

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF MARCH 23, 2011

REGULAR MEETING

TO: Ken Humphreys, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #9: **CONSIDER A POLICY DIRECTING/EMPOWERING STAFF
TO IDENTIFY AND INCLUDE ALL AFFECTED AGENCIES IN
REORGANIZATIONS**

RECOMMENDATION

Staff recommends that the Commission indicate to staff on whether it is interested in the development of a policy to address situations where applicants do not include all affected agencies in reorganizations.

REASON FOR RECOMMENDED ACTION

The proponents for four recent projects requested the annexation into El Dorado Irrigation District for water and/or wastewater service, but did not request the annexation of their subject territory into other districts even though the future residents will arguably have an impact on the facilities of other local governments, most notably local park and recreation districts.

BACKGROUND

This item was placed on the agenda at the request of Commissioner Rowett for discussion and consideration. This issue arose because of a recent spate of proposals where LAFCO staff has identified other agencies impacted by the project, but the applicants have chosen not to annex into those additional districts. The question is what the Commission can do to address this situation. Commissioner Rowett's suggestion entailed the adoption of a policy that directs/empowers staff to identify and change proposals to include all necessary actions before the project moves into the AB-8 (property tax exchange) process. Your Executive Officer and Counsel do not believe the Commission has the ability to delegate such powers to staff; however, there could be other policies that could be added or amended that would assist both the applicant and the Commission to arrive at a more informed decision that leads to orderly boundaries.

Current Staff Analysis and Recommendations to Applicants

The LAFCO Policy & Guideline Section 3.1.2 requires applicants to meet with LAFCO staff prior to their submission of a proposal “to receive direction and advice regarding the processing needs and requirements of the specific action to be taken” (emphasis added). The LAFCO fee schedule further encourages this meeting with LAFCO staff by giving applicants two free hours of staff time. At this meeting, staff is able to evaluate the completeness of the application, spot potential issues with the proposal, identify all of the agencies affected by the project and advise the applicant accordingly.

In the cases where LAFCO staff identified that a project could impact another agency, applicants have been asked to amend their own proposal at the time of submission to include all other LAFCO actions, such as the annexation or detachment to the other districts. This allows for the AB-8 process to address all of the impacted agencies when the property tax allocations are determined. In the past, applicants have been open to such suggestions.

Lately, there have been four applicants who declined staff’s recommendation and instructed LAFCO to process the project as they originally proposed. These applicants, Alto, La Cañada, El Dorado Union High School District and Campobello, opted to pursue annexation into El Dorado Irrigation District for water and wastewater services exclusively, even though when the projects are completed their future residents and users will have an impact on local parks and recreation facilities (Campobello on Cameron Park Community Services District and the other three on El Dorado Hills CSD).

This left the other agencies’ staff scrambling at the last minute, requesting the Commission to amend the proposal at the public hearing to include the annexation into their district. For the three projects the Commission has heard so far, the Commission has approved the project as the applicants have requested.

Statutory Authority and Commission Preference

The ability for a LAFCO to amend proposals is derived from Government Code §56375(a)1, which authorizes a commission:

To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission (emphasis added).

This authority was given as an additional tool to assist a LAFCO with implementing its responsibilities of preserving agricultural and open space resources, encourage the orderly formation of local governments, ensure the efficient provision of public services and prevent urban sprawl (Government Code §§56300 and 56301). To further these goals, the Commission expressed its preference for orderly boundaries through the adoption of a Mission Statement in Section 1.2 of the Policies & Guidelines and stating said preference in Sections 3.1.4, 3.1.9, 3.6, 3.9.4, 3.9.8, 3.10.1, 4.5.4, 5.4, 5.7 and 6.1.4. Consequently, the ability of the Commission, as a body, to amend proposals to further its goals and preferences is legally sound and grounded.

Applicant Preference and the Planning Process

For most private sector development projects, the landowner/developer is usually only looking to address the most immediate need to bring the project to fruition. When it comes to services on the Western Slope, those service needs tend to be water and possibly wastewater, depending on the location and the direction provided by EID staff. As the project is making its way through planning, only those immediate service needs are identified and evaluated in the CEQA document.

LAFCO staff has two opportunities to comment and request the inclusion of any additional identifiable services, at the Technical Advisory Committee (TAC) stage and when the draft CEQA document has been prepared and circulated. The record on including additional agencies into the project definition at the planning stage has been mixed, however, because it is heavily dependent on applicant preference. If the applicant is strongly against annexing into additional agencies, the Community Development Department has been reluctant to include service impacts to the other agencies in the CEQA document and requiring annexation as condition of final permit approval.

