

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

LAFCo MEETING MINUTES JULY 8, 2015

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
Christin Holford, Intern

1. Call to Order and Roll Call

Chairman Silva called the meeting to order at 1:35 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. Consider Approval of Items A through C

- A. Minutes from the June 3, 2015 LAFCo meeting**
- B. City of Clovis “Leonard-Dakota Northeast Reorganization”**
- C. City of Sanger “Indianola-North Reorganization”**
- D. Raisin City Water District Progress Report**

Executive Officer Fey reported that staff received a request from the applicant to continue item 5C to the August 12, 2015 meeting.

Commissioner Parra pulled Item 5D and Commissioner Pacheco pulled Item 5B for discussion. Commissioner Perea made a motion to approve the balance of the items, and concurred with LAFCo Counsel Ken Price's clarification that the motion to approve the balance would include the continuance of Item 5C.

Commissioner Parra seconded the motion and Commissioners Perea, Parra, Pacheco, Santoyo, and Silva voted in favor of the motion that passed approved 5-0.

Commissioner Pacheco asked why Item 5B was on the Consent Calendar and what the difference was between Item 5B and Item 6 that was a public hearing item. Fey responded that it was LAFCo's practice to place reorganizations that were routine in nature—meaning 100% consent from all of the landowners and uninhabited—on the consent calendar. Fey said the reason that Item 6 was shown as a public hearing item was because staff was recommending denial and he knew that the proponent would want to present testimony to the Commission, and therefore, was not necessarily a routine reorganization proposal.

Commissioner Perea made a motion to approve Item 5B and Commissioner Santoyo seconded the motion. Commissioners Perea, Santoyo, Pacheco, Parra, and Silva voted in favor of the motion that passed 5-0.

Regarding item 5D, the Raisin City Water District (RCWD) update, Commissioner Parra said it was his understanding there were only a handful of people that were able to attend the board meeting because the meetings were at 3:00 p.m. and most of the people were unable to attend because they had to work. Commissioner Parra said the people in attendance had asked for a later meeting time but got no response. Commissioner Parra asked if LAFCo could move the meeting time for the RCWD board meetings to a time when more people could attend. Counsel Price said that LAFCo could ask the District to change their meeting time but does not have the authority to compel the District to change their meeting time. Commissioner Perea suggested that staff send a request to the District to change their meeting time. Fey responded that staff could bring it to the District's attention that the Commission felt that as part of their good-faith efforts and outreach, it would be in their interest to change the meeting time.

PUBLIC HEARING

6. City of Fresno "Locan-Fedora Northeast Reorganization" (Landowner Petition)

Fey reported that it was staff's recommendation to deny the proposal based on its non-conformance with LAFCo policy in the SEGA area. Fey said that if the Commission determined to approve the reorganization, staff recommended that there be a condition that prior to the EO filing a Certificate of Completion, the City and the Fresno County Fire Protection District enter into a transition agreement. Fey said staff would recommend continuance of the proposal if the Commission wished to approve the item because the City of Fresno has expressed some concern regarding the fire transition agreement.

Fey said that the City and County have already agreed through their memorandum of understanding (MOU) that this project is exempt from the MOU's SEGA conditions. Fey said the MOU between the City and the County does contain a provision where the parties agree to an exemption from the conditions of the MOU and at the request of the City of Fresno, the Fresno County Board of Supervisors determined on April 22, 2014, that this project was exempt from the provisions of the MOU. However, Fey said that LAFCo is not a party to this MOU.

Fey summarized the past sequence of events for approving the SOI revision that included the SEGA. Fey said the Commission adopted Resolution USOI-136 for the SEGA area on January 12, 2005 and reconsidered its approval on March 16, 2005, at which point the SOI approval was rescinded. Fey said on April 12, 2006, the Commission adopted Resolution USOI-144 approving the request for a sphere of influence revision for SEGA with conditions of approval and findings. Those findings included the preparation and adoption of a community or specific plan for SEGA, a master Service Delivery Plan, preparation of a program for annexing the designated open space areas in the approach corridor of the Fresno Air Terminal, and a rural residential neighborhood annexation program. Fey said staff was recommending denial because none of these conditions have been complied with, which made the proposal inconsistent with the conditions of approval for the SEGA. Fey said the language of the Commission's resolution speaks to applications from the City not being approved until those tasks were complete. Fey said that after considering the language of the Commission's resolution of approval, that based on the record of the resolution, minutes, and information originally provided by the City for the second request for a SOI revision, staff concluded that it was the intent of the resolution to address all applications for the SEGA area and not to exclude property owner petitions. Commissioner Perea clarified that the Commission was not bound by the City's or County's determination that the SEGA area is exempt from the provisions of the MOU. Fey said that was correct.

