

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

EXECUTIVE OFFICER'S REPORT

AGENDA OF DECEMBER 2, 2009

REGULAR MEETING

TO: Francesca Loftis, Chairman, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

PREPARED BY: Erica Sanchez, Policy Analyst

AGENDA ITEM #5: Public Hearing to Reconsider the Environmental Review
and the Summer Brook Annexation to the El Dorado
Irrigation District

LAFCO Project No. 2008-03

PROPONENT(S): Amar Ghorí and Imran Aziz
Olga Sciorelli, Cooper Thorne & Associates

RECOMMENDATION

Staff recommends that the Commission consider and take action on the following two items:

1. Consider the written request for reconsideration of the Summer Brook Annexation to the El Dorado Irrigation District and determine whether reconsideration of the project is warranted; and

If the reconsideration request receives a majority vote, staff recommends the Commission:

2. Receive any oral or written testimony from the applicant or any other interested party and approve or disapprove with or without amendment, wholly, partially, or conditionally, the Summer Brook Annexation into the El Dorado Irrigation District.

REASON FOR RECOMMENDED ACTION

Per Government Code §56895 the applicant, or any other member of the public, has the statutory right to request that the Commission reconsider a project within 30 days of the prior Commission action. The applicant submitted a request for reconsideration (Attachment A) on October 22, 2009.

BACKGROUND

At the public hearing held on September 23, 2009, the Commission received information and testimony relating to the Summer Brook annexation to the El Dorado Irrigation District including a staff report summarizing the project (Attachment B) and oral testimony from the applicant's civil engineer and members of the public. Among the issues discussed were the impacts to EID, the creation of service islands adjacent to EID's service area, the adequacy of the environmental review, the preservation of agriculture and wetlands, the proposed project's impact to surrounding lands and the project's ability to assist in meeting regional housing goals.

After deliberation, Commissioner Hagen's motion to approve the proposed annexation failed on a vote of 3 ayes and 3 noes. This failure to garner a majority vote meant that the annexation was neither approved, nor denied; leaving the project unable to proceed.

Applicable Laws and Policies

Cortese-Knox-Hertzberg (CKH) addresses the possible actions a Commission may take regarding proposals: Unconditional approval, approval with conditions, or denial. Further, CKH is specific that motions to approve projects must garner a majority (quorum) to pass. However, CKH is silent on the issue of a motion failing to garner a majority vote or on a motion garnering a tie. CKH also does not address the instance of a Commission not taking any action on an application. CKH outlines the process for the Commission to consider a petition and to reconsider a decision once it is made.

Most governmental entities consider a tie vote as no action, but ties resemble a denial in the sense that they do not allow the project to proceed. This may be what the Commission had in mind when it adopted Policy 1.9.2, which reads (emphasis added):

1.9.2 **Voting:** Roll call shall be conducted in random order, with the Chair voting last. No act of the Commission shall be valid or binding unless four or more members concur. A tie vote, or any failure to act by at least four affirmative votes, shall constitute a denial.

As noted above, there are only two processes outlined in CKH for applications: Commission consideration and reconsideration after a decision. Since there is no process in CKH for "no action" and *if* there is no adopted local policy addressing those instances, then there is the potential that a project goes into limbo in cases of a tie (not approved or denied but no process to follow to return the item to the Commission). Policy 1.9.2 seems intended to recognize the practical effect of a tie vote, which is that of a denial even if no action is officially taken. It may be that 1.9.2 was adopted to avoid the situation where an applicant might not be able to seek reconsideration if LAFCO treated the tie vote as truly constituting no action.

By having this policy in place, it appears that the Commission wanted to direct applicants toward an administrative solution in cases of ties. Consequently, staff

advised the applicant to follow the reconsideration process outlined in CKH so that the project may be heard again.

Reconsideration Request

In accordance with Government Code §56895, the applicant submitted a request for reconsideration on October 22, 2009 (Attachment A). The letter outlined two reasons as the foundation of the request; 1) a failure of the Commission to specify and document the basis for its decision; and 2) lack of knowledge that a full voting panel was not present, which would have prompted the applicant to request a continuance.

