

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF APRIL 27, 2011

REGULAR MEETING

TO: Ron Briggs, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

PREPARED BY: Erica Sanchez, Policy Analyst

AGENDA ITEM #5: Meeks Bay Fire Protection District Reorganization

LAFCO Project No. 2010-04

PROPONENTS: Meeks Bay Fire Protection District

DESCRIPTION OF PROJECT

The original proposal by the Meeks Bay Fire Protection District (MEK) was a district-wide reorganization of territory to annex 38 parcels (1,418 acres), some of which contain existing structures that MEK already serves, and to detach 14 undeveloped State and Federal parcels (1,290 acres) which are primarily the responsibility of the United States Forest Service (USFS) and/or CAL FIRE for wildland fire suppression.

However, MEK has subsequently asked the Commission to utilize its discretionary power to amend proposals to change the scope of this project. The request is to remove the detachment areas from consideration and to annex only the properties which contain existing structures. As requested, the amended proposal includes annexation of 29 parcels (approximately 40.25 acres); including seven privately-owned parcels and 22 USFS-owned parcels with private leases. Maps of the original reorganization proposal and the requested amended annexation proposal are included as Attachments A and B, respectively, at the end of this report. As amended, the following parcels are proposed for annexation into MEK:

APN	Situs Address	Landowner	Acreage
016-600-07	9040 Highview Drive	Trette Family Revocable Trust	9.74
016-600-08	9019 Crest Road	T. Madrigal Revocable Trust	7.86
016-600-10	9096 Woodland Drive	James K.A. Guthrie	2.14
016-600-13	9178 Scenic Drive	Elliott Revocable Trust	2.4
016-600-19	9170 Highway 89 / 9200 Scenic Drive	G. and J. Stein Revocable Trust	2.55

016-600-20	9204 Scenic Drive	J. Hayes Revocable Trust	2.2
016-600-21	9220 Highway 89	P. A. Nelson Family Trust	9.7
018-020-03	24 Lower Emerald Bay Tract	U.S. Forest Service	0.139
018-020-04	23 Lower Emerald Bay Tract	U.S. Forest Service	0.151
018-020-05	22 Lower Emerald Bay Tract	U.S. Forest Service	0.193
018-020-06	21 Lower Emerald Bay Tract	U.S. Forest Service	0.154
018-020-07	20 Lower Emerald Bay Tract	U.S. Forest Service	0.132
018-020-08	19 Lower Emerald Bay Tract	U.S. Forest Service	0.204
018-020-09	18 Lower Emerald Bay Tract	U.S. Forest Service	0.124
018-020-10	17 Lower Emerald Bay Tract	U.S. Forest Service	0.163
018-020-11	16 Lower Emerald Bay Tract	U.S. Forest Service	0.172
018-030-01	9 Upper Emerald Bay Tract	U.S. Forest Service	0.132
018-030-02	8 Upper Emerald Bay Tract	U.S. Forest Service	0.101
018-030-03	7 Upper Emerald Bay Tract	U.S. Forest Service	0.116
018-030-04	6 Upper Emerald Bay Tract	U.S. Forest Service	0.11
018-030-06	12 Upper Emerald Bay Tract	U.S. Forest Service	0.217
018-030-07	13 Upper Emerald Bay Tract	U.S. Forest Service	0.163
018-030-08	14 Upper Emerald Bay Tract	U.S. Forest Service	0.203
018-030-09	15 Upper Emerald Bay Tract	U.S. Forest Service	0.176
018-030-10	5 Upper Emerald Bay Tract	U.S. Forest Service	0.215
018-030-11	4 Upper Emerald Bay Tract	U.S. Forest Service	0.209
018-030-12	3 Upper Emerald Bay Tract	U.S. Forest Service	0.214
018-030-13	2 Upper Emerald Bay Tract	U.S. Forest Service	0.186
018-030-14	1 Upper Emerald Bay Tract	U.S. Forest Service	0.19

LOCATION

MEK is located in the northeastern corner of El Dorado County, along the west shore of Lake Tahoe, three miles north of Emerald Bay between the Placer County line and D.L. Bliss State Park. Within the requested modified project, there are two separate areas proposed for annexation: seven privately-owned parcels located in the Rubicon Bay area, accessed by way of Scenic Drive, Crest Drive, Highview Drive and State Highway 89 (Emerald Bay Road); and 22 USFS parcels with private leases located northwest of Emerald Bay, accessed by way of State Highway 89 and Upper Emerald Bay Road.

PURPOSE

MEK's amended request to annex the 29 parcels listed above into its service area will better match the boundaries of the District with its first response area, which currently extends several miles south of the District boundary to Emerald Bay. The annexation would align MEK's functional boundary (first response area) with its legal boundary (service area) and bring areas into the district where MEK currently is the first or only responder available for emergencies. Because MEK is usually the primary responder to these areas, the District provides services without any compensation to offset the expenditure of resources.

Each of the parcels proposed for annexation contain either a year-round residence or vacation cabin that is occupied for at least part of the year, and are not currently within the service boundaries of MEK or any other public agency for structural fire protection. The USFS does have responsibility for wildland fire suppression for the 22 USFS parcels; however, USFS is not typically the first responder for structural fire suppression

efforts or for emergency medical services. In addition, USFS staffing and access to the parcels is limited in the winter months. Due to extreme weather affecting road and travel conditions, MEK is often the only emergency service provider that can reach those parcels during the winter.

