

DATE: February 4, 2005

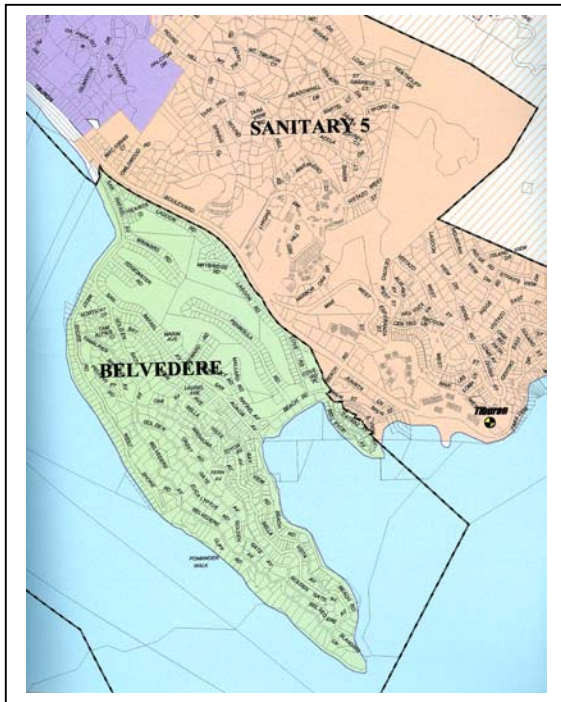
TO: Members, Local Agency Formation Commission

FROM: Peter Banning, Executive Officer

SUBJECT: Executive Officer's Report and Recommendation:
Proposed Annexation of the territory of the City of Belvedere to Sanitary District #5 (Tiburon) (File #1262)

Summary

The City Council of the City of Belvedere and the Board of Directors of Sanitary District #5 (Tiburon) have each adopted similar resolutions of application requesting the annexation of the incorporated territory of the City of Belvedere to Sanitary District #5. If approved, Sanitary District #5 would assume responsibility for the City's sewage collection system and the residents of the City would become eligible to vote in District elections and run for the District's Board.



As shown on the map (left), Sanitary District #5 provides sewer collection and treatment services to a portion of the Town of Tiburon. The District's jurisdiction overlaps that of the Town of Tiburon. If Belvedere is annexed to Sanitary District #5 (San 5), the District's relationship to the City of Belvedere would become the same as its relationship to the Town of Tiburon.

The application includes a set of requested terms and conditions to be attached to LAFCO's approval of the annexation. The requested terms and conditions would govern the effective date, the transfer of City property to the District, the disposition of various assets and liabilities and other matters important to the orderly transfer of service responsibility from the City to the District. The jointly submitted application including these terms and conditions signifies the agreement and consent of the City and the District to the proposed annexation.

The annexation proposal concurrently requests amendment of the sphere of influence of Sanitary District #5 to include the City of Belvedere. The Commission has not yet acted to update the spheres of influence of sanitary districts in southern Marin County. Amendment of the District's sphere of influence is pre-requisite to approval of the proposed annexation.

Staff recommends approval of the proposed sphere of influence amendment and annexation with minor modifications to the terms and conditions requested by the applicants.

General Information

Proposal Description: Annexation of the City of Belvedere to Sanitary District #5

Proposal Location: City of Belvedere

No. of Parcels: 990

Acres: approximately 640

Development Potential: 17 units total, not dependent on this proposal.

Applicants: By resolution of City of Belvedere & San. District #5

Consent of Property Owner(s): No

Public Hearing Required: Yes

Number of Registered Voters: 1,578

City or County: City.

Assessed Value: \$619,535,491

Property Tax Exchange: None

Current and Proposed Provision of Services

	<u>Current:</u>	<u>If Approved:</u>
Police:	City of Belvedere	No Change
Fire:	City of Belvedere (contract w/ TFPD)	No Change
Water:	MMWD	No Change
Sewer:	City of Belvedere & San #5	Sanitary District #5
Streets:	City of Belvedere	No Change
Planning:	City of Belvedere	No Change

Comments of Affected Agencies

None.

Discussion & Analysis

The governing boards of the City of Belvedere and Sanitary District #5 (San #5) have jointly proposed annexation of the City's incorporated territory to the District. This proposal is a form of consolidation of local government services in which the sewer collection service responsibility of the City would be transferred to San #5.

The City of Belvedere currently operates its own sewage collection system and contracts with the District for treatment and discharge. Although the contract between the City and the District defines specific terms of service, residents of the City of Belvedere cannot be directly represented on the District's governing board. Annexation to San #5 would make Belvedere residents eligible to vote in District elections and to serve on the District's Board of Directors. The District would expand its present operations to include maintenance of the City's sewage collection system.

