

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: NOVEMBER 28, 2018 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Project Manager
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #8: LAFCO 3229 -- Reorganization to include
Annexation to the Town of Apple Valley and Detachment from
County Service Area 70

INITIATED BY:

Resolution of the Town Council of the Town of Apple Valley

RECOMMENDATION:

The staff recommends that the Commission approve LAFCO 3229 by taking the following actions:

1. With respect to environmental review:
 - a. Certify that the Commission, its staff, and its Environmental Consultant have independently reviewed and considered the Town of Apple Valley's Addendum to the Environmental Impact Report (SCH#2008091077) prepared by the Town for the Apple Valley 2009 General Plan and Annexation 2008-001;
 - b. Determine that the Town of Apple Valley's environmental assessment is adequate for the Commission's use as a CEQA Responsible Agency for its consideration of LAFCO 3229;
 - c. Determine that the Commission does not intend to adopt alternatives or additional mitigation measures for the project; that the mitigation measures identified in the Town of Apple Valley's environmental documents are the responsibility of the Town and/or others, not the Commission; and,

- d. Direct the Executive Officer to file the Notice of Determination within five (5) days, and find that no further Department of Fish and Wildlife filing fees are required by the Commission's approval of LAFCO 3229 since the Town of Apple Valley, as lead agency, has paid said fees.
2. Approve LAFCO 3229 with the following determination - The Commission determines that approval of LAFCO 3229 will create an unincorporated island completely surrounded by the Town of Apple Valley. Since the east side of Interstate 15 within the Town's unincorporated sphere cannot be developed in conformity with the Town's standards unless the area is annexed, the Commission determines, pursuant to the provision of Government Code Section 56375(m), to waive the restrictions on the creation of a totally surrounded island contained within Government Code Section 56744 because it would be detrimental to the orderly development of the community, and it further determines that the area to be surrounded cannot reasonably be annexed to another city or incorporated as a new city.
3. Approve LAFCO 3229 with the following conditions:
 - a. The Town of Apple Valley will accept the transfer of all previously offered or dedicated drainage easements within the affected area as shown on exhibits to the resolution of approval, which exclude any regional drainage facilities identified. The Town will assume authority over these drainage easements upon completion of LAFCO 3229;
 - b. The Town of Apple Valley shall be required to initiate annexation of the remainder of the island within one year of the Commission's approval of LAFCO 3229. A resolution by the Town Council of the Town of Apple Valley shall be submitted to the Executive Officer of LAFCO outlining the Town's commitment to fulfilling this requirement prior to the issuance of the Certificate of Completion for LAFCO 3229. A status report shall be provided to the Commission at the six month date outlining the progress of the Town of Apple Valley in fulfilling its obligation. Failure on the part of the Town of Apple Valley to fulfill its commitment for annexation of the remainder island shall require that the next annexation proposed to the Town of Apple Valley, either by the Town through resolution or by property owner/registered voter petition, include a condition requiring the initiation of annexation of the reminder island. Said condition of approval shall be deemed completed upon the issuance of the Certificate(s) of Filing for the island.
 - c. The standard LAFCO terms and conditions that include, but are not limited to, the "hold harmless" clause for potential litigation costs by the applicant and the continuation of fees, charges, and/or assessments currently authorized by the annexing agency.

4. Adopt LAFCO Resolution No. 3280, setting forth the Commission's determinations and conditions of approval concerning LAFCO 3229.

