

**LOCAL AGENCY FORMATION COMMISSION
OF FRESNO COUNTY (LAFCo)**

MINUTES

JULY 30, 2003 REGULAR MEETING

Call to order: Chairman Larry Fortune called the meeting to order at 1:30 p.m.

Member Present: Commissioners Susan Anderson, Larry Fortune, Victor Lopez, Trinidad Rodriguez, and Alternate Commissioner Phil Larson.

Members Absent: Commissioner Bob Waterston

Staff Present: Mike Waiczis, Executive Officer
Susan Coberly, LAFCo Counsel
Mike Noland, LAFCo Special Counsel
Candie Fleming, Clerk to the Commission
Samantha Brookhart, Secretary

Approval of Minutes

The minutes for June 18, 2003 regular meeting were approved as presented.

CONSENT AGENDA

“Berkeley Annexation” Reorganization (City of Kerman)

“Reorganization No. 03-01”, Parlier Junior High Annexation (City of Parlier)

The Commission unanimously approved the two proposals (above) on the consent agenda.

PUBLIC HEARING

Protest Hearing for the Central Unified School District, “Polk and Clinton Annexation #1

Executive Officer Waiczis gave a staff report and summarized LAFCo Resolution No. RO-03-8. Mr. Waiczis reported that the sole owner of the territory proposed for annexation was the Central Unified School District, however the North Central Fire Protection District objected to the annexation because there was no fire transition agreement between the City of Fresno and the North Central Fire Protection District.

Lee Daugherty, Chief, North Central Fire Protection District, stated that they had nothing further to add to their protest.

The Commission unanimously voted to approve the requested annexation and directed staff to set a protest hearing.

“Sierra-Cedars Community Service District No. 3”

Executive Officer Waiczis gave a staff report outlining the procedures for protesting the district annexation and summarized LAFCo Resolution No. AD-03-2. Executive Officer Waiczis reported that staff did not receive any written or oral protests against the annexation prior to the hearing.

The Commission determined that in view of the fact that there were no protests received at the hearing or prior to the hearing, the Commission unanimously voted to uphold Resolution No. AD-03-2 approving the annexation.

Receive Public Comments on the Draft Environmental Impact Report for the proposed City Incorporation, “Malaga Reorganization”

Executive Officer Waiczis presented staffs report outlining the public comment process for the DEIR.

Scott Browne, Special Counsel for the Malaga County Water District, requested the comment period for the EIR be continued to the August 27, 2003 hearing to allow the Proponents of the proposed Malaga city incorporation time to submit their comments.

Mr. Browne said the biggest problem with the Draft EIR is that it doesn't state the assumptions upon which it is based. The DEIR does not describe what parts or assumptions from the County General Plan and CFA are being used as the basis for the EIR. He said the DEIR attributes all of the impacts that would result from development of that area to the City of Malaga and did not distinguish what would happen if it were to develop in the County versus what would happen if it were to develop in the City and felt the DEIR reflected a worst-case scenario.

Phil Cronin, County Counsel, asked for clarification on whether the deadline for submitting comments was at the end of the hearing, or 5:00 p.m. today. He wanted the clarification because the County had planned to submit their comments before 5:00 p.m. on July 30th.

Mike Noland, Special Counsel to LAFCo, said that staff set the deadline for receiving comments on the Draft EIR for 5:00 p.m., today, July 30, 2003 in order to allow time for the environmental consultant to respond to the comments and prepare the final EIR for the Commission's consideration at its August 27th hearing.

Scott Browne asked that they be given to 5:00 p.m. Monday, August 4th to comment on the Draft EIR.

Commissioner Lopez made a motion to extend the comment period to the August 27th hearing.

Commissioner Anderson asked if the maker of the motion would consider amending the motion to extend it only until Monday, August 4th at 5:00 p.m. which would accommodate Mr. Browne's request and still allow the Commission to be able to consider the Final EIR at the August 27th hearing.

Commissioner Lopez agreed to amend the motion to 5:00 p.m. on August 4th.

The Commission unanimously voted to extend the written comment period for the Draft EIR to August 4, 2003 at 5:00 p.m.

Receive Public Testimony on the “2001/2002 Updated Proposed Malaga City Incorporation Comprehensive Fiscal Analysis (CFA)” for the Proposed City Incorporation, “Malaga Reorganization”

Executive Officer Waiczis summarized the City incorporation proposal and the process for accepting the CFA.

Scott Browne acknowledged that this process has been going on for a long time but said that they have been citing the same problems with the CFA over and over but they have never been fixed. He said that Nancy Miller, LAFCO's Special Counsel, rendered an opinion that EPS had been calculating the numbers wrong, and agreed that indirect costs are a cost that the City of Malaga and County incurs and should be considered as a cost in determining the numbers for the CFA. He said that the document was huge and very complex and they did not have time to calculate the numbers because they didn't received the document until June 17th.

Mr. Browne disagreed with several items in the CFA. He said that according to the CFA, only 13 cents out of every dollar generated within the proposed City of Malaga is spent on services in the area and that the remaining 87 cents goes for support of general County procedures. It was hard for them to believe that the County spends so little money in the Malaga area. They were concerned with the net cost of services that the County claimed it was spending within Malaga and felt it was too low. He said if that number was more realistic, the unfeasibility of the City would be substantially changed.

