

MARIN LOCAL AGENCY FORMATION COMMISSION

RESOLUTION NO 11-10

**ADOPTION OF DETERMINATIONS
FOR THE SOUTHERN MARIN SEWER AGENCIES SERVICE REVIEW UPDATE
FOR MEMBER AGENCIES OF SEWERAGE AGENCY OF SOUTHERN MARIN**

WHEREAS, Section 56430 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires that Local Agency Formation Commissions (LAFCOs) conduct service reviews prior to, or in conjunction with, consideration of actions to establish a Sphere of Influence (SOI) as defined in Section 56076, and in accordance with Section 56425 or 56426.5, or update an SOI pursuant to Section 56425; and

WHEREAS, as part of such reviews, LAFCOs must compile and evaluate service-related information and make written determinations regarding infrastructure needs or deficiencies, growth and population projections for the affected area, present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies, financial ability of agencies to provide services, status of, and opportunities for, shared facilities, accountability for community service needs including governmental structure and operational efficiencies and any other matter related to effective or efficient service delivery, as required by commission policy; and

WHEREAS, Marin Local Agency Formation Commission conducted a service review of sewer service agencies in southern Marin County in 2005 entitled *Southern Marin Sewer Service Alternatives Study*, which included study of sewer service provided by the City of Mill Valley, Tamalpais Community Services District, Richardson Bay Sanitary District, Homestead Valley Sanitary District, Alto Sanitary District, Almonte Sanitary District and the Sewerage Agency of Southern Marin; and

WHEREAS, Marin Local Agency Formation Commission directed the update of the aforementioned study in January, 2011; and

WHEREAS, Marin Local Agency Formation Commission undertook this service review concurrently with a review of adopted spheres of influence of the Richardson Bay Sanitary District, Homestead Valley Sanitary District, Alto Sanitary District, Almonte Sanitary District; and

WHEREAS, Marin LAFCO consulted with affected and interested parties; and

WHEREAS, Marin LAFCO gathered and compiled the information necessary to conduct the required update and independently evaluated such information; and

WHEREAS, Marin LAFCO issued the staff report and recommendation for this project, entitled *Southern Marin Sewer Agencies Service Review and Sphere of Influence Update* on July 8, 2011 and provided a 21-day public review of said document; and

WHEREAS, Marin LAFCO considered the data, recommendations and determinations contained in the *Southern Marin Sewer Agencies Service Review and Sphere of Influence Update* at noticed public hearings on July 14, August 11, September 8, October 13 and November 10, 2011 and received all oral testimony and evidence, which were made, presented or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to the review, its data, recommendations and determinations; and

WHEREAS, Marin LAFCO considered project related environmental factors and determined that the subject project is Exempt from provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the State CEQA Guidelines;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to powers provided in Section 56430 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the Marin Local Agency Formation Commission adopts written determinations as set forth in Exhibit A.

PASSED AND ADOPTED by the Marin Local Agency Formation Commission on this 8th day of December, 2011, by the following vote:

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

NOES: Commissioner Asbo

ABSENT: None



JEFFRY BLANCHFIELD, Chairperson

ATTEST:



PETER V. BANNING, Executive Officer

EXHIBIT A

Statement of Written Determinations Southern Marin Sewer Agencies Service Review Update, 2011

1. Regarding growth and population projections for the affected area, the Commission determines:

Population growth in southern Marin County remains below 1% per year, expected. Growth in demand for sewer service among the member agencies of the Sewerage Agency of Southern Marin (SASM) as measured by change in total equivalent dwelling units (EDUs) for all member agencies is 2.5% over a five year period. The annexation of previously un-served areas such as Muir Woods Park to a SASM member agency would create growth in demand for sewer service without population growth, with the addition of up to 300 residential units.

As pointed out in Marin LAFCO's 2005 service review determinations, most of the urbanized areas in Southern Marin County are built out and have limited future development potential. This means that financing of future capital improvement investments will need to be borne largely by existing ratepayers and that future sewer rate increases will be based on infrastructure reinvestment requirements, inflation and limited growth in rate base.

2. Regarding present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies, the Commission determines:

Marin LAFCO's 2005 service review determinations noted the need for increased capital investment in sewer collection system repair and rehabilitation and advent of new regulatory requirements affecting SASM and its members, stating "...The major drivers for these future investments are the new California Sanitary Sewer Overflow/Sanitary Sewer Management Plan (SSO/SSMP) regulations and parallel EPA/state enforcement actions for correcting sewer hydraulic capacity and/or structural deficiencies that lead to excessive wet weather inflow and sewer overflows."