Commissioner Parra asked if the Commission could approve the annexation with staff's recommendation that a fire transition agreement be approved prior to the Executive Officer issuing a certificate of completion. Counsel Price responded with some history of why the Commission no longer imposes conditions of approval that are based on an agreement with a third party (i.e. fire district). Counsel Price was concerned about approving the proposal with that condition and suggested continuing the item until the parties could come to agreement on the fire transition agreement.

Commissioner Santoyo asked, if the Commission approved the reorganization with the fire condition and the condition was not satisfied within one year, would the proposal expire. Counsel Price said that was a possibility. Commissioner Santoyo asked Counsel Price if that addressed his concerns. Counsel Price said it would as long as the Commission and the public understood that the Commission does not have the ability to waive the condition once imposed if it could not be satisfied.

John Bonadelle, the petitioner, said he has an agreement across the street in the City of Clovis where he pays the fee and said he was willing to pay the fire transition fees for this reorganization. Bonadelle asked if it was possible for the Commission to approve the reorganization without a fire transition agreement or the payment of a fire transition fee. Fey responded that the current policy is that a fire transition agreement be between the City and the District. Fey noted that the District indicated that it was not looking to have the developer pay the fees but were looking an agreement with the City.

Mr. Bonadelle feels the District is using developers as leverage against the City. Commissioner Pacheco asked what a fire transition agreement was and its purpose and Fey responded by giving the background and history for the purpose of the Commission's fire transition policy. Commissioner Pacheco then said that he was not in favor of approving any annexation until the City and District approve a fire agreement.

Fresno City Manager Bruce Rudd said the City was close to reaching an agreement with the District but was waiting for a response from the District on the draft agreement. General discussion on fire transition agreements followed. Commissioner Santoyo asked Mr. Rudd when he thought an agreement could be reached and Mr. Rudd responded that he felt an agreement could be reached within 30 to 45 days.

Commissioner Silva asked what the land was being used for in the surrounding area and Mr. Bonadelle replied that the surrounding area is almost completely developed and that he developed the area north of Shields Avenue and across the street with 600 houses. Mr. Bonadelle said he put in all of the water and sewer lines down Locan Avenue and that his project has been unanimously approved by the Board of Supervisors seven times, the City Council multiple times, the City Planning Commission, and neighborhood groups. Mr. Bonadelle said that SEGA was approved in 2006, but things have changed and SEGA will never be development under its current form so the conditions are for something that is never going to happen.

Commissioner Santoyo asked Mr. Bonadelle if it would create a problem for him if the Commission was to continue the hearing for another 30 days and Mr. Bonadelle responded no, but just wanted to get past the last hurdle and he said that approving the reorganization with a condition requiring a fire transition agreement would be fine with him. Counsel Price read the Commission's fire transition policy and said that in order for the application to be deemed complete, a fire transition agreement should already exist and that he didn't believe approving the reorganization with a fire condition would be consistent with the Commission's policy. Counsel Price said an alternative would be to continue the reorganization to a date certain, and if by that time there was no agreement, there is a lengthy process which would require the parties to mediate and then the Commission could condition approval on the payment of a fee in the absence of an agreement.

Commissioner Santoyo felt that if the City and District were close to an agreement the Commission should give them additional time to work things out. Commissioner Santoyo said the Commission also has to take another look at and deal with the issues of the SEGA. Commissioner Pacheco concurred with Commissioner Santoyo that the item should not be approved until an agreement is in place. Commissioner Santoyo asked if it would be possible if the Commission could let the City and District know that they only have so many days to come to an agreement before the Commission steps in to facilitate negotiations. Commissioner Perea said that would give leverage to one over the other and create a disincentive for one or the other to come to an agreement. Commissioner Perea asked how approving the reorganization today would breach the Commission's fire policy. Counsel Price responded that an application isn't really deemed complete until there is an agreement in place.

Mr. Rudd said the City doesn't have any issues with annexation on the west side because the other fire protection district does not charge a fee. Mr. Rudd said there has to be a basis for the collection of the fee, if not they are continuing to collect a fee to fund the ongoing cost of operation of an area that has been reduced because of annexation and therefore have less territory to serve.

Commissioner Santoyo asked if the Commission could continue the item for 30-days and if an agreement hasn't been reached, just add a condition that the fee be paid. Fey responded that the policy states that ".... the Commission could impose its own conditions of approval to ensure an orderly transition of services, such conditions shall be deemed to satisfy this policy."

