

**CUPERTINO SANITARY DISTRICT
SANITARY BOARD MEETING
WEDNESDAY, SEPTEMBER 04, 2024**

AGENDA

The meeting will be held in person at 7:00 p.m. in the Stevens Creek Office Center, Suite 100, 20863 Stevens Creek Boulevard, Cupertino, California and via virtual teleconference.

Anyone interested may attend in person, by phone [call 1 (866) 899 - 4679 Conference Access Code: 251566821], or virtually <https://global.gotomeeting.com/join/251566821>.

1. ROLL CALL

2. PUBLIC COMMENTS

This portion of the meeting is reserved for persons desiring to address the board on any matter not on the agenda. Speakers are limited to three (3) minutes.

All statements requiring a response will be referred to staff for further action. In most cases, state law will prohibit the board from making any decisions with respect to a matter not listed on the agenda.

3. CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District and the City of Milpitas v. The City of San Jose, The City of Santa Clara and Does 1 through 50 inclusive.
- B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to section 54956.9 (d) (2) One case – letter dated July 29, 2024 – The Rise Project
- C. PUBLIC EMPLOYEE PERFORMANCE REVIEW – DISTRICT MANAGER ENGINEER

4. MINUTES

- A. APPROVAL OF THE MINUTES OF AUGUST 21, 2024
- B. APPROVED SPECIAL MEETING MINUTES OF JULY 15, 2024
- C. AMENDED MINUTES OF JULY 17, 2024

**CUPERTINO SANITARY DISTRICT
SANITARY BOARD MEETING
WEDNESDAY, SEPTEMBER 04, 2024**

5. CORRESPONDENCE

- A. THE RISE LETTER
- B. PHASE 1 LAFCO POLICY REVISIONS

6. MEETINGS

- A. REGULAR MEETING OF THE SAN JOSE/SANTA CLARA TREATMENT PLANT TECHNICAL ADVISORY COMMITTEE (TAC) TO BE HELD ON MONDAY, SEPTEMBER 9, 2024
- B. SANTA CLARA COUNTY SPECIAL DISTRICTS ASSOCIATION (SCCSDA) REGULAR MEETING TO BE HELD ON MONDAY, SEPTEMBER 9, 2024
- C. CALIFORNIA ALLIANCE FOR SEWER SYSTEM EXCELLENCE (CASSE) TELECONFERENCE TO BE HELD ON WEDNESDAY, SEPTEMBER 11, 2024
- D. REGULAR MEETING OF THE SAN JOSE/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE (TPAC) HELD ON THURSDAY, SEPTEMBER 12, 2024

7. REPORTS

NONE

8. UNFINISHED BUSINESS

- A. 2023-2024 FISCAL YEAR AUDIT

9. NEW BUSINESS

- A. PERMIT FEE REIMBURSEMENT REQUEST FOR APN 369-20-005
- B. DISTRICT MANAGER RATE CHANGE

10. STAFF REPORT

- A. FUTURE DEVELOPMENT PROJECTS

11. CALENDAR ITEMS

- A. NEXT REGULAR DISTRICT BOARD MEETING IS TO BE HELD ON WEDNESDAY, SEPTEMBER 18, 2024

12. ADJOURNMENT

CUPERTINO SANITARY DISTRICT BOARD MEETING WEDNESDAY, AUGUST 21, 2024

The Sanitary Board of the Cupertino Sanitary District convened this date at 7:00 p.m. This meeting was conducted at the District office at 20863 Stevens Creek Blvd, Suite 100, Cupertino. Participation was also available via videoconference.

1. ROLL CALL:

President Chen called the meeting to order, and the following proceedings were had to wit: Roll call was taken, with the following members in attendance:

Board Members present: Angela Chen, Taghi Saadati, Patrick Kwok, David Doyle, and Bill Bosworth.

Staff present: District Manager Benjamin Porter, and Counsel Marc Hynes.

Public Present: Rhoda Fry, Peggy Griffin, Liang Chao, Kitty Moore, and Lisa Warren

2. PUBLIC COMMENTS:

The Board received comments from members of the public on The Rise:

Rhoda Fry, Peggy Griffin, Liang Chao, Kitty Moore, and Lisa Warren all provided comments to the Board on the correspondence from the Rise development, encouraging the Board to ensure that the development pays its fair share in a timely manner.

3. CLOSED SESSION:

President Chen adjourned the regular meeting session and opened the closed session at 7:35 p.m. Porter, and all members of the public were excused from the closed session.

- A. Conference with legal counsel – Existing Litigation in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District, and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

Board action: There was no reportable action.

- B. Conference with Legal Counsel – Potential Litigation

Board action: The Board did not discuss the potential litigation

President Chen adjourned the closed session at 7:40 p.m. and the regular meeting was called to order. Porter rejoined the regular meeting.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, AUGUST 21, 2024

4. MINUTES & BILLS:

A. Approval of the Special Meeting Minutes of July 15, 2024

On a motion by Director Bosworth, seconded by Director Saadati by a vote of 5-0-0, the minutes of the Special Meeting held on Monday, July 15, 2024, were approved as written.

B. Approval of the Regular Meeting Minutes of July 17, 2024

On a motion by Director Bosworth, seconded by Director Kwok by a vote of 5-0-0, the minutes of the Regular Meeting held on Wednesday, July 17, 2024, were approved.

