

LOCAL AGENCY FORMATION COMMISSION MINUTES

CITY MEMBERS

David Ayers
Jim Wadsworth
Sid Craighead - Alternate

COUNTY MEMBERS

Joe Neves – Chair
Jon Rachford - Vice Chair
Alene Taylor - Alternate

PUBLIC MEMBERS

Paul Thompson
Vacant - Alternate

CALL TO ORDER: A regular meeting of the Local Agency Formation Commission of Kings County was called to order by the Chairman, Joe Neves, at 3:04 p.m., on December 07, 2005, in the Board of Supervisors Chambers of the Kings County Government Center, located at 1400 W. Lacey Blvd., in Hanford, California.

COMMISSIONERS PRESENT: Joe Neves, Jon Rachford, Paul Thompson, Jim Wadsworth, Sid Craighead

COMMISSIONERS ABSENT: None

STAFF PRESENT: Bill Zumwalt, Greg Gatzka, Marti Seniff, Denis Eymil

VISITORS PRESENT: Jan Kahn, Cathy Cain, Ron Hoggard, Esther Martinez, Larry Cox, Karl Barnes, Roman Govalez, Norman Allinder, George Petrulakis, Richard Harriman, Larry Wilkinson, Howard Kemp, Karl Barnes, Coy Stark, John Wilbanks

UNSCHEDULED APPEARANCES: None

MINUTES OF October 26, 2005:

The minutes of October 26, 2005 were unanimously approved, with the correction as noted below, by the members present on a motion by Commissioners (Wadsworth / Craighead) with Commissioner Thompson abstaining. Mr. Gatzka noted that the reference to Resolution No. 05-15 for LAFCO Case No. 05-07 was incorrect and should be Resolution No. 05-14.

I. OLD BUSINESS:

A. LAFCO Case No. 05-07 – Tulare Lake Reclamation District No. 761 Detachment

Mr. Gatzka stated that the Tulare Lake Reclamation District submitted an application to detach approximately 157.51 acres from the District. He stated that the territory consisted of one parcel with 116.99 acres, and a 40.52 acre portion of a 320 acre parcel. He stated that this detachment was considered at the last LAFCO meeting on October 26, 2005 where the Commission considered the proposal and adopted the Resolution 05-14 to approve the detachment subject to the results of the protest proceeding which conclude today. Since the previous hearing, staff received a letter of protest from the Franklin Tract Landowners Association on November 14, 2005, which represents 75% of the assessed land value of the entire area subject to the detachment. Mr. Gatzka stated that based upon that fact, Government Code Section 57075 requires that the proceedings be terminated because the valid protest represents the majority of the land subject to that detachment. Since the protest hearing is simply to determine the results of protest, Resolution No. 05-15 has been prepared which will terminate the proceeding for the detachment.

After Commission members discussed the proposal a motion was made and seconded by Commissioners (Wadsworth / Thompson) terminating proceedings for the Tulare Lake Reclamation District No. 761 Detachment. Motion carried unanimously.

AYES: Commissioners: Wadsworth, Thompson, Rachford, Neves, Craighead

NOES: None

ABSENT: None

B. LAFCO Case No. 05-13 – City of Corcoran Reorganization 2005-A

Mr. Gatzka stated the city is requesting an annexation of four (4) separate areas, one County Island area of 90.7 acres and three substantially surrounded areas that meet the criteria for “Substantially Surrounded” as defined by the commission. He stated that Area 1 includes 38.8 acres and represents territory 86% surrounded by the city on three sides; Area 2 includes 91.9 acres and represents 77% surrounded on three sides; and Area 3 includes 56.7 acres and represents 90% surrounded on four sides. He stated that these areas are eligible for City annexation under the island annexation provision of Government Code Section 56375.3. The City is also requesting to detach this territory from the Kings River Conservation District, and Tulare Lake Resource Conservation District. He stated that the four areas are within the sphere of influence of the City of Corcoran, and the City has adopted a negative declaration on July 13, 2005. Mr. Gatzka stated that this project does not represent 100 percent consent by the land owners and notification was submitted to all the land owners and registered voters within the project area and within a 300 foot radius of those properties. He stated that under the Island annexation provision there are no protesting rights if these areas meet the criteria based under Government Code Section 56375.3. Mr. Gatzka showed the four (4) areas to be annexed on the overhead, and stated that adjacent property owners and registered voters were notified separately that they were not part of the annexation and were being notified as required by State Law.

