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August 16, 2010

**BY HAND DELIVERY**

Honorable Robert Short, Chair, and Commissioners  
Santa Barbara Local Agency Formation Commission  
105 East Anapamu Street  
Santa Barbara, CA 93101

Alexandra M. Barnhill  
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ABarnhill@bhfs.com

RE: City of Goleta Proposal for Detachment from Goleta West Sanitary District  
Lapse of City's Application and Defective Certificate of Filing

Dear Chair Short and Commissioners:

This letter is submitted on behalf of the Goleta West Sanitary District ("Goleta West").

As you may recall, the City of Goleta ("City") originally submitted an application to detach from Goleta West to Santa Barbara LAFCO on February 4, 2009. The Executive Director deemed the application incomplete on February 17, 2009, due to its failure to include necessary information about the City's plan for providing sewer services. The City resubmitted its application about 18 months later, on or after July 26, 2010.<sup>1</sup> The Executive Director issued a Certificate of Filing on July 28, 2010. As will be described below, this series of events does not comport with either the substantive or procedural requirements of the Cortese-Knox-Hertzberg Local Governmental Reorganization Act (codified at Government Code §§ 56000 *et seq.*) ("Act"). Due to these flaws, Goleta West respectfully requests that your Commission direct the Executive Director to treat the City's proposal as a new application, rescind the Certificate of Filing, and process the City's application in a manner consistent with the Act. A separate letter addresses the completeness of the City's application.

**A. The City's Original Detachment Application has Lapsed**

The City's detachment application has lain dormant for the past one and a half years since it was found to be incomplete. Given this extended period of inactivity, a rule of reason requires that the application be treated as though it has lapsed.

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<sup>1</sup> The City's cover letter to its application is dated July 26, 2010; however, because the copy provided to Goleta West lacks a LAFCO time stamp, it is not possible to discern when the application was received by LAFCO.

LAFCOs across the state have adopted formal and informal rules regarding the lapse of an incomplete application.<sup>2</sup> For example, Ventura LAFCO imposes on the Executive Director a ministerial duty to determine that an application has been withdrawn if the applicant fails to file the information necessary for the application to be deemed complete within 90 days of receiving a letter of incompleteness.<sup>3</sup> Establishing a reasonable timeframe to complete an application is necessary because each reorganization proposal interferes with an affected agency's ability to serve its customers and conduct long-term planning activities (*e.g.* establish a capital improvement plan, evaluate rate setting, etc.). Imposing a deadline to finalize an application also balances equities because invoking such a rule does not preclude an agency from resubmitting an application at a later date. This rule of reason applies equally in Santa Barbara County as it does in Ventura.

Goleta West requested that the Executive Director inform the City that its application had lapsed. When the Executive Director failed to do so, Goleta West requested that your Commission formally designate the application as having been administratively withdrawn via a letter dated June 29, 2010, which is attached. That letter was not timely transmitted to your Commission by the Executive Director and therefore was not agendaized for your consideration.

Had your Commission been able to review the matter, we believe that the outcome would have been to declare that the Executive Director erred in failing to designate the City's application as lapsed and administratively withdrawn. If the proper procedures had been followed, the City's application made on February 4, 2009 and found incomplete on February 17<sup>th</sup> would have been deemed administratively withdrawn as of May 18, 2009. Submissions made on or after that date by the City should be treated by LAFCO as a new application.<sup>4</sup>

While the City is free to resubmit an application for detachment, both the City and the Executive Director must treat it as a new application and comply with the requirements of the Act. Neither the City nor the Executive Director has done so in this case. We respectfully request that your Commission direct the Executive Director to fulfill his duty by rescinding the certificate of filing and informing the City in writing that its application has lapsed.

