

**GWSD Letter to LAFCO dated February 11, 2009 re City's Application
Completeness**

February 11, 2009

BY HAND DELIVERY

Mr. Robert Braitman, Executive Officer
Santa Barbara Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara, CA 93101

Steven A. Amerikaner
Alexandra M. Barnhill

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RE: City of Goleta Proposal for Detachment from Goleta West Sanitary District

Dear Mr. Braitman:

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

On February 3, 2009, the City Council of the City of Goleta ("City") approved a resolution initiating proceedings for the detachment of territory from the District ("Resolution"). We understand that you announced to the LAFCo Board on Thursday, February 5, 2009 that you had received the Resolution and other application materials ("Application") from the City.¹ It is also our understanding that pursuant to California Government Code Section 56658, you have thirty days to deem this Application complete or incomplete. The purpose of this letter is to identify a number of deficiencies in the City's application which the District believes makes it incomplete as a matter of law.

I. The Format of Goleta's Detachment Application Does Not Comply with the Law

Pursuant to Government Code Section 56652, each application for a change of organization must be in the form prescribed by your agency and must contain all of the following information:

- a) A petition or resolution of application initiating the proposal.
- b) A statement of the nature of each proposal.
- c) A map and description, acceptable to the executive officer, of the boundaries of the subject territory for each proposed change of organization or reorganization.
- d) Any data and information as may be required by any regulation of the commission.
- e) Any additional data and information, as may be required by the executive officer, pertaining to any of the matters or factors which may be considered by the commission.
- f) The names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the report by the executive officer and who are to be given mailed notice of the hearing.

We believe that the City's Application does not satisfy these requirements. While the City's Application includes a Resolution² and several maps of the subject area,³ it does not include a map specifically

¹ Our office received a courtesy copy of the Application on February 5, 2009.

² The Resolution appears to be missing a page, because the Resolution provided to the District does not include a Section 1 or Section 2.

³ The Application includes three maps. The "Location Map" shows Goleta West Sanitary District's boundaries, Goleta Sanitary District's boundaries, the City of Goleta's boundaries, the City of Santa

B. Conclusion

A plan for providing services is not a mere formality; it is a critical element of a reorganization application that indicates the applicant's intentions for providing service for a particular project. A plan for providing services provides:

1. The information needed for LAFCO to render an informed decision on the project.
2. Assurance to LAFCO and the community that the detached territory will be properly served.
3. A basis for determining the impact of the detachment for California Environmental Quality Act purposes.
4. Information to property owners, districts and interested individuals who may be affected by the reorganization.

The deficiencies of the City's application prevent these purposes from being fulfilled.

Because the July 26 materials do not contain the information needed to the cure the deficiencies noted in February 2009, Goleta West respectfully submits that the City's application continues to be materially and substantively deficient. Moreover, the Certificate of Filing appears to have been issued in error, since it is appropriate only if the application is complete (§ 56658). Goleta West hereby reiterates its request that you direct the Executive Officer to rescind the Certificate of Filing and provide a letter of incompleteness to the City, identifying the substantive flaws of its application.

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 Officer
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

Attachments:

1. Letter from Goleta West to LAFCO dated February 11, 2009 re City's Application Completeness.
2. LAFCO Incompleteness Determination dated February 17, 2009.

identifying the "boundaries of the subject territory" for the detachment. (*See*, Gov't Code § 56652(c).) Additionally, although the City includes a comprehensive list of parcels that will be affected by the detachment, the Application does not include a legal description of the exterior boundaries of the detachment area. (*Id.*) By law, both a map and a legal description of the detachment boundaries must be provided. (*Id.*; 57 Ops. Calif. Att'y Gen'l 423 (1974) (petitioners bear burden to provide boundaries of area affected by a proposed change of organization)).

II. The Application Fails to Include Legally Required Information Regarding a Plan for Providing Services.

Under Government Code Section 56653(b), when a local agency submits a resolution of application for a change of organization, it must include a plan for providing services. Specifically, the plan for providing services must include all of the following information:

1. An enumeration and description of the services to be extended to the affected territory.
2. The level and range of those services.
3. An indication of when those services can feasibly be extended to the affected territory.
4. An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
5. Information with respect to how those services will be financed.

