Responses Received from the County of San Bernardino, Cities of Colton, Chino, Hesperia, Victorville, San Bernardino and Montclair

Attachment 3

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MAY 04 2011
LAFCO
San Bernardino County

INTEROFFICE MEMO

1853

County of San Bernardino

DATE May 4, 2011 PHONE 909-387-5418

FROM GREGORY C. DEVEREAUX
Chief Executive Officer

TO KATHLEEN ROLLINGS-MCDONALD
Executive Officer - LAFCO

SUBJECT SAN BERNARDINO COUNTY ISLAND ANNEXATION POLICIES

Summary of San Bernardino Island Annexation Policies:

Through the San Bernardino County General Plan, San Bernardino County has adopted policies recognizing that cities are the logical service providers for municipal-level services and that unincorporated islands can be more effectively and efficiently served by surrounding cities.

Although LAFCO has requested the County of San Bernardino to provide a definition of "entire island", the County believes it prudent to await the California Attorney General's response to Senator Gloria Negrete-McLeod's letter requesting a definition of "entire island."

San Bernardino County looks forward to continuing to work with LAFCO as a partner in serving the residents of the County.

Provided below are San Bernardino County's General Plan policies relating to island annexations.

County General Plan Section II: Land Use

Subsection S.

5. LAND USE PLANNING IN THE SPHERE OF INFLUENCE (SOI) AREAS

The incorporated cities are often critical of the land use decisions made by the County in the sphere of influence areas. The cities' major concerns are that:

- Some of the land uses proposed by the County for the SOI areas are not compatible with, and are not logical extensions of, the adjacent land uses within the cities' boundaries.
- County development standards are relatively lax, depreciating the quality of the permitted development and adversely affecting the neighborhoods, including adjacent areas within the cities.
- The review procedures employed by the County do not include urban design and architectural design considerations used by many cities.

- Section 65300 of the California Government Code places a dual mandate on both cities and counties relating to land use planning within spheres of influence. The land use policies adopted for the SOI areas are designed to encourage annexations or incorporations. In the Inland Valley Development Agency (IVDA) area, the County has a policy of neutrality as to annexation or incorporation, and these actions are neither encouraged nor discouraged.

County General Plan Section II: Land Use

Policies

- **LU 9.2:** Discourage leap-frog development and urban sprawl by restricting the extension or creation of new urban services or special districts to areas that cannot be sustained in a fiscally responsible manner.

  Programs

  1. Consider the adoption of regulations and plans, whenever possible, such as the adoption of overlays, specific plans, zoning studies, infrastructure support plans, and other appropriate mechanisms that encourage annexation and the use of city standards within sphere of influence areas.

- **LU 9.6:** Encourage communities with development densities and intensities comparable to adjacent incorporated cities to annex to incorporated cities.

County General Plan Section IX: Economic Development

Policies

- **ED 12.2:** Promote efficiency in government by encouraging annexations that eliminate isolated County "islands" of development.

- **ED 17.2:** Facilitate annexations that result in continuity of development and the extension of existing infrastructure.

- **ED 17.3:** Develop infrastructure financing policies that are similar for development, whether under County jurisdiction or eventual City annexation.

- **ED 23.2:** Design the impact fee programs to be consistent with existing jurisdictional fee systems so that infrastructure can be expanded on a seamless basis with ongoing development within city boundaries or during annexations or incorporations.

GD:JR

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APR 27 2011
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San Bernardino County

April 21, 2011

Kathleen Rollings-McDonald, Executive Officer
San Bernardino County LAFCO
215 North 'D' Street, Suite 204
San Bernardino, CA 92415-0490

Re: Island Annexation Policy

Dear Ms. Rollings-McDonald:

The City of Colton is pleased to respond to your invitation to comment on the existing San Bernardino LAFCO Island Annexation Policy, including providing input on specific issues related to consideration of unincorporated islands. City staff submitted your December 10, 2010 letter and staff analysis to City Council on April 18, 2011 (report attached hereto). The City Council has directed staff to respond to LAFCO, expressing the City's following responses to the questions and issues contained your December 10, 2010 letter:

Existing Island Annexation Policy
We wish to reaffirm the City of Colton's support for keeping the existing policy, including the definition of "substantially surrounded" until such time as the California Attorney General issues a new opinion regarding island annexations, or revised interpretations are necessitated by case law.

Determination of "Entire Island"
The City supports the Commission's current "substantially surrounded" interpretation and practice, at least until a new Attorney General opinion or case law warrants revising this interpretation.

Requirement to address island areas when proposing annexation of development related territories.
We believe that requiring member to address island areas when proposing annexation of other territories impinges on local government discretion in these matters. Therefore, the City does not support this current LAFCO practice.

Thank you for the opportunity to participate in this policy-making process. Please keep us informed of the next steps, including future opportunities to provide input.

Sincerely,

Mark R. Tomich, AICP
Development Services Director

Attachment

CIVIC CENTER
650 N. La Cadena Drive
Colton, CA 92324
(909) 370-5099

ITEM NO. 7

STAFF REPORT

DATE: APRIL 19, 2011
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER
PREPARED BY: MARK TOMICH, DEVELOPMENT SERVICES DIRECTOR
SUBJECT: LAFCO ISLAND ANNEXATION POLICY

RECOMMENDED ACTION

Authorize staff to prepare a letter on behalf of the City to San Bernardino LAFCO, expressing the City's opinions pertaining to the LAFCO Annexation Policy and supplemental questions, as discussed in the Issues/Analysis section of this report.

GOAL STATEMENT

The proposed action will support the City's goal to promote the City's interests at a regional level and work cooperatively with intergovernmental agencies.

BACKGROUND

The San Bernardino County Local Agency Formation Commission (LAFCO) is revisiting its Island Annexation Policy and is soliciting feedback from member cities prior to either reaffirm the existing Policy, or amend the Policy. A letter from LAFCO, dated December 10, 2010, is attached. LAFCO was scheduled to take up this issue at their January 19, 2011 hearing; however, due to requests for continuance from the City of Colton and other cities, this item has been continued to the May 18, 2011 LAFCO hearing.

The current Island Annexation Policy, which has been in effect since October 18, 2006, reads 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 by 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 the annexation, and land use determinations. Documentation of these efforts shall be a part of the Item application submitted for consideration by the Commission.*

LAFCO is specifically interested in feedback on the implementation of the criteria of "substantially surrounded," including but not limited to support for the current criteria, preference for a different percentage, or other criteria. LAFCO had initially requested feedback by January 4, 2011 so the Commission could consider the Policy at their January 19th hearing. However, due to requests for additional time for review from several cities, including Colton, the Commission will not be considering this issue until May 2011.

