



**SAN LUIS OBISPO  
LOCAL AGENCY FORMATION COMMISSION  
JANUARY 21, 2010**

**Call to Order:**

The San Luis Obispo Local Agency Formation Commission meeting was called to order at 9:01 a.m. on Thursday, January 21, 2010, in the Board of Supervisors Chambers at the County Government Center in San Luis Obispo, California by Chairman David Brooks.

**Roll Call:**

**Present:** Commissioners Katcho Achadjian, Bruce Gibson, Duane Picanco, Allen Settle, Richard Roberts and Chairman David Brooks and Alternate Commissioners Ed Eby, James Patterson, and Kris Vardas

**Absent:** Alternate Commissioner Tom Murray at roll call

**Staff:**

David Church, LAFCO Executive Officer, Raymond A. Biering, LAFCO Legal Counsel, Donna J. Bloyd LAFCO Commission Clerk.

**Pledge of Allegiance:** Led by Chairman Brooks

**Selection of 2010 Commission Chair and Vice Chair:**

Vice Chairman Duane Picanco was selected to sit as Chairman in 2010. Commissioner Richard Roberts was selected to sit as Vice Chairman in 2010.

**Approval of Minutes:** Motion was made, seconded, and passed, with corrections, to approve the draft minutes of October 16, 2009.

**Non-Agenda Public Comments:** None

**Consent Agenda:**

**Item A-1: Submittal of First Quarter 2009/10 LAFCO Budget Status Report, July, August, and September 2009**

**Item A-2: Submittal of Second Quarter 2009/10 LAFCO Budget Status Report, October, November, and December 2009.**

**Commissioner Gibson** pulled Item A-2 with questions about LAFCO's reserve account and salary savings. Mr. Church responded to Commissioner's Gibson's questions. There were no other questions or comments about the Consent Agenda.

**Motion was made by Commissioner Achadjian to approve the Consent Agenda  
Commissioner Gibson seconded the motion.**

**AYES: Commissioners Achadjian, Brooks, Gibson, Eby, Roberts, Settle, and**

**Chairman Picanco**

**NOES: None**

**ABSTAIN: None**

**The motion carried with a unanimous roll call vote.**

**Regular Matters:**

**Item B-1: LAFCO File 7-R-05, Annexation No. 74 to the City of San Luis Obispo (Madonna/Gap)**

**Mr. Biering** disclosed that the law firm of which he is of Counsel, Adamski, Moroski, Madden & Green, has represented and does represent Mr. Clint Pearce, the applicant in this matter. Mr. Biering stated that he knew and had represented Mr. Pearce as well but not in the context of this item.

**Chairman Picanco** asked if the Commissioners had any concerns with this disclosure.

**Commissioner Gibson** stated that if LAFCO were considering outside counsel it would explicitly recognize the disclosure and waive the sense of conflict. He further stated that he would make a motion.

**Chairman Picanco** asked for the motion.

**Motion was made by Commissioner Gibson for the Commission to waive any sense of conflict based on Mr. Biering's disclosure. Commissioner Achadjian seconded the motion.**

**AYES: Commissioners Gibson, Achadjian, Brooks, Eby, Roberts, Settle, and Chairman Picanco**

**NOES: None**

**ABSTAIN: None**

**The motion carried with a unanimous roll call vote.**

LAFCO Executive Officer, Mr. David Church, introduced the item and provided a PowerPoint presentation.

Mr. Church stated that this property is 31 acres in size and is located in the southeast portion of the City San Luis Obispo ("City"), on Los Osos Valley Road across from Costco and Home Depot.

Mr. Church stated that the City had approved a General Plan Amendment and a Certified EIR for the project. The project is comprised of:

- 16.7 acres commercial retail;
- 2.3 acres dedicated to road right-of-way;

11.9 acres dedicated to the City as open space.

Mr. Church stated that the Applicant has dedicated 11.9 acres of prime agricultural land to the City and has agreed to place a conservation easement on another 7.1 acres of prime agricultural land. This makes a total of 19 acres of prime agricultural land which meets the 1:1 replacement ratio for prime agricultural land.

