STAFF REPORT
for
Mono County Board of Supervisors
Inyo County Board of Supervisors
Bishop City Council
Mammoth Lakes Town Council

Subject: Consider approving the formation agreement for an Eastern Sierra Council of Governments Joint Powers Authority (JPA)

Meeting Date: November 20, 2019

BACKGROUND:

Members of the Eastern Sierra Council of Governments have long recognized that intergovernmental collaboration is critical for the well being and success of our region. There has not been a formal means through which the four member agencies could work together. Members of the ESCOG unanimously agree that formation of a Joint Powers Authority among the four agencies will create a much-needed vehicle for intergovernmental collaboration. The ESCOG Board unanimously recommends that each member agency approve the proposed Eastern Sierra Council of Governments Joint Powers Authority (JPA).

The Eastern Sierra Council of Governments (ESCOG) currently exists as a body that shares ideas and discussions between elected officials representing the Town of Mammoth Lakes, City of Bishop, and Inyo and Mono Counties. The ESCOG currently operates under a joint powers agreement. The ESCOG has expressed an interest in creating a Joint Powers Authority (JPA) that would allow the Board to take action on various items affecting the region and to have those powers and duties as provided for in the formation agreement. The JPA would be a separate legal governmental entity. The ESCOG Board has worked through the proposed formation agreement over the past several months. In order to move forward with the JPA formation as presented, all four member agencies will need to vote in support to do so. The attached agreement is provided for consideration by the ESCOG Member Agencies. The ESCOG Board is requesting that each agency either approve or reject the JPA formation agreement as proposed rather than with revisions. Comments or concerns will be expressed and passed on to the ESCOG Board, however, any revisions to the document would require review and approval by each member agency again.

ANALYSIS:

Creation of a JPA would create a new governmental body in the Eastern Sierra. As a separate body, the ESCOG may be delegated certain authority and funding from the Member Agencies creating the JPA. The JPA may act autonomously and independently

from or in concert with member agencies, subject to the powers and duties as provided for in the JPA formation agreement. However, the JPA does require more significant actions by the JPA be approved by the member agencies, such as the levy of any tax, fee or assessment across the member jurisdictions, required funding is limited to core operational services, unless otherwise agreed to by each member agency and the purpose is limited to exclude policy areas that could otherwise be delegated to a council of governments. The powers of the ESCOG JPA are more specifically outlined in Section III and Section V of the JPA Formation Document. The JPA is voluntary by each agency as provided for in Section VII.

Duties and Responsibilities

The JPA formation agreement delegates specific authority to the JPA. The JPA would be formed under the specific State statues allowing governmental agencies to create Joint Powers Authorities (see section I. Recitals, 1.05 and 1.06 of the agreement). Section II sets for the basic purpose for the creation of the JPA. This states as follows:

II. Purposes

2.01 The ESCOG shall continue to be organized to: (1) provide a forum for discussion and study of regional issues of interest to the Member Agencies; (2) identify and plan for the solution of selected regional issues requiring multi-governmental cooperation; (3) facilitate actions and agreements among the Member Agencies for specific project development; (4) conduct other region wide functions as the Members deem appropriate.

2.02 In addition to the above, the ESCOG shall be organized to identify funding sources and to apply for and receive funding for the planning and implementation of programs of regional impact or significance, and to implement such programs, upon approval of the governing bodies of each Member Agency.

The Formation Agreement provides a number of checks and balances for the Member Agencies as noted above in section 2.02. In Section III Powers, there are additional limits such as the ability to raise certain revenue is limited under 3.07. "*With the approval of the governing bodies of each of the Member Agencies, to raise revenues through the imposition of fees, assessments, taxes or the issuance of bonds, in accordance with applicable laws*" (emphasis added). The JPA's overall powers and duties are also focused and under section 3.11 do not include other statutory duties that may be undertaken by a Council of Governments (COG). The powers delegated to the JPA do provide appropriate authority for the JPA to function and to address specific areas of regional importance in concert with the member agencies.

The ability to act as a regional body may bring added value in areas that cover multiple agency governmental boundaries (i.e. recreation, digital 395 broadband, National Forest Planning, to note a few). The JPA will also be positioned to pursue regionally based grants

and other funding directed at agreed upon projects and programs. The JPA will continue to provide opportunity for the Member Agencies to share information and ideas.

