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

AGENDA ITEM NO. 10

DATE: June 13, 2007

TO: Fresno Local Agency Formation Commission

FROM: Rick Ballantyne, Executive Officer

SUBJECT: **Conducting Authority Proceedings - Consolidated Mosquito Abatement District "Eastern Fresno County Annexation"**. An annexation of approximately 2,554 square-miles to the Consolidated Mosquito Abatement District for territory generally located in Eastern Fresno County (**LAFCo File No. AD-06-3**).

Background and Summary

- This protest hearing is being conducted pursuant to the California Government Code commencing with Section 57000 which requires LAFCo to carry out Conducting Authority Proceedings.
- At its April 18, 2007 meeting, the Commission conditionally approved the Consolidated Mosquito Abatement District's "Eastern Fresno County Annexation" by adopting Resolution No. AD-06-3, attached to this Report as Exhibit "A", and incorporated herein by this reference. This protest hearing is required because the territory is inhabited and not all landowners and registered voters have signed consent forms.
- The approved reorganization consists of the annexation of approximately 2,554 square miles to the Consolidated Mosquito Abatement District for territory generally located in Eastern Fresno County.
- As required under LAFCo law, prior to consideration of protests, the Commission's resolution making determinations will be summarized. The Commission would then hear and receive any oral or written protests, objections, or evidence made, presented, or filed.
- Notice of this hearing was published in the "Fresno Bee" and "Mountain Press" due to the large number of affected property owners. Legal counsel, however, has advised your staff that the notices contained in the Fresno Bee and Mountain Press may be insufficient. Specifically, the published notice was directed to landowner voters within the territory proposed for annexation. Legal counsel believes that there is ambiguity in the District's enabling legislation, the Mosquito Abatement and Voter Control Law (Health & Safety Code §2000 *et seq.*) (the "Enabling Law"), which may lead one to conclude that the District is a resident voter, as opposed to a landowner voting, district. If so, the notice sent out by the Commission may be inadequate.
- At this writing, staff has received just one (1) official written protest. It should be noted that approval of the annexation is subject to compliance with a required condition that stipulates that: *The annexation shall not be recorded until verification has been provided to the satisfaction of the Executive Officer acknowledging that the voters have authorized and approved additional taxes resulting from the Proposition 218 requirement.*

- Staff recommends that the Commission continue this proceeding until the Commission's July 11, 2007 hearing so that staff may republish a corrected notice. At any time prior to the conclusion of the continued hearing any landowner or registered voter residing within the affected territory may file a written protest against the annexation.
- Should insufficient valid protests be received and not withdrawn, the Commission's determination conditionally approving the annexation stands.¹

Recommendation

To continue this proceeding until the July 11, 2007 hearing.

Conducting Authority Proceedings

Executive Officer's Summary

The following is a summary of the Commission's Resolution making determinations, which must be presented at the hearing prior to the Commission's consideration of protests.

- At its April 18, 2007 meeting, having considered all relevant factors and heard all interested parties wishing to speak regarding the proposal, the Commission determined that the environmental effects of the project as shown in the CEQA documents submitted by the Lead Agency were legally adequate pursuant to the CEQA Guidelines and that the proposed reorganization was consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and LAFCo Policies, Standards and Procedures.
- The Commission, therefore, approved the proposed Annexation subject to conditions as contained within the adopted Fresno LAFCo Commission Resolution (see Exhibit "A").
- Having determined that the affected territory is inhabited and that not all landowners and registered voters in the territory consented to the annexation in writing, the Commission directed staff to set a protest hearing pursuant to the requirements of California Government Code Section 57000.

Public Testimony

Prior to making its determination for this proposal the Commission must hear and receive any oral or written protests, objections, or evidence made, presented, or filed. The Chairman may call for any final protests to be filed or withdrawn prior to closing the public hearing. The annexation will be terminated if written protests filed with the Executive Officer (and not withdrawn) are sufficient to overturn the Commission's action. Protest procedures for inhabited annexations are outlined below:

¹ Not longer than 30 days following this hearing in accordance with Government Code Sections 56100, 57075, and 57078.

Termination:

The change of organization or reorganization will be terminated if written protests are filed with the LAFCo Executive Officer (and not withdrawn) representing a majority (50% or more) of the registered voters residing in the affected territory (Government Code Section 57078).

Election:

The proposal area has been determined to be “inhabited”, therefore it will be subject to confirmation by the registered voters residing in the affected territory (i.e., by an election) if protests are filed (and not withdrawn) by either:

- At least 25%, but less than 50%, of the registered voters residing in the affected territory, or
- At least 25% of owners of land within the affected territory whose properties also constitute at least 25% of the assessed value of land within the affected territory (Government Code Section 57075).

Annexation Ordered

The change of organization (annexation) will be ordered if the number of protests filed with the LAFCo Executive Officer (and not withdrawn) falls below the threshold numbers stated above, subject to the previously mentioned condition.

Calculating the Value of Protests Received

At the close of the public hearing, staff may be directed to determine the value of valid protests received and not withdrawn. Should substantial valid protests be received and not withdrawn, staff may be directed to determine the value of all protests and issue written results to the Commission within 30 days. The reorganization will stand as approved if the number of protests filed with LAFCo (and not withdrawn) falls below the thresholds described above.

Notice

On May 21, 2007, staff published notice of the protest proceeding in the Fresno Bee and on May 23, 2007, in the Mountain Press. The Notice was directed to landowner voters within the territory to be annexed. Legal counsel reviewed the notice and believes that it may be insufficient. Specifically, there is enough ambiguity in the Enabling Law as to whether or not the District is a landowner-voter district or a resident-voter district.

The consequences of this ambiguity could be significant. Although most provisions in LAFCo law governing the time within which an official or the Commission is to act are deemed to be directory, provisions concerning notice are mandatory (Gov. Code §56106). Additionally, the procedures regarding the termination of an application due to protest are different for landowner voting districts than resident voting districts. Therefore, LAFCo's possible failure to provide adequate notice may be cause for a court to invalidate a protest proceeding. The District has been notified of this matter and has informed staff that this continuance should not adversely affect the District's activities.

LAFCo may continue this protest proceeding to allow staff to republish notice to landowner voters and resident voters within the territory to be annexed via a newspaper of general circulation. LAFCo would resume this proceeding during its July 11, 2007 hearing.