

August 17, 2010

BY HAND DELIVERY

Alexandra M. Barnhill
805.882.1410 tel
805.965.4333 fax
ABarnhill@bhfs.com

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

RE: City of Goleta Proposal for Detachment from Goleta West Sanitary District
Incompleteness of City's Detachment Application

Dear Chair Short and Commissioners:

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

A separate letter addresses the lapsed status of the City's detachment application. The purpose of this letter is to identify a number of substantive deficiencies in the City's application that Goleta West believes makes it incomplete as a matter of law. Goleta West respectfully requests that you direct that you direct the Executive Officer to provide a letter of incompleteness to the City, identifying the substantive flaws in its application which are described in more detail below. We also ask that you direct the Executive Officer to rescind the Certificate of Filing purportedly issued on July 28, 2010 because it erroneously concludes that the "application contains the information and data required by this Commission and the provisions of state law."

**A. The Detachment Application Does Not Provide the Information
Required to Achieve Completeness**

On February 4, 2009 the City of Goleta ("City") submitted to LAFCO an application to detach parcels within its territory from Goleta West. In rejecting the City's detachment application as incomplete, the LAFCO Executive Officer issued an incompleteness letter dated February 17, 2009 which informed the City that it was required to "provide a more extensive response pertaining to the transfer of service responsibilities from the Goleta West Sanitary District to the City of Goleta." The Executive Officer specifically asked the City to address the substantive deficiencies identified in a letter submitted by Goleta West dated February 11, 2009, which was attached to the February 17th letter. A copy of the February 11 and 17, 2009 letters are attached for your reference.

The City's materials submitted on July 26, 2010 fail to provide the information necessary to adequately address a number of the substantive deficiencies identified.

1. The Application Lacks the Required Map and Legal Description of the Detachment Boundaries

Under Government Code § 56652, each application for a change of organization must include, among other things, a map and a legal description of the detachment area boundaries. The City's application submitted February 4, 2009 did not contain these required elements. It contained a location map, affected parcel information, a General Plan / Coastal Land Use Plan Designation map, a Zoning District map, and a Pending and Proposed Development Projects map. These maps do not provide a legal description or illustration of the existing boundaries and sphere of influence of the City as required by Section 56652. Nor do they provide a legal description or illustration of the proposed territorial change. The maps also fail to depict vital information, such as the location and ownership of infrastructure. Goleta West's February 11, 2009 letter clearly stated that the omission of these items made the application incomplete. (See pgs. 1 – 2.) LAFCO's Executive Officer apparently agreed with this determination as he forwarded this letter to the City as the basis for his determination that the application was incomplete.

The City's July 26, 2010 application does not correct these omissions. In fact, the City's addendum does not contain any new maps or legal descriptions. The City's addendum also fails to update the maps it previously submitted, which are now 18 months old and are likely outdated.

Because LAFCO uses the required boundary legal descriptions and maps for the proposed territorial changes to help determine its reorganization decision, the City's application cannot legally be deemed complete or consistent with Section 56652 until the appropriate maps and legal descriptions are filed.

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

LAFCO's mission includes oversight of the orderly formation and development of local agencies, including the provision of efficient and economical services. The Reorganization Act requires that all service providers document their ability to provide service to the proposed territory in a plan for providing services. (Gov't Code § 56653(b).) The intent of requiring a plan for providing service is to provide LAFCO with sufficient information to ensure that the capacity, cost and adequacy of service within the existing district or city are not adversely impacted by the proposed LAFCO action and that the agency can provide all the services to the subject territory at the same level, or greater, than that presently received by the existing agency territory. (See Government Code §§ 56375(g), 56375(h), 56668, 56653.)

Section 56653 provides that a plan for providing services must contain the following:

1. an enumeration and description of the service to be extended to the affected territory,

2. *the level and range* of those services,
3. an indication of when those services can be feasibly extended to the affected territory,
4. an indication of any improvements 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, and
5. information with respect to how those services will be financed.

As noted above, on February 17, 2009 the Executive Officer informed the City that its application was defective in part because it failed to provide a comprehensive description regarding the transfer of service responsibilities from Goleta West to the City. The materials submitted on July 26, 2010 add three pages of additional information about the City's Plan for Providing Services and include a copy of the tax allocation agreement, a financial analysis, and a proposal from Goleta Sanitary District to contract for operations and maintenance. Even with these additions, however, the City's application remains overly general and fails to provide sufficient detail about the service plan. The substantive deficiencies of the City's application are described in the following sections.

a. The City's Application Oversimplifies the Manner in Which Contractual Service Arrangements Will be Satisfied after Detachment

Among the inadequacies of the City's detachment application raised by Goleta West and the Executive Officer in the February 17, 2009 incompleteness determination was the lack of information about the effect detachment would have on the District's contractual agreements. In particular, there was a question about which agency (the City or Goleta West) would be responsible for providing post-detachment service to property within the Embarcadero Municipal Improvement District (EMID), given that those parcels are not in either agency's territorial boundaries. In its July 26, 2010 materials the City attempts to address this issue by stating that it will "...honor all agreements Goleta West has with other agencies..." and will "...honor all connections to the District's collection system that is transferred to the City, even connections outside of the City boundary..." (July 26 Materials, pg. 1, emphasis added.)