In addition, LAFCO is requesting input on the following items related to consideration of islands:

1. *A potential policy determination on the question of the "entire island." This relates to the determinations required of the Commission under Government Code Section 56375.3. In several instances, the Commission has approved island areas which abut each other but which could be identified as substantially surrounded on their own as well as peninsulas of larger areas which meet the Commission's substantially surrounded interpretation. The Commission will be discussing this interpretation; discussing whether to amend or change its determination criteria; and discussing whether to add additional policy language to provide directives to cities and LAFCO staff for the future.*
2. *Potentially adopting as a policy its existing practice of requiring a City to address its island areas when proposing annexation of development-related territories. For example, as a result of the proposed annexation of the Arrowhead Springs Specific Plan, the City of San Bernardino was required to address its unincorporated islands.*

ISSUES/ANALYSIS

The City's most recent attempt to annex unincorporated islands was met with considerable opposition from island residents, and the effort was abandoned by the City in 2007. There are no plans by the City to annex unincorporated islands at this time. However, the current request by LAFCO for input on the existing LAFCO Annexation Policy provides the City with the

opportunity to help shape policy for any future island annexation efforts. In addition, due to ambiguities regarding the interpretation of state LAFCO law for island annexations (Government Code, Section 56375.3 et. Seq.), State Senator Gloria Negrete McLeod has requested an opinion from the California State Attorney General's office concerning whether Government Code, Section 56375.3 authorizes splitting up islands which exceed 150 acres into smaller parcels for annexation purposes (copy of request attached).

In sum, the current Island Annexation Policy provides the City with considerable flexibility in how it proceeds with island annexations in the future, including how it defines "substantially surrounded." Therefore, staff recommends that the Island Annexation Policy remain unchanged until the Attorney General renders an opinion interpreting Government Code, Section 56375.3. We believe it is also prudent to defer the question of defining "entire islands" until after the Attorney General opinion is issued. Finally, we do not recommend support for the current the LAFCO practice of requiring a City to address all of its island areas when proposing annexation of other territories. Such practice impinges on the City's discretion when pursuing individual annexations.

FISCAL IMPACTS

There will be no fiscal impact to the City General Fund.

ALTERNATIVES

1. Reaffirm existing LAFCO Island Annexation Policy.
2. Provide alternative direction to staff.

ATTACHMENTS

1. Letter from LAFCO to Member Cities (December 10, 2010)
2. Letter from State Senator Gloria Negrete McLeod to Office of the Attorney General (September 3, 2010)

LOCAL AGENCY FORMATION COMMISSION

215 North "D" Street, Suite 204 • San Bernardino, CA 92415-0490
(909) 383-9900 • Fax (909) 383-9901
E-mail: lafco@lafco.sbcounty.gov • www.sbclafco.org

Established by the State of California to serve the Citizens, Cities, Special Districts and the County of San Bernardino

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CITY OF COLTON
CITY MANAGER

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PAUL BIANE
Board of Supervisors

GINGER COLEMAN
City Member

KIMBERLY COX
Special District

JAMES V. CURATALO, Vice Chair
Special District

LARRY McCALLON
City Member

BRAD MITZELFELT, Chair
Board of Supervisors

ALTERNATES

BOB COLVEN
Public Member

NEIL DERRY
Board of Supervisors

ROBERT W. SMITH
Special District

DIANE WILLIAMS
City Member

STAFF

KATHLEEN ROLLINGS-McDONALD
Executive Officer

SAMUEL MARTINEZ
Senior LAFCO Analyst

MICHAEL TUERPE
LAFCO Analyst

Vacant
Clerk to the Commission

ANGELA M. SCHELL
Deputy Clerk to the Commission

REBECCA LOWERY
Deputy Clerk to the Commission

LEGAL COUNSEL

CLARK H. ALSOP

December 10, 2010

TO: CITY/TOWN MANAGERS AND LAFCO CONTACTS
FOR THE CITIES AND TOWNS OF:

Adelanto	Loma Linda
Apple Valley	Montclair
Barstow	Redlands
Chino	Rialto
Colton	San Bernardino
Hesperia	Victorville

During discussions over the past year and at the Commission Workshop Session held in August 2010, the Local Agency Formation Commission (LAFCO) has determined to revisit its Island Annexation Policy and directed its staff to return with a review of its definition of substantially surrounded and other matters. The Island Policy, LAFCO Policy #29, to be reviewed currently reads as follows:

POLICY #29 – ISLAND ANNEXATION PURSUANT TO GOVERNMENT CODE SECTION 56375.3 (Policy #29 was repealed and replaced by action of the Commission March 31, 2005, amended October 18, 2006)

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 Item application submitted for consideration by the Commission.*

Determination #1 under Policy 29 outlines the Commission's definition of substantially surrounded. A question to be discussed at the January Hearing is whether the percentage of linear length determination should be amended. The attached maps identify islands within the respective city spheres which meet the criteria of 52% surrounded (current criteria) or greater. The criteria utilized by other LAFCOs around the state range from a low of 50% to as high as 75%. However, it should be noted that several LAFCOs have identified that "substantially surrounded" is determined on a case-by-case basis. This option is not identified in the materials included in this correspondence but may be discussed at the January 19, 2011 hearing. Please provide your City's or Town's response on the implementation of the criteria of substantially surrounded, including but not limited to support for the current criteria, preference for a different percentage, or other criteria for the mandatory determination by January 4, 2011. The Commission will be provided a copy of each response received as a part of the staff report for the hearing.

In addition, at the August Workshop the Commission directed staff to return with a further discussion of the following items related to consideration of Islands:

1. Discussion of a potential policy determination on the question of the "entire island". This relates to the determinations required of the Commission under Government Code Section 56375.3. In several instances, the Commission has approved island areas which abut each other but which could be identified as substantially surrounded on their own as well as peninsulas of larger island areas which meet the Commission's substantially surrounded interpretation. The Commission will discuss this interpretation; discuss whether to amend or change its determination criteria; and discuss whether to add additional policy language to provide direction to Cities and its staff for the future.

2. Discussion of adopting as a policy its existing practice of requiring a City to address its island areas when proposing annexation of development related territories. As an example, as a result of the proposed annexation of the Arrowhead Springs Specific Plan area, the City of San Bernardino was required to address its unincorporated islands.

As with the question of the percentage determination, LAFCO staff is requesting that each City/Town provide its written response on these two items by January 4, 2011.

The discussion of these determinations will apply to potential island considerations under the current provisions which remove the potential for protest from landowners and registered voters. This provision will expire as of January 2014. However, the policy determinations of the Commission will continue under the islands provision which take effect as of January 1, 2014 (Government Code Section 56375.3 (a)(2)which will allow for protest to terminate under Government Code Section 57080). The provision becoming effective January 2014 does not allow for an election. One option that may be considered is for the Commission to direct that a further discussion of the new provisions take place in the fall of 2013 prior to implementation.

