

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF NOVEMBER 16, 2011**

REGULAR MEETING

9:00 A.M.

NOVEMBER 16, 2011

PRESENT:

COMMISSIONERS:	Jim Bagley	Larry McCallon
	Ginger Coleman	Brad Mitzelfelt, Chairman
	Robert Colven, Alternate	Janice Rutherford
	James Curatalo, Vice-Chairman	Robert Smith, Alternate
	Kimberly Cox	Diane Williams, Alternate
	Neil Derry, Alternate	

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, Legal Counsel
Samuel Martinez, Assistant Executive Officer
Michael Tuerpe, Project Manager
Anna Raef, Recording Secretary
Angela Schell, Deputy Clerk to the Commission

ABSENT:

COMMISSIONERS: None

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION
COMMISSION – CALL TO ORDER – 9:03 A.M. – SAN BERNARDINO CITY
COUNCIL CHAMBERS**

Chairman Brad Mitzelfelt calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Chairman Mitzelfelt requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

(Commissioners Derry and Rutherford arrive at 9:05 a.m.)

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

1. Approval of Minutes for Regular Meeting of October 19, 2011
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as Reconciled for Month of October 2011 and Note Cash Receipts

A Visa Justification for the Executive Officer's expense report, as well as a staff

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report outlining the staff recommendation for the reconciled payments have been provided, copies of each are on file in the LAFCO office and are made a part of the record by their reference here.

Commissioner Cox moves approval of the consent calendar as amended, second by Commissioner Curatalo. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Cox, Curatalo, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: Coleman. Absent: None.

PUBLIC HEARING ITEMS

CONSENT ITEMS DEFERRED FOR DISCUSSION - NONE

CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3125; AND LAFCO 3125 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR CITY OF BIG BEAR LAKE – CONTINUED TO FEBRUARY 15, 2012 HEARING

LAFCO conducts a public hearing to consider LAFCO 3125 - Service Review and Sphere of Influence Update for City of Big Bear Lake. As required by State Law notice of the original hearing was provided through publication in a newspaper of general circulation, the *San Bernardino Sun*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy #27, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

Assistant Executive Officer Samuel Martinez states that the City of Big Bear Lake has requested additional time to review some of LAFCO staff's concerns. He says staff has met with the City and its Department of Water and Power, and the City has identified a number of actions it will be taking to address those concerns. Those actions include documenting the extent of its service area and consideration of a number of memoranda of understanding with the Big Bear City CSD, Lake Arrowhead CSD, and County Service Area 53. In order to allow for completion of the service area analysis, as well as completion of some of the negotiations that the DWP is moving forward with, LAFCO staff recommends that the request for continuance to the February 15, 2012 hearing be granted.

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. Jim Miller, City of Big Bear Lake, states that the City respectfully requests continuance to the February 15, 2011 hearing.

Chairman Mitzelfelt closes the public hearing and calls for questions from the Commission. There are none.

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Commissioner McCallon moves to continue the matter to the February 15, 2012 hearing, second by Commissioner Cox. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None. Absent: None.

CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3160 AND LAFCO 3160 – SERVICE REVIEW AND SPHERE OF INFLUENCE ESTABLISHMENT FOR PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT (CONTINUED FROM THE OCTOBER 19, 2011 HEARING) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3160 – Service Review and Sphere of Influence Establishment for Phelan Piñon Hills Community Services District. As required by State Law notice of the original hearing was provided through publication in a newspaper of general circulation, *The Daily Press*. The sphere of influence establishment proposal was not provided individual notice as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in Commission Policy #27, in-lieu of individual notice the publication was provided through an eighth-page legal ad. As required by State Law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

Chairman Mitzelfelt notes that the District voters passed the appropriation limit for the District with an 82 percent vote.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She says the District was formed on March 18, 2008, and in June 2009 the Commission initiated the sphere of influence establishment for the District. She reports that LAFCO staff conducted a service review in 2007 immediately prior to the consideration of the formation of the Phelan Piñon Hills CSD. Today's report is an update of that review because the District has only been in existence three and one-half years. She points out the land area of the district on the overhead display. Most of what the District has done is to transition from multiple County-governed special districts to an independent multi-function agency. It has an elected Board of Directors which has undergone an education process for its obligations and responsibilities as a newly-formed agency. She states that the District has indicated that it wishes a coterminous sphere. Ms McDonald notes that during the service review/sphere update process, discussion occurred regarding expansion of the sphere into Los Angeles County or northerly into the El Mirage community. However, following discussion with Los Angeles LAFCO staff, that effort was not pursued, as it would complicate potential for incorporation of the community. CSD staff and LAFCO staff met separately with the El Mirage Municipal Advisory Council and with no request for expansion into that community received.

