

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

AGENDA ITEM NO. 7

DATE: January 11, 2017

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer 

SUBJECT: Workshop: How should LAFCo actively promote the orderly and logical development of areas within cities' sphere of influence?

RECOMMENDATION: Conduct policy discussion and provide direction to staff

EXECUTIVE SUMMARY

The Fresno LAFCo has the responsibility to plan and regulate the orderly and logical development of local agencies subject to its jurisdiction and provide for the present and future needs of the County and its communities. In staff's opinion, Fresno LAFCo policies function reasonably well to guide proposals toward approval by the Commission. However, the Commission has few policies, practices, or agreements with other public agencies that influence the development of unincorporated territory between a city's limit and the SOI prior to annexation.

This decades-long lack of policy focus has resulted in the following conditions in the territory *between a city's limits and its SOI*:

- Lack of consistency between cities' and County general plans contributes to urban/rural land use conflicts as a city grows;
- County development permits complicate annexations and impairs the fulfillment of cities' general plans; and
- City/County MOU development terms and conditions duplicate LAFCo's statutory responsibilities.

The questions for the Commission to consider are:

- Do the conditions presented in this report reflect logical and orderly development?
- Do LAFCo's policies adequately promote the logical and orderly development of areas within the sphere?
- If not, how can LAFCo best influence the cities and the County of Fresno to promote more orderly and logical development of these areas?

As staff plans its 2017 schedule of outreach to cities and special districts, and Fresno County, we would appreciate the Commission's comments and direction on these issues.

BACKGROUND

A sphere of influence is defined as “a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission.”¹ Adopting a sphere of influence is a fundamental role of LAFCo. The SOI plans the logical and orderly development of the affected local agency.

The process of determining a SOI should also coordinate that agency’s growth and development with other governmental agencies, namely (but not exclusively) the affected city and the County of Fresno. The practice in Fresno County is that this cooperation be confirmed in the Memoranda of Understanding between the cities and the County.

LAFCo’s exclusive jurisdiction over spheres of influence brings the responsibility to create policies that benefit the growth and development of the subject city, or special district (emphases added):

GC 56425(a) In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies subject to the jurisdiction of the commission to advantageously provide for the present and future needs of the county and its communities, the commission shall develop and determine the sphere of influence of each city and each special district, ... within the county **and enact policies designed to promote the logical and orderly development of areas within the sphere.**

GC 56425(b) ...the city and county shall meet to discuss the proposed new boundaries of the sphere and explore methods to reach agreement on development standards and planning and zoning requirements within the sphere **to ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere.**

GC 56425(c) If the commission's final determination is consistent with the agreement reached between the city and county pursuant to subdivision (b), the agreement shall be adopted by both the city and county after a noticed public hearing. **Once the agreement has been adopted by the affected local agencies and their respective general plans reflect that agreement, then any development approved by the county within the sphere shall be consistent with the terms of that agreement.**

ANALYSIS OF ISSUES

The effect of inconsistent planning and zoning requirements between city and County general plans for the territory between a city’s limits and its SOI.

Cities and the County each have the land use and planning authority derived from their respective police powers. Around cities, city and County plans frequently depict different

¹ GC 56076.

types of land uses because they are using two divergent planning models: a city plans for the outward growth of its urban form; the County plans reflect long-held agricultural and rural land use practices that generally predate a city's long-range plans.

This subject is of interest to LAFCo. The Commission determines a SOI based on the evidence of a city's growth trends and service plans (usually a city's general plan). The SOI is the Commission's plan for growth of a city. The statute encourages the LAFCo to then enact policies designed to promote the logical and orderly development of areas within the sphere. LAFCo policies currently have little relationship to the County's subsequent planning and zoning in the area this territory.

Many years ago, the County's amended its general plan to conform with a city's general plan. Because this practice was discontinued, County community plans in the urban areas are now frequently out of date and therefore conflict with the city's general plan, and the Commission's SOI.

County development in cities' SOI impairs the fulfillment of cities' general plans by complicating land use assembly and annexation necessary for development.