C. Approved Regular Meeting Minutes of June 19, 2024 are to be Noted & Filed.

D. Approval of Financial Statements and Bills

On a motion by Director Doyle, seconded by Director Bosworth, by a vote of 5-0-0, the financial statements and warrants were approved.

E. Timesheets

The Board submitted their August timesheets to District Manager Porter.

5. CORRESPONDENCE:

A. Registrar of Voters Notice of Election – November 5, 2024 – General Election is to be Noted & Filed.

B. The Rise letter was deferred to the next regular Board meeting scheduled to be held on September 4, 2024.

6. MEETINGS:

A. Director Bosworth plans to attend the Santa Clara County Special Districts Association (SCCSDA) Regular Meeting to be held on Monday, September 9, 2024.

7. REPORTS:

A. The Board reported on the California Sanitation Risk Management Authority (CSRMA) Risk Management Seminar held on Wednesday, July 31, 2024 in Monterey, CA.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, AUGUST 21, 2024

- B. The Board reported on the California Association of Sanitation Agencies (CASA) Annual Conference held July 31 to August 2, 2024 in Monterey, CA.
1. CSRMA Board of Directors Meeting – President Chen and Directors Kwok and Saadati reported.
 2. Regular Conference Sessions
 3. Attorney’s Committee Meeting – District Counsel did not attend this year.
 4. Other Conference Sessions – President Chen and Director Bosworth reported on the CSRMA Board of Directors meeting.
- C. Manager Porter reported on the regular meeting of the San Jose/Santa Clara Treatment Plant Technical Advisory Committee (TAC) held on Monday, August 5, 2024.
- D. Director Kwok reported on the regular meeting of the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) held on Thursday, August 8, 2024.
- E. Manager Porter reported on the California Alliance for Sewer System Excellence (CASSE) teleconference held on Wednesday, August 14, 2024.

8. UNFINISHED BUSINESS:

A. 2022-2023 Fiscal Year Audit

The Board discussed the Audit results. The results of the audit were positive, indicating no lack of control or need for improvement.

B. Booth Registration Now Open for Cupertino Rotary Fall Fest 2024

Director Saadati proposed Item 5.A. in the minutes of August 21, 2024 be amended to reflect the following, Director Doyle seconded by a vote of 5-0, the motion was approved:

On a motion by President Chen, seconded by Director Kwok, by a vote of 3-1-0, the Board approved District booth support at the Fall Festival. Director Saadati voted No.

On a motion by Director Kwok, seconded by Director Doyle, by a vote of 5-0, the Board authorized a budget of \$2,500 for the Fall Fest.

9. NEW BUSINESS:

A. Permit Fees Reimbursement Request

On a motion by Director Saadati, seconded by Director Bosworth by a vote of 5-0-0, the Board approved reimbursement in the amount of \$400 for APN 369-27-027 inspection fees.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, AUGUST 21, 2024

B. 2023-2024 Fiscal Year Auditor

On a motion by Director Saadati, seconded by Director Doyle by a vote of 5-0-0, the Board approved selection of a new auditor, subject to certification of references.

C. Conflict of Interest Code

On a motion by Director Bosworth, seconded by Director Kwok by a vote of 5-0-0, the Board approved the Conflict of Interest Code.

10. STAFF REPORT

A. Future Development Projects

Manager Porter reported on the status of future development projects.

B. Monthly Maintenance Summary

Manager Porter reported on the monthly maintenance.

11. CALENDAR ITEMS

- A. The next regular District Board Meeting is scheduled to be held on Wednesday, September 4, 2024. On a motion by Director Saadati, seconded by President Chen by a vote of 5-0-0, the Board approved adding CASA Reimbursement to the agenda.

12. ADJOURNMENT:

On a motion properly made and seconded, at 9:39 p.m. the meeting was adjourned.

Secretary of the Sanitary Board

President of the Sanitary Board

CUPERTINO SANITARY DISTRICT
SPECIAL MEETING, CLOSED SESSION
WEDNESDAY, JULY 15, 2024

A Cupertino Sanitary District Board meeting Closed Session convened this date at 3:32 p.m. This meeting was conducted at the District office at 20863 Stevens Creek Blvd, Suite 100, Cupertino.

1. ROLL CALL:

Members present: Angela Chen, Bill Bosworth, Patrick Kwok, and Taghi Saadati. David Doyle attended remotely from 1050 Bedford Road, Washington, IN 47501.

Staff present: District Manager Benjamin Porter, District Administrative Assistant Frankie Martinez, and Counsel Marc Hynes.

Public Present: None

2. CLOSED SESSION:

The closed session commenced at 3:33 p.m. Manager Porter, and Administrative Clerk Martinez were excused from the closed session.

CONFERENCE WITH LEGAL COUNSEL –EXISTING LITIGATION

Government Code § 54956.9 existing litigation – Post Trial Actions. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District and the City of Milpitas v. The City of San Jose, The City of Santa Clara and Does 1 through 50 inclusive.

No reportable action was taken at the closed session.

12. ADJOURNMENT:

On a motion properly made and seconded, at 4:21 p.m. the closed session meeting was adjourned.

Secretary of the Sanitary Board

President of the Sanitary Board

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JULY 17, 2024
AMENDED

The Sanitary Board of the Cupertino Sanitary District convened this date at 7:00 p.m. This meeting was conducted at the District office at 20863 Stevens Creek Blvd, Suite 100, Cupertino. Participation was also available via videoconference.

