

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

MINUTES

SEPTEMBER 23, 2003 SPECIAL MEETING

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

Member Present: Commissioners Susan Anderson, Bob Waterston Larry Fortune, Victor Lopez, and Trinidad Rodriguez.

Members Absent: None

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

Approval of Minutes

It was noted that the approval of the August 27, 2003 minutes would take place at the regular meeting on October 1, 2003.

CONSENT AGENDA

There were no consent items.

PUBLIC HEARING

Continued Public Hearing - Consider Certification - Final Program Environmental Impact Report for the Proposed City Incorporation, "Malaga Reorganization", LAFCo Agency Number: RO-99-4 ("Project").

Executive Officer Waiczis presented his report regarding the FPEIR and the comments received on the DEIR.

Nancy Miller summarized the conclusion of the FPEIR, describing the potential significant unavoidable impacts identified for the project that can not be mitigated.

Chairman Fortune opened the hearing for public comment.

Scott Browne, special counsel for the Malaga County Water District, stated that the impacts seen are common to all projects that have come before the Commission.

There were no other comments from the public and the Commission unanimously voted to close the public portion of the hearing.

Mike Noland, LAFCo special counsel, said the Commission would have to take an action in order to continue the item to the October 24th hearing.

The Commission unanimously voted to continue the item to October 24, 2003.

Continued Public Hearing - Consider Acceptance - The June 12, 2003 "2001/2002 Updated Proposed Malaga City Incorporation Comprehensive Fiscal Analysis as Revised ("CFA") for the Proposed City Incorporation, "Malaga Reorganization", LAFCo Agency Number: RO-99-4 ("Project").

Executive Officer Waiczis reported on the comments and responses staff received for the CFA and gave his recommendations.

Richard Berkson, Principal with Economic and Planning Systems, presented a PowerPoint presentation on the objectives and findings of the CFA. In summary the CFA shows that the new city would not be able to meet its operating costs if it makes the full mitigation payment of 1.6 million to the County.

Commissioner Waterston informed the Commission it was his understanding that Dan Gamel planned to close his RV business in Malaga and turn it into an RV storage center. He said if that were the case, Malaga would no longer be able to receive the sales tax generated by Mr. Gamel's business and asked how that would effect the numbers in the CFA.

Commissioner Fortune asked if there were any questions for Mr. Berkson.

Commissioner Rodriguez questioned the basis for the refusal of the CFA to acknowledge the benefits of the road fund and about charge backs and the cost for road maintenance. He also expressed his concerns about the housing analysis.

Richard Berkson responded that the road funds are restricted funds and cannot be used to determine the general fund deficit and that they had correspondence saying the previously higher figures were too optimistic and were not feasible. He said that the cost for road maintenance was based on the County's current average costs. Mr. Berkson said that regarding the housing analysis, the County hasn't revised the real property assessment in the County for the last several years and that he didn't think any change would be significant enough to change the CFA. He said property value is only reassessed when property is sold and at most it can only grow at 2% a year.

Commissioner Rodriguez asked about administrative costs, stating that smaller cities wouldn't have the operating costs that larger cities have. He also asked how many years the CFA was required to consider by State law.

Mr. Berkson responded that State law states that it must include 3 fiscal years but they felt it was important to look further to have a more accurate view of the city's financial viability. Mr. Berkson also said that as for service levels, they were figured using the current levels provided by the County. He said it would be possible to reduce staffing to

meet available revenues, but that wasn't done for the CFA because it would have resulted in a lower service level.

Commissioner Lopez asked how Revenue Neutrality negotiations were progressing and what figures were used to determine administrative costs and maintenance of parks and recreation areas figures.

Mr. Berkson responded that the numbers were based on using the water district's current budget and what is currently being spent on maintenance of parks and recreation areas by the County.

Scott Browne asked why they used \$84,000.00 (eighty four thousand dollars) as the average value of a home, when all local realtors say that it's at least 20 percent higher than that.

