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

AGENDA ITEM No. 7

DATE: **May 13, 2009**

TO: **Local Agency Formation Commission**

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

SUBJECT: **Consider Approval – Request for One-Year Extension to Complete Proceedings
for the City of Selma “Floral-Stillman Reorganization, Annexation 2003-0023”
(LAFCo File No. RO-05-7).**

This proposal was approved on May 18, 2005, but has not been completed. State law requires that all reorganization proceedings shall be completed within one year of approval unless the Commission grants an extension of time prior to the expiration date. Failure to grant an extension will terminate the proceedings. LAFCo Policies, Standards and Procedures Section 315-03 allows extensions of time to be granted when the imminent need for the proposal still exists, the project is still viable, and progress is being made toward completion.

This item has been placed on the Commission’s regular agenda because this is the fourth one-year extension of time request for this project.

Parties of Interest:

Darlene Flint	Ronald Marashian
Ronald & Jane Marashian	Bill & Patricia Kasababian
Todd Waltzer, PE Wal-Mart Stores Inc.	Anthony Farmand, CEI Engineering
Bert Verrips, Consulting Planner, Wal-Mart Stores Inc.	Al Solis, Sol Development Consultants

Project Description: This reorganization consists of the annexation of 39.47 acres to the City of Selma and the Selma-Kingsburg-Fowler County Sanitation District and detachment from the Fresno County Fire Protection District, the Kings River Conservation District, and the Consolidated Irrigation District for territory located south of Floral Avenue and west of State Route 99 (see attached map location).

Background: On January 18, 2005, the City of Selma approved an application by Wal-Mart Stores, Inc. to allow development of a Wal-Mart Super Center. The City certified an Environmental Impact Report for this development. The completion of this proposal has been delayed due to legal action challenging the Environmental Impact Report (EIR) prepared for the project. Shortly after the EIR prepared for the project was certified by the City of Selma, a Petition for Writ of Mandamus was filed by the “Save Our Selma Coalition” seeking a court order to set aside this EIR certification. An amended petition was later filed and heard on May 2, 2006.

On May 16, 2006, an order granting the Writ of Mandamus was issued and the City of Selma was ordered to set aside its certification of the EIR, the land use approval, and entitlements considered under the EIR. In order to comply with the Court, the City states that the EIR has had to undergo a number of revisions necessitating a significant amount of time. These revisions have included the need to address potential cumulative impacts associated not only with the Wal-Mart proposal, but also with other projects proposed or approved by the City since its approval of the Wal-Mart project, including an update to the City's general plan.

Staff Analysis:

The City's attorney (Neal E. Costanzo) states in his letter of support that the project remains viable and he expects the revised EIR necessary to approve the project will be completed by late 2009. Vesting Tentative Map No. 5161 which includes the project site has been extended by the City and will not expire until January 18, 2010. Annexation of the project site by the City of Selma was made a condition of the project approval.

