

**DRAFT  
SAN DIEGO LAFCO  
MINUTES OF THE REGULAR MEETING  
JUNE 2, 2008**

**2**

There being a quorum present, the meeting was convened at 9:00 a.m. by Chairman Andy Vanderlaan. Also present were: Regular Commissioners – Supervisors Dianne Jacob and Bill Horn, Andy Menshek, Bud Pocklington, Councilmembers Donna Frye, Carl Hilliard, and Betty Rexford. Alternate Commissioners – Mayor Mark Lewis, and John Ingalls. LAFCO Staff – Executive Officer Michael Ott; Local Governmental Analyst Robert Barry; LAFCO Consultant Harry Ehrlich; and LAFCO Legal Counsel William Smith. Absent were: Alternate Commissioners – Supervisor Greg Cox, and Harry Mathis.

**Item 1**

**Approval of Minutes of Meeting Held May 5, 2008**

On motion of Commissioner Pocklington, seconded by Commissioner Rexford, and carried unanimously by the commissioners present, the Commission dispensed with reading the minutes of May 5, 2008 and approved said minutes.

**Item 2**

**Executive Officer's Recommended Agenda Revisions**

Michael Ott indicated that there were no revisions to the agenda.

**Item 3**

**Commissioner/Executive Officer Announcements**

At the request of Chairman Andy Vanderlaan, the Commission dedicated the June 2, 2008 LAFCO meeting in memory of Mike Gotch – former San Diego LAFCO Executive Officer, San Diego City Councilman, CALAFCO Executive Director, and State Assemblyman.

Michael Ott provided the Commission with a history of Mike Gotch's career and legislative accomplishments. Mr. Ott said that he would like to collaborate with CALAFCO to pay tribute to Mike Gotch.

Michael Ott reported that the Grand Jury distributed a report regarding fire protection services in San Diego. He said that the report validated LAFCO's conclusions regarding fire issues and the necessity to consolidate fire protection districts and establish an entity that oversees all fire districts in San Diego County. Mr. Ott indicated that LAFCO is not required to respond to the Grand Jury's fire report, but that the City and County of San Diego are required to provide responses.

Michael Ott said that he will be on vacation from June 23, 2008 to July 11, 2008, and indicated that Shirley Anderson, Chief of Policy Research, will be in charge during his absence.

Commissioner Bud Pocklington provided an update of the San Diego County Water Authority's annexation process.

**Item 4**  
**Public Comment**

There were no public comments.

**Item 5**  
**Update on Appellate Court Decisions Related to Latent Powers and Depositions**

Michael Ott introduced Legal Counsel William Smith who provided a report to the Commission. Mr. Smith reported that there were two related cases from the Court of Appeal in San Joaquin County arising from a lawsuit regarding latent powers. He said the first case asked whether LAFCO had the authority to deny an irrigation district's proposal to provide retail electric services. He reported that the Superior Court had ruled that the irrigation district must obtain approval from LAFCO prior to providing retail electric service, and the Court of Appeal affirmed this ruling. In addition, regarding retail service vs. wholesale service, Mr. Smith said that the Court ruled that retail service is different from wholesale service because it involved a different customer base. Mr. Smith said that the second case, involved the depositions of Commissioners as to their thought processes in approving or denying proposals. He said that the Court of Appeal ruled in favor of LAFCO, holding that since LAFCO decisions could only be overturned if there was fraud or lack of substantial evidence in the record the Court believed that taking depositions of Commissioners would infringe on the separation of powers and would violate the deliberative process privilege.

This was an information item and no action was taken by the Commission.

**Item 6**  
**Proposed "Brunswick Annexation" to the Leucadia Wastewater District (DA08-05)**

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

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

- (1) Concurred in the determination by the Leucadia Wastewater District that this annexation is exempt from CEQA pursuant to Sections 15315 (minor land division), 15304 (f) (minor trenching), and 15332 (in-fill land development) of the State CEQA Guidelines, and has been reviewed and considered; and
- (2) Adopted the form of resolution approving this annexation for the reasons set forth in the Executive Officer's Report, waived the Conducting Authority proceedings

according to Government Code Section 56663(c), and ordered the annexation, subject to the following terms and conditions:

(a) **Local Agency Formation Commission (LAFCO):**

Payment of State Board of Equalization fees.

(b) **Leucadia Wastewater District (LWD):**

The annexed property is thereafter subject to capacity fees, sewer service fees, and all other district-wide Ordinances and Resolutions of LWD.

