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

AGENDA ITEM No. 6

DATE: January 15, 2014

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer

SUBJECT: Consider Approval – City of Clovis “Outside Service Request (Sewer Service)”. A request to extend sewer service from the City of Clovis to one existing single family residence south of Barstow Avenue just west of Leonard Avenue (LAFCo File No. OS-13-1).

Applicant: George Gonzalez, MPA, Associate planner, City of Clovis

Land Owners/Parties of Real Interest: Patricia King Trustee, Robert and Anne Nabors, Bonadelle Homes, and the City of Clovis

Recommendation

- A. As the Responsible Agency pursuant to the California Environmental Quality Act (CEQA) Guidelines find that prior to approving extension of services, the environmental effects of the project as shown in the CEQA documents prepared, adopted, and submitted by the Lead Agency were reviewed and considered, and determine these documents to be legally adequate pursuant to CEQA Guidelines Section 15096.
- B. Find that the proposed extension of services is consistent with LAFCo Policies, Standards and Procedures Section 320 – Extended Service Procedures (01-08), and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.
- C. Approve the proposed extension of services with the condition the landowner consents to annexation when proposed.

Project Description

- The City is requesting an extension of municipal sewer services to provide sewer service to a single family residence. The City acquired the right-of-way on Barstow Avenue to construct street improvements for the development north of Barstow and the septic system that serves the affected territory is in that portion that was acquired.
- The subject property is located in the City of Clovis' sphere of influence, south of the current city limits.
- There is an agreement in place for Bonadelle Homes to pay for all fees associated with connecting the affected territory to the City's sewer system and removing the old septic system prior to the City accepting the street improvements.

- The property owner has, as part of the service agreement, agreed not to oppose, protest, or otherwise object to any annexation proceedings in the future and has waived connection to the City water system.

Discussion and Analysis

All requests for extension of services are to be reviewed for consistency with Fresno LAFCo Policies, Standards, and Procedures. Section 320 - Extended Service Procedures provides guidance for the review of requests for the extension of new city municipal services to unincorporated areas. In general, requests should promote orderly development, discourage urban sprawl, preserve open space and prime agricultural lands, and provide for the efficient extension of governmental services. Except for emergency extensions, applications are processed in the same manner as a change of organization.

Per Fresno LAFCo Policies, Standards, and Procedures and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the landowner has entered into an Extra-Territorial Service Agreement with the City of Clovis for the provision of sewer service

Applicable LAFCo Policies, Standards, and Procedures include the following:

- The Commission shall approve, disapprove, or approve with conditions the contract for extended services.
- Requests for extended service for urban growth and development should be by annexation rather than extended service approval.
- Requests for extension of services shall be approved with a condition that the parcel(s) annex when feasible, and landowner consent or petition be filed.

Environmental Determination

The City of Clovis prepared an Initial Study and Mitigated Negative Declaration to evaluate the potential environmental effects of the “Barstow-DeWolf Northeast Reorganization” with an addendum to include the connection of the affected territory to the City sewer system and abandonment of the existing septic tank. The City of Clovis filed a Notice of Determination with the County Clerk on March 6, 2013 (Available at www.fresnolaftco.org).

As Responsible Agency, the Commission is required to review and consider the City’s Initial Study and Mitigated Negative Declaration prior to taking its action. If the Commission determines that these documents are adequate pursuant to CEQA, it may make the required findings provided under “recommendations” above.

State Law Requirements

California Government Code Sections 56133 (a), (c), and (d) state:

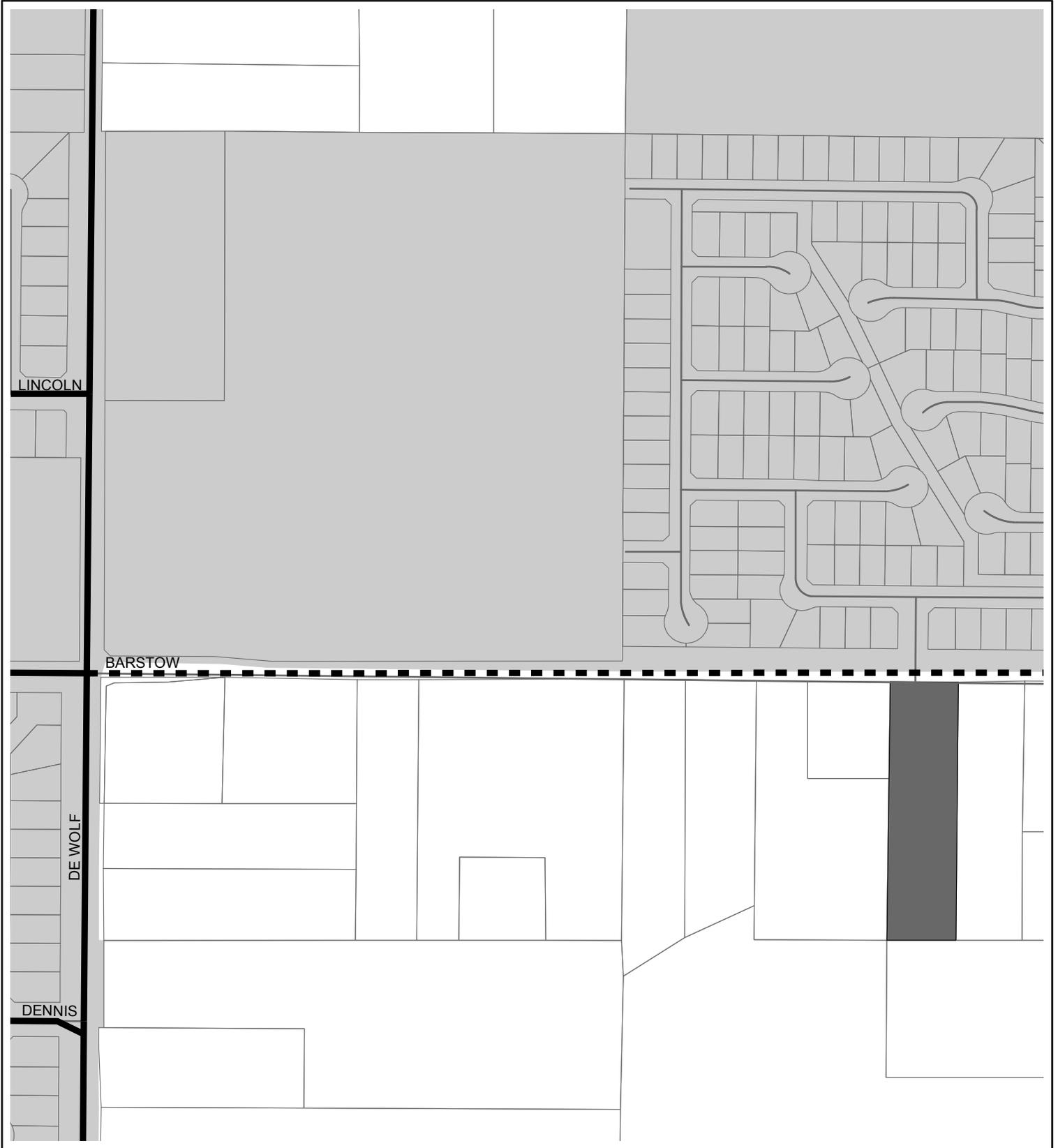
- (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the Commission in the affected County;

- (c) The Commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:
- (1) The entity applying for the contract approval has provided the Commission with documentation of the threat to the health and safety of the public or the affected residents.
 - (2) The Commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the Commission;
- (d) The Commission or Executive Officer shall approve, disapprove, or approve with conditions the contract for extended services.

The Following Received Copies of This Report

- LAFCo Commissioners and Alternates
- Ken Price, LAFCo Counsel, Baker, Manock, and Jensen
- Bernard Jimenez, Fresno County Development Services Manager
- Will Kettler, County of Fresno Public Works
- Ryan Burnett, City of Clovis
- Bryan Araki, City of Clovis
- George Gonzalez, MPA, City of Clovis
- Patricia King Trustee, Landowner

EXHIBIT "A"



Legend

- City Limits
- Affected Territory
- Existing Sewer Lines
- Proposed Sewer Lines

City of Clovis "Outside Service Request-Sewer Service".
(LAFCo File No. OS-13-1)



WHEN RECORDED RETURN TO)
AND RECORDING REQUESTED BY:)
)
City of Clovis)
Attn: City Clerk)
1033 Fifth Street)
Clovis, CA 93612)
_____)

[For Recorder's Use Only]

Exempt from recording fees per Gov. Code §27383

AGREEMENT FOR CITY SEWER CONNECTION

(APN: 554-051-13)