(Gov't Code § 56653(b).) In addition to the statutorily required plan, Santa Barbara LAFCo requires that an application provide supplemental information, consistent with the authority in Government Code Section 56652(d). Santa Barbara LAFCo's "Policies for Encouraging Orderly Formation and Development of Agencies" provide as follows:

Any proposal for a change or organization or reorganization shall contain sufficient information to determine that adequate services, facilities, and improvements can be provided and financed by the agencies responsible for the provision of such services, facilities, and improvements.

The City's Application includes a Proposal Justification Questionnaire ("Questionnaire"). In responding to the Questionnaire regarding its plan for providing services, the City provided the following conclusory paragraph:

The services to be rendered as a result of this detachment are sewer collection, treatment, and disposal services, including maintenance and oversight of the physical plant and infrastructure. These services are funded through user fees paid by those customers receiving said service. The City of Goleta would continue to provide sewer services by either hiring in-house staff to perform and oversee the services; or by contracting out these services in a fashion similar to the arrangement Goleta West now has with Goleta Sanitary District. The City of Goleta would continue to bill on the County tax rolls for the costs of providing these services.

Barbara's boundaries, and the Coastal Zone. The "General Plan/Coastal Land Use Plan Designation Map" depicts residential, commercial, office, and other districts/uses of land in the area. The "Pending and Proposed Development Projects Map" identifies projects that are pending, approved and under construction in the area. None of these maps specifically designates the proposed detachment area.

(Questionnaire Response #17.) This paragraph represents the City's sole description of its plan for providing services as required by Government Code Section 56653(b) and the Policies for Encouraging Orderly Formation and Development of Agencies. For the reasons stated below, we do not believe this paragraph provides sufficient information or detail to satisfy the statutory requirements or to notify LAFCo and the public of Goleta's plan for providing services in the event of a detachment from the District.

A. The City's Description of the Services to be Provided is Inadequate.

As noted above, a complete application must include an "enumeration and description of the services to be extended". (See, Gov't Code § 56653(b)(1).) The City identified "sewer collection, treatment, and disposal services, including maintenance and oversight of the physical plant and infrastructure" as its sole description thereof. (*Id.*; Questionnaire Response # 17.) This description is incomplete in several ways.

First, the City fails to specifically identify who will provide the listed sewer services. Instead, the City names several potential entities that could potentially perform the services.⁴ If the City is going to "hire in-house staff to perform and oversee the services," the City has not specified the necessary personnel and resources to take on that obligation or demonstrated an understanding of the labor market for certified wastewater operators, which is smaller and more competitive than the general labor market. If, on the other hand, the City is going to "contract out these services," the City has not specified the contracting party or indicated the terms and conditions of such a contract. Without this information, there is no way for LAFCo or the public to know if the City's proposal is feasible, financially viable or whether the current level of service will be maintained.

Second, the City's plan does not specify where the City will provide the listed sewer services. Will the City provide sewer services solely to parcels located within the City's boundaries or will it also provide sewer services outside its boundaries through an out-of-area service agreement? How will the Embarcadero Municipal Improvement District ("EMID"), which is presently served by the District through an out-of-area service agreement, receive service after detachment, since there will no longer be physical contiguity between the EMID area and the District? How will the parcels north of the City boundaries and within the District boundaries receive service since there will not be physical contiguity?⁵

Third, it is unclear how the City will provide the "maintenance and oversight of the physical plant and infrastructure." Presumably, the City's reference to the "physical plant" refers to the sewer treatment plant. However, the sewer treatment plant is owned and maintained exclusively by Goleta Sanitary District. Since the City has not proposed to detach parcels served by the Goleta Sanitary District as a part of this application, it is not clear how the City could take on an obligation to maintain and oversee the treatment plant.

⁴ See also Questionnaire # 18 regarding the ability of the City as the annexing agency to provide services. In that section the City included the following statement: "The City has a public works department but does not currently operate municipal utility services. As a result, the City would seek to: contract oversight and maintenance of the services to Goleta Sanitary District; contract such services back with the Goleta West Sanitary District; or establish a utility division under the general direction of the City's Community Services Director/City Engineer." This amounts to an admission that the City lacks the expertise to provide a highly regulated and environmentally sensitive service, and that it does not have any firm understanding of where it would acquire that expertise.

⁵ To the extent the detachment triggers the necessity for the City, the District or both to serve areas in the Goleta Valley through an out-of-area service agreement, the City's Application must also demonstrate how such an arrangement is consistent with the Santa Barbara LAFCo "Standards for Out-of-Agency Service Agreements". The City has not made such a showing.

