

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)

(Fresno County, California)

“MINUTES”

REGULAR LAFCo MEETING – November 15, 2006

1. **Call to order:** Vice Chairman Lopez called the meeting to order at 1:40 p.m.
- Members Present:** Commissioners Susan Anderson, Larry Fortune, Victor Lopez, Trinidad Rodriguez, and Bob Waterston
- Members Absent:** None
- Staff Present:** Rick Ballantyne, LAFCo Executive Officer
Darrel Schmidt, LAFCo Deputy Executive Officer
Kenneth J. Price, LAFCo Counsel
Mike Noland, LAFCo Special Counsel
Candie Fleming, Clerk to the Commission
Susan Pool, Office Assistant

2. **Minutes from the regular LAFCo meeting of October 11, 2006**

The minutes were unanimously approved as presented.

CONSENT AGENDA

3. **Consider Approval: Request for a One-Year Extension to Complete Proceedings**
City of Reedley “Frankwood-Floral Reorganization” (LAFCo File No. RO-05-32).
4. **Consider Conditional Approval: Caruthers Community Services District “North of Clemenceau-East of Marks Annexation” (AD-06-2).**

The Consent Agenda was unanimously approved.

PUBLIC HEARINGS

5. **Conducting Authority Proceedings: City of Fresno “Willow-International Reorganization” (LAFCo File No. RO-06-23).**

Executive Officer Ballantyne presented staff's report and informed the Commission that no protests had been received. The Commission entertained public testimony, but none was offered. A motion to reaffirm the Commission's prior action to approve was made, seconded, and passed unanimously.

6. **City of Sanger “Indianola-Ninth No. 1 Reorganization” (LAFCo File No. RO-06-36).**

Executive Officer Ballantyne reported that although the Indianola-Ninth No. 1 and Church-Quality Reorganizations (Agenda Item No. 7) were conditionally approved several months earlier, that concern existed related to a single condition of the prior approvals. Such condition states:

- 5 *The City of Sanger and/or appropriate landowner shall protect, relocate, and/or refit the Consolidated Irrigation District's Fowler Switch Canal and the Winter Lateral Canal to the satisfaction of, but at no cost to, the District.*

The City of Sanger or appropriate landowner shall execute and acknowledge in a form agreeable to the District, an easement for any relocated facilities or those converted into underground pipelines or appurtenant structures. An approved Consolidated Irrigation District Project Permit shall be obtained by the City and/or appropriate landowner prior to any construction or development activities occurring on the site.

Mike Noland serving as Special LAFCo Counsel (LAFCo Counsel Ken Price recused himself from this item because his firm represents the Consolidated Irrigation District) recommended that the Commission continue this item, as well as Item #7, Church-Quality Reorganization, in order to allow additional time to review legal issues related to the validity of the applications.

Representatives of the City of Sanger and the developer requested that the item be heard and that the condition required by the Consolidated Irrigation District be deleted. These individuals offered the following information:

- Section 56375 of the Government Code states that LAFCo does not have the legal authority to impose such condition.
- It was stated that, the City of Sanger, CID, and the developer had met several times to discuss the matter—but an agreement had not been reached.
- Thirty homes have been constructed on the property but occupancy permits can not be issued by the City until the annexation has been completed. A continuance could place these buyers in jeopardy of losing their permanent financing.
- It was not fully known what CID's requirements were. CID had indicated to the City that they desired a fence installed at the site. After the tract map was approved, CID requested that the canal be underground.
- The developer has stated that a wrought iron fence would be installed to protect the canal.
- The developer was told after two previous petitions before the Commission that the appropriate step to reconsider the condition would be to file a new application.

Mr. Scott Browne, Special Counsel to CID, spoke in favor of the continuance. Citing Government Code Section 56886, Mr. Browne stated the Commission had broad authority to impose conditions to protect the continuation of services and that the Commission had the responsibility to consider the impacts of development on affected agencies and mitigate these impacts or deny the application.

Mr. Larry Craft, Chairman of the CID Board of Directors, spoke in favor of retaining Condition C-5, stating that within the past month, CID had requested the same condition be imposed on a City of Selma project.

Commissioner Waterston questioned whether or not LAFCo should give its opinion on the validity of the condition, indicating his belief that the primary issue is one of safety. Commissioner Lopez also expressed concern over the matter but stated he would like to act on the validity of the application. Commissioner Anderson indicated support of a continuance.

LAFCo Special Counsel, Mike Noland, again recommended a continuance in order to advise the Commissioners on the validity of this application as well as other issues raised. Mr. Noland also indicated that, based on his preliminary research, he did not believe that the application was valid.

Commissioner Fortune stated the only difference between the already approved application and the one in front of them was Condition C-5. Commissioner Anderson stated that the 30-day reconsideration period of this approval had passed and that she believed it should go to court if the City and/or the developer felt that LAFCo didn't have the authority to impose the condition.

Commissioner Anderson moved that this application and the similar Church-Quality Reorganization application be continued to the next meeting. After further discussion, the motion was modified to add that the continuance did not validate the application. The motion was seconded and after a vote, was denied.

CID Special Counsel, Scott Browne pointed out that there were only two possible actions to take: (1) continue the item to the next hearing; or (2) approve the annexation in lieu of an already approved and outstanding annexation.

Commissioner Waterston again asked whether or not the Commission could hear this application. Mr. Noland responded that the Commission could not consider the application because of earlier approval on the same property and unless the Commission rescinded their prior approval, the City and developers would have to wait one year to submit a new application (being March 8th, 2007).

