

**BUTTE LOCAL AGENCY FORMATION COMMISSION
Minutes of January 3, 2008**

1. Call to Order

Chair Leverenz called the meeting to order at 9:06 a.m., January 3, 2008, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Present: Commissioners Lotter, Duncan, Connelly, Beck, Busch, Dolan, and Chair Leverenz

Absent:

Others Present: Stephen Lucas, LAFCO Executive Officer
Stephen Betts, LAFCO Deputy Executive Officer
Jill Broderson, LAFCO Analyst
Joy Stover, LAFCO Commission Clerk
P. Scott Browne, LAFCO Legal Counsel
Beverly Burr, Burr Consulting for the City of Gridley
Dwight Moore, Legal Counsel for the City of Oroville
Kristen Castanos, Outside Counsel for the
City of Oroville
Jessica Miller, Attorney, Feather River Recreation &
Park District
Andrew Morrissey, Counsel for the Feather
River Recreation & Park District

2. Consent Agenda

2.1 Approval of the Minutes of December 6, 2007

Commissioners Dolan, Beck and Connelly requested some modifications be made to the draft minutes. All changes were noted.

2.2 Re-authorization of Executive Officer's Existing Employment Contract.

It was noted some modifications need to be made on the draft contract.

2.3 Consideration and Approval of LAFCo Employee Memorandum of Understanding.

It was moved by Commissioner Beck to approve the minutes and the re-authorization of Executive Officer's existing contract with noted modifications being made, and approve 2.3. It was seconded by Commissioner Dolan, and carried to approve the Consent Agenda.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Beck, Busch, Dolan, and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

3. NOTICED PUBLIC HEARINGS –

3.1 Review and Consideration of the Draft Municipal Service Review for the City of Gridley.

Stephen Betts stated the City of Gridley has prepared the draft Municipal Service Review (MSR) in cooperation with LAFCO staff. It was distributed for a 21 day public notice review period which began on December 12, 2007, & the Commission received their copies on or before that date. To date no comments were received from any agency.

Beverly Burr, the consultant that prepared the draft MSR presented a PowerPoint presentation on the draft MSR for the City of Gridley. Ms. Burr stated their scope for the MSR review was to review services within the existing sphere for the City of Gridley. Ms. Burr stated the services that were reviewed are not only backbone services like water, sewer, fire, and drainage, but also roads, electricity, parks, police, etc. Ms. Burr used maps to identify areas within the review.

Commissioner Beck noted some minor suggestions regarding storm drain outlets and no mention of gang problems under the police section. Ms. Burr stated the reports mention some emerging gang activities. Commissioner Beck stated the gangs are here and it's a problem that should be recognized. Ms. Burr asked if Commissioner Beck is looking to see this in the determinations section. Commissioner Beck stated instead of stating an emerging gang problem it should be noted that the gangs are here and it's up to the City.

Commissioner Busch stated he has some concerns on the map on page 15 regarding the planning area and how the plans of the City of

Gridley to grow north versus the plans of the City of Biggs to grow south would be affected in terms of this MSR and the planning area boundary described on the map. Chairman Leverenz stated Ms. Burr pointed out that the issue relating to the sphere of influence was not what this MSR is dealing with and the planning area on page 15 simply represents the planning area that apparently is being utilized by the City of Gridley for its ongoing general plan. Ms. Burr confirmed this.

Commissioner Busch asked if the consultant is saying that the City of Biggs should not be concerned about this area. Chair Leverenz stated he does not believe the consultant is saying the City of Biggs should not be concerned about this area on the map. Chair Leverenz stated the consultant is saying the City of Gridley is using this as a planning area.

Commissioner Busch stated his concerns regarding all services in the review drifting northward. Commissioner Busch stated his concerns regarding all of the fire stations being on the east side of the railroad tracks and that has to be taken into consideration. Commissioner Busch had concerns about the new electric sub-station. Commissioner Busch asked about the level of arsenic content in the questionable wells. Ms. Burr gave the federal level policy of 10 micrograms per liter and stated the state has not adopted their policy yet but it will be at least as strict as the federal policy.

