

LAFCO RESPONSE - ON DISTRICT LETTERHEAD

January 12, 2023

Via Email

Mr. Rob Fitzroy
Executive Officer
San Luis Obispo Local Agency Formation Commission
1042 Pacific Street, Suite A
San Luis Obispo, California 93401

RE: Response to Notice of Petition of Application for Annexation #30 - Dana Reserve Specific Plan

Dear Rob:

At the direction of the Board of Directors of the Nipomo Community Services District ("NCSD"), I write to provide a timely response to the above-referenced Notice, dated November 17, 2022 and received by the District on November 21, 2022 ("Notice"). As you noted in your report to the LAFCO Board, this landowner "petition of application" is unusual. Frankly NCSD was surprised to receive the Notice, since the landowner/applicant has an annexation application pending with the NCSD, currently in process. The landowner/applicant specifically informed me that the petition to your agency was only for the purpose of allowing SLO LAFCO to start the staff analysis of this proposed annexation, thereby reducing the consideration period after the land use entitlement process is completed. I was informed that the petition would not be deemed complete and the response period triggered by the Notice would not yet start.

Sending the Notice now is confusing and not productive because the landowner/applicant's application is not in a complete form that would allow NCSD or your agency to responsibly evaluate it. The County has not yet circulated or considered, let alone certified, a final EIR for the project. NCSD submitted detailed comments and requests for changes to the draft EIR. That draft EIR, and other communications, have indicated that the proposed project may be adjusted in terms of scope, density, and/or intensity of development. There is no way that NCSD or SLO LAFCO can evaluate the proposed annexation of this property without that final and specific project information. That is why the Notice, and the petition that triggered it, are premature. The landowner/applicant's pending annexation application with NCSD is the appropriate mechanism for considering this significant proposed annexation, at the appropriate time.

Nonetheless, we have received the Notice and the NCSD Board has considered it, along with NCSD's legal options. Although the Board has the legal right to terminate this annexation at this stage, we simply have not been provided with enough information to determine now whether substantial evidence exists to justify termination of this annexation proposal. SLO LAFCO's decision to send the Notice at this time, before the certification of an EIR and before any consideration of the land use entitlements, unfairly and likely illegally precludes NCSD from realistically considering its legal right to terminate the petition at this stage. NCSD reserves its right to raise that prejudicial failure of basic procedural standards in any future litigation over this application.

At this point, I have been instructed by the NCS D Board to convey to SLO LAFCO the following essential elements that must be accomplished by the landowner/applicant, the County and SLO LAFCO, working together, before an application can be considered or approved:

1. The County must certify a legally adequate final EIR that addresses the District's comments on the draft EIR, and any legal challenges to the certification of that EIR must be resolved.

2. There must be an acceptable property tax revenue exchange agreement between NCS D and the County, Pursuant to Revenue and Taxation Code Section 99, providing an acceptable share of property tax revenue to NCS D, consistent with past annexations. To this point, the County's position has been that NCS D will receive no property tax revenue as a part of this annexation, which is inequitable, inconsistent with past annexations, and unacceptable to NCS D. We note that if no such agreement is negotiated, the annexation proceedings would terminate.

3. The landowner/applicant and NCS D must agree 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, and the other items required by the District's annexation policy.

4. NCS D's plan of service for the area proposed to be annexed must be considered and approved as a part of any annexation, based on studies NCS D already commissioned for the project. Given the apparent possibility that the project description may change during the land use entitlement process, NCS D reserves the right to require more information before finalizing the plan of service.

We may identify other considerations as we receive more information. NCS D remains committed to working with SLO LAFCO, collaboratively and in good faith, to evaluate the proposed annexation. We ask that you make this letter a part of the record of the above-referenced proceeding and, if appropriate, provide copies to members of the LAFCO Board in a staff report similar in manner as the Notice of Petition of Annexation dated November 17, 2022.

Please contact me if you have any questions or concerns.

Sincerely,

Mario E. Iglesias

General Manager