Matt Kowta, financial specialist for the Malaga County Water District, gave a PowerPoint presentation on some of his findings in the CFA. Mr. Kowta said the purpose of the CFA was to estimate what the fiscal impact the incorporation would have on the County. This is done by estimating the current revenues generated within the Malaga incorporation area and subtracting those revenues from the current cost of services provided in that area which would result in a net fiscal balance. He said the CFA concludes that the County is currently generating more revenues from the Malaga area than it spends on the provision of services in the area. Mr. Kowta said the law states that the new city would have to mitigate any impact and make the County whole by agreeing to provide revenue back to the County. Mr. Kowta said that the question is not whether to mitigate or not, but what the right and fair amount should be. Their concerns were that the net fiscal surplus is being overstated because the estimate of the cost to provide services to Malaga is too low. In particular, they felt the law enforcement costs are understated and unreliable.

Mr. Kowta said their estimate for the administrative function of a new city would be approximately \$415,000. He said the Malaga County Water District currently is providing solely for the purpose of water, sewer, and recreation services, and is incurring costs of approximately \$508,000 per year. He said there was a potential to realize some cost savings by sharing some burden of the administrative costs that would later be passed on to those water and sewer rate payers.

Carolina Jimenez-Hogg, Assistant County Administrative Officer for Economic Development with the County of Fresno, said the CFA was prepared by consultants to exercise their independent judgment. Even though the County is not pleased with all aspects of the report, Ms. Hogg requested the Commission accept the CFA so the matter can stay on schedule and go to hearing at the August 27, 2003 hearing. Ms. Hogg also stated that as in all previous CFAs prepared for the project, this CFA also concluded that the incorporation would not be revenue neutral and that fiscal mitigation payments from the new city to Fresno County would be required. She said the CFA also concluded that after making annual mitigation payments in the amount calculated, the new city would be expected to experience annual deficits of up to \$427,000, rendering the City potentially infeasible.

Dan Miller, fiscal consultant to the County of Fresno, responded to Mr. Browne's assertion that the County's costs for providing services to Malaga were understated. Mr. Miller said that increasing the County's costs for providing services to the area would transfer more property tax revenue to the new City of Malaga that would increase the amount of revenue neutrality mitigation on the other side. He said, if you transfer more money to the City because these costs are understated, the County loses more money, and the bottom line is still the same. Mr. Miller also said that Mr. Berkson had already responded in writing to the District's concerns and that no matter what methodology is used, the bottom line would stay the same. Mr. Miller urged the Commission to accept the Draft CFA.

Charles Garabedian, Jr., Chairman of the Board for the Malaga County Water District, requested that members of the Fresno County Board of Supervisors attend the revenue neutrality meetings.

Matt Kowta responded to some comments that were made after his PowerPoint presentation. He said that Malaga acknowledges that it would be responsible to offset any impact to the County, but was a matter of determining what that net fiscal impact would be. He said Malaga does not have a problem paying for the cost of services it receives and compensating the County accordingly for those services, but they would rather pay for the cost of services received than to simply pay mitigation for which it receives nothing in return.

Richard Pierce, Fresno county Sheriff, wanted to make a correction to the CFA that stated there was a 36-39% overhead charge for Sheriffs services. He said the correct number was 11.6%.

John Brelsford, owner of Diversified Development, asked on what date the question of incorporation was going to be asked.

Executive Officer Waiczis said the actual hearing for the incorporation would occur on August 27th if the proposal were to stay on schedule, otherwise it would have to be held in October.

Scott Browne said he was advised that there had to be a mandatory period for requesting consideration by the Controller.

Mike Noland said that Mr. Browne was correct and that LAFCo's procedures require the request for Controller's review be made subsequent to the Commission's acceptance of the CFA.

Executive Officer Waiczis said that would be assuming the Commission approved the proponent's request to continue the comment period for the CFA until the August 27th hearing, but if the Commission accepted the CFA today, the Commission could call a special hearing early in September and ask the incorporation question.

Carolina Jimenez-Hogg requested the Commission accept the CFA today.

Dan Miller, fiscal consultant for the County reported that there were many different ways to calculate the figures but no matter how the numbers were calculated, the bottom line would not change.

Matt Kowta said he was not comfortable with the figures that were provided by the Sheriff's office and disagreed with the comment made by Mr. Miller that the bottom line would not change no matter how the numbers were calculated.

John Brelsford, owner of Diversified Development said if the new city has to make mitigation payments to the County, the property owners would be the ones that had to pay for the mitigation. He requested the Commission make a schedule and stick to it so the property owners would know exactly when they needed to show up to give testimony.

A discussion took place regarding when final comments would be accepted and when the Commission would be able to accept the CFA.

Carolina Jimenez-Hogg requested the Commission accept the report at this hearing.

Scott Browne asked the Commission to follow staff's recommendation and continue the item to August 27, 2003 because EPS relied on information from the Sheriff from the current fiscal year which he said was a violation of the requirements of the Cortese-Knox-Hertzberg Act in the current form of the CFA.