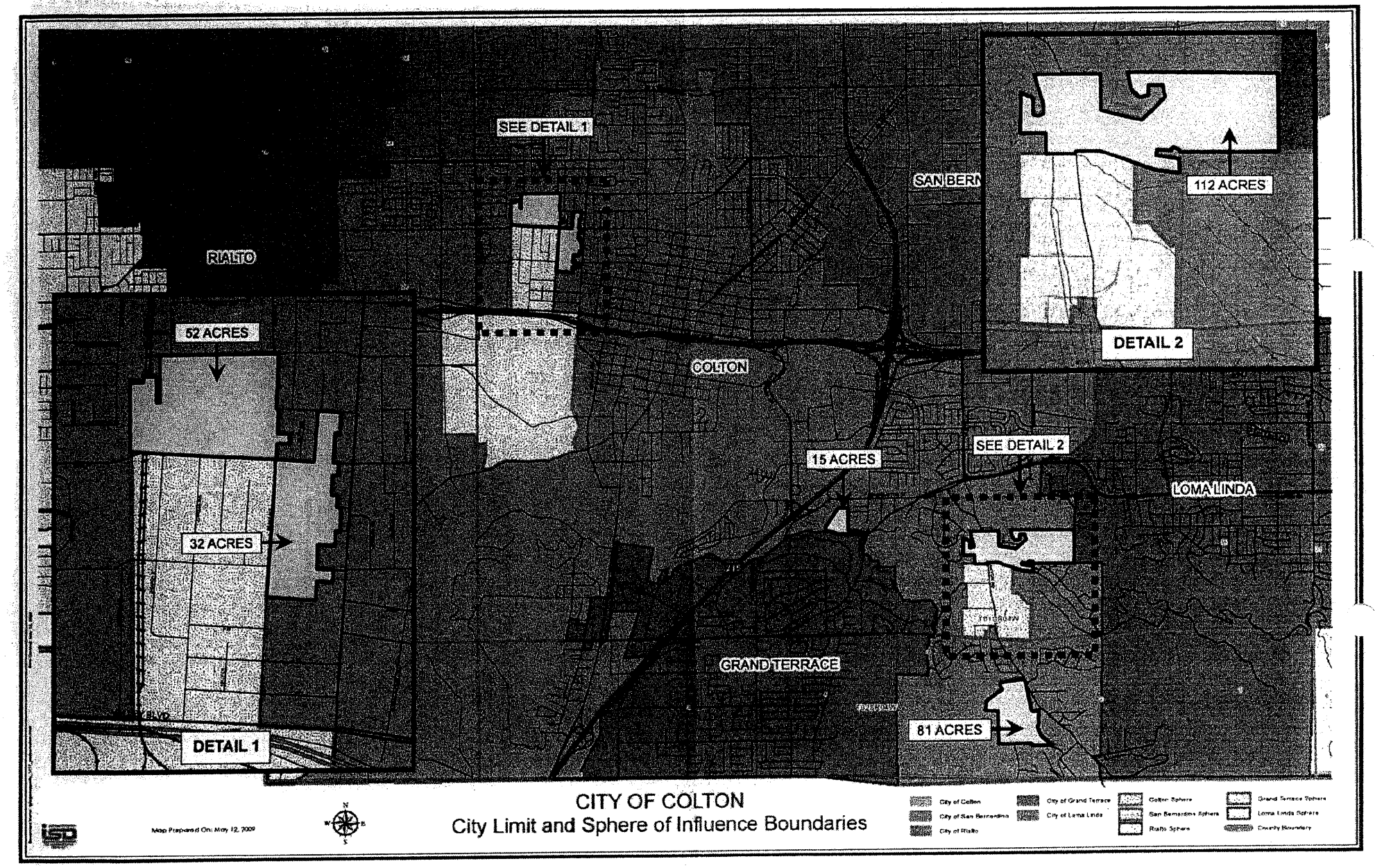
If you have any questions on this letter and its request for response regarding island annexations or need additional information on these matters, please do not hesitate to contact me at (909) 383-9900, by letter at the address above or by e-mail at kmcdonald@lafco.sbcounty.gov. I will be out of the office December 13 through 17, but available otherwise during the holidays. Should you have questions during my absence that cannot wait for my return, please contact Samuel Martinez, Senior LAFCO Analyst at the same telephone number and mailing address.

Sincerely,

KATHLEEN ROLLINGS-McDONALD
Executive Officer

cc: Chiefs of Staff for County Board of Supervisor Members
Dena Smith, Director, Land Use Services Department
John Richardson, Governmental Relations Analyst, County Executive Office
Susan Hulse, property owner, City of San Bernardino Island #5
Peg Battersby, attorney, Sheppard Mullin

Attachments


SEE DETAIL 1
RIALTO
52 ACRES
32 ACRES
DETAIL 1
COLTON
SAN BERN
112 ACRES
DETAIL 2
15 ACRES
SEE DETAIL 2
LOMA LINDA
GRAND TERRACE
81 ACRES
CITY OF COLTON
City Limit and Sphere of Influence Boundaries
Map Prepared On: May 12, 2009
City of Colton
City of San Bernardino
City of Rialto
City of Grand Terrace
City of Loma Linda
Colton Sphere
San Bernardino Sphere
Rialto Sphere
Grand Terrace Sphere
Loma Linda Sphere
County Boundary

STATE CAPITOL, ROOM 2059
SACRAMENTO, CA 95814
TEL (916) 651-4032
FAX (916) 445-0128

DISTRICT OFFICES
4959 PALO VERDE STREET
SUITE 100B
ONTCLAIR, CA 91763
TEL (909) 621-7831
FAX (909) 621-7483

357 W. SECOND STREET
SUITE J
SAN BERNARDINO, CA 92401
TEL (909) 381-3832
FAX (909) 381-0739

WWW.SEN.CA.GOV/NEGRETE
SENATOR.MCLEOD@SENATE.CA.GOV

California State Senate

SENATOR
GLORIA NEGRETE McLEOD
THIRTY-SECOND SENATE DISTRICT

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BUDGET AND FISCAL REVIEW
GOVERNMENTAL ORGANIZATION
HEALTH
VETERANS AFFAIRS

SUBCOMMITTEE
BUDGET SUBCOMMITTEE #4

September 3, 2010

The Honorable Jerry Brown
Attorney General, State of California
Office of the Attorney General
Opinion Unit
ATTN: Ms. Susan Lee, Supervising Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

Re: **Resubmittal of Opinion 10-505, pertaining to Local Agency Formation Commission annexation powers, which was cancelled due to pending litigation.**

Dear Attorney General Brown:

In March, I submitted an opinion request concerning Local Agency Formation Commission annexation powers (see attached letter dated March 19, 2010). In May, I was informed that this request was assigned to Deputy Attorney General Marc J. Nolan, and was given Opinion Number 10-505.

In early August, I received a letter from your office that this opinion was cancelled because of an action filed by Sue Hulse in Superior Court raising similar issues. The letter went on to state that if the issues were not resolved by the litigation, you would entertain another request on this issue.

I have since been informed that a stipulated settlement was reached between the parties of the legal action in question. I have attached a copy of this settlement. Although a settlement was reached, the underlying legal questions were not resolved. I am therefore re-submitting my original request, and asking that an opinion be issued on the questions raised in my March 19th letter.

Should you have any questions about this request, please feel free to contact Vincent D. Marchand in my office at (916) 651-4032. Thank you for your attention to this matter.

Respectfully,

Gloria Negrete McLeod

GLORIA NEGRETE McLEOD
32nd Senate District

DENNIS R. YATES
Mayor

TOM HAUGHEY
Mayor Pro Tem

GLENN DUNCAN
EARL C. ELROD
EUNICE M. ULLOA
Council Members

PATRICK J. GLOVER
City Manager

CITY of CHINO

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MAR 04 2011
LAFCO
San Bernardino County

March 2, 2011

Ms. Kathleen Rollings-McDonald
Local Agency Formation Commission
215 North "D" Street, Suite 204
San Bernardino, CA 92415

Subject: Island Annexation Policy Review

Dear Ms. Rollings-McDonald,

On March 1, 2010 the Chino City Council considered your December 10, 2010 correspondence requesting feedback about LAFCO island annexation policies, and approved the following response. Specific excerpts from your letter are noted in quotations and italicized text below, followed by the City's response.

