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**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)  
EXECUTIVE OFFICER'S REPORT**

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**AGENDA ITEM No. 11**

**DATE:** April 15, 2009

**TO:** Fresno Local Agency Formation Commission

**FROM:** Rick Ballantyne, Executive Officer  
Darrel Schmidt, Deputy Executive Officer

**SUBJECT:** **Consider Request – Waive LAFCo Filing Fee for Reconsideration of the Belmont-Sunnyside No. 3 Reorganization (LAFCo File No. RO-08-14).** A request by the Easterby Kings Canyon Home Owners Association to waive LAFCo's fee for filing a request for reconsideration of the Belmont-Sunnyside No. 3 Reorganization (Island Annexation)".

**Petitioner:** Easterby Kings Canyon Home Owners Association, Terry Slaven, President

**Background:**

On February 4, 2009, the Commission heard the Belmont-Sunnyside No. 3 (Island Annexation) Reorganization—a reorganization proposed by the City of Fresno to annex 94 acres to the City of Fresno and detach the same area from the Fresno County Fire Protection District, the Kings River Conservation District, and County Service Area No. 7. The territory is generally located at the southwest corner of E. Belmont and N. Sunnyside Avenues (see location map).

The affected territory is an unincorporated island surrounded by the City of Fresno and is included within the City of Fresno's "Island Annexation" Program. Annexations involving unincorporated islands or substantially surrounded unincorporated areas less than 150 acres in size differ from other annexations in that State law mandates that the Commission shall approve island annexation proposals and waive protest proceedings provided specified criteria can be met in accordance with Government Code Section 56375.3.

At the conclusion of its public hearing, the Commission continued the proposal in order to allow City and County staff and the Easterby Kings Canyon Home Owners Association's representative (Dr. Terry Slaven) to meet to discuss unresolved issues. This meeting occurred on February 13, 2009 and included discussions on such issues as keeping of horses within the affected territory, whether the City would install sidewalks within the affected territory, and the disposition of County owned land that was previously occupied by a County operated sewerage plant.

Staff also inquired as to whether the neighborhood took issue with any of the stated "Island Annexation" criteria identified in Government Code Section 56375.3. No issues with these criteria were identified. On March 11, 2009, the Commission determined that specified criteria identified in Government Code Section 56375.3 could be met, approved the reorganization, and waived protest proceedings.

On March 24, 2009, the Easterby Kings Canyon Home Owners Association filed a formal request to have the Commission reconsider its resolution of approval (see attached letter).

This letter also included a separate request that the Commission waive fees associated with reconsidering the proposal. Pursuant to the Commission's adopted fee schedule, the fee for reconsidering its resolution is \$500.

**Proposal:**

The Easterby Kings Canyon Home Owners Association is requesting that the Commission waive the \$500 fee for reconsidering its approval for the Belmont-Sunnyside No. 3 (Island Annexation) Reorganization. Action upon the reconsideration proposal will not be presented at this hearing due to formal notification requirements that could not be met timely. Nevertheless, some discussion of the reconsideration request in this report is necessary to provide the Commission adequate information upon which to consider this fee waiver request.

The Home Owners Association has requested that the Commission reconsider its resolution approving the Belmont-Sunnyside No. 3 (Island Annexation) Reorganization since the Association believes that the annexation is a violation of property owners' rights established by Proposition 218 which established that local jurisdictions cannot impose additional property tax assessments or fees without voter approval. The assessment referenced by the Association is the City's "police and fire pension override" which adds an additional \$32.44 in property taxes per \$100,000 of assessed value for properties located within the City of Fresno. The fee referenced by the Home Owners Association is the City's "Community Sanitation" fee which totals \$6.23 per month and funds litter control; the City's annual "Operation Clean Up" curbside pickup; and once a month street sweeping.

LAFCo Counsel is currently researching whether current State law as related to the provisions of Proposition 218 were violated with respect to approval of the reorganization which would result in imposition of additional taxes and fees without approval by owners of property located within the affected territory. Also, whether the City of Fresno would be required to conduct an election pursuant to Proposition 218 resulting in an affirmative vote before the referenced tax and fee could be applied to the affected territory.

