



of Merced County California

Local Agency Formation Commission

2222 M Street

Merced, CA 95340

Phone (209) 385-7654 Fax (209) 726-1710

**MINUTES OF REGULAR MEETING
OF THE
LOCAL AGENCY FORMATION COMMISSION
MERCED COUNTY, CALIFORNIA**

SEPTEMBER 27, 2001

Chairman O'Banion called the meeting to order at 2:00 p.m. in the Board Chambers on the third floor of the Merced County Administration Building.

I. ROLL CALL

Commissioners Present: Commissioner O'Banion, Chairman
Commissioner Cortez Keene
Commissioner Trevino
Commissioner Maiorino
Commissioner Bertao

Staff Present: Bill Nicholson, Acting Executive Officer
Patricia Lippmeier, LAFCO Staff
Mary Schmid, Recording Secretary

Counsel Present: Fernanda Saude, Deputy County Counsel (absent)

II. APPROVAL OF MINUTES

MOTION: M/S BERTAO – MAIORINO, UNANIMOUSLY CARRIED, THE COMMISSION APPROVES THE MINUTES OF THE REGULAR MEETINGS OF MAY 24, 2001 AND JUNE 28, 2001.

III. CITIZEN COMMUNICATION

NONE

IV. PUBLIC HEARINGS

NONE

V. GENERAL BUSINESS

A. Update on Policy and Procedure Committee

1. Definition of Prime Farmland

Mr. Nicholson explained there are items that need to be addressed prior to December regarding the packet that was mailed for this meeting. He said that there has been a Policy and Procedure Committee established which involves all the cities. Commissioner Bertao is a member, as well as Commissioner Maiorino and

Commissioner O'Banion (who trade off), so LAFCO is represented. We also have independent special districts represented. The new law that went into effect beginning January 1st, gives you a whole year to work on your local policy interpretation. One of them is critical to the definition of prime farmland, which did get modified. He explained the memo has bold type for the proposed language that has come out of the Policy and Procedure Committee. He said it's not a big change in the definition, but they wanted to be consistent with the law and apply it to applications that come before the Commission and not wait until December. He went on to explain the changes recommended and gave an explanation of what was done in the past.

Commissioner Cortez Keene asked if someone wanted to develop some houses and the criteria for prime agricultural land had only one of these qualifiers, would they still have to redirect the efforts of that developer, because it meets only one or does it have to meet all four.

Mr. Nicholson said it could just meet one. Automatically if it meets one of the five under the new law, we'd have to say that is prime. Now, what we want to do about that is another matter.

Commissioner Cortez Keene asked what time would the mitigation begin to occur.

Mr. Nicholson said they are still working on that through CAPS (Countywide Agricultural Preservation Strategy Committee). There was discussion on mitigation of prime farmland. They are looking to see what the cities are going to do. The CAPS is going to write a letter to all the city councils or mayors, and asking for presentations with the City Planning Commissions regarding prime farmland.

Commissioner Cortez Keene asked if this is very different from what we currently have?
Mr. Nicholson said it's not much different than we have for LAFCO.

Chairman O'Banion said that definition is kind of difficult too, especially in some of the districts that are in bureau water for the fact that they may get a 25% allocation. Therefore, that means, if they're going to grow a crop, you'd have to put three acres out of production for a one acre of crop. That situation if it's not addressed could be difficult. If you have your own water source, it's a different story. But some of the irrigation districts on the west side who have that allocation and they only appropriate so much per acre, then you certainly can't grow a crop on two acre.

Commissioner Bertao said that is not permanent though, because you could have a wet year and all kinds of water. Chairman O'Banion said the history shows that even in a wet year, they only receive 75% at the maximum over the last ten years.

Chairman O'Banion asked if the bold type is stipulated LAFCO law incorporation into our policies. He asked if this is the minimum that is recommended to put into the definition of prime farmland. Mr. Nicholson said yes, and the implementation statement is our own, we added that. He said the law didn't have that, but again, that is for our own local flexibility. He said Policy 2 is using this, and this is existing policy that at the review of sphere of influence for a city or urban service district we want to review that the jurisdiction or the agency has tried to direct growth away from prime farmland. He said is the whole intent of the Cortese-Knox-Hertzberg Act is trying to preserve prime farmland.

