

## MINUTES - MARIN LOCAL AGENCY FORMATION COMMISSION

On December 13, 2012, the regular meeting of the Marin Local Agency Formation Commission was held at the San Rafael Council Chambers, 1400 Fifth Avenue in San Rafael. Chair Blanchfield called the meeting to order at 7:09 p.m.

### ROLL CALL

Commissioners Present: Susan Adams (7:16)  
Einar Asbo  
Jeffry Blanchfield  
Carla Condon  
Barbara Heller  
Dennis J. Rodoni  
Kathrin Sears

Alternate Commissioners  
Present: Craig K. Murray

Commissioners Absent: Judy Arnold

Staff present: Peter Banning, Executive Officer  
Candice Bozzard, Clerk to the Commission  
Scott Smith, Legal Counsel, Best, Best & Krieger

PUBLIC COMMENT - No comments from the public.

### NOTICE OF APPLICATION (Information Only)

1. New application(s) were received for the following proposals:
  - o Annexation of the Lands of Brunig to the Homestead Valley Sanitary District (File #1310)
  - o Annexation of the Lands of Jouvre Trust to the Richardson Bay Sanitary District (File #1311)

The Executive Officer also informed the Commission of the upcoming annexation of the SODA property to the Town of Tiburon.

**ACTION OR POSSIBLE ACTION ITEMS****CONSENT CALENDAR ITEM(S)**

2. **Regular Meeting Minutes – September 13, 2012**
3. **Financial Reports – September, October and November 2012**

M/S Sears – Condon to approve the Consent Calendar with corrections.

Approved unanimously.

(Commissioner Adams arrived)

**PUBLIC HEARING(S)**

4. **Consolidation of Southern Marin Sanitary Districts (File #1307) – Evaluation Results of Protest Petition, Impartial Analysis:**

The Executive Officer summarized his written report and added that the results of the petition signature evaluation from the Registrar of Voters showed that sufficient signatures were received to trigger an election in each of the four sanitary districts affected by the consolidation previously approved by the Commission. Staff continued that Alto received protest signatures of 42.3% of the total number of registered voters, Almonte received 23.3%, Homestead Valley received 13% and Richardson Bay received 15.1%. Staff continued that as mandated under the Cortese-Knox-Hertzberg Act, the Commission was required to adopt a resolution requesting the County Board of Supervisors to call an election in the Alto, Almonte, Homestead Valley and Richardson Bay Sanitary Districts. The Executive Officer indicated that each of the districts would be responsible for the costs of the elections.

Staff noted a few minor corrections to the proposed draft resolution. The corrections were as follows:

- In section 5 on page two of Resolution 12-07, add “and cost effectively” for the sentence to read “...to more efficiently and cost effectively provide sewage collection ...”
- In section 9 on page 6, include the word “voting” for the sentence to read “... a simple majority of the registered voters voting in each of the four above listed...”
- In section 11 on page 6, change the ballot language to read “Shall the order adopted on September 13, 2012 by the Local Agency Formation Commission of the County of Marin, ordering the consolidation of the Alto, Almonte, Homestead Valley and Richardson Bay Sanitary Districts into a single district

known as the Southern Marin Sanitary District be confirmed subject to the terms and conditions specified in the order?"

- In the first sentence of section 12, change "paragraph 11" to "paragraph 12"

Chair Blanchfield inquired if any Commissioner had additional suggestions or changes to this resolution.

Commissioner Adams asked if the impartial analysis should be approved prior to the resolution. Special Counsel Scott Smith responded that the order of approval was discretionary. Chair Blanchfield added that the resolution was ministerial and suggested to adopt the resolution first.

Commissioner Rodoni wondered if for possible legal action that the language used in the resolution was dictated by the Cortese-Knox-Hertzberg Act. Staff responded that the resolution conformed to the Cortese-Knox-Hertzberg Act requirements.

Chair Blanchfield opened the hearing for public comment on LAFCO Resolution 12-07. No comments were received.

M/S Sears - Condon to close the public hearing on LAFCO Resolution 12-07.

Commissioner Asbo abstained.

Motion passed.

M/S Sears - Condon to adopt Resolution 12-07 approving with corrections the Resolution of Conducting Authority Making Findings on Value of Written Protest Filed and not Withdrawn and Ordering a Change of Organization Subject to Confirmation by the Voters.

Commissioner Asbo abstained.

Motion passed.

The Executive Officer recommended that the Commission review and adopt the draft impartial analysis pending any proposed changes.

Commissioner Condon suggested striking the end portion of the last sentence in the first paragraph "...and is supported by the League of Women Voters".

The Commissioners assessed the best approach for handling the revisions to the draft impartial analysis.

Chair Blanchfield opened the hearing on the proposed impartial analysis for public comment. No comments were received.

M/S Heller - Sears to close the public hearing on the draft impartial analysis.

Motion passed.

After some discussion, the Commissioners agreed to establish an ad hoc sub-committee to review and amend the draft impartial analysis. The ad hoc committee would consist of Commissioners Blanchfield, Condon and Rodoni. The Commission also directed staff to have the revised impartial analysis reviewed by legal counsel prior to being presented to the Commission for adoption.