RECOMMENDATIONS

Staff recommends that the Commission take the following actions:

1. Recognize that the Meeks Bay Fire Protection District, as the lead agency, has adopted a Negative Declaration and CEQA determinations which have been found to be adequate and complete for the purposes of this reorganization and direct staff to file a Notice of Determination in compliance with CEQA and local ordinances implementing the same; and
2. Utilize the authority granted to LAFCO under Government code §56375(a)1 to amend the petition to include only annexation of the 29 parcels containing existing structures, as requested by the Meeks Bay Fire Protection District (Attachment B); and
3. Adopt LAFCO Resolution L-2011-06 (Attachment H), adding any additional conditions the Commission finds appropriate and approve the Amended Meeks Bay Fire Protection District Annexation of Rubicon Bay Parcels and Emerald Bay Tracts, as requested by the District; and
3. Set the Conducting Authority Proceedings for this petition on May 26, 2011 and direct the Executive Officer to open the protest period and notify the appropriate parties, pursuant to Government Code §57000 and local policies.

REASON FOR RECOMMENDATION

Staff has analyzed the amended proposed annexation with consideration of the 28 factors listed in Government Code §56668 and LAFCO Policies, and concluded that approval of the modified proposal whereby annexing the 29 parcels which contain existing structures into MEK will better align the District's service area with its first response area and allow the District to collect property tax and possibly direct charge revenue from these areas which are already served by MEK.

BACKGROUND

Original Proposal – Reorganization

On February 25, 2009, the MEK Board of Directors adopted resolution 2009-02 petitioning LAFCO to reorganize its boundaries, specifically to detach 1,290 acres of State and Federal land and to annex 1,418 acres of private and Federal land.

The 14 parcels proposed for detachment are undeveloped State and Federally owned lands primarily in the northwestern portion of the District. The 38 parcels proposed for annexation are composed of two separate areas: The first area is parcels located in the Rubicon Bay area and the second area runs south of the current District boundary to Emerald Bay. Of the 38 parcels, 29 are developed with existing residential structures, 25 of which are on land leased from the US Forest Service.

MEK's original intent was to annex only the parcels with structures; however, after several discussions with LAFCO staff, the District agreed to annex the public lands between its southern service area and the Emerald Bay leaseholds in order to connect the annexing territory with the southern border of the District boundary (refer to Attachment A).

Amended Proposal – Annexation of Parcels with Structures Only

After learning that the State Board of Equalization (SBE) fees would cost more than \$10,000, MEK sent a follow-up letter asking the Commission utilize its discretionary power to amend a petition. As requested by MEK, the boundaries of the proposal would be changed to encompass the annexation of only the Rubicon Bay area and Emerald Bay parcels (Attachment B). With this change, the district is looking at SBE fees of \$3,000.

Informational Hearing

In August of 2010, Commissioner Sweeney sent a letter to Chief John Pang regarding concerns of LAFCO jurisdiction over public lands and the potential liability issues of annexing public lands and requested LAFCO hold an Informational Hearing on the project. The Informational Hearing was held on December 1, 2010 to address these concerns as well as additional issues identified by the Commission during their October 27, 2010 meeting. The following issues were addressed within the informational hearing staff report (a copy of which is appended to this memo as Attachment D) and during the hearing. Some of the issues, such as property revenue, are covered again throughout this staff report:

- 1) Whether LAFCO has the authority to approve the annexation of State or Federal (public) lands into local governments;
- 2) Whether any issues of financial liability are introduced into these types of annexations, either in the transfer of responsibility for firefighting from the Forest Service or CAL FIRE to the local fire district or in the acquiring of the costs for fighting a fire;
- 3) Whether LAFCO should develop a policy that specifies how these types of petitions will be treated, specifying an exemption to any policy that discourages the creation of service islands;
- 4) Whether any structures on public lands generate any revenue that could be captured by a local agency to offset the cost of providing service, how that revenue is distributed, and whether local benefit assessments and special taxes could be extended to them;
- 5) How other LAFCOs treat these types of situations and whether they only annex the leased lands, but not the surrounding public land.

CEQA

Meeks Bay Fire Protection District, as the Lead Agency for the project, prepared and adopted a Negative Declaration (ND) for the project on February 24, 2010. The environmental impacts of the annexation were addressed within the scope of this

environmental document. MEK’s ND can be reviewed in its entirety as Attachment G. LAFCO staff analysis of these issues can be found within the corresponding 28 factors to be considered.

SUMMARY OF STATUTORY AND POLICY CONSIDERATIONS

Government Code §56668 and LAFCO Policies require that the review of a proposal shall consider the following factors. Please note that the analysis summarized below applies only to the modified proposal of annexing the Rubicon Bay areas and the Emerald Bay tracts:

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Need for organized services, probable future needs	1 – Consistent	The annexation would align MEK’s functional boundary (first response area) with its legal boundary (service area) and bring areas into the district where MEK currently is the first or only responder available for emergencies.
Ability to serve, level and range of service, time frames, conditions to receive service	2 – Consistent	MEK’s closest fire station is Station 62 at 7164 Seventh Avenue in Tahoma, which is located approximately six driving miles north of the privately-owned parcels near Rubicon Bay and ten driving miles north of the USFS parcels near Emerald Bay. Driving time to the two annexation areas from Station 62 is estimated at 12-20 minutes, respectively. Both response times are consistent with NFPA response standards.
Timely availability of adequate water supply	3 – Consistent	The subject parcels receive water service from either the Tahoe City Public Utility District or via private wells; the proposed reorganization would not have any effect on the provision of water service to the annexing parcels.