Commissioner Busch stated Biggs has a brand new well they can not use as it has manganese and consideration needs to be taken as to the quality of the water to the north of Gridley. Commissioner Busch questioned the statement made that Biggs has an interest in sharing facilities [with Gridley]. Commissioner Busch stated he has no idea of the source of that statement as the City of Biggs has never come forth in his tenure as mayor to say they would welcome facilities sharing. Ms. Burr stated clearly Biggs and Gridley are adjacent to each other and there is potential in sharing facilities.

Commissioner Busch referred to the last page of the insert regarding the growth of the City of Gridley expected to be much greater than elsewhere in Butte County, Commissioner Busch stated as a matter of record Biggs would like to be included in this fantastic growth.

The item was opened to the public for comments. None noted.

Chairman Leverenz asked if any of the staff has any additional questions or comments. Stephen Lucas stated there are a number of smaller administrative items that were pointed out and will be made available to the consultant. However, there are a couple of things they would like see addressed. The 16% remaining capacity in the sewer

treatment plant should be converted to EDU's so there is a tangible number that the Commission could use in the future in terms of number of available units still remaining within the plant capacity. Concerns related to the NDPES standards and how that deals with the nitrates and relates in terms of the future requirements on the City to try to augment its water system.

The motion was moved by Commissioner Dolan to continue this matter with the staff given direction to work with the consultant to make the modifications as discussed today, seconded by Commissioner Beck, and carried to continue this item to next month and bring it back for adoption.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Beck, Busch, Dolan, and Chairman Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

4. REGULAR AGENDA

4.1 08-01 – City of Oroville Reorganization – Feather Avenue No. 1

Chairman Leverenz noted additional documents that have been received by the Commission on this item. Chairman Leverenz stated the Commission continued this matter closed, but from the documents it appears there is not a resolution between the District and the City of Oroville and he believes it would be appropriate to allow discussion just on issues that have not be raised to date. Chairman Leverenz asked if the staff has any additional information or comments relating to this proposal. Stephen Lucas stated the staff report was separated into two sections. One related to subdivision design standards, and the second issue is related to the District and City negotiations. Mr. Lucas stated he attended the District board meeting yesterday and their board adopted the agreement that was tentatively agreed to by all parties at the LAFCo facilitated meeting. Mr. Lucas stated he understood the City also met last night in a special meeting that he was unable to attend. Mr. Lucas stated he understands the City board deadlocked at 3 to 3 vote concerning the agreement.

Commissioner Dolan asked Mr. Lucas to clarify which meeting happened last night. Mr. Lucas stated there were two – The City [of Oroville] Council met at 6:00 p.m. to discuss the same issue and the same agreement.

Mr. Lucas stated our recommendation on the project is to approve it at this meeting in recognition of the CKH 70 day window to take action on a project. Mr.

Lucas stated the Commission is not scheduled to meet again until that deadline has passed unless we call a special meeting. He stated the solution to that would be to seek a waiver of that timeline from the applicants. Mr. Lucas stated he doesn't know whether the waiver is preferable to what we are recommending which is an approval of the project with a condition that it requires that agreement to be reached prior to us filing the certificate of completion. That action would allow the entities an entire year to come to an agreement and if they don't reach an agreement within that year the annexation would terminate for a lack of action meeting the condition. Mr. Lucas stated he does not know which choice the Commission would prefer but we did want to give the option to approve with that condition if determined appropriate.

Chairman Leverenz opened the public hearing again for a limited purpose just to confirm that there is no agreement and he does not think we need to rehear why there is no agreement as the letters and the documents speak for themselves.

