

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
1112 I Street, Suite #100
Sacramento, California 95814
(916) 874-6458

November 5, 2003

TO: Sacramento Local Agency Formation Commission

FROM: Peter Brundage, Executive Officer

RE: **City of Elk Grove Compliance with Mitigation and
Monitoring Program Measures Related to the Incorporation**

RECOMMENDATION

1. Order your Executive Officer to issue a Mitigation Monitoring Program Completion Certificate for the mitigation measures related to the incorporation for the City of Elk Grove.

BACKGROUND

LAFCo Resolution 1208, dated June 2, 1999, imposed a Mitigation Monitoring and Reporting Program for the Incorporation of Elk Grove. A Mitigation Monitoring and Reporting Program for the City of Elk Grove was established pursuant to Section 21081.6 of the Public Resources Code.

The purpose of the Mitigation and Monitoring Reporting Program is to assure diligent and good faith compliance with mitigation measures that were recommended in the environmental document and adopted as part of the conditions of incorporation approval in order to avoid or mitigate potentially significant effects on the environment.

COMPLIANCE REQUIREMENT

It shall be the responsibility of the project proponent to provide written notification to LAFCo's Environmental Coordinator, in a timely manner, of the completion of each mitigation measure. LAFCo's Environmental Coordinator will verify, within 10 business days of notification, that the project is in compliance. Any non-compliance will be reported

to the project proponent, and it shall be the project proponent's responsibility to rectify the situation by bringing the project into compliance and re-notifying the Environmental Coordinator. Any indication that the project is proceeding without good faith compliance could result in the imposition of administrative, civil and/or criminal penalties upon the project proponent in accordance with State law.

Upon verification that compliance has been attained for all mitigation measures, the Local Agency Formation Commission will issue a **Mitigation Monitoring Program Completion Certificate** to the project proponent.

MITIGATION MEASURES SET FORTH BY LAFCO¹

1. Modify the proposed boundary to include only those areas southeast of Grant Line Road which have been generally subdivided into 20-acre and smaller lots and to exclude the remaining agricultural and natural preserve areas.
2. 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).
3. Condition the incorporation approval to ensure that the City shall provide street lighting and roadway maintenance by either contract with Sacramento County, contract with a private company, or directly perform the maintenance. At a minimum, street lighting and roadway conditions shall be maintained at existing levels.
4. Condition the incorporation approval to require that existing transportation fee impact programs be continued at levels necessary to adequately fund approved road construction projects.
5. Ensure that the City of Elk Grove and the County of Sacramento enter into joint maintenance agreements for roads which have common boundaries.
6. Condition the incorporation approval to require the new City to contract with the Sacramento County Water Agency (SCWA) in water planning activities for Zone 13 and Zone 40.

¹ Resolution No. LAFC 1208, Resolution of the Sacramento Local Agency Formation Commission Adopting a Mitigation Monitoring and Reporting Program for the Incorporation of Elk Grove, California (5-96), June 2, 1999, page 2 (Summary).

7. Condition the incorporation approval to require the new City to contract with Sacramento County for the continued use of Zones 11A, 12, 13, and the Metropolitan Storm Drain District for drainage planning and maintenance activities. Zones 11A, 12, 13, and the Metropolitan Storm Drainage District shall remain intact upon incorporation.
8. Condition the incorporation approval to require the City to participate and eventually become a co-permittee under the existing County-wide NPDES permit.
9. 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.
10. Condition the incorporation approval on requiring that the new City enter into an agreement with Sacramento County regarding the maintenance and funding of financing plans and programs affecting the incorporation are including, but not limited to, Laguna Community Facilities District, Laguna Area Roadway Development Fee, Elk Grove/West Vineyard Public Facilities Financing Plan, Hampton Village Assessment District, and East Elk Grove Specific Plan Public Facilities Financing Plan. These programs shall substantially [remain] intact in order for build[ing] and planned facilities to be funded.²

DISCUSSION

The City of Elk Grove has responded to staff's request for compliance with LAFCo imposed Mitigation Measures as part of the proposal for the incorporation of Elk Grove. The City's response to staff's request is attached to this report.

LAFCo has contacted the County of Sacramento and Regional Transit, when appropriate, to verify various mitigation measures. The responses are attached to this report. The following discussion summarizes the responses and my analysis of each mitigation measure.

Mitigation Measure No. 1

Modify the proposed boundary to include only those areas southeast of Grant Line Road which have been generally subdivided into 20-acre and smaller lots and to exclude the remaining agricultural and natural preserve areas.

The incorporation boundary was modified to exclude agricultural and open space lands as set forth in this condition prior to the cityhood vote. No further action is required.

² Ibid., pp. 3-4.

