

MINUTES
Del Norte Local Agency Formation Commission
July 28, 2008
Regular Session

Members Present: Commissioners Richard Enea, Don Micheletti, Leslie McNamer, Mike Scavuzzo and Gerry Hemmingsen

Members Absent: None

Others Present: Executive Officer Darren McElfresh, Recording Secretary Lacy Cusmano, Oregon Coast Media Dennis Gill, Armand Trinitapoli, John Messina, Sandra Jerabek, Eileen Cooper, Peter Douglas Executive Director of the California Coastal Commission and Robert Black. John Bakker and Mr. Smith appeared via telephone.

1. Call to Order/Roll Call

Chair McNamer called the meeting to order in regular session at 4:06 p.m.
Roll call was taken by Darren McElfresh.

2. Consideration/Approval of Minutes

- A. April 28, 2008 and June 9, 2008 The minutes were tabled until the next regular meeting for approval, due to necessary changes.

3. Regular Business

A. Further discussion on the results from the Protest Hearing on County application (06-02) for "Proposed Change of Organization (Dissolution) of Pacific Shores Subdivision California Water District' submitted by the County of Del Norte Supervisors.

- i. Discussion and possible action whether the previously adopted resolution entitled "RESOLUTION OF THE DEL NORE COUNTY LOCAL AGENCY FORMATION COMMISSION MAKING DETERMINATIONS ON THE VALUE OF PROTESTS FILED AND NOT WITHDRAWN RELATING TO THE DISSOLUTION OF THE PACIFIC SHORES SUBDIVISION CALIFORNIA WATER DISTRICT AND DIRECTING FILING OF A CERTIFICATE OF COMPLETION" should be modified or rescinded.
- ii. Request from Pacific Shores Legal Counsel to reconsider Resolution entitled: RESOLUTION OF THE DEL NORE COUNTY LOCAL AGENCY FORMATION COMMISSION MAKING DETERMINATIONS ON THE VALUE OF PROTESTS FILED AND NOT WITHDRAWN RELATING TO THE DISSOLUTION OF THE PACIFIC SHORES SUBDIVISION CALIFORNIA WATER DISTRICT AND DIRECTING FILING OF A CERTIFICATE OF COMPLETION"
- iii. Staff presents the following options for the Board:

- a) Discussion and possible action to retain consultant to verify the count of valid protests and/or Petitions for Election based on request for reconsideration.
- b) Initially take no position on whether the protests were “filed . . . prior to the conclusion of the hearing” and direct consultant to calculate whether the protests, if treated as properly filed, would create a different result and, if not, direct Executive Officer to execute and record the certificate of completion. . . If it would, LAFCO would have to determine whether or not the protests were properly filed.
- c) Refuse to treat the newly discovered protests as being “filed . . . prior to the conclusion of the hearing” and redirect you to execute and record the certificate of completion.
- d) Treat the newly discovered protests as though they were properly filed and
- e) direct you to recalculate the protests.

Executive Director McElfresh reported on the number of protests received and Messrs. Bakker and Smith, attorneys, appeared via phone, to discuss the request to reconsider the 156 ballots. Mr. Bakker reported on the June 9th protest hearing, the certificate of completion and the discovery of protests and their not having been recorded. He wanted to know if the protests were received before the hearing. Mr. Bakker suggested the Commission count the protests to see if they would make a difference and refrain from recording them before discussing with the Commission. He highly doubts that the newly found protests would make a difference, stating that the new count would only make a difference if there were 50% in writing. Commissioner Scavuzzo asked if Mr. Bakker was suggesting a third party tally the protests. That would be up to the commission, according to Mr. Bakker. Discussion was held on filing the certificate and recordation. Isaac Stevens, on behalf of Mr. Smith, appearing via (bad service) cell phone, stated that they believe the Commission should provide a protest form and re-open the protest as the protest was not held on valid forms. Commissioner Scavuzzo asked Mr. Stevens “Do you want us to recount the protests together?” Mr. Stevens stated, “Yes.” Mr. Bakker commented that if the protest were to be reopened, and we don’t think you need to do that, we doubt there are extra protests out there. He doesn’t think there was anything wrong with the original protest and there is no need for a public hearing. Discussion was held regarding the statute requiring that LAFCO have a proper form to file a written protest. Mr. Messina handed papers to the Commissioners regarding resolutions and protests. He also mentioned that Robert Black complained of the protest being filed untimely. The state lands are supposed to be revalued; that has not happened yet. The land should be valued as open space land because that is how it is deeded to the state. Open spaced land does not have value so he does not know how their votes can be “held for anything.” He thinks that Mr. McElfresh did a good job counting the protests. Robert Black would like to submit a letter to LAFCO by the Stanford Environmental Law Clinic. He said that it is lengthy, scholarly and meticulous, so he referenced the conclusion by saying “If you count all of the newly discovered

