needs and financial resources.

Section 3. The territory includes an area of approximately 2,666 acres, is found to be inhabited, and is assigned the following distinctive short form designation: "Consolidation of the Alto, Almonte, Homestead Valley and Richardson Bay Sanitary Districts (File #1307)"

Section 4. The proposal is consistent with the adopted spheres of influence for the Alto, Almonte, Homestead Valley and Richardson Bay Sanitary Districts.

Section 5. The Executive Officer is hereby authorized to complete consolidation proceedings in the manner prescribed by Section 57000 et seq. of the Government Code.

PASSED AND ADOPTED by the Marin Local Agency Formation Commission on this 13th day of September 2012 by the following vote:

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

NOES: Commissioner Asbo

ABSENT: None



JEFFRY BLANCHFIELD, Chairperson

ATTEST:



PETER V. BANNING, Executive Officer