

MINUTES – MARIN LOCAL AGENCY FORMATION COMMISSION

On April 12, 2001, the regular meeting was held at the San Rafael Council Chambers, 1400 Fifth Avenue, San Rafael. Chairperson Blanchfield called the meeting to order at 7:35 p.m.

ROLL CALL

Commissioners Present: Mogens Bach
Jeffry Blanchfield
Judy Chapman
Barbara Heller
John Kress
Cynthia Murray
George Quesada

Alternate Commissioners
Present but not seated: Richard Rubin

Staff present: Peter Banning, Executive Officer
David Zaltsman, Legal Counsel
Dory Adams, Clerk to the Commission

ROLL CALL

1. **Public Comment** – None

NOTICE OF APPLICATION (Information Only)

2. Application(s) were received for the following proposals:

Reorganization of Lands of Dominican Sisters to the City of San Rafael and San Rafael Sanitation District (File #1196)
Annexation of the Lands of Shaw to Sanitary District #5 (Tiburon) (File #1197)
Annexation of the Lands of Arendell to Novato Sanitary District (File #1198)

CONSENT CALENDAR ITEM(S)

3. **Regular Meeting Minutes, March 8, 2001**
4. **Financial Report**
5. **Adoption of Conducting Authority Resolution:** Resolution No. 01-08 Ordering Territory Designated as “Reorganization Of Novato Heights Including Annexations to the City of Novato and the Novato Sanitary District (File #1191)” including Notice, Hearing and Election

M/S Quesada - Heller to approve the consent calendar items.

Approved unanimously.

CONTINUED PUBLIC HEARING(S)

6. Novato Area Boundary Policy Study Progress Report

Executive Officer Banning reported possible changes to the Dual Annexation Policy have been referred to the cities and special districts as directed by the Commission in its March 8th meeting. Several agencies have requested additional time for review. Comments from some of the agencies and a resolution from the County Board of Supervisors have been received. Staff has referred some legal questions on the policy's authority and procedures to the firm of Best, Best & Krieger who serve as special counsel to LAFCO. A meeting with the Policy Subcommittee will be held to discuss action on the policy. Staff recommends that the Commission extend the hearing on the recommendations in the Novato Area Boundary Policy Study through the May 10th meeting.

M/S Quesada – Murray to continue this item through the May 10th meeting.

Approved unanimously.

PUBLIC HEARING(S)

7. FY 2001-2 Budget

Commissioner Kress, acting as Chair of the Budget Subcommittee, reported the Subcommittee met on March 19th to discuss the draft budget. He stated the recommended budget is increased slightly, attributable mostly to increase in staff hours. The amount to be contributed by County, cities and special districts is less than last year because of existing reserves.

Commissioner Murray stated concern in not including MarinMap membership. Commissioner Heller noted the current fiscal year budget already includes the \$10,000 buy-in for membership, but was concerned about the value of the service to LAFCO at this time. Executive Officer Banning gave examples of how MarinMap would be used by LAFCO staff and explained that membership would give LAFCO involvement in decisions shaping the development of MarinMap. He noted \$5582 would be the addition to the proposed budget for FY2001-02. Commissioner Kress explained the membership

buy-in cost of \$10,000 and that MarinMap may turn profits in the future which would be shared by members. Commissioner Bach encouraged the Commission to join MarinMap not only because of the benefit to LAFCO staff but as a worthwhile project that needs support.

Commissioner Murray asked about Marin LAFCO audit procedures. Chairperson Blanchfield asked that staff bring back information to the next meeting on the audit process and a projected cost for auditing our records.

Commissioner Chapman asked for the basis of the amount budgeted for legal counsel. The Executive Officer explained legal opinion is requested at various times through the year from County Counsel which previously was not billed. Now that cities and districts will share LAFCO costs, there will be a charge plus occasional costs for outside legal counsel. Commissioner Heller stated one lawsuit would deplete the proposed amount quickly.

Chairperson Blanchfield opened the hearing for public comment. There was none.

M/S Quesada – Murray to close public comment.

Approved unanimously.

M/S Quesada – Bach to approve the Budget Subcommittee recommendation to adopt the proposed budget with amendment to include \$5582 costs for connection to the MarinMap network.

Approved unanimously.

BUSINESS ITEM(S)

8. Status of Progress on the Strategic Plan

The Commission reviewed and commented on the monitoring charts for the Strategic Work Plan. The Executive Officer noted goals reached, changes in deadlines and subcommittee meetings scheduled.