Commissioner Rachford wanted clarification on how Area 1 met the criteria of substantially surrounded. Mr. Gatzka, using the overhead projection map, identified how the area is considered surrounded by the City on three sides and that the total contiguous boundary with the City is greater than 60 percent. Mr. Zumwalt reviewed the substantially surrounded policy with the Commission and proceeded to describe the boundaries for Areas 1, 2 and 3. He continued to clarify that each of the three areas was surrounded by at least three sides adjacent to the City. He further stated that these areas also meet the second test which requires at least 60 percent of the entire boundary of the area to be adjacent to the City. Mr. Zumwalt concluded that these three areas meet the test.

Mr. Gatzka stated that in order for the Commission to consider this annexation under the island annexation provision, all the findings listed under Government Code Section 56375.3 must be met. He stated that staff has determined that all of these criteria can be met. He summarized the seven (7) findings listed. He stated that the four areas are already receiving City benefits now, and for those undeveloped parcels annexation will allow those to tap into city services as well.

Mr. Gatzka stated that LAFCO staff recommends that the Commission approve LAFCO Case No. 05-13 and adopt Resolution No. 05-16. He stated that LAFCO be designated as the conducting authority for the Corcoran Reorganization 2005-A and annexation would become effective when the City of Corcoran has obtained pre-clearance of the annexation from the U.S. Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965.

Mr. Gatzka clarified that protest proceedings would be waived and that the public can present evidence in relation to the Commission making the required six findings. Mr. Zumwalt stated that the Code Section specifies that if the Commission makes these findings then it must approve the annexation and waive the protest proceedings. Commissioner Thompson asked what is the purpose for the public comments then. Mr. Zumwalt stated that the public can present evidence for the Commission's consideration that the findings cannot be made.

Commissioner Rachford stated that he is concerned with Area 1 and wanted to know how it is substantially surrounded. Mr. Zumwalt placed the map of Area 1 on the overhead and explained how the area is 86 percent substantially surrounded by the city. Clarification was made on how a portion of the area is considered to be adjacent along the north.

Commissioner Neves opened the public hearing. Mr. Roman Govalez lives at 2811 Orange near Area 1 and was concerned with the issues of larger animals, RV's and flood zone areas. Commissioner Rachford and Mr. Zumwalt addressed the flood zone issues and Mr. Hoggard addressed the animal issue.

Mrs. Lupe Harris, address 7090 Orange Street, had concerns that the area she has lived in all her life is going to change with the annexation and she wants it to stay the way it is. Mr. Zumwalt explained to Mrs. Harris the state law regarding LAFCO's role in approving the annexation if certain findings can be made. Mrs. Harris was worried that the property taxes would increase and had concerns about drainage, curbs and gutters. Mr. Zumwalt explained that "Proposition 13", approved by the voters in 1978, restricted the amount of taxes that can be placed on property. He clarified that for drainage and other improvements, she has the same opportunities in the County and she will with the City.

Commissioner Neves asked if there was anyone else who would like to give testimony and asked Mr. Zumwalt if there was any written testimony. Mr. Zumwalt stated there was no written testimony. Commissioner Neves closed the public hearing.

After Commission members discussed the proposal a motion was made and seconded by Commissioners (Wadsworth / Rachford) approve LAFCO Case No. 05-13 and adopt Resolution No. 05-16. Motion carried unanimously.