Mr. Church further stated that LAFCO is acting as a Responsible Agency and will use the City's Environmental Impact Report ("EIR") for this project. He added that the City had prepared adequate CEQA documents stating that the EIR addresses impacts of future development and that mitigation measures are referenced and incorporated into the EIR. Mr. Church stated that the City has an adequate, reliable, and sustainable water supply to meet the project's requirements. He added that the City sewer capacity is adequate as well. Mr. Church summarized other aspects of the project.

**Alternate Commissioner Tom Murray arrived at 9:17 a.m.**

**Chairman Picanco** requested Commissioner comments and questions.

**Alternate Commissioner Eby** (replacing Commissioner Barbara Mann) asked if the mitigations were also included as conditions of approval.

**Mr. Phil Dunsmore**, City of San Luis Obispo, stated that the EIR, certified on September 1, 2009, included mitigation measures that were conditions of approval.

**Commissioner Eby** asked if the City was the agency that would monitor the mitigations.

**Mr. Dunsmore** stated that the City would monitor the mitigations since it is responsible for doing so.

**Commissioner Eby** asked if reclaimed water was available for use on the project.

**Mr. Dunsmore** stated that is available and would be used on portions of the property.

**Mr. Raymond Biering**, LAFCO Legal Counsel, stated that LAFCO's role is legislative as to the annexation only and not as to land use. LAFCO does not get involved with land use. Mr. Biering stated that it was appropriate for LAFCO to rely on the City to monitor the mitigations.

**Commissioner Gibson** stated that he had a set of questions about the project. He stated that he assumed that Exhibit D, Proposal Review Factors, of the Staff Report was the basis for LAFCO's findings.

**Mr. Church** stated that assumption was correct.

**Commissioner Gibson** stated that a letter from the San Luis Obispo County Agricultural Commissioner ("AG Commissioner") indicated that it was unknown whether there were 21, 22, or 19 acres of designated as prime soils. He asked if that issue had been settled to the satisfaction of the AG Commissioner.

**Mr. Church** stated that in his conversations with the AG Commissioner it had been indicated that the AG Commission agreed with the 19-acre figure included in the Certified EIR. Mr.

Church stated that he believed that the AG Commissioner had included the creek in the figures and that the creek was not typically farmed. He also thought that a bicycle path had been included in the acreage figures and that 19 acres was an accurate figure.

**Commissioner Gibson** asked if the set-aside easement was dedicated open space set-aside in favor of the City.

**Mr. Church** stated that it was going to be dedicated to the City and that the City would own it in-fee.

**Commissioner Gibson** stated that he wanted to be sure that the instrument securing the open space expressly allows farming of the property.

**Mr. Neil Havlik**, Natural Resources Manager for the City of San Luis Obispo, stated that it was the City's expectation that the open space portion will continue in agriculture and that the City is currently working on a Master Plan for the open space portion of this property, an adjacent piece of property which the City already owns, and some future potentials for the open space portion of the Dalidio property, should it be annexed into the City. He also stated that the City would be considering a formal plan for that property this summer and that it was their expectation that it would continue in farming.

**Commissioner Gibson** stated that his concern was about the 11+ acres of prime AG land surrounded by urban development.

**Mr. Havlik** stated that the 11.9 acres are adjoined by 13 acres which are in the same condition and that there was currently a cover crop that is being maintained on both of those parcels with the concurrence of the Madonna family and that the property is actively being managed for agriculture today.

**Mr. Havlik** stated further that, with favorable events regarding the Dalidio property, there was a possibility that the farmed property could be 80 or 90 acres.

**Mr. Havlik** stated that it was a viable piece of property and that the City was aware of the urban-agricultural conflicts and that was being taken into account in the planning process.

**Commissioner Gibson** stated that another issue was factors regarding the City and County's fair share of the regional housing needs allocation. He stated that, according to the proposal, this project might add 550 jobs, not necessarily head-of-household jobs, and he wondered what analysis of housing needs this proposal has produced and what the City's response was to that issue.

**Mr. Dunsmore** stated that the EIR did consider the jobs-housing balance and at one time the option of putting housing on the property was considered. He stated that unfortunately the Airport Land Use Plan restricted an on-site residential development to a level that was not feasible for the project.

**Mr. Dunsmore** stated that the impact on affordable housing, based on the current situation, was evaluated in the EIR. He stated that it was found that the impact of the additional jobs was going to be less-than-significant in this particular scenario.

