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

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**AGENDA ITEM No. 10**

**DATE:** September 11, 2013

**TO:** Local Agency Formation Commission

**FROM:** David E. Fey, AICP, Executive Officer

**SUBJECT:** Provide Direction: Expiration of Fire Transition Agreements Prior to Certificate of Completion

**Recommendation:** Provide direction to staff regarding implementation of Commission policy

**Background**

Since 2005, 13 reorganizations have been approved, subject to one or more extensions, and not completed (list attached). Since the projects were approved the fire transition agreements between the respective cities and the Fresno County Fire Protection District (District) have expired.

One of these project applicants, Union Community Partners (UCP), has recently requested completion of the Shields-Locan No. 3 Reorganization to the City of Fresno. Mr. Dennis Gaab, representing UCP, has informed staff that he believes UCP is no longer bound to comply with the terms of the fire transition agreement (payment of fees) because the agreement between the city of Fresno and the District has expired.

Staff has corresponded with Mr. Gaab stating the position that the terms of the Commission's approval must still be completed, including payment of the transition fee to the City of Fresno.

Staff requests that the Commission confirm staff's position as conforming to the fire transition policy or provide alternate direction.

**Discussion**

*Policy Determination: If a Fire Transition Agreement between a city and the District expires after approval of the reorganization, but before a certificate of completion is filed, does this void the applicant's responsibility to comply with the Commission's Fire Transition policy?*

Commission policy 102-04 supports a fire transition agreement between a city and the District prior to action by the Commission; absent a transition agreement, the Commission may develop conditions of approval to address transition impacts. The application for the subject reorganization was deemed complete in part because it conformed to this policy.

Likewise, the applications for the other 12 reorganizations were deemed complete and ultimately approved, in part because they complied with the Commission's policy.

The fire transition agreement was a material part of the Commission's consideration of the reorganization's approval. Staff's report analyzed the project's consistency with the Act and Fresno LAFCo policies and determined the project's consistency with LAFCo policies because "an

agreement was in place between the city of Fresno and the Fresno County Fire Protection District to provide for the transition of fire protection services to the affected territory.” The resolution of approval recited the project’s conformity with statute and policy including,

WHEREAS, Fresno County Fire Protection District and the City of Fresno have a transition agreement in full force and effect that applies to fire protection services within the affected territory on file with the commissioners, and...

At the time the Reorganization was approved, without an express determination to the contrary, LAFCo policy required the existence of a transition agreement. Technically, the expiration of the agreement means that the Reorganization is no longer in compliance with the terms and conditions of the Commission’s approval. One option would be for me to determine that a Certificate of Completion simply cannot be filed for the Reorganization. At that point UCP could resubmit a new application to LAFCo. An alternative approach would be for UCP to work out an arrangement between the City and the District, whereby UCP could pay the fee that was in effect at the time the City approved the rezoning ordinance bill.

### *Rezoning Ordinance Condition*

There is also the question if the City of Fresno’s Shields-Locan No. 3 Reorganization’s rezoning ordinance conditions are complete.

Unless a territory is at full build-out, LAFCo law requires that territory be rezoned before it may be annexed to a city. The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Act) states the “Commission shall require, as a condition to annexation, that a city rezone the territory to be annexed.” (Gov. Code section 56375 (a)(7).) Territory must be rezoned so that LAFCo may find that the proposed project is consistent with a city’s general plan.

In fact, both the Act and LAFCo policy state that the rezoning of the subject territory is a condition to annexation. For example, Fresno LAFCo’s Policies, Standards and Procedures manual section 210-13, Standard for Annexation to Cities and Urban Service Districts, Rezoning Requirement, states: “As a condition to annexation a city is required to rezone the territory to be annexed. Prior to submitting an application to the Commission for a proposed annexation (by the city or petitioners, as the case may be) the city or petitioners must have rezoned the affected territory consistent with that city’s general plan...”

City ordinance bill 2006-142 approving the rezoning depicts the effective date as “see sec. 4,” which reads:

This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage and upon annexation of the subject property into the City of Fresno *and upon payment of required fire district “transitional fees.”* (Emphasis added.)

Proof of payment should be provided to the City and the Executive Officer to demonstrate compliance with this condition of approval. Should the Commission concur with staff’s interpretation, this payment will also demonstrate compliance with the Commission’s Fire Transition policy.

**Fey, David**

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**From:** Dennis Gaab <Dennis@unioncommunityllc.com>  
**Sent:** Monday, June 03, 2013 9:03 AM  
**To:** Fey, David  
**Cc:** mikep@biasjv.org; Fleming, Candace Lynn; bruce.rudd@fresno.gov; Mike.Sanchez@fresno.gov  
**Subject:** RE: Shields-Locan No. 3 Reorganization

Dave,

The City of Fresno is not a party to an agreement involving the Fresno County Fire Protection District. Therefore, the City has no basis for imposing a fire transition fee in connection with the Shields-Locan No. 3 Reorganization. We have been advised by City of Fresno officials that the City is fully prepared to provide fire protection and related services to the area described by the Shields-Locan No. 3 Reorganization upon recording of the Boundary Change to perfect the annexation of the area to the City. Therefore, the City does not require the payment of a fire transition fee in connection with the Shields-Locan No. 3 Reorganization.

