



EASTERN SIERRA COUNCIL OF GOVERNMENTS (ESCOG)

SPECIAL MEETING AGENDA

Friday, September 13, 2019

9:00 a.m.

**Mammoth Lakes Council Chamber
437 Old Mammoth Road, Suite Z
Mammoth Lakes, CA**

Board Members

Mono County Supervisor
Stacy Corless – Vice Chair

Mono County Supervisor
Bob Gardner

Town of Mammoth Lakes Councilmember
Lynda Salcido

Town of Mammoth Lakes Councilmember
John Wentworth

Inyo County Supervisor
Jeff Griffiths –Chair

Inyo County Supervisor
Dan Totheroh

City of Bishop Councilmember
Jim Ellis

City of Bishop Councilmember
Karen Schwartz

NOTICE TO THE PUBLIC

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at 760-965-3603. Notification 48 hours prior to the meeting will enable the City of Bishop or Town of Mammoth Lakes to make reasonable arrangements to ensure accessibility to this meeting. (See 42 USCS 12132, 28CFR 35.130)

NOTE: Comments for all agenda items are limited to a speaking time of three minutes.

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**

4. **Public Comment** – Notice to the Public: This time is set aside to receive public comment on matters not calendared on the agenda. When recognized by the Chair, please state your name and address for the record and please limit your comments to three minutes. Under California law the Eastern Sierra Council of Governments Board is prohibited from generally discussing or taking action on items not included in the agenda; however, the Eastern Sierra Council of Governments Board may briefly respond to comments or questions from members of the public. Therefore, the Eastern Sierra Council of Governments Board will listen to all public comment but will not generally discuss the matter or take action on it.
5. **Status and action regarding amended Joint Powers Agreement Establishing the Eastern Sierra Council of Governments as a separate Legal Entity from its Member Agencies**
6. **Board and Council Reports**
7. **Call for Agenda Items for Next Meeting**
8. **Adjournment**

The ESCOG will adjourn to the next meeting on Friday, October 11, 2019 at 8:30 a.m. in Mammoth Lakes.

STAFF REPORT

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

Meeting Date: September 13, 2019

BACKGROUND:

The Eastern Sierra Council of Governments (ESCOG) has been working the proposed formal transition of the ESCOG to become a Joint Powers Authority (JPA) for several months. The ESCOG Board has reviewed a number drafts of a formation document. The most recent draft accepted by the Board is attached. The next step in forming the proposed JPA is to have each member agency consider the proposed JPA formation document.

To facilitate the consideration of the formation document and to get conceptual approval for initial funding, the attached staff report has been prepared for ESCOG review. It is recommended that this staff report be submitted to each member agency's governing body in the same form, so that each agency is considering the same information. A cover memorandum may be provided by the individual agency staff as applicable for requesting that each agency consider the proposed JPA formation document with the attached staff report. Each member agency would also be asked to commit in concept initial funding in a minimum amount to be determined by the ESCOG Board.

The proposed JPA document is the previous one accepted by the ESCOG Board. It is requested that the Board reconfirm that this is the JPA formation document requested to be considered by each of the member agencies.

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 of an Eastern Sierra Council of Governments Joint Powers Authority (JPA)

Meeting Date: September 13, 2019

BACKGROUND:

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. On September 13, 2019, the ESCOG Board voted to bring the JPA formation request forward to the four member agencies. In order to move forward with the JPA formation process, all four member agencies would need to vote in support to do so. The attached agreement is provided for consideration. The same agreement will be presented to each of the member agencies. Any proposed revisions to the agreement would require this process to start all over again.

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 will be responsible for coordinating and clerking meetings, record keeping, and maintaining the ESCOG website. A JPA would likely require additional staff assistance, which could be provided through direct hire, formal agreements with member agencies, or contract employee(s).

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. It may act autonomously and independently from the members or in concert with member agencies.

A specific scope of services that a new ESCOG JPA may oversee has not yet been determined. Some items that have been discussed by the ESCOG Board include regional issues such as housing, economic development, broadband, and recreation. It will be important to clearly define the purpose and functions of a new JPA should it be established.