Mitigation Measure No. 2

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.

The City of Elk Grove has not annexed to Regional Transit District. However, the City has a contract with Regional Transit and a sub-contract with Paratransit for services to the elderly and disabled. This contract expires June 30, 2004.

A recent study indicates that the City of Elk Grove contributes more funds than it receives in services from Regional Transit District. The City of Elk Grove is attempting to negotiate a more favorable agreement to provide a higher level of service to Elk Grove residents. Note: The City of Elk Grove has the ability to annex to Regional Transit, as described below. Assembly Bill 1717, adopted September 24, 2003, specifically allows newly incorporated cities to annex to R.T.

Regional Transit Response

LAFCo received the attached letter from Regional Transit indicating that the City of Elk Grove has not annexed to the District. Regional Transit continues to encourage the City of Elk Grove to take the necessary actions to annex and activate RT service in accordance with LAFCo's mitigation measure.

In order to annex into RT, the City of Elk Grove must make a request to RT, obtain the Sacramento Area Council of Governments (SACOG) approval, and activate RT service by declaring a need for RT to operate within the City of Elk Grove.³ Upon annexation, the City of Elk Grove would have representation on RT's Board. Since July 1, 2001, the City of Elk Grove has maintained public transit services pursuant to the terms of an Agreement for bus service. This Agreement expires June 30, 2004.

Analysis

LAFCo encourages regional cooperation. However, the obvious dilemma raised in this situation is an the issue of equitability. What is an equitable allocation of Regional Transit resources to the City of Elk Grove? The City of Elk Grove is not disputing that it has to provide transit services. In fact, the City wants to provide a higher level of service than is currently provided. On the other hand, RT is attempting to provide services that benefit the entire region. RT is faced with difficult challenges in finding an optimum balance between the countywide allocation of financial resources and service needs.

³ Note: LAFCo does not have jurisdiction over this annexation.

According to LAFCo Counsel, there is a mechanism for all cities, once incorporated, to provide local transit service if they make certain findings. ***LAFCo cannot legally restrict the City of Elk Grove's right to exercise this municipal power.*** However, the Commission did insert a strong statement in this mitigation measure that stresses the importance of regional transit service. The City of Elk Grove will have to make findings addressing the regional issue in order to opt to provide its own public transit service.

Mitigation Measure No. 3

Condition the incorporation approval to ensure that the city shall provide street lighting and roadway maintenance by either contract with Sacramento County, contract with a private company, or directly perform the maintenance.

Street safety lights are provided by County Service Area No. 1; the City of Elk Grove is within the boundary of CSA No. 1. Sacramento County Department of Transportation performs maintenance on street and highway safety lights in the City of Elk Grove. The maintenance and operation costs are funded by County Service Area No. 1. This is a dependent countywide district. The City does not need to contract separately with CSA No. 1 for this service; the City has, to date, proposed no detachment from CSA No. 1. Any detachment would require LAFCo approval.

The City of Elk Grove initially contracted with the County of Sacramento for the maintenance of streets and roads. In October, 2002, the City took over road and street maintenance responsibility. The City is maintaining streets at an equal or better level of service than the County of Sacramento. The City of Elk Grove is in compliance with Mitigation Measure No. 3.

Mitigation Measure No. 4

Condition the incorporation approval to require that existing transportation fee impact programs be continued at levels necessary to adequately fund approved road construction projects.

The status of this mitigation measure is on-going. Upon incorporation, the City Council adopted the Sacramento County Code as its Municipal Code. There were several Municipal Code Chapters relating to roadway development impact fees. Currently, there are eight different roadway development impact fee programs within the City of Elk Grove.

The City has taken over sole responsibility for several of these programs and continues to work with the County on projects that lie in both jurisdictions. For further details, see attached City response. The City of Elk Grove has complied with Mitigation Measure No. 4.

Mitigation Measure No. 5

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

The City and County have not yet finalized a formal written agreement for a joint maintenance agreement. Roads to be included in the agreement will include Calvine Road, Grant Line Road, Kammerer Road, Bruceville Road, Bilby Road and Franklin Boulevard. The final agreement will show the responsibility and cost guidelines for bridge maintenance, pavement and roadside maintenance, landscape areas, traffic signs, striping and markings, traffic signals, traffic operations, etc. The City of Elk Grove is in the process of complying with Mitigation Measure No. 5. The County response indicates that there is currently a verbal agreement that will be formalized.

Mitigation Measure No. 6

Condition the incorporation approval to require the new city to contract with the Sacramento County Water Agency (SCWA) in water planning activities for Zone 13 and Zone 40.

