



BUTTE LOCAL AGENCY FORMATION COMMISSION Minutes of Sept. 2, 2021

(A complete voice recording of the Commission's meetings can be obtained from www.buttelafco.org)

1. CALL TO ORDER

Steve Lucas called the meeting to order at 9:00 a.m., September 2, 2021, through Zoom Webinar attendance due to the COVID-19 pandemic.

1.1 Roll Call

Commissioners Present: Carl Leverenz (Chair-Public)
Bill Connelly (Vice Chair-County)
Tod Kimmelshue (County)
Al McGreehan (Special District)
Bill Sharman (Special District)
James T. "Bo" Sheppard (City)

Commissioners Absent: Greg Bolin (City)

Alternate Commissioners Present: Steve Betts (Public) & Debra Lucero (County)

Alternate Commissioners Absent: Larry Bradley (Special District) & Bruce Johnson (City)

Others Present: Stephen Lucas, LAFCO Executive Officer
Jill Broderson, LAFCO Management Analyst
Shannon Costa, LAFCO Government Planning Analyst
Joy Stover, LAFCO Commission Clerk
P. Scott Browne, LAFCO Legal Counsel

2. CONSENT AGENDA

2.1 Approval of the Minutes of June 3, 2021

Steve Lucas asked if there are any changes to the minutes. No changes requested.

Commissioner McGreehan made a motion to approve the consent agenda. The motion was seconded by Commissioner Sheppard.

The motion was carried by the following roll call vote:

AYES: Chair Leverenz, Connelly, Kimmelshue, McGreehan, Sharman and Sheppard

NOES: None

ABSENT: Bolin

ABSTAINS: None

Commissioner Bolin arrived at 9:07 a.m.

3. NOTICED PUBLIC HEARINGS

3.1 21-05 - City of Oroville - Feather Avenue Annexation No. 2

Shannon Costa summarized the staff report and identified the area to be annexed including the road right-of-ways. Since the packet was distributed staff received additional comments from Kathy Brazil. Most of those new comments were in regards to the 2008 project and no new information was provided. Yesterday staff received the letter from CA Wildlife Foundation which was provided to the Commissioners this morning. They cite concerns over the City's oak tree mitigation ordinance. This project essentially conforms to LAFCO policies and represents a logical extension of the City's boundaries. The territory is uninhabited and has 100% landowner consent to annex. Therefore staff recommends that the Commission adopt the mitigated negative declaration and mitigation monitoring program prepared by the City of Oroville and adopt the resolution to annex the property and waive protest proceedings.

Commissioner McGreehan stated given the late receipt of the letter from CA Wildlife Federation does staff have any relative position.

Shannon stated she spoke with City of Oroville staff this morning. The letter states some confusion over how many inches would be mitigated and staff feels the City's ordinance is pretty clear that for every inch of oak tree that is cut 2 inches need to be replaced. Staff is confident in the City of Oroville's mitigations and those mitigation measures will be implemented and the oak tree ordinance required by the City will be imposed on this project during the final map process.

Chair Leverenz stated the original staff report map exhibit doesn't show that all of 18th Street from Feather Avenue to Oro Dam Blvd is included in the annexation but that the supplemental map that was provided points out that 18th Street from Feather Avenue to Oro Dam Blvd is to be included in the annexation.

Shannon stated yes that portion of 18th Street will be included in the annexation based on some discussions with the City of Oroville staff and comments received from Butte County Public Works it was decided to annex the entire area of 18th Street to clean up this area.

Chair Leverenz stated he just want to make that clarification. As to the letter received concerning the oak trees, obviously the City of Oroville as the lead agency dealt with the environmental review of this and put together the mitigation. Chair Leverenz asked if staff is satisfied that the proposed mitigation measures are consistent and deals with the issue that the letter has raised.

Shannon stated she is confident that their proposal meets the City of Oroville's oak tree mitigation ordinance.

Steve Lucas opened this item to the public for comment.

Linda Draper, past City of Oroville councilmember, stated she wants to set the record straight regarding the Dec. 15, 2020 City of Oroville meeting vote on this issue. She stated Janet Goodson and herself voted No on Dec. 15, 2020. The yes votes were by Smith,

Pittman and Reynolds. This information is easily accessible on YouTube. She just wanted to make sure this record is clarified for the public to know this.

Commissioner Connelly asked LAFCo counsel Scott Browne to speak to this.

Steve Lucas clarified that Linda Draper is referring to Exhibit C in the staff report, which is the resolution that was provided by the City of Oroville.

Linda Draper states yes that is correct.

Scott Browne, LAFCo Counsel, stated that it is good to have the information corrected but this does not change the action of the City. This is not really an issue that is before us today. What is before us today is the letter from the biologist and whether that is information as to how LAFCO should deal with that.

Linda Draper stated she was just concerned with accuracy and transparency for the public.

Scott stated it is not just the oak mitigation that the letter raises. It raises significant issues on endangered species. However, the negative declaration for this project was adopted in 2020 and that was the time in which this group should have challenged the determinations of the City of Oroville. By not doing so, they basically waived any complaints as to the document itself. The only grounds for modification of that document that LAFCO can consider is if there is evidence of significant impacts that were not addressed in the previous documents at such a level that the Commission believes they require a supplemental EIR. The question for you raised by this letter is do you believe it raises new information that would require further analysis in a supplemental EIR.

