

SAN MATEO

**LOCAL AGENCY FORMATION COMMISSION**

455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

July 8, 2015

To: LAFCo Commissioners
From: Martha Poyatos, Executive Officer
Subject: Municipal Service Review and Sphere of Influence Update for the San Mateo County Harbor District

Summary

Attached please find the municipal service review and sphere of influence update (MSR/SOI Update) for the San Mateo County Harbor District. This is the second municipal service review for the District.¹ LAFCo is required by State law to complete municipal service and sphere of influence reviews for all cities and special districts in the County by taking the following actions: prepare a municipal service review and sphere of influence review report, adopt municipal service review determinations pursuant to Government Code Section 56430; adopt sphere of influence determinations pursuant to Government Code Section 56425; and reaffirm or amend the sphere of influence. Accompanying this cover memo are the MSR/SOI Update, comments from affected agencies and individuals, and a table of LAFCo responses to Harbor District comments on data and recommended determinations. Staff recommends receiving the report, opening the public hearing and receiving comments, adopting recommended determinations with any desired amendments, and reaffirming the District's zero sphere of influence indicating the District should be dissolved and services could be assumed by the County of San Mateo and the City of South San Francisco.

Background

The following report summarizes the attached Draft Municipal Service Review and Sphere of Influence Report, responds to comments, and summarizes recommended action. Key Issues include:

1. The District's countywide boundaries were established in 1933 and since that time many other public and private entities have established and operate recreational and commercial marine facilities and water rescue.

¹ The requirement for municipal service reviews in conjunction with sphere reviews became law in 2000. Prior to that time, LAFCos were only required to adopt and periodically update spheres of influence. The zero sphere of influence for the Harbor District was first adopted in 1977 and has been periodically reviewed and reaffirmed. Zero sphere of influence indicates that the District should be dissolved with the County as successor agency to services, facilities, revenues, assets, and liabilities.

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 2

2. Proposition 13, enacted in 1978, resulted in the District receiving, and becoming reliant upon, a share of countywide property tax that is used to fund enterprise and non-enterprise services at Pillar Point Harbor and Oyster Point Marina/Park.
3. The Harbor District's elected Harbor Commission and administration duplicate governance and administrative functions of the County.
4. The MSR/SOI Report documents significant infrastructure and facility improvement needs as a result of wear and tear from heavy use and a harsh marine environment, and deferred maintenance and capital projects.
5. The District lacks an established capital improvement plan and accounting system, including a five-year Capital Improvement Program and acknowledges in comments to the MSR/SOI report the need to establish a CIP that is reflected in the budget.
6. The District lacks a cost accounting system to track cost for enterprise versus non-enterprise.
7. In the course of the MSR/SOI update and since the Civil Grand Jury report, the District has begun to implement many of the Grand Jury and LAFCo recommendations and should continue to do so regardless of the LAFCo sphere designation.

Agency Comments and LAFCo Responses

The San Mateo County Harbor District comments dated June 26, 2015 include introductory remarks, specific comments contained in a table labeled Exhibit A, general responses regarding efficiencies and cost savings; reliance on property tax; the district in transition; governance; and a section regarding an unanswered question about dissolution, including disposition of property tax, State law issues and the California Environmental Quality Act (CEQA), and a conclusion. The following narrative responds to the general comments contained in the June 26 letter. LAFCo comments to the Harbor District's exhibit have been added to Exhibit A (attached).

Harbor District Comment

Introductory Remarks Section: The Draft Report over-emphasizes governance issues governance issues at the expense of the other statutorily required factors that must be the basis for any sphere of influence finding under the CKH Act, which establishes the LAFCo process....The District understands that the Civil Grand Jury Report cannot be ignored.

LAFCo Response

Regardless of the Grand Jury report, discussion of governance issues is unavoidable due to events and issues that arose leading up to and during preparation of the MSR/SOI update, including the process of data-gathering and observations at Harbor District Board and finance committee meetings. It is well documented in the record of the Harbor District Board and finance meetings that governance issues affecting management efficiencies were highly usual, significant, and negatively impaired the District's day-to-day operation and ability to retain and

recruit interim and permanent management staff. They are therefore material to an MSR, specifically management efficiencies, governance, and accountability. Moreover, Government Code §56430(a)(6) requires that the review address governance issues.

Harbor District Comment

However it also believes that an MSR should not examine issues outside those contemplated by the Act.” In its emphasis of governance issues, and in its lengthy discussion of dissolution options the Draft Report excessively focuses on political concerns that are not relevant to the CKH Act’s standards for an MSR. “Even though there is no pending dissolution application, we cannot ignore the call for dissolution presented in the Draft Report. In Part III below, therefore, we emphasize a number of unknown but critically important legal issues we think require further study.” (Page 1, 3rd Paragraph)

LAFCo Response

Section 56430 does not prohibit the LAFCo from examining “issues outside those contemplated by the CKH Act,” nor does it state that content of the MSR is limited to Determinations 1-7. Nonetheless, Determination 6 below specifically speaks to governance issues and operational efficiencies.