**Commissioner Gibson** spoke about his concern regarding affordable housing. He asked if the City had specific assurance that a certain number of affordable housing units are going to be created with this project.

**Mr. Dunsmore** stated that the City had actual requirements that states that a certain percentage and number of units be dedicated as affordable. The number in the EIR is actually more than what the code normally requires because of the jobs/housing balance. That negotiation is occurring now. He also discussed in-lieu fees.

**Commissioner Roberts** asked if the figure in the staff report supplied by the County Assessor in the amount of \$323,828 is the correct figure for the housing.

**Mr. Church** stated that it is a correct figure because the land is vacant farmland.

**Chairman Picanco** stated that since there were no more questions for the staff he would open the meeting to the applicant and the applicant's representative.

**Patti Whelan**, Whelan Consulting, stated that Mr. Clint Pearce was also in attendance. She stated that the Commission had zeroed in on the important questions that have been discussed and reviewed extensively between the City and the applicant. Ms. Whelan addressed the affordable housing and agriculture issues as well.

**Commissioner Gibson** asked for the number of units of affordable housing that would be mitigated.

**Mr. Dunsmore** stated that the number actually ranges because there are different levels of affordability. If the City were to go for a moderate or affordable level, that base level would be about 34 units. The number could go up or down based on the level of affordability.

**Commissioner Gibson** asked if the County's in-lieu fee for affordable, moderate, average housing was about \$100,000 for each unit and asked what the City's per-unit charge might be.

**Mr. Dunsmore** stated that the City's method of calculation is based upon land area, whether it is an expansion area, which this is, and is based upon the value of the project.

**Chairman Picanco** asked if the affordable housing had to be located on the site.

**Mr. Dunsmore** stated that it did not. He added that, in fact, it was not feasible to put housing on this site due to the Airport Land Use Plan.

**Chairman Picanco** asked if there were a certain number of units that cities are required to provide.

**Commissioner Settle** stated that in-lieu fees were a viable option to address that condition.

**Chairman Picanco** asked if there were other questions for the applicant's representative.

**Chairman Picanco** stated that he was concerned with the Dalidio property because LAFCO policies state that islands should not be created.

**Mr. Church** stated that LAFCO is prohibited from creating islands unless it is found that the particular annexation would be detrimental to the overall development of the City. Mr. Church paraphrased the code section saying that if it makes sense and is logical, then the Commission has discretion to do an annexation that does create an island.

**Chairman Picanco** asked about a time frame for the Dalidio property being annexed into the City.

**Mr. Dunsmore** stated that it is in the City's General Plan to annex the property into the City as a retail and open space area. He stated that it was beyond the City's control at this point because the property had been in court for a number of years.

**Commissioner Achadjian** asked if there had been opposition from the Dalidios regarding this annexation.

**Mr. Church** stated that LAFCO had not received any opposition from the Dalidios.

**Chairman Picanco** closed the meeting to public comment on this Item and brought it to the Commissioners for discussion.

**Commissioner Settle** stated that he was quite familiar with the project. He stated that the City had moved forward this week with its housing element and with respect to the Ag he felt that it was a viable option and with respect to Dalidio he felt that, at some time, it would be annexed to the City.

**Commissioner Settle** moved that the item be approved as written.

**Commissioner Achadjian** seconded the motion.

**Chairman Picanco** recognized the motion and second and asked for comments.

There was discussion at length among the Commissioners regarding the agriculture/open space and affordable housing topics.

**Commissioner Gibson** raised several concerns regarding the mitigation for affordable housing and the agricultural uses of the land that were addressed by City staff.

**Commissioner Settle** also responded to questions raised.

**Mr. Biering** stated, following the discussion, that it was his understanding that the motion was not amended.

**Commissioner Settle** confirmed that it was not amended.

**Commissioner Roberts** stated that the item should be opened to public comment.

**Chairman Picanco** opened the item for public comment.

**Public Comment:**

**Alternate Commissioner James R. Patterson** stated that he supported the staff recommendation for this item but he wanted to support the concerns that Commissioner Gibson raised regarding the housing issues. He stated that it was important for LAFCO to recognize that there are specific, regional issues regarding water, agriculture and housing and that it was quite appropriate in LAFCO's recommendations for annexations to address policies that will meet those needs.