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Alternatives to service, other agency boundaries, and local gov't structure	4 – Consistent	Absent the annexation, the subject parcels will remain outside of a local fire agency for structural fire protection. MEK would continue to be the first responder to calls in these areas; however, the District would not have the benefit of recouping costs through property taxes and direct charges.
Significant negative service Impacts	5 – Consistent	Annexation of the requested parcels will not cause a greater demand for service or impact response times because services are already provided by the District.
Coordination of applications	6 – Consistent	Other than the public lands within MEK's boundaries that are the responsibility of the USFS and/or CAL FIRE for fire suppression, there are no additional areas within the District which appear to require reorganization or additional services at this time.
Present cost/adequacy of governmental services, including public facilities	7 – Consistent	MEK has existing nearby facilities (Station 62) and already provides service to the annexation areas. MEK does not appear to have any current service deficiencies that would indicate the annexation may result in any negative cost or service impacts to present residents.

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Effect of proposal on cost & adequacy of service in area and adjacent areas	8 – Consistent	The annexation will have a minor positive financial impact to the District and will help offset some of the financial impacts associated with servicing the area outside its current boundary.
Effect of alternative courses of action on cost & adequacy of service in area and adjacent areas	9 – Consistent	If the annexation is denied, MEK will continue to be the first responder to the subject areas; however, MEK will have no mechanism in place to recoup its cost of service.
Sufficiency of revenues, per capital assessed valuation	10 – Consistent	MEK is expected to receive sufficient revenue for providing service to the parcels proposed for annexation through property taxes and established direct charges.
Revenue producing territory	11 – Consistent	Collected property tax revenue and possibly direct charges will offset the cost of providing fire protection and emergency medical services to the areas, but is not expected to exceed those costs.
56668.3 “best interest”	12 – Consistent	The annexation appears to be in the best interests of the year-round and seasonal residents of the privately-owned and leased parcels and MEK.

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Boundaries: logical, contiguous, not difficult to serve, definite and certain	13 – Inconsistent	The amended annexation proposal would result in the creation of what would be considered two separate irregular boundaries: 1) a minor, single-parcel island surrounded on all sides by MEK's service area and 2) annexation of non-contiguous territory that is separated from the rest of the District by approximately 2-3 miles.
Topography, natural boundaries, drainage basins, land area	14 – Consistent	Although the resulting boundary would contain irregular areas, the annexed areas would not be any more difficult to serve than what is already in place as MEK's functional boundary.
Creation of islands, corridors, irregular boundaries	15 – Inconsistent	As stated in Section 13, the amended annexation will create two separate irregular boundaries for MEK.
Conformance to lines of assessment, ownership	16 – Consistent	The boundaries of the original proposed reorganization and the amended annexation conform to the existing lines of assessment and ownership. Because of MEK's request to amend the proposal, final maps have not been submitted. Based on the Commission's decision, before the proposal maps are submitted by MEK, they will be reviewed by the County Surveyor to ensure that they are definite and certain.

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Spheres of Influence	17 – To be Determined by the Commission	The parcels in MEK's amended proposal are fully within the District's SOI. However, if the Commission were to approve the original reorganization of 2,700 acres, approval will have to be continued for another month to allow for MEK's SOI to be updated to include APN 017-121-01. SOI amendments require a 21-day public notice.
Effect on adjacent areas, communities of interest	18 – Consistent	The amended annexation will primarily benefit MEK, by providing funding for essential services, and the year-round and seasonal residents of the privately-owned and leased parcels who are already benefiting from first response services.
Information or comments from landowners or owners	19 – Consistent	Because the proposal was initiated by MEK resolution and the affected landowners have not provided written consent to LAFCO for the annexation, per §56157(f) all landowners and registered voters within a 300' radius of the project were individually notified of the project and hearing 21 days in advance.
Effect on other community services, schools	20 – Consistent	The reorganization of parcels that receive services from MEK would have no impact on police protection, schools, parks or other public facilities.
Other agency comments, objections	21 – Consistent	No agency comments or objections were received regarding the reorganization.

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Fair share of regional housing needs	22 – N/A	The reorganization proposal does not include any type of new housing or other development; therefore, it will not assist the County in achieving its RHNA goals.
Land use, information relating to existing land use designations	23 – Consistent	The current land use and proposed reorganization is consistent with the current zoning (TR1/TA) and land use designation (AP) of the subject parcels.
Population, density, growth, likelihood of growth in, and in adjacent areas, over 10 years	24 – Consistent	There subject territory has only four registered voters and is considered uninhabited per State Law. Neither the originally proposed reorganization nor the amended annexation proposal would involve the construction or rezoning of land uses on the subject parcels, nor would either trigger a change in the use of the land.
Proximity to other populated areas	25 – Consistent	The 7 privately-owned parcels in the Rubicon Bay area are located at the southern edge of residential development within Rubicon Bay and are bound on the other sides by public land (USFS and D.L. Bliss State Park). The 22 USFS-owned parcels are completely surrounded by a larger open space parcel owned by the U.S. Bureau of Land Management.

FACTOR TO CONSIDER	POLICY / STATUTE CONSISTENCY	COMMENT
Consistency with General Plans, specific plans, zoning	26 – Consistent	The amended annexation area contains both private and public parcels which are consistent with the current zoning and General Plan land use designations (see Section 23 for further details).
Physical and economic integrity of agriculture lands and open space	27 – Consistent	MEK is substantially surrounded by land that is in permanent open space status; however, neither the original proposed reorganization nor the amended annexation will have an effect on timberland or timber production efforts in the area.
Optional factor: regional growth goals and policies	28 – N/A	The reorganization proposal does not include any type of housing or other development; therefore, it will not assist the County in achieving its RHNA goals.