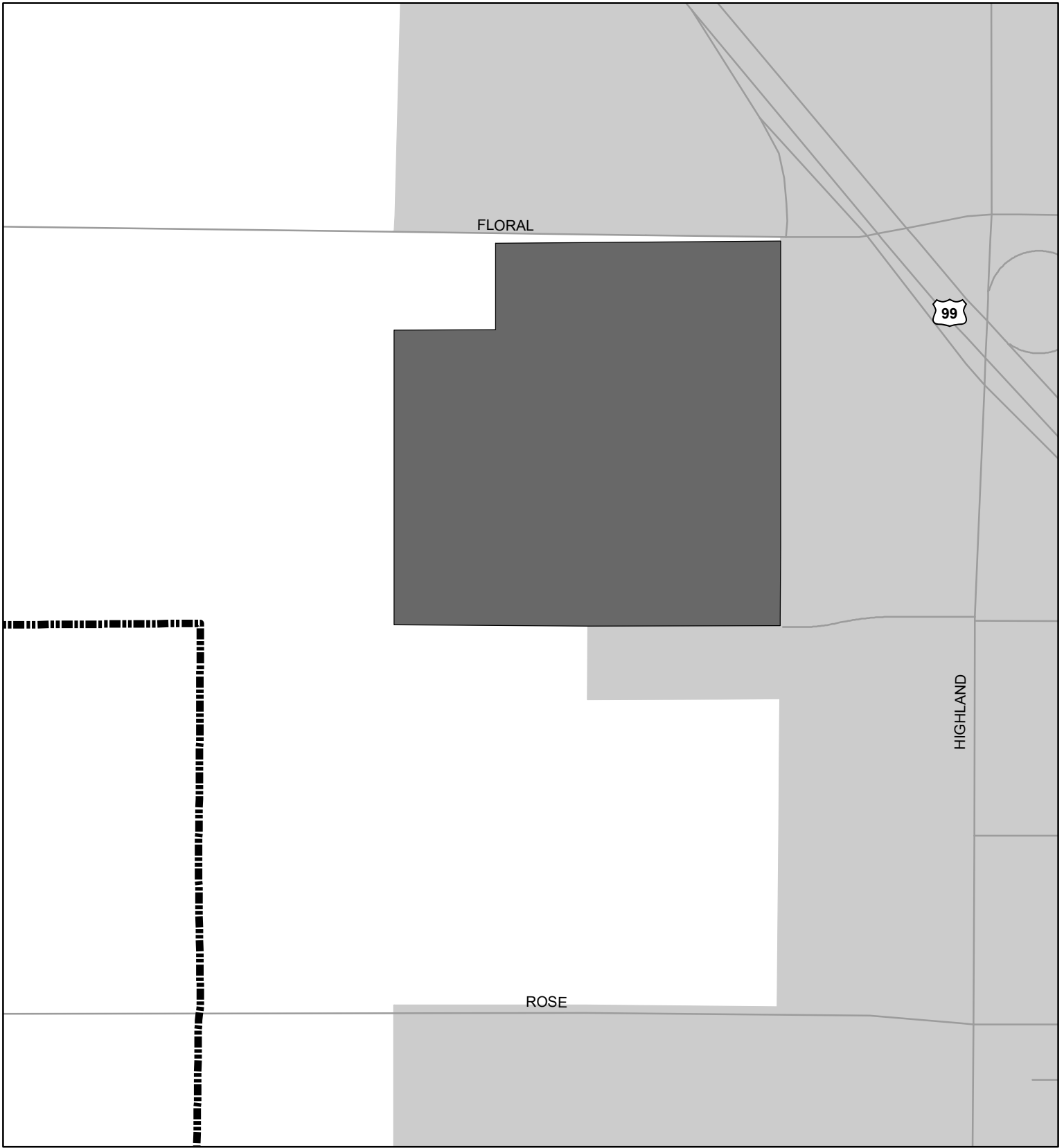
It appears that circumstances beyond the control of the City have caused a delay in finalizing this reorganization. It would also appear that the City still believes this project to be viable and the applicant continues to work towards satisfying requirements of the Court so that the proposal can again be considered by the Selma City Council. Based upon these circumstances, Staff would support an additional one-year extension.

Recommendation: Approve a one-year extension.




The Following Have Received Copies of This Report:

- LAFCo Commissioners and Alternates
- Ken Price, LAFCo Counsel, Baker, Manock, and Jensen
- Neal Costanzo, Attorney for the City of Selma
- D-B Heusser, City Manager, City of Selma
- Bernard Jimenez, Planning Manager, Fresno County Development Services Division
- Chris Motta, Fresno County Public Works and Planning
- Chief Keith Larkin, Fresno County Fire Protection District
- David Orth, General Manager, Kings River Conservation District
- Phil Desatoff, Manager, Consolidated Irrigation District
- David Michel, Manager, Selma-Kingsburg-Fowler County Sanitation District

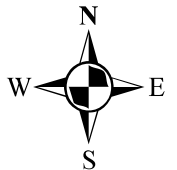
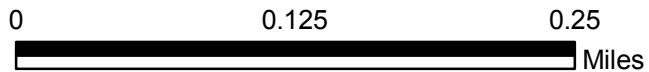
EXIHIBT "A"



Legend

-  Sphere of Influence
-  City Limits
-  Affected Territory

City of Selma "Floral-Stillman
Reorganization - Annexation 2003-0023"
LAFCo File No. RO-05-7



NEAL E. COSTANZO
MICHAEL G. SLATER

LAW OFFICES
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OUR FILE NO. 01236-567

