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

AGENDA ITEM No. 10

DATE: July 11, 2007

TO: Local Agency Formation Commission

FROM: Rick Ballantyne, LAFCo Executive Officer

SUBJECT: **Consider Conditional Approval** – City of Fresno “Request for Extension of Municipal Services Outside the City of Fresno’s Sphere of Influence”. A request to extend water and sewer services to the Aquarius Aquarium Institute project which consists of approximately 10 acres of land located approximately 1,500 feet north of W. Herndon Avenue, immediately adjacent (southwest) to State Highway 99 and approximately 900 feet east of the San Joaquin River (**LAFCo File No. OS-07-1**).

Recommendation: Continue Item to August 15, 2007

Project Proponents: Aquarius Aquarium, a California nonprofit public benefit corporation.
President: Thomas Lang

Proposal:

The Aquarius Aquarium Institute is requesting approval to allow extension of City of Fresno municipal services (i.e. sewer and water) for property located immediately adjacent to the Fresno City Limits and outside the City’s Sphere of Influence. The proponent is requesting to be allowed to extend single lateral sewer and water lines to this parcel.

Background:

The Fresno County Planning Commission approved Unclassified Conditional Use Permit Application No. 3073 on November 17, 2005 to allow a public aquarium facility on the affected territory located south of the San Joaquin River and west of SR 99. A condition of approval of said permit was that *“all water and sewer services for this proposal shall be provided for by the City of Fresno”*.

Summary:

The applicant has requested that the Commission approve an extension for municipal services outside the Sphere of Influence of the City of Fresno. The following government code section and Fresno LAFCo adopted policies and procedures governing the extension of municipal services outside a Sphere of Influence of an incorporated jurisdiction apply to this application:

Applicable State and Local Policies:

California Government Code - A city may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the Commission [Government Code Section 56133. (a)]. The Commission may authorize a city to provide new or extended services outside its jurisdictional boundaries (city limits) and outside its sphere of influence (SOI) to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

1. The entity applying for the contract approval has provided the Commission with documentation of a *threat to the health and safety of the public or the affected residents.* (56133. (c)(1); *Emphasis added*), and
2. The Commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the Commission. 56133. (c)(2).

Fresno LAFCo Policies - Under the Policies, Standards and Procedures the following rules apply to this request:

1. Requests for Extended Service for urban growth and development should be by annexation rather than Extended Service approval.
2. Requests for Extended Service outside the sphere of influence should be made only for urgent health and safety reasons, e.g. public water service in water contaminated area, or fire protection in a wildfire crisis.
3. Requests for extension shall be approved with a condition that the parcel(s) annex when feasible, and landowner consent or petition be filed.

Discussion:

Staff has discussed this request with the applicant's representative, Thomas Lang, as well as with LAFCo Counsel and representatives of Fresno County and the City of Fresno. One of the conditions of approval of the Unclassified Conditional Use Permit approved by the County Planning Commission was that "all water and sewer services for this proposal shall be provided by the City of Fresno". The applicant's have filed an application with the Commission for approval of extended services to in order to comply with the condition related to outside services from the City of Fresno.

The affected property is located outside the Sphere of Influence of the City of Fresno. While reviewing this application, staff made a preliminary determination that the applicant has not met the following State law requirement applicable to property seeking extended service outside a city's sphere of influence:

The entity applying for the contract approval has provided the Commission with documentation of a threat to the health and safety of the public or the affected residents. 56133. (c)(1).

LAFCo Counsel has reviewed the applicable legal authorities to determine if the provision of extended services to the aquarium is necessary due to a threat to the health and safety of the public or the affected residents. In fact, there is limited case law and legislative history to provide the Commission with guidance in this area. However, the Senate Local Government Committee report reviewing the statute provided such examples as "failing septic tanks and water wells" as threats. (Cal. Senate Bill 807 Analysis (1999-2000).)

We understand that the applicant has not broken ground and there appears to be no *current* threat to the health and safety of the public due to the project. However, the LAFCo Executive Officer has sent a letter to Mr. Lang requesting written justification and documentation on how an extension of services is necessary in order to address an existing or perceived threat to health and safety prior to taking action.

Both the applicant and staff request a continuance to allow the applicant the opportunity to provide such information to the Commission. We request the application be continued to the Commission's August 15th hearing.

The Following Received Copies of This Report

- LAFCo Commissioners and Alternates
- Ken Price, Baker, Manock, and Jensen
- Bernard Jimenez, Planning Manager, Development Services Department
- Will Kettler, Public Works and Planning
- Alan Weaver, County of Fresno
- Keith Bergthold, City of Fresno
- Rene Ramirez, City of Fresno
- Tom Lang, Aquarius Aquarium Institute

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