Establishment and operation of a new JPA will require funding from each of the member agencies. Staff resources will be necessary to complete basic legal and administrative steps in order to formalize the JPA. Beyond that, the structure and operations of the JPA may be relatively simple or more complex. This would be up to the discretion of the ESCOG and the delegation of funding from the member agencies. It is anticipated that some level of ongoing staffing will be required for the ESCOG JPA. If the ESCOG hires its own employee(s), it would be required to provide benefits, participate in PERS, etc. The ESCOG could also hire a contract employee(s), and/or contract with one of the member agencies to provide staff resources. In this instance, details would need to be worked out between the member agency and the ESCOG including funding to the member agency for the staff time and who the staff person would report to.

Mono County Counsel has taken the lead on drafting the attached draft JPA document, which has been reviewed by Counsel and the administrators for the other member agencies. The draft JPA was approved by the ESCOG on September 13, 2019. The ESCOG voted to take 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 items will need to occur in order to finalize the creation of the JPA. Most likely, the Board would need to hire a staff person (or contract with a member agency) to oversee these tasks. The cost for this work would need to be allocated by the member agencies. The following initial steps have been identified by staff and legal counsel as requirements for the formation of a JPA:

1. Finalize the JPA document, with any amendments from member agencies
2. File the document with the Secretary of State
3. Adopt a Conflict of Interest Code
4. File new (or amended) Form 700s
5. Secure insurance for the JPA
6. Acquire legal counsel/representation
7. Draft and adopt a budget and detail member agency financial requirements
8. Set regular meeting schedule (adopt by resolution)
9. Adopt Bylaws for the new JPA

STAFFING CONSIDERATIONS:

It is likely that the ESCOG will need to hire staff in order to conduct work on its behalf. The initial program would continue to use clerking support provided through the Town of Mammoth Lakes for meeting administration. For any work program items to be pursued,

the scope of work for each activity and the role of the JPA Board will need to be defined, in order to determine staffing needs. Each member agency will need to consider its funding share of the JPA as it is formed, and any future costs related to specific work program items.

FINANCIAL CONSIDERATIONS:

At this point in time, it has not been determined what the financial impact to the four agencies would be if the JPA were to be adopted. An estimate ranging from \$12,000 to \$35,000 per agency is likely needed to complete the above tasks in setting up the new JPA. The low cost estimate assumes no Executive Director; the high end costs assume a contract position, presumably with one of the member agencies.

Ultimately the financial impact would depend upon the activity of the ESCOG as well as the type of staffing solution that the JPA chooses to employ. If the JPA is approved by the member agencies, there would likely be ongoing staffing costs to each agency. It is anticipated that at a minimum, these costs would be in the \$10,000 per agency range for minimal operations and staff support to just operate the JPA, without any specific project work.

LEGAL CONSIDERATIONS:

Adoption of the JPA would 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 would have the authority to take action on certain items, which could override the authority and autonomy of the individual agencies in some cases.

OPTIONS

Each of the member agencies should consider the following options.

Option 1: Approve the draft JPA document as proposed. Allow the ESCOG to determine its scope of work and services, which will in turn determine the operational costs for each agency. Vote in concept to approve the initial funding.

Option 2: Provide input on the draft document and direction on the anticipated scope of services. Request that the ESCOG make revisions to the draft JPA document and/or develop a detailed scope of work and services for the JPA, including a cost estimate for its operations. 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.

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

discussions between elected officials in the region and operate under the existing joint powers agreement structure.

