

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

LAFCo MEETING MINUTES – NOVEMBER 5, 2014

Members Present: Commissioners Phil Larson, Mario Santoyo, Armando Lopez, Henry Perea, 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.

3. Comments from the Public

There were no comments from the public.

4. Potential Conflicts of Interest

There were no conflicts to report.

5. CONSENT AGENDA

- A. **Consider Approval:** Approve Minutes from the regular LAFCo meeting of October 1, 2014.
- B. **Consider Approval:** Request from the City of Sanger for a one-year extension for the “Annexation 06-03 – Greenwood Estates” Reorganization.
- C. **Consider Approval:** City of Clovis “Hendon-Locan Southwest Reorganization.”
- D. **Consider Adoption:** LAFCo Hearing Schedule for Calendar Year 2015.

Commissioner Perea made a motion to approve the Consent Agenda per staff's recommendations and Commissioner Lopez seconded the motion. Commissioners Larson, Santoyo, and Silva voted in favor of the motion.

PUBLIC HEARING

6. Consider Approval: New MSR Guideline Policies to LAFCo Policies, Standards and Procedures Manual.

Executive Officer Fey reported that the new guideline policies were being presented pursuant to Commission's direction given in August and the refinement of policy options given in September. Fey said that the guidelines serve as policy on the timing, frequency, and depth of analysis of MSRs.

LAFCo Analyst George Uc presented the MSR Guideline Policies. Uc said MSRs are to be updated every five years or "as necessary." Commissioner Santoyo asked for clarification on what was meant by "as necessary." Counsel Price responded that "as necessary" at a minimum would mean every time an agency's sphere is amended. Fey added that LAFCOs have used local policies to clarify the function of the "as necessary" language. Fey said that the purpose of the proposed policy is for the Commission to publically discuss and adopt a position how it will interpret the statute.

Uc described how cities and special districts would be divided into three levels that would require different levels of review. Commissioner Santoyo asked if the three levels of MSRs would be determined by staff or if the levels were a standard from elsewhere. Fey responded that staff would make that determination and inform the Commission of its approach. Fey said that Level One MSRs would probably be on a five-year basis and a Level Three would on an "as necessary" basis, when the agency's SOI would be amended. Fey said that staff included a 20-year planning horizon to let these agencies know that if adopted, LAFCo will be using that horizon and they should also use it to tailor their sphere changes.

Uc summarized the MSR program by saying the policies would introduce the 20-year planning horizon for the local agencies and distinguish the types of services the agencies provide into two categories based on a proposed definition of "municipal services" and "non-municipal services." Uc said the policies also introduce the Level One, Level Two, and Level Three program. Uc said staff was looking for direction on what to do with those districts that were unresponsive to LAFCo's request for information in 2007. Commissioner Larson said that probably part of the reason that those districts didn't respond was because their boards were appointed and their boards are vacant. Commissioner Silva asked if all of the county service areas would be part of Level Two. Uc responded that that they would but some could be moved to Level Three considering that many only provide street maintenance or lighting. Fey said that many CSAs provide services that promote growth though at a rural level of service.

Commissioner Perea asked when the Commission would be discussing a strategy on what to do with inactive special districts. Fey said he has been working with the west side resource conservation districts regarding consolidation and has been reaching out to the cemetery districts and county service areas. Fey said staff plans to present an item as a workshop in January or February to let the Commission know the progress and bring to the Commission's attention some of the other factors that staff has been encountering as it relates to inactive districts. Fey said there is no legal definition of inactive but it is a presumption on many agencies' part if there are no board members, no appointees to the board, no working phone number, or if the district is even filing with the State Controller's office. Rather than call the district inactive, Fey suggested "unresponsive" is a more appropriate term. Fey said it is the

obligation of each special district's board to perform its functions under the law and that there are still actions by other agencies that are necessary under their own statutes even if there is nobody there to answer the district's phone. Commissioner Perea asked if those districts with no board or phone were providing services. Fey responded that frequently they have no budget and do not provide services. Commissioner Silva asked who would be in charge of the district's budget if they had no board. Fey responded that the board is responsible for its budget. Fey said the question is how far is the Commission willing to take the efficiency mandate? Would the Commission be willing to dissolve a district if members of the district community did not want the district to be dissolved? Fey suggested that the Commission could have a workshop on the subject and invite the districts to ask them how they would like to keep their district functioning.

