

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
MINUTES OF MEETING

July 13, 2016

Board of Supervisors Chambers
Martinez, CA

August 10, 2016
Agenda Item 5

1. Chair Mary Piepho called the meeting to order at 1:30 p.m.
2. The Pledge of Allegiance was recited.
3. Roll was called. A quorum was present of the following Commissioners:

County Members Federal Glover and Mary Piepho and Alternate Candace Andersen.
Special District Members Mike McGill and Alternate Stanley Caldwell.
City Members Rob Schroder and Don Tatzin.
Public Members Don Blubaugh and Alternate Sharon Burke.

Present were Executive Officer Lou Ann Texeira, Legal Counsel Sharon Anderson, and Clerk Kate Sibley.

4. Approval of the Agenda

Upon motion of Tatzin, second by Schroder, Commissioners, by a vote of 7-0, adopted the agenda.

AYES: Andersen (A), Blubaugh, Caldwell (A), McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Glover (M), Skaredoff (M)
ABSTAIN: none

5. Public Comments

There were no public comments.

6. Approval of June 8, 2016 Meeting Minutes

Upon motion of Blubaugh, second by Tatzin, the minutes were unanimously approved by a vote of 7-0.

AYES: Andersen (A), Blubaugh, Caldwell (A), McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Glover (M), Skaredoff (M)
ABSTAIN: none

7. LAFCO 09-07 - Laurel Place/Pleasant View Annexation to the City of Concord

The Executive Officer provided background, noting that this annexation was approved in August 2015, conditioned upon LAFCO deferring recording the annexation for up to one year to allow the developer time to obtain the necessary County permits and complete construction. Lenox Homes recently informed LAFCO that the site improvement is underway but that the estimated completion date will extend beyond the August 2016 deadline as previously approved by LAFCO. Lenox Homes requests that LAFCO defer recordation of the annexation to February 2017 to allow for completion of the project as explained in their letter. An extension of time is allowed under the Government Code.

Upon motion of Blubaugh, second by Andersen, Commissioners unanimously, by a 7-0 vote, approved an extension of time to file the Certificate of Completion for LAFCO 09-07 to February

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2, 2017, as requested by Lenox Homes, to allow the developer additional time to complete construction activities.

AYES: Andersen (A), Blubaugh, Caldwell (A), McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Glover (M), Skaredoff (M)
ABSTAIN: none

At this time, Chair Piepho, noting that she had been asked to delay Agenda Item #7 for latecomers, moved to Agenda Item #8.

Also, Commissioner Glover arrived at approximately 1:40 p.m., during discussion of Agenda Item #8.

8. LAFCO 16-09 - City of Martinez Out of Agency Service (Sierra Avenue) (Agenda Item #8)

The Executive Officer provided background on this request by the City of Martinez to provide municipal water service to a property on Sierra Avenue in the unincorporated Mt. View area. The landowner is proposing to build a single family home on the property, and is in the process of obtaining a building permit through the County. This property is contiguous to the City boundary; however, the City's application indicates that annexation is not feasible at this time.

LAFCO staff reviewed the proposal for consistency with the Commission's policy and believes that a corresponding application for annexation is needed, given the subject property is contiguous to the City boundary, that annexation of the Mt. View area is questionable given the results of the fiscal study, and that the City has not adopted a plan for annexation or a resolution of intent to annex this area in the foreseeable future. LAFCO staff previously communicated with City staff and the property owners the options for water service to this property and advised that annexation would be preferred.

Staff recommends that the Commission approve the request for out of agency service conditioned on an annexation application being submitted within a specified time. The property owners are aware of this option and have requested that if the Commission approves the out of agency service request conditioned on an annexation application being submitted, that the Commission consider waiving the annexation fee as explained in their letter. Regarding the fee waiver, the Commission's adopted fee schedule provides that the Commission may waive or alter fees in special circumstances per Gov. Code §56383(d) if it finds that payment would be detrimental to the public interest. The waiver or reduction of the LAFCO fee is a policy matter to be decided by the Commission.

Commissioners discussed this LAFCO's history of such a conditioned approval of out of agency service, the pros and cons of this, and the prospect of a full territory annexation of the Mt. View area in the immediately foreseeable future. They also discussed the ramifications of waiving or modifying the LAFCO annexation fee.

