

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

**CONSIDERATION OF (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3162,  
AND (2) LAFCO 3162 – COUNTY SERVICE AREA 70 AFFIRMATION OF SERVICE  
UNDER AUTHORIZED ROADS FUNCTION TO INCLUDE SNOW REMOVAL -  
APPROVE STAFF RECOMMENDATION TO CONTINUE TO FEBRUARY 15, 2012  
HEARING**

LAFCO conducts a public hearing to consider Mountain Region Review of Road and Snow Removal Services. Notice of the original hearing on December 8, 2010 was advertised as required by law through publication in *The Sun*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.

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 Commissioner Rutherford has requested this continuance on the basis that CSA 68 has a special tax election that must be concluded. That election will be completed in January 2012.

Commissioner Curatalo moves approval of the staff recommendation, second by Commissioner Rutherford. 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).

**CONSIDERATION OF CEQA STATUTORY EXEMPTION FOR APPROVAL OF  
AMENDMENTS TO POLICY AND PROCEDURE MANUAL; AND REVIEW AND  
ADOPTION OF AMENDMENTS TO LAFCO POLICY AND PROCEDURE MANUAL  
– CONTINUED TO OCTOBER 19, 2011 HEARING**

LAFCO conducts a public hearing to consider CEQA Statutory Exemption for Approval of Amendments to Policy and Procedure Manual and Review and Adoption of Amendments to LAFCO Policy and Procedure Manual.

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 in August 2010 at the Commission's workshop it was recommended that the Policy and Procedure Manual be reviewed in its entirety. She says that what is before the Commission today is a complete revamp and revision of the entire manual. Staff reviewed manuals from around the state and primarily used the San Diego and Orange Policy and Procedure Manuals as examples. Ms. McDonald states that at the August 2010 workshop the Commission also discussed a Mission Statement for the Commission, with suggestions for content. Staff has presented a proposed statement for consideration today. The mission statement is a broad statement that includes direction to identify some of the laws that govern LAFCO, and identifies the guiding principles for the Commission's decisions and

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operations, including effective and efficient services and sustainability of the governments.

She notes that the Policy and Procedure Manual is divided into seven sections. All Commissioner-related policies, rules of order, terms of office, and the selection process are identified in the first section. The second section covers the financial and accounting policies utilized by the Commission. She states that all of the accounting and financial policies have been moved into a single section and the expense reimbursement policy has been removed from the Human Resources Policies and Guidelines adopted in June and placed it in the accounting and financial section, as it applies to both staff and Commissioners. The Commission's practices related to its annual audit, as well as the newly-adopted reserve policy with two committed reserve accounts for compensated absences and general reserve for litigation and unanticipated costs are included in this section. She notes that there are no other changes to the human resources policies and guidelines and benefit plan, as those were adopted in June 2011.

Ms. McDonald states that the application and project processing policies have been consolidated and reorganized into a single section, including the Commission's procedures and practices in evaluating proposals. She notes minor changes, including that the Commission has adopted the Office of Planning and Research (OPR) Incorporation Guidelines, which have been included as an appendix, as the Commission's guidelines. The out-of-agency services contract section has been modified to exclude the recitation of the Code section itself while providing an introductory section to explain the purpose of the statute. The service review policies have been revised to clarify current practice and to identify that the Commission has adopted the OPR Guidelines for service reviews. Sphere of influence policies have been updated to include changes that require establishment of spheres of influence for special districts within one year of the district's formation, definition of the Commission's practice of a zero sphere as a policy, and language changes to reflect current statutory requirements.

With regard to environmental review, Ms. McDonald states that the Commission has had environmental review guidelines and policies since the early '80s. Those guidelines and policies have been incorporated into the Policy and Procedure Manual with updates to reflect current changes in LAFCO law. She notes that the Commission's practice to not move forward with projects where environmental litigation is in process has been added as a policy. This has been a practice for 15 years, but is now included as a direct policy. She states that the 2012-13 budget will include a request for funding to update the environmental review guidelines. A request for proposal process or possibly a single-source contract with the Commission's environmental consultant will be presented for consideration in April.

She says that Special District representation rules, regulations and policies were transferred in their entirety into the Policy and Procedure Manual, with a change that activation or divestiture of a function or service for special districts is now considered to be a change of organization. This changes the policies and procedures

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dramatically because it now requires a property tax transfer process, environmental review, public hearing and protest process for any change in function or service of an existing special district.