**Item 7A**

**Adoption of an Amendment to the Sphere of Influence for the East County Fire Protection District (SA08-11a)**

**Item 7B**

**Adoption of an Amendment to the Sphere of Influence for the San Miguel Consolidated Fire Protection District (SA08-11b)**

**Item 7C**

**Adoption of the Sphere of Influence for the Consolidation of the San Miguel Consolidated Fire Protection District (SI08-11)**

**Item 7D**

**Proposed “Consolidation of the East County and the San Miguel Consolidated Fire Protection Districts” (East County and San Miguel Consolidated Fire Protection Districts) (DC08-11)**

Michael Ott commended Shirley Anderson and John Traylor for their time and effort to process the proposed consolidation in a timely manner while at the same time adhering to state guidelines. He also commended Augie Ghio (Fire Chief of the San Miguel Consolidated Fire Protection District) and Jack Grogger (Acting Fire Chief of the East County Fire Protection District) for assisting LAFCO staff. Mr. Ott introduced Shirley Anderson who provided a PowerPoint presentation.

Shirley Anderson indicated that the Boards of Directors for the East County and San Miguel Consolidated Fire Protection Districts submitted a resolution to LAFCO requesting the consolidation of both districts into a successor district – the San Miguel Consolidated Fire Protection District (FPD). She said that State Law requires LAFCO to approve or conditionally approve the proposal because both boards unanimously adopted substantially similar resolutions.

Shirley Anderson said that the consolidation proposal includes terms and conditions. She indicated that LAFCO staff made technical changes to the subject agencies' terms and conditions in order to meet state law requirements, and that both agencies have agreed to those technical changes. Ms. Anderson said that the property tax increments

from the subject agencies will be transferred to the new agency –San Miguel Consolidated FPD. She said that the level of cooperation between subject agencies allowed LAFCO staff to process the consolidation proposal in a timely manner.

Shirley Anderson said that because of conflicting proposal provisions in state law, the Commission must determine that the East County FPD shall be removed from the Reorganization of Structural Fire Protection and Emergency Medical Services in Unincorporated San Diego County – Phase I (Ref. Nos. RO05-10 and DF05-10) prior to the finalization of the consolidation between the East County FPD and the San Miguel Consolidated FPD.

Chairman Andy Vanderlaan opened the public hearing.

San Miguel Consolidated FPD's Fire Chief Augie Ghio addressed the Commission in support of East County and San Miguel Consolidated FPD's proposed consolidation. He said that LAFCO staff has been very helpful in moving the consolidation proposal forward in an efficient manner. He commended the East County FPD's board members and Acting Fire Chief Jack Grogger for their cooperation.

East County FPD's Acting Fire Chief Jack Grogger addressed the Commission in support of the proposed consolidation. Chief Grogger also thanked LAFCO staff for their assistance and commended the East County FPD board members for giving up their positions for the public good.

Kandhy Franklin-Collins, East County FPD board member, addressed the Commission in support of the proposed consolidation.

Paula de Sousa, representing the San Miguel Consolidated FPD, indicated her support for the proposed consolidation and that she would be available for any questions the Commission may have.

Commissioner Jacob thanked the East County and San Miguel Consolidated FPDs for their joint effort and cooperation to assist LAFCO staff in moving the consolidation proposal forward for Commission consideration. She indicated that on June 25, 2008, the Board of Supervisors would be making a major decision with respect to the proposed Regional Fire Protection District consolidation in San Diego County.

With no more speakers from the public and no further discussion from the Commission, on motion of Commissioner Jacob, seconded by Commissioner Menshek, and carried unanimously by the commissioners present, the Commission closed the public hearing and took the following action:

1. Concurred in the determination by the San Miguel Consolidated FPD that the proposed consolidation is not subject to the environmental impact evaluation process because the geographic area in which previously existing powers are exercised under the collective powers or jurisdiction of the San Miguel Consolidated FPD and the East County FPD will not change as a result of the consolidation (Calif. Admin Code § 15378(b)(5); and consolidation does not have potential for causing a

significant effect on the environment (Calif. Admin Code § 15061(b)(3) have been reviewed and considered;

2. Re-affirmed the Special Districts Municipal Service Review and Sphere of Influence Data Summary that was adopted by the Commission on August 6, 2007 and amended the spheres of influence for the East County FPD and the San Miguel Consolidated FPD to transitional spheres, adopted a sphere of influence for the consolidated district identical to the spheres of the predecessor districts, and adopted the written Statements of Determination as proposed in (Exhibit B);
3. Found that the successor San Miguel Consolidated FPD would be providing all services previously provided by the East County FPD and the San Miguel Consolidated FPD and determined therefore, that the property tax allocation of the East County FPD and San Miguel Consolidated FPD shall be transferred to and become the base property tax for the successor district;
4. Adopted the form of resolution approving the minor sphere amendments, adopting a sphere of influence for the successor district;
5. Determined that modifications to the terms and conditions in Exhibit A are technical and not material; and
6. Approved the proposed consolidation subject to modified terms and conditions of consolidation (Exhibit A) for the reasons set forth in the Executive Officer's Report, and delegated to the Executive Officer responsibility for holding conducting authority proceedings.

