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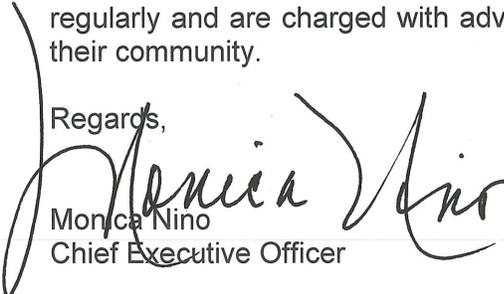
Dear Mr. Drake,

Thank you for your interest regarding the community of Stanislaus. The following responses have been prepared to the questions you posed regarding the Salida Initiative and annexation proceedings at a recent Board meeting and through an email to the Clerk of the Board on August 14, 2012. Thank you for your patience while County staff (Chief Executive Office, County Counsel, Planning and Community Development, and Public Works) researched the questions raised and developed accurate and thorough responses.

As you know, Stanislaus County is working with the City of Modesto on exploring annexation feasibility options for improving services for the community of Salida. Some of the questions you raised are a good reminder of the recent history regarding the Salida Community Plan approval, infrastructure needs, and the procedures and processes in place (annexation, LAFCO, etc.) that will need to be further analyzed as we determine the fiscal impacts to both the County and City of the annexation option.

The response provided, and cited references, is general information and every care has been taken to ensure completeness. In addition to providing you the information as requested, the County's response will also be shared with the Salida Municipal Advisory Council that is an advisory board made up of elected residents from Salida that meet regularly and are charged with advising the Board of Supervisors on matters relating to their community.

Regards,


Monica Nino
Chief Executive Officer

cc: Board of Supervisors
Salida Municipal Advisory Council
Keith Boggs, Assistant Executive Officer

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The following responses are provided to the public information request received by the Stanislaus County Clerk of the Board on August 14, 2012 at 1:02pm and mentioned during the August 7, 2012 Board of Supervisors regular meeting.

Sources Referenced:

August 7, 2007 – [Board Report Pertaining to Impact of Proposed Salida Area Planning, Road Improvement Economic Development and Farmland Protection Initiative. Includes Overview and Formal Analysis. \[#2007-627\]](#)

August 17, 2007 – [Recorded Development Agreement for Salida Area Planning, Road Improvement Economic Development and Farmland Protection Initiative.](#)

June 23, 2010 (Amended) – [Stanislaus LAFCO Policies and Procedures.](#)

1. “Is it possible for Salida to have a referendum and vote to refute the County Board’s Salida Now land use vote from 2007?”

As explained below, modifications to development under the Salida Initiative requires both approval of the electorate and approval of landowners who have vested rights under the Development Agreement.

Referendum vs. Initiative

“Referendum” is the power of the electorate to approve or reject legislation through an election called for the purpose. State legislative actions are subject to referendum petitions filed within 90-days after adoption of the legislative act that the referendum seeks to reject. (Cal. Const., art. 2, section 9(b).) Referendum powers may be exercised by County electorate under procedures established by the Legislature. (Id. at art 2, section 11(a).) California law requires that a local referendum be filed prior to the effective date of the ordinance; generally, within 30-days after an ordinance is adopted. (Elect. Code, §§ 9144, 9141(b); see *Kuhs v. Superior Court* (1988) 201 Cal.App.3d, 966.) Most likely, September 7, 2007, was the last day to file a referendum petition to challenge the adoption of the Salida Initiative.

“Initiative” is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. The initiative power could be used to adopt a new ordinance repealing the ordinance approving the Salida Initiative.

Approval of the Electorate

Election Code, section 9125, provides that “no ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the

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voters shall be repealed or amended except by a by a vote of the people, unless provision is otherwise made in the original ordinance.”

In this case, the Salida Initiative expressly adopts the limitation of Elections Code, section 9125:

“Until the term of the Development Agreement expires as provided in Section 1.04 thereof and except as specifically provided for otherwise in this Initiative, this Initiative may be amended or repealed, to the extent permitted by law, only by a majority of the voters in the County voting in an election held in accordance with state law.”

Thus, the electorate must vote to modify or repeal the Salida Initiative.

Approval by Holders of Vested Rights under Development Agreement

Even if another initiative attempted to modify or repeal the Salida Initiative, the Development Agreement included in the Salida Initiative vests the right to develop in accordance with the general plan and zoning standards put in place by the Salida Initiative and other laws existing as of its effective date.

