

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

LAFCo MEETING MINUTES – JANUARY 14, 2015

Members Present: Commissioners Brian Pacheco, Daniel Parra, Henry Perea, Mario Santoyo and Robert Silva

Staff Present: David E. Fey, AICP, LAFCo Executive Officer
Ken Price, LAFCo Counsel
Candie Fleming, Commission Clerk
George Uc, LAFCo Analyst

1. Call to Order and Roll Call

Chairman Silva called the meeting to order at 10:00 am.

2. Pledge of Allegiance

Chairman Silva led the recital of the Pledge of Allegiance.

Chairman Silva welcomed new Commissioner Brian Pacheco and Alternate Commissioner Daniel Parra to the Commission.

3. Election of Vice Chairman

Executive Officer Fey reported that Vice Chair Lopez is no longer on the Commission; the term of Chair and Vice Chair is for two years and since the current officers were elected in July, 2013, the Commission would need to elect a new Vice Chair to fill the remainder of the term ending June, 2015.

Commissioner Perea made a motion to nominate Daniel Parra as Vice Chair for the remainder of the term and to direct staff to place a policy for consideration and action regarding chair rotation between the County and City representatives at the February hearing. Commissioner Silva agreed that Commissioner Parra should fill the vice chair position and that the discussion of chair rotation should be on the agenda. Commissioner Santoyo asked if Commissioner Parra was a permanent member of the Commission or if he was waiting to officially be appointed by COG because there might be an issue if the Commission appointed him as Vice Chair and he was not re-appointed by COG. Commissioner Perea said that technically Commissioner Parra is a member because as the city alternate he is now filling the remainder of a Commission member's term. Counsel Price said it was his understanding that COG will make a selection to fill the remainder of Commissioner Lopez' term and alternate for a four-year term.

Commissioner Santoyo seconded Commissioner Perea's motion. Commissioners Pacheco, Parra, and Silva voted in favor of the motion. Commissioner Santoyo asked if staff could

conduct a survey of the other LAFCOs to see what their policies were for election of chair and vice chair.

4. Comments from the Public

There were no comments from the public.

5. Potential Conflicts of Interest

There were no conflicts to report.

6. CONSENT AGENDA

Consider Approval of Items A Through C

- A.** Minutes from the regular LAFCo meeting of December 10, 2014.
- B.** Request for a one-Year Extension of time for the City of Sanger “California-Academy Northwest Reorganization” (**LAFCo File No. RO-07-21**).
- C.** City of Parlier “Reorganization 14-01, Mendocino-Parlier Northwest.”

Commissioner Perea pulled Item 6B from the Consent Calendar for discussion. Commissioner Pacheco said that he believed that he and Commissioner Parra had to abstain from approving the minutes because they were not present at the last meeting.

Commissioner Santoyo made a motion to approve Items A and C and Commissioner Perea seconded the motion. Commissioners Pacheco, Parra, and Silva voted in favor of the motion but with Commissioner Pacheco and Parra abstaining from voting for approval of the Minutes.

- B.** Request for a One-Year Extension of Time for the City of Sanger “California-Academy Northwest Reorganization” (**LAFCo File No. RO-07-21**).

Commissioner Perea asked for some background on the number of extensions that have been approved for the proposal. Fey said that this was the seventh request for extension. Commissioner Perea asked the proponent to tell the Commission what the reasons were for the number of extension requests.

Mike Slater spoke on behalf of Lennar saying the land was purchased at the peak of the market with the anticipation that things would be moving more quickly than they have. Mr. Slater said the cost of off-sites and the distance from the project and the off-sites has delayed the development of the project. Mr. Slater said that Lennar was in a predicament that is mostly market driven. Mr. Slater said that the property cannot be developed at this time but Lennar still has plans to develop the property. Mr. Slater said that Bill Walls, the project manager for Lennar was available to answer technical questions. Commissioner Perea gave Mr. Slater some background on the Commission’s current policy for granting numerous extensions due to economic hardships and that the Commission would be considering a policy change. Mr. Slater said that the State legislature has approved the extension of tentative maps recognizing the issue of economic conditions. Commissioner Santoyo added that over time, conditions

and circumstances change and that the Commission needs to assess whether it should continue to approve extensions. Mr. Slater said the conditions of the map are still in place and the map is still valid and Lennar was moving forward with the project.

Bill Walls, Land Development Manager for Lennar said the problem at the moment is the off-site sewer costs. Mr. Walls said for the last year and a half Lennar has been trying to see if they could get some help from the City of Sanger with the costs for extending the sewer to the project and that they have been evaluating what their financial options were and felt that the demand for housing in Sanger is strong.

Commissioner Perea said he would make a motion to approve the extension but on the next agenda item the Commission would be talking about a change to the Commission's policy where economic hardship may not be an overriding factor in the future. Commissioner Parra seconded the motion and Commissioners Pacheco, Santoyo, and Silva voted in favor of the motion.

PUBLIC HEARING

7. Consider Approval: Amendment to Fresno LAFCo Policy Regarding Extension of Time to Complete Proceedings.

Fey gave some background on the item and summarized the recommended policy revision. Commissioner Silva asked if staff tracks the proposals from the time the applicant requests an extension. Fey responded that staff keeps a tickler on each project that allows staff to identify when an expiration is coming due in order to give the applicant time to request an extension. Commissioner Silva asked if the applicant let staff know how the project was progressing and Fey responded that staff doesn't get a progress report but when an applicant is getting ready to record an annexation they contact staff to make sure staff has all of the documentation necessary to record. Commissioner Silva asked when did LAFCo start the practice of granting extensions and Fey said that it has been a long-standing practice of the Commission to grant extensions and is consistent with the statute. Fey said the Commission's policy has changed over the years in response to changing conditions such as the market's downturn, etc.

Commissioner Santoyo asked at what time a project requires reassessment before granting an extension of time. Counsel Price responded that from a CEQA point of view, the Commission typically serves as a responsible agency and if the Commission approves a proposal, it may not amend an environmental document without certain various specific limitations. Counsel Price said that once the Commission approves an application its ability to study any environmental changes relating to a project are over and the only time the environmental document could be reevaluated would be if the application expires and a new application was brought before LAFCo and then, as a responsible agency, under very strict limitations. Counsel Price said that during the time between approval and a seventh extension there would be no ability by the Commission to make any kind of CEQA determination. Counsel Price said that if an application expired and a new application was filed, then a new environmental assessment would be necessary at that time. Commissioner Santoyo said a new policy should not allow for extensions over a long period of time. Fey said the new policy would be to only grant one extension (one or more years) and the proponent would need to justify the length of their request. Commissioner Perea asked if they would be allowed a second extension if so requested. Fey said that was not the intent of the policy. Commissioner Santoyo said he

wanted to make sure that the proponent's request isn't for an extended period of time because then the situation would be the same one the Commission now has.

Commissioner Perea asked if the Commission should even consider a developer's economic factors or should they just be concerned with orderly, logical growth. Fey responded that LAFCo does not consider the economics of a project at the time an application is received and before LAFCo approval because those factors have already been considered by the landowners and/or developers. Fey said the policy issues that the Commission considers is if the project is consistent with the general plan, rezoned consistently, are services available to the sight, and is the project imminent. Fey said the current policy allows the Commission to take into consideration economic hardships as a basis for extension, but the Commission is looking to reassess the criteria for extensions. Commissioner Santoyo suggested a level of review for extensions, i.e. one, two, or three years, but the applicant could only request the extension once and would have to provide rationale for the length of time requested. Commissioner Pacheco asked what happens to an application if it does not receive an extension and expires. Fey responded that the proceedings were terminated and the applicant could reapply to LAFCo.

Mike Prandini representing the Building Industry said there was a multitude of reasons why a project could be delayed and recommended that the Commission's new policy follow the Subdivision Map Act and approve extensions of time for as long as the map is considered active under the Subdivision Map Act. Mr. Prandini also said the BIA had a serious concern with item 02(d) that required a letter supporting a request for extension from the city or district for which the annexation is to occur and from the County. Mr. Prandini said that an annexation could be made to expire if the agency didn't provide a letter of support.

Jeff Roberts spoke on behalf of Granville Homes. Mr. Roberts said that the Commission might want to consider a longer time for approval that would coincide with other city approvals such as a conditional use permit, site plan, map, or CEQA. Mr. Roberts said there are numerous reasons for a project to be delayed that are unknown when a developer submits an application. Mr. Roberts said the policy could also align more with the CEQA analysis which is good for about five years. Commissioner Santoyo said that LAFCo was proposing to allow one extension request that could be longer than a year and one that would work for the developer, but he didn't want to have extensions for so long that everything that was originally approved no longer made sense. Commissioner Santoyo said his thought was to grant a one, two, or three-year extension and asked Mr. Roberts what his thoughts were. Mr. Roberts said that LAFCo has placed a one-year time limit to complete a proposal and that if the LAFCo would grant a longer approval time it would cut down on some of the extension requests. Mr. Roberts said that if the developer has to request an extension after that, there is probably a pretty good reason. Counsel Price responded that under Government Code section 57001, LAFCo is limited to one year to satisfy the conditions for an annexation and after that, LAFCo may grant one or more extensions. Counsel Price said that there is not much the Commission could do about the one year time limit except to grant an extension of one- two- or three-years which is under LAFCo's jurisdiction. Counsel Price said a certificate of completion can be recorded once conditions of approval are satisfied and it doesn't necessarily mean that a project has to be complete prior to the recordation of the annexation. Counsel Price said that the only thing the executive officer needs to know in order to record an annexation is have the conditions been satisfied and has nothing to do with the progress of the project. Fey said the conditions of approval are almost ministerial and rather routine. Fey noted that language in

paragraph 02(d) was word for word out of the existing policy and staff is keeping it because it was important to know if the city or district has any comments. Fey noted that he had met with the Building Industry to discuss this policy amendment.

Commissioner Pacheco asked what would happen to a project like Westlake where the project was approved and the developer has decided to farm the land. Commissioner Pacheco asked if the developer would first have to come back to LAFCo when he decides to develop the territory. Fey responded that Westlake was approved in July, 2014, and has a year to complete the conditions in order to record the annexation. Fey said that Mr. Roberts had informed staff that the developer was not going to record the annexation within the one year's time for a variety of reasons and that the developer would be farming the land in the interim. Fey responded that the Commission's interest is in approving a project and then can take a discretionary action on whether to grant an extension of time. Fey said that between the time a proposal is approved and the time it expires, there is no discretionary action for the Commission to take as long as there was no request for reconsideration. Commissioner Pacheco asked if the developer would have to come back to the Commission before they develop their property if they have been farming it for 20 years. Fey responded that under the current policy, the Commission would have had to grant 20 one-year extensions.

Commissioner Perea asked how many LAFCos follow the Map Act when considering an extension. Fey responded that he couldn't respond to that directly because it was an unusual request and with regards to Mr. Robert's suggestion for using the CEQA work, CEQA was not relative to the scope of the Commission's statute or policy. Fey said it was the Legislature's interest to extend maps due to the economy and there is language in the Map Act that encourages agencies to take that into consideration, but it is not mandatory upon LAFCo to follow the Map Act's advice.

Commissioner Perea made a motion to approve the amended policy per staff's recommendations. Commissioner Santoyo asked Commissioner Perea if he would consider refining amendment policy section 05 so that the extension could be for one, two, or three years but would require a qualifying reason for each level, otherwise the requests would all be for three years. Commissioner Santoyo said his request would be to ask staff to come up with some reasonable criteria for approving each length of extension. Commissioner Perea said he would accept that direction to be part of his motion. Counsel Price asked for clarification of the motion and asked if Commissioner Santoyo was suggesting staff develop criteria for approving a one- two- or three-year extension and asked if he wanted the policy to specify what the criteria would be? Santoyo said that was correct. Counsel Price said in that case, he would suggest the Commission continue the item to allow staff to develop a policy with language that is acceptable and that would follow the sentiment of the Commission to what that criterion is. Commissioner Pacheco said he was uncomfortable with approving a policy where the Commissioners did not know what the criteria were and would support Counsel's suggestion of continuing the item. Commissioner Perea said he changed the motion to continue the item until next month and direct staff to craft a policy that would allow one extension of time with an option of one, two, or three years to include different levels of criteria for each option. Commissioner Santoyo seconded the motion and Commissioners Pacheco, Parra, and Silva voted in favor of the motion.

OTHER ITEMS

8. Mid-Year Budget and Work Plan Status for Fiscal Year 2014-2015.

Executive Officer Fey gave a brief summary of the budget and status of the work plan. Fey reported that at mid-year revenues are slightly ahead of expenses, which are slightly lower than expected. Fey reported that LAFCo was slightly ahead in collection of application fees. Fey said staff is moving forward to complete the work program and that three of the four workshops have been completed. Fey said that staff is of the opinion that a fourth workshop with the special districts would not be feasible due to the fact that the districts are so different from each other and that more district focus would be applied next fiscal year. Fey gave the status of the other work program items and said overall, LAFCo is doing well with the budget and work plan.

9. Workshop: Sustainable Groundwater Management Act.

Counsel Price said that this presentation was in response to the Commission's recent request for a presentation on new groundwater legislation. Counsel Price introduced his colleague Lauren Layne who works with him at Baker, Manock, and Jensen. Counsel Price said they had prepared a journal article in one of the California State Bar Journals on the Sustainable Groundwater Management Act that paid a lot of attention to the impact on LAFCOs. Counsels Price and Layne gave their presentation.

Commissioner Silva said the question would be whether LAFCo wants to take a more active role. Commissioner Santoyo said he wanted to share what he viewed for the Central Valley. Commissioner Santoyo said that the impact of this legislation probably has the greatest effect here in the Central Valley because the impact of groundwater usage will impact agriculture more than anything else and the Central Valley is where most of the agriculture is. Commissioner Santoyo said that it will become very important for LAFCo to be involved as the regulations develop to enforce these plans and that the cleanup legislation will become even more important. Commissioner Santoyo said he thinks the Commission has the responsibility to the Central Valley to be engaged with the issue in order to facilitate the law. Commissioner Santoyo said he thought it was important for LAFCo to have some definitive communication with the Legislature once the plans are in place so the Commission will know where Fresno County is regarding water supply. Commissioner Santoyo said this legislation is controversial for the Central Valley and that LAFCo should have some concern about how this legislation moves forward.

Counsel Price said this legislation is important to LAFCOs because their sole purpose is to determine service boundaries which are core to the Commission's mission for preserving agriculture and logical and orderly growth. Counsel Price believes that more is going to be asked of LAFCOs with respect to determining those boundaries and disputes between governmental entities wanting to serve a role as a Groundwater Sustainability Agency and that LAFCo may want to also serve as a mediator and not just a decision-maker. Counsel Price agreed that the effect of this legislation will be most significant in the Central Valley.

Commissioner Perea said that during the upcoming meeting in Madera, Supervisors Mendes and Pacheco will be focusing on that effort and he sees Fresno County emerging to take more of a leadership position on this legislation.

Commissioner Santoyo said this legislation will have a direct and immediate impact on all of the small cities because of their dependence on farming.

10. Executive Officer Comments/Reports

Executive Officer Fey reported that the Employee Benefits Subcommittee met last month and provided direction to staff to gather additional information which has been done. Staff will be providing that information to the Subcommittee soon and then to the Commission for action. Fey also reported that UC Davis Extension will be holding a one-day seminar in March and that he could provide information to any Commissioner that would like to attend. Fey said staff was planning to have a workshop on inactive special districts next month and asked the Commission to let him know if there were any additional issues that they would like to have staff address during the workshop.

11. Commission Member Comments/Reports

There were no comments from Commission Members.

CLOSED SESSION

12. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Executive Officer

Commissioner Silva said some Commission members indicated to him that they would like to have this item continued since they are new to the Commission. Commissioner Silva asked Fey if this was a quarterly report. Fey responded that he was contractually obligated to present this item in the first quarter but it was up to the Commission to decide an appropriate time for an evaluation. Commissioner Santoyo said considering the fact that there were new members on the Commission he felt they should wait a couple of months to do the EO's performance evaluation and asked Fey if March would work. Fey responded that March will still be in the first quarter of the year. Through a consensus the item was continued to the March hearing.

ADJOURNMENT

Commissioner Perea made a motion to adjourn the meeting and Commissioner Santoyo seconded the motion. Commissioners Pacheco and Silva voted in favor of the motion and the meeting adjourned at 11:45 am. Commissioner Parra had to leave the meeting prior to adjournment.