

BUTTE LOCAL AGENCY FORMATION COMMISSION

DRAFT Minutes of November 7, 2013

1. CALL TO ORDER

Chair Leverenz called the meeting to order at 9:00 a.m., on November 7, 2013, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Present: Commissioners Scott Lotter (City), Larry Duncan (Special District), Tom Lando (Special District) Jerry Fichter (City), and Chair Carl Leverenz (Public). Alternate Commissioners Wes Gilbert (Special District) and Greg Steel (Public)

Absent: Commissioners Bill Connelly (County), Steve Lambert (County). Alternate Commissioners 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

Commissioner Connelly arrived at 9:01 a.m.

1.2 Resolution of Appreciation for Loren Gill, Alternate Special District Representative

Commissioner Lotter made a motion to approve the Resolution of Appreciation for Loren Gill. The motion was seconded by Commissioner Fichter.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Lando, Fichter and Chair Leverenz

NOES: None

ABSENT: Commissioner Steve Lambert

ABSTAINS: None

1.3 Welcome of New Commission Special District Representatives.

- a. Tom Lando, Chico Area Recreation & Park District, Regular Member
- b. Wes Gilbert, Butte County Resource Conservation District, Alternate Member

2. CONSENT AGENDA

2.1 Approval of the Minutes of October 3, 2013

2.2 Review and Consideration of Amendment No. 1 to the Memorandum of Understanding between Butte LAFCO and its Employees

Chair Leverenz 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 Lotter.

The motion was carried by the following roll call vote:

AYES: Commissioners Lotter, Duncan, Connelly, Fichter and Chair Leverenz

NOES: None

ABSENT: Commissioner Steve Lambert

ABSTAINS: Commissioner Lando

3. NOTICED PUBLIC HEARINGS

3.1 13-04MS – Public Review Draft El Medio Fire Protection District Municipal Service Review and Sphere of Influence Update.

Chair Leverenz stated due to scheduling issues, this matter is going to be continued to the December LAFCo meeting.

Chair Leverenz opened this item to the public for comment. No comments received. The public hearing was closed and the item was continued to the December LAFCo meeting.

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda – None

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

Steve Betts stated at the Commission's request, staff was directed to determine where the sewer connections were occurring and provide an update. Staff determined there are 27 LAFCo approved extension of sewer service connections and 62 unincorporated parcels connected to the City of Chico's sanitary sewer system without LAFCo review and approval. The data used consisted of the septic system destruction permit listings, City of Chico sewer connection data which was provided by the City of Chico, data from the Chico Urban Nitrate Compliance Program, and data from LAFCo files. There have been 14 emergency sewer connections, approved by LAFCo.

Steve Betts went over the amount of staff and GIS time that has been spent on reviewing this issue to gather the data, evaluate it and map it. At this point staff is recommending the Commission direct the City of Chico to submit to LAFCO one comprehensive extension of services application encompassing all 62 unauthorized sewer

connections. Staff gave the Commission multiple options for funding the processing of these 62 connections, as shown in the staff report.

Chair Leverenz shared a letter that was given to the Commission today from Brian Nakamura, City of Chico City Manager, requesting that the Commission not take action today on the recommendation of the LAFCo staff and ask staff to meet with the City over the next two weeks and continue this matter to the December LAFCo meeting. Chair Leverenz stated he is inclined to want to honor the City's request so we don't get crossways with the City, but at the same time it would be wise to not give Staff at least some indication of where the Commission is on this issue. We have been pretty pointed about our disappointment with what the City has done. A lot of the properties connected to sewer would have been appropriate to actually annex to the City. If the City doesn't assist in repaying LAFCo, then the other LAFCo participants are paying for the City of Chico's errors. Chair Leverenz asked if there were any questions or comments.

Commissioner Lando stated he has a fairly strong opinion and it echoes the Chair's opinion. He stated the City for a long time, when he was the City Manager, suggested that the Chapman and Mulberry area would be annexed when the property owners were ready to annex. There was a [County] Supervisor at the time who strongly opposed the annexation. Commissioner Lando asked if the dollar amount the current City Manager, Brian Nakamura quotes in his letter, would come out of the sewer fund and in which point it would not affect the City's general fund.

Commissioner Duncan asked who would pay the LAFCO reduced fee of \$600.00 for these connections.

Steve Lucas stated generally the property owner would have been responsible to pay the LAFCo fees. LAFCo reduced the fees to a flat \$600.00 to make it easier on the property owners. Some of these connections actually occurred prior to LAFCo reducing the fees and they would have been full cost recovery. It would be difficult for the City to now retroactively try to collect from the property owners as they have already been connected to the sewer.

Chair Leverenz stated we are not living up to our mandate if we don't handle this in some fashion. Chair Leverenz asked LAFCo Counsel, Scott Browne, legally what are some of our remedies and do we have any.

