

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

LAFCo MEETING MINUTES – DECEMBER 10, 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 10:02 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 November 5, 2014.
- B. **Consider Approval:** One-Year Extension of time for the City of Clovis “Nees-Sunnyside Southeast Reorganization” (LAFCo File No. RO-06-38) (Eighth Request).

Commissioner Perea noted this extension request was an example of why there was going to be a workshop regarding extensions of approval. Commissioner Perea said that the current policy allows for numerous extensions; however, that policy may change.

Bob Dillon with Gary McDonald Homes acknowledged that the project has taken a long time and gave the reasons for the delay. Mr. Dillon said they now have all of the approvals from the City and are ready to go to the City Council for approval and will be starting the project early next year. Mr. Dillon thanked the Commission for their previous approvals.

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

PUBLIC HEARING

6. Consider Approval: Amendment to LAFCo Policies, Standards, and Procedures Manual to include Model Annexation Program Guidelines.

Executive Officer Fey gave his report and explained that the Manual includes many issues of concern and commission goals that are relevant to the Model Annexation Program which is intended to facilitate consistency between city annexation efforts and Commission policy. Fey said the guidelines are not mandates or requirements, but a template of actions that can be used to assist the local agencies with their plans and compliance with LAFCo policy.

Fey said staff received written comments about the annexation program guidelines from the contract planner for the City of Firebaugh and Selma city attorney. Fey said copies of the letters were provided to the Commissioners at the hearing, as well as a proposed revision to Attachment 1, Item No. 1. Fey supported a requested revision to the guidelines to read "city and county are "encouraged to reach an agreement..." rather than "shall reach an agreement on development standards" Fey said that the Selma city attorney also asked the Commission to consider making a revision that would clarify language to Item No. 2 to read "City annexation applications shall describe how the proposal implements the City's general plan, or an adopted amendment to the general plan....." instead of City annexation applications shall describe how the proposal implements the city's general plan, and support these statements with information....." Fey did not support the change to Item No. 2 as it is not necessary given that once a city has updated its general plan that is the plan of record.

Fey said that staff recommended the Commission adopt the program guidelines with the recommended change to Attachment 1, Item No. 1, which will provide guidance to the cities.

Commissioner Silva asked staff if a city has a general plan in place, does the Commission work with that plan? Fey responded that the Commission establishes the sphere around the city and the city then populates that sphere with land uses that it will grow into. Fey said when the Commission receives an application, its decision on the application is based on the general plan and rezoning pursuant to the general plan. Fey said the Commission isn't in a position to second-guess the wisdom of the plan that has already been addressed by the legislative body of the city.

Commissioner Larson said he did not support the language change to Item No. 1. Commissioner Santoyo agreed with Commissioner Larson saying "shall" means you have to do something but "encouraged" means you don't have to do it. Commissioner Santoyo felt that if an agreement on development standards has not been reached, LAFCo has not met its obligations and goals. Commissioner Santoyo asked if "shall" was too defining and if the Commission had the authority to require a development agreement. Commissioner Larson said the Commission is obligated to set the sphere lines for the cities and within those sphere lines; the cities have a general plan for that area. Commissioner Perea said that he thought the policy should be left with "shall" instead of "encouraged."

Fey said that Attachment 1 showed the Annexation Program Guidelines in bold along with staff's suggested actions to achieve those goals, and some background for the guidelines. Fey said the Commission already must make its decision consistent with a city's sphere so there is little latitude for a city to ask for decisions by the Commission that are not consistent with their sphere. Fey said that under suggested actions it is suggested that the city and county "shall" reach agreement, which is an encouragement and is still a suggested action. Fey said that "shall" may imply that it is a mandate, but is under suggested actions. Fey said that the Commission would encourage cities to reach an agreement, but does not have the authority to require that they reach an agreement. Fey said the CKH states that the City "shall" meet with the County prior to submitting an application to LAFCo for a sphere change in order to reach agreement on development standards. Fey said the CKH says that if there is no agreement, then LAFCo shall do the following. Fey said that whether it is "shall" or "encouraged" it is still directory and not mandatory language for the cities.

Commissioner Larson felt the language should remain "shall." Commissioner Santoyo agreed saying that LAFCo needs to be taken seriously and when you say you "shall" do something, you send a stronger message.

