



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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June 4, 2012
Agenda Item No. 7c (Action)

May 29, 2012

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer

SUBJECT: Consideration of a Fee Waiver Request for a Pending Proposal to Form a New Special District to Serve the Cappell Valley Estates

The Commission will consider a request to waive the agency's application fees tied to processing a pending proposal to form a new special district to assume water and sewer services for the Cappell Valley Estates. The total value of the fee waiver is estimated at \$9,000.

Local Agency Formation Commissions (LAFCOs) are authorized to establish fee schedules for the costs associated with administering its regulatory and planning duties under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. This includes, most commonly, processing applications for boundary changes and outside service requests. State law specifies LAFCO's fee schedules shall not exceed the estimated "reasonable costs" in providing services. State law also authorizes LAFCOs to waive or reduce fees if it determines the payment would be detrimental to public interest.

A. Background

LAFCO of Napa County's ("Commission") fee schedule was comprehensively updated in June 2007 and has been amended in each subsequent fiscal year to help ensure an appropriate level of cost-recovery. The fee schedule is premised on applying a composite hourly staff rate to either "fixed" or "at-cost" proposals. Fixed fees represent reasonable cost estimates for processing common proposals and based on a number of predetermined staff hours. Fixed fees typically range in cost between \$4,000 and \$7,000 and include annexations, detachments, and outside service extensions. At-cost fees apply to more complex proposals requiring additional analysis and based on the number of actual staff hours. Markedly, although not an absolute, at-cost proposals are expected to exceed \$7,000 and include special district formations, consolidations, and dissolutions.

Lewis Chilton, Chair
Councilmember, Town of Yountville

Joan Bennett, Commissioner
Councilmember, City of American Canyon

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

Brad Wagenknecht, Vice Chair
County of Napa Supervisor, 1st District

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Commissioner
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

B. Discussion

Pending Proposal to Form a Special District

The Commission has received a written request from Robert Joe for a fee waiver in anticipation of submitting a proposal to form a special district to assume water and sewer services for the Cappell Valley Estates Mobile Home Park located at 6001 Monticello Road near Steele Canyon Road.¹ Mr. Joe is the owner and operator of the mobile home park and its private water and sewer systems, which currently serve 58 units as well as an



adjacent a commercial center known as “Moskowite Corners.” Mr. Joe asserts the central goal in forming a special district is to improve the financial solvency for both the water and sewer systems by having access to government subventions and low/no interest loans to fund needed improvements; improvements Mr. Joe states cannot be easily absorbed through rate increases given residents are predominately on low and fixed incomes.²

Estimated Proposal Costs

The Commission’s application fee for forming a special district is designated at-cost and necessitates the payment of an initial deposit as determined by the Executive Officer. Staff estimates it has already expended approximately 10 billable hours assisting Mr. Joe in identifying and discussing options tied to forming a special district relative to his stated interests. This includes attending a community meeting to discuss the possibility of forming a special district with residents and interested parties.³ The Executive Officer estimates an additional 80 hours of billable staff time would be needed to process a special district application and result in a total charge of approximately \$9,000 under the current fee schedule; an approximate 4.0% increase in the fee schedule is expected to become effective August 3, 2012 and would raise the total estimated cost of the application to \$9,440.⁴ This includes preparing an initial study as well as processing a concurrent municipal service review/sphere of influence establishment as required under LAFCO law. The Executive Officer has provided this estimate to Mr. Joe along with an initial deposit request of \$2,825 to cover the first 25 hours of staff time.

¹ At the recommendation of staff, Mr. Joe has agreed to petition for the formation of a community services district if he chooses to go forward and submit an application with the Commission. This type of district would – if approved – be authorized to provide only water and sewer services with all other authorized powers designated as latent and could only be activated upon future Commission approval. Governance of the special district would be delegated to registered voters.

² Residents at Cappell Valley Estates Mobile Home Park currently pay \$550 in monthly rent. Tenets also pay a combined \$50 a month for water and sewer service.

³ The community meeting was held on January 18, 2012 and attended by approximately 30 residents and interested parties. Commissioner Dodd was also in attendance given the affected territory lies within his supervisorial district.

⁴ The Commission will consider adopting the proposed increase to the fee schedule as part of Agenda Item No. 6b.

It is pertinent to note there are several “third-party” costs tied to processing a special district formation proposal. Most notably, this includes preparing a map and description of the affected territory, holding an election, and filing an environmental determination with California Fish and Game. Staff estimates the total third-party cost for processing a special district formation is approximately \$6,000 to \$8,000 with the difference dependent on whether Fish and Game would approve a separate fee waiver request.