Scott Browne stated the Commission's appropriate remedy is to do what you are doing which is to seek to get the City to apply retroactively to correct the situation. The method of doing that would be to file a court action for writ of mandate. The City would have no defense and the court would order it and they would have to pay the fees.

Commissioner Connelly asked if it is legal to discount the fees or is that a gift of public funds.

Scott Browne stated the decision was made at the time the fees were reduced that there were public benefits in encouraging connections by lowering the fees and spreading that cost to all the agencies, including the County. That is a decision the Commission would have to make and most agencies when dealing with failure to comply with the rules situations, generally require penalties.

Chair Leverenz opened this item to the public for comments.

Commissioner Lando stated from his perspective, he is not interested in recovering the past costs. He feels bringing this property into the city is absolutely the appropriate thing to do and if we could accomplish that, he feels LAFCO will have accomplished a huge task. He personally would be looking for costs going forward if there is an agreement to annex.

Mark Wolfe, Community Development Director for the City of Chico, stated he sees this as a great opportunity to work with the Commission and staff in solving something that has been a problem for some time and a sore point in our relationship, maybe for decades. The City understands that it is essential that the City have a well functioning relationship with LAFCO and it is essential in terms of implementing our General Plan and it is our charge & your charge under the state mandates to work together and that is what the community expects as well. The City staff has worked very cooperatively with LAFCo staff to accumulate the data that was presented here today. The City is only asking for a couple more weeks to work with LAFCo staff to arrive at a number and also find the money.

Chair Leverenz stated it is critical that the City and LAFCo staff have an appreciation for where the Commission is on this matter. The Commission wants this problem solved, we want the City to follow the law and we want the process to work and it hasn't. We need to deal with this going forward and we need to recognize that LAFCo has expended a certain amount of money and will spend some additional amount of money to process whatever the result is going to be.

Mark Wolfe stated he couldn't agree with Chair Leverenz more with just about everything he said. He was thinking the number was considerably somewhat less than what is referenced in the staff report. The City has changed the process now and whenever someone comes in to the City for an extension of sewer services, they are referred to LAFCo staff to start talking about what they are going to be faced with so we don't end up in this situation again.

Commissioner Connelly stated he would like to make a motion to approve Option B which is \$17,606.50. Motion died for lack of a second.

Commissioner Lando moved to table this item to our next meeting, to indicate our expectation is there will be an application coming forth to annex properties that are annexable. His own request would be that the City pay any appropriate fees going forward.

Commissioner Duncan stated he doesn't feel the City is talking about annexing.

Chair Leverenz restated the motion to state: To have the City apply to legitimize all of the existing hook-ups and also a consideration for annexing those parcels that are annexable.

Commissioner Connelly asked if the motion is asking the City to pay.

Commissioner Lando he is asking them to pay any costs that are required in the future for our staff, but nothing owed from the past.

The motion died for a lack of a second.

Commissioner Lotter stated he is always concerned about the LAFCo cost recovery. The figure of \$17,606 is what it has cost to research this and get to where we are now. And then \$37,200 is what it would cost to hook-up if we charge them at \$600. Actually the number is really much larger.

Commissioner Duncan stated regardless, LAFCO has lost money on this.

Commissioner Lotter stated as a city stakeholder, all of the cities, county and special districts are picking up the tab for these costs.

Chair Leverenz stated if the City of Chico doesn't pay some or all of the \$17,000 then all of the other LAFCo stakeholders are in fact subsidizing those mistakes and that is not fair.

Commissioner Duncan moved to continue this item to the December LAFCo meeting, giving the City staff and LAFCo staff time to meet and agree that the cost will not exceed \$37,200.00. The motion died for a lack of a second.

Commissioner Lando stated we could enter into an agreement in the next month to agree to annex these properties, understanding there is a fiscal issue, but it needs to be done regardless.

Commissioner Connelly stated we just can't give it a free ride and we need to recover a reasonable amount of costs as everybody else subsidizes it.

Commissioner Lotter stated the LAFCO contribution is increasing, every city, county and special district. We've had expenses that everyone is having to pay for and had we had those fees it might have made a difference.

Steve Lucas stated he just wanted to clarify Commissioner Lando's perspective, and if I understood him correctly, we would move this process forward, require the City to make an application for all 62 connections. There is a subset of those connections that are contiguous at this time to the City boundaries and could immediately be feasible for annexation. So we would be asking the City to come back with an application that corrects all 62, looks at the subset of the parcels that are immediately feasible for annexation and make application to annex those. And that would all be at full cost recovery. In a sense it is retroactively writing off what we already spent, but we are then going to, in the future, collect additional fees to process the larger mix. The benefit to that is it may resolve in 27 additional parcels being physically annexed into the City which is ultimately a good solution. If the goal is to get towards properties being annexed into the City, in Commissioner Lando's perspective, then this makes sense.