AYES: Commissioners: Wadsworth, Rachford, Thompson, Neves, Craighead
NOES: None
ABSENT: None

II. NEW BUSINESS:

A. LAFCO Case No. 05-15 – Hanford Reorganization No. 135

Mr. Gatzka stated that the City of Hanford has requested annexation of 21 parcels totaling 433.34 acres. He stated that the application does not represent 100 percent consent from all the land owners and notification has been issued to all land owners and the registered voters within the project area and within a 300 ft radius. He stated that the project is located along the west and east sides of 12th Avenue and north of Houston Avenue. Mr. Gatzka stated that out of the 21 parcels, 7 parcels are currently under the Williamson Act Contract. He stated that those parcels with contracts are protested by the City but a few are not, but have notices of non renewal filed on them. He stated that LAFCO received a comment letter from the Department of Conservation dated December 5, 2005.

He stated that the City of Hanford is relying on their 2002 General Plan EIR documentation, and that the territory is pre-zoned for consistency with the General Plan. Mr. Gatzka stated that the letter from the Department of Conservation is stating that the City protest of those contracts are not considered valid. He stated that staff as done research to provide the commission with the information needed in considering the project and was included in the supplemental information packet. Mr. Gatzka stated that after staff reviewed the city protests, they were found to be valid LAFCO staff's opinion. He stated that there was documentation filed by the City back in 1969, 1970 and 1973 for those contracts. He stated that back in 1969 and 1971, LAFCO was not responsible for the City protests, it was under the Board of Supervisors and LAFCO historically upheld those protests assuming that they meet the criteria of being located within a mile of the existing city limit boundaries of that time. He stated that in 2002 staff conducted a study of all the protested land and verified whether it was located within a mile of the City limit boundaries at the time of filing. He stated that contracts 267, 266, 819 and 1570 are the four that the Department of Conservation are challenging and he provided them with the researched documentation which showed the findings to determine the protests were valid. In addition, he stated that findings can be made for the City to annex Williamson Act land under Government Code Section 56856.5, which requires that certain finding be made to justify that the land should be annexed into the City and if they are adequately planned for the territories for their expanded growth and if provisions are in place to protect agricultural land. Mr. Gatzka stated that the City's General Plan has planned for these territories which were protested and relied upon as available land for the City's urban growth expansion and to help meet their residential needs. As the City is predominantly surrounded by prime agricultural land, the protested areas have historically been the areas planned for growth. In addition, the City has planned for less intensive uses along their defined agriculture urban interface. He stated that the City's General Plan has made efforts to preserve agriculture and planned for the growth of the city and their uses by relying on the protested contracted areas which date back to 1969. He stated that these findings can be made by the Commission for the annexation approval of this territory. He explained that Contract 566 which is in the south east portion of the subject territory is in under non-renewal and that this portion would not be allowed to receive services under the Williamson Act rules and regulations, and that this condition has been added to the Resolution.

Mr. Gatzka presented two Resolution alternatives, A & B. Resolution A is if there is no opposition and the Commission can waive the protest proceedings, and Resolution B is if there is opposition and the protest proceedings are to commence with a noticed protest hearing to occur at the next scheduled meeting. He stated that staff is recommending approval of LAFCO Case 05-15 with the conditions that the Commission be designated as the conducting authority and either proceed with the protest proceedings if there is opposition or waive protest proceedings if there is no opposition, and that the city obtain pre-clearance from the Department of Justice. He stated that Resolution 05-17 has been prepared for the Commission's consideration.

Commissioner Wadsworth wanted clarification regarding Contract 566 and the statement that the city would not provide services because it was under the Williamson Act. Mr. Gatzka stated that under the Williamson Act Contract there are restrictions on the type of land use allowed and that only those allowed land uses could receive necessary services but not other uses. Commissioner Wadsworth asked for some examples of what that would be. Mr. Gatzka gave an example of a residential subdivision and pointed out that the city would not be allowed to provide water and sewer services because it is not allowed under the Williamson Act Contract. He stated that until the contract is phased out the only uses would be those that are described in the Uniform Rules and Regulations under that contract. The Contract 566 would expire on the year 2014 and 2015. Commissioner Rachford asked if the Commission approved the annexation, who would be responsible to answer the letter from the Department of Conservation. Mr. Gatzka stated that the