1. ROLL CALL:

President Chen called the meeting to order, and the following proceedings were had to wit: Roll call was taken, with the following members in attendance:

Board Members present: Angela Chen, Patrick Kwok, and Taghi Saadati. David Doyle attended virtually from Hampton Inn Nashville-Vanderbilt, 1919 West End Avenue, Nashville, TN 37203. Bill Bosworth was on excused absence.

Staff present: District Manager Benjamin Porter, District Administrative Assistant Frankie Martinez, and Counsel Marc Hynes.

District Advisor: Richard Tanaka

Public Present: Zach Siviglia

Counsel Hynes announced there was an amendment to the agenda.

2. PUBLIC COMMENTS:

There were none.

3. CLOSED SESSION:

President Chen adjourned the regular meeting session and opened the closed session at 7:02 p.m. Porter, Martinez, and Siviglia were excused from the closed session.

- A. Conference with legal counsel – Existing Litigation in accordance with government code section Paragraph (1) of Subdivision (d) of Section 54956.9, existing litigation. Name of Case: County Sanitation District 2-3, West Valley Sanitation District, Cupertino Sanitary District, Burbank Sanitary District, and the City of Milpitas v. The City of San Jose, The City of Santa Clara, and Does 1 through 50 inclusive.

Board action: There was no reportable action.

President Chen adjourned the closed session at 7:34 p.m. and the regular meeting was called to order. Porter, Martinez, and Siviglia rejoined the regular meeting.

4. MINUTES & BILLS:

- A. Approval of the Regular Meeting Minutes of June 19, 2024

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JULY 17, 2024
AMENDED

On a motion by Director Saadati, seconded by Director Doyle by a roll call vote of 4-0-0, the minutes of the Regular Meeting held on Monday, June 19, 2024, were approved as written.

B. Approved Regular Meeting Minutes of May 15, 2024

By consensus, the Minutes of Wednesday, May 15, 2024, are to be Noted & Filed.

C. Approval of Financial Statements and Bills

On a motion by Director Kwok, seconded by Director Doyle, by a roll call vote of 4-0-0, the financial statements and warrants were approved.

D. Timesheets

The Board submitted their July timesheets to District Manager Porter.

5. CORRESPONDENCE:

A. Email: Cupertino Rotary – Fall Festival – Save the Date – Saturday, September 14, 2024

On a motion by President Chen, seconded by Director Kwok, by a roll call vote of 3-1-0, the Board approved District booth support at the Fall Festival. **Director Saadati voted No.**

B. City of Cupertino Notice of Public Hearing – To Consider Application Nos MCA-2023-001, SPA-2023-001, Z-2024-001, CP-2024-002, EA-2024-001

It is to be Noted & Filed.

6. MEETINGS:

A. All Board members plan to attend the California Sanitation Risk Management Authority (CSRMA) Risk Management Seminar to be held Wednesday, July 31, 2024 in Monterey, CA.

B. All Board members plan to attend the California Association of Sanitation Agencies (CASA) Annual Conference to be held July 31 to August 2, 2024 in Monterey, CA.

C. Manager Porter plans to attend the regular meeting of the San Jose/Santa Clara Treatment Plant Technical Advisory Committee (TAC) to be held Monday, August 5, 2024.

D. Director Kwok plans to attend the regular meeting of the San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC) to be held Thursday, August 8, 2024.

7. REPORTS:

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JULY 17, 2024
AMENDED

- A. Manager Porter reported on the California Alliance for Sewer System Excellence (CASSE) teleconference held on Wednesday, July 10, 2024.

8. UNFINISHED BUSINESS:

- A. 2022-2023 Fiscal Year Audit

Manager Porter indicated that the audit was finally completed and will be presented at the next Board meeting.

- B. Cristo Rey Odor Control

On a motion by Director Kwok, seconded by Director Saadati by a roll call vote of 4-0-0, the Board approved Staff's recommendation that an electrical analysis, device coordination and arc flash study be conducted prior to purchasing the odor control device for the Cristo Rey Pump Station, and that the work be awarded to the lowest bidder, Frish Engineering, Inc.

9. NEW BUSINESS:

- A. Resolution No. 1348-Amended

On a motion by Director Saadati, seconded by Director Kwok by a roll call vote of 4-0-0, the Board approved amended Resolution No. 1348, Consolidation of Elections.

- B. McClellan Installer's Agreement

On a motion by Director Saadati, seconded by Director Kwok by a roll call vote of 4-0-0, the Board approved the Installer's Agreement.

- C. Sewer Push Camera Purchase Request

On a motion by Director Doyle, seconded by Director Kwok by a roll call vote of 4-0-0, the Board approved the purchase of three sewer push cameras, not to exceed \$25,387.94.

10. STAFF REPORT

- A. Future Development Projects

Manager Porter reported on the status of future development projects.

- B. Monthly Maintenance Summary

Manager Porter reported on the monthly maintenance.

11. CALENDAR ITEMS

- A. The next regular District Board Meeting is scheduled to be held on Wednesday, August 7, 2024.

CUPERTINO SANITARY DISTRICT BOARD MEETING
WEDNESDAY, JULY 17, 2024
AMENDED

12. ADJOURNMENT:

On a motion properly made and seconded, at 8:51 p.m. the meeting was adjourned.

