

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
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September 1, 2004

TO: Sacramento Local Agency Formation Commission
FROM: Peter Brundage, Executive Officer
RE: **Elk Grove Incorporation Mitigation Measures**

RECOMMENDATION

I recommend that your Commission make the following finding:

- (1) The City of Elk Grove has satisfied Mitigation Measure No. 2. The City of Elk Grove continues to maintain and provide to its residents local and regional public transit service including applicable paratransit service, through contract with the Sacramento Regional Transit District; transportation services in the City of Elk Grove meet the Cortese-Knox-Hertzberg requirement of service provision at an equal, or improved level, as service prior to incorporation.

I further recommend:

- (2) That your Commission direct the Executive Officer to work with Sacramento Regional Transit District and CALAFCo to evaluate whether or not it is appropriate for CALAFCo to introduce legislation that clarifies LAFCo's authority regarding transit districts, and report back on this issue with a recommendation.
- (3) That your Commission direct the City of Elk Grove to meet with appropriate environmental interests to jointly develop an expenditure plan that allows its Swainson's Hawk Habitat Fund to be used for management and operations of existing and future habitat sites, enhancement of habitat sites as well as the purchase of land or easements for Swainson's Hawk habitat. Direct your Executive Officer to report back on this issue with a recommendation and Program Completion Certificate, if applicable.

DISCUSSION

To date, your Commission has not issued a Program Certificate Completion for the Mitigation Monitoring Reporting Program (MMRP) related to the Elk Grove Incorporation because of two outstanding issues:

Mitigation Measure No. 2 - Annexation to Sacramento Regional Transit District.

"Require the City to maintain existing public transit service including applicable paratransit service required under the Americans With Disabilities Act. This shall be accomplished by requiring annexation into the Sacramento Regional Transit District, and activation of transit service within the city, in accordance with the procedures set forth in ... the District's enabling legislation. ¹

Mitigation Measure No. 9 - All Conditions to Mitigate Environmental Impacts be Transferred to City of Elk Grove.

"Condition incorporation approval to require that all conditions of land use entitlement approvals that are designed to mitigate environmental impacts be transferred to the new city's jurisdiction."²

Mitigation Measure No. 2: Annexation to Sacramento Regional Transit District

Your Commission has requested, and received, the attached legal opinion from Harriet Steiner, McDonough, Holland & Allen, that addresses whether or not LAFCo has the legal authority to enforce the mitigation measure it imposed during the Elk Grove Incorporation proceedings. The legal opinion indicates that under current LAFCo statutes, there is no clear answer regarding whether or not the Commission has the legal authority to require the City of Elk Grove to annex to Sacramento Regional Transit District.

I have discussed the legal opinion with both the City of Elk Grove and Sacramento Regional Transit District. I believe both parties agree with the legal opinion---"it is unlikely that a court would enforce this condition..." Therefore, it appears that Sacramento LAFCo does not have explicit authority to require the City of Elk Grove to annex to Sacramento Regional Transit District. Short of voluntary compliance, an attempt at enforcement would most likely result in litigation; that outcome is uncertain.

¹ Resolution No. LAFC 1208, Resolution of the Sacramento Local Agency Formation Commission Certifying the Final Environmental Impact Report for the Incorporation of Elk Grove, California, Mitigation Measure 2. (June 2, 1999).

² Resolution No. LAFC 1208, Resolution of the Sacramento Local Agency Formation Commission Certifying the Final Environmental Impact Report for the Incorporation of Elk Grove, California, Mitigation Measure 9. (June 2, 1999).

Sacramento Regional Transit District has forwarded a letter to your Commission [copy attached] which does not indicate whether Sacramento Local Agency Formation Commission should pursue enforcement of this condition. Sacramento Regional Transit District stresses its concern with impacts related to future incorporations. Therefore, Regional Transit has requested LAFCo to consider introducing legislation that would clarify LAFCo's authority related to transit districts. Regional Transit has suggested that Government Code Section 56866 be amended to add express authority for LAFCo to condition incorporations on annexation to an existing transit district.

