



**MINUTES**

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY  
MEETING OF THE BOARD OF DIRECTORS  
September 24, 2020– 2:00 p.m.  
Via Zoom Tele or Video Conference Only**

**Call to Order: 2:01PM**

**1. Call to Order/Roll Call**

Agency	Present	Absent	Agency	Present	Absent
Atherton	X		Menlo Park		X
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo	X	
Foster City	X		County of San Mateo	X	
Hillsborough	X		West Bay Sanitary District	X	

All Members and public participated by Zoom Video or Conference Call

**2. Public Comment**

Persons wishing to address the Board on matters NOT on the posted agenda may do so. Each speaker is limited to three minutes. If there are more than five individuals wishing to speak during public comment, the Chairman will draw five speaker cards from those submitted to speak during this time. The balance of the Public Comment speakers will be called upon at the end of the Board Meeting. If the item you are speaking on is not listed on the agenda, please be advised that the Board may briefly respond to statements made or questions posed as allowed under The Brown Act (Government Code Section 54954.2). The Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report and formal public discussion and input at that time. **Speakers may also submit comments via email prior to the meeting by sending those comments to [rethinker@rethinkwaste.org](mailto:rethinker@rethinkwaste.org)**

No public comments were made.

**3. Adjourn to Closed Session:**

- A. Pursuant to Government Code Section § 54957– Public Employee performance evaluation – Executive Director.
- B. Pursuant to Government Code § 54956.8 – Conference with Real Property Negotiators Property: 225 - 333 Shoreway Road, San Carlos, California 94070 Agency negotiator: Joe La Mariana, Executive Director. Negotiating parties: Recology San Mateo County and South Bayside Waste Management Authority Under negotiation: Price and terms of license

**4. Call to Order/Roll Call (Regular Session)**

**Call to Order: 2:25PM**

Agency	Present	Absent	Agency	Present	Absent
Atherton	X		Menlo Park		X
Belmont	X		Redwood City	X	

Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo	X	
Foster City	X		County of San Mateo	X	
Hillsborough	X		West Bay Sanitary District	X	

## 5. Public Comment

None

## 6. Executive Director's Report

Executive Director La Mariana gave the following updates:

- The Town of Atherton Council voted 4-0 on September 16 to proceed with their plan to exit. The next steps in the process are that Atherton proceeds to each of Member Agencies elected bodies for approval to exit the JPA by December 31. Atherton's Town Manager has expressed a sense of urgency to do this as soon as possible. Assuming at least 10 of the 12 Member Agencies vote to approve the exit then Atherton would pay the \$2.2M exit costs discussed at the August Board meeting. He noted that staff is working to assist Atherton's urgent need and has just finalized a model staff report and resolution that has gone to each of the City Managers for placement on Council agendas. Lastly, he noted that all parties intend to have a respectful and professional transition of services.
- There are 3 remaining key meetings in 2020 - (10/6) Finance Committee, (10/15) Joint Board/TAC Study Session, and (11/19) last regular Board meeting of the year. See agenda item 12E for the key agenda item topics at each meeting.
- The City of Palo Alto has issued an RFP for a portion of their mixed waste processing, but the SBWMA is not in a place to respond at this time, but he has asked Palo Alto to keep the SBWMA in mind for any future RFPs for processing, when we have all the operations up and running and history to be able to bid an appropriate cost, but at this time the costs are still unknown.
- On September 25, the entire SBWMA staff will be participating in an implicit bias training to discuss.
- He displayed the award RethinkWaste received at the Solid Waste Association of North America (SWANA) Northern California Chapter- the *2020 Public Agency of the Year Award*. The award was based on industry leadership and excellence in legislative advocacy, providing leading programs and policies, innovative operations, and environmental stewardship.

Executive Director La Mariana then gave a COVID update noting that both Recology and SBR have demonstrated extensive procedure and operating protocols to keep their employees safe. To date there has been one Recology employee positive COVID case and 3 positive cases at SBR. In both cases immediate measures were taken to quarantine. He acknowledged Recology and SBR for their efforts to keep their workforce safe and operations running.

