

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
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May 5, 2004

TO: Sacramento Local Agency Formation Commission

FROM: Peter Brundage, Executive Officer

RE: **Elk Grove Incorporation Mitigation Measures**
LAFC Resolution No. 1208

RECOMMENDATION

1. Direct staff to report back on the Sacramento Regional Transit District Annexation Mitigation Measure after a legal opinion is rendered.
2. Certify that the City of Elk Grove has satisfied the Joint Road Maintenance Mitigation Measure.
3. Continue to monitor the transfer of Mitigation Monitoring and Reporting Program conditions related to land use entitlements to the City of Elk Grove for six months, or sooner if land and/or easements are purchased for Swainson's Hawk foraging habitat.

DISCUSSION

The City of Elk Grove must satisfy three outstanding incorporation mitigation measures before your Commission can issue a Mitigation Monitoring Program Completion Certificate. The following mitigation measures based on previous Commission action are still pending:

1. 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 sections 102062.5 and 102055 of the District's enabling legislation (Part 14 of Division 10 of the California Public Utilities Code).

2. Ensure that the City of Elk Grove and the County of Sacramento enter into joint maintenance agreements for roads which have common boundaries.
3. 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.

1. Annexation to Sacramento Regional Transit District

Status: **Open.**

Recommendation: Continue until a legal opinion is rendered.

On October 16, 2001, the City of Elk Grove and Sacramento Regional Transit District entered into an Interim Agreement for bus service. This agreement expires on June 30, 2004. On March 8, 2004, the City of Elk Grove and Sacramento Regional Transit District amended the Interim Agreement and also extended it for an additional six-month period, through January 1, 2005.

The agreement contains the following provisions:

- The parties agree to a six-month extension of the current level of services to be provided by Sacramento Regional Transit District.
- Elk Grove will receive \$250,000 for administrative expense, \$40,000 in FY 2004 and \$210,000 in FY 2005.
- Sacramento Regional Transit District consents to City of Elk Grove Transit Services provided:
 1. City agrees to maintain representation on the Regional Transit Board as provided in an amendment to Regional Transit's enabling legislation provided that the amendment does not change the rights of the City under this agreement. City's first appointment will be made within 90 days after the effective date of the amendment to Regional Transit's enabling act authorizing the appointment.
 2. City agrees to reimburse Regional Transit, based upon a methodology to be approved by Regional Transit, all of Regional Transit's member agencies, and the Cities of Folsom, Citrus Heights, and Elk Grove, for Regional Transit's cost beginning January 2, 2005, to provide regional transit services within Regional Transit's activated boundaries. [Note: Regional Transit's activated boundaries currently include most of Sacramento County's urban area but could expand or contract over time.]

- City recognizes Regional Transit as the party responsible for the planning, development, design, and implementation of all transit services within Regional Transit's activated boundaries except for bus service provided by City within City's boundaries.
- Regional Transit recognizes City as the party responsible for planning, development, design and implementation of all bus services operated within City's boundaries.

Memorandum of Understanding [MOU]

- City of Elk Grove agrees to consider a proposal from Regional Transit to be a contract provider for its bus service.
- Transfers between services will continue to be offered to customers in accordance with a transfer agreement to be in place by January 2, 2005.
- Each party may operate in the other party's jurisdiction upon obtaining the other party's consent.

Analysis

As discussed above, both parties have reached an interim agreement that differs from the LAFCo mitigation measure. It appears that the City of Elk Grove and Sacramento Regional Transit District are in the process of developing a new service delivery model. However, not all of the specific terms and issues have been resolved at this time.

The Commission encourages the development of a long term agreement that clearly defines the roles and responsibilities of both parties to ensure the provision of efficient and cost-effective local and regional public transit. Nonetheless, based on a request from Sacramento Regional Transit District, your Commission has directed staff to obtain a legal opinion regarding whether or not the original mitigation measure is enforceable. The Sacramento Local Agency Formation Commission is negotiating with the firm of McDonough, Holland and Allen to render a legal opinion on this issue.

2. Joint Road Maintenance Agreement with the County of Sacramento

Status: **Complete**

On March 2, 2004, the City of Elk Grove and County of Sacramento entered into a Joint Agreement to maintain transportation facilities. This agreement was adopted by the City Council and County Board of Supervisors. There are no outstanding issues that need to be addressed.

3. **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**

- Status: A. Transfer of development projects, land use entitlements and Mitigation Monitoring and Reporting Program from County to City **Complete.**
- B. Compliance with specific development mitigation measures transferred: **Partially Complete.**

Recommendation: Continue to monitor and report back in six months or sooner if Swainson's Hawk foraging habitat land or easements have been purchased.

The City of Elk Grove contends that they have fully complied with this mitigation measure. The County has transferred the appropriate documents related to development projects that contained mitigation monitoring and reporting programs. See attached letter from Anthony B. Manzanetti, City Attorney, City of Elk Grove.

On the other hand, Commission Counsel indicates that the Commission has the ability to also determine that the City of Elk Grove is in compliance with Mitigation Monitoring and Reporting Programs that have been transferred. The next section evaluates the Commission's role in this process.

Commission Counsel's Response

Commission Counsel rendered the attached legal opinion dated April 27, 2004, opining that the Commission has the authority to monitor the City of Elk Grove's implementation of Mitigation Measure No. 9 in LAFCo Resolution 1208 for so long as is reasonably necessary to ensure the City purchases Swainson's Hawk habitat. Counsel Miller's opinion also applies to other mitigation measures that have been previously approved and not completed.

Swainson's Hawk Mitigation Measure Staff Analysis and Recommendation

Based on public testimony, it appears that the only significant outstanding mitigation measure relates to the acquisition of habitat for the Swainson Hawk. Therefore, I will focus my comments on the Hawk habitat issue.

The City of Elk Grove continues to impose a Swainson's Hawk Mitigation fee on development projects. The City has increased the fee from \$750 per acre to \$3,925 plus \$375 for operations and maintenance and \$382 in administration fees. The City has collected \$1.8 million; no funds collected have been expended to date. The State Department of Fish and Game has prepared a map that indicates acceptable areas that can be used to mitigate for the loss of Swainson's Hawk foraging habitat. The City of Elk Grove intends to use this map in its efforts to expedite the purchase of appropriate land and or easements for Hawk habitat.

The City Council has directed staff to develop a defined work project schedule that identifies willing sellers, whereby the City of Elk Grove can negotiate the purchase of land and/or easements for Swainson's Hawk foraging habitat. The City has sent out requests and has received several positive responses from landowners. However, to date, the City has not purchased any land in fee or easements for the Swainson's Hawk. Therefore, it is necessary to continue to monitor this mitigation measure until funds have been expended for the purchase for habitat for the Swainson's Hawk.

Summary

The City of Elk Grove continues to work on the remaining two incorporation mitigation measures:

1. Annexation to Sacramento Regional Transit District.
2. All conditions of land use entitlement approval that are designated to mitigate environmental impacts be transferred to the new city's jurisdiction.

The City of Elk Grove believes it has substantially complied. Nonetheless, to date, these items have been implemented in modified forms. Consequently, the Commission may choose to continue to monitor these two remaining issues until such time the Commission believes the City of Elk Grove has substantially complied.

PB:Maf
Attachment
(Mitigation)