

BUTTE LOCAL AGENCY FORMATION COMMISSION
Minutes of November 5, 2009

1. Call to Order

Chair Leverenz called the meeting to order at 9:00 a.m., November 5, 2009, in the Butte County Board of Supervisors Chambers, 25 County Center Drive, Oroville, California.

1.1 Roll Call

Present: Commissioners Lotter, Duncan, Connelly, Sweany, Frith, Dolan, and Chair Leverenz.
Alternate Commissioners Gill, Holcombe and Steele

Absent: Alternate Commissioner Yamaguchi

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

2. Consent Agenda

2.1 Approval of the Minutes of October 1, 2009

Commissioner Connelly noted one modification on page two.

Commissioner Lotter made a motion to approve the minutes with one modification on page two. The motion was seconded by Commissioner Duncan.

The motion was carried by the following vote:

AYES: Commissioners Lotter, Duncan, Connelly, Sweany, Frith, Dolan and Chair Leverenz
NOES: None
ABSENT: None
ABSTAINS: None

3. NOTICED PUBLIC HEARINGS –

3.1 SP-56 – Review and Consideration of the Public Review Draft Municipal Service Review for Wastewater Service Providers – Oroville Region.
(Continued from the October 1, 2009 LAFCo Meeting)

Stephen Lucas stated there is no new information to present. Staff incorporated all comments that have been received, both written and verbal, and put all comments into a format change which is included in the staff report as attachment "A" which indicates the

actual changes to the document that will to occur. Staff will make all those changes to the Final MSR once it is adopted.

Chair Leverenz opened the hearing to the public. There being no responses, the public portion of the hearing was closed.

Commissioner Connelly made a motion to approve Resolution No. 03 2009/10 adopting the Final MSR as amended, approve the letter to SC-OR and authorize the Chair and the Executive Officer to sign the letter to SC-OR. The motion was seconded by Commissioner Duncan.

The motion was carried by the following roll call vote:

AYES:	Commissioners Lotter, Duncan, Connelly, Sweany, Frith, Dolan and Chair Leverenz
NOES:	None
ABSENT:	None
ABSTAINS:	None

4. REGULAR AGENDA

4.1 Items Removed from the Consent Agenda – None

4.2 Sphere of Influence Reviews and Updates Policy Discussion

Steve Lucas stated staff received a request for comments from the Town of Paradise regarding what is now referred to as the Wal-Mart Project, previously referred to as the Gateway Project. Staff provided comments to Paradise as to what LAFCo concerns on this project. There is one outstanding question related to a prior letter that the Commission directed be sent to every agency concerning whether or not LAFCo would move forward on major annexations and/or Sphere amendments absent a Sphere update. It was expected that The Town of Paradise was going to prepare a Sphere update but for a variety of reasons the Town has decided at this time it is not going to move forward with a comprehensive General Plan Update or Sphere Update.

Chair Leverenz stated from what he understands this particular property is currently within the Sphere of Influence for the Town of Paradise and the issue will be the Sphere of Influence for the Paradise Irrigation District.

Steve Lucas stated this property is within the Town's Sphere but not within the Sphere of the Paradise Irrigation District. Steve Lucas reiterated that if we don't have an updated Sphere is there a legal vulnerability as to LAFCo processing an annexation for a project absent a comprehensive Sphere update as the Town's Sphere has not been reviewed in any extensive format since 1985.

Chair Leverenz stated from what he understands, state law does not really require some of the requirements we have in our policies like five year incremental Sphere reviews and we're simply supposed to do a Sphere update as needed on a regular basis so it is meaningful. Chair Leverenz stated the staff's suggestion is to have the Commission authorize staff to go back and re-draft some of the policies to be consistent with our ability to consider projects such as this one. Chair Leverenz stated it would be nice to have a

comprehensive General Plan update or a Sphere review update, as it relates to this particular project. Chair Leverenz stated when this project finally comes to us there needs to be an analysis of the water impact as far as Paradise Irrigation District (PID) is concerned. Chair Leverenz stated he understands PID is in the process of preparing their own study.