Commissioner Silva suggested that LAFCo give notice to the districts that if they didn't respond to staff's request for information, the Commission would take action to dissolve their district. Commissioner Perea asked if staff had a list of how many of those districts exist and Fey responded that staff does have a list that is being developed and it would be made available to the Commission.

Commissioner Larson said a good example would be the Mid Valley Water District stating that they didn't have any water but they didn't want to be dissolved and that he can't get anyone to serve on the board. Commissioner Larson also asked if the Commission could notify the districts that if they didn't respond they would be dissolved. Fey said that staff was reviewing the recommendations in past MSR's that were well-intended at the time but the MSR program has evolved and future MSR's would include recommendations that if there are no elected or appointed board members and no budget, the Commission would expect the board at the very least to meet once a year to take minimal actions so that the district doesn't become a liability to other agencies such as the Elections Department or Clerk to the Board of Supervisors.

Commissioner Silva asked Counsel Price if state law provided any guidance or does staff know what other LAFCOs are doing in these situations; said he doesn't want to reinvent a policy if there was already something in place at the State level. Counsel Price responded that LAFCOs throughout the State have implemented their own programs to try to deal with this situation and said there was a basic framework within the law with respect to how to initiate dissolution; whether or not you have to have an election. Price said that there was a provision in the law that if you try to dissolve a district without an election you would need the consent of the dissolving agency. Price said that staff could present a step-by-step approach to dissolution to the Commission.

Commissioner Santoyo asked what the Commission's responsibility was as far as follow-up on recommendations made in an MSR, and what could the Commission do as far as follow-up? Commissioner Santoyo asked if staff needed to establish a follow-up procedure. Fey responded that the MSR determination could state the Commission's expectations for accountability. Fey said that staff could put together some parameters for the Commission to discuss in terms of accountability points that are of interest to the Commission and could be made a part of the MSR process. Fey said that after an MSR was performed, the Commission could make determinations and recommend that an audit be performed to make sure certain actions took place within a certain amount of time, and if those actions did not take place, then the Commission may choose to consolidate or dissolve the district. Commissioner Santoyo wondered why LAFCo would go through the process of performing an MSR if the Commission

didn't enforce or monitor the recommendations. Counsel Price said that the statute only give LAFCOs limited authority but if a district wanted to expand their sphere and their MSR showed significant problems, the Commission has the discretion to approve or deny an SOI request.

Commissioner Larson made a motion to approve the MSR Guidelines and Commissioner Lopez seconded the motion. Commissioners, Perea, Santoyo, and Silva voted in favor of the motion.

OTHER MATTERS

7. Executive Officer Comments/Reports

Fey reported that staff attended the CALAFCO Conference and made a lot of connections and found that there are a lot of issues that LAFCOs are facing together. Fey said the LAFCo Financial Statements for September were placed on the dais for their review. Fey discussed an article that was in The Fresno Bee regarding the Westlake project that was recently approved by the Commission. Fey said that the article stated that the developer was going to forestall the recordation of the project and plant trees. Fey said that the developer may request a one-year extension but that it would be up to the Commission at that time to grant or deny the request.

Commissioner Perea said that if the developer plans to plant trees, it would probably be at least ten years before they would be ready to record the annexation. Commissioner Perea asked if the Commission could rationalize continually extending the approval for ten years. Commissioner Santoyo asked for an explanation of what was being proposed. Commissioner Larson responded that Granville made a presentation saying that they planned to withdraw their application for annexation to the City of Fresno due to a lack of communication with the City and that they planned to plant almond trees. Commissioner Larson said that Granville did not feel the market would justify furthering the project at this time and that it would probably be ten years before the market comes back; however, if the market did turn around and development became viable they would develop the land as quickly as possible.