Attachments

A - Initial Startup Cost Estimates

B - Final Draft JPA

Attachment A

ESCOG JPA START-UP COST ESTIMATE

<u>ACTIVITY</u>	<u>COST</u>	<u>COST/AGENCY</u>
Executive Director	\$?	\$?
Clerk/Clerical ¹	\$30,000	\$7,500
Legal Services ²	\$10,000	\$2,500
Fiscal Agent ²	\$2,400	\$600
Insurance/Other	<u>\$8,000</u>	<u>\$2,000</u>
Total	<u>\$50,400</u>	<u>\$12,600</u>

1 – Assumes work provided by existing Mammoth Lakes staff, with minor increase in meetings

2 – Assumes work provided by existing member staff (Mono/Inyo County)

Attachment B

Final Draft JPA

**JOINT POWERS AGREEMENT ESTABLISHING THE EASTERN SIERRA COUNCIL OF GOVERNMENTS
AS A SEPARATE LEGAL ENTITY FROM ITS MEMBER AGENCIES**

This agreement, made and entered into this _____ day of _____, by and among the County of Mono, a political subdivision of the State of California (“Mono”), the County of Inyo, a political subdivision of the State of California (“Inyo”), the Town of Mammoth Lakes, a municipal corporation (“Town”) and the City of Bishop, a municipal corporation (“City”) (collectively “Member Agencies” or “Members”), shall supersede and replace, in its entirety, that Amended Joint Powers Agreement Eastern Sierra Council of Government Entities (COG) entered into by and among the Parties on or about February 26, 1999.

I. Recitals

- 1.01 In 1995, the Counties of Inyo and Mono and the Town of Mammoth Lakes executed a joint powers agreement (JPA) establishing the Eastern Sierra Council of Governments (ESCOG). The 1995 JPA was amended in 1999 to add the City of Bishop as a party.
- 1.02 Since its establishment, the ESCOG has functioned as a forum for communication among Member Agencies regarding issues of regional concern and, more recently, for the planning and implementation of regional communications and broadband solutions through the establishment of the Inyo-Mono Broadband Consortium. The ESCOG has not historically operated as a joint powers authority independent from its Members, nor taken the necessary steps to become such an independent legal entity.
- 1.03 The Member Agencies acknowledge and agree that there are circumstances where it is necessary or desirable for the Member Agencies to function collectively on a regional basis, such as where regionalization enhances funding opportunities, provides resources and capabilities that would not otherwise be available, or improves the delivery of services to benefit the interests of the Members’ constituents.
- 1.04 The Member Agencies further agree that the creation of a regional joint powers authority that is a separate legal entity from the Members would position the ESCOG to maximize and take advantage of these opportunities.
- 1.05 Article 1 of Chapter 5 of Division 7 of Title 1, commencing with section 6500, of the California Government Code authorizes two or more public agencies, by joint powers agreement approved by their governing bodies, to jointly exercise any powers common to them and/or to create a separate legal entity for the purpose of exercising such powers.
- 1.06 It is the intent of the Parties to enter into a joint powers agreement pursuant to the provisions of sections 6500 et seq. to establish a joint powers authority, the Eastern Sierra Council of Governments, which would supersede and replace the historic ESCOG established in 1995 (and modified in 1999), for the purposes of enhancing funding and resource opportunities and providing such programs, services or functions that the Member Agencies, by approval of their governing bodies, deem necessary or desirable.

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.

III. Powers

- 3.01 To contract or otherwise participate in, and to accept grants, funds or services from the State or Federal government, their agencies or instrumentalities or from any civic organization or private person (including but not limited to corporations) in connection with any program judged by the ESCOG Board to be relevant to its purposes, and upon approval of the governing bodies of the Member Agencies.
- 3.02 To accept gifts, bequests or donations in support of current programs of the ESCOG or to support ongoing operating expenses.
- 3.03 To contract for any services judged by the ESCOG to be necessary or convenient for carrying out its purposes and to pay the costs of such services in accordance with section 5.02. Such contracts may be with an ESCOG Member, upon agreement by that Member and the ESCOG, or with an outside agency or firm and may include contracts for:
- a. General legal services.
 - b. Litigation or specialized legal services.
 - c. Liability Insurance and, where applicable, workers' compensation insurance.
 - d. Human Resources services.
 - e. Other governmental services required to operate the ESCOG may be provided by a Member, JPA staff or an independent contractor.
- 3.04 To incur debts, liabilities or obligations that are not the debts, liabilities or obligations of the Member Agencies, except as required by Government Code sections 6508.1, 6508.2, 20574.1 and 20575, enacted by AB 1912 in 2018, which require that the members of a dissolving joint powers agency apportion any PERS liability among themselves and allows CalPERS to make the apportionment if the members cannot agree.
- 3.05 To employ personnel including an Executive Director and/or such other staff as the ESCOG Board of Directors deems appropriate and to establish the powers and duties of such personnel

