

BUTTE LOCAL AGENCY FORMATION COMMISSION

Minutes of December 5, 2013

1. CALL TO ORDER

Vice Chair Lotter called the meeting to order at 9:00 a.m., on December 5, 2013, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Present: Commissioners Greg Steel (Public - Alternate), Larry Duncan (Special District), Bill Connelly (County), Tom Lando (Special District) Jerry Fichter (City), Steve Lambert (County) and Vice Chair Scott Lotter (City).

Absent: Commissioner/Chair Carl Leverenz (Public).
Alternate Commissioners Wes Gilbert (Special District), Ann Schwab (City) and Larry Wahl (County).

Others Present: Stephen Lucas, LAFCO Executive Officer
Stephen Betts, LAFCO Deputy Executive Officer
Jill Broderson, LAFCO Management Analyst
Joy Stover, LAFCO Commission Clerk
Scott Browne, LAFCO Legal Counsel

2. CLOSED SESSION (*Administration Conference Room Available 9:00 a.m. to 10:00 a.m.*)

2.1 Conference with Legal Counsel on Significant Exposure to Litigation Pursuant to Gov. Code Section 54956.9(b)(1) – One Case

Scott Browne stated there was no reportable action out of the Closed Session.

3. CONSENT AGENDA

3.1 Approval of the Minutes of November 7, 2013

Vice Chair Lotter asked if anyone wanted any corrections or changes to the minutes. None stated.

Commissioner Fichter made a motion to approve the consent agenda. The motion was seconded by Commissioner Duncan.

The motion was carried by the following vote:

AYES: Commissioners Steel, Duncan, Connelly, Lando, Fichter, Lambert and Vice Chair Lotter

NOES: None

ABSENT: None

ABSTAINS: None

4. NOTICED PUBLIC HEARINGS

4.1 13-04MS – Review and Consideration of Public Review Draft Municipal Service Review and Sphere of Influence Update for the El Medio Fire Protection District.

Steve Lucas summarized the staff report and gave a historical account of how the process works

George Williamson, consultant with Planned West Partners, introduced himself and his associate John McFarland who has an extensive career in fire service and has the great experience of serving both as a city fire chief and a special district fire chief. He stated when the consultants reviewed the 2004 Municipal Service Review (MSR) for the El Medio Fire Protection District it was very sobering. The consultants asked the District to consider putting together a master plan. That master plan is now part of the record and tells the story of a district that is on the improvement. George Williamson presented a slide show showing the MSR determinations. The Sphere of Influence was the biggest challenge as the sphere the district applied for was ambitious, but it does speak to where the district provides services. The current district facility location is not the best location and it is encouraging to see where the district plans to relocate as shown on the maps provided to the Commission. The District has an option for a new facility that would include a training facility.

Steve Lucas showed on the map where the District's current station lies in relation to where the City of Oroville and the Butte County Fire Stations are located. The new proposed District facility would serve the area much more efficiently as it would be much more centrally located.

Commissioner Connelly requested a brief recess to confer with Legal Counsel and then stated he currently lives within 200 feet of, and previously owned, the property the District is proposing to move to. He no longer owns the property, but he would still like to recuse himself from this item. Commissioner Connelly left the room at this time.

George Williamson concluded his presentation and stated his firm recommends the increase in the Sphere of Influence boundaries as proposed by the El Medio Fire Protection District in their master plan.

John McFarland, stated El Medio has a very classy group of young fire fighters, that are committed to this organization and especially committed to the success of this organization. Both the City of Oroville Fire Department and El Medio are committed to their jurisdictions and are partners in this issue. It is his firm opinion that the two fire departments complement each other and need to continue to work together. He urges the Commission's consideration and support to approve this report to increase of Sphere of Influence.

Steve Lucas stated tremendous progress has been made by the El Medio Fire District, however what still remains is concern over their fiscal health. Staff supports the "Growth" approach and the expansion of the District's SOI either limited or as proposed. Steve Lucas went over the Table shown on page 6 of the Staff Report showing projected outcomes if the District were to increase their boundaries in the future. Steve Lucas shared letters of support that were received after the agenda packet was distributed and a budget update. The budget update will be included in the MSR and will replace Table 2.4.