Commissioner Larson made a motion to leave the word "shall" in the guidelines and Commissioner Perea seconded the motion.

Counsel Price said that the draft guidelines have not yet been adopted and the Commission wasn't being asked to change an existing policy. Commissioner Larson clarified his motion to approve the model annexation guidelines as submitted by staff without revisions.

Veronica Garibay, Co-chair of Leadership Counsel for Justice and Accountability, supported the language that included the word "shall" and thanked staff for including Item No. 6 related to LAFCo's DUC policy. Ms. Garibay voiced her concerns with Item No. 3, which suggested that cities consider discouraging property-owner, petition-initiated reorganizations saying that many cities have been reluctant to annex disadvantaged communities and have grown away and around those unincorporated areas and that an example was Calwa. Ms. Garibay said that she wanted to make sure that LAFCo's guidelines are not encouraging or emphasizing the use of cities' resolutions of applications versus property-owner petitions. Ms. Garibay said applications by petition is an important tool for Disadvantaged Unincorporated Communities (DUCs) and suggested that the Commission make an exception for property-owner petitions for DUCs and that LAFCo would prioritize annexation of those neighborhoods.

Dwight Kroll, Planning Director for the City of Clovis, supported the policy as submitted. Keith Woodcock, City Planner for the City of Sanger, thanked Fey for providing a workshop and meeting with the cities and felt the program guidelines reflected staff's hard work. Mr. Woodcock said he supported the word "shall" in Item No. 1 because "shall reach agreement on development standards" reflects the concerns of the affected city as there is often disagreement between cities and the county on development standards. Mr. Woodcock said this will help insure that when a city wishes to implement its general plan that the County will use the city's general plan in order for a city to establish its own development standards.

Commissioner Larson said he liked what Mr. Woodcock said; however, the County has jurisdiction over local government and that he felt the Commission's guidelines should keep the word "shall."

In reference to Ms. Garibay's concerns, Commissioner Perea asked if staff needed to make any changes to the guidelines. Fey responded that encouraging applications by resolution did not preclude or hamper an annexation initiated by a land-owner petition. Fey said this guideline simply focuses on administrative issues that arise if a property owner doesn't have the ability to follow up on many of staff's questions that is necessary in order to complete the project. Fey said it has been staff's experience that if a city is the proponent, the administrative process is typically smoother when trying to get necessary information and complete the project.

Ms. Garibay said that the LAFCo guidelines prioritize a city annexation request over a property owner-initiated annexation request. Commissioner Perea asked if the Commission could direct staff to meet with the Leadership Council to come up with some language. Commissioner Larson didn't feel it would be a public service for the Commission to allow individuals to trump direction from city or LAFCo staff. Counsel Price said that the CKH allows for landowner- and registered-voter petitions and LAFCo cannot circumvent state law; however, the reason for the recommended policy is that there are property owners and developers that initiate a petition to LAFCo without going to the city first to make sure that there is consistency between the city's standards and the proposal. Counsel Price said that another difficulty is because LAFCo is not set up to be a lead agency for CEQA purposes and is usually only a responsible agency. Counsel Price said he read that Item No. 3 is written to simply encourage applicants to apply through the city for plan consistency and doesn't mean that an application absolutely has to go through the city. Counsel Price said that he has talked to other LAFCo counsels and found that this type of policy is consistent with LAFCOs throughout the State.

Commissioner Perea said he was ok with seconding the motion but felt staff should have a discussion with the Leadership Council to discuss their concerns. Commissioner Larson said he made the motion and was in favor of Commissioner Perea's request for staff to have a discussion with the Leadership Council. Commissioners Santoyo, Lopez, and Silva voted in favor of the motion.

7. Workshop: Commission Workshop on Extensions of LAFCo Approval

Executive Officer Fey said that at the November 5, 2014 meeting, the Commission asked staff to return with a workshop to discuss the extension of time process. Fey said his report provided statutory and policy background on the current extension procedure and then asked the Commission to provide staff with direction.