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<sup>2</sup> See Ventura LAFCO Commissioner's Handbook rule 2.1.2.2 available online at <http://www.ventura.lafco.ca.gov/pdf/Adopted%20Oct%2017%202007-updated%20thru%207-16-08-posted%208-20-09.pdf>. See also Madera Commissioner's Handbook Rule 2.16 imposing a similar termination requirement on incomplete applications, available online at [http://www.madera-county.com/rma/archives/uploads/1246031858\\_Document\\_upload\\_ppgmanual.complete.pdf](http://www.madera-county.com/rma/archives/uploads/1246031858_Document_upload_ppgmanual.complete.pdf)

<sup>3</sup> Pursuant to Ventura Rule 2.1.2.2, extensions beyond the 90 days are only available from the Commission, and cannot be granted by the Executive Director.

<sup>4</sup> The Executive Director's failure to satisfy his ministerial duty should not affect the status of the application. To conclude otherwise would allow two wrongs to make a right by allowing inaction on both the City and Executive Director's parts to extend the life of an application to survive beyond a reasonable timeframe.

**B. The City Failed to Adopt a Resolution of Application for its New Detachment Application**

Because the original application lapsed, the City's application submitted on July 26, 2010 must be considered a new application. In order to submit the application, the Goleta City Council must first adopt a Resolution of Application to initiate a boundary change. (See Gov't Code § 56652, 56654.) The Goleta City Council has not satisfied this step, which is legally required for resubmission. Neither your Executive Director nor your Commission should process the City's Application until the Goleta City Council adopts a Resolution of Application.

**C. The Certificate of Filing for the Detachment is Void Because It Was Issued Prematurely and Without Proper Notice**

Prior to issuing a Certificate of Filing, the executive officer must identify the affected agencies and give them written notice that an application has been received. (Gov't Code § 56658)<sup>5</sup> After giving notice, the executive officer must wait at least 20 days before issuing the certificate of filing. (*Id.*) These procedural steps provide affected agencies with an opportunity to act as a check and balance on the Executive Director by allowing the agencies time to review and comment on an application before it is certified and scheduled for a hearing.

Santa Barbara LAFCO's Executive Director is clearly familiar with this procedure, given that he provided written notice to Goleta West on February 6, 2009 after the City's detachment application was originally filed.<sup>6</sup> It appears that the Executive Director erroneously believes that this notice satisfies his duties under Section 56658. This is likely attributable to his assumption that the City's application had not lapsed. However, even if the Executive Director was legally authorized to treat the July 26, 2010 application as an extension of the February 3, 2009 application, Section 56658(b)(1) would nevertheless require the notice to be reissued and the 20-day minimum waiting period to be exhausted before a Certificate of Filing is issued.<sup>7</sup>

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<sup>5</sup> Gov't Code § 56658(b)(1) provides in pertinent part: "Immediately after receiving an application and before issuing a certificate of filing, the executive officer shall give mailed notice that the application has been received to each interested agency and each subject agency, the county committee on school district organization, and each school superintendent whose school district overlies the subject area. The notice shall generally describe the proposal and the affected territory..."

<sup>6</sup> See Notice of Receipt of Application Materials, February 6, 2009.

<sup>7</sup> Section 56658(b)(1) is drafted in a manner that supports an interpretation that re-noticing is required upon resubmission after having been deemed incomplete. Moreover, to the extent the noticing requirement is vague, its interpretation must be resolved in the manner that advances the intent behind the law. The Legislature's intent in requiring that a written notice be provided and a 20-day waiting

The Executive Director may not rely on the actions he took eighteen months ago on a lapsed and incomplete application to satisfy his obligations under Section 56658 in processing the City's new application. Rather, he must comply with all the substantive and procedural requirements of the Act as he would with any other new application. In this case, the Executive Director did not provide the required written notice to Goleta West after receiving the City's detachment application on July 26, 2010. Further, the Executive Director waited less than forty-eight hours to issue the Certificate of Filing. This unseemly haste impairs the ability of Goleta West and other affected agencies to meaningfully participate in the Commission's proceedings and creates a risk that the public will perceive the Commission's procedures as lacking in transparency.

Since the Executive Director did not comply with the notice and waiting period requirements of § 56658, Goleta West respectfully submits that the Certificate of Filing purportedly issued for the City's application on July 28, 2010 is null and void.