- *"Please provide your City's or Town's response on the implementation of criteria of substantially surrounded, including, but not limited to, support for the current Criteria, preference for a different percentage, or other criteria for the mandatory determination by January 4, 2011."*

The City participated in the exercise to establish the current criteria. In doing so, we believe that the 52% substantially surrounded benchmark has served the City well in the management of its sphere of influence pertaining to annexations.

- *"Discussion of a potential policy determination on the question of the "entire island." This relates to the determinations required of the Commission under Government Code Section 56375.3. In several instances, the Commission has approved island areas which abut each other but which could be identified as substantially surrounded on their own as well as peninsulas of larger island areas which meet the Commission's substantially surrounded interpretation. The Commission will discuss this interpretation; discuss whether to amend or change its determination criteria; and discuss whether to add additional policy language to provide direction to Cities and its staff in the future."*

In most cases within the City of Chino's sphere of influence, if the Commission were to request that another adjacent territory, that is also considered substantially surrounded, be added to the proposed annexation territory, it most likely would result in the area being more than 150-acres in size. As you know, annexation proposals larger than 150-acres lose the exemption from the protest hearing process; thus the City sees no benefit for such a policy when considering such actions in its sphere of influence.

13220 Central Avenue, Chino, California 91710
Mailing Address: P.O. Box 667, Chino, California 91708-0667
(909) 627-7577 • (909) 591-6829 Fax
Web Site: www.cityofchino.org

- *"Discussion of adopting as a policy its existing practice of requiring a City to address its island areas when proposing annexation of development related territories……..."*

Any LAFCO policy that would require the City to address island territories with annexation/development proposal outside of the same island location where the development is taking place is of concern, largely due to the large size and scope of the island areas that would result from such a policy. Therefore, while the City is not completely opposed to such a policy, consideration of the size and scope of such an annexation request should be considered in any new policy.

Thank you for allowing the City of Chino to provide feedback on potential modifications to LAFCO's Island Annexation Policy. If you have questions about the information provided, please contact me at (909) 591-9806.

Sincerely,

Patrick J. Glover
City Manager

PJG:PG:NL:ro

City of Hesperia

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FEB 0 2011
LAFCO
San Bernardino County

February 4, 2011

Kathleen Rollings-McDonald, Executive Officer
Local Agency Formation Commission
215 North D Street, Ste. 204
San Bernardino, CA 92415-0490

Re: Review of Island Annexation Policy

Dear Mrs. Rollings-McDonald:

This is a follow-up to my December 21, 2010 letter, regarding LAFCO's request for input on LAFCO's Island Annexation Policy. In that letter, the City requested additional time beyond the January 4, 2011, deadline to respond to the two questions, due to the matter needing discussion by the City Council at a pending workshop (subsequently held on January 25, 2011). It is my understanding that LAFCO Board continued this matter to a future meeting, which allows the City's comments to be considered.

On both issues ("substantially surrounded" definition and what constitutes an "island", and the requirement to address island areas when proposing other annexations), the City recommends that there be flexibility, allowing them to be evaluated on a case-by-case basis. On the first issue, what constitutes "substantially surrounded," the lowest percentage (anything just greater than 50 percent) would afford cities and LAFCO with the ability to be flexible. Service needs, and ability to provide and/or extend service should also be evaluated when determining what an "entire island" is, provided it stays within the 150-acre limit.

On the second issue, the City dropped proposed annexations in 2006 that qualified as island annexations, in large part due to the opposition of the people residing in the island. The City Council's belief then (which was re-affirmed by the current Council) was that the City did not wish to annex people into the City who were not provided due process and allowed to decide the outcome (via the protest vote process). If a majority of residents don't support annexation, it is unlikely the City would use the current law to effect the annexation. Consequently, while we understand the role of LAFCO to establish proper and efficient service boundaries for agencies, the City again requests flexibility by reviewing these on a case-by-case basis, instead of enforcing the current blanket policy.

Mike Leonard, Mayor
Russ Blewett, Mayor Pro Tem
Paul Bosacki, Council Member
Bill Holland, Council Member
Thurston "Smitty" Smith, Council Member

Mike Podegracz, City Manager

9700 Seventh Avenue
Hesperia, CA 92345
760-947-1018
TD 760-947-1119

www.cityofhesperia.us

City of Hesperia

The City appreciates the opportunity to provide input for consideration. If you have any questions, please do not hesitate to contact me at (760) 947-1901.

Very truly yours,

Scott Priester

Scott Priester
Director of Development Services

cc: Mike Podegracz, City Manager
Dave Reno, Principal Planner

THE CITY OF
BARSTOW
CROSSROADS OF OPPORTUNITY

RECEIVED
FEB 0 ^ 2011
LAFCO
San Bernardino County

January 31, 2011

Kathleen Rollings-McDonald
Executive Director
Local Agency Formation Commission
215 North "D" Street, Suite 204
San Bernardino, CA 92415-0490

RE: Island Annexations Pursuant to Government Code Section 56375.3

Dear Ms. Rollings-McDonald;
We apologize for the late response to your inquiry. However, we have had numerous projects, including emergencies, that needed attention and we simply do not have the staffing levels necessary to address the emergencies AND other projects. Therefore, we write in response to your questions late, rather than not at all.

In regards to Policy 29, subsection 1, indicating an area of 52% or more, we believe that this is unreasonable. The reason being is that this opens up the necessity for other required annexations of a much larger area that may be substantially surrounded by a city or cities, but as a total far exceed the maximum 150 acres in area. This is evident in both the Barstow Heights and Lenwood/Grandview areas near Barstow. Essentially this has the potential of a "piece meal annexation" that would not encourage the orderly development or growth of a community. Further, it has the potential to cause disruption in emergency services, postal/delivery service, public works, etc. as a boundary has the potential to migrate less than ¼-mile at a time year after year, as well as to divide an established community. We do not disagree with the rational of squaring off the boundaries. However, we must disagree with the systematic incorporation of an area that is more than 150 acres (in our case more than 600) because it is surrounded on three sides by the City. The citizens in these areas have spoken before that they do not wish to be annexed into the City. This subsection of Policy 29 could result in a systematic, forced annexation every time the policies are reviewed or as a result of other annexations. In addition, this is in violation (as determined in Hulse v. LAFCO et al and the opinion of the California Attorney General) that an island cannot be split, that the entire island must be considered. This would rule out the Lenwood/Grandview area, and Barstow Heights (including the 125 acre area proposed in the exhibit for Barstow). We would recommend the following modification, italicized and in bold:

> "...the territory of an annexation proposal shall be deemed "substantially surrounded" if 52% of its boundary***, and provided that the total unincorporated island area does not exceed 150 acres***, as set forth in a boundary description accepted by the Executive Officer, is surrounded by..."

We also wonder if it should be clarified what triggers the island annexations, and whether one or more would or could be required at a time. There is a potential cost saving should it be to require cities to

220 East Mountain View Street, Suite A • Barstow, California 92311-2839
Ph: 760.256-3531 • Fax: 760.256-1750 • www.barstowca.org

clear up the island annexations under one step (i.e., for us you have identified four, the fifth which is currently in motion, annexations that are 125 acres, 69 acres, 55 acres and 21 acres. Financially, it is more feasible to process the multiple annexations under one application than it would be to process each individually ($19,400 vs. $67,700, not including any consultation fees).

