

**TULARE COUNTY LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT (ADDENDUM)**

August 4, 2010

**LAFCO Case Number 1446-T-316
South Tulare No. 21, Annexation 2007-03**

This proposal was originally brought before the Commission on February 10th, 2010. Because the project is located directly north of the Matheny Tract Subdivision the original Executive Officer's Report cited various issues including Environmental Justice (EJ) consideration (per GC 56668 (o)), potential inadequacy of the South I Street Specific Plan EIR, and other factors that merited an additional cooperative analytical effort between City Staff, LAFCO Staff, and the residents of the adjacent Matheny Tract Subdivision. As a result the Commission voted to continue the public hearing to the April 7, 2010 LAFCO meeting in order to allow the aforementioned factors to be adequately addressed.

The first step in the process was to conduct a public outreach effort with the goal of informing Matheny Tract residents of the proposed project, gain a sense of resident interest in eventual annexation into the City of Tulare, and aid them in understanding exactly what annexation would mean to them in terms of costs and land use rights. A meeting where all of these issues were addressed was held on March 25, 2010. In the April 7, 2010 Executive Officer's Report Addendum, LAFCO Staff detailed the City's March 25th public outreach meeting and the Commission determined that residents expressed a high enough level of interest in annexation and directed Staff to develop a concrete framework that would allow for further educational efforts and a mechanism that would give a more accurate estimate of resident support for annexation. This framework was presented to the Commission in the May 5, 2010 Executive Officer's report addendum. The framework allowed the newly formed Matheny Tract Committee (MTC) and their legal representative, California Rural Legal Assistance Inc. (CRLA), to determine the outreach/education framework. LAFCO Staff, City Staff, and County Staff would be made available if needed. This framework was to be submitted to LAFCO by the end of May 2010, effort implemented over the course of the next month or so in order to allow a subdivision-wide interest in annexation survey to be conducted by July 23, 2010. Survey results, citizen concerns, and some resolution between all parties would then be presented during the August 4, 2010 LAFCO meeting.

Over the course of the process the MTC determined that the time allowed was simply not enough to truly iron out all the details, educate an adequate amount of residents, and address all other factors associated with an annexation process. Thus, although annexation of the Matheny Tract Subdivision may eventually be pursued, all parties agreed that to take on such an endeavor at this moment will

benefit no one. As will be detailed later in the Staff Report Addendum, the City has agreed to, at the very least, take an annexation proposal before its City Council if a petition for annexation is signed by 25% of Tract property owners.

Although the annexation of the sight is now tabled and will be analyzed as a separate proposal, other issues remain. The remaining issues include those regarding EJ and adequacy of the Environmental Impact Report submitted by the City for use with this proposal as well as other issues raised by the CRLA and the City of Tulare since the case was last discussed during the June LAFCO meeting. Attached to this Staff Report addendum are the most recent letters submitted by the respective parties (copies were forwarded to Commission members upon receipt by LAFCO Staff). The following is LAFCO Staff's response to the issues raised in the attached letters. The response is followed by Staff's recommendation and alternative options the Commission may chose. Also detailed below are the various powers explicitly granted to the Commission by the Cortese-Knox-Hertzberg Act of 2000.

Commission staff received a letter from the California Rural Legal Assistance, Inc. (CRLA) on behalf of the Matheny Tract Committee on 7/6/10 (attached). This letter and a prior CRLA letter (4/7/10) (attached) details many issues pertaining to California Government Code (GC), the California Environmental Quality Act (CEQA) and various other state and federal laws where the CRLA believes that the Commission is in violation or has not properly addressed. The analysis below addresses all the issues discussed in these letters.

Annexation of Matheny Tract

CRLA and the Matheny Tract Committee have indicated that they need additional cost/benefit information before deciding on potential annexation. It appears that all parties involved have recognized that the potential future annexation of the Matheny Tract would need to be addressed separately from the currently proposed change of organization. The City has indicated that it would be willing to seek annexation of the Tract if it receives petitions from 25% of the property owners.

For a potential future annexation of Matheny Tract, the Commission may consider the option to reduce or waive the processing fee pursuant to Government Code (GC) §56383(d):

The commission may reduce or waive a fee, service charge, or deposit if it finds that payment would be detrimental to the public interest. The reduction or waiver of any fee, service charge, or deposit is limited to costs incurred by the commission in the proceedings of an application.

The Commission may want to consider a policy amendment that would give a discount (similar to developed county island annexations) to all changes of

organization that primarily involve existing County development that promote environmental justice (EJ).

Factors to be considered in the review of a proposal (GC §56668)

The CRLA letters identify several factors that they feel that the Commission has not properly addressed. These factors are specifically detailed below.

GC §56668(b):

The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost of adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.

The City did provide a Plan for Services for the annexation area in the application materials for this change of organization. Services to the annexation area were specifically addressed in the Executive Officer's (EO) Report reviewed at the February 10, 2010 Commission meeting. In regards to the Matheny Tract specifically, the City is working with Self-Help Enterprises to secure grant funding to connect the Pratt Mutual Water system (the system that services the Matheny Tract) to the City's water system. Details of how the water lines would extend to the borders of the Tract are shown in Figure 5-1 (attached) of the South I Street Industrial Park Specific Plan (attached). In addition, Figure 6-1 (attached) shows the planned future sewer system that would also bring service to the borders of the Tract. Both of these figures were also included in the Plan for Services in the application materials for this change of organization.

Potential future water and sewer service along with other issues were discussed at the March 25, 2010 City public meeting regarding the South I Street Specific Plan. In addition, there were several follow-up meetings between City staff and CRLA/Matheny Tract representatives.

GC §56668(c):

The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

The Commission voted to continue the public hearing for this proposal at the February meeting to allow time for the City to perform more outreach efforts with Matheny Tract residents. As previously noted, the City held the meeting on

March 25, 2010. City staff reviewed their efforts for providing water service to the Tract and the costs associated with providing other services. The summary of this meeting was provided at the April 7, 2010 Commission meeting. The effects of this change of organization have been reviewed and discussed by all parties involved. It should be noted that development of the annexation area will allow for the extension of services to the boundaries of the Matheny Tract at the cost of the developers where otherwise extension of services would be solely dependent on grant funding or placement of a tax assessment district.

GC §56668(l):

The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

The EO Report presented at the February 10, 2010 Commission meeting addressed the regional housing needs. In the report it was indicated that the 68 acres of single-family residentially zoned land 8 acres of multi-family zoned land would provide for approximately 704 residential units assisting the low and moderate income level groups. To expand upon this analysis, please refer to the following table.

Regional Housing Needs Assessment (RHNA) for City of Tulare (2007-2014)

Income Group	Housing Units Needed	Income Range*
Very Low	1,120	\$0 to \$13,856
Low	937	\$13,857 to \$22,169
Moderate	1,103	\$22,170 to \$33,253
Above Moderate	2,483	\$33,254 +

*Household income in 2000 dollars. The median household income for the City of Tulare in the 2000 Census was \$33,637.

This change of organization would not have an impact on the County's housing needs because the area proposed to be annexed to the City isn't planned for residential development in the County's General Plan.

GC §56668(o):

The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

As mentioned earlier, the City is working with Self-Help Enterprises to secure grant funding to extend City water service to the Matheny Tract. Development of

the land north of the Matheny Tract will allow for the extension of sewer service to the boundaries of the Tract. A mutual aid agreement for fire protection services is already in place between the County and City fire departments. Other services such as police, refuse collection, drainage, lighting, road maintenance, etc. would remain under the County's jurisdiction. Since the potential annexation of the Matheny Tract needs to be addressed separately from this proposal, the full provision of City services would be subject to City annexation and determining the financial mechanisms (other types of grants, tax assessment area, etc.) that would fund those services.

Duty as Responsible Agency

CRLA claims that the Commission has failed to comply with its duty as a responsible agency under CEQA. Public Resources Code (PRC) §21080.4(a) states the following (excerpt):

If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency... Upon receipt of the notice, each responsible agency..., shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency...