Dwight Moore, City Attorney for the City of Oroville, stated he didn't have an opportunity to see the Staff Report until yesterday evening after the City Council meeting. Mr. Moore stated the condition that's proposed is something that they think is inappropriate and is something that should be deleted in its entirety. Mr. Moore stated the reasoning behind that is there's a court case on an issue related to LAFCO's authority and he has a photocopy of it and he will pass it out. It is McBail & Company vs. Solano County Local Agency Formation Commission. The citation is 62 Cal.App.4th 1223. Mr. Moore stated this condition as far as we can tell is not based on substantial evidence in the record. There's nothing about this annexation that would generate the need for the condition relating to the development impact fee arrangement that's proposed within the staff report condition. Mr. Moore stated they haven't been able to find anything that provides substantial evidence. Therefore the condition is inappropriate; it's arbitrary and capricious on its face, because it's not supported by a rational nexus between this annexation and the need for this condition. It's a general type of activity that is being requested here and it's something that is problematic because it requires two government agencies to agree to something and the agreement doesn't relate to any kind of financing for this particular project. The agreement relates to a piece of paper being delivered to the City of Oroville before a building permit is issued. That piece of paper would merely say that the district has been paid its impact fee. That is outside the scope of any kind of financing arrangement through LAFCo because the fees are already in place. These fees are not being adopted by the City of Oroville. Those fees are in place and they can be collected by the District. The City never touches the fees. Mr. Moore stated he has a copy of the proposed ordinance for the Commission and it doesn't speak about anything other than requiring payment of the fees to these various entities, to the city and to the district; and based on that there's nothing here that says that they're going to increase revenues because of this arrangement. The Nexus Study and the need for a regional plan isn't connected

to any formal substantial events in the record associated with this annexation; it's just something that has been proposed but it isn't something that you can tie directly to the need for this annexation to go forward. And without that connection you can not impose a condition upon the City to do this arrangement. We [the City] attempted to bring this forward last night, the council voted three to three; that means the motion failed and so that's where it stands at this point in time. Mr. Moore stated he thinks we're taking a political situation and trying to introduce it as a legal requirement and he doesn't perceive any kind of legal requirement to have this condition here. Mr. Moore stated he thinks LAFCo is exceeding its authority if it imposes this condition upon the annexation.

Chairman Leverenz asked if anyone has any questions of Mr. Moore. None noted. Mr. Moore introduced an attorney from Sacramento, Kristen Castanos.

Kristen Castanos, outside counsel for the City of Oroville, stated she wants to echo some of Mr. Moore's comments and also point out to the Commission that LAFCo's authority to issue conditions is limited by statute. Not only is it limited in terms of what those conditions can be by section 56885, but in addition those conditions must be supported by substantial evidence and as Mr. Moore explained there is no substantial evidence in this record to support the condition being imposed on the City with respect to this particular annexation; in particular, because there is nothing about this annexation that changes the district's authority to collect its fees. Its authority to collect and its ability to collect its fees are not affected by this annexation. So this condition exceeds the scope of LAFCo statutory authority, it is not rationally related to LAFCo statutory purpose. The District has fees in place and this annexation does not change that.

Chairman Leverenz stated at the risk of playing devil's advocate, if LAFCo was to find the cumulative impact of this annexation creates a problem for the District, because they have no realistic way to collect the money and that cumulative affect of this annexation plus others represents a problem which if it continues, will create some financial problems for the District. Chairman Leverenz asked if we made that finding, that the cumulative affect in fact creates a financial disconnect from the District, are you saying that we wouldn't have the power then to deny the applicant unless this issue is resolved.

Ms. Castanos stated that finding would need to be supported by substantial evidence in the record and as Mr. Moore has indicated we fail to see the substantial evidence in the record to support a finding that the District is unable to continue to collect its fees.

Commissioner Beck stated Chairman Leverenz refers to it as a problem, but he would look at it as a significant adverse affect; it's an impact. Commissioner Beck stated the fact that there has to be recognition that: number

one, the District has to be notified, and he doesn't know if that issue has been resolved, secondly that the City should not be approving these new projects unless that impact is mitigated.

Ms. Castanos stated if you [Commissioner Beck] are referring to a significant affect under CEQA, then that brings in a whole different set of issues. The City did conduct its environmental review pursuant to CEQA, that CEQA review has been complete, the statute of limitations to challenge that document has run, nobody has challenged it, there's been no finding and no evidence to support a claim that the environmental review that the City conducted has been inadequate and so there is actually no substantial evidence to support a finding that there will be an impact.