Since the City proposes to act as the successor-in-interest to all Goleta West's agency contracts and connections according to the plan for services, then the City will have the sole responsibility for serving EMID and satisfying Goleta West's other agency agreements. However, even if LAFCO approved the City's detachment application, Goleta West will continue to exist and serve Isla Vista and the unincorporated area within its remaining territory. As such Goleta West will also remain liable for fulfilling its contractual and statutory obligations with its customers and other agencies (such as EMID, the Regional Water Quality Control Board (RWQCB) and Isla Vista Recreation and Park District (IVRP)).

How can both the City and Goleta West honor all agreements simultaneously? Will the agencies treat all agreements as three party agreements and split responsibilities

proportionally? For example, will City have 48% obligation and Goleta West 52% obligation to serve EMID (based on the estimated flow)? If so, how will the proportional flow obligations be determined? Will flow meters be installed? Which agency will bear the expense of such installation? Will the City have direct obligations to the Goleta Sanitary District with respect to the expenses of the regional treatment plant? Will it have capacity rights? In what amounts?

If LAFCO allows the City to stand in Goleta West's shoes, will Goleta West be released from its contractual obligations to the extent that the City assumes them, and will the City and the other contracting party be required to indemnify Goleta West against claims that Goleta West has a continuing contractual obligation after detachment?

These questions illustrate the inadequacies of the City's materials by pointing out the contractual complexities that the City has failed to address. Since those contracts lie at the heart of Goleta West's current provision of service to its customers, the City's materials present a fatally inadequate plan for providing service. To satisfy the requirements of Section 56653, the City needs to specifically identify which agency contracts it intends to succeed to, what portion of those contracts will be assumed, what rights it expects to assume, what the relationship between the City and Goleta West will be after detachment. For shared agreements, the City must also clarify how responsibility will be divided both in performing under the agreement and defending against liability. And, as to all of these service obligations, the City should specify how and to what extent it will accept liability to the Regional Board and other regulatory agencies for compliance with the Clean Water Act and other regulatory requirements. Without this information, LAFCO cannot evaluate the adequacy of the service plan.

b. The City's Application Lacks Basic Service Information

To be considered complete, an agency that proposes to take over the provision of a service (particularly one that is critical to the health and safety of the public and the environment) must describe the service as well as the level and range of that service it will provide. (Gov't Code § 56653(b)(1) - (2).) The City attempts to satisfy its obligation by stating that it will "tak[e] the place of the District" by honoring all agreements and connections Goleta West has with other agencies and providing operation and maintenance services through a contract with Goleta Sanitary District. The City then concludes, without any basis, that "detachment does not and will not result in a reduction of service levels." The City's submission presents no information on which this barebones representation can be assessed.

Among the information the City has failed to include is:

- A description of the size or capacity of the existing infrastructure.
- A capacity analysis that identifies the total number of service units within the City's

boundaries.

- A determination of whether the system is capable of providing service for planned growth and development.
- A list of unserved parcels within its boundaries.
- A statement disclosing its disposition regarding its responsibility to reserve capacity for unserved parcels.
- A description of any required facility or infrastructure expansions and a schedule for completion thereof.

Without the inclusion of this critical information about the demand for and capacity of the sewer system, which is clearly required by Section 56653, it is impossible for LAFCO to determine whether the City is capable of undertaking the proposed service obligation. As a practical matter, the application must be considered incomplete until the City provides this information.

c. The City's Application Contains No Plan for Transferring Wastewater from the City's Boundaries to the Treatment Plant

The City's February 4, 2009 application provided that "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." The June 26, 2010 application provides that "At a minimum, the levels of service currently provided by Goleta West will be maintained." It bears noting that Goleta West does not directly provide sewer treatment or disposal services. Rather, Goleta West provides wastewater collection, transferring effluent from its customers to Goleta Sanitary District's plant pursuant to a contractual agreement, and Goleta Sanitary District provides sewer treatment and disposal services, including maintenance and oversight of the wastewater treatment plant. This simple fact illustrates the City's fundamental misunderstanding of the service obligation it is proposing to undertake.