During January 2008, the Sewerage Agency of Southern Marin (SASM) reported two storm-related spill events from SASM's Wastewater Treatment Plant.

According to the report of the State Water Resources Control Board Office of Enforcement,

The primary cause of the January 25, 2008, overflow was extremely high infiltration and inflow into the sewage collection system. The inflow and infiltration is caused by extremely poor condition of the SASM's ageing collection system. This is a serious chronic problem that has been neglected for the last 25 years. Similar incidents have occurred in the past and will likely continue in the future during the periods of heavy and prolonged rainfall.

The January 31, 2008 spill was caused primarily by operator error. The situation was exacerbated by high flows due to excessive inflow and infiltration and the failure of the alarm company to follow the established alarm response procedures. However, had the operators made the appropriate decisions, the spill could have been completely avoided.

Following the results of the Spill Investigation Report, the EPA found SASM and its member agencies in violation of their NPDES permits that required each agency to maintain its collection system, control inflow and infiltration and manage overflows. All seven agencies were made subject to an Administrative Order, requiring each agency to file reports and take actions to improve procedures and facilities over a five-year period.

All seven agencies subject to the Administrative Order are now in compliance with the order's requirements, including the filing of annual spill reduction action plan progress reports. Rehabilitation of the collection systems of the six SASM member agencies will require continued reinvestment for many years.

3. Regarding financial ability of agencies to provide services, the Commission determines:

The following table shows changes in sewer rates and property tax proceeds per equivalent dwelling unit (EDU) for SASM and its member agencies since 2005 indicating total charges for sewer service for each agency. Substantial increases have occurred and are continuing, driven by SASM costs (including \$2.8 million in costs of 2008 spills paid from SASM reserves) and regulatory compliance, including mandated increases in capital spending.

**Change in Total Charges Per Equivalent Dwelling Unit (EDU):
 Sewer Service Charge + Property Tax Proceeds
 2005 & 2011**

<u>District</u>	<u>Total Cost</u> <u>/EDU 2005</u>	<u>Total Cost</u> <u>/EDU 2011</u>	<u>%</u> <u>Increase</u>
Alto Sanitary District	\$ 305	\$ 532	74%
Almonte Sanitary District	310	486	57%
Homestead Valley Sanitary District	280	597	113%
Richardson Bay Sanitary District	436	521	20%
City of Mill Valley	297	600	102%
Tamalpais CSD (SASM only)	301	1,014	237%

Data in the table above includes treatment charges by SASM allocated to each member agency and included in their service charge. Rate increases by each agency except SASM are subject to the procedural requirements of Proposition 218, which provides for public protest and possible reversal. Recent rate increases have not generated significant public protest. Combined with relatively static property tax allocations, the sewer service charges of SASM member agencies and their ability to raise those rates when necessary, demonstrate the ability of SASM member agencies to continue to generate adequate revenue for provision of sewer service.

4. Regarding the status of, and opportunities for, shared facilities, the Commission determines:

Prior to 2005, SASM and member agencies engaged in some forms of collaborative activity including the SASM joint-powers treatment plant and a few other limited forms of cooperative effort. Marin LAFCO's 2005 study listed a variety of areas of potential collaboration that might precede consideration of political consolidation of SASM agencies. These measures were identified by the Commission's consultants as methods of reducing cost under the current government structure and without political consolidation. All sewer service agencies in southern Marin adopted resolutions agreeing to pursue such cost savings. The committee set up for this purpose met for approximately one year, then discontinued meeting. Following the spills of 2008, the managers of the SASM agencies resumed meeting to collaborate on response to federal and state regulatory agencies.

Of the measures identified in the 2005 study, the following measures were adopted:

- **Common sanitary sewer management plan (SSMP) templates** (agency plans and incident response protocols were developed individually, but following the 2008 spills, all were supplanted by sewer spill reduction action plans prepared by a single consultant and required by EPA and the Regional Water Quality Control Board);
- **Contracts for pooled engineering/design services** (a single engineering company prepared all agencies sewage spill reduction action plans and an external audit report covering both treatment and collection systems following the spills of 2008);
- **Contracts for pooled construction services** (in two instances, small projects of two districts were jointly contracted. Project scale remained small, no cost savings were identified);
- **Laboratory analytical services.** These tests are now available to the member agencies at the SASM treatment plant laboratory and do not require outside testing. In addition, SASM provides all of the sampling kits required for collection system SSO analysis.