Commissioner Beck stated we can look at information that has been received after the City's review and we have some information that suggests if this continues, there will be a significant adverse impact on the District.

Ms. Castanos stated you can do that and if you find that there is substantial evidence to support a conclusion that the mitigated negative declaration adopted by the City is inadequate, and then the Commission can assume the lead agency role and undertake your own environmental analysis. But at this point you may not deny the annexation based only on your determination that the City's environmental review is inadequate unless you undertake lead agency role yourself and conduct your own environmental review and your decision to undertake lead agency role must be supported by substantial evidence.

Chairman Leverenz stated the problem is a cumulative issue. We know there is another annexation coming from the City of Oroville which is a very large one. That particular project is not part of the District yet. Where are those citizens going to wish to recreate? This cumulative issue may not necessarily be an environmental issue, but it is an impact issue and the concern is that if we don't find that there is an impact, and he appreciates that Ms. Castanos is saying there's no substantial evidence, saying it doesn't make it so. Chair Leverenz stated he can determine just based upon the information that we have, that there's an impact that could very well be substantial, obviously a superior court judge with a writ of mandate could disagree.

Commissioner Beck stated many years ago there was a court case involving the El Dorado High School District, where a judge found that overcrowding was a physical affect on the environment. If facilities aren't provided because funds aren't available then there's an adverse affect upon the environment for the District also. And so it really is a CEQA type issue.

Ms. Castanos stated again to the extent that this is a CEQA issue and this Commission feels the environmental analysis did not adequately address the

impacts on the parks, then this Commission has the discretion to assume lead agency role and conduct its own environmental review but short of that, the Commission does not have the discretion to impose a condition that is not rationally related to the impacts of this annexation.

Jessica Miller, legal counsel for the Feather River Recreation and Park District, stated we are talking about \$194,000.00, the amount the Feather River Recreation District would be unable to collect if Ruddy Creek was annexed today. If Ruddy Creek was going to be built and it was in the County, Feather River Recreation and Park would be able to collect \$194,000.00. Ms. Miller stated she thinks that's a substantial impact. It's in the record, it's apparent and she thinks the condition is rationally related to the annexation for Ruddy Creek. Ms. Miller would also like to point out that last night at the City Council meeting the agreement that was drafted by the District was not even considered by the City. Ms. Miller stated Dwight Moore drafted a watered down version of it which called simply for the adoption of an ordinance, and that was it, an interim ordinance that would last a year and the City would have at its sole discretion the authority to extend it if it wished. At this point there is no agreement and Ms. Miller thinks it would be wise for this Commission to adopt a condition giving the City and Feather River Recreation & Park District (FRRPD) an additional year to try to work this problem out because this problem is going to come up in every annexation that FRRPD is affected by.

Chair Leverenz stated there is no practical way for the District to collect the money except to have the City insist the developers show the money's been paid. Mr. Moore stated he doesn't know if that's true because the District could easily monitor a building permit application once a week for building permits, then send a letter to that applicant, requesting they pay the developer impact fees to the District. The City doesn't add anything to the rights of the District to collect the money; the City just acts as a bottleneck under this proposal to force people if they want a building permit to pay the fee.

Chairman Leverenz stated you can call it a bottleneck or an implementing effort depending on which way you are looking at it. Commissioner Beck stated there are accepted practices from the state and other agencies that you have to pay certain fees before building permits can go into effect such as for fish & game, water quality, and schools.

Dwight Moore stated those fees are statutorily imposed on the City through the legislature.

Andrew Morrissey, counsel for the District, stated it is the District's position that this is going to be a continuing problem that this Commission is going to have to address in a repeated nature over time and as a result the District is asking that a moratorium be placed on further annexations pending an agreement between the parties that will provide a mechanism for the collection of

these fees. Currently no mechanism is in place that permits collection of these fees, absent litigation between the District and every developer that comes down the line henceforth. An impasse has been reached between the parties. A great deal of resources went into developing an agreement between the parties. Mr. Morrissey stated he wanted to commend Mr. Lucas in his role as mediator on behalf of LAFCO and his efforts in trying to get the parties to agree to this proposal.