Subsection 2 allows for a "double-standard." An island shall not be annexed if it is part of the County Redevelopment Area (RDA). What this conveys is the County receives more tax dollars for this area, so they don't want to give it up. If it were required to be incorporated into the City's RDA (if this could legally be done), this would convey a sense that it is not just about the tax dollar but providing the additional services to those projects within the RDA.

Subsection 3 is understandable. However, a forced annexation already is a drain on the ever dwindling budgets that all local governments are receiving. There is ample opportunity to have the public hearings (i.e., Planning Commission/City Council) as the General Plan must be amended to include the new territory and the Pre-Zone must be adopted (these go to both the Planning Commission as well as the City Council). The local governments go through great expense in the processing of annexations, including several mail-outs, brochures, etc. I guess the question is how many opportunities are necessary to allow the citizens to comment when they are notified of the public hearings?

We also want to convey what other Cities have already indicated. This is something that should go before the City Council. However, I have recently been told that the Council Agendas have about reached capacity until March. Therefore, we would like to defer final comments until the end of March when the Council can review and provide input on the questions at hand.

In closing, we would like to see island annexation requirements relaxed until we are all over the current economic times where we have little budget, lower revenues, fewer staff, and nearly as many projects. Few cities have staff dedicated to annexations. As indicated, we are not opposed to the squaring off of the boundaries, but there is little financial support to do so. There are no reductions in the application fees, etc. and the mere fact that the annexations are residentially zoned, so the property tax generated does not pay for the services provided, causes a long-term financial burden on the cities.

Sincerely,

Michael Massimini
City Planner

Cc: Ronald O. Rector, Community and Economic Development Director

CITY OF
VICTORVILLE

DEVELOPMENT DEPARTMENT
Planning • Building • Code Enforcement
14343 Civic Drive
P.O. Box 5001
Victorville, CA 92395-5001

(760) 955-5135
Fax (760) 269-0070

RECEIVED
JAN 0 2011
LAFCO
San Bernardino County

January 4, 2011

LAFCO
Kathleen Rollings-McDonald
215 North "D" Street Suite 204
San Bernardino, CA 92415-0490

RE: Island Annexation Policy

The City of Victorville is responding at a staff level to your December 10, 2010 letter.

Regarding the first item of "substantially surrounded", the current policy of island determination is fine, however, maybe a case-by-case basis is also appropriate. If an area (island) is surrounded by a city, is better served by that city, and LAFCO recommends that the area should be annexed into the city, than the boundary percentage threshold should not matter.

Regarding adopting a policy requiring cities to address island areas, while we agree that islands are inefficient for County services, we find that if it is the desire of the County and LAFCO to have islands put into the city, the County should pay the fees and process the application. The City of Victorville has an annexation policy which supports annexation requests from property owners who desire to become a part of the city and who are in areas that will provide a benefit to the city. Forcing the city to incorporate an island may violate both of these.

Lastly, regarding the discussion of the "entire island", we completely disagree with the idea of portioning an island into smaller islands in an attempt to make it more feasible or avoid the 150 acre protest requirement. If an island is to be annexed, the County and LAFCO need to step in, let everyone know, and process the island in its entirety.

Thank you for the opportunity to comment.

Sincerely,

Chris Borchert
Assistant Director of Planning

RECEIVED
JAN 04 2011
LAFCO
San Bernardino County

OFFICE OF THE CITY ATTORNEY
CITY OF SAN BERNARDINO

JAMES F. PENMAN
CITY ATTORNEY

January 4, 2011

Kathleen Rollings-McDonald
Executive Officer
Local Agency Formation Commission (LAFCO)
215 North "D" Street, Suite 204
San Bernardino, CA 92415-0490

Re: January 19, 2011 LAFCO Public Hearing
Agenda Item No. 11, Islands Annexation Policies and Commission Directives on Implementation of Island Policies

Dear Ms. Rollings-McDonald:

Your letter dated December 10, 2010, requested the City of San Bernardino's input on LAFCO's Island Annexation Policies, which will be discussed at the above-referenced Public Hearing.

Any LAFCO Policy regarding Island Annexations must exempt the City of San Bernardino in accordance with the August 13, 2010 Stipulated Judgment and Court Order in Susan Hulse v. LAFCO, et al, San Bernardino Superior Court Case No. CIVDS 1002077 (copy attached), which states, at Page 8, Section 5, the following:

> Unless and until the California Legislature substantially revises Section 56375.3 and/or the LAFCO Act to allow annexations of territories that comprise less than an entire unincorporated island, LAFCO agrees it shall not condition any annexations requested by the City on the City's additional annexation of areas that comprise less than the entire unincorporated island of which they are a part. In addition, LAFCO further agrees that it will not withhold approval of annexations requested by the City because island annexations of less than an entire unincorporated island cannot be so conditioned.

As you know, in Hulse v. LAFCO, et al, the plaintiff was successful in reversing six Island Annexations which LAFCO forced the City of San Bernardino to accept during processing of the

300 NORTH "D" STREET • SAN BERNARDINO, CA 92418-0001 • (909) 384-5355 • FAX (909) 384-5238

City's application for the Arrowhead Springs area annexation; and the plaintiff obtained $100,000 from LAFCO and the City as reimbursement for the plaintiff's attorneys fees and costs of litigation.

During the pendency of the Hulse v. LAFCO. et al lawsuit, as well as in July 2006, when the Mayor and Council considered Resolution No. 2006-247, the San Bernardino City Attorney's Office opined that LAFCO's Island Annexation policies violate Government Code Section 56375.3(b)(1) and (2). Section 56375.3(b)(1) requires that the territory (area) to be annexed "constitutes the entire island," and Section 56375.3(b)(2) requires that "The territory constitutes an entire unincorporated island located within the limits of a city . . . ." Government Code Section 56375.3 does not permit LAFCO to split up county unincorporated islands which exceed 150 acres, into smaller segments of 150 acres or less for annexation and thereby avoid landowner/voter protest proceedings. This opinion is supported by a 1980 California Attorney General Opinion, 63 Ops.Cal.Atty.Gen 343, and Schaeffer v. County of Santa Clara (1984) 155 Cal.App.3d 901, and Fig Garden Park No. 2 v. Local Agency Formation Commission of Fresno County (1984) 162 Cal.App.3d 336. Although this Attorney General's Opinion and these two appellate court decisions involve the predecessor statute to Government Code Section 56375.3, the operative language in the statute remains substantially the same.

Clark Alsop, of Best, Best & Krieger, LAFCO's General Counsel, has previously informed our office that one-half of the LAFCO attorneys in California agree with our legal opinion regarding Government Code Section 56375.3.

At the request of California State Senator Gloria Negrete McLeod (letters attached), the California Attorney General's Office is currently working on Opinion Request No. 10-902, which concerns these same issues regarding Government Code Section 56375.3.

We respectfully request that LAFCO suspend the implementation and the amendment of any LAFCO Policy regarding Island Annexations under Government Code Section 56375.3 until after the California Attorney General's Opinion is issued.

