

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF SEPTEMBER 28, 2011**

Counsel Clark Alsop states that it does, but the question is whether the Commission wishes to make it explicit. For example, a City Manager can sign for a City, but the signature is based upon the City's approval process. He says that it is within the Commission's authority to require the signature of the Mayor or Chairman.

Commissioner Bagley asks if the Commission has the authority to require that indemnification language be incorporated in the agency's resolution. Commissioner Coleman agrees that a "whereas" could be included in a resolution signed by a Mayor or Chairman rather than burdening that individual with signing all the application forms. Mr. Alsop states that, regardless of what is included in the Policy and Procedure Manual, it does not eliminate the possibility that a contract fight could ensue between LAFCO and an applicant who chooses not to honor the contract. Chairman Mitzelfelt agrees that the Commission should require that the statement be included in the resolution.

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item. Sue Hulse states that staff is asking that the Commission repeal the existing Policy and Procedure Manual. She asks that approval of this item be deferred until after the island annexation policy is discussed and approved. Ms. McDonald explains that the proposed Policy and Procedure Manual includes the existing language of the island annexation policy, transitioning it from the former document to the new document. Chairman Mitzelfelt states it is reasonable to defer action on this item until action is taken on the annexation policy.

Chairman Mitzelfelt calls for further questions from the Commission. There are none.

**CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR REVIEW OF ISLAND ANNEXATION POLICIES; AND (2) REVIEW AND ADOPTION OF COMMISSION POLICIES ON ISLAND ANNEXATIONS UNDER GOVERNMENT CODE SECTION 56375.3 – CONTINUED TO EARLIEST PRACTICAL HEARING**

LAFCO conducts a public hearing to consider CEQA Statutory Exemption for Review of Island Annexation Policies and Review and Adoption of Commission Policies on Island Annexations under Government Code Section 56375.3.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She states that, following the Commission's reconsideration of the San Bernardino islands and the 2010 workshop, the Commission directed staff to review the island annexation policies including a discussion of the question of "entire island" and the existing policy to tie island annexations to development-related proposals. She points out on the overhead display the current policy language for island annexations which identifies what the Commission defines as "substantially surrounded," establishing 52 percent of a boundary as set forth in a description accepted by the Executive Officer, and provides some additional clarification as to what the Commission would accept. It provides that no territory within a County redevelopment area is included in an island unless the County agrees. It also provides a process that requires a City that is initiating a proposal to conduct an

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outreach program prior to the placement of the item on the Commission's agenda for consideration. She notes that this policy was modified 2005 and again amended in 2006. Ms. McDonald notes that the island annexation procedures and policies have been in place since 1998 and the 2006 amendment changed the requirement for island annexations increasing the size to 150 acres and removing language that limited the area which could be addressed as an island.

She clarifies that the island annexation procedures do not go away in 2014, as many have perceived. As of January 1, 2014, a unique protest process is instituted for island annexations. That process will require a 50 percent majority rule; if more than 50 percent of the registered voters protest, the proceedings would terminate. She says this does eliminate the ability of landowners to require an election, but gives direct voice to the registered voters to ultimately decide.

Ms. McDonald reports that last December LAFCO staff forwarded a letter to all cities and towns with areas that met the criteria for island annexations. As of May, responses have been received from the County Executive Officer, and the cities of Colton, Chino, Hesperia, Barstow, Montclair, San Bernardino and Victorville. Staff met with representatives of Redlands, Loma Linda and Rialto regarding their islands to discuss these issues, but no written response was provided by any of those cities. No response was received from either the City of Adelanto or the Town of Apple Valley. She says the general consensus was that there was no opposition to the definition of "substantially surrounded." The general consensus regarding "entire island" was that any decision should be made on a case-by-case basis and should be made after the Attorney General renders an opinion. She points out that Senator Gloria Negrete McLeod submitted a request to the Attorney General last year asking for an opinion on the issue of "entire island." The Attorney General's office indicated it would not respond based on existing litigation; however, when the San Bernardino island issue was resolved, the Attorney General has taken up the request again. A copy of the opinions of Legal Counsel Clark Alsop, on behalf of San Bernardino LAFCO and CALAFCO Special Legal Counsel Michael Colantuono were provided to the Commission. She notes that, aside from Barstow, Victorville and Chino, which indicated no support, there is no consensus on the practice of tying island annexations to development-related proposals. Staff recommends that the Commission direct staff, once an Attorney General opinion is issued, to return at the next available Commission hearing for review of any potential changes to the Commission policy.

