

COUNTY OF SAN MATEO

INTERDEPARTMENTAL CORRESPONDENCE

July 12, 1991

TO: David Christy, Director, Parks and Recreation
FROM: County Counsel
RE: Harbor District

You have asked this office to provide answers to a series of questions regarding the Harbor District. Our conclusions are as follows:

1. What will happen to the property tax revenue now received by the District, if the District is dissolved?

Government Code § 56800 provides that a proposal for a change of organization may be made by the adoption of a resolution of application by the legislative body of an affected local agency. A change of organization is defined to include a district dissolution. This resolution of application is then submitted to the LAFCO Executive Officer. Then, under Revenue and Taxation Code § 99(b), the Executive Officer notifies the County Auditor and Assessor of the proposed change of jurisdictions. The Auditor and Assessor are required to determine the amount of property tax revenues attributable to any affected local agencies during the current fiscal year. Upon receipt of the estimates, the "local agencies" have thirty (30) days to negotiate an agreement on the amount of taxes to be exchanged between them.

In the event that a jurisdictional change affects the service area or service responsibility of one or more special districts, as here, Revenue and Taxation Code § 99(b)(5) provides that the Board of Supervisors of the county in which the district is located shall negotiate the exchange of property taxes on behalf of the district. After agreement is reached, the Executive Officer issues a "certificate of filing". In our case, the Board of Supervisors would determine the exchange of property taxes and submit this to the Executive Officer. The Executive Officer then has ninety (90) days to set a hearing and submit a recommendation to LAFCO. Absent the existence of any other affected local agency, the Board of Supervisors could determine that all taxes now received by the District should go to the County as successor agency.

2. May the County assume Boating and Waterways loans given to the Harbor District? If so, who would have to approve this transfer?

Assuming there is no prohibition in the loan documents, the County would assume these loans upon approval by the Board of Supervisors and LAFCO. If the loan documents prohibit the transfer or require approval from the Department of Boating and Waterways, the County may need such approval prior to LAFCO approval. Several sections of the Government Code provide for transfer of obligations to successor agencies. (See, for example, Government Code § 56121, 56844, 57455 and 57461.)

Also note that the administrative regulations governing Boating and Waterways construction loans contain a provision that during the loan repayment period the applicant shall not sell, transfer, exchange, mortgage or hypothecate in any manner all or any portion of the real property or improvements within the project area without written approval of the department. (14 California Code of Regulations § 5105(g).)

3. Does the Agreement between the Harbor District and South San Francisco carry any reversionary provisions and, if so, what are they?

The Joint Powers Agreement between the Harbor District and South San Francisco concerning Oyster Point Marina provides at section 22 that the parties intend that the Agreement be binding upon the successors in interest of the parties. If the Harbor District is dissolved, the County as successor would then assume the obligations and the rights under the Agreement until the Agreement is terminated by both parties or its term expires on November 11, 2026 (forty-nine years from the effective date of November 11, 1977.) Note that the agreement may be terminated or modified at any time by agreement of both parties.

One final note: Section 21 of the Agreement provides that if the Harbor District is dissolved, the District is obligated to place in trust the funds needed over and above available loan and grant funds to complete Phases I and II of the Oyster Point Marina/Park construction project (not to exceed \$700,000). It is my understanding from our discussions that Phase I and II of the project are already complete. If so, this provision would not affect the County as successor agency.

4. What was the cause of the court ruling that overturned the prior election on dissolution of the Harbor District and how can the problem be avoided?

It has been twenty years since this issue was last put before the voters. In 1966, a majority of voters approved the dissolution, but the vote was later voided by the Court of Appeal in San Mateo County Harbor District v. Board of Supervisors of San Mateo County. In that case, the court held that LAFCO had not made the required "independent determination" as to the advisability of dissolving the district. Although LAFCO had approved the dissolution, it had accompanied its approval with a letter stating that the Commission had strong reservations regarding the advisability of the dissolution. In effect, the court found that LAFCO had not really approved the dissolution, thus the dissolution proceedings were invalid.

In 1970, the issue was again put before the voters, but was defeated. In 1977, a special election was called, but the courts voided the resolution calling for the election before it could be held. The decision by Judge Cohn found that LAFCO regulations existing at the time precluded a city member from acting on a proposal affecting his or her city. Apparently, Judge Cohn found that a conflict of interest existed, which voided LAFCO's approval of the dissolution, because one of the LAFCO members voting on the dissolution application represented a city which had also applied for dissolution of the District.

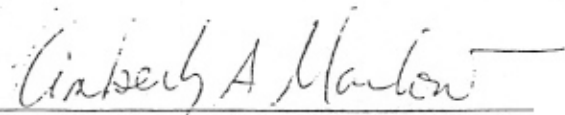
Whether or not this ruling was legally correct, such a ruling would not occur today. Government Code § 56336 provides that the representation by a member or alternate of a city or district shall not disqualify the member or alternate from acting on a proposal affecting the city or the district. Further, any regulation providing for the disqualification of a city or district representative for that reason is null and void.

In summary, neither of these court decisions poses any significant issues with regard to the current proposal to dissolve the Harbor District.

Please feel free to contact me if you have further questions on this matter.

THOMAS F. CASEY, III,
COUNTY COUNSEL

BY



KIMBERLY A. MARLOW, DEPUTY

KAM:amg
[kmarlow]
harbor