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FILING FEE EXEMPT PURSUANT TO
GOVERNMENT CODE § 6103

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EAST PALO ALTO SANITARY DISTRICT
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO
10

11 EAST PALO ALTO SANITARY DISTRICT,
a California Independent Special District,

12 Petitioner,

13 v.
14

15 SAN MATEO LOCAL AGENCY
FORMATION COMMISSION, a
governmental agency and DOES 1-10
16 inclusive,

17 Respondent.

18 CITY OF EAST PALO ALTO, a California
19 municipal corporation,

20 Real Party in Interest.
21

Case No. 24-CIV-01489

**NOTICE OF MOTION & MOTION AND
MEMORANDUM OF POINTS OF
AUTHORITIES IN SUPPORT OF
JUDGMENT ON THE FIRST CAUSE OF
ACTION FOR WRIT OF MANDATE**

**(Code Civ. Proc. §§ 526,
3422, 860 et. seq., 1085)**

Date: August 16, 2024
Time: 9:00 a.m.
Dept.: 40

[hearing date has been cleared with master
calendar]

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE THAT on **August 16, 2024 at 9:00 a.m.**, or another such date
24 convenient to the Court, in Department 40 of the above-entitled Court located at located at 400
25 County Center, Redwood City, CA 94063, Petitioner EAST PALO ALTO SANITARY
26 DISTRICT (“Petitioner” or “EPASD”) will, and hereby does, move the Court for the issuance of a
27 writ of mandate commanding Respondent SAN MATEO LOCAL AGENCY FORMATION
28 COMMISSION to set aside Respondents’ decision approving the Proposal to Establish the East
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1 Palo Alto Sanitary District as a Subsidiary District of LAFCo File No. 22-09.

2 This Motion is based on sections 1085, and 187 of the California Code of Civil Procedure.
3 In addition, because this is “[a]n action to determine the validity of [a] ...reorganization,” this
4 Motion is also brought as a validation action pursuant to California Code of Civil Procedure
5 Section 860, et seq.

6 This Motion is based on this notice of motion, the attached memorandum of points and
7 authorities, the Administrative Record cited therein, the Petition for Writ of Mandate and
8 Complaint for Damages and Injunctive Relief previously filed, and on such oral argumenta and
9 other information that the Court finds relevant at the time of the hearing.

10 Dated: July 3, 2024

BURKE, WILLIAMS & SORESENSEN, LLP

11
12 By: 

13 J. Leah Castella
14 Iudis D. Sominskaia
15 Attorneys for Petitioners
16 EAST PALO ALTO SANITARY
17 DISTRICT
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I. INTRODUCTION

The Cortese-Knox Hertzberg Act, Government Code sections 56000 *et seq.* (“CKH Act” or “Act”) was enacted to “encourage orderly growth and development” in a way that comports with various local priorities. (Gov. Code § 56001.) Importantly, although the statutory framework includes a stated preference for efficiency, it no longer automatically favors multipurpose agencies. (*Id.*; *see also* Gov. Code § 56116 (declaring that the doctrine of automatic merger of a district with a city ... has no further effect.”) To the contrary, the CKH Act provides that single-purpose agencies “play a critical role,” and may be better-suited to meet community service needs in certain circumstances. (*Id.*) Ultimately, the Act declares that “responsibility should be given to the agency or agencies that can *best provide government services.*” (*Id.* (emphasis added).)

The history of East Palo Alto Sanitary District (“District”) illustrates how the outdated policy preference for multipurpose government organizations can clash with local interests. In 1982, the initial incorporation ballot of the City of East Palo Alto (“City”) failed because local residents refused to approve an incorporation that included dissolution of this District. (*See* Administrative Record (“[AR](#)”) 000077, [AR 000094](#).) Proponents of the incorporation were forced to petition the San Mateo Local Agency Formation Commission (“SMLAFCo” or “Commission”) for a second incorporation vote, this time setting aside the dissolution. (*Id.*) This tension between the interests of local, often underprivileged, ratepayers, and a City seeking to expand its authority, has persisted for years. And, each time the effort failed because of legitimate concerns that a “general service” local agency (the City) would be ill-equipped to take on the specialized functions of a sanitary district, among other issues.¹

This most recent takeover attempt is driven by developers lobbying for opportunities to reduce costs of investing in the sought-after region and culminated in the City’s application to the San Mateo Local Agency Formation Commission (“SMLAFCo” or “Commission”) in November

¹ *See e.g.*, [AR 001004](#) (MSR 2009 citing “loss of local control” as a disadvantage of a potential reorganization/ concerns regarding a “general service” local agency taking over the District and concerns regarding disenfranchisement of Menlo Park ratepayers in the event of a reorganization); [AR 001030](#) (comments by the then-Executive Officer of SMLAFCo, identifying “the need for regional governance to best provide water and sanitary sewer service[.]”).

1 2022, to establish the District as a subsidiary (“City’s Proposal” or “LAFCo File No. 22-09”). In
2 response, the District lodged an Alternative Proposal, which included extensive documentation
3 describing why it is best suited to provide sanitary sewer services to its ratepayers and included
4 documentation of why the City was not qualified to run the District. ([AR 000001 - AR 003236](#).)

5 For instance, the District’s Alternative Proposal demonstrated, with significant factual
6 support, that: (1) the City’s failure to accurately capture the District’s current capacity, and its
7 projected infrastructure needs, would necessarily result in unfair, disproportionate spikes to
8 service rates while offering unlawful and harmful windfall to developers (*see* [AR 000001](#)); (2) the
9 District continues to be in a robust financial position while the City has “struggled to achieve
10 economic growth and financial stability ([AR 001767](#)); (3) the District has effectively delivered
11 sewer services since 1939 and employs a highly credentialed and effective team while the City
12 plans to outsource operations to a third party at the expense of rate payers² ([AR 000001](#), [AR](#)
13 [005387](#)); (4) the City’s Proposal necessarily entails disenfranchisement of Menlo Park ratepayers
14 who currently can participate in District decisions but will lose their ability to vote for District
15 leaders once transferred to the City Council ([AR 000001](#)); and (5) that the District has a
16 demonstrated record of facilitating responsible but efficient growth by actively greenlighting new
17 development. ([AR 000001](#).) Under the relevant statutory guidelines, the record before the
18 Commission clearly demonstrated that responsibility for running local sewer operations should not
19 be divested from the District.

20 Despite substantial evidence pointing in the opposite direction, SMLAFCo approved the
21 City’s Proposal. ([AR 004285](#); [AR 005378](#).) The Commission’s decision was unsupported by the
22 record, ran afoul of the applicable statutory standards, and constituted a prejudicial abuse of
23 discretion. In addition, the proceedings were tainted by decision-maker bias. If implemented, this
24 reorganization will continue to adversely and substantially impact local ratepayers. For these
25 reasons, and as discussed further below, the Court should issue a writ of mandate commanding
26 SMLAFCo to set aside its decision approving the Proposal to Establish the East Palo Alto Sanitary

27
28 ²[AR 000001](#). Additionally, the City’s own consultant estimates that rates would go up to \$1,070
under the City’s Proposal, an increase of nearly \$500. ([AR 005387](#).)

