



Working for a future without landfills...

AGENDA

ADVISORY COMMITTEE

TUESDAY, JUNE 30, 2020, 4:00 P.M.
128 Sun Street, Suite 101, Salinas, CA 93901

Important Notice on Page 2

Call to Order

Roll Call

Rob Cullen, President of the Committee
Nikki Cossio, Grower-Shipper Association
Keven McIntosh, Central Coast Builders Association
Grant Leonard, North County Chamber of Commerce
Marc Bloom, South County Chamber of Commerce
John Bailey, Salinas Valley Chamber of Commerce
Cesar Lara, Citizen from City of Salinas

Marty Horton Ramirez, Citizen from South County Cities
Paula Getzelman, Citizen from Unincorporated County
Brett Saunders, Cannabis Industry

Vacancies

Monterey County Farm Bureau

Public Comments

Receive public comment on topics which are not on the agenda. The public may comment on scheduled agenda items as the Committee considers them. Speakers are limited to three minutes at the discretion of the President of the Committee.

Meeting Topics

1. [Minutes of January 30, 2020 Meeting](#)
 - A. Public Comment
 - B. Committee Discussion
 - C. Recommended Action: Approval
2. [Board Meeting Highlights and General Manager Comments](#)
 - A. Receive Report from General Manager/CAO, Patrick Mathews
 - B. Public Comment
 - C. Committee Discussion
 - D. Recommended Action: None; Informational Only
3. [Update on the Expansion of the Organics Program \(SB 1383 and Composting Facility\)](#)
 - A. Receive Report from Resource Recovery Manager, Mandy Brooks
 - B. Public Comment
 - C. Committee Discussion
 - D. Recommended Action: Provide Input
4. [Update on the Sun Street Transfer Station Relocation Project](#)
 - A. Receive Report from General Manager/CAO, Patrick Mathews
 - B. Public Comment
 - C. Committee Discussion
 - D. Recommended Action: Provide Input

5. [Update on the City of Salinas' One-year Notice of Intent to Withdrawal from the Joint Powers Agreement with the Salinas Valley Solid Waste Authority](#)
 - A. Receive Report from General Manager/CAO, Patrick Mathews
 - B. Public Comment
 - C. Committee Discussion
 - D. Recommended Action: Establish Regular Meeting Schedule

Committee Comments

Adjournment

Important Notice

Due to State, and County orders and guidance from the California Department of Public Health and the California Governor's Officer, in order to minimize the spread of the COVID 19 virus to contain the spread of COVID-19, all of the Committee members will be attending remotely from various locations. To comply with the social distance between individuals and limited space available there will be no observation room available to for the public. Members of the public interested in observing the meeting may do so online at <https://svswa.org/live-stream-meetings/> or on our YouTube channel <https://www.youtube.com/user/svswa831>. To make either a general public comment or to comment on a specific agenda item as it is being heard, please submit your comment, limited to 250 words or less, to the Clerk of the Board at comment@svswa.org. Every effort will be made to read your comment into the record, but some comments may not be read due to time limitations. Comments received after an agenda item will be made part of the record if received prior to the end of the meeting.

This meeting agenda was posted at the Salinas Valley Solid Waste Authority office at 128 Sun Street, Suite 101, Salinas, and on the Authority's Website on **Wednesday, June 24, 2020**. Any writing or documents provided to a majority of the Committee regarding topics on this agenda will be made available for public inspection at the Salinas Valley Solid Waste Authority office at 128 Sun Street, Suite 101, Salinas, California 93901, during normal business hours.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meeting, please contact Erika J. Trujillo, Clerk of the Board, at 831-775-3000. Notification 48 hours prior to the meeting will enable the Authority to make reasonable arrangements to ensure accessibility to this meeting (28 CFR 35.102-35.104 ADA Title II)

**MINUTES OF
THE SALINAS VALLEY SOLID WASTE AUTHORITY ADVISORY COMMITTEE MEETING
JANUARY 30, 2020
128 Sun Street, Suite 101, Salinas, CA 93901**

CALL TO ORDER

Meeting was called to order by President Cullen at 3:05 p.m.

ROLL CALL**Members Present**

President of the Committee: *Rob Cullen*
 Grower-Shipper Association: *Nikki Rodoni*
 (arrived at 3:45pm)
 No. Co. Chamber of Commerce: *Grant Leonard*
 So. Co. Chamber of Commerce: *Marc Bloom*
 Cannabis Industry: *Brett Saunders*
 South County Cities Citizen: *Marty H. Ramirez*
 Unincorporated County Citizen: *Paula Getzelman*
 (arrived at 3:45pm)

Members Absent

Central Coast Builders Association: *Keven McIntosh*
 Salinas Valley Chamber of Commerce: *John Bailey*
 City of Salinas Citizen: *Cesar Lara*

Staff Present

Patrick Mathews, General Manager/CAO
Mandy Brooks, Resource Recovery Manager
Erika J. Trujillo, Clerk of the Board

PUBLIC COMMENT

None

MEETING TOPICS**1. Minutes of October 29, 2019 Meeting**

(4:27)

Public Comment: None

Committee Discussion: The Committee discussed the presentation.

Motion: By consensus the Committee approved the minutes as presented.

2. Sun Street Transfer Station Tour (3:15pm to 3:45pm) and Modern Transfer Station Design Review

(3:10) The Committee departed to the Sun Street Transfer Station.

(3:49) The Committee arrived back to the Conference Room.

(3:51) General Manager/CAO Mathews provided a presentation on modern transfer stations explaining in detail the differences between the current Sun Street Transfer Station and what is proposed to be developed. He explained the essential public services needed for the City of Salinas area and potential programs to help meet those needs. He presented the original Sun Street Material Recovery Center design ideas that were developed in 2007. Mr. Mathews reviewed the goals the Authority would like to accomplish, such as continue services to its more than 100,000 customers, assist in meeting new and increasing mandates, a reuse retail store, and meet the public's desires and demands reflected in the results of the 2018 independent, Market Research Public Services survey that was conducted for the Authority's service area.

Public Comment: None

Committee Discussion: The Committee discussed the presentation.

Motion: None; Informational Only

3. Update on the City of Salinas' One-year Notice of Intent to Withdrawal from the Joint Powers Agreement with the Salinas Valley Solid Waste Authority

(4:26) General Manager/CAO Mathews reported that Authority staff continues to work with the City of Salinas on issues that cannot be stopped or postponed. He indicated that Authority staff continues to look for potential sites to relocate the Sun Street Transfer Station. President Cullen provided a brief history on what has transpired in the last 13 months since the notice was given to the Authority. He informed the Committee that the Authority Board was informed at the January Board meeting by a City of Salinas Board member that the report conducted by R3 Consultants was completed and a couple of the City Council members along with City staff had received a briefing on the report, however, it would not be released publicly. President Cullen and General Manager Mathews discussed the negative impact if the City of Salinas would decide to withdraw, such as the litter and illegal dumping issues within the city limits if there was no recycling facility within city limits, the \$30-\$40 million debt the City of Salinas would acquire, the rate increases the South County cities would incur, and the traffic impacts for the roadways leading to the Monterey Regional Waste Management District landfill from self-haul customers. Mr. Cullen indicated the next best steps are for the Authority to consider the request of the report and to present a financial analysis to those interested on the impacts of the withdrawal on other member agencies.

Public Comment: None

Committee Discussion: The Committee discussed the report inquiring about the process to request the report. The Committee requested the financial analysis be presented to the group.

Motion: By consensus the Committee recommends the Authority Board request the release of the report from the City of Salinas and that they be provided with a copy of the request and a template to submit their own records request.

4. Discussion on Establishing Regular Meeting Schedule

(4:58) President Cullen indicated there was a conflict with the selection of the fourth Tuesday of the Month for the regular Committee meetings.

Public Comment: The Committee discussed the best time and days to hold the Advisory Committee meetings.

Motion: By consensus of the Committee selected the regular meetings to be on the fourth Thursday of the month at 3 p.m.

COMMITTEE COMMENTS

(5:06) None

ADJOURNED

Meeting was adjourned at 5:07 p.m.

APPROVED: _____
Robert Cullen, President

ATTEST: _____
Erika J. Trujillo, Clerk of the Board

ADVISORY COMMITTEE

Date: June 30, 2020
From: Patrick Mathews, General Manager/CAO
Title: Board Meeting Highlights/General Manager Comments

A report will be given at the meeting.

Attachment

1. Board Meeting Highlights for February, March, April, and May of 2020
2. General Manger/CAO Comments from the June 18, 2020 Board meeting



BOARD OF DIRECTORS

MEETING HIGHLIGHTS

February 20, 2020

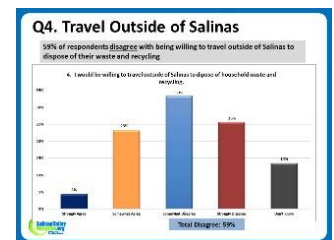
MODERN TRANSFER STATION DESIGN REVIEW

Staff presented existing Materials Recovery Center/Transfer Station designs and architecture ideas. The designs included modern covered-enclosed buildings and focused on recycling and recovery in convenient one-stop public service centers. The original design idea for the fully enclosed Sun Street Material Recovery Center that was developed in 2007 was also presented. The Authority's Salinas area service goals remain unchanged, including continued services for more than 100,000 customers visits, assisting in meeting new and increasing State mandates, a reuse retail store, and meeting the public's expressed desires, demands, and needs.



2019 CUSTOMER SERVICE SURVEY RESULTS FOR THE SUN STREET TRANSFER STATION

The Authority has conducted quarterly customer service surveys to measure customer service satisfaction, program effectiveness, use of services, quality of service, and geographic origins since 2014. With the City of Salinas submitting their one-year notice of intent to withdrawal in December of 2018, the survey was revised with the help of EMC Research to include questions related to possible impacts to the customers. The online/in person survey was conducted throughout several months with a total of 207 completed surveys. From the surveys completed, 66% were City of Salinas residents and 34% from unincorporated Monterey County. The results reflected that 94% strongly agree that a facility like the Sun Street Transfer Station (SSTS) should exist within the Salinas area; 94% strongly agree they visit the SSTS because of its convenient location within the Salinas area; 59% disagree they would be willing to travel outside of Salinas to dispose of household waste and recycling; 69% agree they would recycle fewer items if they had to travel outside of Salinas to properly dispose of waste; 32% don't know what facility they would go to; and 21% would use neither Gonzales nor Marina facilities.



COLLABORATION BETWEEN THE AUTHORITY AND THE MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Staff continues to meet with the Monterey Regional Waste Management District (District) staff to identify new collaboration opportunities, most recently discussed was the program planning work around SB 1383 and the use of Recyclist as reporting management database system, the same system the Authority's Resource Recovery department uses now; the Authorities composting capacity; and the opportunity of using the District's future mixed-waste processing capacity. The District is considering an additional \$30-\$50 million investment (public or private) for an Anaerobic Digestion system to process mixed organics and recycling from the mixed-waste processing system. Staff expressed the importance of considering the economic extent of collaboration as some of the collaboration opportunities could reduce revenue from the Authority to obtain a higher recycling percentage causing rate increases, as is common when increasing recycling levels.

CITY OF SALINAS NOTICE OF INTENT TO WITHDRAWAL UPDATE

Per the Board's request, staff presented the rate impacts to the remaining members if the City of Salinas would withdrawal from the Joint Powers Agreement and the Sun Street Transfer Station would close. The report was based on the 2020-21 fiscal year projected budget and demonstrated a 65% rate increase or just over \$44.00 per ton and includes a minimum of 19 layoffs. At this meeting the Board was informed by the Salinas Board members that the City of Salinas' study conducted by R3 Consultants has not been completed and it will be released once it is completed.

Salinas Withdrawal	
Operating Expenditures	13,437,300
Post Closure	1,055,000
CIP Budget/Set Asides	1,245,000
Total Budget	15,737,300
Salinas Liability Payment	(2,542,000)
Non Solid Waste Revenues	13,798,478
Net Solid Waste Revenue Needed	9,486,822
Per Ton (\$4,000)	112.94
Increase	
Eliminate 19 (net) full time positions and 5 Hope Services	44.44

FINANCIAL REPORT FOR MONTH ENDED DECEMBER 2019 (50% OF THE FISCAL YEAR)

Revenue collected	\$ 11,995,514 (58.9% of Estimated Revenue of \$20,369,805)
Expenditures for operations	\$ 9,352,242 (50.7% of Operating Budget of \$18,458,000)
Cash balance	\$ 28,441,090

REDUCE

REUSE

RECYCLE

"To manage Salinas Valley solid waste as a resource, promoting sustainable, environmentally sound and cost-effective practices through an integrated system of waste reduction, reuse, recycling, innovative technology, customer service, and education."



BOARD OF DIRECTORS

SPECIAL MEETING HIGHLIGHTS

March 26, 2020

SVR DOING ITS PART TO PREVENT THE COVID-19 SPREAD

With the evolving situation of the COVID-19 pandemic and to comply with the Shelter in Place order the Authority Board will continue to conduct its meetings via teleconference thru the month of April. All members will be attending from various locations and the meetings will be live streamed on the Authority's YouTube Channel, everyone is encouraged to live stream the meetings. For more information visit our website at www.SalinasValleyRecycles.org/live-stream-meetings/

THE FUTURE OF ORGANICS

Contract Agreement Extended - The Board approved an amendment to the organics processing contract with TDRA Industries, Inc., dba. Vision Recycling (Vision) for the addition of composting the organic slurry from the de-packager, food waste, and culls. This will allow the Authority and its member agencies to meet many of the new organics' mandates required under Senate Bill 1383. The Authority will continue to work with Vision to operate the new composting facility and ensure production of high quality and marketable compost products.

Organics Grant Program Extension – CalRecycle contacted the Authority to offer the extension of the grant ending date from April 1, 2020 to April 2, 2021, to allow the Authority the opportunity to fully spend the performance payments on additional identified capital needs in the amount of \$268,373. Due to unforeseen challenges, the start of the compost operation was delayed, resulting in the inability to claim most of the performance payments.

OPERATING BUDGET FOR FISCAL 2020-21 - APPROVED

The Operating Budget of \$19,137,200 was approved by the Board which includes two additional positions, an Equipment Maintenance Technician I/II, and an Equipment Operator/Driver to assist with the recovery process of Organics, Wood Waste and Construction and Demotion (C&D). The budget will be balanced with the projected increase in tonnage, savings gained from reducing contracted equipment maintenance, the third phased-in increase to the organics program fees approved by the Board in September 2017, as well as increases to the C&D rate for the initial staff implementation of the Organics/Wood Waste/C&D Recovery Line, and a cost-of-living increase to the AB939 program fees. Solid waste tipping fees will not be increased.

FY 2019-20 Projected Total Budget Increase		Projected Revenue Increase	
Payroll Increases	\$ 274,700	5,000-ton increase in solid waste tonnage	\$ 342,500
C&D Program	311,200	Organics	219,370
Organics Program	227,000	Construction and Demolition	195,000
Set Asides	33,000	Sales of Materials/Gas Royalties	117,200
All Other Increases / (Decreases)	(21,900)	Investment Earnings	100,000
Debt Service	(213,300)	AB939 fee (3% CIP increase)	82,000
Total Operating Budget Increase	610,700	All Other Revenue Changes	30,400
Total CIP Budget Increase	315,000	Transportation Surcharge	(154,575)
Total Increases Funded from Operations	\$ 925,700	Total Revenue Increase	\$ 931,895

LOCAL EMERGENCY IMPACTS AND ACTIONS

The COVID-19 pandemic continues to be an evolving situation. In order to ensure that critical services to our customers continue, two administrative policies to address Business Continuity and supplemental Administrative Leave of 80 hours for employees impacted by COVID-19 actions and related orders were enacted. The Board approved an adjustment to the Operating Budget for fiscal year 2019-20 to fund the 80 additional hours of COVID-19 Administrative Leave for employees. Transfer stations and landfill services will begin implementing rotating operational reductions in staffing, and services reductions to maintain a healthy reserve of workers to address any future impacts. The situation will continue to be monitored and assessed to move forward with partial or complete closure of non-essential facilities if necessary. To stay informed follow us on our social media pages or visit our website www.salinasvalleyrecycle.org.

FINANCIAL REPORT FOR MONTH ENDED JANUARY 2020 (58% OF THE FISCAL YEAR)

Revenue collected	\$ 13,859,993 (66.9% of Estimated Revenue of \$20,369,805)
Expenditures for operations	\$ 10,825,630 (57.7% of Operating Budget of \$18,458,000)
Cash balance	\$ 30,003,206



REDUCE

REUSE

RECYCLE

"To manage Salinas Valley solid waste as a resource, promoting sustainable, environmentally sound and cost-effective practices through an integrated system of waste reduction, reuse, recycling, innovative technology, customer service, and education."



BOARD OF DIRECTORS

SPECIAL MEETING HIGHLIGHTS

April 16, 2020

SVR CONTINUES TO DO ITS PART TO PREVENT THE COVID-19 SPREAD

All meetings thru the month of May will continue to be conducted through teleconference with all members and most staff attending from remote locations. The meetings will be live streamed on the Authority's YouTube Channel, no observation room will be available for the public due to limited space. For more information visit our website at www.SalinasValleyRecycles.org/live-stream-meetings/

2020-21 DISPOSAL AND SERVICE FEES APPROVED

Given the current situation with the COVID-19 virus and the financial difficulties many residents are facing, the Board of Directors decided to not raise rates for the upcoming fiscal year. The rates will remain the same with the addition of three new rates needed to establish services.