Additional Information

In response to concerns brought up at the September meeting regarding wetlands and agriculture, staff discussed the issues with the applicant's engineer, County Planning, and the Agriculture Department (please refer to email correspondence, Attachments E-G). The following is a summary of the key points of discussion:

- According to the project's civil engineer and County planner, the project does not propose filling any wetlands for the residential development of the property. There is a roadway that crosses a narrow strip of wetlands on the southern portion of the site which will require an open bottom culvert (Proposed Utility Exhibit, Attachment D); however, this will not alter any wetlands as defined by the Army Corps of Engineers. Mitigation measures were included in the County's MND in the event the method of crossing changes or construction activities would require State or federal permits.
- The County Department of Environmental Health reviewed the submitted septic test information and site map and determined that sufficient disposal and replacement areas would be available for each parcel (Proposed Utility Exhibit, Attachment D). The proposed leach fields maintain a minimum 50-foot setback from intermittent streams and wetlands and 100-feet from perennial streams, as required by the General Plan. Septic systems are not typically monitored once permitted, except in response to complaints.
- Portions of the subject parcels are designated by the State as "Farmlands of Local Importance," which could support various agricultural crops. According to Bill Stephans, Agricultural Commissioner, "The soils (in the Summer Brook parcels) are good for pasture, irrigated pasture, rangeland and horticultural endeavors. With water available, it is my opinion that a commercial ag operation could be initiated and be successful." However, Mr. Stephans also indicated that grazing of livestock within the project area may not be ideal given the zoning and proximity to residential uses.

Some non-commercial ranches are in the vicinity, including an Exclusive Agriculture zoned parcel with draft horses to the southeast. All other parcels in the surrounding area are zoned residential. As it relates to the effect the development of the Summer Brook parcels would have on agricultural operations in the surrounding vicinity, Mr. Stephans concludes, "It appears that the recent zone/land use change has extended the higher density residential uses further into the original (General Plan) Rural Residential areas than first contemplated by the EIR which supported the adoption of the GP. Without further study and

analysis, I believe the parcel southeast adjacent to the project parcels wishes to retain the Exclusive Agriculture zoning...so this project could pose problems with any agriculture on that parcel. Also, the Ag Commission's recommendation which (was) not taken, would have, I believe, been more consistent with the EIR and GP."

It should be noted that the references within the email correspondences regarding a discrepancy in the alignment of an interior roadway on different project maps have been addressed and clarified. No alterations were made to the project design after Board of Supervisor approval; the Summer Brook Tentative Map was amended prior to Board of Supervisors approval to reflect a request by the County Department of Transportation to alter the location of an interior roadway. Though the incorrect Tentative Map was attached to the Planning staff report, the correct map was approved by the BOS, and reflects the alignment in the map shown in Attachment D.

The Reconsideration Process

The reconsideration hearing may require two separate motions and votes from the Commission.

- (1) The Commission will consider whether the request for reconsideration is warranted. If a motion to approve the reconsideration process is not approved, the original failure to approve the annexation proposal will stand and the project will be closed. If a motion to reconsider the project is approved, a second vote on the proposal will be necessary.
- (2) After receiving all written and oral information regarding the reconsideration, the Commission will reconsider the annexation proposal. The Commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. Staff advises that in the motion, the Commission be clear it is taking one of the following two actions:
 - a. It is adopting the Resolution in Attachment H approving the Summer Brook Annexation; *or*
 - b. It is adopting the Resolution in Attachment I denying the Summer Brook annexation

Regardless of the outcome of the two votes, the determinations of the Commission will be final and conclusive. There are no other appeals processes, either to this Commission or any other legislative body.

ATTACHMENTS

- Attachment A: Reconsideration Request
- Attachment B: 2008-03 Staff Report (including attachments)
- Attachment C: County Mitigated Negative Declaration
- Attachment D: Proposed Utility Exhibit Map
- Attachment E: Sciorelli Email re Wetlands
- Attachment F: Fong Email re Wetlands
- Attachment G: Stephans Email re Ag Use (including attachments)
- Attachment H: Draft Resolution of Approval (L-2009-07)
- Attachment I: Draft Resolution of Denial (L-2009-07)