protests and exclude to count the publicly owned parcels the protest still fails.” Peter Douglas Executive Director of the California Coastal Commission stated that he has had a long history with this district and conditions have not been met. Instead, the district has made frivolous lawsuits. Now the district has filed another frivolous lawsuit. He does not think it will change the results of the protest and he strongly urged the Commission to file the certificate of completion. Armand Trinitopli stated that he thinks the new protests should be counted. The State gets a vote because they own land and you should not walk away. Sandra Jerabek stated that Mr. Smith should be providing the proper forms. She noticed during the protest that there was information on the LAFCO website that is rather kind. Everyone could read the code and anyone can get an attorney to explain it to them. She discussed the sewer protest forms and the problems that occurred locally with that process. Mr. Messina asked if there was a posting by the Executive Director on the website about the protest. Eileen Cooper discussed the Pacific Shores zoning not yet certified. Discussion was held regarding the process and whether to recount the protests by the Commission. Mr. McElfresh stated that the count would be by the acreage vote, one vote per acre. He thinks it is so close that the Commission should listen to legal counsel. The State owned parcels make up the majority; however the protest procedure indicates that the State is not counted in the context that the State does not have a vote in the water district. Every benefit of the doubt goes to the Pacific Shores District. Commissioner Hemmingsen discussed with Mr. Bakker the circumstances and how the property owners would get a vote per acre. A voter is a person who owns land; the state is not a person. Chair McNamer indicated that this is an example of the different options and why it has taken so long to conclude this issue. Commissioner Scavuzzo explained the difference between a vote and a protest. Mr. Bakker read a part of the statute to help clarify the issue. Mr. Smith stated their analysis came to the same conclusion. He thinks this would be a very interesting legal issue.

On a motion by Commissioner Enea, seconded by Commissioner Scavuzzo, and unanimously carried and polled vote, the LAFCO Board directed that the newly found protests be counted.

B. Review request for annexation of Redwood Springs Estates into HRC Community Services District

- i. Staff recommends the conditional approval of the annexation of Redwood Springs Estates into HRC Community Services District based upon an approved new boundary change for the CSD.
- ii. Discussion or possible action by the Board.

Executive Officer McElfresh reported on the Redwood Springs Estates annexation in to the HRC Community Service District.

On a motion by Commissioner Scavuzzo, seconded by Commissioner Enea, and unanimously carried, the Local Agency Formation Commission to approve the new boundary change/annexation for the HRC CSD.

C. Review and acceptance of budget for fiscal year 2008-2009

- i. Staff recommends the approval of the budget for the fiscal year of 2008-2009. Bi-annual request

On a motion by Commissioner Enea, seconded by Commissioner Scavuzzo, and unanimously carried, on a polled vote, the Local Agency Formation Commission approved the 2008-2009 fiscal year budget as presented.

D. Payment of bills:

- i. Meyers Nave Bill of \$1196.50.
ii. Executive Officer monthly payment due for months of June and July.

On a motion by Commissioner Scavuzzo, seconded by Commissioner Enea, and unanimously carried the Board approved payment of the above listed invoices.

4. Closed Session pursuant to Government Code section 54957(b)(1)

- A. Interview of prospective candidates for Executive Director.

No closed session was held. There will be a special meeting on August 4th at 3:00 p.m. to hold interviews.

5. Open Session and announcements from Closed Session

- A. Report of selection of Executive Director No closed session was held see action above.

6. Reports

- A. Staff - The Executive Officer will provide a report of current projects and issues of interest to the Commission. Discussion was held regarding public member Don Micheletti stepping down from the Commission and finding a replacement.

- B. Commission - On their own initiative, Commission members may make brief announcements or brief reports on their own activities. They may ask questions for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda pursuant to Government Code section 54954.2 (a). No Commissioners made reports.

- C. Public - Public comment on items of interest to the public within the subject matter jurisdiction of the Local Agency Formation Commission, and not otherwise appearing on the agenda. No action may be taken on any item not appearing on the agenda. No public comments were made.

5. Adjournment 5:26pm

There being no further business to come before the Commission, Chair McNamer adjourned the meeting at 5:26 p.m. until the next special session on August 4, 2008 at 3:00 p.m.

Respectfully Submitted,
Lacy Cusmano, Recording Secretary