

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
(Fresno County, California)
“MINUTES”

REGULAR LAFCo MEETING – NOVEMBER 4, 2009

Call to Order: Chairman Victor Lopez called the meeting to order at 1:31 p.m.

Members Present: Commissioners Susan Anderson, Larry Fortune, Henry Perea, Trinidad Rodriguez, Victor Lopez, and Alternate Commissioner Chaidez

Members Absent: None

Staff Present: Rick Ballantyne, LAFCo Executive Officer
Kenneth J. Price, LAFCo Counsel
Candie Fleming, Clerk to the Commission
Samantha Hendricks, LAFCo Technician II

1. **Call to Order and Roll Call**
2. **Pledge of Allegiance**
3. **Minutes from the Regular LAFCo Meeting of October 7, 2009.**

The minutes were approved as presented.

4. **Potential Conflicts of Interest: Any Commission Member who has a potential conflict of interest may now identify the item and recues themselves from discussing and voting on the matter.**

Commissioner Lopez noted his conflict with Item No. 8.

5. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:
(Number of Potential Cases: 1)

There was no reportable action.

6. **Consider Approval: Request for a One-Year Extension to Complete Proceedings for the City of Kingsburg “Kamm-Academy Southwest Reorganization”.**

Executive Officer Ballantyne reported that the applicant had made progress in meeting conditions of the final map. He reported that the City of Kingsburg supported the request.

Commissioner Fortune moved for approval, Commissioner Rodriguez seconded the motion, and it was passed unanimously.

7. Consider Approval: Request for a One-Year Extension to Complete Proceedings for the Caruthers Community Services District “North of Clemenceau-East of Marks Annexation”.

Executive Officer Ballantyne reported that the applicant/developer had requested an extension of time based upon adverse economic hardships and conditions that existed within the housing market. He also reported that the Caruthers Community Services District representatives also supported the request. Mr. Ballantyne reported that existing land use circumstances and conditions had not changed within the vicinity that would affect the proposal.

Commissioner Rodriguez moved to approve a one-year extension, seconded by Commissioner Fortune, and unanimously approved.

8. Consider Approval: City of Orange Cove “Jacobs-South Reorganization (Del Rey Villas, LLC.)”.

Chairman Lopez left the room due to a potential conflict of interest as had been previously reported to the Commission.

Executive Officer Ballantyne reported that a reorganization application had previously been approved for the site but had been allowed to expire. Such decision was necessary in order to allow consideration of a new proposal that would allow for 768 residential units that would include a variety of town houses and single-family residences.

He reported that the State Department of Health Services had reviewed the application and commented that the City currently does not have adequate water supply and treatment capacity to meet the maximum day demand requirement under the Department’s waterworks standards. The Department also stated that they did not object to the project provided that the City acquires additional water and treatment facilities and capacities as identified in its Initial Study and Service Plan documents.

Mr. Ballantyne reported that the City has an existing contract to purchase additional water supply from the Lower Tully Irrigation District on an annual basis and is in the process of securing approval for a long-term contract for water supply. He reported that the City is in the process of determining how to best expand its water treatment plant capacities. In order to assure wastewater treatment capacity, the City is requiring the developer to demonstrate that adequate water and capacity is available and verification of adequacy be provided by the City’s Public Works Superintendent prior to issuance of building permits.

Executive Officer Ballantyne reported that the property is under Agricultural Land Conservation Contracts No. 3701 and 5387 that were successfully protested by the City when they were established. He indicated that the City had indicated its desire not to succeed to the contracts and that the City may exercise its option to not succeed to the contracts.

Mark Garza, representing the Kings Canyon Unified School District, indicated that the District did not oppose the project. However, the development would impact the District through an increase in student population. Mr. Garza reported that developer fees were not sufficient to properly deal with the increase in student population and that the District would work with the City of Orange Cove in promoting a new school bond measure. He also reported that the project is adjacent to the Orange Cove High School and would result in increases in noise, lighting, and traffic generation.

Commissioner Perea asked Mr. Garza if the District was negotiating with the City and developer to raise the developer fees. Mr. Garza responded that they were looking at revising their developer fees to essentially double the fees.

Commissioner Rodriguez moved to approve the proposal with conditions and set a protest hearing. Commissioner Perea seconded the motion which was unanimously approved.

9. Consider Approval: City of Parlier “City of Parlier Reorganization No. 06-02”.

Executive Officer Ballantyne reported that Ruben Castillo would serve as LAFCo’s Special Counsel for this item due to a potential conflict with Counsel Price. Mr. Ballantyne recommended that the item be continued for sixty days in order to allow the City and the Consolidated Irrigation District to address District issues and concerns. Representatives of the City of Parlier and the Consolidated Irrigation District (CID) concurred with the continuance.

Commissioner Rodriguez moved to continue the item for 60 days with a second by Commissioner Fortune. The motion was unanimously approved.

After the item was continued, Scott Brown (Special Counsel to CID) requested that the continuance be extended to the first meeting in February in order to allow more time for negotiations.

Alexis Gevorgian, representing the developer, testified that his company had attempted to annex the subject territory for nearly three years. Also, that they would comply with any future agreement that would be negotiated between the City and CID. Mr. Gevorgian stated that they had proceeded on that basis and that they have expended a great amount of money on the project. He stated that CID had later changed their mind and said they would oppose the annexation and would file a lawsuit if necessary. Mr. Gevorgian felt that his company was caught in the middle of a dispute between the City and CID and felt it was unfair and that the continuance would cause irreparable damage and jeopardize funding for the project. Mr. Gevorgian asked that the Commission force the issue in order to resolve the situation timely.

Chairman Lopez reminded the Commission that that they had already taken formal action to continue the item to the January, 2010 meeting.