The Notice of Preparation (NOP) for the Draft Environmental Impact Report (Draft EIR) to the South I Street Industrial Park Specific Plan was distributed on November 15, 2007 with a 30-day review period from November 16th to December 17, 2007. The Draft EIR was distributed on October 17, 2008 with a 45-day comment period from October 17th to December 1, 2008. The Draft EIR was revised to analyze the environmental impacts of the Specific Plan in context of the 1993 City General Plan (rather than the 2030 General Plan update). The Draft EIR was redistributed and open for public review from June 25, 2009 to August 10, 2009.

Commission staff did not provide comment to the NOP or to either distribution of the Draft EIR. Although CRLA contends that LAFCO did not respond in accordance with PRC § 21080.4(a), State CEQA Guideline § 15082(b)(2), regarding a responsible agency's response to Notice of Preparation, states "...If a responsible or trustee agency or the Office of Planning and Research fails by the end of the 30-day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that none of those entities have a response to make..." The absence of Commission comment unto itself doesn't mean that the EIR is inadequate for Commission purposes. To reopen the EIR pursuant to PRC §21166 (discussed later), the Commission would need to make specific findings regarding new information unknown at the time of EIR certification, change in the project, or changed circumstances.

In regards to the Matheny Tract in particular, the NOP did recognize the existence of the Matheny Tract by identifying, “potential land use conflicts between existing residential uses and future industrial uses” as a potential area of concern and issue to be resolved.

The EIR fails to include any analysis of the environmental or health impacts that the proposed annexation has on Matheny Tract

CEQA Guideline § 15231 states, “A final EIR prepared by a Lead Agency or a Negative Declaration adopted by a Lead Agency shall be conclusively presumed to comply with CEQA for purposes of use by Responsible Agencies which were consulted pursuant to sections 15072 or 15082 unless one of the following conditions occurs:

- (a) The EIR or Negative Declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or
- (b) A subsequent EIR is made necessary by Section 15162 of these Guidelines.”

CEQA Guideline sec, 15231 (a) does not apply. Subdivision (b), regarding CEQA Guideline § 15162 (pertaining to PRC § 21166), does not require a subsequent or supplemental impact report in this case because: substantial changes in the project are not proposed, substantial changes regarding the circumstances under which the project is being undertaken have not occurred, and new information which was not known and could not have been known at the time the EIR was certified as complete has not become available.

CRLA’s statement mentioned in the above sub-heading and the statement in the February 10th EO Report referenced in the July 6, 2010 CRLA letter are inaccurate in two different ways. First, the Matheny Tract is directly considered and referenced in the Environmental Setting of the Draft EIR on page 2-9. Adjacent residential uses are recognized in the NOP and in some of the mitigation measures. Examples include:

Night lighting shall also be screened from adjacent residential areas and not be directed in an upward manner or beyond the boundaries of the parcel on which the buildings are located... (Impact #3.1.2)

The proposed project shall provide site attenuation features such as walls, berming, heavy landscaping, and setbacks between industrial and residential uses to reduce noise and vibration impacts... (Impact #3.11.2)

In addition, several impacts are broad in nature and apply to the project site and surrounding areas, which geographically includes the Matheny Tract.

Second, the July 6 and April 7, 2010 CRLA letters fail to recognize that the proposed industrial area to the north of the Matheny Tract would need additional environmental analysis upon submission of actual project development proposals

to the City which require discretionary approval. The EIR recognizes that many impacts can not be fully addressed without knowing the actual development projects. City staff has also agreed to notice all Matheny Tract property owners of future projects in the specific plan area. By law, the City is only required to notice within 300-feet of the project area.

The July 6th CRLA letter specifically cites a previous letter from the CRLA dated April 7, 2010. The following addresses the issues contained in the April 7th letter that weren't already addressed above.

Federal Fair Housing Act

The April 7th CRLA letter indicated that excluding the Matheny Tract from this annexation may be "condoning and facilitating an annexation policy with clearly discriminatory, disparate impacts". The City didn't include the Matheny Tract because it was City staff's understanding that Tract residents were not supportive of annexation. However, as previously stated, the City is willing to annex the Matheny Tract if the residents want to be annexed. Also as previously stated, CRLA and the Matheny Tract Committee have requested additional cost/benefit analysis before deciding whether to apply for annexation. The Matheny Tract annexation may come before LAFCO as a separate application.

The Fair Employment and Housing Act (FEHA)

The April 7th CRLA letter indicated that Commission approval of this annexation may be promoting an annexation policy that violates FEHA's prohibition regarding discrimination through land use practices and decisions. City staff have indicated that they are willing to revisit the decision to designate the Matheny Tract as light industrial in the City's new General Plan Update. All legal noticing requirements for the South I Street Industrial Park Specific Plan, associated environmental documents and the change of organization proposal were completed by the City. This included a notice to parcels within 300 feet of the project area. Over 35 parcels in the Matheny Tract were included in the notice, of which there were no responses. As previously mentioned, the City has agreed to notice the entire Matheny Tract regarding future City consideration of actual development projects north of the Tract. In addition, the Matheny Tract annexation may come before LAFCO as a separate application.

Equal Protection Clause of the Fourteenth Amendment

The April 7th CRLA letter indicated that the Commission may be in violation of the 14th Amendment by promoting an annexation policy that has a discriminatory impact on a protected class of residents. As previously mentioned, noticing requirements have been fulfilled according to law and the City is willing to provide future noticing far above legal requirements. The Commission has allowed ample to time for the Matheny Tract residents issues to be heard and considered by the City and by the Commission. Also, both the City and Commission are willing to considering the future annexation of the Matheny Tract as a separate application.

California Government Code section 11135

The April 7th CRLA letter indicated that the Commission may be in violation of GC §11135 by approving an annexation that unlawfully subjects residents of that community to discrimination under a program that receives financial assistance from the State. While the Commission doesn't receive State funding, the City does. As stated in the previous subsections, the City has acted in a legal manner in regards to this change of organization proposal and the Matheny Tract annexation may come before LAFCO as a separate application.

A letter from McDonough Holland & Allen on behalf of the City of Tulare, dated 7/14/10, was also submitted to Commission staff. This letter contains responses to a prior CRLA letter to the City and addresses some of the issues included in CRLA's letter (7/6/10) to the Commission. The analysis below addresses issues in the City's letter that weren't already addressed above.

Annexation of Matheny Tract

The City's letter incorrectly states that it is too late in the process to add Matheny Tract to the currently proposed annexation. While it is not recommended that the Commission add Matheny Tract to this annexation, amending a proposal is within the Commission's powers pursuant to GC §56375(a)(1):

To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.

Extension of Services Outside of the City's Jurisdiction

The City of Tulare letter also addresses LAFCO's role in the extension of services outside of the City's jurisdiction. While the City is correct in stating that the Commission would need to approve an extension of City services outside its boundaries, it is incorrect in saying that Matheny Tract residents have to want to be annexed before such services could be provided. The definition of Sphere of Influence (SOI) is defined in GC §56076:

"Sphere of Influence" means a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission.

By definition, since the Matheny Tract is already within the City's SOI, it is recognized that the Tract should logically be within the City of Tulare's boundaries at some point in the future. The City does have the option to require the signing of consent to annex forms as a condition to receive services but for Commission purposes, this is not necessary to approve an extension of services.

As stated in the City's letter, the Commission would need to approve an extension of services pursuant to GC §561339(a) & (b):

- (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 of the affected county.*
- (b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.*

As outlined in Tulare LAFCO's Policy C-6, the application and approval of an extraterritorial service agreement (ESA) within a City's SOI is a simple process. The City would need to do the following:

- Complete a CEQA review for the proposed extension of services
- Submit a complete application and processing fees to LAFCO
- Show that there is a demand or need for the services

There is no template application for an ESA. However, in the past, cities have submitted a letter detailing the area which is proposed to be served, the service(s) to be provided and the need for those services. The Commission has given the Executive Officer delegated authority to review, approve or deny ESA requests that are within an agency's SOI. The cost for application of this type of request is \$121.

City of Tulare letter 7/20/10

A letter was received from the City of Tulare directed to the Executive Officer dated July 20, 2010 (attached). This letter essentially states the City's positions regarding conditions of approval for the project.