Tambri Heyden, owner of the property in question, noted that she has been caught between the City of Martinez and LAFCO for the past two years, and that she must have proof of water service in order to move forward with the County's permitting process.

Upon motion of Blubaugh, second by McGill, Commissioners, by a 7-0 vote, found the project exempt pursuant to §15303 of the CEQA Guidelines; and authorized the City of Martinez to extend municipal water service outside its jurisdictional boundary to the 0.12±-acre parcel, APN 375-054-014 located on Sierra Avenue, subject to specified terms and conditions, that water service be further conditioned on LAFCO receiving an application to annex the subject parcel by January 13, 2017, and upon the LAFCO Executive Officer deeming the annexation application complete. The LAFCO resolution was amended to reflect the Commission's condition of approval.

AYES: Blubaugh, Caldwell (A), Glover, McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Skaredoff (M)
ABSTAIN: none

9. LAFCO 16-02 -Detachment from the Byron Bethany Irrigation District (BBID) (Agenda Item #7)

The Executive Officer provided background on this proposal submitted by Contra Costa County to detach 480+ acres from BBID located in two separate areas in Discovery Bay west. The subject areas comprise territory where BBID and the Town of Discovery Bay Community Services District (TODBCSD) boundaries overlap.

The areas proposed for detachment are within the SOIs of both BBID and the TODBCSD. Removal of these areas from BBID's SOI is not required, and presently there is no proposal to remove the subject areas from BBID's SOI in conjunction with the proposed detachment. If desired, a proposal to amend BBID's SOI can be submitted at a later time.

The County Board of Supervisors (BOS) adopted a tax transfer agreement providing that BBID's share of the annual property tax associated with the proposed detachment, which currently totals approximately \$685,000, will be allocated to the County. Further, the BOS directed its staff to prepare a second tax exchange agreement to allow the County to transfer, annually, the reallocated BBID tax revenue from the County to East Contra Costa Fire Protection District (ECCFPD), unless an application to initiate dissolution of ECCFPD is filed with LAFCO, at which point the property tax transfer from the County to ECCFPD would automatically terminate.

LAFCO received a request from Rick Gilmore, BBID's General Manager, to exclude from the proposed detachment two parcels containing a BBID-owned pipeline corridor, located at the western edge of the TODBCSD; it appears that exclusion of the two parcels from the proposed detachment will not create an island or gap. Excluding the two parcels from the proposed detachment will mean that BBID will not have to pay property tax on these parcels (estimated at \$217 per year), and that the two parcels will remain in both the BBID and TODBCSD boundaries. Should the Commission take action today, the Commission has the option of excluding these two parcels from the proposed detachment.

Mr. Gilmore additionally requested that LAFCO detach these two parcels from the TODBCSD, as the parcels do not require the CSD's services. Further, that should LAFCO vote to approve excluding the two parcels from the proposed detachment, detachment from the TODBCSD would be necessary to avoid another boundary overlap. Should the Commission wish to take action today, the Commission does *not* have the option of detaching these two parcels from the CSD, given that the detachment from the TODBCSD was not part of the County's application, nor was this action included on the LAFCO agenda or in LAFCO's published notices. Therefore, should the Commission wish to also detach the two parcels from TODBCSD, then the proposal, in its entirety, must be continued to a future LAFCO meeting.

Commissioners discussed the options before them, confirming with County staff that the detachment of these two parcels was not in the County's application. Also discussed was the County Board of Supervisors' decision regarding the tax revenue allocation process; Chair Piepho explained that this will ensure that the funds will be used for fire protection even if ECCFPD were to dissolve due to other financial pressures.

Commissioner Blubaugh asked if delaying a decision on this proposal will affect the ability to make the tax share transfer effective on next year's tax roll. As the deadline for that is December 1, there should be no concern.

Upon motion of Glover, second by Blubaugh, Commissioners unanimously, by a 7-0 vote, continued the public hearing to the August 10, 2016 regular LAFCO meeting in order to re-notice the hearing to reflect the additional action, as requested by BBID, regarding two parcels.