Commissioner Santoyo asked how the Commission could extend a project that wasn't going to be started for a long time. Commissioner Larson responded that the developer would have to start all over again if they withdrew their application. Commissioner Perea agreed with Commissioner Santoyo that the Commission approved the project based on current conditions, not eight or ten years from now. Commissioner Perea said the question is, at what point the Commission decides whether to rescind their approval based on the decision of the developer. Commissioner Perea asked if the Commission had any authority to deal with the situation prior to June before the approval expires. Counsel Price said that had the application been recorded the Commission would have had the ability to detach the territory and that he wasn't aware of a procedure in the LAFCO law that would allow the Commission to go back and deny its prior approval. Commissioner Santoyo asked if staff could place a condition on an application that would keep this situation from happening in the future. Counsel Price responded that the Commission can't place a condition on something someone else controls but can place a condition on something that is within the Commission's purview that would ensure that there is viability; the Commission could then place a condition of approval on something in the confines of the statute. Fey said that the Commission has the ability to grant a one-year extension based on whether the project is viable. Fey said that statute says that if

a certificate of completion is not filed within a year, then the application terminates. Fey said that prior to the Fresno Bee article Jeff Roberts called staff about Granville's decision regarding Westlake and that Fey had informed the Commissioners about this.

Commissioner Perea asked if there could be a brief workshop at December's hearing to give a little more detail on the developer's decision and to discuss the criteria that must be met in order for the Commission to grant an extension. Commissioner Perea said the Commission needs to look at a policy that would apply to everybody.

Fey said staff received a call from an employee at Self-Help Enterprises regarding CSA #39A and 39B saying that they were contacted by property owners outside of the CSA whose wells are going dry and they have been talking to the County about requesting an extension of service outside the District's sphere. Fey said that same afternoon he got another call from a property owner in the Heidelbrecht Estates east of Clovis Community Hospital who reported that he and many of his neighbors are running out of water and that this issue appears to be happening more often. Fey said that LAFCo could extend services outside a district's sphere if there is an immediate or impending health and safety issue; however, since this situation appears to be happening more often, he has contacted other EOs in the state asking if there were any policies in place that would address this situation.

Commissioner Santoyo said that because of the groundwater overdraft in the valley, these situations will continue unless there is a dramatic change in precipitation over the next year. Commissioner Santoyo said that the legislature and Governor Brown implemented the Groundwater Sustainability Agencies Mandate and that LAFCo should have a better understanding of what's happening to the water supply and what the effect of implementation of the legislation with regard to groundwater management would have on water supply. Commissioner Santoyo said that LAFCo should develop criteria for approving those expansions.

Counsel Price said that the groundwater legislation is complex which took three bills and merged them into one in order to implement it. Counsel Price said it is not clear as to what LAFCOs' role will be with respect to the implementation of the legislation. Price said that he was currently writing a law journal article about the very issue and would be happy to work on some kind of workshop for the Commission regarding the impact of the legislation. Price said that LAFCOs will have a very keen role and the legislation would change their oversight with respect to annexations and entity formations and would also have a profound effect on the out of area service agreements. Counsel Price said this would change the LAFCO law significantly in the next three years. Commissioner Perea asked when the workshop would be and Fey responded that staff would put a workshop together and keep the Commission comprised of the date.

8. Commission Member Comments/Reports

Commissioner Perea reported that Fresno and Madera Counties will be holding a joint meeting regarding their potential growth in both counties on January 13th and 27th and said they will include LAFCo in that discussion.

ADJOURNMENT

Commissioner Larson made a motion to adjourn the meeting and Commissioner Lopez seconded the motion. Commissioners Santoyo, Perea, and Silva voted in favor of the motion and the meeting adjourned at 10:53 am.