The Commission's power to condition the approval of a change of organization are quite broad (as defined in GC §56885 to 56886 and 57300 to 57330.5 et al.) The Commission does have the authority to condition a change of organization with the provision of services outside of the actual annexation area. As an example, this Commission has done this in the past by requiring operation and service agreements for segments of County roads in certain situations. In addition, GC §56376 states the following:

The commission shall not impose a condition for the provision of services by the annexing city to an area which has not been placed within that city's adopted sphere of influence, as defined in Section 56076, unless that condition would mitigate effects which are a direct result of the annexation.

While the Matheny Tract is inside the City's SOI, under certain circumstances as noted above, the Commission may even require provision of services to areas outside an agency's SOI. Other LAFCOs have recognized the general authority to apply service conditions and further define the use of it in their policies and

procedures. For example, this is Riverside LAFCO's policy regarding conditioning the provision of services:

In certain cases adjoining service agencies shall collaborate to ensure appropriate and adequate services are provided to the public even though it may be outside an agency's service area. In those unique instances where an adjoining agency has the best ability to serve a particular location outside of its service area and within another agency's service area, it must be demonstrated that the public need or benefit outweighs a particular jurisdictional authority. LAFCO shall encourage this type of interagency collaboration only on a limited geographical basis when appropriate and in the best interest of the public. This type of collaboration may take a variety of forms, including: a. The establishment of informal arrangements between agencies in which each understands the other's abilities and/or priorities and the action meets existing agency goals. b. The establishment of formal arrangements between agencies using agreements or Memorandums of Understanding that detail the administrative and operational relationship of each agency.

Conditioning this annexation with the provision of services, specifically potable water, hasn't been recommended in this case for two reasons. First, the current providing entity is a privately held company. Second, the City has already recognized the deficiencies in Pratt Mutual's system and has been working with Self-Help Enterprises to secure grant funding to extend domestic water service to the Tract. However, due to the City's statement regarding potentially ceasing this assistance and CRLA's letter dated 7/21/10 (attached), it doesn't seem unreasonable to condition the approval with the assurance that the City will continue to work with Pratt Mutual Water Company. This condition would also be predicated on Pratt Mutual's continued good-faith effort to work with the City.

The Commission even has the ability to condition the approval of one change of organization with the action of another change of organization pursuant to GC §56885.5(a)(2):

In any commission order giving approval to any change of organization or reorganization, the commission may make that approval conditional upon any of the following factors: (1) Any of the conditions set forth in Section 56886 (2) The initiation, conduct, or completion of proceedings for another change of organization or a reorganization...

This hasn't been recommended in this case because it still hasn't been determined whether or not Matheny Tract residents want to be annexed and the City has indicated that they would be willing to proceed with an annexation of the Matheny Tract if the residents were agreeable to annexation.

The following are recommended additional findings and an additional condition of approval to the findings and conditions listed in the original Staff Report.

Added condition of approval:

The City shall continue to work with Pratt Mutual Water Company to deliver potable water to the Matheny Tract (this is predicated on Pratt Mutual's continued good-faith effort to work with the City).

Added findings:

The City has agreed to notify Matheny Tract property owners of projects within the annexation site which require additional discretionary approval and consequent environmental review.

The City has agreed to reconsider the light industrial land use designation for the Matheny Tract within its 2030 General Plan Update.

The City has agreed to process the annexation of the Matheny Tract, in accordance with City policy, if a petition is signed by 25% of property owners is submitted to City Staff.

Recommended Actions:

Staff recommends that the Commission approve the annexation as submitted and that the following actions be taken:

1. Certify that the Commission has reviewed and considered the City's South I Street Industrial Park Specific Plan EIR approved by the City of Tulare for this project, find that all potential impacts associated with this project, both on site and within adjacent communities, are adequately addressed in accordance with the California Environmental Quality Act and additionally adopt by reference the City's Statement of Overriding Considerations.
2. Find that the proposed annexation to the City of Tulare is consistent with the policies and priorities of the Cortese-Knox-Hertzberg Act, GC §56377.
3. Pursuant to LAFCO Policy and Procedure Section C-1.2, find that:
 - a. The boundaries of the proposed annexation are definite and certain.
 - b. There is a demonstrated need for municipal services and controls and that the city has the capability of meeting this need.

- c. There is a mutual social and economic interest between the residents of the city and the proposed annexation territory.
 - d. The proposed annexation is compatible with the City's General Plan.
 - e. The proposed annexation represents a logical and reasonable expansion of the annexing municipality.
4. Adopt the following findings:
- (1) Government Code Section 56856.5 is not applicable to Williamson Act Contract 7233 (Preserve 2457 since a notice of non-renewal has been filed.
 - (2) The City of Tulare validly protested the formation of Ag Preserve 0278 and the execution of Williamson Act Contract 2847.
 - (3) *The City has agreed to notify Matheny Tract property owners of projects within the annexation which require additional discretionary approval and consequent environmental review.*
 - (4) *The City has agreed to reconsider the light industrial land use designation for the Matheny Tract within its 2030 General Plan Update.*
 - (5) *The City has agreed to process annexation of the Matheny Tract, in accordance with City policy, if a petition signed by 25% of property owners is submitted to City Staff.*
5. Approve the annexation, to be known as LAFCO Case No. 1446-T-316, South Tulare No. 21, Annexation 2007-03 subject to the following conditions:
- A.) No change be made to land use designations or zoning for a period of two years after the completion of the annexation, unless the city council makes a finding at a public hearing that a substantial change has occurred in Circumstances that necessitate a departure from the designation or zoning.
 - B.) The City must succeed to Williamson Act Contract 7233 upon annexation in accordance with rules adopted in accordance with GC 21243.

- C.) The City shall not provide service to the property affected by Williamson Act Contract 7233 during the remainder of the life of the contract for land uses or activities not allowed under the contract.
 - D.) LAFCO will not record a Certificate of Completion with the County Clerk until the City provides evidence that it has filed a notice of contract termination for Williamson Act Contract 2847 (Preserve 0278).
 - E.) *The City shall continue to work with the Pratt Mutual Water Company in an effort to deliver potable water to the Matheny Tract Subdivision (this is predicated on Pratt Mutual's continued good-faith effort to work with the City)*
- 6. Waive the protest proceedings in accordance with GC 56663 (d) (1) unless a landowner owning land within the annexation site or a registered voter residing within the site submits written protest before the end of this public hearing.
 - 7. Authorize the Executive Officer to sign and file a Notice of Determination with the Tulare County Clerk.