The City of Elk Grove lies within the boundaries of Sacramento County Water Agency Zone 13 and Zone 40. At this time, the City of Elk Grove is automatically subject to these benefit zones. Revenues are collected as benefit assessments on real property. The County of Sacramento collects the funds and continues to provide the service. The City of Elk Grove is in compliance and participating in the program identified in Mitigation Measure No. 6.

Mitigation Measure No. 7

Condition the incorporation approval to require the new city to contract with Sacramento County for the continued use of Zones 11-A, 12, 13, and the Metropolitan Storm Drainage District for drainage, planning and maintenance activities. Zones 11-A, 12, and 13 and the Metropolitan Storm Drainage District shall remain intact upon incorporation.

Zone 11-A - Drainage Development Impact Fee Program. The County continues to provide this service for the City of Elk Grove. The City of Elk Grove lies within the boundaries of Sacramento County Water Agency Zone 11-A which provides fee credits to developers for the construction of major drainage facilities. Because the City of Elk Grove lies within the service area of Zone 11-A, no contract is necessary.

Zone 12 is a benefit zone within Sacramento County Water Agency, established to collect money to operate, maintain, repair and improve storm drainage and related facilities. The County of Sacramento provided this service until July 1, 2003. Since July, the City of Elk Grove has assumed the responsibility for all storm water utility service within the City. The City uses a private contractor. The City currently contracts with the County for billing and collection service. The City of Elk Grove has the right to provide this municipal service. It has decided to assume this responsibility previously provided by the County.

Zone 13 funds studies related to water supply, drainage and flood control. No change has been proposed by the City of Elk Grove. Planning for this service responsibility continues to be provided by the County of Sacramento.

Metropolitan Storm Drainage District provides funding for storm drainage maintenance through property taxes. By mutual agreement, the County forwards the City of Elk Grove its share of funds. Because of the complexity in bookkeeping, the County of Sacramento may request a detachment of this District from the City of Elk Grove. District legal counsel is analyzing the issue at this time. As explained, the City of Elk Grove is substantially in compliance with Mitigation Measure No. 7. LAFCo would process the required detachment upon application and determination that the detachment falls within LAFCo jurisdiction.

Mitigation Measure No. 8

Condition the incorporation approval to require the city to participate and eventually become a co-permitter under the existing countywide NPDES permit.

Non-Point Discharge Elimination System (NPDES). The City of Elk Grove adopted Resolutions 2003-76 and 2003-77 which require that the City meet the requirements of the NPDES permit and that it sign a formal Memorandum of Understanding with the other permittees in Sacramento County. The MOU was signed by the City on April 16, 2003. The City of Elk Grove is a co-permitter. The City of Elk Grove is in compliance with Mitigation Measure No. 8.

Mitigation Measure No. 9

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.

The Mitigation Monitoring Program has been transferred to the City of Elk Grove.

Note: General Comment. The City states on its response that it has implemented all mitigation measures and conditions of approval. The County Department of Environmental Review and Assessment [DERA] had already begun mitigation monitoring on several projects prior to incorporation. For these projects, DERA retained jurisdiction over the mitigation monitoring in Elk Grove. The City of Elk Grove is in compliance with Mitigation Measure No. 9.

Mitigation Measure No. 10

Condition the incorporation approval on requiring that the new city enter into an agreement with Sacramento County regarding the maintenance and funding of financing plans and programs affecting the incorporation including, but not limited to, Laguna Community Facilities District, Laguna Area Roadway Development fees, Elk Grove/ West Vineyard Public Facilities Financing Plan, Hampton Village Assessment District and East Elk Grove Specific Plan Public

Facilities Financing Plan. These programs shall remain substantially in tact in order for build and planned facilities to be funded.

Upon incorporation, the City Council adopted the Sacramento County Code as its Municipal Code including related infrastructure funding programs. The City is responsible for funding and implementing infrastructure programs. The County, as the bond issuer and through mutual agreement with the City of Elk Grove, administers the Laguna Area Community Financing District and the Park Meadows Community Financing District. The County also administers the Hampton Village Assessment District. The City and County are working together to ensure infrastructure is constructed.

The City now administers the following development impact fee programs: Laguna South, Elk Grove/ West Vineyard, and Elk Grove Auto Mall. In addition, the City administers the Very Low Income Housing Trust Fund Fee Program for projects located in the City.

The City has also implemented the following development fee programs: Elk Grove Auto Mall Phase II, City Roadway Fee Program, Citywide Facilities Fee Program, and the Citywide Affordable Housing Fee Program.