Ms. McDonald states that the approval of SB 89 removed the motor vehicle in lieu fees that were provided to cities for inhabited annexations approved after 2004. She says the City of Fontana lost \$1.3 million in revenue and received \$289,000 in COPS grants in return. There were two attempts to address what many believe to be an unintended consequence of SB 89 -- ABX1-36 failed and its intent was to return Orange County's funding, and ABX1-41 did not receive sufficient votes to make a determination. It is now unclear the status of this bill. Currently SB89 stands and the revenue stream relied upon to sustain these island annexations along with the supplemental revenues no longer exists. She says that with this funding situation many islands will not be sustainable because there are not sufficient revenues to

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cover required the municipal level services. Without that funding, staff does not believe that the program of tying island annexations to development-related applications can be universally applied. Staff recommends that staff be required to come to the Commission with a discussion item on any large-scale development-related application to review the question of island annexations. Ms. McDonald states that the staff's criteria for this analysis has used the water supply assessment language to establish what would define a large-scale development.

Ms. McDonald explains that there is existing litigation related to the Sunset Beach island annexation to the City of Huntington Beach. Of question is whether the City of Huntington Beach can extend its utility and other taxes to the island annexation. Huntington Beach intends to extend those taxes. It has been this Commission's position that an island annexation, which removes the ability to protest according to a standing Attorney General's opinion, does not allow imposing those taxes on island annexations. A preliminary ruling was released on that annexation and it has, in fact, been completed. It is expected that the decision will be appealed. Any appellate decision, which is precedent setting, is at least one year away.

Ms. McDonald summarizes the staff recommendations.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Cox comments that she remembers the initial discussions of this Commission on island annexations, when there were several healthy dialogs about the definition of "substantially surrounded." She recalls the concern that cities would cherry-pick choice areas and exclude disadvantaged communities. She notes that it was with very altruistic intent that the policy was adopted.

Chairman Mitzelfelt states that the State has changed the playing field in a way that places LAFCO in a position that requires the Commission to consider requiring island annexations for new development. He believes that in this economy that can be a hindrance to development, in this county in particular. He suggests a policy that the Commission not require island annexations because the state has taken away the vehicle in-lieu fee revenue. He believes that if the legislature wants orderly development to occur it needs to address what the State has done to this revenue source. He suggests that this would send a signal that there are consequences to removing this source of revenue and the Commission recognizes the economic condition this County is facing.

Commissioner Coleman states she agrees with staff's position on island annexation because there are islands in the high desert where the residents are adamantly opposed to being annexed into the City. She fully supports not requiring island annexations along with development related annexations.

Commissioner Bagley states that the idea of sustainability is critical and that should be pointed out. Removing the vehicle licensing fees as a funding mechanism makes these annexations unsustainable. In addition, Commissioner Bagley refers to the statement ". . . not limited to a freeway, flood control channel or forest service land."

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He asks that the language be changed to read "lands administered by the federal government" rather than "forest service land." He says that San Bernardino County includes military bases, Bureau of Land Management land, and other types of land administered by the federal government and this language would provide clarification.

Ms. McDonald notes that the environmental consultant has indicated that if the island policies are changed as written, a continuance is recommended to ascertain that the environmental assessment is accurate. She states her belief that an exemption would still apply.

Chairman Mitzelfelt states that the Commission could make a finding that there is no applicable further review necessary under CEQA, but it is recommended that the matter be continued for further clarification. Legal Counsel Clark Alsop comments that he recommends continuance also.

Chairman Mitzelfelt opens the public hearing and asks if there are members of the public who wish to speak on this item.