There being no other members of the public wishing to speak **Chairman Picanco** closed the meeting to public comment.

**Motion was made by Commissioner Settle to approve annexation #74 to the City of San Luis Obispo with the following conditions:**

1. **Prior to filing the Certificate of Completion with the State Board of Equalization, the proponent shall submit to LAFCO documentation to be reviewed and approved by the Executive Officer and LAFCO Counsel establishing that a minimum of one acre for each acre of prime agricultural land being converted by the project has been permanently preserved. The documentation shall show that a minimum of 19 acres of prime agricultural land will be preserved as required by LAFCO's Adopted Agricultural Policies.**
2. **The proponent shall submit documentation to be reviewed and approved by the Executive Officer and LAFCO Counsel that states the proponent will provide a source of water for agricultural irrigation to the land being preserved consistent with Mitigation Measure AG-2 found in the Final EIR and this Staff Report.**

**Commissioner Achadjian** seconded the motion.

**AYES:** Commissioners Settle, Achadjian, Brooks, Eby, Gibson, Roberts, and Chairman Picanco

**NOES:** None

**ABSTAIN:** None

**The motion carried with a unanimous roll call vote.**

**Commissioner Eby** had questions regarding the need to have a resolution at each Commission meeting when there are items that require a vote.

**Mr. Biering** and **Mr. Church** responded to his questions.

**Mr. Biering** stated that for as long as he had been LAFCO counsel it was not the practice to have a resolution as part of the packet. He stated that the LAFCO tradition was to have a separate attachment that included all the factors that the Commission is required to consider and to cover the factors and then make a resolution that is consistent with the factors. He stated that the practice could be changed.

**Commissioner Eby** asked what would happen if there were legal questions about the resolution after it were signed.

**Mr. Church** stated that the resolution is signed by LAFCO Counsel and the Chair and that it was reviewed by Counsel and the Chair. He stated that the factors considered are referred to at the hearing. As an example this particular resolution will include issues regarding islands and affordable housing.

**Special Matters:**

**Item C-1: LAFCO File 2-S-09 Status Report for the Municipal Service Review and Sphere of Influence Update for the Nipomo Community Services District**

Mr. Church introduced this item and provided a PowerPoint presentation regarding the Sphere of Influence Update ("SOI") / Municipal Service Review being prepared for the Nipomo CSD.

**Item C-2: Report regarding the proposal for a more regional approach to CALAFCO**

Mr. Church introduced this item and provided a PowerPoint presentation.

Mr. Church stated that a proposal to regionalize CALAFCO was approved by the CALAFCO Board of Directors at their January 15, 2010 meeting. He stated that there are now four regions within CALAFCO and that there would be four representatives from each region.

In summary, Mr. Church stated that creating regions in CALAFCO will retain the agency as one entity, there will be a more geographically balanced Board of Directors, CALAFCO will be more cohesive and unified legislatively and LAFCO expertise will be maintained.

**Motion was made by Commissioner Roberts to send a letter of support to CALAFCO. Commissioner Settle seconded the motion.**

**AYES: Commissioners Roberts, Settle, Achadjian, Brooks, Eby, Gibson, Roberts, and Chairman Picanco**

**NOES: None**

**ABSTAIN: None**

**The motion carried with a unanimous roll call vote.**

**Commissioner Comments:**

There was discussion about including a resolution as part of the staff reports.

**Legal Counsel Comments:**

Mr. Biering discussed the depositions for the Los Robles del Mar matter.

**Executive Officer's Comments:**

Mr. Church stated that nominations to replace the Special District Member of the Commission are proceeding, with the nomination period closing on February 11, 2010.

Mr. Church also stated that the process of recruiting a LAFCO analyst has begun.

**Adjournment:** With no further business before the Commission, the meeting adjourned at 10:43 a.m. until the next meeting scheduled for February 18, 2010 at 9:00 a.m. in the Board of Supervisors Chambers at the County Government Center in San Luis Obispo.

**THESE MINUTES ARE NOT OFFICIAL NOR ARE THEY A PERMANENT PART OF THE RECORD UNTIL THEY ARE APPROVED BY LAFCO COMMISSIONERS AT THE NEXT REGULAR MEETING.**

Respectfully submitted,

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Donna Bloyd, LAFCO Commission Clerk