Scott Browne, LAFCo counsel, stated with regard to preparing Sphere updates, even in a situation like this, we would have what is probably considered a major annexation to the Town of Paradise, and he would advise the Commission to complete the Sphere update before proceeding with such an annexation otherwise it would be too vulnerable to legal challenge.

Chair Leverenz asked if this would be a Sphere update for just PID.

Scott Browne stated the update should be for both the Town of Paradise and PID. Scott Browne stated law requires that you update the sphere every five years, and he feels the court will say that if you haven't updated the Sphere within five years, since the annexation has to be consistent with the Sphere, the same as the general plan consistency argument, if you don't have a valid general plan you can't do a rezoning because you don't have anything to measure consistency with.

Chair Leverenz stated if we have the staff review and make suggestions as to modifications to Commission policies, in addition to that we should also ask Paradise to do an updated Sphere analysis.

Scott Browne stated the Sphere update is a LAFCo project and should be done jointly with the Town, and if there are no major changes planned to the Sphere, it doesn't have to be a massive document.

Steve Lucas stated timeframe wise, we may be looking at 18 months as the minimum before this project comes back in front of the Town and it may be 2 years out before we actually get the proposal for annexation.

Chair Leverenz stated this should be done in conjunction with PID as both agency Spheres need to be updated during this timeframe.

Commission Lotter confirmed this project area is not currently within the Sphere of Influence for PID.

George Barber, general manager for PID, gave a historical review of the District and submitted a map to the Commission showing the current and proposed Sphere of Influence district boundaries. George Barber went over the proposed Sphere of Influence boundary changes and stated they are currently sending out their Initial Study that will be out for about 90 days and the idea is to get comments back from their resource agencies and hopefully get their EIR prepared for the SOI and all the District's water rights needs. The District will go forward with their process and if they feel that the Wal-Mart project becomes a contentious issue based on comments, the District may need to take that out of their SOI. George Barber stated he feels the EIR for the project itself should satisfy all of the issues associated with amending the SOI in that area at the time the project is reviewed by the Town.

Chair Leverenz stated he is pleased to see the District is going forward and in theory by this time next year this [SOI update] should be close to being complete.

Commissioner Connelly stated George Barber stated that the district would need an intake at the Highway 70 Bridge and asked why the District is not taking their proposed SOI boundary all the way down to the Highway 70 Bridge? George Barber stated he is taking the boundary through right-of-ways far enough to where the boundary would enter into state lands. There was discussion on taking the District's SOI boundary into the state lands.

Commission Dolan asked if the District is under the PUC. George Barber stated the district has no relationship with the PUC as the PUC only deals with private water agencies.

Andrea Redamonti, Community Development Director for the City of Gridley, stated on behalf of the City of Gridley she wanted to thank LAFCo for the consideration of updating LAFCo Sphere policies and looks forward to working with staff as these policies are developed. Andrea Redamonti submitted a letter to the Commission describing Gridley's input as it relates to updating the LAFCo policies.

Chair Leverenz asked if LAFCo amends the LAFCo policies in an attempt to be consistent with the general plan law, do we run afoul of the five year update requirement. Steve Lucas stated no, LAFCo has a requirement under the Cortese-Knox-Hertzberg law that we need to review a Sphere every five years and update those plans and Ms. Redamonti is speaking to five year planning horizons in Butte LAFCo Policies that were put in place years ago. It does create a lot of potential hardship for the various cities to try to conform to a five year business projection. Steve Lucas stated these are two separate issues.

Commissioner Frith made a motion to authorize the staff to go back and revise the LAFCo policies as related to issues discussed today and bring back proposals to the Commission. The motion was seconded by Commissioner Lotter.

The motion was carried by the following vote:

AYES:	Commissioners Lotter, Duncan, Connelly, Sweany, Frith, Dolan and Chair Leverenz
NOES:	None
ABSENT:	None
ABSTAINS:	None

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

6. Reports and Communications

6.1 Executive Officer's Report

Steve Lucas, LAFCo Executive Officer, summarized the Executive Officer's Report and stated Commissioner Connelly was elected to the CALAFCO Board.

