LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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DATE : **NOVEMBER 9, 2009**

FROM: **KATHLEEN ROLLINGS-McDONALD, Executive Officer**

TO: **LOCAL AGENCY FORMATION COMMISSION**

SUBJECT: **AGENDA ITEM #7 – CONSIDERATION OF LAFCO 3067A THROUGH 3067F – CITY OF SAN BERNARDINO ISLANDS (See Full Titles Below)**

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)

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)

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)

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)

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)

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)

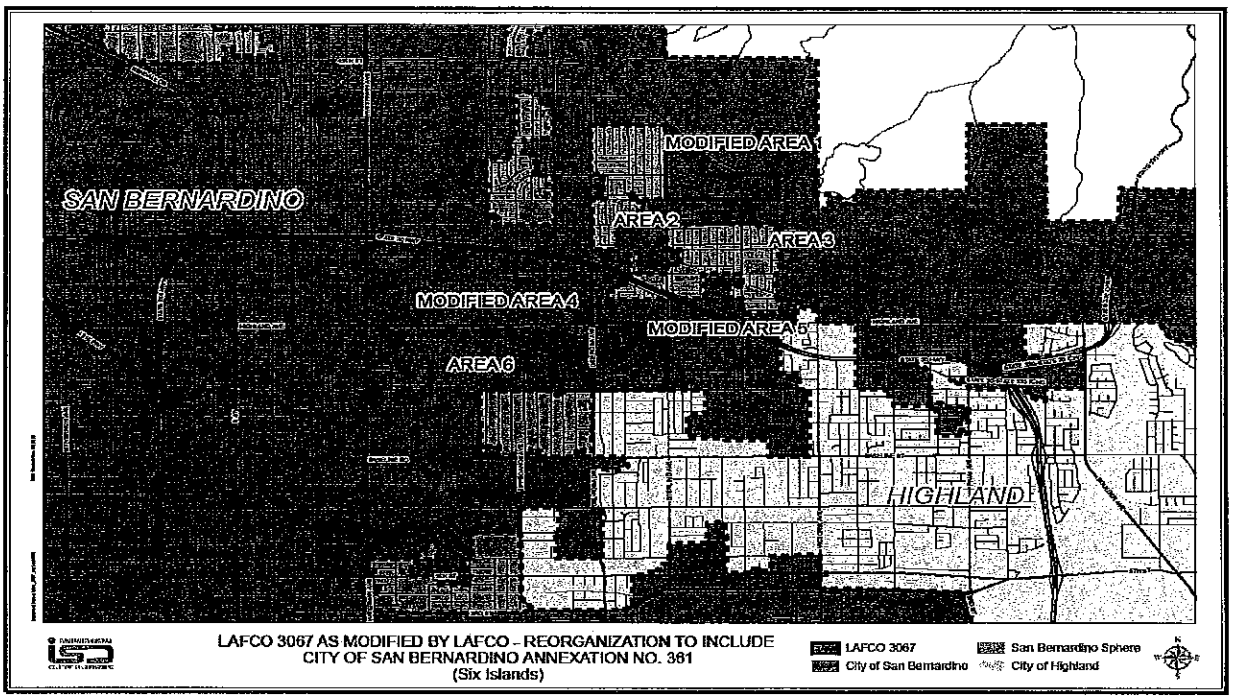
INITIATED BY:

City Council Resolution, City of San Bernardino

INTRODUCTION:

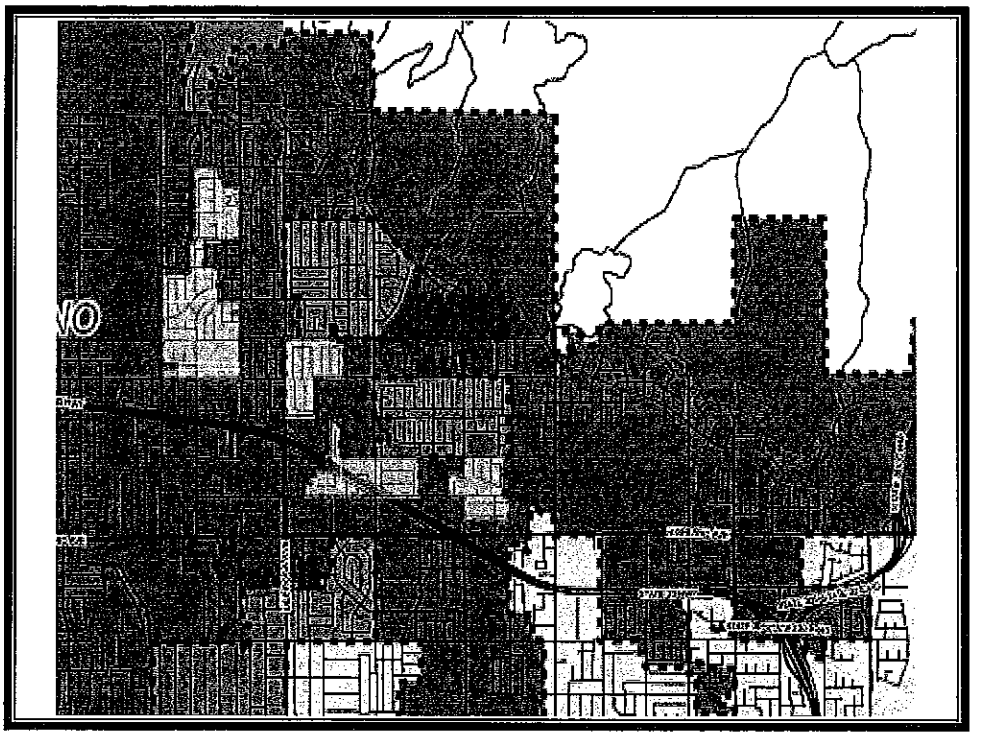
In July 2006, the City of San Bernardino submitted a proposal to annex six substantially-surrounded unincorporated islands of territory located in its northeastern sphere of influence. This proposal was submitted in response to Commission requirements officially outlined at the April 2006 Commission hearing related to the annexation of the Arrowhead Springs Specific Plan (LAFCO 3050). Over the last three years, the City has maintained its request that LAFCO 3067 not proceed without the companion LAFCO 3050.

At the February 2007 hearing the Commission separated LAFCO 3067 into six separate considerations, identified individually as LAFCO 3067A through 3067F. This report will provide general background information for all six proposals combined and then provide an individual recommendation and discussion for the island areas.



BACKGROUND:

At the July 11, 2006 City of San Bernardino Council meeting, the City initiated the annexation of six of the twelve islands (LAFCO 3067) it had committed to through adoption of Resolution No. 2006-347. In October 2006, the City adopted Resolution No. 2006-348 which outlined a schedule to address five additional island areas. The illustration below shows the six islands originally submitted by the City in red, while the area in yellow identifies the remaining five islands to be initiated by the City. The resolution identifies that they will be initiated in two phases, by no later than January 2008.



At the February 2007 and November 2006 hearings the Commission reviewed the six islands (copies of the staff report is included as Attachment #5 to this report) and determined to expand Island Areas #1, #4, and #5. Staff recommended approval of each of the island annexations identifying that each met the criteria established by the Cortese-Knox-Hertzberg Local Government Reorganization Act criteria contained in Government Code Section 56375.3 which eliminated the ability of registered voters and landowners to protest the jurisdictional change.

As noted above, the islands were initiated in response to directives of the Commission related to the annexation of the Arrowhead Springs Hotel and its associated Arrowhead Springs Specific Plan Area, LAFCO 3050. At the November 2006 hearing the Commission continued its consideration of LAFCO 3050 – City of San Bernardino Annexation et al (Arrowhead Springs Specific Plan) and the City Manager at the time requested that these matters, LAFCO 3050 and LAFCO 3067 et al remain tied together for consideration. Thus, this matter has been continued for three years until completion of the agreement related to LAFCO 3050's water and sewer service delivery options. The agreement was completed in August and the Commission is proceeding with its consideration of both items at this hearing.

Attachment #1 to this report provides the regional vicinity maps for the six island annexation areas, Attachment #2 provides the updated Plan for Service prepared by the City of San Bernardino. This Plan addresses the six areas as a whole and does not provide a description of the service needs or responsibilities for the individual islands. However, the financial impact analysis included provides spreadsheets for the individual islands. LAFCO staff has included these spreadsheets in the attachment materials for the individual islands.

ISLAND ANNEXATION PROVISIONS:

Government Code Sections 56375(a) and 56375.3 requires the Commission to approve the annexation of island territory if several basic findings are made concerning the size of the island, the configuration of city boundaries, the lack of prime agricultural land within the island area, the presence of development in the area, and the ability of the study area to benefit from or use municipal services from the City. The Commission is required to evaluate each of the six (6) islands against the criteria outlined and make specific determinations regarding their compliance with these provisions. That specific evaluation criterion is as follows:

- 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;
- 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.