Plan for Providing Services

Under Government Code Section 56653, public agencies filing applications for changes to local government boundaries or organization must include a plan for providing service. The required plan for services includes:

1. An enumeration and description of the services to be extended to the affected territory.
2. The level and range of those services.

3. An indication of when those services can feasibly be extended to the affected territory.
4. An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
5. Information with respect to how those services will be financed.

The applicants' Plan for Providing Services (see application, attached) anticipates the extension of the full range of services provided by Sanitary District #5 to the City of Belvedere upon the proposed effective annexation date of July 1, 2005. The service to be extended is stated as "Standard sanitary sewer services compliant with all Regional Water Quality Control Board requirements and state and local health and safety codes and regulations consistent with the operation of collection and pumping facilities and infrastructure." No improvements or upgrading of existing sewer facilities will be required. The City of Belvedere will remain responsible for solid waste collection and disposal.

Due to the topography of the City 's territory, the age of the City's collection system and other factors, the costs of service in the City of Belvedere are higher than in the present territory of the District. In order to finance services provided by the District after annexation, the District will retain the City boundary as a separate rate zone within the District's jurisdiction. The District Board will annually evaluate the costs of operation within the zone "...and set rates based upon these financial evaluations consistent with state laws." The City Council must set a rate sufficient to pay operating costs for Fiscal Year 2005-06 prior to July 1, 2005 based on its report, *Financial Feasibility, Annexation of City of Belvedere's Sewer Service Area to Sanitary District No. 5*, Bartle Wells Associates, September 2004. Sewer service charges are included in property tax bills and collected by the County.

Financial Feasibility

Prior to initiation of annexation proceedings, the City and San #5 retained an engineering consultant to define the terms under which the proposed annexation would be feasible. Bartle Wells Associates completed *Financial Feasibility, Annexation of City of Belvedere's Sewer Service Area to Sanitary Distirct No. 5* in September 2004 (see Attachment A). The study concludes that annexation is financially feasible if the District defines and maintains the incorporated area of the City as a separate rate zone within the District and that sewer service charges within that rate zone are increased from the current \$700 per equivalent dwelling unit to \$890.

The \$890 rate will generate the required revenue to pay full costs of operation and debt service on outstanding City Certificates of Participation after annexation. Debt service for sewer improvements has previously been paid from the City's general revenues.

The feasibility analysis assumes no transfer of property tax revenues from the City to the District following annexation. Under current policies and practices of the County Auditor, no property taxes will be transferred pursuant to Sections 99 and 99.1 of the Revenue and Taxation Code unless the City seeks to transfer a share of its property tax base to the District. No such transfer has been sought.

It is important to point out that sewer service charges in both the City and the District will increase regardless of annexation. Increased costs are attributable to the District's capital improvement plan (which has included service to Belvedere), costs of compliance with new operating regulations, general inflation in the cost of public services and other factors. Required rates in the present San #5 service area are expected to rise by an average of 11% per year in the next five years. Required rate increases in the Belvedere service area are projected to rise an average of 2% per year in the five year period following annexation.

Terms and Conditions

Government Code Section 56886 provides LAFCO with the authority to attach a wide variety of terms and conditions to its approval of changes of local government organization. Such terms and conditions are often of vital importance to the orderly and equitable transfer of service responsibility inherent in the implementation of boundary changes. The staffs of the City of Belvedere and the Sanitary District #5 negotiated and jointly prepared a series of terms and conditions that specify actions for both agencies necessary to properly implement their Plan for Providing Services. Each agency has included the same list of 13 requested terms and conditions in its resolution of application. Several key terms and conditions are summarized and discussed below.

Condition 1. - Effective Date and Compliance:

The effective date of annexation shall be July 1, 2005 provided all terms and conditions below have been met to the satisfaction of the Agency and City by June 15, 2005.

The proposed effective date would coincide with the beginning of the next fiscal year, simplifying budgeting, accounting and other management tasks for both the City and the District. This condition also provides that "the Agency" - Sanitary District #5, and the City be satisfied with compliance with all terms and conditions on or before June 15, 2005. This condition would be clearer if it referred specifically to Sanitary District #5 and if it also provided for timely communication from Sanitary District #5 and the City of Belvedere to LAFCO staff on whether both parties were satisfied that all conditions had been met. Timely communication is needed to allow LAFCO staff to record a Certificate of Completion and make other filings prior to the requested effective date. (See Recommended Terms and Conditions, below.)