Section 56430 calls for the following:

56430 (a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

- (1) Growth and population projections for the affected area.
- (2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
- (3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
- (4) Financial ability of agencies to provide services.
- (5) Status of, and opportunities for, shared facilities.
- (6) Accountability for community service needs, including governmental structure and operational efficiencies.**
- (7) Any other matter related to effective or efficient service delivery, as required by commission policy.

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 4

II. Harbor District General Response

1. Efficiencies and Cost Savings:

The Harbor District states that the report “asks many questions about whether the County can actually accomplish the District’s functions more efficiently. In essence, the ultimate question of whether the County can provide the services of the District more efficiently is not certain. The District cites additional legal costs associated with the transition and the fact that the County would need to assign County Counsel or outside counsel to provide legal service currently provided to the District. The Harbor District cites the County’s lack of experience with liveaboard facilities, commercial fishing and water rescue. The Harbor District references the County Operated Coyote Point Marina Budget. The Harbor District cites Section 56000 which requires that “responsibility should be given to the agency or agencies that can best provide government services” and states that the report cannot point to any identifiable cost savings to be incurred by the District’s dissolution.

LAFCo Response

The report does not ask questions about whether the County can actually accomplish the District’s functions more efficiently. The report acknowledges that actual savings in a dissolution would be determined by analysis by the County as successor and in collaboration with the City of South San Francisco, owner of the Oyster Point Marina. The report identifies the District’s practice of balancing the budget by deferring maintenance and capital improvements. Therefore, any analysis of efficiencies and savings would need to take into account that the Harbor District’s budget is artificially deflated due to deferred maintenance and capital improvements. In regard to expertise, the report indicates that dissolution with the County as successor assumes that Harbor District employees with expertise in marine facilities that include commercial fishing, liveaboards, and water rescue operations would become employees of the successor agency. The report does not contemplate a dissolution in which the County would propose elimination of service or a lower level of service than that provided by the Harbor District.

In regard to legal fees, they are a function of the hourly rate charged by legal counsel, the amount of time legal counsel spends responding to inquiries of the board, staff, and the public, including public records requests as well as potential and existing litigation. The District itself has expressed concerns about rising legal costs. County counsel rates are significantly lower than private law firms. The report acknowledges the several one-time costs associated with a governmental reorganization including legal fees.

The Harbor District misrepresents the Coyote Point Marina budget and misstates sources of revenues. The following Coyote Point budget information is provided by the County Parks Department. The Coyote Point Marina is an Enterprise Fund and, as such, is self-contained and has no influx of General Fund or sales tax revenues (Measure A).

In Fiscal Year 2013-14, the Coyote Point Marina budget was as follows:

Use of Money and Property	26,121.02
Intergovernmental Revenues	1,359,892.59
Charges for Services	951,417.84
Miscellaneous Revenue	8,265.93
Other Financing Sources	
Total Revenue	2,345,697.38
Fund Balance	<u>869,645.79</u>
TOTAL SOURCES	3,215,343.17
Salaries and Benefits	288,307.93
Services and Supplies	137,328.11
Other Charges	364,616.12
Fixed Assets	262,379.18
Other Financing Uses	1,694,838.32
Gross Appropriations	2,747,469.66
Intrafund Transfers	
Net Appropriations	2,747,469.66
Contingencies/Dept Reserves	
Non-General Fund Reserves	<u>467,873.51</u>
TOTAL REQUIREMENTS	3,215,343.17
NET COUNTY COST	0.00

In regard to elections costs, the report cites savings by eliminating harbor commission costs and potentially reducing other administrative costs. The report will be amended to reflect that the District's election costs, if dissolved, would be redistributed to remaining agencies. However, the argument that Harbor and Marina operations would not experience a savings due to elimination of elections costs is flawed. Currently a countywide harbor district with at-large elected commissioners funded with property tax and user fees is in essence subsidizing the San Mateo County Elections Department because a separate governing body requires a separate election.

In regard to the District's assertion that there is no convincing evidence that another agency, particularly the County, would provide the District's critical services more effectively or efficiently than the District, discussion of "effective" and "efficient" would be clarified in an application and plan for service. Nonetheless it is reasonable to consider duplicated governance and administration of a single purpose agency and economies of scale that could be achieved by larger organization such as the County or a city. In particular, the County and City have administrative capacity including, but not limited to, administration, human resources, finance and accounting, asset management, and grant administration. One cannot deduce that one

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 6

operator is more effective in operating their marina than another simply by comparing berth revenues. There are a number of other factors that would need to be considered in order to arrive at such an opinion, such as size of each berth, fees being charged, location, and how the operator is managing these funds to operate a marina.

