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BY HAND DELIVERY

San Bernardino County LAFCO and
LAFCO Executive Officer
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Re: Request for Reconsideration - Agenda Item No. 7(A)-(E) (LAFCO 3067A-3067F) for the November 18, 2009 San Bernardino County LAFCO Meeting (Resolution Nos. 3071, 3072, 3073, 3074, 3075 and 3076)

Honorable Commissioners and the LAFCO Executive Officer:

Please consider this my request for reconsideration of the island annexations considered in Agenda Item No. 7, subdivisions (A) thru (F), on November 18, 2009, by the San Bernardino County LAFCO ("Commission" or "LAFCO") (collectively referred to as the "Island Annexations"). While the Island Annexations were noticed and agendized together, they were separately approved via LAFCO Resolutions 3071, 3072, 3073, 3074, 3075, and 3076 (collectively, the "Resolutions"). I have been told by LAFCO Staff that my request for reconsideration of the Island Annexations may be submitted as a single application, but that I must submit a $1,100.00 fee for reconsideration of each of the Resolutions referenced above, at the time I file my application.

Because I was required to pay all six application fees up front, a total of $6,600, in order to submit this request for reconsideration, I have paid the full amount under protest, subject to the Commission's review of my request for a fee waiver or reduction. My request for waiver or reduction of my application fees should be considered a part of and is incorporated in this request for reconsideration.

I am a resident of San Bernardino County ("County"), and reside west of Del Rosa Avenue, within Area 5 proposed for annexation to the City of San Bernardino ("City") in connection with LAFCO 3067 (3067E). I am directly affected by the LAFCO action, and have objected to the annexation of my property as part of Area 5, and to the policy of the Commission with respect to island annexations. My request for reconsideration of the Commission's actions approving LAFCO 3067, including the adoption of the Resolutions, individually and collectively, is also

made on behalf of all County residents, and all City residents who are, or could be affected by the Commission's actions approving LAFCO 3067, and by the application of the policy and procedure of the LAFCO in encouraging and processing piecemealed annexations in a way that is specifically aimed at avoiding full disclosure of long range ultimate fiscal and environmental effects of these annexations, and in clear violation of the statutory rights of residents and property owners of the City and the County to be heard and to protest the proposed actions. In addition to asking the Commission to reconsider and rescind its action approving LAFCO 3067 in it's entirety, I am also asking that the Commission direct its staff to discontinue the policy and practice of seeking and recommending piecemeal island annexations.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Govt. Code, §§ 56000 *et seq.*) ("LAFCO Act") provides that "[w]hen a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution." (Govt. Code, § 56895.) The LAFCO's adopted policy for reconsideration requests provides that a request for reconsideration will be granted when a petitioner presents "some compelling new evidence, or show[s] that *significant factors relative to the situation were overlooked* or have changed." As the below discussion shows, "significant factors" were overlooked when the Commission considered LAFCO 3067 and approved Resolutions 3071, 3072, 3073, 3074, 3075, and 3076. These factors include, but are not limited to, (a) inappropriate and deliberate segmentation of existing County unincorporated islands for the purpose of avoiding statutory and constitutional rights of property owners and residents affected by the proposed actions; (b) failure to evaluate and disclose long range fiscal effects of improper segmentation of annexations; and (c) application of the LAFCO's island annexation policy and procedure in a manner which ostensibly makes the proposed actions "ministerial" under the law.

A. <u>Violations of Section 56375.3 of the Cortese-Knox-Herzberg Local Government Reorganization Act and the LAFCO's own adopted policy</u>

On November 18, 2009, the Commission considered and approved the City's application for annexation of six unincorporated "islands" (LAFCO 3067A through 3067F), relying on Government Code Section 56375.3 ("Section 56375.3") for each. Section 56375.3 makes annexations of small unincorporated islands "ministerial" and eliminates the ability of property owners and residents to protest a jurisdictional change.

The City's application was submitted in response to Commission requirements officially outlined at the April 2006 Commission hearing related to the annexation of the Arrowhead Springs Specific Plan (LAFCO 3050). The November 18, 2009 agenda describes the actions to be taken as follows:

1. **LAFCO 3067A** – Reorganization to include City of San Bernardino Annexation No. 361 and Detachment from San Bernardino County Fire Protection District, its Valley Service Zone, its Service Zone PM-2, County Service Area 70 and County Service Area SL-1 (Area #1)
2. **LAFCO 3067B** – Reorganization to include City of San Bernardino Annexation No. 361 and Detachment from San Bernardino County Fire Protection District, its Valley Service Zone, its Service Zone PM-2, County Service Area 70 and County Service Area SL-1 (Area #2)
3. **LAFCO 3067C** – Reorganization to include City of San Bernardino Annexation No. 361 and Detachment from San Bernardino County Fire Protection District, its Valley Service Zone, its Service Zone PM-2, County Service Area 70 and County Service Area SL-1 (Area #3)
4. **LAFCO 3067D** – Reorganization to include City of San Bernardino Annexation No. 361 and Detachment from San Bernardino County Fire Protection District, its Valley Service Zone, its Service Zone PM-2, County Service Area 70 and County Service Area SL-1 (Area #4)
5. **LAFCO 3067E** – Reorganization to include City of San Bernardino Annexation No. 361 and Detachment from San Bernardino County Fire Protection District, its Valley Service Zone, its Service Zone PM-2, County Service Area 70 and County Service Area SL-1 (Area #5)
6. **LAFCO 3067F** – Reorganization to include City of San Bernardino Annexation No. 361 and Detachment from San Bernardino County Fire Protection District, its Valley Service Zone, its Service Zone PM-2, County Service Area 70 and County Service Area SL-1 (Area #6)

In order to take advantage of the summary proceedings allowed under Section 53675.3, the Commission must make certain specified findings:

- The area does not exceed 150 acres, and ***constitutes the entire island of unincorporated territory***;
- The study area constitutes an ***entire unincorporated island*** located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands;
- The area is totally or substantially surrounded ("substantially surrounded" if 52% of its boundary is surrounded by (a) the affected City or (b) the affected City and adjacent Cities per Commission policy and procedure manual);

- The study area is substantially developed or developing, based on findings that there is the availability of public services, there is the presence of public improvements in the area, and there are physical improvements on many, if not most, of the properties;
- The study area is not prime agricultural land as such is defined by LAFCO statutes; and
- The study area will benefit from the annexation or is receiving benefits from the annexing city.
- There must be documentation showing that the City proposing to initiate an island annexation conducted a public relations effort within the area to be annexed prior to the adoption of its resolution or initiation.

Notably, the Commission's findings in each of the Resolutions appear to have overlooked the "entire island of unincorporated territory" requirement contained in Government Code Section 56375.3(b)(1)-(2).[1] (See Resolutions 3071, 3072, 3073, 3074, 3075, and 3076.) In fact, there are only three much larger County unincorporated islands from which the six Island Annexations have been carved. Specifically, it appears that the Commission has engaged in a pattern and practice of "chopping up" pieces of large unincorporated islands into smaller portions in order to fit them within the 150 acre limitation contained in Government Code Section 56375.3(b)(1).[2] Such a policy and practice is a direct violation of the LAFCO Act as well as a violation of the due process clauses of the United States and California Constitutions. Each "island of unincorporated territory" contemplated in LAFCO 3067A through 3067F (Resolutions 3071, 3072, 3073, 3074, 3075, and 3076) is but a small piece of a larger island of unincorporated territory. In each case, the total unincorporated island is far greater in size than the 150 acre limitation set forth in Government Code Section 56375.3(b)(1). Consequently, the Commission's approvals and findings contained in Resolutions 3071, 3072, 3073, 3074, and 3075 must be vacated.

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1 It appears that the City Attorney for the City of San Bernardino, James F. Penman, agrees with this position. In refusing to sign City of San Bernardino Resolution No. 2006-247, which made the application to the Commission to annex the unincorporated islands at issue, Mr. Penman cited to Government Code Section 56375.3(b)(1)-(2). A copy of San Bernardino Resolution No. 2006-247 is attached to this request.

2 LAFCO Staff have been very candid in this regard, and have admitted that the island annexation boundaries have been selected with the 150 acre limitation in mind. LAFCO Staff have also been clear that this practice has been used elsewhere in the County.

In addition, Policy No. 29 of the LAFCO's Policy and Procedure Manual establishes requirements for island annexations. Part 3 of Policy No. 29 provides as follows:

> The Commission directs that a City that proposes an island annexation proposal as such is defined in Government Code Section 56375.3 shall be required to have conducted a public relations/education effort within the affected area prior to the placement of the item on a Commission agenda for consideration. Such outreach/education efforts shall include, but not be limited to, providing information on the grandfathering of existing legal County uses into the City, costs to the resident/taxpayer associated with annexation, and land use determinations. Documentation of these efforts shall be a part of the staff report presented for consideration by the Commission.

As LAFCO Staff was aware, the City did not conduct outreach in the expanded areas of Island Annexation Areas 1, 4 or 5, and did not certify that outreach had been conducted, as required by Policy No. 29. Nonetheless, Island Annexation Areas 1, 4 and 5 were placed on the Commission's agenda by LAFCO Staff for approval.

B. Failure to adequately evaluate and disclose the ultimate fiscal impacts of island annexations

In connection with its review and approval of annexations, the LAFCO requires the preparation of an analysis of the fiscal impacts of the proposed reorganization. The Fiscal Impact Analysis for the Island Annexations was prepared and clearly recognizes that a financial burden will be placed on the City, however minor it may appear because of the small size of each island being annexed. However, by piecemealing annexation of County unincorporated islands, LAFCO avoids analysis and disclosure of the cumulative impact of annexation of the "entire" island, as required by Section 56375.3(b)(1) and (2). All residents of the City are affected by the Island Annexations, and by application of the LAFCO's policy and procedure of encouraging the piecemeal annexation of fragmented County islands, because the cost of essential services for the islands will be a perpetual financial burden on and reduce the level of existing City services, the ultimate effect of which will never have been disclosed to or considered by the Commission or the public.