Finally, the City's description of what services will be provided is silent regarding the performance of street sweeping services. If parcels within the City are detached from the District, will street sweeping within the detachment area cease? If the City intends street sweeping to continue, who will provide that service and at what cost?

By failing to identify basic information about who, what, when, where, and how this critical public service will be provided, Goleta has not met the legal requirements of Government Code Section 56653(b)(1). As a result, the City leaves LAFCo and the public with no clear picture of what the proposal to provide "sewer collection, treatment, and disposal services" means.

B. The City Fails to Describe the Level and Range of Services.

An application for detachment must describe the "level and range" of sewer services. (See, Gov't Code § 56653(b)(2).) The City's Application fails to discuss whether the level of sewer service currently provided by the District will be maintained. Nor does the Application describe whether the City will treat the sewage at a primary, secondary, or tertiary level, consistently with the Waste Discharge Requirements (WDRs) of the Regional Water Quality Control Board (RWQCB) and the other regulatory restrictions on the operation of this complex and environmentally sensitive service.

With respect to the range of sewer service, the Application does not specify if the City will continue the District's practice of accepting wastewater of varying compositions and strengths. Nor does this Application describe how Goleta will provide recycled water for appropriate uses to conserve scarce water supplies.

All of this information is critical to the Application because it can significantly impact cost and quality of service and demonstrate the City has an appropriate comprehension of the highly regulated utility business which it proposes to enter. This information must be included to allow your Commission to understand the implications of the City's application.

C. The Application Does Not Indicate When Services Can Be Provided.

An application for detachment must indicate "when those services can feasibly be extended." (See, Gov't Code § 56653(b)(3).) Nothing in the Questionnaire indicates when the City would be prepared to take over the sewer services to the area it seeks to detach. Even if the City implied that it would take over the services immediately upon detachment, this appears to be infeasible. To provide the services immediately upon detachment the City must have either hired staff with the expertise to run a sewer system or entered into a binding agreement with a sewer service provider. To our knowledge, the City has not taken, or even meaningfully explored, either step. We expect that you will require this information prior to deeming this Application complete.

D. The City Did Not Include Any Information about Improving or Upgrading Structures.

The City is required by law to identify any "improvement or upgrading of structures" that the City would impose when the detachment is completed. (See, Gov't Code § 56653(b)(4).) Yet, the City does not identify a single improvement or upgrade in its Application. The District is deeply concerned about this gap in the Application because there are several identifiable structural improvements to the District's wastewater system that are currently in the planning stages, some required by the Regional Water Quality Control Board or necessary to avoid fines and penalties under state and federal environmental laws.

Most notably, the District is under a contractual obligation to contribute approximately 40% of the funds required to upgrade the Goleta Sanitary District's treatment plant. To satisfy the terms of a settlement agreement with the Regional Water Quality Control Board, the treatment plant upgrade must be completed by 2014. If this target is missed, the RWRCB could repeal the waiver it has granted to the treatment plant, resulting in penalties or further restrictions on its use, either of which will significantly impact service and cost. The silence of the City's Application on this pending capital project suggests that the City does not intend to contribute towards that effort. If that inference is correct, the Application should disclose the impact of that intention on the ability of the other parties with an interest in the treatment plant to complete the capital project and it should prepare an environmental evaluation under the California Environmental Quality Act (CEQA) analyzing the consequences of this decision.

Similarly, the District recently conducted a study which analyzed the condition of the EMID collection system. That study indicates that the EMID system will need repair and rehabilitation in the near future. Without such upgrades, the EMID system is at heightened risk of break down and spills, resulting not only in additional, unnecessary costs, but potential environmental injury and legal liability. Does the City intend to take responsibility for this capital project? Does the City intend to take responsibility for EMID's system prior to that work, including potential civil and criminal liability in the event of a collector line break or a wastewater spill?

The City must include information about the treatment plant and EMID system improvements, among others, not only as a matter of law, but also as a practical matter in order to allow the other service providers to prepare for this outcome.