Forms have been updated to include renaming the justification for proposal as "application and preliminary environmental description" form. Language has been added to all application forms regarding indemnification. A signed form will be required of all entities with the understanding that the Commission is indemnified for any legal action that may arise out of the approval process. Language has been added identifying the understanding that extension of existing taxes, fees and assessments is allowed through a change of organization in which a protest process is carried out. A clear update to the supplemental forms has been added, indicating the fiscal impact analysis must include a five-year projection of revenues and expenditures. She notes that the number of forms for service reviews has been reduced to one.

Ms. McDonald explains that this item was continued from the last hearing because of the need for an environmental assessment of the impacts for the adoption of the revised, amended and reorganized Policy and Procedure Manual. The Commission's environmental consultant has conducted that analysis and recommends a statutory exemption for that project.

She concludes by stating that the mission statement presented provides for the general direction and philosophy of the Commission, that the revamped and reorganized Policy and Procedure Manual provides for a clear review of the policy directions of the Commission that are understandable and can be easily located by the general public, the agencies the Commission serves, and the Commissioners themselves. She notes that staff believes that an annual review process should be implemented in order to keep the document current at all times.

Ms. McDonald summarizes the staff recommendations.

Chairman Mitzelfelt calls for questions from the Commission. Commissioner Colven asks if the new indemnification statement is stronger than the previous one. Ms. McDonald states that it is no stronger than before; however, it is made very clear that the applicant is signing onto that process when the application is submitted. Commissioner Bagley comments that the indemnification issue was major in the past and questions whether the new language is sufficient to dispel the previous issue. Ms. McDonald reads the indemnification statement included on every application and supplement form. She says that this is a condition of approval and the additional language clarifies that from the very beginning of the process. Commissioner Cox asks if there would be any merit in having the resolution from the Council or Board acknowledging that. Ms. McDonald states that the only way the application can be initiated is by resolution of the governing body and the forms are usually part of the review by the governing body. Ms. McDonald says that the Mayor or Chairman of the governing body could be required to sign the application form rather than a staff member. Chairman Mitzelfelt asks if general law already establishes that. Legal

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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:**

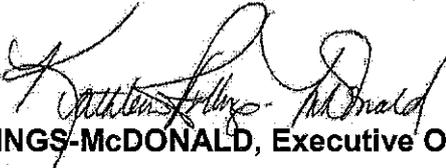
**LEGISLATIVE REPORT**

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

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COUNTY OF SAN BERNARDINO**

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**DATE :** JANUARY 9, 2012   
**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT: AGENDA ITEM #11 – Status Report on Policy and Procedure Manual Update and Island Annexation Policy Update**

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**RECOMMENDATION:**

Staff recommends that the Commission:

1. Direct staff to set the matters for full consideration on the March 21, 2012 Commission agenda with the required advertisement and notifications; and,
2. Note receipt of the Status Report and file.

**BACKGROUND:**

At the September 28, 2011 hearing the Commission discussed the update and reorganization of its Policy and Procedure Manual and reviewed its existing Island Annexation policies (excerpt of the minutes from the hearing included as Attachment #1). At that time, the Commission continued the matter indefinitely to: (1) receive the Attorney General's opinion on island annexations, and (2) to have staff amend its policies and forms to clarify indemnification issues.

Staff conveyed to the Attorney General's office the Commission's interest in receiving the opinion requested by Senator Gloria Negrete McLeod (copy of September 28, 2011 hearing staff report included as Attachment #2). In late October LAFCO staff was informed that the opinion had been submitted for final review, but to date no further information has been received. Ms. Sue Hulse identified at the September Hearing that it was her understanding that the opinion would be issued shortly. Staff has inferred this to mean by the beginning of the New Year. It is the staff's position that it is now appropriate to move forward with this consideration.

Since the September hearing, the Governor has signed SB 244 related to addressing disadvantaged unincorporated communities and the services they receive or don't receive. Passage of SB 244 will require that the Commission adopt new policies related to "disadvantaged unincorporated communities" and the needs required for additional considerations in service reviews (Government Code §56430) and sphere of influence updates (Government Code §56425). In addition, at the direction of the Commission, staff has worked on new language for policies to assure that the governing body of an entity submitting an application and/or affected landowners and voters understand the indemnification requirements of the Commission as well as refining the forms we use for application submission. Since the Commission will be initiating its next required round of service reviews/sphere of influence updates in the near future, it is important to have identified the necessary policies and procedures applicable.