### **Item 8**

#### **Proposed "North Avenue Reorganization" (City of Escondido) (RO06-18)**

Chairman Andy Vanderlaan opened the public hearing.

Michael Ott said that over the past two years the proposal has evolved and now addresses the concerns of affected and interested parties. He introduced Robert Barry, Local Governmental Analyst, who provided a presentation to the Commission.

Robert Barry indicated that the developer and the City of Escondido have revised their proposal in response to neighboring residents' concerns regarding potential grading impacts, increased stormwater runoff, traffic and visual impact issues. Mr. Barry said that LAFCO staff believes that jurisdictional issues related to the reorganization have been resolved.

In response to a question from Commissioner Pocklington, Robert Barry said that the homes in the subject area were built in the late 1960s and early 1970s, with septic systems. Mr. Barry indicated that the septic systems would be inspected prior to the proposed reorganization being finalized. He said that the property owners in the subject area would have the option for sewer connection to the City of Escondido.

In response to a question from Commissioner Jacob, both Michael Ott and Legal Counsel William Smith said that upon approval and finalization of the proposal, the terms and conditions would be legally enforceable in court. Legal Counsel Smith said that property owners would be able to file a lawsuit through LAFCO or the courts.

In response to a question from Commissioner Frye, Robert Barry said that the County of San Diego's Department of Environmental Health would inspect septic systems prior to the finalization of the proposed reorganization in order to establish a baseline for the condition of the septic systems.

In response to a question from Commissioner Pocklington, City of Escondido's representative Diana Delgadillo said that the City is willing to set aside a fund for possible septic system failures caused by the proposed development.

In response to a question from Commissioner Rexford, Diana Delgadillo said that the proposed development would improve storm drainage.

Commissioner Ingalls said that it may be advantageous for concerned property owners to have the nearby development so that they have the option to connect to the sewer system if their septic system fails.

In response to a question from Commissioner Frye, Diana Delgadillo said that the City of Escondido has completed an environmental impact report (EIR) that addresses the City's capacity and analysis of potential capacity and has concluded that the City is able to provide services to the subject area and affected property owners.

In response to a question from Commissioner Menshek, Diana Delgadillo said that the EIR indicates that the City has the capacity to serve residents of Laurashawn Lane.

Kathy Jones, representative for the neighbors of Laurashawn Lane, addressed the Commission in opposition of the proposal. She provided the Commission with a petition of 35 neighbors in opposition of the proposal.

Commissioner Horn asked Ms. Jones if any septic systems failed during the rainfall year. Ms. Jones said no.

Darwin Bree, representing 44 neighbors of Laurashawn Lane, addressed the Commission in opposition of the proposal. He provided the Commission with a couple of photographs showing the height of a retaining wall proposed in the development.

Frank Fitzpatrick, engineer from Maniton Engineering Company, addressed the Commission in support of the proposal. He reported that during the rainy season, the Company dug holes along the existing homes in the subject area to test whether their septic systems would leak into the development area. He said that the hole in the southwest area was the only place that had a small amount of seepage at the bottom with no odor. He indicated that the conclusion of the test was that the septic systems did not leech back from the existing lots into the development area. He said that the

consolidation of the soil and the channel on the east side of the new houses would greatly improve the ability of the affected area's septic systems to operate. He indicated that the County Water Authority (CWA) authorized developers to cross the CWA's aqueducts. In addition, Mr. Fitzpatrick said that the development area would not be in a flooded plain area.

Robert Szolohayer, neighbor in North Avenue from the east side of development area, addressed the Commission in support of the proposal and requested that he be included on the mailing list for any information related to the reorganization. He said he has some concerns regarding issues related to water quality, traffic, septic system, and capacity in the subject area and believes that the development would allow these issues to be addressed. He requested that property owners on the east side of the development be included in the proposal.

Chairman Vanderlaan closed the public hearing.

In response to some of Commissioner Frye's concerns regarding cumulative impacts from additional developments to the area, Michael Ott said that there have been many individuals in support of developments in the area because they believe it would initiate regional improvements to infrastructure. In addition, Mr. Ott said that the City of Escondido has addressed the capacity issues in their environmental impact report (EIR).

Commissioner Frye said she would like to have more information to better understand the capacity issues such as average daily flows, how much capacity does the City of Escondido have left, and what the analysis included. In addition, she said she would like to see a more comprehensive solution to the affected home-owners concerns regarding septic system failure. She said that there seems to be a desire between the developer as well as the residents to try and come to some sort of a better solution, and asked for a one month continuance of the proposal to give the City and developer an opportunity to provide more information.

Commissioner Horn said that he believes the City of Escondido and the developer has addressed the affected property owners' issues, and that the development is not in a flood plain area. He moved approval for the proposal.