Kathy Brazil, 1224 16th Street, stated she has been present at all the public meetings involving the subdivision at Ruddy Creek. Ms. Brazil stated she finds it distressing that it seems the decision as far as the annexation is left up to the two agencies, the Feather River [Recreation and Park District] and the City. It seems like when you're talking about legal rights its kind of like leaving out the legal rights of the public unless there's sufficient evidence that the big agencies can come up with. Ms. Brazil read a letter and submitted it to the Commission. Ms. Brazil referred to the Jan. 3rd, 2008 LAFCo Memorandum stating on page 2 the detention facility would be located within a 100 year flood zone. Ms. Brazil stated she is enclosing a letter from Stuart Edell with the Public Works planning development division, dated Oct. 3, 2006, that clearly states the proposed detention basin should be located outside of floodplains. Ms. Brazil submitted pictures for LAFCO review.

Chuck LaFlamme, a partner in the Ruddy Creek partnership and the underlining landowner for this project, stated the only point he wants to make is that one of the conditions of approval of this project is a pocket park. He stated they are providing a park to the community. Mr. LaFlamme stated there are conditions maybe where Feather River [District] is going to be impacted but it's also being mitigated by what they are providing. And it's not just fees that are being provided but it's actually 3 acres of land and the park. Mr. LaFlamme stated that's the only comment he wanted to make.

Janet Lantsberger, 1515 Feather Avenue, stated on page 3 of the minutes that came out, the line in question showing the property division should be moved over 1/8 of an inch west and it should match the one on page 4. Chairman Leverenz asked if Ms. Lantsberger is referring to the Memorandum Staff Report. Ms. Lantsberger stated yes. Ms. Lantsberger stated no one has mentioned the pheasant or the quail population at all. She stated she has had a couple of covey of quail every year and she keeps a blackberry bush on the other side of the creek for them to have protection plus to keep trespassers out. She stated they would naturally be disturbed by this public park.

Christine Armstrong addressed the Commission and her question is does Feather River Recreation have a mechanism of recourse if a developer does not pay the fees? Is there an imposed fine that they can apply in addition to the normal impact fee? Chairman Leverenz stated maybe our attorney can talk about this, but his understanding is the fees are in place and the mechanism for the

collection, short of a lawsuit, is to sue each developer and he's not even sure they could do that.

Scott Browne, attorney for LAFCO, stated he would seriously question their [the District's] ability to even do that. Impact fees are authorized under a section that says agencies that approve development projects; park and recreation districts do not approve development projects. So absent some other provision of the law that would give authority, Mr. Browne thinks the only power that could enforce it would be the approval authority.

Chairman Leverenz stated the answer to the question is the fee is in place but there's no realistic way for the District to collect it. Commissioner Dolan added absent an agreement with the City. Chairman Leverenz stated currently there's no realistic agreement. Ms. Armstrong asked if an agreement is in place with the County right now on the FRRPD's behalf. Chairman Leverenz stated the County does have an agreement with the District and other Districts.

Chairman Leverenz closed the hearing to the public.

Chairman Leverenz stated the case that was cited is just a substantial evidence case. Scott Browne stated basically the case that has been given [to the Commission today] simply says you have to have a good reason for imposing a condition. If you believe that there is going to be substantial impact on the District and you find that there is substantial evidence in the record. You certainly have evidence from the District itself; most recently we had a study presented to the Commission in a letter by Anna Shimko Jan. 2, 2008, which extensively discusses the cumulative and individual impacts of this project. If you find that that is substantial evidence that justifies imposing a condition to require the parties to reach an agreement before completion of the annexation, then you have the authority both under Cortese-Knox-Hertzberg and under the California Environmental Quality Act to adopt feasible mitigation measure.