April 17, 2009

SENT VIA OVERNIGHT DELIVERY

Rick Ballantyne, Executive Director
Fresno County Local Agency
Formation Commission
2115 Kern Street, Suite 310
Fresno, CA 93721



**Re: Request for One-Year Extension to Complete "Floral-Stillman
Reorganization - Annexation No. 2003-0023 (LAFCO File #R0-05-7)**

Dear Mr. Ballantyne:

Enclosed herewith is an application and supporting declaration for a one-year extension of time to complete the referenced annexation which relates to the proposed development of a Super Wal-Mart in the City of Selma together with my firm's check in the amount of \$500 which is the prescribed filing fee for this requested extension. There have been a number of extensions requested and approved by LAFCO with respect to this development. Despite the passage of time, this project remains viable, an eminent need for the proposal still exists and progress is being made, albeit slowly, toward a completion. The facts supporting the requested extension are more fully set out in the accompanying application and declaration.

As I understand it, the application request will be on LAFCO's agenda as a "public hearing" at its next regular meeting on May 13, 2009. I will be present to answer any questions the Commission has relative to the requested extension, which will hopefully be the last request for an extension as the EIR necessary for the project is nearing completion.

Very truly yours,

COSTANZO & ASSOCIATES

Neal E. Costanzo

NEC/tm
Enc.

cc: D-B Heusser

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6 Attorneys for City of Selma
7

8 **BEFORE THE**
9 **FRESNO COUNTY LOCAL AGENCY FORMATION COMMISSION**

10 In the Matter of:) **APPLICATION FOR EXTENSION OF**
) **TIME TO COMPLETE REORGANIZATION**
11 A REQUEST FROM THE CITY OF) **(ANNEXATION)**
SELMA FOR APPROVAL OF THE) **[GOVERNMENT CODE §57001]**
12 FLORAL-STILLMAN REORGANIZATION)
- ANNEXATION NO. 2003-0023)
13

14 The City of Selma hereby applies for an extension of time within which to complete
15 proceedings for the Floral-Stillman Reorganization - Annexation No. 2003-0023. This
16 Application is made pursuant to Government Code §57001 and section 315 of the
17 Policies, Standards and Procedures Manual of the Fresno County Local Agency
18 Formation Commission (LAFCo). The application for an extension of time is based on this
19 Application, the supporting Declaration of Neal E. Costanzo, filed concurrently herewith,
20 and on the records and documents on file in this proceeding.

21 On January 18, 2005, the City of Selma ("Selma") approved the Application of Wal-
22 Mart Stores, Inc. (Walmart) for the proposed construction of a Wal-Mart Supercenter and
23 certified the Environmental Impact Report (EIR) for the project. The project required,
24 among other things, the annexation of 39.47 +/- acres to the City of Selma. This
25 Commission conditionally approved the Floral-Stillman Reorganization-Annexation by
26 Resolution No. RO-05-07. Shortly after Selma certified the EIR and approved the project,
27 a Petition for Writ of Mandamus and an Amended Petition for Writ of Mandamus were
28 filed in the Fresno County Superior Court by Save Our Selma Coalition on February 18,

1 2005, and March 4, 2005, respectively. The Amended Petition alleged that the EIR did
2 not comply with the California Environmental Quality Act (CEQA), and sought a court
3 order setting aside Selma's approval of the Walmart project and certification of the EIR.
4 The Petition for Writ of Mandamus was heard on May 2, 2006. This lawsuit is referenced
5 at the second and fourth pages of LAFCo's Resolution No. RO-05-07 conditionally
6 approving the annexation.

7 On May 18, 2005, the Fresno Local Agency Formation Commission (LAFCo)
8 adopted the aforementioned Resolution No. RO-05-07 conditionally approving Selma's
9 request for approval of the Floral-Stillman Reorganization, Annexation No. 2003-0023.
10 The request proposed, and this Commission's Resolution approved annexation of 39.47
11 +/- acres to the City of Selma and the Selma-Kingsburg-Fowler Sanitation District. The
12 Resolution states at paragraph 15 that the Commission's actions approving the proposal
13 will expire one year from the date of the Resolution. By the terms of the Resolution, and
14 by the provisions of Government Code §57001, the Commission's approval of the
15 annexation was to expire on May 18, 2006. On May 10, 2006, this Commission approved
16 a request for extension to complete proceedings for one year pursuant to §57001 pending
17 the outcome of the aforementioned lawsuit. The Commission, on the City's application,
18 again extended approval of the annexation for one year to May 18, 2008. The
19 Commission again extended approval of the annexation for another year to May 18, 2009.
20 Selma now applies for a one-year extension to May 18, 2010. It is anticipated that an EIR
21 which has been delayed for a variety of reasons will be complete late this year.