- 3.06 To invest, in accordance with Government Code section 6509.5, monies in the treasury of the ESCOG that is not immediately required for necessities of the ESCOG.
- 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.
- 3.08 To incur long or short-term indebtedness.
- 3.09 To own, lease or license real or personal property and/or equipment which is necessary or proper to carry out the purposes of the ESCOG.
- 3.10 All other powers that are necessary or proper to carry out the purposes of the ESCOG.

Each of the above powers may be exercised by the ESCOG in the same manner, and subject to the same restrictions, as such powers are exercised by the Town of Mammoth Lakes.

IV. Organization - The internal organization of the ESCOG shall be as follows:

- 4.01 Membership. Members shall consist of the County of Inyo, the County of Mono, the Town of Mammoth Lakes and the City of Bishop, upon approval of this agreement by the governing body of each, and the execution of this agreement by an authorized representative of each Member. Each Member shall be entitled to be represented by two representatives, each of whom shall be a member of the legislative body of such Member.
- 4.02 Board of Directors, Officers and Meetings.
 - a. The ESCOG shall have a Board of Directors comprised of two representatives, and up to two alternates, appointed by each of the governing bodies of its Members. The term of office of each director shall not exceed his or her term of office on the legislative body he or she represents.
 - b. Upon execution of this agreement by all four Member Agencies, the ESCOG representatives having previously been appointed by the governing bodies of the Member Agencies shall continue to serve as directors of the ESCOG for the terms for which they were previously appointed. The term of office of each subsequently-appointed representative shall be four (4) years. If a vacancy occurs on the board, it shall be filled by appointment of the governing body of the affected Member and such appointed representative shall serve for the remainder of the term.
 - c. The Board of Directors shall elect from among its members a Chair, Vice-chair and Secretary for a term of one (1) year. The members currently serving in those offices shall continue to serve for the remainder of their appointed terms, except that the member, if any, previously appointed to serve as Secretary/Treasurer shall instead serve as Secretary. Notwithstanding

the above, the office of Secretary may be an administrative staff person of the ESCOG or of a Member Agency designated by the Board of Directors.

- d. The ESCOG shall establish regular meetings of the Board of Directors which shall be not less than one (1) such meeting each calendar quarter.
- e. Meetings of the ESCOG shall be noticed and carried out in accordance with the provisions of the Ralph M. Brown Act.
- f. A majority of the Board of Directors shall constitute a quorum for the transaction of business. No resolution or motion shall be passed or become effective without affirmative vote of at least a majority of the membership of the board and, for those actions requiring approval by the governing bodies of the Member Agencies, by each and every Member Agency, unless otherwise indicated.

V. Financial Provisions

- 5.01 Each Member shall contribute to the administrative support of the ESCOG. Administrative support is understood as those costs, expenditures and obligations which maintain up to one (1) 0.5 FTE agency administrative staff person. Each Member's contributions to administrative time and support shall be accounted for. It is intended that each Member will provide twenty-five percent (25%) of the administrative staff person, unless otherwise agreed by the Board of Directors, and shall agree in advance regarding any additional administrative support.
- 5.02 Members may make financial contributions to the ESCOG in any manner authorized by Government Code section 6504. All contract costs incurred pursuant to section 3.03 and section 5.04 of this JPA shall be divided equally among the Members. Any financial contributions other than for costs under section 3.03 or 5.04 shall be provided on an individual project basis and approved by the governing body of the Member Agency providing such support. Any advances of public funds to the ESCOG shall be repaid in the manner provided in the document authorizing the advance.
- 5.03 The ESCOG's fiscal year shall commence on July 1 of each year and terminate on June 30 of the following year.
- 5.04 The Finance Director of the County of Mono shall serve as the Fiscal Agent, Treasurer and Auditor (hereinafter "Treasurer") for the ESCOG, unless otherwise directed by a majority of the board. The Treasurer shall be responsible for all money of the ESCOG from whatever source, shall be the depository and have custody of the money of the ESCOG, and shall perform all duties and functions of the Treasurer as set forth in Government Code sections 6505, 6505.5, or any other applicable state, federal or local law or regulation. All funds of the ESCOG shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements during the fiscal year. Members shall share the costs of this service equally.