In support of this fee waiver request, the Association states: "LAFCo should require the City to proceed to the Prop 218 process as a (condition) of the resolution granting annexation. The condition should require an affirmative vote by the property owners before annexation can be completed. Further, because of the nature for this reconsideration we ask you to waive the \$500 application fee." The Howard Jarvis Taxpayers Association has also gone on record supporting the Homeowners request (see attached letter).

**Discussion/Staff Analysis:**

The fee waiver request is somewhat unique in that the Association asserts that property owners have been denied a Constitutional right provided for by Proposition 218 since the annexation will result in an increase in their property taxes and fees imposed by the City of Fresno. Generally, fee waiver requests have come from public agencies that assert that they do not have adequate revenues to pay LAFCo's fees.

Whether or not owners of property located within the affected territory have actually been denied rights provided for by Proposition 218 is not intended to be discussed today—only to consider whether the Commission should waive the \$500 fee associated with the Association's reconsideration request. The reconsideration request is tentatively scheduled to be heard at the Commission's May 13, 2009 hearing, at which time LAFCo Counsel will advise the Commission as to whether the Association's claims are valid. Additionally, staff's report will also indicate

whether it is believed that the Association has identified “*new or different facts that could not have been presented previously*” as required for reconsideration requests pursuant to Commission policies.

Section 350.08 (Fee Schedule-Exceptions to Required Fees) of Fresno LAFCo’s adopted *Policies, Standards, and Procedures* states that the Commission may take action on a four-fifths affirmative vote to waive filing fees if the imposition of such fee(s) would be detrimental to the public interest as determined by the Commission. Whether the imposition of fees to consider the reconsideration request would be “detrimental to the public interest” as required by the Commission’s policies is a subjective determination.

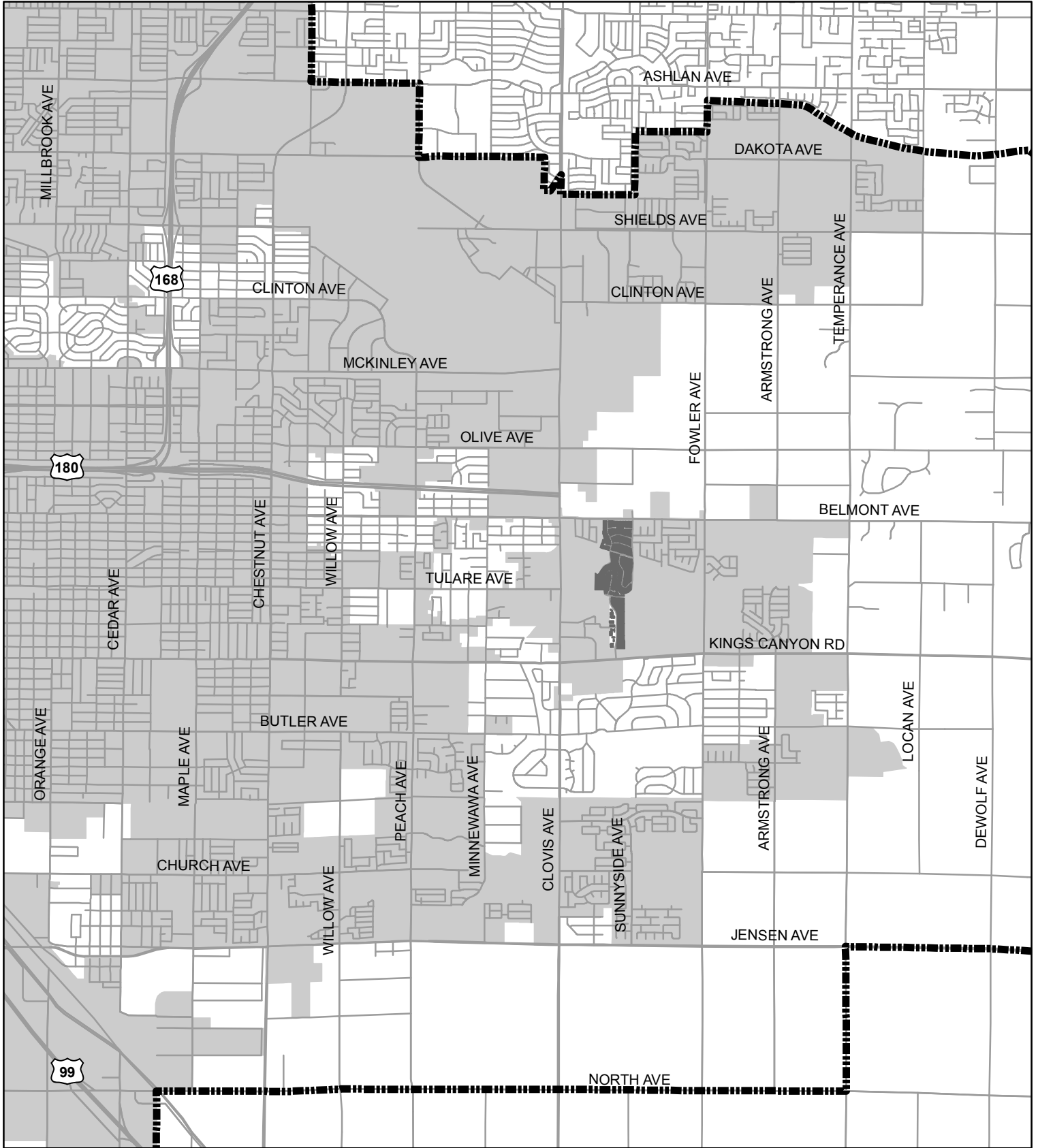
LAFCo staff takes seriously the assertion by the Home Owners Association that property rights under the California Constitution have been violated. The fact that significant research is necessary on the part of LAFCo Counsel to affirm or deny this assertion supports this argument insofar as it indicates that the Association has raised a valid question.

