

LAFCO 21-10

COMMISSION FINDINGS AND ORDER RE GRANTING A TWO-YEAR TIME  
EXTENSION TO LOS OLIVOS COMMUNITY SERVICES DISTRICT TO  
CARRY OUT ASSESSMENT UNDER PROPOSITION 218

On May 6, 2021, the Santa Barbara Local Agency Formation Commission heard the request of the Los Olivos Community Services District for an extension of time to conduct a Proposition 218 assessment as necessary to fund the construction and operation of a wastewater treatment system for that community. The Commission held a duly notice public hearing, received a report from staff and public comment both written and verbal. After due consideration, the Commission makes the following recitals and determinations.

WHEREAS, the time extension request relates to the District's compliance with a condition included as part of the Commission's approval of formation of the District, which occurred on April 13, 2017. The Certificate of Completion for that proceeding was recorded on April 18, 2018. The relevant record for the time extension request therefore includes the administrative record from that LAFCO proceeding.

WHEREAS, on April 13, 2017, the Santa Barbara Local Agency Formation Commission adopted Resolution No. 17-03, authorizing the formation of the Los Olivos Community Services District with statutory powers authorized by the Community Services District Law, Government Code section 61000 et. seq.

WHEREAS, pursuant to Government Code section 61100(b), the Commission authorized the newly formed District to collect, treat, and dispose of sewage, wastewater, recycled water, and storm water, in the same manner as a sanitary district, formed pursuant to the Sanitary District Act of 1923, Division 6 (commencing with Sec. 6400) of the Health and Safety Code.

WHEREAS, the formation of the District was proposed by a registered voter petition to the Commission in response to the County of Santa Barbara's Local Agency Management Program ("LAMP") that sets forth plans and requirements for onsite wastewater treatment systems. County's LAMP was adopted in 2014 and revised July 1, 2015.

WHEREAS, the County's LAMP was adopted pursuant to the statewide LAMP program adopted by the State Water Resources Control Board when it adopted the "Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems," dated June 19, 2012, also referred to as the "OWTS Policy." The State Water Board's Policy provides a multi-tiered strategy for management of onsite wastewater treatment systems in California.

WHEREAS, the County LAMP was adopted in 2014 and revised on July 21, 2015, entitled "Onsite Wastewater Treatment Systems, Local Agency Management Program." ("County LAMP.") For Los Olivos, the County LAMP recommended:

*"Community Wastewater Facility. It is recommended that feasibility and environmental studies be undertaken to develop and implement a community wastewater facility for the town of Los Olivos. The need for a community wastewater solution in Los Olivos stems from the very high density of development in the town, combined with the inherent soil and groundwater conditions that force homeowners and businesses to utilize drywell systems that discharge directly into the groundwater strata in the area. The study of alternatives for the town can and should consider various service area configurations, the possibility of maintaining septic systems in limited areas of town, the possibility of a joint community facility with Ballard, an interceptor sewer connection to the City of Solvang, and various locations and technologies for a community wastewater treatment and disposal facility."* (County LAMP at p. 24, emphasis added.)

WHEREAS, the Commission approved formation of the District upon two conditions for funding. First, the District was to adopt a special tax that would generate \$200,000 annually in revenue and which may increase annually thereafter by the Consumer Price Index. These monies would be used to fund operation of the District as it prepared the studies and plans necessary to design the wastewater system. Second, the Commission required the District to carry out a Proposition 218 assessment as follows:

*"The District shall implement a Proposition 218 assessment within one year of the effective date as necessary to fund the wastewater treatment facilities for the area, including CEQA and other planning analysis, assessment study and necessary election. Santa Barbara LAFCO may otherwise extend such deadline, or other LAFCO approved arrangements are made for funding such construction."*  
(LAFCO Resolution 17-03, Par. B(v)(vii), at p. 2.)

Further, the Commission required that the "District's authority to tax shall terminate once the District successfully adopts an assessment pursuant to Article XIII D Section 6 of the California Constitution (Proposition 218) to generate revenue sufficient to funds its administrative costs through charges other than the tax."

WHEREAS, the Executive Officer's April 13, 2017 Staff Report to the Commission cited a Berkshire Associates Study commissioned by the petitioners as estimating the cost of the wastewater treatment system to be \$29,869,000.