Nancy Slater, Merced County Farm Bureau said she has been serving on the CAPS committee and they did discuss this extensively. One of the reasons is it makes it

equitable throughout the county, if we can get this accepted everywhere. She said she doesn't like the word "prime" and wished it didn't have to be in there but knows it's part of the official language for LAFCO. But the definitions as they went through them all along with many other farming people in the room who said they felt that was applicable, not necessarily calling it "prime" but saying this is productive agricultural land. If everybody had the same definition, it would make it easier across the board for any agency or government that is going to have to make a decision about it. She said when they get down to the mitigation, it will be a whole other thing, but if they have something consistent and start talking about mitigation, she thinks it will simplify it for us as well.

Commissioner Maiorino asked if there was any discussion on the mitigation area staying within the county boundaries. Mr. Nicholson replied, yes, there has been in the past. Commissioner Maiorino said it's not so much the land that's going to kill agricultural as the water that the cities use that is going to take away from agriculture as we have short supplies. He asked if that is being addressed. Mr. Nicholson said there are several different fronts on that. He said one of them is the change in the Cortese-Knox-Hertzberg Act which will come back to the Commission as a policy consideration on water supply. They have elevated water supply to insuring there is adequate water supply for annexation for urban projects. The Commission is now responsible to make sure that the jurisdiction, whether it's an urban special district or city, has an adequate water supply for development.

Chairman O'Banion said Congressman Costa had a bill requiring water that was approved and is currently working on another one. He said that in the past it used to be that if you could get a Can and Serve letter from the entity to provide the domestic water, you could go forward. He said that he thinks they are putting more stringent regulations on that and in the process also show that Can and Will Serve letter, how the water is going to be there.

Commissioner Cortez Keene asked whose responsibility it is to show that or who the burden it is on. Mr. Nicholson responded it is the agency providing the water who is responsible.

Kus Porter, said the "prime" is an ambiguous term, because you use it in beef, real estate and prime farmland. Everyone has their own opinion of what "prime" is. He feels the words "productive" or "highly – productive" farmland would be better. Because when you use either of them you can bring in to the definition the idea of management, because you can take a lower productive farmland and with proper management, it's amazing what you can do with it. The highest and biggest concern that he has is the availability and continuous availability of sufficient high quality irrigation water for the land. Especially when you mitigate, because without the water and a sufficient amount, forget it. You're paying a lot of money for mitigation and you're not accomplishing anything. He said having everyone use the same mitigation and definitions for "prime" farmland would be a lot more simple. He said he would not recommend going outside the county for mitigation. He said that the Commission would probably want to keep it as close to the area you are mitigating far as possible and this is a good opportunity in your mitigation, and if there are areas you want to keep in farmland then your mitigated land could form a barrier between urban, industrial or commercial area and the farmlands.

Chairman O'Banion said that he thinks it could be beneficial to establish the definition of prime agricultural land. Another reason is because he has been in so many hearings where there are different arguments on what the definition is. Is it land of statewide importance or is it land of lesser importance or of local importance and so on,

and what he interprets is that once this is established those definitions and discussions are out. As far as the mitigation of land use impacts, these are issues of local entities, cities and county. Mr. Nicholson said it used to be, but for endangered species the federal government now dictates mitigation. As far as LAFCO, he expects the County or the Cities to come in with agricultural mitigation. If CAPS can come up with an overall countywide mitigation, fine, as long as local jurisdictions who have land use issues can jointly agree on those. He said the Policy and procedures Committee felt the CAPS Committee is going to be responsible as far as coming in with mitigation for LAFCO to either accept or not.

Commissioner Cortez Keene asked if the term “prime” is a state or local recommended definition. Chairman O’Banion said that the bold type is the require law through the Cortese-Knox-Hertzberg Act. Mr. Nicholson said that it references that this is now state law. So we really have to use this.

Commissioner Maiorino asked if for the income levels is it taken into consideration the type of crop and government payment. Chairman O’Banion said it is the total income from that acre. Mr. Nicholson said it’s the annual gross value.

