

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

MINUTES OF MEETING

July 8, 2009

Board of Supervisors Chambers
Martinez, CA

August 12, 2009
Agenda Item 5c

1. Chair Gayle Uilkema called the meeting to order at 1:00 p.m.
2. The Pledge of Allegiance was recited.
3. Roll was called. A quorum was present of the following Commissioners:

City Members Helen Allen and Rob Schroder and Alternate Don Tatzin.
County Members Federal Glover and Gayle Uilkema and Alternate Mary Piepho.
Public Member Martin McNair.
Special District Member David Piepho and Alternate George Schmidt.

Present were Executive Officer Lou Ann Texeira, Legal Counsel Silvano Marchesi, Planner Nat Taylor, and Clerk Kate Sibley. MSR Consultants Kim Hudson of Dudek, Bruce Baracco, and Alex Hebert-Brown, both of Burr Consulting, and Michael McCormick, PMC, were also present.

The Commission adjourned at 1:02 p.m. for a Closed Session; reconvened at 1:30 p.m. The Chair stated that there was nothing to report.

4. Approval of the Agenda

Upon motion of D. Piepho, second by Allen, the agenda was adopted.

5. Public Comments

There were no public comments.

6. Approval of June 8 (Fire MSR Committee) and June 10 (Commission), 2009 Minutes

Upon motion of D. Piepho, second by Glover, the minutes for the June 8 and June 10, 2009 meetings were approved.

7. Informational Presentation: Green Valley Recreation and Park District

Blythe Soria, Board Member of Green Valley Recreation and Park District (GVRPD), provided an informational update to the Commissioners regarding the future of GVRPD. She provided an overview of the District's history, services and facilities. She spoke to the prior SOI amendment and indicated that they have withdrawn their application to annex a surrounding area intended to expand the District's tax base to fund major upgrades to the pool; instead they will fund less significant upgrades from the District's existing reserve fund and by incrementally increasing membership dues and soliciting grants.

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Soria highlighted the recommendations presented in the MSR (i.e., reviewing fees, adopting an annual budget and financial audit, and public meeting notification, meeting minutes, etc.) and the District's efforts to address these issues. She also spoke about the pending SOI update that will be presented to LAFCO later this year, indicating that additional time is needed to explore all options, including continuing as an independent special district or, creating an alternative entity that will continue to provide service to the community.

The Commission offered some observations and thanked Ms. Soria.

8. LAFCO 09-08 – City of Martinez Out of Agency Service Request (5274 Alhambra Valley Road)

The Executive Officer commented on the statute governing out of agency service and provided an overview of the request by the agency to extend water service outside the City of Martinez's jurisdictional boundary. Staff provided information regarding the land use, ground water challenges, and indicated that the property owner has signed a pre-annexation agreement.

In response to a question, Commissioner Schroder confirmed that he did not have to exempt himself on this issue, according to both the Mayor's Conference and LAFCO policies.

Upon motion of McNair, second by Glover, the Commission unanimously authorized the City of Martinez to extend water service outside the District's boundary to 5274 Alhambra Valley Road with specified conditions.

9. Workshop – Central County Sub-Regional Municipal Services Review (MSR)/Sphere of Influence (SOI) Updates

The Executive Officer provided a brief overview and chronology of the Subregional Municipal Service Review process, indicating that this is the second of three subregional MSRs, with East County completed and West County yet to come. Staff highlighted the fundamental framework of MSRs, emphasizing LAFCO's purpose and role, the governance structure and SOI options and recommendations and the differences in the two, and the close collaboration between agency staff and the MSR project team.

The Executive Officer stated that the Central County Sub-Regional MSR focuses on ten cities and one community services district: Clayton, Concord, Danville, Lafayette, Martinez, Moraga, Orinda, Pleasant Hill, San Ramon, Walnut Creek, and Diablo Community Services District.

Kim Hudson of Dudek provided a PowerPoint overview highlighting various factors including voter approved urban growth management measures, profiles of each agency, and governance and SOI options for each city, stressing that these are suggestions for possible choices based on each agency's general plan and other documents.

Following preliminary discussion with Commissioners, the public hearing was opened.

Phil Wong, City Manager for the City of San Ramon, spoke on behalf of maintaining that city's SOI, with inclusion of some additional properties that are currently being developed.

David Woltering, Planning Director for the City of Clayton, confirmed that city staff had been unsuccessful in finding official records of LAFCO-adopted SOIs. He asked that the SOI be confirmed/approved as it has been shown for some time—particularly the quarry area, which heavily affects Clayton residents.

