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

AGENDA ITEM No. 15

DATE: January 9, 2008

TO: Fresno Local Agency Formation Commission

FROM: Rick Ballantyne, Executive Officer

SUBJECT: **Consider Request – Waive LAFCo Filing Fees for Washington Colony Cemetery District**". A request to waive filing fees for a Sphere of Influence Amendment and Concurrent Annexation Proposal Resulting from Recommendations of Approved Municipal Service Review.

Petitioner: Washington Colony Cemetery District, Claire Venema, District Manager

Representative: Christine Grider, Urban & Environmental Consulting

Background:

On August 24, 2005, Fresno LAFCo approved a Municipal Service Review and Sphere of Influence Update for the Washington Colony Cemetery District prepared by Land Use Associates, LAFCo's contract consultant. The Commission's action as reported within the Minutes included the following recommendations:

1. The Washington Colony Cemetery District should consider annexing the remaining portion of the Caruthers Unified School District area currently not served.
2. The District may also wish to consider annexing the large area north of its current boundaries, inside its adopted SOI, bounded by Jensen Avenue to the north, Highway 145 to the west, and the Fowler Cemetery District to the east, if it is shown to be economically feasible. This action needs to be initiated by the District.
3. The District has expressed an interest in removing substantial territory inside its current SOI to the northeast of its present boundaries. The District should initiate discussion with LAFCO to determine if such action is advisable, and if so, how to proceed with requesting the removal of this territory.

The Minutes of the August 24th meeting also reflect that the District had made a request to waive all or a portion of the required filing fee for a Sphere of Influence Revision and Annexation Applications (see attached Minutes). The Minutes state that Executive Officer Waiczis had recommended that the requests be continued to allow time for staff to return to the Commission with a report detailing the recommendations and why the changes may be necessary so the Commission could make a determination as to whether or not to consider a waiver or partial waiver of the fee. The Commission unanimously voted to continue the request to the next meeting. However, LAFCo records do not indicate that such report was presented as requested by the Commission.

Proposal:

The proponent's consultant, Urban & Environmental Consulting, has requested that LAFCo fees totaling \$13,125 be waived based upon the recommendations of a *Cost-Benefit Analysis* that

supports such fee waiver (see attached request), or as an option that the fees be reduced to \$2,500 to cover costs associated with the processing of such applications (i.e. public notices and mailing).

The report's Executive Summary states:

Because the District's Board determined that the required processing fees would bring about a financial hardship on the district, the Commission was approached in 2006 and requested to waive these fees. In response the Commission requested that the District provide documentation demonstrating in what way(s) the LAFCO fees presented an undue financial hardship on the District. Consequently, the District determined to contract with Urban & Environmental Consulting, an urban planning consulting firm to prepare this Cost-Benefit Analysis

The Cost-Benefit Analysis prepared for the proposal is attached hereto. Interestingly, it appears that, based upon information contained within this analysis, the District paid Urban & Environmental Consulting \$4,500 to prepare the cost-benefit analysis to request a waiver of fees.

The analysis sets forth a discussion of District costs (both recurring and non-recurring costs) as well as District benefits and suggests three possible cost/benefit profiles for consideration. These include possible cost/benefit scenarios resulting from waiver of the LAFCo fees, partial waiver of the fees, and requiring full payment of fees. The analysis relies upon past experiences and assumptions in order to formulate recommendations. It would appear that while the District may benefit from increased taxes and a larger service area, that such benefits may take time to be realized and that the short-term financial situation of the District may be negatively impacted by requiring the full payment of LAFCo fees.

Staff Analysis:

Fresno LAFCo recently completed the processing of Municipal Service Reviews (MSRs) for 122 special districts and 15 cities. The Cemetery Districts, including the Washington Colony Cemetery District, were the first reports to be prepared and approved. The MSRs often times made recommendations to amend SOIs and consolidate several districts to improve service efficiencies or reflect actual service boundaries. Such recommendations often included the waiver of LAFCo processing fees. Such waivers, however, did not come at the request of the districts, and there did not appear to be a profit motive/future tax revenue benefit associated with the action.