Based upon these positions, LAFCO staff believes that the time is right for considering these items. Therefore, staff is recommending that the Commission set this matter for full consideration on the March 21, 2012 agenda. This will require new advertisement and notifications for the consideration.

KRM

Attachments:

- 1 - Excerpt of Minutes related to Item #12 Related to Island Annexation Policies
- 2 -- September 28, 2011 Staff Report

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COUNTY FOR SAN BERNARDINO**

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**DATE: SEPTEMBER 19, 2011**

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

**TO: LOCAL AGENCY FORMATION COMMISSION**



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**SUBJECT: AGENDA ITEM #11 – REVIEW AND CONSIDERATION OF AMENDMENT  
TO THE SAN BERNARDINO LAFCO POLICY AND PROCEDURE  
MANUAL**

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**RECOMMENDATION:**

Staff recommends that the Commission take the following actions:

1. Adopt the Mission Statement as presented by staff, or as modified at this hearing;
2. Repeal the existing San Bernardino LAFCO Policy and Procedure Manual;
3. Certify that the proposed revision and reorganization of the Policy and Procedure Manual is statutorily exempt from the provisions of the California Environmental Quality Act and instruct the Executive Officer to file a Notice of Exemption within five (5) days of this action;
4. Provide staff with any changes, corrections or amendments to the Policy and Procedure Manual;
5. Adopt the Policy and Procedure Manual as revised, reorganized and consolidated, as may be modified at the September hearing; and,
6. Direct staff to prepare the resolution adopting the Policy and Procedure Manual and place the item on the Consent Calendar for October 19, 2011 hearing.
7. Establish an annual review of the Policy and Procedure Manual to be undertaken in August or September of every year so that the document remains current and relevant.

**BACKGROUND:**

At the Commission's August 2010 workshop, an update of the existing Policy and Procedure Manual (hereafter shown as "Manual") was discussed as well as preparation of a "Mission Statement" for the Commission. Thereafter, staff began its review of potential amendments to the Manual and determined that no review of its structure or general presentation had been made since its adoption in the late 1970s. In addressing this issue, staff came to the conclusion that a complete review, revamp, reorganization, and revision of the Manual was necessary to make it more useable for the Commission, staff, the entities we serve and the general public. The document, Attachment #1 to this report, has taken the Commission's Rules of Order and General Policies, along with the supplemental policies and procedures adopted, common practices of the Commissions, and included them in a single document. The Manual has been revised in its sections to provide for a clearer identification of the general policies of the Commission. The questions regarding the Commission's Island Annexation Policy are addressed under Item #12 on the Agenda and should be reviewed in conjunction with this report.

The information which follows identifies the new structure of the Manual and outlines the general revisions and reorganizations which are recommended by staff:

**MISSION STATEMENT AND COMMISSION OPERATIONS:**

The first section of the Manual has been revised to include the new Mission Statement requested by the Commission at the August 2010 Workshop. As identified at the July hearing, this section includes the Countywide Vision Statement adopted by the County and the 24 Cities/Towns in the County to provide for a unified vision for a sustainable system of infrastructure, development, and community. LAFCO staff has tiered off this statement to provide for the Commission's Mission statement, which is proposed as follows:

On September 28, 2011, the Commission adopted the following mission statement to reflect the unique circumstances and conditions which exist within San Bernardino County and to promote the Countywide Vision:

"The broad mission of the Local Agency Formation Commission for San Bernardino County is to implement the legislative direction and policies embodied in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 in a manner that provides for an orderly and efficient growth pattern that reconciles the varied needs of San Bernardino County, promotes the Countywide Vision Statement, is in keeping with the provisions of the California Environmental Quality Act, and addresses the parameters of the principle acts for Cities and Special Districts.

One of the fundamental principles of the Local Agency Formation Commission is to ensure the establishment of an appropriate, sustainable,

and logical municipal level government structure for the distribution of efficient and effective public services. The Local Agency Formation Commission for San Bernardino County will encourage and promote communication among agencies (public and private), property owners and residents of the County to achieve these goals. The Commission's policies shall be carried out in an efficient and courteous manner."

The first order of business in addressing the Manual Update will be to review the statement, provide corrections or amendment to the statement, and finally to adopt the Mission Statement for San Bernardino LAFCO.