Condition 4. – Rate Zone:

District to establish separate billing zone for Belvedere collection system service operations

Maintaining Belvedere as a separate rate zone within San #5 after annexation will allow the District to equitably manage costs, revenues and reserves between two differing service areas. However, it is important for all parties to understand that terms and conditions attached by LAFCO are not enforceable after the completion of annexation proceedings. That is, terms and conditions of annexation can only be enforced by withholding completion of annexation proceedings if conditions are not met. LAFCO's terms and conditions cannot bind the future actions of another legislative body, such as the governing board of San #5. Though unenforceable, this term and condition should be included in any resolution of approval as requested by the applicants as an expression of agreement and intent of both agencies.

Conditions 5, 6, 8, 9, and 10 – Transfer of Assets and Liabilities

The City and District request a series of terms and conditions on the transfer of fund balances, real property, records, sewer improvements and contractual interests from the City to the District. Under condition #7, the City retains liability for collection system facilities and operations prior to the effective date of annexation and indemnifies the District against claims and damages stemming from operation of the City's sewer facilities. These terms and conditions represent agreement between the City and the District for the complete transfer of the City's responsibility for sewage collection to the District.

LAFCO staff proposes minor changes to the requested terms and conditions for clarity and effectiveness as listed in under Recommendations below.

Sphere of Influence

The Commission has not completed action on its review of the spheres of influence of sanitary districts in southern Marin County. Commission action awaits completion of the Southern Marin Sewer Service Alternatives Study, due later this Spring. However, LAFCO consultants working with the Sphere of Influence Committee selected alternatives for study that the current sphere of influence of San #5 does not include the City of Belvedere. Therefore, the Commission's approval of annexation of the City would necessarily be preceded by amendment of the District's sphere.

The needed amendment of the District's sphere of influence is justified by the existing service relationship between the District and the City. The District's provision of sewage treatment service to the City are included in the District's capital improvement plan. The District's management and operations capacity is well prepared to assume responsibility for maintenance of the City's collection system.

The only organizational alternative favoring retention of San #5's existing sphere excluding the City is the eventual establishment of San #5 as a subsidiary district of the Town of Tiburon. The Tiburon Town Council could become the governing board of San #5 as long as a minimum of 70% of the District's land and 70% of the District's registered voters lie within the boundary of the Town. However, under such a subsidiary district, the City of Belvedere would remain a contract customer of San #5 and the Town of Tiburon. Belvedere residents would remain lacking political accountability (and unable to participate in District elections) for its sewage treatment service.

The proposed annexation of the City by San #5 - as permitted by an amended sphere of influence - offers appropriate political representation of Belvedere residents on the governing board of San #5 plus marginal management and operating efficiencies of an enlarged service organization.

Other Commission Policies

Chapter III, Section 1.A. of the Commissions Policies, Procedures and Guidelines contains the following Agency Consolidation Policy:

- A. It is the intent of LAFCO to encourage the rationalization of local government organization through the elimination or consolidation of small, single purpose special districts. Wherever the full range of urban services is required, general-purpose governments are preferred to special districts for the provision of services.

It is the intent of LAFCO to strengthen the role of city governments in the provision of urban services. In the city-centered corridor of Marin County as designated in the Marin Countywide Plan, general-purpose governments are preferred over special districts for the provision of services. Where provision of a service by a general purpose local government is not practical, LAFCO favors the consolidation or reorganization of small, single purpose special districts when such consolidation can be shown to reduce aggregate costs of service and/or improve local government accountability.

LAFCO discourages the proliferation of local governmental agencies and the existence of overlapping public service responsibilities. LAFCO discourages the formation of new special districts where service can be provided by existing local government agencies.

The proposal under consideration would reduce the number of small, separate agencies providing sewer service in southern Marin County. The proposal would also remove the possibility for San #5 to be established as a subsidiary district of the Town of

Tiburon. In staff's view, the elimination of small sanitary districts in southern Marin is not practical given the small size of the four cities in the area and the poor geographical relationship of city boundaries to the areas served by the area's three treatment plants. Consolidation of San #5 through establishment of a subsidiary district in Tiburon would continue or exacerbate the present lack of political accountability for sewage treatment for Belvedere residents. Under these circumstances, amendment of the San #5 sphere of influence and annexation of Belvedere is the clearest path toward improving accountability for local services and conforming to the spirit of the Commission's adopted policy.

The proposal's consistency with the factors to be considered under Government Code Section 56668 and the Commission's adopted Policies, Procedures and Guidelines is summarized in Attachment B.