Vice Chair Lotter opened this item to the public for comments.

Don Rust, Director of Community Development for the City of Oroville, stated he doesn't want to be an opponent of this and he appreciates all the comments today. El Medio is a partner with OFD and OPD and the City is providing dispatch for El Medio. Don Rust provided a letter from the City Council supporting only a limited expansion of the District's SOI. Don Rust said the City has gone through some financial distresses recently, but was recently awarded a grant to hire 4 new fire fighters. The City is looking into getting a new fire station in the south Oroville area as the City anticipates annexing that area in the future. As the City works through the annexation strategy, the City is planning to move forward to annex the south Oroville area and there is currently a study in process. The City would like to grow to the south and the west. The City cannot annex the El Medio area right now financially. The City sees El Medio becoming a partner with the City and ultimately dissolving the El Medio Board or possibly become a public or fire commission for the City.

Annie Terry, Director of the Woman's Shelter of the Oroville Rescue Mission, stated the Oroville Rescue Mission has been in existence for almost 50 years and partners with El Medio Fire District for several community functions. The Fire District is very community minded and is a very viable district in this community.

Donald Robinson, Captain with the El Medio Fire Protection District, stated he has been working with LAFCo staff and the Planned West Partners and it has been a very informative process and he has learned a lot. Currently the District provides service to a large portion of the City and provides the first response unit. The District has an automatic aid agreement with the County. The reason the District has asked for a larger Sphere is eventually in the next 20 years the District would like to grow into the area it is currently serving via automatic aid. The District has outlined their plan for growth in the Master Plan that is included in the MSR. The District is able to provide service to not only their entire district, but also provide assistance to outside agencies. To date, the District has received approximately 500 calls within the district and they have responded to over 700 calls to outside agencies, mainly the City of Oroville. If the District is awarded the Sphere and were able to get the public support to expand our boundaries, our service will continue to increase and grow. The District believes they can serve this entire area and provide a consistent better level of service.

There was discussion on the District's current budget. The District can fund 6 line personnel and 1 chief with the income that comes in from taxes alone. The additional funding received from grants funds additional positions and if the grants were to go away, the positions would go away, but baseline staffing would continue.

Commissioner Steel asked if there were any comments received from CalFIRE.

Steve Lucas stated this item was circulated to CalFIRE and they were included in the original discussions with the consultants and they have not provided any written comments.

Vice Chair Lotter asked if there were any more comments. No response and the public portion was closed.

There was discussion on which parcels within the proposed new sphere area may be within the State Response Area and currently pay the state an additional fee of \$150.

Vice Chair Lotter stated it would help El Medio to get a vote for annexation if the SRA fees per structure or out building goes away and all you pay is \$118.

Steve Lucas stated he contacted CalFIRE's administrative office and was told it would not be an automatic process for a district annexation to change the status of the parcel to a Local Response Area (LRA) from a State Response Area (SRA). It is only automatic for city annexations.

Commissioner Lando made a motion to approve Option 1 as recommended and outlined by the Executive Officer in the staff report. The motion was seconded by Commissioner Fichter.

Steve Lucas stated he would like to make one addition to the environmental findings. We would like to cite under the environmental findings categorical exemption 15320, which deals with areas that are in spheres that directly or indirectly result in any new or significantly different services to the proposed SOI area.

Commissioner Lando amended his motion to include this addition. Commissioner Fichter agreed.

The motion was carried by the following roll call vote:

AYES: Commissioners Steel, Duncan, Lando, Fichter, Lambert and Vice Chair Lotter

NOES: None

ABSENT: None

ABSTAINS: Commissioner Connelly

Commissioner Connelly returned at this time.