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With regard to growth and population projections, LAFCO staff has reviewed the 2010 census data to prepare the updated population projections. She points out on the overhead display the population projections for the next 30 years. Commissioner Cox asks if these projections are consistent with SCAG projections. Ms. McDonald states that the staff report includes information from SCAG as well as SanBAG and the census. LAFCO staff used that information in preparing its projections. She says these are more realistic, given the economic climate, the foreclosure rate and turnover. Commissioner Cox comments that she hopes SCAG would use a reasonable approach to its population projections. Commissioner McCallon states that, speaking as immediate past president of SCAG, the current cycle includes growth projections provided by each of the cities. SCAG has not made any top-down projections over what the cities have provided. Commissioner Coleman adds that SCAG started the process before census numbers were available, so there were possible discrepancies because of that. Commissioner Cox notes that SCAG once projected a population of 200,000 for this area, which was not consistent with County-adopted land use. Chairman Mitzelfelt states that SCAG placed 40,000 units in unincorporated San Bernardino County. Commissioner McCallon points out that Commissioner Mitzelfelt represents SanBAG on SCAG and is on the Transportation Committee. Ms. McDonald states that the southern California LAFCOs have reported some success in SCAG recognizing special districts, especially community services districts as a means for defining population centers. Commissioner McCallon asks that the Commission let him know if at any time there is a perception that SCAG is not listening.

Ms. McDonald reports on present and planned capacity of public facilities, and says water is the lifeblood of every area of San Bernardino County defining whether an area will prosper. The staff report includes the number of wells within the Phelan Piñon Hills CSD and regional information identifies the Mojave Water Agency deliveries for this area. Reliability is at 61 percent based upon the current status of the system. She says this year has been the best of the last four where the Mojave Water Agency anticipates receipt of 80 percent of its allocation in order to recharge the basins. She notes that Phelan Piñon Hills CSD has 353 miles of pipe, 35 storage tanks and seven pressure zones. The elevation changes for the district are dramatic, from mountainous areas to lower flatlands with a slope heading to the north. There are issues regarding utility costs and the District is making every effort to find ways to make its utilities more efficient. She says that of importance is that Well 14 is in Los Angeles County and is outside the Mojave Water Agency adjudication. Water pumped from this well is not part of the free production allowance. She notes that for 2010 almost 40 percent of the production for delivery in the system comes from this well. She says that in 2035 the projections for use and production are almost equal. Charts included in the staff report that identify the types of water usage indicate that almost 80 percent is for residential consumption with its primary land use type of 2.5 acres per unit.

She says that of unique status is that the District is actually within two of the Mojave ground water basins for the adjudication, so it has two separate listings for free production allowance and two requirements for makeup water. In 2008-2009 the

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District had a replacement water obligation, and it is important to note that the District purchased water in the central basin to offset its replacement water obligations. Without that, the requirement to offset would have cost \$544,000, where the actual cost paid to Mojave Water Agency was \$25,000. She points out on the overhead display the Alto Basin obligations and states that, when purchasing water for replacement from another basin, the agency must buy it on a two to one replacement rate.

Ms. McDonald notes that an outline for residential water service rates has been provided and the District's rates appear to be extremely reasonable when compared to other agencies' rates. She comments that AB54 will require that all mutual and private water companies provide maps of their service territories and respond to information requests from LAFCO staff for distribution and other information. Staff has not received a specific response from Sheep Creek Water; however, in 1985 in its bylaws it identified to the Department of Corporations that the agency's ultimate service area is within the Phelan Piñon Hills CSD. That agency is restricted in the area it can serve by the law of parallel lines. Duplication into the territory served by Phelan Piñon Hills CSD is prohibited. She points out on the overhead map the area the agency can serve. Sheep Creek Mutual Water Company's source of water is outside the Mojave Water Agency adjudication, so it is not limited in the amount of water it can deliver to its customers.