Secretary of the Sanitary Board

President of the Sanitary Board

July 29, 2024

Benjamin T. Porter, P.E., District Manager-Engineer
Cupertino Sanitary District
20863 Stevens Creek Boulevard, Suite 100
Cupertino, CA 95014

RE: The Rise Project – Sanitary Sewer Fee Proposal for Horizontal Construction Scope

Dear Mr. Porter:

As we've discussed, Vallco Property Owner, LLC ("VPO") is currently seeking construction permits from the City of Cupertino to commence horizontal construction work on the west side of The Rise project site. This limited horizontal construction activity is narrow in scope and limited to just rough grading, dry and wet site utilities including the joint trench, curbs and gutters, and the first lift of roadways, and the work is expected to commence in October 2024. In connection with this horizontal construction, VPO will be installing new sanitary sewer pipelines throughout the west side of the Project site. These pipelines ultimately will be dedicated to the District to be operated as part of its public system and VPO is completing this work at no cost to the District. Importantly, this phase of the work will not include any new sanitary sewer lateral connections given that the new buildings will be constructed in a subsequent phase. As such, and like with other building permits issued in connection with site improvement work performed at the project site to date, no new sewer flows will result from this horizontal construction permit scope.

Despite this limited scope of the proposed horizontal work, the District has recently indicated this work will trigger the requirement to pay the full Sewer Development and Treatment Plant Capacity Fees (referred to as the "Fees" here) required for the entire project. We understand that the Fees are estimated to total \$21.6 million (which assumes the initial phase of the project's retail component will be 100% made up of restaurant uses). This came as a surprise as we had previously understood that Fees would not be due until building permits are issued for the new Project buildings. It is not financially viable for VPO to the full Fees at this early stage. We also believe the amount is high as credit should be provided for the prior mall uses. However, we also acknowledge that it is in both VPO and the District's best interest to come to an agreement on this issue and to resolve disputes to allow the horizontal construction work to move forward.

To that end, VPO proposes to provide \$1,000,000 to the District as a good faith deposit at the time of issuance of the main permit for the horizontal work. Thereafter, payment of Sewer Development and Treatment Plant Capacity Fees would be paid on a phased basis prior to issuance of building permit(s) for vertical construction for each Project building. We also

believe that credit should be provided for the prior use so the fee is only paid on the net new demand.

I. Sewer Development and Treatment Plant Capacity Fees Are Premature and Cannot Be Accurately Calculated at This Early Project Stage

According to the District's Operations Code, the purpose of the Fees is to offset costs and burdens on the District's systems that are caused by new development. The purpose of the Sewer Development Fee is to allow the District to "recover the costs associated with providing sewer collection lines in the District," excluding pump station costs. (§ 7200). Similarly, the purpose of the Treatment Plant Capacity Fee is to allow the District to recover its "reasonable and actual costs of purchasing treatment capacity at the San Jose-Santa Clara Regional Wastewater Facility." (§ 7300).

Given this cost recovery purpose, it is premature to pay the Fees with the horizontal work because it will not create any new District costs or burdens. That is, there are no costs to "recover." The Project is a large-scale, multi-phase masterplan development that requires significant up front infrastructure work prior to being able to develop any buildings. The currently proposed horizontal construction work is an important step towards eventual delivery of those buildings, but this work itself will not result in any new sanitary flows, and no flows will be generated for several years.

Moreover, it is not yet possible to calculate the Fees that will be owed to the District. The District establishes its fee rates based on the specific land uses incorporated within a project – with higher fees owed for uses that generate comparatively higher sanitary sewer flows. For example, restaurant uses pay higher fees than retail store uses. The problem is that at this stage, the mix of commercial land uses within the Project are not yet known – in fact, a significant portion of Phase 1 remains unprogrammed commercial use, which could include 100% retail uses (yielding a lesser fee payment) or a portion of which could be restaurant or other food and beverage services uses (yielding a higher fee payment). So, at this time, the actual Fees owed by the Project cannot yet be calculated, but they can certainly be more accurately calculated at the time of issuance of building permits for actual "vertical" buildings, as opposed to "horizontal" site improvements.

II. Both the District's Operations Code and Prior Installer's Agreements for the Project Confirm That Fees Can be Paid at Time of Building Permit Issuance

Fortunately, the District's Operations Code establishes the timing for payment of Fees and expressly allows for payment at an agreed upon future date. Specifically, for the Sewer Development Fee, the Operations Code states that such payment timing can be at a time as "stipulated in the Installer's Agreement," and the Treatment Plant Capacity Fee is due "at the time the connection is made." (§§ 7200, 7301.)

The District and VPO have a long history of working together to plan for and deliver new sanitary sewer improvements related to the Project, as evidenced by several draft and executed Installer's Agreements that have been prepared for the Project over the years. In 2019, in connection with a prior iteration of the Project, the District provided VPO with a draft Installer's Agreement (the "2019 Agreement"). Although the 2019 Agreement was not executed due to Project changes, it is relevant because the District proposed that an initial deposit would be due to the District at execution and further Fees would be due only "prior to issuance of each building permit" based on the "type of uses and sizes" of the buildings (again, rather than at the building permit for non-building "horizontal" site improvements with no such "uses and sizes").

This payment structure makes sense given that at the time of building permit issuance, the specific land uses are far more certain, and the timing for impact of the new development is more imminent (though each "building" will require approximately 2 years or more of vertical construction before any sewer flows actually commence).