Department of Conversation are requesting a copy of the staff report and the findings in the Resolution and a letter would be sent to them and wait to see their response and if they challenged it. Mr. Zumwalt stated that the Department of Conversation is citing changes in law that occurred after the protest was in place. He stated that he is confident these protests identified specific land and that records dating back to 1969 show what specific territory was protested by the City. He stated that the City Council's protests were submitted to the County Board of Supervisors between 1969 and 1972 and that they identified the specific preserves and that LAFCO accepts them as long as they were within a mile of the city. After 1972 protests went before LAFCO and the same determination was made. These early protests were processed by agricultural preserve numbers. He stated that there is no question and we can point to a specific parcel and tell you whether it was protested or not. Commissioner Rachford asked know who will respond to the Department of Conversation if challenged, the City or LAFCO? Mr. Zumwalt stated that if the Department of Conversation decided to disagree with the Commissions actions then they would file suite against LAFCO to reverse the action. Mr. Dennis Emil stated that LAFCO would refer to the City to provide the actual defense. He stated that the Department of Conservation's argument is based on the contract number being a magical number, when in fact we have always been able to specifically define the territory under contract.

Commissioner Neves opened the public hearing. Mrs. Kathy Cain, Planner for the City of Hanford, stated that the City does agree with staff's recommendations, and made herself available to the Commissioners if have any questions.

Mr. Norman Allinder, 210 East F Street, Oakdale and with the RRM Design Group, stated that he represents the proponents of the project and land owner. He stated that his associates are present and if the Commission has any questions they would be happy to assist. He also stated that there are 22 properties and do date they have 20 signatures turned in.

Mr. Richard Harriman, Attorney at Law, 4321 North West Avenue, Suite 106, Fresno, CA 93705, he greeted and thanked the staff and Mrs. Venturella for making available the documents. He stated that he is representing Hanford Citizens for Responsible Planning a non-profit unincorporated association and Valley Advocates, a California non-profit public benefit corporation with its business located in Fresno. He stated that he would like to focus on three things and it might be unusual but perhaps not to the Commissioners. He stated that he made a presentation at the October 18, 2005, Hanford City Council meeting at which time he did not have access to the final Arsenic Reduction Study report of the City of Hanford, and he stated that the report that appeared on the City of Hanford's 2002 General Plan update which was adopted July, 2002, did not address the New Arsenic Drinking Water Standards of the Federal and State Government. They are going into affect January 23, 2006, therefore the reliance by the applicant on the Final EIR in 2002 Hanford General Plan update was misplaced because in that final EIR the City did not address the non compliance with the Federal and State Drinking Water Standards that they had to address in their Final Arsenic Study and so the Mitigated Negative Declaration upon which they reported in July with your review as a responsible agency under the California Environmental Quality Act (CEQA) can not be found complete and accurate. He included documents from the report and specifically sited the section which says that the EPA arsenic rules that would become affective on January 23, 2006, would greatly impact the City's water supply. The Final Arsenic Study and report that was accepted by the City Council on November 1, 2005, was done without any Environmental Review what so ever, even though it identified a \$6.85 million dollar project that would not necessarily be in compliance with Federal and State regulations until December 2009. What they have is a role of compliance program that they are attempting to build in each one of these sequential compliance points of completion, however if this doesn't do the job then they'll go onto the next one. He stated that with

“all do respect” he doesn’t think much of the findings because they are not substantial credible evidence in the record, and that the City can provide potable drinking water in compliance with Federal and State standards. He stated that he is familiar with the applicant’s consultants and he regards them highly and he stated that this was not something he planned for and it might have been a surprise to them as well. But their best argument in this case is “Well this time it won’t be built out until some other time” and that the City’s Attorney and staff at the City Council meeting on October 18, 2005, stated that they will do an EIR for the development. He stated that that does not comply with the standards of CEQA for this body specifically. He cited the *Bozung v. LAFCO* case and two other treatises that find that this is a project that you must review and adopt adequate Environmental Review and that that is not available for you today.