Other primary services provided by the District include Park and Recreation. At the time of formation there was a condition regarding the \$600,000 Proposition 40 grant received by the County Special Districts Department to provide for Park and Recreation within the Phelan and Piñon Hills communities. An agreement was reached to transfer the \$600,000 to the Big Bear Valley Recreation and Park District with a return of the cash equivalent to the Phelan Piñon Hills CSD, allowing the Big Bear Park District to utilize the funds as intended by Proposition 40. The District has utilized this \$600,000 fund to purchase an 80-acre parcel for a park in Phelan and a second parcel for a park in Piñon Hills.

With regard to street lighting functions, Ms. McDonald reports that the District succeeded to the functions performed by CSA 9 for the community and approximately 98 streetlights were transferred. The Southern California Edison Co. owns the light standards, but the District is obligated to pay for the cost of electricity. She notes that the area is included in the County's night sky ordinance so any future streetlights would be installed only for public health and safety issues.

Ms. McDonald states that primary roads are maintained by CalTrans (State Highways) and the County Public Works Department maintains roads within the County-maintained system. Two improvement zones to CSA 70 perform augmented road maintenance services, CSA Zone 70-G in Oak Springs and CSA Zone R-39, Phelan Highland Estates, for roads not built to county standards.

She states that the District financial reports show a positive financial position. She notes the California Infrastructure Bank loan of \$800,000 is in full payment status for

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the 30-year loan. She notes that use of the revenues from the water standby charges was unclear in the financial documents, but that the revenues are used for water enterprise functions. The District has indicated in future years for its budget, and subsequent audit, this relationship will be clearly identified. She points out on the overhead display the fees received by the road districts serving the area, and notes that Zone R-39 has a per-parcel tax and Zone G has a fee rate structure for augmented services.

With regard to status and opportunity for shared facilities, she states that interties exist with several agencies to make sure that, in the case of emergency, supplemental water is available.

Ms. McDonald states that, as the District has been in existence for only three years, there are not many areas to be evaluated for government structure and community service needs. Roads and fire protection will be discussed in the future for serving the community as a whole. She says that future growth will require consideration of augmented road maintenance for non-county maintained roads through the development process and the question as to whether to pursue this service by the CSD or through additional zones to CSA 70.

With regard to fire protection, LAFCO staff believes that transfer of the County Fire Protection District functions to the CSD is not appropriate at this time.

Present and planned land uses include the retention of a rural residential lifestyle. LAFCO staff hopes that, in the future, the community will look for the potential of creating a town core along Phelan. She says that municipal service needs will be required for the community at the levels currently defined through the Board of Directors.

Ms. McDonald states that the Commission has directed staff to review the potential for using school district boundaries to determine existence of social or economic communities of interest. She says the school district is much larger and regional in nature. LAFCO staff believes that the social and economic community of interest is defined by the existing boundaries for the agency, which is comprised of 128 square miles. Services provided are included in the staff report and are available in the Commission's policy and procedures manual.

She says that the Commission's environmental consultant has determined that this action, sphere establishment coterminous with the District's existing boundary, is statutorily exempt from CEQA.

Ms. McDonald concludes by stating that LAFCO staff supports the establishment of a coterminous sphere of influence for the Phelan Piñon Hills CSD. She summarizes the recommendations for action by the Commission.

Chairman Mitzelfelt calls for questions from the Commission. There are none.

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Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. Charlie Johnson, Board Member of Phelan Piñon Hills CSD, thanks LAFCO staff for an excellent job and thanks the Commission for its consideration.

Chairman Mitzelfelt closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Cox moves approval of staff recommendation, second by Commissioner Coleman. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None. Absent: None.

(Commissioner Williams arrives at 9:23 a.m.)

CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR LAFCO 3167 AND LAFCO 3167 – ACTIVATION OF SOLID WASTE POWERS FOR THE PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT (CONTINUED FROM THE OCTOBER 19, 2011 HEARING) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider LAFCO 3167 – Activation of Solid Waste Powers for the Phelan Piñon Hills Community Services District. In compliance with the requirements of Government Code Section 56157 and Commission Policy, LAFCO staff has provided for notice of the original hearing through publication of an 1/8th page legal advertisement in the *Daily Press* a newspaper of general circulation in-lieu of individual notice due to the number of landowners and voters exceeding 1,000. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.

