

ALTO SANITARY DISTRICT

P.O. BOX 163, MILL VALLEY, CA 94942; PHONE & FAX: (415) 388-3696

DIRECTORS

Stanley Bransgrove, President
Roger Gainer, Secretary Treasurer
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DISTRICT MANAGER

Bill Hansell

June 28, 2017

Mr. Jay Hamilton-Roth, Foreperson
2016-2017 Marin County Civil Grand Jury
3501 Civic Center Drive, Room 275
San Rafael, CA 94903

And

The Honorable Judge Kelly V. Simmons
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988

Dear Mr. Hamilton-Roth and Judge Simmons,

The Marin County Grand Jury has recommended that sewage agencies waive connection fees for affordable housing projects and/or have reduced user fees for affordable housing units.

Prior to any Board consideration on the merits of this issue, we have consulted with our legal counsel. Our counsel researched the issue and provided a written opinion. That opinion indicates that the issue of reduction of fees and/or waiver of connection fees is very problematic for a JPA sewage agency, sanitary district or county sanitation district. The problematic issues include: (1) a possible violation of the California Constitution's prohibition of a gift of public funds [Article XVI, Section 6]; and (2) whether opening the door to such reductions involves a violation of equal protection in the sense that other ratepayers might provide proof that they fall under the poverty level and should also be given reductions or waivers. In both situations (waiver of connection fees or waiver/reduction of user fees), this agency has no funding mechanism to recoup the loss of funds.

Our counsel recognized that other public agencies including, for example, the Marin County Community Development Agency, do provide fee waivers for affordable housing. However, the County's program recovers the fee waivers through a Housing Fund Trust that is funded by developer's affordable housing fees. In our counsel's opinion, such a program is not available or

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feasible for our public agency since we would not be a viable recipient of a Housing Fund Trust. This agency is governed by the Sanitary District Act of 1923 (California Health and Safety Code Sections 6400 et seq.). This Act does not provide any authority for the waiver of fees.

Should the Grand Jury provide competent legal authority for the waiver of connection fees by a sanitary district, this district will consider the authority and re-visit this issue.

Sincerely,



Stanley Bransgrove, President