A related condition is that the fulfillment of the County general plan in a city's SOI impairs a city's ability to grow in accordance with its own general plan. The city/County MOU attempts to address this by several conditions but, as noted in this report, not to a level that the Legislature has authorized LAFCo to fulfill.²

The lack of a LAFCo growth policy is most evident first in the City of Fresno's West Development Growth Area. The effect of this is that many rural or agricultural parcel owners now effectively control urban growth in the city's western growth area just outside the existing city corporate boundaries but within its SOI.

This is of interest to LAFCo. As mentioned above, the SOI approved by LAFCo is intended by the Legislature "to advantageously provide for the present and future needs of the county and its communities." An example of this condition is the City of Fresno's west of SR 99 growth (called Growth Area 1 by the Fresno General Plan) The effect of competing City and County plans in this area impairs Fresno's capacity to balance its planned growth between infill and new development in Growth Area 1. (Exhibit 1) In addition, this tension weakens other regional planning including the Fresno General Plan Housing Element, and the Fresno COG's Regional Transportation Plan.³

City/County MOU procedures and conditions duplicate LAFCo's responsibilities and potentially contribute to inefficiencies

² GC secs. 56425 (a) and (b) Purpose and policies.

³ Fresno General Plan Implementation Element identifies the West area north of Clinton Avenue as Growth Area 1, "*Strategic Sequencing of Development*. Following the adoption of the Plan, the City will focus on infill development as well as new development within Growth Area 1 based on planned infrastructure expansion, public service capacity, and fiscal considerations."

It is the practice of Fresno County and its fifteen cities to approve a long-term master property tax-sharing agreement rather than negotiating individual and separate agreements on an as-needed basis. These Memoranda of Understanding (MOU) serve a vital function regarding property tax revenue sharing required under Revenue and Tax Code §99 *et seq.* (Tax Code). An agreement on property tax revenue sharing is generally required by the Tax Code and is necessary for each annexation proposal considered by LAFCo.

In addition to the tax-sharing component, the MOU also typically include conditions of development, development standards, and Standards of Annexations which positions the County ahead of LAFCo in determining the adequacy of a city's annexation proposal. These terms are agreed to by the cities in the MOU but procedurally create redundancies during the LAFCo's own review-and-approval cycle. In staff's opinion, these terms and this process are not efficient. Rather, the effect has been to allow development in the unincorporated areas near a city limit to be influenced by a city's general plan but otherwise to not impede fulfillment of the County's general plan elsewhere within a city's SOI.

Another issue is that the number of County permits and discretionary land use entitlements subject to the referral policy as well as the area affected by the referral policy are both limited, leaving many County development permits (summarized in Exhibit 2) relatively free to develop pursuant to the County general plan. The MOU also stipulates that only "urban" uses needing discretionary permits are subject to referral, reinforcing the County's long-held land use plan and potentially resisting the affected city's growth plans. As noted previously, the County plans reflect long-held rural and agricultural land use practices rather than the growth plans of the city. This lack of coordinated planning impairs and discounts the purpose of the SOIs as determined by the Commission.

The effect of these MOU conditions are that non-urban uses, ministerial projects, and lower tier entitlements/permits may still be approved by the County within a city's SOI without referral.

A further challenge is that the lack of County code enforcement within a city's SOI has created virtual land use control voids that further hamper the orderly and efficient transition of County land into city territory that the LAFCo envisioned when it determined the SOI.

CONCLUSION

LAFCo's planning and regulatory role is prescribed by statute (last updated with the 2000 adoption of the Cortese-Knox-Hertzberg Local Government Reorganization Act). The County's role overseeing and approving the character of cities' growth through the MOU process is largely a legacy of a time when LAFCo was a department of the County and functionally subordinate to the Board of Supervisors.

The question for LAFCo to consider is whether the conditions described in this report are consistent with the Commission's legislative mandate for orderly, logical, and efficient growth of cities (and special districts), and if not, then by what means should the Commission engage the cities and County to address these conditions.