Chairman Mitzelfelt discloses that he has received a campaign contribution from CR&R, the service provider related to this item. He recuses himself from this item, and turns the hearing over to Vice-Chairman Curatalo.

(Chairman Mitzelfelt leaves the dais at 9:30 a.m. and Vice-Chairman Curatalo assumes the chair. Commissioner Derry leaves the dais at 9:30 a.m.)

Ms. McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She says this proposal is to activate solid waste and recycling services for the entirety of the Phelan Piñon Hills CSD. She says that currently solid waste services are provided under County Franchise Area 20. She points out County Franchise Area 20 and County Franchise Area 15 on the overhead display. Ms. McDonald notes that CR&R Inc. is the franchisee for both of these areas. She explains that every change of organization requires review of boundaries, land uses, services and environmental considerations and the activation of a latent service is considered a change of organization. She

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says the boundary change would include removing the the District's service area from CFA 20 and the concurrent assumption of the service by the Phelan Piñon Hills CSD. Land uses were identified in the service review as a rural residential lifestyle. She notes that the application package identifies the District's funding mechanism through the approval of its Plan for Service. She says that the specific request is that the District be provided solid waste and recycling powers defined as the ability "to collect, transfer, and dispose of solid waste and provide for solid waste handling service, including but not limited to source reduction, and recycling composting activities, consistent with the Public Resources Code". She says the Plan for Service identifies the mechanism for funding the provision of this service is the transfer of the franchise fee from the County to the District in the amount of \$82,000 per the existing contract. She says the materials provided included alternatives, such as the assumption of the transfer station at Sheep Creek and the potential for transferring billing services from CR&R to the District as it provides for water service billing. She states that the District, at this time, is only requesting that the activation allow for transfer of the franchise contract and its commensurate \$82,000 in funding. . She explains that CR&R has provided a letter stating it does not object. Negotiation could take place between the District and CR&R after the District has the official right to provide the service for the transfer of billing services. Ms. McDonald notes that no further LAFCO review would be necessary should that take place. She says LAFCO staff does not support the transfer of the Sheep Creek Transfer Station along with its closed landfill that is on the parcel. This position is based upon the fact that the transfer station is a regional facility and there is potential liability related to the closed landfill.

Ms. McDonald states that the Commission must make a determination regarding the financial ability of the District to provide the service and that it is sustainable. She notes that a determination is included in the staff report that, based upon the exchange of franchise fees from the County to the District, it will be able to provide the range and level of service identified in the contract, as it is currently written, for this area, and assume the responsibility for recycling and waste stream reductions that the District will be required to perform by State law. LAFCO staff recommendation indicates that the Commission can make the necessary determinations.

Ms. McDonald states that staff is requesting that a condition be included in the approval process that no certificate of completion for the application be issued until a copy of the signed contract between CR&R and the Phelan Piñon Hills CSD is presented to LAFCO staff. She explains that, upon approval of the proposal, a protest hearing will be held. Absent sufficient levels of protest to require an election or termination, staff would then issue the certificate of completion. LAFCO staff recommends that the condition be instituted to require that the contract be signed so that the transition is smooth.

She reports that the Commission's environmental consultant has reviewed the proposal and has indicated that it is statutorily exempt from environmental review. She notes that there will be no change in the territory where service is provided. LAFCO staff recommends approval of the expansion of function and service for the Phelan Piñon Hills CSD to include solid waste and recycling because it will allow for

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local control and response to requirements of the state. It will also provide for consolidation of service for this community under a single board with whom residents can express frustration or support, or ask for augmented services.

Ms. McDonald summarizes the staff recommendations.

Vice-Chairman Curatalo calls for questions from the Commission. Commissioner Cox asks when signing of the contract by CR&R is anticipated. Ms. McDonald states the District's consultant and Solid Waste's consultant have indicated that negotiations are moving forward. She explains that if it is approved, completion would not take place for about three months because of the notice periods required for reconsideration and protest.

Vice-Chairman Curatalo opens the public hearing and asks if there are members of the public who wish to speak on this item. Brent Speers of CR&R states that he made a contribution to Commissioner Mitzelfelt in the form of a golf game. He says CR&R looks forward to this change and he believes it will be an excellent relationship.