Chair Benton saluted the team on the award of the 2020 Public Agency of the Year award.

Member Rak asked if there was any other action that needs to be taken by the SBWMA Board on the Atherton exit.

Executive Director La Mariana answered that there is no other action required by the SBWMA Board. Atherton needs 10 out of the 12 Member Agencies to vote in favor of their exit, and they have already voted, so once they get 9 additional votes they've satisfied that requirement then they pay the exit cost established by the Board in August and that is the final step.

Member Brownrigg asked for further information about the RFP that was issued that was not bid on.

Executive Director La Mariana noted the RFP was released and then he found out about it through a third party almost at the end of the reply period. As a public agency there is a formal review process, and the due date of the RFP didn't sync up with the opportunity to present it to the Board for consideration. Secondly, the Organics-to-Energy pilot has not been running long enough to have complete confidence in the numbers that the SBWMA would have submitted and then had to live with for the term of the contract. So, after consulting with the Executive Committee the SBWMA did not bid on the project.

Member Brownrigg commented that the Agency needs to think about how to be nimble and how to amortize costs over a larger service area, as a way to protect rate payers. He suggested staff look at process so it's not the system that is holding up the process of proposing in the future.

Chair Benton asked for further information in the written report about subsidy money, that the Agency wouldn't be ready to ask for in time for the grant deadline. And what would need to happen in order to be able to get that subsidy money.

Executive Director La Mariana noted that there is a grant subsidy available to convert a significant part of the Recology fleet to zero emission vehicles which right now is defined as electric vehicles. In this case there is PG&E and some others subsidy funds available, but the waste truck electric vehicle technology isn't there yet, for staff to be able to go through the evaluations process and make recommendations to the Board in order to apply for the subsidy.

Chair Benton reiterated Member Brownrigg's comment about being nimble and not letting the bureaucracy get in the way of being able to take advantage of subsidy money.

**7. Approval of Consent Calendar**

Consent Calendar item(s) are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Board, staff or public request specific items be removed for separate action. *Items removed from the Consent Calendar will be moved to the end of the agenda for separate discussion.*

- A. Approval of the Minutes from the August 20, 2020 Board of Directors Meeting
- B. Resolution Approving an Updated Conflict of Interest Code
- C. Resolution Approving a Contract Amendment in the amount of \$26,000 with S. Groner Associates for the Battery Outreach & Education
- D. Approval of Quarterly Investment Report for the Quarter ending June 30, 2020

Motion/Second: Brownrigg/Widmer

Roll Call Vote: 11-0-0-1

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton	X				Menlo Park				X
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto	X				San Mateo	X			
Foster City	X				County of San Mateo	X			
Hillsborough	X				West Bay Sanitary Dist.	X			

**8. Administration and Finance**

No Items

**9. Collection and Recycling Program Support and Compliance**

## A. Resolution Approving Recology San Mateo County's 2021 Compensation Application

Executive Director La Mariana noted the results of the annual rate survey are attached to the packet at agenda item 12A, and the member agencies' rates are very favorable. He noted that with the step up in the Recology contract in 2021 he expected the member agencies' rates to go up and be closer to the other rates in the attachment, but that the member agencies have been putting money in their rate stabilization funds in preparation for the 2021 step up so should be in good shape.

Staff Mangini gave a PowerPoint presentation noting that in past years the compensation has been based on a CPI adjustment, but this year the compensation is based on the base compensation that is in each member agency's amended and restated franchise agreements. He also noted that the recommended compensation \$65,774,515 is actually \$224,000 less than Recology's compensation application due to the route assessment period used. Originally Recology had used a route assessment period of February/March for the commercial line of business to calculate the service level adjustment, but because this time period was pre-lockdown, staff negotiated with Recology to use a time period of June/July as staff felt it was more representative of the go forward economic conditions.