Mr. Berkson said that that figure was not the average value of a home, but was the average increase in value when a new home is built. He said that there will be underlying value in the land, and that it may be 10 percent or even 20 percent.

Executive Officer Waiczis said that they had discussed this matter extensively and concluded that it is a wash because if you raise the value of the homes, you end up with a greater loss in taxes to the County if Malaga incorporates.

Commissioner Fortune opened the item to the public for comment.

Scott Browne said that Dan Gamel's moving is the most important problem they are facing today because it throws all of the numbers out the window.

Commissioner Fortune stated it was his understanding that the CFA was supposed to be a snapshot of the fiscal standing of Malaga and the County at a certain moment in time and it shouldn't matter if Dan Gamel might be moving out of Malaga in the next couple of years.

Nancy Miller said that the legislature already made that decision, that your snapshot in time is the last fiscal year for which data is available. In revenue neutrality negotiations you can look at the most recent data that's available because it's more relevant.

Commissioner Fortune asked if Mr. Gamel does move and the figures were re-determined wouldn't all these new numbers have a neutral effect? Commissioner Fortune said that if the County loses sales tax revenue now, just as Malaga would lose it in the future it would be neutral and shouldn't enter in to the equation.

Mr. Browne said that the CFA says the County would be losing 1.6 million and, therefore, the County said they would not accept less than that.

Commissioner Fortune asked Mr. Browne if they were leading up to asking for the CFA to be redone requiring the matter be held over for another year.

Mr. Browne responded that they only wanted a commitment from the County that they wouldn't insist on using the CFA numbers.

Nancy Miller said that the issue is whether or not the CFA adequately represents the fiscal year 2001-2002 and that she believes it does and that revenue neutrality is a different thing. She said the Commission has the ability to implement its own revenue neutrality if Malaga and the County cannot provide their own.

Mr. Brown asked if the Commission makes the decision, would they have to make mitigation for 1.6 million?

Ms. Miller said if the incorporation is approved there has to be a finding that there is a substantially similar distribution of revenue and services from the City to the County, and that can be done with recent data.

Commissioner Fortune referred to an article in the newspaper that said Dan Gamel had bought the old Kmart on west Shaw, and that he was going to turn the parking lot into an RV center and the building into an RV accessories emporium and announced that he is closing his RV center in what will be the city of Malaga and will turn it into an RV storage center which would generate no sales tax whatsoever.

Mr. Browne said that there are other reasons they don't agree with the CFA.

Commissioner Waterston said that they had talked to Dan Gamel's staff and they do plan to move but that lots of things can happen. He said that when you are dealing with losing someone as big as Dan Gamel it could hurt everyone. But it hasn't happened yet and might not happen.

Carolina Jimenez-Hogg said the snapshot keeps changing based on what the State is doing and what's happening with revenues. She said that Malaga asked to be put on the Board of Supervisors' agenda for September 30th. Ms. Hogg said that if portions of the CFA are adjusted the proceedings should be terminated and we go to a different year. She said the County's objections were removed from the record at the last hearing because their concerns about data from other years being used had been addressed.

Mr. Kowta, principal with Bay Area Economics, expressed concerns about being locked into the 1.6 million-dollar mitigation figure. He said there are some differences of professional opinion regarding the responses to the CFA and to which services Malaga would take over and which would be contracted out. He said that BAE offered an alternate method of calculating indirect Sheriff's cost that raised the Sheriff cost allocation by \$95,000 (ninety five thousand dollars) per year. Mr. Kowta said that as far as charge backs go, the general manager of the water district wasn't consulted, and still hasn't been consulted. He said the 1.6 million dollars doesn't consider the \$75,000 (seventy five thousand dollars) to the road fund and that services that are contracted out will help control cost by avoiding pension and health insurance costs.