Very truly yours,

James F. Penman

JAMES F. PENMAN
City Attorney

cc: Mayor and Councilmembers, City Clerk, City Manager

STATE CAPITOL, ROOM 2059
SACRAMENTO, CA 95814
TEL (916) 651-4032
FAX (916) 445-0128

DISTRICT OFFICES
4959 PALO VERDE STREET
SUITE 100B
ONTCLAIR, CA 91763
TEL (909) 621-7831
FAX (909) 621-7483

357 W. SECOND STREET
SUITE 1
SAN BERNARDINO, CA 92401
TEL (909) 381-3832
FAX (909) 381-0739

WWW.SEN.CA.GOV/NEGRETE
SENATOR.MCLEOD@SENATE.CA.GOV

California State Senate

SENATOR
GLORIA NEGRETE McLEOD
THIRTY-SECOND SENATE DISTRICT

CHAIR
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MEMBER
BUDGET AND FISCAL REVIEW
GOVERNMENTAL ORGANIZATION
HEALTH
VETERANS AFFAIRS

SUBCOMMITTEE
BUDGET SUBCOMMITTEE #4

September 3, 2010

The Honorable Jerry Brown
Attorney General, State of California
Office of the Attorney General
Opinion Unit
ATTN: Ms. Susan Lee, Supervising Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

Re: Resubmittal of Opinion 10-505, pertaining to Local Agency Formation Commission annexation powers, which was cancelled due to pending litigation.

Dear Attorney General Brown:

In March, I submitted an opinion request concerning Local Agency Formation Commission annexation powers (see attached letter dated March 19, 2010). In May, I was informed that this request was assigned to Deputy Attorney General Marc J. Nolan, and was given Opinion Number 10-505.

In early August, I received a letter from your office that this opinion was cancelled because of an action filed by Sue Hulse in Superior Court raising similar issues. The letter went on to state that if the issues were not resolved by the litigation, you would entertain another request on this issue.

I have since been informed that a stipulated settlement was reached between the parties of the legal action in question. I have attached a copy of this settlement. Although a settlement was reached, the underlying legal questions were not resolved. I am therefore re-submitting my original request, and asking that an opinion be issued on the questions raised in my March 19th letter.

Should you have any questions about this request, please feel free to contact Vincent D. Marchand in my office at (916) 651-4032. Thank you for your attention to this matter.

Respectfully,

Gloria Negrete McLeod

GLORIA NEGRETE McLEOD
32nd Senate District

Nelson 10-0505

STATE CAPITOL, ROOM 2059
SACRAMENTO, CA 95814
TEL (916) 651-4032
FAX (916) 445-0126

DISTRICT OFFICES
4959 PALO VERDE STREET
SUITE 100B
MONTCLAIR, CA 91763
TEL (909) 621-7931
FAX (909) 621-7483

357 W. SECOND STREET
SUITE 1
SAN BERNARDINO, CA 92401
TEL (909) 381-3632
FAX (909) 381-0799

WWW.SEN.CA.GOV/NEGRETE
SENATOR.MCLEOD@SENATE.CA.GOV

California State Senate

SENATOR
GLORIA NEGRETE McLEOD
THIRTY-SECOND SENATE DISTRICT

CHAIR
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SELECT COMMITTEE ON ALAMEDA CORRIDOR
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BUDGET AND FISCAL REVIEW
GOVERNMENTAL ORGANIZATION
HEALTH
VETERANS AFFAIRS

SUBCOMMITTEE
BUDGET SUBCOMMITTEE #4

March 19, 2010

The Honorable Jerry Brown
Attorney General, State of California
Office of the Attorney General
Opinion Unit
ATTN: Ms. Susan Lee, Supervising Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

Re: Local Agency Formation Commission annexation powers pertaining to substantially surrounded islands of unincorporated territory.

Dear Attorney General Brown:

Pursuant to Government Code section 12519, I respectfully request an opinion from this Office concerning the following question:

QUESTION PRESENTED

Does Opinion No. 80-223, 63 Ops. Cal. Atty. Gen 343, issued on April 25, 1980, still apply to the application of the successor statute to Government Code Section 35150, now codified as Government Code 56375.3?

Specifically,

A. Does Section 56375.3, pertaining to the annexation of substantially surrounded islands of unincorporated territory require annexation of the "entire unincorporated island" as set forth in subdividion (b) (1) and (2) of Section 56375.3?

B. May a Local Agency Formation Commission split up county unincorporated islands which exceed 150 acres into smaller segments of 150 acres or less for annexation and thereby avoid landowner/voter protest proceedings pursuant to Section 56375.3(a)?

DISCUSSION

In my district, the San Bernardino County Local Agency Formation Commission (LAFCO) recently approved the City of San Bernardino's annexation of several unincorporated "island"

parcels. The LAFCO required the City of San Bernardino to annex these island parcels as a condition for approving the city's request to annex a much larger and more desirable parcel of land.

In order to accomplish the annexation of the island parcels, the LAFCO divided larger island parcels in excess of 150 acres into several smaller ones, each smaller than 150 acres. By creating several islands of less than 150 acres out of larger island parcels, the LAFCO was able to utilize the authority granted in Government Code Section 56375.3, which allows the LAFCO to waive certain protest proceedings.

These actions raise the question of whether dividing larger islands into smaller ones subverts the spirit of Government Code 56375.3, which among other conditions requires that the area "constitutes the entire island."

I have included as an attachment the San Bernardino County LAFCO's staff report on the island annexations in question, as well as Opinion No. 80-223, 63 Ops. Cal. Atty. Gen 343, issued on April 25, 1980. Should you have any questions about this request, please feel free to contact Vincent D. Marchand in my office at (916) 651-4032. Thank you for your attention to this matter.

Respectfully,

Gloria Negrete McLeod

GLORIA NEGRETE McLEOD
32nd Senate District

COPY

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
SEAN P. O'CONNOR, Cal. Bar No. 155940
MARGUERITE P. BATTERSBY, Cal. Bar No. 115422
DANIEL P. BANE, Cal. Bar No. 251144
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626-1993
Telephone: 714-513-5100
Facsimile: 714-513-5130

Attorneys for Plaintiff, Susan Hulse

FILED-Central District
SUPERIOR COURT
SAN BERNARDINO COUNTY

AUG 13 2010

By Stephanie Chandler
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

SUSAN HULSE, an Individual

Plaintiff,

v.

ALL PERSONS INTERESTED IN THE MATTER OF LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY ("LAFCO") 3067 A-F (RESOLUTION NOS. 3071 (LAFCO 3067A); 3072 (LAFCO 3067B); 3073 (LAFCO 3067C); 3074 (LAFCO 3067D); 3075 (LAFCO 3067E); and 3076 (LAFCO 3067F) APPROVED ON NOVEMBER 18, 2009, WITH RECONSIDERATION DENIED ON FEBRUARY 17, 2010; SAN BERNARDINO COUNTY LOCAL AGENCY FORMATION COMMISSION; CITY OF SAN BERNARDINO; and DOES 1-100, inclusive,

Defendants.

