

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: SEPTEMBER 12, 2016

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
SAMUEL MARTINEZ, Assistant Executive Officer



TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #5: LAFCO 3210 – Annexation to the Apple Valley Heights
County Water District (APN 0438-132-21)

INITIATED BY:

Resolution of the Board of Directors of the Apple Valley Heights County Water
District

RECOMMENDATION:

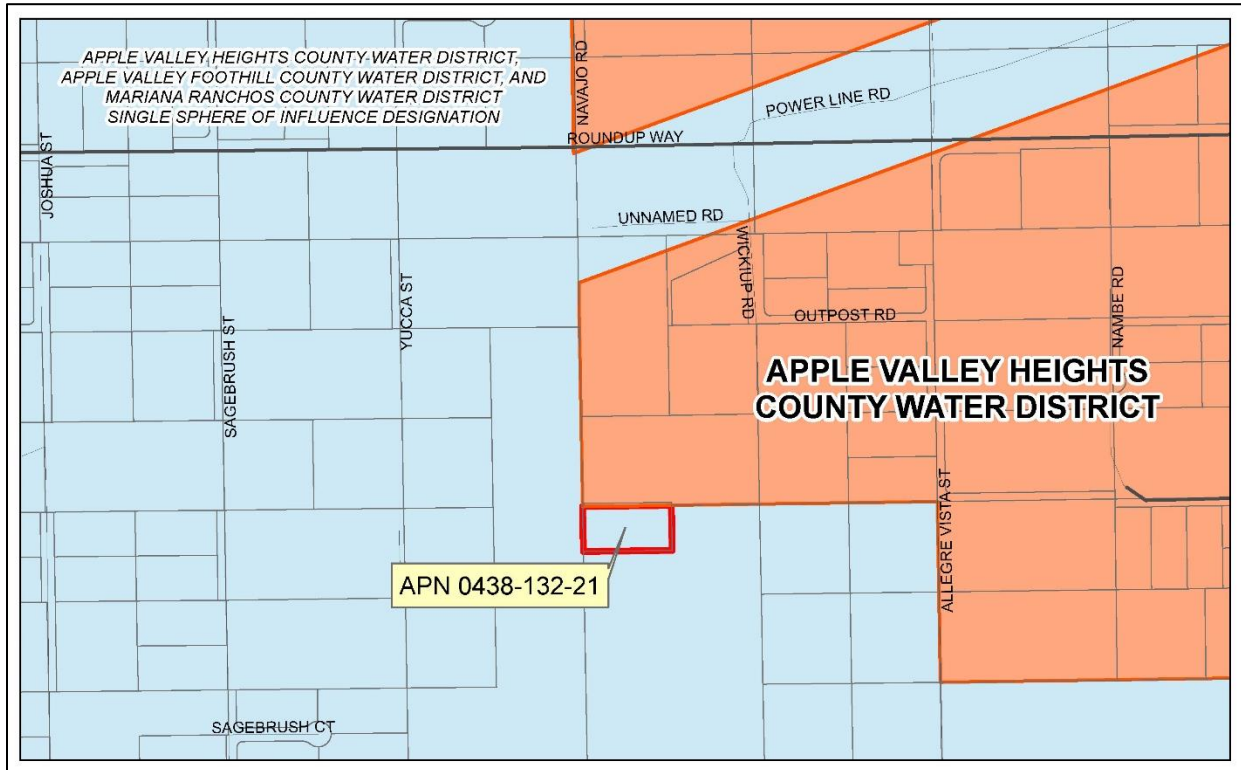
The staff recommends that the Commission approve LAFCO 3210 by taking the
following actions:

1. For environmental review, certify that LAFCO 3210 is statutorily exempt from the provisions of the California Environmental Quality Act and direct the Executive Officer to file the Notice of Exemption within five (5) days;
2. Approve LAFCO 3210, with the condition for the “hold harmless” clause for potential litigation costs, continuation of fees, charges, assessments, etc.;
3. Waive protest proceedings, as permitted by Government Code Section 56662(d), with 100% landowner consent to the annexation; and,
4. Adopt LAFCO Resolution #3234, setting forth the Commission’s determinations and conditions of approval concerning LAFCO 3210.