LOOKING AHEAD – AUTOCLAVE TECHNOLOGY PROCESS

In 2012 the Board approved a non-binding agreement with Global Organics Energy (GOE) to provide the Authority exclusive rights to negotiate use of the technology and for consideration of a public/private partnership for the "Autoclave Technology Process". This technology is designed to deal with specific types of wet wastes that are high in paper fiber and organic content such as post-recycled residential wastes and some types of commercial and agricultural waste. GOE in partnership with the original designer (CR3) have developed a fully integrated system to take the autoclave output and convert it into a clean, recyclable paper pulp. Mixed wastepaper collected through recycling programs could also be processed in this system. Research conducted by the USDA and GOE has demonstrated waste reduction rates for the autoclave system can be 60% or more. At this meeting the Board approved the extension agreement through December 31, 2021, this will allow GOE to construct a Commercial Scale Demonstration Autoclave at the Johnson Canyon Landfill which is necessary to provide engineering, financial and CEQA related information to better understand the economics, benefits and impacts associated with this innovative technology.



RELOCATION OPTIONS FOR THE SUN STREET TRANSFER STATION

Staff continues to explore options for the relocation of the Sun Street Transfer Station. Recently, Republic Services and the Authority discussed the possibility of the Authority acquiring one of the three parcels owned by Republic Services at the Madison Lane Transfer Station property. If acquired, this would allow the Authority to continue providing services to the City of Salinas' residents. The Board directed staff to move forward with preliminary actions needed to further analyze the potential of the project.



CITY OF SALINAS NOTICE OF INTENT TO WITHDRAWAL UPDATE

A teleconference meeting between the City of Salinas Mayor, City Manager, the Authority Board President, and General Manager/CAO took place on April 13th to discuss the one-year notice of intent to withdrawal from the Joint Powers Agreement submitted by the City of Salinas on November 2018. The City of Salinas presented terms and conditions to rescind the notice. The terms and conditions will be reviewed by the Executive Committee during an upcoming meeting to be able move forward and enter into negotiations.

FINANCIAL REPORT FOR MONTH ENDED FEBRUARY 2020 (58% OF THE FISCAL YEAR)

Revenue collected	\$ 15,425,771 (74.5% of Estimated Revenue of \$20,369,805)
Expenditures for operations	\$ 12,419,957 (66.6% of Operating Budget of \$18,458,000)
Cash balance	\$ 29,512,067

REDUCE

REUSE

RECYCLE

"To manage Salinas Valley solid waste as a resource, promoting sustainable, environmentally sound and cost-effective practices through an integrated system of waste reduction, reuse, recycling, innovative technology, customer service, and education."



BOARD OF DIRECTORS

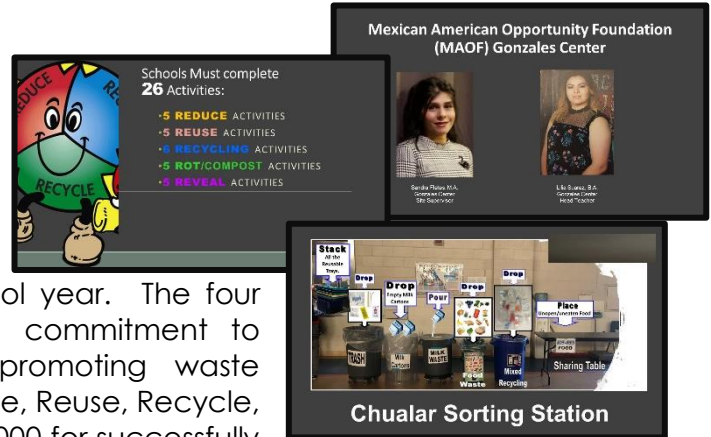
SPECIAL MEETING HIGHLIGHTS

May 21, 2020

WALLY-WASTE-NOT AWARDS

A total of 14 schools applied for the program. However, due to the Shelter-In-Place Order and schools closing, only four schools from the Salinas Valley were able to complete the entire Wally Waste Not Award Program and receive the award. The remaining schools that applied this year, but were unable to finish, will be given the opportunity to complete the activities next school year. The four schools were recognized for their outstanding commitment to implanting recycling, waste reduction, and promoting waste awareness at their sites by utilizing the 4R's – Reduce, Reuse, Recycle, and Rot/Compost. Each school was awarded \$2,000 for successfully completing the 26 required activities of the program. Congratulations to the teachers and staff that took the initiative to participate in the program and assured the successful completion of each activity. EXCELLENT WORK!

CHUALAR SCHOOL
DUAL IMMERSION ACADEMY OF SALINAS



MAOF EARLY LEARNING CENTER IN GONZALES
FRANK LEDESMA SCHOOL IN SOLEDAD

APPROVAL OF THE PURCHASE OF A REFRIGERATED TRUCK FOR THE MONTEREY COUNTY FOOD BANK

The Board approved the purchase of a 26-foot refrigerated food distribution truck. The truck is being purchased for the Food Bank for Monterey County. This will help meet the increased demands to recover and rescue more edible food to feed those most in need in our community during these uncertain times.



RELOCATION OPTIONS FOR THE SUN STREET TRANSFER STATION

Staff informed the Board that a meeting was held between Republic Services staff and Authority staff to further discuss the potential project of relocating the Sun Street Transfer Station to the Madison Lane Transfer Station. Details of actions needed and the estimated timeline were reviewed in detail during the meeting. Staff reiterated the importance of the commitment by all parties involved to make the relocation project move forward and be completed by June 2022.

CITY OF SALINAS NOTICE OF INTENT TO WITHDRAWAL UPDATE

The teleconference meetings between the City of Salinas (City) Mayor, City Manager, the Authority Board President, and General Manager/CAO have continued to discuss the one-year notice of intent to withdraw from the Joint Powers Agreement submitted by the City, pending legal issues needed to be resolved between the City of Salinas Attorney and the Authority General Counsel, and the terms and conditions to rescind the notice presented by the City. The group will continue to hold meeting every Friday.

FINANCIAL REPORT FOR MONTH ENDED MARCH 2020 (75% OF THE FISCAL YEAR)

Revenue collected	\$ 17,153,606 (82.8% of Estimated Revenue of \$20,369,805)
Expenditures for operations	\$ 13,705,344 (72.1% of Operating Budget of \$18,458,000)
Cash balance	\$ 29,767,350

REDUCE

REUSE

RECYCLE

"To manage Salinas Valley solid waste as a resource, promoting sustainable, environmentally sound and cost-effective practices through an integrated system of waste reduction, reuse, recycling, innovative technology, customer service, and education."



5 key pandemic trends from the solid waste industry's Q1 earnings reports

Results are in for seven publicly-traded North American companies, and it's clear the industry is resilient. Many questions remain about adapting to volume shifts and recovery prospects.

By Cole Rosengren, E.A. Crunden

Published May 13, 2020

Now that Q1 reports are in from all publicly-traded solid waste companies, it is clear that operations remain stable amid the coronavirus pandemic, both financially and logistically. But companies have also seen significant shifts that could endure for months. Annual guidance has largely been suspended, with significant uncertainty about what comes next.

In addition to our same-day coverage of earnings reports from the big four North American players – Waste Management, Republic Services, Waste Connections and GFL Environmental – Waste Dive has been tracking other solid waste companies as usual. Multiple trends are clear when also factoring in reports from Advanced Disposal Services, Casella Waste Systems and Covanta.

Lost volumes are coming back, but it will be gradual and incomplete

- Waste Management reported a 20% decline in third-party landfill volumes and a 16% decline in commercial volumes during April. While the company is seeing signs for early optimism, CEO Jim Fish repeatedly noted the unpredictability

of commercial business going forward. "I just don't know what happens with schools, what happens with airlines. And of course, that whole hospitality space is a massive question at this point," he said.

- Republic Services similarly reported declines (April container and third-party landfill volumes were down 20%) but thought the worst had likely passed. Executives recognized some customers will not return, but did not offer any ranges for how many.
- Waste Connections saw overall volumes drop by 12% in April, driven by much higher decreases in the Northeast and Canada. The company had its own reasons for early hope in terms of business activity picking back up, but CEO Worthing Jackman emphasized this outlook was "not assuming anything about getting back to prior levels."
- GFL Environmental reported an 8.7% decline in solid waste revenue for April, year-over-year, driven in large part by significant effects in Canadian cities — Montreal and Toronto saw double-digit volume decreases starting in March. In one sign of a possible turnaround, CEO Patrick Dovigi said hotels in major Canadian cities that might normally be serviced three or four times per week (and had declined to one) were back up to two.
- Advanced Disposal Services reported "experiencing volume declines in all of its lines of business except residential due to deteriorating macroeconomic conditions and stay-at-home orders resulting from the COVID-19 pandemic." While the company didn't break out percentages in its quarterly filing, it reported multimillion dollar revenue effects across all regional segments.

- Casella Waste Systems reported smaller disruptions during Q1, with overall revenues only down 0.9% in April, but has seen effects nonetheless. Revenues were down more notably for commercial and roll-off collection, as well as disposal, when excluding the effects of recent acquisitions. April landfill tonnages were down 22%, due in part to a major drop-off in New York volumes. The company reported positive landfill trends in late April, but CFO Ned Coletta said it was "a little early to fully understand what that means."
- Despite a mostly positive first quarter, Covanta reported ongoing pressure on commercial MSW volumes, along with profile waste due to shifts in the automotive industry and other sectors. Profile waste volumes are down 15-20%, according to CEO Steve Jones. The company is facing downward pressure on roughly 30% of its waste revenue, he said. Covanta is also looking at internalizing some of the 200,000 tons typically sent to third parties for disposal. Jones estimated backfilling commercial and industrial volumes with "lower price alternative waste sources" is reducing tip fee revenue by \$5 million per month.

Residential volume increases are putting pressure on some business models

- Waste Management reported a 25% uptick in residential waste volumes and the issue came up repeatedly during the company's earnings call as an area that will be addressed with municipalities, because 75% of its business is under some form of contract. "I mean look, nobody signed up for 25-plus-or-minus percent increases in residential volumes," said COO John Morris, adding that with more people expected to continue working from home "this is a key focal area for us."

- Republic Services CEO Don Slager said now that the company had emerged from a stabilization period in April, it would begin engaging with municipalities for some financial recognition that residential weights were up 15% for the month.
- GFL Environmental saw residential volumes rise by as much as 15% in some parts of Canada and Michigan. While the Canadian business is tonnage-based, and about 40% of the U.S. business is on a subscription basis, the company will try to recoup higher costs for the rest. "Given what we experienced in 2018 with the recycling, I'm going to say it would be all additive and bonus if we were able to get something," said Dovigi.
- Waste Connections didn't call out notable residential issues, in part because much of the company's municipal work is done under franchise contracts with regular rate reviews. Casella reported residential volumes were up around 15% from March, and does 75% of that business on a subscription basis, but wasn't immediately focused on price increases as this was believed to track with seasonal trends.
- Covanta did not report the same significant uptick in residential volumes noted by other companies, but Jones said the company is currently leaning on its long-term municipal contracts, many of which are based on processing residential waste. Jones noted tip fee revenues associated with residential waste have "remained strong," in a break from the downward trends associated with commercial and industrial volumes.

The industry can flex costs quickly and work leaner

- Every hauler reported some amount of reduced spending on overtime, travel, fuel and numerous other areas. Waste Connections and Casella reported some furloughs or layoffs.

Limiting or freezing hiring, along with salary increases, was also reported across multiple companies.

- Companies with a larger proportion of landfill assets reported plans to ramp down capital expenditures for new cell construction as projected lifespans extend due to volume declines. Waste Management is planning a 10% cut in annual spending and Republic outlined a similar reduction in "growth capital." Waste Connections anticipates a 20% reduction.
- GFL Environmental may have a smaller portion of landfill assets, but executives said they've still identified \$100 million in planned spending on fleet replacements and other needs that can be cut "if we need to." While Casella's portfolio is smaller, with certain landfill closure or expansion projects already well underway, the company also found an estimated \$10 million in "discretionary capital expenditures" to freeze for the year.
- Covanta was among the first companies to announce cost-saving measures in April as the pandemic took hold. The company cut its dividend to save \$90 million and initiated another \$15-30 million in cost reductions. This included temporary compensation reductions for executive leadership and support employees, some furloughs and a hiring freeze.

M&A and expansion activity may be delayed, but continues

- Waste Management, like others, reported the M&A process had been delayed for its own acquisition of Advanced by weeks or more due to logistical factors. Republic continues to anticipate hitting a \$600-650 million target for the year, with a deal to buy Santek Waste Services on track, and Slager said "we think it'll still be a good year for us in the M&A department." Waste Connections didn't share any projections, but Jackman said

multiple deals are in the works and "the level of activity really hasn't changed for us."

- GFL already spent \$1.13 billion Canadian dollars on M&A in Q1 and said more deals are in the works. Dovigi noted some sellers may decide it's not worth trying to survive another downturn and thinks valuations may change for "bronze" and "silver" level companies.
- Casella has completed four smaller acquisitions to date, with a focus on expanding its New York presence, but expects a temporary pause. Still, CEO John Casella said he sees "a great runway in front of us to create a lot more value over the next few years as we continue to grow."
- Covanta is in early negotiations with Pasco County, Florida for an incinerator expansion, which Jones called "a positive sign on the potential for domestic growth and of our strong position in the market." He also noted active discussions with two or three other local governments.

No one really knows what comes next

- GFL doesn't anticipate permanent impairment to its commercial business, but expects a complicated path back. "I think our governments are struggling on actually how to reopen," said Dovigi. "It was easy to shut it down, but I think they're trying to understand how they actually reopen. But we are seeing material upticks in people now wanting to get their service back online."
- "While it's impossible to predict if we are at the bottom, we have seen several key indicators, such as commercial and industrial service level changes, the number of roll-off pulls and landfill tons, begin to stabilize and, in some cases, improve over the last several weeks," said Coletta about Casella's outlook.

- Republic was among the industry's most optimistic, but executives recognized that could all change. "If we get into a double dip, right, because we have a reemergence at broad scale and have widespread sheltering in place in the fall, that would be a different scenario," said President Jon Vander Ark, noting projections rely on the bottom not being as bad as expected and business picking back up into Q3.
- Waste Management's Fish was frank during his earnings call and other media appearances about "the big unknown" around commercial business projections. "How are these small businesses going to recover from this? Are they going to recover? How many of them will choose to just throw in the towel?" he asked. "[T]he piece that I think all waste companies are going to really have to kind of get our heads around is what happens to small business because it is unprecedented that you take the entire \$23 trillion U.S. economy and shut it down."

Recommended Reading:

WASTE DIVE

Major waste industry companies highlight coronavirus challenges in Q1 earnings reports [🔗](#)

WASTE DIVE

2019 earnings coverage for US waste and recycling companies [🔗](#)

FY 2020/21 FINAL BUDGET

Published 6/16/2020

Memorandum – Director of Finance & Administration

DATE: June 12, 2020
TO: Board of Directors
FROM: Director of Finance & Administration
SUBJECT: Final Budget for Fiscal Year 2020/2021

RECOMMENDATION: That the Board approve the Final Budget for Fiscal Year 2020/2021.

Enclosed for your review is the Final Budget for Fiscal Year (FY) 2020/2021. Staff is requesting that the Board of Directors approve this budget.

Just prior to the emergence of the COVID-19 pandemic, District staff developed a draft budget anticipating a year of building upon recent progress in several areas. These areas include improvements to the new Materials Recovery Facility operations, development of infrastructure that positions the District to deliver on its mission and meet upcoming industry mandates, and investments in building every employee's sense of purpose at the District.

Then came the coronavirus. After State and County Shelter in Place orders were issued, the District shuttered the Last Chance Mercantile store and implemented extensive procedures designed to keep our employees safe while they perform essential work. In late March disposal tons began to drop and by April revenues dipped to 22% below normal. Then in May volumes showed some recovery, resulting in revenues equal to 15% below averages. For context, May's results represent a deeper drop than the District experienced during the Great Recession. At this time, staff cannot predict the impacts of either the progression of the pandemic or changes to the guidance provided by public health officials.

Instead, staff is presenting now what it views to be a cautious budget to start the year. While we remain hopeful that life, and business, will return to normal quickly, staff believes this budget positions the District to manage a realistic reduction in disposal volumes. Staff plans to monitor District financial conditions closely and will recommend adjustments to this budget throughout the coming year should things change.

As previously discussed with the Board, the difference between the pre-COVID draft budget and this version is a drop in revenue of over \$5.5M. Staff has responded with a proposed reduction in operating costs of over \$4M. These reductions are gained through a combination of the following measures: 1) staff reductions made possible by voluntary retirements and certain operational changes; 2) wage cuts taken by the General Manager and Directors; 3) wage increase deferrals agreed to by all District Managers; 4) aggressive cuts to non-personnel spending; and, 5) targeted layoffs and hiring freezes. Further discussion of the impact of these changes follows in this budget document.

Finally, the proposed increases in the District tip fees and Single Stream Recyclables Processing fee will help to offset the impact of the projected pandemic-related business contraction.

FY 2020/21 FINAL BUDGET

For FY20/21, staff estimates Revenues to be \$32,464,000. This is a decrease of \$4,085,000 (11%) compared to the FY19/20 Budget and is due to the following factors:

- \$1,256,000 decrease (5%) in disposal fees, primarily due to expected reductions in material volumes originating from within Monterey County.
- \$1,622,000 decrease (22%) in MRF revenues, including commodities sales, processing fees and contamination disposal fees, primarily due to lower commodities prices.
- \$800,000 decrease in Last Chance Mercantile revenue, due to the temporary closure as the District explores ways to reopen under conditions that are both safe and financially sustainable.
- \$397,000 decrease in projected power revenue resulting from a recalibration of estimates to align more accurately with recent experiences.

Operating Expenses for FY20/21 are projected to be \$30,649,000. This is a decrease of \$2,934,000 (9%) from the FY19/20 Budget. Personnel expenses decrease by \$1.9M (12%). Please see the accompanying memorandum from the HR Manager for details on personnel changes. Non-personnel expenses are projected to decrease \$1M, or 6% compared to the FY19/20 Budget.

