

LAFCO

Santa Barbara Local Agency Formation Commission

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October 14 2010 (Agenda)

Local Agency Formation Commission

105 East Anapamu Street

Santa Barbara CA 93101

Proposed City of Goleta Detachment from Goleta West Sanitary District Has the Proposal Lapsed? Is the Application Adequate?

Dear Members of the Commission:

Recommendation

It is recommended the Commission, after reviewing this letter and the enclosed communications, determine the application submitted by the City of Goleta to detach territory from the Goleta West Sanitary District has not lapsed and is an active proposal.

It is further recommended the Commission direct staff to address all pertinent issues raised by interested parties in our staff report on the merits of the proposal by the City of Goleta.

Last, it is recommended, the Commission direct the staff regarding the best date to schedule a public hearing on the merits of this proposed detachment.

Has the Proposal Lapsed?

The August 17, 2010 letter from the Goleta West Sanitary District (GWSD) states the proposal submitted by the City of Goleta had “lapsed.” Upon receiving the letter we researched LAFCO statutes. We can find no statutory direction regarding when a submitted application is considered to be lapsed.

Not only is there no statutory requirement for when an application to LAFCO expires or lapses, the Commission has not adopted a policy regarding when an application lapses, nor has there been a demonstrated need for such a policy in the past.

The legal counsel has researched this issue and his memo is filed concurrently and immediately following this staff report.

More than a year after we advised the initial application from the City of Goleta was incomplete the GWSD concluded the application had lapsed. The August 16, 2010 GWSD letter stating the proposal had lapsed was written almost three weeks after we had issued the Certificate of Filing on July 28.

From February 6, 2009 when we issued a Notice of Receipt of Application Materials to July 28, 2010 when we issued the Certificate of Filing, both the City of Goleta and GWSD were having financial consultants prepare reports and responses to the other agency's reports. These months were not "idle" time when no activities were being underway regarding this application.

The GWSD letter refers to Ventura and Madera LAFCO policies regarding when applications are considered lapsed or withdrawn. On August 31 we surveyed all LAFCOs to determine how this situation is handled elsewhere. The survey results are attached. While some LAFCOs have adopted a written policy governing when a proposal is considered lapsed or abandoned most LAFCOs do not have a formal policy.

If the Commission wishes to adopt a policy on when applications are considered lapsed, as a few LAFCOs have done, we suggest that in fairness such a policy should be adopted prospectively to apply to future applications and not retroactively to apply to applications that are already accepted and are being processed.

If directed the staff would be pleased to would return at a future meeting with a proposed policy, though we must note this situation does not seem to have been a significant problem.

Is the Submitted Application Sufficient?

The August 17, 2010 letter from the GWSD asks the Commission to direct the Executive Officer to rescind the Certificate of Filing issued on July 28, 2010 for the proposed detachment of territory from the District.

The attached Legal Counsel memorandum advises the Commission it is the statutory duty of the Executive Officer to determine whether an application is complete. Government Code Section 56658 applies and is the controlling statute. This section is attached and provides that:

- "The executive officer shall determine within 30 days of receiving an application whether the application is complete and acceptable for filing or whether the application is incomplete."
- "When an application is accepted for filing, the executive officer shall immediately issue a certificate of filing to the applicant."

We believe there is a “threshold” to proceed to a hearing and this application meets the threshold. There may be a different “standard for a decision” by the Commission but only when a proposal is heard can this decision be made. We feel an obligation to present the proposal to the Commission for a hearing and decision.

Government Code Section 56668, which is attached, provides the extensive array of “. . . factors to be considered in the review of a proposal . . .” We kept these factors in mind in determining whether the application is acceptable for filing.

We are confident there is sufficient information in the proposal submitted and augmented by the City of Goleta, its consultants, materials from GWSD and its consultants and data from other sources for the LAFCO staff to prepare a report that complies with requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act.

Although the October 14 hearing is limited to whether to proceed to a hearing and not whether to approve or disapprove the application, we have attached general comments in response to issues raised by the Goleta West Sanitary District.

Conclusions

The application submitted by the City of Goleta has not lapsed.

In this instance the staff correctly issued a certificate of filing. Any alleged insufficiency in materials submitted by the City and augmented by other parties should be addressed when the Commission conducts its hearing on the merits of the proposal.

If the Commission feels important, essential information is still lacking it retains the prerogative to continue the hearing and direct staff and others to provide additional information or it can deny or modify the proposal.

Please contact our office if you have any questions.

Sincerely,

BOB BRAITMAN
Executive Officer

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Legal Counsel Analysis of GWSD Objections

Attachment A – Map of proposed detachment

Attachment B – Survey of LAFCOs re “lapsed” proposals

Attachment C - Staff responses to August 17 letter from GWSD

Attachment D - Government Code Section 56658 (re acceptance of application)

Attachment E - Government Code Section 56668 (listing factors to be considered)

Attachment F - Tim W. Giles, Goleta City Attorney (September 29, 2010)

Attachment G - Alexandra M. Barnhill, GWSD Attorney (August 16, 2020)

Attachment H - Alexandra M. Barnhill GWSD Attorney (August 17, 2020)

cc: City of Goleta
Embarcadero Municipal Improvement District
Goleta Sanitary District
Goleta West Sanitary District