The balance of the section provides information on the Commission's authorities, the organization of the Commission – the statutory selection requirements and terms of office – ending with the inclusion of the former Rules of Order. Staff has amended the Rules to combine those addressing the same issue, such as financial disclosure, and reordered them to improve the sequence.

#### **ACCOUNTING AND FINANCIAL POLICIES:**

This is a new section to the Manual to address the specific policies that have been adopted and to include practices which have been implemented and should be memorialized as a direct policy of the Commission. The introduction to this section outlines the existing agreements between the Commission and the County to address Commission operations. The policies have been extracted from the various locations in the prior Manual and have been placed in a revised order, staff has extracted the Expense Reimbursement policy from the Human Resources Policy Manual placing it in this section (Policy #4), added the practices for the Annual Audit as a policy declaration (Policy #6) and included the new Reserve Policy adopted at the June 2011 hearing (Policy #7). It is staff's position that this will provide for an easier review and explanation of the matters affecting the financial and accounting procedures for the Commission as an independent entity.

#### **HUMAN RESOURCES POLICIES AND PROCEDURES AND BENEFIT PLAN:**

At the June 15, 2011 Hearing, the Commission adopted a Revised Human Resources Policy and an updated Benefit Plan. The only change to these documents through their inclusion within the overall Manual is to extract the expense reimbursement policy and transfer it to the Accounting and Financial section as noted above.

#### **PROJECT/APPLICATION PROCESSING POLICIES:**

Staff has taken all the policies related to processing of applications as well as service reviews and spheres of influence and included them in a single section. The internal structure of the Section divides into application processing, Out-of-Agency Service Contracts, Service Reviews, and Spheres of Influence. Staff has not made substantial changes to this section; however, there have been minor changes to:

- The Incorporation Policy now addresses the adoption of the OPR Incorporation Guidelines and makes them an appendix to the Manual for ease of review. A copy of the Incorporation Guidelines is included as Appendix 1 to the Manual.
- The Out-of-Agency Service contract section has been revised to exclude the recitation of the existing statute section and to clarify the introductory background section.
- The Service Review policies includes a revision to the Approach section to clarify the existing process for these types of service reviews and the identification of the OPR Municipal Service Review Guidelines which were adopted by the Commission in May 2003 as its guidelines for use in its service review. For reference, a copy of these Guidelines is included as Appendix 2 to the Manual.
- The Sphere of Influence Policies have been updated to:
  - reflect changes in the law requiring establishment of spheres of influence for special districts within one year of formation;
  - include a definition of a "zero sphere of influence" as has been the practice of the Commission for many years; and
  - provide for language changes to reflect the determinations now statutorily required.

The questions regarding the Commission's Island Annexation Policy and proposed additions are addressed under Item #12 on the Agenda and should be reviewed in conjunction with this report.

### **ENVIRONMENTAL REVIEW GUIDELINES**

Staff has included the separate policy document adopted as the Commission's environmental review guidelines in 1995 in its entirety within the Manual. Updates within this section have been included to reflect the language of Cortese-Knox-Hertzberg Local Government Reorganization Act and the Commission's adopted practice of not moving forward with a proposal until environmental litigation is resolved has been added as a policy at the end of the document. No other changes have been included.

However, the inclusion of this document within the overall Manual has illuminated again the need for a complete overhaul of the Guidelines. Such a review and update was proposed to be undertaken in 2004, but due to time and staffing constraints was not completed. As a part of the FY 2012-13 Budget review, staff will be requesting that the Commission move forward with this update either through a Request for Proposal (RFP)

process or single-source contract with the Commission's environmental consultant depending upon the estimated cost for the project.

**SPECIAL DISTRICTS REPRESENTATION POLICIES:**

Again, LAFCO staff has placed the entire section of the prior Policy Manual into the amended Manual document. In reviewing the provisions, revisions have been included which address changes in the State law which affect the processing of changes of organization and the activation or divestiture of functions or services for special districts. The major change has been to identify the process for activation or divestiture of functions or services which is now considered to be a change of organization, requiring a Certificate of Filing, a Property Tax Transfer process under Revenue and Taxation Code Section 99, a protest process after Commission approval and the issuance of either a Certificate of Completion or Certificate of Termination following a protest proceeding.