Harbor District Response - Reliance on Property Tax

The District indicates that the report's discussion of property tax revenue as it relates to enterprise activities represents a fundamental misunderstanding of the District in particular and of local government finance in general. The District cites the fact that most enterprise districts in California receive a share of the 1 percent property tax.

LAFCo Comment

The Harbor District mischaracterizes the intent of Proposition 13, inappropriately compares the Harbor District to other districts that receive property tax and discounts the absence of nexus between the District's share of countywide property tax with the District's service responsibility that is not countywide. Since implementation of Proposition 13, San Mateo Harbor District, like most other enterprise and non-enterprise districts in the State, has received a share of the 1 percent property tax in addition to enterprise revenues from user fees. This was an unintended consequence of Proposition 13. As illustrated in the District's budget, approximately half of the revenue received by the District is property tax revenue. The District incorrectly compares their case with that of small enterprise districts. While the fact that enterprise districts receive property tax is an unintended consequence, in the case of a small water or sewer district receiving property tax only from within that district's boundaries, there is at least geographic nexus between the property tax received and the service provided. In contrast, the Harbor District uses countywide property tax to fund services at two distinct facilities that are of partial benefit to all taxpayers.

The District's position also suggests that it is appropriate to subsidize enterprise services such as liveaboard berth fees, water, and sewer service with property tax. Proposition 13, enacted in 1978, set the total tax that could be levied on real property at 1 percent of the assessed value. As a result, the share of the countywide 1 percent property tax received by any city, district or school district was based on each agency's proportion to all taxes levied in the County prior to Proposition 13. In essence, Proposition 13 changed special district funding in that enterprise districts lost the ability to raise revenue through property tax. The intent was that enterprise districts would recover the cost of service through user charges and fees other than the limited property tax. Government Code Section 16270 states: *The Legislature finds and declares that many special districts have the ability to raise revenue through user charges and fees and that their ability to raise revenue directly from the property tax for district operations has been eliminated by Article XIII A of the California Constitution. It is the intent of the Legislature that such districts rely on user fees and charges for raising revenue due to the lack of the availability of property tax revenues after the 1978-79 fiscal year. Such districts are encouraged to begin the transition to user fees and charges during the 1978-79 fiscal year.*

The MSR/SOI report also makes a recommendation that the Harbor District convert to a cost accounting system that identifies the cost of enterprise versus non-enterprise activities to be able to assess what the reliance on property tax should be. Additionally the report suggests that some non-enterprise services such as trail maintenance could be transferred to the County Parks Department.

Harbor District Response - The District is in Transition and Governance

The District states that the MSR fails to take into account that the District is implementing many of the recommendations in the Draft report and is in the process of recruiting a General Manager after the retirement of a General Manager after over 15 years of tenure and the report does not taking into account the importance of this change of leadership. The District emphasizes the enormous importance this is to a District with a small staff. The District asserts that Sections 56430 and 56425 are the exclusive list of items LAFCo may include in an MSR/SOI report and that the report inappropriately includes a section on dissolution process.

LAFCo Comment

Transition

The MSR/SOI report acknowledges that the District is in transition and makes recommendations to be implemented by the District regardless of the District's sphere including, but not limited to, governance issues that have demonstrably impaired the ability of the District to recruit a permanent General Manager. LAFCo acknowledges that the District has begun to implement Grand Jury recommendations and LAFCo recommendations and that the District has made progress in this regard. While it is clearly important to have strong management leadership, the municipal service review and sphere update are not based on the individuals in leadership or governance roles at a special district.

Governance

Sections 56430 and 56425 govern the municipal service reviews and sphere of influence reviews and updates and do not restrict LAFCo consideration in the manner suggested by the Harbor District. Section 56430 includes the language: "...and shall prepare a written statement of its determinations with respect to each of the following..." There is no language that state the MSR shall only discuss these areas of determination. Sections 2 through 4 of the report speak to the areas of determination in Section 56430 and Section 5 makes recommended determinations in these areas regarding to the Harbor District. Section 56430 does not prohibit LAFCo from examining "issues outside those contemplated by the CKH Act." Nonetheless, Determination 6 identified on Page 1 above speaks to governance issues that would include discussion of dissolution and the dissolution process.

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 8

Harbor District Response - Dissolution - Unanswered Questions

The District notes that dissolution of special district is rare and there are numerous unprecedented and complex legal issues that will be costly and will require further analysis before assuming dissolution is in the best interest of County taxpayers.