DETERMINATIONS

The Commission should review the factors summarized above and discussed below, then make its own determinations regarding the project. Staff recommends that the Commission utilize its authority under Government Code §§56375(a)1 to amend the proposal to include only the annexation of the Rubicon Bay parcels and the Emerald Bay tracts into the MEK service area and that the Commission make the following determinations based on project research, state law and local policies:

1. The subject territory is “uninhabited” per Government Code §54046. Application for this detachment is made subject to Government Code §56650 et. seq. by District resolution.
2. The territory proposed for annexation in the amended proposal is within the Sphere of Influence of the Meeks Bay Fire Protection District. The 29 parcels proposed for annexation contain existing structures which currently receive fire protection and emergency services from the District.
3. The Negative Declaration prepared for this project by the Meeks Bay Fire Protection District satisfies the requirements of the California Environmental Quality Act.
4. The amended reorganization proposal will not result in negative impacts to the cost

- and adequacy of service otherwise provided in the area, and is in the best interests of the affected area and the total organization of local government agencies.
5. The amended reorganization will not have an adverse effect on agriculture and open space lands.
 6. The amended reorganization will not have an effect on water supply available for the build-out of regional housing needs determined by the Sacramento Area Council of Governments.

DISCUSSION

Government Code §56668 and LAFCO Policies require that the review of an annexation proposal shall consider the following factors:

(Numbered items 1-6 relate to services)

1. ***NEED FOR ORGANIZED COMMUNITY SERVICES, PROBABLE FUTURE NEEDS:*** Applicants shall demonstrate the need and/or future need for governmental services and that the proposal is the best alternative to provide service (Policies 3.1.4(b), 6.1.7; §56668(b)).

RESPONSE: The amended proposal to annex only the 29 parcels with existing structures would align MEK's functional boundary (first response area) with its legal boundary (service area) and bring areas into the district where MEK currently is the first or only responder available for emergencies. Annexation will allow MEK to collect property tax revenue and possibly direct charge revenue from the annexed properties to offset the costs of providing fire protection and emergency medical services to the areas.

2. ***ABILITY TO SERVE, LEVEL AND RANGE OF SERVICE, TIME FRAMES, CONDITIONS TO RECEIVE SERVICE:*** Prior to annexation the applicants and proposed service providers shall demonstrate that the annexing agency will be capable of providing adequate services which are the subject of the application and shall submit a plan for providing services (Policy 3.3, §56668(j)).

RESPONSE: MEK is currently the first (and sometimes only) responder to the annexation areas and will continue to provide fire protection and emergency services to areas, as it has done so historically. MEK's closest fire station is Station 62 at 7164 Seventh Avenue in Tahoma, which is located approximately six driving miles north of the privately-owned parcels near Rubicon Bay and ten driving miles north of the USFS parcels near Emerald Bay. Driving time to the two annexation areas from Station 62 is estimated at 12-19 minutes, respectively. Both response times are consistent with NFPA response standards.

The Emerald Bay tracts are approximately three miles and five minutes from the southernmost point of the current service area; the driving distance from the Tahoma station to the current southern boundary is a little over seven driving miles,

or approximately 14 minutes. The Rubicon Bay parcels are substantially surrounded by the district on three sides.

3. **TIMELY AVAILABILITY OF ADEQUATE WATER SUPPLY:** The Commission shall consider the timely availability of water supplies adequate for projected needs (§56668(k)).

RESPONSE: The subject parcels receive water service from either the Tahoe City Public Utility District or via private wells; the proposed reorganization, whether amended or not, would not have any effect on the provision of water service to the annexing parcels. When responding to calls for service outside the boundary area, MEK utilizes existing facilities such as fire hydrants for water supply, when available.

4. **ALTERNATIVES TO SERVICE, OTHER AGENCY BOUNDARIES, AND LOCAL GOVERNMENT STRUCTURE:** The Commission shall consider alternatives to the proposal, proximity of other agency boundaries and alternative courses of action. Where another agency objects to the proposal, LAFCO will determine the best alternative for service (Policies 3.3.2.2(g), 6.1.3).

RESPONSE: If the Commission denies MEK's amended annexation proposal, the subject parcels will remain outside of a local fire agency for structural fire protection. This would likely result in continuing increased home insurance rates for the privately-owned Rubicon Bay parcels. The leased USFS-owned Emerald Bay parcels would continue to be the responsibility of the USFS for fire suppression; however, the USFS is not typically the first responder for structural fire protection, is not staffed year-round and cannot always access the parcels during the winter months. Therefore, MEK would continue to be the first responder to calls in these areas without the benefit of recouping costs through property taxes and direct charges.

5. **SIGNIFICANT NEGATIVE SERVICE IMPACTS:** Services provided to the territory will not result in a significant negative impact on the cost and adequacy of services otherwise provided (Policy 6.2.4, §56668.3(b)).

RESPONSE: MEK currently provides services to the 29 parcels requested to be annexed but does not receive financial compensation for such service, causing a strain on resources. The annexation of these parcels will not cause a greater demand for service or impact response times because services are already provided by the District.

COORDINATION OF APPLICATIONS: If a project site can be anticipated to require additional changes of organization in order to provide complete services, the proposal shall be processed as a reorganization (Policy 3.1.10). Where related changes of organization are expected on adjacent properties, petitioners are encouraged to combine applications and LAFCO may modify boundaries, including the addition of adjacent parcels to encourage orderly boundaries (Policy 3.1.9).

