



**MINUTES**

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY  
 MEETING OF THE BOARD OF DIRECTORS  
 November 19, 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).**

None

**3. Adjourn to Closed Session**

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code Section 54957)

title: Executive Director

CONFERENCE WITH LABOR NEGOTIATOR (Government Code Section §54957.6); Agency Designated

Representative: Jean B. Savaree; Unrepresented Employee: Executive Director

**THE REGULAR PORTION OF THE MEETING IS EXPECTED TO BEGIN AT APPROXIMATELY 2:30PM**

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

Call To Order: 2:29PM

Agency	Present	Absent	Agency	Present	Absent
Atherton	X		Menlo Park	X	
Belmont	X	X (3:58PM)	Redwood City	X	
Burlingame	X	X (4:33PM)	San Carlos	X	X (2:59PM)
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 (Public Session)

Doug Silverstein an environment & sustainability nonprofit leader at Thrive Alliance of San Mateo County, and the leader of a new single use plastics reduction alliance called Circular SMC. The alliance would like to partner with RethinkWaste and other community private and public partners to find viable long-term source reduction solutions at food businesses, cafes, retail stores and effect policy change that can drive out single use plastics in the form of bans on disposables and incentives for reusables product packagers. Further information on Circular SMC was emailed to Board Members by Doug Silverstein after the meeting.

## 6. Executive Director's Report

Executive Director La Mariana gave the following updates:

- He noted that the SBWMA leadership will shift since Chair Benton would be stepping out of public service in December. Vice Chair Aguirre will become Interim Chair at that time, until the January Board Meeting when a Chair and Vice Chair will be elected by the Board.
- In this packet there is a list of 2021 Board meetings, as well as other committee meetings.
- In the spring of 2021, there will be two proposed member agency elected body approvals. One is the approval of JPA amendments including changes to the purchasing policy that would align the JPA's policy with the County's policy and would allow staff some more flexibility when dealing with projects. He noted that, should this be approved, the Executive Director's purchasing authority would be increased to \$75,000 and up to \$100,000 with Executive Committee approval. The second would be a member agency level decision regarding amendment one to the franchise agreements, currently Recology has exceeded the number of bulky item collection requests they can provide in the allotted 10 day time frame, so it will be coming back to the Board for a decision.
- He gave an update that 9 out of 11 agencies have approved Atherton's exit from the JPA, San Carlos has this item on their agenda on Monday, and staff has been working with KNN to handle Atherton's defeasance payment and plan that it would be completely funded by December 10.

Member Bonilla noted that he went to the transfer station this morning, and that there were only 2 men working there. He talked to one of the two workers who was separating things out for recycling, and the worker noted that the forklift was broken and they didn't have a hand truck big enough to move a refrigerator that had been dropped off, so it might end up in the landfill. Member Bonilla noticed many things in the transfer station pile that should have gone to recycling, and that one person isn't enough to separate recycling from the landfill pile. When he asked the SBR staff about the situation he replied that they don't have enough staff do it properly. Member Bonilla noted that it is part of SBR's agreement that they are supposed to separate and recycle the materials that are recyclable, so he wanted to know why there wasn't enough staff to fulfill that requirement.

Executive Director La Mariana noted that in the interest of time staff would investigate with SBR and report back at the next Board meeting.

Member Rak added that he visited the transfer station last weekend and found it difficult to park because the waste hadn't been pushed back, and he ended up blocking the door, and it seemed very unsafe. He asked that staff look into his and Member Bonilla's concerns especially from a safety perspective.