Non-Operating Revenues/Expenses for FY20/21 equals \$1,306,000, which includes interest expense on the 2015 and 2018 Revenue Bonds at \$2,164,000, equipment lease interest expense of \$36,000 for 2017 and 2018 equipment lease arrangements, and income from leases, investments and other charges equal to \$894,000.

Capital Outlay requests equal \$7,686,000, a decrease of over \$6.7M from the FY19/20 Budget and a reduction of \$3.3M (30%) from the pre-COVID draft budget. Mobile Equipment investments for the year include the replacement of a 2007 Cat 386 compactor (\$1.3M), replacement of a 2010 excavator (\$350,000) that was originally budgeted in FY19/20, and replacement of a service truck (\$90,000) used by the Equipment Maintenance shop. Three additional pieces of equipment and one pick-up truck initially identified for replacement in this budget year have been deferred to FY21/22, avoiding \$655,000 of capital spending. Capital Improvement projects include completion of the Biogas Conditioning System project, which will result in a positive \$1M net of CEC grant funds, development work on landfill Module 7 (\$3M) and roadway paving and improvements (\$1.1M) associated with the Scale E addition to the facility. The Capital Improvements Project budget has been reduced by \$2.7M from the pre-COVID budget by downsizing projects and/or deferring them to future years.

Net Income is projected at \$509,000.

Cash provided by operations for FY20/21 is estimated at \$5,079,000 (Net Income less Depreciation and Amortization and Closure/Post Closure Costs). Unrestricted Cash Reserves are projected to total \$24,668,000, which is made up a Cash Operating Expense Reserve of \$5,216,000, \$5,968,000 in remaining of 2018 Revenue Bond funds, and an additional, undesignated balance of \$13,484,000.

The Bond Debt Service Ratio calculated for FY20/21 is 1.36, which is above the Bond Covenant of 1.25.



Peter K. Skinner, Director of Finance & Administration

FY 2020/21 FINAL BUDGET

Published 6/16/2020

Memorandum – Human Resources Manager

DATE: June 12, 2020
TO: Board of Directors
FROM: Human Resources Manager
SUBJECT: Final Employee Total Compensation Budget for Fiscal Year 2020/21

RECOMMENDATION: That the Board approve the Final Employee Total Compensation Budget that is part of the Final Budget for Fiscal Year 2020/21

The Employee Total Compensation Budget, that is part of the Final Budget for FY 2020/21, includes wages and benefits expenses for 116 employees, or 115.25 full time equivalents (FTEs) and totals \$14,058,000. In comparison, the current FY Employee Total Compensation Budget included 143.75 FTEs and totaled \$15,971,000 (12% more). This represents a 20% reduction in FTE's on a year to year comparison. The decrease is necessary due to the negative financial impacts of COVID-19 on the District's finances and the resulting projected revenue shortfall for FY 2020/21, as described in the Final Budget for Fiscal Year 2020/21.

2020 Voluntary Early Retirement Incentive Program (VERI)

The implementation of the 2020 Voluntary Early Retirement Incentive (VERI) Program was a key cost-savings measure for personnel cost reductions and resulted in 14 voluntary retirements from various departments as shown here:

Department	2020 Voluntary Early Retirement Incentive (VERI)
ACT	Accounting Technician
ADM	Executive Assistant/Board Clerk
LCM	LCM/HHW Manager
LCM	Sales Associate
LCM	Sales Assistant
LCM	Recycling Attendant
MRF	MRF Manager
MRF	Sorter I
MRF-MT	MRF Maintenance Tech
PUB	Pub Ed & Outreach Coord.
SCL	Scales Supervisor
SCL	Weighmaster
SHP	Maintenance Shop Assistant
SHP	Heavy Equip Tech III

FY 2020/21 FINAL BUDGET

Several of the vacated positions will be eliminated, resulting in a reduction of 9.5 FTEs from the 2020 VERI Program.

Reductions in Pay, Layoffs and Workforce Restructuring

While the VERI Program helped moderate the impact of the revenue shortfall, the cost-savings achieved are not sufficient to meet budgetary requirements. To contribute additional cost-savings to the budget, the General Manager offered a 10% reduction in his pay and the Directors offered an additional 5% reduction in their pay. The Management unit also agreed to defer a negotiated July wage increase (COLA) for up to one year. Until the first week of June, staff's budget assumed all employees would agree to this wage deferral, which would have netted the additional cost-savings needed. Regrettably, all three of the Operating Engineers Local 3 (OE3) bargaining units voted against Management's proposal to freeze the 3.5% payrate increases (COLA) that are due on July 1, 2020, in accordance with the respective MOUs. This decision by the OE3 bargaining groups, forced staff to seek the additional necessary savings in the form of layoffs.

With the elimination of 9.5 FTEs resulting from VERI retirements, there were only a few options for further workforce reductions from District essential services. Current vacancies were eliminated first, before considering non-essential District operations. The Last Chance Mercantile has been closed since mid-March due to the County closure order of non-essential businesses and after initial evaluation of prior years' financials, the requirements for reopening and the projected revenues after COVID-19, Staff determined that the viability of that operation required further evaluation. It was decided to keep the LCM closed through the end of the year, layoff the staff and use the time to explore options for optimizing that operation.

In all, the staffing budget is reduced by 28.5 FTEs from vacant positions, VERI retirements and layoffs as shown on the attached Organization Chart (Attachment A) and below:

VERI Retirements Remaining Vacant: 9.5 FTEs
Vacant Positions: 4.0 FTEs
Layoffs 15.0 FTEs (11 from closure of LCM)

Full Time Equivalent (FTE)				
DEPT	2019/20	2020/21	Headcount	CHANGE
ADMIN	4.00	3.00	3.00	-1.0
COMM/PUB ED	3.00	2.00	2.00	-1.0
ENG	2.00	2.00	2.00	
FIN/ACCT	5.00	5.00	5.00	
HR	3.00	3.00	3.00	
HHW	4.00	4.00	4.00	
LANDFILL	10.00	9.00	9.00	-1.0
LCM	15.00	0.00	0.00	-15.0
LFG	3.00	3.00	3.00	
MAINT SHOP	11.00	10.00	10.00	-1.0
MRF MAINT	9.00	8.00	8.00	-1.0
MRF OPS	56.00	50.00	50.00	-6.0
SAFETY	1.75	1.75	2.00	
SCALES	6.00	4.50	5.00	-1.5
SITE OPS	11.00	10.00	10.00	-1.0
	143.75	115.25	116.00	-28.5

Impact of the Workforce Reduction on Continuing Operations: The overall reductions in workforce is spread over various departments for minimal impact. The following operational changes will be implemented to minimize the impact on the remaining staff.

- ADMIN - After evaluating the administrative support needs of the Administration Department, it was determined that two part-time positions suffice to meet the business need at this time. The Administrative Support Specialist II will continue to perform the duties within her role at half-time and assume the responsibilities of the Board Clerk at half-time (and with out-of-class pay) until the business need changes.
- COMM/PUB ED - Onsite tours, public education at fairs and outreach to the local schools had already been cancelled for the year and the remaining staff will primarily focus on internal and external communications.
- LANDFILL – The position eliminated is one of two supervisors. The Manager and remaining supervisor will assume responsibility for the day-to-day operation. Additionally, a Site & Facilities Supervisor will provide back-up support, if necessary.
- HHW - With the retirement of the LCM/HHW Manager, the Site Operations Manager will assume responsibility for management and supervision of the HHW Department (with four (4) employees). The Site Operations Manager will receive a 5% payrate increase.
- MAINT SHOP – The position vacated by retirement is that of Shop Assistant and primarily had responsibility for cleaning around the shop and grounds. The work that can be deferred will be deferred and any critical work will be shared by the remaining staff.
- MRF OPS – The Assistant MRF Manager will be appointed Interim MRF Manager with the retirement of the MRF Manager. There is a training opportunity for the MRF employees to make better use of the Time & Attendance System to automate a lot of manual work being done currently by the MRF Manager. Also, there is an opportunity for the administrative assistant to provide greater clerical support to the Interim MRF Manager that would enable the Interim MRF Manager to focus on running the day-to-day operation. Additionally, recent operational changes and the pending installation of the MRF equipment upgrade are expected to create additional efficiencies and allow for the decrease of a few more positions.
- MRF MAINT – A Tech I position is being eliminated, as the new MRF Sorting Equipment requires higher-skilled labor at this time. A second Tech II position will be vacated by retirement and that position will be backfilled with a Sr. Tech who will provide greater expertise and technical support to the team.

Employment Taxes and Benefits:

Please refer to the *Operating Expense Accounts, Section 2. Taxes and Benefits*, found on page 16 of this budget document for all other personnel-related expenses, included in the Employee Total Compensation Budget.

STRATEGIC PLAN

The 2020/21 Staffing Plan described above supports the District's strategic objectives of ***utilizing an intentional and mindful process in the recruitment, development and growth of our people and building a high-performance team.*** It is central to the District's mission of ***"Turning Waste into Resources in the most***

FY 2020/21 FINAL BUDGET

cost-effective and environmentally sound manner” and necessary to assist the District’s member agencies in accomplishing the state’s Public Policy recycling and waste diversion goals.


FINANCIAL IMPACT

The financial impact to the District’s budget is estimated to be a \$3.2M reduction in personnel costs compared to the District’s Pre-COVID-19 draft budget.

CONCLUSION

Staff requests your approval of the Employee Compensation & Benefits Budget for FY 2020/21 in the amount of \$14,058,000 to support the District’s mission.

Sincerely,


Berta R. Torres, Human Resources Manager

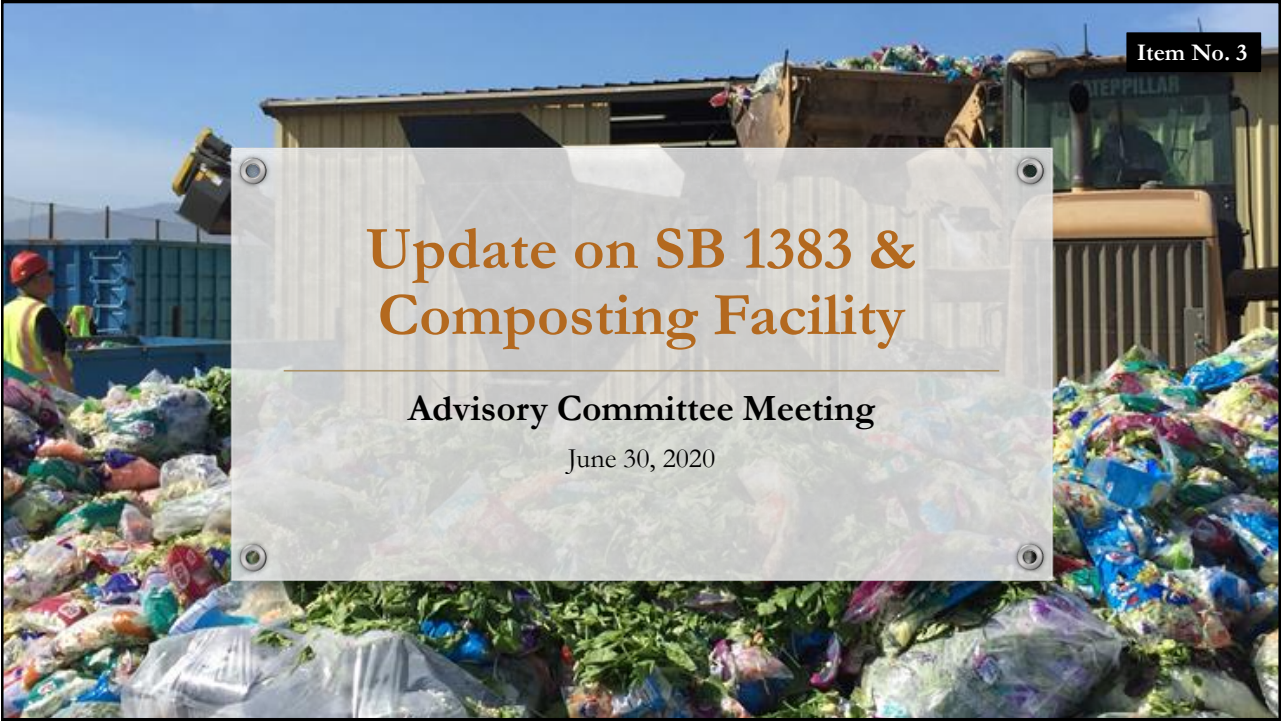
ADVISORY COMMITTEE

Date: June 30, 2020
From: Patrick Mathews, General Manager/CAO
Title: Update on the Expansion of the Organics Program (SB 1383)

A presentation will be given at the meeting.

Attachment

1. Power Point Presentation



1

What is Organic Waste?

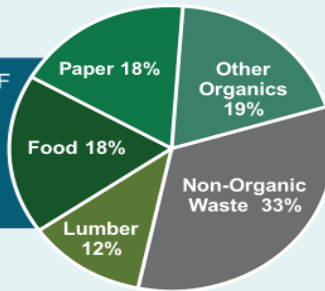
-  Food Waste (food scraps)
-  Food-Soiled Paper (pizza boxes, napkins)
-  Green Waste (leaves, grass)
-  Wood Waste (lumber, pallets)

2

Why Organic Waste?

Organic Waste Is the Largest Waste Stream in California

CALIFORNIA DISPOSED OF APPROXIMATELY **27 MILLION TONS** OF ORGANIC WASTE IN 2017



California's Waste Stream

IN CALIFORNIA, MILLIONS ARE **FOOD INSECURE**

1 IN 8 CALIFORNIANS
1 IN 5 CHILDREN



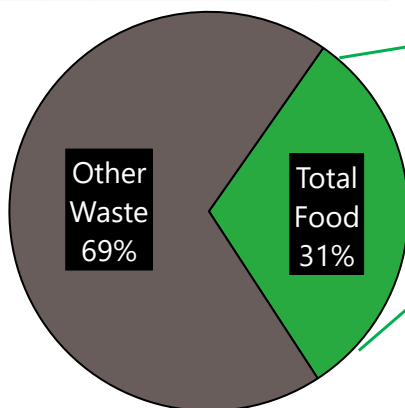
CALIFORNIA THROWS AWAY **MORE THAN 6 MILLION TONS** OF FOOD WASTE EVERY YEAR!

CalRecycle

3

Organic Waste in the Salinas Valley

37,600 tons of food in commercial waste



24% Potentially donatable

71% Not donatable

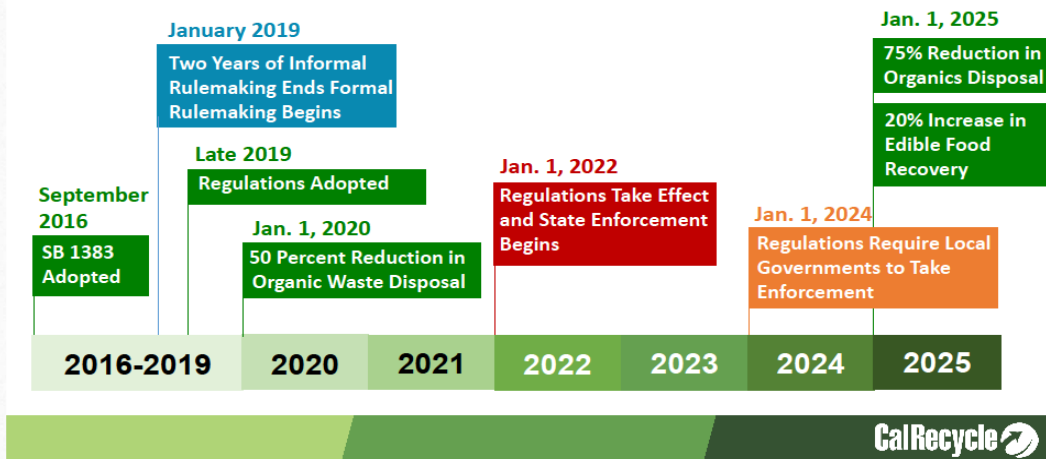
5% Inedible

63% Unpackaged

37% Packaged

4

SB 1383 KEY IMPLEMENTATION DATES



5

SB 1383 Program Planning



Awarded Contract for Program Planning (*SCS Engineers*)



Awarded Contract for Composting Marketing Plan & Technical Assistance (*Diversion Strategies and Green Mountain Technologies*)



Conducted Planning Meetings with Cities/County and Haulers



Final Draft Program Plan – Sept 2020

6

Program Planning Timeline

Task	Key Items	Due Date
Signed Contract		February 4, 2020
Task 1: Project Kick-Off Meeting	Meeting to confirm goals, timeline, objectives and project approach.	February 4, 2020
Task 2: Pre-Plan Development	2.1 Analyze current programs and estimate needs	Feb. & March 2020
	2.2 Develop draft plan	April 2020
	2.3 Prepare cost benefit analysis	May 2020
	2.4 Organics planning meeting preparation	May 2020
	2.5 Facility site visits	February 2020
Task 3: Organics Planning Meeting	Establish meetings for the Cities of Salinas, Gonzales, Soledad, Greenfield and King City, and the eastern unincorporated area of Monterey County to review workplan.	June 2020
Task 4: Compile Feedback & Conduct Analysis	Compile existing program information, agency or contractor feedback, and analysis of associated costs into the draft workplan and/or facility operating procedures.	July 2020
Task 5: Finalize Plan/Procedures	A final work plan will be provided highlighting new programs, costs and an implementation schedule for each member agency.	August 2020
Task 6: Present Plan/Procedures	Present findings and provide all final plans and templates.	Sept. or October 2020
Task 7: Ongoing Assistance	SB 1383 or composting technical assistance	As Needed

7

Extended Aerated Static Pile Composting Facility



View looking down from top of the landfill

8



Making Compost!

- Material on the Air Pad
- On Air: 21-28 days
- Curing: 30-60 days

9



Compost Mixer & Tractor

Slurry from de-packager is mixed with green waste

10



Mixer

Dual, Rotating Augers

11



Two Refrigerated Trucks

- Refrigerated Food Rescue Trucks
- 26ft Long with Special Lift Gates
- First Truck – Grant Funded (Dec 2018)
- Second Truck – SVR Funded (May 2020)

12

Questions?