**FORMS:**

The Commission is required to adopt its forms for use, at a minimum, to address the submission of protest. For San Bernardino LAFCO, the Commission has reviewed and adopted the full range of forms used in application processing. In this update process the following changes to forms have been proposed:

1. Notice of Intent to Circulate Petition and Landowner Consent forms have been corrected to make them official forms and remove confusion as to their use as examples for submission. This change will require applicants in the future to use these forms only for processing.
2. LAFCO staff has renamed the former "Justification for Proposal" form to "Application and Preliminary Environmental Description" form. The former name was confusing to many applicants. In addition, following the questions which arose with the processing of the San Bernardino Island application, the form now includes a clear identification of indemnification and the clear understanding regarding the extension of existing taxes, fees, and assessments upon annexation. In preparing these changes, staff reviewed other LAFCO forms throughout the State for the appropriate language and has developed a hybrid between San Diego LAFCO and Orange LAFCO language.
3. Supplement forms for all changes have been updated to outline the requirement for submission of a Fiscal Impact Analysis which addresses a minimum five-year projection of revenues and expenditures for the change.
4. The Application for Service Extension has been updated to include the indemnification requirement.

5. Under Service Reviews, the number of forms has been reduced to a single form for use in the mandatory service review process. Prior forms have been deemed to be checklists, listing of guidelines and/or data sheets for staff support not really a form subject to Commission review and adoption.

The balance of the forms within this section are unchanged. Staff is recommending that the Commission adopt these changes.

### **ENVIRONMENTAL CONSIDERATION:**

At the July 2011 hearing, staff identified that the review of the efforts to revamp, revise, and reorganize the Manual with the Commission's Environmental Consultant, Tom Dodson, and Legal Counsel resulted in the recommendation that an environmental assessment of the project be undertaken. This prompted the need to continue the consideration to the September hearing.

Mr. Dodson has reviewed the actions proposed to revise, reorganize, and update the Policy and Procedure Manual and has indicated that it is his recommendation that the matter is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the updated Manual has no potential to cause an adverse effect on the environment; and therefore, the project is exempt from the requirements of CEQA as outlined in the State CEQA Guidelines, Section 15061(b)(3) and the Commission's Environmental Guidelines. It is recommended that the Commission adopt the Statutory Exemption for this project and direct the Executive Officer to file a Notice of Exemption with the appropriate agency within five days.

### **CONCLUSION:**

First, staff recommends that the Commission adopt its Mission Statement, providing for amendments, additions, or changes to the statement provided. Second, staff recommends that the Commission provide its additions, amendments or corrections to the revamped and reorganized Manual and take the actions necessary to adopt the new document. Finally, staff recommends that the Commission establish an annual review of its Policy and Procedure Manual, to take place at the August or September hearing of each year, to make sure that the document remain current in the future.

KRM/

### **Attachments:**

1. Revised and Amended Policy and Procedure Manual
2. Letter Dated September 6, 2011 from Tom Dodson and Associates Recommending a Statutory Exemption

**LOCAL AGENCY FORMATION COMMISSION  
COUNTY FOR SAN BERNARDINO**

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**DATE :** SEPTEMBER 19, 2011

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

**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT: AGENDA ITEM #12 -- REVIEW AND POSSIBLE ACTION ON ISLAND  
ANNEXATION POLICIES AND IMPLEMENTATION DIRECTIVES**

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**BACKGROUND:**

Following the reconsideration hearing on LAFCO 3067 et al, the six San Bernardino Islands, in February 2010 and again at the August 2010 Workshop, the Commission directed staff to bring back a discussion of its Island Annexation Policy and its directions and practices for implementation. The Policy is currently identified as follows:

**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 placement of the item on a Commission agenda for consideration. Such efforts shall include, but not be limited to, providing information on the grandfathering of existing legal County uses into the City, costs to the resident/taxpayer associated with annexation, and land use determinations. Documentation of these efforts shall be a part of the application submitted for consideration by the Commission.

In addition it has been the practice of the Commission to require Cities/Towns when annexing development related proposals – such as the Arrowhead Springs area to the City of San Bernardino, the Agricultural Preserve area within the Ontario sphere to the City of Ontario, the Agricultural Preserve Area within the Chino sphere to the City of Chino – to require the municipality to annex its islands which meet the criteria of Government Code Section 56375.3. That statutory language is included as Attachment #1 to this report. For those proposals initiated by City Resolution between January 1, 2000 and January 1, 2014 this section removes the protest ability of landowners and registered voters within the area. However, it is important to note, from January 1, 2014 on this section provides for a unique protest proceeding where the standard protest process for notice and publication are provided but a simple majority will determine the fate of the annexation/reorganization. The protest will be considered under the statute which reads as follows:

Government Code Section 57080.