**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 September 24, Board of Directors Meeting
- B. Approval of the Minutes from the October 15 Special Board Meeting and Board/TAC Study Session
- C. Approval of 2021 Board Meeting Calendar
- D. Resolution Approving a 2-Year Contract with Environmental and Energy Consulting (EEC) for 2021-2022 Legislative Advocacy Programs
- E. Consideration of Six-Month Extension of License Agreement with Recology San Mateo County for Use of a Portion of SBWMA's Shoreway Environmental Center
- F. Resolution Approving a Not-to-Exceed Expenditure of \$198,983 for the MRF OCC Screen Refurbishment
- G. Approval of Quarterly Investment Report for Quarter ending September 30, 2020

Motion/Second: Hurt/Dehn

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**

- A. Hearing Pursuant to Section 7.11.D of the Agreement for Operation of the Shoreway Recycling and Disposal Center to Consider South Bay Recycling's Request for a Compensation Adjustment for Special Circumstances

Counsel Savaree gave an overview of the two requests from SBR for annual compensation adjustments. The first request is that their compensation adjustment be based on changes in law made by the People's Republic of China to their standards for acceptable recyclable material which is referred to as the National Sword Policy (National Sword). The second request is based on SBWMA's closure of the buyback center. Both requests were presented in writing to the SBWMA on February 12, 2020 and were presented to Finance Committee on May 12 as an informational item. She noted that only these two requests were before the Board today, and that in the November 10 submittal by SBR there are two other items mentioned, but those have not been vetted by the Finance Committee nor have they been determined by the Executive Director. She then went over the process, where there would be a staff report, followed by SBR's presentation, followed by public comment. At which point the Board would deliberate and take action on two separate resolutions one for each of the two requests. She added that the requests come to the Board under section 7.11 of the Operations Agreement contract, which does provide for SBR to make requests for compensation adjustments if they are qualifying

special circumstances, and the contract calls out specifically what those circumstances are, and that those qualifying circumstances increase the cost to SBR in the proceeding rate year. She added that it is SBR's burden to establish with substantial evidence that their request is provided for under the contract and appropriate.

She then talked about their first request National Sword, noting that in 2018 The People's Republic of China adopted some regulations which changed the landscape of recyclables and disposal of recyclable materials by first banning plastics and then changing the allowable contamination for mixed paper which closed the market in China. As a result, SBR contends that their costs for labor, transportation and disposal increased by \$352,000 a year and that their revenue from these products decreased from \$1.2M to \$308,000 per year. So they are requesting that the SBWMA compensate them an additional \$1.64M per year. She added that Executive Director La Mariana looked at this request, and there were two meetings with SBR to discuss it, and then issued a letter to SBR denying this request. The reason the request was denied was because in the SBR agreement the definition of applicable law is defined as any federal, state, local law, regulation, rule, order, decree, permit, approval or any requirements of any governmental agency having jurisdiction over the processing, transfer and disposal of recyclables. She added that it's SBR's contention that they are still entitled to this because China as another governmental agency with jurisdiction over the processing, disposal and transfer of recyclables. Staff disagrees with that perspective, China has no jurisdiction on any agency within the United States, and for that reason staff does not believe that this is a qualifying event under the contract with SBR and therefore recommends denying this request.

Executive Director Joe La Mariana then gave the background and overview of SBR's second request in which they are seeking additional compensation related to the closure of the buyback center. He noted that staff's recommendation is to approve this request, because in August of 2019, there was an abrupt and dramatic change in the marketplace that resulted in numerous local buyback centers closing, and as a result those that remained open were completely overwhelmed with buyback center transaction requests. He made the emergency executive decision to temporarily close the buyback center, and eventual permanent closure of the buyback center. He added that after reviewing SBR's request staff believes that SBR is entitled to a compensation adjustment for a portion of the lost revenue that occurred as a result of the closure. Staff Mangini explained that SBR's request is that the revenue guarantee be lowered by \$864,800 which is generally the amount that would be received from the buyback center each year. SBR earns 25% of the commodity revenue after the commodity revenue guarantee is achieved, so by lowering the revenue guarantee by \$864,800. SBR begins earning revenue earlier. The cost to the agency is 25% of \$864,000 or \$216,000 on an annual basis. He then noted that the retroactive cost to the Agency to the time the buyback center closed in 2019 would be \$79,000 in 2019, and \$216,000 for 2020 and moving forward. He added that this number was included in the 2021 budget but was not included in the 2020 or 2019 budgets and would therefore be an unbudgeted impact to the SBWMA.