Chair Leverenz stated the City may want some time to do all this and the question would be how much time should they have and that's an issue we'll have to deal with.

Scott Browne stated you can't separate the annexation from the connection approvals and legally the Commission loses all authority to force an annexation if the Commission approves the sewer connections. They are tied together.

Commissioner Lando asked if both Chapman and Mulberry are eligible for the island annexation at this point.

Steve Lucas stated Chapman, Mulberry, Stewart and several other islands are all available for the island annexation law at this time.

Commissioner Lando stated he would like this to be part of the discussions with the City staff.

Mark Wolfe stated he fully acknowledges and agrees with the concept that everything ultimately being under one umbrella for municipal services is the charge under the state law, but the City doesn't have the resources to proceed with the annexations of the scale that is being discussed here.

Commissioner Connelly stated LAFCo should not subsidize this. Why should the County, other Cities and Special Districts subsidize the mistakes of Chico? We should get our cost recovery at a minimum. He does agree with the annexation idea, but we can't force them to proceed with annexation. What is before us is not annexation; we are talking about cost recovery for these sewer connections.

Commissioner Lotter made a motion to continue this matter to the December LAFCo meeting; LAFCo staff is to meet with the City of Chico staff as directed by the Commission; the City is to submit an application to correct all of the 62 unauthorized sewer connections and that process will be fully funded by the City of Chico; LAFCo requires a commitment for the City to either annex the 27 parcels or the entire islands with the City of Chico covering that cost; the issue of the \$17,000 cost recovery would remain open subject to further negotiation and they will come back in December with some appropriate timelines to complete the process. The motion was seconded by Commissioner Lando.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Lando, Fichter and Chair Leverenz

NOES: None

ABSENT: Commissioner Lambert

ABSTAINS: None

4.3 Review and Discussion of Agricultural Preservation Policies and Agricultural Land Conversion Mitigation Options

Steve Lucas summarized the staff report and stated LAFCo has three primary objectives according to state law: 1) To protect and conserve prime agricultural land and open space lands; 2) The Commission wants to have a single common predictable policy that could be applied throughout the county so that everybody is treated fairly and 3) To have a known expectation on the part of landowners and developers working in the county, as to what LAFCo would expect and there would be no mystery as to what that would be.

Staff would like to develop a draft policy that would be similar to the Stanislaus LAFCo agriculture policy and have it reviewed by a LAFCo subcommittee.

Chair Leverenz stated our current policy not being clear; we have had to rely upon other entities policies. We have had to adjust projects on a case by case basis, to

mitigate the agricultural issues. We need a policy that will work for LAFCo in all the areas. Chair Leverenz stated he would like staff to put together a draft policy and have Commissioners Greg Steel and Jerry Fichter review the draft policy and then circulate it.

Chair Leverenz opened this item to the public for comments.

Donna Decker, with Decker Engineering and the City Planner for the City of Gridley, stated she supports the efforts LAFCo is making to protect our agricultural land as we need comprehensive methodology that is fair and equal within every jurisdiction.

Scott Friend, speaking on behalf of the City of Biggs Planning department, stated fundamentally the valley has been blessed with having prime agricultural land around it. He would like to include having the cities be involved in developing the policy.

Chair Leverenz stated what is envisioned is to develop a draft policy, have it reviewed by a LAFCo subcommittee and then what is a result of that would be sent out to the stakeholders, including the cities and special districts, for comments.

Don Rust with the City of Oroville, stated the City has been engaged with the county in their process of preparing an agricultural policy. The City of Oroville would be very interested in reviewing the LAFCo agricultural mitigation draft policy and how it affects the City and the other communities.

Commissioner Lando made a motion to direct the staff to do an initiate outreach to get some input based upon what has already been done and then draft policies, have the draft reviewed by a sub-committee of LAFCo, and then bring the draft policy back to the Commission for additional discussion, before going out to the stakeholders. The motion was seconded by Commissioner Duncan.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Lando, Fichter and Chair Leverenz

NOES: None

ABSENT: Commissioner Lambert

ABSTAINS: None

4.4 Adoption of 2014 LAFCo Regular Meeting Calendar

Commissioner Lando made a motion to adopt the 2014 LAFCo Regular Meeting Calendar as submitted. The motion was seconded by Commissioner Fichter.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Lando, Fichter and Chair Leverenz

NOES: None

ABSENT: Commissioner Lambert

ABSTAINS: None

5. PUBLIC COMMENTS NOT ON THE AGENDA - None

6. REPORTS AND COMMUNICATION

6.1 Executive Officer's Report –

Steve Lucas summarized the Executive Officer's Report.

6.2 Correspondence – None

7. ADMINISTRATION

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:20 a.m. to the Thursday, December 5, 2013 regularly scheduled meeting.

LOCAL AGENCY FORMATION COMMISSION

By: Stephen Lucas, Executive Officer

Minutes prepared by Joy Stover, Commission Clerk