In the case of the Cemetery District, the principal LAFCo fee being waived would be for the annexation of two broad scale areas (\$10,500) with an additional fee (\$2,625) for the concurrent Sphere of Influence (SOI) change. While the staff could support the waiver of the fee for the SOI since it was a recommendation of the MSR/SOI Update report in 2005, staff has concern with waiving fees for the annexation of District lands that will eventually provide increased tax revenues and greater numbers of future interments that will generate revenues. Additionally, the Cost-Benefit Analysis Summary (Page 4-1st Paragraph) states:

Even though it appears possible that all costs associated with the processing of the applications could be recovered by the end of the 12 month period, without a fee waiver the District would be obligated to carry the burden of the total \$20,125 cost of processing. This would create a short-term fiscal hardship on the District. While the District may be able to cover the hard costs of processing the proposed

changes (\$2,500), any unanticipated costs may compromise the District's ability to function efficiently in the short term.

It should be pointed out that LAFCo's fees have been established to help off-set the State mandated annual contribution by the County of Fresno and the Cities of Fresno County that fund LAFCo operations. It should be pointed out that the Special Districts that operate within Fresno County also have a right to participate as LAFCo Commission members and provide one-third of the operating costs of the agency. The Districts, however, have not indicated their desire to participate.

Section 350.08 of Fresno LAFCo's adopted Policies, Standards, and Procedures (Fee Schedule-Exceptions to Required Fees), state 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.

The option also exists to "defer" the payment of processing fee(s) until such time that the District collects increased tax revenues as a result of the annexation. The District would have to enter into an agreement allowing the District to defer the fees until such time as the District obtains increased revenues directly resulting from the annexation. LAFCo staff does not favor this approach. First, we are concerned about whether or not such an agreement would be creating a precedent for other Districts to request a deferral of fees. Second, LAFCo Counsel is concerned that, once the Commission records a Certificate of Recordation, thereby finally approving the annexation, it may be very difficult for the Commission to actually collect such processing fees. The Commission would have to obtain a judgment against the District based upon a breach of contract to actually collect such fees.

Staff understands the challenges that local special districts have in meeting annual service demands with limited budgets, however, staff believes that the payment of fees for gaining future benefits needs to be factored into the cost of doing business—whether in the private or public sector. While staff believes that the consultant's report provides the basis for granting consideration of deferring the fees, it does not provide justification for a full-waiver.

Recommended Options:

The following options should be considered by the Commission:

1. Waive the \$2,625 Sphere of Influence (SOI) Adjustment filing fee.
2. Allow a \$2,500 payment to initiate the processing the two annexations (partial payment).
3. Defer payment of the remainder of the LAFCo fees (\$8,000) until July 1, 2009, unless an extension has been granted by the Commission prior to this date.

It should be noted that while staff supports the first option, it does maintain concern related to the deferment of the annexation fees for the reasons stated within the Staff Analysis Section above.

URBAN & ENVIRONMENTAL CONSULTING

Christine Y. Grider
Project Manager

December 7, 2007

Mr. Rick Ballantyne
Executive Officer
Fresno LAFCo
2115 Kern Street, Suite 310
Fresno, CA 93721

RE: Request for Wavier of Application Processing Fees.

Dear Mr. Ballantyne:

Please consider this correspondence an official request for a "fee wavier" pursuant to Section 350.08 of LAFCo's Policies, Standards and Procedures "Fee Schedule" for the processing of an SOI Update and annexation(s).

As you are aware, the Municipal Service Review (MSR) for the Washington Colony Cemetery District ("District") adopted by LAFCo in July, 2005 recommended that the District consider annexing a portion of the Caruthers Unified School District area, annexing an area north of the District's current boundaries, and removing substantial territory inside the District's current SOI northeast of its present service boundaries. While LAFCo has the statutory authority to update the District's SOI pursuant to the recommendations of the MSR at no cost to the District, no such action was pursued by your agency.