Member Rak noted that he was comfortable with staff's recommendations on this issue. He asked if there were any job shifts or layoffs related to this change.

Member Widmer commented that he thought that the SBWMA had done a good job of trying to partner with them in response to China's law change, providing a share in costs of extra sort labor, and well as MRF upgrades to make a cleaner more marketable product.

Counsel Savaree confirmed that the SBWMA has picked up some of the labor costs that SBR has incurred at a bit over \$900,000 to date.

Dan Domonoske presented SBR’s appeal to the Board. He first noted that workers in the buyback center were re-assigned and there was no job loss related to the closure. He also noted that cost-sharing does cover a part of the labor costs they’ve incurred due to National Sword, and the request for \$1.6M is the amount that goes beyond that. He also clarified that China has banned mixed paper and mixed plastics, and the .5% of contamination restriction is for all recyclables going into China including cardboard which essentially resulted in being a ban which has impacted every MRF in the United States, especially California. He noted that SBR operates under 4 principles, 1) safety, 2) regulatory compliance, 3) contract compliance with the operating agreement, and 4) contract compliance with collective bargaining agreements. He noted that the 3 page letter included in the Board packet makes it is clear that SBR is recognized as a great facility operator, who has gone and continues to go above and beyond to meet the needs of the Board. He added that SBR isn’t making any money, and this is not about trying to maximize profits, they are trying to recover some of their losses. The National Sword was unparalleled, unexpected and unusual, and the attorneys from SBR and the SBWMA have a differing opinion about the laws, and the meanings of those laws. So rather than appealing to the legal justifications for the request, he asked the Board to think about what is reasonable, fair, just and fair. He added that there are a lot of municipalities including JPAs throughout California who have essentially looked at their MRF operator and compensated them for costs that are beyond their control. He concluded by noting that SBR believes their request is both reasonable and fair, and that is not about SBR trying to make more money, we are here to deliver the services you require, and would appreciated the Board’s consideration of not having SBR be in the uncomfortable position financially for things that are beyond their control.

Chair Benton requested that the Board look at the two issues separately, first, National Sword.

Member Brownrigg commented that he was interested in getting Chair Benton’s opinion on the matter and asked if the contract had any kind of force majeure provision.

Counsel Savaree answered that yes the contract does have a force majeure, but that it doesn’t change legal counsel’s opinion on this question, because China is a market not a regulator so it doesn’t meet the conditions for force majeure.

Chair Benton answered that he has read the contract and read Counsel’s write up citing provisions in the contract, so from a purely legal standpoint he had no dispute with staff’s recommendation. From a human interest side there is the desire to maintain a good relationship with an important contractor who has performed well, but he thought it would present other issues if allocations were made outside of the contract, and he didn’t think the Board should do that, so he supported staff’s recommendation.

Motion/Second: Widmer/Brownrigg

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			

Chair Benton thanked SBR for all the work that they’ve done to trying and mitigate the problems. He added that he’d like to think the Agency is trying to assist through capital investment in the MRF that will benefit SBR going forward. He then moved on to the second decision item, the buyback center compensation adjustment request. He reiterated that staff agrees with SBR’s request to the reduce the revenue guarantee share by \$864,000, which would reduce income to the SBWMA by 25% of that number \$216,200.

Member Hurt asked where are funds coming from to pay this additional cost.

Staff Mangini answered they are in the process of auditing the FY20 financials and if possible, he would like to get the cost for 2019 and 2020 into that year as unbudgeted expenses for a total of \$295,000. Going forward 2021 and beyond the amount is budgeted as a reduction of revenue.

Chair Benton reiterated Member Rak's question regarding what happened to the staff at the buyback center.

Dwight Herring answered the employees were re-assigned to other parts of the operation and their wages were red circled at the rate they were making while working in the buyback center which is higher than the rate where they are working now.