- 5.05 Nothing contained in this agreement shall bind any Member to a financial commitment on behalf of the ESCOG, except as specifically provided.

VI. Property and Records

- 6.01 Upon any dissolution of the ESCOG, any surplus money or property shall be disposed of by division among the Members in the same proportion as such Members contributed to the ESCOG.
- 6.02 The Town of Mammoth Lakes shall serve as the repository of all records of the ESCOG. Record retention shall conform to the requirements of law. Any record destruction shall first be approved by the Board of Directors. The Board of Directors may provide for record retention beyond the requirements of law.

VII. General Provisions

- 7.01 Amendments. This agreement may be amended at any time by all of the Member Agencies acting through a majority vote of their governing bodies. In the event the ESCOG should determine that an amendment to this agreement would be in the best interests of the ESCOG and its Member Agencies, it may propose such amendment for ratification by the governing bodies of each Member Agency. This agreement shall be deemed and be so amended upon the date the last governing body approves such amendment.
- 7.02 Voluntary Association. It is understood and agreed that membership and participation in the ESCOG as described in this agreement is voluntary. Any Member may withdraw by giving written notice to the governing bodies of the other Member Agencies in the manner provided in this agreement for the communication of notices.
- 7.03 Withdrawal. A Member may withdraw from the ESCOG by providing written notice to the remaining Members at least ninety (90) days prior to the end of the fiscal year, and shall remain liable for its share of financial support and/or contribution to the ESCOG through the end of that fiscal year. Except for payments required by AB 1912 (2018) and described in section 3.04, a withdrawing Member shall not be liable to the ESCOG nor any of the other Members for payment of contributions or financial support to the ESCOG not previously committed by that Member.
- 7.04 Dissolution and Termination. The ESCOG may be dissolved and this agreement terminated at any time in the same manner as provided for amendment in section 7.01. The ESCOG shall automatically be dissolved upon withdrawal of 2 of its Members.
- 7.05 Effective Date and Term of Agreement. This agreement shall be and become effective for all purposes when approved by the governing bodies of each of the Member Agencies and shall remain in full force and effect unless and until dissolved or terminated in the manner provided in this agreement.

7.06 Notices. In the event it is or becomes necessary for a party to this agreement to serve or give notice to any other party, such notice shall be deemed validly served and given if deposited in a United States Post Office with postage thereof fully prepaid, sent registered or certified mail and, if to Inyo County, addressed to the County Administrator, Administrative Center, County of Inyo, PO. Box N, Independence, California 93526; if to Mono County, addressed to the County Administrative Officer at P.O. Box 696, Bridgeport, California 93517; if to the Town of Mammoth Lakes, addressed to the Town Manager at P.O. Box 1609, Mammoth Lakes, California 93546; and, if intended for the City of Bishop, addressed to the City Manager at 337 West Line Street, Bishop, California 93514.

7.07 Inurement. This agreement shall inure to the benefit of and be binding upon the parties hereto and their successors.

VIII. Execution

IN WITNESS WHEREOF, the Member Agencies have executed this agreement as of the date last written below.

COUNTY OF INYO

DATED: _____

BY: _____
Chair, Board of Supervisors

ATTEST: _____
Clerk to the Board

APPROVED AS TO FORM:

Inyo County Counsel

COUNTY OF MONO

DATED: _____

BY: _____
Chair, Board of Supervisors

ATTEST: _____
Clerk to the Board

APPROVED AS TO FORM:

Mono County Counsel

TOWN OF MAMMOTH LAKES

DATED: _____

ATTEST: _____

BY: _____
Town Mayor

Town Clerk

APPROVED AS TO FORM:

Town Attorney

CITY OF BISHOP

DATED: _____

BY: _____
City Mayor

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

City Attorney