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

AGENDA ITEM No. 8

DATE: April 10, 2013

TO: Local Agency Formation Commission

FROM: Jeff Witte, Executive Officer

SUBJECT: **Provide Direction:** Request from the Building Industry Association to Revise LAFCo's Peninsula Policy (Continued from March 13, 2013 Meeting)

RECOMMENDATION:

Provide Discussion and direction pertaining to the use of criteria as suggested in "Exhibit A".

EXECUTIVE SUMMARY:

This issue pertains to proposals that are initiated by cities/developers that are within the cities' existing spheres of influence. When a proposal is presented to staff, often times in order to not create an island, staff requires the city/developer to include rural residential territory that results in an inhabited annexation that can later be defeated at a protest hearing. While staff is not specifically seeking a change in State law or our local policies, staff is interested in being able to better respond to cities and members of the development community during the pre-application process where frequently the boundaries of a specific proposal are formulated or refined.

Generally, this issue is most prevalent for cities that have adjacent rural residential properties within their spheres of influence. This issue usually pertains to annexations to the Cities of Fresno and Clovis and to some extent, the City of Sanger. Most of the other cities in the County do not have the same proximity to rural residential properties, which do not create the same problems as those experienced by Fresno and Clovis. Previously, staff has recommended that extensions of existing peninsulas or the creation of new peninsulas would be subject to some additional criteria found in Exhibit A.

During the last LAFCo meeting, staff discussed this issue with the Commissioners and heard testimony from the public, including Mr. Mike Prandini of the Building Industry Association (BIA). During that hearing, Mr. Prandini asked for certain policy changes, which are attached in Exhibit B. Mr. Prandini requested that LAFCo have certain criteria to, in part, give cities certain deadlines with respect to processing applications and, if these deadlines are not met, LAFCo would consider the change of organization or reorganization as a petition by the developer, rather than as an application by the city.

BACKGROUND:

This item was continued from the March 13, 2013 meeting, to allow time for staff to review the concerns expressed by the BIA. Staff is recommending that a city submit a plan for annexation when it submits an annexation application that would extend a peninsula. The BIA was concerned that annexations could be held up if the annexing city did not have an annexation plan to submit with the application. To address this No.10 has been added to the list of criteria on Exhibit "A". This was added to address a situation where a city does not have a plan for dealing with peninsula annexations. These criteria would guide the Executive Officer in the review of such an application, including additional procedures for processing the application that may add conditions of approval being placed on an annexation.

Staff received a letter dated October 9, 2012, from the BIA, requesting LAFCo to review and reconsider their existing Policy on peninsulas. The letter also contained suggested criteria of what they would like to see included in LAFCo's policy on peninsulas.

The Commission considered public testimony on this matter at the November 7, 2012, hearing and directed staff to meet with representatives from the cities, BIA, development community, County Planning, and Fresno County Sheriff's office to discuss implications related to situations where a peninsula may be formed or extended. With that direction, staff convened a meeting of the aforesaid groups at LAFCo on December 12, 2012, for the purpose of reviewing LAFCo's policy, land use issues, and any other service-related implications of creating a peninsula or extending an existing one.

As a result of the discussions at the December 12th meeting, it became clear that there is really no "one size" or single standard that will fit all occasions in terms of establishing a mathematical formula or some pre-specified design constraints. This group concluded that the existing criteria suggested by staff and the BIA should only add two additional requirements, which would include seeking input from the Sheriff's office with respect to any service related issues that such proposal could generate. In a report presented to the Commission in November, staff had suggested notifying the Sheriff's Office of annexations and requesting comments; however, the group thought it was important enough to formalize the process. The group also wished to have the County Planning Department's comments to the proponents' (city or applicant) application that should show how the proposal fits in with a previously approved master plan or specific plan for the area and why such an annexation boundary is required to operationalize the master plan or specific plan.

These two additional requirements would be included in the pre-application review process before an application is submitted to LAFCo. If LAFCo determines to allow for the creation of a peninsula, the annexing city will need to provide justification for the peninsula and why it is not feasible to annex the surrounding territory at that time. The City will also need to provide a plan to LAFCo showing their future strategy for annexing the areas surrounding the peninsula.

Attached as "Exhibit A", is the criteria suggested by the Cities, County, Sheriff, BIA, etc. at the December 12th meeting for a policy revision.

LAFCO Laws and Policies:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH), contains various legislative findings, which mandate "logical formation and modification of the boundaries of local agencies . . ." (Gov. Code section 56001.).

Section 56375(m) creates a way for LAFCo to waive the statutory restrictions on annexations that would result in islands or peninsulas. It states, "To waive the restrictions on Section 56744 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation or incorporation is so located that it cannot reasonably be annexed to another city or incorporated as a new city.

Moreover, Section 56375(5) states, "As a condition to the annexation of an area that is surrounded, or substantially surrounded, by the city to which the annexation is proposed, the commission may require, where consistent with the purposes of this division, that the annexation include the entire island of surrounded, or substantially surrounded territory."

State law tends to group the creation of peninsulas and islands in the same category; however, this report is NOT seeking any modification in terms of creating islands and is only addressing the creation or extension of peninsulas under certain circumstances based on the criteria attached in "Exhibit A"

LAFCo Policies, Standards, and Procedures also address this issue. Section 210-08 states the "Proposal would not create islands. Boundaries minimize creation of peninsulas and corridors, or other distortion of boundaries, and should include any developed islands or substantially surrounded area with the proposed developing area."

LAFCo Policies define "substantially surrounded territory" as meeting one of two criteria: (1) "The proposal must have at least three sides contiguous with city boundaries"; or (2) "The proposal must have at least 75% of its perimeter contiguous with city boundaries." (Section 005-09.)

