

BUTTE LOCAL AGENCY FORMATION COMMISSION
Minutes of July 7, 2011

1. CALL TO ORDER

Chair Leverenz called the meeting to order at 9:00 a.m., on July 7, 2011, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Present: Commissioners Scott Lotter (City), Larry Duncan (Special District), Bill Connelly (County), Mark Sweany (Special District), Jerry Fichter (City), Steve Lambert (County) and Chair Carl Leverenz (Public); Alternate Commissioner Ann Schwab (City)

Absent: Alternate Commissioners Loren Gill (Special District), Greg Steel (Public) & Kim Yamaguchi (County)

Others Present: Stephen Lucas, LAFCO Executive Officer
Stephen Betts, LAFCO Deputy Executive Officer
Joy Stover, LAFCO Commission Clerk
Scott Browne, LAFCO Legal Counsel

2. CONSENT AGENDA

2.1 Approval of the Minutes of June 2, 2011

Commissioner Fichter noted a correction on page 4.

Commissioner Fichter made a motion to approve the consent agenda with one correction noted. The motion was seconded by Commissioner Duncan.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Lambert and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

3. NOTICED PUBLIC HEARINGS – None

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda – None

4.2 11-08 – City of Chico – Stewart Avenue Annexation No. 2

Steve Betts stated he has nothing new to add to the staff report and confirmed this is a project that was originally submitted to the Commission as an extension of services project, which the Commission denied and directed the City to submit as an annexation. The property owners have agreed to the annexation.

Chair Leverenz opened this item to the public for comments and seeing none, closed the public portion of the hearing.

Commissioner Lotter moved to adopt Resolution No. 01 2011/12 approving the annexation. The motion was seconded by Commissioner Sweany.

The motion was carried by the following roll call vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Lambert and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

4.3 11-07 – City of Chico – Master Extension of Sewer Services

Chair Leverenz sought clarification as to which parcels are affected by this application. Steve Lucas stated the application would cover approximately 2,991 unincorporated, developed parcels within the City's Sphere of Influence and that approximately 667 of these parcels are within the "hot spots" where the City is going to focus its initial attention.

Chair clarified the request is to allow the City to connect all 2991 parcels without having to come to LAFCO for individual approval.

Steve Lucas stated the distinction between the two groups is parcels in a hot spot would be eligible for the financing programs from the City while parcel owners not included in the identified 'hot spot' areas but would have to pay full cost for the process of hooking up.

Chair Leverenz opened this item to the public for comments.

Ann Schwab, (representing herself as Mayor for the City of Chico), stated: the City's number one goal is to promote health and safety and make it easy for citizens to adhere to the state's prohibition order which applies to individual landowners not the legislative bodies; that the City acknowledges that annexation of all islands within the City of Chico is the ultimate intent of all participating agencies and is supportive of an annexation plan that results in logical and orderly boundaries; the City's application to LAFCO is based on a request not to require immediate annexation as it would create a financial hardship for the property owner as well as the City of Chico and that the City believes in order to promote the creation of logical and orderly jurisdiction boundaries, annexation of the remaining islands within Chico would be most successful by bringing in the entire island into the City's limit all at once, rather than through a piece meal approach.

Ann Schwab stated she is committed to driving the annexation plan and delivering LAFCO a plan for consideration on the expectation that the annexation plan will be developed in approximately six months by the City of Chico, County of Butte and LAFCO. She urged the Commission to approve the master sewer plan agreement today. If the Commission has any doubts about her commitment, then add a sunset date to the agreement but don't delay approving this agreement.

Chair Leverenz stated as he understands it, the City of Chico is now financially in a position because of grant or loan money to at least extend sewer to certain areas that are within these 'hot spots' and the City needs to move quickly, but LAFCo needs to make sure these areas are annexed so they don't remain islands. Chair Leverenz asked if LAFCO doesn't approve this today, does that absolutely prohibit the City's ability to move forward.

Ann Schwab stated their contract has already been signed, the work is going forward in the Chapman neighborhood and the City anticipates being able to offer sewer hook-ups to those residents very soon and the City is asking for a six month window for them to develop the agreement.