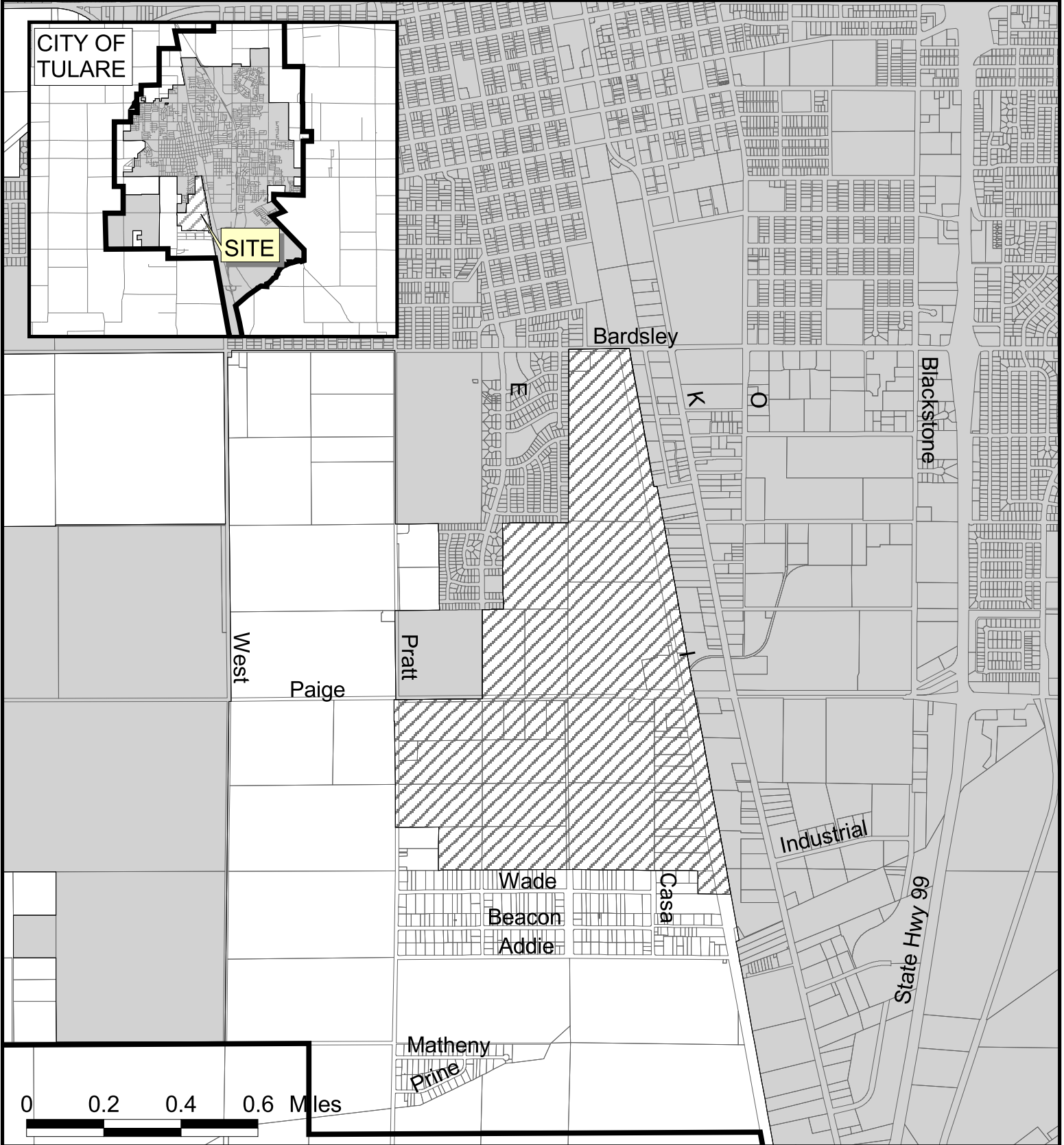
The Commission also has the option of choosing one of the following alternative courses of action:

- 1. Deny the project as proposed due to the inadequacy of the Environmental document submitted by the City for use with this project pursuant to PRC §21166 (CEQA Guidelines §15162) either:
 - a. Without prejudice (This would allow the City to revise the EIR and the one year waiting period requirement for submittal of a proposal containing the same area would be waived.)
 - b. The Commission can take the responsibility to prepare a subsequent or supplemental EIR.
- 2. Approve the project with an amendment to the originally proposed boundaries. This amendment shall consist of eliminating a portion of the original area in order to create a buffer between the City's proposed industrial uses and the residential uses south of the site. This will allow a degree of mitigation against the potential adverse environmental effects of the project on a protected class of citizens. (This option could also necessitate the need for further environmental review.)

If the Commission chooses an alternative option, Staff recommends continuation of the public hearing in order to allow Staff to make the appropriate findings and for the interested parties to be able to address such findings.

Figures, Exhibits & Appendices:

- Exhibit 1 CRLA Letter Dated July 6, 2010
- Exhibit 2 City of Tulare Letter Dated July 14, 2010
- Exhibit 3 City of Tulare Letter Dated July 20, 2010
- Exhibit 4 CRLA Letter Dated July 21, 2010
- Figure 1 Site Location Map
- Figure 5-1 Specific Plan Water System
- Figure 6-1 Specific Plan Sewer System