WHEREAS, on February 8, 2018, County Clerk Recorder-Assessor Joseph E. Holland certified the results of the election held on January 30, 2018 that showed of the 363 votes cast, 73.4 percent voted "Yes" and 26.6 percent voted "No" on the formation of the District and the assessment of the special tax.



WHEREAS, District previously requested two time-extensions on December 8, 2018 and March 20, 2020 (the latter request was renewed on August 10, 2020) to carry out the Proposition 218 assessment. In both instances, the District provided detailed information on ongoing efforts to complete studies, work with the Regional Water Quality Control Board and public outreach efforts that would lead to a successful Proposition 218 assessment necessary to fund construction of the wastewater treatment system.

WHEREAS, the District has provided information on the studies completed and ongoing, as well as the grant funding being sought or secured from several sources. The District's letter to the Commission dated March 19, 2021, identified the Project Goals and individual objectives that were underway or completed for each goal. These included:

- Successful securing of a County Environmental Health Services grant of \$180,000 in support of District Goal 3 (implementation of Local Groundwater Monitoring Program) and Goal 4 (Phased Collection and Treatment System Implementation):
- Discussions with County regarding treatment plant siting options.
- Working with County Environmental Health Services and letting a contract for preparation of update to the Los Olivos Local Area Management Plan in accordance with State guidelines that establish appropriate requirements for continued residential onsite wastewater treatment systems ("OWTS").
- Contract with Water Consultancy Inc., for preparation of Engineers Report for preliminary studies, design, and environmental review. This will provide the basis for the Proposition 218 assessment.
- Preparation of a Local Groundwater Monitoring Program.
- Preparation of a preliminary environmental assessment for the project.

WHEREAS, in addition to its March 19, 2021 letter, the District Board of Directors President Lisa Palmer presented oral and written (PowerPoint) testimony to the Commission at the May 6, 2021 hearing on the District's extension request. In her presentation, President Palmer made the following points.

- The District has a reserve balance of \$289,000.
- The District has secured a right-of-way easement from the County the District may use subject to environmental review and project approval.
- District has qualified for a State Water Recycling Planning Grant of \$300,000/50% matching – Agreement estimated in August 2021.
- The District presented its "Progress & Estimated Timeline to Prop 218 Assessment Vote" that shows the District expects to:
  - complete the Alternatives Analysis, Concept and Preliminary Design & Estimates by August 2021 and
  - in an update to the schedule outlined in its March 19 letter, hold an Assessment Vote by June 2022.

WHEREAS, in response to questions from Commissioner Hartman, Board President Palmer testified the District was not pursuing efforts to take itself out of the County LAMP but, rather, was seeking amendments to the County LAMP to tailor it to conditions in Los Olivos and that the District understood County EHS had made similar amendments to the Montecito and Isle Vista portions of the County LAMP.

WHEREAS, the District's presentation to the Commission stated the District's goal is to have a Proposition 218 assessment by June 2022. District General Manager Pike testified this assumes the State Water Board Water Recycling Planning grant comes through on time (projected for August 2021), as these funds will fund preparation of the "60% design" plan essential to producing a quality assessment that will instill public confidence necessary to ensure the assessment is successful. The Commission finds significant General Manager Pike's testimony that if this assessment fails, the project will be back to "square one."

WHEREAS, the District candidly stated in its March 19, 2021 letter:

"Yet we still have significant work to do in order to get to an informed and successful Prop. 218 benefit assessment vote. We therefore respectfully request LAFCO . . . extend the LAFCO Resolution deadline to conduct the District's Prop. 218 proceedings for two years. During this time, we will continue to submit biannual updates to your [Commission]. *We ask for this extension to maximize the probability of a successful Prop. 218 proceeding for the District.*" (emphasis added.)

WHEREAS, Heal the Ocean submitted a letter, dated May 6, 2021, to the Commission advocating that the District should be dissolved and LAFCO should "LET THE COUNTY TAKE OVER THE PROJECT . . ." (emphasis original) through establishment of a county service area, engaging a professional recycled water plant builder or/and having Laguna Sanitation District operate the project.