5. REGULAR AGENDA

5.1 Items Removed from the Consent Agenda – None

5.2 14-01 – City of Chico – Oak Way Annexation No. 3

Steve Betts stated in May an emergency connection to the City of Chico's sanitary sewer system was approved by the Executive Officer due to a failed septic system and the Commission followed with the approval of the standard sewer service extension conditioned to require the parcel to annex to the City. The City subsequently submitted the application to annex the property and Staff is recommending approval.

Steve Lucas stated he wanted to compliment [City Planner] Brendan Vieg for making changes in the last couple of months to the City's processes which has led to this situation being resolved the way we expected.

Vice Chair Lotter opened this item to the public. No response received and the public portion was closed.

Commissioner Duncan made a motion to adopt Resolution No. 21 2013/14 approving the annexation. The motion was seconded by Commissioner Lando.

The motion was carried by the following roll call vote:

AYES: Commissioners Steel, Duncan, Connelly, Lando, Fichter, Lambert and Vice Chair Lotter

NOES: None

ABSENT: None

ABSTAINS: None

5.3 Update of the Sewer Service Extension Process and Actual Sewer Connections in the City of Chico.

Steve Lucas provided an update and summarized a letter received from the City of Chico Manager on Dec. 3, 2013. The City's letter, which has been provided to the Commission, does not offer a solution for annexing the island areas into the City in order to avoid processing individual sewer connections one by one. LAFCo Staff met with City Staff on November 14th as instructed by the Commission, and that meeting resulted in no particular solution other than the City's position that it doesn't have the resources or a plan to annex the island areas in the near future. Steve Lucas went over two possible options listed in the staff report that may resolve the issue of the existing unauthorized extensions of sewer service. Option #1 may be the most viable option if the Commission just wants to legitimize those unauthorized sewer connections.

Commissioner Lando asked if logistically the city can initiate the annexation within 60 days.

Steve Lucas stated it would probably be more like 60 to 90 days as it would need to go before the City Council to approve the resolution.

Scott Browne stated there is no CEQA requirements as the parcels are all developed.

There was discussion on the fees the City of Chico may have collected when the City hooked up these parcels.

Brendan Vieg stated the fees collected by the City of Chico were only sewer hookup fees for the City and the City did not collect LAFCo fees for these parcels.

Commissioner Lando stated he feels it was an error that the City neglected to collect fees for LAFCo and submit the applications.

There was discussion on what the effective date of the master service agreement would be and how it is determined.

Vice Chair Lotter asked what the recourse would be if the City of Chico does not agree to a master service agreement.

Steve Lucas stated if the City fails to execute the master service agreement within 60 to 90 days, the process would revert back to Option 1, and the City would be responsible for paying the costs of processing those 62 unauthorized sewer service connections individually and that cost would far exceed the cost of processing them as island annexations.

Commissioner Duncan stated the Commission should put a sunset on the \$600 fee set for processing these sewer connections as the other LAFCo entities are subsidizing the costs.

Vice Chair Lotter stated we would need to agendize the issue of changing the fee.

Vice Chair Lotter opened up this item to the public.

Brendan Vieg, Principal Planner for the City of Chico, stated he has been working with LAFCo staff trying to rectify some of the problems that have gotten us where we are right now. The ultimate goal should be to have people wanting to hook up to sewer to get them hooked up, whether they are city or county residents. The more important goal should be getting these areas annexed with some date certain and that's where we should spend our time and energy, not pursuing the 27 individual parcels. There is an annexation study being prepared by the County and it is analyzing the fiscal impact to both the City and County of annexing these areas. That study needs to be finalized and reviewed by all parties before we have this line in the sand of meeting this February deadline. That study will help the City see what the fiscal impact will be to annex the areas. Coming up with a master sewer service agreement would be a great thing for everyone. The goal shouldn't be the timeline; it should be the commitment to a timeline.

Commissioner Duncan stated we have been working on this issue for over 2 years.

Vice Chair Lotter asked what is the status of the fiscal study that Brendan Vieg has referred to.

Steve Lucas stated LAFCo Staff has only seen administrative drafts of the fiscal study which is expected to be completed very soon.

