

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

550 Main Street Suite E • Placerville, CA 95667
Phone: (530) 295-2707 • Fax: (530) 295-1208
lafco@edlafco.us • www.edlafco.us

AGENDA OF DECEMBER 1, 2010

INFORMATIONAL HEARING

Agenda Item No.: 5

Meeks Bay Fire Protection District
Reorganization; LAFCO Project No. 2010-04

**Petitioners: Meeks Bay Fire Protection
District**

PURPOSE

This preliminary hearing is required by Government Code Section §56857 and is informational only. The item is not a noticed public hearing but, under the Brown Act, any person wishing to speak on the item shall be allowed to do so. The hearing is being held for two purposes. First, it is to allow 60 days for any annexing agency to request termination of this project. The second is that it was requested by the Commission.

SUMMARY

The Meeks Bay Fire Protection District (MEK) original proposal included the detachment of some lands within its service boundaries and the annexation of other lands. Since its application, MEK has requested to amend its initial reorganization proposal to eliminate all detachment areas and annex only properties which contain structures. The amended proposal is to annex approximately 40.25 acres, including seven privately owned parcels in the Rubicon Bay area and 22 United States Forest Service (USFS) owned parcels with private leases northwest of Emerald Bay.

The AB-8 property tax redistribution plan was approved by the District Board of Directors and El Dorado County Board of Supervisors.

RECOMMENDATIONS

Staff recommends that the Commission take the following actions:

1. Receive information regarding the project and take no action.
2. Under the Brown Act, allow any member of the public to speak on the agenda item.
3. Direct staff either to set the proposal for hearing not sooner than 60 Days or to terminate the project if District requests termination.

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COMMISSIONERS

Public Member: Don Mette • Alternate Public Member: Norm Rowett
City Members: Jerry Birdwell, Carl Hagen • Alternate City Member: Mark Acuna
County Members: Ron Briggs, James R. Sweeney • Alternate County Member: Ray Nutting
Special District Members: Ken Humphreys, Harry J. Norris • Alternate Special District Member: Michael Cooper

STAFF

José C. Henríquez, Executive Officer • Erica Sanchez, Policy Analyst
Denise Tebaldi, Interim Commission Clerk • Andrew Morris, Commission Counsel

PROJECT OVERVIEW

On February 25, 2009, the MEK Board of Directors adopted resolution 2009-02 petitioning LAFCO to reorganize its boundaries. MEK sought to detach some public lands on its north and western sides and annex other parcels that contain structures that it already services. Most of the parcels in the Rubicon Bay area are privately owned, while the structures north of Emerald Bay are leaseholds, private structures on leased public land. The original intent was to annex only the parcels with structures; however, after several discussions with LAFCO staff, they agreed to annex the public lands between its southern service area and the Emerald Bay leaseholds (please refer to Attachment A).

However, upon learning that the State Board of Equalization (SBE) fees would be close to \$10,000, MEK wrote to LAFCO asking that the Commission utilize its discretionary power to amend a petition to change the boundaries of the proposal to encompass only the Rubicon area and Emerald Bay parcels (please refer to Attachments B and C). With this change, the district is looking at SBE fees of only \$3,000.

ISSUES RAISED BY THE COMMISSION

Summary of Events

On August 24, 2010, Commissioner Sweeney sent a letter, a copy of which is appended to this memo as Attachment D, to Chief John Pang with two questions. The following day, at the August LAFCO meeting, Commissioner Sweeney requested an Informational Hearing on the project. At the October 27, 2010 meeting, staff asked the Commission to identify additional issues that it wanted to address for the hearing. The following items will be addressed in this report:

- 1) Whether LAFCO has the authority to approve the annexation of State or Federal (public) lands into local governments;
- 2) Whether any issues of financial liability are introduced into these types of annexations, either in the transfer of responsibility for firefighting from the Forest Service or CALFIRE to the local fire district or in the acquiring of the costs for fighting a fire;
- 3) Whether LAFCO should develop a policy that specifies how these types of petitions will be treated, specifying an exemption to any policy that discourages the creation of service islands;
- 4) Whether any structures on public lands generate any revenue that could be captured by a local agency to offset the cost of providing service, how that revenue is distributed, and whether local benefit assessments and special taxes could be extended to them;
- 5) How other LAFCOs treat these types of situations and whether they only annex the leased lands but not the surrounding public land.

LAFCO Jurisdiction

LAFCO has jurisdiction to regulate the boundaries of cities and special districts regardless of the underlying property owner, such as the State or Federal government, but it is recognized that the County and the two cities have no authority to regulate land uses on public properties. Given that local land use agencies do not have the authority to regulate land use within those properties and, therefore, it becomes difficult to predict when some of these lands could potentially be “flipped” from public ownership to private or be turned into

leaseholds, it seems only prudent for LAFCO, from a public safety standpoint, to include some of these lands within the service areas of a local fire district.

Liability Issues

In order to understand how the responsibility for fire protection in the Tahoe Basin is handled, a few terms must be defined. From LAFCO's 2006 Fire MSR:

State Responsibility Areas (SRA) – Section 4102 of the Public Resources Code (PRC) defines "state responsibility areas" as those areas of the state for which the State has the financial responsibility of preventing and suppressing fires. Under PRC §4125 and 4126, these areas roughly correspond to vegetated lands that have watershed value. Lands in incorporated cities or owned by the federal government are excluded.