Chair Leverenz stated he is aware that the letter certainly is not timely, but the mitigated negative declaration that the City adopted clearly considered the issues raised by the letter and deals in some detail as to their mitigation of this. It appears the City did consider it with adequate consideration to deal with concerns being expressed.

Scott stated that would justify a finding that there is no new information that would require a supplemental EIR.

Kathy Brazil stated she has submitted some documents and they are included in the agenda packet. She is asking for LAFCo to deny this annexation based on the transparency of Oroville. There was a supposed public hearing on Sept. 8th but there are no minutes for that meeting and she wants to know who was present for that meeting. The public comment was open during the evacuation warning when the City of Oroville was closed for the North Complex Fire. She believes that limited public participation. The application and the information that was submitted danced between old information and new information. She is concerned that they just changed the date on the Negative Declaration document. She voiced concerns for the potential environmental impact on Ruddy Creek and wants to know if the City of Oroville will be liable for any flooding to properties down the creek that are in the County. She has concerns that a detention pond will be in the park next to a flood plain and with the amount of homes proposed to be built in the subdivision.

Steve Lucas stated the application was circulated to all affected agencies including the County, the Thermalito Water & Sewer District as well as other overlaying agencies. The end result of that is that staff has received no negative comments back regarding the drainage. The only comment staff received from the County was related to Feather Avenue

and some issues there. Other agencies were notified including Feather River Park and Recreation and none of them had any concerns with the project.

Wes Ervin, City of Oroville Principle Planner, stated there have been some questions raised about the mitigated negative declaration and whether it is a new document. It is a new document and all of the environmental impacts were adequately addressed. Staff believes the City appropriately developed and approved an oak mitigation process. The water quality and storm water drainage were adequately addressed by the project design. The drainage will be handled by pipes under the street and French Drains. There is no longer a detention basin proposed. The September 8th public hearing was a Planning Commission meeting and full record is online.

Wes Gilbert stated the original proposal for this subdivision included a detention basin with a pipe discharge into Ruddy Creek. Prior to the Planning Commission meeting we opted to change that to a subsurface storm drain detention retention percolation system so that the project drainage will be basically treated through the leach system and all of additional run off will be percolated away.

Wes Ervin wanted to make a correction and stated the September 8th meeting was not a Planning Commission public hearing it was a neighborhood meeting that was held in the Council chambers and minutes were not required.

Commissioner Lucero asked were the most recent FEMA Maps used and what was the date of the FEMA Maps used.

Wes Gilbert stated Jan. 6, 2011 is the date on the map.

Commissioner Lucero stated that is long before the climate change that we are experiencing now and the floods of 2019 had a deep effect on our County.

Scott Browne stated the last speaker claims the areas of wetlands were not properly recorded in the Initial Study and this is new information that LAFCO must consider. Scott asked the City of Oroville staff if they considered the additional areas of wetlands that the speaker spoke of.

Wes Ervin stated the wetland area for the proposed project is the lower area (parcel A) and there will not be future development in that area other than possibly a new city park sometime in the future. The rest of the development is way above and out of the floodplain.

Sam Abshier voiced her concerns in how the City Council conducts their meetings and stated every time you turn around they [the City] are taking another piece of the Thermalito pie.

Steve Lucas asked if there was anyone else that would like to speak. No one requested to speak. Steve closed the public comment portion.

Chair Leverenz stated he felt it was appropriate to call for a motion.

Commissioner Connelly made a motion to approve the annexation, amend and adopt Resolution No 7 2021/22 to include a finding that no new information of substantial importance, which shows that the project will have any significant effects not discussed in the City of Oroville adopted MND, was provided. The motion was seconded by Commissioner Kimmelshue.

Chair Leverenz stated projects like this always create issues, some of which are not always resolved. It does appear the City of Oroville has tried to deal with all of the issues that they were required to deal with. The drainage problems that have been discussed in the environmental documents, will have to be resolved with the conditions imposed by the City during the construction of improvements. The environmental document cannot solve those. There was a concern about liability. If the project proves to create or cause more water that does harm in certain areas, he certainly is familiar with lawsuits. The real issue is has the applicant and the City done what they need to do to go forward with this project. Chair Leverenz voiced his concerns regarding the City of Oroville's temporary ability to provide fire services.

Commissioner Connelly voiced his concerns regarding adding to a 'flag' and also the City of Oroville's ability to provide fire and police and if not will that fall on the County. He is inclined to support development as we need the housing so bad.

Steve Lucas stated Oroville has grown out and the 'flag' is the area going out Hwy 162 towards Hwy 99. The City has been aware of this and has developed multiple annexation plans and this is a gradual process.

Commissioner Connelly stated there has been promises of a fire station at the airport but that has never happened. In his mind the City should at least take the corridor so it is part of the community but he doesn't feel the core of Thermalito is ready to be annexed.