BACKGROUND:

In June 2016, the Apple Valley Heights County Water District (hereinafter the “District”) initiated an annexation application—with 100% landowner consent—to annex approximately 1.25 acres into the District. The annexation area includes a portion of a

parcel, Assessor Parcel Number (APN) 0438-132-21, which is adjacent to the District's boundary and has a physical address of 9125 Cholla Road generally located at the southwestern edge of the District within the District's sphere of influence (note: the District, along with the Apple Valley Foothill County Water District and the Mariana Ranchos County Water District, have a single sphere of influence designation assigned to all three districts). Location and vicinity maps are included as Attachment #1 to this report. The map below provides a general location of the area to be annexed into the District.



The primary reason for the annexation request is to provide water service to 9125 Cholla Road as required per the settlement agreement between the property owner and the District. Only a small portion of the parcel associated with 9125 Cholla Road is currently within the District; therefore, the District has initiated the annexation of the rest of the parcel into the District in order to legitimize the provision of water service to the parcel.

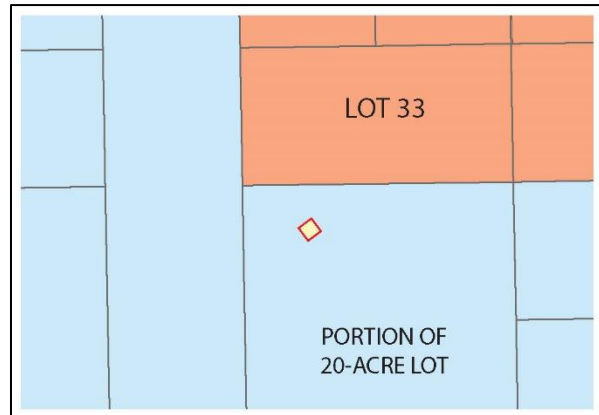
This report will provide the Commission with the information related to the four major areas of consideration required for a jurisdictional change – boundaries, land uses, service issues and the effects on other local governments, and environmental considerations.

BOUNDARIES:

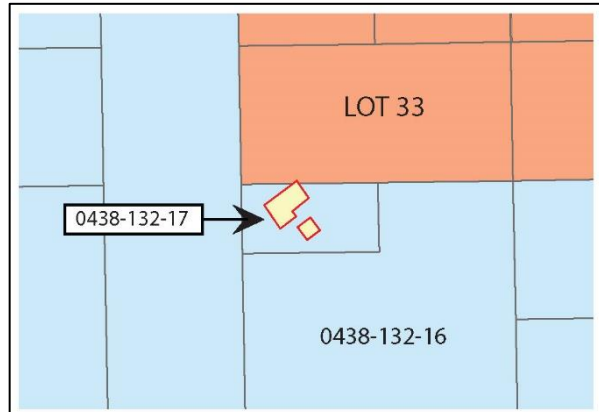
As outlined above, the annexation consists of a portion of APN 0438-132-21 that has a street address of 9125 Cholla Road, comprising approximately 1.25 acres. The parcel is generally located on the east side of Cholla Road, southerly of Roundup Way.

History of Parcel Configuration and the Delivery of Water Service to 9125 Cholla Road:

In the late 1950s, the property owner of Lot 33 built a cabin that was placed on the government lot located southerly of the Lot 33, approximately 100 feet south of the parcel. Soon after, the property owner acquired the 20-acre government lot south of Lot 33. The District provided a water service meter for the cabin even though it was located outside of the District. The meter was placed at the northeast corner of Lot 33 and the water line ran diagonally across the parcel to the cabin.