Therefore, unless the Commission can make the findings included in Section 56375(m), the Commission may not approve an annexation unless it is a substantially surrounded territory.

DISCUSSION:

Of the 15 cities, most of this issue is focused on the Fresno-Clovis Metropolitan area; however, there are ramifications for the City of Sanger and some of the other smaller cities. The BIA appears to assert that LAFCo policies make it challenging for future annexations.

Land use decisions related to rural residential property date back 40 to 50 years, when rural residential land was still some distance from the city limits. Over the years, as several of the cities have grown and developed new general plans, new annexations are encroaching upon rural residential properties.

Another element in the discussion is that an annexation that contains 12 or more registered voters is considered an inhabited annexation under the CKH. An unintended consequence of adding

rural residential properties to a developer's property in order to avoid creating a peninsula is that it often results in an inhabited annexation, which can be defeated at the protest hearing.

Previously, cities and developers have avoided annexing inhabited territory by annexing around the inhabited territory, which can result in the creation of a peninsula. This practice has left some very unusual boundaries and it now has reached the point that it will be extremely difficult to process more annexations under the present policies. Thus, even if land is available within the city's approved sphere of influence, is fully provided for in the city's general plan, has been pre-zoned correctly, does not have environmental issues, and the developer has the ability to provide services to the property, the land still may not be annexable because to do so, would create a peninsula,

BIA PROPOSAL:

The BIA is asking the Commission to consider the following four points when an annexation could result in a peninsula, or further extension of a peninsula:

1. The annexation complies with the Municipal Service Plan for the annexing jurisdiction.
2. The annexation is consistent with the adopted plans and policies of the annexing jurisdiction.
3. The annexation is within the sphere of influence of the annexing jurisdiction.
4. The annexation is consistent with the other adopted standards for annexation.

In their proposal, the BIA states that a revision to the criteria for the peninsula policy is needed and without such, there will be serious limits on the amount of property that can be developed which could potentially cause adverse impacts on the creation of jobs and the local economy.

STAFF ANALYSIS:

Staff agrees with the BIA as to the ramifications that the existing policy has on the Fresno-Clovis Metropolitan area. Under the CKH, an inhabited annexation requires a protest hearing that allows both landowners and registered voters to protest an annexation, if all of the landowners and registered voters have not consented to the annexation. It is likely that development of inhabited property within the existing metropolitan area, that has already been included in general plans, zoning ordinances, and other documents will not take place, if the annexation is defeated at the protest hearing. Further, if land within the existing metropolitan area that has already been planned for development cannot be annexed, growth would likely be directed toward larger agricultural areas, thus triggering a series of events that LAFCo has even greater reservations about.

In addition to the four points that the BIA brings up, there are other considerations related to the provision of governmental services. Specifically, the provision of various safety services needs to be considered. In many cases, the sheriff and the police are crossing each other's boundaries to serve these "fringe" areas. Even if the extension of a peninsula may not make any material difference, it is important to examine each annexation on a case-by-case basis with special

consideration for safety services. Typically, LAFCo's focus during the pre-application meeting with the County planning staff and the applicant is to discuss land use issues. By adding the opportunity for sheriff's representatives to attend the pre-application meeting, it would assist in identifying any area where special concerns exist in terms of jurisdictional boundaries and safety services.

Another concern is to ultimately address and resolve issues with areas that were left out of previous annexations because they were inhabited, and the landowners and/or registered voters were opposed to annexation. As a result of the December workshop session, the project will need to show its relationship to the master plan for the area. This plan would presumably include planning concepts that are not only consistent with the city's general plan, but are also consistent with their master plan for development of an enhanced community. In some cases, operationalizing a good specific plan may meet these proposed requirements.

Staff would also support two additional requirements in this area. First; that any such peninsula annexation include other properties where possible, including territory containing up to 11 registered voters. While this would still result in a protest hearing, it would also assist in squaring up boundaries. Secondly, depending on the circumstances of each application, staff would generally support a city's peninsula annexation if the city has an annexation program in place that has been approved by Fresno LAFCo. The annexation program would be designed to annex those areas that are already largely developed and are already within the city's sphere of influence, but are not a part of a specific development proposal.

Exhibit A

Provide direction to staff to include the following items related to peninsula annexations:

1. All applicants are encouraged to conduct a preapplication review with LAFCo to determine whether or not the annexation would cause an island and if LAFCo would require the addition of territory to avoid an island.
2. The annexation complies with the Municipal Services Plan for the annexing jurisdiction.
3. The annexation is consistent with the adopted plans and policies of the annexing jurisdiction.
4. The annexation is within the sphere of influence of the annexing jurisdiction.
5. The annexation is consistent with the other adopted standards for annexation.
6. Annexation, to the extent possible, will include up to 11 registered voters.
7. Cities wishing to use the revised peninsula plan will submit to LAFCo for approval, an annexation program to include areas already in the city's sphere of influence, but not a part of a development proposal for annexation.
8. LAFCo shall include participation by the Sheriff's Office in any related boundary discussion.
9. All proposals shall show how the boundaries of the annexation area are needed to advance a city's master plan or specific plan.

(NEW)

10. In cases where the applicant wishes to annex to a city and the city does not have an approved plan on file with LAFCo, the Executive Officer may require the following steps in addition to the above criteria with the exception of No. 7. The Executive Officer may also require:
 - a. A mandatory meeting with the nearby property owners as determined by the Executive Officer.
 - b. Mitigation of certain impacts to nearby property owners related to annexation (i.e. water sewer etc.)
 - c. Providing for filing fees for additional annexations at a future date.
 - d. Compliance with LAFCo's policy for addressing Disadvantaged Communities