Chairperson Blanchfield asked about scheduling the six-month strategic planning meeting for review of progress. Executive Officer Banning stated the proposed budget did not include funds a second retreat. He stated most of the goals were annual and review would not require as in-depth of discussion or a facilitator.

9. **Report on Special District and Public Member Selection**

The Executive Officer reported the mail ballot election to fill the seat of Special District Regular Member vacated by Commissioner Ware was scheduled to close at the end of March. The election for the seat held by Commission Chapman would be held when the Special District Selection Committee convened at the LAFCO Forum to be held April 25th, pursuant to Government Code §56332.

The Executive Officer reported that the result of the mail ballot was not clear. Of 30 votes cast for four candidates, no candidate received a majority of votes cast. After consulting with Legal Counsel, no winner could be determined since there was not a majority vote. He recommended that a runoff be held to conclude this election also at the LAFCO Forum on April 25th.

Legal Counsel David Zaltsman stated he based his analysis on certain facts:

- 1) There is no written policy or guideline. There is only a practice that has developed over time.
- 2) The Special District Selection Committee does not have any adopted bylaws or formally adopted parliamentary rules. Research indicated the only time a plurality could be deemed to elect is when there is a specific bylaw or law statute to that effect. The normal parliamentary rule applied generally in absence of any written bylaw is that only a majority can elect. In some cases it is the majority of the quorum and in other cases it is an absolute majority of the total membership. The legislature requires an absolute majority with respect to both the city selection committee and selection of the public member to LAFCO.

Counsel's written opinion was not released to the public since Legal Counsel did not feel it was appropriate until the Commission had approved of the release.

The Executive Officer stated the Marin Special Districts Association (SDA) submitted a written request that the Commission continue to use mail ballot selection. Commissioner Murray asked what was meant when the SDA stated they had decided at a meeting that it was not feasible to hold a meeting of the Special District Selection Committee. The Executive Officer explained the difference in SDA's monthly luncheon which was referenced in the letter and convening a Special District Selection Committee.

Legal Counsel stated a majority of a quorum in attendance would be an acceptable selection at the Special District Selection Committee. By mail ballot, those responding are considered in determining a quorum.

M/S Quesada – Heller for the memo from Legal Counsel be made public.

Approved unanimously.

Commissioner Kress stated the Commission needed to decide what the procedure would be for resolving the inconclusive election, whether by mail ballot or convening a meeting of the Special District Selection Committee and whether to require election by a majority of a quorum or majority of membership.

Chairperson Blanchfield opened the public hearing.

- David Ware, Past Chairperson of Marin LAFCO and of the Special Districts Association

Mr. Ware stated it was the seat that he vacated in December that was being filled in the current election. He stated two questions involved in the recent mail ballot result: 1) Can a plurality make the decision, and 2) if you began an election by mail, can you change it mid-stream to a selection committee? He gave a history of when special district representation was installed on the Commission. He said a factor in setting up the election process was the stated desire of the special district board members that votes be decided by their entire board, not just the Chairman attending a selection committee meeting.

Mr. Ware responded to a Commission question that he believed plurality should be accepted and that the election already in progress should be continued and concluded by mail ballot.

Commissioner Kress asked Mr. Ware if he conceded that it was the discretion and within the authority of the Commission to determine the voting procedures for the special districts, pursuant to State law. Mr. Ware stated that it is usually within the discretion of the Executive Officer, but the decision is usually made in concert with the special districts.

- Chris DeGabriele, North Marin Water District (NMWD) General Manager

Mr. DeGabriele stated that since the statute is silent on election by plurality, it should be accepted since the process described in the statute is problematic.

- Robert Long

Mr. Long presented a memo from Curry Eckelhoff of Southern Marin Fire Protection District who was unable to attend. The memo urged the Commission to hold a runoff election.

➤ Phillip Vizcarra, Strawberry Recreation District President

Mr. Vizcarra spoke in support of holding an election. He gave an example of a vote determined by plurality by the Strawberry Recreation District Board.

M/S Quesada – Bach to close public comment.

Approved unanimously.

Commissioner Heller stated she felt the first election should be concluded as a run-off by mail ballot since it began by that method, however the second election should be held by the Special District Selection Committee. She noted that, at the March meeting, the President of the Marin SDA had commented that a selection committee would be acceptable to the Association.