You may recall that previously (in 2006) the District consulted with you about processing these applications. Specifically, we discussed the financial burden of amending the SOI and processing the recommended annexations of territory. Processing the recommended changes requires the District to pay fees totaling \$13,125 in addition to approximately \$7,000 in professional consulting services.

At that time the District's Board determined that the required processing fees would bring about a financial hardship on the District and the Commission was approached and requested to waive these fees. In response the Commission requested that the District provide documentation demonstrating in what way(s) the LAFCo fees created an undue financial hardship on the District. Consequently, the District determined to contract with Urban & Environmental Consulting, an urban planning consulting firm, to prepare a Cost-Benefit Analysis.

The Cost-Benefit Analysis has been prepared in response to LAFCo's request (copies are included with this correspondence). The study analyzed the fiscal impact of LAFCo fees on the District and contrasts this impact with the quantitative and qualitative benefits of the proposed SOI update and changes of organization. The analysis examined the most cost-beneficial option for processing the SOI update and annexation applications while discussing the benefits of the changes to the District and LAFCo.

The requested Cost-Benefit Analysis concluded that a reduction in the District's SOI to correspond with annexation of territory would create logical boundaries, result in a more efficient and equitable provision of services, and would generate tax dollars that are needed for the long-term operation and maintenance of the District.

The successful processing of the proposed annexations would provide the District with new revenues primarily from taxes in the long run. Assuming "best case" scenarios, all costs associated with the processing of these applications could be recovered by the end of the 12 month period under examination in the study.

This "optimistic" conclusion is tempered by the current fiscal issues the District is encountering. The District's revenues fluctuate depending on annual sales and services, amount of usable interest received, and the taxes it receives from the State. Financial constraints on the District have been magnified by the continued shift of local property tax revenue to the state Educational Revenue Augmentation Fund (ERAF).

Interment services provide a large portion of the District's annual budget; however these revenues change from year to year based on the number of interments. Point in case, in 2006 there were 86 interments, but the number of interments for 2007 at this writing is about half at 47.

In Fiscal Year 2005-2006 the District balanced its budget by using unrestricted funds from its Endowment Care Fund and usable interest earning. However, with interments down in Fiscal Year 2006-2007 current estimates indicate a significant shortfall (\$54,000), which can only be covered by utilizing additional unrestricted funds from the Endowment Care Fund. The District also has on going Capital Facility expenses.

The annexation of additional territory into the District would change estimated revenues. The annexations would alter revenues by increasing the potential for additional interments while reducing or eliminating revenues from out of district interments. While revenues from out of district services would immediately cease, it is predicted that increased revenues from new interments would take time, allowing for residents to become familiar with District services before begin utilizing them.

The study concluded that new interments will only match previous out-of-district interments for the first 1 to 2 years (about 10 per year). Accordingly, the District would not realize an increase in revenues from additional interments until the third year or longer. Interments would likely continue to increase incrementally over the next 7 or 8 years to an estimated maximum of between 30 and 40 interments annually from the new territory.

Even though it appears possible that all costs associated with the processing of the applications could be recovered, without a fee waiver the District would be obligated to carry the burden of the total \$20,125 cost of processing. This would create a short-term fiscal hardship on the District.

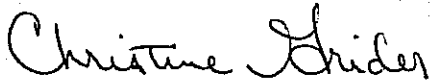
While the District may be able to cover the hard costs of processing the proposed changes (estimated to be \$2,500), any unanticipated costs may compromise the District's ability to function efficiently in the short term. Additionally, the potential risk exists that LAFCo could deny the applications and the District would then lose the funds expended for the processing. This would create a long-term fiscal hardship on the District.

The Benefit/Cost Ratios presented at the end of the analysis indicated that "costs" out-weighted "benefits" to the District. Notwithstanding these results, it is likely that benefits will exceed costs in the long-term (for example, in years 5-10 following the annexations).