**Dennis M. Gaab**  
Director of Forward Planning  
[Dennis@unioncommunityllc.com](mailto:Dennis@unioncommunityllc.com)

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548 W. Cromwell Avenue, Suite 104 | Fresno, CA 93711  
[www.unioncommunityllc.com](http://www.unioncommunityllc.com)

UCP

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**From:** Fey, David [<mailto:dfey@co.fresno.ca.us>]  
**Sent:** Monday, June 03, 2013 7:34 AM  
**To:** Dennis Gaab  
**Cc:** [mikep@biasjv.org](mailto:mikep@biasjv.org); Fleming, Candace Lynn  
**Subject:** RE: Shields-Locan No. 3 Reorganization

Dennis,

"The City of Fresno will be notifying LAFCo in writing that the conditions of approval associated with the Shields-Locan No. 3 Reorganization have been satisfied."

What is the status of the transition fee?

DF

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**From:** Dennis Gaab [<mailto:Dennis@unioncommunityllc.com>]  
**Sent:** Friday, May 31, 2013 4:31 PM  
**To:** Fey, David  
**Cc:** [mikep@biasjv.org](mailto:mikep@biasjv.org)  
**Subject:** Shields-Locan No. 3 Reorganization

Dave,

First, congratulations on your appointment as Fresno LAFCo Executive Officer. We extend to you our very best wishes for success in your new role, and we stand ready to assist you in every way possible.

Second, Mike Prandini and I enjoyed a positive, productive session earlier today with Fresno Assistant City Manager Bruce Rudd regarding the Shields-Locan No. 3 Reorganization. Bruce confirmed that Union Community Partners, which owns the land described by Vesting Tentative Tract Map No. 5341 (located on the south side of Clinton Avenue between

Temperance and Locan Avenues), and is scheduled to close escrow soon to perfect its acquisition of the land described by Vesting Tentative Tract Map No. 5592 (located at the southwest corner of the intersection of Shields and Locan Avenues) has fully satisfied the conditions of approval associated with the Shields-Locan No. 3 Reorganization. Bruce indicated that the City of Fresno is prepared to provide all municipal services to meet the needs of the area approved for annexation to the City.

Fresno LAFCo approved the Shields-Locan No. 3 Reorganization more than five years ago. The City of Fresno has consistently supported each of the five annual requests for extension of time to perfect the annexation, the last of which was approved by LAFCo on January 9, 2013 (Resolution RO-07-26F) and extended the time to February 6, 2014. The City of Fresno will be notifying LAFCo in writing that the conditions of approval associated with the Shields-Locan No. 3 Reorganization have been satisfied.

Our goal here is for LAFCo to obtain recording of the Shields-Locan No. 3 Reorganization Boundary Change as soon as practicable. We would prefer to achieve our goal through the cooperative effort, and with the support of, all parties involved in and affected by the reorganization. To this end, we would welcome the opportunity to discuss with you a process and schedule for LAFCo to obtain recording of the Boundary Change in the near future.

I look forward to hearing from you, and thank you in advance for your cooperation and assistance.

**Dennis M. Gaab**

Director of Forward Planning

[Dennis@unioncommunityllc.com](mailto:Dennis@unioncommunityllc.com)

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UCP



# Fresno Local Agency Formation Commission

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August 22, 2013

Mr. Dennis M. Gaab  
Director of Forward Planning  
Union Community Partners  
548 W. Cromwell Avenue, Suite 104  
Fresno, CA 93711

Dear Mr. Gaab,

Subject: Shields-Locan No. 3 Reorganization

This letter addresses the issue you raised recently regarding the Shields-Locan No. 3 Reorganization (Reorganization) and whether a Certificate of Completion can be filed in light of the expiration of the fire transition agreement between the City of Fresno (City) and the Fresno County Fire Protection District (District).

I took the opportunity to thoroughly review LAFCo's file on the Reorganization, the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (the Act), and LAFCO Policies and Procedures. While I am aware that the fire transition agreement between the City and the District has expired, I have concluded that a Certificate of Completion cannot be filed because (i) the rezoning ordinance adopted by the City of Fresno is not effective because a condition therein has not been satisfied; and (ii) the proposed reorganization is not in compliance with the LAFCO policy requiring that a fire transition agreement be in place (which was the case at the time LAFCo approved the Reorganization).