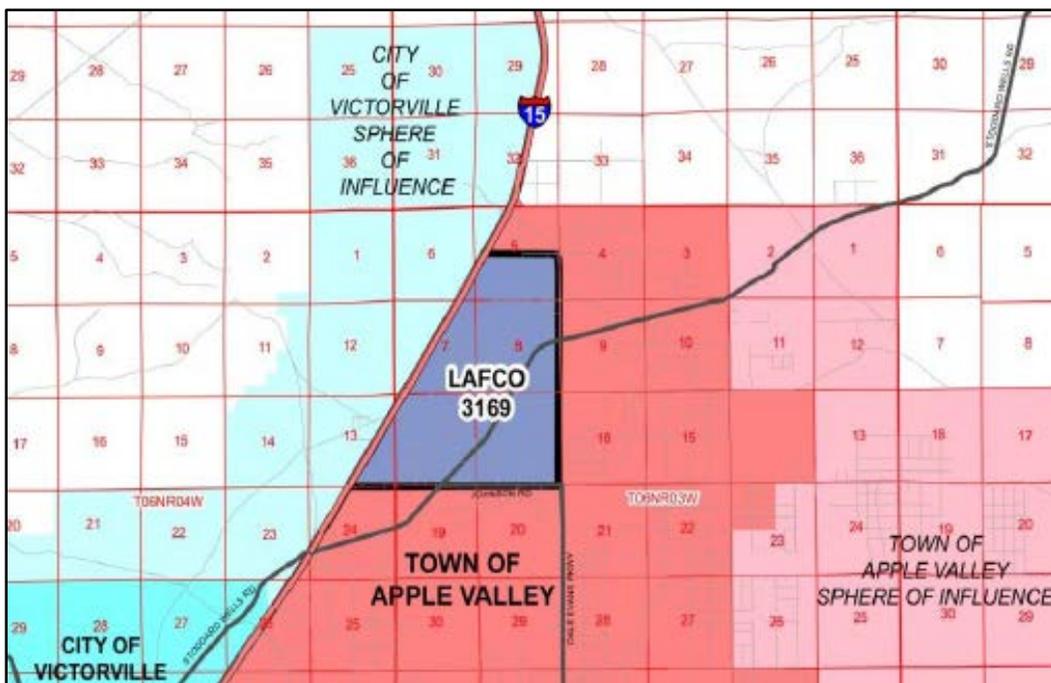
BACKGROUND:

Prior Proposal (LAFCO 3169)

In 2012, the Town of Apple Valley ("Town") submitted an application to annex the entirety of its unincorporated northwestern sphere of influence (LAFCO 3169). In its application to LAFCO, the Town provided the following reasons for the potential annexation:

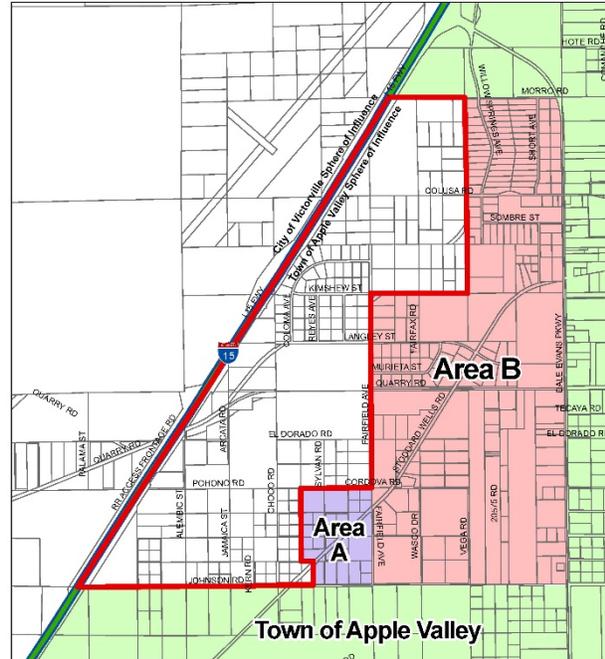
- The annexation would bring the planning, design, and construction of future development, including public roads, under the jurisdiction and direction of one entity and provide for the control, orderly development and logical growth in accordance with the Town General Plan.
- The lands are within the Town of Apple Valley sphere of influence and contiguous with its existing corporate limits on the north, east and south. The annexation represents a logical extension of the Town's corporate limits to adequately plan for the anticipated future growth in the area.

The Commission approved LAFCO 3169. However, during the protest proceedings, the registered voters within the territory submitted adequate protest to terminate the proposal. A map of LAFCO 3169 and the unincorporated island is shown below.