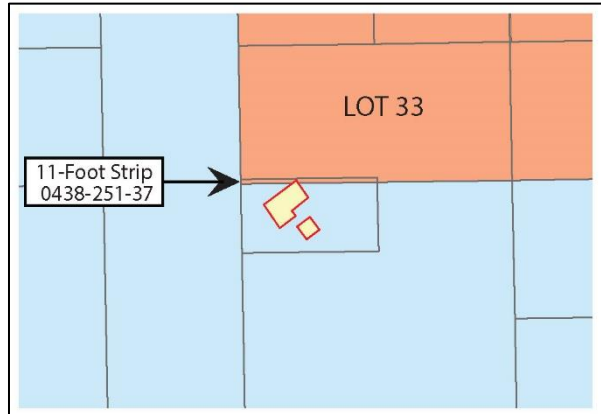
In the early 1960s, the owner of the parcel then built a second cabin that had a garage that encroached onto Lot 33. The owner also subdivided the 20-acre parcel into two lots: APN 0438-132-17 (which includes the cabins), and a remainder lot, APN 0438-132-16, that remains vacant to this day. Years later, Lot 33 and APN 0438-132-17 were sold; however, the buyer eventually defaulted on the loan in 1999 and APN 0438-132-17 was transferred to the US Department of Housing & Urban Development (HUD).



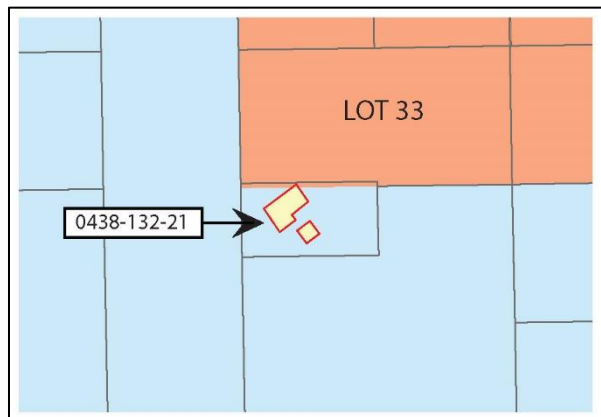
HUD then sold the property to the Schmidts, the current owners. However, a neighbor had claimed he should have been permitted to purchase the property from HUD, which prompted HUD to rescind the purchase agreement with the Schmidts. The Schmidts then brought a legal action against HUD for breach of contract.

At the same time, the District told the Schmidts that it would no longer provide water service to the cabins because they were outside the District's boundaries. The District was also named in their lawsuit requiring restoration of water service to the cabins that are on APN 0438-132-17.

In 2000, a settlement was reached. HUD completed the sale of the property to the Schmidts and as part of the foreclosure of Lot 33, an 11-foot strip was granted to the Schmidts located at southern edge of Lot 33 where a portion of the garage extended into the property. The Schmidts were also granted an exclusive easement for a large portion of Lot 33 for the water meter, the area where the water lines and septic system are located, as well as an easement for where an access road could be built in the future.

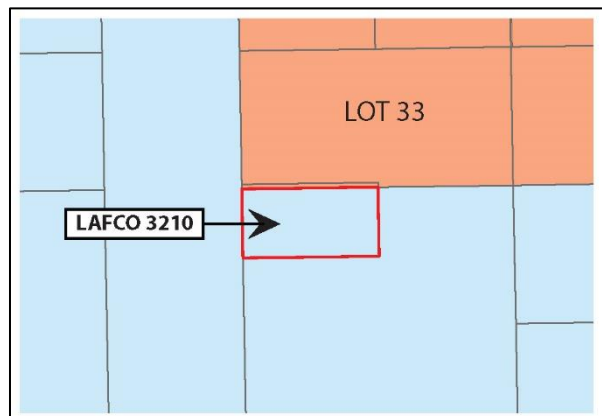


Soon after, a lot merger was filed with the County to combine the 11-foot parcel (APN 0438-251-37) and parcel with the two cabins (APN 0438-132-17). Although the merger of the parcels should not have been allowed—since both parcels are in two different Tax Rate Areas (TRA): one parcel is in a TRA which has the District and the other is in a TRA that does not include the District—the County went ahead and merged the parcels into a single parcel, now known as APN 0438-132-21.