Mr. Harriman stated that the second point in Legislative analysis that the development of this project at this time is inconsistent with the standard set in Section 56377 relative to planning orderly and efficient patterns of urban development. The reason for that is that relevant analysis of the environment wasn’t reviewed for you today of the subdivisions and other properties which are already in the pipe line along with most of the east Hanford area within the City limits which is readily available for development and already has urban infrastructure. Much of which is being passed over for this project which comes very far to the south of the City and directly takes out agriculture property. He stated that he respectfully submits that there is no substantial evidence to support the findings to approve the project at this time and especially when read with the problems with the polluted drinking water, and that this is not in the public interest at this time. He indicated that perhaps with the compliance with the Federal and State Drinking Water Standards that the applicant can resubmit the application. He stated that he believes that the agricultural land conversion under the City’s 2002 General Plan Update and the Final Environmental Impact Report for that significant environmental affect is legally inadequate because there is available Mitigation and he stated that he knows that those that know him know that he tries to advocate in the public interest for his clients and for what he believes the law is at this time or should be under the statutes sited under the California Environmental Quality Act (Public Resources Code Section 211001, 21001.1, 21002). He stated that these are available to this body and used by other jurisdictions mitigation measures where the conversion of agriculture and urban boundaries, specifically acre for acre, off site off sets. Land can be put in a land bank for the land trust. This project is particularly suited being on the edge of the southern portion of Hanford that is the boundary which is the buffer and would be larger lots. A one for one acre mitigation measure should be imposed and he ask that the Commission do that and stated that for those reasons he respectfully request that the application be denied at this time without prejudice and send it back to the City of Hanford for further review. He stated that to be practical, from a development stand point there is no reason why you can’t go back and do the proposed final impact report which is the supplemental one to the City’s General Plan program EIR and bring it before you with the impact such as traffic, the bridge, the overcrossing over 198 and 12th is going to be a zoo, and he knows that because of Hanford litigation, Hanford Wal-Mart litigation, the mitigation measure required by Caltrans, the specs the City of Hanford is going to have to meet, that traffic impact on the overcrossing over 198 and 12th needs to be addressed by the Commission with the proper environmental review document. Mr. Harriman finished his testimony and stated that he could answer any questions.

Commissioner Neves asked if there were any other testimony. Seeing none he closed the public hearing. In response to the applicant’s representative, Commissioner Neves reopened the public hearing and stated that usually he doesn’t reopen hearing once closed.

In rebuttal to Mr. Harriman’s comments, Mr. Norman Allinder stated that east Hanford’s urban reserve would require substantial infrastructure investment, and is not readily available for

development. He stated that the area proposed for annexation is planned for growth and is an orderly and logical extension of the city. There are no development plans submitted with the city at this time. If we were proposing a general plan amendment then perhaps the issues related to low density residential and the urban interface would be addressed. With respect to the traffic issues this is anecdotal evidence.

Mr. Harriman responds by stating that in respect to the projects in the pipe line, other than LAFCO Case 05-15 (Hanford 135), we don't know what other projects are in the pipeline outside this area to know what the need is for this annexation at this time. Secondly, with respects to the East Hanford area that is in urban reserve, these areas are already within the City limits and this is taking an annexation into the city limits and therefore inefficient orderly plan growth and in his point of view there trying to leap ahead.

Mr. Lou Camara, City of Hanford Public Works, stated that the City can provide services to that area because there are pipelines going out to that area and there is water transmission facility and infrastructure to provide services. He stated that in the east side there are no infrastructures at this time. He stated that in regards to water quality the city currently has followed all regulations of water quality and there is a new state regulation that will take affect in January 2006. He stated that the City has hired a consultant to do an Arsenic Reduction Study and it was adopted by the City Council. He continued to summarize the Arsenic Reduction Plan adopted by the Hanford City Council.

Mrs. Kathy Cain stated that she would like to clarify that they did use the 2002 General Plan Environmental Impact Report (EIR) and the Program EIR for the purpose of the overriding considerations, and that the City did do a Negative Declaration on this project which includes the 2004 Urban Water Management Plan. She stated that the City does not have any development applications for this area at this time, but traffic impacts would be analyzed as actual development plans come in.