1 District as a Subsidiary District of LAFCo File No. 22-09.

2 **II. FACTUAL AND PROCEDURAL BACKGROUND**

3 **A. General Background**

4 Since 1939, the District has provided sanitary sewer service to an estimated population of
5 26,622 located in the City and a smaller section of Menlo Park. The majority of connections
6 served by the District are residential (3,800 out of 4,155). ([AR 000498](#), 2022 MSR at p. 3, 101.)
7 The District's collection system is well-maintained and has sufficient capacity to handle average
8 dry weather flow and peak wet weather flows for existing customers. ([AR 001954](#) & [AR 001975](#).)
9 The District itself is an efficient, fiscally sound public agency with a highly qualified staff and a
10 duly elected Board of Directors. ([AR 000498](#).)

11 In recent years, there has been substantial interest in developing the territory served by the
12 District. In 2017, without consulting the District, the City issued a General Plan that contemplated
13 construction of at least 825 residential units, and 4 million sq. ft. of commercial development. ([AR](#)
14 [000143](#).) This defied statutory mandates which required City staff to meet with the District to
15 discuss the City's intended density goals. (See Gov. Code § 65852.2 (A) ("A local agency that
16 does not provide water or sewer services shall consult with the local water or sewer service
17 provider regarding the adequacy of water and sewer services before designating an area where
18 accessory dwelling units may be permitted.")) Accommodating development of this scope
19 required major system expansion. Not surprisingly, and although the District properly reserved
20 capacity for some future growth, its system was not capable of accommodating this much growth.

21 Although the City did not seek the District's input in drafting the portions of its General
22 Plan relating to the burden it would impose on the local sewer system, the City did mail a
23 notification to the District when it published the General Plan. However, the District's then-
24 management did not initially note the scope of changes contemplated by the plan. Once the
25 District's current management learned of the discrepancy, it made repeated attempts to cause an
26 amendment to the City's General Plan to be executed, which would integrate complete and
27 accurate data about the District's system capacity. (See [AR 003013](#).) The City did not wish to
28 engage. (See [AR 003013](#).)

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1 **B. The District's Efforts to Support the Expansion**

2 Simultaneous with its attempts to collaborate with the City, the District worked to make a
3 realistic, sustainable expansion plan possible. To that end, the District retained Freyer & Laretta,
4 an engineering consultant ("F & L"), to assess the hydraulic capacity of the current pipeline,
5 including the main trunk line. ([AR 000425.](#)) By February 2021, F & L determined that the present
6 system's hydraulic capacity was sufficient to accommodate existing ratepayer and some future
7 growth. ([AR 005403.](#)) On, April 28, 2021, F & L produced an Addendum to the March 2015 East
8 Palo Alto Sanitary District Master Plan Update, which provided insights as to the scope and
9 attribution of expansion costs, but offered a limited perspective, as it did have data on the actual
10 condition of the pipes. ([AR 000425.](#))

11 To address this issue, the District retained Sierra West ("Sierra West"), to assess the
12 condition of the District's pipes using closed-circuit cameras ("CCTV Study"). ([AR 001865.](#)) On
13 October 31, 2022, Sierra West delivered the partial results of the CCTV Study which were based
14 on surveillance of 3 out of 4 subsections of the District. ([AR 001865.](#)) This initial report estimated
15 the total cost of structural and capacity pipeline upgrades to be \$64.7 million, a considerable
16 portion of which was directly attributable to new development. ([AR 001865.](#)) Of the \$64.7 million
17 in needed upgrades, only \$20 million were deemed "High Priority," with \$14.3 million of those
18 upgrades attributable to *both* existing needs and new development, and \$4.9 million attributable
19 *only* to new development. ([AR 001869.](#))

20 To establish how much of this work was fairly chargeable to developers, as opposed to
21 existing ratepayers, the District retained Hildebrand Financial Services LLC ("Hildebrand"). ([AR](#)
22 [001975.](#)) Based on all available data, Hildebrand concluded that approximately \$40 million of the
23 expansion costs were attributable either exclusively, or chiefly, to new development, including
24 approximately \$22 million in pipeline upgrades.³ Based on this calculation, and prorating the cost
25 of upgrades owing to *both* new development and existing use to ensure fair distribution of costs,

26
27 ³ Most of the pipes that needed need work either had significant useful life remaining or could be
28 repaired instead of replaced. For those sections, and in line with industry standards, Hildebrand
concluded that 70% of the cost would be fairly allocated to developers. ([AR 001975.](#))

1 on September 7, 2022, Hildebrand recommended the District raise its connection fee to \$14,464
2 per equivalent dwelling unit. ([AR 000498](#).) The City, and a group of developers, were unhappy
3 with this result. (*see* [AR 000001](#).)

4 **C. Developer-Sponsored 2022 Municipal Service Review**

5 In June 2022, SMLAFCo adopted its Municipal Service Review of the City, the District,
6 and West Bay Sanitary District (“2022 MSR”). ([AR 000498](#).) This extensive study was paid for by
7 developers with projects pending in the City. During the MSR process and beyond, both
8 SMLAFCo and the City incorrectly claimed the District had imposed a *de facto* ban on new
9 development. (*See, e.g.*, [AR 000498](#), [AR 004921](#).) SMLAFCo even cited “developer narratives” to
10 support a finding that “EPASD has been unwilling to discuss financing options[.]” ([AR 000498](#).)
11 This characterization ignored the fact that: (1) that none of the objecting developers had actually
12 applied for Will Serve letters with the District⁴ (*see* [AR 000001](#)), and (2) many of the major
13 projects were delayed for reasons that had nothing to do with the District, including the City’s
14 longstanding water allocation problem, and other unrelated infrastructure issues like lack of
15 vehicular access to landlocked development parcels. ([AR 005423](#).)

16 In June 2022, the MSR adopted by SMLAFCo designated the District’s Sphere of
17 Influence (“SOI”) as “dissolution” (zero), listing as potential governance options (1) the status
18 quo, (2) reorganization with the District becoming a subsidiary of the City, and (3) annexation to
19 WBSD. ([AR 000498](#).) Although the 2022 MSR misstated the actual cost attributable to new large
20 scale development, it expressly conceded that “new development should fund the cost of increased
21 system capacity required by increased flows.” ([AR 000501](#).)

22 **D. District’s Continued Efforts to Collaborate on a Financial Plan**

23 Both throughout the MSR process, and after the adoption of the final 2022 study, the
24 District continued to work steadily toward a well-researched, accurate plan to fund repairs and
25

26 ⁴ The City was also aware that the developers were routinely proceeding with capital projects
27 without contacting the District for sewer service permits. (*See, e.g.* Intergovernmental Committee
28 Minutes, dated July 23, 2020, included as [AR 000139](#) (“Director Yanez expressed the ongoing
concern of the Board that prospective developers are not making initial contact with the District to
obtain sewer service permits before undertaking construction projects.”))