After approval by ordinance, a development agreement is enforceable despite subsequent changes in the municipality's land use laws (Gov. Code, § 65865.4), and the agreement may be amended or cancelled only by mutual consent of the parties to the agreement (Gov. Code, § 65868). (See Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes (2010) 191 Cal.App.4th 435, opinion p. 3, citing Gov. Code, § 65865.4.)

A development agreement may provide that subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. (Gov. Code, § 65865.2.) In this case, Section 5 of the Salida Initiative specifically adopts a Development Agreement, which incorporates the limitation of Government Code, section 65865.2:

“For the Term of this Agreement, Applicants shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of the Legislative Project Approvals, the Subsequent Approvals (as and when issued), the Applicable Law (defined below) and amendments as shall, from time to time, be approved pursuant to this Agreement. Specifically, subject to compliance with CEQA covering the Subsequent Approvals, federal and state laws, and the County's remaining discretion in connection with the Subsequent Approvals, Applicants shall have the vested right to develop the Project in accordance with the Legislative Project Approvals.”

(Development Agreement, Section 2.01, p. 2.)

It is unlikely that a subsequent initiative could deprive landowners and developers in the Salida area of vested rights under the Salida Development Agreement.

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2. “Are Salida citizens guaranteed by law a vote in any annexation attempt by Modesto?”

Per Government Code 57075(a), and for inhabited city annexations:

If a protest is submitted by at least 25% (but less than 50%) of the registered voters or at least 25% of landowners owning 25% or more of the assessed value of land, LAFCO may order annexation proposal subject to an election.

If majority of voters protest, LAFCO may terminate the annexation proceedings.

If less than 25% of voters or less than 25% of landowners owning less than 25% of the assessed value of land, LAFCO may order the annexation proposal without election.

[Excerpts from the Stanislaus LAFCO Policies and Procedures]

The Cortese-Knox-Hertzberg Act gives LAFCO (Local Agency Formation Commission) the authority to approve or disapprove, with or without amendment, wholly, partially, or conditionally, a wide variety of proposals for jurisdictional change (Government Code 56375). These include, but are not limited to, proposals for:

...Annexation of territory to cities and special districts....

Effective July 1, 2001, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (AB 2838) establishes LAFCO as the conducting authority for all proposals requiring protest proceedings....

Unless protest proceedings are waived...a protest hearing will be held.

At the hearing, the commission shall hear and receive any oral or written protests, objections, or evidence which is made, presented or filed.

Written protests may be filed with LAFCO from the date of the notice until the conclusion of the protest hearing and must include all information contained in Section 57051.

Within 30 days of the protest hearing, the commission shall determine the value of written protests filed and not withdrawn and take one of the following actions (except as provided in Section 57002(b)):

- a) Order the change if the area is uninhabited and protest is received from landowners owning less than 50% of the assessed land value; or if it is inhabited and protest is received from less than 25% of the voters or landowners owning less than 25% of the assessed value;*
- b) Order the change subject to an election if the land is inhabited and at least 25%, but less than 50%, of the registered voters protest or at least 25% of the landowners owning 25% or more of the assessed value of land protest;*

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- c) *c) Terminate proceedings if a majority protest in accordance with Section 57078 (at least 50% of the landowners owning 50% or more of the assessed value in uninhabited territory, or a majority of the voters for inhabited territory).*

(Findings and actions by the Conducting Authority, See Section 57075)

LAFCO does not have statutory authority to conduct an election. When one is required, the commission shall inform the board of supervisors or the city council of the affected city and request the board or the city council to direct the elections official to conduct the necessary election (57000(d)(e). See Sections 57115-57120 for a discussion of the commission's resolution ordering a change of organization or reorganization subject to confirmation by the voters. After completion of proceedings ordering a change of organization or reorganization without election or confirming an order for a change of organization or reorganization after confirmation by the voters, the Executive Officer shall prepare and execute a certificate of completion.