With the execution of this amendment, the Installers shall pay \$340,000. Prior to approval and issuance of each building permit by City of Cupertino, the Installers shall pay both development and treatment plant fees based on building permit application for type of uses and sizes. The \$340,000 fee deposited by the Installers will be credited to fees due at the time of building permit.

More recently in 2021, the District and VPO entered into an Installer's Agreement for completion of certain Make Ready Utilities work (2021 Agreement). That 2021 Agreement does not give any indication that Fee would be due prior to issuance of building permits and states only that payment of Fees will be due later as detailed in a "future Installer's Agreement." This Make Ready Utilities work was also horizontal in nature, setting a precedent that there should be no Fees requirement at this Horizontal Construction work stage.

5. PAYMENT OF FEES TO BE PAID BY INSTALLER:

Installer further hereby agrees to pay:

- a) Deposits described in Section 4 of this agreement.
- b) Sewer Development & Treatment Plant Capacity fees will be required as part of a future Installer's Agreement.

The District has not previously indicated that full payment of the Fees would be at the horizontal construction stage, and the Project cannot bear this cost until closer to when the buildings will be delivered, and revenue produced.

III. Fee Calculations Should Recognize Credit For Prior Uses

We understand that the District is not providing a fee credit to account for the flows from the Vallco Shopping Mall. A fee credit should be provided in order to more accurately reflect the impact of the Project on the District's facilities. The Project site is the location of the former Vallco Shopping Mall, which totaled approximately 1.217M gross square feet of retail, restaurant, and other commercial uses. In prior environmental analysis for an earlier iteration of the Project, it was estimated that the Vallco Shopping Mall had an estimated average daily sewage generation rate of approximately 0.28 mgd.¹ Removal of the mall also results in removal of this sewage generation. When calculating the Fees owed by the Project, the District should take this prior use into account.

The District's Operations Code allows for credit to be provided for both the Sewer Development and Treatment Plant Capacity Fees. For Sewer development Fee, the Operations Code states that where there is a change in size or change in land use classification, that the fee will be calculated based on the difference in size or land use classification. (§7203.) For the Treatment Plant Capacity Fee, the Operations Code has the same language for changes in land use classification, but is silent on the changes in size. (§7303.)

Providing credit is also consistent with Section 66013 of the California Mitigation Fee Act, which regulates sewer connection fees and capacity charges. In particular, that section says that such fees or charges "shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed." (Cal. Gov. Code § 66013(h).) If Fee credit is not provided for the removal of prior uses, the Project would overpay for its new uses because the District's facilities already account for sewer facility capacity to service the prior uses. If the prior use is not accounted for, the Fees would "exceed the estimated reasonable cost of providing the service."²

IV. Proposal and Next Steps

VPO is seeking to work with the District to achieve a solution that works for both parties. To that end, we propose to provide \$1,000,000 to the District as a good faith deposit at the time of issuance of the main permit for the horizontal work. Thereafter, payment of Sewer Development and Treatment Plant Capacity Fees would be paid on a phased basis prior to issuance of building permit for vertical construction for each Project building, consistent with the approach contemplated in a prior Installer's Agreement for the Project. We also propose that credit is provided to recognize the prior mall uses. We believe that this approach is consistent with both past practice and the Operations Code.

¹ Vallco Special Area Specific Plan, Draft Environmental Impact Report (May 2018)

² This concept is also consistent with constitutional principles under the Takings Clause that the U.S. Supreme Court has recently affirmed require that impact fees are "roughly proportional" to a project's impact. *Sheetz v. County of El Dorado*, (2024) 601 U.S. 267. Here, the Project's impact on the sewer system is only the net newer sewer flows, so accounting for the removal of the previous use is consistent with this "rough proportionality" test.

July 29, 2024

We are quickly moving toward starting construction on this horizontal work so are anxious to work with the District to find a path forward. However, if we cannot come to terms by mid September, we would also like to explore executing an Installer's Agreement like what we did in 2021 that contemplates another future agreement, such as prior to the first building permit. This approach may allow the work to proceed while giving us more time to work out any details.

* * *

We appreciate your time and attention to this matter, and we look forward to continuing to work with the District for the years to come in delivering The Rise project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Reed Moulds', with a stylized, looping initial 'R' and a trailing horizontal line.

Reed Moulds
Managing Director
Sand Hill Property Company
o/b/o Vallco Property Owner, LLC

From: Humphrey, Sonia <sonia.humphrey@ceo.sccgov.org>
Sent: Friday, August 30, 2024 2:21 PM
Cc: LAFCO
Subject: AVAILABLE NOW! Phase 1 LAFCO Policy Revisions - For Public Review and Comment
Attachments: NOA - Phase 1 LAFCO Policy Revisions..pdf

As part of LAFCO's comprehensive review and update of its policies, the Phase 1 LAFCO Policy Revisions are now available for public review and comment [here](#).

Please see the attached [Notice of Availability & Notice of LAFCO Public Hearing for the Phase 1 Policy Revisions](#), which includes information on how to provide timely written comments to LAFCO.

