



NOTICE OF REGULAR MEETING MINUTES

Marin Local Agency Formation Commission

Thursday, October 14, 2021

CALL TO ORDER

Chair McEntee called the meeting to order at 7:06 P.M.

ROLL CALL BY COMMISSION CLERK

Roll was taken and quorum was met. The following were in attendance:

Commissioners Present: Sashi McEntee, Chair
Lew Kious, Vice-Chair
Craig K. Murray
Barbara Coler
Damon Connolly
Tod Moody

Alternate Commissioners Present: Tod Moody
Richard Savel (Seated as Regular)
James Campbell

Marin LAFCo Staff Present: Jason Fried, Executive Officer
Jeren Seibel, Deputy Executive Officer
Olivia Gingold, Clerk/Junior Analyst

Marin LAFCo Counsel Present: Mala Subramanian

Commissioners Absent: Larry Loder
Judy Arnold

Alternate Members Absent: Dennis Rodoni

AGENDA REVIEW

Approved: M/S by Commissioners Kious and Coler to move item 3 off of Consent and place it in Business Items before Item 7.

Ayes: Commissioners McEntee, Kious, Connolly, Murray, Coler, and Savel

Nays: None

Abstain: None

Absent:

Motion approved unanimously.

PUBLIC OPEN TIME

Chair McEntee opened the public open time period. Hearing no request to speak, Chair closed the public open time.

CONSENT CALENDAR ITEMS

1. Approval of Minutes for August 12, 2021, Regular Meeting
2. Commission Ratification of Payments from August 1, 2021, to September 30, 2021

Approved: M/S by Commissioners Murray and Kious to approve the Consent Calendar.

Ayes: Commissioners McEntee, Kious, Connolly, Murray, Coler, and Savel

Nays: None

Abstain: None

Absent: Arnold

Motion approved unanimously.

PUBLIC HEARING ITEMS

4. Approval of Resolution 21-17, Annexation of 1996 Novato Blvd (APN 141-061-20) to Novato Sanitary District (LAFCo File #1359)

Clerk/Jr. Analyst Gingold introduced this application, which requests to annex a lot of 1.10 acres to move off septic into Novato Sanitary District. The application is within the City of Novato's boundaries. The applicant has intention to split the parcel into 3 APNs in the future but at present, the single parcel will be annexed. The application went through 30-day review and all comments received were neutral or in support.

Commissioner Murray wanted to know if this application was subject to the Dual Annexation Policy, Clerk/Jr. Analyst Gingold reaffirmed that the parcel was in the City's boundary.

The applicant was offered the opportunity to make comment, but had no further comments to make.

Chairman McEntee opened public hearing. Hearing no public comment, she closed the hearing.

M/S Commissioners Coler and Murray to approve Resolution 21-17.

Approved: Commissioners McEntee, Kious, Connolly, Murray, Coler, and Savel

Ayes:

Nays: None

Abstain: None

Absent: Arnold

Motion approved unanimously.

BUSINESS ITEMS

3. Approval of Resolution 21-18 Allowing for Video and Teleconference Meetings During the COVID-19 State of Emergency under AB 361

Legal Counsel Subramanian introduced the item, noting that it had been pulled off of the Consent Calendar because some minor revisions were recommended for the resolution. The current resolution includes making findings for all of the sub-commissions and sub-committees that are subject to the Brown Act, but after consultation with the EO, it was agreed that the finding would be made by the Commission, and separately made by any sub-commissions or committees that meet.

Legal Counsel shared the recommended revisions, red-lined in a document, with the Commission via screen share, giving them time to consider the revisions.

Chairman McEntee asked a question confirming that these revisions were in compliance with AB 361 which Legal Counsel Subramanian confirmed.

Chairman McEntee asked why adopting the resolution for all bodies was less preferential than having each individual body adopt its own findings. Legal Counsel Subramanian explained that because

LAFCo's Commission meets every 60 days but the findings for AB 361 are required to be made every 30 days, that it made more sense to have each individual body adopt its own findings.

Vice-Chair Kious wanted to know what the source for language in the resolution was, and why there was so much variability between this resolution and others in the County. Legal Counsel Subramanian clarified that the only critical part is making findings and having information to support those findings. Any other information was added by Agency preference depending on how much additional supporting information the agencies and their legal counsels felt was apt to mention.

