

**DRAFT
SAN DIEGO LAFCO
MINUTES OF THE REGULAR MEETING
FEBRUARY 7, 2011**

There being a quorum present, the meeting was convened at 9:00 a.m. by Chairman Carl Hilliard. Also present were: Regular Commissioners –Supervisor Dianne Jacob, Vice Chairwoman, Supervisor Bill Horn, Mayor Mark Lewis, Special District Member John Ingalls, Special District Member Bud Pocklington, Councilmember Lorie Zapf and Public Member Andy Vanderlaan. Alternate Commissioners –Special District Member Jo MacKenzie and Public Member Harry Mathis. LAFCO Staff – Executive Officer Michael Ott, Assistant Executive Officer Shirley Anderson, and Local Governmental Analyst Robert Barry, LAFCO Legal Counsel Thomas Bosworth and Special Legal Counsel Holly O. Whatley. Absent were: Alternate Commissioners – Supervisor Greg Cox, Mayor Jim Janney and Councilmember Sherri Lightner.

Item 1
Roll Call

The Commission Secretary performed the roll call for the February 7, 2011 LAFCO meeting. All regular commissioners were present with the exception of Alternate Commissioners Cox, Janney and Lightner.

Item 2
Approval of Minutes of Meeting Held December 6, 2010

On motion of Commissioner Bud Pocklington, seconded by Commissioner Bill Horn, and carried unanimously by the commissioners present; the Commission dispensed with reading the minutes of December 6, 2010 and approved said minutes.

Item 3
Executive Officer's Recommended Agenda Revisions

Chairman Carl Hilliard asked the Executive Officer if there are any agenda revisions.

Michael Ott indicated that there are several announcements and revisions. Mr. Ott recommended that Items 4 and 5 be reversed to install Councilmember Lorie Zapf and appoint LAFCO's Legal Counsel and also that Items 9 and 10 be reversed.

Mr. Ott provided supplemental handouts related to the Office Relocation and the Proposed FY 2011-12 Budget.

Mr. Ott also provided a handout for the Errata related to Items 10A and 10B of the Home Depot Reorganization regarding condition 6C, Page 3 of the Terms and Conditions of the draft resolution.

Item 4

Installation of Councilmember Lorie Zapf as LAFCO Regular Commissioner City of San Diego Member

Assistant Clerk of the Board, David Hall, performed the installation of Councilmember Lorie Zapf as the Regular City of San Diego Member on the Local Agency Formation Commission.

Item 5

Appointment of LAFCO Legal Counsel pursuant to Government Code Sections 56384(b) and 56380

Michael Ott addressed the Commission regarding the appointment of a new LAFCO Legal Counsel. He summarized provisions in State Law regarding the appointment requirements. Mr. Ott introduced Thomas Bosworth and recommended that the Commission appoint him as LAFCO's General Counsel. Mr. Ott indicated that LAFCO's Special Counsel will remain the same.

Chairman Hilliard asked if there were any questions from the Commissioners.

On motion of Commissioner Pocklington, seconded by Commissioner Vanderlaan, and carried unanimously by the commissioners present, the Commission took the following action:

Pursuant to Government Code Sections 56384(b) and 56380, appointed Thomas Bosworth as the San Diego LAFCO's Legal Counsel, effective February 7, 2011.

Legal Counsel, Thomas Bosworth addressed the Commission about the projects that he has been involved with and expressed appreciation regarding his appointment.

Item 6

**Commissioner / Executive Officer Announcements:
Presentation of Recognition Plaque**

Chairman Carl Hilliard presented a plaque of appreciation to Commissioner Bud Pocklington for his dedicated service as Chairman of LAFCO in 2010. In addition, Chairman Hilliard also said that Karen Landers will receive a plaque of appreciation for her dedicated service as LAFCO's Legal Counsel, and asked Commissioner Mathis to deliver the plaque to Ms. Landers at the Metropolitan Transit System office.

Commissioner Bud Pocklington commented about his leadership roles and thanked the Commission and LAFCO staff for their support in 2010.

Item 7

Public Comments

Chairman Hilliard addressed the public asking if anyone requested to speak on an item that is not related to the agenda. Chairman Hilliard stated that there were no speaker slips received from the members of the public requesting to speak.

Item 8

Proposed "Cradic Annexation"

Spring Valley Sanitation District (DA10-08)

At the request of Michael Ott, the Commission waived the staff presentation.

On motion of Commissioner Jacob, seconded by Commissioner Pocklington, and carried unanimously by the commissioners present, the Commission took the following actions:

- (1) Find in accordance with the Executive Officer's determination, that pursuant to Section 15319(b) of the State CEQA Guidelines, this annexation is not subject to the environmental impact evaluation process because the annexation area consists of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures; and
- (2) Adopt the form of resolution approving this annexation for the reasons set forth in the Executive Officer's Report, waiving the Conducting Authority proceedings according to Government Code Section 56663(c), and ordered the reorganization, subject to the following terms and conditions:

Payment by property owner of Spring Valley Sanitation District capacity fees and sewer service fees, and State Board of Equalization charges.