Commissioner Chapman stated that if there should be a run-off, it should be by mail since that election is in process now. However, she noted a plurality was used to select the original two regular members and alternate. She stated those not selected are not abandoned as they may be nominated in the second election which is for her own seat on the Commission.

Commissioner Kress stated he felt requiring a majority puts responsibility back on the special districts to make a clear selection.

Commissioner Bach stated he felt problems in elections come from making changes midstream and changing to majority vote.

M/S Kress – Heller to require a mail ballot runoff election between the two candidates receiving the most votes for the seat vacated by David Ware.

AYES: Commissioners Blanchfield, Heller, Kress, Murray and Quesada

NOES: Commissioner Bach and Chapman

ABSTAIN: None

Motion passed 5/2.

[Commissioner Murray left the meeting at 8:58 p.m.]

Dennis Rodoni, President of the Special District Association, stated that his comment of March 8th was made before notice was sent to convene the Special District Selection Committee. He stated the notice was not sent out 30 days previous to the meeting and therefore the Marin SDA Board did not feel there was enough time. Also, the election result at the end of March included ballots from 29 of the 30 special districts which indicates that the mail ballot method is a successful method for selection of special district LAFCO members.

Commissioner Heller wanted to ensure that districts are aware ballots will be accepted by facsimile.

The Commission discussed the time period to require mail ballots which would allow all of the special districts to get the ballot on their agendas.

M/S Heller – Quesada to have the runoff election by mail ballot with a response required in 60 days.

Approved unanimously.

The Commission discussed the seat with term ending in May and decided to remain with their previous decision to convene the Special District Selection Committee for that election on April 25, 2001.

10. **Report of the Sphere-of-Influence Subcommittee**

Commissioner Heller reported on the meeting of the Sphere-of-Influence (SOI) Subcommittee. The Subcommittee discussed the process to be followed by staff and Commission in fulfilling the requirements of Cortese-Knox-Hertzberg Act. The Subcommittee developed a generic master outline so that once Novato is completed it could be used as a “boilerplate” for the studies to follow. She stated service reviews would need to be added after July under AB2838 requirements.

M/S Heller – Chapman to approve the Sphere-of-Influence Subcommittee’s recommendation: to direct staff to proceed with the sphere of influence study of public agencies in the Novato area under the guidance of the Subcommittee and according to the recommended schedule and preliminary outline.

Approved unanimously.

11. **Merit Salary Increase**

The Executive Officer described the recommended step increase for the Commission's part-time clerical assistant Seven Shaw. A performance review conducted the previous week allowed a recommendation for a merit increase.

M/S Chapman – Bach/Kress to approve the merit increase for Clerical Assistant Seven Shaw.

Approved unanimously.

COMMISSIONERS' REPORTS

Commissioner Rubin thanked the Commissioners for their participation in the CALAFCO Reinventing LAFCO Workshop. Several Commissioners complimented Mr. Rubin's panel presentation, the success of the workshop, and quality of information provided.

EXECUTIVE OFFICER'S ORAL REPORT

The Executive Officer spoke on these items:

- a) The first protest hearing by LAFCO staff under new provisions of AB2838 was held on April 9th and went smoothly. The procedure developed for conducting protest hearing was successful.
- b) A letter was received from Southern Marin Fire Protection District reporting on the continued success of the consolidation of the two fire districts.
- c) The Executive Officer was invited to speak to the Grand Jury on April 10th, as a resource rather than as a subject of investigation.
- d) Emerging proposals in the Tiburon area:

Lands of Shaw - The applicant wishes to connect to the sanitary district but will need to construct 2000 feet of sewer line with potential for growth-inducement. A consultant will be retained at the applicant's expense to perform the necessary environmental review.

Sorokko Property – Tiburon is interested in annexing the property and will not waive the Dual Annexation Policy. The applicant must apply to the Town for rezoning in order to annex to the Town and the special district. The problem is the

boundaries of the proposal will create an unincorporated island. The Executive Officer is suggesting a conference with all parties, the Town and the special district to find an agreement.

ADJOURNMENT

M/S Quesada – Bach to adjourn the meeting.

Approved unanimously.

The meeting was adjourned at 9:32 p.m. The next regular LAFCO meeting is scheduled for Thursday, May 10, 2001.

Respectfully submitted,

PETER V. BANNING, Executive Officer

ATTEST:

JEFFRY BLANCHFIELD, Chairperson