LAFCo Comment

LAFCo agrees that dissolutions are rare. However, as cited in the report there is guidance contained in the CKH Act, Revenue and Tax Code, and by example of past dissolutions that provide guidance in the procedures and process of dissolution with a long-term successor. A municipal service review and sphere of influence update are not intended to serve as detailed fiscal analysis of dissolution. The report identifies transition issues that would be researched and resolved prior to an agency submitting a dissolution application to LAFCo. LAFCo recognizes that the District is unlikely to support the potential for the Board of Supervisors to succeed the Harbor Commission as the governing body of a harbor district sharing the same constituency and property tax base, and therefore the discussion between LAFCo and the District on this topic is contentious. Nonetheless, the report sets forth potential benefits including eliminating duplicated governance and administration and aligning funding of property tax to non-enterprise activities. It is reasonable that a larger organization such as the County or a city would achieve cost efficiencies and effectiveness in areas including, but not limited to, administration, human resources, finance and accounting, asset management, and grant administration.

Harbor District Response - Property Taxes

The District asserts that the report incorrectly cites application of revenue and tax code as it relates to dissolution of a district with a long-term successor.

LAFCo Comment

The District mischaracterizes the distribution of property tax in a district reorganization. Revenue and Tax Code calls for the County to negotiate on behalf of special districts subject to organizational change. For the benefit of continuing harbor and marina operations that currently rely on property tax, a dissolution with the County as successor would be dependent upon the County receiving the same share of property tax to fund services until such time that savings are achieved and rates are adjusted to reduce reliance on property tax. Because other districts and the cities are not subject to the organizational change, they are not party to the property tax negotiation.

Revenue and Tax Code Section 99(b)(5) reads: *“In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues. Prior to entering into negotiation on behalf of a district for the exchange of property tax revenue, the board shall*

consult with the affected district. The consultation shall include, at minimum, notification to each member and executive officer of the district board of the pending consultation and provision of adequate opportunity to comment on the negotiation.”

In the case of a district dissolution, the County would negotiate on behalf of the Harbor District and because there is no change in the service responsibility of any city or other special district, other agencies would not be party to the negotiation. If following dissolution, the County and the City of South San Francisco initiate a subsequent organizational change pertaining to Oyster Point Marina, that proposal would be subject to a property tax exchange between the County and the City.

Harbor District Response - Labor Issues

The District cites the in progress bargaining negotiations with two unions and how the outcome of negotiations is unknown and will be important to understand. The District also cites the CalPERS obligations cited in the report.

LAFCo Comment

LAFCo agrees that the outcome of labor negotiations and the requirement to satisfy CalPERS obligations prior to dissolution would need to be assessed by the County prior to initiating a dissolution application. The requirement to satisfy the CalPERS obligations prior to dissolution would be a one-time cost associated with the transition that would need to be considered in the long term and underscores the importance of considering the long-range versus short-term benefits of governance alternatives.

Harbor District Response - State Law Issues

The District cites the District’s State tidelands grant that allowed it to establish Pillar Point Harbor (Chapter 68, Statutes of 1960), which states: “That said lands shall be used by said district...for the establishment, improvement and conduct of a harbor...and for the construction, maintenance and operation thereon structures and facilities for public recreational purposes...” (emphasis added) and questions whether the Cortese-Knox-Hertzberg Act under which LAFCo operates would provide authority under the tidelands grant if the district does not exist. The District also cites the Department of Boating and Waterways (DBW) loans discussed in the report and provisions of Harbors and Navigation Code that attach statutory requirements to recipients of loans and the extent to which DBW must approve assignment of a District asset to a successor agency, or indeed if DBW approval is required as a condition of dissolution.

LAFCo Comment

Government Code Sections 56885 and 56886 (conditions) and 57450 (effect of dissolution) speak to the ability of LAFCo to set conditions, including establishing a long-term successor for continuation of service that would succeed to all rights, assets, debts, and other obligations of

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 10

the dissolved district including, but not limited to, land ownership. Section 57450 contains the following language: "The general provisions of this chapter shall not be construed as limiting in any manner the authority of the commission to impose one or more of the terms and conditions set forth in Section 56886."

While concurrence or approval may be required of State agencies in regard to the County becoming successor to DBW debt or a State tideland grant, the County of San Mateo has an existing loan with DBW, an AAA bond rating from Moody's and S&P, and has in the past been granted State tideland grants.

Harbor District Response - CEQA

The District questions whether the alternative of terminating the joint powers agreement (JPA) for Oyster Point Marina with City of South San Francisco or detaching would be exempt from the California Environmental Quality Act (CEQA).

LAFCo Response

The District's comment is noted, however, because the District's boundaries are currently countywide and the district operates two distinct facilities, the CEQA exemption that applies to a change where the change does not change the geographic area in which previously existing powers are exercised covers all possible scenarios. This exemption would not apply if there were an expansion of service area, but in any case involving the Harbor District, a change in operator does not change the geographic area in which service is provided.