Motion/Second: Bonilla/Hurt

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 SBWMA's SB1383 Action Plan

Rob Hilton gave a PowerPoint presentation on the SBWMA's proposed SB1383 Compliance Plan, key issues, next steps, and timeline. He noted that the SBWMA now has 13 months to implement the plan to be in compliance by January of 2022.

Chair Benton asked how the decision was made regarding compliance responsibilities that fall to the member agencies and responsibilities that fall to the SBWMA, and how do we prevent duplicative work at the two.

Rob Hilton answered that close coordination with the TAC, and increased meetings with the TAC to manage that coordination. In certain cases, there is support and technical assistance that the SBWMA can provide, but building counter, and purchasing activities that have to be done at the member agency level.

Chair Benton expressed concern that smaller communities would be taking on disproportionate overhead costs for any of the compliance activities that the SBWMA takes on, because those costs would be evenly spread using formulas that have been used for years, which means some agencies will be paying for services they don't need or don't need as much of, and he wanted to make sure the SBWMA didn't take on things that could just as easily be done at the member agency level.

Executive Director La Mariana answered that HF&H essentially performed a gap analysis by taking a look at the SBWMA's resources, versus what the law requires and identified the gaps, and those gaps come to you in the form of a compliance plan to hopefully be approved today. Over the next year, as staff begins implementing the compliance plan the tasks that are better suited at the member agency level versus the SBWMA level as well as the tasks that fall to the hauling partner Recology, will be identified. That means identifying a scope of work, modifying the franchise agreements so that Recology can be responsible for their portion of the law and compensated for it.

Chair Benton clarified that the approval today was just for the plan, and expenditures related to implementing the plan would come as a separate approval.

Executive Director La Mariana answered that the plan itself is step one to be approved with this item. Step 2 is to approve the budget which is the next item and has a \$927,000 line item for expenses projected for year one implementation of the compliance plan. As well as adding a new Program Manager II level position that would be directly responsible for implementing the compliance plan. This proposed position and these implementation costs have been included in the SBWMA’s proposed FY 2021 Budget (see action item “C” below)

Motion/Second: Bonilla/Carlton

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			

**C. Resolution Approving the FINAL CY 2021 SBWMA Operating Budget and Capital Improvement Plan**

Staff Mangini gave a PowerPoint presentation highlighting the changes between the draft budget presented in October joint Board/TAC Budget study session and this final budget. He also noted that the reserve balances were not presented in the draft budget but are in the staff report. They are about \$16.2M which is consistent with last 3 budget cycle actuals.

Chair Benton reminded the Board that this is the first time they are being asked to approve a calendar year budget.

Motion/Second: Hurt/Groom

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			

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

**A. Resolution Approving the 2021-2023 Public Education Plan (Continued from the September 24 Board Meeting)**

Staff Au presented the 2021-2023 Public Education and Technical Assistance Plan and gave an overview of the staff report. She thanked the Public Education Committee and Recology for contributing to the creation of the plan.

Chair Benton thanked Staff Au for her work on the plan and noted that one of the backbones of this agency is to educate the public on recycling diversion and now SB1383. He also thanked the education team for being creative and shifting to virtual tours.

Motion/Second: Dehn/Brownrigg

Roll Call Vote: 8-0-1-3

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			

## 10. Shoreway Operations and Contract Management

### A. Discussion on Recology Fleet Fueling and Shoreway Facility Needs Assessment

Staff Southworth gave a PowerPoint presentation on collection fleet options for zero emission vehicles which will be required by the California Air Resources Board (CARB) by 2026

Executive Director La Mariana noted that in terms of the collection vehicles, the ZEV technology is not quite there yet, and they are considerably more expensive and less productive than their diesel counterparts. So the next steps will focus on the support vehicles not the collection vehicles of which there are about 15, and if the collection vehicle pilot in the spring of 2022 pans out staff will make recommendations accordingly.

Chair Benton asked when this would become an action item.