Moreover, with the potential passage of Assembly Bill 466 (Steinberg), the ability of LAFCo to enforce its mitigation measure is moot.³ The proposed legislation provides for the following:

Public Resources Code 102100.8

"Execution of the agreement provided in Section 102100.3 by the district and the City of Elk Grove shall be a complete defense in any action or proceeding of any kind to enforce or compel compliance with Resolution No. 99-1044 adopted by the Sacramento County Board of Supervisors or Resolution Numbers LAFC 1205, LAFC 1206, LAFC 1207, LAFC 1208, adopted by the Sacramento Local Agency Formation Commission, to the extent the enforcement action is related to the enforcement of the Mitigation Monitoring Reporting Program, Mitigation Measure Number 2 pertaining to Sacramento Regional Transit District."

**Status of Service Delivery Agreement between
City of Elk Grove and Sacramento Regional Transit District**

On October 16, 2001, the City of Elk Grove and Sacramento Regional Transit District entered into an Interim Agreement for bus service. On March 8, 2004, the Interim Agreement was amended and extended for another six-month period, through the date of January 1, 2005. During this period, the City of Elk Grove and Sacramento Regional Transit District have been developing a new service delivery model for local and regional transit services. This process is still underway. Should Governor Schwarzenegger sign AB 466, and a long-term agreement between the City of Elk Grove and Sacramento Regional Transit District is reached, LAFCo's mitigation measure is untenable. AB 466 is supported by both the City of Elk Grove and Sacramento Regional Transit District.

³ AB 466 (Steinberg) [Non-urgency; non-appropriations; majority vote required; non-state mandated local program; non-fiscal; non-tax levy]. Read first time 2/14/04; as of 7/10/04, in Assembly; 7/12/04 re-referred to Committee on Transportation. Passed the Assembly and Senate; sent to Governor 8/25/04. AB 466 is a Sacramento County measure allowing the City of Elk Grove and Sacramento Regional Transit District to agree that provision of local transportation service will be the responsibility of the City of Elk Grove and regional transportation will be the responsibility of Sacramento Regional Transit District.

Service Delivery Issue

The more important issue is that cost effective and efficient public transit services (local and regional) continue to be provided to the residents of Elk Grove at a similar or improved level of service than prior to incorporation. The City of Elk Grove intends to continue to provide transportation services. The potential issue that exists is that the City of Elk Grove desires to improve local services; the provision of improved services could potentially impact regional services if transit funding is reallocated from regional to local control. This potential dispute must be negotiated and resolved between the City of Elk Grove and Sacramento Regional Transit District, not LAFCo.

Finding

I recommend that your Commission make the finding that the City of Elk Grove continues to provide local and regional, through contract, transit service to its residents; that those services meet the Cortese-Knox-Hertzberg requirement of service provision at an equal or improved level prior to incorporation, and that your Commission grant a Certificate of Compliance for Transit Service to the City of Elk Grove (upon completion of Mitigation Measure No. 9).

Mitigation Measure No. 9: All Conditions to Mitigate Environmental Impacts be Transferred to City of Elk Grove

"Condition incorporation approval to require that all conditions of land use entitlement approvals that are designated to mitigate environmental impacts be transferred to the new city's jurisdiction."

Staff has received confirmation that all conditions of land use entitlement approvals that were designed to mitigate environmental impacts have been transferred to the new city's jurisdiction. Thus, the terms of Mitigation Measure No. 9 have been satisfied.

Swainson's Hawk Issue

The City of Elk Grove has made significant progress to enhance the protection of the Swainson's Hawk. Recently, the City amended its Swainson's Hawk Ordinance to require developers to acquire habitat for the Swainson's Hawk. The City mandated that developers must acquire habitat for the species, they can no longer pay a fee. The mitigation is 1:1⁴, a high standard. Note: the payment of a mitigation fee still applies to projects of less than 40 acres.

The City is attempting to spend nearly \$1.8 million in Swainson's Hawk mitigation funds, however, it has not yet spent any hawk mitigation funding. The City has been unable to find willing sellers at reasonable prices for approved habitat sites. The City acknowledges that it is obligated to expend these funds for the intended purpose. To date, the City has not been able to implement the last phase of this objective, given current (real estate) market conditions.