3. ***“How much is left in the account the County says developers contributed to in order to push the Hammett Road Interchange?”***

| Kaiser Permanente Voluntary Contribution Fund (1104) | |
|---|----------------------|
| Original Contribution | \$ 2,045,113.00 |
| Interest Earnings/Fair Value Adj | \$ 377,513.38 |
| Subtotal | \$ 2,422,626.38 |
| | |
| Hammett Road Interchange (PA&ED) | |
| Original Contract (Rajappan & Meyer Consulting Engineers) | \$ (955,800.00) |
| Amendment 1 | \$ (97,225.00) |
| Subtotal | \$ (1,053,025.00) |
| | |
| Kiernan Avenue Interchange (PA&ED) | |
| Original Contract (Rajappan & Meyer Consulting Engineers) | \$ (998,800.00) |
| Amendment 1 (Funded by from different source)* | \$ - |
| Subtotal | \$ (998,800.00) |
| | |
| Remaining Balance | \$ 370,801.38 |
| * Kiernan Avenue Interchange PA&ED Amendment 1 of \$50,000 funded by Hammett/Kiernan PSR fund | |
| PA&ED = Project Approval and Environmental Documents | |
| | |
| Hammett and Kiernan Project Study Report Fund (1795) | |
| Original Contribution | \$ 765,700.00 |
| Interest Earnings/Fair Value Adj | \$ 56,800.00 |
| Subtotal | \$ 822,500.00 |
| | |
| Hammett Road PSR | |
| Original Contract (Rajappan & Meyer Consulting Engineers) | \$ (764,823.00) |
| Subtotal | \$ (764,823.00) |
| | |
| Kiernan Avenue PSR | |
| Transfer for Amendment 1 of PA&ED | \$ (57,677.00) |
| Subtotal | \$ (57,677.00) |
| | |
| Remaining Balance | \$ - |
| PSR = Project Study Report | |

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4. *“Exactly how many years are remaining from the Salida Now vote regarding land use designations?”*

In 2007, the Board of Supervisors approved a 25-year Development Agreement (or through approximately the year 2032), which established a vested right to proceed with development in conformance with the general plan and the community plan. The Development Agreement applies to twenty-four properties that signed and agreed to be bound by the Agreement.

5. *“Exactly how many years will remain on Salida Now land use rules if Modesto annexes them?”*

Government Code, section 65865.3 provides that *“if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier.”* The City could shorten that time if it could find that the Development Agreement is dangerous to the health or safety of the residents.

6. *“Will Modesto citizens get to vote on annexing Salida?”*

[\[Planning: Urban Area Growth Review Documents – City of Modesto\]](#)

To ensure that Modesto’s growth is handled in a fiscally responsible manner, the Modesto City Council adopted an Urban Growth Policy on March 25, 1974.

Measures A and M apply indirectly to the annexation of new territory into the City of Modesto, by requiring that an advisory election of the citizens of Modesto be held prior to extending sewer improvements to new areas with five or more dwelling units. Measure M does not apply to non-residential areas.

Measure A

On March 6, 1979, the voters enacted Measure A, the “Citizens’ Advisory Growth Management Act,” which requires the City Council to hold an advisory vote of the citizens of Modesto prior to extending sewer trunk lines to areas outside of the current sewer service area. Measure A allows Modesto’s citizens to voice their opinions on growth before it happens and ensures that City Council members know the public opinion.

Measure M

On November 4, 1997, the voters enacted Measure M, the “Modesto Citizens’ Advisory Growth Management Act of 1995.” The purpose of Measure M is to extend the advisory votes required by Measure A to all sewer improvements and

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to bring the public's voice into decisions concerning whether or not to allow urban expansion.

Public advisory elections concerning extending sewer service are typically scheduled every other year in odd-numbered years if City Council determines, through the Urban Growth Review, that the City has an inadequate supply of developable land and that the City's infrastructure can accommodate additional development.

7. ***“For the sake of openness, exactly which companies and their owners, were the land use guarantees made to?”***

Per the 25-year Development Agreement:

- Bates Property, Inc.
- Derk J. Van Konynenburg
- Jacqueline L. Van Konynburg
- John P. Britton and Alberta W. Britton 1996 Inter Vivos Trust
- Bavak Land Company, LLC
- Van Kay, Inc.
- Salida 3V Investors, LP
- Salida Hammett Investors
- Salida, LLC
- San Point Ranch, Inc.
- Charles S. Viss
- Gertrude Viss
- Braddock & Logan
- Alfred E. Spina
- Van Der Meer, LLC
- L. Stephen Endsley
- Ann Blair Endsley