Harbor District Conclusion- Moving Forward

The District emphasizes the purpose of the MSR as a planning tool and not a retrospective of past mistakes and notes the District's commitment to implementing improvements and providing essential services to County residents, commercial fishermen, and the thousands of visitors that visit District facilities or that indirectly benefit from District services when they order local seafood.

LAFCo Response

LAFCo acknowledges that MSRs are often perceived as critical documents but disagrees that the MSR constitutes a retrospective document of past mistakes. The report documents deficiencies and makes recommendations for improvements and best practices. LAFCo appreciates the District's genuine engagement in the municipal service review process and the willingness of the Harbor Commission and staff to provide information crucial to preparation of the report.

City of South San Francisco Comments

The City of South San Francisco concurs with MSR recommendations regarding a five-year Capital Improvement Plan, best practices for budgeting, consideration of outsourcing including property leasing functions, opportunities for shared facilities/services, and implementing an accounting and budgeting process that separates enterprise functions that should be self-

supporting versus those functions that are for the benefit of the general public (trails, open space access, etc.). The City expresses concern that capital improvement expenditures are less than the amount needed to meet priorities and that underfunding capital improvements has significant long-term impacts on the viability of facilities. The City believes that a more focused investment in public amenities at Oyster Point Marina (OPM) would result in higher use by the public. The City notes that a successful lease and rent/concession enterprise at OPM is a priority for the City and that more attention can be placed on actively pursuing revenue opportunities at OPM, including finding a tenant for the bait shop. The City concurs with the suggestion of outsourcing commercial real estate management. The City believes there are more recreational opportunities for the general public at OPM such as trail usage, picnicking, shoreline access, and partnering with the City of South Francisco Parks and Recreation Department. The City defers comment on dissolution until or unless a recommendation is adopted by LAFCo.

County of San Mateo Comments

The County of San Mateo's letter concurs with recommendations in Section 5 of the report and expresses concern about lack of linkage between capital improvements in the District's strategic plan and the capital projects funded in the budget. The County supports engaging an outside public accounting firm to review District Operations and capital budgets and supports separation of enterprise and non-enterprise functions. The County indicates that if the Commission recommends dissolution and the County determines it will follow up on the Grand Jury recommendation that the County initiate dissolution of the District, the County would undertake a comprehensive analysis of all aspects of the district including, but not limited to, deferred maintenance, debt, CalPERS liability, finances, operations, staffing structure, and the Oyster Point Marina Joint Powers Agreement with the City of South San Francisco. The County would include input from the City of South San Francisco and analysis would be discussed at a public meeting prior to the Board of Supervisors considering action to initiate dissolution of the District.

Comments From Other Agencies and Organizations

Coastside Fire Protection District

Assistant Chief Paul Cole expresses the fire district's support for Harbor District's emergency services, including assistance the fire district receives from the Harbor District in rescue operations. The letter indicates the fire district's hope that the outcome of the MSR will continue to support the emergency service capabilities for Pillar Point Harbor.

North American Marine Environment Protection Association (NAMEPA)

NAMEPA Education and Outreach Manager Elise Avallon expresses the NAMEPA support for the Harbor District and describes the organization's working relationship with the Harbor District.

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 12

Half Moon Bay Coastside Chamber of Commerce

The Chamber expresses support for the Harbor District and the Harbor's importance to the economic base of the Coastside.

San Francisco Bay Conservation and Development Commission (BCDC)

BCDC has permitting jurisdiction for all tidal areas of San Francisco Bay as described in their letter. BCDC notes that the Harbor District administers the Oyster Point Marina, which is in BCDC's jurisdiction and subject to several permits. The letter describes BCDC policies that apply to Oyster Point Marina. The letter cites the San Francisco Bay Plan Maps that designate Oyster Point Marina and the adjacent shoreline as "Waterfront Park, Beach" priority use area "Oyster Point Marina Park," and describes other applicable BCDC policies that apply to the marina.

Comments from Residents

Letters or emails received from the following individuals are attached to this report:

- Anthony Basso
- Chris Dunham
- Chris Johnson
- Shawn Mooney
- Debra Penrose, Half Moon Bay Council Member
- Robert Riechel
- John Ullom

Recommended Municipal Service Review Determinations

The attached Public Hearing Draft Municipal Service Review for the Harbor District includes applicable corrections and responses to comments on the circulation draft that was widely distributed. In addition, Exhibit A to the Harbor District's comment letter containing specific Harbor District comments and requested corrections, which now includes LAFCo responses and is attached to this staff report, is recommended to be included as an addendum to the Municipal Service Review document. The MSR is based on budgets, audits, and other documents provided by the District; observation of Harbor Commission meetings; and comments from the District, affected agencies, and interested organizations and individuals. The recommended determinations in the MSR are based on data in the report and generally accepted best practices in budgeting, governance, and administration.