E. The City's Proposed Method of Financing Sewer Services Will be Insufficient to Maintain the Current Level of Service.

Under the statute and Santa Barbara LAFCo policy, the City must identify how the services to be provided will be financed. (See, Gov't Code § 56653(b)(5).) The City's Application indicates that "[t]hese services are funded through user fees paid by those customers receiving said service" and that such fees will be collected "on the County tax rolls." (Questionnaire Response #17.) This statement is materially incorrect. At present, the District's wastewater services are funded through two major independent sources of revenue: annual user fees AND property taxes paid by owners of property in the District. The former is used for operations, maintenance and repair. The latter is used for street sweeping and capital projects, including collector and main line rehabilitation and the required treatment plant upgrade.

The City's Application only addresses annual user fees. No mention is made of connection fees for new sewer connections. More significantly, the Application is silent concerning the City's intentions regarding property tax revenues. At the February 3, 2009 City Council meeting, City representatives made clear that these property tax revenues would be used for "general City purposes" and not for wastewater system capital needs. Given that public admission, the City's Application should address a core question of interest to LAFCo and the public: Will the City raise the annual user fees paid by City residents to collect those necessary capital funds and, if so, by how much and when?⁶ Likewise, the City should address the corollary question: Will the detachment result in an increase in sewer fees to District customers outside the City boundaries?

The District believes that the City will be forced to raise annual sewer fees if it diverts property tax revenues to general City purposes. According to a recent independent study, which is summarized in the

⁶ If the City intends to increase annual user fees to cover future capital needs, it should do more than simply disclose that intent. It should also disclose the uncertainties of implementing that intent given that any annual user fee increase will be subject to Proposition 218's requirement of a majority protest proceeding for such fees (Calif. Const. Art. XIII D, § 6(a)).

attached Exhibit A, if property taxes are no longer available for wastewater system capital needs, the annual user fees must double from current levels in the next five years to maintain existing service levels.

The District provided this information to the City by letter and raised the issue at the City's February 3, 2009 meeting, and thus is very surprised the City did not refer to it in its Application. We were even more surprised when, at the City Council meeting, City staff told the City Council and the public that the City's application to LAFCo does not include any increase in annual sewer fees. This remarkable statement suggests the City either knows that a fee increase will be needed and has decided to remain silent on the subject to avoid an adverse public reaction, or that it does not understand that a fee increase will result, thus reflecting a distressing lack of understanding of the finances of the utility services it wishes to provide. In either event, LAFCo would do well to require more information from the City on these issues to ensure that its decision-making is fully informed.

These facts leave a significant unanswered question: How will the City finance future wastewater system capital needs? The fact that this question is unanswered in the application is in direct contradiction of the requirements of Government Code Section 56653(b)(5).

III. The Application Does Not Provide an Adequate Project Description for CEQA Purposes.

The City's Application asserts that the detachment is categorically exempt under CEQA Class 20 (Questionnaire Paragraph #21). However, we believe that the Application is missing key information needed to invoke this exemption.

Specifically, the Application does not explain how the City will finance its share of the planned treatment plant upgrade described above. The Application states that the City will request a "proportionate share" of the District's reserves, which have been earmarked and set aside to pay for the District's portion of the costs of that capital project. The Application is silent on the City's intentions with respect to these reserves. Will the City pledge to use that money to pay for the treatment plant upgrade? Will it place those funds in a dedicated trust account for that purpose? Alternatively, will the City use those reserves for general City purposes? If it does so, how will it raise the funds needed to pay for its share of the treatment plant upgrade? Moreover, significant legal issues arise if the City diverts funds derived from sewer service revenues, rather than property taxes, for non-sewer services. (E.g., Calif. Const. Art. XIII D, §6(b)(2).)

The planned upgrade of the treatment plant is an environmental betterment project intended to improve the quality of the effluent discharged by the treatment plant into the ocean. If the upgrade project is delayed, downsized or cancelled altogether as a result of the detachment and the City's diversion of the reserve funds for other purposes, then the detachment cannot be considered to be categorically exempt.

Absent detailed information about (i) the City's intentions with regard to the District's annual property tax revenues and its reserves and, (ii) the City's intentions with regard to securing the funds needed for the treatment plant upgrade and other capital projects, it is impossible to determine whether or not the detachment will have a significant effect on the environment. Thus, the Application is inadequate as a project description under CEQA and the use of the Class 20 CEQA exemption is inappropriate.