Thank You!

Mandy Brooks – Resource Recovery Manager

mandyb@svswa.org | (831) 775-3004

ADVISORY COMMITTEE

Date: June 30, 2020
From: Patrick Mathews, General Manager/CAO
Title: Update on the Sun Street Transfer Station Relocation Project

A presentation will be given at the meeting.

Attachment

1. Power Point Presentation

SUN STREET TRANSFER STATION RELOCATION REVISED MADISON LANE TRANSFER STATION PROPOSAL

- ▶ Staff proposal to Republic Services
- ▶ Republic Services Interest
- ▶ Concept Plan
- ▶ Preliminary Actions Summary
- ▶ Rossi Road Extension

Published 04/14/2020

1

MADISON LANE TRANSFER STATION

AERIAL PHOTOS



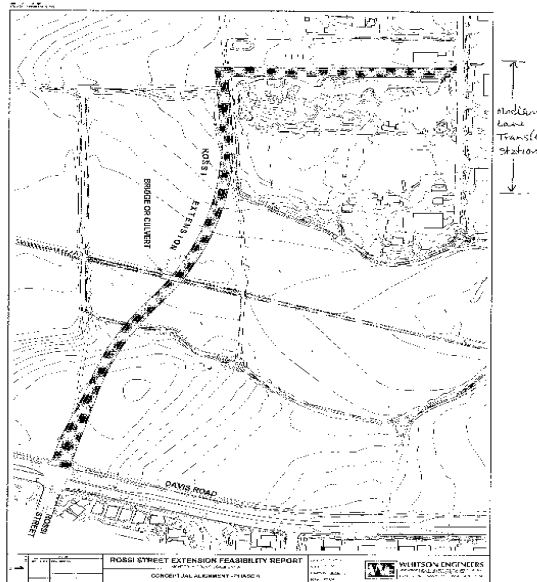
2

PRELIMINARY ACTIONS SUMMARY

- ▶ Republic Services Negotiations: Property Acquisition Agreement (APN #007), Appraisals, Building/Structural Evaluation & Estimates, Improvement Agreements & Funding, CEQA Funding Agreement, Operating Agreement(s)
- ▶ CEQA: Revised Consultant Scope of Work and Funding, Project Description (SVR/Republic), Community (Boronda) Outreach, Initiation of CEQA/Scoping
- ▶ Rossi Extension: Add to Project Description vs. Mitigation at Conclusion of CEQA?, Rossi Ext. Funding Agreement (City, County, SVR, Business Dist. split) & Who is Lead?, County Timeline for Rossi Ext. Construction-2002 est. 1.8 years, Land/ROW Acquisitions & Timeline? (Rossi Extension will likely control MLTS Project Timelines)
- ▶ Oversight: EC or Special Board "Project Development Committee"

3

ROSSI EXTENSION PLAN - COUNTY PLAN 2002



4

STAKEHOLDER ROLES

- ▶ **SVSWA**
 - ▶ Project Proponent
 - ▶ CEQA Lead Agency
 - ▶ Business Partner w/Republic Services
 - ▶ Public Services and Regulatory Compliance
 - ▶ Co-funder of Rossi/Road Extension
- ▶ **Republic Services of Salinas**
 - ▶ Business Partner with SVSWA
 - ▶ Owner of Madison Lane Transfer Station and Corporation Yard
 - ▶ Salinas Franchise Refuse and Recycling Collector
- ▶ **City of Salinas**
 - ▶ Project Facilitator to support Sun Street Relocation for future Alisal Market Place Development
 - ▶ Co-funder and Benefactor of Rossi/Road Extension (southern leg of General Plan Frwy Bypass)
- ▶ **County of Monterey**
 - ▶ Rossi Road Extension Lead, Design and Build
 - ▶ Co-funder of Rossi/Road Extension
- ▶ **South Boronda Community & Businesses**
 - ▶ Benefactors of Rossi Road Extension
 - ▶ “Potential” Co-funder of Rossi/Road Extension

5

MEMBER AGENCY PROJECT SUPPORT

- ▶ County assigns RMA/DPW staff to work with Salinas, SVR and Boronda Community/Businesses to develop the plan for Rossi Road Extension Project
- ▶ County shares in Rossi Extension Funding and MOU preparation
- ▶ County, Salinas and SVSWA agree to include Rossi Extension in Project CEQA
- ▶ Salinas shares initial Rossi Extension Funding MOU work product (2015)
- ▶ Salinas supports Republic Services efforts to move forward on proposed Project and Business Partnership w/SVSWA at MLTS
- ▶ Salinas assigns staff to participate in project development
- ▶ Salinas forwards contacts for all past and current interested AMP developers SVSWA can contact for SSTS purchase interest
- ▶ Salinas rescinds Notice of Intent to Withdraw

6

Historic Bond Ratings

- ▶ 1997 - S&P Rating BBB
 - ▶ Agency Formation and initial Bond issue (\$9M)
- ▶ 2002 - S&P Rating A-
 - ▶ New Bond and refinance 1997 Bond (\$40M)
- ▶ 2010 - S&P Rating A+
 - ▶ Rating upgrade (periodic review)
- ▶ 2017 - S&P Rating AA-
 - ▶ Rating upgrade (periodic review)

ADVISORY COMMITTEE

Date: June 30, 2020
From: Patrick Mathews, General Manager/CAO
Title: Update on the City of Salinas' One-year Notice of Intent to Withdrawal from the Joint Powers Agreement with the Salinas Valley Solid Waste Authority

A Report will be given at the meeting.

ATTACHMENT

1. Email from Drew Tipton Regarding City of Greenfield Concerns over Salinas "demands" to SVSWA, dated May 21, 2020
2. Supplement Material from the Board of Directors Meeting of May 21, 2020
3. Agenda for the City of Salinas / SVSWA Meeting of June 5, 2020

From: Drew Tipton <dtpion@ci.greenfield.ca.us>
Sent: Thursday, May 21, 2020 10:03 AM
To: Patrick Mathews; ROBERT CULLEN
Cc: Paul Wood; tcochran@lozanosmith.com
Subject: City of Greenfield Concerns over Salinas' "demands" to SVSWA

Good afternoon, Patrick and Rob--

As the SVSWA representative for the City of Greenfield, I have worked with our City Manager and our City Attorney to come up with a list of concerns/questions about Salinas' demands:

- Upon whose authority were these demands created – it appears as though they were transmitted from the office of the mayor, but were these from the consensus of the council? Is this the formal position of the entire city council?
- The City of Greenfield is concerned that this is a 'poison pill' for the Authority – Salinas can state that they tried to negotiate, and were rejected, even though the terms were not delivered in good faith.
- How often do you reallocate the board votes based upon tonnage? Every year? Every other year?
- 72 hour notice precludes special or emergency meetings, and prevents changes or updates within 72 hours – more restrictive than state law/Brown Act
- Concern about having new station open in time for June 30, 2021. Why "unconditionally" for the closure by that date?
- What is "full responsibility" for the sale? Why is the burden solely on the SVSWA? Shouldn't it be shared by all the members? What does Salinas mean by this?
- They want authority over design and operations on something not within city limits? This does not seem appropriate.
- No difference in cost for transfer loads or direct loads to Johnson Canyon? What are the current transport fees for transfer loads?
- If Salinas wants full financial disclosure and transparency, then they need to share their R3 report and all other data gathered with us in the interests of transparency - they should not be requesting something that they, themselves, are not willing to provide
- Salinas rates will need to be adjusted up and in line with the rest of the authority members. If fees are spread evenly by tonnage, then that means that Salinas will see the lion's share of any increase.
- #5 is a rehash of #3 – why?
- Only 30% of the waste flow is guaranteed to JCL – how will this allow SVSWA to maintain low costs without full knowledge of the waste flow
- Are #8 and #9 contradictory? The city shall require organics and greenwaste to go to SVSWA, but then SVSWA will relax flow control and allow organics and food waste to go somewhere else?

Thanks,
Drew



Drew Tipton

Councilmember

Tel. 831.674.5591

Fax. 831.674.3149

dtipton@ci.greenfield.ca.us

City of Greenfield

599 El Camino Real

P.O. Box 127

Greenfield CA 93927

www.ci.greenfield.ca.us



Reduce. Reuse. Recycle. Re-planet.

Notice: The information contained in this electronic email and any accompanying attachment(s) is intended only for the use of the intended recipient(s) and may be confidential and/or privileged. If any reader of this communication is not an intended recipient, unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error, please immediately notify the sender by return email, and delete the original message and all copies from your system.



SUPPLEMENTAL MATERIAL WAS ADDED TO THE BOARD OF DIRECTORS

May 21, 2020
AGENDA PACKET

Pertaining to the following Scheduled Items:

05/19/2020

- ITEM NO. 13 UPDATE ON THE CITY OF SALINAS' ONE YEAR NOTICE OF INTENT TO WITHDRAWAL FROM THE JOINT POWERS AGREEMENT WITH THE SALINAS VALLEY SOLID WASTE AUTHORITY**
- A.** Agenda for the City of Salinas / SVSWA Meeting of May 15, 2020
 - B.** Letter from the City of Salinas to SVSWA with Term Sheet received April 17, 2020
 - C.** Letter from Roy C. Santos, General Counsel to the Authority dated May 18, 2020 to Kevin D. Siegel in response to the May 6, 2020 letter
 - D.** Letter from Kevin D. Siegel from Burke, Williams & Sorensen, LLP to Roy C. Santos, General Counsel to the Authority dated May 6, 2020
 - E.** Letter from SVSWA to the City of Salinas Mayor dated February 20, 2020 requesting Solid Waste Study Performed by R3 Consulting
 - F.** Letter from the City of Salinas dated March 13, 2020 in response to the letter from SVSWA dated February 20, 2020

The "Supplemental Materials" have been added to the end of its corresponding agenda item in the agenda packet.



City of Salinas

OFFICE OF THE CITY MANAGER • 200 Lincoln Ave • Salinas, California 93901

(831) 758-7201 • (831) 758-7368 (Fax) • www.ci.salinas.ca.us

City of Salinas/ SVSWA

May 15, 2020 at 11:00 a.m.

Zoom Meeting <https://us02web.zoom.us/j/89830614179>

+ 16699009128 Meeting ID: 898 3061 4179

- I. Update on Legal Issues
- II. JPA Governance Options (attachments)
 - a. Monterey One Water/ Monterey Regional Water Pollution Control Agency
 - b. Transportation Agency for Monterey County
- III. Develop Plan in 2 weeks for Closure & Removal of Sun St. Transfer Station and Purchase of Madison Lane by Joint Working Group of SVSWA Staff and City of Salinas Staff
 - a. Timeline
 - b. Major Steps
 - c. Commitments Required by SVSWA and Other Parties
 - d. Actions by SVSWA Board for Implementation
- IV. Agenda Items for Next Meeting

TRANSPORTATION AGENCY FOR MONTEREY COUNTY BYLAWS

01. These Bylaws are intended to supplement California Government Code Title 3, Division 3, Chapter 2, and the Public Utilities Code Division 10, Part 11, referencing the Transportation Development Act passed in 1972, and as amended.
02. These Bylaws outline the basic organization and the administration procedures used by the Transportation Agency for Monterey County, successor agency to the Monterey County Transportation Commission, when serving as the Local Transportation Commission, the Regional Transportation Planning Agency, and the Service Authority for Freeways and Expressways. When serving as the Local Transportation Commission, the Regional Transportation Planning Agency, and the Service Authority for Freeways and Expressways, the Transportation Agency for Monterey County is referred to as the "AGENCY."
03. **FUNCTIONS OF THE AGENCY WHEN SERVING AS THE
LOCAL TRANSPORTATION COMMISSION AND AS THE
REGIONAL TRANSPORTATION PLANNING AGENCY**
 - 3.1. As the Local Transportation Commission, administer the provisions of the Transportation Development Act in allocating Local Transportation Funds and State Transit Assistance Funds to the cities, County, and transit operators.
 - 3.2 As the state designated Regional Transportation Planning Agency, perform transportation planning activities for the County and Cities of Monterey County.
04. **FUNCTIONS OF THE AGENCY WHEN SERVING AS THE MONTEREY
COUNTY SERVICE AUTHORITY FOR FREEWAYS AND EXPRESSWAYS**
 - 4.1 The AGENCY shall enact a motorist aid program having the primary function of installing and monitoring roadside call boxes.
 - 4.2 This program shall be performed in accordance with Sections 2550 et seq. of the California Streets and Highways Code.
 - 4.3 The AGENCY has been designated as the Monterey County Service Authority for Freeways and Expressways by resolutions of the Monterey County Board of Supervisors and a majority of the Cities containing a majority of the incorporated population as required under Streets and Highways Code Section 2551. The program shall be developed in consultation with and with the cooperation of Caltrans and the California Highway Patrol.

05. ORGANIZATION

- 5.1 **MEMBERSHIP:** The AGENCY shall be composed of each of the five members of the Monterey County Board of Supervisors, or his or her individually designated alternate, and one member appointed from each incorporated city within Monterey County or his or her designated alternate.
- 5.2 **EX-OFFICIO MEMBERSHIP:** The purpose of ex-officio membership is to permit the ex-officio member(s) to participate in AGENCY discussion before and after a matter is allowed for discussion by the public. Ex-officio members shall have no vote on matters brought before the AGENCY. Ex-officio membership is not intended to evolve into full voting membership.
- 5.2.1 The Association of Monterey Bay Area Governments, Caltrans, the Monterey Bay Unified Air Pollution Control District, Monterey Peninsula Airport District, Monterey-Salinas Transit, California State University at Monterey Bay and City of Watsonville may appoint one member each to the AGENCY to serve as ex-officio members. Ex-officio members may be added or deleted by amending the Bylaws. Additional ex-officio members shall be limited to public agencies only. This restriction to public agencies does not affect the permanent ex-officio members described in this paragraph. As used here, “public agency” means the State of California or any department or agency thereof, a county, city, public corporation, municipal corporation or public district.
- 5.3 **ALTERNATE MEMBERS:** Each appointing authority, for the regular member it appoints, may appoint up to two alternate members to serve in place of the regular member when the regular member is absent or disqualified from participating in the meeting of the AGENCY. Alternate members will have the same rights, responsibilities and privileges as regular members, except that they may not serve as officers of the AGENCY.
- 5.4 **APPOINTMENT:** City members, city alternate members, and ex-officio members, must all be appointed by the appropriate appointing authority from the affected jurisdiction. A letter signed by the City Manager or Mayor, minute action and/or a resolution making that appointment must be presented to the Executive Director before that member may participate in the AGENCY meetings. The Chair of the Board of Supervisors shall notify the AGENCY by letter to the Executive Director of the Board’s alternates.
- 5.5 **STIPEND:** Regular members may receive compensation for services performed for and on behalf of the AGENCY in accordance with written policies adopted by the Board of Directors in a public meeting.
- 5.6 **TRAVEL REIMBURSEMENT:** AGENCY Board Members (and alternates) are entitled to reimbursements for travel expenses involved in attending all regular and special meetings of the AGENCY. Reimbursement for travel expenses will be made on a per-mile basis at the current rate established by the TAMC Board for auto

expenses or actual cost of public transportation. TAMC Board members (and alternates) will receive automatic mileage reimbursement payments quarterly based on attendance records and their declared mileage to and from the TAMC meetings. Board Members attending conferences or other agency business meetings may request reimbursement for expenses in accordance with the AGENCY's administrative policies for travel reimbursement.

06. **QUORUM:** A majority of the voting members of the AGENCY shall constitute a quorum for transaction of AGENCY business; the quorum shall consist of a minimum of nine (9)-voting members, including a minimum of seven (7) city representatives and one (1) county representative.

07. VOTING

- 7.1 Except as specifically otherwise provided herein, the vote of a majority of the members of the AGENCY present at any regular, adjourned or special meeting shall be sufficient to pass or act upon any matter properly before the AGENCY, and each member of the AGENCY shall have one vote.
- 7.2 **POPULATION WEIGHTED VOTING:** Upon the call and request of any AGENCY member, present and able to vote, and a quorum being present, a weighted voting formula shall apply for any vote to be taken by the AGENCY, with each member having one or more votes based upon the population of the city or unincorporated county area such member represents. One vote will be granted to Supervisorial District 1, as its population is included with the City of Salinas.

In order for the AGENCY to take action under the provisions of this section two requirements must be fulfilled:

- a) A majority of the votes weighted by population must be cast in favor of the action, provided that not less than two-member agencies vote in favor of the action; and
- b) A majority of the members vote in favor of the action.

In the event a simple majority vote on a question has previously been taken, and a weighted vote is subsequently called; a roll call vote will be taken that tabulates both the weighted vote and the members voting. The vote weighted by a majority of those voting representing a majority of the population shall supersede the previous simple majority vote, provided that the vote of a single member may not defeat an action.

- 7.3 **POPULATION:** For the purposes of determining the weighted vote of Cities or the unincorporated area of the County, the weighted vote by population shall be based on the most current Census, and AGENCY staff shall update annually based on the California State Department of Finance population estimate when it becomes available.

08. OFFICERS

- 8.1 The AGENCY officers shall consist of a Chair, a First Vice-Chair and a Second Vice-Chair. The AGENCY officers shall be elected from the AGENCY and shall serve a term of one year. Terms of the Chair shall not be consecutive full one-year terms. Election of officers shall take place every year at the beginning of the AGENCY's January meeting, and officers' terms shall commence immediately upon election.
- 8.2 The Chair, or in his or her absence, the First Vice-Chair, shall preside over all meetings, and may direct the Executive Director to call a special meeting of the AGENCY Board when he or she judges necessary. In the absence of the Chair and the First Vice-Chair, the Second Vice-Chair shall preside over all meetings and exercise all of the powers of the Chair and the First Vice-Chair.