AYES: Blubaugh, Caldwell (A), Glover, McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Skaredoff (M)
ABSTAIN: none

10. Agricultural & Open Space Preservation Policy (AOSPP)

Commissioners Burke and Tatzin, members of the ad hoc Policies and Procedures Committee, thanked the Executive Officer for her work on the proposed AOSPP. Commissioner Burke provided an introduction, chronology and an update on meetings and communications with numerous stakeholders in the preparation of this latest draft policy, which the committee members feel reflect many of the comments received.

Commissioner Tatzin thanked the Commissioners for asking for more input, as their further conversations provided a basis for most of the changes presented today. He added, in noting the addition of a preface to the draft policy, that Contra Costa County began as an agricultural county, but much has changed; the 2010 census population was 33 times the 1910 population count, and by 2040 another 200,000+ people are expected to settle in this county. He reviewed the changes made since the Commission's discussion in March, which reflect both the Commission's guidance and comments received from the stakeholders and the public. Commissioner Tatzin noted that many correspondents requested that stronger mitigation measures be required in the policy; and while the committee did not change direction in this regard, committee members feel it should be discussed by Commissioners today. LAFCO has also received comments that this draft policy goes too far and that LAFCO has exceeded its bounds.

Commissioner Tatzin highlighted three observations included in the policy, and posed several policy questions: Do we want to continue with assessment; do we want to revisit the topic of mandated mitigations; do we want to remove passages that have been recommended for removal; and do we to revise any wording?

Chair Piepho thanked Commissioners Burke and Tatzin for their work and stated that this is a more robust policy because of that. She still has some concerns, particularly regarding a letter from Barbara Cecchini from Cecchini & Cecchini Farms, which provides the farmers' perspective in warning that farmers need flexibility in responding to changes in the agriculture business. Commissioner Tatzin believes they have addressed this in both Guideline 8, designed specifically to allow mitigation to include both farming and agriculture-related business, and Observation 3.

Commissioner McGill asked if the Cortese Knox Hertzberg (CKH) refers to all three terms (i.e., "open space," "agriculture" and "prime agriculture")? Commissioner Burke responded "yes" and that there are many instances where CKH simply refers to "agricultural land." The committee chose to include more specific terms, as even when land is not "prime" it is still viable agricultural land. Open space, on the other hand, is defined as that which has already been defined as open space as an element in a local jurisdiction. Commissioner Tatzin noted that in the definitions section of the policy, they have copied definitions exactly from state code, word for word.

The Executive Officer added that LAFCO law uses “prime ag” and “ag,” with different definitions for each. “Agriculture” appears more frequently, and more generally; the policy mirrors the statute in terms of the use of those words. Discussion ensued regarding the use of lands under the Williamson Act, lands zoned agricultural but lying fallow at the time, lands enrolled in a set-aside program, lands being used as a golf course, and how these lands fits into the policy. Commissioner Tatzin stated that the policy clearly indicates and encourages a hierarchy, if choices must be made in land acquisition—and again encouraged Commissioners to refer to the definitions section, which is taken from state law.

Following further discussion about open space definitions and policy, Chair Piepho opened the floor to public comment.

Paul Campos, Building Industry Association, East Bay, stated that his association believes the policy has improved, but that they still have significant concerns, noting that the language in Policy 5 in particular warrants closer scrutiny. He stated that CKH asks LAFCOs to consider housing as well and that Policy 5 can be read as establishing a presumption discouraging development in ag areas and discouraging rural development, overriding local general plan language.

Linus Eukel, John Muir Land Trust, stated his organization’s gratitude for the work done on this policy, and expressed their support of the policy with a few changes that would revise the Goals, Policies, and Guidelines sections to provide clear direction and guidance for open space protections comparable to agricultural lands. He referenced the letter they submitted on July 12, 2016 for further details. He also recommended a review of the adopted policy in three years to determine its efficacy and any refinements needed.

Bob Oxenburgh, Greenbelt Alliance and Alamo resident, spoke in favor of any policy that will restrict further sprawl development, and encouraged a strong mitigation ratio for agricultural land lost to development.