Case No.: CIVDS 1002077
(CEQA)

Assigned for all purposes to:
Hon. Judge Donald R. Alvarez
Dept. S36

STIPULATION FOR ENTRY OF JUDGMENT; [PROPOSED] ORDER AND JUDGMENT THEREON

Complaint Filed: February 25, 2010

It is hereby stipulated, by and between Plaintiff SUSAN HULSE ("Plaintiff") and Defendants LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY ("LAFCO") and CITY OF SAN BERNARDINO ("City"), as follows:

RECITALS

WHEREAS, on or about November 18, 2009, LAFCO considered and approved San Bernardino Annexation No. 361/LAFCO 3067A-F (LAFCO Resolution Nos. 3071-3076) (hereinafter, the "Island Annexations");

WHEREAS, on or about November 19, 2009, LAFCO filed Notices of Exemption regarding the Island Annexations with the Clerk of the Board of Supervisors of San Bernardino County;

WHEREAS, on or about December 17, 2009, Plaintiff Susan Hulse ("Plaintiff") filed one or more requests for reconsideration with LAFCO, pursuant to Government Code Section 56895, seeking reconsideration of the Island Annexations;

WHEREAS, on or about February 17, 2010, LAFCO denied Plaintiff's requests for reconsideration regarding the Island Annexations;

WHEREAS, on or about February 22, 2010, LAFCO executed and recorded Certificates of Completion for the Island Annexations;

WHEREAS, upon the recordation of the Certificates of Completion, the Island Annexations were deemed to be completed and in existence;

WHEREAS, on February 25, 2010, Plaintiff filed and served her Complaint to Invalidate Unlawful Island Annexations Approved Pursuant to Government Code Section 56375.3; for Violations of the California Environmental Quality Act ("CEQA"); and for Declaratory and Injunctive Relief, which complaint was brought pursuant to Code of Civil Procedure Sections 800 *et seq.* as a "reverse validation" action (hereinafter, the "Action");

WHEREAS, to date, no interested parties have answered or otherwise intervened in the Action;

WHEREAS, on or about April 6, 2010, Plaintiff filed and served her First Amended Complaint to Invalidate Unlawful Island Annexations Approved Pursuant to Government Code Section 56375.3, for Violations of CEQA, and for Declaratory and Injunctive Relief (hereinafter, "Complaint");

WHEREAS, Plaintiff's Complaint alleges that the Island Annexations were unlawfully approved, pursuant to Government Code Section 56375.3 and CEQA; and Defendant LAFCO disputes these allegations; and

WHEREAS, the parties enter into this Stipulated Judgment for the purpose of avoiding any additional costs of litigation, and without any admission of wrongdoing or violation of law;

AGREEMENT

Based on the Recitals set forth above, which are incorporated herein, and in consideration therefore, the parties agree that a Stipulated Judgment in the form and manner set forth below (see Exhibit "A" to the attached Order and Judgment) shall be submitted to and may be made and entered by the Court with respect to the rights and obligations of the parties to this Stipulated Judgment.

DATED: August 5, 2010

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

By _____
Kathleen Rollings-McDonald
Executive Officer

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By: _____
Mark Austin, Esq.
Special Counsel to the LAFCO, Defendant

WHEREAS, Plaintiff's Complaint alleges that the Island Annexations were unlawfully approved, pursuant to Government Code Section 56375.3 and CEQA; and Defendant LAFCO disputes these allegations; and

WHEREAS, the parties enter into this Stipulated Judgment for the purpose of avoiding any additional costs of litigation, and without any admission of wrongdoing or violation of law;

AGREEMENT

Based on the Recitals set forth above, which are incorporated herein, and in consideration therefore, the parties agree that a Stipulated Judgment in the form and manner set forth below (see Exhibit "A" to the attached Order and Judgment) shall be submitted to and may be made and entered by the Court with respect to the rights and obligations of the parties to this Stipulated Judgment.

DATED: August 5, 2010

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

By _____
Kathleen Rollings-McDonald
Executive Officer

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By: _____
Mark Austin, Esq.
Special Counsel to the LAFCO, Defendant

DATED: August 12, 2010

CITY OF SAN BERNARDINO

By _____
Patrick J. Morris, Mayor

APPROVED AS TO FORM:

JAMES F. PENMAN, CITY ATTORNEY

By: _____
Henry Empeño, Jr., Senior Deputy
City Attorney for the City of
San Bernardino, Defendant

DATED: August 12, 2010

SUSAN HULSE

By _____
SUSAN HULSE, Plaintiff

APPROVED AS TO FORM:

SHEPPARD MULLIN RICHTER & HAMPTON, LLP

By: _____
Marguerite P. Battersby, Esq.
Daniel P. Bane, Esq.
Attorneys for Susan Hulse, Plaintiff

[PROPOSED] ORDER AND JUDGMENT

Based on the foregoing Recitals, and the attached Stipulated Judgment (Exhibit "A"), and with good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment in this matter shall be entered in accordance with the Stipulated Judgment, attached hereto as Exhibit "A" and incorporated herein in full.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction over this matter until such time as the Island Annexations (LAFCO 3067A-F) have been detached from the City of San Bernardino, and payment in full has been made to Plaintiff, as set forth in the Stipulated Judgment.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: AUG 13 2010, ~~2010~~

Donald R. Alvarez, Judge

EXHIBIT "A"

STIPULATED JUDGMENT

1. Promptly upon entry of this Stipulated Judgment by the Court, the San Bernardino Local Agency Formation Commission ("LAFCO") shall take the following actions to effect the rescission of LAFCO Resolution Nos. 3071 (LAFCO 3067A), 3072 (LAFCO 3067B), 3073 (LAFCO 3067C), 3074 (LAFCO 3067D), 3075 (LAFCO 3067E), and 3076 (LAFCO 3067F) (collectively, the "Resolutions") approving the annexation of six (6) unincorporated San Bernardino County islands pursuant to Government Code § 56375.3 ("Section 56375.3") (collectively, the "Island Annexations"):

A. The Certificates of Completion for the Island Annexations, issued by the LAFCO Executive Officer on February 22, 2010, and recorded that same day as document numbers 2010-0067724, 2010-0067725, 2010-0067726, 2010-0067727, 2010-0067728, and 2010-0067729, shall be effectively rescinded by the LAFCO Executive Officer's recordation, at LAFCO's expense, of six (6) new certificates of completion confirming the restoration of the *status quo ante* the Island Annexations. LAFCO shall exercise its best efforts to record the new certificates of completion not later than four (4) calendar days following Court approval of this Stipulated Judgment.

B. The new certificates of completion shall reflect the following actions regarding the Island Annexations:

Area	Agency And Action Taken
LAFCO 3067A	City of San Bernardino –*Detached From* San Bernardino County Fire Protection District (SBCFPD) – *Annexed to* SBCFPD Valley Service Zone – *Annexed to* SBCFPD Service Zone PM-2 – *Annexed to* County Service Area 70 – *Annexed to* County Service Area SL-1 – *Annexed to*

LAFCO 3067B	City of San Bernardino –*Detached From* San Bernardino County Fire Protection District (SBCFPD) – *Annexed to* SBCFPD Valley Service Zone – *Annexed to* SBCFPD Service Zone PM-2 – *Annexed to* County Service Area 70 – *Annexed to* County Service Area SL-1 – *Annexed to*
LAFCO 3067C	City of San Bernardino –*Detached From* San Bernardino County Fire Protection District (SBCFPD) – *Annexed to* SBCFPD Valley Service Zone – *Annexed to* SBCFPD Service Zone PM-2 – *Annexed to* County Service Area 70 – *Annexed to* County Service Area SL-1 – *Annexed to*
LAFCO 3067D	City of San Bernardino –*Detached From* San Bernardino County Fire Protection District (SBCFPD) – *Annexed to* SBCFPD Valley Service Zone – *Annexed to* SBCFPD Service Zone PM-2 – *Annexed to* County Service Area 70 – *Annexed to* County Service Area SL-1 – *Annexed to*
LAFCO 3067E	City of San Bernardino –*Detached From* San Bernardino County Fire Protection District (SBCFPD) – *Annexed to* SBCFPD Valley Service Zone – *Annexed to* SBCFPD Service Zone PM-2 – *Annexed to* County Service Area 70 – *Annexed to* County Service Area SL-1 – *Annexed to*
LAFCO 3067F	City of San Bernardino –*Detached From* San Bernardino County Fire Protection District (SBCFPD) – *Annexed to* SBCFPD Valley Service Zone – *Annexed to*