WHEREAS, if an alternative governance option were pursued, under the Cortese Knox Hertzberg Act, Government Code section 56000 et seq., any "change of organization" as defined in Government Code section 56021, would require LAFCO review and approval. This would include an affected agency's submission of a resolution of application or registered voter or landowner petition (Sec. 56650), application completeness determination (Sec. 56658(c)), payment of fees (Sec. 56383), Commission review at a noticed public hearing (Sec. 56375(a), and, if approved, requisite determinations (Sec. 56880 & 56881) and conditions (Sec. 56885), which shall be followed by a protest hearing (Sec. 57000 & 57050). Further, a protest hearing shall lead to an election if protests are received from more than 25 percent but less than 50 percent of the registered voters or more than 25 percent but less than 50 percent of the landowners



owning at least 25 percent of the assessed value of the area (Sec. 57075). And if 50 percent or more of the registered voters protest, then the “proposed change of organization or reorganization shall be terminated.” (Sec. 57078.)

WHEREAS, whether the project is pursued by the District or another agency, such as the County, any entity chosen would have to propose a funding source to cover the estimated \$29,869,000 cost of the project. This most likely will come predominately from a Proposition 218 assessment, which is precisely the objective the District is now pursuing.

WHEREAS, County Director of Public Works Scott McGolpin submitted a memorandum to the Commission dated May 4, 2021, stating the District’s request for an extension “should be approved.” Mr. McGolpin stated:

“It is the opinion of the County Public Works Department that the motion to extend the time to successfully conduct a Proposition 218 assessment as required by Condition B (vii) in the Resolution 17-03 approving formation on April 13, 2017, should be approved. Public Works believes that significant work has been completed to date by the special district in completing the goal of constructing a community sewer, and changing processes now would break the momentum. It is further the belief that changing to County management at this time would also add time to the process and create new governmental logistical activity that would actually act counter to the goal of gaining a community sewer system as soon as possible.”

NOW, THEREFORE, THE COMMISSION HEREBY ADOPTS THE FOLLOWING FINDINGS:

1. The District has made reasonable and well documented efforts to manage the challenging task of putting together the studies, analysis, funding and public outreach to successfully carry out a Proposition 218 assessment as necessary to fund the wastewater treatment system for Los Olivos, estimated to cost \$29,869,000.
2. The District’s due diligence has been shown by, among other things, the Los Olivos voters approval of formation of the district and imposition of a special tax by a margin of 73.4 percent “Yes” to 23.6 percent “No” vote. The Commission determines this not only shows due diligence, it assures that the interim funding of the District will remain sound based on \$200,000 collected annually in tax revenue. In particular, the District has testified it has a reserve balance of \$289,000.
3. The District has diligently sought and obtained grant funding, engaged consultants, worked proactively with County Environmental Health Services and the Regional Water Quality Control Board (“Regional Board”), and achieved other important

objectives as outlined in its letter of March 19, 2021. Additionally, the District is conducting important public outreach in order ensure the Proposition 218 assessment is successful.

4. The Commission recognizes the urgency of public agencies addressing the environmental and health concerns caused by the use of onsite wastewater treatment systems in the Santa Ynez Valley. The Commission finds that the District's efforts to date are reasonable, even given the delays that have occurred since the District was formed. In context, the Commission notes that the State LAMP program was not adopted by the State Water Resource Board until 2012 and the County adopted its LAMP in 2014 and revised it in 2015. During that time, while the County has been proactive in adopting studies and regulations for this problem, the County did not come forward with any proposed project to address the situation. A Los Olivos citizen group finally came forward with a registered voter petition in 2017 for formation of the District, which was approved by LAFCO and became final on April 18, 2018. As a new district, it had to go through normal "growing pains" as it hired staff and counsel and retained qualified professional consultants to carry out the necessary studies to plan the wastewater system project and carry out an assessment for a \$29,869,000 project. In light of this timeline and the size and expense of the project, the Commission finds that the District has exercised reasonable due diligence in moving forward with the wastewater treatment system for Los Olivos.

5. The Commission has noted the many objections from Heal the Ocean ("HTO") in its letter dated April 22, 2021, ("HTO Letter") regarding the length of time it has taken the District to carry out the assessment and begin construction. The Commission's findings and responses regarding HTO's objections are:

a. **HTO Objection.** The District has failed to find a suitable site for the wastewater treatment plant and not conducted any CEQA analysis or obtained permits.

**Commission Finding:** The District's March 19, 2021 letter states a siting and site procurement study is underway. Additionally, a preliminary environmental assessment is being prepared by Urban Planning Concepts, expected completion June 30, 2021.