Commissioner Murray wanted to know if there was a boilerplate for ad hoc Committees/other Committees. Legal Counsel Subramanian clarified that this resolution would be the template for all LAFCo Brown-Act-subjected bodies. It would be a matter of changing dates and other information as needed in the resolution presented today.

Commissioner Murray also wanted to know if the ad hoc and sub-committee meetings needed to be available remotely to the public, and if there were any posting or noticing requirements unique to AB 361. Legal Counsel Subramanian clarified that ad hoc committees are not subject to the Brown Act so in theory there are no requirements. As for standing committees, there would be traditional noticing for regular meetings meaning posted online and in a physical location (LAFCo's Office). Public is permitted to participate via Zoom.

Chairman McEntee opened public hearing. Hearing no public comment, she closed the hearing.

M/S Commissioners Kious and Coler to approve Resolution 21-18 with presented amendments.

Ayes: Commissioners McEntee, Kious, Connolly, Murray, Coler, and Savel

Nays: None

Abstain: None

Absent: Arnold

Motion approved unanimously.

5. Approval of FY 19-20 Audit and Authorization for FY 20-21 Audit

Shannon Ayala from Davis Farr gave a report on the Audit Reports, including Basic Financial Statements with unmodified opinion, Communication to those in governance, and Government Auditing Standards Opinions. Ms. Ayala complimented that finance staff and LAFCo staff were prepared for the audit. 4 material journal entries were detected as a result of audit procedures, and one significant deficiency was reported as a result of material audit adjustments.

EO Fried added to the auditor's presentation, making comments on some of the material journal entries. He noted that a handful of these journal entries had to do with differing preferences from the previous auditor and this new auditor since this is Marin LAFCo's first time working with Davis Farr for audits. Ms. Ayala affirmed EO Fried's comment about the difference between how her firm prefers information compared to the previous auditor.

Commissioner Murray wanted to know if Ms. Ayala had any recommendations on improvements based on best practices other LAFCos and/or other government agencies were following. Ms. Ayala clarified that those recommendations had already been considered, especially since this was the first audit, and that if any other recommendations had made themselves clear to Davis Farr, the auditors would have included that in their recommendations. An element of unpredictability (unpredictability tests) will be included in future years, now that the first audit is done.

Commissioner Connolly had noticed the pension reporting issue and had wanted to know if that had resulted in recommendations on changes in internal control, but he felt Ms. Ayala had already more or less covered this item. Ms. Ayala commented this is a common area where issues arise which is why they

pay close attention to it. Ms. Ayala felt LAFCo's bookkeeper was open and willing to make changes recommended by Davis Farr. She did not have any other comments beyond that.

Chairman McEntee clarified where the error was occurring, to which EO Fried responded.

EO Fried requested approval of the current audit, and authorization to start the next audit with Davis Farr in order to get caught up to the current fiscal year.

Commissioner Murray wanted to know if there were auditing principles related to 2-year budgets, EO Fried clarified that Marin LAFCo does not use a 2-year budget.

M/S Commissioners Coler and Murray to accept and file the Audit and implement its recommendations, and to authorize EO Fried to enter into an agreement for FY 20-21 audit with a not-to-exceed amount of \$7,450.

Ayes: Commissioners McEntee, Kious, Connolly, Murray, Coler, and Savel

Nays: None

Abstain: None

Absent: Arnold

Motion approved unanimously.

6. Discussion and Update on 255 Margarita Drive, LAFCo File 1325 and 1328

EO Fried introduced the item. This is an application originally presented to LAFCo as an emergency OSA with a failing septic. In between the approvals and the parcel connecting to SRSD, the district made comments that the parcel being connected was going across another property. SRSD wanted to see an easement before finalizing this. The Commission conditioned the application approval on receiving an easement, an extension was also approved, but the application eventually lapsed and an easement was never received. Applicant has stated that the neighbor is okay with the lateral going across their property, but does not want to sign paperwork. This gives the EO cause for pause.

Vice-Chair Kious recommended moving this forward to the next Commission meeting in closed session based on past experience with a similar issue at his Sanitary District.