	SBCFPD Service Zone PM-2 – *Annexed to* County Service Area 70 – *Annexed to* County Service Area SL-1 – *Annexed to*

2. Upon the entry of this Stipulated Judgment by the Court and LAFCO's completion of the actions set forth hereinabove, LAFCO shall promptly notify all affected public agencies, and all property owners/residents in the affected areas through correspondence sent by regular mail using a mailing list provided by the City, that the Island Annexations have been rescinded. Additionally, LAFCO shall immediately notify the appropriate taxing authorities that any property tax and subvention revenue designations affecting the San Bernardino County Fire Protection District ("SBCFPD"), SBCFPD Valley Service Zone, SBCFPD Service Zone PM-2, County Service Area 70, and/or County Service Area SL-1, and any other affected agencies, made as a result of the Island Annexations, must be returned to the *status quo ante* the Island Annexations.

3. The City of San Bernardino ("City") shall repeal City Resolution Nos. 2006-247 and 2006-348 at its next regularly scheduled meeting of the City Council following entry of this Stipulated Judgment by the Court. All parties agree that the Arrowhead Springs Annexation was not (and shall not be) conditioned on the annexation of the six (6) areas identified as LAFCO 3067A-F, or the five (5) additional areas referenced in City Resolution No. 2006-348.

4. The City shall not initiate any further island annexations pursuant to Section 56375.3 in which the area sought to be annexed comprises less than an entire unincorporated island, unless and until the California Legislature substantially revises Section 56375.3 and/or the Cortese-Knox-Hertzberg Act (Government Code Sections 56000 *et seq.*) (hereinafter, the "LAFCO Act") specifically to allow such annexations.

5. Unless and until the California Legislature substantially revises Section 56375.3 and/or the LAFCO Act to allow annexations of territories that comprise less than an entire unincorporated island, LAFCO agrees it shall not condition any annexations requested by the City on the City's additional annexation of areas that comprise less than the entire unincorporated island of which they are a part. In addition, LAFCO further agrees that it will not withhold

approval of annexations requested by the City because island annexations of less than an entire unincorporated island cannot be so conditioned.

6. Any "interested persons," as that term is used in Code of Civil Procedure §§ 860 *et seq.*, failing to timely respond to the Complaint, are in default, and this Stipulated Judgment may be entered against them pursuant to Code of Civil Procedure Section 585, subdivision (c).

7. LAFCO and the City shall, within ten (10) calendar days following receipt of notice that the Court has approved and signed this Stipulated Judgment, reimburse Plaintiff's attorneys' fees and costs of litigation in this matter as follows:

A. The City shall be liable to Plaintiff for, and shall reimburse Plaintiff for, $66,667.00, and no more; and

B. LAFCO shall be liable to Plaintiff for, and shall reimburse Plaintiff for, $33,333.00, and no more.

C. The foregoing amounts represent two separate liabilities for which the City and LAFCO are not jointly or severally liable. Under no circumstances shall LAFCO be required to pay the amount owed by the City, or the City be required to pay the amount owed by LAFCO.

8. Plaintiff's recovery of attorneys' fees and litigation costs in connection with this Action are limited to the amounts set forth in Paragraph 7 above. Plaintiff shall not be entitled to recover any further attorneys' fees and/or costs from either the City or LAFCO that relate in any manner to the Action, the Resolutions, or the Island Annexations (including but not limited to fees and costs incurred before the Action was initiated), except for the amounts set forth in Paragraph 7 above. Any party who is required to bring a post-judgment enforcement action on, or defend any challenge to, this Stipulated Judgment may recover their fees and costs if they are the prevailing party, as determined by the Court.

9. The City and LAFCO shall each pay their own respective attorneys' fees and costs of litigation in this matter, including any fees and costs incurred in complying with this Stipulated Judgment. Neither the City nor LAFCO shall seek reimbursement nor recovery from the other for their attorneys' fees and/or costs of litigation in this matter.

10. The Court shall retain jurisdiction over this matter until such time as the Island Annexations (LAFCO 3067A-F) have been detached from the City of San Bernardino and payment in full has been made to Plaintiff, as set forth in this Stipulated Judgment.

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 300 No. "D" Street, Rm 668, San Bernardino, California.

On **August** 13, **2010**, I served the foregoing document described as: **STIPULATION FOR ENTRY OF JUDGMENT; [PROPOSED] ORDER AND JUDGMENT THEREON** on the persons set forth below as follows:

Marguerite P. Battersby, Esq.,
Sheppard, Mullin, Richter & Hampton
650 Town Center Drive, 4th Floor,
Costa Mesa, CA 92626
714.513.5100 office; 714.513.5130 fax
(Attorneys for Plaintiff, HULSE)

Mark J. Austin, Esq.
RUTAN & TUCKER
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626-1931
(714) 641-5100; (714) 546-9035
(Attorneys for Defendant, SAN BERNARDINO COUNTY LOCAL AGENCY FORMATION COMMISSION)

✓ *(BY UNITED STATES MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the above listed addresses. By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

✓ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

___ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **August** 13, **2010**, at San Bernardino, California.

Angela Rodriguez
Legal Secretary
City Attorney's Office
300 N. D Street
San Bernardino, CA 92418

(signature)

*Per Judicial Council of California POS-040 [Rev. January 1, 2010]

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MONTCLAIR

RECEIVED
DEC 27 2010
LAFCO
San Bernardino County

December 22, 2010

Kathleen Rollings-McDonald, Executive Officer
Local Agency Formation Commission
215 N. D Street, Suite 204
San Bernardino, CA 92415-0490

Dear Kathy:

Re: Island Annexation Policies

Thank you for your letter dated December 10, 2010, regarding LAFCO's request for input regarding its island annexation policies (Policy #29) and related issues under Government Code Section 56375.3. The City of Montclair supports continuing the practice of defining an island as "substantially surrounded" if 52% is surrounded by (a) the affected City, (b) the affected City and adjacent Cities, or (c) the affected City and a service impediment boundary as defined by LAFCO. Further, the City supports the Commission continuing to consider abutting island annexations that could be identified as "substantially surrounded" on their own, since Montclair's "East Island" meets this criterion.

If you have any questions, please feel free to contact me at (909) 625-9431 or *slustro@cityofmontclair.org.*

Sincerely,

Steve Lustro, AICP
Community Development Director

c: Edward C. Starr, City Manager

CITY OF MONTCLAIR
5111 Benito Street, P.O. Box 2308, Montclair, CA 91763 (909) 626-8571 FAX (909) 621-1584

Mayor Paul M. Eaton • Mayor Pro Tem Carolyn Raft • Council Members: Leonard Paulitz, J. John Dutrey, Bill Ruh • City Manager Edward C. Starr