RESPONSE: The intent of the amended annexation proposal is to match MEK's service boundary with its first response area. The District is aware of additional public lands that are within its boundaries, but are the responsibility of the USFS and/or CAL FIRE for fire suppression; however, State Board of Equalization fees make it cost prohibitive for MEK to pursue detachment at this time (see the Background section above). There are no additional areas within the District which appear to require reorganization or additional services at this time.

(Numbered items 7-12 relate to cost and revenues)

6. **PRESENT COST/ADEQUACY OF GOVERNMENTAL SERVICES, INCLUDING PUBLIC FACILITIES:** The Commission shall consider existing government services and facilities, cost and adequacy of such services and facilities (§56668(b), Policy 3.3). If service capacity and/or infrastructure will be expanded, the applicant will submit cost and financing plans (Policy 3.3.2.2).

RESPONSE: As stated above in Section 2, MEK already responds to calls from both annexation areas from Station 62, which is approximately six driving miles north of the privately-owned parcels near Rubicon Bay and ten driving miles north of the USFS parcels near Emerald Bay. MEK is often the first responder for these areas already, and is sometimes the only fire suppression agency that is able to access the areas in the winter months due to road closures. MEK does not appear to have any current service deficiencies that would indicate the annexation may result in any negative cost or service impacts to present residents.

7. **EFFECT OF PROPOSAL ON COST & ADEQUACY OF SERVICE IN AREA AND ADJACENT AREAS:** The Commission shall consider existing and proposed government services and facilities, the cost and adequacy of such services and facilities and probable effect of the proposal on the area and adjacent areas (§56668(b) and Policy 3.3). LAFCO will discourage projects that shift the cost of service and/or service benefits to others or other service areas (Policy 6.1.8).

RESPONSE: MEK has negotiated and approved the property tax increment agreement with the County for the reorganization territory. In addition to property tax revenue, MEK may possibly collect revenue through direct charges, depending on how the charges were created (see Section 10 below for more information). The annexation will have a minor positive financial impact to the District and will help offset some of the financial impacts associated with servicing the area outside its current boundary.

8. **EFFECT OF ALTERNATIVE COURSES OF ACTION ON COST & ADEQUACY OF SERVICE IN AREA AND ADJACENT AREAS:** The Commission shall consider the cost and adequacy of alternative services and facilities (§56668).

RESPONSE: If either the original reorganization or the proposed amended annexation is denied by LAFCO, MEK will still continue be called to respond to

incidents within the proposed annexation areas since it is the closest available resource for structural fires and the only resource that has year-round access to the areas. In the event that MEK is the first responder to an area outside of District boundaries, MEK does not have defined out-of-district fees to bill the landowner for the cost of service.

9. SUFFICIENCY OF REVENUES, PER CAPITA ASSESSED VALUATION: 56668(j)

RESPONSE: The total taxable assessed value of the amended project area is \$10,753,516. This includes \$8,653,442 for the privately-owned parcels in the Rubicon Bay area and \$2,100,074 for the USFS-owned leased parcels. Though the USFS-owned parcels are inactive and non-taxable, they contain privately-owned structures (cabins) which are active and taxable as possessory interests. A possessory interest is the private right and use of public land for a specified period of time, as opposed to outright ownership of the land. The assessed value of the possessory interest is based on the value of the improvements and a portion of the value in the underlying land that the leaseholder is entitled to use. Tax revenue from the possessory interest is collected and distributed to local agencies the same as regular property taxes.

According to the negotiated property tax revenue sharing agreement between the County and MEK, based on the property tax increment distribution plan shown in Attachment C, MEK will receive 13.0% of the property tax revenue for the annexation area. MEK also has two direct charges, an \$85 benefit assessment (which can be extended up to \$195 per parcel) and a \$45 special tax per parcel. The two tax rate areas affected by the amended annexation proposal are 069-013 (Rubicon Bay parcels) and 075-022 (Emerald Bay Tracts), which are addressed in the first two pages of the adopted redistribution plan (Attachment C).

LAFCO can grant the extension of special taxes and/or special benefit assessments under Government Code §§56886(t) and 57330. In 1999, the Attorney General's Office under previous AG Bill Lockyer published a legal opinion clarifying LAFCO's authority regarding voter and landowner approval requirements for direct charges on annexed areas (Attachment E). In conclusion, the opinion states the following:

If a local agency formation commission conditions approval of a change of organization or reorganization upon a requirement that the subject agency levy or fix and collect a previously established and collected tax, benefit assessment, or property-related fee or charge on parcels being annexed to the agency, the voter and landowner approval requirements of the Constitution relating to taxes, assessments, fees, and charges do not apply.

Typically, El Dorado LAFCO includes the following language as a standard condition of approval for all reorganizations:

The subject territory shall be liable for any authorized or existing taxes, fees, service charges, assessments and any bonded indebtedness of the (annexing agency).

To-date, no case law has questioned the validity of either the two Government Code sections or the AG opinion. Therefore, it is reasonable to assume that MEK's benefit assessment and special tax per parcel could legally be extended to newly annexed parcels without requiring any additional voter approval from the annexed area.

Levying these charges on possessory properties depends on their structure, but that is an administrative matter for MEK and its legal counsel to determine. According to El Dorado County Auditor-Controller staff, the ability to impose direct charges on the possessory interest holders depends on how the charges were created and written. Typically, these charges are added to the property tax bill by the County Auditor-Controller at the request of the District. However, it is a District's responsibility, in consultation with its legal counsel, to ensure that direct charges have the legal authority to be levied on the possessory interests prior to submitting the charges to the County Auditor.