It was also during this time that the Schmidts opted not to use the parcel as their personal residence and instead moved out to Indio, California. A caretaker occupied the cabins for the Schmidts. However, when the caretaker vacated the property in 2010, the District removed the water service to the property.

In December 2015, the Schmidts requested restoration of its water service per its settlement agreement. Through an action of the District's Board of Directors on March 9, 2016, the District restored water service to 9125 Cholla Road. The Schmidts have been required to pay the "out-of-district" service cost until the annexation of the parcel is completed. LAFCO 3210 has been submitted by the District in order to annex the portion of APN 0438-132-21 that is outside of its boundaries.



It is LAFCO staff's position that LAFCO 3210 is a logical extension of the District's boundary since it is including the entirety of the parcel associated with 9125 Cholla Road, which is an easily identifiable boundary for service delivery. In addition, annexation will also clear-up the issue of having two Tax Rate Areas within a single parcel. Therefore, LAFCO 3210 has no boundary concern.

LAND USE:

The County's current land use designation for the parcel is AV/RS-1 (Apple Valley (community)/Single Residential, 1 acre minimum lot size), which provides for areas for single-family homes on individual lots. Below is an aerial view of the parcel that shows the existing single-family residences (a.k.a. the cabins) on it.



No change in land use is anticipated as a result of the annexation proposal. In addition, approval of this proposal will have no direct impact on the current land use designation assigned for the parcel.

SERVICE ISSUES AND EFFECTS ON OTHER LOCAL GOVERNMENTS:

In every consideration for jurisdictional change, the Commission is required to look at the existing and proposed service providers within an area. Current County service providers within the annexation area include County Service Area 60 (Apple Valley Airport) and County Service Area 70 (multi-function entity). In addition, the following entities overlay the annexation area: Mojave Desert Resource Conservation District,

Apple Valley Fire Protection District, and the Mojave Water Agency (State Water Contractor).

The application includes a plan for the extension of water service to the parcel as required by law and Commission policy (included as part of Attachment #2 to this report). The Plan for Service, including the settlement agreement (included as Attachment #3) indicates that water service will be provided to the parcel, and was reactivated in March 2016.

Currently, the landowner is paying the monthly water rates and fees in accordance with the District's fee schedule, including a \$17.00 monthly out-of-district service cost. Upon completion of the annexation, the out-of-district service cost will cease; however, the property owner will be required to pay the annual standby availability assessment and all fees and charges related to its water service.

As required by Commission policy and State law, the Plan for Service shows that the extension of its services will maintain, and/or exceed, current service levels provided to the parcel.

ENVIRONMENTAL CONSIDERATIONS:

As the CEQA lead agency, the Commission's Environmental Consultant, Tom Dodson from Dodson and Associates, has indicated that the review of LAFCO 3210 is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the fact that the annexation will not result in any physical impacts on the environment. Therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). It is recommended that the Commission adopt the General Rule Statutory Exemption for this proposal. A copy of Mr. Dodson's analysis is included as Attachment #5 to this report.

Waiver of Protest Proceedings:

The annexation area is legally uninhabited and the County Assessor's Office has verified that the study area possesses 100% landowner consent to the annexation. Therefore, if the Commission approves LAFCO 3210 and none of the affected agencies have submitted written opposition to a waiver of protest proceedings, staff is recommending pursuant to Government Code Section 56662(d) that protest proceedings be waived and that the Executive Officer be directed to complete the action following completion of the mandatory reconsideration period of 30-days.

CONCLUSION:

LAFCO 3210 was submitted by the Apple Valley Heights County Water District to complete the requirements of the settlement agreement it entered into with Mr. and Mrs. Schmidt related to their acquisition of APN 0438-132-21 (9125 Cholla Road). Since the

1950's, this parcel has intermittently received water service from the District and this annexation will clear up the jurisdictional issues for continuing service to the parcel.