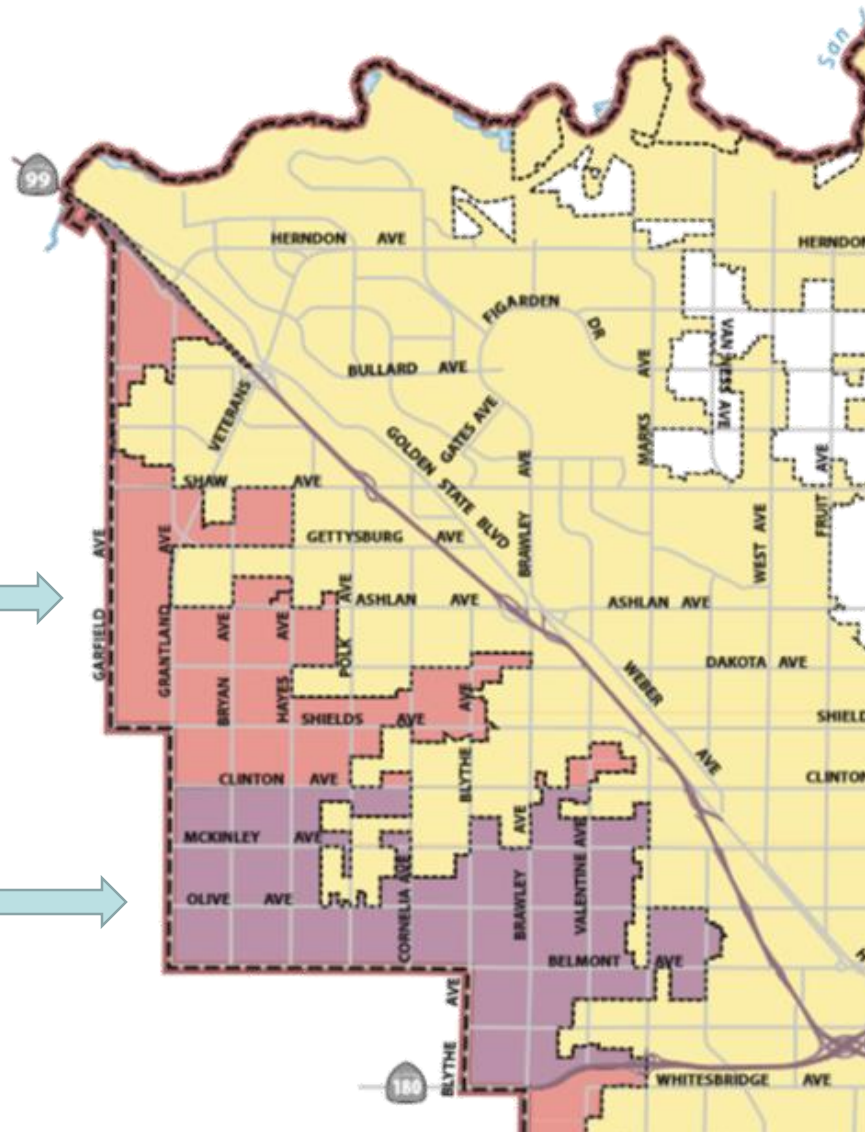
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Excerpt of Fresno General Plan Figure IM-2 (“Sequencing of Development”), showing Growth Area 1 and portion of 2

1



2



Areas shaded in purple represent parcels in Growth Areas 1 and 2 that are committed to Rural Residential land uses in the unincorporated territory within the Fresno SOI.