Commissioner Lando stated Brendan Vieg's comments are fairly counter to the letter received from Mr. Nakamura, in that the City implies that if they knew they would get in trouble for not complying, they would have made it harder to comply. It is not at all in the spirit of moving these ahead and it raises great concerns about delaying. We have been working on annexing the Chapman area for years.

Brendan Vieg voiced the City's concerns regarding the resources required to process individual parcel annexations.

Vice Chair Lotter stated he found disturbing the section in Mr. Nakamura's letter where it is stated: *"Further, had it been suggested that by assisting LAFCO we would likely provoke a requirement for up to 27 annexations, our interest in cooperating as we did would have instantly evaporated"*. Vice Chair Lotter stated the City would not have provided the information about the 62 illegal connections if they knew they would have to pay for them. This colors the Commission's opinions on future agreements due to the failed efforts in the past and does not show good faith on the part of the City.

Brendan Vieg stated he does not feel the City would have withheld information, but the City may not have provided the staff time to meet and work with LAFCo to ferret out the information.

Commissioner Duncan stated since the City made the mistakes, don't they feel it is right to assist LAFCo.

Vice Chair Lotter asked if these fees could come out of the sewer fund.

Brendan Vieg stated there is an issue for an enterprise fund and the money collected is intended to be used for certain purposes only.

Vice Chair Lotter opened this item to the public. No further comments received.

Commission Connelly stated efficient government cost all the members of LAFCo and having islands is very inefficient. There has been nothing but delays for the last 9 years on an annexation process for this area. This is definitely an urban area and is best served by cities. If we don't follow through on this it will not happen. We should put the City on notice that we want this complied with.

Steve Lucas stated perhaps the appropriate way is to blend both options, direct your staff and your attorney to prepare a letter to the City saying that they have a choice; the Commission prefers Option 2, but if Option 2 is not accepted by the City, Option 1 will be, by default, put into place.

Commissioner Lando stated this is already written into Option 2 in the staff report.

Commissioner Lando made a motion to approve Option 2 from the staff report dated November 26, 2013, extending the time and giving the City of Chico 90 days to consider and adopt a Master Annexation and Sewer Extension Agreement that is acceptable to Butte LAFCo. The agreement shall require the immediate annexation of the Chapman, Mulberry, Forest Avenue and the East Lassen Avenue unincorporated area islands utilizing the island annexation provisions of CA Gov. Code 56375.3. The effective dates of which will be contained in the Master Annexation and Sewer Extension Agreement. Failure of the City of Chico to adopt the agreement will result in Option 1 becoming effective. The motion was seconded by Commissioner Steel.

The motion was carried by the following roll call vote:

AYES: Commissioners Steel, Duncan, Connelly, Lando, Fichter, Lambert and Vice Chair Lotter

NOES: None

ABSENT: None

ABSTAINS: None

It was confirmed the letter is intended to be signed by the LAFCo Chair.

6. PUBLIC COMMENTS NOT ON THE AGENDA – None

7. REPORTS AND COMMUNICATION

7.1 Executive Officer's Report –

Steve Lucas 1) acknowledged Supervisor Steve Lambert's reappointment as Regular County LAFCO Commissioner to a four-year term ending May 31, 2017; 2) stated Matsom & Isom will be conducting the on-site portion of the audit for FYE 2012/13 on Wednesday, December 11, 2013. This item will be placed on the agenda for the February meeting; 3). Provided an update to AB 54 provided; 4) stated he was appointed as Vice Chair of the Legislative Committee for CALAFCO; 5) requested the Commission to change the LAFCO meeting in January 2014 to January 9th; and 6) stated the 2014 Annual CALAFCO Conference dates have been changed from September 17-19 to October 15-17.

7.2 Correspondence – None

8. ADMINISTRATION – None

9. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:09 a.m. to the next LAFCo meeting to be held on Thursday, January 9, 2014 at 9:00 a.m.

LOCAL AGENCY FORMATION COMMISSION

By: Stephen Lucas, Executive Officer

Minutes prepared by Joy Stover, Commission Clerk