1) Growth and population projections for the affected area

As further described in Chapter 2 of the Municipal Service Review, the County's population is forecasted to increase by about 26 percent between 2010 and 2040; this is a slightly greater

rate than the growth projected in the 2006 MSR; however, actual growth will depend on future economic conditions, land use policies, and other factors. Although these trends indicate continued growth in demand, utilization of SMCHD facilities is much more significantly influenced by weather conditions, successful fishing seasons, and outdoor recreation trends.

2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence

In 2006, LAFCO reaffirmed the zero SOI adopted for the SMCHD originally adopted in 1977. Within the current boundaries of the SMCHD, which correspond to San Mateo County boundaries, multiple disadvantaged unincorporated communities (DUCs) exist. However, the intent of evaluating DUCs is to assure that those communities are provided adequate services and infrastructure comparable to other communities within or contiguous to an agency's SOI. This provision is not applicable to the SMCHD, which operates and maintains a harbor and a marina, and provides related maritime services.

3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the SOI.

As detailed in **Chapter 2** of this MSR, the SMCHD has significant infrastructure and facility improvement needs as a result of the wear and tear of heavy use, a harsh marine environment, and deferred maintenance and capital projects. The Draft Strategic Business Plan prepared in 2014 for the SMCHD indicated a need over the next five years for \$17.3 million in repairs and capital improvements. Additional needs not assessed in the Plan include a need to demolish and remove the dilapidated Romeo Pier, and harbor dredging projects. The SMCHD CIP budget addresses several of the recommended items in addition to other needs; however, it defers major construction pending further design and review, and acquisition of adequate funding.

Recommendations

The SMCHD should establish a capital improvement planning and accounting system, including a five-year CIP, to better document and plan for the funding and implementation, as well as to facilitate prioritization, of capital improvements. The CIP should be explicitly linked to improvements currently recommended in the Draft Strategic Business Plan as well as the proposed budget.

4) Financial ability of agency to provide services

As described in Chapter 3 of the MSR, the SMCHD budget consistently exhibits a net operating shortfall due to operating revenues inadequate to cover operating costs. The operating shortfall (before debt service and before the use of property taxes) exceeds \$3.4 million in the projected budget, meaning that fees and charges are insufficient to cover about half of operating expenditures. In addition to the operating shortfalls, the SMCHD must fund approximately

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 14

\$1.4 million of annual debt service, undertake ongoing maintenance, and construct needed capital improvements.

In addition to fees and charges, the SMCHD receives over \$5 million annually from its share of countywide property taxes. These total revenues are sufficient to fully fund operations and \$710,000 of planned capital improvements; however, the repair and capital improvement needs are greater than the amount currently shown in the proposed budget.

The SMCHD's labor-related and other operating costs continue to increase, placing more pressure on budget resources. However, numerous actions recently undertaken and/or planned by the SMCHD offer the prospect for improved financial resources and the ability to fund improvements, including:

- Establishment in recent years of a "two-tier" benefit system that reduces the cost of benefits related to new employees.
- Current relocation of administrative offices to new space at a reduced lease cost.
- Streamlining procedures to reduce "bad debt" associated with non-paying berth tenants implemented by the Finance Director.
- Review of fees and charges to assure reasonable and competitive rates for appropriate mix of slip sizes.
- Consideration of charges for services currently provided at no cost, e.g., pump-out services and charges for large parties using picnic areas.
- Contingent on staff capacity, renew efforts to seek grant funding for facilities and improvements, including possible grants related to equipment needs for SMCHD Search and Rescue.
- The recent sale of surplus property, consistent with Civil Grand Jury recommendations, increased SMCHD reserves.
- Over time, Termination Benefit liabilities and payouts will diminish and eventually end.
- Possible retention of a commercial real estate management firm to help maximize lease revenues.
- Refinancing and/or eventual payoff of existing DBAW debt will make additional resources available for capital funding.

Due in part to recent turnover of staff with extra work falling to remaining staff and lack of consensus on the Board, many of the initiatives noted above were not pursued. Conflicts within the Board, and between staff and the Board, as noted by the Civil Grand Jury further exacerbated the difficulty of achieving SMCHD objectives and increased SMCHD costs (e.g., for legal services).

The SMCHD has undertaken steps to reduce Board conflict and establish "Chain of Command" protocols. An Interim General Manager was hired recently and the current General Manager

recruitment and hiring offers an opportunity to solidify leadership, organization, and direction assuming it is supported by a majority of the Harbor Commission. In the near term, improvements in property tax revenues and lease revenues will help to fund staff efforts towards the initiatives noted above, assuming strong management direction. Improvements in accounting and financial policies can strengthen capital improvement planning and programming, and provide for appropriate reserve policies that enable limited use of reserves for capital while maintaining adequate reserve levels.