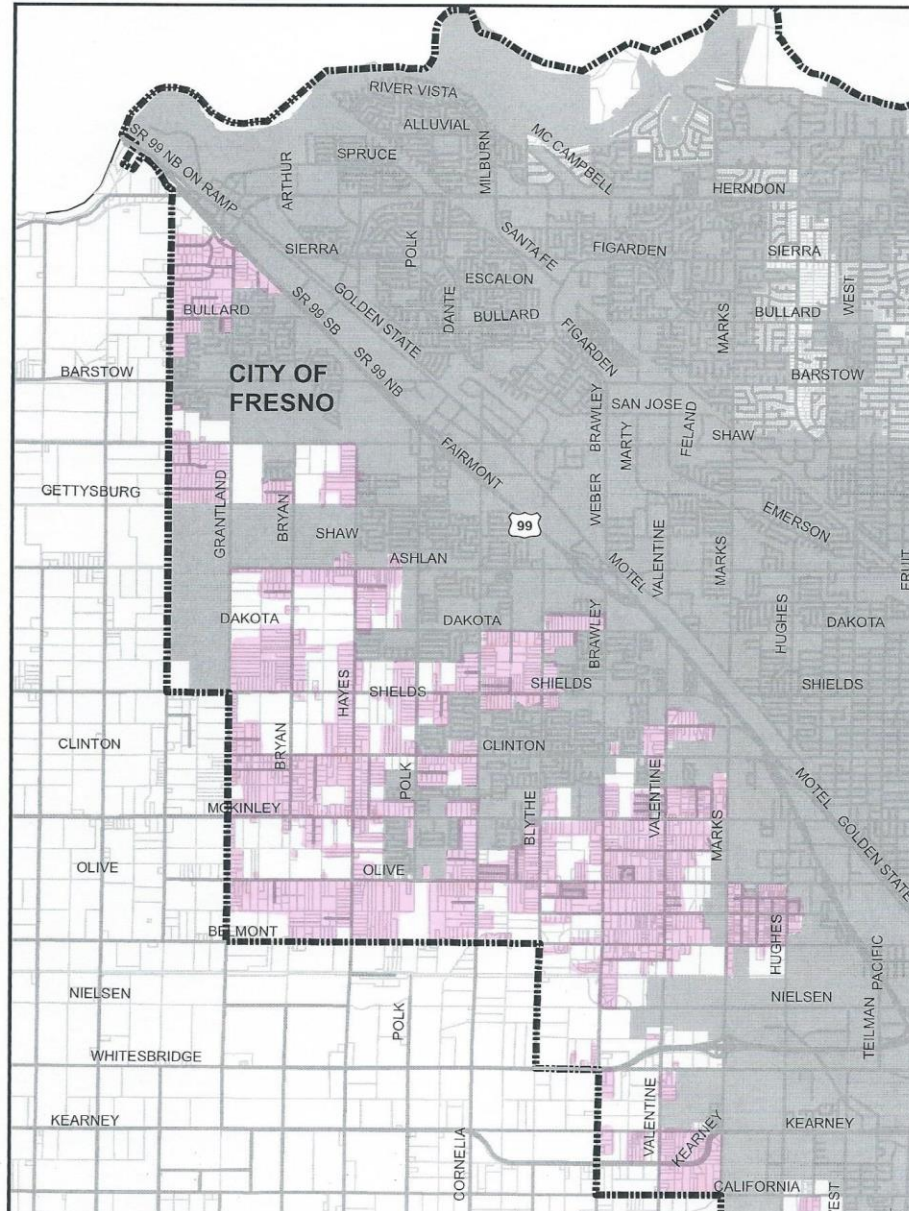


EXHIBIT 2

SUMMARY DESCRIPTION OF THE CITY/COUNTY MOU REFERRAL POLICY

Current MOUs establish an area one-half mile out from a city limit where the "County shall not approve any discretionary development permits for new urban development within city's sphere of influence unless the development shall have first been referred to city for consideration of possible annexation." The MOU then describes "discretionary development permits" as,

- general plan amendments,
- rezoning,
- tentative tract maps,
- tentative parcel maps,
- conditional use permits,
- director's review and approvals, and
- variances.

Other discretionary and ministerial development permits are not included in the MOU; they are identified by the County of Fresno's master fee schedule. Issuance of these permits may contribute to the impairment of a city's growth plans within its SOI:

- building, mechanical, electrical, plumbing permits, and plan review (construction of structures complying with county plan/zone, but may not be consistent with city plans),
- special services fees for change of occupancy, modification of permit application, temporary occupancy permit,
- building relocation,
- wrecking or demolition,
- mobile home occupancy,
- home occupancy permit,
- amendment application with concurrent misc. D.R.A.,
- amendment application with concurrent CUP,
- amendment application with concurrent residential D.R.A.,
- amendment to text,
- Conditional Use Permit application with concurrent variance,
- minor variance,
- misc. DRA with concurrent variance,
- residential DRA with concurrent variance, and
- lot line adjustments,
- well drilling permits, and
- plan lines for streets.