Commissioner Neves asked if there were any other testimony. Seeing non he closed the public hearing. He asked if any of the Commissioners had any questions, comments or concerns.

Commissioner Thompson asked what constitutes protest and is it 100% consent? Mr. Zumwalt stated that Section 57075 lists three possibilities. He stated that "Protest" if 50% or more of the land owners file written protest then the Commission would terminate proceedings, but if it is between 25 % and 50% then it would go to an election, but if the Commission receives less than 25% protest then the Commission would proceed with an action. He stated that they have not received any written protest for this project.

Commissioner Neves asked if any of the Commissioners had anymore questions or comments. Commissioner Wadsworth asked if Mr. Harriman's letter was additional information to consider or does it raise additional questions since it challenges the EIR and if this is one of the conditions to consider. Mr. Zumwalt stated that the Commission would consider actions concerning CEQA but LAFCO is generally a responsible agency and the City is the lead agency and they have used their EIR from their General Plan that they adopted in 2002 which is normal procedure. He stated that they have supplemented that with a Negative Declaration which was submitted to the Commission with the application and unless you find some error in the actions then you are obligated to accept that EIR as yours and move forward with your actions. He stated that the arguments made by Mr. Harriman did not indicate that the City was out of compliance at this time with the arsenic standards. He stated that the territories are shown in the Cities General Plan for development and LAFCO

adopted the Cities Sphere of Influence based on the General Plan and these territories are well within the sphere of influence of the city of Hanford. He stated that Mr. Camara from the City Public Works gave testimony that water and sewer infrastructure is in place in this particular area and there is need for housing all throughout the valley. Regarding Agricultural land, the majority of the land on the east side that has been provided water and sewer within the City has been developed and the territory that is in the County that has not been developed has no sewage capacity at this point. He stated that as far as timing goes the West side has the sewer line and when the sewer line goes East it will open up everything South and West of highway 43 but at this point the City has said that the sewer capacity on the East side is about at its limit. He stated that he doesn't know what else can be done with the EIR at this point, the City adopted it and included it and forwarded it. He stated that LAFCO is the responsible agency and may rely on the City's actions.

Commissioner Wadsworth asked if the City is in compliance with the current State and Federal water standards. Mr. Zumwalt stated that his understanding is that they are since the standards have not changed and have provided a copy of that report to all the Commissioners. Commissioner Rachford stated that as he reads the Resolution it talks about the protest being from property owners and land owners who are affected. He asked Mr. Denis Eymil, County Counsel, for clarification since Mr. Harriman is neither the land owner nor property owner, can he protest? Mr. Denis Eymil clarified that this is a public hearing and stated that Mr. Harriman can give testimony and the hearing is not considered a protest. Mr. Zumwalt stated that the Commission could take action now. Commissioner Neves stated that they have 90% consent from property owners which is not 100% but it is less than 25%. Mr. Zumwalt stated that 20 of the 25 property owners have consented. Commissioner Thompson stated that even if they have the protest hearing Mr. Harriman's considerations are not part of the protest. Mr. Eymil stated that the Commission can consider Mr. Harriman's comments on the EIR and the Arsenic but not as part of the protest.

After Commission members discussed the proposal a motion was made and seconded by Commissioners (Rachford / Craighead) approve LAFCO Case No. 05-15 and adopt Resolution No. 05-17, approving Hanford Reorganization No. 135 and waives the protest proceedings. Motion carried unanimously.

AYES: Commissioners: Rachford, Craighead ,Thompson, Neves, Wadsworth
NOES: None
ABSENT: None

III. LEGISLATION

None

IV. MISCELLANEOUS

- A. Correspondence** – Mr. Gatzka stated that the “The Sphere” CALAFCO publication was included in their Agenda packet.
- B. Unscheduled Public Comments** – None
- C. Items from the Commission** – None

D. Staff Comments – None

V. ADJOURNMENT

A. Next scheduled meeting is January 25, 2005 at 3:30 p.m.

Respectfully submitted,

**LOCAL AGENCY FORMATION COMMISSION
OF KINGS COUNTY**

William R. Zumwalt, Executive Officer

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