CITY OF
TULARE

SITE

Bardsley

Blackstone

West

Paige

Pratt

Wade

Beacon

Addie

Casa

Industrial

State Hwy 99

Matheny

Prine

0 0.2 0.4 0.6 Miles



SITE



CITY



SOI



PARCELS

LAFCO CASE 1446-T-314
CITY OF TULARE
SOUTH TULARE NO. 21
ANNEXATION 2007-03



FIGURE 1

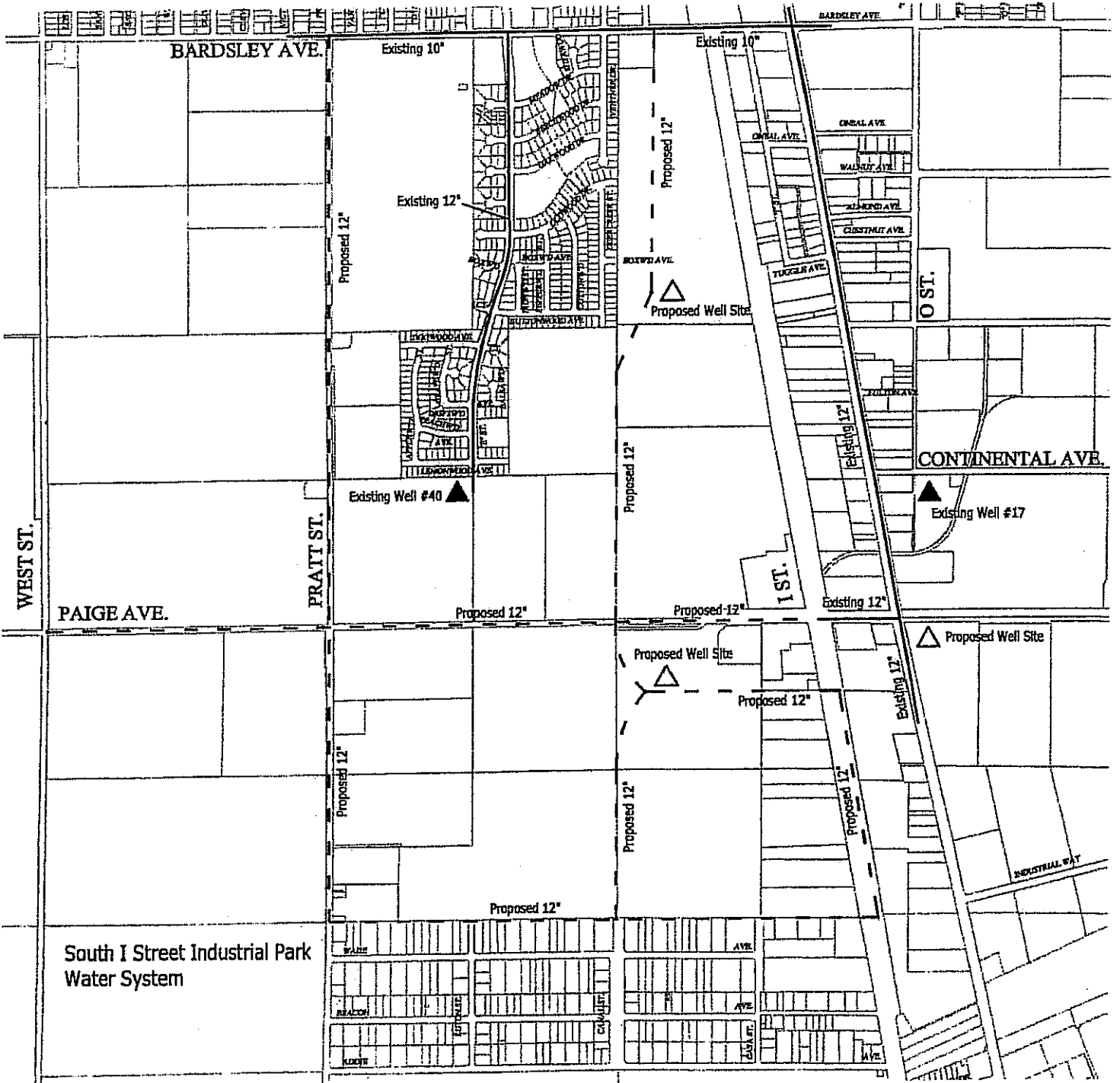


FIGURE 5-1

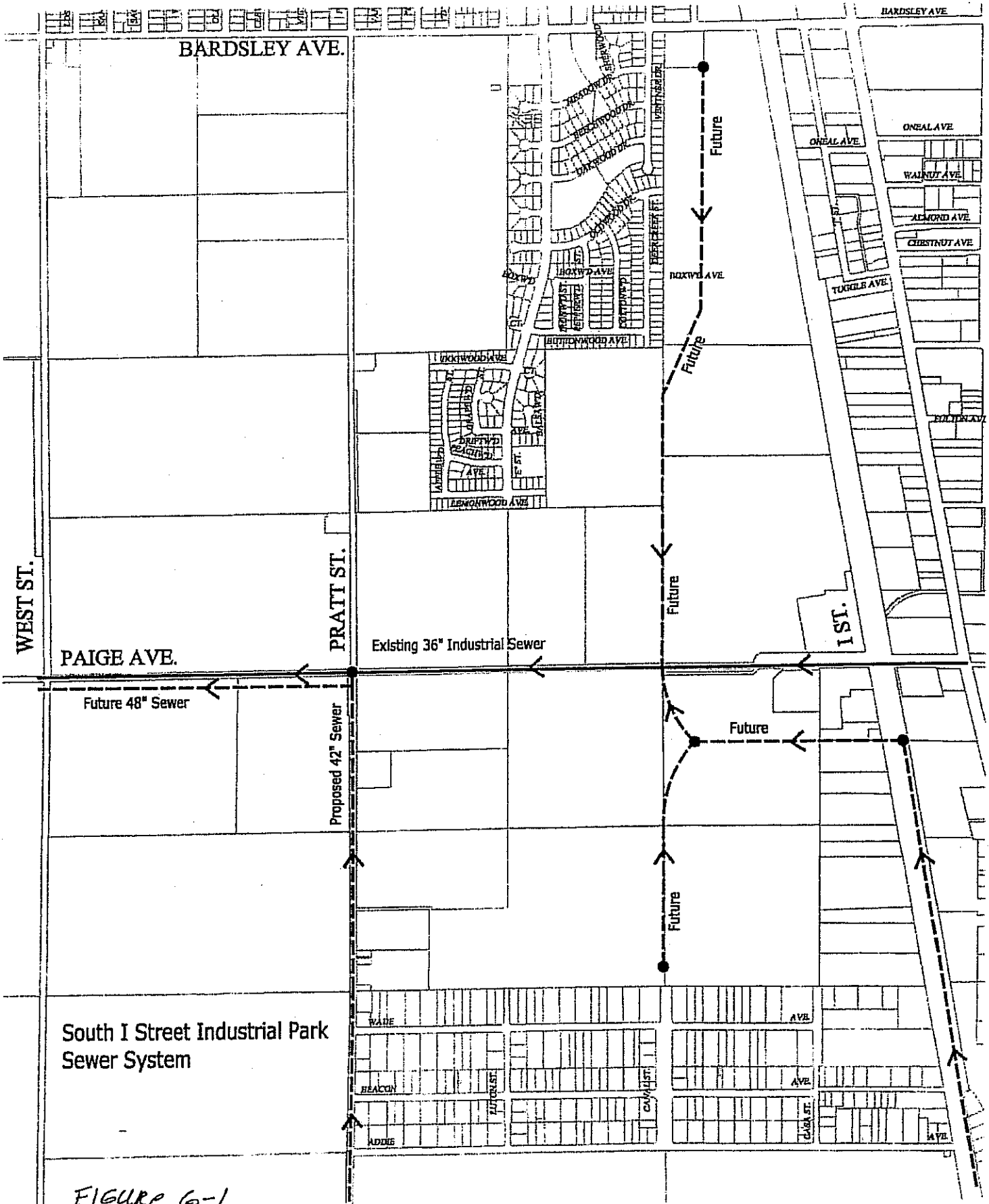


FIGURE G-1



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July 6, 2010

George Finney, Executive Officer
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RE: Annexation 1446-T-316

Dear Mr. Finney,

On behalf of the Matheny Tract Committee, thank you for taking the time to meet with us on June 23, 2010 to discuss Annexation 1446-T-316 and in particular its impact on Matheny Tract.

Our client, the Matheny Tract Committee, is pleased with progress regarding the City of Tulare's and LAFCO's willingness to pay for and facilitate the annexation of Matheny Tract, should the residents of Matheny Tract wish to be annexed in the future. Similarly, the MTC is pleased with progress on discussions regarding increased notice requirements for development near Matheny Tract and maintaining Matheny Tract's zoning as some form of residential. While more discussion is necessary in all of these matters, the MTC believes that we are likely to reach agreement on all of them.

Matheny Tract Committee remains extremely concerned regarding a variety of other issues related to Annexation 1446-T-316, including, but not limited to the extension of water and sewer services into the community, the development of other critical infrastructure, and the environmental and health impact that Annexation 1446-T-316 will have on the community.

With respect to LAFCO's responsibilities to Matheny Tract, the MTC remains concerned that should LAFCO approve Annexation 1446-T-316 as proposed, LAFCO will fail to comply with California Government Code 56668 as well as state and federal civil rights and fair housing laws. The MTC is also concerned that LAFCO has failed to discharge its duties under CEQA, as outlined below.

As outlined in our letter of April 7, 2010, we still do not believe that LAFCO has sufficiently considered and addressed the required factors included in California Government Code Section 56668, specifically subdivisions (b), (c), (l) and (o). Similarly, as outlined in the same letter, an outright approval of Annexation 1446-T-316 subjects LAFCO to liability under state and federal civil rights and fair housing laws. We have attached that letter for your reference.

LAFCO has failed to comply with its duty as a responsible agency under The California Environmental Quality Act

As a responsible agency under CEQA, LAFCO is required to consult on and/or make comments on Environmental Impact Reports pursuant to the California Public Resources Code.

The Environmental Impact Report fails to include any analysis of the Environmental or Health Impacts that the proposed Annexation has on Matheny Tract

The Environmental Impact Report (EIR) prepared by the City of Tulare excludes Matheny Tract entirely from its analysis. The EIR expresses significant concerns regarding the proposed annexation's affect on air quality, groundwater contamination and noise pollution. Yet there is no discussion of the specific impacts on Matheny Tract and no mitigation measures address the community. Furthermore, there is no analysis as to the extent to which the annexation will positively or negatively impact Matheny Tract's opportunities for improved services and infrastructure.

LAFCO staff noted in the EO's February 10th Report that the City of Tulare did not address the probable adverse environmental effects of the proposed development on Matheny Tract residents. As of the writing of this letter, the City has still not adequately analyzed the environmental, health and other impacts on Matheny Tract nor has it proposed mitigation measures.

The development proposed with this annexation threatens not only to bring, but to add to the already existing negative environmental impacts that Matheny Tract residents are experiencing due to the City of Tulare's development patterns.

A number of public facilities and industrial uses are already sited next to the community and negatively impact the community. This includes an industrial area to the east of the community and the City of Tulare's new waste water treatment plant to the northwest. The treatment plant has burdened the community with offensive odors despite the community not having a connection to the City's sewer system. At the recent Matheny outreach meeting several residents expressed concern that their community has smelled of "waste" for several months and that the odor is so offensive it has kept them from going outdoors and enjoying their property.

As a Responsible Agency under CEQA, LAFCO has failed to comply with its duty to ensure that the EIR Considered issues within LAFCO's purview and areas of expertise

As a Responsible Agency under CEQA, LAFCO failed to sufficiently consult on the preparation of the EIR or comment on the EIR. Under Public Resources Code, Section 21080.4, LAFCO must

specify to the lead agency the scope of the environmental review germane to its obligations as an agency. In the case of the Annexation 1446-T316, LAFCO failed to consult with the City of Tulare on areas within its purview, notably the orderly provision of services and the environmental justice implications of the proposed annexation. Furthermore, LAFCO has failed to address the concerns that Matheny Tract residents have raised with regard to the proposed annexation and the EIR at several public hearings. As of the writing of this letter, LAFCO has failed to comply with its duties under the CEQA and specifically section 21080.4 of the Public Resources Code. As LAFCO failed to raise issues pertaining to Matheny Tract during the preparation of or in response to the Draft EIR, LAFCO must now request or prepare a supplemental or subsequent EIR to address the concerns of Matheny Tract with regard to provision of services, environmental justice and other issues within LAFCO's purview.

