MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF NOVEMBER 18, 2009

REGULAR MEETING **9:00 A.M.** **NOVEMBER 18, 2009**

PRESENT:

COMMISSIONERS:
Jim Bagley, Alternate
Kimberly Cox
James V. Curatalo
Brad Mitzelfelt, Vice-Chairman
Mark Nuaimi, Chairman
Richard P. Pearson
Robert Smith, Alternate
Diane Williams, Alternate

STAFF:
Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, Legal Counsel
Samuel Martinez, Senior LAFCO Analyst
Michael Tuerpe, LAFCO Analyst
Rebecca Lowery, Deputy Clerk to the Commission

ABSENT:

COMMISSIONERS:
Paul Biane
Neil Derry, Alternate
Larry McCallon

REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – CALL TO ORDER – 9:05 A.M.

CONSIDERATION OF LAFCO 3067 A THROUGH 3067F CITY OF SAN BERNARDINO ISLANDS
(It is noted that Commissioner Curatalo arrives at 9:09 a.m.)

Ms. McDonald provides a general overview of information related to all six island areas, noting that in July 2006, the City of San Bernardino submitted a proposal to annex six substantially surrounded unincorporated islands of territory; the territory is located in the city's northeastern sphere of influence known as LAFCO 3067. The proposal was submitted in response to LAFCO Commission requirements outlined at the April 2006 Commission hearing related to the annexation of the Arrowhead Springs Specific Plan. That Commission policy identifies the position that a City when annexing lands proposed for new development will be required to also address its pockets, peninsulas, and islands of unincorporated territory. At the February 2007 hearing the Commission separated LAFCO 3067 into six separate considerations, identified as LAFCO 3067A though 3067F.

At the November 2006 and February 2007 hearings, the Commission reviewed the six islands and determined to expand Island Areas #1, #4 and #5. Ms McDonald states that if each area meets the criteria established by the Cortese-Knox-Hertzberg Local Government Reorganization Act criteria contained in Government Code Section 56375.3 the ability of registered voters and landowners to protest the jurisdictional change will be eliminated.

Ms. McDonald reviews the Vicinity Maps on the overheard display.

Ms. McDonald states that 21 days ago LAFCO staff mailed notification to individual landowners and registered owner within and surrounding the areas to be annexed, broadcasting the annexation and providing the direction as to who to contact or where on the LAFCO website to go for information pertaining to the annexation and the LAFCO process. She states that the questions from the public following the notification that have come into the staff office are typical for annexation proposals with common annexation myths that annexation will automatically increase taxes. She says that annexation cannot raise

the general (ad valorem) property taxes, as outlined by Prop. 13. In an island annexation proposal, extension of existing taxes or assessments, such as a utility tax, is not allowed as the ability to protest and require an election has been removed by the State Legislature. She says that what annexation does do is change the distribution internally of those property taxes; at present portions of the property tax that the residents pay for services go to San Bernardino County Fire Protection District, CSA 70, CSA SL-1. Those revenues will now be transferred to the City to help support its operations. In addition, questions were asked of staff regarding existing uses, many residents inquired as to whether they will be allowed to continue to do what they are currently doing with their property. LAFCO staff's response has been that if the activity is legal in the County as it currently exists, then it will be legal in the City following annexation. Ms. McDonald notes, however, if the current land uses are not a legal use in the County, annexation will not remedy those situations. She also states that a number of people have expressed concern regarding the postal numbering system for City addresses. She says that if the residents currently have a 5-digit street address, upon annexation those addresses will be shifted to the City's 4-digit system; this will decrease confusion for emergency service response.

Ms. McDonald states that in the staff report, LAFCO staff has provided general information that applies to all the Island Annexations. When the Commission made the original determinations regarding boundaries, they directed staff to consider each island individually and so each island was assigned its own designation, 3067 A-F, each to be presented as a separate item, however, the City's Plan for Service addresses the islands as a whole.

Ms. McDonald states that the island annexation procedures that the legislature put into place removes the ability of landowners and voters to protest annexation if the territory meets certain specific criteria. It is highly uncommon for any politician to remove the ability of anyone to vote on a proposal; however, their view was that it is significantly important to address service confusion, service inefficiencies for these smaller areas that are surrounded or substantially surrounded by a municipality. It is simply good government to reduce the confusion, to provide a cohesive pattern for the delivery of government services.