The District letter also states it has been in discussions with the County for selection of a treatment plant site. Further, District Board President testified the District has secured a right-of-way easement from the County the District may use subject to environmental review (which would have to look at project alternatives) and project approval. Obtaining permits at this juncture is premature.

b. **HTO Objection.** Communications between the District and LAFCO have been inconsistent about the meaning of this "deadline," raising questions about what these one-year deadlines are for.



**Commission Finding.** The Commission finds that the District has been diligent in submitted reports about its progress. The Commission routinely imposes a funding condition on the formation of any district and such a condition always includes a deadline. In such cases, the Commission reserves the power to itself to extend the deadline as needed given the circumstances. Indeed, language in the condition allowing for extensions shows that such extensions are anticipated and expected. Resolution 17-03 even provides an alternative for “other LAFCO approved arrangements . . . for funding such construction.” The Commission finds that raising funds for large projects, such as a wastewater treatment system costing more than \$29 million, is a daunting task and it is not unexpected that additional time is needed.

c. **HTO Objection.** The “Question of Intent” – the Coastal Onsite Design Services study. HTO argues that the District commissioned a study by Coastal Onsite Design Services. According to HTO, the study was originally proposed to take the form of a Los Olivos-specific LAMP but then would instead be presented to the Regional Board to “argue the Santa Ynez groundwater basin is not subject to LAMP guidelines.” Many other criticisms of the District are made as part of this objection.

**Commission Finding.** The Commission finds no merit in this objection. First, the document identified as the “Scope of Work” by Coastal Onsite Design Services is not on any company letterhead nor is it signed. Assuming it is from Coastal Onsite Design Services and is a proposal to the District, the document states a goal to “Create a Los Olivos Specific LAMP that clarifies and aligns the appropriate State Tier 2 & 3 OWTS requirements for the District, providing detailed guidance to District residents and property owners *while the District continues to develop its wastewater collection and treatment system.*” (HTO Letter, Attachment 14 “Scope of Work,” emphasis added.) On its face, the proposal did not abandon building of a wastewater collection and treatment system; rather, it identified several tasks to be pursued concurrently.

The HTO Letter also acknowledges that Environmental Health Services Director Lars Seifert “counseled the [District] that amending the County LAMP to provide for particular details in the LAMP for septic system maintenance in Los Olivos might be permissible, *depending on lot size*, but that creating a separate LAMP for Los Olivos is not permissible.” This is not inconsistent with the County LAMP which specifically provides:

*“The study of alternatives for the town can and should consider various service area configurations, the possibility of maintaining septic systems in limited areas of town, the possibility of a joint community facility with Ballard, an interceptor sewer connection to the City of Solvang, and various*

locations and technologies for a community wastewater treatment and disposal facility.” (County LAMP at p. 24, emphasis added.)

Indeed, the document that HTO says is the District’s memorandum summarizing the District’s March 3, 2021 meeting with EHS Director Seifert (the Commission notes the document author is unidentified and it is neither signed nor dated), stated that EHS would consider editing of the LAMP for Los Olivos to include appropriate modifications, including consideration of smaller lot. (HTO Letter, Attachment 15.) Assuming the document is authentic and accurate, the Commission finds it indicates the County was willing to work with the District on amendments to the County LAMP as it applied to Los Olivos.

The Commission finds persuasive testimony from District Board President Palmer that the District was not pursuing efforts to take itself out of the County LAMP but, rather, was seeking amendments to the County LAMP to tailor Plan requirements to conditions in Los Olivos.

The Commission finds significant that the District’s goal is to have a Proposition 218 assessment by June 2022. District General Manager Pike testified this assumes the State Water Board Water Recycling Planning grant comes through on time (projected for August 2021), as these funds will allow for preparation of the “60% design” plan essential to producing a quality assessment that will instill public confidence necessary to ensure the assessment is successful. The Commission finds significant General Manager Pike’s testimony that if this assessment fails, the project will be back to “square one.”

The Commission finds that the evidence from HTO is unpersuasive of showing any disingenuous District intent and does not undermine the Commission’s finding that the District has acted with due diligence in pursuing the project.

d. **HTO Objection.** Other governance options should be pursued, in particular the County should take over the project.

