

**SAN BENITO LOCAL AGENCY FORMATION
COMMISSION
MINUTES OF MEETING**

May 12, 2022
Board of Supervisors Chambers - Hollister, CA

CALL TO ORDER

1. Chair Bob Tiffany called the meeting to order at 4:03 p.m. Those present were Executive Officer Bill Nicholson and Commissioners: Bea Gonzales, Richard Bettencourt, Bob Tiffany, Ignacio Velasquez, and Cesar Flores. Also present were Reed Gallogly, LAFCO Counsel, and Jennifer Frechette, Recording Secretary.
2. Commissioner Velasquez led the Pledge of Allegiance.
3. **APPROVE AFFIDAVIT OF POSTING AGENDA**

Commissioner Bettencourt made a motion to accept the Affidavit of Posting, Commissioner Gonzales seconded. (5/0 vote)

*Ayes: Tiffany, Bettencourt, Gonzales, Velasquez, and Flores
Noes: None
Abstain: None
Absent: None*

PUBLIC COMMENT

4. **Public Comment Period:** No comments.

CONSENT AGENDA

5. **Approval of minutes: April 14, 2022**

Commissioner Flores stated he would abstain from voting because he was not present at the last meeting.

Commissioner Velasquez made a motion to approve the minutes of April 14, 2022, Commissioner Bettencourt seconded. (4/0 vote, 1 Abstain)

*Ayes: Tiffany, Bettencourt, Gonzales, and Velasquez
Noes: None
Abstain: Flores*

Absent: None

BUSINESS ITEMS – PUBLIC HEARING ITEMS

6. Approval of the Final 2022-23 LAFCO Budget

Public Hearing was opened at 4:06 p.m.

Executive Officer Bill Nicholson gave a brief overview and background of the final 2022-23 LAFCO Budget. He informed the commission that after LAFCO approves the budget it must be sent to all the cities and special districts as many special districts fund LAFCOs across the State. The prior fiscal year amount for LAFCO operations, minus revenue from applications, paid from the County of San Benito was \$42,342.00, the other half of operating costs was paid by the City of Hollister in the amount of \$40,508.00 and \$1,833.00 from the City of San Juan Bautista.

Mr. Nicholson stated that the County of San Benito pays 50%, City of Hollister pays roughly 48% and the City of San Juan Bautista pays about 2 or 3%. When the budget is approved for \$163,000.00, the actual billing amount last year for Executive Officer services was only about \$44,000.00. The amount spent in the past has not been the amount budgeted. Mr. Nicholson recommended the commission approve the budget.

There was no public comment.

Commissioner Bettencourt asked Mr. Nicholson if an outside attorney was hired if there would be enough money in the budget.

Executive Officer Bill Nicholson affirmed that there is enough money in the budget under the Contingencies Account.

Public Hearing was closed at 4:10 p.m.

Commissioner Bettencourt made a motion to approve the Final 2022-23 LAFCO Budget, Commissioner Flores seconded.

Ayes: Tiffany, Bettencourt, Gonzales, Velasquez, and Flores
Noes: None
Abstain: None
Absent: None

GENERAL BUSINESS – NON-HEARING ITEMS:

- 7. Continued discussion of wastewater/sewer services issues, and potential LAFCO exemptions, with respect to certain projects: Fairview Corners Subdivision, Gavilan Joint Community College District, and Lands of Lee – and LAFCO’s role. Receive brief presentation from staff and counsel regarding need for formal written request for exemption determination along with submission of supporting documentation, and execution of indemnification agreement. Consider retention of outside legal counsel. Provide additional direction to Staff and Counsel as desired.**

LAFCO Counsel, Reed Gallogly, gave background information regarding legal ramifications for the commission. He explained the need for an application for the commission to make a decision and shared information for possible outside counsel and her rates to represent LAFCO.

There was discussion among the commissioners and county counsel of LAFCO’s role and why it was created and why an application is needed in order for LAFCO to make a decision.

Supervisor Tiffany explained that at the next LAFCO meeting in June, the commission would be making a decision whether or not LAFCO has jurisdiction for the Sunnyslope County Water District (CWD) to extend sewer service to these projects.