Jon Harvey, Brentwood Agricultural Land Trust, referred to the letter that organization submitted in May, and spoke in favor of a mitigation program that would be administered by a qualified land trust that could leverage local money with regional, state, and federal monies. He further stated that many of his colleagues feel that the building industry already has the votes on this policy “locked up,” but he himself is hopeful that LAFCO will adopt a policy and urged strong mitigation measures.

Karen Whitestone, East Bay Chapter, California Native Plant Society (CNPS), spoke in support of a 1:1 mitigation, and drew Commission’s attention to a mapping tool, called the Botanical Priority Preservation Areas, published in 2010 by CNPS and covering about 140,000 acres in Contra Costa County that they concentrate on when focusing their efforts for open space preservation. This tool is online and may be helpful to the Commissioners.

Lesley Hunt, Friends of the Creek, spoke of a seeming long-held bias toward shelter; she is encouraged that LAFCO is finally speaking for the other things humans must have by standing up for agricultural preservation. She encouraged Commissioners to fairly apply mitigation, on a level that makes it more advantageous to develop within urban limit lines than beyond them. If asking an applicant to evaluate impact and suggest mitigation, be aware that the applicant may “have a thumb on the scale” and mitigation may not be adequate and reasonable.

Robia Crisp, Manatt, Phelps & Phillips, referred to the letters that firm sent with suggested revisions that they believe would bring the policy into compliance with current law (both CKH and CEQA); LAFCO’s focus should be on “prime agricultural” land. They also believe that the

procedures must be reviewed under CEQA. They urge deferring action until their recommendations can be incorporated.

Joel Devalcourt, Greenbelt Alliance (GA), reported that 64 members of Greenbelt Alliance have voiced support of this policy and have, further, requested strong mitigation measures. He referred to the GA letter, and noted that the Agriculture Department just released new figures on the value of ag land to the county (\$225 million). Every acre counts, and when an acre is lost it impacts the entire agricultural economy. He noted that LAFCO should consider Sustainable Communities Strategies as referenced in the CKH. GA urges that development be kept within the ULL, and that mitigation standards of 3:1 for prime ag land, and 2:1 for lesser lands, be established.

Brian Schmidt, GA, was involved as an attorney in the establishment of Santa Clara LAFCO's agricultural mitigation program, which has been quite effective. "Preservation of a maximum amount of the state's limited agricultural land is necessary to the maintenance of the agricultural economy in the state" is a direct quote from CKH. Many of the references to agricultural land in the CKH are to just that, not to *prime* agricultural land. The State Supreme Court said that the restriction on land use merely ensures that final zoning decisions are made by local agencies concerned, not by LAFCO; it does nothing to detract from the power of a LAFCO to disapprove an annexation and find it violates detailed criteria which a LAFCO might consider, which includes mitigation measures. A focus on prime ag lands does not exclude other ag lands.

Louis Parsons, Discovery Builders, stated that this policy, as proposed, still raises questions about how to complete a LAFCO application. For example, what if only a portion of the land is prime ag? He believes there is a way to get there, but it's still confusing, and a lot of work needs to be done to make it clearer for applicants.

Ben Wallace, Contra Costa Resource Conservation District (CCRCD), referred to their letter of June 20, which lays out arguments for the importance of agriculture to the county. He provided some background on the CCRCD, noting that now, 75 years later, CCRCD is concerned about retaining a critical mass of ag land so that agricultural production in the county can remain viable, and that CCRCD is here to "help people help the land." He also commented on growth, risk of losing agricultural heritage, conversion, fragmentation and loss of ag land, loss of ag services, such as the USDA and businesses that support agriculture, and the loss of critical mass. He also emphasized the county's natural assets: senior water rights, highly productive soils, excellent growing conditions, and access to Bay Area urban markets—all of which help local farmers and ranchers thrive. LAFCO can help with CCRCD's efforts by enacting a strong agricultural and open space policy.

Juan Pablo Galván, Save Mt. Diablo, noted that this policy is a positive step forward, and that the majority of commenters support a strong policy that preserves agricultural and open space lands, but it can be strengthened further by including at least 1:1 (or stronger) mitigation. This is completely legal under CKH and CEQA.