More recently, SASM and its member agencies report additional collaborative efforts that were not mentioned as cost-saving measures in the 2005 study. These measures include most prominently:

- Monthly meetings of SASM and member agency managers;
- Engineering services related to spills of 2008;
- A written, uniform contract with Roto-Rooter;
- Standardized geographic information system;
- Financing program for private lateral replacement (replacement programs themselves remain the individual responsibilities of the separate agencies);
- Sewer system overflow sampling kit.

With respect to management efficiency, the Commission determined in 2005:

The management and staffing resources of the current decentralized sewer services agency are inefficiently deployed. Management, operations and administrative staffing redundancy are inherent in the existing decentralized, multi-agency structure. Some needed skills or agency capabilities are not available (e.g., human resources, training) to small organizations due to budget constraints....

SASM and its member agencies are responsible for a sewer system composed of six collection areas and a single sewage treatment plant, governed by 30 elected and 6 appointed officials, managed with the involvement of 8 general managers

and operated by a variety of full and part-time staff plus contract personnel. The conclusions of 2005 quoted above continue to apply to SASM and its member agencies as a sub-set of the eleven sewer service agencies previously studied.

5. With respect to accountability for community service needs, including governmental structure and operational efficiencies, the Commission determines:

In its 2005 Sewer Service Review Determinations, Marin LAFCO determined that:

The local control over a municipal service afforded by a special district board is meaningful if the scope of activities and decisions of that governing board are known to the public and attract participation by constituents. Where this is not the case because the district's service role is very limited or the budget is small or the governing board's discretion over spending is very narrow, local control has little practical meaning. The political accountability of agencies of very small size or limited scope of service may be improved if consolidation would create a larger, more capable organization with a more prominent presence in the community and an enhanced ability to communicate effectively with the public.

Fewer and larger organizations with full-time staff capabilities would be better able to maintain public awareness, access to information and increased participation at lower cost. Continued segmentation of sewer service between collection and treatment functions and between very small neighborhood areas no longer adds value to the provision of this service.

These conclusions continue to apply to the present study of SASM member agencies. None of the member agencies, with one vote each, can be held accountable for any aspect of the sewage treatment function and each must allocate approximately 30% of its budget to SASM to pay for the treatment function outside of its control. The appointed SASM board is accountable only to its member agencies, not the public and is, in this sense, not under "local control."

Three of the member agencies (Alto, Almonte & Homestead Sanitary Districts) rely entirely on Roto-Rooter or other contractors to provide their services. The services provided are under the company's control, not directly under the control of the three member districts.

LAFCO's 2005 study found different rates of contested elections between cities, community service districts and sanitary districts with high rates of contested elections for cities and CSDs and much lower rates for sanitary district board membership. Updated research on SASM member agency elections shows that in possible elections in the eleven years since 2000, elections were contested in all TCSD elections and all but one election for Mill Valley City Council. In 20 possible elections for sanitary district board seats, only one was contested.

During that period, incumbent sanitary district board members have continued their service, running unopposed at election. When mid-term vacancies have occurred, the remaining members of the district board recruit, interview and appoint a replacement. There were twelve mid-term appointments by the boards of the four sanitary districts. None of the board members of the four SASM member sanitary districts have been elected by voters in the last ten years.

Public attendance is steady at meetings of the City of Mill Valley and Tamalpais Community Services District, agencies with diverse agendas and business activity. Slightly more than half of the meetings of the SASM board are attended by members of the public. Public attendance at the meetings of the four sanitary district boards is extremely rare as shown on the table below.

SASM Member Agency Meetings - Public Attendance

	Alto	HVSD	Almonte	RBSD	SASM
Number of Meetings - Jan 2008 to March 2011	39	40	38	44	40
Meetings w/ Public in attendance*	1	3	1	2	22

The Commission affirms its previous conclusion that continued segmentation of sewer service between small sewage collection districts no longer adds value to the provision of this service.

6. **With respect to any other matter related to effective or efficient service delivery, as required by commission policy, the Commission determines:**

(No additional matters relating to effective or efficient service delivery have been identified for purposes of this resolution)