1 increased capacity. In addition to numerous attempts to collaborate with the City and developers
2 directly, the District consulted Bartle Wells Associates (engineering firm that conducted its rate
3 studies), Sierra West, Hildebrand, and Government Financial Services (financial and grants
4 consultant retained specifically to assess funding alternatives.). (See [AR 001924](#); [AR 001865](#); [AR](#)
5 [001975](#); [AR 000060](#).)

6 As late as September 2022, the District and Hildebrand presented the City Council with
7 various financing options for the needed expansion, including accelerated depletion of District's
8 reserve funds, Mello-Roo tax programs, federal grants, rate increases, the possibilities of phased
9 and "buy in" development fee structures. ([AR 002559](#).) During its presentation, the District
10 informed the City that it was continuing to actively work to identify an equitable solution that
11 would, among other things, minimize the financial shock to developers. ([AR 002563](#).) It also
12 informed the City that it was actively working with a grants consultant to see where expansion
13 costs could be further externalized. ([AR 002559](#).) At that point, however, the City was already
14 determined to move forward with its reorganization proposal (see [AR 005334](#)): indeed, the City's
15 Council's vote on the submission of its reorganization proposal to SMLAFCo was agendized as a
16 later item for the same public meeting. ([AR002542](#).)

17 **E. The Initial SMLAFCo Proceeding**

18 On November 10, 2022 the City submitted its initial application to the Commission
19 proposing that the District be established as a subsidiary of the City; the application was marked
20 LAFCo File No. 22-09. ([AR 003282](#).) On December 8, 2022, the District Board unanimously
21 adopted Resolution No. 1327, objecting to and opposing the City's application, and opposing the
22 establishment of the District as a subsidiary district of the City. ([AR 005332](#).) On December 22,
23 2022, the District submitted its initial comments in response and in opposition to the Proposal to
24 SMLAFCo, expressly reserving its right to provide additional or amended comments in the future.
25 ([AR 005335](#).)

26 The City submitted additional information to SMLAFCo in support of its Proposal in
27 December 2022 and March 2023. ([AR 005335](#); [AR 003005](#).) On June 15, 2023, SMLAFCo issued
28 a Certificate of Filing for the City's Proposal which stated, *inter alia*, that "[a]ll time requirements

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1 and limitations for processing and consideration of [the] application specified by State Law and/or
2 rules and regulations of the San Mateo LAFCo ... [became] effective on the date of the issuance
3 of [the] Certificate.” ([AR 005331](#).) SMLAFCo set the hearing date for the City’s Proposal for July
4 19, 2023. (*Id.*)

5 On July 13, 2023, the District Board unanimously adopted a resolution of intention to file
6 an alternative proposal and immediately transmitted the resolution to SMLAFCo. ([AR 005332](#).)
7 Notably, although the District’s entitlement to file an alternative proposal was procedurally clear,
8 SMLAFCo initially denied the District’s request to so proceed, claiming that an alternative
9 proposal would be time-barred. ([AR 005393](#).) Following meet and confer efforts, SMLAFCo
10 conceded that the District was entitled to file an alternative proposal. (*See* [AR 005357](#).)

11 On September 19, 2023, the District submitted an alternative proposal that sought to (i)
12 retain the District’s governance structure, (ii) amend its SOI to be coterminous with its service
13 boundaries, and (iii) remove its territory from the SOI of WBSD (“Alternative Proposal”). ([AR](#)
14 [000001](#).) The District also demonstrated in its submission that under the Government Code
15 factors, and LAFCo’s policies, it not the City, would be the “best” agency to provide sewer
16 services. (*See* Gov. Code §§ 56001, 56375(g), 56668, 56425; *see also* [AR 005320](#) (San Mateo
17 Local Agency Formation Commission Procedures for the Evaluation of Proposals, as adopted on
18 February 21, 1990, as revised on January 17, 2001).)

19 On November 15, 2023, SMLAFCo held the hearing on File No. 22-09. ([AR 004921](#).) The
20 staff report published prior to the hearing recommended approval of the City’s Proposal. ([AR](#)
21 [003994](#).) During the hearing, commissioners repeatedly (and incorrectly) suggested that it would
22 cost the District \$53-60 to repair its collection system. (*See, e.g.*, [AR 004984](#).) This fact—which
23 formed the basis of their decision—was wrong. While the CCTV Study did estimate that total
24 replacement of the District’s collection system would cost approximately \$53 million, it made
25 clear that absent new development, much of that that work did not need to be done for decades.
26 ([AR 001865](#)). The report concluded that the “High Priority” replacements that needed to be done
27 in the short term were for new development. (*Id.*) Indeed, of the “High Priority” upgrades, \$4.9
28 million are *solely* for new development and \$14.3 million are *significantly* related to new

1 development. (*Id.*) Despite this, the City repeatedly (and falsely) represented that all “High
2 Priority” repairs were necessary regardless of new development. (*See. e.g.,* [AR 004997.](#))

3 That was not the only misrepresentation at the hearing. Sergio Ramirez, general manager
4 of the neighboring West Bay Sanitary District, the agency slated to be the City’s third-party
5 contractor testified without evidence that the District had “at least four” unreported sanitary sewer
6 overflows (“SSOs”) and implied that the District had intentionally underreported SSOs in its
7 service area. ([AR 005039.](#)) The District disputed this. ([AR 005040.](#)) After the hearing, the District
8 asked WBSD for documentation to support this claim. (*See* [AR 005347.](#)) The *only* related
9 document produced was an email addressed to the District, concerning a single spill on April
10 2021, of which both the District and WBSD had received notification; the email included
11 photographs of the alleged spill. ([AR 005349.](#)) No other evidence was provided to show that (a)
12 this spill was of reportable magnitude (i.e., over 50 gallons in volume), and (b) that it was not, in
13 fact, reported by the District. Yet, at the time of the hearing, commissioners appeared to take
14 Ramirez’s comment at face value, referencing the allegedly unreported SSOs during a later
15 discussion regarding the state of the District’s pipeline. (*See, e.g.,* [AR 005071.](#))

16 Based on these mistakes of fact and despite substantial evidence pointing to the District
17 being the “best agency” to provide services, the commissioners voted unanimously to approve the
18 City’s Proposal, with certain conditions. ([AR 005082.](#))

19 **F. District’s Pursuit of Reconsideration**

20 Consistent with the statutory framework of Gov. Code § 56895, on December 15, 2023,
21 the District timely filed its reconsideration request with the LAFCo’s executive commissioner, via
22 both email and U.S. mail. ([AR 005390.](#)) The District expected SMLAFCo to follow statutory
23 protocol and “not take any further action until [it] act[ed] on the request.” (Gov. Code § 56895.)
24 Initially, that did not happen. A week after submitting its request for reconsideration, SMLAFCO
25 notified the District that it was opening the protest period relating to File No. 22-09. ([AR 005391.](#))
26 The District immediately reached out to LAFCo. Initially, the Commission claimed that the
27 District’s request for reconsideration was untimely and/ or otherwise procedurally improper. ([AR](#)
28 [005393.](#)) And again, after its position was challenged by the District, SMLAFCo reversed course.