- Option 2 would expand LAFCO 3229 to include the southern notch westerly of Fairfield Avenue (Area A). This will make the boundary for LAFCO 3229 more logical since it takes in the entire portion westerly of Fairfield Avenue.

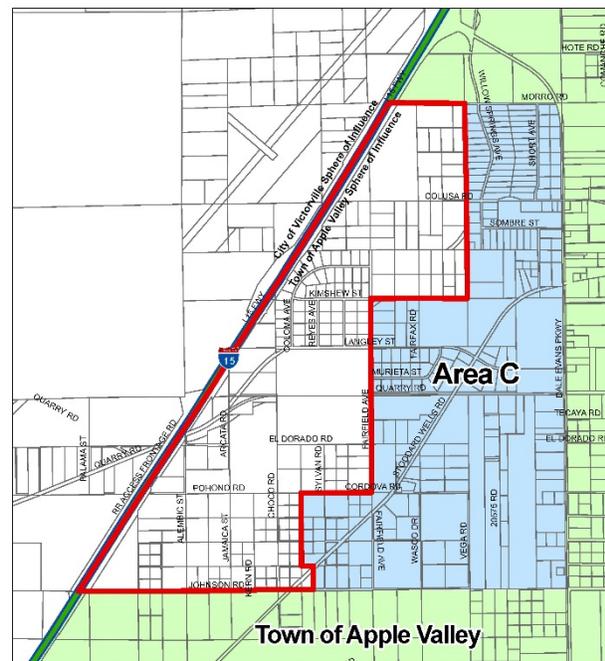
One problem with moving forward with this option is that the Town did not include Area A as part of its environmental assessment for the current proposal. Therefore, the Commission would have to prepare the environmental assessment for this additional area.



In addition, one would argue that this revised boundary—even though it provides for a more logical configuration—still does not address the rest of the island. Therefore, one option to address the remainder island is to require the Town to initiate the annexation of the remainder portion (Area B) as a separate proposal.

- Option 3 is to keep the boundary for LAFCO 3229 as submitted by the Town.

However, it should be noted that LAFCO staff’s preference is to address the entirety of the island. Therefore, in order to address the remainder portion (Area C), LAFCO staff recommends that the Town be required to initiate the annexation of the remainder portion as a separate proposal.



The fate of the second proposal would then be decided by the registered voters and/or landowners within the entire Area C – separate and apart from the current proposal.