Commissioner Jacob seconded the motion.

Commissioner Jacob asked if LAFCO could initiate the annexation and have the City of Escondido, the property owners, and the developer work out the cost issue.

Michael Ott said that LAFCO does not have initiation powers with respect to City annexations. He said that the developer and City of Escondido developed a comprehensive package in terms of expanding the annexation to include additional residences. Mr. Ott said that LAFCO staff has been working on the proposal for two years to try and make it the best possible project and proposal. Mr. Ott said that police protection, for example, would improve significantly if annexed to the City; response

rates would drop down from approximately 10 minutes to about 5 minutes for priority calls. In addition, he said services for fire protection would improve as well. Mr. Ott said that there has been a good faith effort from the City of Escondido and the developer to address the concerns of the affected property owners.

In response to a question from Commissioner Jacob, Michael Ott said that upon the effected date of the annexation, the County Sheriff would no longer be responsible for delivery of police protection. He said that the City of Escondido's Police Department would be the responsible party to provide law enforcement to the subject area.

In response to a question from Commissioner Rexford, Michael Ott said that the City of Escondido would only provide services to the annexing area indicated on the map and that property owners in the annexation area would be able to obtain sewer service if their septic systems failed. Commissioner Rexford indicated her support for LAFCO staff recommendation.

Commissioner Pocklington said that with the developer's comments, it seems that the proposed development may actually extend the life of the septic systems that are already there. He indicated that he supports LAFCO staff's recommendation.

Commissioner Hilliard addressed his concerns with the proposed development. He said that he is reluctant to approve the proposal with terms and conditions that place the responsibility on the resident to hire lawyers and try to enforce the terms and conditions.

Michael Ott said that the terms and conditions also places responsibility on the City and developer.

In response to a question from Commissioner Ingalls, Michael Ott said that LAFCO's fees will be paid by the City of Escondido for those resident's whose septic systems fail.

Commissioner Jacob said the developer should be held accountable for any fees if the development causes harm to the septic systems of the people in the surrounding area.

Michael Ott said that LAFCO staff had considered language to make the developer/the builder exclusively responsible for annexation fees if septic systems fail; but wanted to make sure that the builder/developer would be in business so that they can be held accountable for the septic system failures when they occur. Mr. Ott said that LAFCO staff added the City of Escondido to increase accountably for annexation fees.

Legal Counsel William Smith said it would be possible to impose a condition that prior to recording the certificate of completion, that the developer would deposit some estimated necessary annexation fees if it should subsequently be determined that their development caused the failure of septic systems in the subject area. Mr. Smith said it is important that LAFCO have a nexus that if there is a failure of a septic system caused by the development; otherwise LAFCO would have a statutory problem.



Michael Ott indicated that the applicant for this project is the City of Escondido, not the developer; and that the full City Council initiated the proposal. He said that is the reason why LAFCO decided to place the City of Escondido as one of the responsible parties for annexation fees if septic system failures occur.

Commissioner Menshek indicated his support for Commissioner Frye's motion to continue the proposal to the next meeting so that the City and developer could provide the Commission with more information.

Commissioner Rexford said that the City of Escondido's full council approved the proposal and that maybe the City has additional information that LAFCO staff hasn't received. She indicated that she supports the continuance of the proposal so that additional information could be obtained and brought to the Commission.

Commissioner Horn said that the City of Escondido is the guarantor so there is no need to hold up the proposal.

Commissioner Frye said she is uncomfortable with certifying the Mitigated Negative Declaration.

Commissioner Jacob withdrew her motion to approve the proposal and motioned to continue the proposal for another 60 days.

Commissioner Frye seconded her motion. She requested that additional documents be provided to the Commission that would assist the Commission in certifying the negative declaration; additional information that specifically addresses water supply and sewer services.

At the request of Legal Counsel William Smith, the Commission clarified the motion on the floor to continue the proposal to the next meeting as opposed to being continued for 60 days.

With no more speakers from the public and no further discussion from the Commission, and with Commissioner Horn opposing, ON MOTION of Commissioner Jacob, seconded by Commissioner Frye, and carried unanimously by the commissioners present, the Commission closed the public hearing and took the following action:

- 1) Continued the proposal to the next meeting; and
- 2) Directed LAFCO staff to obtain additional information, specifically related to water supply and sewer services.

**Item 9**  
**June 2008 Legislative Report**

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

**Item 10**

**Cancellation of the July 7, 2008 Meeting**

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

Approved the cancellation of the July 7, 2008 LAFCO meeting.

There being no further business to come before the Commission, the meeting adjourned at 11:31 a.m. to the August 4, 2008 meeting, in Room 302, County Administration Center.

**Tita Jacque Mandapat  
Administrative Assistant**