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1 ([AR 005357](#).) The City engaged in similar tactics.⁵ Following the District’s submission of its
2 reconsideration request, the City transmitted a series of letters to the District, levying
3 unsubstantiated allegations of various statutory abuses, none of which had any basis in the law.
4 (See [AR 005449](#).)

5 The District’s reconsideration request cited the following “new or different facts” as basis
6 for reconsideration:

- 7 1. After the date of the hearing, the District adopted an updated Capital
8 Improvement Plan, which was a culmination of several years’ worth of
expansion-related research, finally completed in late October 2023;
- 9 2. After the date of the hearing, the District approved the lowering of the
10 capacity fees for developers in an effort to find a balanced, sustainable
solution;
- 11 3. After the date of the hearing, the District approved a CPI rate increase
12 process, in part to account for the decrease to the capacity fees; and
- 13 4. After the date of the hearing, the District approved drafting of an Ordinance
14 setting forth a more uniform and consistent process for negotiating
development agreements and Will Serve letters. ([AR 005358](#).)

15 The District asserted that the above changes crystallized its position as the best agency to
16 provide government services. (*Id.*) The District also submitted various materials supporting its
17 request prior to the reconsideration hearing. ([AR 004294](#).)

18 The City and WBSD also submitted materials to the Commission, this time alleging that
19 two additional SSOs were unreported by the District (one in December 2023, and another in
20 January 2024 – both *after* the initial LAFCo hearing). ([AR 004719](#); [AR 004729](#).) These materials
21 arrived late (with some materials published by SMLAFCo the day before the reconsideration
22 hearing, and some - mere hours before the hearing), and were inaccurate and misleading. (*Id.*) In
23 fact, both of the spills were timely reported by the District.⁶

24
25 ⁵ These facts evidence a pattern of behavior from both SMLAFCo and the City to repeatedly block
the District’s access to a fair and balanced process.

26 ⁶ ***The District did timely reported both of the alleged spills*** to the California Integrated Quality
27 Water System Database (CIQWS). Specifically, the District submitted a CIQWS report for the
December 4, 2023 Category 3 Spill, on December 12, 2023, and submitted a report for the January
28 19, 2024 Category 1 Spill on January 24, 2024. (See California Integrated Water Quality System
Project, Spill Event ID 892300 and Spill Event ID 891500,

1 It is not clear what the City and WBSD hoped to achieve with these late, unsubstantiated
2 accusations, other than to prejudice SMLAFCo's decision regarding the District's request for
3 reconsideration. And their strategy worked: SMLAFCo commissioners pointed to an absence of
4 response as a mark against the District during the reconsideration hearing. (*See, e.g., AR 005220.*)
5 And although the District's records ultimately showed that the SSOs were timely reported, in light
6 of the lateness of these submissions, the District was not in a position to specifically refute these
7 allegations at the time of the hearing.

8 The reconsideration hearing appeared to be a formality. The Commission limited the
9 District to ten minutes, including rebuttal, to present its position. Among other things, the District
10 explained that the actions undertaken by the District following the Commission's decision
11 regarding File No. 22-09 could not have been possible until after the November 15, 2023, hearing.
12 (*AR 005361.*) The proceeding lasted little more than an hour, including public comment, with
13 little questioning or commentary from commissioners. (*AR 005202.*) *The comments that were*
14 *made were inaccurate. Commissioners suggested* that the District's pipes were not "taken care of,"
15 that "nothing substantive" was brought on reconsideration, and that "40 years ago, a mistake was
16 made" to "take away [the City's] power" to govern local sewer services, and that it should be
17 "given back."⁷ At the conclusion, SMLAFCo voted unanimously to disapprove the District's
18 request for reconsideration on the incorrect basis that the District's request "set forth no new or
19 different facts that could not have been presented previously to the Commission[.]" (*AR 005264,*
20 *AR 005378.*)

21 III. STANDARD OF REVIEW

22 Courts apply a dual standard of review to LAFCO decisions. Questions of law are
23 reviewed de novo, including questions of interpretation and application of the CKH Act's
24 provisions. (*Placer County Local Agency Formation Com. v. Nevada County Local Agency*

25
26 <https://www.waterboards.ca.gov/ciwqs/>.)

27 ⁷ This comment was in an apparent reference to the failed ballot vote to dissolve the District
28 during the City's incorporation in 1982. The significance of this historic vote was not that the
City's power was "taken away" but that the local community wanted the District to *maintain* its
~~current form of governance~~ and opposed to seceding it to the City.

1 *Formation Com.* (2006) 135 Cal.App.4th 793, 803.) Courts review factual determinations under
2 using the substantial evidence test. (Gov. Code § 56107(c).) Substantial evidence is evidence that
3 is legally significant, credible, and “reasonable in nature.” (*JKH Enterprises, Inc. v. Dept. of*
4 *Industrial Relations*, (2006) 142 Cal.App.4th 1046, 1057 (quotation omitted).)

5 Although LAFCos enjoy broad power to effectuate policies related to local agency
6 formation, growth, and development, that discretion has limits. (*See* CKH Act.) If a LAFCo’s
7 involves a “prejudicial abuse of discretion” that “adversely and substantially affect[ed] the rights
8 of any person,” it can be judicially set aside. (Gov. Code § 56107(c); *see also San Joaquin Cnty.*
9 *Loc. Agency Formation Comm’n v. Superior Ct.*, (2008) 162 Cal. App. 4th 159, 167; *Citizens for*
10 *Responsible Open Space v. San Mateo Cnty. Loc. Agency Formation Com.*, (2008) 159 Cal. App.
11 4th 717, 725.) To establish abuse of discretion, a party must show that the underlying
12 determination was “not supported by substantial evidence in light of the whole record.” (*Id.*)

13 Abuse of discretion is prejudicial when a LAFCo fails to “apply or properly interpret the
14 governing law,” ((*Manderson-Saleh v. Regents of University of California* (2021) 60 Cal.App.5th
15 674, 693), or its decision is “arbitrary, capricious, or lacking in evidentiary support” (*California*
16 *Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 211). In carrying out its
17 determinations, LAFCo is required to “adequately consider[] all relevant factors, and
18 demonstrate[] a rational connection between those factors, the choice made, and the purposes of
19 the enabling statute.” (*McBail & Co. v. Solano County Local Agency Formation Com.* (1998) 62
20 Cal.App.4th 1223, 1230 (quotation omitted).)

21 Here, SMLAFCo’s decision to approve the City’s Proposal, when weighed against the
22 record as a whole, and even considering the deference afforded to LAFCos generally, was
23 unsupported by substantial evidence.

24 **IV. ARGUMENT**

25 The Commission abused its discretion in two ways: (1) at the initial hearing, it failed to
26 adequately consider all statutory factors, which taken as a whole, supported leaving the current
27 governance structure in place; (2) on reconsideration, it failed to acknowledge and consider the
28 new facts presented by the District. These abuses occurred in a climate infected by bias, as

1 demonstrated by the consistent attempts to deprive the District of a fair chance to be heard.