⁴ For every acre developed, one acre must be protected.

All parties that are in the market for conservation interests agree that such property is becoming more and more difficult to purchase and that the competition among development interests is squeezing out non-profits and public entities. Staff has no information that the City of Elk Grove is doing anything but earnestly attempting to make the funds it has available to legitimate acquisition and administration, maintained and conservation of habitat approved by the Department of Fish and Game for Swainson's Hawk.

Friends of the Swainson's Hawk Position

In a letter dated August 3, 2004, Friends of the Swainson's Hawk request the Commission find the City of Elk Grove **not in compliance** with the LAFCo mitigation measure until the funds are expended. Friends of the Swainson's Hawk have requested that LAFCo **not** issue a Program Compliance Certificate and continue to monitor this issue until the City of Elk Grove is in compliance.

City of Elk Grove Position

The City of Elk Grove has undertaken the obligations imposed by all conditions of land use entitlement approvals that were designated to mitigate environmental impacts that have been transferred to the City of Elk Grove's jurisdiction. The City continues to work with your Commission and the environmental community in an effort to expend the funds collected for Swainson's Hawk mitigation for their intended purpose. The Commission has received oral testimony from the Nature Conservancy confirming that existing market conditions make it difficult to acquire appropriately designated land for Swainson's Hawk habitat.

Commission Options

Your Commission has several options regarding this mitigation measure:

1. Take no action beyond monitoring this matter until the City of Elk Grove expends the funds to mitigate for the loss of Swainson's Hawk habitat. At that time, your Commission could certify completion of this mitigation measure.
2. Based on its collection of fees per its Ordinance to mitigate Swainson's Hawk habitat, determine that the City of Elk Grove has substantially complied with this mitigation measure.
3. Issue a partial Program Completion Certification and continue to monitor Mitigation Measure No. 9 until Swainson's Hawk funds are expended.
4. Direct the City of Elk Grove to meet with appropriate environmental interests to jointly develop an expenditure plan that allows its Swainson's Hawk Habitat Fund to be used for management and operations of existing and future habitat sites, enhancement of habitat sites as well as the purchase of land or easements for Swainson's Hawk habitat.

Analysis

The City of Elk Grove has voluntarily attempted to solve this issue. To date, the City has transferred hundreds of conditions pursuant to the terms of incorporation. Further, the City has been rigorously enforcing these transferred conditions, including the condition of collection of fees for Swainson's Hawk habitat. The City has made several contacts but to date, has not achieved results related to the purchase of land or easements for Swainson's Hawk habitat.

Little or no impact on the City of Elk Grove will occur if your Commission does not issue the Program Certification Completion for the incorporation MMRP.⁵ However, the City does continue to spend valuable staff resources and time to work with your Commission on this issue. The City of Elk Grove does not dispute that it needs to spend the fees for their intended purpose. The City does not appear to be disregarding or ignoring the intended purpose of its ordinance. LAFCo can continue to monitor this issue, as suggested, but that action does little to obtain habitat.

Executive Officer's Recommendation

On the basis of my evaluation of the City's response to the intent of your Commission's conditions on the incorporation of Elk Grove, I recommend your Commission (a) find that based on agreement and new legislation, the City of Elk Grove and Regional Transit have agreed on a transit plan for the City of Elk Grove in lieu of annexation at this time. (b) Approve Option 4, above, which recommends the City of Elk Grove to meet with environmental interests to jointly create an alternative expenditure plan that allows its \$1.8 million in habitat funds to provide for an endowment fund, or trust fund, for the purchase of land or easements, the enhancement of existing habitat sites, and/or the management or operations to develop a quality habitat plan for the Swainson's Hawk.

Respectfully submitted,

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

Peter Brundage
Executive Officer

PB:Maf
Attachments

cc: Anthony Manzanetti, City of Elk Grove
Friends of the Swainson's Hawk
The Nature Conservancy

(EG Mitigation Measures)

⁵ The Commission will evaluate future applications for Sphere of Influence Amendments or proposed Annexations and determine whether or not the City has satisfactorily resolved the Swainson's Hawk habitat issue as well as other service delivery issues.