09. STAFF: The AGENCY staff shall consist of an Executive Director, and such other staff members as shall be authorized by the AGENCY budget and appointed by the Executive Director.

- 9.1 The AGENCY shall appoint the Executive Director to serve at the pleasure of the AGENCY.
- 9.2 The Executive Director will serve as Chief Executive Officer of the AGENCY.
- 9.3 The AGENCY shall appoint Counsel to serve at the pleasure of the AGENCY.
- 9.4 The AGENCY shall complete an annual performance evaluation of the Executive Director and Counsel.

10. MEETINGS

- 10.1 The regular meetings of the AGENCY shall be held on the fourth Wednesday of each month or at such other time designated by the Board at a location in Monterey County. Special meetings shall be set with the notice required by law.
- 10.2 AGENCY meetings are open to the public and are conducted according to the Ralph M. Brown Act (Govt. Code Section 54950 et seq.) and Roberts Rules of Order. Time will be allotted at each meeting for the public to present their views to the AGENCY on transportation items, as set forth in Govt. Code Section 54954.3.

Public presentations on transportation matters not on the AGENCY's agenda are limited to three minutes each, unless extended at the discretion of the Chair.

The Chair may establish reasonable limitations on the time allotted for public presentations on any AGENCY agenda item.

- 10.3 The voting members of the AGENCY may meet in closed session to discuss those matters authorized by state law. Only appointed TAMC representatives and, in their absence, their appointed alternates, may attend Closed Sessions. Ex-officio members shall not be authorized to attend Closed Sessions.
- 10.4 The AGENCY Chair in consultation with the First Vice-Chair may cancel any regular meeting if there are no items presented that require the AGENCY's immediate attention.
- 10.5 The AGENCY Agenda will be prepared by the AGENCY staff. The agenda deadline is noon, Thursday, nine (9) working days before the regular meeting. Any member may request in writing an item to appear on the agenda. The request shall be made at or before the Executive Committee meeting prior to the regular meeting for which the item is proposed, or, in the case of an urgent matter, after consultation with the AGENCY Chair, or in the absence of the Chair, the First Vice Chair, by the agenda deadline. Any supporting papers must be furnished by the agenda deadline or be readily available.
- 10.6 Agenda packets shall be distributed to AGENCY members, alternates, and ex-officio members.
- 10.7 The AGENCY agenda shall also be supplied to other governmental agencies on written request, renewable annually.

11. BUDGET

- 11.1 The AGENCY shall annually develop and adopt a budget in accordance with State and Federal requirements no later than the May meeting.
- 11.2 Each AGENCY member shall contribute toward AGENCY activities by means of the Regional Transportation Planning Assessment ("Assessment") in proportion to California Streets and Highways Code Highway Users Tax Account Section 2105 funds received by each AGENCY member to those received by all other AGENCY members. Such Assessment shall be paid from local funds of the member, in order to provide the greatest flexibility of use by AGENCY. AGENCY staff shall invoice each voting member each June for the following fiscal year.

12. COMMITTEES: Committees and subcommittees, whether standing or ad hoc, may be established, as the AGENCY may deem appropriate.

Standing committees shall be the following:

- 12.1 A Technical Advisory Committee (TAC) composed of one person representing each AGENCY member including ex-officio members, and transportation providers in Monterey County. Additional members from organizations and jurisdictions not presently represented may be appointed by the AGENCY. The Technical Advisory

Committee shall advise the Agency Board on regional transportation improvement projects, transportation planning programs, and transportation funding programs.

12.2 An Executive Committee composed of the Chair, First Vice-Chair, Second Vice-Chair, immediate past Chair, and two members selected by the AGENCY; one from the County members and one from the City members. If one of the above-designated persons is not available to serve on the Executive Committee, the AGENCY shall appoint another AGENCY member so that the Executive Committee shall have six members. The Executive Committee shall meet when directed to do so by the AGENCY, or when directed to do so by the Chair of the AGENCY, or by a majority of the Executive Committee members. The Executive Committee may meet for the following purposes:

- a. Review of budget and work program and personnel.
- b. Review adequacy of transportation funding and regional transportation planning and project delivery efforts.
- c. Review state and federal legislative matters.
- d. Review major AGENCY policy matters for recommendation to the Board.

Minutes of the Executive Committee meetings shall be distributed to all AGENCY members.

12.3 A Citizens Advisory Committee for Bicycle and Pedestrian Facilities composed of one representative from each city and supervisorial district. Additional members from organizations and jurisdictions not presently represented may be appointed by the AGENCY. The purpose of the committee is to advocate bicycle and pedestrian travel as viable alternative means of transportation, and advise the Transportation Agency, its member agencies, and private development with respect to bicycle and pedestrian facilities and travel.

12.4 A Rail Policy Committee composed of TAMC Board members or their alternates from the following jurisdictions on the rail lines: Cities of Salinas, Marina, Sand City, Seaside, and Monterey, Supervisorial District 1, Supervisorial District 2, Supervisorial District 4, Supervisorial District 5 and two representatives from South Monterey County: either (a) the 3rd District County Supervisor and a voting TAMC Board member from one of the South Monterey County Cities, or (b) two voting TAMC Board members from South Monterey County Cities. In addition, the TAMC Board may appoint one at-large member from the TAMC Board, taking into account interest and expertise in rail issues. The TAMC Chair may appoint annually ex-officio members as needed.

The Committee shall select a Chair and Vice Chair from its membership for a two-year term at the end of the February meeting of every even year, beginning in 2008. The Chair may rotate between the County Supervisors and the Cities, and/or between Salinas Valley and the Monterey Peninsula or the existing Chair may be reappointed to

a new term. To be eligible to serve as the Chair or Vice Chair, the person must be a voting AGENCY Board Member and have served on the Rail Policy Committee for at least one year. The Rail Policy Committee advises the Transportation Agency Board on matters related to the establishment of passenger rail service in Monterey County.

- 12.5 Bylaws for any standing committee may be developed and adopted, or amended, by a majority vote of the AGENCY.
- 12.6 Except as otherwise provided herein, a majority of the voting members of each committee shall constitute a quorum for transaction of the business of the committee. For the Technical Advisory Committee (TAC); 5 members of the TAC, representing voting members of the Transportation Agency Board of Directors, constitute a quorum for transaction of the business of the committee.
- 12.7 The Transportation Agency has designated the Monterey-Salinas Transit Mobility Advisory Committee as the Social Services Transportation Advisory Council for Monterey County pursuant to the Transportation Development Act. The Agency will consult with the Mobility Advisory Committee regarding the Agency's annual unmet transit needs finding and the transportation needs of the elderly, persons with disabilities and other transit dependent groups.

13. PROCEDURE FOR APPROVING AND AMENDING BYLAWS

- 13.1 Provided a quorum is present, these Bylaws may be amended at an AGENCY meeting by two-thirds (2/3) of the voting members.
- 13.2 Notice of the proposed amendment of the Bylaws shall be announced at the AGENCY meeting prior to the meeting at which the amendment will be voted upon.

14. AUDITS

All revenues and expenditures of the AGENCY will be audited annually in accordance with General Accounting principles.

A triennial performance audit will be conducted as required by the Transportation Development Act.

Rev.2/27/2019

JOINT EXERCISE OF POWERS AGREEMENT
FOR THE
MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

THIS AGREEMENT is made and entered into by and between those certain public agencies, hereinafter designated as "eligible public agencies," which have duly executed, pursuant to resolution or ordinance, a counterpart hereof, as follows:

ARTICLE 1. RECITALS

1.01 Presently Existing Agency. Each of the parties hereto is presently a member of the Monterey Peninsula Water Pollution Control Agency, hereinafter referred to as "MRWPCA," a joint powers agency formed in February 1972 by the cities of Monterey and Pacific Grove and the Seaside County Sanitation District. In April 1975 the City of Salinas and the County of Monterey became members of said MPWPCA. In February 1976 the three members of the Seaside County Sanitation District, namely, the cities of Del Rey Oaks, Sand City and Seaside, became individual members of the MPWPCA in place of said District.

1.02 MPWPCA Activities. MPWPCA has been actively involved in developing and implementing plants for regional sewerage facilities to serve the entire area of north Monterey County, California, as more specifically outlined in the North Monterey County Regional Water Pollution Control Project Financing Plan and Institutional Program, a report prepared by Bartle Wells Associates of San Francisco, California, and dated September 1976. Pursuant to such plans, MPWPCA has let out contracts and has applied for and received state and federal grants for the construction of such facilities.

1.03 Formation of Operating District - MRCSD. In early 1977 the cities of Monterey, Pacific Grove, Seaside, Del Rey Oaks, and Sand City and the County of Monterey acted to create the Monterey Regional County Sanitation District, hereinafter referred to as "MRCSD." The MRCSD was formed for the purpose of operating the sewage collection, treatment and disposal services for the cities within the district, as part of Stage 1 of the aforesaid regional project, and to become the eventual successor entity to the MPWPCA as the owner-operator of the regional facilities

constructed by MPWPCA. During 1978 the City of Salinas, the Castroville County Sanitation District and the Moss Landing County Sanitation District all acted to join and annex to the MRCSD.

1.04 Codify Prior Agreements; Supersede MPWPCA. It is the intent and desire of the parties, by this present Agreement, to clarify, up-date and codify the Joint Powers Agreement for the MPWPCA, which has been amended four times and which contains language and provisions which are no longer operable or applicable to the present circumstances. It is the intention of the MPWPCA and its member entities, all of which are parties to this Agreement, that the Agency created by this Agreement, the Monterey Regional Water Pollution Control Agency, shall supersede and in all manner and respects be the legal successor in interest of the MPWPCA, and as such successor, be legally entitled to all of the rights, entitlements and assets of, and subject to all of the duties and obligations of, the MPWPCA.

1.05 Joint Exercise of Powers. To that end, each of the parties hereto is a public agency duly authorized and empowered by law to contract for the joint exercise of powers under Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (Section 6500 et seq.), and the parties hereto further have and possess the common power and authorization to acquire, construct, maintain and operate facilities for the collection, transmission, treatment, disposal and reclamation of sewage and wastewater for the benefit of lands and inhabitants within their respective boundaries.

ARTICLE 2. CREATION OF AGENCY

2.01 Joint Powers Agency. In consideration of the mutual promises and covenants contained herein, there is hereby created by agreement of the parties hereto a Joint Powers Agency, with the powers and authority as hereinafter set forth.

2.02 Name of Agency. The Joint Powers Agency created hereby shall be known as and designated the "Monterey Regional Water Pollution Control Agency," hereinafter referred to as the "Agency."

2.03 Purpose; Successor to MPWPCA. The purpose of this Agreement is to create a separate public agency, as previously existed in the form of the MPWPCA, to undertake and implement the common power and authority of its members to study, plan for, design, construct and operate, to contract for same, regional wastewater treatment facilities for the area of North Monterey County, California. The Agency shall supersede and in all manner and respects be the legal successor in interest of the MPWPCA, and shall be legally entitled to all of the rights, entitlements and

assets of, and subject to all of the duties and obligations of, the MPWPCA. The Agency is to be construed as having been in continual existence since the inception of the MPWPCA, and no action taken by the MPWPCA is to be considered modified, amended or otherwise affected by this Agreement.

2.04 Powers. The Agency shall have all powers necessary to carry out the purpose of this Agreement, except the power to tax. The Agency shall have the power, in its own name, to do any and all of the following:

- a) To make and enter into contracts;
- b) To employ agents and employees and to contract for professional services;
- c) To acquire, convey, construct, manage, maintain and operate buildings, works and improvements;
- d) To acquire, hold and convey real and personal property;
- e) To sue and be sued in its own name;
- f) To incur debts, liabilities and obligations;
- g) To issue bonds, notes, warrants and other evidences of indebtedness to finance costs and expenses incidental to the projects of the Agency;
- h) To apply for and execute appropriate grants or contracts of financial assistance from state and federal agencies;
- i) To issue revenue bonds in accordance with the State of California statutes more specifically set forth in Article 5, Paragraph 5.01 hereinbelow;
- j) To levy and collect charges and fees for the use of and connection to the sewage and wastewater facilities owned or operated by the Agency, pursuant to the provisions of Article 4, Chapter 1, Part 3, Division 5 of the California Health and Safety Code (Section 5470 et seq.);
- k) To exercise the power of eminent domain and condemn any real property necessary to carry out the objects or purposes of the Agency; and
- l) To the extent not herein specifically provided for, to exercise any and all other powers common to the parties hereto.

To the extent not otherwise herein specifically provided for, the foregoing powers shall be exercised by the Agency in the manner and according to the methods provided in the laws applicable to a California county sanitation district, as set forth in the County Sanitation District Act (Health and Safety Code Section 4700 et seq.).

2.05 Separate Legal Entity. The Agency created hereby is a public entity duly formed and existing under the laws of the State of California, and is a legal entity separate and distinct from its member entities, the parties hereto. The debts, duties and obligations created pursuant to this Agreement shall be solely the obligation of the Agency and not those of its officers, employees, Board of Directors or the member agencies.

2.06 Eligible Public Agencies. The public agencies eligible to become parties to this Agreement and members of the Agency are specified as follows:

- a) The City of Del Rey Oaks;
- b) The City of Monterey;
- c) The City of Pacific Grove;
- d) The City of Salinas;
- e) The City of Sand City;
- f) The City of Seaside; and
- g) The County of Monterey.

An eligible public agency shall become a party hereto and a member of the Agency upon execution of this Agreement and any addenda, amendment or supplement thereto. The Agency may approve membership of other public agencies at any time, by a two-thirds (2/3) vote of the Board of Directors and upon such terms and conditions as the Agency may prescribe. Membership of the Agency shall be limited to the County of Monterey and incorporated cities and other public agencies within the county which have joined and been annexed to the MRCSD.

2.07 Service to Adjacent Territory. Unless otherwise determined by the Board of Directors, Agency services will be rendered only to sewered areas within its boundaries, connected through member entity systems (i.e., city, sanitation district, water district, county service area or military installation). Currently sewered unincorporated areas of Monterey County may be served through an interceptor or trunk constructed at the request of the County. Private agencies will only be connected to Agency facilities at their own expense and at the request of a member

public entity. Te Agency is intended to be a service agency only, having no role in the determination of land use or development, and the Agency will serve areas under the jurisdiction or sphere of influence (as determined by the Monterey County Local Agency Formation Commission) of a member entity only at the request of that entity.

2.08 Ex-Officio Members. The Board of Directors of the Agency, by a two-thirds (2/3) vote, may from time to time approve and permit ex-officio membership in the Agency. Such ex-officio members shall not be entitled to vote on Agency matters. Any references herein to a "member" of the Agency, shall, unless specifically designated otherwise, refer only to a regular, voting member of the Agency, and not to an ex-officio, non-voting member.

ARTICLE 3. ORGANIZATION

3.01 Board of Directors. The powers of the Agency shall be vested in and exercised by and through its governing body, known as the Board of Directors. The Board of Directors shall be composed of one representative from each member agency. Each member agency shall appoint one regular member and one alternate member to the Board of directors and shall notify the Agency in writing of their appointments or any change of representative. The representative shall be either an elected official or an officer or employee of the member agency, and shall serve solely at the pleasure of the governing body of the appointing member agency. All vacancies in the Board shall be filled in the same manner as the original appointment.

3.02 Meetings. The Board shall establish a time, place and date for its regular meetings. Regular meetings may be adjourned from time to time. Sspecial meetings may be called by the Chairman of the Board or by a majority of the members of the Board.

3.03 Quorum. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of Agency business.

3.04 Voting. Except as specifically otherwise provided herein, the vote of a majority of the members of the Board of Directors present at any regular, adjourned or special meeting shall be sufficient to pass and act upon any matter properly before the Agency, and each member of the Board shall have one vote; provided, however, that upon the call and request of any Board member, present and able to vote, and a quorum being present, a weighted voting formula shall apply for any vote to be taken by the Agency Board, with each member having one or more votes based upon the population of the city, district, agency or

unincorporated county area such member represents, as follows:

<u>Population</u>	<u>No. of Votes</u>
0 to 9,999	1
10,000 to 24,999	2
25,000 to 49,999	3
50,000 to 74,999	4
75,000 to 99,999	5
100,000 and above	6

For the purpose of determining the population of a city, district, agency or represented county area, the Agency shall consider the last official United States census or the California Finance Department population estimate, whichever is more recent for a particular area.

In determining such population basis, those portions of the population of a city, district, agency or represented county area which are attributable to and located on the U.S. Army Military Reservation at Fort Ord, California, shall not be included within the population computation of such city, district, agency or county area.

No action can be taken by the Agency Board to establish, incur or increase the financial obligation or liability of any member of the Agency without the unanimous vote of the Board members and the express ratification thereof by the legislative or governing body of each member entity whose financial obligation is so established or increased.

3.05 Officers. There shall be selected from the membership of the Board of Directors a chairman, a vice-chairman, who shall act in the absence of the chairman, and if the Agency has no manager as provided for in Section 3.06 hereinbelow, a secretary, and such other officers as the Board may deem necessary. Pursuant to Government Code Section 6505.5, the treasurer of the City of Monterey shall be the treasurer of the Agency, to be the depository and have custody of all money of the Agency from whatever source. Said treasurer shall have the powers and duties as set forth in said Section 6505.5, and the City of Monterey shall be compensated for said services. The auditor-controller of the City of Monterey shall be the auditor-controller of the Agency, and shall draw all warrants and pay demands against the Agency approved by the Agency Board or manager. The treasurer and auditor-controller hereby designated may be changed by consent of all board members. All officers shall serve for a term of one year from the date of their election or until their successors are elected. The chairman and vice-chairman are authorized to execute all documents in the name of the Agency, and the secretary is authorized to attest to the same.