2 **A. SMLAFCO's Approval of the City's Proposal Was Unsupported By Substantial**
3 **Evidence and was Untethered from the Statutory Standard**

4 In reviewing a reorganization proposal, LAFCOs are required to consider the factors in
5 section 56668 of the CHK Act (Gov. Code § 56668), and may additionally adopt and follow
6 further standards for evaluating proposals. (Gov. Code § 56375; *see also McBail*, 62 Cal.App.4th
7 at 1230.) Notably, the CHK Act also declares that “responsibility should be given to the agency or
8 agencies that can best provide government services,” which may be a multipurpose, or a single-
9 purpose agency, depending on “community service priorities, which are required to reflect local
10 circumstances, conditions and limited financial resources.” (Gov. Code § 56001.) Finally,
11 Commission members are also subject to a general statutory duty to “represent the interests of the
12 public as a whole” in making any reorganization determinations. (Gov. Code § 56331.4.)

13 Accordingly, when it assessed the City's and the District's respective proposals,
14 SMLAFCo was required to “adequately consider” the mandatory section 56668 factors, as well as
15 its own “[Procedures for the Evaluation of Proposals](#),” and to make a determination that would
16 reflect local community service priorities, and represent the interests of the public as a whole.
17 Although the Commission superficially touched upon statutory factors in its Resolution, the
18 findings it made were unsupported by substantial evidence.

19 **1. SMLAFCo's Approval of the Reorganization Was Not Supported by**
20 **Substantial Evidence In Light of the Whole Record.**

21 The Commission, as basis for its decision on the City's Proposal, touted benefits such as
22 “more efficient operation and coordinated planning of sewer service, infrastructure and capacity to
23 accommodate planned growth and improve transparency, accountability, environmental health to
24 meet the current and future needs of all East Palo Alto Sanitary District ratepayers and customers.”
25 ([AR 004285](#).) Similarly, the Staff Report recommending the Proposal's approval, asserted that,
26 among other things, the reorganization would result in improvement to delivery of the sewer
27 services in the area, and “enhanced efficiencies by removing a layer of government and enhanced
28 ease of use of constituents, with single provider of services.” ([AR 003994](#).) But, this reasoning is
entirely unsupported by substantial evidence, and is belied by the record as a whole.

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1 First, there is no evidentiary support for the conclusion that management of wastewater
2 services delivery would be enhanced if the City governed the District. The City lacks knowledge
3 and experience to do so, is planning to outsource, and has a poor history running services –
4 nothing in the City’s Proposal demonstrated otherwise.

5 Second, the Commission stated that the District would see enhanced efficiencies under the
6 City’s Proposal because it “remov[es] a layer of government.” ([AR 004039](#).) But creation of a
7 subsidiary district *does not* remove a layer of government. The District remains a separate legal
8 entity. The only difference is that, instead of being governed by a Board *only* accountable to
9 ratepayers, it will be governed by a City Council accountable to other interests, including the
10 interests of developers. And, because the District remains a separate legal entity, decisions made
11 by the City Council acting as the District Board have no impact on the City’s budget and cannot
12 create liability for the City—which makes the Council even less accountable to ratepayers.

13 Third, the Commission assumed, contrary to the evidence in the record, that the City will
14 better facilitate development. However, the District already actively engages in development
15 efforts and does so in a responsible manner by managing ratepayer and developer interests. The
16 District has also recently developed the CIP, lowered capacity charges, and passed an ordinance to
17 make the Will-Serve letter process more efficient—all of which will facilitate even more
18 development. Instead of taking this into account, the Commission sided with the City’s approach
19 to promote development at the expense of ratepayers by dramatically reducing connection fees.

20 2. SMLAFCo’s Findings Were Untethered from the Statutory Standard

21 The Commission’s decision also failed to properly consider the statutorily-prescribed
22 factors for assessing reorganizations. Thus it is unsurprising that, when viewed in light of these
23 factors, the Commission’s decision does not align with the policy goals contained in the
24 Government Code in light of the record as a whole.

25 (a) SMLAFCo failed to adequately consider the District’s ability to 26 capably provide local services.

27 SMLAFCo was required to holistically assess which agency would best provide local
28 services using the consideration framework mandated by section 56668. Among other factors, in

1 evaluating reorganization proposals, a LAFCo must consider how the change would impact the
2 cost and adequacy of government services provided, as well as how it would affect “mutual social
3 and economic interests.” (Gov. Code § 56668(b) and (c).) Too, as part of the analysis, LAFCOs are
4 required to assess both the existing agency’s ability to provide government services (Gov. Code §
5 56668(b)), and the proposed entity’s ability to do the same (*Id.*, subsection (k).)

6 Here, SMLAFCo failed to “adequately consider” these key mandatory factors when it
7 concluded that City should govern the District. (*McBail*, 62 Cal.App.4th at 1230.) The record
8 before the Commission showed that the District, and not the City, has been, and would continue to
9 be, in the superior position to provide local services in a manner that would serve mutual social
10 and economic interests.⁸ ([AR 004921](#).) SMLAFCo’s unsupported findings to the contrary
11 constitute prejudicial abuse of discretion, and its approval of the City’s Proposal should therefore
12 be set aside.

13 **(b) SMLAFCo Failed to Consider the District’s Unique Ability to Provide**
14 **Adequate Services**

15 Under Government Code section 56668(b) and (c), SMLAFCo was required to assess the
16 effect of a proposed change on both adequacy of services and the ability of the entity formed to
17 provide services. Both in the course of the initial proceeding, and upon reconsideration, the
18 District lodged extensive documentation of its capably maintained operations, and its current
19 highly-credentialed and effective team. (*See* [AR 000001](#) – [AR 003236](#).) An engineering study of
20 the District’s hydraulic capacity, the District’s own regularly conducted inspections, and public
21 record relating to spills within the District’s service area, consistently show that the District has
22 maintained an excellent level of service for local consumers, all while keeping rates low. ([AR](#)
23 [000001](#); [AR 001924](#).) Further testament to the adequacy of the District’s existing system: during
24 the severe February 2022 torrential storms, which caused substantial overflows in even the most

25 _____
26 ⁸ As recognized by the Commission itself, the District submitted a significant amount of data,
27 documentation, and explanation in support of its Alternative Proposal, rendering the
28 Commission’s decision even more baffling considering the amount of supporting documentation
submitted. (*See* [AR 004921](#), p. 124:16-22 (Chairperson Draper stating, “[I]’ve been working in the
public sector for 48 years ... and the amount of information that you submitted was more than I’ve
seen any other applicants submit.”)) changes 4863-
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1 well-funded and developed districts in the Bay Area like Redwood City, the District's system held
2 up without overflows. (See [AR 000001](#), [AR 000018](#).)

3 In contrast, the City does not possess the special qualifications required to run the District,
4 and plans to outsource operations to a third party.⁹ ([AR 001751](#).) And, while the District's systems
5 are amply capable of serving ratepayers needs without surcharging, the City's own Plan is
6 predicated on ignoring engineering recommendations, and compromising on structure, such that
7 surcharges would be not just likely, but inevitable. ([AR 001802](#).)