City ordinance bill 2006-142 approving the rezoning depicts the effective date as "see sec. 4," which reads:

This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage and upon annexation of the subject property into the City of Fresno *and upon payment of required fire district "transitional fees."* (Emphasis added.)

Unless a territory is at full build-out, LAFCo law requires that territory be rezoned before it may be annexed to a city. The Act states the "Commission shall require, as a condition to annexation, that a city prezone the territory to be annexed." (Gov. Code section 56375 (a) (7).) Territory must be rezoned so that LAFCo may find that the proposed project is consistent with a city's general plan.

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In fact, both the Act and LAFCo policy state that the rezoning of the subject territory is a *condition* to annexation. For example, Fresno LAFCo's Policies, Standards and Procedures Manual section 210-13, Standard for Annexation to Cities and Urban Service Districts, Rezoning Requirement, states, "As a *condition* to annexation a city is required to rezone the territory to be annexed. Prior to submitting an application to the Commission for a proposed annexation (by the city or petitioners, as the case may be) the city or petitioners must have rezoned the affected territory consistent with that city's general plan..." (Emphasis added). While the rezoning requirement was not an express condition contained in the resolution, it was clearly a condition of approval by operation of law.

Proof of payment should be provided to the City and this office to demonstrate compliance with this *condition* of approval.

Second, the fire transition agreement was a *material* part of the Commission's consideration of the reorganization's approval. Staff's report 6 February 2008 analyzed the project's consistency with the Act and Fresno LAFCo policies and determined the project's consistency with LAFCo policies because "an agreement was in place between the city of Fresno and the Fresno County Fire Protection District to provide for the transition of fire protection services to the affected territory." The resolution of approval recited the project's conformity with statute and policy including,

"WHEREAS, the Fresno County Fire Protection District and the City of Fresno have a transition agreement in full force and effect that applies to fire protection services within the affected territory on file with the Commission,...."

At the time the Reorganization was approved, without an express determination to the contrary, LAFCo policy required the existence of a transition agreement. Technically, the expiration of the agreement means that the Reorganization is no longer in compliance with the terms and conditions of the Commission's approval. One option would be for me to determine that a Certificate of Completion simply cannot be filed for the Reorganization. At that point UCP could resubmit a new application to LAFCo. An alternative approach would be for your client to work out an arrangement between the City and the District, whereby UCP could pay the fee that was in effect at the time the City approved the rezoning ordinance bill.

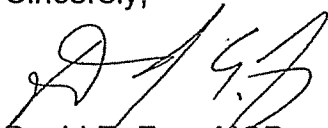
I will be bringing this item before the LAFCo Commissioners to discuss this matter during the September 11, 2013 meeting. I will request the Commissioners provide me guidance to change Commission policy regarding this matter. To that end, I will seek clarification from the Commissioners on how to best address the intersection between

Mr. Dennis Gaab  
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city imposed prezoning conditions that are to be satisfied *after* an application is submitted to LAFCo and the possibility that, after years of extensions, fire transition agreements could expire. The Commissioners may want to find some way of ensuring that there is an equal playing ground between those applicants who take the necessary steps to see that their applications are recorded in a timely manner and those that benefit from numerous extensions. You are more than welcome to address the Commission during that meeting.

In the meantime, please do not hesitate to contact me regarding this or any matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Fey', written over a horizontal line.

David E. Fey, AICP  
Executive Officer

DEF:cf

C: Mike Prandini, BIA  
Ken Price, LAFCo Counsel  
Bruce Rudd, Fresno City Manager  
Jennifer Clark, DARM Director

**PROPOSALS APPROVED BUT NOT RECORDED  
EXPIRED FIRE TRANSITION AGREEMENTS**

Proposal No.	Proposal Name	City	Date Approved	Exp. Date
RO-10-0-1	Manning Zumwalt	Reedley	6/9/10	6/9/14
RO-08-9	Reed-Floral Reorg.	Reedley	6/4/08	6/4/14
RO-08-2	McKinley-Blythe No. 1	Fresno	3/5/08	3/15/14
RO-07-26	Shields-Locan No. 3	Fresno	2/6/08	2/6/14
RO-07-21	Calif.-Academy Northwest	Sanger	2/6/08	2/6/14
RO-07-22	Annex. 06-03, Greenwood Estates	Sanger	11/7/07	11/7/13
RO-07-6	Reed-Beechwood	Reedley	3/14/07	3/14/14
RO-06-27	Kings Canyon-Minniwawa	Fresno	10/11/06	10/11/13
RO-06-28	Calif.-Temperance No. 3	Fresno	10/11/06	10/11/13
RO-06-32	Shields-Polk No. 4E	Fresno	10/11/06	10/11/13
RO-06-33	Kamm-Academy SW	Kingsburg	11/15/06	11/15/13
RO-05-32	Frankwood-Floral	Reedley	12/7/05	12/7/13
RO-05-7	Floral-Stillman	Selma	5/18/05	5/18/09