Environmental Review

This proposal is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15320 of the State CEQA Guidelines which provides exemption for changes in the organization or reorganization of local governmental agencies where the changes do not alter the geographical area in which previously existing powers are exercised.

Recommendation

The proposed annexation will create real improvement in the organizational structure of agencies providing sewer service in southern Marin. By jointly developing and filing this application, the governing boards of the District and the City have created an agreement for an orderly transfer of service based on a clear set of terms and conditions.

Staff recommends that the Commission approve the proposed amendment of the sphere of influence of Sanitary District #5 and the proposed annexation of the City of Belvedere to Sanitary District #5. These actions will improve overall efficiency and political accountability for sewer service in the City of Belvedere.

Recommended Commission Action, by Resolution:

1. Approve Draft Resolution 04-21 amending the sphere of influence of Sanitary District #5 to include the incorporated territory of the City of Belvedere.
2. Approve Draft Resolution 04-22 the proposed Annexation of the City of Belvedere to Sanitary District #5 subject to the following amended Terms and Conditions:

- a. The effective date of annexation shall be July 1, 2005 provided all terms and conditions below have been met to the satisfaction of Sanitary District #5 and the City of Belvedere by June 15, 2005. The managers of the City and District shall provide notification of satisfactory or unsatisfactory performance to the LAFCO Executive Officer no later than June 20, 2005.
- b. Annexation shall not result in expansion of the number of District Board Directors.
- c. The City of Belvedere shall adopt sewer service rates for fiscal 2005/2006 that shall comply with state law and shall provide for funding of all operational, capital and debt payment requirements for Fiscal Year 2005-06 not later than June 15, 2005. These rates shall not initially exceed those identified in the Bartle Wells Study attached to the LAFCO application and are to be not less than \$850 per year per equivalent dwelling unit nor more than \$900 per year per equivalent dwelling unit at the time of adoption.
- d. Sanitary District #5 shall establish separate billing zone for City of Belvedere collection system service operations.
- e. The City of Belvedere shall transfer \$750,000 fund balances associated with the City Sewer Enterprise Fund to District on July 1, 2005. All cash reserves and fund balances transferred shall be maintained for the sole benefit of the rate payers in the rate zone established pursuant to Condition 4 above. City shall have no rights or responsibilities to these funds subsequent to their transfer to District.
- f. The City of Belvedere shall transfer title and responsibilities for all easements, rights-of-way and fee title to District not later than June 1, 2005. City shall prepare a separate Inventory of Real Property Interests to be transferred no later than sixty (60) days following District's adoption of the Resolution of Application. All transfers shall be conditioned so that any fee title shall revert to City should the District declare the property surplus.
- g. The City of Belvedere shall retain full responsibility for all liability related to collection system facilities and operations prior to the effective date of the annexation (anticipated to be July 1, 2005). The City shall indemnify, defend and hold the District harmless against all claims and damages arising from the operation of the City's sewer system facilities prior to the effective date of the annexation.
- h. The City of Belvedere shall transfer all records, financial data, sewer user information, plans, drawings, legal documents, electronic documents and

- software related to the collection system operations, operational manuals, reports and files to District not later than June 1, 2005.
- i. The City of Belvedere shall transfer all infrastructure improvements, pipelines, manholes, pump stations, interceptors, force mains, appurtenances and any other facilities and improvements necessary to fully maintain and operate the collection system of City.
 - j. The City of Belvedere shall transfer to District all rights and obligations as contained in any wastewater contracts or agreements existing at the time of annexation after District review of these documents. Current contracts are limited to a maintenance agreement with the Central Marin Sanitation Agency and two (2) agreements for pipeline maintenance and wastewater treatment and disposal with Sanitary District #5.
 - k. The City of Belvedere shall notify Trust Agent for the 1996 Certificates of Participation of the new billing address for annual principal and interest payments subsequent to the effective date of the annexation. The City shall assign and the District shall accept all City rights and responsibilities under the certificates, including responsibility for the annual principal and interest payments required by the issue covenants.
 - l. Sanitary District #5 and the City of Belvedere shall share all outside annexation expenses equally. Each agency shall bear sole responsibility for its staff time and in-house costs for the annexation process. It is estimated that these total expenses will not exceed \$13,000.
 - m. Sanitary District #5 and the City of Belvedere shall negotiate and execute a full settlement to all billing claims prior to completion of annexation proceedings.
3. Direct staff to conduct protest proceedings pursuant to Government Code §57000 and in accordance with policies and procedures adopted by the Commission.

Respectfully submitted,

Peter V. Banning
Executive Officer