Item 10 (Originally Item 9)

Proposed FY 2011-12 LAFCO Budget

Item 10A (Originally Item 9A)

Proposed FY 2011-12 LAFCO Budget / Office Relocation

Michael Ott provided a brief presentation to the Commission regarding the FY 2011-12 Budget and office relocation. He also provided handouts related to the updated budgetary information and the office relocation.

Mr. Ott discussed the rent increase for the office space located at the County Administrative Center and introduced the Finance Group Director, Ebony Shelton.

Commissioner Jacob commented about the budget for FY2011-12. Commissioner Jacob moved that the item be continued until the next LAFCO meeting on March 7th to provide more time to review the updated budgetary information.

Chairman Hilliard opened the public hearing.

Alternate Commissioners Harry Mathis and Jo MacKenzie commented about the office relocation.

Since no speaker slips were submitted in opposition to this item, and there was no discussion from the Commission, on motion of Commissioner Jacob, seconded by Commissioner Vanderlaan, and carried unanimously by the commissioners present, the Commission continued the items to the March 7, 2011 meeting.

Ray Lutz, Citizens Oversight Projects addressed the Commission about the continuance and appointment of an office relocation committee.

Commissioner Lorie Zapf left at 10:50 a.m.

Commissioner Horn left at 10:55 a.m.

Commissioner John Ingalls commended the staff for the expanded detail in the budget.

Item 9A (Originally Item 10A)

CLOSED SESSION: Adjourn to Closed Session, if needed:

CONFERENCE WITH LEGAL COUNSEL-EXISTING

Pursuant to Subdivision (a) of Government Code Section 54956.9: The San Diego Local Agency Formation Commission finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the Commission in the litigation

**Case Name: *City of El Cajon v. County of San Diego LAFCO et. al*
(Orange County Superior Court Case No. 06CC13348 and Court of Appeal Case No. G041793)**

Item 9B (Originally Item 10B)

**OPEN SESSION: Proposed "Home Depot Reorganization"
(City of El Cajon) RO05-36**

Chairman Carl Hilliard asked LAFCO's Special Legal Counsel, Holly O. Whatley to address the Commission about two matters: (1) Participation of Commissioner Mark Lewis related to the Home Depot agenda items; and (2) Necessity of the Commission to adjourn to a closed session.

Holly O. Whatley, Special Legal Counsel addressed the Commission and explained the conditions for the participation of Commissioner / Mayor Mark Lewis regarding the Home Depot litigation. Ms. Whatley indicated that Commissioner Lewis may participate in the Commission discussion. She also said that the Commission can not excuse Mr. Lewis. Ms. Whatley recommended that the Commission convene to a closed session regarding the pending Home Depot litigation to protect the attorney-client privileges. She also explained the process for the closed session and who can be in attendance.

Commissioner Mark Lewis, Mayor of the City of El Cajon, voluntarily recused himself from the closed session.

Chairman Hilliard adjourned to the Closed Session at 9:20 a.m. with the Regular Commissioners Hilliard, Horn, Ingalls, Jacob, Lewis, Vanderlaan and Zapf; LAFCO's Executive Officer Michael Ott, Assistant Executive Officer Shirley Anderson, Local Governmental Analyst Robert Barry, Administrative Assistants Tamaron Luckett and Ruth Arellano; Legal Counsel Thomas Bosworth and Special Legal Counsel Holly O. Whatley.

The Commission re-convened to an open session at 9:45 a.m.

Chairman Hilliard provided a brief overview of the Home Depot Reorganization and litigation. He stated that the reorganization was disapproved by LAFCO in 2006 and that the trial court upheld the determination of LAFCO and the Appellate court reversed the decision. He said the draft resolution has been attached to the staff report and that the City of El Cajon and Home Depot have object to accept conditions 6C, 6D, and 6E, page 3 of the resolution. Chairman Hilliard announced that no actions were taken in closed session.

Chairman Hilliard indicated that correspondence was received dated February 4th from the Haynie Law Group, the representative of Home Depot and Kathi Henry, City Manager of the City of El Cajon.

Chairman Hilliard stated that there were several speaker slips received in support or opposition to the Home Depot reorganization.

Chairman Hilliard opened the public hearing.

The following individuals addressed the Commission to discuss their concerns related to the annexation in opposition or support; either declined to speak or allowed their time to be given to another representative.

Deborah Opfer, Resident, addressed the Commission in opposition to the annexation related to the Home Depot Reorganization.

Richard Tighe, Resident, addressed the Commission in opposition to the annexation and concerns related to the Home Depot Reorganization.

Allen Haynie, Home Depot Representative, expressed concern that Mayor Mark Lewis was recused by the Commission. In response to the concern, Michael Ott indicated that Mayor Lewis voluntarily recused himself.

Mr. Haynie addressed the Commission in opposition of the Executive Officer's recommendations related to three conditions of the draft resolution (items 6C, 6D and 6E) – he suggested that these items be removed. Mr. Haynie indicated that the conditions were applied at the time to gain political support from the Lakeside Fire Protection District.