...

- (b) The commission, not more than 30 days after conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn and shall do either of the following:
  - (1) Terminate proceedings if written protests have been filed and not withdrawn by 50 percent or more of the registered voters within the affected territory.
  - (2) Order the territory annexed without an election.

So the policy related to the processing of Island Annexations will not expire in January 2014 as many entities have envisioned, but will move to a new process and procedure.

This policy discussion was originally scheduled for hearing on January 19, 2011. At the January 2011 hearing, staff requested continuance of the policy consideration to the July 2011 hearing. The continuance was to allow for further review with affected cities and the County and to give them additional time to respond to staff's inquiries regarding the Island Policies posed in a December 10, 2010 letter, copy included as Attachment #2. The questions were posed to the County Administrative Office and to the Cities and Towns which had territory which met the criteria established by State law and Commission policy for Islands. The Cities and Towns were: Cities of Adelanto, Barstow, Chino, Colton,

Hesperia, Loma Linda, Montclair, Redlands, Rialto, San Bernardino, Victorville and the Town of Apple Valley. The questions presented are summarized as follows:

1. Question of whether an additional policy declaration on the issue of "entire island" should be included in the Island Annexation Policy; and,
2. Question of whether or not to include the Commission's existing practice of requiring Cities/Towns to address their islands of unincorporated territory meeting the criteria under Government Code Section 56375.3 whenever proposing annexation of large-scale development projects.

As of May 2011, responses to the questions posed were received from the County and the Cities of Colton, Chino, Hesperia, Barstow, Montclair, San Bernardino and Victorville; copies are included as Attachment #3 to this report. Discussions have taken place with the staffs of the Cities of Redlands, Rialto and Loma Linda related to the questions posed but no official response has been provided. The balance of the Cities and Town have not provided a response to the questions presented.

In general the responses received, except for the City of San Bernardino, have identified support for or no opposition to the current definition of substantially surrounded adopted by the Commission and for the question of entire island, that the matter should be addressed on a case-by-case basis. Secondly, there is no consensus on the issue of making the current practice of connecting island annexations to the larger development related annexation application a policy of the Commission. The Cities of Chino and Victorville have indicated opposition to the imposition of such policy on the basis of the adoption of local policies that the City will only annex lands and voters who support the proposal and whose lands would produce a benefit to the City through annexation. This relates to lands which hold significant potential for sales tax dollars and/or increases in property valuations.

The City of San Bernardino has expressed its position that it must be "exempted" from the policy as the stipulated agreement settling the San Bernardino Islands case indicated that that Commission would not impose a condition on the annexation of its island areas. However, staff does not believe that an "exemption" is necessary given the terms of the stipulated agreement on the Commission and on the City of San Bernardino indicating it will not initiate an annexation of an island area until such time as the law regarding protest is changed.

#### **ISSUES AFFECTING CONSIDERATION:**

Since the Commission directed staff to evaluate the existing Island Annexation policy three significant issues either continue to be processed or have occurred: (1) a request for Attorney General Opinion on the question of entire island; (2) the State's passage of SB 89 removing the discretionary Motor Vehicle In-Lieu fees for inhabited annexations; and (3) pending litigation in the case of the Sunset Beach Island Annexation to the City of

Huntington Beach regarding the ability of the City to extend existing special taxes, i.e., utility tax, to an island annexation area. The following summarizes these issues:

1. In March 2010 Senator Gloria Negrete-McLeod requested that the Attorney General weigh in on the island annexation matter by asking two specific questions:
  - 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 subdivision (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)?"

The Attorney General's initial response was that it would not take up the matter due to pending litigation. That litigation, Hulse v. LAFCO, was resolved by stipulated agreement and the matter, in September 2010, was again requested to be addressed by the Attorney General. To date, no information has been received regarding the status of the opinion request. However, San Bernardino LAFCO Legal Counsel and Special Counsel for the CALAFCO have submitted opinions to the Attorney General (copies included as Attachment #4 to this report). In summary they have indicated that the entire island must be annexed but the definition of what constitutes the entire island should be based upon a determination of the affected LAFCO on the question of substantially surrounded. Until such time as the Attorney General's Office releases an opinion, we believe that the language of the existing policy is adequate for addressing these issues. Therefore, staff is recommending that the Commission direct its staff upon release of the Attorney General Opinion related to Island Annexations that an item be placed on the next available Commission agenda for which notice can be provided to review that opinion and its impact on the Island Policy.