Recommendations

1. The SMCHD should engage a public accounting firm to review its budget accounts for both operations and capital improvements, and establish a financial accounting system consistent with best practices for California public agencies. The review should include a system to allocate costs and revenues according to enterprise versus other public purposes for each of their facilities and provide immediate access to current lease and tenant information.
2. The SMCHD should assess its personnel needs in order to fill vacated positions as necessary to pursue the initiatives noted above, including seeking grants.
3. The SMCHD should consider administrative functions that can and should be more cost-effectively outsourced, including IT functions and property leasing. This outsourcing should consider collaboration with other public agencies as well as private contractors.

5) Status of, and opportunities for, shared facilities

Limited opportunities for shared facilities have been identified in the course of this MSR process. Recently the District has leased office space from the Granada Community Services District and contracted with Regional Government Services to recruit an interim general manager. Various opportunities may exist by which the SMCHD may take advantage of shared services, e.g., possible IT contracting with or through other public agencies is being explored. Responsibility for certain facilities could be shifted to other agencies, e.g., the West Trail and Surfers Beach dredging, as recommended by the Civil Grand Jury and noted in the following determination.

6) Accountability for community service needs, including governmental structure and operational efficiencies

The Civil Grand Jury described indications of “a systemic flaw in the ability of District commissioners to govern effectively.”

The SMCHD has taken a number of steps towards addressing issues negatively affecting governance and operational efficiencies, including workshops to facilitate collegiality and working relationships, consideration of “norms” of commissioner behavior, improvements in public posting of materials on their website, and multiple workshops on topics such as the budget. A strategic business plan is being prepared; however, it has been delayed and concerns exist about its scope and effectiveness in addressing SMCHD financial issues. As described in

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 16

this MSR, inappropriate interaction between Commissioners and staff continue to interfere with operational efficiencies.

The Civil Grand Jury recommended dissolution of the SMCHD and transfer of responsibilities to other agencies, specifically the County of San Mateo. Chapter 4 of the MSR describes governance options with the most potentially viable option a scenario in which the County acts as successor agency, operates PPH, and enters into an agreement with the City of South San Francisco (SSF) to operate OPM. The agreement with SSF would include negotiated funding from the County's property taxes (from the dissolved SMCHD) and other revenues to be transferred to SSF to fund operations and capital improvements, and any other shared financial liabilities (e.g., remaining debt service, CalPERS liabilities, etc.).

The option described above may incur additional costs during the initial years of transition related to CalPERS and other liabilities but could provide for cost and service efficiencies over the longer term. This option would integrate the SMCHD operations into larger entities that have the capacity and expertise to provide a range of needed services, including information technology, purchasing and contracting services, human resources, and absorbing Harbor District employees with needed expertise.

Recommendations

The City of South San Francisco and the County of San Mateo should continue to confer and research issues and options affecting the feasibility of dissolving the SMCHD, transferring responsibilities to the County as successor agency, and transitioning to SSF operation of OPM via a JPA.

7) Any other matter related to effective or efficient service delivery, as required by commission policy.

A primary concern expressed by prior MSRs and by the Civil Grand Jury involved the use of countywide property tax revenues to help subsidize "enterprise" type operations, including berth rentals occupied by a majority of non-County residents. However, the current and prior MSR also documented the range of facilities, services, and benefits provided by SMCHD services and facilities such as Search and Rescue; environmental services; and public use and access to piers, parks, and waterfront open space.

While it is difficult to isolate cost estimates for these broader, non-fee-funded services, the SMCHD could create "cost centers" to document and track these expenditures to support appropriate levels of property tax use and allocation. In the near term, it is expected that property taxes will continue to be necessary to fund deferred maintenance and other necessary improvements. Over the longer term, there is a possibility that revenue enhancements and cost efficiencies from the initiatives described above and/or from reorganization could reduce the current reliance on property tax.

Recommendations

As also noted above under Recommendation 4.1, the SMCHD should establish an accounting system that can allocate costs and revenues according to enterprise versus other public purposes to better assess the need for property tax.

Recommended Sphere of Influence Determinations

LAFCo acknowledges that in the course of the MSR preparation, the District has begun to implement some of the recommendations in the MSR as well as those of the Grand Jury. Many of the comments received urge the Commission to allow the District more time to make improvements and stabilize with a new general manager before reaffirming the longstanding sphere of influence of dissolution. As noted in the response to the Harbor District, LAFCo spheres are not based on the individuals that serve on an elected board or serving as management staff. The Harbor District sphere is based on the duplication of governance and administration with the County of San Mateo, the absence of nexus of the District's countywide boundaries with the location of the two District facilities, one of which is leased, and the agencies best able to provide services in the long range. Pillar Point is located in unincorporated San Mateo County and Oyster Point is located in and owned by the City of South San Francisco. The County of San Mateo and City of South San Francisco have governance and organizational infrastructure to assume the services, and marine-related personnel.