Vice-Chairman Curatalo closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Cox moves approval of staff recommendation, second by Commissioner Coleman. Vice-Chairman Curatalo calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, McCallon, Rutherford. Noes: None. Abstain: Mitzelfelt. Absent: None.

(Chairman Mitzelfelt returns to the dais at 9:51 a.m. and assumes the chair.)

DISCUSSION ITEMS

APPROVAL OF AND AUTHORIZATION TO SIGN MEMORANDUM OF UNDERSTANDING FOR TRANSFER OF PRINCIPAL COUNTY STATUS FOR SPHERE OF INFLUENCE DETERMINATIONS FOR MULTI-COUNTY SPECIAL DISTRICTS WITH LOS ANGELES, ORANGE AND RIVERSIDE LAFCOS – APPROVE STAFF RECOMMENDATION

LAFCO considers Approval of and Authorization to Sign Memorandum of Understanding for Transfer of Principal County Status for Sphere of Influence Determinations for Multi-County Special Districts with Los Angeles, Orange and Riverside LAFCOs.

Ms. McDonald states that in August 2011 staff requested authorization from the Commission to pursue MOUs with the five surrounding LAFCOs for transfer of principal county status for sphere of influence determinations to the LAFCO in the area where the territory lies. Those counties are Riverside, Orange, Los Angeles, Kern and Inyo. Signed MOUs have been received from Riverside, Orange and Los Angeles Counties. LAFCO staff asks that the Commission approve the MOUs and

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authorize the Chairman and Legal Counsel to sign them. Kern County Legal Counsel and Executive Officer have some concerns and continue to review the MOU. Ms. McDonald explains that Inyo LAFCO's next hearing is scheduled for April 2012, at which time the MOU will be considered.

Chairman Mitzelfelt calls for questions from the Commission. There are none.

Commissioner Curatalo moves approval of staff recommendation, second by Commissioner McCallon. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, McCallon, Mitzelfelt, Rutherford. Noes: None. Abstain: None. Absent: None.

Commissioner Bagley asks if there is any equivalent to LAFCO in Nevada or Arizona. Ms. McDonald states there is not. Ms. McDonald states that services provided in areas bordering Nevada and Arizona will be covered in service reviews for the agencies serving those areas. Chairman Mitzelfelt notes that there are no mutual aid agreements between San Bernardino County and Clark County in Nevada. Ms. McDonald notes that when there is a fire or emergency response on the I-15, there is a huge, immediate and rapid response to clear the roadway, but there is not as immediate a response by Clark County for other areas.

INFORMATION ITEMS

LEGISLATIVE REPORT

Ms. McDonald reports that she has been reappointed to the CALAFCO Legislative Committee for the upcoming year. The first meeting will be held on Friday, November 18, in San Diego, to review a potential platform. Sponsors will be sought to rewrite Government Code 56133, out-of-agency service agreements. Platforms for the Legislative Committee and CALAFCO will be reviewed for the upcoming year. She notes that John Edney, the southern section's City representative on CALAFCO, did not win his reelection bid in Imperial County, so his position on the CALAFCO Board will be vacated. This will be discussed at the CALAFCO meeting in January.

She states the January hearing will include a review of the effects of bills written and approved this year. She says SB244 was signed and will take effect January 1, 2012 for service review factors. Sphere of influence updates provisions will take effect July 1, 2012. AB54 relating to mutual water companies will change, including a requirement for mapping.

EXECUTIVE OFFICER'S REPORT

Ms. McDonald reports that this spring three positions are up for election, Alternate Public Member (Colven), City Member (Coleman), and Special Districts Member (Cox).

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Ms. McDonald notes that there is no hearing in December and the staff office will close beginning December 23, 2011 through January 3, 2012.

COMMISSIONER COMMENTS

Chairman Mitzelfelt calls for comments from the Commission.

Commissioner Cox congratulates Commissioner McCallon on the receipt of an award from the League of California Cities. Commissioner McCallon points out that Commissioners Rutherford and Williams also received that award. He thanks the Commission.

Commissioner Curatalo wishes everyone Happy Holidays and Merry Christmas.

COMMENTS FROM THE PUBLIC

Chairman Mitzelfelt calls for comments from the public. There are none.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE
COMMISSION, THE HEARING IS ADJOURNED AT 10:03 A.M.**

ATTEST:

ANNA RAEF, Recording Secretary

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BRAD MITZELFELT, Chairman