2. On July 1, 2011 SB 89 became effective removing the discretionary Motor Vehicle In-Lieu Fee (MVLF) funding for inhabited annexations and incorporations which occurred after 2004. This reduction was the State Budget mechanism to guarantee the continuation of the COPS Grants due to a dwindling revenue stream for the State. This legislation was drafted in the dark of night without a serious vetting to address potential implementation issues, passed by the Legislature on Tuesday June 28, and signed by the Governor on June 30, effective July 1. Attachment #5 to this report is the information prepared by Mr. Michael Coleman, Financial Policy Analyst for the California League of Cities, outlining the effects of this legislation. The effects in our County are most dramatic for the City of Fontana which processed LAFCO 3048 addressing the full range of its islands, removing a total of \$1,397,806 MVLF funding with a return of \$298,859 COPS grant, a loss of more than

\$1,000,000. During the original discussion of this issue it was reported that in Riverside County it is anticipated that there will be four disincorporations – Wildomar, Menifee, Eastvale and Jurupa Valley -- in the near future since as much as 50% of these new cities funding has been removed. It was identified in several local newspapers that this was an unintended consequence of the legislation but staff finds this explanation hard to believe.

In addition, two pieces of legislation were drafted late in the Legislative Session, ABX1-36 and ABX1-41, both attempting to restore funding for the MVLF for the incorporations and inhabited annexations after 2004 and to address the Orange County loss of approximately \$49,000,000. Both items did not move out of Committee and at this time are considered to be either dead (ABX1-36) or a possible two-year bill (ABX1-41). At this time staff understands that any legislative change would be anticipated to address only the shortfall facing Orange County over the financing of its bankruptcy debt.

In looking at the impact of this legislation on the Commission's island annexation program, the question of sustainability for these island annexations, in many cases, hinged upon the receipt of what was \$57 per capita in supplemental MVLF. Without that funding, the provision of increased municipal level services, such law enforcement and traffic control, will not be sustainable. It is staff's position that the exclusion of this revenue stream will mean that the policy of requiring a City to address its island areas as a part of a larger development related proposal will need to be addressed on a case-by-case basis, not a blanket policy declaration. This is in contrast to the current approach of LAFCO staff reviewing this option with city personnel. It is staff's position that these matters will need to be a Commission consideration and discussion in a public hearing setting with Commission action to require the imposition of a condition for annexation of the island areas. In addition any such annexation imposition will need to receive a collaborative County and City response so that future items, such as transportation funding issues, do not derail the process.

Therefore, based upon the actions of the State Legislature in adopting its budget package for Fiscal Year 2011-12, staff is recommending that the Commission suspend the blanket application of its directive to require a city to address its unincorporated islands as a part of a development application. Rather staff is recommending that the Commission establish a policy that any development-related annexation or reorganization, one that includes 500 or more dwelling units and/or more than 500,000 square feet of commercial/industrial development, be brought to the Commission for a discussion of that City's unincorporated island areas which meet the criteria outlined in Government Code Section 56375.3. As a part of the recommendation, the Commission should direct staff to include such language in the new Policy and Procedure Manual.

3. The final issue on island annexations is related to current litigation in process in Orange County related to the imposition by the City of Huntington Beach of its special taxes through the island annexation processed for the Sunset Beach area. No judgment has been issued on this litigation, but staff understands that the preliminary determination of the Judge in the case is that the City can extend its existing taxes to the territory in the same manner and amount currently paid by existing Huntington Beach residents.

This determination is significant to San Bernardino LAFCO as this is contrary to the position taken by staff and conditions included in prior island annexation approvals. Specifically, based upon existing Attorney General Opinions, San Bernardino LAFCO has determined that existing taxes and assessments could not be extended in an Island annexation since no ability to protest the annexation was afforded residents and landowners within the area. If the Judge in the Orange County case issues a published opinion to the contrary it will significantly change the fiscal impact of island annexations for the future. It is anticipated that a determination is at least one year away as any appeal would have to be resolved before the precedent would apply.

#### **ENVIRONMENTAL CONSIDERATION:**

At the July 2011 hearing, staff identified that the review of the Island Policy with the Commission's Environmental Consultant, Tom Dodson, and Legal Counsel resulted in the recommendation that an environmental assessment of the project be undertaken. This prompted the need to continue the consideration to the September hearing.