3.06 Manager and Other Employees. The Board may employ a manager and such other employees and assistants as may be appropriate. Should the Board employ or appoint a manager, he shall be the chief administrative officer and shall assume such other duties and responsibilities as the Board may direct. The manager shall also serve as secretary to the Agency and shall have the power to certify Agency documents, as required by law. The manager and all other employees shall serve at the pleasure of the Board.

3.07 Public Meetings. All meetings of the Board shall be open to the public and shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, being Sections 54950 et seq. of the California Government Code.

3.08 Rules. The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

ARTICLE 4. FINANCIAL PROVISIONS

4.01 Costs of Operation. All costs of operation of the Agency shall be received from:

- a) Revenues from fees and charges for the use of and connection to the sewage and wastewater facilities owned or operated by the Agency;
- b) Revenues from fees and charges levied or collected by the MRCSD, pursuant to written agreement between said MRCSD and the Agency;
- c) Grant funds received from the Environmental Protection Agency, the State Water Resources Control Board or from any other state or federal agencies; and
- d) Funds from the sale of revenue bonds issued by the Agency.

For the purposes of any election held regarding the issuance of bonds by the Agency, the boundaries of the Agency shall be deemed to be the same as the service area of the Agency, which includes only those areas within the MRCSD.

4.02 Limitation on Agency. The Agency shall have no power to incur any indebtedness, nor to enter into any contract, which may be a charge payable by any member hereunder, without the express consent of the governing body of such member. The Agency shall have no power to borrow money or issue bonds which will in

any way be a charge or lien on any member or any member's property.

4.03 No Liability of Member. No member shall be liable for any indebtedness of the Agency except that which is expressly consented to by its governing body. All persons dealing with the Agency shall be hereby notified that no member shall be liable for the debts of the Agency.

4.04 Subsequent Members. If determined by the Agency Board to be appropriate under the circumstances, members who join the Agency after money, property or services shall have been contributed by existing members may be required to reimburse the Agency the amount or value existing members have contributed which would be in excess of its chargeable share hereunder, including administrative and financing costs, had the new member been a member from the effective date of this Agreement. The Agency's calculation under this section shall be conclusive, and any reimbursement required hereunder shall be a condition to membership.

4.05 No Power to Tax. The Agency shall have no power to raise money by taxation or assessment.

4.06 Fiscal Year. The fiscal year of the Agency shall be from July 1 to June 30, following.

4.07 Accounting Procedures. Full books and accounts shall be maintained for the Agency in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies (see Government Code Section 26909). In particular, the controller and treasurer of the Agency shall comply strictly with the requirements of the statutes governing joint powers agencies as set forth in Article 1, Chapter 5, Division 7, Title 1 of the Government Code (Section 16500 et seq.).

4.08 Audit. The auditor or controller of the Agency shall cause the accounts and records of the Agency to be audited annually in accordance with the provisions of California Government Code Section 6505, and copies of such audit report shall be filed with the Monterey County Auditor and each member of the Agency within six (6) months of the end of the fiscal year under examination.

4.09 Official Bonds. The manager and such other employees or agents as the Board may direct shall file an official bond in the amount determined by the Board. The cost of said bond(s) shall be borne by the Agency.

ARTICLE 5. BOND FINANCING

5.01 Revenue Bonds. The Agency shall have the power and authority to issue and sell revenue bonds in accordance with the procedures and requirements set forth in:

a) Article 2, Chapter 5, Division 7, title 1 of the California Government Code, commencing with Section 6540;

b) Chapter 6, Division 2, Title 5 of the California Government Code, commencing with Section 54300;

c) Chapter 5, Part 3, Division 5 of the California Health and Safety Code, commencing with Section 4950; and

d) Any other then-applicable law regarding or permitting the issuance of revenue bonds by a joint powers agency.

ARTICLE 6. PROPERTY RIGHTS

6.01 Agency Facilities. All facilities, assets and property acquired or constructed by the Agency shall be held in the name of the Agency for the benefit of its members in accordance with the terms of this Agreement; provided, however, that the Agency Board may determine, in its discretion, that such facilities, property or assets may more appropriately or beneficially be held in the name of the MRCSD, pursuant to written agreement with the Agency.

6.02 Collection Systems. Each member of the Agency reserves the right to retain ownership of, and responsibility for the operation and maintenance of, the sewer collection systems within their respective boundaries; provided, however, any member may enter into a contract with the Agency to have the Agency operate and/or own any portion or all of the member's collection system.

6.03 Transfer of Facilities Upon Dissolution. Upon termination of this Agreement and dissolution of the Agency as hereinafter provided for in Paragraph 7.02, the facilities, assets and property of the Agency shall be transferred and conveyed to the MRCSD or to such other successor entity as may be created hereafter by the members of the Agency to own and operate the regional wastewater sewerage facilities contemplated by this Agreement for the benefit of all lands and inhabitants within the boundaries of the Agency-MRCSD.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.01 Effective Date. This Agreement shall become effective and the Agency shall be created when the governing bodies of all seven (7) of the eligible public agencies listed in Paragraph 2.06 hereinabove shall have authorized execution of this Agreement.

7.02 Termination. This Agreement may be terminated and the Agency dissolved by a two-thirds (2/3) vote of the Board of Directors, ratified by two-thirds (2/3) of the member agencies; provided, however, that there shall be no termination and dissolution until any and all revenue bond debt incurred by the Agency for the construction or acquisition of its regional sewerage facilities has been fully amortized and retired or such debt is refinanced by the MRCSD or other successor entity.

7.03 Insurance for Tort Liability. Throughout the term of this Agreement the Agency shall maintain in force a comprehensive general and automobile liability insurance policy or policies, with minimum coverage of \$1,000,000, insuring the Agency, its employees and agents, from any loss, liability or claims arising out of or in any way connected with this Agreement or the operation of the Agency. In addition, in contemplation of the provisions of Government Code Section 895.2, imposing certain tort liability upon public entities which are parties to a joint powers agreement, such policies shall also name all parties to this Agreement as additional insureds, with such insurance coverage to be construed as primary insurance, and shall further provide that thirty (30) days' written notice be given to all additional insureds of cancellation or non-renewal of said policies.

7.04 Arbitration. If a dispute arises as to the construction, interpretation or implementation of any provision of this Agreement, the issues in dispute or matter requiring action shall be submitted to binding arbitration. For such purpose, an agreed arbitrator shall be selected by all members of the Board, or in the absence of such an agreement, the Board by majority vote shall select another arbitrator, and the two arbitrators so selected shall select a third arbitrator. The arbitrator or the three arbitrators acting as a panel, as the case may be, shall proceed to arbitrate the matter in accordance with the provisions of Title 9, Part 3, of the California Code of Civil Procedure.

7.05 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, agreements, appointments or designations hereunder shall be given in writing and addressed to the principal office of each member of the Agency.

7.06 Severability. If any one or more of the terms,

provisions, promises, covenants or conditions of this Agreement, or the application thereof to any member agency or circumstance, shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. Each of the parties hereto hereby declares that it would have entered into this Agreement, and each term, provision, promise, covenant and condition thereof, irrespective of the fact that one or more terms, provisions, promises, covenants, or conditions, or the application thereof to any member agency or circumstance, be held invalid, unenforceable, void or voidable.

7.07 Amendment. This Agreement may not be amended without the consent of all existing members of the Agency at the time of amendment.

7.08 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

7.09 Assignment. The parties hereto shall not assign any rights or obligations under this Agreement without written consent of all other parties.

7.10 Additional Documents. the parties hereto agree upon request to execute, acknowledge and deliver all additional papers and documents necessary or desirable to carry out the intent of this Agreement.

7.11 Captions. Captions of the articles, sections and paragraphs of this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision contained herein.

IN WITNESS WHEREOF, the parties hereto, by and through their respective duly authorized representatives, have executed this Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency on the date so indicated.

ATTEST:

Joyce A. Dettman
Joyce A. Dettman, City Clerk

ATTEST:

Beth C. Lyons
Beth C. Lyons, City Clerk

ATTEST:

William S. Pitt
William S. Pitt, City Clerk

ATTEST:

Evelyn Reynolds
Evelyn Reynolds, City Clerk

CITY OF DEL REY OAKS

By Charles W. Benson
Charles W. Benson, Mayor

Dated: June 26, 1979.

CITY OF MONTEREY

By Gerald T. Fry
Gerald T. Fry, Mayor

Dated: June 27, 1979.

CITY OF PACIFIC GROVE

By Florus C. Williams
Florus C. Williams, Mayor

Dated: June 28, 1979.

CITY OF SALINAS

By Henry Hibino
Henry Hibino, Mayor

Dated: June 27, 1979.

ATTEST:

Belle Smith
Belle Smith, City Clerk

ATTEST:

Stanley H. Hall
Stanley H. Hall, City Clerk

ATTEST:

Ernest A. Maggini
Ernest A. Maggini, County Clerk

CITY OF SAND CITY

By David K. Pendergrass
David K. Pendergrass, Mayor

Dated: June 27, 1979.

CITY OF SEASIDE

By Stephen E. Ross
Stephen E. Ross, Mayor

Dated: June 27, 1979.

COUNTY OF MONTEREY

By Sam Farr
Sam Farr, Chairman of
Board of Supervisors

CASTROVILLE COUNTY SANITATION DIST.

By Rich Drown
Chairman of the Board of
Directors (Supervisors)

ATTEST:

Ernest A. Maggini
By: Nancy Lukensell,
Deputy

ATTEST:

Ernest A. Maggini
By: Nancy Lukensell,
Deputy

MOSS LANDING COUNTY SANITATION DIST.

By Rich Drown
Chairman of the Board of
Directors (Supervisors)

FORT ORD MILITARY RESERVATION

By Frederick Meurer
Lt. Col. Frederick Meurer
Director of Engineering and Housing

Dated: April 22, 1985

BORONDA COUNTY SANITATION DISTRICT

By Kimi Strode Kaufman
Chair of the Board of Directors
(Supervisors)

Dated: ~~May~~ June 2, 1987

ATTEST:

Ernest K. Morishita, Clerk
By Anne Arii,
Deputy

MARINA COUNTY WATER DISTRICT

By James E. Perrine
James E. Perrine
Chairman of the Board

ATTEST:

Dated: April 27, 1989

Cornie Shroyer

From: [Estefania Vargas](#)
To: [ROBERT CULLEN \(rcullen@farmersagent.com\)](mailto:rcullen@farmersagent.com)
Cc: [Erika Trujillo](#)
Subject: FW: Letter to Salinas Valley Solid Waste Authority and Term Sheet
Date: Friday, April 17, 2020 8:44:26 AM
Attachments: [image003.png](#)
[image005.png](#)
[image007.png](#)
[image009.png](#)
[image011.png](#)
[Terms and Conditions Letter and Term Sheet Sent to SVSWA 4.15.2020.pdf](#)

Robert,

Here it is in PDF once more, let me know if you have troubles I can send at least the term sheet in Word

Estefania Vargas

Executive Assistant

Office of the City Manager

200 Lincoln Avenue, Salinas, California 93901

estefaniav@ci.salinass.ca.us

P: (831) 758-7204 F: (831) 758-7368





City of Salinas

OFFICE OF THE MAYOR • 200 Lincoln Avenue • Salinas, California 93901 • (831) 758-7201 • Fax (831) 758-7368

April 15, 2020

Robert Cullen
SVSWA Board President
128 Sun Street, Ste. 101
Salinas, CA 93901

Dear Board President Cullen,

Attached is the list of terms and conditions for the City of Salinas to remain as a member of the Salinas Valley Solid Waste Authority. The first three items on the list, Governance, Sun Street Transfer Station and New Transfer Station are our top priorities.

For our rate payers to be equitably represented, the governance structure of the current board needs to be changed. The City of Salinas has three votes of the total nine board members, yet, we have 61% of the tonnage of waste. We think the realignment of the Board vote should be by tonnage contribution.

The Sun Street Transfer Station needs to be unconditionally closed by June 30, 2021. Last year you offered a closure date of June 2021. The citizen driven, Alisal Vibrancy Plan, acknowledges the facility is an impediment to economic development. The full development of the Alisal cannot be realized unless the transfer station is closed and removed. Several residents and business believe the transfer station is an environmental justice issue.

The City has been consistent on no new transfer station within the City; however, we recognize the need for a transfer station for self-haul. It can be located at a convenient site for Salinas customers while outside the City limits. We want to be part of those discussions. Development of housing is a top priority for us, any sites or land that is available within our City will be used for housing first, as is reflected in all our current plans.

We think decisions and an agreement can be reached in the next 30 days. That time frame allows each of us to make critical decisions for the upcoming fiscal year. We look forward to working through these issues. It's our goal to improve our partnership.

Sincerely,

Joe Gunter

Mayor
City of Salinas

Term Sheet - City of Salinas and the Solid Waste Authority

1. SVSWA Governance

- a. The Board vote shall be realigned to reflect the tonnage contribution by each of the Member Agencies.
- b. Agenda items including supplemental materials and presentations, shall be made available at least 72 hours prior to all Board and Committee meetings and remain posted on Authority's web site.

2. Sun Street Transfer Station

- a. SVSWA agrees unconditionally to close the Sun Street Transfer Station by June 30, 2021.
- b. SVSWA shall assume full responsibility for the sale of the property.
- c. All associated costs for environmental investigation and remediation as required by law and to transfer the property shall be the sole burden of the SVSWA.

3. New transfer facility

- a. The City recognizes the need for a new transfer station to accept self-haul, household hazardous waste (HHW) and franchised green waste (organics). The new transfer station shall be developed at a convenient site for Salinas customers while located outside the City limits.
- b. The City is to have direct input into design and operations standards of the transfer station regardless of location.
- c. Design shall include separate entry/scales and tip area for franchised green waste/organics tonnage delivered in packer trucks. There shall be no cost difference for franchised loads regardless whether delivered to the new transfer station or to SVSWA's compost facility.
- d. SVSWA to include drop-off for HHW and more annual HHW events within the City.

4. Financial disclosure and member benefits

- a. SVSWA shall demonstrate a direct tie between amounts paid by each Member Agency to the benefits derived. SVSWA shall agree to equalize expenses and benefits by proportioning these according to individual member tonnage.
- b. City shall require full and clear reporting and disclosure of all financial matters and the use of funds. A breakdown will be required of funds received and programs provided to each Member Agency.
- c. City requires that the amount of its share of the SVSWA liability be reconciled. While the SVSWA has estimated the sum to be \$56M, the City has determined its share to be substantially less. Additionally, the City requires SVSWA to fully reconcile each Member Agency's directly controlled franchised disposal tonnage

vs. total tonnage received for disposal from all sources (franchised, self-haul, outside contractors)

5. New transfer facility

- a. The City recognizes the need for a new transfer station to accept self-haul, household hazardous waste (HHW) and franchised green waste (organics). The new transfer station shall be developed at a convenient site for Salinas customers while located outside the City limits.
 - b. The City is to have direct input into design and operations standards of the transfer station regardless of location.
 - c. Design shall include separate entry/scales and tip area for franchised green waste/organics tonnage delivered in packer trucks. There shall be no cost difference for franchised loads regardless whether delivered to the new transfer station or to SVSWA's compost facility.
 - d. SVSWA to include drop-off for HHW and more annual HHW events within the City.
6. SVSWA to allow the City to direct its franchise hauler to deliver C&D materials to MRWMD for processing.
7. SVSWA to relax flow control such that the City may direct its franchise hauler to deliver MSW to MRWMD for disposal or processing, and the City shall continue directing its franchise hauler to deliver MSW for disposal. The allocation between MRWMD and JCL will be based on the most efficient routing by the City's franchise hauler for the use of either MWRMD or JCL. The City will guarantee a minimum of 30% of its franchised MSW will be delivered to JCL. SVSWA shall not add any markup, or any additional costs to tonnage the City directs to MRWMD.
8. City shall require franchised green waste be delivered to SVSWA's compost facility and/or transfer station. City shall increase payment for green waste and/or organic processing to a per ton tipping fee as agreed to between the City and SVSWA. The City agrees to adjust customer rates as appropriate to account for increased green waste and/or organic processing fees as may be paid to SVSWA. SVSWA agrees to adjust the AB939 fee accordingly such that it no longer compensates for the current discrepancy of green waste tipping fees.
9. SVSWA to relax flow control such that the City's franchise hauler has the option to deliver organics/food waste to any permitted facility.
10. SVSWA to coordinate with Republic to eliminate any overlap with regard to Legislative Compliant Programs including AB341, AB1826 and SB1383.



**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW

Roy C. Santos
rsantos@awattorneys.com
(559) 445-1580

2440 Tulare Street, Suite 410
Fresno, CA 93721
P (559) 445-1580
F (559) 486-1568

ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

AWATTORNEYS.COM

Published 05/19/2020

May 18, 2020

VIA ELECTRONIC MAIL ONLY

Kevin D. Siegel, Esq.
ksiegel@bwslaw.com
Burke, Williams & Sorensen, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612-3501

Re: Conflict of Interest - Director De La Rosa,
Mr. Siegel:

We are in receipt of and have reviewed your letter dated May 6, 2020, on behalf of the City of Salinas. Among others, the letter raises certain factual and legal issues, including the exclusion of Director De La Rosa from a closed session of the Executive Committee and disputes with the analysis prepared by Lozano Smith in February of 2019 regarding conflicts of interest. Rather than getting into a costly and unproductive back and forth, suffice it to say that we disagree with your contentions within the May 6th letter regarding certain factual statements, what constitutes a conflict of interest and the applicable law cited within the Lozano Smith memo.

While it is each Director's independent obligation to recuse themselves when there is a conflict or similar disqualifying circumstances, we also work to help protect all Authority Directors from inadvertently getting into situations that could have significant consequences for them. As part of this process, we typically coordinate with the Board President, affected Director and/or Executive staff ahead of time as the circumstances allow. Additionally, in an effort to resolve legal concerns relating to potential conflicts of interest for the Directors from the City of Salinas, we have looked for a mechanism which would allow for appropriate participation. As a result, we have identified a path forward to potentially allow the Directors from the City of Salinas to participate in Authority matters involving the sale of the Sun Street transfer station and potential purchase of a portion of the Madison Lane transfer station property. This conclusion is based on the information currently provided to us, and the assumption that the government salary exception is the sole income interest the Directors from the City of Salinas may have regarding the Sun Street and Madison Lane properties. (See Government Code § 82030(b)(2).) We will advise you accordingly if circumstances change.

