



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 07-28-08

Approved

Deanna Sartun

Date

7/30/08

COUNCIL DISTRICT: City-Wide

**SUBJECT: APPROVE THE TRANSFER OF TREATMENT PLANT CAPACITY
FROM CUPERTINO SANITARY DISTRICT TO THE CITY OF
MILPITAS**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute amendments to Agreements among the cities of San José, Santa Clara and Milpitas and Cupertino Sanitary District to reflect the transfer of 0.75 million gallons of capacity in the San José/Santa Clara Water Pollution Plant from Cupertino Sanitary District to the City of Milpitas.

OUTCOME

The outcome of the proposed action will be a redistribution of 0.75 million gallons of the total Water Pollution Control Plant treatment capacity from Cupertino Sanitary District to the City of Milpitas. There is no direct impact on the City's available capacity.

BACKGROUND

On June 19, 2008, Cupertino Sanitary District notified staff that a recent engineering study had confirmed that its capacity rights in the San José/Santa Clara Water Pollution Plant exceeded its projected demand for new sewer connections over the next 20 years. In the notice to San José, Cupertino also expressed an interest in selling 0.75 million gallons of its excess capacity to the City of Milpitas.

The Board of Directors of the Cupertino Sanitary District has voted to designate 0.75 million gallons of the District's capacity as "excess pooled capacity," pursuant to the terms of the Master Agreements for Wastewater Treatment among the cities of San José and Santa Clara and Cupertino Sanitary District. Cupertino further requested approval of the sale of this excess pooled capacity to the City of Milpitas, which is permitted under the Cupertino Master

Agreement, subject to the approval of the cities of San José and Santa Clara. On May 6, 2008, the City of Milpitas Council authorized the purchase of up to 0.75 million gallons of excess pooled capacity from Cupertino Sanitary District.

ANALYSIS

Under the Master Agreements for Wastewater Treatment among the cities of San José, Santa Clara and Milpitas and Cupertino Sanitary District, the District has 8.6 million gallons per day of Treatment Plant capacity, and Milpitas has 13.5 million gallon per day of capacity. Both of these capacity allocations are based on the Treatment Plant's rated capacity of 167 million gallons per day average dry weather flow.

The City of Milpitas has determined that it needs to acquire additional wastewater treatment capacity in order to enhance its land development opportunities. In 2005, Milpitas purchased one million gallons of capacity from West Valley Sanitation District. Cupertino Sanitary District has determined that it has excess capacity and has agreed to sell some of its' excess capacity to Milpitas. The proposed transfer of capacity included a proportionate share of all of Cupertino's rights and obligations under its Master Agreement, including the transfer of a proportionate share of Cupertino's interest in Treatment Plant lands, and a proportionate share of Cupertino's debt service obligations. However, the proposed transfer does not include the biochemical oxygen demand constituent.

Once an agency has determined that it has "excess pooled capacity," unless one of the Plant co-owners wants to purchase the excess capacity, negotiations of the terms and conditions of the sale is left up the primary parties to the transaction. Although staff is still reviewing the terms and conditions of the proposed transfer, staff has determined that San José does not need to purchase the excess Cupertino capacity at this time. San José and Santa Clara together share 130.548 million gallons in Plant capacity. The agency Master Agreements all contain provisions for proportionate spreading of any mandatory reductions in Plant flows. Under the 1959 joint powers agreement for operation of the Treatment Plant between San José and Santa Clara, their joint capacity is allocated on an annual basis in proportion to the ratio of joint owners' respective average assessed property tax values. For 2007, San José's allocated capacity was 109.603 million gallons, while its flow was 73.411.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

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- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The criteria listed above do not apply to this action. This memo will be posted on the City's website for the August 19, 2008 Council Agenda.

COORDINATION

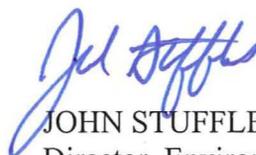
This memorandum has been coordinated with the Department of Planning, Building and Code Enforcement and the Office of the City Attorney. It is scheduled to be heard at the August 14, 2008, Treatment Plant Advisory Committee meeting.

COST IMPLICATIONS

There are no cost implications for the City of San José.

CEQA

Not a project. The development that would be facilitated by the wastewater treatment capacity would occur in Milpitas, and so acting as Lead Agency under CEQA, on June 3, 2008, the Milpitas City Council certified the Environmental Impact Report for the Milpitas Transit Area Project and adopted findings concerning the Project's significant environmental impacts, mitigation measures, and alternatives. Acquisition of wastewater treatment capacity is discussed in Section 3.11 and CEQA-required conclusions are shown in section 5.3 regarding growth-inducing impacts. The full EIR and accompanying documents can be found at http://www.ci.milpitas.ca.gov/citygov/citycouncil/agenda060308/agenda_attachments.htm. The Planning Director, acting on behalf of the City commented on the Draft EIR prepared by Milpitas, indicating the City was a Responsible Agency in the event treatment plant capacity would be transferred from the City to Milpitas. The Final EIR prepared by Milpitas includes satisfactory responses and text revisions addressing the City's comments. However, Milpitas is now contemplating a wastewater treatment capacity transfer from Cupertino Sanitary District to Milpitas, and so the City is no longer a responsible agency while serving its role as Plant operator.



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For further information, please contact Dale Ihrke, Deputy Director, Environmental Services, at (408) 945-5198.