#### **D. A New Property Tax Exchange Agreement is Necessary**

As a new detachment application, a new tax exchange agreement must be negotiated. (Rev. & Tax Code § 99.) The tax exchange agreement for the original application was adopted on May 5, 2009. Renegotiating the tax exchange agreement is particularly prudent in this case, in light of new information that has come to light in the last fifteen months since the original agreement was signed.

In letters dated April 9 and May 4, 2009 (attached), Goleta West urged the County of Santa Barbara (which was designated as Goleta West's tax exchange negotiator under Revenue and Tax Code section 99) not to conclude negotiations until the information was provided to complete the City's February 4, 2009 detachment application. In particular, Goleta West was concerned that it was not possible for the parties to engage in a meaningful negotiation without information about the scope of the City's proposed service obligation or the method proposed to finance those services. Goleta West's position on this matter has not changed; the City's June 26, 2010 application must be treated as a new application and a property tax exchange negotiation should occur on that application if and when it has been deemed complete.

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period be completed was clearly to ensure fairness and equity to an agency whose organization will be the subject of a fundamental change by providing enough time for the agency to review and comment on the application. In light of those public policy reasons, Section 56658(b)(1) must be interpreted to require ample notice. Concluding otherwise would mean that an agency has no right to review the revisions and changes made to a previously incomplete application, no matter how significant those changes may be or how much time has elapsed. We do not believe that the Legislature intended the reorganization process to allow one agency to ambush another.

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Given that the City's application has lapsed and that the original property tax exchange agreement was based on incomplete information, we respectfully request that your Commission direct the Executive Officer to inform the City that renegotiation of a property tax exchange agreement will be required with its resubmitted application once it has been deemed complete.

**E. Conclusion**

By allowing eighteen months to elapse without providing the information necessary to complete the detachment application, the City's application has lapsed. As such, the July 26, 2010 application must be treated as a new proposal. As with any new proposal, the Act requires that the submitting agency adopt a Resolution of Application prior to submitting it to LAFCO, the Executive Director provide written notice to affected agencies and wait at least 20 days prior to issuing a Certificate of Filing, and the applicant negotiate a property tax exchange agreement with the affected agency prior to a LAFCO hearing on the proposal.

None of these procedural steps have been satisfied with respect to the City's July 26, 2010 application.

For those reasons, Goleta West respectfully reiterates its request that your Commission direct the Executive Director to treat the City's proposal as a new application, require Goleta City Council to adopt a Resolution of Application before submitting its application, rescind the Certificate of Filing, initiate a new property tax exchange negotiation, and process the City's application in a manner consistent with the Act.

If you have any questions or would like to discuss this matter further, please feel free to contact either me or Steven A. Amerikaner, District General Counsel, at the number above.

Sincerely,



Alexandra M. Barnhill  
Assistant General Counsel  
Goleta West Sanitary District

cc Board of Directors, Goleta West Sanitary District  
Mark Nation, General Manager, Goleta West Sanitary District  
Bob Braitman, LAFCO Executive Director  
Bill Dillon, LAFCO Counsel  
Dan Singer, City Manager, City of Goleta  
Tim Giles, City Attorney, City of Goleta  
Doreen Farr, Supervisor, County of Santa Barbara

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Attachments:

1. GWSD Letter to Assistant County Executive Officer re Property Tax Exchange Agreement dated April 9, 2009.
2. GWSD Letter to County Board of Supervisors re Property Tax Exchange Agreement dated May 4, 2009.
3. GWSD Letter to SB LAFCO re Lapse of City Application dated June 29, 2010.
4. GWSD Letter to SB LAFCO re Incompleteness of City's Detachment Application
5. Executive Director's Letter to City re Incompleteness
6. Notice of Receipt of Application Materials, February 6, 2009.