Mr. Nicholson said he thinks that on a project coming to LAFCO the City, County or District will have a negative declaration or an EIR done to address agricultural impacts. He said any entity proposing would have dealt with it before it gets to the Commission. As staff, we have to review those documents and comment on them from draft form. Commissioner Maiorino asked if we are going to try to manage growth or stop it. He asked what they are trying to accomplish. He asked if we are trying to manage growth in other areas. Mr. Nicholson said the Act is trying to use LAFCO as a regional entity as they were trying to make this apply to General Plans throughout the state, but they couldn’t do it. He said they would look at natural resources more extensively during the review of projects. Agricultural resources are important as well as habitat and wetlands. He said the way the Act has been written, it asks for LAFCO to take a more active role to manage growth, to use your powers to try to encourage development to conserve valuable open space and farmland. Chairman O’Banion said it’s not so much to control growth, as it is to preserve the agricultural land and the resources. He said that in the past when a city wanted to annex land that was farmland, it might have been a more economical benefit to annex the land than taking away the agricultural land. That could be the reason why they justified going forward. He thinks that now, with this type of definition they’re going to have to say, yes, this is prime farmland, and this is what is expected to do to offset taking away that agricultural land. In the past they would just say, there are overriding considerations of the economic benefit to the public and that was okay, because it was part of the requirements for CEQA. Now, it’s recognized as prime farmland, so what are you going to do about it. He feels that the local jurisdiction will have the final say on what will happen.

Commissioner Trevino asked if there is a minimum size for the prime farmland. Mr. Nicholson said that under this definition, there is not. One of the issues they are discussing in the CAPS meetings in terms of mitigation is the minimum size of a parcel. Commissioner Trevino said that based on this definition, it would be one acre to quality. Mr. Nicholson said if it is what you do about it then. It may be better to look at a more economic sized parcel.

Commissioner Cortez Keene said that what this does is bring it together, because now the Commission is the authority. She asked if the mitigation land has to remain within the local area at the county. Mr. Nicholson said that he’s suggesting that it should. Jerry said the boundary lines are within the jurisdiction of the county.

Commissioner Bertao said they talked about this several times in the Policy and Procedure Committee meetings. Then the people from the cities said let’s go to the

CAPS Committee, because there are many people there who have opinions before we proceeded to do anything or set anything firm. That's what's happening. The City representatives want everything on a level playing field. They want the same rules. They said if it got to the point that an area couldn't be mitigated but, it was a desirable area and nowhere else to go, then it would probably be allowed, because there is no alternative. Mr. Nicholson said that is correct. He said it goes back to the statement of overriding considerations that you can make through an Environmental Impact Report.

Chairman O'Banion reminded the Commission the requested action today is to approve the definition on an interim basis until the comprehensive overall LAFCO policies have been established. He said to also acknowledge the implementation statement that is on the objective as well as Policy No. 2.

M/S CORTEZ KEENE – MAIORINO, AND CARRIED UNANIMOUSLY TO APPROVE THE PROPOSED MODIFICATIONS TO THE LAFCO PRIME AGRICULTURAL LAND POLICY AS PRESENTED ON PAGE TWO OF THE STAFF REPORT.

2. Procedure on Protest Hearings

Mr. Nicholson requested the Commission's direction on proceedings for the Conducting Authority for resolutions, as we are now the Conducting Authority and so all proceedings take place here. There is a little more work for the Commission, but it will speed things up. One way it will speed things up is if you have proposals for annexation and everybody that is within the annexation boundary is in support of it and you have a petition, you can waive the protest proceedings and any further hearing on that application. He said we also have some notification requirements that before LAFCO takes action, we let neighboring property owners know and any affected agencies. The only people who can protest and request a protest hearing are the property owners within the boundary. He said he would like the Commission's direction to the maximum extent possible that if we have 100% consent from the land owners that we will always go through the process that we hold the one hearing and avoid the protest. He said the staff report will be written up that way, and so when you take action, it will give that order, but before the meeting, we'll have to do some other notification provisions and we'll automatically do that as staff. He said that the direction he would like the Commission to take is that you want to waive protest proceedings to the maximum extent possible.

Commissioner Cortez Keene said that she doesn't like to be in a position that we are moving so fast that people are interested don't have the opportunity to voice their opinions.

Commissioner Maiorino asked for clarification regarding the sphere of influence if it is outside 300' and neighboring property owners. Mr. Nicholson replied the notification is everybody within 300' of that proposal.

Mr. Nicholson said in response to Commissioner Cortez Keene for clarification that we will always have a public hearing at the Commission and they have actually expanded the public awareness and public involvement. Public noticing on regular items is 10 days, however this new Act is 21 days for LAFCO.

Commissioner Maiorino, said it seems like if it is small project like building a house, 300' is adequate for noticing, but if it is an annexation of the city then you would think that we would give at least a ½ mile radius of the proposed annexation. He asked if there was consideration of a larger area for an annexation. Mr. Nicholson said that the law doesn't go beyond that, but at times we have done that and with the Commission's direction we can implement that.