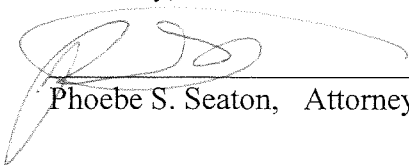
CEQA mandates the preparation of a Subsequent or Supplemental EIR as part of a discretionary approval if new information becomes available following certification of an EIR

Public Resources Code, Section 21166 allows for the preparation of a subsequent or supplemental EIR if new information becomes available after the EIR is certified and prior to subsequent discretionary approval. As the EIR did not in any way mention impacts on Matheny Tract, information regarding how the project will impact Matheny Tract is new information. Furthermore, to the extent that the project's impact on Matheny Tract was knowable at the time of its certification, LAFCO failed to comply with its duty to adequately review and comment on the EIR. In either case, a supplementary or subsequent EIR can and should be required to address the environmental impacts that the annexation will have on Matheny Tract prior to LAFCO's discretionary approval. *See Cal. Code Regs., tit. 14, Section 15162. See also Fort Mojave Indian Tribe v. California DHS, 38 Cal. App. 4th 1574, Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga, 82 Cal. App. 4th 473 (follows Mojave).*

* * * * *

Tulare LAFCO has not adequately addressed several factors that it must consider before approving an annexation nor has it complied with its duties as a responsible agency under CEQA. We look forward continuing to work with you again to address the concerns of the Matheny Tract Committee and resolve the matters outlined above.

Sincerely,



Phoebe S. Seaton, Attorney, California Rural Legal Assistance



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*Directors of Litigation,
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April 7, 2010

Tulare County Local Area Formation Commission
5961 S. Mooney Blvd.
Visalia, California 93277

RE: Annexation 1446-T-316

Dear Commissioners:

We respectfully submit these comments to you on behalf of residents of Matheny Tract who are concerned about the proposed annexation, Annexation 1446-T-316.

The community of Matheny Tract, a low income community of color, lacking critical and basic services including potable drinking water and sewer services, was excluded from all decisions regarding the proposed annexation and from the annexation itself. Residents were not asked if they wanted to be included in the annexation, they were not notified of decisions made regarding the annexation nor were the adverse environmental impacts of the annexation on them considered.

The Commission need not make a determination at today's hearing.

The Commission is not bound by the time limits set out in California Government Code, Section 56666. As clearly stated in California Government Code Section 56106, any provisions in this division governing the time within which an official or the commission is to act shall in all instances, except for notice requirements and the requirements of subdivision (I) of Section 56658, be deemed directory, rather than mandatory.

The commission has not sufficiently considered factors that it is required to consider before approving the proposed annexation.

According to California Government Code Section 56668, LAFCO must consider several factors before making a determination on a proposed annexation. The Commission has not yet adequately considered several factors laid out in Section 56668, primarily subdivisions (b), (c), (l) and (o).

California Government Code Section 56668(b)

California Government Code Section 56668(b), requires that LAFCO considers the need for organized community services and the probable effect of the proposed annexation and of alternative courses of action on the cost and adequacy of services and controls in...the adjacent areas.

There is a critical need for community services and governmental services in Matheny Tract, including domestic water, a sewer system, sidewalks, streetlights,

curbs, gutters and improved police protection. LAFCO's Executive Officer's Report prepared for LAFCO's February 10th (EO's February 10th Report) meeting, states that domestic water and sewage system issues are well-documented. Community members have clearly and continually expressed their urgent need for potable water, a sewer system and other services and infrastructure including improved police protection, street lighting, sidewalks, curbs and gutters.

California Government Code Section 56668(c)

California Government Code Section 56668(c) requires LAFCO to consider the effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

Annexation 1446-T-316 proposes heavy industrial uses adjacent to Matheny Tract. While LAFCO has recognized the probable adverse environmental effects of the annexation area's proposed industrial uses on Matheny Tract residents, LAFCO has been unable to consider this factor as required by law. The City of Tulare's complete failure to consider the adverse effects of the proposed annexation on residents of Matheny Tract, rendered any informed consideration of this factor by LAFCO impossible.

Furthermore, LAFCO has not yet considered how an alternative action of including Matheny Tract in the annexation area or expanding services to the community of Matheny Tract would benefit the community.

California Government Code Section 56668(l)

According to California Government Code Section 56668(l), LAFCO must consider the extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs.

Residents are concerned that the Annexation 1446-T-316 does not aid the City of Tulare in achieving its respective share of the regional housing needs. As the proposal was submitted prior to the City's adoption of their Housing Element, there is no way that the proposal can effectively address the needs and actions outlined in the Housing Element and therefore LAFCO has not been able to assess the impact that this annexation will have on the City of Tulare's ability to achieve their respective fair share of the regional housing need.

California Government Code Section 56668(o)

California Government Code Section 56668 (o) mandates that the commission must consider "the extent to which the proposal will promote environmental justice" when deciding whether to approve

an annexation. Environmental justice is defined as “the fair treatment of people of all races, cultures and incomes with respect to the location of public facilities and the provision of public services.

Matheny Tract is a low income, community of color and precisely the type of community that Cal. Government Code Section 56668(o) targets with its demand that people of all races, cultures and incomes be treated fairly with respect to the location of public facilities and the provision of public services.

LAFCO cannot make a decision regarding the proposed annexation because the annexation as currently proposed does not promote environmental justice.

Failure to analyze impact of proposed development on Matheny Tract

Neither the City of Tulare nor LAFCO has done a full analysis of the environmental impacts that this proposed annexation will have on Matheny Tract and therefore LAFCO cannot at this time determine the extent to which this proposal will promote environmental justice.

The Environmental Impact Report (EIR) prepared by the City of Tulare excludes Matheny Tract entirely from its analysis. The EIR expresses significant concerns regarding the proposed annexation’s affect on air quality, groundwater contamination and noise pollution, there is no discussion of the specific impacts on Matheny Tract and no mitigation measures address the community.

LAFCO staff noted in the EO’s February 10th Report that the City of Tulare did not address the probable adverse environmental effects of the proposed development on Matheny Tract Residents. As of April 7th, 2010, the City has still not adequately analyzed the environmental and other impacts on Matheny Tract nor has it proposed mitigation measures.

The development proposed with this annexation threatens not only to bring, but to add to the already existing negative environmental impacts that Matheny Tract residents are experiencing due to the City of Tulare’s development patterns.

A number of public facilities and industrial uses are already sited next to the community and negatively impact the community. This includes an industrial area to the east of the community and the City of Tulare’s new waste water treatment plant to the northwest. The treatment plant has burdened the community with offensive odors despite the community not having a connection to the City’s sewer system. At the recent Matheny outreach meeting several residents expressed concern that their community has smelled of “waste” for several months and that the odor is so offensive it has kept them from going outdoors and enjoying their property. City officials responded that they estimate that even in the best case scenario the odor is likely to be present for several more months.

Failure to Consider Annexation of or Extension of Public Services to Matheny Tract

Annexation 1446-T-316 does not anticipate the provision of critical services to residents of Matheny Tract. As noted above, Matheny Tract suffers from critical infrastructure and service deficits and is in dire need of potable drinking water, but also in need of sewer systems, improved police services, sidewalks, curbs, gutters, streetlights and improved streets.

While the proposed annexation will bring public services and infrastructure to the boundary of Matheny Tract, it will exclude Matheny Tract from all infrastructure improvements.

The failure of this annexation proposal to consider inclusion of Matheny Tract in the annexation area or extending services to Matheny Tract precludes this Commission from finding that the proposed annexation promotes environmental justice in any way.

III. The LAFCO Commission risks violating state and federal civil rights and fair housing laws by approving this annexation as proposed.

By failing to study current service levels and the need for future services to Matheny Tract Subdivision, and by approving the City of Tulare's proposed annexation without determining whether its exclusion of Matheny Tract is logical or legitimate, LAFCO fails to carry out its charge, and risks violating the civil rights of residents of Matheny Tract. The Commission may promote the exclusion of low-income communities of color from city boundaries and services.