Thank you,

Sonia Humphrey, LAFCO Clerk
LAFCO of Santa Clara County
777 North First Street, Suite 410
San Jose, CA 95112
(408) 993-4709

SANTA
CLARA
LAFCO

60th
ANNIVERSARY
1963-2023



**Local Agency
Formation Commission
of Santa Clara County**
777 North First Street
Suite 410
San Jose, CA 95112
SantaClaraLAFCO.org

Commissioners
Sylvia Arenas
Jim Beall
Rosemary Kamei
Yoriko Kishimoto
Otto Lee
Russ Melton
Terry Trumbull

Alternate Commissioners
Domingo Candelas
Helen Chapman
Cindy Chavez
Teresa O'Neill
Mark Turner
Executive Officer
Neelima Palacherla

DATE: August 30, 2024

TO: City Managers
Special District Managers
County Executive
County and City Planning Directors
Other Interested Parties

FROM: Neelima Palacherla, Executive Officer

**SUBJECT: COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES:
Notice of Availability and Notice of Public Hearing**

The proposed Phase 1 LAFCO policy revisions are now available for public review and comment.

The proposed revisions to the current LAFCO policies are recommended by the LAFCO Ad-Hoc Committee (LAFCO Chair Russ Melton, Vice Chair Sylvia Arenas, and Alternate Commissioner Helen Chapman) which was created to assist LAFCO staff with the comprehensive review and update of LAFCO policies.

The Ad Hoc Committee recommends these revisions to the LAFCO policies in order to:

- Better enable LAFCO to meet its legislative mandate,
- Make the policies consistent with recent changes to the CKH Act,
- Better document current and historic practices,
- Provide ease of use and better guidance to affected agencies, public, and potential applicants; and increase clarity and transparency of LAFCO's policies and expectations.

The proposed Phase 1 LAFCO policy revisions and associated documents are available [here](#) for your review.

Written Comments

Your feedback on the proposed Phase 1 policy revisions is important to LAFCO.

Written comments will be accepted until **5:00 PM on Wednesday, October 2, 2024**. Comments received by **September 25, 2024**, will be included in the October 2 LAFCO meeting agenda packet.

You may email your comments to LAFCO@ceo.sccgov.org.

LAFCO Public Hearings

LAFCO will hold an **initial public hearing on October 2, 2024**, to receive public comments on the proposed Phase 1 policy revisions from affected agencies, interested parties, and members of the public. No final action will be taken by LAFCO at this hearing.

Date: Wednesday, October 2, 2024

Time: 1:15 PM or soon thereafter

Place: Board of Supervisors' Chambers, 70 West Hedding Street, San Jose

Following the October 2 LAFCO public hearing, LAFCO staff, working closely with the Ad-Hoc Committee, will compile all written comments received, prepare a response to the comments received, and propose any further revisions to the policies as necessary.

It is anticipated that the responses to public comments and any revisions to the recommended policies will be published for additional public review and comment in early November.

Finally, LAFCO will hold a **second public hearing on December 4, 2024**, to consider and adopt the Phase 1 policy revisions.



Memo

Item 9A

To: Board of Directors
From: Benjamin Porter, District Manager-Engineer
Date: September 04, 2024
Re: Reimbursement of Sewer Permit Fee
875 Alderbrook Ln, Cupertino
(APN: 369-20-005)

Summary:

On May 21, 2024, the District produced a plan review Permit Form requiring the property owner to install a new property line cleanout and pay a plan check fee of \$300 and inspection fee of \$400, due to the written scope/description of work. Based on the pre-inspection work-order of the existing property line cleanout, the material is ABS-Clay and has no deficiencies. Since the material did not meet the District's Standard material requirement PVC SDR26 in District Standard Detail #7, a new property line cleanout was requested.

On June 20, 2024, the property owner called the District office and paid the \$300 plan check fee and \$400 inspection fee over the phone with a credit card.

On August 21, 2024, the property owner visited the District Office, very frustrated because the previous property owner had already replaced their property line cleanout with ABS-Clay in 2010 to adhere to the District Standards. Now, with the standards changed again, they are upset about the need for another replacement. The District Assistant Engineer brought this issue to the District Manager-Engineer to determine if an exception can be granted for this property owner.

On August 26, 2024, the District Manager-Engineer approved the exception so that the property line cleanout does not need to be replaced to District Standards since there were no existing deficiencies found. With this approval, the new inspection fee would be \$300 instead of \$400.

The property owner, Yan Tang, is requesting a partial reimbursement for payment of sewer permit fees.

Recommendation:

Approve reimbursement of \$100.00 to Yan Tang for the inspection fee.

Attachments:

1. Receipt of Fees # 12394
2. Original Comment Letter



20863 STEVENS CREEK BOULEVARD, SUITE 100
CUPERTINO, CALIFORNIA 95014-2154
PHONE (408) 253-7071 FAX (408) 253-5173
www.cupertinosanitarydistrict.org

Receipt #: 12394

Received From: Yan Tang

6/20/2024 10:48:20AM

Address: tymse@hotmail.com

Phone:

Check / Property Information

| | | | |
|-----------|--|-------------|---------------|
| Check No. | Visa ...1560 | Bank: | |
| Amount: | Seven Hundred Dollars & 00/100 | City Permit | BLD-2024-0914 |
| APN # | 369-20-005 | CuSD Permit | 24-091 |
| Property: | 875 ALDERBROOK LN, Cupertino, CA 95014 | Bldng/Apt. | |