Request for a Fee Waiver

Mr. Joe has submitted a formal written request for the Commission to waive all of its related fees and deposits tied to his pending application to form a special district for the Cappell Valley Estates community. Mr. Joe justifies the request by noting the limited means of the private water and sewer systems to absorb the application costs given its narrow operating margin and challenge in raising rates due to residents’ low-income status. Mr. Joe also justifies the request by noting approval would measurably lessen the financial impact tied to covering the estimated \$8,000 in third-party costs.

C. Analysis

The Commission’s policies and practices provides members abundant discretion in considering whether to approve or disapprove Mr. Joe’s request to waive all fees and deposits tied to his pending application to form a special district. In particular, the Commission’s existing policies do not provide any guidance in considering the merits of proposed fee waiver requests and staff has not identified any comparable requests on record to serve as appropriate precedents for consideration. The Policy Committee (Luce, Rodeno, and Simonds), however, is proposing amendments to the Commission’s fee schedule as part of a separate agenda item for today’s meeting to provide basic and uniform criteria to members in considering fee waiver requests. This includes directing members to consider the merits of fee waiver requests relative to (a) public interest and (b) agency mission with specific cited examples including, but not limited to, addressing public health or safety threats, affordable housing, and community serving projects.

It appears there is reasonable merit for the Commission to approve Mr. Joe’s fee waiver request based on the proposed policy criteria referenced in the preceding paragraph. This statement is largely predicated on tying the request to the Commission’s prescribed mission to support low income housing in the course of promoting orderly development as outlined under Government Code Section 56001. This statement, however, is uninformed with respect to the Commission determining whether the location of the low income housing is orderly given Senate Bill 375 and other land use principles the agency is tasked with facilitating/promoting.⁵ It is also important to note the decision on whether to approve the fee waiver request will establish a precedent going forward.

⁵ Senate Bill 375 (Steinberg) became effective on January 1, 2009 and directs regional and local agencies to reduce greenhouse gas emissions by aligning transportation, land use, and housing activities.

D. Alternatives for Action

The following alternative actions are available to the Commission.

Alternative Action One (Disapprove)

Disapprove by motion the fee waiver request.

Alternative Action Two (Approve)

Approve by motion the fee waiver request.

Alternative Action Three (Approve with Condition for Third-Party Fee Deposit)

Approve by motion the fee waiver request with a condition the petitioner submit a deposit to cover all or a portion of the estimated \$8,000 in third-party costs.

Alternative Action Four (Continuance)

Approve by motion to continue the item to the next regular meeting and direct staff and or the petitioner to provide additional information as needed.

E. Recommendation

Staff recommends the Commission consider the fee waiver request relative to determining whether it is consistent with the agency's mission and public interest as well as precedent considerations. If the Commission determines the request is appropriate, staff respectfully suggest approval be conditioned on Mr. Joe submitting a deposit sufficient to cover either all or a specific portion of the estimated \$8,000 in third-party costs needed to complete a successful special district formation (Alternative Three). Staff believes conditioning an approval in this manner is appropriate and would serve to protect the Commission's "investment" in allocating agency resources by helping to ensure sufficient funds are available to complete the formation process if approved.

F. Procedures for Consideration

This item has been agendaized as part of the action calendar. The following procedures are recommended with respect to the Commission's consideration of this item:

- 1) Receive verbal report from the Committee;
- 2) Invite public testimony (optional); and
- 3) Discuss item and consider action on recommendation.

Respectfully,

Keene Simonds
Executive Officer

Attachment:
1) Letter from Robert Joe

**ROBERT V. JOE
CAPELL VALLEY ESTATES, INC.
PO BOX 5003
WALNUT CREEK, CA 94596
PH/FX: (925) 939-7444**

MAY 15 2012
NAPA COUNTY
LAFCO

5/11/12

Mr. Lewis Chilton, Commission Chair
Napa LAFCO
1030 Seminary Street, Ste B
Napa, CA 94559

Dear Mr. Chilton,

As owner of Capell Valley Estates MHP, I am interested in applying to become a Special District to benefit this disadvantaged mobile home community. Currently we provide potable water for 64 connections in this small community as well as providing sewer and waste water treatment to the residents and a handful of outside businesses.

Although our potable water treatment plant had a major ARRA upgrade last year we need to make major improvements to our potable water and waste water distribution lines as well as making major improvements to the community's waste water treatment infrastructure.

The community's disadvantaged designation was established through the ARRA project with help from Rural Community Assistance Corporation that did the actual income surveys of the MHP residents.

The sole purpose and goals for becoming a SD is that we will be in a better position to apply for Grants and zero interest/low interest funding so that we can make the required improvements to our community with a goal of lowering the current water and sewer rates.

Because this is a disadvantaged community it would be extremely hard to increase any rates to our residents for the associated LAFCO fees. Waiving the LAFCO fees would be a tremendous benefit and service to this disadvantaged community. I am hopeful that you will give this request your utmost consideration.

Very truly yours,



Robert Joe

Cc: Keene Simonds
Richard Zaragoza, Don MacKenzie