Chairman McEntee asked what the implications were if LAFCo chose not to enforce this item. EO Fried felt it would weaken LAFCo's legitimacy. Legal Counsel Subramanian echoed EO Fried's concern. This would not legally preclude LAFCo from enforcing in the future, but it could affect how LAFCo is viewed in the County.

Commissioner Coler wanted to know if LAFCo could be liable if some type of expense or damage were to occur on the property of the person whose property the lateral crosses. Commissioner Coler also recommended sending an additional letter since the last letter sent was dated December 2018. Legal Counsel Subramanian confirmed that LAFCo would probably be brought into a lawsuit if some sort of event like the one Commissioner Coler mentioned had occurred, which would incur financial costs for the litigation even if LAFCo were not found liable.

Commissioner Murray wanted to know what County Health's involvement should be given that they are the ones who made the determinations regarding the failing septic. Legal Counsel Subramanian did not feel that County Health was the enforcement arm anymore. Because LAFCo granted initial approvals for the Emergency OSA, she felt the onus was now on LAFCo.

Commissioner Savel wanted to know if the Commission should set a date to hear back from the district after the most recent 9/21 communication.

Vice-Chair Kious noted that there is an established policy in the County and State against septic. The concept of disconnecting from sewer and going back to septic cannot be considered.

Chairman McEntee clarified that was not a recommendation, rather, it was mentioned as the only alternative. There was some discussion of this established policy and the implications it may have for the Commission and its enforcement options.

Chairman McEntee wanted to know if any Commissioners were opposed to taking this item to closed session at the next meeting unless it is resolved in the interim.

Commissioner Coler wanted to know if an additional letter should be sent – in addition to or in lieu of closed session. EO Fried clarified that he has been in ongoing communication with the district so he is unsure how effective an additional letter would be.

There was more discussion of the benefits of taking the item to closed session, to which no opposition was raised.

No action was necessary on this item.

7. Report out from the Ad Hoc Committee on Post MSR Work

Commissioner Coler presented the item, noting that the Committee had determined there would be limited situations that a legislative body would need to be created. The Commission would be able to determine this topic by topic based on whether or not there would be significant public interest. The ad hoc Committee decided instead of situational prescriptions, that staff would present to the Commission its thoughts during the final approval of the MSR and the Commission would decide what action should be taken.

Commissioner Murray wanted to know if the ad hoc Committee had focused on any actionable items. Vice-Chair Kious clarified that the ad hoc Committee's discussions were more general, not prescriptive for any specific situation that may be on the horizon. Commissioner Coler concurred.

Chairman McEntee asked if the Commission had any objections to the ad hoc Committee's recommendations. There were no objections mentioned by any Commissioner.

No action was necessary on this item.

EXECUTIVE OFFICER REPORT (discussion and possible action)

- a) Budget Update FY 2021-2022
25% into the year, LAFCo has only spent 18% of its budget so LAFCo is overall in good shape. EO Fried did highlight some line items that were over, but clarified that for varying reasons none of these were to be of concern or alarm for the Commission. He also highlighted that agency contributions were under but that this had been resolved between the distribution of the agenda packet and the evening of the LAFCo meeting.
- b) Current and Pending Proposals
A handful of items are on their way to the Commission, one was approved at the meeting that evening.
- c) CALAFCO Update (verbal only)
EO Fried updated the Commission on the award recipients from CALAFCO.
- d) Discussion of Annual Workshop 2022
EO Fried introduced the item by describing past iterations of workshop topics and laying out a few different options for the next upcoming workshop. Staff's recommendation was for a review of the MSR schedule and the purpose of the MSRs for the next study schedule round. There was

discussion among the Commissioners about other possible topics, but the MSR study schedule was settled on. Logistics were also discussed, it was agreed they would be finalized in 2022.

COMMISSIONER ANNOUNCEMENTS AND REQUESTS

Chair McEntee adjourned the meeting at 8:28 P.M.

ADJOURNMENT TO NEXT MEETING

Thursday, December 9, 2021

Zoom

Attest: Olivia Gingold
 Clerk/Junior Analyst

Any writings or documents pertaining to an open session item provided to a majority of the Commission less than 72 hours prior to a regular meeting shall be made available for public inspection at Marin LAFCo Administrative Office, 1401 Los Gamos Drive, Suite 220, San Rafael, CA 94903, during normal business hours.

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