PROOF OF PAYMENT

| | Account Number | Amount: |
|--|----------------|---------|
| Plan Check Fee | (405.10) | 300.00 |
| Inspection Fee Specify: | (430.10) | 400.00 |
| System Connections Fees: | | |
| Residential Connections: | (405.10) | 0.00 |
| Non-Residential Connections: | (405.10) | 0.00 |
| Change in Use | (425.10) | 0.00 |
| Treatment Plant Use Fee: | | |
| Residential Capacity Fee | (435.10) | 0.00 |
| Non-Residential Capacity Fee | (435.10) | 0.00 |
| Change in Use | (425.10) | 0.00 |
| Treatment Plant Use Fee for Pump Station Area: | | |
| Residential Capacity Fee | (435.10) | 0.00 |
| Non-Residential Capacity Fee | (435.10) | 0.00 |
| Change in Use | (425.10) | 0.00 |
| Discharge Permit Fees | (405.10) | 0.00 |
| Other fees Specify: | | 0.00 |
| Total: | | 700.00 |

Comment:

New Home Construction

District Staff fmartinez

DISTRICT MANAGER-ENGINEER
MARK THOMAS & COMPANY, INC.
BENJAMIN T. PORTER, P.E.

DISTRICT COUNSEL
ARMENTO AND HYNES, LLP
MARC HYNES



20863 STEVENS CREEK BOULEVARD, SUITE 100
CUPERTINO, CALIFORNIA 95014-2154
(408) 253-7071 PHONE • (408) 253-5173 FAX
WWW.CUPERTINOSANITARYDISTRICT.ORG

BOARD OF DIRECTORS
WILLIAM A. BOSWORTH
PATRICK S. KWOK
ANGELA S. CHEN
TAGHI S. SAADATI
DAVID A. DOYLE

Permit Form

| | | | |
|-----------------|--|-----------------------------|---------------|
| OTC Permit: | <input type="checkbox"/> | Submittal # | 1 |
| Date: | 5/21/2024 | Cupertino Sanitary Permit # | 24-091 |
| APN: | 369-20-005 | Cupertino Building Permit # | BLD-2024-0914 |
| Applicant Name: | Yin Su | | |
| Address: | 875 Alderbrook Ln, Cupertino, CA 95014 | | |
| Scope of Work: | New construction of home with addition of two bedrooms, two bathrooms, and a living room. Replace 4" sewer line and install clean out. | | |

The Cupertino Sanitary District has reviewed the plans for the subject project:

- Sanitary sewer is available, and the existing building is connected to our sanitary sewer system, see conditions/requirements listed below.

Conditions/Requirements for permit approval:

| Paid | Fees | Amount |
|-------------|--|--------|
| - | Cupertino Sanitary District Lateral Plan Check Fee (\$300) (O.C. 7102.3.1) | \$300 |
| - | Cupertino Sanitary District Inspection Fee (\$400) – Lateral Connection to Existing lateral with New Cleanout and CCTV Inspection Included (O.C. 7102-4.1) | \$400 |
| TOTAL DUE = | | \$700 |

| Completed | Conditions/Requirements |
|-----------|--|
| - | Show the following on the SITE PLAN on Sheet A0.0: <ul style="list-style-type: none">Sanitary sewer lateral<ul style="list-style-type: none">Sanitary sewer lateral is located at the right property line.New Property Line Cleanout (PLCO)Callout for new PLCO<ul style="list-style-type: none">"New PLCO per District Standards. See Detail 7"Dimension PLCO location from right property line. |
| - | Provide note and show on plans that the Water supply lines shall not be installed in the same trench as, and shall be at least 10 feet horizontally from and one foot vertically above, any parallel pipeline conveying: (1) Untreated sewage. (Cal. Code Regs. Tit. 22, § 64572) |
| - | Cupertino Sanitary District Detail 7 (sewer lateral cleanout installation on existing sewer) shall be included on plans for District Approval. District details are available on our website at www.cupertinosanitarydistrict.org under Contractors (O.C. 5101) |

PERMITS HAVE EXPIRATION DATE OF 1 YEAR FROM DATE OF APPROVAL. IF REFILING FOR PERMIT APPLICATION AFTER YEAR IS UP, NEW PERMIT FEES MUST BE PAID BY APPLICANT.

SUPPLYING SANITARY SEWERAGE SERVICES FOR: CITY OF CUPERTINO, PORTIONS OF THE CITIES OF SARATOGA, SUNNYVALE, LOS ALTOS AND SURROUNDING UNINCORPORATED AREAS

Cupertino Sanitary Permit # : 24-091
Cupertino Building Department # : BLD-2024-0914

Conditions/Requirements to be met during construction:

- Install new property line cleanout to District's standards. See attached detail. The property line cleanout must be within 5 feet of the property line. Cleanout shall be the same diameter as the street portion of the service lateral. Gravity lateral is 4" diameter. **(O.C. 4101)**
 - *Existing clean out does not meet district standards.*
- Cupertino Sanitary District **Initial (Visual) Inspection** required. The contractor shall leave the new pipe installation exposed. Do not backfill. Owner to contact District **48 hours** prior to scheduling a District Inspector for a visual inspection. **(O.C. 5203)**
- Cupertino Sanitary District **Final (CCTV) Inspection and Approval** of the new property line cleanout, point of connection, and District lateral is required prior to clearance for City of Cupertino Final Inspection. Owner must allow District **at least 48 hours'** notice to schedule a District Inspector for a video inspection. District to provide the Building Department with **written notification** upon completion of inspection. **(O.C. 7102)**

Additional Comments:

- Storm water surface or roof drains and other general surface water runoff shall not be discharged to the sanitary sewer.
- The Cupertino Sanitary District recommends installing the required improvements near the beginning of the project in case any unforeseen issues arise with the installations.
- The applicant may potentially be required to upgrade their sanitary sewer lower lateral if the District finds the structural conditions of the pipe to be unsatisfactory.