Executive Director La Mariana answered that the first decision is anticipated to be in the spring (2021) with the PG&E subsidy, which may or may not be an option for us depending on the collection vehicle technology options.

Member Carlton commented that Peninsula Clean Energy also has a grant program available for this purpose as well and encouraged staff to explore that option.

### B. Shoreway Environmental Center Project Update: MRF Phase I; Organics to Energy, Storm Water Repairs

Staff Gans gave an overview of the PowerPoint presentation in the packet but didn't give the presentation due to time. He noted that in addition to the EV fleet assessment staff is looking at regulatory impacts to the site of SB1383, and the Bay Area Air Quality Management District (BAAQMD) Regulation 13-2. Regulation 13-2 is an air emission control rule in development that may require air control mechanisms to be installed at the transfer station and the MRF. He noted that the site is very constrained at this point, and more than two or three trucks could not be added without bumping out cars and parking. Executive Director La Mariana is working with the County to potentially access undeveloped land at the San Carlos airport which has adjacent vacant land as an option for additional space.

He gave an update on current projects noting that the Phase I MRF project upgrades are installed, which provide better battery recovery and reduction of fires, and improves the quality of material of recyclables. There has been a 20% increase in MRF productivity, and there should also be a reduced sorting expense which translates into a reduced processing cost per ton. The upgrade also makes it possible to sort solid waste at the MRF, which ties to the Organics to Energy (O2E) project. He reiterated that the O2E pilot has not been able to start yet, which has been installed since February, because there aren't enough Source Separated Organics (SSO) tons due to COVID arriving to justify running the equipment. So, to supplement the SSO they are receiving they will be adding green cart organics after being sorted at the MRF to the smaller SSO streams and will be doing

test runs in January. He noted that running the pilot is very important in collecting data and cost information needed to determine SB1383 compliance costs.

Chair Benton complimented Staff Gans no small accomplishment during COVID of getting two major capital projects completed. The O2E project is to a point where it is just waiting for material, and now upgrading the MRF. He noted that they are up and running on budget and on time.

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

No Items

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

- A. 2020 Finance and Rate Setting Calendar
- B. Check Register Detail for September and October 2020
- C. Technical Consulting Contracts Update July – October 2020
- D. 2021 Meeting Planning Guide

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

Member Bonilla expressed some concerns regarding safety at the Shoreway facility, during a recent visit he saw the possibility the people dropping off at the transfer station, and workers, the possibility to step on boards with nails, slip on wet floors etc. He noted that section 11.0.02 of the operations agreement, explicitly address and provides remedies for safety. He asked if someone gets hurt, who is responsible, and are there safety inspections. If so, are they announced, how often are they happening and are the reports available to the public. He also noted that he saw a lot of recycling items being dropped off at the transfer station side, and wondered how to get the recycling out of the transfer station, only one side of the transfer station was open, there was not enough space for cars, and only one worker available to remove items. He attributed his long wait, only one side of the transfer station being open, and one worker to remove recyclable items to the decreased personnel, and asked staff to look into this, report back and provide resolutions.

Member Carlton commented that she has been on the Board since 2013, and this is her last meeting, and thanked her fellow Board Members and staff and noted that she has enjoyed her time on the Board.

Member Mahanpour noted that this was also her last meeting on the Board and thanked everyone for the great year. She thanked Executive Director La Mariana and Counsel Savaree for helping her to get on board at the SBWMA.

Chair Benton also noted that this was his final board meeting, noting that it has been his honor to lead the board for the last two years, and thanked Vice Chair Aguirre for her strong support in all the SBWMA activities. He also thanked Counsel Savaree for all the work she has done on the SBR matters, there has been a lot of things going on that required counsel input at today's meeting.

Member Widmer noted that he has also been on the Board since 2013, and has enjoyed working with the staff, SBR and Recology, and appreciates Executive Director La Mariana's leadership.

Vice Chair Aguirre thanked Chair Benton for his leadership, and on behalf of her Board colleagues noted that he will be missed.

### **14. Adjourn: 4:41PM**