8 In light of this evidence, SMLAFCo's conclusion that the City, and not the District, should
9 lead operations of sewer services in the area was unreasonable and an abuse of discretion.

10 **(c) SMLAFCo Ignored the Effect of the City's Proposal on Cost of Services**

11 Under Government Code section 56668, SMLAFCo was required to consider the impact of
12 the City's proposal on cost of services presently and in the future, and the impact of that cost on
13 social and economic interests of ratepayers. (Gov. Code § 56668(b), (c), and (k).) In considering
14 current and future cost of services provided, in light of the whole record, SMLAFCo's only
15 reasonable conclusion could have been that this factor similarly favors the District. The District's
16 historic ability to prioritize safeguarding rates is undisputed, and is at least partly explained by its
17 maintenance of a prudent and effective fiscal policy. (See [AR 000001](#) at Exh. B.) SMLAFCo had
18 the opportunity to review the District's financials which boast low debt, regular savings, and
19 robust reserves. ([AR 000506](#) [stating that the District is in a "strong financial position" and has
20 "healthy reserves."]; [AR000749](#).) The District also made available for the Commission's review
21 its audit reports, which certified the District's financials as "free from material misstatement,
22 whether due to fraud or error." ([AR 001537](#); see also [AR 001534](#).)

23 On the other hand, as the District explained in its Alternative Proposal, the City's
24 verifiable failure to realistically and accurately capture the District's capacity, and its projected
25 infrastructure needs, would necessarily result in unfair, disproportionate spikes to service rates
26 chargeable to the local community, while simultaneously offering an unlawful, and undeserved

27
28 ⁹ Notably, the District already provides all of the services listed in the City's Request for Proposals
for sewer services. Brief DRAFT with JLC changes 4863-
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1 windfall to developers.¹⁰ ([AR 000001](#), [AR 000036](#), [AR 000015](#).) Too, the use of a franchisee is
2 especially likely to yield additional, unnecessary rate increases.¹¹ ([AR 002994](#).)

3 By its own admission, the City has historically “struggled to achieve economic growth and
4 financial sustainability.” ([AR 001767](#).) Inviting the fiscally unstable agency to manage the sewer
5 fund would introduce yet another risk to the District’s long-term financials. Even the peer review
6 study prepared by an independent consultant at SMLAFCo’s request in connection with the
7 proposed reorganization, noted serious deficiencies in the City’s financial plan, including that it
8 underestimated construction costs and did not project costs beyond the initial five years, putting in
9 question the plan’s long-term financial feasibility. ([AR 005381](#).)

10 In light of the District’s proven ability to effectively manage service costs, and the
11 verifiable issues with the City’s Proposal, substantial evidence does not support the determination
12 that the City, not the District, was the best agency to provide government services. SMLAFCo’s
13 approval of the City’s Proposal demonstrates that mandatory factors under subsections (b) and (c)
14 were not “adequately considered” which constitutes a prejudicial abuse of discretion.

15 **(d) SMLAFCO Failed To Consider The Disproportionate Impact Of The**
16 **Reorganization On Local Interests.**

17 Section 56668 demands that LAFCOs properly consider the impact of a reorganization on
18 various local interests, ranging from broad “mutual social and economic interests” (subsection
19 (c)), to “interests of the affected landowners, voters, or residents” (subsection (n)), to housing-
20 related concerns (subsection (m)), to consideration of whether the change would promote the
21 state’s environmental justice values and goals (subsection (p).) The record before the Commission

22
23 ¹⁰ The City’s proposed budget for development-related improvements is based on inaccurate and
24 incomplete findings, and severely underestimates the financial burden of accommodating large
25 scale development. Because the City failed to account for many significant expenses, and used
26 flawed data, the funds it would assess via capacity charge fees would in reality account for only a
fraction of the real cost of new construction. Inevitably then, the City would be confronted with
enormous, unplanned for, expenses, resulting in immediate and substantial rate increases for the
ratepayers. (See [AR 000036](#), [AR 000015](#).)

27 ¹¹ There is empirical evidence to support this claim. In 2001, the City contracted its water services
28 out to a third party vendor. With franchise fees charged by the City, and additional fees charged by
the contractor in order to yield profit, the City’s water rates spiked significantly, and swiftly,
harming the District’s already economically vulnerable ratepayers.

1 makes clear that the District’s current governance structure would best promote these important
2 local interests. But, SMLAFCo failed to properly consider these factors and as a result, arrived at
3 an unsupported, and erroneous decision to approve the City’s Proposal.

4 As explained above, the City’s Proposal necessarily results in higher rates for the local
5 community, which is predominantly Black and/or Hispanic and includes many low-income
6 ratepayers,¹² (See [AR 000143](#)) including a substantial population that meets LAFCo’s definition of
7 disadvantaged community. ([AR 000505](#).) In addition to being economically disadvantaged, the
8 California Environmental Protection Agency concluded that East Palo Alto was the City most
9 burdened by pollution in all of San Mateo County. (See [AR 000387](#).) As the District reasoned in
10 its Alternative Proposal, “there is a special irony in asking disadvantaged, low-income ratepayers
11 who are already at risk of imminent displacement, and are uniquely burdened by pollution, to
12 absorb substantial rate increases in order to make development more profitable for investors.” ([AR](#)
13 [000017](#); see also [AR 000018](#) [citing US Census Bureau Statistics showing that the rate of return
14 on development in the area ... is already favorable to investors (housing appreciation rates are
15 300% higher than the average in California, and even higher when compared to national averages
16 ... further highlight[ing] the inequity the District’s policies aim to ameliorate.”].)

17 In addition, the City’s Proposal necessarily entails disenfranchisement of Menlo Park
18 ratepayers who would lose their ability to vote for the members of the District Board. The City’s
19 proposed solution – a Menlo Park voice on the advisory committee – is a far cry from the
20 District’s current offering to Menlo Park ratepayers, which is to equitably participate in shaping
21 policies that directly affect their interests. (See [AR 001802](#).)

22 The evidence above, and more, was presented to SMLAFCo to show that “mutual social
23 and economic interests” (Gov. Code 56668, subsection (c)), “interests of the affected landowners,
24 voters, or residents” (*id.*, subsection (n)), and concerns related to housing and environmental
25 justice (*id.*, subsections (m) and (p), would all be seriously undermined should the City take over
26

27 ¹² The District’s ratepayers experience lower life expectancy, income levels, and educational
28 attainment when compared to the rest of San Mateo county—the 4th wealthiest county in the
country. (See [AR 000143](#) [City’s General Plan, at p. 7-1].)

1 governance of the District. SMLAFCo's finding that the relevant factors justify the City's
2 Proposal was improper in light of the whole record, and constitutes prejudicial abuse of discretion.