Chair Leverenz stated the Commission needs to have a commitment by the City, that they will file an application to annex these areas. Chair Leverenz asked if it is Ann Schwab's view that the Council would consider a deadline date for the City to annex these properties.

Ann Schwab stated it is her desire to have all the pocket areas annexed into the City. With the economic downturn the City feels it would be an undue hardship on the City at this time.

Fritz McKinley, Director of Building and Development Services for the City of Chico, stated the City infrastructure work has started in the [connection] areas and this would not delay those projects.

Chair Leverenz asked if the Commission extends this for a month, and if we were to tentatively approve those hook-ups, and possibly put a sunset date on it, would that slow down their process?

Fritz McKinley stated it will not slow down their process only the availability for parcels to hook-up that have a failed system would be a problem.

Chair Leverenz stated if we continue this for a month we could have staff approve the ones with a failed system.

Chair Leverenz stated he is a great believer in drafts and we should have our staff put together a draft for the meeting on July 19th to speed up the process by at least having something that the various staffs could then take to their legislative bodies. Chair Leverenz asked Steve Lucas if he felt this could be done.

Steve Lucas stated he felt they could put together a draft agreement by the 19th.

Chair Leverenz asked if anyone else wanted to be heard.

Jennifer Macarthy, Economic and Community Development Manager for the County of Butte, stated she is speaking in favor of the City's application for a master sewer service agreement. The County has been working diligently since the 1980s with the City to find a solution to the nitrate issues in the greater Chico urban area and have secured funding and encouraged connections. The County acknowledges the fact that the implementation of this project was not done hand in hand with LAFCO. The County feels strongly that the primary goal is to encourage as many parcels as possible in CSA No. 114 to connect to city sewer to alleviate the nitrate issues. The County acknowledges the need for a plan for annexation for the remaining pockets of the unincorporated area throughout the greater Chico urban area. The County does not however feel that anything should be done that would potentially discourage property owners from connecting to sewer, whether that be through fees, annexations, or whatever. We believe the annexation issue will be addressed through the development of a master annexation plan and that an acknowledgement signed by the property owner stating that they understand that their property will be part of a future annexation plan should be the preferred alternative. The County does support the idea of this master annexation plan, but feels strongly that the individual sewer connections within CSA No. 114 should not be contingent on annexation.

Scott Browne asked for clarification about the acknowledgement from the property owner that the property would be annexed.

Jennifer Macarthy stated an acknowledgement would be different than an agreement in that it would not be binding.

Scott Browne stated it is the City's/County's position that they will not agree to have the property owner sign a legally binding commitment.

Jennifer Macarthy stated the County's goal has been that annexation would not be a requirement to connect to sewer service. We do understand that annexation needs to occur, but that we are however not using sewer connection as that trigger for that annexation. The acknowledgement signed by landowner would inform them that a master annexation plan is in place and ask if they are interested in annexation which would assist in gathering data on which neighborhoods may want to annex sooner than anticipated.

Chair Leverenz asked if any other comments from the public. None responded.

Commissioner Connelly stated he thinks LAFCO is created to address urban issues like this, that urban areas should be served by City Government and there's a huge economic strain upon Butte County. He thinks the annexation should be enforced and anybody that signs up for sewer should sign a waiver that they will not protest a future annexation at a minimum. Landowners will be getting services without any annexation process and he doesn't see the logic in it. He thinks there should be a firm commitment from the City of Chico for annexation, not some inferred 20 year plan. The minimum we should have is a transferrable acknowledgement that there will not be a protest to annexation upon sewer service and the owner will get sewer service.

Chair Leverenz stated the way that you could accomplish this is to record a covenant on each property that they agree to annexation and any subsequent protest would be superseded by the covenant.

Scott Browne stated staff has developed a covenant that does not waive protest, but consents to annexation which he believes would be a legally enforceable covenant and would provide a greater assurance of a successful annexation process.

Chair Leverenz stated candidly that makes more sense but the problem is it is not consistent with City/County commitments to these property owners that they wouldn't have to annex in order to get sewer service.