10. Consider Authorization to Enter into Amended and Restated Professional Services Agreement with the County of Fresno.

Ken Price, LAFCo Counsel, presented staff’s report on the *Third Amendment to the Restated Professional Services Agreement* to be entered into between LAFCo and the County of Fresno. He indicated that the Amendment would result in greater LAFCo independence by terminating the use of County employees to serve LAFCo, as well as the services presently provided by the County’s Personnel and Auditor Offices. Mr. Price said that LAFCo would continue to receive other services from the County.

Mr. Price reported that the Agreement as written would be effective on January 11, 2010 and terminate on December 31, 2013. However, because LAFCo is seeking health insurance services from CalPers and because of unresolved issues regarding the employees’ retirement benefits, it was being recommended that a minor change be made to the Agreement that would allow the effective date be extended with the consent of both parties. Mr. Price said the draft would allow the Commission’s Executive Officer and the County CAO to work together to collectively determine the new effective date. Mr. Price reported that the Professional Services

Agreement is scheduled to be considered and approved by the County Board of Supervisors on December 1, 2009. He also discussed different options available for bringing on the new Executive Officer prior to January 11, 2009.

Commissioner Fortune pointed out that LAFCo would be able to obtain services outside the County if necessary—except for services mandated by law (i.e. Assessor, Election, and Health Department services).

Executive Officer Ballantyne reported that staff will meet with the Independence Subcommittee to work out the details. He reported that CalPers would require a formal resolution from the Commission in order to provide health benefits.

Commissioner Anderson questioned what the process would be if LAFCo should decide at a later date that they no longer wished to be an independent agency. She also stated that she would not support the Agreement because she felt it was not in the best interest of the LAFCo employees or the agency and that a move away from the County would eventually prove to be more expensive for the taxpayers and applicants.

Executive Officer Ballantyne responded that he had not heard of any instances where a LAFCo chose to return to the County after becoming independent and wasn't sure what the legal ramifications would entail. Ken Price responded that the issue would become an employment issue and an application would have to be made to FCERA to terminate LAFCo's membership in order to transition LAFCo employees back to the County.

Commissioner Anderson asked whether the employees could come back if the County agreed. Mr. Price responded that he had not reviewed the termination provisions but would be glad to do so and report back to the Commission.

Commissioner Perea asked if this issue with FCERA is with existing employees or future employees. Ken Price responded that this item has to do with the mechanics of the agreement between the County and LAFCo irrespective of the retirement system.

Ken Price said that FCERA has taken the position that once LAFCo becomes a member of FCERA, then all the LAFCo employees must be a member of FCERA, but that should not preclude the Commission the ability to tier the retirement benefits of new employees.

Commissioner Perea said he understood it differently from FCERA and that maybe the Commission could have someone from FCERA come before the Commission to address the issue. Mr. Perea divulged that he also was not going to support the agreement because of the cost factor. He stated that if LAFCo desires to be independent—then they shouldn't rely on the County to continue to provide health insurance, retirement, or any other benefits or services. Commissioner Perea indicated that he wouldn't support future LAFCo employees being a part of the County's retirement system. He stated that LAFCo should consider hiring new employees as contract employees.

Ken Price said the recommendation was to approve the agreement and give staff the authority to modify the effective date of the initial term to a later date than January 11, 2009, given any outstanding issues.

Commissioner Fortune made the motion which was seconded by Commissioner Rodriguez. The motion passed three to two with Commissioners Anderson and Perea voting no.

11. Retirement Options for Future LAFCo Employees (Continued from October 7, 2009).

Ken Price (LAFCo Counsel) stated that the item was to report on the legal opinion that he had received from the Fresno County Employees Retirement Association (FCERA). FCERA's legal counsel had determined that FCERA would not permit some LAFCo employees to be part of FCERA while other employees were not members.

Commissioner Perea asked to get the legal opinion in writing. Counsel Price responded that he could request such and ask representatives of FCERA (Mr. Reger or Mr. Pena) to appear before the Commission.

12. Consider Adoption of Calendar Year 2010 LAFCo Hearing Schedule.

Commissioner Rodriguez moved to approve the 2010 LAFCo Meeting Calendar as presented with a second by Commissioner Fortune. The 2010 LAFCo calendar schedule was unanimously approved.

13. Executive Officer Report on CALAFCo State Conference at Yosemite.

Executive Officer Ballantyne reported that the 2009 CALAFCo Conference sponsored by Fresno LAFCo was a great success. He provided a photo show of Conference highlights. He also reported that Fresno LAFCo was awarded a "Certificate of Recognition" by CALAFCo officials for the exceptional work and contributions in hosting the conference. Also, that Commissioner Larry Fortune was recognized and received CALAFCo's "Outstanding Commissioner of the Year" Award.

CLOSED SESSION

**14. A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION.
Subdivision (a) of Section 54956.9: *City of Fresno v. Fresno Local Agency Formation Commission***

**B. PUBLIC EMPLOYMENT
Title: Executive Officer**

Chairman Lopez reported that there were no actions to report.

Executive Officer Ballantyne announced that the December 2nd Fresno LAFCo meeting would be his last and that his last day would be January 8, 2010. He indicated that there would be a brief retirement ceremony held at the end of the December meeting. Mr. Ballantyne reported that LAFCo's Counsel (Baker, Manock & Jensen) had graciously offered to host his reception at the Downtown Club following the meeting and that all Commissioners were invited.

PUBLIC COMMENTS

There were no comments from the public.

ADJOURNMENT

The meeting was adjourned at 3:18 p.m.

THE NEXT LAFCo MEETING will be held on December 2, 2009, at 1:30 p.m. in the Board of Supervisors' Chamber - Hall of Records, Room 301, Fresno, California.