

TO: BOARD OF DIRECTORS

FROM: CRAIG A. STEELE
GENERAL COUNSEL

REVIEWED: MARIO IGLESIAS 
GENERAL MANAGER

DATE: January 6, 2023



RESPONSE TO SLO COUNTY LAFCO REGARDING DANA RESERVE ANNEXATION REQUEST

ITEM

Consider "Notice of Petition of Application for Annexation #30 Dana Reserve Specific Plan to Nipomo Community Services District" from SLO County LAFCO and Give Direction to Staff Regarding Response [RECOMMEND CONSIDER NOTICE, RECEIVE INPUT FROM *AD HOC* SUBCOMMITTEE AND STAFF, AND PROVIDE DIRECTION TO GENERAL MANAGER REGARDING RESPONSE]

BACKGROUND

On November 21, 2022, the General Manager received a Notice from the Executive Officer of the San Luis Obispo County Local Agency Formation Committee ("SLO LAFCO") that the landowner for the Dana Reserve Specific Plan site had filed a landowner petition with SLO LAFCO seeking annexation into the District. This Notice triggered a 60-day period for your Board to respond, if your Board chooses to do so.

Although staff was aware of the landowner's application to SLO LAFCO, the delivery and timing of this Notice is surprising and confusing, in that the landowner had informed staff that the purpose of the application was only to speed-up SLO LAFCO's consideration of the project elements, in anticipation of later hearings once the County's consideration of the project is complete. Staff believes that the SLO LAFCO Notice is premature, and we note that the landowner already has an annexation application pending with the District, which had been proceeding in due course.

The Notice is a preliminary step in the landowner petition process, and SLO LAFCO staff informed District staff that they are simply following SLO LAFCO's normal processes and timelines. SLO LAFCO cannot formally approve or deny the annexation until SLO County certifies a final EIR for the project and approves the land use entitlements, and SLO LAFCO conducts a full hearing process at which the District would participate. SLO LAFCO also cannot approve the annexation unless the District and SLO County first agree on a property tax sharing agreement, as has been negotiated in many past annexations into the District. There are many steps in the process still to be completed before an annexation could be approved, but the District's deadline to respond to this Notice, if it responds, is January 16, 2023.

The Board has three options with regard to the Notice:

1. Take no action at this time and direct staff to engage SLO LAFCO staff and SLO COUNTY on the technical details of a potential tax sharing agreement and service plan, should the annexation move forward.

2. Notify SLO LAFCO that the annexation application should be terminated for specific service-related reasons.
3. Direct the General Manager to send a letter to SLO LAFCO taking the position that considering the application now is premature, and that no annexation should be considered or approved without the following essential elements:
 - a. The County's certification of a final EIR that adequately addresses the District's comments on the draft EIR, and resolution of any legal challenges to that EIR.
 - b. Agreement between the District and SLO County regarding an acceptable property tax sharing formula for the annexation, consistent with past annexations where the County has shared an equitable portion of property tax revenue with the District.
 - c. Agreement between the developer and the District on an acceptable annexation agreement to ensure that the project complies with the District's annexation policy and the developer is required to pay for and install the necessary infrastructure, to District specifications, to serve the project.
 - d. Approval of the District's plan of service for the area proposed to be annexed, based on studies the District already commissioned for the project.

Staff and the *ad hoc* subcommittee recommend Option 3. This option would continue to consider and process the proposed annexation without committing the District to an approval. It also puts SLO LAFCO, SLO County, the developer and the community on notice regarding the elements that will be essential to the District as consideration moves forward. Under LAFCO law, for example, the District and the County must agree on a property tax sharing agreement before any annexation can be approved. A proposed letter will be circulated to the Board prior to the Board meeting.

Option 2 is not supportable at this time, since the District's technical studies have not identified any service-related reason why the annexation must be terminated at this stage. In some ways, a properly planned annexation, with acceptable agreements and project documents as specified above, could be beneficial to the District by adding water customers to help spread the increasing costs to customers for supplemental water. Option 1 is not productive, since it would not put the District on record as to the elements of the proposed annexation that are essential to the District.

RECOMMENDATION

It is recommended that your Honorable Board direct the General Manager send a letter to SLO LAFCO consistent with Option 3.

