

DATE: September 4, 2009

TO: Members, Local Agency Formation Commission

FROM: Peter Banning, Executive Officer

SUBJECT: *Novato Fire Protection District vs. United States of America Et Al*

### **Summary & Recommendation**

In 1977, LAFCO approved the detachment of the Hamilton Air Force Base (HAFB) from the Novato Fire Protection District (NFPD). The detachment of territory eventually became the subject of litigation between NFPD and the U.S. Navy in which the detachment approved by LAFCO was invalidated by action of the U.S. Supreme Court in 1999. LAFCO was not a party to the litigation, received no notice of the Court's action and did not become aware of the decision until December 2008. The Commission must now take administrative action to correct public boundary records to reflect the reversal of the 1977 detachment.

### **Background**

As summarized in *Novato Fire Protection District, Petitioner v. United States of America, Et Al.*, NFPD had provided only supplemental fire protection services until HAFB was decommissioned in 1974. The U.S. Navy (which became the principal occupant of the base) then sought to obtain NFPD's primary fire protection services. NFPD entered into an agreement with the Navy providing for payment of a fee based on what the District would receive in property tax if the base was not a tax exempt federal installation. In other words, the fee was based on estimated property value rather than the cost of providing fire protection service.

Since the base was in fact a tax exempt federal installation, the District sought to eliminate potential legal problems in its contract by detaching HAFB from its jurisdictional area, thereby eliminating its legal obligation to provide service to the base and legitimizing its contractual relationship with the Navy.

LAFCO eventually approved NFPD's detachment proposal in 1977. The protest proceeding set up by Commission provided for an election among registered voters in both the detaching area and in NFPD as a whole<sup>1</sup>. Voters in both areas affirmed the detachment. The County Board of Supervisors adopted a resolution stating the results of the election and affirming the detachment of territory. LAFCO staff recorded that resolution along with other documents to complete detachment proceedings.

The service contract between NFPD and the Navy continued in force until 1996 when the parties were unable to agree on contract terms. NFPD filed suit in Marin County Superior Court to obtain a declaration (writ of certiorari) that the 1977 detachment was valid and that, as a result, NFPD had no obligation to provide service to the base. The litigation, including cross claims by the Navy, proceeded to U.S. District Court, Court of Appeals and the U.S. Supreme Court. At each level, the courts found LAFCO's protest proceedings to be inconsistent with the State law then in effect and found the detachment to be an illegal evasion of the tax exempt status of federal property. The writ sought by NFPD validating the detachment and the contractual relationship with the Navy was denied.

The final decision was issued in April of 2000. The text of the decision and other documents relating to the 1977 detachment are on file in the LAFCO office if more detailed account of the proceedings is needed.

### **Aftermath**

The legal effect of the decision was to invalidate or reverse the 1977 detachment of territory from NFPD as though it had never occurred. However, action was needed to correct various public records and clarify the boundaries of NFPD when the decision was handed down. The logical action upon receiving the decision would have been for NFPD to contact LAFCO to request recordation of new documents reversing the 1977 detachment. Most of the necessary notifications would have followed from that action. LAFCO staff received no such request of notification from NFPD.

In repeated inquiries from LAFCO staff, NFPD has been unable to account for its response (or lack of response) to the conclusion of its lawsuit against the Navy. The District has no record of any agenda item relating to discussion of the lawsuit's conclusion, no record of discussion at any public or private meeting with its governing board and no written staff report or other document of any kind. The District has no record of taking any action to correct the allocation of property tax from the territory restored to its jurisdiction by the court's decision or any action to restore the right of residents in the affected area to vote in the District's elections. District staff has stated

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<sup>1</sup> Note that LAFCO made no provision for the federal government to protest the detachment as property owner of the detaching area.

that none its present or past members have any recollection of actions or decisions taken at the conclusion of the litigation. The District is also unable to contact its legal representatives or access attorney's records of the litigation. NFPD is a generously funded and staffed organization, recognized for its exemplary operational and management capabilities (see article attached). The District's inability to provide any useful information in this instance stands without explanation.

Independent of the NFPD's apparent inaction, the County Auditor-Controller's office became aware of the court's decision in 2005 and requested that State Board of Equalization correct property tax allocations in the affected area of HAFB. The State Board's Tax Area Service Section (TASS) accordingly changed its records, thereby redirecting a share of the property tax in the affected area to NFPD. The TASS staff did suggest that LAFCO be notified of this action, but again, LAFCO was not notified. Changes to the tax rate areas, in turn, re-enfranchised voters in the affected area, allowing them to vote and run for office in elections affecting the NFPD board.

### **Recommendation**

Although some of the public records relating to NFPD boundaries in the HAFB area have already been brought into compliance with the court's decision, the official record of the 1977 detachment from NFPD's boundaries must be corrected in the records of the County Recorder. Staff has drafted the attached resolution which rescinds approval of the detachment of territory from NFPD and provides written explanation of these events. Staff recommends that the Commission adopt the draft resolution and direct that it be recorded with appropriate exhibits in order to complete needed changes to the public records of NFPD boundary changes.

Respectfully submitted,

Peter Banning  
Executive Officer