Public comment was given by Erik Ramakrishnan, attorney representing Dividend Homes and Drew Lander, General Manager of the Sunnyslope CWD. Drew Lander stated his district wants to work cooperatively with LAFCO and discussed the old Memorandum of Understanding (MOU) with his district and the City of Hollister and summarized his written “LAFCO Meeting Presentation” he submitted in writing to the Commission dated May

12, 2022. He also mentioned a possible new alternative relationship with the City where the Sunnyslope CWD would serve as a wastewater collection agency for the collection, conveyance, and billing for sewer service in the area outside the City of Hollister, and they could contract with the City for the treatment and disposal of the wastewater. This arrangement is used with the City of Monterey, Sand City, the Cities of Seaside and Marina which contract with "Monterey One Water" for wastewater treatment and disposal.

Eric Ramakrishnan referenced the MOU as one basis of why the district is exempt from coming to LAFCO to extend sewer services, along with the Joint Exercise of Powers Act which was recognized in an Attorney General's opinion in 2012. He also argued that the Sunnyslope CWD sewer service extensions to anywhere within their district does not constitute a change of organization under Government Code section 56842.10.

There was discussion among the commissioners regarding having an application and indemnification agreement between the parties.

Commissioner Bettencourt stated he does not believe outside counsel should be hired.

Executive Officer Bill Nicholson explained he does not have an application for a public hearing for a specific project. He also explained his role in LAFCO and the need to have an application so he can provide the LAFCO commission information and a report on a specific project.

LAFCO Counsel, Reed Gallogly stated that some sort of document needs to be submitted so that LAFCO can make a decision and provide evidence so that Executive Officer Bill Nicholson can make a report for the commission.

Commissioner Velasquez asked who would be indemnified.

Legal Counsel, Reed Gallogly stated if LAFCO approved a project, that developer signs an indemnification agreement, anybody who files a lawsuit challenging LAFCO action will indemnify LAFCO and the developer would handle that lawsuit.

Commissioner Tiffany expressed that the decision to see if LAFCO has jurisdiction should be made first, then they can worry about an indemnification agreement.

Executive Officer Bill Nicholson explained and wanted to make sure the public understood that the question before the LAFCO commission, to be decided in June, is whether LAFCO has jurisdiction, not to find an exemption.

Chair Tiffany stated he was in favor of hiring outside counsel. He requested Counsel to identify what direction is needed from the Commission today.

Reed Gallogly clarified that the questions raised involve having the applicants for sewer service from Sunnyslope CWD provide evidence through an application that they qualify for an exemption from LAFCO, applicant indemnification for the Commission for any action taken by the Commission, and whether to retain outside counsel to advise the Commission on the authority to require review of sewer extensions from the Sunnyslope CWD.

Chair Tiffany questioned whether the Sunnyslope CWD or the individual developers would be indemnifying LAFCO, and what specific vote is needed from the Commission this evening. Reed Gallogly clarified that only one vote is requested of the Commission concerning whether to retain outside counsel to advise the Commission. LAFCO Staff and Counsel will the indemnification agreement and application submittal.

Chair Tiffany requested input from the Commissioners on the desire to retain outside counsel.

Commissioner Bettencourt stated he does not believe outside counsel should be hired.

Commissioner Velasquez stated that he was in favor of hiring outside counsel.

Commissioner Gonzales stated she was not in favor of hiring outside counsel.

Commissioner Flores stated he was not in favor of hiring outside counsel.

Chair Tiffany clarified that since there was not a majority in favor of retaining outside counsel the commission should be looking to both Executive Officer Bill Nicholson and Legal Counsel, Reed Gallogly as the experts on this matter.

8. Presentation by the City of Hollister: “General Plan 2040” Update and Status Report.

Executive Officer Bill Nicholson stated the staff person that was going to present this was not able to make it to the meeting so it would be postponed to the next meeting in June.

INFORMATIONAL:

9. Commissioner Announcements and Requests for Future Agenda Items

No commissioner announcements.

10. Executive Officer oral status report on pending proposals, correspondence, and other LAFCO business items.

Executive Officer Bill Nicholson stated he had some correspondence from Mr. Robert Gilcrest Hounamen that he wanted distributed to the commissioners regarding an application he says LAFCO has regarding an annexation into Sunnyslope Water District. Mr. Nicholson stated that LAFCO does not have an application that Mr. Hounamen is referring to and explained what he understands about the concern.

Public Comment: Drew Lander

ADJOURNMENT

11. Upon a motion by Commissioner Velasquez, and seconded by Commissioner Gonzales, and carried 5 – 0, the meeting was adjourned at 5:26 p.m.

Final Minutes Approved by the Commission
on August 11, 2022

By: _____

Bob Tiffany, Chairman