Commissioner Kimmelshue, stated he represents the Thermalito area as a County Supervisor and he also has concerns as to the 'flag' situation. He does agree with Chair Leverenz that if Cal Fire is going to be the fire department for the City of Oroville, he feels much more comfortable with that service. Tod stated he walked this piece of property and feels it is appropriate to be developed. He feels it could be very similar to the subdivision across from 18th St. and this would be a great addition to the City of Oroville and Thermalito if the development is done correctly.

Scott Browne stated the motion should include a finding that there has not been substantial new information submitted to the Commission that has not already been addressed in the Mitigated Negative Declaration of the City and therefore the Commission finds no basis for requiring a supplemental EIR for this project.

Commissioner Connelly accepts the motion amendment.

Commissioner Kimmelshue accepts the motion amendment.

The motion was carried by the following roll call vote:

AYES: Chair Leverenz, Bolin, Connelly, Kimmelshue, McGreehan, Sharman and Sheppard
NOES: None
ABSENT: None
ABSTAINS: None

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda- None

4.2 Discussion of Drought Issues

Steve Lucas stated this issue is regarding extending approvals for potable water for people with dry wells. Steve is asking the Commission to authorize staff to be involved and work with the various agencies, at the state level and locally to work through this. Essentially we can give the agencies a pre-approval and then those water provisions would terminate when the drought proclamation is ended.

Commissioner McGreehan stated this is an excellent suggestion and he hopes the Commission gives staff permission to proceed.

Chair Leverenz stated if the Commission could authorize the staff to temporarily give these people permission on a short term basis to be able to haul potable water that would be a good and that hopefully would not go against the State Water Board.

Commissioner Connelly stated we may need to go before legislature to get a temporary stay if the State Water Board is not cooperative.

Commissioner Kimmelshue stated we are in a crisis here and it is ridiculous that you can't go between districts to help distribute water where needed.

Commissioner Lucero asked how LAFCo will document these requests.

Steve Lucas stated our policy already sets this. Staff can get verification from a well driller of the well failure.

Commissioner Connelly stated you don't really need a driller. You need a pump company. There is a personal responsibility and people may have to extend the depths of their wells. We have to make sure the water is being used for a legitimate use.

Commissioner McGreehan stated assuming that the Commission authorizes staff to proceed, he trust that Steve and staff will come up with the appropriate documents and process to assist.

Steve Lucas opened this item to the public for comments. None stated.

Commissioner McGreehan made a motion to authorize staff to proceed as requested. The motion was seconded by Commissioner Connelly.

The motion was carried by the following roll call vote:

AYES: Chair Leverenz, Bolin, Connelly, Kimmelshue, McGreehan, Sharman and Sheppard
NOES: None
ABSENT: None
ABSTAINS: None

4.3 Paradise Irrigation District Options Study

Steve Lucas stated the Options Study is progressing but there are concerns in how this is progressing. Steve sent a letter regarding his concerns. The State Water Board continually uses terms such as consolidations, which means something different to the

SWB that is does to LAFCo. The SWB has the power to approve consolidations. We need to keep the control at the local level and keep the local water here.

Commissioner Connelly stated he fully supports Steve's efforts.

Commissioner Bolin stated he appreciates Steve's efforts as well and if there is going to be a consolidation it has to be with the Town of Paradise.

Commissioner Lucero stated she appreciates the fact that Steve is attending these meetings as they are not well attended. This is an appropriate letter and there's a real possibility for Paradise to lose control of their water.

Commissioner McGreehan stated he agrees with all of the comments stated and asked if the Draft report is available.

Steve Lucas stated he will stay involved as much as he can and will continue to share what information he receives.

Commissioner McGreehan requested to be excused at this time.

Steve Lucas opened this item to the public.

Richard Harriman stated he wants to make a special point to commend Steve Lucas for the way he has participated in the PID Options Study. He is greatly concerned with the passage of AB 36, which is to allow a form of fast tracking for the construction of both the Paradise pipeline and the PID pipeline. This is really a difficult situation and the train is leaving the station.

Public comments were closed.

No formal action was taken and it was agreed that staff should continue to be involved.

5. Public Comment on Items not on the Agenda

Steve Lucas asked if there were any comments on items not on the agenda. None stated.

6. Reports and Communications

6.1 Executive Officer's Report

Steve Lucas summarized the Executive Officer's report and provided updates. There was discussion on a new citizens committee formed in Paradise called Hold Our Water (HOW). There was discussion on the progress of the Tuscan Water District formation (TWD) project. Steve stated in his opinion we have received a completed application.

6.2 Correspondence - None

7. ADMINISTRATION

- 7.1** Due to a conflict with the CALAFCO Conference on October 7, 2021, the Commission will need to pick a new meeting date for October or cancel the meeting.

Steve Lucas stated the CALAFCO Conference was cancelled after the Agenda was distributed. There is no longer a need to change the October meeting.

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:29 a.m. to the next LAFCO meeting scheduled for October 7, 2021. The next LAFCO meeting is proposed to be a Zoom meeting.

LOCAL AGENCY FORMATION COMMISSION



By: **Stephen Lucas, Executive Officer**

Minutes prepared by Joy Stover, Commission Clerk