Financial Considerations

The ESCOG historically has not had any staff assigned to work on its behalf. Clerking duties have rotated between the four agencies, although a recent change has assigned those duties to a new Town of Mammoth Lakes position that will be funded in part by each of the four ESCOG agencies. The new position is responsible for coordinating and clerking meetings, record keeping, and maintaining the ESCOG website. The approval of the JPA will have additional staff and support costs. The estimate for formation of the JPA is provided in Attachment A. The initial cost for each agency for the first year of operation is estimated at $100,400 or $25,100 per member. For FY19-20 a prorated amount of $16,300 is requested. This includes the full year of clerking services and half year of other estimated costs. For budget planning it is recommended that each consider funding in the amount of $25,100 for FY20-21. The amount may be further refined over the next several months.

The initial funding estimate includes the current clerk duties being provided by the Town of Mammoth Lakes. While part of the annual cost, this is not a new cost to the members. The initial recommendation is for a part-time Executive Director. An allocation of $50,000 is recommended. The position may be contracted through a member agency. The alternative would be a to directly contract with an individual. The remaining costs are normal operational costs including, legal, fiscal agent, insurance and other miscellaneous costs. It is anticipated that the initial legal and fiscal agent costs will be provided by member agencies.

Next Steps

Mono County Counsel has taken the lead on drafting the attached JPA formation document, which has been reviewed by Counsel and the administrators for the Member Agencies. The proposed JPA was approved by the ESCOG on October 11, 2019. The ESCOG voted to present the document to each of the member agencies for approval, which is required before any additional action can be taken to formalize the JPA.

If the JPA is approved by each of the four agencies, a number of steps will need to occur in order to finalize the formation of the JPA. The following initial steps have been identified by staff and legal counsel as requirements for the formation of a JPA:

1. File the JPA formation document with the Secretary of State
2. Adopt a Conflict of Interest Code
3. File new (or amended) Form 700s
4. Secure insurance for the JPA
5. Acquire legal counsel/representation (initially contract with member)
6. Draft and adopt a budget and detail member agency financial requirements
7. Set regular meeting schedule (adopt by resolution)
8. Adopt Bylaws for the new JPA
9. Hire/Contract for an Executive Director

It is anticipated that current member agency staff will assist in several of these steps. A number of the actions will need to run in parallel fashion, while others are sequential.

LEGAL CONSIDERATIONS:

Adoption of the JPA will create a new governmental entity in the Eastern Sierra. The JPA structure is provided under State law and is a legal process used by multiple agencies across the state to provide regional services. The Eastern Sierra Transit Authority (ESTA) is a local example. This body will have those duties, powers and authority as provided for in the JPA formation documents.

OPTIONS

Each of the member agencies should consider the following options.

Option 1: Approve the draft JPA formation agreement as proposed. Vote in concept to approve the initial funding for the remainder of FY19-20 (anticipated to be 50% of the estimated annual cost) and as a base line for FY20-21 budget planning purposes.

Option 2: Provide input on the proposed JPA formation agreement and request that the ESCOG make revisions to the draft JPA formation agreement. Any revisions or additional information would need to come back to the four agencies for approval, as all four agencies need to approve the same document. The ESCOG Board is requesting that the proposed JPA formation document be either approved or rejected, with any comments forwarded to the ESCOG Board.

Option 3: Do not approve the draft JPA. Request that the ESCOG stop working on the establishment of a JPA and that it continue to function as a body that shares ideas and information between elected officials in the region and continue to operate under the existing joint powers agreement structure.

RECOMMENDATION

The ESCOG Board is recommending approval of the proposed Eastern Sierra Council of Governments Joint Powers Authority and the allocation of $16,300 per agency for initial start up funding for the remainder of Fiscal Year 19-20.

Attachments

A - Initial Startup Cost Estimates
B - Final Draft JPA formation agreement

Attachment A
JPA START-UP COST ESTIMATE

ACTIVITY	ANNUAL COST	FY19-20 AGENCY COST	ANNUAL AGENCY COST
Executive Director[1]	$50,000	$6,250	$12,500
Clerk/Clerical[2]	$30,000	$7,500	$7,500
Legal Services[3]	$10,000	$1,250	$2,500
Fiscal Agent[3]	$2,400	$300	$600
Insurance/Other	$8,000	$1,000	$2,000
Total	$100,400	$16,300	$25,100

1 – Assumes work provided by existing Member agency staff on a part-time basis/or limited contract for service
2 – Assumes work provided by existing Mammoth Lakes staff is ongoing
3 – Assumes work provided by existing member staff (Mono County/Other)

Attachment B

Final Draft JPA

Approved by ESCOG Board

October 11, 2019