Moreover, CEQA categorical exemptions may not be relied upon when the circumstances of a particular case suggest the potential for environmental impacts not countenanced by other projects within the text of a particular exemption. (State CEQA Guidelines, § 15300.2.) Several such possible impacts suggest CEQA review is required in this case: (i) the risk that the legally required upgrade of the treatment plant will be adversely affected by the diversion of funds pledged for that purpose, (ii) the risk that the EMID collection system will be unable to finance upgrades necessary to operate that system lawfully and in an

Mr. Robert Braitman, Executive Officer
February 11, 2008
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environmentally responsible manner, and (iii) the risk that the proposed change of organization will make it difficult to provide efficient and effective services in the balance of the Goleta West Sanitary District, which will have non-contiguous service areas if the detachment is approved.

IV. Conclusion

The District has an interest in ensuring that any change in its boundaries does not cause deterioration in the efficiency and effectiveness of the service provided its customers by the District or by the City as a successor agency. For the reasons stated above, we respectfully submit that the City's Application does not comply with the requirements of Government Code Sections 56652 and 56653 or Santa Barbara LAFCo's policies. As such, we respectfully urge you to determine that the City's application is incomplete and require the City to provide further information to assist your Commission and the community we all serve in evaluating the City's proposal.

As also demonstrated above, the Application is not adequate as a project description under CEQA because key information is missing and the claimed CEQA exemption cannot be relied upon here.

If you have any questions or would like to discuss this matter further, please feel free to contact either me or Steven 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
Bill Dillon, LAFCo Counsel
Dan Singer, City Manager, City of Goleta
Tim Giles, City Attorney, City of Goleta

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LAFCO

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RECEIVED

February 19, 2009

FEB 20 2009

Alexandra M. Barnhill
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Brownstein Hyatt et al
21 Carrillo Street
Santa Barbara CA 93101

GOLETA WEST
SANITARY DISTRICT

City of Goleta Detachment from Goleta West Sanitary District (LAFCO 09-1)

Dear Alexandra:

I am writing in response to your February 11 letter regarding this subject. We have written to the City of Goleta requesting additional information for this application. A copy of that letter will be provided to you.

With regard to one of the issues raised in your letter there is no question of the specific area that is the subject of this proposal. It is the portion of the Goleta West Sanitary District that is located within the boundaries of the City of Goleta. The boundaries of both agencies are established lines, records of which are known to our office, County Surveyor, County Assessor and State Board of Equalization.

The question of whether a description of a proposal is acceptable to our office is based in part on whether the County Assessor and State Board of Equalization find the description is sufficient. If it is determined that a metes and bounds legal description of the proposal is needed we will require it at that time.

(Note: in similar situations such as annexation of the Orcutt Fire Protection District to the Santa Barbara County Fire Protection District, a metes and bounds description was not required since, as with this case, the boundaries of the proposal area already defined.)

We will evaluate the proposal further when we have received a response from the City for additional information. Until that time we will not issue a Certificate of Filing.

Alexandra Barnhill
February 19, 2009
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If you have other questions or comments do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Braitman", followed by a horizontal line extending to the right.

BOB BRAITMAN
Executive Officer

cc: Mark Nation, General Manager, Goleta West Sanitary District
Dan Singer, City Manager, City of Goleta

LAFCO Incompleteness Determination dated February 17, 2009

LAFCO

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February 17, 2009

RECEIVED

Dan Singer
City Manager
City of Goleta
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Goleta, CA 93117

FEB 20 2009

GOLETA WEST
SANITARY DISTRICT

City of Goleta Detachment from Goleta West Sanitary District (LAFCO 09-1)

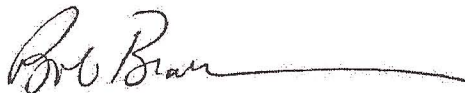
Dear Dan:

We have reviewed the application materials submitted by the City for the proposed detachment from the Goleta West Sanitary District. We have not scheduled the matter for hearing by the Commission pending receipt of additional information as specified in this correspondence.

We would like the City to provide a more extensive response pertaining to the transfer of service responsibilities from the Goleta West Sanitary District to the City of Goleta. This may take the place of a more complete or detailed Plan for Providing Services. Please consider the issues been raised in the enclosed letter we received from Alexandra Barnhill on behalf of the Goleta West Sanitary District.

Once we have received the City's response we will consider when we can schedule the proposed detachment for public hearing by the Commission.

Sincerely,



BOB BRAITMAN
Executive Officer

cc: Alexandra Barnhill, Attorney, Brownstein Hyatt Farber Schreck
Mark Nation, General Manager, Goleta West Sanitary District