(1) The present and planned land uses in the area, including agricultural and open space lands.

Land uses within District boundaries include a wide range of land use including residential, commercial, industrial, open space, agricultural, rural, and open space land use designations under the jurisdiction of the County of San Mateo, incorporated cities, the California Coastal Commission, the State of California through a tidelands grant, the San Francisco Bay Conservation and Development Commission, as well as other agencies that may have land use review authority.

(2) The present and probable future need for public services.

Services provided by the Harbor District within District boundaries are also provided at varying levels by other public and private entities. The Harbor District provides search-and-rescue security vessels stationed at Pillar Point and Oyster Point Marina and the County of San Mateo Sheriff's Department, other marina operators, and some fire agencies have search-and-rescue capability at other locations throughout the county. Need for these services is expected to continue.

(3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

San Mateo County Harbor District operates two facilities, Pillar Point Harbor and Oyster Point Marina/Park. The MSR/SOI Report documents significant infrastructure and facility improvement needs as a result of wear and tear from heavy use and a harsh marine environment, and deferred maintenance and capital projects. Pillar Point has 95-100 percent

July 8, 2015

MSR and SOI Update for the San Mateo County Harbor District

Page 18

berth occupancy rate. Work is in progress on the provision of new berths and the District has an executed agreement with the U.S. Army Corps of Engineers for provision of a new navigation channel in connection with pier replacement. Oyster Point has 60-65 percent occupancy rate and therefore has additional capacity. Both facilities include visitor-serving opportunities. Opportunities exist for the Harbor District to collaborate with the County of San Mateo and City of South San Francisco to maximize resources. Services also include search and rescue and the District's Pillar Point Harbor Patrol provides the only search-and-rescue security vessels stationed on the San Mateo County coast.

(4) The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency.

San Mateo County Harbor District's boundaries are coterminous with San Mateo County, while operations are limited to two locations: Oyster Point in South San Francisco and Pillar Point in Half Moon Bay. These represent distinct communities with common social and economic interest in commercial and recreational fishing and marine, boating, and visitor-serving facilities. While commercial fishing is an industry important to the County, Pillar Point Harbor serves as search and rescue to benefit the County's coast, and Oyster Point offers a venue for a commuter ferry, these issues speak to the value of providing these services whether they are provided by the Harbor District or a successor agency such as the County of San Mateo or the City of South San Francisco.

Inventory of Active Services

Government Code Section 56425 (i) and (j) requires that in conducting MSRs, LAFCo's prepare an inventory of all authorized powers under a district's enabling legislation and identify those powers that are active versus inactive. Government Code Section 56824.12 requires that before a District activates an inactive service or divests of an active service, it must first apply to LAFCo and obtain LAFCo approval. The SMCHD is providing the full set of services authorized by the enabling legislation, including recreational use of District facilities located at Pillar Point Harbor and Oyster Point Marina, under a Joint Powers Agreement with the City of South San Francisco as owner of the marina.

Recommended Sphere of Influence

Based on the forgoing, it is recommended that the Commission reaffirm the zero sphere of influence of the San Mateo County Harbor District indicating that the District should be dissolved and that the County of San Mateo be established as the long-term successor agency. Implementation of the sphere could be initiated by the County of San Mateo in partnership with the City of South San Francisco with the first step being a fiscal feasibility analysis.

Executive Officer's Recommendation

Staff submits that the attached municipal service review and the sphere of influence update provide a framework for the Harbor District, County of San Mateo, and City of South San

Francisco to further study improvements in the areas of finance, accountability, and transparency as well as governance alternatives, including dissolution. The attached municipal service review, sphere of influence update, and recommended determinations comply with Government Code Sections 56430 and 56425 and are consistent with Government Code Section 56301 promoting efficient provision of government services and orderly formation of and development of local agencies based on local conditions. It is therefore respectfully recommended that the Commission take the following actions:

1. Accept the report and public comment;
2. Adopt the municipal service and sphere of influence report;
3. Adopt the municipal service review and sphere of influence determinations and the statement of active services contained in this report; and
4. Reaffirm the zero sphere of influence of the San Mateo County Harbor District indicating that the District should be dissolved and the County of San Mateo should be the long-term successor agency and partner with the City of South San Francisco as owner of the Oyster Point Marina/Park.

The LAFCo MSR is not intended to be a fiscal analysis of dissolution and states that prior to initiating an application, analysis would include, but not be limited to, addressing financial issues such as deferred maintenance and capital improvements, debt, and CalPERS liability.

Respectfully submitted,



Martha M. Poyatos
Executive Officer

Attachments: Attachment A - Municipal Service Review and Sphere of Influence Update
Attachment B - Comments