At a minimum, the cumulative fiscal effect of full implementation of the LAFCO policy and practice of splitting up existing County islands into small, seemingly inconsequential pieces has far reaching and unevaluated ramifications for existing City residents and for residents of the annexation areas, whose right to be fully informed, heard and to protest the action is being summarily and serially denied.

C. Violation of the California Environmental Quality Act

The California Environmental Quality Act ("CEQA," Public Resources Code §§ 21000 et seq., and the CEQA Guidelines, 14 Cal. Code of Regs. §§ 15000 et seq.) requires that potential adverse environmental impacts of a proposed project be considered before the project is approved. Annexations constitute "projects" for CEQA review purposes. See *Bozung v. LAFCO* (1975) 13 Cal.3d 263.

Mr. Dodson's environmental assessment of each Island Annexation is based on the assumption that the Island Annexations are appropriate under Section 56375.3, and therefore exempt from CEQA because they are "ministerial" projects under Section 15268 of the CEQA Guidelines. However, both Section 56375.3 and the Section 15268 exemption have been misused by the LAFCO in approving the Island Annexations.

The CEQA exemption determinations for LAFCO 3067A through F are not valid because the Commission improperly segmented the "entire" unincorporated islands into smaller parts. The CEQA exemption determinations for LAFCO 3067A through 3067F were based on the misnomer that the Island Annexations would be a ministerial action. However, because Government Code Section 56375.3 cannot be applied to artificially created island annexations, the Commission's actions with respect to LAFCO 3067A through 3067F can no longer be considered ministerial.

In order for the Commission to proceed with the annexation of County unincorporated islands which exceed 150 acres, the residents and property owners of those islands will be entitled to full disclosure of the effects of the "entire island" annexations, a hearing, and the right to protest. The annexations of the County islands which include the Island Annexations will no longer be ministerial, under the LAFCO Act or under CEQA. It may be that, after review of the effects of annexation of the "entire islands," they will still be exempt from CEQA. However, such a determination cannot be made until the entire "project" has been properly considered under CEQA. Reliance on the Section 15268 CEQA exemption in connection with LAFCO 3067 is inappropriate.

D. <u>Piecemeal annexation of County islands avoids the ability of cities to negotiate their boundaries</u>

Ever since the City of Highland ("Highland") incorporated, the City and Highland have had an ongoing discussion about boundary adjustment to achieve more regular boundaries and to straighten out the peculiar gerrymandering the LAFCO approved along Highland's northern boundary before its incorporation. It is my understanding that Highland still has a Council subcommittee for the purpose of boundary negotiations with the City.

As the LAFCO affects the boundary lines around Highland and the City, it is obvious that the ability of the two cities to continue their dialog, or to straighten out the boundaries, will be more and more limited. This task should be left to Highland and the City, and not to the LAFCO Staff to decide. The LAFCO should encourage the two cities to come to agreement regarding their boundaries, rather than imposing their will on the City in exchange for approval of unrelated actions.

Finally, in making this Request for Reconsideration, I want to make clear that I do not intend to affect the City's annexation of the Arrowhead Springs Hotel, or LAFCO 3050 (the "Arrowhead Springs Annexation"). In reviewing the actions taken by the Commission on November 18, 2009, I noted that the Arrowhead Springs Annexation was not conditioned to include the six Island Annexations, and it appears that LAFCO 3050 and LAFCO 3067 (A through F) stand entirely alone in the approval process. I recognize and appreciate the process followed by the LAFCO in the Arrowhead Springs Annexation, and am certain the residents and property owners of that area appreciate the fact that they have had a full opportunity to review and evaluate both service-related, fiscal and environmental effects of the annexation of their properties to the City.

I would also request that all agendas, staff reports, notices, minutes and recordings of proceedings, fiscal and environmental determinations, and resolutions adopted by the Commission in connection with its review and consideration of LAFCO 3067 be incorporated in this Request for Reconsideration.

Based on all of the above, the Commission must reconsider its action approving LAFCO 3067A through F, and rescind Resolution Nos. 3071 (LAFCO 3067A, Area 1); 3072 (LAFCO 3067B, Area 2); 3073 (LAFCO 3067C, Area 3); 3074 (LAFCO 3067D, Area 4); 3075 (LAFCO 3067E, Area 5); and 3076 (LAFCO 3067, Area 6), in their entirety.

Thank you for your consideration of my request.

Yours sincerely,

Susan Hulse

Attachment: City of San Bernardino, Resolution No. 2006-247

Enclosure: Request for Waiver or Reduction of Fees