This Agreement for City Sewer Connection ("Agreement") is entered into by and between the City of Clovis ("City"), and the Robert L. Nabors and Anne E. Nabors Declaration of Trust Established July 26, 2001 (collectively referred to as "Owners") with respect to the following recitals, which are a substantive part of this Agreement:

RECITALS

A. Owners own certain real property in the County of Fresno, State of California, known as APN 554-051-13 and located at 8371 E. Barstow Avenue (hereafter "Property"), as legally described in Exhibit "A" attached hereto. The Property is located along the south side of Barstow Avenue

B. Bonadelle Homes ("Developer") is developing Tract 5950 near the northwest corner of the intersection of Barstow and Leonard Avenues, and acquisition of right-of-way and construction of street improvements along Barstow Avenue are conditions of the development.

C. The Property is on the south side of Barstow Avenue, and a portion of the Property is being acquired for the street improvements. However, the septic system that serves the Property is located beneath the portion of the Property being acquired for the street improvements, and the septic system will need to be removed or abandoned as part of the street improvement work.

D. A City sewer main is located beneath Barstow Avenue adjacent to the Property, and as a result of the removal or abandonment of the septic system, the City, Owners, and Developer desire that the Property be connected to the City's sewer system, and that the Developer shall be responsible for the costs of removing the septic tank and connecting the Property to the City's sewer system.

C. City and Owner understand and acknowledge that the Developer is responsible for paying for all applicable permits and sewer connection fees associated with connecting to the City's sewer system, and City is willing to allow Owners Property to be connected to the City's sewer system in accordance with the provisions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of mutual covenants, City and Owners agree as follows:

1. Recitals. The recitals above are true and incorporated by reference as a substantive part of this Agreement.

2. Connection to City Sewer System. City hereby authorizes Developer and/or its authorized contractors to connect to the City sewer main adjacent to the Property for purposes of connecting the Property to the City sewer system. Developer shall submit plans to the City for approval and obtain all necessary permits prior to beginning construction of the connection to the City sewer main. Developer shall perform all work in accordance with applicable City standards. Developer shall be solely responsible for paying all expenses associated with the connection to the City sewer system, including all applicable sewer connection charges as set forth in Title 6, Chapter 6.4 of the Clovis Municipal Code, including but not limited to the \$10.00 fee under Sections 6.4.05(a) and 6.5.102 for Owners to open a new sewer service account, and the \$100.00 fee required by Section 6.4.12.

Developer shall be responsible for removing or abandoning the existing septic tank on the Property, and City agrees not to accept Developer's street improvement work until the septic tank on the Property has been appropriately removed or abandoned, and the sewer connection to the Property is approved by the City as complete. City shall approve the sewer connection to the Property before Owners may begin discharging to the City sewer system. Upon completion and approval of the sewer connection to the Property, Owners shall be subject to applicable City sewer service charges, and Owners shall pay all applicable periodic charges in accordance with applicable sections of the Clovis Municipal Code, including but not limited to Sections 6.4.05 (except the \$10.00 fee for opening an account as required by Sections 6.4.05(a) and 6.5.102), 6.4.06, and 6.4.12 (except for the one-time \$100.00 connection fee). Owners shall be responsible for paying the \$100.00 (refundable) deposit for new sewer service as required by Sections 6.4.05(b) and 6.4.102(a) of the Clovis Municipal Code. All applicable City sewer service ordinances and standards in effect at the time shall govern and be complied with by Owners and Owners' successors, heirs, and assigns of the Owners' interest in and to the Property and any part thereof.

3. Maintenance and Repair of Sewer Connection. City shall require Developer or its authorized contractor to warrant and guarantee the work and materials used for the sewer connection to the Property against defects for a period of one (1) year after City's approval of the completed sewer connection. Thereafter, Owners shall be solely responsible for all maintenance and repairs to the sewer later and any portion of the sewer connection lying within the boundary of the Property.