Steve Lucas stated the proposed covenant is between the Commission and the person receiving the service and that the City wouldn't play a role other than to have that requirement met through LAFCO.

Commissioner Duncan stated he supports the covenant as it is consistent with our own policies.

Commissioner Lotter asked if they signed an agreement to be annexed in order to be connected can they then be removed from the voting pool for any protest hearing, so you just don't mail them a ballot.

Scott Browne stated they would have already pre-consented.

Chair Leverenz stated we should at least consider having a covenant.

Scott Lotter stated he agrees a covenant is an important tool.

Steve Lucas went over the four items listed on page 10 of the staff report with the Commission. He stated the Commission has the ability to condition this extension of services as they feel is appropriate in applying LAFCO policies and does not need agreement from the applicant.

Chair Leverenz stated he doesn't consider a covenant to be unreasonable, but it does conflict with City/County statements to property owners. If we are able to put together a total master agreement to annex we might defer this issue.

Commissioner Connelly stated if somebody has a failed sewer system they have options, they could be red tagged, they could go to a very advanced septic system that actually treats the water on-site, or they could simply connect to the sewer by signing a covenant in support of a future annexation. It is their choice.

Chair Leverenz stated if we don't require annexation of contiguous parcels, we would have to require the type of document we are talking about.

Steve Lucas stated that while considering the contiguity question on a parcel by parcel basis does start to incrementally remove those parcels, it also creates even a larger piece meal puzzle like approach to these islands that may not result in any more efficiency in delivery of services and may further complicate it.

Chair Leverenz stated it would be cleaner to pick up an entire island.

Commissioner Lotter asked what if there was cost savings in doing fewer large annexations.

Chair Leverenz stated the amount of work would be similar, but spread out over more parcels.

Steve Lucas referred to the map on the wall and identified some of the island areas and the unincorporated areas within the City's sphere which consists of 12 remaining areas, 9 of those islands. One option would be to annex those islands when 50% of parcels are connected.

Chair Leverenz stated we would still have the issue of when does that occur as the City may not be ready to take that annexation area.

Steve Lucas stated the option would not necessarily be time driven but connection driven so whenever 50% of parcels are connected, annexation would be triggered which might come in a few years or may not be triggered for 20 years.

Chair Leverenz stated we need to think about all the issues as it relates to how to implement all of this and we should have written agreement before we approve anything. The idea, on an interim basis, approving the City's hookups, especially with a condition of this type of covenant, makes me a lot more willing to approve the hookups without having some type of a full blown agreement in place.

Chair Leverenz stated his feeling is we ought to continue this item to next month and during that period the meeting on the 19th will occur. The Commission consensus is we want a type of covenant executed by the property owners supporting annexation and recorded. The agencies could discuss the bullet points of a draft agreement on the 19th.

Commissioner Fichter asked if the Commission will get a copy of the draft ahead of it going to Chico. Scott Browne stated it can be emailed to the Commissioners.

Steve Lucas asked to run through the four points on the staff report for clarification. In terms of contiguity, the Commission believes this would result in piece meal annexations which would not be as preferable as to doing entire islands at one time.

Chair Leverenz stated it is a trade off for having the property owners sign the covenant, it would be much more efficient to annex them as an island at such time as there are enough hookups to justify annexing the whole area in and maybe by that time the City would be able to take that area in financially to provide a complete range of urban services.

Steve Lucas stated point #2 is the requirement to have an annexation plan adopted prior to the authorization of the extension of services. Steve Lucas stated he understands the Commission desires to have such an agreement in place prior to the authorization of the extension of services.

Chair Leverenz clarified that the Commission could consider authorizing connections if an annexation plan could be totally in place by March 2012, but it is contingent upon immediate utilization of the covenants.

Scott Browne stated, as your lawyer, he would suggest that you have an agreement in place before you start, even if it is only an interim agreement.

Chair Leverenz stated if the City and the County agree that we can utilize these covenants it is a big step and if they didn't then he certainly would not approve an interim authorization. Chair Leverenz thinks it is fair to allow the City Council and this body time to develop an annexation plan that works.