Mr. Haynie provided a brief report of items 6C, 6D and 6E. He also commented about the revenue, property tax, Mello-Roos and Mutual Aid Agreement issues that were related to the project and the Lakeside Fire Protection District.

Commissioner Dianne Jacob commented about the decision that was ruled in favor of the commission by the trial court in August 2010. She also commented about the property tax revenue lost to the Lakeside Fire Protection District. She also commented about Home Depot reversing on what they offered to the district.

Commissioner Pocklington asked if Home Depot, the City of El Cajon and LAFCO could meet and negotiate an agreement. In response to the question, Mr. Haynie said that conditions 6C, 6D and 6E do not apply – and cannot be imposed.

Commissioner Mark Lewis asked how much revenue the city lost. In response to the question, Mr. Haynie said that \$40,000 in property tax was lost in 2006, when the project was denied and as of 2011 \$125,000 has been lost. He also stated the city has lost in excess of \$2 million dollars related to the sales tax.

John Ziebarth, Representative, in opposition to conditions 6C-E; declined to speak, provided time to Allen Haynie.

Kathi Henry, City Manager, City of El Cajon, in opposition to conditions 6D-E; declined to speak, provided time to Allen Haynie.

Mike Scott, Fire Chief City of El Cajon, addressed the Commission and commented about the issues related to the Home Depot annexation.

Jeff Hardman, Home Depot Representative, in opposition to conditions 6C-E; declined to speak; provided time to Allen Haynie.

Ray Lutz, Citizens Oversight Projects, addressed the Commission with concerns about the litigation. Mr. Lutz asked whether there was any other litigation pending on this item and what was the report in the closed-session. In response to the question, Special Legal Counsel Holly Whatley stated that there was no other pending litigation. Mr. Lutz also commented about the tax revenue issues and expressed opposition to the project.

Chairman Hilliard stated there was no reportable action coming out of closed session.

Chairman Hilliard asked Mr. Lutz whether he was present upon the beginning of the open session. Chairman Hilliard reiterated his report that was given at the opening of the open session related to Home Depot.

Andy Parr, Lakeside Fire Protection District Fire Chief, addressed the Commission in opposition to the Home Depot reorganization.

Commissioner Jacob asked Fire Chief, Andy Parr if he wants the opportunity to meet with the Home Depot representatives and the City of El Cajon to see if an agreement could be reached. In response to the question, Fire Chief, Andy Parr said he would if the opportunity is available.

Alternate Commissioner Harry Mathis asked about how a third responder would respond to a service area. In response to the question, Fire Chief, Andy Parr said it's according to the Mutual Aid Service Agreement with the city. Mr. Parr indicated that the property is adjacent to the Lakeside Fire Protection District and the district will respond.

Richard White, Resident, addressed the Commission in opposition to the annexation and concerns with the Home Depot reorganization.

Chairman Hilliard requested that Kathi Henry, City Manager, City of El Cajon answer some questions related to the project by the Commissioners.

Commissioner Jacob asked whether the City would meet with Home Depot and Lakeside Fire Protection District to discuss any type of agreement before February 28th. Ms. Henry stated that there are no other alternatives to discuss with the fire district at this time. Commissioner Jacob said that these conditions were already offered by Home Depot to the Lakeside Fire Protection District and Home Depot is now refusing to honor the offer.

With no additional members of the public wishing to speak in support of or in opposition to the item, and no discussion from the Commission, Chairman Hilliard closed the public hearing.

Commissioner Bill Horn placed a motion on the floor to approve and remove items 6C, 6D and 6E, Page 3 of the draft resolution.

Commissioner Lewis seconded the motion.

Commissioner Jacob stated she was voting no on this item. She also disagreed with the ruling of the court's decision and addressed concerns about the offer that the Home Depot representative refused to honor to the Lakeside Fire Protection District.

Commissioner Pocklington commented about the city, representative and the district not wanting to negotiate. Commissioner Pocklington supported the motion.

Commissioner Vanderlaan commented about the city, representative and the district not wanting to negotiate.

Chairman Hilliard commented about the decision that LAFCO made and the Appellate Court ruling. He also commented about the annexation acreage. Michael Ott indicated that the acreage is correct.

The Commission voted on the Home Depot item and the Commission Secretary recorded the following votes:

AYES:	Commissioners Horn, Ingalls, Lewis, Pocklington and Zapf
NOES:	Commissioners Jacob, Hilliard and Vanderlaan
ABSENT:	None
ABSTAINING:	None

Michael Ott indicated that the motion passed and was approved on a 5/3 vote. Mr. Ott identified Commissioners Horn, Ingalls, Lewis, Pocklington, and Zapf voting in favor of the motion and Commissioners Jacob, Hilliard and Vanderlaan opposed.

There being no further business to come before the Commission, the meeting adjourned at 11:10 a.m. to the March 7, 2011 meeting, in Room 302, County Administration Center.

Tamaron Luckett
Administrative Assistant
San Diego Local Agency Formation Commission