Executive Director La Mariana noted that 1.3% for the Service Level Adjustment factor is very welcome news, and the increases are extremely close to what staff had projected last year.

Mike Kelly of Recology noted that on September 8, 2020 he sent a letter to Executive Director La Mariana identifying indirect costs currently allocated to Atherton including electricity, phone systems, maintenance, IT costs, mechanics, customer service representatives supervisors, managers etc. These are costs that remain at Recology if Atherton exits. He added that when Recology negotiated the amended and restated agreement the assumption was that 12 member agencies would share in these indirect costs. He also noted that the amount that the remaining agencies would share is approximately \$386,000 or 0.24%-0.54% of the total revenue requirement for the SBWMA. Recology believes that these indirect costs should be reallocated amongst the remaining member agencies.

Counsel Savaree noted she has looked at the contract and she doesn't believe it provides for other members to have contractual responsibility pick up these costs. It was an assumption that there would be 12 member agencies, but the parties went into the agreement knowing that if 8 of the member agencies approved the contract it would be operative. She added that there is no provision in the contract that requires Recology be made whole if one agency defaults or leaves the SBWMA.

The Board discussed the additional \$386,000 in indirect costs identified by Recology due to the Atherton Exit. Member Hurt asked why it was not included in the \$2.2M exit cost that was established at the August meeting.

Executive Director La Mariana explained that the discussion and approval of the costs determined for Atherton to exit on August 20, was identifying and capturing of all of the obligations the Town of Atherton had through December 31, 2020. After the August 20 meeting he was contacted by Recology on these ongoing and going forward costs that Recology had identified. He added that the attorney's office have reviewed the letter that is in the Board packet sent by Recology identifying these indirect costs and have determined that the franchise agreements between Recology and the remaining 11 member agencies don't bear these costs. So, each of the franchise agreements would need to be re-negotiated to reconsider these costs and modify and amend their franchise agreements. Based on that legal opinion it is staff's recommendation not to include the \$386,000 indirect costs in this compensation adjustment approval, so they are not included in the number presented.

Chair Benton asked for confirmation that the SBWMA is not required to allocate this \$386,000 because it is not in each member agency's individual franchise agreement.

Counsel Savaree confirmed that Chair Benton was right, and also responded to Board Member Hurt's question noting that the calculation of all amounts due as part of Atherton's exit was looked about by HF&H Consultants and they didn't identify this as a cost that anybody should be responsible for because the contract doesn't provide for that. When the SBWMA received this letter identifying the \$386,000 in costs from Recology she again looked at the contract provisions, and there is no provision in the contract that would require that any of the Member Agencies pick up this obligation of a departing member.

Member Brownrigg commented that Recology amortizes costs over 12 agencies and now one of those agencies is leaving so it seemed right to him that the remaining 11 agencies shoulder those costs whether or not the contract is written in a different way. He thought Recology's request was reasonable.

Member Mahanoupour asked if the Board would be voting on the \$386,000 that is in dispute today.

Member Widmer commented that this is not a dispute with Atherton, it's a dispute with Recology.

Chair Benton added that it is not being voted on today and has not been included in the compensation adjustment and review staff has prepared.

Member Groom noted that the County staff has been working with SBWMA staff on a disagreement on the CFA charge. And asked if that would be resolved with the County's staff.

Executive Director La Mariana answered that staff is working with the county to get the issue resolved, but that he didn't find out about it until yesterday, so it is not resolved yet.

Member Groom noted she would abstain from the vote.

Chair Benton asked how the approved compensation would change as a result of discussions like this that are still ongoing. He wondered if the board's approval would be only for the total dollar amount and if the allocation to each member agency was still to be determined.

Counsel Savaree answered that the Board is approving the total compensation number that is then allocated out to each member agency based on the formula that is in the franchise agreements.

Counsel Borger clarified that approval of the compensation application is an approval of the total compensation to Recology and each individual member's compensation allocation amount as well. She noted that the approval could be made subject to the adjustment of getting the County's calculation corrected.