10. **REVENUE PRODUCING TERRITORY:** The proposed annexation shall not represent an attempt to annex only revenue-producing territory (Policy 6.1.1).

RESPONSE: The total assessed value of the subject area will not increase as a result of the annexation into MEK. MEK will collect revenue through property taxes and possibly direct charges (see section 10). Collected revenue will offset the cost of providing fire protection and emergency medical services to the areas, but is not expected to exceed those costs.

11. **"BEST INTEREST":** The Commission shall consider whether the proposed annexation will be for the interest of landowners or present or future inhabitants within the district and within the territory proposed to be annexed to the district (§56668.3).

RESPONSE: The annexation appears to be mostly consistent with LAFCO policies (see the discussion in #13) and is in the best interests of the year-round and seasonal residents of the privately-owned and leased parcels by providing funding for essential services. The annexation will have a minor positive financial impact to the District and will help offset some of the financial impacts associated with servicing the area outside its current boundary.

(Numbered items 13-17 relate to boundaries)

12. **BOUNDARIES: LOGICAL, CONTIGUOUS, NOT DIFFICULT TO SERVE, DEFINITE AND CERTAIN:** The proposed boundary shall be a logical and reasonable expansion and shall not produce areas that are difficult to serve (§56001). Lands to be annexed shall be contiguous (Policy 3.9.3, §56741-cities) and should not create irregular boundaries, islands, peninsulas or flags (Policy 3.9.4). The boundaries of the annexation shall be definite and certain and conform to existing lines of assessment and ownership (Policy 3.9.2, §56668(f)).

RESPONSE: All of the subject parcels proposed for annexation were added to MEK's sphere of influence after the first-round Fire Services Municipal Service Review in June 2007; however, if approved, the amended annexation proposal would result in the creation of what would be considered two separate irregular boundaries: 1) a minor, single-parcel island surrounded on all sides by MEK's service area and 2) annexation of non-contiguous territory that is separated from the rest of the District by approximately 2-3 miles (refer to the amended project map included as Attachment B).

Single-Parcel Island

The 7 privately-owned parcels in the Rubicon Bay area are surrounded by the current MEK service boundaries on three sides. However, because the amended proposal is to annex only parcels which contain existing structures, there is a single, undeveloped USFS-owned parcel under ten acres which would be left outside of MEK's service area, but would be surrounded on all sides by other parcels within the District. The creation of islands is discouraged by LAFCO Policy 3.9.4, which reads as follows:

3.9.4 Islands, peninsulas, flags, "pin point contiguity," "cherry stems," and other irregular boundary lines are inconsistent with the formation of orderly and logical boundaries and may be amended, modified or disapproved by LAFCO (§56744, §56741, §56742).

Annexation of Non-Contiguous Territory

The 22 Emerald Bay tracts owned by USFS are not contiguous with current MEK boundaries; the area is separated from the District's southern service boundary by approximately 2-3 miles. Absent annexation of the public lands that lie between the District and the USFS tracts, which was part of the original reorganization application, the USFS parcels will remain non-contiguous with MEK boundaries if annexed. LAFCO Policy 3.9.3 discourages annexation of non-contiguous lands except in the following instances:

3.9.3 Lands to be annexed which are within an adopted Sphere of Influence shall be physically contiguous to the boundaries of the annexing agency except under one of the following circumstances (§56119):

(a) Existing developed areas where LAFCO determines that interests of public health, safety, and welfare would best be served by the extension of the service, or which represent clear or present health or safety hazards that could be mitigated by the proposal and city or district facilities are present and sufficient for service.

(b) Existing developed areas where city or district facilities are present and sufficient for service, and where the Commission determines that the annexation will not induce growth.

However MEK's principal act, Fire Protection District Law (Section 13800 et seq. of the California Health and Safety Code), allows fire protection districts to annex non-contiguous lands. In addition, LAFCO Law indicates that on the issue of boundaries, LAFCO defers to the principal act. Specifically, Government Code

§56119 reads, in part:

...Except as otherwise provided in this division, in any change of organization or reorganization the principal act shall govern as to any provisions in the principal act pertaining to boundaries, to contiguity or noncontiguity of territory, to the incorporated or unincorporated status of territory, and to the overlapping of territory of a district with the territory of another district or city...

In addition, whenever there is a conflict between local policy and State Law, the courts have ruled that State Law prevails. While the above irregular boundaries are not entirely consistent with LAFCO's adopted Policies and Guidelines, staff believes that the amended proposal to annex only parcels which are within MEK's first response area and contain existing structures is consistent with the intent of both MEK's principal act and with Cortese-Knox-Hertzberg Act. In this case, the amended proposal may be a preferred option, given the revenue recovery reasoning behind annexation.

- 13. TOPOGRAPHY, NATURAL BOUNDARIES, DRAINAGE BASINS, LAND AREA:** Natural boundary lines which may be irregular may be appropriate (Policy 3.9.6). The resulting boundary shall not produce areas that are difficult to serve (Policy 3.9.7).

RESPONSE: Both of the proposed annexation areas already receive fire protection and emergency services from MEK because they are in the District's first response area. Additionally, MEK is the only fire protection provider with access to some of the parcels within the winter months due to road closures. Although the resulting boundary would contain irregular boundaries, the annexed areas would not be any more difficult to serve than what is already in place as MEK's functional boundary.

- 14. CREATION OF IRREGULAR BOUNDARIES:** Islands, peninsulas, "flags", "cherry stems", or pin point contiguity shall be strongly discouraged. The resulting boundary shall not produce areas that are difficult to serve. The Commission shall determine contiguity (Policies 3.9.3, 3.9.4, 3.9.7).