22 On May 16, 2006, an order granting the Writ of Mandamus was issued and the City
23 of Selma was ordered to set aside its certification of the EIR, the land use approvals, and
24 entitlements and amendments based thereon. (See Declaration of N. Costanzo). The
25 order further directed Selma to prepare and circulate a revised EIR which adequately
26 addresses three omitted matters which are: (1) the correlation of air quality impacts on
27 health, (2) whether there is a significant effect on the environment due to energy use that
28 is wasteful or unnecessary, and (3) identification and discussion of general plan

1 inconsistencies with the project. (Declaration of N. Costanzo). A revised EIR is currently
2 being prepared by Bert Verrips, AICP. The revised EIR is expected to be completed in
3 2009. Public Resources Code § 21168.9(b) states that where a court issues a Writ of
4 Mandate specifying what action by the public agency is necessary to comply with CEQA,
5 the court shall retain jurisdiction over the public agency's proceedings until the court has
6 determined that the public agency has complied with CEQA. Once completed, the
7 revised EIR will then be returned to the court for a determination that the issues raised in
8 the Writ have been properly addressed. After the court determines that the revised EIR
9 properly addressed the issues raised in the Writ, the City of Selma will then, pursuant to
10 the Writ, reconsider all relevant factors including whether the project requires any
11 modification and/or additional mitigation as conditions of re-approval. Only then may the
12 City re-certify the EIR and proceed with re-approving the project including land use
13 approvals, entitlements, and amendments.

14 Government Code §57001 states that if a certificate of completion for the
15 annexation has not been filed with the Commission within one year after the Commission
16 has approved it, the reorganization shall be deemed abandoned, unless prior to the
17 expiration of that year, the Commission authorizes an extension of time for completion.
18 Section 315 of the LAFCo Policies, Standards and Procedures establishes standards for
19 granting extensions of time to complete the annexation. Section 315 requires a showing
20 that the imminent need for the proposal still exists, that the project is still viable, and that
21 progress is being made toward completion.

22 The project remains viable and the annexation, therefore, remains necessary, but
23 no further action has been taken toward completion of the project or annexation pending
24 the completion and certification of the revised EIR as described above. Completion of the
25 new EIR has been complicated by the fact that property adjacent to the proposed
26 Walmart site is also proposed to be developed and the EIR needs to consider the
27 cumulative impacts of both projects.


28 Government Code §56375 states that the Commission shall require as a condition

1 of annexation that a city present evidence satisfactory to the Commission that "the
2 existing development entitlements on the territory are vested" Accordingly, in
3 paragraph 11 of its Resolution, the Commission conditioned its approval of the annexation
4 upon Selma providing verification, prior to completion of the annexation, that the City has
5 accepted the final map for Vesting Tentative Tract Map No. 5161. Since the court has
6 ordered the land use approvals and entitlements set aside pending the completion of the
7 revised EIR, the final map cannot be adopted until the Court determines that the revised
8 EIR addresses the deficiencies raised in the Writ and the City of Selma reconsiders the
9 project. Government Code §66498.5 provides that the rights conferred by a vesting
10 tentative tract map shall last for a time period as provided by ordinance, of not less than
11 one year, nor more than two years. Selma Municipal Code §9-6-6.10(A) provides for a
12 twenty-four month period from the date of approval of a vesting tentative map, in which
13 to record a final map. Section 9-6-6.10(B) of the Selma Municipal Code provides that the
14 applicant may request a twelve-month extension provided such extension does not extend
15 the life of the map in excess of five years. Therefore, since Vesting Tentative Tract Map
16 No. 5161 was approved by the Selma City Council on January 18, 2005, and has been
17 previously extended by the Counsel and will not expire until January 18, 2010.

18 For the reasons stated above, Selma requests an order of this Commission
19 extending the time to complete the reorganization which was conditionally approved by
20 Resolution No. RO-05-7.