We are providing eight (8) copies of the requested Cost-Benefit Analysis for the Commissioners and LAFCo staff and public record. Again, please consider this correspondence an official request for a "fee wavier" pursuant to Section 350.08 of LAFCo's Policies, Standards and Procedures "Fee Schedule" for the processing of an SOI Update and annexation(s).

Please call with any questions. Thank you.

Sincerely,



Christine Grider, Project Manager
Urban And Environmental Consulting

for

Claire Venema, Manager

Attachments

CEMETERY DISTRICTS (Adopted August 24, 2005)

Clovis Cemetery District
Coalinga-Huron Cemetery District
Fowler Cemetery District
Kingsburg Cemetery District
Oak Grove Cemetery District
Parlier Cemetery District
Reedley Cemetery District
Sanger/Del Rey Cemetery District, Selma Cemetery District]
Squaw Valley Cemeter7y District
Washington Colony Cemetery District

Summary of Determinations:

1. **Maintain Adopted SOI** - No changes (updates or revisions) are recommended to the existing spheres of influence and current district boundaries for the Clovis, Coalinga-Huron, Fowler, Kingsburg, Parlier, Reedley, Sanger/Del Rey, Selma and Squaw Valley Cemetery Districts.¹

2. **Dunlap Cemetery District**

The Board of Trustees should consider requesting a reduction in the District's Sphere of Influence and de-annexation of territory in areas where new development is occurring.

3. **Fowler Cemetery District**
 - A. Maintain the District's existing Sphere of Influence and boundaries.
 - B. The District should consider employing an accountant or bookkeeper to maintain District financial records.

4. **Oak Grove Cemetery District**
 - A. The Board of Directors should initiate discussions with the Washington Colony Board of Directors to discuss the possibility of increasing the SOI of the Oak Grove Cemetery District to include the outlying areas located above its northern boundary and south of Washington Colony as shown in Figure 1.
 - B. Before an expanded SOI is considered, the Oak Grove Cemetery District should consider annexing all areas within its current SOI and make the boundaries concurrent, if it is shown to be economically feasible. This action needs to be initiated by the District.

¹ The SOI and district boundary of all cemetery districts are coterminous except for Dunlap Cemetery District, Washington Colony Cemetery District, and Oak Grove Cemetery District.

5. **Squaw Valley Cemetery District**

- A. Maintain the District's existing Sphere of Influence and boundaries.
- B. The District should consider establishing operational policies and procedures consistent with the Health and Safety Code to clarify the burial process, fee collection, and services provided.
- C. The District should consider developing a Capital Improvement Plan that identifies projects to be completed, the estimated cost of the project, possible funding sources and completion timing.
- D. The District should consider working towards the establishment of a fee schedule for residents and non-residents using fee schedules from other districts and maintaining consistency with the Health and Safety Code.
- E. The District should explore the fiscal advantages and feasibility of consolidating with the Squaw Valley Cemetery District.

6. **Washington Colony Cemetery District**

- A. The Washington Colony Cemetery District should consider annexing the remaining portion of the Caruthers Unified School District area currently not served.
- B. The District may also wish to consider annexing the large area north of its current boundaries, inside its adopted SOI, bounded by Jensen Avenue to the north, Highway 145 to the west, and the Fowler Cemetery District to the east, if it is shown to be economically feasible. This action needs to be initiated by the District.
- C. The District has expressed an interest in removing substantial territory inside its current SOI to the northeast of its present boundaries. The District should initiate discussions with LAFCo to determine if such action is advisable, and if so, how to proceed with requesting the removal of this territory.

Staff Report Recommendations:

- 1. Find the MSR prepared for Cemetery Districts in Fresno County complete and satisfactory.
- 2. Find that the written determinations within the report satisfy State Law.

3. Pursuant to Government Code Section 56425, adopt the determinations as presented.

COMMISSION ACTION

Adopted Municipal Service Reviews prepared for the Clovis, Coalinga, Huron, Dunlap, Fowler, Kingsburg, Oak Grove, Parlier, Reedley, Sanger/Del Rey, Selma, Squaw Valley and Washington Colony Cemetery Districts.