SB 554359 v1:006888.0070

**GWSD Letter to Assistant County Executive Officer re  
Property Tax Exchange Agreement dated April 9, 2009**

ROUTE TO:

2009 APR -9 PM 2:54

RETURN INSTRUCTIONS:

April 9, 2009

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**HAND DELIVERY**

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Assistant County Executive Officer  
County of Santa Barbara  
105 E. Anapamu Street  
Santa Barbara, CA 93101

RE: Property Tax Exchange Negotiations Related to Proposed Detachment from Goleta West Sanitary District

Dear Mr. Baker:

This letter is submitted on behalf of the Goleta West Sanitary District (Goleta West) with respect to the application submitted to the Santa Barbara Local Agency Formation Commission (LAFCO) by the City of Goleta (City) proposing that certain Goleta West territory be detached from the District. Pursuant to Revenue and Tax Code Section 99, the County soon will be negotiating on behalf of the District a tax exchange agreement with the City. While we disagree with the County Counsel's decision not to recuse the County from this role as stated in his March 20 letter, we remain hopeful that the County will fulfill its fiduciary duty and negotiate this tax exchange at arms-length on behalf of Goleta West.

This letter sets forth Goleta West's positions with respect to the negotiations.

**Need for Additional Information**

The City's application to LAFCO was submitted on February 4, 2009. Goleta West sent a letter to LAFCO on February 11 pointing out significant omissions from the application. LAFCO forwarded Goleta West's letter to the City, but the City has not yet responded to it. A copy of our February 11 letter to LAFCO is enclosed.

The deficiencies Goleta West identified make it very difficult for the County to engage in meaningful negotiations over the terms of a tax exchange agreement. We believe that, at a minimum, the following questions must be answered by Goleta before the negotiations begin:

1. In light of the City's proposal that it receive 78% of Goleta West's current reserves and future property taxes, is the City willing to accept the obligation to pay 78% of all treatment plant costs, including O&M, the pending upgrade, and future capital needs that, absent the detachment, would be obligations of Goleta West? If not, what share of these three categories of cost is the City prepared to accept?
2. Is the City willing to commit to pay the costs of the pending upgrade with funds it receives from Goleta West's property tax reserves reserves by the deadline set by the Regional Board and the Goleta Sanitary District?



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3. Will the City agree to a LAFCO term and condition requiring that it assume Goleta West's contractual obligations to the Embarcadero Municipal Improvement District (EMID), including providing wastewater collection system operations, maintenance, repair and rehabilitation, as set forth in the existing agreement between Goleta West and EMID?
4. Will the City agree to a LAFCO term and condition requiring that it enter into one or more extra-territorial service agreements with the owners of parcels north and west of the City boundary which are currently within the boundaries of the District?
5. Will the City agree to a LAFCO term and condition requiring that it pay Goleta West a "wheeling charge" to transport wastewater from the City boundary to the regional wastewater treatment plant to pay a fair share of the O&M and capital costs of the sewer mains and pumping facilities used by that wastewater stream?

### **The City's Proposal to Reallocate Property Taxes**

The City has proposed that the tax exchange agreement provide for reallocation of 78% of the future property taxes from the District to the City. The City's position is based on its claim that the area proposed for detachment includes real property constituting 78% of the assessed value of all property in the District.

Goleta West believes the City's proposal is fundamentally flawed because it fails to reflect the actual shift in sewer service responsibilities that will occur if the detachment is implemented. Indeed, the shift in sewer service responsibilities to the City will be between 43% and 66%, depending on which measure of "service responsibilities" is chosen.

The proposed detachment area includes:

- o 43% of the registered voters of the District as of November 2008.
- o 47% of development potential of the District
- o 51% of the land area of the District
- o 52% of the total wastewater flow of the District for 2008-09.
- o 66% of the collection system (measured in linear feet without considering pipe diameter)

Goleta West respectfully submits that the appropriate measure of "service responsibility" should be based on two factors: current wastewater flow and future development potential, for the following reasons.

Historically, Goleta West has used property tax revenues (and associated interest earnings) for its capital projects and street sweeping. There are two kinds of capital projects: activities related to the regional wastewater treatment plant and activities related to the collection system. Goleta West is one of five participants in the treatment plant, which is owned by Goleta Sanitary District. Its participation is governed by a contract dating back to the 1960s, which requires Goleta West to pay approximately 40% of the costs of the plant. Under that contract, Goleta West has agreed to participate in periodic capital projects for the plant, including construction of the ocean outfall in the early 1990s.