In addition, the Commission has adopted its own policies related to the processing and evaluation of island annexations. Those policies, adopted March 31, 2005, are as follows:

1. For the purpose of applying the provisions of Government Code Section 56375.3, the territory of an annexation proposal shall be deemed "substantially surrounded" if 52% of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by (a) the affected City or (b) the affected City and adjacent Cities, or (c) the affected City and a service impediment boundary as defined by the Commission to include, but not be limited to, a freeway, a flood control channel or forest service land.

2. The Commission determines that no territory within an established County Redevelopment Area shall be included within an island annexation proposal, unless written consent has been received from the County Board of Supervisors and County Redevelopment Agency.

3. The Commission directs that a City proposing to initiate an island annexation proposal shall have conducted a public relations effort within the area prior to the adoption of its resolution of initiation. Such 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 application submitted for consideration by the Commission.

Each of these islands will be evaluated as to whether or not it complies with these directives.

ISSUES RELATED TO LAFCO 3067A THROUGH LAFCO 3067F:

In reviewing these proposals there were a number of items which affected all six islands equally. Those matters are outlined below:

1. LAFCO staff, members of the City of San Bernardino staff and County Land Use Services personnel have met to review issues related to the handling of the transition of land use projects and code enforcement issues from the County to the City. It has been identified that there are projects and open Code Enforcement actions currently in process at the County affected by this action. The City has indicated to LAFCO staff that it will honor the County's land use approvals for projects, will assume responsibility for assurance of compliance with the County's conditions of approval and will assume responsibility for ongoing enforcement action. However, City personnel have noted that the City reserves the right to require compliance with City design standards and on-site improvement plans.

2. As noted above, the City of San Bernardino has provided a "Plan for Service" for LAFCO 3067A through LAFCO 3067F as a single document as required by law and as modified by Commission policy. A copy of the Plan, including supplemental information, is included as part of Attachment #2 to this report. Highlights of the Plan and related information include the following:

   - Water and sewage collection services will not be affected by these changes. This is based upon the provision of these services by the East Valley Water District whose boundaries are unaffected by the island annexations.

   - Law enforcement responsibilities will shift from the County Sheriff's Department, which operates out of the Main Sheriff facility in San Bernardino, to the City of San Bernardino Police Department. The City indicates that its Police Department will absorb this territory into its existing beat system surrounding the sites. However, the City has indicated that no additional police personnel will be provided due to the City's existing hiring freeze, so the change will impact overtime requirements. The financing of this service will be through the ad valorem property tax received by the City from within the annexation areas.

   - Solid waste services are currently provided within the annexation area by Burrtec Disposal. As authorized by law and City policy, upon annexation residents will have five years in which to transition to the City-operated service. The City's current residential rate is $22.84 per month for pick up which includes the provision of containers for normal, recyclable and green waste. The current rate for Burrtec varies from $45.72 to $49.00 bi-monthly depending on island area. The City rate would be four (4) cents lower than existing low end Burrtec rate or $3.32 less than the high end rate. Commercial rates vary depending on the type and frequency of pick up. .

- Fire protection and paramedic services are currently the responsibility of the San Bernardino County Fire Protection District, its Valley Service Zone and its Service Zone PM-2 (paramedics). The County contracts with the City of San Bernardino to provide these services within all the unincorporated area east of Waterman Avenue including the Arrowhead Suburban Farms island (copy of the contract included as Attachment #3). The City's modified Plan for Service identifies that the contract entered into in 2006 provided the City with a payment of $487,000 per year which was determined to be 75% of the CSA 38 revenue in 2005-06 (CSA 38 has become the Valley Service Zone of the San Bernardino County Fire Protection District (SBCFPD)) and all of the revenues from the special assessment for paramedic services (in the contract identified as CSA 38 Zone L, which was reorganized into Service Zone PM-2). A concern for City staff and SBCFPD personnel is the effect of the transfer of these responsibilities to the City along with the revenues they generated.