Commissioner Uilkema urged that all comments be put in writing.

Staff asked that all comments be submitted by July 15 in order to assure timely posting of the Public Review Draft by approximately two weeks from the meeting.

Upon motion of Allen, second by Schroder, the Commission voted unanimously to receive the report and directed the project team to release the Public Review Draft MSR report and return September 9, 2009 with a Final Draft MSR that includes public comments.

10. Reclamation Services Municipal Services Review (MSR)

The Executive Officer provided an overview of the work that has been completed on the Reclamation Services MSR, with a review of reclamation districts (RDs) 799, 800, 830, 2024, 2025, 2026, 2059, 2065, 2090, 2117, 2121, 2122 and 2137. Staff noted that this item focuses only on the MSR itself, which the Commission is asked to accept, along with approving the required determinations. The next agenda item will focus on Sphere of Influence (SOI) updates.

Alex Hebert-Brown and Bruce Baracco presented highlights from the MSR and answered questions from Commissioners. They indicated that half of all prime agricultural land in Contra Costa County is located within these 13 reclamation districts (excluding RD 2122, which totally comprises wetlands), but only 14% of total prime agricultural land is registered under the Williamson Act. Delta levees are unique from most levees because they suppress water constantly, not just in flood situations. According to a government tidal gauge conducted at Crissy Field, there has already been a sea level rise of seven inches in the past 100 years, with predictions from the Intergovernmental Panel on Climate Change and CalFed, among other agencies, of further rises of 7-78 inches in the next 100 years.

Hebert-Brown noted the danger posed by a cataclysmic earthquake; there is a 62% chance of a 6. magnitude quake by 2032. Baracco added that with the subsidence that has already taken place, a 100-year flood would put most of the reclamation districts under water by approximately 20-30 feet. Some of the RDs are critical to the health of the Delta, while others may have little recourse to assistance in the event of failure.

For many of these RDs, the annual assessment does not provide enough funds for the necessary maintenance/repair work, so they must accumulate over a period of years. Once work is complete, they then must wait for reimbursement from California subvention funds.

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Consolidation could help some of these districts with access to more substantial funds, if other barriers can be surmounted.

Commissioner Allen asked about including the history of the levees and their development; ensuring that the Delta doesn't become a swamp in the event of rising waters through climate change; and ensuring that the prime farmland doesn't disappear if the levees are inundated.

Following further discussion with Commissioners, Commissioner Glover called for the question. Upon motion of Allen, second by D. Piepho, the Commission unanimously determined that the MSR project is Categorical Exempt pursuant to CEQA Guidelines §15306, Class 6; considered comments presented prior to and during the public hearing; accepted the report; adopted the MSR determinations, and directed staff to prepare the Final MSR report, including comments made by Commissioner Allen, and make it available publicly.

Upon motion of Allen, second by Glover, the Commission unanimously agreed to switch the order of Agenda Items Nos. 10 and 11.

11. Proposed SOI Expansions – City of Pittsburg, Contra Costa Water District (CCWD) and Delta Diablo Sanitation District (DDSD) (Agenda Item 11)

The Executive Officer provided a brief overview and history of the MSR and SOI updates for these three agencies, and introduced Michael McCormick of PMC, who directed the CEQA Initial Study and development of a Negative Declaration for the sphere expansions of the City of Pittsburg, CCWD and DDSD.

McCormick explained the project, which focused on expansions in a total of 13 areas (combining Pittsburg, CCWD and DDSD) in the Pittsburg and Antioch areas. Overall, the Initial Study was to determine if these sphere expansions would have a significant impact on the environment. In conducting the study, PMC tiered from four separate previous environmental analyses, and applied maximum buildout assumptions.

PMC determined that the action of expanding the SOIs would have no significant environmental impact. Additionally, all of the SOI areas are within the general plan boundaries for both Pittsburg and Antioch.

Following McCormick's presentation the Chair opened the public hearing.

Cristina Wong, with Greenbelt Alliance, spoke in opposition to adoption of the Negative Declaration (ND), stating that this action puts LAFCO in the development business. Furthermore, the ND does not fully analyze the impacts of such an action. Wong questioned the need for water and wastewater sphere expansions given that there is no proposed development project.