MINUTES

Executive Officer Waiczis presented Staff's report summing up the requirements for an MSR. He indicated that Bruce O'Neal of Land Use Associates was retained as a consultant to prepare the MSR. Executive Officer Waiczis stated that the purpose of the MSR is to examine and evaluate each cemetery district individually. He stated that LAFCOs are not required to make any adjustments in SOIs as may be recommended by the findings or recommendations of the Service Review unless initiated by the districts themselves. The Review's major goal is to serve as an informational document.

Mr. O'Neal reported that generally all of Fresno County's Cemetery Districts are operating efficiently, but the Review did offer recommendations. He reported that the Dunlap Cemetery District desired to reduce the size of its SOI because the District did not feel that they could provide services to such a large area as it develops. Mr. O'Neal responded that the report contained several recommendations for the District to improve its revenue flow and management in case it decided not to seek a reduction in their service area.

Mr. O'Neal reported that the Review also recommended that the Fowler Cemetery District obtain a professional accountant/bookkeeper. He also indicated that the Oak Grove Cemetery District desired to expand their SOI. Mr. O'Neal recommended that the Squaw Valley Cemetery District maintain its current SOI and consider establishing more formal operational policies and procedures and future consolidation with the Dunlap Cemetery District. Mr. O'Neal indicated that the Washington Colony Cemetery District desired to reduce its SOI to eliminate the Cities of Firebaugh, Kerman and Mendota, since they do not believe that they could adequately serve these communities in the future. The District, however, would like to annex the balance the Caruthers School District area to their District.

Commissioner Anderson asked Staff why the Commission was required to make a finding that the Service Review was complete and satisfactory, and if there was a legal reason for such finding. Executive Officer Waiczis responded that the finding would be that the Commission has reviewed the report and all of its elements are complete and that the Commission has all information necessary in order to make written determinations for each district.

Commissioner Anderson said that they were not taking any action on the recommendations and it seemed to her that the Commission should just receive the report because the Districts would have to initiate any changes themselves. Mr. Waiczis responded that what the Commission was being asked to approve the MSR and adopt the required written determinations.

Commissioner Fortune asked about the merits of making a Countywide Cemetery District.

Executive Officer Waiczis responded that such an idea was not pursued since it was obvious that the Districts wished to maintain their autonomy.

Commissioner Fortune made a motion to accept the report, find that the written determinations satisfy State Law, and adopt the determinations. Commissioner Anderson seconded the motion. The motion carried unanimously.

Request from the Washington Colony Cemetery District for a Waiver or Partial Waiver of the fee for a sphere of influence revision

Request from the Oak Grove Cemetery District for a Waiver or Partial Waiver of the fee for a sphere of influence revision

Executive Officer Waiczis presented both requests to the Commission. He indicated that these requests resulted from recommendations of the Cemetery District's Municipal Service Review. Mr. Waiczis referred to LAFCo's policies that state that any specific changes recommended by a "Service Review" may not require a fee. Mr. Waiczis stated that the Commission may waive the fee but require that the District pay all hard costs (i.e. postage, copying, etc.).

Executive Officer Waiczis recommended that the requests be continued to allow time for staff to return to the Commission with a report detailing the recommendations and why the changes may be necessary so the Commission may make a determination whether or not to consider a waiver or partial waiver of the fee.

Commissioner Fortune asked whether one-third of the Commission's costs were covered by LAFCo fees. Executive Officer Waiczis responded that he was correct. Commissioner Lopez asked how much the fees were going to be. Mr. Waiczis responded that the District's fees would probably be around \$14,000 based on the acreage of the changes which would take place.

The Commission unanimously voted to continue the request to the next meeting.