Commissioner Connelly stated he wanted to thank everyone for their support and stated the importance of having CALAFCO representation from the north state, especially as it relates to water issues.

Steve Lucas stated CALAFCO is looking at creating regions as a way of maximizing resources and stated there was a statewide meeting related to regionalization. Steve Lucas

stated CALAFCO has asked for comments to be submitted and this issue will roll out over the next year.

Commissioner Duncan stated he felt there were a lot of people that were against regionalization and they didn't want to say anything, including people on the CALAFCO Board.

Commissioner Dolan stated the word regional doesn't carry a lot of favorable views in Northern California as it is viewed as loss of control. Steve Lucas stated he agreed and he will bring to the Commission proposed regional maps as they come available for Commission comments.

There was discussion on other issues raised at the CALAFCO Conference, including financial impacts being faced by cities & special districts throughout the state and the amount of work that needs to be done to assist these agencies.

Commissioner Connelly stated there was an emphasis on water and the role LAFCO plays in enforcing the need for more water supply. Commissioner Connelly stated it will be interesting being on the CALAFCO Board and he wanted the Commission to know that he represents everyone on the Commission.

There was discussion on SB 375 legislation, how SB 375 will be implemented and discussion on Ag and open-space lands.

Commissioner Connelly stated an Indian Tribe from San Diego provided an Indian gaming presentation at the CALAFCO Conference.

The Butte LAFCo Calendar of Events for 2010 was discussed. Steve Lucas went over some possible dates for the Butte LAFCo regular meeting for October 2010. It was decided to schedule the meeting for Thursday, October 14, 2010.

Steve Lucas stated staff has been contacted by several individuals over the past months requesting guidance as to various ways to pursue the annexation of the south Oroville area. Steve Lucas stated it appeared the individuals were not talking to one another and it was suggested that they form more of a comprehensive group that could communicate together and come to us as one voice. Commissioner Connelly stated south side residents do come together on certain issues and there have been round table discussions recently suggesting there are approximately 60% to 70% of the residents that would like to be annexed into the City of Oroville.

Chair Leverenz stated as far as LAFCo Staff participation goes, the Commission wants staff to assist anybody that is interested in LAFCo issues as that is our role.

Steve Lucas stated he expects in the near future to be reaching out to the City of Oroville Administrator to try to facilitate some meetings between the land owners and the City and move this process along.

Commissioner Dolan asked if this is a possible land owner petition for annexation to LAFCo. Steve Lucas stated the individuals have asked those questions and they have been apprised of the LAFCo process, requirements and costs associated with a land owner petition. Steve Lucas stated he has informed them that they still need to go before the City Council and ask and be rejected before they can bring forth a petition under our policy.

Steve Lucas stated it was expressed to him that the individuals are not getting a high level of cooperation or a high level of information back from the City in terms of processes and timeframes and that's why they came to our office asking for assistance in helping with the process.

Scott Browne stated during a legal counsel roundtable at the CALAFCO Conference they discussed an interesting and rather important new case that came out in the Ninth Circuit Court called The Committee Concerning Community Improvement versus the City of Modesto wherein the Ninth Circuit Court ruled that citizens can file an action against the City if they can show circumstantial evidence that the City is deliberately not annexing their area and it disproportionately affects minorities.

Chair Leverenz stated hopefully it won't get that contentious and the Commission encourages the staff to continue to work with these people and all people, to the extent you're able to provide information and assistance.

Commissioner Connelly stated it is important to note that several of the City Council members have indicated that they desire to annex south Oroville and it will be interesting to see how they vote. There has been a regular policy of annexation of bare ground while avoiding infill and the poor neighborhoods, and representing this area, Commissioner Connelly stated he urges staff to urge them to annex and he'll help all he can.

6.2 Correspondence

A. October 18, 2009 letter to Oroville Mosquito Abatement District

7. ADMINISTRATION – None

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:52 a.m. to the December 3, 2009 regularly scheduled meeting.

LOCAL AGENCY FORMATION COMMISSION


By: **Stephen Lucas, Executive Officer**

Minutes prepared by Joy Stover, LAFCO Commission Clerk