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The most costly capital project involving the wastewater treatment plant is the planned upgrade to full secondary treatment levels. The upgrade was mandated by the Regional Water Quality Control Board as a part of a settlement agreement with Goleta Sanitary signed in 2004. Under the settlement agreement, all construction financing must be acquired by December 31, 2010. The settlement agreement also imposes a timeline for construction. The treatment plant is currently being engineered and designed, and is scheduled to be under construction in March 2010. For that schedule to be met, Goleta Sanitary District will want to have firm assurances that all treatment plant participants have the funds on hand to meet their obligations.

The current estimated cost of that project is approximately \$50 mm and the District's 40% share of that expense is approximately \$20 mm. The District has long planned to eschew borrowing and instead finance its obligation from its reserves, which consist of property taxes and associated interest earnings.

Goleta West intends to use future property tax revenues for similar purposes, including annual collection system rehabilitation, replacement and repair work. To cite one example: Goleta West recently completed construction of a new sewer main in Hollister Avenue to replace an existing main substandard in size and in need of rehabilitation and repair. The project cost \$3.2 mm, and was paid for with reserve fund derived from property tax revenues.

Goleta West's financial consultant has estimated that the District's Capital Improvement Plan ("CIP") expenditures between 2011 and 2029 will be \$47.7 mm, including \$31.8 mm for the treatment plant upgrade and other plant capital expenditures during this period.

If the City's proposal to reallocate 78% of future property taxes is accepted by the County on behalf of Goleta West, Goleta West will be left with 48% of the wastewater flow and just 22% of the capital funds needed for the facilities that handle that flow. Goleta West's capital improvement plan cannot be sustained if the District's share of the property tax revenues is reduced to 22%.

To make up the shortfall, the District will be compelled to quadruple annual sewer service charges to District customers.. This conclusion appears in a study of the fiscal impacts of detachment recently prepared for Goleta West by Raftelis Financial Consultants, Inc. Of course, since sewer service is considered a property-related fee under Proposition 218, the ratepayers could block the sewer service charge increase by a simple majority protest.

If that were to occur, the District would be unable to fulfill its contractual obligation concerning the treatment plant upgrade, and would be unable to implement its Capital Improvement Program, which is needed to ensure that the collection system operates in an environmentally-responsible way that complies with state and federal regulations.

There is one additional and important point. At present, the District uses about 55% of its contractual entitlement in the treatment plant. In other words, the District pays for capacity in the plant that it is not currently using, and that it is holding to accommodate future development. The amount of future development potential within the City of Goleta is about equal to the amount of future development potential in Isla Vista, based on a 2006 study of future development patterns completed by Dudek & Associates ("Dudek Study").

If the allocation of property taxes and treatment plant capacity rights fails to consider future development potential, the City or the District could find itself with additional plant capacity that it will never need or, possibly, an allocation of plant capacity that will be inadequate for its future development

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needs. Thus, the split of property taxes and plant capacity should take account of the future development potential of the City compared to Isla Vista.

### Proposed Negotiating Positions

Based on the foregoing, we urge the County to assert the following positions on behalf of Goleta West in the upcoming negotiations with the City of Goleta:

1. As a condition of a tax exchange agreement, the City must agree to execute an agreement with Goleta Sanitary District under which it will assume the following portion of Goleta West's existing obligations to Goleta Sanitary with respect to the regional treatment plant:
    - a. 52% of annual O&M expenses, to be adjusted annually to reflect actual wastewater flows from properties served by the City.
    - b. A share of the costs of the pending upgrade project, and all future capital expenditures related to the treatment plant, calculated as follows:
      - (i) Utilized Capacity. This term refers to the portion of the Goleta West contractual capacity of 3.11 mgd that is actually utilized. For 2008-09, Goleta West is utilizing about 55% of this capacity, or 1.7 mgd. This Utilized Capacity should be allocated to the City and Goleta West in accordance with their respective wastewater flows in any given year, and the allocation should be adjusted annually.
      - (ii) Additional Capacity. This term refers to the portion of the Goleta West contractual capacity of 3.11 mgd that is not actually utilized in a given year, but instead is above and beyond the District's needs in that year. For 2008-09, Goleta West is holding about 45% of its total contractual capacity as Additional Capacity, or 1.4 mgd. This Additional Capacity should be allocated to the City (47%) and Goleta West (53%) in accordance with their future development potential as analyzed in the Dudek Study, and should be adjusted every five years to reflect the most current available information concerning development potential.
  2. As a condition of a tax exchange agreement, the City must agree to (i) reduce its proposal for a share of the Goleta West property tax reserves from 78% to 52% (as adjusted in accordance with paragraph 1,b) , (ii) legally pledge those reserves to funding the treatment plant obligation noted in paragraph 1 above and other projects identified in the Goleta West CIP within the City's boundaries, and (iii) adopt Goleta West's CIP as the City's Sewer CIP for the portions of the collection system within the City boundaries and the areas the City will be required to serve under an extra-territorial service agreement (e.g., EMID).
- This proposal is based on the simple fact that detachment will not alter the reality that the City and the District will be inextricably dependent upon one another for the proper operation of the wastewater collection and disposal system. If the City is unable to make its payments for O&M and capital costs of the treatment plant, the other partners in that plant (including Goleta West) will be required to make up the deficit. This duty is not mitigated by Goleta West's ability to sue the City to recover any funds expended by Goleta West. Sewer plant operations cannot be suspended while lawsuits are being resolved.
3. The District's reserves of \$30.4 mm should be segregated into funds comprised of connection fees and capital facility fees (and interest earned thereon) ("Capital Fee Reserve"), which Goleta West estimates to be about \$2.5 mm of the total, and funds comprised of property tax revenues (and interest

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earned thereon). Funds in the Capital Fee Reserve cannot lawfully be transferred to purposes other than capital related to the wastewater system (under Gov't Code Sec. 66000), and those funds shall be allocated to the City and Goleta West in accordance with the Goleta West Sewer CIP.

4. The tax exchange agreement should provide that for the 2010-11 tax year, the City will receive 52% of the property taxes currently allocated to Goleta West (adjusted in accordance with paragraph 1,b to take into account Additional Capacity), which equals the estimated quantity of wastewater generated in 2008-09 by users within the City's boundaries. For each year thereafter, the City will receive an allocation of property taxes that equals its share of the capital costs for the treatment plant calculated per paragraph 1,b.

This allocation should be calculated annually to ensure the property tax exchange is revenue neutral in the future on both the City and Goleta West, and to account for the possibility that (i) development will be more intensive in Isla Vista than in the City, thus increasing wastewater flows and associated capital expenses, and (ii) development potential may be increased for properties in one area compared to another, thus requiring a reallocation of Additional Capacity.

5. The tax exchange agreement should provide that the City must place all property taxes received as a result of the tax exchange agreement into a dedicated reserve for operations (including street sweeping), maintenance, repairs, and long-term capital needs of the sewer system as shown on the Goleta West CIP, except to the extent that those revenues are replaced by revenues generated by sewer service charges. The purpose of this requirement is to ensure that there are adequate funds available for future capital needs, and that a failure to raise sewer service charges in the future (whether due to Prop 218 protests or other reasons) does not impair the City's ability to fund those needs. We believe that such a condition is needed for both public policy (as explained above) and CEQA reasons.

#### **Request to Attend Negotiations**

Goleta West respectfully request that the County invite District representatives to attend the property tax exchange negotiations.

Please contact me if you have any questions concerning the foregoing positions. We look forward to consulting with the County and providing input on the terms as they are negotiated.

Sincerely,



Steven A. Amerikaner

Enclosure

cc Board of Directors, Goleta West Sanitary District  
Mark Nation, General Manager, Goleta West Sanitary District  
Michael Ledbetter, Deputy County Counsel

SB 501599 v14:006888.0070