Issues that Arise at the LAFCO Stage

LAFCO encourages applicants to initiate their proposal after the preliminary map approval stage because a significant number of issues that typically arise during the LAFCO process can be, and usually are, vetted out by then, including the environmental review, land use requirements, service impacts and a reasonable determination of what the final project will look like at completion. If there is a negative side to this practice, it is that LAFCO has to work with what comes out at the end of the preliminary map phase. As the Commission is aware, most of the issues at the tail end relate to the adequacy of the CEQA document.

Any condition of approval requiring annexation to a district that is imposed at the preliminary map phase provides additional motivation on the applicant to apply to LAFCO. For example, the County also required Alto to annex into El Dorado Hills Fire, thereby closing a hole in its service area. Tangential to this matter is that any inclusion of additional agencies in the planning process ensures that the CEQA document addresses issues important in LAFCO's process, including impacts to an agency's capability, infrastructure, financing and service capacity. Conversely, any exclusion of agencies in the planning process removes a powerful motivator for the applicant to comply with LAFCO staff's recommendation and potentially hamstrings LAFCO's ability to navigate CEQA.

Policy Consideration and Recommendation

The Commission may conclude that the recent increase in the number of applicants who decline staff's recommendation to voluntarily amend their petition indicates more of an unusual coincidence rather than a trend. Even if it makes such a conclusion, the Commission may want to strengthen the upfront processes to prevent the undesirable effects that were voiced at the December meeting during the Campobello hearing:

- Proposals without a holistic view of services create irregular jurisdictional boundaries separating future communities from local districts that provide desirable and/or vital public services;

- Proposals that don't take into account all necessary Commission actions result in the receipt of last minute requests from the other impacted local districts. If those last minute requests are received on the hearing date, they result in the Commission being unable to decide the matter because the public notice did not reflect any additional actions;
- Last minute requests also result in the applicant feeling "blind sighted" and/or as if last minute obstacles were being thrown their way; and
- Proposals without a holistic view of services and last minute requests have a cumulative impact on the Commission being unable to render a decision because of insufficient information. Consequently, Commissioners cannot determine whether amending the proposal at the time of the approval hearing is logical or not.

The policy question is how to minimize or eliminate these effects. The easiest way would be to empower staff to amend proposals at the time it is submitted as Commissioner Rowett suggested. However, LAFCO staff does not believe the Commission can delegate its authority to amend proposals to others in a legally defensible manner. But the Commission can alter some of its policies and practices to prevent undesirable effects. Staff proposes that the Commission implement the following:

- 1) Ensure that the sphere of influence for all agencies are consistent with the Commission's goals of orderly boundaries and with community character and development patterns;
- 2) Direct staff to continue to work with the Community Development Department in identifying all affected agencies as soon as feasible and to notify all affected agencies about pending projects of interest at the preliminary permit process phase;
- 3) In cases where applicants choose not to follow staff's recommendation to amend their proposal, require those applicants to submit additional materials justifying their decision. These materials will be included in the staff report for the Commission's review. To implement this requirement, Policy & Guidelines Sections 3.1.2 and 3.4 will have to be amended. Staff will draft amendments to be approved at a later date;
- 4) At the time the public notice is published, authorize staff to include all possible Commission actions so that if the Commission chooses to amend the proposal, it can do so at the time of the hearing.

Item numbers 3 and 4 will eliminate almost all of the concerns the Commission expressed at the time of the Campobello hearing. By requiring the submission of additional materials, the applicant would have been notified that their project has impacts to more agencies and that there is the potential that the Commission may alter their project. The materials could then be used by the Commission to make an informed decision on the matter, weighing staff's recommendation against the applicant's preference. Because all possible actions that the Commission may make will be included in the public notice, the Commission can make a decision on the same night as the notice, preventing any additional delays.

Please note that staff's recommendation does not address Commissioner Rowett's concern that all relevant agencies are included in the AB-8 process. If the Commission follows the staff recommendation and approves the proposal with an additional change

of organization, it is necessary to go through the property tax agreement process a second time if the districts require a share of the property tax revenue. This entails notifying the County, special district(s) and city, as applicable, that LAFCO amended the proposal. The districts then have additional time to renegotiate the property tax exchange agreement pursuant to Revenue and Taxation Code Section 99 et seq.

Attachment:

Attachment A: Policy & Guidelines Sections 3.12 and 3.4