A motion to continue this item to the next hearing, with the understanding that the continuance did not validate the application was made again, and passed with Commissioner Lopez opposing.

7. City of Sanger "Reorganization No. 05-05" (Church-Quality Southeast (LAFCo File No. RO-06-37)).

LAFCo Special Counsel Mike Noland recommended continuance for this proposal in order to allow additional time to review the validity of the application.

A motion to continue this item to the December 13th hearing was made, with the understanding that the continuance did not validate the application, and passed with Commissioner Lopez opposing.

8. City of Kingsburg "Kamm-Madsen No. 1 Reorganization (LAFCo File No. RO-06-34).

Executive Officer Ballantyne presented staff's report stating that not all property owners had consented to this annexation and that the twenty-acre parcel had been pre-zoned, but the southerly four-acre parcel included in this proposal, had not been pre-zoned. The option of an exception to the pre-zoning requirement on the four-acre parcel was not applicable in this case because the parcel has not been fully built out.

Additionally, as in Agenda Items 6 and 7, the Consolidated Irrigation District requested the City of Kingsburg to protect, relocate, and/or refit canals.

LAFCo Counsel Ken Price did not recuse himself from advising the Commission on this application stating, as long as the City of Kingsburg and CID consent to the condition without dispute, there would be no conflict of interest requiring him to recuse himself.

Larry Craft of Consolidated Irrigation District spoke in favor of the project.

Robert Schottler, the applicant's representative, requested that the Commission approve the annexation but without inclusion of the lower four-acre parcel.

Will Washburn of Provost and Pritchard Inc., informed the Commission that they were ready to proceed with recordation of the final map pending final comments.

Linda McNaughton, owner of the four-acre parcel, stated that she was not against annexation or having the property pre-zoned, but was requesting something in writing that there would be a wall constructed along her northerly property line to protect her residence. She indicated that no provision had been required when the applicant's tentative map was approved by the City.

City of Kingsburg Planning and Development Director, Terry Schmal, stated that the City took no position on the application.

Commissioner Anderson identified two potential solutions: (1) Continue this item to the January meeting so that the property could be pre-zoned; or (2) Remove the four-acre parcel from consideration.

A motion to approve the application without inclusion of the four-acre parcel was made, seconded and passed unanimously.

9. City of Kingsburg "Kamm-Academy Southwest Reorganization" (LAFCo File No. RO-06-33).

Executive Officer Ballantyne presented staff's report indicating that the same condition with regard to CID's conveyance facilities would apply to this application as well and that the City of Kingsburg and CID have agreed to this condition. He stated that the City of Kingsburg had indicated support of inclusion of a 20-acre parcel located south of the affected territory. Mr. Ballantyne indicated that the County, however, had indicated that inclusion of this property would not be consistent with the City of Kingsburg/County tax sharing agreement and recommended against its inclusion.

Ken Price again stated that as long as both parties were in agreement, providing his counsel to the Commission would not create a conflict of interest.

Robert Schottler spoke in support of the request. No other testimony was offered.

A motion to approve the proposal without inclusion of the 20-acre parcel was made, seconded and passed unanimously.

OTHER ITEMS

10. Consider Adoption: Calendar Year 2007 LAFCo Hearing Schedule.

Executive Officer Ballantyne presented the Commission with the proposed 2007 LAFCo Hearing Calendar. A motion to adopt the 2007 Calendar was made, seconded and approved unanimously.

11. Executive Officer Reports:

A. Selection of Municipal Service Review/Sphere of Influence Contracts Update

Executive Officer Ballantyne informed the Commission that staff had sent *Request for Proposals* for the *Municipal Service Reviews* to certified firms and that bids should be received within the next two weeks. Executive Officer Ballantyne concluded that the subcommittee should reconvene to choose

one of the proposals and report the subcommittee's recommendation at the Commission's December 13th meeting.

B. LAFCo Personnel Appointments

Executive Officer Ballantyne introduced Mr. Darrel Schmidt, LAFCo's new Deputy Executive Officer. Mr. Schmidt would be transferring from the County of Fresno Resources Division. It was reported that Mr. Schmidt had worked in County's Current Planning, Community Development, and Resources Divisions and that he will be responsible for coordinating the *Municipal Service Review Program*.

C. 2007 Fresno LAFCo Workshops:

1. Municipal Service Reviews/Spheres of Influence Start-Up

Executive Officer Ballantyne recommended that a special Municipal Services Review Workshop be held and conducted by Bob Braitman who serves as the Santa Barbara LAFCO Executive Officer and has had many years of experience in working with LAFCOs. Representatives of special districts, cities, the County, and other interested persons would be invited to attend.

Commissioner Anderson asked if staff could incorporate within the workshop a presentation possibly by San Diego County related to their fire districts. Commissioner Waterston added that they should have the fire district meeting as soon as possible. Larry Kraft of Consolidated Irrigation District asked to be included in these workshops.

2 Preservation of Agricultural Lands and Open Space Resources

LAFCo Counsel Ken Price informed the Commission that the County of Fresno Board of Supervisors would be having a workshop on December 5th regarding Agricultural Land Preservation. Mr. Price also noted that LAFCo's purpose is to preserve Prime Agricultural Land and Open Space and urged the Commissioners to have a separate workshop on how LAFCo can be constructive in this matter.

A motion for adjournment was made, seconded, and passed.