Chairman stated he thinks the Commission has three choices; we can deny the application, we can approve without conditions or we can approve it with a condition. Mr. Leverenz asked for a motion for one of those courses. Commissioner Connelly asked if we could delay this for another 30 days. Chairman Leverenz stated no, as we would be outside our 70 days directed by Cortese-Knox-Hertzberg. Commissioner Connelly stated it just seems like there should be some reasonable agreement between the two parties. Chairman Leverenz stated we have been saying that for 90 days.

Commissioner Dolan asked if it were to be denied how soon could it be resubmitted addressing the concerns that have been raised in the record. Chairman Leverenz stated normally there is a year wait but if we condition this approval with a waiver of that one year they could bring it right back. Scott Browne stated you could say without prejudice to a re-submittal of the

application. Commissioner Duncan asked what happens if we were to become as the lead agency. Commissioner Beck stated it has happened and it can happen but does it really need to happen.

Commissioner Beck made a motion that there is a potential for significant adverse effect based on cumulative effects of all the proposed subdivisions and annexations. Commissioner Beck stated he will move for approval subject to signing of an agreement by the City and the District. Commissioner Beck stated he believes there already is an adverse impact and a potential for greater cumulative impact. Chairman Leverenz asked for a second. No second, motion died for a lack of a second.

Commissioner Dolan stated she was looking at her notes from the last meeting on this and would apologize to anybody who thought that she got a little testy as she did not mean to be that. Her concerns are centered on 3 things. First of all, she thinks that the storm drainage and flood control are neither adequately analyzed nor adequately mitigated in this subdivision. And the first finding that she would need to make as a LAFCO Commissioner is that the Commission certifies that the review and mitigations are appropriate and she doesn't think they are. Commissioner Dolan stated it has been mentioned in the record here by the City Engineer, by records from the storm flood control engineer for the county and the Commissioners themselves, including her, that there is a cumulative problem that continues to be made worse and is not addressed. The City of Oroville and the County of Butte recognize this need to update both the storm drainage plan and the flood control plan for this vital area. There is a draft storm drainage report that is well known, but it is not part of the analysis here. I think that that alone nets substantial information in the record that requires that additional environmental analysis.

Commissioner Dolan stated the second concern relates to the recreation needs that have been identified that do accrue when you have dense urbanization and that's what this is and it is appropriate. To have dense urbanization without recreation services for the residents is inappropriate. Commissioner Dolan disagrees with the conclusion that a storm detention basin is a park. And there's no analysis or factual information that this works. There are comments that have been made on the record, there's anecdotal information, there are observations from her regarding the community of Chico and they don't work. The kids could not go recreate there; it would be a mud hole. That is what occurs in the Community of Chico right now. This mitigation she thinks shows a conclusion and not an analysis. Commissioner Dolan thinks that means we ought to ask for our own analysis for us to make our decision.

The third one is on boundaries. This Commission has done a really good job in the last several years looking at boundaries. And in this instance the approved tentative subdivision map does connect streets to existing streets that will remain in unincorporated jurisdictions. So she thinks the boundaries are

inappropriate. And that the impacts are going to be felt right next door without any recourse for those residents to get the impacts resolved for drainage, traffic impacts, road improvements, road maintenance and such. Commissioner Dolan disagrees that we ought not to be the lead agency; she thinks that we need more analysis on this. Is a storm drainage retention pond really a park? And if it is when is it? When the kids go out and it's covered with water and all mushy what does that mean in terms that it's mitigation as a park. And then this whole issue and cumulative impacts on the storm drainage and the flood control. It's beginning to be addressed and then we'll know what needs to be done, we meaning both the City and the County, because we clearly share jurisdiction in this area.

Chairman Leverenz asked attorney Scott Browne if we make a determination that we feel there has been an inadequate environmental review, based upon all the information that we have received over the last three months and we feel that we want to become the lead agency, what do we do with this project? Do we deny it and simply indicate that we'll act as the lead agency?