Fey expressed concern that approving the reorganization with the above condition would be a disincentive for the City and District to come to an agreement. Fey said that shortly after the Commission approved the SEGA the City Council decided to focus its efforts on the west side of Highway 99 but the City's General Plan now emphasizes in-fill development as well. Fey observed that there was a potentially negative effect if the Commission allowed Mr. Bonadelle's development to move forward without the SEGA Specific Plan. Fey said there were three other developers in the audience that could conclude that the SEGA is open for development through property owner petitions because this Commission determined to allow individual projects without a specific plan, as was originally intended.

Commissioner Perea wondered now that the City of Fresno's MSR is nearing completion, how the MSR will affect the update of the Commission's policies, if they started moving toward something different with SEGA. Fey responded that the MSR is essential for the Commission to take any action on a SOI and the SEGA will be part of the discussion when the MSR is brought before the Commission. Commissioner Santoyo made a motion to continue the item for 30-days to allow the City and District to reach an agreement and if they didn't reach an agreement, then the developer could pay the fees to the District.

Counsel Price said that the Commission has the authority to waive a policy for a particular reorganization if the Commission determines that it is in the public's interest. Counsel Price advised the Commission to continue the hearing to the next regularly scheduled meeting which is August 12th, and have the 30-day clock as noted in the policy commence today and consider that time whether they should determine to dispense with the mediation requirement. Commissioner Parra seconded the motion and the motion passed on a 5-0 vote with Commissioners Santoyo, Parra, Pacheco, Perea, and Silva voting in favor of the motion.

OTHER MATTERS

7. Authorize the Executive Officer to amend consulting service agreement with Policy Consulting Associates for preparation of the City of Fresno Municipal Service Review.

Fey reported that due to delays caused by changes in City staff and changes in the economy which caused a substantial rewrite of the Fresno MSR, the consultant requested a budget amendment of \$3,995 to make revisions and complete the MSR. Fey said LAFCo would be responsible for \$500 and that the City had agreed to pay the remaining amount.

Commissioner Santoyo made a motion to approve the amendment to the agreement and Commissioner Parra seconded the motion. The motion passed on a 5-0 vote with Commissioners Santoyo, Parra, Pacheco, Perea, and Silva voting in favor of the motion.

8. Authorize the Executive Officer to sign a contract with Sampson, Sampson & Patterson, LLP to perform LAFCo audit.

Fey said that the Commission's Financial Procedures stipulate that an audit will be conducted every two years and that the last audit was in 2012. Fey requested authorization to sign a contract with Sampson, Sampson & Patterson to prepare the 2013/2014 audit.

Commissioner Perea made a motion to authorize the EO to sign the contract with Sampson, Sampson & Patterson to prepare the 2013/2014 audit. The motion passed on a 5-0 vote with Commissioners Perea, Santoyo, Parra, Pacheco, and Silva voting in favor of the motion.

9. Executive Officer Comments/Reports

Fey noted that the May Financials were distributed and that early registration for the CALAFCO Conference was about to end and that he would include information on the Conference in Friday's Notes, if any Commissioner wished to attend. Fey said that staff was working on an inter-agency white paper for the Lanare Community Services District and intended to distribute it to the Fresno County Planning Department, to the water boards currently overseeing the remediation project in Lanare, and to the Leadership Council staff. Fey said the white paper essentially puts all the LAFCo pieces out and describes what LAFCo's interests in the service district are and what steps are necessary in order for that district to continue to function. Fey said that George Uc would be attending a meeting in Lanare on Friday that was called by Supervisor Mendes.

10. Commission Member Comments/Reports

There were no comments by the Commission.

11. Executive Officer Employment Agreement: Amendment to Compensation and Benefits.

EO Employment Agreement subcommittee members Commissioner Silva and Commissioner Santoyo reported on their recommendations and asked if the Commission had any questions.

General discussion of the EO's contract followed. Commissioner Perea made a motion to approve the amendment and directed Counsel to make the modification to the agreement which would be to delete section 3.2 and add that any future salary increase would be determined by the Commission at the time of review. The motion was seconded by Commissioner Santoyo and passed on a 5-0 vote with Commissioners Perea, Santoyo, Parra, Pacheco, and Silva voting in favor of the motion.

ADJOURNMENT

Commissioner Santoyo made a motion to adjourn the meeting and Commissioner Parra seconded the motion. Commissioners Santoyo, Parra, Pacheco, Perea, and Silva voted in favor of the motion. The motion passed with a vote of 5-0. The meeting was adjourned at 3:05 p.m.