Chair Benton asked how Atherton's exit would play into the compensation language.

Staff Mangini noted that there is language in the staff report, but not the resolution itself stating that if Atherton exits the compensation would be reduced to \$64,161,753 without the need for further action by the Board.

Counsel Borger noted that the reduction in Recology's compensation should Atherton exit would happen automatically through the contract.

Member Hurt asked if the TAC recommended the details in the report for approval.

Executive Director La Mariana answered that it was presented as an informational discussion item to the TAC not an approval item, there was no formal action.

Member Hurt asked for further details on the 3<sup>rd</sup> party audit.

Staff Mangini answered that the audit verified the 2019 revenue reconciliation, and they verified all the numbers to make sure that the calculated surplus/shortfall from each member agency is accurate. The numbers verified for accuracy in the audit report include: revenue generated from the member agencies, compensation due to Recology, disposal tip fees charged, and agency fees applied to the revenue that goes back to the member agencies.

Mike Kelly confirmed that the audit teams certify that the systems Recology uses to verify the stats used in the compensation application operate as Recology describes them too.

Member Hurt commented that Belmont has different methodology and calculations so, therefore, table 8 doesn't accurately express what is happening in Belmont, so that by voting yes on this item she would be agreeing that those numbers are correct. This Table 8 notes that Belmont has a shortfall, when they never have. She noted she would abstain from approving the compensation application.

Executive Director noted that he has been in touch with senior staff at Belmont since he found out about the issue yesterday, and assured her that SBWMA staff would work with Belmont staff on a resolution on how the numbers are displayed.

Member Brownrigg commented that he thought it would be impossible to vote on the specific allocation numbers to each member agency given the issues with Belmont and the County and he didn't feel comfortable voting with so much uncertainty. He added he could vote for a gross number subject to a future vote on allocations.

Member Mahahpour, Member Rak and Member Aguirre commented that they felt uncomfortable and asked for further time to review.

Executive Director La Mariana noted that there is a contractual obligation to have this approved by October 1, which ties into the agency's prop 218 notices.

Counsel Savaree noted that the contract does say October 1, but if staff could get the information to address the Board's concerns and reconvene the Board as soon as possible on this issue staff should honor those requests.

Member Rak made a motion to table this to a future meeting.

Member Bonilla seconded the motion.

Roll Call vote:9-0-1-2

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton			X		Menlo Park				X
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo	X			
Foster City	X				County of San Mateo	X			
Hillsborough	X				West Bay Sanitary Dist.	X			

Chair Benton asked for further board direction to staff on how to manage Recology's request for an additional \$386,000 in costs.

Member Bonilla commented that it gives him pause about considering the exit of Atherton, noting that it is a reason to look closer at the liability to the remaining agencies on an ongoing basis. He did not think it was fair that Recology should be expected to eat the difference.

Member Hurt agreed with Member Bonilla reminding the Board that she voted no on the staff recommended dollar amount for Atherton’s exit, with her main concern that all of the costs weren’t being covered. So, she was concerned about how to handle this moving forward and who should take responsibility for the very large number.

Member Widmer commented that Atherton made it clear that they were looking into exiting over a year ago, indirect costs can be cut, but they chose to leave them in and bring them up at the last minute. Atherton will get no benefit from the indirect costs noting that asking Atherton to pay for future indirect costs is not going to be well accepted and is not fair.

Chair Benton directed staff and Atherton to think this issue through and come up with a solution.