RESPONSE: As stated in Section 13, the amended annexation will create two separate irregular boundaries for MEK (refer to Attachment B). However, for reasons outlined above and throughout this report, LAFCO staff recommends approving the amended proposal as requested by MEK.

- 15. CONFORMANCE TO LINES OF ASSESSMENT, OWNERSHIP:** The Commission shall modify, condition or disapprove boundaries that are not definite and certain or do not conform to lines of assessment or ownership (Policy 3.9.2).

RESPONSE: The boundaries of the original proposed reorganization and the amended annexation conform to the existing lines of assessment and ownership. Because of the potential changes to the original reorganization area based on MEK's requested amendment, staff postponed the receipt of the State Board of

Equalization proposal maps until after Commission action. Based on the Commission's decision, whether to approve the project as originally proposed or whether it will use its statutory discretion to amend the boundaries as MEK requests, the maps submitted by MEK will be reviewed by the County Surveyor to find that they are definite and certain.

16. ***SPHERES OF INFLUENCE:*** Commission determinations shall be consistent with the spheres of influence of affected local agencies (Policy 3.9.1).

RESPONSE: The parcels proposed for annexation in MEK's amended proposal are fully within the District's sphere of influence (SOI). If the Commission approves the amended proposal to annex only the 29 parcels (40 acres) containing existing structures, then there is no need to update MEK's SOI.

However, if the Commission were to deny MEK's request to amend the proposal and instead approve the original reorganization of 2,700 acres, MEK's SOI would need to first be updated to include APN 017-121-01 which was not included in LAFCO's most recent SOI Update for MEK in 2007. If the Commission recalls, the SOI update was completed with assistance from MEK in anticipation of a future reorganization of boundaries. The update removed the public parcels anticipated for detachment from MEK's SOI and added the parcels considered for annexation. However, APN 017-121-01, which is part of MEK's original reorganization proposal, was not added to MEK's SOI because, at the time, it wasn't considered for future annexation (parcel and SOI shown for reference on Attachment B).

Based on MEK's request to amend the proposal due to cost prohibitive SBE fees and from concerns voiced at the informational hearing regarding the annexation of undeveloped public lands, an SOI update was not included in the public for tonight's hearing. Because SOI updates require public notice 21 days in advance, this item would need to be continued to the May 26 LAFCO hearing for the SOI amendment to be properly noticed if the Commission opts to approve the project as originally submitted.

(Numbered items 18-21 relate to potential effect on others and comments)

17. ***EFFECT ON ADJACENT AREAS, COMMUNITIES OF INTEREST:*** The Commission shall consider the effect of the proposal and alternative actions on adjacent areas, mutual social and economic interests and on the local governmental structure of the county (§56668(c)).

RESPONSE: The proposed annexation does not break any Community of Interest. The amended annexation will primarily benefit the Meeks Bay Fire Protection District, by providing funding for essential services, and the year-round and seasonal residents of the privately-owned and leased parcels who are already benefiting from first response services.

18. ***INFORMATION OR COMMENTS FROM THE LANDOWNER OR OWNERS:*** The Commission shall consider any information or comments from the landowner or owners.

RESPONSE: In September 2006, MEK Fire Chief John Pang conducted a poll of the Emerald Bay Tract cabin owners to gauge their level of consent or opposition to annexation into the District. According to a summary memo from Chief Pang to the MEK Board (see Attachment F), all but two cabin owners in the Lower and Upper Tracts were in favor of annexation. The two cabin owners in opposition to the annexation apparently felt that the annexation into MEK was unnecessary because service could be provided through existing nearby water tanks.

In addition, LAFCO staff informed the affected public landowners, including the USFS, California State Department of Parks, Bureau of Land Management and the California Tahoe Conservancy of the reorganization proposal and requested comments on the action; however, none were received.

Because the proposal was initiated by MEK resolution and the affected landowners have not provided written consent to LAFCO for the annexation, per §56157(f) all landowners and registered voters within a 300' radius of the project were individually notified of the project and hearing 21 days in advance.

19. **EFFECT ON OTHER COMMUNITY SERVICES, SCHOOLS:** LAFCO's review of services refers to governmental services whether or not those services are provided by local agencies subject to the Cortese-Knox-Hertzberg Act, and includes public facilities necessary to provide those services.

RESPONSE: There are no negative impacts expected for other public service providers to the proposed reorganization area. The annexation and detachment of parcels that receive services from MEK would have no impact on police protection, schools, parks or other public facilities. The reorganization or amended annexation would not affect current services that are provided by these entities nor would it increase a demand for these public services.

20. **OTHER AGENCY COMMENTS, OBJECTIONS:** All affected and interested agencies are provided application related material and notified of the proposal and proposed property tax redistribution plan. Comments have been requested and shall be considered (Policy 3.1.4 (I), §56668(i)).

For district annexations and city detachments only, the Commission shall also consider any resolution objecting to the action filed by an affected agency (§56668.3(4)). The Commission must give great weight to any resolution objecting to the action which is filed by a city or a district. The Commission's consideration shall be based only on financial or service related concerns expressed in the protest (§56668.3(5b)).