Ms. Sue Hulse states that she brought the lawsuit regarding the island annexations. She says she appreciates Commissioner Coleman's comment regarding residents of the high desert who do not wish to be annexed into the city. She states that the City of San Bernardino could not take care of the residents in the island areas, but the Commission was forcing the territory into the City. She believes the Commission should wait until the Attorney General opinion is released. That should occur within the next two months. She says it appears that this matter will be delayed anyway and requests that it be delayed until the Attorney General opinion is released. She notes that the two main issues being addressed by the Attorney General are "substantially surrounded," and whether or not a larger island can be broken into segments of less than 150 acres to avoid protest.

Chairman Mitzelfelt comments that changing the policy could send a message to the Attorney General and the legislature that this Commission wants an opinion. Perhaps if other LAFCOs take similar action, an opinion might be forthcoming sooner.

Chairman Mitzelfelt summarizes the staff recommendation and the suggested change by Commissioner Bagley regarding federal lands. The recommendation is to affirm existing policy and to add language relative to size of the development, if 500 or more dwelling units or 500,000 square feet of commercial/industrial, the Commission would automatically consider whether to require an island annexation. Chairman Mitzelfelt states his alternative suggestion is to remove the staff's recommended new language altogether stating that without adequate funding the Commission would not require an island annexation be tied to a development related proposal. His recommendation is to add the language and be prepared to alter it if the Attorney General opinion makes that appropriate and to certify the environmental review as exempt.

Commissioner Curatalo comments that he supports the staff recommendation with the proposed changes. He says that when bodies of government impose obstacles for

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local government a strong message should be sent. Commissioner Curatalo moves approval of staff recommendation with the changes proposed by Chairman Mitzelfelt and by Commissioner Bagley. Ms. McDonald clarifies that the motion is approval of staff's recommendation with the exception that in Item 4 staff's language would be removed and a statement would be made that the Commission will not require applicants to address islands based on development-related application. Chairman Mitzelfelt says that would be contrary to the recommendation. He says his suggestion is to change the policy, which would send a stronger message. Ms. McDonald clarifies that the Commission wishes to make a statement that island annexations are no longer sustainable because of actions by the state to remove a level of funding and the staff's recommended language in Item 4 is to be removed. A statement is to be made that, on the basis that the state has removed discretionary funding for motor vehicle in-lieu fees that were previously apportioned for inhabited annexations, the Commission will not assert its authority to require island annexations. She notes that if a city were to request an island annexation on its own it can do so, it would be required to educate landowners and residents in the area, and the Commission would be required to approve the application. Commissioner Curatalo withdraws his motion. Chairman Mitzelfelt asks if the Commission adopts that policy, can it later waive that policy if a situation warrants such waiver. Legal Counsel Alsop states it can do so because it is a policy and not law, although he believes it would be better to change the policy in the future.

Commissioner Bagley moves continuance of Items 11 and 12 to the earliest practical hearing, second by Commissioner Cox. Chairman Mitzelfelt calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Bagley, Coleman, Cox, Curatalo, Mitzelfelt, Rutherford, Williams. Noes: None. Abstain: None. Absent: McCallon (Commissioner Williams voting in his stead).

(Commissioner Derry leaves at 10:10 a.m.)

**INFORMATION ITEMS:**

**LEGISLATIVE REPORT**

Ms. McDonald states that the Commission has been provided the CALAFCO Legislative Report. She says the governor has signed AB1430, which revises the definitions for LAFCO. Ms. McDonald has also provided the Commission a listing of actions taken during the year from the Senate Local Government and Finance Committee. She has also provided the Commission with copies of veto requests related to SB244, the Disadvantaged Communities Bill. She says the Commission's request to the Governor to veto that bill on the question of sustainability has been submitted. She notes that SB89 has changed the landscape for many of the inhabited disadvantaged communities. She says San Bernardino County has submitted a request for veto based upon land use changes and General Plan changes in SB244. The California Coalition of LAFCOs has sent a request for veto, as well. She adds that the general consensus is that ABX141 will only pass in order to address the \$49 million lost by the County of Orange. She notes that two of the new cities in Riverside