4. No Opposition to Annexation of Property. Owners agree not to oppose, protest, or otherwise object to any proceeding involving City's annexation of the Property in the future, no matter whether such proceeding is before LAFCO, the City Council of Clovis, or any other legislative body, board or commission. Owners understand and agree that this Agreement and the covenants contained herein are intended to be and shall act as a complete and irrevocable waiver of all such protest rights, whether or not such protest rights are sought to be exercised either as Owners of the Property which is the subject of the annexation proceedings, or as a registered voter residing on the Property which is the subject of the annexation proceedings. Owners shall not be responsible for any charges or fees associated with or related to annexation proceedings solely due to the fact that the Property is part of an area proposed for annexation by the City. However, if Owners propose a development for annexation by the City, whether or not including the Property, Owners may be subject to charges and fees associated with or related to such annexation proceedings, and nothing in this Agreement shall operate otherwise.

Owners further agree that in the event they or any other person or legal entity hereafter succeeding to Owners' interest in and to the Property or a part thereof seeks to protest the annexation contrary to and in breach of the provisions of this Agreement, City shall be entitled to take the following actions:

(1) In the event a protest to the annexation is filed with the City, such protest shall be null and void and shall be disregarded by the City in determining the value of all protests to such annexation.

(2) In the event a protest to the annexation is filed with LAFCO or any other board or commission, this Agreement shall act as a complete bar to the acceptance and consideration of such protest by LAFCO or

other board or commission at such time as the City files a copy of this Agreement with LAFCO or other board or commission.

5. Recording. This Agreement may be recorded against the Property. This Agreement shall constitute a covenant running with the Property, shall be enforceable thereby, and shall be binding upon and inure to the benefit of the Owners and City and the successors, heirs, and assigns of Owners' interest in and to the Property and any part thereof.

6. Voluntary Agreement. The parties represent that they have read this Agreement in full and understand and voluntarily agree to all of the provisions herein. The parties further declare that prior to signing this Agreement they had the opportunity to apprise themselves of relevant information, through sources of their own selection, including consultation with legal counsel of their choosing if so desired, in deciding whether to execute this Agreement. The parties further represent that they have, as of the date of execution of this Agreement, the legal capacity to understand, agree to, and sign this Agreement.

7. Effect of Agreement. This Agreement shall be recorded against the Property. This Agreement shall constitute a covenant running with the Property and each part thereof, shall be enforceable thereby, and shall be binding upon and inure to the benefit of the Owners and Fowler and the successors, heirs, and assigns of Owners' interest in and to the Property and any part thereof.

WHEREFORE, the parties hereto, by their signatures below, enter into this Agreement.

CITY OF CLOVIS

By: Robert Woolley
Robert Woolley, City Manager

Dated: 10/29/13

ATTEST:

By: John Holt
John Holt, City Clerk

Dated: 10/29/13

OWNERS

Robert L. Nabors and Anne E. Nabors
Declaration of Trust Established July 26,
2001

By: Patricia King
Patricia King, Trustee

Dated: 10-25-13

ATTACH NOTARY ACKNOWLEDGMENT FOR EACH SIGNATURE

State of California)
County of Merced)

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT**

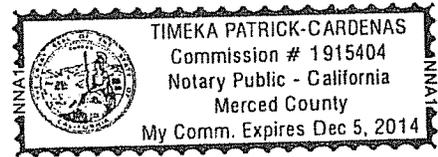
On October 25, 2013 before me, Timeka Patrick - Cardenas, Notary Public
(here insert name and title of the officer)

personally appeared Patricia King

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Timeka Patrick Cardenas

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____ containing _____ pages, and dated _____.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) _____ Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information	
Method of Signer Identification	
Proved to me on the basis of satisfactory evidence: <input type="checkbox"/> form(s) of identification <input type="checkbox"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # _____ Entry # _____	
Notary contact: _____	
Other	
<input type="checkbox"/> Additional Signer(s)	<input type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/> _____	

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Fresno, State of California, described as follows:

PARCEL 1:

THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 2:

A RIGHT OF WAY FOR ROAD PURPOSES OVER A STRIP OF LAND 20 FEET WIDE LYING SOUTHEASTERLY OF AND ADJACENT TO A DITCH AS NOW LOCATED OVER THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID RIGHT OF WAY IS FOR THE BENEFIT OF AND APPURTENANT TO THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12.

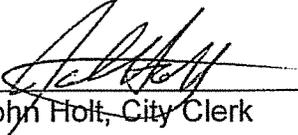
APN: 554-051-13

State of California)
) ss.
County of Fresno)

On October 29, 2013, before me, John Holt, City Clerk, personally appeared Robert Woolley, City Manager, who proved to me on the basis of satisfactory evidence to the be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/their executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



John Holt, City Clerk