Phil Cronin said that because under the law, the CFA must be based on the most current data available, and the next year's data will become available soon, he urged the Commission to accept the Draft CFA.

Executive Officer Waiczis said the reason staff recommended continuing the item was because of threat of litigation by Malaga's attorney, not because staff felt the CFA was flawed or inadequate. He said that in consultation with LAFCo's attorney they decided it best not to provoke litigation before the question is asked. Mr. Waiczis said that the District had signed contracts agreeing to not try to manipulate information in the EIR or CFA.

Mike Noland said that he felt it was only reasonable and fair for the Commission to grant a continuance to the August 27, 2003 hearing for the acceptance of the CFA in order to allow all of the parties the opportunity to review and comment. He suggested a cutoff date for written comments prior to the August 27th hearing that would allow enough time for Mr. Berkson and his staff to have an opportunity to be able to reflect all comments and responses so the Commission will be able to make its decision on the whole record with regards to the acceptance of the CFA.

Executive Officer Waiczis suggested 5:00 p.m. on August 13th as the cutoff time for written comments that would still allow the question of accepting the CFA to be heard at the August 27th hearing.

The Commission unanimously voted to continue the hearing on the CFA until August 27th, and that all of those who spoke on the CFA today and who intend to speak on the CFA at the August 27th meeting submit to staff by 5:00 p.m., on August 13th, written comments that are specific and identify those issues that they are going to speak on at the August 27th meeting.

Non-Payment of Funds Required for the continued Processing of the Proposed City Incorporation, "Malaga Reorganization"

Executive Officer Waiczis reported that at the June 18th hearing, an additional \$150,000 would be needed in order to continue processing the Malaga incorporation application. Mr. Waiczis said that staff had received \$75,000 (½) of the requested funds for which most had already been encumbered, and therefore was unable to ask Richard Berkson or Nancy Miller to attend this meeting. Mr. Waiczis said that the \$75,000 was paid under protest and there was some indication that there was no need to deposit the other \$75,000, even though Mr. Costanzo said the Malaga County Water District would be happy to pay the money. Mr. Waiczis said he was unable to execute the contract amendments that were approved on June 18th because staff needed an additional \$59,140 to execute those contracts.

Charles Garabedian, Jr. said they would be making a \$75,000 payment to LAFCo in a couple of days to keep the process moving. He requested that they get full accountability and itemized receipts in case the District gets audited.

Phil Cronin said that he was stunned to hear that Malaga had spent almost \$300,000 on these proceedings and does not include their attorney or consultant's fees. Mr. Cronin asked the Commission who would pay for Mr. Berkson's analysis, if the District did not make the payment.

Larry Fortune said that Mr. Berkson was instructed not to do any further work until payment had been made. He said that if no payment was received by August 27th, there would be an item on the agenda to terminate the process.

Commissioner Rodriguez made a motion to suspend the processing of the application and directed the Executive Officer to forward a demand for processing funds to the Proponents requesting deposit of appropriate funding within 7 days of receiving the request. This motion carried.

Larry Fortune said that if funds were not received before August 7th, suspension of processing would be in place until August 27th.

Mike Noland said the motion would have to be amended to change the time period from 7 days of date of receipt of demand to the money being provided to LAFCO on or before 5:00 p.m. on August 6th.

Commissioner Rodriguez amended his motion per Mr. Noland's recommendation and was seconded.

The motion was unanimously approved.

Consider Adoption of List of Consultants to Assist Staff with Municipal Service Reviews, Sphere of Influence Updates, and CEQA documentation.

Executive officer reported that the Commission authorized \$85,000 for consulting services to assist LAFCo in doing Municipal Service Reviews and environmental documents and requested the Commission to adopt an official list of consultants so staff would not have to send out an RFP every time the need arose.

The Commission unanimously approved the list of consultants as recommended.

Provide Direction on Minor Admendments to LAFCo Adopted "Fee Schedule"

Executive Officer Waiczis reported that there are a number of areas in the fee schedule that needed to be amended. and was seeking direction.

The Commission gave their consensus to direct the Executive Officer to come back with an amended fee schedule for their review and approval.

Executive Officer's Report – Report on the Progress of Revenue Neutrality Negotiations for the Proposed Malaga City Incorporation

Executive Officer Waiczis referred to Staff Report No. 8, Exhibit B that lists chronologically summarizing the revenue neutrality negotiations. Mr. Waiczis said that unless the incorporation is revenue neutral "by right" the County does not intend to sit down at the table and look at mitigation packages that the County cannot afford to risk. Mr. Waiczis said he didn't feel they were going to get meaningful revenue neutrality negotiations.

Charles Garabedian, Jr., said it would be beneficial for the County Supervisors to be present at those negotiations because there were many avenues to make it revenue neutral and that they shouldn't rely solely on staff and requested the Executive Officer invite the Board of Supervisors to that meeting.

Larry Fortune said he would be available to attend the revenue neutrality meetings if he were requested.

Comments from the Public

There were no comments from the public and the meeting adjourned at 4:10 p.m.