Moreover, there are several Mello-Roos Community Facilities Districts within the corporate boundary of the City of Elk Grove. Since incorporation, the City has issued bonds for the East Franklin Community Facilities District to fund the East Franklin Specific Plan (north portion). The City has formed Poppy Ridge Community Facilities District to fund the south portion of the East Franklin Specific Plan. The City of Elk Grove is currently in compliance with Mitigation Measure No. 10.

General Conditions of Incorporation
Resolution No. LAFC 1207⁴

- The City of Elk Grove shall petition Sacramento Area Council of Governments (SACOG) for inclusion into its Joint Powers Agreement and shall participate in SACOG's Regional Planning activities as a non-member prior to membership.

The City of Elk Grove currently participates as a non-member of SACOG and hopes that soon it will obtain representation based on recent changes to the JPA.

- Any and all development agreements entered into between the County of Sacramento and any development project applicant, and any conditions of approval (including mitigation measures adopted pursuant to the California Environmental Quality Act) imposed by the County Board of Supervisors on any and all discretionary projects adopted and approved prior to the effective date of incorporation shall remain valid and enforceable between the applicant and the new city of Elk Grove, subject to Government Code Section 65865.3, subdivisions (a) and (b).

⁴ Resolution No. LAFC 1207, Resolution of the Sacramento Local Agency Formation Commission Making Determinations for the Approval of the Incorporation of Elk Grove, California (5-96), June 2, 1999.

I have been unable to verify whether or not all development projects are in compliance with conditions of approval and adopted mitigation measures. The City of Elk Grove has been working with the Nature Conservancy to find suitable foraging habitat for the Swainson's Hawk. The City has raised the mitigation fee and continues to collect the required funds for mitigation. Note: This is a LAFCo *condition of approval for incorporation*, not one of the 10 Mitigation Measures in LAFC Resolution No. 1208.

- Subject to the City of Elk Grove satisfying all prerequisites necessary to become a member entity of the Sacramento Transportation Authority, LAFCo recommends that the City of Elk Grove petition to become a member of the Sacramento Transportation Authority and submit a proposal to the Sacramento Transportation Authority requesting that the County, the City of Sacramento, and other members of the Sacramento Transportation Authority act to allocate funds equitably and in a manner similar to other municipalities in Sacramento County.

There is a proposal pending that would give the City of Elk Grove representation on the Sacramento Transportation Authority Board. It is anticipated that this condition will be satisfied in the near future.

CONCLUSION

In my opinion, the City of Elk Grove is in compliance with LAFCo imposed mitigation measures set forth in Resolution LAFC 1207.

Although, Mitigation Measure No. 2 of Resolution No. LAFC 1208 has not been completed because the City has not annexed to Regional Transit District, the City has a contract for service until June 30, 2004. The City of Elk Grove and Regional Transit have been discussing their differences but have not yet reached agreement. It appears that the City's approval to annex may be dependent on the outcome of further negotiations with Regional Transit. LAFCo cannot force the City to complete the annexation. Moreover, an RT annexation is not within the purview of LAFCo.

In future annexation/ reorganization proposals to the City of Elk Grove, LAFCo will retain the responsibility of evaluating service levels of all services providers. The City will be required to demonstrate that it provides adequate public transit services within the corporate boundary of the City of Elk Grove and can provide adequate public transit service in the area proposed to be annexed.

If the City withdraws from the Regional Transit system, however, the City should seriously evaluate consideration of any negative impacts that action may have to RT service. Better service within the City of Elk Grove may not benefit residents who need to commute outside the City---to surrounding areas---should Regional Transit District services be negatively impacted.

The County of Sacramento has provided responses to staff's questions regarding mitigation measures. Those responses are attached. The County of Sacramento does not have any comments that would preclude the issuance of the Mitigation Monitoring Program

Completion Certificate. The City and County both indicate they are in the process of finalizing a Joint Road Maintenance Agreement, as set forth in Mitigation Measure No. 3.

Recommendation

The City of Elk Grove has substantially complied with the required ten mitigation measures. However, in some cases, the service provider is the City rather than an affected agency, as specified by LAFCo in Resolution 1208. The City has, in my opinion, complied with LAFCo Resolution No. 1208. Services related to the referenced mitigation measures are provided at a similar, or higher, standard of service as that provided prior to incorporation. Therefore, ***I recommend that your Commission issue a Mitigation Monitoring Program Completion Certification.***

PB:Maf

Attachments:

David Storer, Assistant City Manager, City of Elk Grove
Beverly A. Scott, General Manager, Regional Transit District
Steven M. Pedretti, Director, Engineering and Administration, County of Sacramento
Jeff Atteberry, Local Sewer Engineering, County of Sacramento
Russ Childers, Department of Transportation, County of Sacramento
Paul Philleo, County of Sacramento
Resolution No. LAFC 1208

(Mitigation Measures Schedule)