RESPONSE: The following agencies were provided an opportunity to comment on this proposal:

- CAL FIRE Northern Region, Amador – El Dorado Unit
- California State Department of Parks and Recreation
- California Tahoe Conservancy
- El Dorado County Chief Administrative Office

- El Dorado County Department of Agriculture
- El Dorado County Elections Department
- El Dorado County Office of Education
- El Dorado County Planning Department
- El Dorado County Emergency Services Authority
- El Dorado County Representing CSAs 3, 3 Zone 1, 3 Zone 2, 3 Zone 3, 3 Zone 4, 3 West Shore Snow Removal, 5, 10, 10 Zone C and 10 Zone H
- El Dorado County Sheriff's Department
- El Dorado County Surveyor's Office
- El Dorado County Water Agency
- Farm Bureau
- Happy Homestead Cemetery District
- Lake Tahoe Community College District
- Lake Tahoe Unified School District
- Los Rios Community College District
- McKinney Water District
- South Lake Tahoe Recreation Facilities Joint Powers Authority
- Tahoe City Public Utility Water District
- Tahoe Regional Planning Agency
- Tahoe Resource Conservation District
- Tahoe Truckee Unified School District
- Tahoe-Truckee Sanitation Agency
- United States Forest Service, Boundary Management Lands Department
- United States Bureau of Land Management

No agency comments or objections were received.

(Numbered items 22-26 relate to land use, population and planning)

- 21. FAIR SHARE OF REGIONAL HOUSING NEEDS:** The Commission shall review the extent to which the proposal will assist the receiving entity in achieving its fair share of regional housing needs as determined by Sacramento Area Council of Governments (SACOG) (§56668(l)).

RESPONSE: The proposed reorganization does not include any type of new housing or other development; therefore, it will not assist the County in achieving its RHNA goals. This section is not applicable to this detachment application, as it applies to MEK.

- 22. LAND USE, INFORMATION RELATING TO EXISTING LAND USE DESIGNATIONS:** The Commission shall consider any information relating to existing land use designations (§56668(m)).

RESPONSE: All of the territory proposed for annexation is within the Tahoe Adopted Plan; the privately-owned Rubicon Bay parcels are zoned One-Family Residential District (TR1) and the USFS-owned leased parcels near Emerald Bay are zoned Tahoe Agricultural District (TA). The current land use and proposed

reorganization is consistent with the current zoning and land use designation of the subject parcels.

- 23. POPULATION, DENSITY, GROWTH, LIKELIHOOD OF GROWTH IN AND IN ADJACENT AREAS OVER 10 YEARS:** The Commission will consider information related to current population, projected growth and number of registered voters and inhabitants in the proposal area.

RESPONSE: There are currently four registered voters residing within the reorganization area and the amended annexation area, so the subject territory is considered uninhabited per State Law. Neither the originally proposed reorganization nor the amended annexation proposal would involve the construction or rezoning of land uses on the subject parcels, nor would either trigger a change in the use of the land. Growth and development potential is limited largely by Tahoe Regional Planning Agency (TRPA) regulations.

- 24. PROXIMITY TO OTHER POPULATED AREAS:** The Commission shall consider population and the proximity of other populated areas, growth in the area and in adjacent incorporated and unincorporated areas during the next 10 years (Policy 3.1.4 (a)).

RESPONSE: The proposed annexation or reorganization would not physically divide an established community, nor would either have a significant impact on growth in the area. The 7 privately-owned parcels in the Rubicon Bay area are located at the southern edge of residential development within Rubicon Bay and are bound on the other sides by public land (USFS and D.L. Bliss State Park). The 22 USFS-owned parcels are completely surrounded by a larger open space parcel owned by the U.S. Bureau of Land Management.

- 25. CONSISTENCY WITH GENERAL PLANS, SPECIFIC PLANS, ZONING:** The Commission shall consider the general plans of neighboring governmental entities (Policy 3.1.4(g)).

RESPONSE: The amended annexation area contains both private and public parcels which are consistent with the current zoning and General Plan land use designations (see Section 23 for further details). The requested amended annexation is not expected to conflict with applicable land use plans or regulations of entities that may have jurisdiction in the boundary area.

- 26. PHYSICAL AND ECONOMIC INTEGRITY OF AGRICULTURE LANDS AND OPEN SPACE LANDS:** LAFCO decisions will reflect it's legislative responsibility to maximize the retention of prime agricultural land while facilitating the logical and orderly expansion of urban areas (Policy 3.1.4(e), §56016, 56064).

RESPONSE: MEK is substantially surrounded by land that is in permanent open space status; including the Eldorado National Forest (Desolation Wilderness) to the west, and D.L. Bliss State Park and Lake Tahoe to the east and south. The

proposed reorganization or amended annexation will not affect timberland or timber production efforts in the area, nor would either convert any agricultural farmland of importance at the State or local level, conflict with zoning of lands under Williamson Act contracts or involve the conversion of farmland to non-agricultural uses.

- 27. OPTIONAL FACTOR: REGIONAL GROWTH GOALS AND POLICIES:** The Commission may, but is not required to, consider regional growth goals on a regional or sub-regional basis (§56668.5).

RESPONSE: The reorganization, as originally proposed or amended, does not include any type of housing or other development; therefore, it will not assist the County in achieving its RHNA goals.

ATTACHMENTS

- Attachment A: MEK Resolution & Original Map
- Attachment B: Amended Map & MEK Request
- Attachment C: BOS Property Tax Redistribution
- Attachment D: Informational Hearing Staff Report (*attachments available on the LAFCO website within the December 1, 2010 meeting agenda*)
- Attachment E: AG Opinion re: Direct Charges to Annexed Areas
- Attachment F: Chief Pang Memo re: Emerald Bay Tract Annexation Poll
- Attachment G: Negative Declaration, prepared by MEK
- Attachment H: Draft Resolution L-2011-06