  LAFCO staff has provided updated information on the ad valorem property revenues generated within this area, including those related to the current fire providers, SBCFPD and its Valley Service which will be transferred to the City. The revenues for the special assessment for Service Zone PM-2, to which the City will succeed, have been provided by County Fire Fiscal Management personnel. The transfers are:

SBCFPD (formerly CSA 70)	$ 29,677
SBCFPD Valley Service Zone (formerly CSA 38)	$134,392
Service Zone PM-2 (formerly CSA 38 Zone L)	$ 19,399
TOTAL	**$183,468**

  According to the terms outlined in Section 8 of the agreement, the reduction in the contract will be for the full value of the SBCFPD (former CSA 38) and its Service Zone PM-2 (former Zone L). This reduction will take effect in Fiscal Year 2010-11. The language states "only properties annexed prior to April 1st of the current contract year will be used to recalculate the next year's contract payment." LAFCO staff has previously identified its concern that the contract amount no longer represents what the understandings of the parties were at the time of contract signing. Specifically that the amount paid represents the amount of revenue derived from the area by CSA 38 (Board Agenda Item #16 of October 31, 2006 included as a part of Attachment #5). LAFCO staff has requested updated information from the County Assessor and Property Tax Division of the Auditor Controller to determine the amount of revenue generated within the areas of the contract (approximately 8 islands of territory). The amounts to be received during the 2009-10 Fiscal Year are:

SBCFPD	$ 174,944
SBCFPD Valley Service Zone	$ 792,226
Service Zone PM-2	$ 94,654
TOTAL	**$1,061,824**

The staffs from the City Manager's Office, LAFCO and County Fire have met to review this situation and LAFCO staff's concerns. It has been agreed that the current contract amount will not be altered for the current and final year of the contract for service, and that the negotiations for the contract for Fiscal Year 2011-12 and thereafter will take into account the revenue stream remaining for those services. City and County Fire staff has indicated that a letter outlining this position will be provided to LAFCO staff, but as of the time of preparation of this report it had not been received. A copy of any correspondence related to this matter will be provided to the Commission at the hearing.

- Streetlights are currently funded within the island areas through County Service Area SL-1. The Plan for Service identifies that 173 lights and the lights associated with two intersections will transfer to City responsibility. The Commission's adopted policy requires documentation of the transfer of this responsibility through verification of lighting facilities to be transferred and requiring the submission by the City of a signed form authorizing the transfer upon completion of the annexation. Staff has included this condition in its recommendation for approval. There are 173 lights operated by CSA SL-1 within County territory to be transferred and it is estimated that the annual cost of operation is $24,912 (approximately $144 per year for energy and administrative costs). The property tax transfer from CSA SL-1 to the City is $17,200, which does not cover the entire cost of this service.

- An important note included in the Plan for Service and proposed as a condition of approval for the individual islands, is that none of the island areas will be required to pay the City's 7.75 percent Utility Users Tax. Pursuant to a State Attorney General opinion, unless the voters and landowners have the opportunity to protest the annexation, the existing taxes of the City can not be automatically extended to the area. However, in the future as voters of the City if the matter of the utility users' tax is on a ballot, they will become subject to payment.

As required by Commission policy and State law, the Plan for Service submitted by the City of San Bernardino shows that the extension of its services will maintain, and/or exceed, current service levels provided through the County.

3. The City Council of the City of San Bernardino adopted Resolution No. 2006-348 on October 4, 2006 (copy included as Attachment #4) , which outlines the phasing of the remaining island annexations. As noted in the introduction of this report, the City of San Bernardino was responding to requirements of the Commission to address 13 unincorporated islands discussed during consideration of LAFCO 3050. No action to rescind this resolution has been taken by the City Council and LAFCO staff is of the understanding that the phasing will take place acknowledging the three (3) year deferral for LAFCO 3067 at the request of the City. Specifically, Resolution No. 2006-348 identifies that the areas identified in its Exhibits as Islands #1 and #6 would be initiated by January 2007 and Islands #2, #7 and #8 by January 2008. It is staff's assumption that these dates would be deferred to January 2010 and January 2011 respectively.

For every proposal, the Commission is required to evaluate the factors of boundaries, land uses, service delivery and environmental considerations. These items were discussed at the previous

hearings on this proposal conducted in February 2007 and November 2006. A copy of the staff report for the February hearing, dated February 12, 2007 is included as Attachment #5 to this report. Those items that have been amended and that are universal to the six areas have been outlined above. The information which follows provides for the staff's analysis of each of the individual island areas, provides the determinations required by State law under Government Code Section 56375.3, provides for individual consideration by the Commission for the islands and provides a staff recommendation.