

**LOCAL AGENCY FORMATION COMMISSION
MENDOCINO COUNTY**

The Local Agency Formation Commission convened a meeting on Monday, June 17,, 2009 at 1:30 p.m. at the City of Ukiah Conference Center Chenin Blanc Room, 200 School St., Ukiah, CA.

AGENDA ITEM 1 - CALL TO ORDER / ROLL CALL

Chairman Melo called the meeting of the Local Agency Formation Commission of Mendocino County to order at 1:33 p.m. The following Commissioners were present and seated: Commissioners McCowen, Kisslinger, Smith, Shoemaker, and Chair Melo. Alternate Commissioners Orth, Madrigal, Brown, Executive Officer McMichael and County Counsel Jeanine Nadel were also present. Commissioners Rodin and Ward had previously indicated their expected absence. Alternate Commissioners Orth and Madrigal were immediately seated.

AGENDA ITEM 2 - PUBLIC EXPRESSION

There was no one in attendance from the public who indicated an interest in speaking.

AGENDA ITEM 3 – APPROVAL/CORRECTION/ADOPTION OF MINUTES

Upon a motion by Commissioner McCowen, seconded by Commissioner Orth the minutes of May 4, 2009 were approved as submitted by the following vote: Ayes: Shoemaker, Smith, McCowen, Orth, Kisslinger, Madrigal and Chair Melo; Nays: None; Abstain: None; Absent: Rodin

Upon a motion of Commissioner Smith seconded by Chair Melo the minutes of the June 1, 2009 Executive Committee were approved by the following vote: Ayes: Smith and Chair Melo; Nays: None; Abstain: Kisslinger; Absent: None.

AGENDA ITEM 4 –CLOSED SESSION

Significant exposure to litigation pursuant to Government Code Section 54956.9(b)

Upon completion of the vote for the minutes, Chair Melo announced that as per the agenda the Commission was adjourning to another room for purpose of closed session.

At that point, Marguerite Mary Leoni, Esq. requested the opportunity to speak to the Commission prior to going into closed session. After consultation with counsel, Chair Melo allowed her to speak. She read from a document a series of points that echoed the allegations as provided in her May 29, 2009 to the Commission about the Service Impact Report; this document was not provided to the Commission after completion of her recital. She further indicated that there had been a filing of an invalid lawsuit which will require expenditure of resources by DDR because of the information in the Report.

Richard Johnson of Ukiah then asked to speak whereupon he indicated that he had filed the lawsuit to prevent the Initiative to going forward. He stated that the question was not if the lawsuit was valid but is the Report true or not. He also indicated that there is considerable legal doubt as to the complaint by Developers Diversified about the Report because the Initiative is not on the ballot at this time.

Steve Scalmanini requested that the inflammatory remarks from the first speaker (Attorney Leoni) be ignored by the Commission.

After that, at 1:45 p.m. the Commission went into closed session in an adjacent room. The Commission returned from closed session at 2:33 p.m.

Jeanine Nadel, acting as Counsel to the Commission, reported to the public in attendance that the Commission had authorized the Executive Officer to prepare the Report, had directed Counsel to respond to the correspondence dated May 28, 2009 from Ms. Leoni and additionally the Commission had further directed the Executive Officer to amend or adjust the report as he thought necessary to clarify particular information and that additional information was to be included as he thought appropriate with the adjusted Report to be reposted to the Website.

AGENDA ITEM 5—EFFECT ON LAFCO OF PROPOSED INITIATIVE TO AMEND THE GENERAL PLAN AND THE INLAND ZONING CODE OF THE COUNTY OF MENDOCINO AND ENACT THE MENDOCINO CROSSINGS MIXED USE MASONITE PLAN

After the report out from closed session the Commission moved to this item. At this point Commissioner Kisslinger provided a motion that this item be continued to the August meeting. Commissioner Smith seconded the motion. Chair Melo then requested that E.O. McMichael provide a brief recap of the reason for this agenda item. E.O. McMichael recounted that this was the title of the agenda item placed on the May agenda from direction given to him at the April meeting; that he had prepared for the Commission for that May agenda item and that after receiving his report the Commission had directed him to continue this item to the next meeting.

At this point Clark Graham briefly indicated his approval of the Service Impact Report put forward by the Executive Officer and that it was important for the voters to have access to information so that there could be an informed electorate.

Subsequent to Mr. Graham's comment, Chair Melo read into the record parts of an email that he received from Mike Sweeney as follows:

I'm writing to urge you to support Frank McMichael's right to freely report his views about the DDR ballot measure. The true test of our society's commitment to freedom of speech comes when powerful forces try to deny it. That is what is happening with DDR's threat letter.

I am particularly concerned that LAFCO is being advised to retreat in the face of this threat and disavow Frank's report. This comes at a time when the Board of Supervisors has asked various agencies and departments to submit their analysis of the DDR ballot measure. How can we expect the other agencies (MCOG, County Planning, etc.) to respond honestly to the Supervisor's request for comment if Frank is reprimanded?

DDR's lawyer tries to argue that Frank's report was "illegal" because it expresses opinions and he wrote it (presumably) on LAFCO time. There is absolutely no legal basis for such an argument. On the contrary, the recent Supreme Court decision in Vargas V. Salinas makes it clear that public agencies can express their opinion about ballot measures. In fact, the City Council of Ukiah did just that by adopting a resolution in opposition to DDR. The incidental expenditure of public funds to write such a resolution (and to pay the electricity bill for the meeting, etc.) is lawful, no matter how one-sided the resolution may be.

The ban on expenditure of public funds only applies if the public agency "mounts and election campaign" and Vargas gives examples of what that means: "the use of public funds to purchase bumper stickers, posters, advertising 'floats' or television and radio 'spots'."

There is no way that McMichael's report can be construed as campaign activities" under the standard that the courts have set down. All he did was write a report and deliver it to the Board of

Supervisors in response to its consideration of agency comment. As long as LAFCO doesn't print it up and mail out to voters, or publicize it in paid advertising, it isn't 'campaign activity.'

After the reading of this statement, on a voice vote the Commission unanimously agreed to continue Agenda Item 5 to the August meeting.

AGENDA ITEM 6—ADJOURNMENT

Having no further business, the meeting adjourned at 2:45 p.m.