



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY MANAGER: OFFICE OF SUSTAINABILITY

**File #:** 20-963

Board Meeting Date: 12/8/2020

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Carolyn Bloede, Director, Office of Sustainability

**Subject:** Approval of Town of Atherton's Withdrawal from Membership in the South Bayside Waste Management Authority

**RECOMMENDATION:**

Adopt a resolution approving the Town of Atherton's withdrawal from the South Bayside Waste Management Authority (SBWMA), provided it liquidates its proportionate share of debt, obligation, and liability as determined by the SBWMA Board on August 20, 2020, and that it do so prior to December 31, 2020.

**BACKGROUND:**

The SBWMA was formed as a joint powers authority under the provisions of the California Government Code that allow public agencies to jointly exercise common powers to achieve efficiency and economy in service delivery. Its authority and function are governed by the terms of the Joint Exercise of Powers Agreement ("Agreement") for the SBWMA, as is each Member's participation in the agency.

The Agreement was entered into on December 9, 1999 to provide a regional approach to the collection and disposition of solid waste, recyclable materials, and organic materials. It was established by the following twelve (12) San Mateo County jurisdictions: Town of Atherton, City of Belmont, City of Burlingame, City of East Palo Alto, City of Foster City, Town of Hillsborough, City of Menlo Park, City of Redwood City, City of San Carlos, City of San Mateo, County of San Mateo, and West Bay Sanitary District. Under the Agreement, these twelve (12) entities are identified as "Equity Members."

The Shoreway Environmental Center Facility, operated by South Bay Recycling, LLC., processes solid waste and recyclables for the SBWMA's twelve Member Agencies. In 2000, the SBWMA issued Revenue Bonds to acquire and reconstruct the facility. In 2009 these bonds were defeased and new bonds were issued. In 2019, new bonds were issued to refund the 2009 bonds and raise capital for various new improvements. These bonds consist of \$31,860,000 in 2019A refunding bonds and \$16,915,000 in 2019B new money bonds.

The Agreement has been amended and restated several times over the years; the current governing Agreement is dated June 19, 2013 and is titled the “Second Amended and Restated Joint Exercise of Powers Agreement South Bayside Waste Management Authority”, (Attachment A).

Pursuant to the Agreement, Article 15, “Withdrawal from SBWMA”, a Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

On June 29, 2020, the Town of Atherton formally notified the SBWMA of its intent to withdraw from the SBWMA, effective December 31, 2020. In response, the SBWMA Board held a special meeting on August 20, 2020, and determined that to meet the liquidation requirement necessary for withdrawal, the Town of Atherton would be required to pay approximately \$2,203,016 to the SBWMA. The actual amount is subject to adjustment based on market conditions on the date of defeasance, which must occur before December 31, 2020. The SBWMA Board’s determination of the Town of Atherton’s liquidation amount was a final administrative determination and it is not subject to appeal. SBWMA’s bond counsel (Stradling Yocca Carlson & Rauth) raised no additional legal issues relating to the defeasance. KNN Public Finance indicated that Atherton’s withdrawal should have no rating impact, as it was known as a risk at the time of the bond issuance in 2019. The SBWMA Board recommended to the Member Agencies that they approve the Town of Atherton’s withdrawal, provided the liquidation amount is paid prior to December 31, 2020. A copy of the SBWMA staff report and Board’s resolution from the August 20, 2020 Special Board Meeting is attached hereto as Attachment B.

At a meeting held on September 16, 2020, the Town Council of Atherton agreed to pay the determined liquidation costs and voted to move forward with withdrawal from the SBWMA. The next step in the process is for 4/5s (or 10) of the Equity Member Agencies in the SBWMA to approve the Town of Atherton’s withdrawal before December 31, 2020. If this is not achieved, Atherton’s withdrawal will not become effective.

#### **DISCUSSION:**

When the SBWMA formed, the Agreement provided a mechanism to allow a Member Agency to withdraw from the SBWMA, while protecting the interests of the remaining Members. The Town of Atherton has taken the necessary steps to meet the requirements laid out in the Agreement, “Article 15. Withdrawal from SBWMA.” Accordingly, in its resolution determining the Town of Atherton’s liquidation cost, the SBWMA Board recommended to the Member Agencies that they approve the Town of Atherton’s withdrawal. The SBWMA Board made this recommendation because, assuming the Town of Atherton pays the liquidation cost and defeases its portion of the bonds prior to December 31<sup>st</sup> 2020, it will have met the requirements of Article 15 of the Agreement, and there would be no basis for withholding consent by the member agencies.

#### **Environmental Review**

The SBWMA, acting as the Lead Agency, has determined the Town of Atherton’s withdrawal from the SBWMA is exempt from California Environmental Quality Act (CEQA) because it is not defined as a project under CEQA, 14 CCR 15378, Section 15378 (b), Project does not include: (5) Organizational

or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

County Counsel has reviewed and approved the resolution as to form.

**FISCAL IMPACT:**

Approval of the Town of Atherton's withdrawal from the SBWMA will have no impact to the County General Fund. There will be modest costs impacts to CSA-8 (North Fair Oaks) and County Franchised Area.

Once the Town of Atherton completes its withdrawal from the SBWMA, it will no longer be responsible for any ongoing expenses by the SBWMA. This will have a modest fiscal impact on the remaining eleven Member Agencies, commencing January 1, 2021, when the remaining members will be responsible for the ongoing operational costs of SBWMA. Tip fee revenue from each Member Agency covers the majority of the SBWMA's fixed and variable costs. SBWMA staff calculates that the Town of Atherton's withdrawal will result in an annual net shortfall in operating funds of approximately \$146,760 that would need to be reallocated amongst the remaining Members through increased tip fees. The County's portion of this annual shortfall is \$4,407 for the County Franchised Area and \$4,482 for CSA-8 (North Fair Oaks).