A. The Federal Fair Housing Act

The Fair Housing Act, 42 U.S.C. 3604(b),(FHA) makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." In its recent decision in CCCI v. Modesto, the Ninth Circuit concluded that the FHA reaches post-acquisition discrimination.

By approving the City of Tulare's potentially inefficient, uneconomic proposed annexation excluding the primarily low-income, minority community of Matheny Tract, LAFCO may be condoning and facilitating an annexation policy with clearly discriminatory, disparate impacts.

B. The Fair Employment and Housing Act (FEHA)

The Fair Employment and Housing Act("FEHA"), California Government Code Section 12955, makes it unlawful to discriminate through public or private land use practices, decisions, and

authorizations because of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry.

By approving the City of Tulare's proposed annexation excluding Matheny Tract, LAFCO may promote an annexation policy that potentially violates FEHA's prohibition regarding discrimination through land use practices and decisions.

Equal Protection Clause of the Fourteenth Amendment

The Equal Protection Clause of the Fourteenth Amendment makes it unlawful for any state to deny to any person within its jurisdiction the equal protection of the laws. To the extent that Tulare LAFCO promotes an annexation policy within its jurisdiction that has a discriminatory impact on a protected class of residents, it risks violating the equal protection of the laws as provided by the 14th Amendment to the United States Constitution and the equal protection clause of the California Constitution.

California Government Code 11135

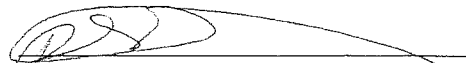
California Government Code 11135 states, "No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."

By approving the City of Tulare's proposed annexation excluding Matheny Tract, LAFCO risks unlawfully subjecting residents of that community to discrimination under a program that receives financial assistance from the State to help facilitate the logical provision of infrastructure and services to residents.

* * * * *

The LAFCO commission has not adequately addressed several factors that it must consider before approving an annexation nor has it considered the civil rights implications of the annexation as currently proposed.

Sincerely,



Phoebe S. Seaton, Attorney, California Rural Legal Assistance

Phoebe S. Seaton, Attorney, California Rural Legal Assistance



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July 14, 2010

VIA E-MAIL AND U.S. MAIL

Phoebe Seaton
California Rural Legal Assistance, Inc.
2115 Kern Street, Suite 370
Fresno, CA 93721

Re: Matheny Tract

Dear Phoebe:

This letter is in response to your letter to the City of Tulare dated June 24, 2010, and also addresses some of the points you made in your July 6, 2010 letter to Tulare County LAFCO. For the most part, the City's position remains the same as set forth in Mr. Kielty's June 4, 2010 letter to you. However, the City of Tulare offers below a few responses to some of the specific issues raised in your letter.

Proposed Annexation

During and after the June 1, 2010 meeting with City staff and members of the Matheny Tract Committee (MTC), we believed there was an understanding amongst all parties that the Matheny Tract would not be included, and would not be proposed to be included, in the South I Street annexation. Your letter appears to indicate otherwise.

Your letter states, "we have not determined whether or not it makes sense to change the currently proposed annexation to include Matheny Tract." As the City has maintained all along, it is too late in the process for the Matheny Tract to be added in to the South I Street annexation. To date, neither you nor the Matheny Tract Committee have outlined any specific procedures or parameters as to how such an annexation could be accomplished. The proposed annexation, as you know, has been subject to a full and complete environmental impact report (EIR), and all required hearings have been held. The proposed annexation is now before LAFCO, and the time to have requested to be a part of the annexation has long passed.

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Phoebe Seaton
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Page 2

If the Matheny Tract landowners want to be annexed to the City, they may separately petition the City for such annexation. Quite frankly, we do not believe that either the Matheny Tract or the MTC at this late juncture has the prerogative to now "determine" whether it makes sense to be a part of the South I Street annexation; and even if it did, the MTC has not given the City any indication that the Matheny Tract landowners even want to be annexed. To the contrary, the information the City has gathered thus far indicates that there may not even be sufficient interest for a proposed annexation of the Matheny Tract to be successful.

Extension of Services Outside of the City's Jurisdiction

As Mr. Kielty mentioned in his June 4 letter, the City must receive LAFCO approval in order to extend services outside of its jurisdiction. While you state in your letter that is not true because Matheny Tract is within the City's sphere of influence, such a statement is inconsistent with applicable law. Government Code section 56133 provides that a city may provide new or extended services by contract outside its jurisdictional boundaries if it requests and receives written approval from LAFCO. And if such services would be provided within the City's sphere of influence, such service would be provided "in anticipation of a later change in organization." Gov't Code § 56133(b).

Thus, if the Matheny Tract landowners anticipate a "change in organization," such as an annexation, and formally request that the City provide it with water and sewer service pursuant to an agreement to do so, the City will consider and process that request. Absent such a request and approval from LAFCO, the City simply does not have the authority to extend water and sewer service outside of its jurisdictional boundaries to the Matheny Tract.

Even if the City were to have the authority to temporarily extend water service to the Matheny Tract, there would be practical difficulties in supplying that water. According to Lew Nelson, the City's Public Works Director, the only way for the City to temporarily supply clean water in the "short term" would be to construct a pipeline to the City system and to install a metered connection to the Pratt Mutual Water Company. Since the Pratt Mutual Water Company has a flat rate billing system in place, the Pratt Mutual Water Company Board would be required to change its monthly flat rates to a consumption-based rate in order to collect the cost of the City's water from its customers. Or, water meters could be installed at individual residences, which would preclude the option of providing water in the "short term."

The City believes very strongly, as I mentioned to you during the May LAFCO hearing, that the Matheny Tract owners and residents and/or the MTC should



Phoebe Seaton
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Page 3

be communicating with the County of Tulare, and making the same requests of the County, as they/it make to the City. Again, the County, not the City, authorized and sited the Matheny Tract. The Matheny Tract remains within the County of Tulare's jurisdiction, and the County (not the City) should be addressing any infrastructure problems – regardless of whether the Matheny Tract is located within or outside the City's sphere of influence.

Water Quality

The City also objects to your characterization of the City's role in contaminating the water provided to Matheny Tract. Your letter states that the extensive industrial development to the east of Matheny Tract, the sewer treatment facility to the west of the Matheny Tract, and the City's failure to extend water service to the Matheny Tract (which, as explained above, the City cannot legally do) have contributed to the contaminated groundwater. Your letter, however, makes unsupported assertions, as no facts or studies were provided substantiating these quite serious allegations. If you have information, and not merely unsupported accusations, supporting your claims, the City will consider such information.

Your comments have been reviewed by Lew Nelson. According to Mr. Nelson, the City has a groundwater monitoring well network around the wastewater treatment plant, and the treatment plant has not influenced Matheny Tract water quality. In addition, the City does not believe it is possible for the industrial park development to have influenced Matheny Tract water quality. The City does, however, acknowledge that the Coehlo meat packing operations at the southeast corner of Paige and K Street contaminated the groundwater with nitrate prior to annexation and that it is the subject of a cleanup order from the Regional Board. While this contamination might have affected the groundwater quality, it is also Mr. Nelson's opinion that it is impossible to separate out that contamination from the septic tank effluent impacts within the Matheny Tract that are causing the groundwater contamination.

Other Claims

The City has received a copy of your July 6, 2010 letter to Tulare County LAFCO. The City will in all likelihood submit a letter to LAFCO responding to your specific points. However, I will briefly note again that CRLA has never asserted any facts, much less any legal precedent, to demonstrate an intentional discrimination claim.



Phoebe Seaton
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Page 4

Further, there is no legal or factual basis for the Tulare County LAFCO to prepare a subsequent or supplemental EIR. As CRLA is aware, the time for challenging the South I Street Annexation EIR has long passed. A subsequent EIR may only be prepared if one or more of three events occur: (a) there have been substantial changes in the proposed project that require major revisions of the EIR; (b) there have been substantial changes in the circumstances under which the annexation is being undertaken that will require major revisions to the EIR; or (c) "new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." Public Resources Code § 21166; *see also* CEQA Guidelines §§ 15162, 15163. There has been no new information that arose after the EIR was certified as complete. The EIR is legally adequate, the deadline for challenging it has long passed, and the Tulare County LAFCO is required to rely on it. *See City of Redding v. Shasta County Local Agency Formation Commission*, 209 Cal. App. 3d 1169 (1989). The cases cited in your July 6, 2010 letter to LAFCO do not support CRLA's position that a subsequent or supplemental EIR is required and in fact support the City's position that no new information has been provided necessitating a subsequent EIR.