This being the case, staff believes that imposition of a fee is not justified where there is a question of property owners’ rights possibly being violated. Given such circumstances, staff does not believe that property owners should have to bear the cost if such is the case. Imposition of such a fee could be considered detrimental to the public interest as such fee may inhibit the public from being able to assert its rights. Staff, therefore, recommends that the fee to reconsider this proposal be waived.




**Recommended Action:**

Find that imposition of the \$500 reconsideration fee would be detrimental to the public interest and waive this reconsideration fee.

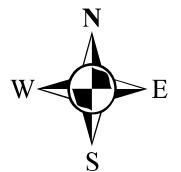
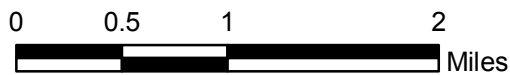
# EXHIBIT 1 - GENERAL SITE LOCATION



## Legend

-  Sphere of Influence
-  City Limits
-  Affected Territory

City of Fresno "Belmont-Sunnyside  
No. 3 Reorganization" (Island Annexation)  
LAFCo File No. RO-08-14





March 24, 2009

EASTERBY KINGS CANYON HOME OWNERS ASSOCIATION

Mr. Rick Ballantyne, Executive Officer  
Fresno Local Agency Formation Commission  
2115 Kern Street, Suite 310  
Fresno, CA 93721



Re: Request to Reconsider Belmont-Sunnyside No. 3 Reorganization (File No. RO-08-14)

Dear Mr. Ballantyne:

Pursuant to Cal. Gov. Cd. § 56895 I am requesting the reconsideration of the resolution authorizing the City of Fresno to proceed with the island annexation referenced above.

I request that the resolution be amended to require the property owners be afforded their rights under Cal. Constitution Art. XIII when they will be subject any new or additional fees or taxes as provided for by Prop 218.

Because there will be new and additional fees and taxes - not allowing us to vote violates our rights under Art. XIII (Prop 218.)

