

EXECUTIVE OFFICER'S REPORT

To The

Local Agency Formation Commission

TO:

Commissioner	DON CAMPBELL	[City]	Commissioner	MICHAEL KELLEY (Vice-Chair)	[Supervisor]
Commissioner	JASON JACKSON (Chair)	[City]	Commissioner	RAY CASTILLO	[Supervisor]
Commissioner	DAVID WEST	[Public]			
	Alt Commissioner	JACK TERRAZAS			[Supervisor]
	Alt Commissioner	MARIA NAVA-FROELICH			[City]
	Alt Commissioner	RALPH MENVIELLE			[Public]

REPORT DATE: September 4, 2015

FROM: Jurg Heuberger, AICP, CEP, Executive Officer 

PROJECT: Discussion/Direction on Annexation Procedures

HEARING DATE: **October 8, 2015** **TIME: 8:30**

AGENDA ITEM NO: 7

HEARING LOCATION: El Centro City Council Chambers- 1275 Main Street, El Centro, CA
(for directions call 760-353-4115)

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (In summary & order)

- OPTION #1:** Approve the procedure for processing annexation applications as presented by the Executive Officer
- OPTION #2:** Approve the procedure for processing annexation applications as presented and with changes requested by the Commission
- OPTION # 3:** Continue the hearing for not to exceed 70 days (end date Dec 18, 2015).
- OPTION # 4:** Take no action.

ANALYSIS

The Cortese Knox Hertzberg Act of 2000 also known as Gov. Code 56000 et. Seq provides the framework for the various procedures that LAFCO's follow in processing applications for reorganizations.

One of these is the annexation procedures. Under the act the process is as follows:

- 1) Application is filed by either a "petition" (individual/private) or by "resolution" (public entity).
- 2) LAFCO E.O. has 30 days from date of application to determine the application **complete** and issue a "Certificate of Filing" or determine the application to be incomplete and notify the applicant of the deficiencies.
- 3) If LAFCO is the lead agency under CEQA, LAFCO E.O. must prepare the Initial Study and follow the CEQA process for a determination.
- 4) LAFCO E.O. must prepare a report on the project and schedule it for hearing. Note however that until there is a tax sharing agreement in place the project cannot be heard by the Commission.
- 5) The Commission must conduct a public hearing and render a decision (either at the hearing or within a specified time thereafter).
- 6) If the annexation is approved it must be recorded within one year at the County Recorder's Office and submitted to the State Board of Equalization.
- 7) If the annexation is denied it cannot be re-filed for one year.

A **complete** application must include all of the following:

- a) A completed application form (Petition or Resolution)
- b) An annexation map prepared by a Ca. Licensed Surveyor or Engineer authorized to practice in the State, meeting specific guidelines by the Map Act as well as the County Recorder's Office..
- c) The City's Land Use approvals which at a minimum have to include the "pre-zoning" and the "CEQA" documents. Typically that also includes General Plan Amendments, Tract or Parcel Maps and Conditional Use Permits.
- d) An indemnification agreement signed by the applicant(s).
- e) Fees for processing
- f) Fees for filing with the State and Records Office

If the above procedures are followed exactly, then the processing of the full application is in "serial" format and typically lengthens the process significantly. Essentially an application would go through the entire land use entitlement process, then go through the tax split process and then file the application with LAFCO and follow that process.

This creates a number of delays but more importantly creates a situation whereby LAFCO being the last step can and in our case found itself in the untenable situation of having to deny an application because CEQA was not followed or could not be used by LAFCO. In several situations we were faced with either litigating with a City or simply denying the application, where the applicant in some cases had not control over how the applications were processed.

With regard to the tax sharing agreements, as long as we had "master" agreements there were not many issues, however when there were not master agreements the process often required LAFCO to step in and make sure the County had the correct information. In other words, in some cases the project presented by the City/Applicant to the County for tax sharing purposes changed over the course of the land use entitlement process and when it came to LAFCO, the County would have objections.

To streamline and minimize confusion and most certainly to avoid denials or litigation over inadequate CEQA documents this LAFCO adopted a more "common sense" process closely following the laws as follows:

- 1) Applicants are encouraged to file the land use applications with the City and the annexation applications with LAFCO at the same time.

- 2) The City and LAFCO processed the CEQA components in a joint (co-lead) manner which allowed both the City and the LAFCO to arrive at a mutually agreed upon CEQA determination and avoided the issue of LAFCO having to reject what it may consider an inadequate CEQA document.
- 3) The LAFCO would determine the application to be "conditionally" complete and file a "conditional Certificate of Filing". While this effectively notified the applicant and the public that an application was generally complete it lacked one or more documents, typically the CEQA document and the tax sharing document. It did however allow the process to move forward concurrent rather than serialized.
- 4) LAFCO would through the Certificate of Filing and with a special form, initiate the tax sharing process between the City and County. Note applicants have no part in this. (See form developed in conjunction with the County to clarify the process, EXHIBIT A).
- 5) The EO would prepare the required report and schedule the matter for hearing only upon receipt of the following items; (a) Resolution of Pre-Zoning approved by the City Council; (b) Resolution Certifying the CEQA document by the City Council; (c) Resolution approving the Tax Sharing agreement by the City Council, Minute Order from the Board of Supervisors approving the Tax Sharing agreement; (d) executed copy of the Tax Sharing Agreement and (d) payment of all processing fees.

If the Commission is in agreement to continue to follow the previously and as outlined above process, the E.O. requests that you approve Option # 1.

If the Commission desires to modify the process, the please provide direction under Option # 2.

If you have any questions, please feel free to let me know.

Public Notice:

Public notice for the proposed project hearing before the Imperial County Local Agency Formation Commission has been given, according to Section 56660 and 56661. Notice was issued in the form of a publication in the I.V. Press at least twenty (20) days prior to said hearing, and posted on the Web

Report:

In accordance with Section 56665, the Executive Officer has prepared a report, and presented said report to your Commission and to any public member requesting such report

EXECUTIVE OFFICERS RECOMMENDATION

RECOMMENDATION:

It is the recommendation of the Executive Officer that LAFCO consider the information and make a determination by approving Option 1, or in the alternative Option 2, Option 3 or Option 4.

ATTACHMENTS:

EXHIBIT A –Flow Chart for Tax Sharing Process