Fey said the Commission's approval of a proposal is a discretionary action and that once a project is approved, and the 30-day reconsideration period has expired, there is very little discretion to not complete a project if and when the various conditions imposed by the Commission are satisfied. Fey said he sent out several inquiries to other LAFCOs and got back quite a bit of experience and perspective. Fey said the bottom line is the statute states that if a Certificate of Completion for a change of organization or reorganization has not been filed within one year after the Commission approves a proposal, the proceedings shall be

deemed terminated unless prior to the expiration of that year the Commission authorizes an extension of time for that completion. Fey said that the statute gave broad authority to the Commission to extend the time for completion and Fresno's own policies don't restrict extensions to one year. Fey said that in 2009, economic hardship was established as sufficient justification and in 2010; all extensions were move to the consent calendar. Fey said there currently are 13 projects that have been approved and not completed and nine have been extended from five to eight years. Fey said that there are few LAFCOs that have that inventory of incomplete projects. Fey said that once the Commission approves a project and the reconsideration period expires, the Commission's discretion is minimized until the expiration period comes up.

Commissioner Perea said that it sounds like the Commission does have some discretion (to extend or terminate) after a project is approved and reconsideration period has passed. Commissioner Perea noted a project that was recently approved for development but that plans had changed and development was not going to occur for many years and the property owner was going to plant trees. Commissioner Perea asked what the Commission's discretion would be in that situation. Fey responded that the opportunity for the Commission to exercise its discretion would be if the applicant were to request a one-year extension. Fey said the Commission's decision was based on imminent development and if that development did not appear imminent then the Commission could take action according to the information in front of them. Commissioner Perea said that the policy does include imminent development but the Commission should take a look at what economic hardship means.

Counsel Price said the Commission has the authority to approve and place conditions on proposals and that those conditions must be satisfied before the proposal can be recorded. Price said the Executive Officer also has the discretion to determine if the conditions have been satisfied. Counsel Price said that if the conditions have not been met within one-year, then the Commission has the discretion to approve or deny a request for extension. Counsel Price said there is no mandatory requirement to approve an extension.

Commissioner Santoyo said the Commission should set a limit in terms of extensions because as time passes, circumstances change and that continually allowing extensions eliminated the incentive for a developer to complete the project. Commissioner Santoyo said he felt the Commission should set a limit in terms of extensions no matter what. Commissioner Silva noted that since there are so few extensions in other counties, maybe Fresno has made it too easy to extend projects. Commissioner Perea said that maybe the Commission needed to change its policy and send a message that extensions are not going to be granted forever.

Counsel Price said that maybe the issue wasn't just extensions but is crafting conditions of approval to address circumstances that have changed between the time of approval and the time of extension. Fey said there is language in the PSP manual that relates to a condition that the project must be completed within a certain amount of time. Fey said that staff could come back at the next meeting with some policy options for the Commission to consider on the limitation of extensions or the number of years of extensions. Fey said that economic conditions have been a factor but the Commission may want to consider removing that factor or require the applicant to provide greater evidence that the project was still viable and moving forward.

Commissioner Silva asked if any changes to the policy would require a public hearing and if notice would be sent out to the public and Counsel Price responded that it would.

There was a consensus of the Commission to direct staff to come up with some parameters and conditions for extensions and to improve on the definitions for criteria of extensions.

OTHER MATTERS

8. Executive Officer Comments/Reports

Executive Officer Fey reported that Ken Price would be presenting a groundwater workshop in January and that there will be a workshop on inactive districts in February. Commissioner Silva asked what the groundwater workshop was about and Commissioner Santoyo responded that as he recalled, the workshop was to let the Commission know how LAFCo would be engaged in new legislation regarding groundwater regulations. Counsel Price said he was going to go through the groundwater act and explain what the provisions would be and show some opportunities where LAFCo could be involved.

9. Commission Member Comments/Reports Service awards to outgoing Commissioners Larson and Lopez

Commissioner Silva asked Commissioner Perea if he was going to remain on the Commission next year and he responded that he was. Commissioner Perea also said that he believed that Brian Pacheco would be the new County Commissioner replacing Commissioner Larson. Commissioner Perea reported that the County was going to hold a series of summits, the first to be held on January 27th, in Madera which will be a joint meeting between Fresno County and Madera County to discuss what's happening on a regional perspective with their growth policies and that LAFCo will be getting an invitation.

Chairman Silva presented awards to outgoing Commissioners Larson and Lopez for their service on the Commission.

ADJOURNMENT

Commissioner Perea made a motion to adjourn the meeting and Commissioner Larson seconded the motion. Commissioners Santoyo, Lopez, and Silva voted in favor of the motion and the meeting adjourned at 10:54 am.