Government Code Section 56375.3 was put into place, and was amended in January 1, 2004 which increased the size limitation to 150 acres and removed the prohibition on the area being a part of a larger unincorporated area. LAFCO staff has outlined in the staff report the specific criteria that the Commission must address for each island in order to approve the proposal with out a protest proceeding.

The criteria is that the area does not exceed 150 acres and constitutes the entire island of unincorporated territory; the study area constitutes an unincorporated island surrounded by the limits of a city or an adjoining 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.

She states that in addition, in March 2005, the LAFCO Commission adopted its own policies related to the processing and evaluation of island annexations and established their definition of substantially surrounded. That policy definition indicates that if 52% of linear length of the boundary is comprised of the annexing city or adjoining city the territory would be deemed substantially surrounded and it also identified that the boundary could include impediments to service such as freeways, flood control district properties and/or the National Forest. The Commission also indicated that they would not include any territory that was currently a part of a county redevelopment area in an island annexation unless the county consented to it. And, the Commission required that the City provide a Community outreach program to provide information to the residents regarding land use issues, taxation issues and service delivery questions in the area to be annexed.

Ms. McDonald conducts a general review of the Updated Plan for Service dated November 2009 which was submitted by the City and states that the Plan for Service outlines service delivery to all six island areas. Some of those services are water and sewer service; the water services will remain with East Valley Water District, whose boundaries are unaffected by the island annexations. She says that law enforcement will transfer from the County Sheriff to the City Police Department. The City has indicated that its Police Department will absorb this territory into its existing beat system; however, the City has indicated that no additional police personnel will be provided due to the City's existing hiring freeze. 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, which are currently provided by private haulers, will transition over a five year period to the City collection services. Ms. McDonald notes that at each Commissioner's place a letter has been provided to the Commission from a private waste company stating that they provide waste services in areas 4 & 5 and oppose the annexations due to the loss of their franchise area.

(It is noted that Commissioner Mitzelfelt arrives at 9:19 a.m.)

She states that fire protection and paramedic service are currently provided through a contract with the San Bernardino County Fire Protection District. LAFCO staff has outlined some concerns in the staff report related to the contractual agreement between the City and the County regarding the contract amount and the implications of these annexations. She states that the staff report identifies that the current revenues for fire protection within the annexation areas and the other unincorporated islands total $487,000 annually. The contract was put in place several years ago with the understanding that it represented 75% of the CSA 38 revenues. However, in review, the current property tax allocation for county fire from all of these islands including the special tax is over one million dollars. The question to the City then becomes will the county invoke the reductions to the contract that are available, which would be to deduct the full share of the CSA 38 revenue from the contract; that would then reduce the contact to about $350,000. She states that staff from the City Fire and County Fire met to review the situation, but the outcome has not yet been provided to LAFCO staff, however it is LAFCO staff's belief that the two parties are working to remedy the questions so that the effect on the City's finances for the fire contract will be minimal.

Ms. McDonald states that what is of importance to both the Commission and the residents is the 7.75% utility users' tax. As is noted in the staff report and also included in the notice to landowners and registered voters the utility tax will not be extended to the annexed areas, the law does not allow for the extension of a special tax without the ability for the residents to protest the annexation. By removing the ability to protest the annexation, the city is restricted to not charge the utility users' tax. She says that in the future as voters of the City if the matter of utility users' tax is on a ballot, they will have the right to vote and then will become subject to payment if the ballot item passes.

Ms. McDonald states that the City Council of the City of San Bernardino adopted Resolution No. 2006-348 on October 4, 2006, which outlines the phasing of the remaining island annexations identified by the Commission in its April 2006 hearing. As has been noted, the City was responding to requirements of the Commission to address 13 unincorporated islands. There are five remaining islands to be annexed. The City has identified a phased plan for the annexation of these remaining islands. LAFCO staff is of the understanding that the phasing will take place acknowledging the 3 year deferral at the request of the City and the Commission has been provided a letter from the City Manager indicating that he will continue to work with the City Council and with LAFCO to implement the adopted resolution. Ms. McDonald reviews on the overhead the map that details the areas slated for future annexation phasing.

Ms. McDonald states that a note to be added to the record is that when the LAFCO staff sent out the notices for islands 4 & 5, the Registrar of Voters transposed the list for registered voters in those areas. LAFCO staff corrected the mailing list once it was discovered and remailed to those registered voters. So, they received two mailed notices.