Exhibit "C"

RESOLUTION NO. MSR-05-1

**FRESNO LOCAL AGENCY FORMATION COMMISSION
FRESNO COUNTY, CALIFORNIA**

In the Matter of

LAFCo Determination

**RESOLUTION ADOPTING MUNICIPAL)
SERVICE REVIEWS AND MAKING)
DETERMINATIONS FOR THE)
SPHERES OF INFLUENCE OF THE)
CLOVIS, COALINGA-HURON,)
FOWLER, KINGSBURG, OAK GROVE)
PARLIER, REEDLEY, SANGER/DEL)
REY, SELMA, SQUAW VALLEY, AND)
WASHINGTON COLONY CEMETERY)
DISTRICTS)**

**ADOPT MUNICIPAL SERVICE REVIEWS
PREPARED FOR THE CLOVIS, COALINGA-
HURON, DUNLAP, FOWLER, KINGSBURG,
OAK GROVE, PARLIER, REEDLEY SANGER/
DEL REY, SELMA, SQUAW VALLEY AND
WASHINGTON COLONY CEMETERY
DISTRICTS**

WHEREAS, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56425 et. Seq.) the Fresno Local Agency Formation Commission is required to review and update, as necessary, Spheres of Influence of local agencies not less than once every five years; and

WHEREAS, Government Code Section 56430 directs the Commission to conduct a review of municipal services not later than the time it considers an action to establish or update a Sphere of Influence; and

WHEREAS, notice of this Commission's hearing of said request was duly given in a publication of general circulation as required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and State law, and at the time and in the form and manner provided by law; and

WHEREAS, the Commission has heard, discussed and considered all relevant evidence, including but not limited to the Executive Officer's *Municipal Service Review and Sphere of Influence Update Report*, environmental documentation, applicable land use plans and all testimony, correspondence and exhibits received during the public hearing process, all of which are included herein by reference.

NOW, THEREFORE, BE IT RESOLVED that the Local Agency Formation Commission of the County of Fresno does **HEREBY STATE, FIND, RESOLVE, DETERMINE, AND ORDER** as follows:

Section #1. Acting as Lead Agency pursuant to California Environmental Quality Act (CEQA) Guidelines, this Commission finds that prior to adopting the written determinations for the Municipal Service Reviews and Sphere of Influence determinations under consideration, it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment and that it qualifies for the general exemption from environmental review under the California Environmental Quality Act (CEQA) under Section 15061(b)(3).

Section #2. This Commission finds the Municipal Service Reviews and Sphere of Influence Updates prepared for the Clovis, Coalinga-Huron, Dunlap, Fowler, Kingsburg, Oak Grove, Parlier, Reedley, Sanger/Del Rey, Selma, Squaw Valley, and Washington Colony Cemetery Districts are complete and satisfactory.

Section #3. This Commission finds that the written determinations within the Municipal Service Reviews and Sphere of Influence Updates satisfy State Law.

Section #4. Pursuant to Government Code Sections 56425 and 56430 this Commission hereby adopts the determinations as presented in the Municipal Service Review and Sphere of Influence Update documents.

Section #5. - The Executive Officer is hereby authorized and directed to mail certified copies of this resolution as provided in Government Code Section 56882 and to file, as appropriate, in the office of the Fresno County Clerk all environmental documents, if any, pertaining to the approval of this Proposal, as required by State law.

* * * * *

ADOPTED THIS 24th DAY OF AUGUST, 2005, BY THE FOLLOWING VOTE:

AYES: Commissioners Fortune, Anderson, Waterston, Lopez

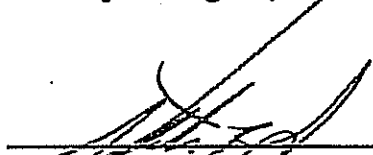
NOES: None

ABSENT: None

**STATE OF CALIFORNIA)
COUNTY OF FRESNO)**

CERTIFICATION

I, Victor Lopez, Chairman of the Fresno Local Agency Formation Commission (LAFCo), Fresno County, State of California, hereby certify that the foregoing resolution was adopted by the Commission on the 24th day of August, 2005.



Victor Lopez, Chairman
Fresno Local Agency Formation Commission