**Commission Finding.** First, as stated above, the Commission finds the District has exercised due diligence in pursuing the wastewater collection and treatment system. Therefore, the Commission does not currently see a need to identify another agency to pursue the project. Second, the Commission is concerned about the loss of time that would occur if another agency were to step in to pursue the Los Olivos wastewater treatment project. Even if another agency were prepared to step in, the Commission takes notice of the required statutory processes of the Cortese Knox Hertzberg Act that would certainly apply. These steps are identified in the recitals above.



To date the County has not expressed such an interest. Even if the County did express an interest, such a process would consume significant time, most likely more time than it would take the District to move forward with the Proposition 218 assessment. Additionally, the County would almost certainly have to fund the project through a Proposition 218 assessment that would need to raise over \$29 million. There is no reason to believe this would be an easier task for the County than it has been for the District. The Commission also finds as significant the District's statements that "We ask for this extension to maximize the probability of a *successful* Prop. 218 proceeding for the District." (Emphasis added.) Getting the required support from landowners for a Proposition 218 assessment for a project that will cost more than \$29 million is a daunting challenge.

The Commission finds significant the opinion from the County Public Works Director McGolpin that County "Public Works believes that significant work has been completed to date by the special district in completing the goal of constructing a community sewer, and changing processes now would break the momentum."

Therefore, the Commission finds that pursuing other governance options for the Los Olivos wastewater treatment system are not appropriate at this time.

e. **HTO Objection.** The District has hired consultants who are former County EHS employees who may have a conflict of interest.

**Commission Finding.** The Commission notes that District's counsel responded to this issue in its letter dated April 27, 2021. The Commission finds that no issue has been raised on this matter that affects the Commission's finding that the District has acted with due diligence.

f. **HTO Objection.** The Regional Water Quality Control Board has warned that if local agencies move too slowly to address groundwater conditions documented in the 2003 (Questa) Septic System Sanitary Survey for Santa Barbara, the Regional Board may impose "a set of conditions requiring action and a timeline confirming implementation of those actions."

**Commission Finding.** The Commission recognizes and respects the oversight regulatory role of the Regional Board and its authority to take enforcement action as necessary. Nothing in today's action by the Commission undermines the Regional Board's authority. The Commission's action today is limited to whether the District has exercised due diligence to pursue the project. If the District's efforts are not sufficient to meet the requirements of the Regional Board, that is for the Regional Board to determine and that Board will take appropriate action.

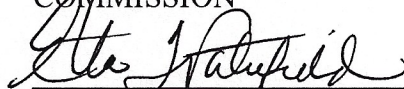
NOW, THEREFORE, THE COMMISSION HEREBY ORDERS THE FOLLOWING:

1. The District is granted a two-year extension in order to carry out a Proposition 218 as assessment necessary to fund the construction and operation of the wastewater treatment system. This extension shall be through to and include April 6, 2023 or, if the Commission does not have a regularly scheduled hearing on that date, the next regularly scheduled Commission hearing after that date.
2. The District shall file quarterly written reports with the Executive Officer on progress it has made on pursuing the project. As deemed appropriate, the Executive Officer will schedule Commission hearings to review and comment on such progress reports.

This Resolution is approved this 3<sup>rd</sup> day of June, 2021, in Santa Barbara County, State of California, by the following vote.

Ayes: Commissioner Aceves, Freeman, Geyer, Hartmann, Lavagnino, Stark, and Waterfield  
Noes: None  
Abstain: None

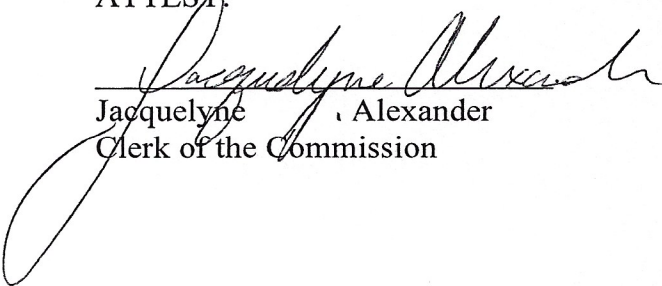
LOCAL AGENCY FORMATION  
COMMISSION



Chair Etta Waterfield

Date: June 3, 2021

ATTEST:



Jacquelyne Alexander  
Clerk of the Commission