Donna Gerber, Greenbelt Alliance [former LAFCO Commissioner, former CCC Board Supervisor (BOS)], spoke in support of GA's previously submitted comments, and reminded Commissioners that in 2000 she and Joe Canciamilla led the BOS in tightening the ULL, and placed about 14,000 acres of ag land outside the ULL at that time. She stated that Contra Costa County has long been the poster child for sprawl development and the loss of ag and open space lands. In 2000, the revised CKH provided LAFCO with additional strength to do two things: prevent sprawl and protect and enhance agriculture, ag lands, and open space lands. She made two suggestions for Contra Costa LAFCO's role: 1) applications should be required to abide by the voter approved ULL and other urban growth boundaries; and 2) provide better information so that jurisdictions can make better decisions. Ms. Gerber referenced studies that show the benefits of mixed-use

main-street development as compared to single-family residential and big box retail. LAFCO should consider the economies of smart growth and infill development.

In response to Ms. Gerber's comments, Commissioner Schroder pointed out that infill development is the most difficult to pass without it becoming a voter referendum issue, and asked for additional support from environmental groups in this area of development. He added that he is not yet ready to go forward with mitigation; he needs more research. Commissioner Caldwell agreed that the mitigation issues need further work.

Commissioner Blubaugh commended Commissioners Burke and Tatzin on their work. He added that his views have evolved over time and he now wants to see specific mitigation measures as part of the process but would like to see what the language would look like. Clearly there is a need for policy, as everyone is in agreement about the importance of preserving agricultural and open space lands. But the policy needs to be clear, with limited flexibility so that applicants and Commissioners—and the community—understand what is expected. Commissioner Blubaugh asked the committee to develop some clear language regarding mitigation.

Commissioner Glover expressed his appreciation for the outstanding work done by the committee, and for the draft policy's consistency and respect for the voter-approved ULL; we have a responsibility to that. He endorsed taking more time to make sure the language is right and that it considers the input provided by commenters.

Commissioner McGill agrees that there is no reason to rush. He stated that, as part of his work on increasing economic vitality in East Contra Costa County, he recognizes that agriculture and related businesses are important. He wants to be sure that LAFCO does not inadvertently hurt farmers and ranchers with this policy. Commissioner McGill is not sure he wants to go to mitigation, and he's not sure where to suggest going from here.

Chair Piepho stated her concern about comments that LAFCO is going beyond its bounds with CKH and CEQA and would like clarification in the next report. She also agreed with comments that definitions and language clarity may need further refining, and that regular review (i.e., 1-2 years) should be done.

Commissioner Tatzin listed what he heard needs further work: advanced mitigation; agriculture as a business; Policy 5 (although interpretations may be far more significant than intended and that edits can be made to ease these concerns); the hierarchy between prime ag land and ag land can be strengthened; there is no mention of CEQA in the policy so he is uncertain on how it can be violating that law. As for mandatory mitigation, there are at least six places in the policy where wording could be changed, and it would be helpful to receive further direction on which mitigations might be mandated (i.e., replacement ratio, right to farm requirements, buffer zones, etc.).

Commissioner Tatzin agrees that periodic review should happen. He agrees that Ms. Gerber's suggestion regarding a financial assessment might be an additional observation to be included. Finally, if applicants find the LAFCO application difficult to complete, they need to specifically state the challenges.

The Chair indicated that she was not going to ask the committee to rewrite the entire document, but to look at it in terms of the comments made since this draft was released. Commissioners Burke and Tatzin indicated that they would address those issues listed by Commissioner Tatzin, if Commissioners are in agreement. Further, that the Committee will return to the Commission with two version of the policy: one with voluntary mitigation, as currently written, and a second version with required mitigation.

Commissioner McGill added that he would like to see the committee focus on the letter from Barbara Cecchini; it won't do any good to preserve ag land if there are no farmers to farm it.

Upon motion by Tatzin, second by Blubaugh, Commissioners, by a 7-0 vote, continued the item to September 14, 2016.