Please note that other laws may place restrictions on the Directors from the City of Salinas' participation depending on the circumstances. For example, their participation may be limited in the event there are ever certain Authority closed session agenda items relating to claims or potential litigation involving the City of Salinas as an adverse party, etc. In such circumstances there is generally no right of Directors from the City of Salinas to participate in such items. However, we remain hopeful that such a circumstance will not arise.

Please contact me if you would like to discuss this item in further detail.

Very truly yours,

ALESHIRE & WYNDER, LLP

Roy C. Santos
General Counsel

Direct No.: 510.903.8806
Our File No.: 06862-0006
ksiegel@bwslaw.com

May 6, 2020

VIA EMAIL AND FIRST CLASS MAIL

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
Aleshire & Wynder LLP
2440 Tulare Street, Suite 410
Fresno, CA 93721
E-Mail: rsantos@awattorneys.com

Re: Salinas Valley Solid Waste Authority's Improper Exclusion of Director De
La Rosa, Appointed to the Board of Directors by the City of Salinas

Dear Mr. Santos:

My colleague Tom Brown and I have been retained by the City of Salinas ("Salinas") to address issues regarding Salinas Valley Solid Waste Authority's ("SVSWA" or "Authority") positions and actions relative to Salinas' appointed representatives to the SVSWA Board of Directors. We send this letter to you, in your capacity as General Counsel to the SVSWA (AKA "Authority Counsel"), to address these issues and to seek resolution thereof.

Please respond to us immediately, so that we can discuss how you will ensure that Director Gloria De La Rosa, one of three Salinas representatives on the SVSWA Board of Directors, is not unlawfully excluded from the Executive Committee meeting scheduled for May 7, 2020, 4:00 pm, as she was on April 22, 2020. Salinas City Attorney Christopher Callihan and I will make ourselves available for a phone call tomorrow to discuss, prior to the Executive Committee meeting.

I. INTRODUCTION

On April 22, 2020, a Salinas representative on the SVSWA Board of Directors, Gloria De La Rosa, was inexplicably disconnected from the SVSWA Executive Committee closed session meeting being conducted by Zoom (the audio-visual teleconferencing application). The action was apparently taken by the Board President, as the presiding officer, presumably in coordination with the General Manager and General Counsel.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 2

The action was unjustified and unlawful, for myriad reasons.

To the extent that the responsible SVSWA actors believed that the former General Counsel's February 15, 2019 memorandum supported their action, the belief is not supported by any facts or law. That memorandum contends that Salinas' representatives on the SVSWA Board of Directors have disqualifying common law conflicts of interest since Salinas has notified the SVSWA of its intent to withdraw. But the common law conflicts of interest doctrine concerns an official's *personal* interests, which are not implicated. Further, the apparent concern the former General Counsel's memorandum attempts to address is whether Salinas' representatives have conflicts based on the doctrine of incompatible offices. But the Joint Exercise of Powers Act, case law, and Attorney General Opinions make clear that doctrine does not apply to Joint Powers Agencies.

Thus, the February 15, 2019 General Counsel memorandum provides no support for the action taken, and we are aware of neither facts nor law that could support any basis upon which the Board President, General Manager, General Counsel, and/or any other SVSWA actor could have determined that Director De La Rosa should be disqualified.

Further, the action did not comply with Robert's Rules of Order, which does not allow the presiding officer (nor the agency's staff or counsel) either to compel any board member to refrain from voting or to forcibly remove that board member based on a purported conflict.

Moreover, the improper effort to disqualify Salinas' representatives threatens to disenfranchise approximately 160,000 of SVSWA's constituents—the residents of the City of Salinas who would no longer have Salinas' representatives to represent their interests at the SVSWA.

As such, the Board President, General Manager, and General Counsel must remedy the error and take action to prevent a re-occurrence with respect to any of Salinas' three representatives on the SVSWA Board of Directors.

After you have had an opportunity to review the points and authorities set forth herein, please contact us to schedule a meeting so that we can work cooperatively towards an appropriate resolution.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 3

II. BACKGROUND

A. Brief Overview of the SVSWA—a Joint Powers Agency Governed by, *inter alia*, the Joint Powers Agreement Among its Member Agencies, the Brown Act, and the SVSWA Code.

As you know, the SVSWA is a Joint Powers Agency, organized pursuant to the Joint Exercise of Powers Act (“JPA Act”), Government Code section 6500 *et seq.* Its member agencies include the Cities of Salinas, Gonzales, Greenfield, King, and Soledad and the County of Monterey (“JPA Members”). The JPA Members created the SVSWA by entering into a Joint Powers Agreement (“JPA Agreement”). The JPA Agreement sets forth, *inter alia*, (i) the purpose of the SVSWA, (ii) the rights and obligations of the JPA Members (including withdrawal), (iii) the membership of the Board of Directors (including the JPA Members’ right to appoint representatives to serve as members of the SVSWA Board of Directors), (iv) the appointment of Board counsel, and (v) the applicability of the Brown Act, Government Code section 54950 *et seq.*

Chapter Two of the Salinas Valley Solid Waste Authority Code (the “SVSWA Code”) governs, *inter alia*, (i) procedures for Board of Director meetings (including that Robert’s Rules apply), (ii) the authority and duties of the President of the Board of Directors, (iii) the appointment of an Executive Committee of the Board of Directors, (iv) the appointment of Authority Counsel, and (v) the authority and duties of the SVSWA’s Chief Administrative Officer (“CAO” or “General Manager”).¹

B. The Unsupported Opinion of the SVSWA’s General Counsel and Unjustified Actions Taken Against Director De La Rosa, a City of Salinas’ Representative to the Board of Directors, during the April 22, 2020 Executive Committee Meeting.

On December 6, 2019, the City of Salinas provided one-year notice of Salinas’ intent to withdraw, pursuant to paragraph 19(a) of the JPA Agreement (which provides for such one-year notices). Salinas later agreed to extend its earliest possible withdrawal date to June 30, 2020, the end of Salinas’ and SVSWA’s fiscal years.

By memorandum, dated February 15, 2019, which had been requested by the SVSWA’s General Manager, then-General Counsel Jim Sanchez offered opinions regarding the existence and scope of Salinas representatives’ purported conflicts of

¹ Of course, the SVSWA is also subject to other governing laws.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 4

interest ("General Counsel Opinion"). The SVSWA published this General Counsel Opinion with its February 21, 2019 Agenda Packet (at page 200 *et seq.*).

The General Counsel Opinion expressly addresses the following issue (at page 1): "What are the procedural voting limitations imposed on Board Members from Salinas once Salinas provided a notice of intent to withdraw from the JPA." The General Counsel Opinion provides the following "Short Answer" (at pages 1-2):

Once Salinas provided a notice of intent to withdraw it triggered a one-year legal process through which the remaining Board Members are to exercise due diligence to prepare for the significant impacts of the possible withdrawal. The considerations include preparing for a restructured organization, perhaps a downsizing of staff, financial considerations, and the potential for litigation concerning the possible withdrawal.

JPA Section 19(b) expressly states that once Salinas provided the notice of intent, the remaining members are to meet and prepare appropriate JPA amendments to reflect the changed membership/structure. Additionally, the direct conflicts created by the impending withdrawal, particularly including potential litigation and discussions related to strategies to ensure the Authority is properly protected during the withdrawal process, necessitate the Salinas Board Members recuse themselves from any action, or deliberations concerning the notice of intent to withdraw or negotiations/actions related to that legal process. The Salinas Board Members should also not be apprised of information discussed in closed sessions regarding the withdrawal.

The General Counsel reached this conclusion based on the common law conflict of interest doctrine.

On February 20, 2019, the Salinas City Attorney sent a letter to the SVSWA Board of Directors, with copies to its General Counsel and General Manager. The Salinas City Attorney expressed disagreement with the General Counsel Opinion and explained several reasons therefor. The Salinas City Attorney further requested that the SVSWA confer with Salinas to seek a resolution of the SVSWA General Counsel's

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 5

contentions, and that the SVSWA defer taking action while the parties seek to resolve the issues.

Thereafter, Salinas representatives participated in open and closed sessions meetings of the SVSWA Board of Directors without any expressions of concern by the SVSWA General Counsel, Board President, or General Manager about any conflict of interest issue. This abruptly changed at the April 22, 2020 Executive Committee closed session.

The April 22, 2020 closed session agenda listed two items: (1) pursuant to Government Code section 54956.8, negotiations regarding potential “acquisition, lease, exchange or sale” of real property owned by the SVSWA, located at 135-139 Sun Street, Salinas, CA, and real property owned by Republic located at 1120 Madison Lane, Salinas, CA; and (2) pursuant to Government Code section 54957(a), consultation “with General Counsel, Roy C. Santos on the threat to public services and/or facilities consideration of tactical response plan consultation.”

A closed session Executive Committee meeting was scheduled for April 22, 2020, to be conducted by Zoom due to the Shelter-in-Place orders necessitated by the COVID-19 pandemic. Prior to the meeting, President Robert Cullen (who is the King City representative) informed Director De La Rosa of his opinion that she had a disqualifying conflict of interest. Director De La Rosa did not concur and did not agree to recuse herself. President Cullen did not follow-up with Ms. De La Rosa prior to the meeting; nor did the General Manager, or General Counsel. Nor did the Board President, General Manager, or General Counsel contact the Salinas City Attorney to discuss the propriety of Ms. De La Rosa’s participation—or any Salinas representatives’ participation—at the April 22, 2020 meeting or thereafter.

At the commencement of the Executive Committee meeting, Board President Cullen declared that Director De La Rosa had a disqualifying conflict of interest. Neither he nor the General Manager nor the General Counsel asked Director De La Rosa at the meeting whether she had considered or determined whether she had a conflict of interest, nor whether she would voluntarily recuse herself. Instead, she was abruptly disconnected from the Zoom meeting and precluded from participating.

On April 27, 2020, the Salinas City Attorney emailed the SVSWA General Counsel, expressing his understanding about what had transpired and seeking clarification about the events and rationales for the actions taken. The City Attorney closed his email as follows:

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 6

Please let me know the authority the Board President relied on in making the unilateral determination that he had the authority to prohibit an Executive Committee member from participating in this closed session meeting. If the determination was that Authority Board member De La Rosa had a disqualifying conflict of interest, which I understand to be the basis of his unilateral decision, please let me know the perceived basis for that disqualifying conflict of interest. As mentioned above, I am curious as to how, for this particular closed session, the Salinas representative was prohibited from participating when in previous meetings these two topics were on the agenda in nearly the same form and acted upon and included the Salinas representatives (March 26 and April 22).

Also, please let me know what was reported out from the Executive Committee's closed session meeting.

After you have had some time to think about these issues and gather the information, please let me know when you have some time to discuss. I am open most of Thursday and Friday of this week.

Thank you. Stay well.

You and the City Attorney thereafter exchanged emails but did not get into substantive discussions. As you have been informed, the Salinas City Attorney has retained Burke, Williams & Sorensen, LLP to help resolve this matter.

III. ANALYSIS

A. The SVSWA Lacked any Justification for Excluding Director De La Rosa from the April 22, 2020 Executive Committee Meeting.

While it should go without saying, Salinas has rights under the JPA Act and the JPA Agreement to have its representatives to the SVSWA Board of Directors participate in SVSWA Board meetings, and not to be improperly excluded based upon a decision made by SVSWA actors (e.g., the Board President, General Manager, and/or General Counsel) without appropriate consultation, inquiry, and appropriate legal and factual bases. (See, e.g., Gov. Code § 6508 [agencies forming Joint Powers Agency have right

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 7

to specify by agreement that their elected officials shall serve on the JPA's board of directors]; JPA Agreement, paras. 3, 4 [each member to the SVSWA has a right to appoint representatives who in turn have rights to participate and vote in Board meetings].) Salinas' representatives on the Board of Directors have associated rights to participate in SVSWA Board meetings, and not to be improperly excluded. (See also *DeGrassi v. Cook* (2002) 29 Cal.4th 333, 343 fn. 8 [Brown Act authorizes issuance of writ of mandate to remedy improper exclusion of elected official from public meeting]; *DeGrassi v. City of Glendora* (9th Cir. 2000) 207 F.3d 636, 646 [elected official's free speech rights are implicated by restrictions against participating in meetings]; cf. *Powell v. McCormack* (1969) 395 U.S. 486, 550 [elected representatives cannot be excluded for reasons not expressly authorized by law].)²

The SVSWA's exclusion of Director De La Rosa was not justified and unlawful. The action must be corrected and not repeated.

1. The General Counsel Opinion Does Not Identify a Justifiable Basis for Exclusion.

The February 15, 2019 General Counsel Opinion concludes that Salinas representatives have "direct conflicts [under the common law conflicts of interest doctrine] created by the impending withdrawal, particularly including potential litigation and discussions related to strategies to ensure the Authority is properly protected during the withdrawal process," and that the purported conflicts "necessitate [that] the Salinas Board Members recuse themselves from any action, or deliberations concerning the notice of intent to withdraw or negotiations/actions related to that legal process." The General Counsel opinion is fundamentally flawed, in both its analysis and conclusion.

The common law conflicts of interest doctrine addresses conflicts between an official's public obligations and his or her *private* interests (pecuniary or non-pecuniary). As the courts and the Attorney General have explained: "[T]he common law doctrine against conflicts of interest ... prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171 [quoting 64

² Note also that the SVSWA Code does not authorize the Board President, General Manager, General Counsel or any other persons to exclude any board member. (See SVSWA Code, Article 2 [<https://svswa.org/government/authority-code/>].)

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 8

Ops.Cal.Atty.Gen. 795, 797 (1981) and also citing 70 Ops.Cal.Atty.Gen. 45, 47 (1987)]; see also *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.)³

The General Counsel Opinion neither identifies nor addresses any private interest that any Salinas representative might have in connection with issues of concern (e.g., associated with the potential withdrawal of the City of Salinas from the SVSWA). Thus, the General Counsel's analysis and conclusion are inapt.

Further, the General Counsel Opinion attempts to analogize this situation to that considered by the California Attorney General in 101 Ops.Cal.Atty.Gen. 1 (2018) [18 Cal.Daily.Op.Service 3274, 2018 WL 1971010]. That reliance is misplaced.

The General Counsel accurately summarizes this Attorney General opinion. In short, the issues were (1) whether a city councilmember who is an attorney may advocate, as an attorney, on behalf of his or her clients with respect to matters in which the clients are adverse to the city, and (2) whether the city councilmember may participate in the city's decision-making with respect to the issues concerning the client. The Attorney General determined that each situation presented a conflict of interest that precluded advocacy and participation, respectively.

As a fundamental matter, 101 Ops.Cal.Atty.Gen. 1 concerned the councilmember's private interests and thus has no bearing on the issues at hand. In addition, the Attorney General's analysis was based on the Rules of Professional Conduct that govern an attorney's conduct. There is no such issue here. Accordingly, the General Counsel's attempt to apply 101 Ops.Cal.Atty.Gen. 1 to the question of Salinas representatives' right to participate in SVSWA meetings is fatally flawed.⁴

³ As the League of California Cities' Conflict of Interest Guide (2016) states at p. 116: "The common law conflict of interest is premised on the basic presumption that a 'public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public.'[fn] Thus, a decisionmaker should not be tempted by his or her own personal or pecuniary interest, and the doctrine will apply to situations involving a nonfinancial personal interest.[fn]." [Citing *Clark v. City of Hermosa Beach* and *Noble v. City of Palo Alto* in the footnotes.]

⁴ Similarly, the General Counsel Opinion has no basis to rely on *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050, or *DeGrassi v. City of Glendora* (9th Cir. 2000) 207 F.3d 636.

At issue in *Hamilton* was a councilmember's conflict of interest due to a private financial interest. The conflicted councilmember had no right to learn about the contents of the closed session from which he had recused himself. There is no analogous conflict of interest at issue here, and *Hamilton* sheds no light on whether there is any basis to disqualify Salinas' representatives to the SVSWA.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 9

Accordingly, the General Counsel Opinion provided no support for disconnecting Director De La Rosa from the April 22, 2020 Executive Committee meeting.

2. The General Counsel Opinion Appears to Be Based on Concerns Underlying the Doctrine of Incompatible Offices; But that Doctrine also Does Not Apply, Pursuant to the JPA Act and Relevant Authorities.

It appears that purported conflict concern is actually based on the doctrine of incompatible offices. As the League of California Cities Conflict of Interest Guide (2016) states at p. 122: “The doctrine of incompatibility of office concerns the potential clash of two public offices held by a single official and potentially overlapping public duties. This is to be compared to the concept of conflicts of interest that involve a potential clash between an official’s private interest and his or her public duties.”⁵ But this doctrine is also inapplicable, pursuant to the Joint Exercise of Powers Act.

“There is nothing to prevent the Legislature ... from allowing, and even demanding, that an officer act in a dual capacity.” (*American Canyon Fire Protection Dist v. County of Napa* (1983) 141 Cal.App.3d 100, 104 [quoting *McClain v. County of Alameda* (1962) 209 Cal.App.2d 73, 79].) Indeed, when the Legislature codified the incompatible offices doctrine, they expressly provided that it may be overridden by statute. (Gov. § 1099(a) [“Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law”].) As a recently published decision confirms: “Notwithstanding the conflict in duties and loyalties we have identified, Section 1099 does not deem offices beset by such a conflict incompatible if ‘simultaneous holding of

At issue in *DeGrassi* was active dispute between a city and a former councilmember who had been sued for slander based on comments she made as a councilmember. The councilmember alleged the city was obligated to defend and indemnify her, and that the city had improperly excluded her from closed sessions at which the council discussed these demands. The Ninth Circuit rejected her claims. In the passage to which the General Counsel Opinion alludes, the Court stated: “Because of the potential conflict between DeGrassi’s role as a Council member and her personal interest, it was reasonable for the Council to exclude her from its discussions concerning her request for a defense.” (*DeGrassi*, 207 F.3d at 646.) But the General Counsel’s Opinion does not cite to any conflict between the private interests of any Salinas representative to the SVSWA (and we are not aware of any), nor does it cite to any active dispute that could devolve into litigation between the SVSWA and Salinas’ representatives. Thus, *DeGrassi* is irrelevant.