3 **(e) The District Has Not Been a Barrier To Orderly and Efficient**
4 **Development.**

5 Under section 56668(d), the Commission is required to consider how the proposal would
6 impact efficiency and order of planned development. (Gov. Code 56668(d); *see also* SMLAFCo
7 Procedures for Evaluating Proposals.) SMLAFCo based its approval of the City's Proposal on the
8 unsupported finding that the reorganization would promote orderly and efficient growth in the
9 region. (*See* [AR 004039](#).) But, this finding is both unreasonable and unsupported when viewed in
10 light of the whole record. The Commission's consequent decision that the City should take over
11 governance of the District thus constitutes prejudicial abuse of discretion, and should be set aside.

12 As the District repeatedly posited throughout these proceedings, it did not disrupt
13 development in the region, it simply required developers to pay their fair share of expansion costs.
14 Where there were delays in development approvals, they were rarely attributable to stalled
15 negotiations with the District.¹³ (*See* [AR 005423](#).) To the contrary, the record shows that the
16 District's commitment to ensuring development moves forward has been steadfast. ([AR 000001](#);
17 *see also*, Petition at 31-32.)

18 Despite the City's failure to consult the District when approving significant growth in its
19 service area, the District tirelessly worked to accurately project the costs of the new demand so.
20 ([AR 000038](#).) It retained numerous consultants and repeatedly attempted to collaborate with the
21 City and developers directly so it could set a fair and equitable connection fee. ([AR 000016](#).) But,
22 because paying their fair share cut into their profits, developers successfully lobbied the City to
23 pursue the pending reorganization.

24 In light of the record, SMLAFCo's conclusion that the proposed change in governance
25 would serve to promote "orderly and efficient... development," was unjustified, and substantially
26

27 ¹³ For instance, some delays were caused by the City's longstanding water allocation problem,
28 and other unrelated infrastructure issues like lack of vehicular access to landlocked development
parcels.

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1 unsupported. As such, SMLAFCo’s decision to approve the City’s Proposal constituted prejudicial
2 abuse of discretion, and should be set aside.

3 (f) **SMLAFCo did not adequately consider SOI determinations, and other**
4 **formalized findings regarding the affected agencies in light of the whole**
5 **record.**

6 Section 56668(i) mandates that the Commission pay mind to other formalized findings
7 made with regard to affected agencies, including Sphere of Influence (“SOI”) determinations
8 (Gov. Code § 56668(i)) and consistency with existing growth plans like a City’s General Plan.
9 (*Id.*, subsection (h).) Here, SMLAFCo did not consider these factors “in light of the whole record”
10 as required by the statutory framework. (Gov. Code § 56107(c).) Instead, it appeared to have
11 cherry-picked the findings convenient to its predetermined goal of approving the City’s Proposal.

12 For example, SMLAFCo relied on its 2022 MSR finding that the District should be slated
13 for dissolution to show that the City’s Proposal was desirable. (*See, e.g.*, [AR 004024](#).) But, the
14 District had submitted extensive documentation and testimony to show that the developer-funded
15 2022 MSR had been conducted and adopted in a highly politicized environment, and relied on
16 incorrect assumptions in order to arrive at its determinations. (*See* [AR 005399](#).) Too, the MSR
17 itself had proposed dissolution, or merger of the District in order to achieve the supposed goals of
18 efficient and orderly growth. ([AR 000498](#).) But the City has not proposed to dissolve, annex, or
19 merge with, the District. Instead, it has proposed to serve as a subsidiary District’s *ex officio* Board,
20 which, in contrast with the originally proposed forms of reorganization, would not increase
21 efficiency by reducing the “layer[s] of government.” ([AR 004039](#).) What it would, on the other
22 hand, achieve, is functionally inoculating the City from liability by allowing it to make potentially
23 risky, or unlawful decisions with respect to the District, yet without risk to the City’s own
24 financials.

25 SMLAFCo’s reliance on the City’s Proposal’s consistency with the City’s General Plan
26 was similarly misguided. Indeed, as the District repeatedly testified before the Commission, the
27 City’s General Plan was based on incorrect assumptions about the District’s capacity and
28 infrastructure because the City did not properly consult the District on these issues prior to
adopting the Plan. ([AR 004921](#), [004984-5](#), [005072](#); *see also* [AR 00562](#).) Indeed, delays in

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1 development approvals resulted directly from these errors—errors it has taken the District years to
2 properly address by funding and conducting the necessary research to be able to plan for the major
3 expansion contemplated by the Plan. (See [AR 000498](#); [AR 001749](#); *see also* [AR 005361](#).) As
4 such, SMLAFCo’s conclusions regarding this factor similarly were entirely inconsistent with the
5 evidence in the record.

6 Using previous findings to guide, and even validate a current decision, is only a workable
7 approach if the findings at issue are inherently reliable. Here, on the other hand, the record before
8 the Commission demonstrated that SOI determinations in the MSR, and the conclusions contained
9 in the City’s General Plan, were based on verifiably false information, and could not therefore be
10 used to buttress determinations as to the District’s infrastructure, and its future as an independent
11 local agency. Yet, in another show of prejudicial abuse of discretion, SMLAFCo repeatedly relied
12 on these previous findings. As such, SMLAFCO’s decision should be invalidated and set aside.

13 **B. SMLAFCO ‘s Denial of Reconsideration Was Unsupported by Substantial Evidence,**
14 **and Constituted a Prejudicial Abuse of Discretion.**

15 Under Government Code section 56895, after a LAFCo has adopted a resolution making
16 determinations, any affected agency may file a written request for reconsideration of the
17 resolution, stating “new or different facts” that would warrant reconsideration. The District
18 exercised this right by timely filing a request for reconsideration with the Commission on
19 December 15, 2023. The Commission, however, again abused its discretion by deciding to deny
20 reconsideration, finding that the District had presented no “new or different facts” even though
21 that position was not supported by substantial evidence in light of the whole record. []

22 Contrary to the Commission’s statements, the District did, indeed, supply it with new and
23 different facts which would support reconsideration and ultimately support denial of the City’s
24 Proposal. Namely, the District cited the following “new or different facts” as a basis for
25 reconsideration:

- 26 • After the date of the hearing on the City’s Proposal, the District adopted an updated
27 Capital Improvement Plan, which was a culmination of several years’ worth of
expansion-related research, finally completed in late October 2023;
- 28 • After the date of the hearing, the District approved the lowering of the capacity fees

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1 for developers in an effort to find a balanced, sustainable solution;

- 2 • After the date of the hearing, the District approved a CPI rate increase process, in
3 part to account for the decrease to the capacity fees; and
- 4 • After the date of the hearing, the District approved drafting of an Ordinance setting
5 forth a more uniform and consistent process for negotiating development
6 agreements and Will Serve letters. ([AR 005358](#).)

7 These efforts by the District could not have taken place prior to the November 15, 2023, hearing
8 on the Proposal and Alternative Proposal because they were the product of years of research which
9 were still being completed in October 2023¹⁴ ([AR 005361](#).), and also because they were targeted,
10 in part, to respond to concerns raised by the Commission in its initial decision to grant the City's
11 Proposal. Thus, these facts "could not have been presented previously," and were therefore valid
12 bases for the reconsideration request. (See Gov. Code § 56895(a).)