21
22 Dated: April 17, 2009

COSTANZO & ASSOCIATES

23
24 By 
25 Neal E. Costanzo
26 Attorneys for the City of Selma,

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8 **BEFORE THE**
9 **FRESNO COUNTY LOCAL AGENCY FORMATION COMMISSION**

10 In the Matter of:)
11 A REQUEST FROM THE CITY OF)
12 SELMA FOR APPROVAL OF THE)
13 FLORAL-STILLMAN REORGANIZATION)
- ANNEXATION NO. 2003-0023)
**DECLARATION OF NEALE E. COSTANZO
IN SUPPORT OF APPLICATION FOR
EXTENSION OF TIME TO COMPLETE
REORGANIZATION (ANNEXATION)
[GOVERNMENT CODE §57001]**

14 I, Neal E. Costanzo, declare:

15 1. I am the attorney of record for the City of Selma (Selma) in the Fresno
16 County Superior Court Case No. 05 CECG00534, entitled Save Our Selma Coalition,
17 Petitioner, v. City of Selma, Respondents, et. al. Wal-Mart Stores, Inc. (Walmart) is
18 named as the Real Party in Interest. This action was filed under the California
19 Environmental Quality Act (CEQA) wherein the Petitioner is seeking a court order setting
20 aside Selma's approval of a project consisting of construction of a Wal-Mart Supercenter
21 and setting aside Selma's certification of the Environmental Impact Report (EIR) for the
22 project. This project required the annexation of 39.47 +/- acres of land which was
23 conditionally approved by this Commission in Resolution No. RO-05-07, as the Floral-
24 Stillman Reorganization - Annexation No. 2003-0023.

25 2. The CEQA action was commenced by the Petitioner, Save Our Selma
26 Coalition, by filing a Petition for Writ of Mandamus on February 18, 2005. An Amended
27 Petition was then filed on March 4, 2005.

28 3. The Petition for Writ of Mandamus was heard on May 2, 2006.

1 4. On May 16, 2006, an order granting the Writ of Mandamus was issued. A
2 copy of the order is on file with this Commission, attached to a declaration of the
3 undersigned dated May 16, 2007. The City of Selma was ordered to set aside its
4 certification of the EIR, the land use approvals, and entitlements and amendments based
5 thereon. The order further directed Selma to prepare and circulate a revised EIR which
6 adequately addresses three omitted matters which are: (1) the correlation of air quality
7 impacts on health, (2) whether there is a significant effect on the environment due to
8 energy use that is wasteful or unnecessary, and (3) identification and discussion of
9 general plan inconsistencies with the project.

10 5. The City retained CDIA Engineering to prepare a revised EIR in 2007.
11 That consultant was replaced by Bert Verrips in 2008. Certain other projects within the
12 City were approved or become foreseeable, within the meaning of CEQA subsequent to
13 May 2008, when this Commission last extended its approval of the annexation for this
14 project. Consequently, the cumulative effects of these other projects must be considered
15 in the EIR for this project. As a result, the consultant drafting the EIR has had to charge
16 and update the document. The City is currently updating its general plan and the
17 completion of the EIR for this Project will also need revision and updating to reflect this
18 new development. Because the court necessarily retains jurisdiction to determine
19 whether its writ has been complied with, once completed, the EIR will need to be
20 submitted to the court together with a request that the court evaluate the document to
21 determine if it complies with the Writ. Only then could the City re-certify the EIR and
22 proceed with approvals of the project. The EIR is currently undergoing revision to address
23 the aforementioned new developments that may create cumulative impacts and the City's
24 updated General Plan. The project remains viable, and annexation continues to be
25 necessary in that the steps required to comply with the court's writ are being undertaken.
26 Preparation of the EIR requires detailed studies and summarization of the findings of
27 those studies, and necessarily requires a substantial amount of time to complete.

28 6. The Vesting Tentative Map No. 5161, the tentative map for this project as

1 to which the annexation was requested has been extended and does not expire until
2 January 18, 2010. The EIR necessary to approve the project is expected to be completed
3 by late 2009.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6
7 Dated: April 17, 2009

COSTANZO & ASSOCIATES

8
9 By _____
Neal E. Costanzo

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