**See the application by the City of Fresno:**

**8. Costs and Other Changes Affecting Residents or Landowners:**

**General bonded indebtedness of affected agencies:**

*City of Fresno has adopted a tax override. When annexed, this property would be subject to any existing property tax override\*. Residents will have to use and pay for City of Fresno solid waste services within 5 years*

**\*See City of Fresno v. Superior Court (1984) 56 Cal. App. 3d 1137**

Further, a new and additional fee for Community Sanitation will be charged to each property that is not charged now.

I understand under Gov. Cd. § 56107 that a LAFCO resolution can not be invalidated when it “. . . does not adversely and substantially affect the rights of any person . . . “ However, clearly here the property owners rights are being adversely and substantially affected!

I request this reconsideration on the fact that there was never any analysis or discussion by the City or LAFCO as to this conflict between the loss of our voting rights under Cal. Gov Cd. § 56375.3 and those provided under Article XIII of the California Constitution. We now have been made aware of those rights after the LAFCO hearing process.

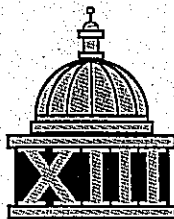
Since LAFCO is prohibited from allowing us to have our protest hearing or vote under Gov. Cd. § 56375.3 it should require the city to proceed to the Prop 218 process as a conduction of the resolution granting annexation.

The condition should require an affirmative vote by the property owners before annexation can be completed.  
Further, because of the nature for this reconsideration we ask you to wave the \$500 application fee.

Sincerely,

Terry Slaven, President  
Easterby Kings Canyon Homeowners Association.

HOWARD JARVIS, Founder (1903-1986)  
JON COUPAL, President  
TREVOR GRIMM, General Counsel  
TIMOTHY BITTLE, Director of Legal Affairs



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## HOWARD JARVIS TAXPAYERS ASSOCIATION

March 23, 2009

Victor Lopez  
Fresno Local Agency Formation Commission  
2115 Kern Street, Suite 310  
Fresno, CA 93721

Re: Request to Reconsider Belmont-Sunnyside No. 3 Reorganization (File No. RO-08-14)

Dear Chairman Lopez,

Howard Jarvis Taxpayers Association supports the request asking Fresno LAFCo to reconsider its approval of the Belmont-Sunnyside No. 3 Reorganization (File No. RO-08-14).

While LAFCo cannot disapprove a qualified island annexation, it seems able to *condition* its approval under Gov. Code § 56375, which empowers LAFCo to “review and approve ... with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization.”

That LAFCo may exercise its authority under section 56375 to condition its approval is further supported by the fact that the statute requiring approval of qualified island annexations, Gov. Code § 56375.3, expressly provides that its authorization is “[i]n addition to those powers enumerated in Section 56375,” not in lieu of them.

The constitutional rights of property owners in the territory to be annexed may be violated if the Fresno LAFCo does not condition its approval of the proposed annexation to require some sort of election regarding city fees and taxes the City of Fresno plans to collect from these parcels after the annexation.

The Attorney General has twice opined that the election to approve annexation can also serve as the election to approve taxes and fees imposed by the annexing agency. See 82 Ops.Cal.Atty.Gen. 180 (1999) and 89 Ops.Cal.Atty.Gen. 173 (2006). In both opinions, the AG acknowledged that Proposition 218 gives the owners of property to be annexed the right to vote before a new tax or fee may be imposed on them, but found that the annexation election provides all the due process required by 218’s voter approval requirement.

The implication seems to be that if *no* election is held for annexation, then Proposition 218’s voter approval requirement is *not* satisfied.

Fresno LAFCo  
March 23, 2009  
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While we have not surveyed all of the fees and taxes that are collected by the City but not the County, we have members who own property within the territory to be annexed, who believe that their right to vote on new fees and taxes will be violated unless an election is held.

Please give their right to vote on new fees and taxes serious consideration when acting on the request for reconsideration of the Belmont-Sunnyside No. 3 Reorganization. Thank you.

Sincerely,



Timothy A. Bittle  
Director of Legal Affairs