The District permit counter is open from 10AM to 3PM. Fees can be paid at the District office located at 20863 Stevens Creek Boulevard, Suite 100 in Cupertino, CA by cash, check (payable to "Cupertino Sanitary District"), or credit card. Payment via credit card can be made over the phone. Please contact Frankie Martinez at (408) 477-7300 to process your credit card payment. Please call (408)253-7071 to schedule an inspection.

All conditions, requirements and recommendations are to be completed at the (owner/developer)'s expense. Approval of Cupertino Sanitary District permit form does not grant permission to start construction on a project. Construction may be started once the Building Department clears all permits from all required departments. If you have any questions or need additional information, please contact Sarah Chou at schou@markthomas.com.

Regards,



For: Benjamin T. Porter, P.E.
 District Manager-Engineer

N:\CUSD\Permits & Fees\Permits - Developments\2024\24-091_BLD-2024-0914_875 ALDERBROOK LN\24-091_S1_BLD-2024-0914_875 ALDERBROOK LN.docx

PERMITS HAVE EXPIRATION DATE OF 1 YEAR FROM DATE OF APPROVAL. IF REFLILING FOR PERMIT APPLICATION AFTER YEAR IS UP, NEW PERMIT FEES MUST BE PAID BY APPLICANT.

SUPPLYING SANITARY SEWERAGE SERVICES FOR: CITY OF CUPERTINO, PORTIONS OF THE CITIES OF SARATOGA, SUNNYVALE, LOS ALTOS AND SURROUNDING UNINCORPORATED AREAS



Memo

Item 9B

To: Board of Directors
From: Benjamin T. Porter, District Manager-Engineer
Date: September 4, 2024
Re: DISTRICT MANAGER RATE

Background:

The District Manager-Engineer performs a variety of services to the District and the Board of Directors. The nature, diversity, and scope of responsibilities require knowledge of community interests, governmental functions, and the frequent use of discretion, initiative, and independent judgment. The District Manager functions in a staff capacity and provides direct support and assistance through research, advisory, and facilitating services specifically to the Board.

The last time an increase was implemented for the position of District Manager-Engineer was in March of 2023. It was calculated based on CPI through June 2022. At that time, the District Manager's rate was set at \$273 per hour. The contract allows for the District Manager's rate to be adjusted annually based on the Consumer Price Index for the San Francisco Bay Area, with a maximum increase of 3.0%. The CPI over the period from June 2022 is summarized below.

CPI Rates from 2022-2024:

| From | To | CPI | Use |
|-----------|-----------|------|------|
| 6/30/2022 | 6/30/2023 | 2.9% | 2.9% |
| 6/30/2023 | 6/30/2024 | 3.2% | 3.0% |

Total: 5.9%

Over the course of two years since June 2022, the CPI increased a total 6.1%. However, using an annual increase cap of 3.0%, the total increase over the three-year period is 5.9%. Increasing the current District Manager rate by 5.9 % results in an hourly rate of \$289.10.

Board Consideration/Action:

Staff requests that the Board approve a total increase of 5.9% to cover the past two years and increase the District Manager's rate to \$289.10.

**CUPERTINO SANITARY DISTRICT
MEETING/EVENT SCHEDULE**

Item 11.A.

SEPTEMBER 2024

09/04: 1st Regular Meeting
09/09: TAC
09/11: CASSE
09/12: TPAC
09/18: 2nd Regular Meeting

| SEPTEMBER 2024 | | | | | | |
|----------------|------------------------|---------|---------------------------|------------|--------|----------|
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| 1 | 2 Labor Day Holiday | 3 | 4 1st Regular Meeting | 5 | 6 | 7 |
| 8 | 9 TAC SCCSDA | 10 | 11 CASSE | 12 TPAC | 13 | 14 |
| 15 | 16 | 17 | 18 2nd Regular Meeting | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | | | | | |

OCTOBER 2024

10/02: 1st Regular Meeting
10/07: TAC
10/09: CASSE
10/10: TPAC
10/16: 2nd Regular Meeting

| OCTOBER 2024 | | | | | | |
|--------------|----------|---------|---------------------------|------------|--------|----------|
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| | | 1 | 2 1st Regular Meeting | 3 | 4 | 5 |
| 6 | 7 TAC | 8 | 9 CASSE | 10 TPAC | 11 | 12 |
| 13 | 14 | 15 | 16 2nd Regular Meeting | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

NOVEMBER 2024

11/06: 1st Regular Meeting
11/11: TAC
11/13: CASSE
11/14: TPAC
11/20: 2nd Regular Meeting

| NOVEMBER 2024 | | | | | | |
|---------------|-----------|---------|---------------------------|------------|--------|----------|
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 1st Regular Meeting | 7 | 8 | 9 |
| 10 | 11 TAC | 12 | 13 CASSE | 14 TPAC | 15 | 16 |
| 17 | 18 | 19 | 20 2nd Regular Meeting | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |