

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

DRAFT MEETING MINUTES

MARCH 9, 2016

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

Members Absent: None

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

1. Call to Order and Roll Call

Chairman Silva called the meeting to order at 1:30 p.m.

2. Pledge of Allegiance

Chairman Silva led the recital of the Pledge of Allegiance.

3. Comments from the Public

There were no comments from the public.

4. Potential Conflicts of Interest

There were no conflicts reported.

CONSENT AGENDA

5. Minutes from the February 10, 2016, Meeting

Commissioner Parra made a motion to approve the Minutes and Commissioner Perea seconded the motion. The motion passed by a 5-0 vote.

REGULAR AGENDA ITEMS

9. Recruitment for Public Member and Alternate Public Member

Executive Officer Fey reported that the Public Member and Alternate Public Members' terms will expire at the end of April and the Commission needed to review and approve the form of notice that is to be published in the newspaper before beginning recruitment. Fey said staff was recommending that the Commission form a subcommittee to review all of the applications and select the top candidates to be interviewed by the Commission.

Public Member Mario Santoyo recused himself for this item. Chairman Silva said that he was interested in serving on the subcommittee. Commissioner Perea moved to also appoint Commissioner Pacheco as the County member on the subcommittee and Commissioner Parra seconded the motion. The motion to appoint Commissioners Silva and Pacheco to the Public Member Selection Subcommittee passed 5-0.

Commissioner Perea made a motion to approve the form of the notice and Commissioner Parra seconded the motion. The motion passed 5-0.

6. **Consider Approval:** City of Clovis “Barstow-Leonard Southwest Reorganization.”
A reorganization to annex approximately 38.02 acres to the City of Clovis and detach from the Fresno County Fire Protection District and the Kings River Conservation District for territory located at the southwest corner of Leonard and Barstow Avenues (LAFCo File No. RO-16-1).

Fey gave staff's report and recommendations which included approving and waiving the conducting authority proceedings for the proposal pursuant to CKH section 56663(b) and (c) which allows the Commission to waive a protest hearing if the notice included language that the Commission intended to waive proceedings if no written opposition has been received prior to the conclusion of the hearing. Staff recommended approving the proposal with two actions: the first to approve the CEQA findings (A) and the second to approve the proposal by taking various actions (B through F).

There was no further questions or comments from the public or Commission. Commissioner Perea made a motion to approve Item A and Commissioner Parra seconded the motion that passed 5-0. Commissioner Perea then made a motion to approve Items B through F and Commissioner Parra seconded the motion that passed 5-0.

7. **Consider Approval:** Memorandum of Understanding between the City of Fresno, the Malaga County Water District, and the Fresno Local Agency Formation Commission Related to Water Service North and South of North Avenue.

Fey said that staff has been approached over the past couple of years with requests to extend services to projects that lie north of North Avenue, inside the City's SOI and just outside the Malaga County Water District (MCWD) SOI. Fey said the City's infrastructure is not fully extended in this area but the MCWD has sewer and water facilities in portions of North Avenue that could be made available but only to properties within their District. Fey said that service requests outside a SOI can only be granted if there is an impending threat to public health and safety.

Fey said that after considerable discussions with representatives of the City of Fresno and MCWD, they were able to come up with an MOU. Fey said that the way it works is that the property owner would contract with the City for public utilities as if the property was in the City, the City would be the agent that the utility bill is paid to but the City would also have an agreement and contract with the District to provide services on an interim basis. Fey said the property owner pays the City for services; the City has an agreement and pays the District, so that on an interim basis before annexation is feasible, the property could be developed and served with the adequate level of municipal services. Fey said that as a condition of approval, the property owner would agree not to protest annexation and once annexed, the District would

no longer serve the property and be served by the City. Fey said the City, District, and staff felt this was an adequate solution on an interim basis. Fey noted that this would not relinquish any of LAFCo's authority to approve extensions nor would the extension of service be automatic, but is a process that if all the agencies agree, would work to facilitate development in this area.

Chairman Silva commended staff, the District, and the City for their work and for coming up with a resolution. Fey said there is considerable market pressure in this area for development. Commissioner Perea asked if the crux of the MOU was to encourage industrial development and the answer was "yes."

There was no further discussion and Commissioner Perea made a motion to approve the MOU and Commissioner Parra seconded the motion that passed 5-0.

8. **Consider Authorization:** Authorize the Executive Officer to enter into an agreement with Provost & Prichard Engineering Consultants to prepare the Municipal Service Review for the City of Selma.

Fey reported that the MSR program has slowed down because of some complexities and that the developer of the Selma Crossings project has volunteered to fund a consultant to prepare an MSR for the City of Selma under the direction of staff in order to expedite his project. Fey said the consultant would also pay a 9% administrative fee to LAFCo and recommended approval as described in the staff report.

Commissioner Parra asked if approving the contract would fast-track the MSR and help the budget. Fey responded that there would be a slight bump in the budget due to the administrative fee but otherwise there would be no expense to the Commission. Fey noted that the Commission had asked for staff to perform MSRs; however, in this case Provost & Pritchard (P&P) has experience and is reliable to perform the work. Fey said this may be a prototype for a relationship with a consultant with the appropriate controls and monitoring by staff of the work to make sure the Commission gets the product it needs out of the MSR.

Commissioner Santoyo asked what role LAFCo has at the beginning of the selection of a consultant vs. accepting a developer's choice for a consultant to do the services. Fey responded that P&P is one of the few local consulting firms that have experience with MSRs, and since the MSR is being funded by the developer, it is the developer's choice of consultant. Fey said that if it had been another consultant without the reputation that P&P has, staff may have supported the proposal. Fey said in this case it is the developer paying for it and is not the Commission's funds. Commissioner Santoyo said he just wanted to make sure staff was comfortable with the developer's choice of consultant.

Jeff O'Neal from P&P said they have plenty of experience preparing MSRs for LAFCos from Madera County down to Kern County and in between. Mr. O'Neal said they had a lot of information on the Selma Crossings project that would help facilitate the preparation of the MSR and then made himself available for questions.

Dirk Poeschel, spoke on behalf of Tim Jones the developer of the Selma Crossings project said the purpose of the contract is to expedite the MSR and coordinate a modification of the MSR for the Selma-Kingsburg-Fowler County Sanitation District which will facilitate a regional commercial center which has economic benefits for the region. Mr. Poeschel said they are very confident that P&P can do the work that is necessary to expedite the project in a proper manner.

A motion was made by Commissioner Perea to approve the contract and was seconded by Commissioner Parra which passed on a 5-0 vote.

Commissioner Perea asked that the item be reopened because he realized that LAFCo's Conflict of Interest Policy made him ineligible to vote. Counsel Price asked Commissioner Perea to recuse himself. Commissioner Parra made a request to reconsider the prior action and Commissioner Pacheco seconded the motion. The motion passed with a 4-0 vote with Commissioner Perea being absent.

Commissioner Parra made a motion to approve the contract and the motion was seconded by Commissioner Silva which passed by a vote of 4-0 with Commissioner Perea being absent.

10. Presentation: Preliminary Budget and Work Plan for Fiscal Year 2016-2017

Fey presented staff's report and said he was looking for some policy direction on the work plan and related budget. Fey said the budget was going to close with fee revenue higher than expected, as well as expenses higher than expected but is anticipated to balance out. Fey said there has been a bottle-neck in the MSR program because of the necessary time it takes to perform an MSR that has value to the agency and Commission. Fey said once staff has made it through the "2.0" MSRs, it may not be necessary to prepare MSRs for those districts on a five-year basis.

Fey said that staff was proposing to increase staffing by adding a LAFCo Analyst I position, increasing the size of LAFCo's offices, and increasing consulting services via an amendment of the PSA to accommodate the increased workload of the Municipal Service Review Program.

Commissioner Santoyo said it sounded like there is a backlog of MSR and GIS work and LAFCo was looking at getting some GIS help from the County. Commissioner Santoyo wondered if hiring a GIS consultant might be more affordable and efficient option than contracting with the County for GIS; Commissioner Santoyo asked whether or not the districts have a revenue source in collect assessments, and if so, are the districts not making those funds available to LAFCo. Fey responded that he did look at hiring consultants and then considered the investment of knowledge in commission staff. Fey said the County already manages the GIS database and there is a benefit to LAFCo participating in the GIS team because we are letting them know what LAFCo does, why LAFCo is interested in accurate boundaries, and there is a benefit when each agency shares that knowledge with another agency. Fey said that the end product would be accurate information that benefits LAFCo, the County, and other agencies.

Fey said that as far as districts paying for MSRs, there are some that operate at a very high level and then there are many others that don't. Fey said staff is finding out that it may not necessarily be a district's fault or the intention of a district's staff, but a lot of the districts have poor money management skills or are just underfunded. Staff is finding that many districts have not raised their fees in years because the boards do not want to have a contentious meeting. Fey said when LAFCo finds these kinds of issues in a district, staff works with them to resolve the issue which is a reason why the MSRs are taking so long; however, at the end of the process, the benefit is on a more sound financial footing which also benefits the public. Commissioner Santoyo was concerned about having a policy or criteria that allows a district not to pay for their MSR if they say they don't have the funds to pay but actually do have a revenue source. Fey responded that Commission funding of the MSRs was fundamental platform of the

2014 MSR program. Fey said that if the Commission is looking for some reassessment of the program it could direct staff to look into it and report back with recommendations.

Chairman Silva said he agreed with staff's recommendation to increase the staff so LAFCo can perform its duties more efficiently. Commissioner Parra agreed with Chairman Silva about increasing staff. Fey said that LAFCo not only process annexations and prepares MSRs but is in a unique position to offer advice to local agencies to fulfill a role of creating more orderly and efficient delivery. Fey said that having more staff would allow the Executive Officer more time to reach out and spend more time with an agency that is in need of some consultation. Fey noted that the California Special Districts Association is looking to form a local chapter and they would be an excellent complement to the work of the Commission.

LAFCo Council Price said that Fresno LAFCo is one of a finite number of LAFCos that charge in some instances governmental entities for the preparation of MSRs. Council Price said the way the law is written, any time there is a sphere update there has to be an MSR and there is specific language in the law that allows LAFCos to charge a fee for a sphere update. Council Price said the law is silent regarding LAFCo's ability to charge a fee for the associated MSR. Council Price said a number of LAFCo attorneys around the state have taken the position that if you have to update a sphere; it's not unreasonable for LAFCo in many instances to charge a fee for the MSR. Council Price said the advantage of bringing in a consultant kind of hedges your bet that in the event there is ever a judicial challenge regarding LAFCo's authority to charge for the MSR whether or not LAFCo has the direct statutory authority, has not yet been determined to his knowledge, but he thinks it's possible that it could.

Commissioner Santoyo said he is fully supportive of increasing staff to support the workload but however it's done, should be as cost effective as possible. LAFCo Analyst George Uc said he has been attending the County's monthly GIS meetings that include the Elections Department, Assessor's Office, Planning and Public Works Departments and cities. Uc said that since he has been working on the MSRs he has noticed that some of the special districts have an understanding of what their boundaries are which are not reflective of what LAFCo has for their boundary and when contacting the County Assessor Office, the Assessor has a different type of map. Uc said that in some instances, the Commission may have annexed or detached territory which doesn't get reflected on the Elections' or County's database. Uc said he then has to take the time to research to find the discrepancy. Uc said that bring the information into the GIS realm helps LAFCo keep intact the information we have internally as LAFCo but also allows LAFCo to tap into the larger County system to keep the information up to date.

The Commission concurred to have the Executive Officer place funds in the budget to hire an additional analyst and part time GIS technician.

11. Executive Officer Comments/Reports

Fey reported that there was a pink sheet on the dais that provided an update on the Raisin City Water District and will have a more formal presentation at the April hearing. Fey noted that there is a comedian named John Oliver who did a segment on Comedy Central about special districts and couldn't believe that the work LAFCo does get national press. Fey said that there really is a message in there about the performance or non-performance of special districts and will be providing it to the Commission in an e-mail.

12. Commission Member Comments/Reports

Chairman Silva reported that last weekend he was in San Jose for a conference related to well water availability in the State of California that was attended by different agencies including school districts. Chairman Silva said was sitting on a panel and a lady from southern California said she had a problem with LAFCo and he informed her he was a LAFCo member and satisfied her with her question. Chairman Silva felt it was a little strange that LAFCo came up but was glad to be able to address her concerns.

CLOSED SESSION

13. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Executive Officer

There was no closed session.

ADJOURNMENT

Commissioner Parra made a motion to adjourn the meeting and Commissioner Silva seconded the motion. The motion passed 4-0 with Commissioner Perea absent and the meeting was adjourned at 2:25 p.m.