**10. Shoreway Operations and Contract Management**

**A. Resolution Approving South Bay Recycling’s 2021 Compensation Application**

Staff Gans gave an overview of this item noting that all the services and costs in the agreement are on a per ton basis, so SBR’s agreement is a more straightforward agreement, if the tonnage goes down the SBWMA isn’t obligated to pay for the reduction in tonnage. He noted that there is a 6.2% decrease in compensation year over year - a \$1,219,108 from 2020 - for a total estimated compensation amount in 2021 of \$18,565,479. He added that there are two main reasons for the decrease. One, a passthrough cost of \$846,000 related to the closure of the buyback center, which closed because the CalRecycle California refund value (CRV) program isn’t working very well, which caused a lot of buyback centers to close, and in turn drove a lot of traffic to Shoreway and caused unsafe traffic conditions, so the decision was made to close the Buyback center permanently. Two, fuel costs are decreasing by 16% and making a 5% decrease in transportation costs.

Motion/Second: Dehn/Rak

Roll Call Vote: 10-0-0-2

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton	X				Menlo Park				X
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo	X			
Foster City	X				County of San Mateo	X			
Hillsborough	X				West Bay Sanitary Dist.	X			

**B. Resolution Approving the Use of Shoreway Sewer Line for Discharge of Landfill Leachate by BFI’s Ox Mountain Landfill (Half Moon Bay) Facility**

Staff Gans introduced the item, noting that it got pulled from consent at the last meeting and asked to go straight to discussion.

Member Widmer asked if the pipeline is sound, and which party is responsible if the pipeline is not sound.

Staff Gans answered that in the license agreement specifically notes that BFI Republic Services assumes all risk and liability and agrees to indemnify the SBWMA for all costs and damages.

Member Rak noted that the staff reporting mentions a \$10,000 loss, and if that is the case why is the SBWMA absorbing those costs.

Staff Gans answered that the \$10,000 in the staff report is an estimated cost for staff time and other costs they owe to the SBWMA.

Member Hurt asked if this process would bump up allowable emissions.

Staff Gans answered that he didn't think that it would have any impact of the facility's air emission, and the process would fall under Silicon Valley Clean Water's air permit.

Motion/Second: Hurt/Bonilla

Roll Call Vote: 10-0-0-2

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton	X				Menlo Park				X
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo	X			
Foster City	X				County of San Mateo	X			
Hillsborough	X				West Bay Sanitary Dist.	X			

C. Resolution Approving Transfer Station Tunnel Pump Replacement Project

Staff Gans noted that the staff report is very straightforward on this item. There are large pumps that lift storm water as well as processed water that accumulates in the transfer station tunnels. The tunnels sit below grade and below ground water, so there is also ground water in the tunnel. The pumps lift that water out of the tunnel and into the sewer. The pumps are worn out and need to be replaced before the rainy season.

Motion/Second: Bonilla/Groom

Roll Call Vote: 10-0-0-2

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton	X				Menlo Park				X
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto				X	San Mateo	X			
Foster City	X				County of San Mateo	X			
Hillsborough	X				West Bay Sanitary Dist.	X			

D. Discussion on SBR's notice to furlough 5 employees

Member Bonilla gave the highlighted overview of the letter he sent to the Board. He noted that there is mandatory overtime due to short staff and commented that there shouldn't be reductions in staff if there is a need for overtime and recommended stop the overtime and keep the furloughed workers on staff. He also noted that the workers are needed on the floor to keep everyone safe. He noted that more businesses are going to be opening up and tonnage is trending back upward.

Chair Benton reminded the Board that SBR is the employer who has a labor agreement with the union, and this issue is between the union and SBR and he didn't see a role for the Board to play in this decision.



Executive Director La Mariana noted that staff was asked to research the contractual elements of this issue, and based on the language in the operations agreement, and the tons that have dropped over a 6-month period, per section 15.11 of the contract, SBR is contractually entitled to make this decision.

Member Hurt asked how many people have been furloughed since shelter in place.

Dwight Herring of SBR answered that none have been furloughed so far, but tonnage is decreasing year over year and has not recovered to pre-COVID volumes. He added that when he projects the current volume out and averages it out, SBR is under the annual average set forth in the operating agreement.

Member Hurt asked how much savings there would be after furloughing the 5 employees.

Dwight Herring answered about \$700,000 per year.