The proposal represents a reasonable annexation to the Apple Valley Heights County Water District for the following reasons:

- Water service is to be provided to 9125 Cholla Road per the settlement agreement between the property owner and the District; and,
- The annexation area is a logical boundary since it is including the entirety of the parcel associated with 9125 Cholla Road, which is an easily identifiable boundary for service delivery. In addition, annexation will also clear-up the issue of having two Tax Rate Areas for a single parcel.

For these reasons, and those outlined throughout the staff report, the staff supports the approval of LAFCO 3210.

DETERMINATIONS:

The following determinations are required to be provided by Commission policy and Government Code Section 56668 for any change of organization/annexation proposal:

1. The annexation area is legally uninhabited containing 0 registered voter as determined by the Registrar of Voters as of September 8, 2016.
2. The County Assessor's Office has determined that the total assessed valuation of land and improvements within the annexation area is \$38,950 (land - \$12,985 -- improvements - \$25,965) as of August 9, 2016.
3. The annexation area is within the consolidated sphere of influence assigned for the Apple Valley Heights County Water District.
4. Legal notice of the Commission's consideration of the proposal has been provided through publication in *The Daily Press*, a newspaper of general circulation within the area. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notice.
5. LAFCO staff has provided individual notice to the landowners (9) and registered voters (156) surrounding the reorganization area (totaling 165 notices) in accordance with State law and adopted Commission policies. Comments from landowners and any affected local agency in support or opposition will be reviewed and considered by the Commission in making its determination.

6. The County's land use designation for the annexation area AV/RS-1 (Apple Valley/Single Residential, 1 acre minimum lot size). No change in land use is anticipated as a result of the annexation.
 7. The Southern California Associated Governments (SCAG) adopted its 2016-2040 Regional Transportation Plan and Sustainable Communities Strategy pursuant to Government Code Section 65080. LAFCO 3210 has no direct impact on SCAG's Regional Transportation Plan. The Sustainable Community Strategy includes as a goal the need to promote and improve public health, which LAFCO 3210 accomplishes.
 8. The Commission's Environmental Consultant, Tom Dodson and Associates, has recommended that this proposal is statutorily exempt from environmental review based on the finding that the Commission's approval of the annexation has no potential to cause any adverse effect on the environment; and therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b)(3). Mr. Dodson recommends that the Commission adopt the Statutory Exemption and direct its Executive Officer to file a Notice of Exemption within five (5) days. A copy of Mr. Dodson's response letter is included as Attachment #5 to this report.
 9. The annexation area is served by the following local agencies:
 - County of San Bernardino
 - Mojave Desert Resource Conservation District
 - Mojave Water Agency
 - Apple Valley Fire Protection District
 - County Service Area 60 (Apple Valley Airport)
 - County Service Area 70 (unincorporated County-wide multi-function agency)
- None of these agencies are affected by this proposal.
10. A plan was prepared for the extension of water service to the annexation area, as required by law. The Plan for Service, as well as the settlement agreement, indicates that the District can provide water service to the parcel and can maintain and/or improve the level of service currently available. A copy of this plan is included as a part of Attachment #2 to this report and a copy of the General Mutual Release and Settlement Agreement is included as Attachment #3 to this report.

The Plan for Service has been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56668. The Commission finds that the Plan for Service conform to those adopted standards and requirements.

11. The annexation can benefit from the availability and extension of water service from the District and has benefited from water service previously provided by the District.
12. With respect to environmental justice, the annexation proposal—which simply provides water service to a single parcel —will not result in the unfair treatment of any person based on race, culture or income.
13. The County of San Bernardino adopted a resolution determining there will be no transfer of property tax revenues. This resolution fulfills the requirement of Section 99 of the Revenue and Taxation Code.
14. The map and legal description prepared by the County Surveyor are in substantial compliance with LAFCO and State standards.

KRM/sm

Attachments:

1. [Vicinity Maps for the Annexation Proposal](#)
2. [Apple Valley Heights County Water District Application and Plan for Service](#)
3. [General Mutual Release and Settlement Agreement](#)
4. [Landowner Consent Form](#)
5. [Tom Dodson's Environmental Response for LAFCO 3210](#)
6. [Draft Resolution No. 3234](#)