AYES: Blubaugh, Caldwell (A), Glover, McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Skaredoff (M)
ABSTAIN: none

11. Response to Contra Costa County Grand Jury Report No. 1607

The Executive Officer reported on the Contra Costa County Grand Jury report #1607, titled *Delta Levees in Contra Costa County: How Well Do We Protect This Vital Safety System?* The report raises concerns about the condition of the County's levee system, what's at risk, financial challenges, and future opportunities. In preparing this report, the Grand Jury relied on various publications, including the 2015 Contra Costa LAFCO MSR covering reclamation services. LAFCO is required to respond to two findings and one recommendation contained in the report. Staff noted that a draft response letter is included with the agenda packet.

Commissioner Caldwell suggested that the letter add reference that the Grand Jury report reflects Contra Costa LAFCO's 2015 Reclamation Services MSR, with special note of the Grand Jury's recommendations numbers 2-5.

Upon motion by McGill, second by Blubaugh, Commissioners, by a 7-0 vote, approved the letter as drafted with Commissioner Caldwell's additions.

AYES: Blubaugh, Caldwell (A), Glover, McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Skaredoff (M)
ABSTAIN: none

12. Financial Audit Report, Fiscal Year 2014-2015

The Executive Officer presented the FY 2014-15 financial audit, reviewed by R.J. Ricciardi, Inc., whose auditor found LAFCO's financial statements fairly represent LAFCO's financial position in all material respects; are in conformance with generally accepted accounting principles; and are free of misstatements. The FY 2014-15 audit includes new information in accordance with GASB requirements relating to pension liabilities.

Upon motion of Caldwell, second by Glover, Commissioners, by a 7-0 vote, received and filed the audit report for the fiscal year ending June 30, 2015.

AYES: Blubaugh, Caldwell (A), Glover, McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Skaredoff (M)
ABSTAIN: none

13. CALAFCO 2016 Conference Material and Call for Board of Directors Candidates and Achievement Award Nominations

The Executive Officer drew Commissioners' attention to the CALAFCO 2016 Annual Conference (October 26-28, 2016 in Santa Barbara) materials. Nominations for Board of Director seats are due September 26, 2016; nominations for Achievement Awards are due August 31, 2016; and designation of LAFCOs' voting delegates and alternates must be made by September 26, 2016.

Commissioner McGill indicated his interest in running for his current seat on the CALAFCO Board of Directors.

Upon motion of Glover, second by Caldwell, Commissioners, by a 7-0 vote, nominated Commissioner McGill for the Special Districts seat (Coastal region) on the CALAFCO Board of Directors.

AYES: Blubaugh, Caldwell (A), Glover, McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Skaredoff (M)
ABSTAIN: none

Upon motion of McGill, second by Glover, Commissioners, by a 7-0 vote, designated Chair Piepho as Contra Costa LAFCO's voting delegate, with Executive Officer Teixeira as the alternate voting delegate.

AYES: Blubaugh, Caldwell (A), Glover, McGill, Piepho, Schroder, Tatzin
NOES: none
ABSENT: Skaredoff (M)
ABSTAIN: none

14. Plan Bay Area 2040

The Executive Officer reported that ABAG and MTC are gearing up for Plan Bay Area 2040, which is an update to the 2013 Plan Bay Area. In May, MTC issued a Notice of Preparation (NOP) relating to the forthcoming DEIR for this project. Staff submitted a comment letter in response to the NOP, which is included in the agenda packet. LAFCO staff will continue to follow the development of Plan Bay Area 2040 and update the Commission.

15. Correspondence from CCCERA

There were no comments on this item.

16. Commissioner Comments and Announcements

Commissioner McGill participated in the CALAFCO Legislative Committee meetings/calls on May 20 and June 24, and will attend the CALAFCO Board of Directors meeting in San Diego on July 29.

17. Staff Announcements

The Executive Officer provided updates on LAFCO-related legislation. The CALAFCO omnibus bill (AB 2910), as proposed, allows for dissolution of healthcare districts without voter approval, which could be helpful in LAFCO's assessment of West Contra Costa Healthcare District's situation. Senator Wolk pulled SB 1318 regarding water and wastewater service to DUCs.

The meeting adjourned at 4:02 p.m.

Final Minutes Approved by the Commission August 10, 2016.

AYES:
NOES:
ABSTAIN:
ABSENT:

By _____
Executive Officer