Neal Costanzo, counsel for Malaga County Water District, said the issue is whether the CFA conforms to the requirements of State law and LAFCo's adopted Policies and Procedures. He said if the CFA was accepted despite of the concerns of the water district, their only recourse would be to go to the State Controller's office for an independent review. He said he feels that the comparisons made with other cities aren't accurate or complete and don't conform to State law. Mr. Costanzo requested the acceptance of the CFA be deferred.

Commissioner Waterston asked how long this had been going on and Mr. Costanzo responded by saying since 1999 but with the lawsuit filed by the County, they were not able to proceed for at least three years because of a court order. He estimated they have been working actively on it for six months.

Commissioner Waterston asked why the CFA wasn't more accurate and why the consultant were not asked to do more.

Executive Officer Waiczis said that they did a couple of things. He said they requested information from a lot of smaller cities, though it was very hard finding cities as small as the proposed city, with the same use of land. He also said the costs of cities not in the valley are very different from costs of cities in the valley and that they assimilated the data and looked at general numbers. But, because of those differences, it was decided that only cities in the valley would be used even though they weren't the same size because they would have similar operating costs.

Mr. Costanzo said his point is the methodology employed by the CFA by comprising the total budget of the city, does not conform to the mandate that the determination be based on a comparison of similar cities. He asked if the Commission wants to accept a CFA that doesn't conform to the requirement.

Nancy Miller said that the consultant has prepared many documents for LAFCo's up and down California. She said Appendix E does provide comparison numbers and is specific. Ms. Miller said LAFCOs consider segregated funds as part of the revenue neutrality calculation and as for the value of the property, the \$84,000.00 (eighty four thousand dollars) is for improvements to the land and not the price of home sales in the area. She said the land value is in addition to the improvement value and that in her opinion, the CFA is consistent with the law.

Commissioner Lopez thanked Ms. Miller for explaining revenue neutrality and asked for the figures used for expenses.

Mr. Berkson said they went to extensive effort to detail the costs for city counsel, elections, city manager, city clerk, etc. He said the sheriff's cost is based on 1.6 deputies and doesn't include SWAT, horse patrol, etc. Mr. Berkson said the animal control costs were based on the contract the County has with the ASPCA.

Commissioner Lopez said that his city clerk makes \$24,000 (twenty four thousand dollars) and serves as his secretary and the manager's secretary.

Commissioner Fortune said it's his understanding that \$171,000 (one hundred and seventy one thousand dollars) would only buy 6-7 hours of patrol a day.

Mr. Berkson agreed.

Scott Browne said that revenue neutrality negotiations needed to be discussed before continuing.

Mr. Browne asked if the County would agree that the 1.6 million is not written in stone. He offered alternate language for the Commission's consideration from the proponent.

Phil Cronin asked that the Commission not accept Mr. Browne's language and said that the CFA is either accepted or not, and should not be modified today.

Commissioner Rodriguez said that if this is the best snapshot we have right now, LAFCO should accept the document and the current data could be used for revenue neutrality later. Commissioner Rodriguez then made a motion to accept the CFA and Commissioner Waterston second it

The Commission unanimously approved the acceptance of the CFA.

Consider – Move the October 24, 2003 Special Meeting Scheduled to Consider the Proposed City Incorporation, "Malaga Reorganization", LAFCo Agency No. RO-99-4 to Another Date.

Commissioner Lopez said he has a prior engagement and cannot attend the special meeting on October 24th.

Commissioner Fortune asked if the dates would have to be changed anyway if the proponent asks for a Controller's review.

Commissioner Anderson asked why we didn't just change the October 24th meeting to November 5th.

Mr. Browne said that the additional time would help them be able to present the Commission with the findings of the negotiations.

Commissioner Anderson made the motion to move the special October 24th hearing to the regular November 5th hearing.

The Commission unanimously approved the continuance.

OTHER ITEMS

Executive Officer's Report

Executive Officer Waiczis reported on the progress of Revenue Neutrality Negotiations for the proposed Malaga City Incorporation.

No action was required by the Commission.

Comments from the Public

There were no comments from the public and the meeting adjourned at 3:35*/ p.m.

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