Member Widmer commented that he went back and looked at SBR's reports and can see that the tonnage actually is decreasing. He noted a time when Member Bonilla pointed out to the Board that it is the Executive Director's decision to make management decisions about the SBWMA, and this is a similar issue regarding a subcontractor. He agreed with chair Benton that this isn't SBWMA business and the Board has no input, it's between SBR and their team and they should just be advising the Executive Director.

Member Rak commented that he was concerned that SBR was making hasty actions given that things seem to be coming back, he understood the Board has no role in this, but he thought it would be better to wait and see if the tonnage increases now that things are opening back up, and he thought it was premature action by SBR.

There were 3 public comments: Robert Sandavol from Teamsters Local 35; Brian Marshall, a 30 year plus employee at Shoreway currently working as a Recology Shop Steward; and Joseph Gomes, a 33-year transfer station employee. All spoke about safety as their main concern regarding the proposed furlough, and the mandatory overtime as a reason not to furlough.

Member Rak asked Dwight Herring to address safety concerns and the mandatory overtime.

Dwight Herring noted that SBR is a 7-day operation, and they count their employees as a full time equivalent. There is overtime on Saturday and Sunday that is posted and employees sign up for it, there isn't typically weekend work in the MRF, but the transfer station does run 7 days a week. Regarding spotters, they are retaining door and gate spotters, and they don't want to compromise on safety. When there were 400,000 tons a year coming into the transfer station there were mid-floor spotters. However currently there has been a 16% reduction in inbound tonnage from the prior year, and there is not a need for some of these positions due to the volume. Obviously, our volume is based on inbound tonnage and with the tonnage being down the revenue is down, so it was a business decision to reduce staffing.

Member Hurt asked that SBR be thoughtful about keeping folks on, and the safety of operations, and she would like to see how SBR can keep these employees on.

Member Bonilla asked SBR to take the concerns raised today by some of the SBWMA Board to the SBR Board and ask them to reconsider. He asked that the Board vote on his suggestion of taking the concerns raised today to the SBR Board.

Counsel Savaree noted that the position of the Board Members who stated one could be shared, but the remainder of the Board has not shared any opinion. So, staff can share the opinion of those Board Members with SBR.

Member Bonilla asked to see a tonnage trend report for further study.

Member Benton commented that he didn't think the SBWMA Board was in a position to tell SBR what to do with respect with how they manage their employees, as long as it's in line with the contract. SBR would just advise the SBWMA on such matters. He added that was not prepared to cross that line and tell SBR how to manage their employees.

Member Aguirre thanked the union members who came forward today and thanked them for their service. She hoped their testimony would give SBR cause to look at the work they do, and the value they bring to RethinkWaste as well as SBR.

Member Bonilla asked Dwight to comment on whether he would bring this back to the SBR board and ask them to review it.

Dwight Herring answered yes, he would review this with his Board and if tonnage increases as businesses come back and they are meeting or exceeding the base set forth in the operating agreement they will take a look to bring staff back. He would report back to the SBWMA through the Executive Director with the SBR board's reaction to these comments.

Chair Benton directed Executive Director La Mariana to share the SBR board's reaction to these comments with the SBWMA Board.

- E. Shoreway Environmental Center Project Update: MRF Phase I, Organics-to-Energy and Storm Water Repairs

This item was tabled to the next Board Meeting.

#### **11. Public Education and Outreach**

- A. Resolution Approving the 2021-2023 Public Education Plan

This item was tabled to the next Board Meeting.

#### **12. Informational Items Only (no action required)**

- A. 2019 Rate Survey Data
- B. 2020 Legislative Session Update
- C. 2020 Finance and Rate Setting Calendar
- D. Check Register Detail for July and August 2020
- E. Potential Future Board Agenda Items

#### **13. Board Member Comments**

Chair Benton noted that this would likely lead to an additional special meeting before the November Board Meeting.

#### **14. Adjourn 4:32PM**