

## RESPONSE TO GRAND JURY REPORT

Report Title: **Overcoming Barriers to Housing Affordability**

Report Date: **April 6, 2017**

Response Date: **July 12, 2017**

Agency Name: Las Gallinas Valley Sanitary District Agenda Date: June 26, 2017

Response by: Russ Greenfield Title: President, Board of Directors

### FINDINGS

- ◆ I (we) agree with the findings numbered: Not Applicable
- ◆ I (we) disagree *partially* with the findings numbered: Not Applicable
- ◆ I (we) disagree *wholly* with the findings numbered: Not Applicable

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

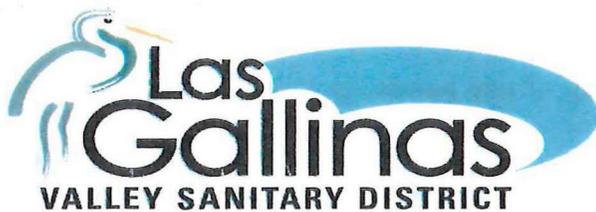
### RECOMMENDATIONS

- ◆ Recommendations numbered Not Applicable have been implemented.  
(Attach a summary describing the implemented actions.)
- ◆ Recommendations numbered Not Applicable have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- ◆ Recommendations numbered Not Applicable require further analysis.  
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- ◆ Recommendations numbered R5 (Low Income Housing) will not be implemented, because they are not warranted or are not reasonable.  
(Attach an explanation.) (*An explanation is provided in the attached letter.*)

Date: 6/26/17 Signed: Russ Greenfield

Number of pages attached 3





**DISTRICT BOARD**

Megan Clark  
Rabi Elias  
Russ Greenfield  
Craig K. Murray  
Judy Schriebman

**DISTRICT ADMINISTRATION**

Mark R. Williams,  
General Manager  
Michael Cortez,  
District Engineer  
Mel Liebmann,  
Plant Manager  
Susan McGuire,  
Administrative Services Manager  
Greg Pease,  
Collection System/Safety Manager

June 23, 2017

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

Jay Hamilton-Roth, Foreperson  
Marin County Grand Jury  
3501 Civic Center Drive, Room #275  
San Rafael, CA 94903

Re: Response to Recommendation R5, Grand Jury Report, "Overcoming Barriers to Housing Affordability"; Report dated April 6, 2017

Las Gallinas Valley Sanitary District ("District") as a utility providing sanitary services in and about San Rafael, California, is required to respond to recommendation:

R5 Each utility district should adopt waivers for hook-up fees for low-income housing projects and accessory dwelling units.

**Response**

The District views Recommendation R5 to provide two separate recommendations, to wit; (1) to adopt a waiver for hook-up fees for accessory dwelling units; and (2) to adopt a waiver for hook-up fees for low-income housing projects.

A. Pursuant to Penal Code section 933.05(b)(4), the District cannot agree to implement the recommendation to enact a waiver for "hook-up fees for low income housing" for the following reasons:

The District's ability to waive its "connection fees" must take into account the authority granted to the District under the Sanitary District Act of 1923 ("Act") (H&S Code §§ 6400 et seq.) and Article 13D of the California Constitution, otherwise generally referred to as Prop. 218<sup>1</sup> (which imposes restrictions and procedures on government agencies in assessing new taxes).

Health & Safety Code: While §6520.2 ("Requiring proportionate share of cost") and § 6520.5 ("Charges for services and facilities") allow the District to assess and collect fees for connection to the District's sewer lines, respectively, there is nothing in the "Act" that

allows for waiver of connection fees to a specific group of rate payers (in this case low income housing developers).

Art. 13D of the Cal. Constitution (Prop 218): First and foremost, the purpose of Proposition 218 was to limit local government's ability to impose real property assessments and was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges. *Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431.

If the costs for one user segment are waived, then those waived revenues must naturally be borne by other rate payers, essentially requiring those other rate payers to pay for more than the cost of their services. This is inconsistent with long standing California laws on local public agency service fees and charges. Without engaging in an elongated discussion of Prop 218/Art. 13D, suffice it to say that the District cannot impose on one set of its rate payers a rate increase directly related to recouping the resultant loss of connection fees from its waiver of connection fees for a low income housing development without following the procedures instituted by Prop. 218/Art. 13D.<sup>2</sup> The current rate payers would be bearing the burden of the increased costs (e.g. increased sewer flow, treatment costs and facilities costs) associated with the waiver of the connection fees.

Clearly, the added costs borne by the other rate payers would be for a service that is not actually used by or available to the rate payer. Even if the District were to forego the imposition of an increase in rates to cover the loss of connection fees for low income housing, there still would be an invisible but effective increase in rates as those costs would still be borne by the District and thus its rate payers.

In addition, any assessment on real property must be in proportion to the special benefit conferred on that property. *Bonander v. Town of Tiburon* (2009) 46 Cal.4th 646. Other than the public policy benefit to the remaining property owners/rate payers, there isn't any direct special benefit conferred on the other property owners.

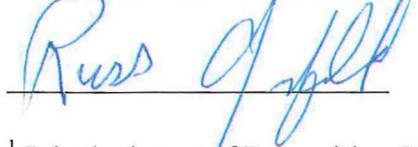
Separately, unlike some cities and counties, the District does not have a variety of revenue sources that it can legally direct to programs or purposes other than providing sanitary type services. By comparison, cities often have revenues from various sources such as parking fees, sales tax, business licenses, concessions, along with ad valorem taxes, that they can divert towards meeting their legal responsibilities to foster low-income housing. Las Gallinas Valley Sanitary District does not have such unrestricted revenue streams.

Therefore, while the District fully appreciates the value of this recommendation, it is not appropriate for a Sanitary District (a single purpose agency) to waive this fee when its sole function is to provide utility services based on fees and charges that cannot legally exceed the cost of providing that service.

Very truly yours,

Russ Greenfield  
President, Board of Directors

cc: LGVSD Board of Directors

A handwritten signature in blue ink, appearing to read "Russ Greenfield", is written over a horizontal line.

<sup>1</sup> It is the intent of Proposition 218 to ensure that all taxes and most charges on property owners are subject to voter approval. In addition, Proposition 218 seeks to curb some perceived abuses in the use of assessments and property-related fees, specifically the use of these revenue-raising tools to pay for general governmental services rather than property-related services.

<sup>2</sup> **“(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.** Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.” (Emphasis added) Cal. Const. art. 13D, § 6