Scott Browne stated that you can assume lead agency status under 15052 of the CEQA guidelines. Basically that is where the lead agency has not adequately consulted with you as a responsible agency in the process of developing the environmental document. I would have to defer to staff as to whether that consultation has occurred. If the consultation has occurred, then basically unless you challenged the environmental documents within 30 days of its adoption by the City, you have to live with that document and not become the lead agency. The second basis upon which you can become the lead agency, is if you find based on section 15162 of the guidelines that there are grounds to require a supplemental environmental documents, that there is new information or new circumstances that without due diligence could have been provided to the lead agency and that that new information has potential for significant adverse impact not properly considered in the city's environmental document. Then you could require a supplemental document. Those are the only two grounds upon which we can do that. Again, whether we were consulted originally with regard to this project or not he would have to defer to staff.

Chairman Leverenz stated as he recalls a notice was late but we did make some comments. Steve Lucas stated he believes Chairman Leverenz may be referring to a different project as there have been a number of projects that have come in. Mr. Lucas stated he would have to check the file and he doesn't recall that early consultation notice for this particular project. Commissioner Dolan stated from her perspective in all that occurred in the hearings on this, she thinks there are compelling grounds that have been raised. Chairman Leverenz stated that was the second alternative that Scott [Browne] talked about. Commissioner Dolan stated particularly on the issue of handling storm water, flood control, and this whole issue of recreation needs impacts and how they are addressed. Feather River has impact fees that are approved, but without an agreement they

can't get collected, so they get to sue every single developer. Commissioner Dolan doesn't think that helps the liability of the community of Oroville to grow appropriately nor individual development projects. Then the issue of whether or not a park and a detention pond can be the same thing.

Chairman Leverenz stated Commissioner Dolan's list of compelling reasons was gone through. The question mechanically is what do we do with this project if we say there are compelling grounds to require a supplemental environmental document.

Scott Browne stated under CEQA as a responsible agency, if you decide there is a requirement for a supplemental document you would deny the annexation at this point and send it back for preparation of a supplemental environmental review.

Chairman Leverenz wanted to make sure everybody understands what the option is. Commissioner Scott Lotter stated we have two distinct issues; the concerns FRRPD has with getting their fees paid and there's the concerns of the environmental documents and flooding, the floodplain, the detention pond, and so on. Chairman Leverenz stated the financial impact could easily be lumped together with environmental impact. Commissioner Beck stated yes because crowding a facility is an impact and the amount of fees is irrelevant, it's just that if the district can't provide enough facilities to handle the people it becomes an impact.

Commissioner Lotter stated if somebody was simply looking for a way of stopping the project, either because FRRPD is not getting its fees or that there are problems with the environmental documents and there is potential for flooding, even if for some reason the city of Oroville and FRRPD agreed and they get their fees paid, it still will not address some of the concerns some of them have about the floodplain.

Commissioner Lotter asked would both things get addressed. Chairman Leverenz stated yes, we would want both things addressed as appropriate, so the project could move forward or not. Commissioner Lotter stated it is not for just one thing. Commissioner Beck stated that is why the supplemental EIR requirement was developed; you could have one single issue & then you address that one single issue. It would have to be a more detailed analysis on drainage, if you ever played on 20th Street you would find out, for example, after the storm on Monday you won't be able to use those fields even though they are not called detention ponds. The reason for detention versus retention is that it does drain supposedly within 48 hours, and they have designed actual school grounds so that the whole playground area is a detention base. Commissioner Dolan stated she lives by one and she clarified that Commissioner Beck is talking about 20th Street in Chico not 20th Street in Thermalito. Commissioner Dolan stated in this

instance the detention is in a floodplain so by that sole designation it is made to hold flood water.

Commissioner Dolan stated she is not interested in stopping this entirely; she is truly interested in making it a better project. Commissioner Lotter stated he was not suggesting that she was trying to stop the project, but obviously there are some in the audience who prefer to stop. Chairman Leverenz stated that is why we need to think through and make a finding that there's a need for a supplemental environmental review dealing with all the issues that we raised here today.