Commissioner Bertao asked if there is a requirement in the law that even though people outside the proposed annexation area are going to get notified and they are in an unfavorable position to what is going to get annexed, but still everyone inside the area is in favor of it. Thus the outside people's protest can be heard but it really has no value in a protest vote, except that our body listens to what they have to say. He asked are our hands tied to the point that we have to approve it. Mr. Nicholson he said no, that on the public hearing stage on the application, you can listen to any input. What this would do is, when you have a protest, and when you have a protest hearing, the only people who are allowed to protest are the landowners or registered voters within that boundary. If a neighbor comes in at that point, they can't protest, they don't have a vote.

Commissioner Cortez Keene asked if there is a situation where a property owner has the majority of land and there are twenty property owners who own smaller parcels. Does his voice count more than the twenty residents. Mr. Nicholson said it varies. That is one of the findings you will always see in an Executive Officers Report is if it is inhabited or not. He said inhabited under the Cortese-Knox-Hertzberg Act is 12 registered voters. It's majority rule by registered voters. If you don't have 12 registered voters, then you go by ownership, which then is voted on by assessed value of property owners.

Mr. Nicholson explained the second item on this issue related to protest hearings is rather than take up the Commission's time to hold the hearing the Act allows the Commission to have the Executive Officer to hold the protest hearings

M/S CORTEZ KEENE – BERTAO, AND APPROVED UNANIMOUSLY TO RECOMMEND THE COMPLETION OF PROCEEDINGS AND TO CONDUCT THE PROTEST HEARINGS AS STATED IN THE EXECUTIVE OFFICER'S REPORT DATED SEPTEMBER 27, 2001.

3. Urban Sphere of Influence Policies

Mr. Nicholson said gave the Commission an update on what the Policy and Procedure Committee has been working on. He explained that this is for their information and there is no need for action at this time. He also gave an explanation regarding the relation of spheres for urban special districts versus the cities. A twenty-year time horizon has typically been the timeline for spheres of influence.

Chairman O'Banion asked if LAFCO is responsible for updating the Sphere of Influence every 5 years with these new policies. Mr. Nicholson said yes. Chairman O'Banion asked what the status for trying to line up updating the sphere of influence. Mr. Nicholson said we are not doing that at this time, as we are focusing on the policies and procedures. He said that we after this is done, we intent to come back with a program of what we will have to do, which will be early next year.

Commissioner Maiorino asked if the City and/or County is responsible for updating the General Plan every five years.

Mr. Nicholson said no, and LAFCO doesn't have the authority to approve or deny their General Plans. He said we only comment on them.

B. Annual CALAFCO Conference in Yosemite

Only LAFCO Staff will be attending this conference at the end of October.

C. Other Business

Mr. Nicholson said there is an additional item. He said there is another change in the law which is a procedural change. He said they are trying to have LAFCO more involved in land use management. One of the options is that the Commission may review and give approval for an entity that provides services outside their city and/or district limits. Under this law we can comment and might approve this. One of the issues is the UC project where the City of Merced supplies sewer and water to the campus. If you can't approve it, then it would not be worth commenting on it. He asked the Commission members if they would like to have staff investigate this policy.

Commissioner Cortez Keene asked what could we do other than make comments. Mr. Nicholson explained some of the reasons why it would be good to look at these types of applications such as special districts extending services into the County without going through LAFCO for annexation. Commissioner Maiorino said he doesn't know if it's worth doing. Chairman O'Banion said he is not convinced that it is a good idea for LAFCO to do since the City of Dos Palos has been providing services to areas of Fresno County for many years. Commissioner Cortez Keene asked to what extent would they look at it and what their role will be.

Mr. Nicholson said the provisions of services that LAFCO would be involved would include new special district, City of Merced annexed land, new city, etc. Chairman O'Banion said it should to be on the next meeting agenda.

Mr. Nicholson said that this issue and the fees would be on the next regular meeting agenda. Commissioner Bertao asked if there was a financial report. Mr. Nicholson said not at this time, it would also be on the next meeting agenda.

Chairman O'Banion asked about the election of officers. Mr. Nicholson said that will also be on the next meeting agenda.

VI. ADJOURNMENT

There being no further business, Chairman O'Banion adjourned the meeting at 3:16p.m.