Given that the City fails to recognize the distinction between sewage collection and treatment, it is not surprising that the City's application fails to address this matter with specificity. One of the most significant gaps in the City's application is its plan for transferring wastewater from the City to Goleta Sanitary District's wastewater treatment plant. Had the City included an infrastructure map with its materials, it would be clear that there is no direct connection of the sewer system within the City's boundaries to the treatment plant. Rather, the sewage flows from the City through pipelines and pump stations in Goleta West's unincorporated territory before it is conveyed to Goleta Sanitary District. Yet, nowhere in the City's application does it account for this transfer. Certainly a plan for providing sewer service cannot be complete

without an explanation of how the wastewater will be conveyed from the customers to the treatment plant.

Presumably the City assumes it will convey wastewater from City parcels through Goleta West's pipes and pump stations, as opposed to building its own pipelines to the Goleta Sanitary District's treatment plant or building its own treatment plant. Indeed, this assumption appears to underlie the City's financial analysis. However, while the financial analysis acknowledges the need to pay Goleta West wheeling charges for the use of its infrastructure, the plan for providing services does not include a proposed contract with Goleta West for such use. Without such an agreement, the City cannot factually claim to be able to provide sewer services at all, let alone at the same or better level than Goleta West is currently providing. We also fail to understand how the City's financial analysis can claim the service will be provided at a lesser cost to the customers when it has failed to take into account this critical aspect of service. The excluded and inaccurate information in the City's application regarding the level and range of service the City will provide renders it incomplete under Section 56653.

d. The City Neither Prepared or Budgeted for a Capital Improvement Plan

The City is required to identify an "improvement or upgrading of structures" that the City would impose when the detachment is complete. (Gov't Code § 56653(b)(4).) The City's February 4, 2009 application did not address capital improvements, which was another reason it was deemed incomplete.

The July 26, 2010 materials merely provide that, "A comprehensive Capital Improvement Program will be developed and updated just as the city currently does with all other capital projects." This implies that the City does not intend to carry over Goleta West's capital improvement program for improvements within its boundaries. Yet the City does not identify any improvements or upgrades it plans to undertake upon detachment. Nor does the City identify any timeframe for developing a new capital improvement plan.¹ The City also excludes capital improvements from its spreadsheet of total annual costs for providing sewer service. Thus, the budget does not represent a realistic picture of the costs of operating the system.

The most notable capital improvement to be addressed is the upgrade of the Goleta Sanitary District wastewater treatment plant. As was noted in Goleta West's August 16, 2010 letter, the property tax exchange agreement set aside \$20 million to cover Goleta West and the City's obligation to upgrade the Goleta Sanitary District's wastewater treatment plant. However, that set aside was based on the estimated cost of the upgrade. If the cost of the upgrade is significantly less than planned, how will the balance be expended and by which agency? If the cost of the upgrade is significantly more than planned, how will the City finance its share?

¹ The City indicates that a six month transition period is necessary for "all maintenance, personnel and contractual services to be considered" but this does not contemplate a CIP update.

Given that this project is nearly ready to begin construction, and must proceed on schedule in order to satisfy the settlement agreement with the Regional Water Quality Control Board, it is not acceptable for the City to simply suggest that it will come up with a capital improvement program at some unspecified point in the future. Failure to adequately plan for the wastewater treatment plant upgrade or other vital capital improvements could result in sewage spills, environmental pollution, and enforcement actions from regulatory agencies including fines and delays of new development.

An application to transfer a service obligation cannot be deemed complete without information about whether, how and to what extent the capital improvements identified as necessary by Goleta West will be carried out by the City.

e. City Lacks Information about How Sewer Service will be Financed

Every application must include information about the plan for financing the services to be provided. (Gov't Code 56653(b)(5).) The City's February 4, 2009 proposal simply stated "These services are funded through user fees paid by those customers receiving said service...The City of Goleta would continue to bill on the County tax rolls for the costs of providing these services." Goleta West and the Executive Officer found this level of detail inadequate. While the July 26, 2010 materials include a budget and a financial analysis, they do not provide any more specificity as to how the services will be financed. In addition to the gaps in that financial analysis noted above, the budget and financial analysis also fail to address a key fiscal issue: How can the City justify its assumption that it will receive 100% of the property taxes re-allocated from Goleta West, given the provisions of the 2001 Revenue Neutrality Agreement that require that 70% of those re-allocated taxes be delivered to the County for fire protection services? Before LAFCO can decide whether transferring the service obligation to the City will cost the customers the same or less than Goleta West, the City needs to provide a realistic financial plan.

3. The Deficient Project Description Makes Environmental Analysis Impossible

In adopting a resolution of application on February 3, 2009, the Goleta City Council acknowledged that LAFCO was the lead agency but noted that it believed this project was exempt from environmental review under the California Environmental Quality Act. As the lead agency, LAFCO will need to make a determination of whether the proposed detachment will have a significant effect the environment. It may not rely on categorical exemptions such as CEQA Guidelines Section 15320 where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Until the City provides adequate information about the level and scope of services, its capital improvement program, and its financial plan, we do not believe it is possible for LAFCO determine the environmental impact of detachment.

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.