



Staff Report

Agenda Item: **INTERGOVERNMENTAL AGREEMENT RELATING TO PRESERVATION OF FOREST LANDS** – Consideration of rescinding the Intergovernmental Agreement with the City of Cottonwood relating to Preservation of Forest Land.

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: September 17, 2009

Background: On September 16, 2008, the Cottonwood City Council directed their staff to begin the process of annexing the Forest Service lands referenced on the attached map, which led to the filing of the required blank annexation petition by the City on September 17, 2008. The City completed the required Public Hearing and waiting period process, which gave the City the authority to take action to approve the annexation anytime between October 18, 2008 and October 18, 2009. Under Arizona law, no other municipality has the right to annex these same lands during this time frame.

In October, 2008, the Clarkdale Town Council expressed concern that the process for annexation of these forest lands might require the annexation ordinance to be adopted before more attractive alternatives were considered. After hearing a mutual desire from both Councils to retain these lands in the National Forest, Town Manager Mabery drafted a proposed IGA, in coordination with City Manager Bartosh, in order for the two Councils to fully explore such an option. The Clarkdale Town Council and the Cottonwood City Council met in Joint Session on August 14th to discuss, in part, this proposed Intergovernmental Agreement.

After lengthy discussion at the August 14th Joint Meeting, both Councils directed their respective staff members to place the Intergovernmental Agreement on their upcoming agendas for consideration. The Cottonwood City Council met on August 18, 2009 and decided to move forward with the forest land annexation, and not execute the proposed IGA. The Clarkdale Town Council met on August 25th and approved the above referenced IGA, contingent upon Cottonwood's approval by October 1, 2009 (the effective date of the agreement).

Subsequent to both Council meetings, the only entity that was believed to be qualified to sign Cottonwood's annexation petition, Qwest, Inc., notified the Arizona Department of Revenue that, after further review, they do not have any property of value in the area proposed for annexation. This notification eliminates Qwest's eligibility as a signator on the annexation petition.

Among other things, annexation laws in the State of Arizona presume that an annexation petition will be signed by an owner of personal or real property within the annexation area (see A.R.S. 9-471). Because this annexation contains only US Forest Service land, which has not been valued and for which the Forest Service cannot sign a petition, it appears that the annexation proposal

will result in an unsuccessful annexation.

With this in mind, it appears that the conditions that prompted Clarkdale to approve the IGA for Forest Preservation no longer exist, and that it would be in the Town's best interest to rescind the IGA that was approved August 25th. That being said, it is the staff's hope that whether or not the annexation of forest land is unsuccessful, that there will be an opportunity for Clarkdale and Cottonwood to enter into discussions about future annexation opportunities on lands surrounding our respective communities, with the goal of developing boundary agreements that are negotiated in advance between the parties.

Recommendation: Staff recommends the Council rescind the IGA relating to preservation of forest lands, originally approved on August 25, 2009, and authorize staff to convey the Council's action to the City of Cottonwood, including Clarkdale's desire for discussions with Cottonwood about future annexation opportunities on lands surrounding our respective communities, and potential boundary agreements.

Doug Von Gausig

P.O. Box 885

Clarkdale, AZ 86324

928.634.3501

douvgv@commspeed.net

September 16, 2009

To the Clarkdale Town Council and the Citizens of Clarkdale;

Although I cannot attend the special Council meeting on September 17th in person, I want unequivocally to express my feelings about the cancellation of the Forest Preservation IGA.

This IGA was conceived and drafted under the following assumptions and conditions:

1. That the City of Cottonwood's Council was sincere in its desire to see that the U.S. Forest Service lands under consideration for annexation would remain open space in perpetuity, and that this desire had been stated several times in public meetings;
2. That, given the above, the only reason for continuing the annexation was that Cottonwood feared that Clarkdale might annex these same lands, thereby endangering the open space character of the lands;
3. That the US Forest Service as well as other authorities and other communities' experiences indicated that annexation of Forest Service lands actually decreases the likelihood that the land would remain open space;
4. That Cottonwood's City Manager, Doug Bartosh, had been consulted and his input included in the drafting of the IGA;
5. That Clarkdale had no desire to annex these lands, and also wished to see them remain open space in perpetuity;
6. That Clarkdale believed that annexation of these lands increased the likelihood they would some day be developed;
7. That Clarkdale felt that the majority of citizens and stakeholders in the Verde Valley were opposed to these lands being annexed;
8. That the City of Cottonwood could mount a successful annexation drive for these lands, and that if they did so, Clarkdale's quality of life as well as that of the entire Verde Valley would be threatened;
9. That there were qualified property owners other than the Forest Service in the annexation area who might sign Cottonwood's annexation petition, thereby enabling the annexation; and
10. That a valid annexation petition by law must contain the signature of at least one qualified property owner in the annexation area.

The IGA was proposed out of the hope that we could reach an agreement that would remove Cottonwood's fear of a Clarkdale annexation of the same or similar lands, and thereby, remove the threat of development of these same lands. Since the Cottonwood Council has decided not to execute the IGA, but instead to proceed with the annexation, the Clarkdale Council's hope to forge a partnership to preserve these lands as open space has since been dashed.

Subsequent to Cottonwood's decision to annex, the only party reported by the Arizona Department of Revenue to have qualifying property in the annexation area, Qwest, has informed that department that it actually has no property there, and that they would not be signing the annexation petition. It appears that, since the requirements of ARS 9-471, which deals with annexations by municipalities, have therefore not been met, the City of Cottonwood can no longer legally annex these lands.

Given the likelihood that Cottonwood cannot now proceed with the annexation which was the impetus behind the IGA, the very reason for the agreement has been rendered moot. I therefore believe Clarkdale's most practical and responsible course of action is to rescind its approval of the IGA. The rescission will ensure that no unintended consequences of allowing this invalid document to exist will come to pass.

My fervent hope is that the Town of Clarkdale and the City of Cottonwood will now sit down together in a spirit of mutual trust and cooperation that will lead to agreements on future annexations of both communities. These agreements will benefit both the two municipalities as well as the rest of the Verde Valley. Such "boundary agreements" are well established and legally binding tools long used by communities in the United States that desire to assure each other that their future borders are secure and well understood by all parties. These agreements will hopefully incorporate the spirit and intent expressed in the regional land use planning documents agreed upon by all of the Verde Valley's communities.

Sincerely,

Doug Von Gausig
Mayor, Town of Clarkdale

TOWN OF CLARKDALE

Memo

To: Clarkdale Town Council
From: Gayle Mabery, Town Manager
Date: September 17, 2009
Subject: Annexation Requirements

I have consulted with the League of Arizona Cities and Towns to reconfirm their position with regard to signature requirements on annexation petitions. Clarkdale's original consultations with the League occurred when we were contemplating an annexation of U.S. Forest Service Lands in 2000. At that time, the League advised us that their opinion was that there must be some taxable property annexed along with federal property so that some signature appears on the annexation petition. Clarkdale followed that advice at the time, and included private property along with the Forest property in our annexation.

In consultation this week, the League has confirmed that the opinion, originally given by League Counsel Lamar over 13 years ago, remains the same. Some taxable property must be annexed along with federal property so that a signature appears on the annexation petition.