Steve Lucas sought clarification if the annexation plan is going to be a condition of authorization for extension of services and if so we will have that available on the 19th. If the process is going to be that if we can have covenants signed by individuals as a prerequisite for connection and then the annexation plan can develop over time.

Commissioner Lotter stated he doesn't feel it should take more than 3 months to have a plan approved if staff can prepare a plan by the 19th.

Ann Schwab stated it may be feasible to have an agreement to this committee by the 19th but does that give the City Council time to review it, our staff to review it?

Chair Leverenz stated whatever comes out of the meeting on the 19th can be discussed at the LAFCO August meeting. The issue then becomes if there's an agreement in principle on the issues in the draft agreement, if there isn't, and then we are going to need to further discuss those issues. He stated it would be very nice to have the draft agreement, including this covenant, in place over the next two months, if it doesn't materially impact the City's ability to hook people up.

Ann Schwab said the sewer mains are going to be going down the street, people will be calling the City of Chico and the County of Butte wanting to know how to get hooked up to the sewer only to be told they are trying to figure out this agreement that needs to be in place.

Chair Leverenz stated technically we could, but the Commission supports having the property owner sign a covenant that you support annexation in the future and that is going to be recorded against your property and that the City of Chico will in fact annex all of these properties by Jan. 1, 2020. He would rather see a consensus agreement worked out over the next couple of months that works for the City, the County, LAFCO and the property owners.

Steve Lucas stated the Commission may want to consider establishing an ad hoc Committee to meet on the 19th with three members of the City of Chico Council who will be attending that meeting. Chair Leverenz and Commissioner Sweany volunteered to be on a subcommittee to attend the meeting on the 19th.

Commissioner Fichter stated LAFCO did run into a situation in Gridley on Vermont Street where some people did not want to annex and there was no prior annexation agreement which caused a more complicated process.

It was agreed to continue this item one month.

4.4 Consideration of Authorization for Executive Officer to Approve Transfers of Jurisdiction.

Steve Lucas stated there are times when a district boundary crosses over into two counties and jurisdictional changes involve both county LAFCOs and the law allows for

the adjacent LAFCOs to transfer jurisdictional authority when appropriate in order to expedite a process. The Commission is requested to authorize the Executive Officer to approve transfers of jurisdiction.

Commissioner Connelly stated there is a fire district in Clipper Mills that would like to transfer into the fire agency adjacent to them in Yuba County and he'd like to have staff work on that project.

Commissioner Lambert moved to adopt Resolution No. 03 2011/12 delegating authority to the Executive Officer to execute agreements related to LAFCO jurisdictional transfers. The motion was seconded by Commissioner Connelly.

The motion was carried by the following roll call vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Lambert and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

4.5 Special District Risk Management Authority Board of Directors Elections.

Steve Lucas stated he was able to have a conversation with Sand Raffelson and she believes there needs to be a voice for the rural north of which she does not believe currently exists on this board.

Commissioner Fichter moved to have the elections ballot sent in for Sandy Raffelson, District Clerk for Herlong Public Utility District, to serve on the SDRMA Board of Directors. The motion was seconded by Commissioner Lotter.

The motion was carried by the following roll call vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Fichter, Lambert and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

4.6 Convene Budget Committee to Review Policies and Practices for Establishing Annual Budgets.

The Commission directed staff to arrange a time for the Budget Committee to meet to look at our overall budget process.

5. PUBLIC COMMENTS NOT ON THE AGENDA

6. REPORTS AND COMMUNICATION

6.1 Executive Officer's Report –

Steve Lucas summarized the Executive Officer's report, dated June 30, 2011 relating to Administration, General Notes, Legislative Notes and Application Activity.

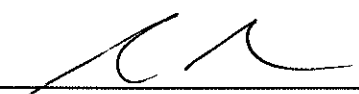
6.2 Correspondence – None

7. ADMINISTRATION – None

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:43 a.m. to the August 4, 2011 regularly scheduled meeting.

LOCAL AGENCY FORMATION COMMISSION



By: Stephen Lucas, Executive Officer