13 Moreover, the District's demonstrated efforts were substantive and significant, raising
14 legitimate grounds that would warrant revision of the Commission's decision. For instance, the
15 District altered the capacity charge to place greater responsibility of mixed purpose pipeline
16 replacement work on the ratepayers to respond to the Commission's concerns about encouraging
17 development. ([AR 005361](#).) Especially in light of its new CIP, the change in capacity charges
18 reflects a significant, tangible change in the District which will directly aid in further
19 development.¹⁵ (See [AR 004921 at 004974-75](#).) This fact alone would warrant greater support for
20 denial of the City's Proposal because it remedies one of the major concerns that SMLAFCo
21 supposedly relied on in granting the Proposal.

22 Further, the Commission not only disregarded the District's new developments, but also
23 disregarded the evidence that some of the facts that formed the foundation of the initial decision
24 were false. For instance, the Commission's decision was predicated on the City's incorrect claim
25 that the approximately \$20 million in "High Priority" repairs identified by the Sierra West Report

26 ¹⁴ The District was still in the process of finalizing key studies and projects at the time of the
27 November 15, 2023 hearing. For instance, the Sierra West CCTV Study, which was necessary for
28 making an updated Capital Improvement Plan, was only completed in mid-October 2023. ([AR 001865](#).)

¹⁵ The development of a new CIP itself addresses many of the Commission's concerns, and
dispolled concerns aired during the hearing that the District was not working on a new CIP.

1 mean the District’s pipes are in disrepair.¹⁶ ([AR 004993](#).) This and the claim that \$20 million in
2 repairs are unrelated to new development is demonstrably false: the report explicitly provides that
3 the vast majority of the \$19.2 million of identified “High Priority Repairs” *are primarily needed to*
4 *accommodate* new development.¹⁷ ([AR 001869](#).)

5 The Commission, consistent with its steadfast commitment to favor the City’s Proposal,
6 took it upon itself to use “too little, too late” reasoning to avoid actual consideration of the facts
7 presented by the District. The Commission’s rationale that the District’s request for
8 reconsideration should be denied merely because the District’s initiatives to rectify identified
9 issues came too late is inappropriate in this context, where its determination should have been
10 focused on whether there existed any new or different facts that changed the calculus of the
11 decision. The District provided such facts, but those facts were not even the focal point of the
12 Commission’s decision on reconsideration. The Commission incorrectly concluded that the
13 District’s request “set forth no new or different facts that could not have been presented previously
14 to the Commission[.]” Given this, the Commission’s decision to deny reconsideration was
15 unsupported by substantial evidence.

16 **C. The SMLAFCO Proceedings In This Matter Were Irreparably Tainted By**
17 **Decisionmaker Bias and the Decision Should Thus Be Set Aside**

18 An independent district subject to a subsidiary district proposal is entitled to a lawful and
19 fair hearing, conducted by unbiased decisionmakers who “ha[ve] *not prejudged* the specific facts
20 of the case, and [are] *free of prejudice* against or in favor of any party.” (*Petrovich Dev Co., LLC*
21 *v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973 (emphasis in original).) The participation
22 of even a single biased decisionmaker renders a decision invalid. (*See Woody’s Group, Inc. v. City*
23 *of Newport Beach* (2015) 233 Cal.App.4th 1012, 1022; *Nasha v. City of Los Angeles* (2004) 125
24

25 ¹⁶ See City’s Opposition to Motion for Preliminary Injunction, p. 11.

26 ¹⁷ This initial report estimated the total cost of structural and capacity pipeline upgrades to be
27 \$64.7 million, a considerable portion of which would be directly attributable to new development.
28 Of the \$64.7 million, only \$20 million were deemed “High Priority,” with \$14.3 million of those
upgrades attributable to *both* existing needs and new development, and \$4.9 million attributable
only to new development.

1 Cal.App.4th 470, 485.) Here, SMLAFCo repeatedly demonstrated a biased approach. Evidence of
2 the bias that SMLAFCo exhibited throughout this process further underscores that “adequate
3 consider[ation]” of the relevant factors was never offered to the District. (*McBail*, 62 Cal.App.4th
4 at 1228.) SMLAFCo’s decision thus constituted a prejudicial abuse of discretion and there is a
5 “probability of actual bias” further underscoring this abuse. (*Petrovich Dev. Co., LLC*, 48
6 Cal.App.5th at 973.) Accordingly, the decision should be set aside and remanded.

7 In its efforts to oppose the initial application, eventually submit the Alternative Proposal,
8 and ultimately be afforded a fair and lawful hearing, the District constantly encountered resistance.
9 First, when the District learned that the City’s Application was deemed to be incomplete by
10 SMLAFCo, it requested that the Commission allow the District to delay submitting its comments,
11 to ensure its opposition was comprehensive. ([AR 005335](#).) SMLAFCo refused. Then, when the
12 District, in full compliance with statutory requirements, filed its Resolution of Intention to File an
13 Alternative Proposal, the Commission attempted to dissuade the District from so doing, claiming
14 that the District’s submission would be untimely. Additionally, when the District submitted a fully
15 statutorily compliant request for reconsideration following the initial hearing and decision on the
16 City’s Proposal, the Commission similarly attempted to argue, without merit, that the District’s
17 request was procedurally defective, and that it would therefore not be considered.

18 Throughout this proceeding, the District’s access to a fair and balanced process was
19 repeatedly undercut. This serves as further evidence that SMLAFCo did not—and could not—
20 “adequately consider” the relevant factors, and consequently, SMLAFCo prejudicially abused its
21 discretion when it ultimately approved the City’s Proposal.

22 V. CONCLUSION

23 Throughout this proceeding, SMLAFCo repeatedly failed to “adequately consider” the
24 relevant statutory factors, misapplied statutory standards, and exhibited impermissible bias, all of
25 which hindered its ability to properly assess whether adequate justification for the proposed
26 organization existed. Its approval of the City’s Proposal was therefore improper, not supported by
27 substantial evidence, and constituted prejudicial abuse of discretion. The Court should thus grant
28 the District’s Petition for Writ of Mandate and direct SMLAFCo to set aside its decision

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1 approving the City's Proposal to Create a Subsidiary District and remand the matter for further
2 proceedings that are consistent with the applicable statutory standards.

3 Dated: July 3, 2024

BURKE, WILLIAMS & SORESENSEN, LLP

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STATE OF CALIFORNIA, COUNTY OF ALAMEDA

On July 3, 2024, I served true copies of the following document(s) described as

PETITIONER'S NOTICE OF LODGING AND CERTIFICATION OF THE ADMINISTRATIVE RECORD

on the interested parties in this action as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address ascott@bwslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on July 3, 2024, at Oakland, California.

Ann M. Stet

Anne M. Scott

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SERVICE LIST
East Palo Alto Sanitary Dist. v. San Mateo Local Agency Formation Commission
San Mateo County Superior Court
Case No. 24-CIV01489

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