Mr. Dodson has reviewed the actions proposed to affirm the existing Island Annexation policy and provide an additional element to review the question of a City's unincorporated islands upon the receipt of a development related application under specific parameters and has indicated that it is his recommendation that the matter is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the updated policy has no potential to cause an adverse effect on the environment; and therefore, the project is exempt from the requirements of CEQA as outlined in the State CEQA Guidelines, Section 15061(b)(3) and the Commission's Environmental Guidelines. It is recommended that the Commission adopt the Statutory Exemption for this project and direct the Executive Officer to file a Notice of Exemption with the appropriate agency within five days.

#### **CONCLUSION:**

After reviewing the events of the last year or so regarding island annexations and the changes in revenues which flow to Cities based upon State changes, it is staff's position that the three elements of the Commission's policy on Island Annexations, as last updated in October 2006, should be maintained in their current form.

However, staff is proposing that an additional element be added to have the Commission review the question of a City's unincorporated Island areas which meet the criteria of Government Code Section 56375.3 upon the receipt of a development related application which includes 500 or more dwelling units and/or 500,000 square feet of commercial/industrial development. This will then become a determination of the Commission based upon an understanding of the existing revenue forecasts and service transfer issues between the County and City and will be addressed on a case-by-case basis. In approving this addition, staff does not believe it is necessary to specifically exempt the City of San Bernardino from these considerations as requested by the City based upon the terms of the signed stipulated agreement. However, if the Commission disagrees with this position, exemption language can be easily added to the addition proposed.

**RECOMMENDATION:**

Staff recommends that the Commission take the following actions:

1. Certify that the maintenance of the existing language for the Island Annexation Policy and the proposed inclusion of a new procedure to address development-related annexations is statutorily exempt from the provisions of the California Environmental Quality Act and instruct the Executive Officer to file a Notice of Exemption within five (5) days of this action;
2. Affirm the existing policy language for Island Annexations and add a new element of review that requires Commission consideration of a City's unincorporated island areas whenever a development-related annexation application is received which includes 500 or more dwelling units and/or 500,000 square feet of commercial/industrial development, to read as follows:

**ISLAND ANNEXATION PURSUANT TO GOVERNMENT CODE SECTION 56375.3**

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 placement of the item on a Commission agenda for consideration. Such efforts shall include, but not be limited to, providing information on the grandfathering of existing legal County uses into the City, costs to the resident/taxpayer associated with annexation, and land use determinations. Documentation of these efforts shall be a part of the application submitted for consideration by the Commission.*
  
4. *The Commission directs that upon receipt of a development-related annexation or reorganization application, which anticipates development of 500 or more dwelling units and/or 500,000 square feet of commercial/ industrial development, LAFCO staff shall, within 90-days, place an item on the Commission's discussion calendar to review that City's unincorporated island areas which meet the criteria identified in Government Code Section 56375.3. The questions to be reviewed shall include, but not be limited to, the feasibility of annexing the island areas as a condition of application approval, the anticipated revenues available to fund service extension should the areas be annexed, and any special circumstance in reference to original change of organization application or the island areas.*

This amendment shall be included in the resolution of approval for the revised and reorganized Policy and Procedure Manual scheduled for consideration on the Commission's October 19, 2011 Hearing Consent Calendar.

3. Direct staff that upon notification of the issuance of an Attorney General Opinion related to the questions on island annexations posed by Senator Negrete-McLeod that an item be placed on the next available Commission agenda for which notice can be provided to review that opinion and the impact on the Commission's Island Policy.

KRM

Attachment:

1. Government Code Section 56375.3 – Island Annexation Statute
2. December 10, 2010 Letter to City/Town Manager Regarding Questions on the Commission's Existing Island Annexation Policies
3. Responses Received from the County of San Bernardino, Cities of Colton, Chino, Hesperia, Victorville, San Bernardino and Montclair
4. Letters to State Attorney General from Scott Porter of Colantuono & Levin PC on behalf of CALAFCO and Clark Alsop of Best, Best & Krieger on behalf of San Bernardino LAFCO
5. Outline of Impacts of SB 89 Prepared by Mr. Michael Coleman, Fiscal Policy Advisor for the California League of Cities, Excerpt from Chart Showing San Bernardino and Riverside Counties, Copy of SB 89
6. Letter from Tom Dodson and Associates for Environmental Assessment