Aram Hodess, representing Plumbers Union Local 159, spoke in support of adopting the ND; with the terrible economy, unions are suffering and development provides jobs. Los Medanos

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Hills should be considered for development. Hodess also acknowledged having made political contributions to both Commissioners Schroder and Glover.

Melvin Rosenthal, resident of Walnut Creek, spoke in opposition, citing the damage to the viewshed from Mt. Diablo toward Pittsburg.

Marc Grisham, City Manager of the City of Pittsburg, stressed that not a single bit of development will occur as a result of this ND, as any developments must be deemed a project, go through a full environmental review, and then return to LAFCO for annexation. Grisham presented an agreement between the City of Pittsburg and LAFCO indemnifying LAFCO from any costs resulting from any unfounded lawsuits. When asked by Commissioner Glover if he is authorized to act for the City of Pittsburg in indemnifying LAFCO in the event of a lawsuit over the ND, he replied that he is.

Christina Armor, community organizer of the local Bay Area chapter of the Sierra Club, spoke on behalf of the thousands of members in Contra Costa County that expanding the spheres of influence is premature given that no developments are on the table yet, this is not the typical process employed by LAFCO, and that an MSR does not seem to be an appropriate vehicle for these expansions.

Dennis Linsley, representing Save Our Hills/Friends of Pittsburg, indicated that while not opposed to development, that development should occur in appropriate areas. He spoke in opposition to the SOI expansions, indicating that such action will set the stage for development. Given that Pittsburg has designated Los Medanos Hills as open space, he questioned why water and wastewater are needed. Furthermore, he questioned why the City of Pittsburg tabled its hillside development ordinance because it needed a full EIR, and yet this sphere expansion is requiring only an ND.

Paul Seger, resident of Oakley, spoke against adopting the ND and expanding the spheres, and asked that the minutes reflect that Discovery Builders is funding this Initial Study. Furthermore, the economic downturn is a boon to developers who work in the backrooms.

Tom Hansen, representing IBEW Local Union 302, supported the ND and sphere expansions, stating that the people voted for the City of Pittsburg's urban growth boundary, which includes the areas in question.

Troy Bristol, representing Save Mount Diablo, asserted that the ND and sphere expansions are incompatible with LAFCO goals and an end run around the regular process. He added that this action is growth-inducing without appropriate mitigation, tiering off general plans is not adequate, Pittsburg still hasn't finalized its hillside development ordinance, and expanding spheres into an area that has been designated as open space doesn't make sense.

The Chair invited those who have written comments to submit them for the record.

Commissioner Uilkema asked Marc Grisham what happens to Bay Point if LAFCO matches the SOI to Pittsburg's urban growth boundary, which excluded Bay Point. Grisham responded that the Council has taken the necessary steps to include Bay Point.

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Commissioner Glover noted that he was a leader in fighting the expansion of the County Urban Limit Line (ULL), but lost that; the people of Antioch and Pittsburg spoke very loudly when they approved their cities' urban growth boundaries. Glover believes that LAFCO has a responsibility to make SOIs coterminous with the ULL throughout the County.

Commissioner Uilkema expressed concern over the word "unfounded" in the indemnification agreement; would that render the agreement moot if either party deemed a lawsuit unfounded? Legal Counsel Marchesi responded that Commissioners can reasonably rely on the agreement holding, regardless of a verdict.

Following further discussion, Commissioner D. Piepho called for the question. Upon motion of Glover, second by D. Piepho, Commissioners voted by the following roll call vote to adopt the Negative Declaration; approve the indemnification agreement between the City of Pittsburg and LAFCO; and authorize the Executive Officer to sign the indemnification agreement.

AYES: Allen, Glover, D. Piepho, Schroder
NAYS: McNair, Schmidt, Uilkema
ABSENT: Meadows (M)

At 5:10 p.m., Commissioners Allen, Glover and Schroder departed. City Alternate Tatzin moved to the dais.

12. Reclamation District (RD) SOI Updates (Agenda Item 10)

The Executive Officer referred to the table outlining governance structure and SOI options and consultant and staff recommendations for each reclamation district.

The Chair listed the RDs for which the consultant and staff recommendations were to retain the existing coterminous SOIs: 830 (Jersey Island), 2024 (Orwood/Palm Tracts), 2025 (Holland Tract), 2026 (Webb Tract), 2059 (Bradford Island), 2090 (Quimby Island), 2117 (Coney Island), and 2122 (Winter Island).