Commissioner Dolan stated she would make that motion adding that this would be done without prejudice which would allow the City to bring it back. The motion was seconded by Commissioner Duncan. Commissioner Connelly stated he wanted to state he is not against the project and he thinks that he has to ditto some of Commissioner Dolan's statements that he thinks we're rushing on the flood issues. He stated he knows Ruddy Creek regularly floods and impacts a lot of people and we have a report that is almost done that we can rely on. And secondly, it is unfortunate that the City of Oroville and the Feather River Recreation and Parks can not work out this simple issue of collection of fees. Feather River will provide recreation for this new subdivision, they will be impacted, and that must be addressed. Commissioner Duncan stated he just wants to add that the deal between the District and the City was sort of helpful because otherwise it might have gone through without further review on the floodplain.

Scott Browne stated CEQA 15162 is clear that if you determine that a supplemental environmental document is required, you [the Commission] has to handle it. Basically you would be sending it back for preparation of a supplemental environmental document. But he thinks he would wait for the analysis to be done to determine the subsequent document to be prepared.

Chairman Leverenz asked if we would have the ability to request performance. Scott Browne confirmed. Mr. Browne stated what essentially is happening is you are assuming lead agency status and sending the project back for that review and that would be the substance of your motion. Commissioner Beck asked if the finding could be a mitigated negative declaration. Chairman Leverenz stated we can not prejudge that. Commissioner Lotter stated as he recalls we have a full-cost recovery so we would not be paying for the cost of a consultant in the end. Chairman Leverenz stated it is up to the developer to decide what they want to do.

Commissioner Busch asked to have the motion restated. Chairman Leverenz stated: The motion is without prejudice we will deny the project, make a finding incorporating the comments that have been made by Commissioners Dolan and Lotter and by Attorney Scott Browne, that there are compelling

grounds to require supplemental environmental documents that will need to be prepared. We will act as the lead agency for that purpose.

The motion was moved by Commissioner Dolan to deny the project without prejudice which would allow the City to bring this back, make a finding that there is a need for a supplemental environmental review dealing with the issues raised here today, and LAFCO to act as lead agency for that purpose. The motion was seconded by Commissioner Beck.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Beck, Busch, Dolan, and Chairman Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

4.2 Request for Reconsideration of Annexation for the City of Biggs Sixth Street Reorganization No. 1.

Chairman Leverenz stated this item has been requested to be continued to the next LAFCO Meeting in order to give Biggs and the Reclamation District time to work out their differences.

4.3 Appointment of Budget Committee for the 2008/2009 Fiscal Year and Adoption of the LAFCO Budget Process Time Line.

Commissioners Lotter, Connelly and Duncan volunteered to be on the Budget Committee. Chairman Leverenz appointed Greg Steele, alternate LAFCO Commissioner, to be on the Budget Committee.

The motion was moved by Commissioner Beck to approve the selection of the Budget Committee and approve the timeline, seconded by Commissioner Dolan.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Beck, Busch, Dolan, and Chairman Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

Stephen Lucas stated one of the Budget meetings on the Time Line is scheduled for April 3, 2008 and falls at the same as the CALAFCO

workshop for this year and we may want to consider moving that meeting to the following week. Chairman Leverenz stated we can discuss/adjust this further at the next month's meeting.

Jill Broderson stated she wanted to remind the committee members that as stated on the Time Line the first Budget Committee Meeting is scheduled for February 13, 2008 at 10:00 a.m. at the LAFCo office.

5. Public Comment on Items not on the Agenda - None

6. Reports and Communications

6.1 Executive Officer's Report

Steve Lucas stated Paradise has begun its preparation of the environmental documents for the Pacland that will be at the entrance of the gateway area.


6.2 Correspondence – None

7. ADMINISTRATION – None

8. ADJOURNMENT.

The meeting was adjourned at 10:57 a.m. to the February 7, 2008 regularly scheduled meeting.

LOCAL AGENCY FORMATION COMMISSION



By: Stephen Lucas, Executive Officer