ATTACHMENT

- A) November 17, 2022 SLO LAFCO – Staff Report: Notice of Petition...Dana Reserve....

JANUARY 11, 2023

ITEM E-1

ATTACHMENT A



San Luis Obispo Local Agency Formation Commission

TO: MEMBERS OF THE COMMISSION

FROM: ROB FITZROY, EXECUTIVE OFFICER

DATE: NOVEMBER 17, 2022

SUBJECT: NOTICE OF PETITION OF APPLICATION FOR ANNEXATION #30 DANA RESERVE SPECIFIC PLAN TO NIPOMO COMMUNITY SERVICES DISTRICT – LAFCO FILE NO. 4-R-22

RECOMMENDATION

It is respectfully recommended that the Commission receive and file this report.

SUMMARY

The San Luis Obispo Local Agency Formation Commission (LAFCO) received a landowner “petition of application” for annexation into Nipomo Community Services District (NCSD) for the “Dana Reserve Specific Plan” (DRSP) project. The application was received on October 13, 2022. The DRSP is a phased development plan and vesting tentative tract map to construct 1,289 residential units and up to 203,000 square feet (SF) of commercial space on a 288-acre parcel near Willow Road and Highway 101 in the community of Nipomo. Annexation into NCSD is proposed by the landowner to obtain water and wastewater service from the NCSD.

This report provides the Commission with a formal notice of receipt of the application not filed by the affected agency, as required by government code section 56857. Typically, an annexation application is received directly by the district or city wishing to annex an area into their jurisdiction. However, State law also allows annexation requests to be submitted by a landowner. When this occurs government code section 56857 requires that we inform the Commission at the first available meeting. The application request will then be forwarded to the affected agency (NCSD) who is granted 60 days to terminate the request by resolution if they do not wish to annex the area based on substantial evidence for financial or service related concerns. If they do not request termination, the application will continue to be processed by staff and the Commission will consider the item at a public hearing. Staff understands that the landowner has already been coordinating with NCSD on the annexation and that NCSD is actively

COMMISSIONERS

Chairperson
Ed WAAGE
City Member

Vice-Chair
DEBBIE ARNOLD
County Member

LYNN COMPTON
County Member

MARSHALL OCHYLSKI
Special District Member

ROBERT ENNS
Special District Member

STEVE GREGORY
City Member

HEATHER JENSEN
Public Member

ALTERNATES

DAWN ORTIZ-LEGG
County Member

ED EBY
Special District Member

CHARLES BOURBEAU
City Member

David Watson
Public Member

STAFF

ROB FITZROY
Executive Officer

IMELDA MARQUEZ
Analyst

Morgan Bing
Clerk Analyst

BRIAN A. PIERIK
Legal Counsel

evaluating the request in context to their established policies, infrastructure and organizational capabilities. Nonetheless, this notice is still required in order to comply with state law.

It is important to note 60 day termination period is a window of time allowed by state law wherein an agency affected by an annexation has the opportunity to terminate a request based on substantial evidence known and readily available at that time. The intent is to discontinue an annexation proposal early in the process to reduce time and expense on an annexation that could or should be denied based on information already known. Not providing a response within 60 days does not indicate support for the project. It often is the case that agencies need more than 60 days to evaluate a request. Beyond 60 days an agency will not have the ability to unilaterally terminate the request, rather the decision for approval or denial of the annexation would reside with LAFCO once it has been fully processed.

Procedurally, NCSD will evaluate the request in context to their policies for annexation. Should NCSD wish to support the annexation, that information will be conveyed to LAFCO who will then ultimately decide whether to approve the annexation. LAFCO will consider annexation at a public hearing if the project has been approved by the County Board of Supervisors, including approval of the General Plan amendment(s), Specific Plan, Conditional Use Permit, EIR, Developer Agreement, and Vesting Tentative Tract Map, and NCSD has demonstrated an ability to support the annexation. For further information on the project and annexation process, please refer to LAFCO's July 21, 2022, Study Session items available on our website.

Staff has provided the first round of notices and requests for information to affected agencies and interested individuals consistent with Government Code section 56658 and 56857. An additional notice will be sent out to those affected agencies and interested parties after County Board of Supervisor consideration. Staff will update the Commission as necessary as these applications are processed. The Commission may provide staff with any questions or comments on this item.