Upon motion of Tatzin, second by D. Piepho, the Commissioners unanimously determined that Reclamation Districts 830 (Jersey Island), 2024 (Orwood/Palm Tracts), 2025 (Holland Tract), 2026 (Webb Tract), 2059 (Bradford Island), 2090 (Quimby Island), 2117 (Coney Island), and 2122 (Winter Island) would retain their existing coterminous SOIs; and directed Staff to prepare the resolutions supporting these determinations for adoption at the August 12 meeting.

The Chair then opened the public hearing on the remaining RDs.

Tom Baldocchi, Jr., Trustee of RD 2065 (Veale Tract), requested clarification of what the Commissioners would vote on regarding that district's sphere. Baracco explained that both he and LAFCO staff were recommending adopting a "provisional" sphere, with the requirement that the district report back to LAFCO within 12 months regarding potential governance

and/or boundary changes. Baldocchi asserted that they are concerned because the peripheral canal is taking a great deal of their time and a 12-month deadline might be a problem; he was assured that a report could consist of telling LAFCO that the peripheral canal is still taking all their time. Baldocchi also stated that they are interested in discussing future collaborations with Knightsen Community Services District.

Joe Darden, property owner (Delta View) in Veale Tract, spoke in favor of the future possibility of consolidation with RD 2024 (Orwood/Palm Tracts), but was concerned by the fact that Veale Tract had been removed from the spheres of Diablo Water District and Ironhouse Sanitary District, and that they were never notified. Staff responded that these sphere changes, part of the East County Water and Wastewater MSR process, had been publicly noticed and heard at various public hearings.

The public hearing was closed.

Upon motion of Tatzin, second by D. Piepho, the Commissioners unanimously approved a provisional coterminous SOI for RD 2065 (Veale Tract), with a report required within 12 months regarding potential SOI changes.

Upon motion of Tatzin, second by D. Piepho, the Commissioners unanimously adopted zero SOIs for Reclamation Districts 2121 (Bixler Tract) and 2137 and directed LAFCO staff to work with staff of those two districts to initiate dissolution; reduced the RD 799 SOI in the western portion of the district; expanded the RD 800 (Byron Tract) SOI to include an 80-acre parcel where the district currently provides service outside its bounds, and reduced the same district's SOI by 200 acres to remove a parcel that does not need district services; directed LAFCO Staff to prepare concurrent resolutions supporting these determinations for adoption at the August 12 meeting.

Discussion of items 29 and 30 in the governance structure and sphere options table followed, with the Chair suggesting that there might ultimately be three committees established to address SOI and boundary issues for Fire Districts—East County, Fire Districts—West County, and Reclamation Districts.

Upon motion of Tatzin, second by D. Piepho, the Commissioners unanimously continued discussion of LAFCO Staff recommendations to encourage Reclamation District consolidations (items 29 and 30) until there is clarification on how committees should be formed.

13. Call for CALAFCO Achievement Award Nominations

The Executive Officer drew Commissioners' attention to the announcement from CALAFCO regarding achievement award nominations to be presented at the 2009 Annual Conference. The deadline for submittal is October 2. The Chair asked that this be continued to the August meeting for further discussion.

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14. Nominations for CALAFCO Executive Board of Directors

The Executive Officer reported that CALAFCO has opened nominations for seats on the Executive Board of Directors. All incumbent officers are seeking re-election, but others are encouraged to submit nominations as well. The deadline is September 29.

15. Request for Special LAFCO Meeting

Upon consideration of available dates for a special LAFCO meeting in July, it was decided that due to Commissioners' vacation schedules and other conflicts, it would be best to address the Fire Committee recommendations at the regular August meeting.

16. Commissioner Comments and Announcements

Commissioner Schmidt, Chair of the Alternate Public Member Selection Committee, reported that the committee (Schmidt, Glover, Schroder) would interview candidates on Friday, July 10. They will interview all candidates and make recommendations to the Commission at the August meeting.

Commissioner Mary Piepho stated that she doesn't agree with the concept of creating two ad-hoc committees (East and West) for the fire issues; it would be more efficient to have one fire committee Countywide.

Commissioner M. Piepho also reported that she had been asked to give an update on the Delta, but given the late hour of this meeting she will defer the update to the August meeting.

17. Staff Announcements and Pending Projects

The Executive Officer drew Commissioners' attention to the pending projects and legislative update, provided in the agenda packet.

The meeting adjourned at 5:46 p.m.

Final Minutes Approved by the Commission on August 12, 2009.

AYES:

NOES:

ABSTAIN:

By _____
Executive Officer

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