As CRLA knows, the timeframe in which to object to all or a portion of the EIR has long passed. While CRLA may have wanted the EIR to specifically and repeatedly name the Matheny Tract in the document, such a distinction argues for form over substance. The EIR did state that the Matheny Tract is located south of the proposed annexation (as well as describe the existing project location and setting) and did evaluate the environmental impacts that the proposed project would cause. Moreover, in addition to the fact that claims about the adequacy of the EIR are now being made too late, CRLA has never provided the City or LAFCO with any substantial evidence that the information relied on in the EIR is incorrect or was not supported by substantial evidence.

Conclusion

As Mr. Kielty stated in his June 4 letter to you, the City is willing to have further discussions with CRLA and MTC regarding the residential improvements. However, the City does ask that both CRLA and MTC approach this process in a reasonable manner with the understanding that (a) it is inappropriate and untimely to include the Matheny Tract in the proposed South I Street annexation, (b) there is no new information or changed circumstance necessitating a subsequent EIR, (c) there are legal impediments regarding the extent to which the City may assist the Matheny Tract in providing infrastructure, (d) the County is the appropriate public agency to direct the vast majority (if not all) of the Matheny Tract Committee's concerns



McDonough Holland & Allen PC
Attorneys at Law

Phoebe Seaton
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Page 5

towards, and (e) the City has not discriminated against, and is not discriminating against, the Matheny Tract landowners or residents.

The City does not want to be in an adversarial position with either CRLA, the Matheny Tract landowners and residents, or the MTC. However, the City also does not want its project to continue to be delayed based on unreasonable and unsupported assertions concerning fair housing laws, the LAFCO statutes, and the California Environmental Quality Act. Despite the fact that the Matheny Tract is neither within the City nor originally authorized by the City, the City is going above and beyond what it is required to do by lending its assistance to the Pratt Mutual Water Company and stepping in to play part of the role that should rightfully be played by Tulare County.

Please feel free to contact me after you have reviewed this letter if you would like to talk further about how to resolve these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kara K. Ueda', written over a printed name.

Kara K. Ueda

KKU:km

cc: Darrel L. Pyle, City Manager
Mark Kielty, Planning and Building Director
Lewis R. Nelson, Public Works Director

City of Tulare City Council

411 East Kern Avenue, Tulare, California 93274 AGRI-CENTER OF THE WORLD Tel: (559) 684-4200 Fax: (559) 685-2398



July 20, 2010

Craig Vejvoda
Mayor

Ben Giuliani
Executive Director
Tulare County LAFCO
5961 S. Mooney Blvd.
Visalia, CA 93277

Phil Vandegrift
Vice Mayor

Re: LAFCO Case 1446-T-316 (South I Street)

David Macedo
Councilmember

Dear Mr. Guiliani:

Richard Ortega
Councilmember

As you are aware there have been meetings and written correspondence exchanged between the City of Tulare and California Rural Legal Assistance/Matheny Tract Committee, regarding the proposed South I Street annexation. As you are aware, LAFCO does not have the authority to place conditions on the South I Street annexation that would require the City to provide services and infrastructure to a County subdivision. Similarly, there are no new conditions or changed circumstances that would support the preparation of a supplemental or subsequent EIR or any other environmental studies.

Wayne Ross
Councilmember

As you may also know, the City has been willing to assist with the process for seeking grant funding so that the Matheny Tract receives potable water. Due to the now rather contentious nature of the negotiations between CRLA/MTC and the City and the unreasonable delay that LAFCO has imposed to consider the City's annexation application, the City sees no reason to continue providing such support if the South I Street annexation is not approved by LAFCO. The Matheny Tract is located within the County, and the City has been willing to provide support and assistance for no other reason than that it is believed to be the right thing to do—not because it was legally required to do so.

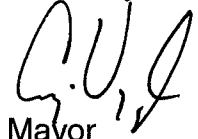
MISSION STATEMENT

To promote a quality of life making Tulare the most desirable community in which to live, learn, play, work, worship and prosper.

The City understands that LAFCO may want the City to take certain steps in furtherance of the proposed annexation. The City is willing to do certain things to assist the Matheny Tract landowners and residents but will not consent to having these items listed as conditions of the annexation:

1. The City of Tulare will continue to work with Pratt Mutual Water Company to deliver potable water to the Matheny Tract subdivision.
2. If the Matheny Tract landowners petition the City to be annexed, the City will process a Matheny Tract annexation provided that LAFCO agrees to treat the Matheny Tract as if it were a substantially surrounded County island (which it is not) and to charge half of the usual processing fees (which LAFCO does for substantially surrounded County islands). In addition, the annexation would be subject to an assessment district to install public sewers, laterals, street lights and street reconstruction.

Sincerely,



Mayor
City of Tulare

cc: CRLA/Phoebe Seaton
Kara Ueda

MISSION STATEMENT

To promote a quality of life making Tulare the most desirable community in which to live, learn, play, work, worship and prosper.



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July 21, 2010

SENT VIA FAX (559-685-2398) AND EMAIL

Tulare City Council
411 East Kern Ave.
Tulare, CA 93274

RE: July 20, 2010 Letter to LAFCO regarding LAFCO Case 1446-T-316

Members of the Tulare City Council:

I am writing on behalf of the Matheny Tract Committee regarding your letter to Tulare County LAFCO on the subject of the South I Street Annexation. This letter suggests that the City of Tulare is attempting to dissuade the Matheny Tract Committee from expressing their concerns regarding the annexation by threatening retaliation, in violation of their first amendment rights.

It is our understanding that the City of Tulare has been working with representatives of Pratt Mutual Water Company for 3 years to connect Matheny Tract to the City's water system. On June 4, 2010 we received a letter from the City which included assurances that "the City will assist Matheny Tract in obtaining grant funding for the construction of the water infrastructure." However, the City's letter of July 20, 2010 to LAFCO states that: "due to the now rather contentious nature of the negotiations between CRLA/MTC (California Rural Legal Assistance/Matheny Tract Committee) and the City and the unreasonable delay that LAFCO has imposed to consider the City's annexation application, the City sees no reason to continue providing such support if the South I Street Annexation is not approved by LAFCO."

This statement undeniably suggests that the City of Tulare will retaliate against the Matheny Tract committee if they continue to express concerns regarding the South I Street annexation. Retaliation by a public entity or public official for exercising constitutional rights is a violation of the first amendment. *Tichinin v. City of Morgan Hill, 177 Cal. App. 4th 1049 (2009).*

We raised these concerns at the July 20, 2010 City Council meeting. The City's special council, Kara Ueda, responded that this language was not intended to imply that the City of Tulare is threatening to retaliate against Matheny Tract residents. While we are willing in good faith to accept Ms. Ueda's explanation, in the event that the City of Tulare takes any action to retaliate against Matheny residents for expressing concerns regarding the

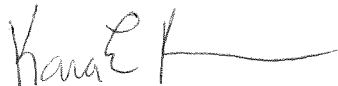
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I Street annexation, or for otherwise expressing their constitutional rights, we will not hesitate to pursue legal remedies including filing an action in state or federal court.

If you should have any questions regarding this letter please feel free to contact me at: 559-441-8721, ext. 320 or Phoebe Seaton at ext 315.

Sincerely,

California Rural Legal Assistance, Inc.

A handwritten signature in black ink, appearing to read "Kara E. Brodfuehrer", with a long horizontal flourish extending to the right.

Kara Brodfuehrer, Attorney, Community Equity Initiative

cc:

Mark Kielty, Planning and Building Director, City of Tulare

Darrel Pyle, City Manager, City of Tulare

Lew Nelson, Public Works Director, City of Tulare

Kara Ueda, Attorney at Law

Ben Giuliani, Executive Officer, LAFCO