The Commission then went on to discuss the legal principles governing the conduct of public agencies affected by the consolidation in the time period preceding the election.

Special Counsel Smith noted that there was a direct connection between the Cortese-Knox-Hertzberg Act and the California Supreme Court case of *Stanson v. Mott* regarding the expenditure of public funds in campaign elections. Mr. Smith stated that the Commission and other affected agencies could not use staff time or equipment to "influence" the public in voting on a ballot measure. Mr. Smith added that it was however permissible to educate and inform the public on material already provided by LAFCO but the Commissioners could not advocate for voter confirmation of the consolidation of sanitary districts.

Commissioner Heller asked about the Commission creating a fact sheet to help answer questions. Mr. Smith responded that a summary of LAFCO's decisions and findings of the proposed consolidation would be permissible.

Commissioner Sears inquired about preparing an argument for the ballot materials. Mr. Smith responded that it was appropriate to make a statement and recommended inclusion of the outcome of any vote taken by the Commission on the matter.

Commissioner Asbo inquired about who adjudicates impartial information permissible under *Stanson v. Mott*. Mr. Smith responded that a court arbitrator could make those determinations. Mr. Smith elaborated that providing a truly impartial mailer was difficult and the best remedy would be to include both sides of the argument in any such material.

Commissioner Adams reiterated that all public agencies had to adhere to the Brown Act but could direct the public to the website for additional information. Commissioner Adams added that another way to educate the public without violating

the Brown Act would be to create a campaign committee that would be separate from the district or from LAFCO.

Chair Blanchfield asked if referring the public to any background or findings that the Commission had approved was permissible. Mr. Smith responded that it would be permissible. Chair Blanchfield then asked if a letter to the local newspaper was acceptable. Mr. Smith responded that an opinion letter written by an individual member of the Commission would be permissible but not from the Commission as a whole.

The Executive Officer inquired about using agency board titles. Mr. Smith responded that such use would be dictated by each agency's local policy. However he recommended that LAFCO should be clear when speaking in support or opposition of the sewer consolidation that it was as an individual and not as a representative of LAFCO. The Executive Officer then asked if an agency had biased material posted on their website prior to the call of the election, was that agency required to retract it. Mr. Smith answered that information posted on the agencies website that was not the result of a board action should be removed from the website.

Commissioner Asbo asked about the schedule for placement of a measure on the ballot. Chair Blanchfield responded that it was the schedule set by the Registrar of Voters and any questions should be directed to that office.

Chair Blanchfield opened the discussion to public comment.

- Mr. Scott McKown, League of Women Voters Representative - Mr. McKown inquired when the resolution calling for the election would be presented to the Board of Supervisors.

Chair Blanchfield responded that staff will present the resolution to Clerk of the Board of Supervisors within the next few days, after which the Board of Supervisor's will have 45 days to call the election.

M/S Adams - Condon to close the public hearing.

Approved unanimously.

## **BUSINESS ITEM(S)**

### **5. Strategic Plan Agenda Review:**

The Executive Officer reported that there were several items to discuss at the upcoming Strategic Planning Workshop scheduled for Friday, February 1, 2013. The Executive Officer added that Mr. Bill Chiat would be the workshop facilitator. Staff

encouraged input from the Commissioners on matters to discuss at the workshop. Chair Blanchfield requested a five-year schedule of special studies that need to be addressed. The Executive Officer noted that staff would present a draft agenda at the next meeting.

### **COMMISSIONER REPORTS**

Commissioner Heller distributed a copy of an article in the Fall 2012 C&L Newsletter regarding disadvantaged unincorporated communities (DUCs). The article pertained to information on SB 244 requiring cities, counties and LAFCOs to include consideration of DUCs in their adopted plans and spheres of influence.

Commissioner Adams felt LAFCO should be involved with the Association of Bay Area Governments/MTC One Bay Area program. The Executive Officer replied that the Bay Area Executive Officers have periodically discussed this planning process and, in the case of Marin County, thought there was minimal connection to LAFCO plans and policies.

### **BUSINESS ITEM(S)**

#### **6. Progress Report:**

The Executive Officer added to his written report that he, along with Leslie Alden (Aide to Supervisor Sears) met with Jonathon Logan and Josh Barrow of the Marin City Community Services District and Richard Berkson of Economic & Planning Systems (EPS) regarding the potential study of incorporation of Marin City.

### **CLOSED EXECUTIVE SESSION**

Scott Smith advised that the potential litigation matter had not materialized so closed session discussion would only involve personnel issues.

#### **7. Personnel Matters:**

The Commission entered into closed session at 8:47 p.m. and reopened at 9:05 p.m.

The Commission discussed personnel concerns regarding staff. The Commission took no formal action during the course of this discussion.

ADJOURNMENT


M/S Adams - Asbo to adjourn the meeting.

Approved unanimously.

The meeting was adjourned at 9:06 p.m. The next regular LAFCO meeting was scheduled for Thursday, January 10, 2013.

Respectfully submitted,

  
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PETER V. BANNING, Executive Officer

ATTEST:  
  
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JEFFRY BLANCHFIELD, Chair