Federal Responsibility Areas (FRA) – The primary responsibility for preventing and suppressing fires is that of the Federal Government. These lands are generally protected by the Department of Agriculture, Forest Service (USFS) and various other bureaus within the Department of the Interior: Bureau of Land Management, National Park Service, US Fish and Wildlife Service and the Bureau of Indian Affairs.

As the attached letter from Chief Pang explains (refer to Attachment E), most of the Basin has a designation of either FRA (protected by USFS) or SRA (protected by CALFIRE). While CALFIRE is equipped to fight structure fires, their presence is limited in the Basin due to an agreement with USFS. The latter agency, in turn, has a larger presence during the tourist peak season and it is not equipped to fight structure fires. Consequently, the job for structural fire protection falls to the local jurisdiction.

MEK has been providing service to the Emerald Bay area for free for many years. The intent of the proposal is to recoup some of the costs of providing service. The practice of providing service to leaseholds is not that unusual. Currently, several local FPDs have State and Federal lands within their boundaries, including El Dorado County Fire along Highway 50, the eastern side of Georgetown FPD and the Echo Lakes area in Lake Valley FPD. With the exception of Pioneer FPD, most of the lands in these other districts are likely either to "flip" in the near future or to contain leaseholds.

Because of the presence of structures and people, the local jurisdictions are usually the first responders to emergencies. Having those structures within their service boundaries has not increased the FPDs' liability; their liability has remained the same. Further, several chiefs that staff has spoken to indicate that providing service to leaseholds has the same type of liability as the liability incurred for providing service to privately owned properties. In addition, there is no evidence that including public lands within local jurisdictions alters the equation for how wildland fires are financed. The cost for fighting wildland fires remains with the State or Federal governments; the Angora Fire being the most recent example of how a local FPD was not impacted financially from a catastrophic fire. If a wildland fire starts at a structure and creates a disastrous wildland fire, the cost is still not borne by the local FPD.

Development of Policy

Cortese-Knox-Hertzberg does not define what constitute an island; however, Section 7 of the Commission's Policies and Guidelines (P&Gs) define "islands" as "An area of land that is not contiguous according to (Government Code) §56301 or according to the standards for contiguity of the State Board of Equalization." Other sections of the PG&G reference islands, such as requiring the applicant to identify the definiteness of the proposal boundaries

[Section 3.1.4(f)]; the discouragement of creating islands (Section 3.9.4); and the requirements for a proposed city's boundaries (Section 3.7.8.4).

During the discussion on October 27, the Commission contemplated adopting a policy on how it would treat lands in public ownership. Among some of the items proposed was to "exempt" publicly held lands from some of the local policies, such as the discouragement of creating islands and the encouragement of annexing contiguous lands.

While the Commission has the ability to create such a policy, staff recommends against moving in that direction. Treating publicly held lands differently from other types of lands would be difficult to apply fairly and in all situations. First, the bell has been rung: As noted earlier, there are other local FPDs with portions of the Eldorado National Forest within their service boundaries. Second, other types of agencies, such as the El Dorado Irrigation District and the Georgetown Divide Public Utility District, not only have public lands within their district but may find it advantageous to annex more in the future. It would be difficult for the Commission to deny some agencies from annexing public lands while denying others based solely on public ownership. Third, as stated in the section immediately above, for public safety reasons it makes more sense to have the local jurisdiction providing structure fire protection. The leaseholds and the structures are there and the local FPD is already expending its resources to provide service.

Revenue Generation, Capture and Distribution

Though the USFS owned parcels are inactive and non-taxable, they contain privately-owned structures (cabins) which are active and taxable as possessory interests. A possessory interest is the private right and use of public land for a specified period of time, as opposed to outright ownership of the land. The assessed value of the possessory interest is based on the value of the improvements and a portion of the value in the underlying land that the leaseholder is entitled to use.

The total taxable assessed value of the amended project area is approximately \$10,750,000. This includes \$8,650,000 for the privately-owned parcels in the Rubicon Bay area and \$2,100,000 for the USFS-owned leased parcels. Tax revenue from the possessory interest is collected and distributed to local agencies the same as regular property taxes. According to the negotiated property tax revenue sharing agreement, MEK will receive 13.0% of the property tax revenue for the annexation area.

MEK also has two direct charges, an \$85 benefit assessment and a \$45 special tax per parcel. These charges may or may not be imposed on the possessory interest holders, depending on how the charges were created and written. Typically, these charges are added to the property tax bill by the County Auditor-Controller at the request of the District. However, it is a District's responsibility to ensure that direct charges have the legal authority to be levied on the possessory interests prior to submitting the charges to the County Auditor.

Practices by Other LAFCOs

Other LAFCOs treat public lands no differently from privately held lands, especially in matters relating to fire district boundaries. In many counties, local FPDs have service areas that overlap with CALFIRE and USFS jurisdictions. These range from encompassing almost all public lands (San Bernardino and Inyo Counties) to counties similar to El Dorado, where the edges of public lands are within local FPDs (Santa Cruz and San Diego Counties). The logic behind containing a portion of these lands in a local jurisdiction is not only for structural fire

protection on leaseholds but also to ensure that the districts capture some revenue to offset the cost of providing service.

ATTACHMENTS

Attachment A: Original Project Map

Attachment B: MEK Request to Amend Petition

Attachment C: Amended Project Map Based on District's Request

Attachment D: Commissioner/Supervisor Sweeney's Letter to Pang

Attachment E: Chief Pang's Response to LAFCO