⁵ The doctrine of incompatible offices is based in common law and has been codified at Government Code section 1099.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 10

the particular offices is compelled or expressly authorized by law.” (*People ex rel. Lacey v. Robles* (2020) 44 Cal.App.5th 804, 822 [quoting Gov. Code § 1099(a)].)

This is exactly what the Legislature has done in the Joint Exercise of Powers Act. Government Code section 6508 states in pertinent part:

The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. ...

The governing body of any agency having the power to sue or be sued in its own name, **created by an agreement** entered into after the amendment to this section at the 1969 Regular Session of the Legislature, **between parties composed exclusively of parties which are cities, counties, or public districts of this state**, irrespective of whether all such parties fall within the same category, **may as provided in such agreement, and in any ratio provided in the agreement, be composed exclusively of officials elected to one or more of the governing bodies of the parties** to such agreement....

The governing body so created shall be empowered to delegate its functions to an advisory body or administrative entity for the purposes of program development, policy formulation, or program implementation, provided, however, that any annual budget of the agency to which the delegation is made must be approved by the governing body of the Joint Powers Agency.... [Emphasis added.]

The Attorney General has explained that, pursuant to this statute:

- The incompatible offices doctrine does not apply to Joint Powers Agencies where the agreement that created the Agency provides for its governing board members to be elected officials from the member agencies. (78 Ops.Cal.Atty.Gen. 60 (1995) [1995 WL 114599].)
- Joint Powers Agency board members act, as all public agency board members do, by exercising their individual discretion to vote on matters before the Agency board as they see fit—whether that representative’s decision is consistent or inconsistent “with the position taken by the

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 11

legislative body which appointed the member.” (83 Ops.Cal.Atty.Gen. 267 (2000) [2000 WL 1815701].)

- While a Joint Powers Agency board member is not bound to vote in accordance with the position taken by the member agency’s board and the representative’s constituents, it is, not surprisingly, expected that the board member commonly will. Indeed, the Attorney General opined, **“the Legislature intended a joint powers agency member’s loyalty to his or her constituency to be “a feature, not a bug,” of this system.** (19 Cal. Daily Op. Serv. 7461 (July 25, 2019) [2019 WL 3523679] [quoting *Lexin v. Super. Ct.* (2010) 47 Cal.4th 1050, 1090]; emphasis added.) In other words, **inherent in the JPA Act is the fundamental principle of representative democracy that elected officials will act to further the interests of the persons who have infused them with the authority and discretion to vote on matters affecting them.** (*Ibid.*)⁶

These authorities unequivocally demonstrate that the General Counsel Opinion has it backwards. The SVSWA Agreement expressly provides that its board shall be comprised of nine elected officials from the member agencies, three of whom shall be from Salinas. (Para. 3.) It also provides that, after a member agency provides notice of intent to withdraw, that agency’s board members shall not participate in certain board proceedings, to wit the preparation of an amendment to the JPA agreement. (Para. 19(b).) The Agreement does not preclude such board members from continuing to participate in other matters before the SVSWA Board. Thus, pursuant to the Joint Exercise of Powers Act, they have the right to continue to participate. Indeed, the General Counsel Opinion’s expressions of concern that the Salinas Board members cannot participate because they will likely vote in a manner that is consistent with the positions and interests of their constituents and the Salinas City Council is a “feature, not a bug,” of the Joint Exercise of Powers Act. (19 Cal. Daily Op. Serv. 7461 (July 25, 2019) [2019 WL 3523679].)⁷

⁶ These Attorney General opinions are cited in Westlaw’s Notes of Decision under the JPA Act, including under Government Code section 6508, and thus are readily accessible to guide attorneys advising Joint Powers Agencies and their board members.

⁷ Moreover, if the General Counsel Opinion were correct, each member agency’s appointed representative to the SVSWA Board of Directors would be disqualified whenever his or her member agency’s interests would be affected by the Board of Directors’ decision. That would be an absurd outcome, in contravention of the JPA Act.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 12

Accordingly, the General Counsel Opinion neither expressly nor impliedly addresses any basis for SVSWA actors (e.g., the Board President, General Manager, or General Counsel) to have disconnected Director De La Rosa from the April 22, 2020 Executive Committee meeting (which did not concern drafting an amendment to the SVSWA Agreement).

3. Director De La Rosa Was Improperly Disconnected from the April 22, 2020 Executive Committee Meeting.

Unfortunately, Director De La Rosa was disconnected from the April 22, 2020 Executive Committee meeting without appropriate consultation or explanation, as discussed above.⁸

Further, the SVWSA Code does not authorize the Board President, General Manager, General Counsel or any other person to exclude any board member based on their perception that the board member has a disqualifying conflict. (See Authority Code, Article 2 [<https://svswa.org/government/authority-code/>].) Nor does Robert's Rules of Order. Robert's Rules does not authorize the presiding officer (or any other board member, staff member, or counsel) to compel a board member not to vote or to forcibly remove the member from a meeting based on a perceived conflict. (See, e.g., RONR (11th ed.), p. 407 (Rule 45), pp. 448 – 452 (Rule 47).)

Instead, the Board President, General Manager, General Counsel, and/or others apparently discussed, in advance of the April 22, 2020 meeting, and decided—without Director De La Rosa's input, and perhaps in violation of the Brown Act—that she was disqualified from participating. Indeed, they provided Director De La Rosa no opportunity to determine whether to recuse herself. Clearly, that was an improper decision-making process.

As such, we can only presume that the decision to exclude Director De La Rosa—whether made and acted by the Board President, General Manager, General Counsel, or other meeting participants, or any combination of them—was based on the concerns or conclusions expressed in the February 15, 2019 General Counsel Opinion. However, as demonstrated above, the February 15, 2019 General Counsel Opinion

⁸ We presume that you, as General Counsel to the SVSWA and City Attorney to King City, have acted in accordance with your duties to each, and that you adhered to our ethical obligations and the Rules of Professional Conduct with respect to any counsel you provided SVSWA Board President Robert Cullen, who is also a King City councilmember.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 13

provided no basis for disconnecting Director De La Rosa from the April 22, 2020 Executive Committee meeting.

Further, we cannot think of any potentially lawful basis for the exclusion, and believe there is none.

4. The Board President, General Manager, and General Counsel Should Rectify the Situation.

The Board President, General Manager, and General Counsel must rectify the situation.

Salinas has a right under the Joint Exercise of Powers Act as well as under the JPA Agreement to have each of its representatives participate in SVSWA meetings. In addition, each of the Directors appointed by Salinas has an associated though independent right to participate in SVSWA Meetings. (See discussion at pp. 6-7, above.)

Further, neither the Authority Code nor Robert's Rules of Order authorize the Board President, General Manager, General Counsel or any other person to exclude any board member based on their perception that the board member has a disqualifying conflict. (See discussion at p. 12, above.)

Accordingly, we look forward to discussing with you how to rectify this situation and prevent a re-occurrence.

B. With Respect to Future Meetings, if any SVSWA Official or Employee Believes any Representative Should Recuse Himself or Herself, They Should Investigate the Facts and Law and Consult with the Interested Parties.

Going forward, the SVSWA must properly investigate the facts, evaluate relevant law, and follow appropriate protocols, including by consulting with interested parties. By doing so, the SVSWA can ensure that the rights of all interested persons and entities—including its constituents, member agencies, are Board Members, are honored.

Accordingly, with respect to the Executive Committee meeting scheduled for tomorrow, May 7, 2020, at 4:00 pm, the SVSWA must not repeat its unlawful exclusion of Director De La Rosa.

Roy C. Santos, General Counsel to
Salinas Valley Solid Waste Authority
May 6, 2020
Page 14

IV. CONCLUSION

The Board President, as the presiding officer at the April 22, 2020 Executive Committee meeting, General Manager, and/or General Counsel committed a clear violation of law. We look forward to discussing this matter with you, so that the SVSWA can remedy the error and prevent any reoccurrence, with respect to any of Salinas' three representatives on the SVSWA Board of Directors.

Please contact the City Attorney and me immediately so that we can discuss how you will ensure such unlawful activity is not repeated at the Executive Committee meeting scheduled for 4:00 pm tomorrow or thereafter.

Sincerely,

Burke, Williams & Sorensen, LLP



Kevin D. Siegel

KDS:lam

cc: SVSWA Board of Directors (rcullen@farmersagent.com; gloriad@ci.salinas.ca; Lopezcm@co.monterey.ca.us; john.villegas@ci.salinas.ca.us; josephg@ci.salinas.ca.us; mlara@cityofsoledad.com; dtipton@ci.greenfield.ca.us; district2@co.monterey.ca.us; lsilva@ci.gonzales.ca.us)
Patrick Mathews, General Manager, SVSWA (patrickm@svswa.org)
Christopher Callihan, Salinas City Attorney (chrisc@ci.salinas.ca.us)
Ray Corpuz, Salinas City Manager (ray.corpuz@ci.salinas.ca.us)



Mission: To manage Salinas Valley solid waste as a resource, promoting sustainable, environmentally sound and cost effective practices through an integrated system of waste reduction, reuse, recycling, innovative technology, customer services and education.

Vision: To reduce the amount of waste by promoting individual and corporate responsibility. To recover waste for its highest and best use while balancing rates and services. To transform our business from burying waste to utilizing waste as a resource. To eliminate the need for landfills.

February 20, 2020

Mr. Joe Gunter, Mayor
City of Salinas
200 Lincoln Avenue
Salinas, California 93901

Re: R3 Consulting Group Report Prepared on Behalf of the City of Salinas

Dear Mayor Gunter and Council Members:

Salinas Valley Solid Waste Authority ("SVSWA") received the City of Salinas' Notice of Intent to Withdraw from the SVSWA in December of 2018. As you know, this poses a potential significant disruption to our agency and rate payers, which requires planning on our part. The City of Salinas ("City") retained R3 Consulting Group ("R3") and paid them one hundred sixty-nine thousand nine hundred fifty dollars (\$169,950.00) to prepare a detailed report addressing the following tasks:

- (1) Post-Collection Facility Options;
- (2) SVSWA Options and Summary Report;
- (3) Revised/Amended Franchise Agreement;
- (4) Management of Franchise Agreement; and
- (5) Memorandum of Understanding (MOU) and General Consulting Solid Waste Services.

Both the City's elected officials and staff repeatedly represented to the public and SVSWA that the report being prepared by R3 would be released to the public for review upon its completion. However, despite the report's apparent completion, to date the report has not been made available to the public or SVSWA. In fact, the SVSWA Board of Directors were informed by Council Member Villegas at its January 2020 meeting that the City was not going to release the report to the public. However, at the February 6th meeting of the Executive Committee, Council Member De La Rosa stated that she participated in a meeting with the City Manager, Mayor and consultant [R3] to discuss the report, but that it is not ready for release to SVSWA. She assured the Executive Committee that the report will be released when its ready.

Whatever the content of the R3 report, this should not dictate whether the City releases the report to the public. Further, you informed your fellow Salinas Valley Mayors that the City would provide elected officials from the various cities a high-level overview of the R3 report findings upon their request to the City. As such, we request the City release the report (or at a minimum those sections of the report specific to Salinas' decision on SVSWA membership withdrawal) and any presentation materials already received by the City Council members from City staff or R3. If the City intends to continue withholding the R3 report or any related Council member presentation

materials from public disclosure, we request the City provide the legal basis for its refusal to disclose information related this publicly financed report.

In addition, it is our current understanding that the City has not officially approved withdrawal at this time; rather, the City is interested in negotiating with SVSWA regarding remaining a member of the Authority. It is important for an open and honest negotiation that the public have the information contained within or related to the R3 report as part of developing a collaborative community solution.

The goal of SVSWA remains the same, to provide its member agencies and their citizens with the best and most fiscally sustainable recycling and solid waste services possible. I look forward to hearing from you regarding this issue. Please feel free to contact me if you have any questions.

Sincerely,



Robert Cullen, Board President
Salinas Valley Solid Waste Authority

cc: Salinas City Council



March 13, 2020

Robert Cullen

President

Salinas Valley Solid Waste Authority

128 Sun Street, Ste. 101

Salinas, California 93901

This letter is in response to your letter of February 20, 2020

On August 7, 2018 the City Council approved a resolution supporting collaboration between Salinas Valley Solid Waste Authority (SVSWA) and the Monterey Regional Waste Management District (MRWMD) to leverage their resources to improve the overall system of solid waste processing and landfills in the County and address State regulations. The Board of Supervisors passed an MOU in support of collaboration on July 17, 2018. There was not much progress over the following months to create a partnership between SVSWA and MRWMD to address solid waste management with a more efficient county-wide approach. Nor was there progress on relocating the Sun Street Transfer Station outside the City. On November 20, 2019 the City passed the resolution to provide a one-year notice to withdraw from the Salinas Valley Solid Waste Authority Joint Powers Authority. The notice provides the City an opportunity to continue the process of determining the most efficient and economical method of delivering waste disposal and diversion services to the Salinas community. Our rate payer residents and businesses are our primary priority.

We approved an agreement with R3 Consulting Groups to review all our options for solid waste including staying with SVSWA or direct hauling all waste to another facility. In all scenarios, we unequivocally support the removal of the Sun Street Transfer Station. This was reaffirmed by residents as part of the Alisal Vibrancy Plan. Businesses, residents and community groups are



City of Salinas

OFFICE OF THE MAYOR • 200 Lincoln Avenue • Salinas, California 93901 • (831) 758-7201 • Fax (831) 758-7368

concerned about the environmental justice of the location of the current transfer station. This requirement also assumes no site for a transfer station or self-haul facility in the City of Salinas. The R3 report includes specific information on services, fees, and rates. The report is in draft form. The City Attorney has been the depository for all the reports and related information. The draft report does not have to be released under current laws. The information is also attorney client privileged. Initially, there was some thought some portions of the report could be released. But given the complexity and sensitivity of the information the report will not be released.

We look forward to meeting with you. We are committed to constructive and positive discussions that will provide solutions for our rate payers.

Sincerely,

Joe Gunter

Mayor

City of Salinas

cc: City Council

City Manager

Salinas Valley Solid Waste Authority Board

General Manager/CAO, Salinas Valley Recycles



City of Salinas

OFFICE OF THE CITY MANAGER • 200 Lincoln Ave • Salinas, California 93901

(831) 758-7201 • (831) 758-7368 (Fax) • www.ci.salinas.ca.us

City of Salinas/ SVSWA

June 5, 2020 at 11:00 a.m.

<https://zoom.us/j/94449731893?pwd=RTRCM3FVeklwUHVjcTZlVHpoMkl4Zz09>

+16699006833 Meeting ID: 944 4973 1893 Password: 293711

- I. Governance JPA Weighted Vote Draft (attached)
- II. Developments and Commitments for Sale of Sun St. Transfer Station Site and Closure/Removal and Acquisition of Madison Ln.
- III. Agenda Items for Next Meeting

Current Voting Provision

Votes. Each Party to this Agreement shall appoint its respective representative or representatives to serve as a member or members on Authority Board. Each member shall have one (1) vote. Five (5) votes shall be required for any action of the Authority Board and one (1) of the five (5) votes must be from a representative from Salinas.

Proposed Voting Provision

Voting. Except as specifically otherwise provided herein, the vote of a majority of the members of the Board of Directors present at any regular, adjourned, or special meeting shall be sufficient to pass and act upon any matter properly before the Board, and each member of the Board shall have one vote

Population Weighted Voting. Upon the call and the request of any Authority member, present and able to vote, and a quorum being present, a weighted voting formula shall apply for any vote to be taken by the Board, with each member having one or more votes based upon the population of the city or unincorporated county area such member represents. In order for the Board to take action under the provisions of this section, a majority of the votes weighted by population must be cast in favor of the action, provided that not less than two member agencies vote in favor of the action and provided at least one of the votes in favor is from the Salinas representative.

For the purposes of determining the weighted vote of the cities or the unincorporated area of the county, the weighted vote by population shall be based on the most current census and Authority staff shall update annually based on the California State Department of Finance population estimate when it becomes available. If there is a change in the population of one city or in the unincorporated county area which disrupts the vote balance then each of the member agencies' vote shall be adjusted in order to maintain the voting balance.

OR

Tonnage Weighted Voting. Upon the call and the request of any Authority member, present and able to vote, and a quorum being present, a weighted formula shall apply for nay vote to be take by the Board, with each member having one or more votes based upon the total amount of tonnage of solid waste and recyclables (including solid waste, green waste, food waste, etc.) contributed to the Authority by the city or unincorporated county area such member represents. In order for the Board to take action under the provisions of this section, a majority of the votes weighted by the amount of tonnage contributed to the Authority must be cast in favor of the action, provided that not less than two member agencies vote in favor of the action and provided at least one of the votes in favor is from the Salinas representative.

For purposes of determining the weighted vote for the cities or the unincorporated area of the county, the weighted vote by tonnage of solid waste and recyclables contributed to the Authority

shall be based on the prior fiscal year's data and Authority staff shall update annually based on the total amount of solid waste and recyclables contributed to the Authority by each of the member agencies.

SAMPLE

Tonnage by Population

City	Population	Tonnage %
Gonzales	8,506	25%
Greenfield	18,284	
King City	14,797	
Soledad	25,301	
	66,888	
Salinas	162,222	61%
North County	35,000	13%