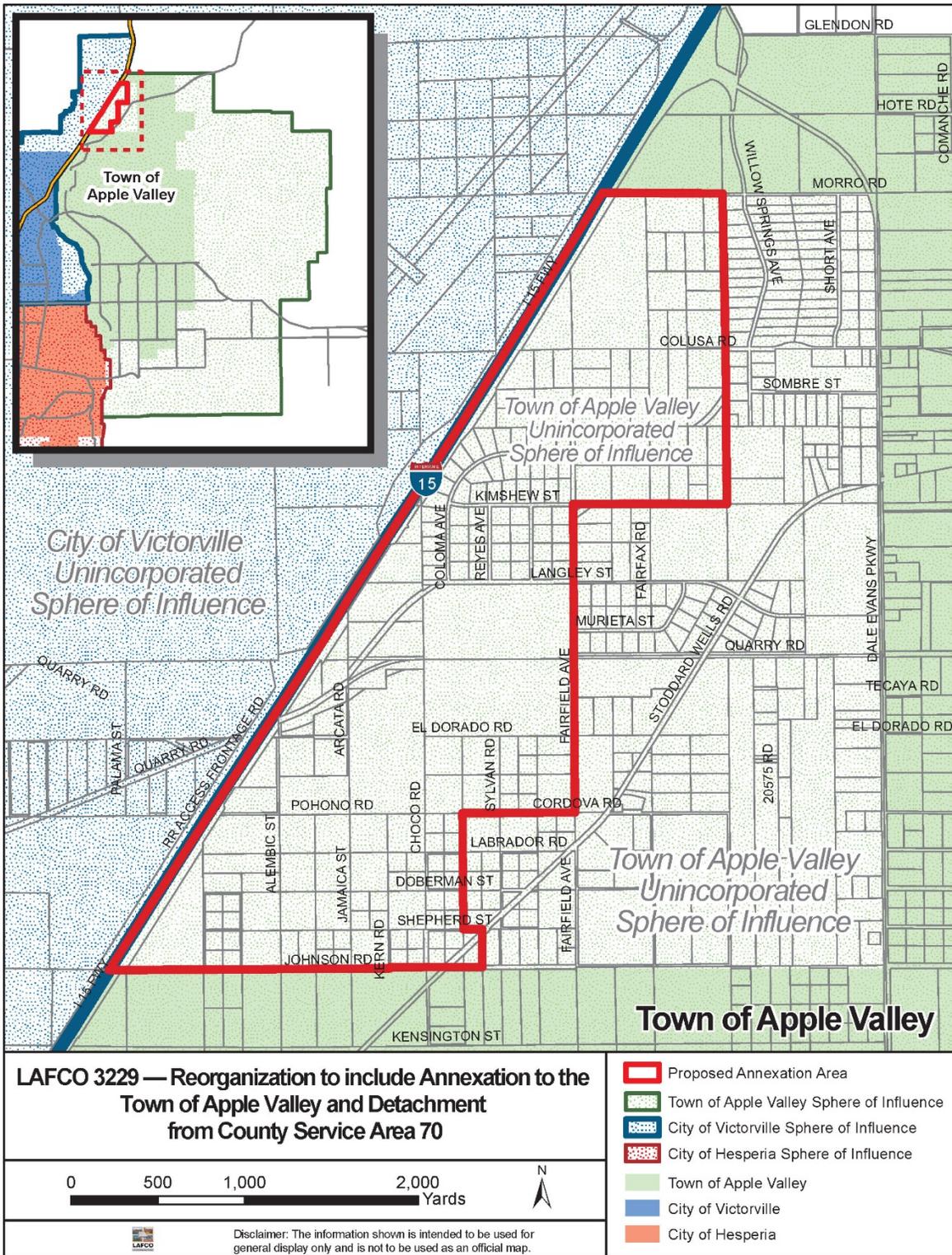
Based on the options outlined above, LAFCO staff recommends the Commission choose Option 3. It allows for the Town to move forward its proposal as submitted, and the Town can then work with landowners and registered voters within the remainder area as a separate proposal for annexation into the Town. Therefore, staff recommends the Commission include the following condition of approval for LAFCO 3229:

Condition – The Town of Apple Valley shall be required to initiate annexation of the remainder of the island within one year of the Commission’s approval of LAFCO 3229. A resolution by the Town Council of the Town of Apple Valley shall be submitted to the Executive Officer of LAFCO outlining the Town’s commitment to fulfilling this requirement prior to the issuance of the Certificate of Completion for LAFCO 3229. A status report shall be provided to the Commission at the six month date outlining the progress of the Town of Apple Valley in fulfilling its obligation. Failure on the part of the Town of Apple Valley to fulfill its commitment for annexation of the remainder island shall require that the next annexation proposed to the Town of Apple Valley, either by the Town through resolution or by property owner/registered voter petition, include a condition requiring the initiation of annexation of the reminder island. Said condition of approval shall be deemed completed upon the issuance of the Certificate(s) of Filing for the island.

Further, as identified in the early discussion related to boundaries, the proposal as submitted would create a totally surrounded island territory. However, the Commission has the statutory ability to waive the restrictions of creating an island as outlined in §56744 if it finds that the application of the restrictions would be detrimental to the orderly development of the community and that the area that would be enclosed by the annexation is so located that it cannot reasonably be annexed to another city or incorporated as a new city (§56375(m)).

LAFCO staff believes Commission denial of LAFCO 3229 could be detrimental to the orderly development of the area, particularly along the I-15 Freeway, and that the island area cannot be annexed to another city or incorporated as a new city. Therefore, if the Commission approves LAFCO 3229, the following determination will need to be made by the Commission pursuant to Government Code §56375(m):

Determination – The Commission determines that approval of LAFCO 3229 will create an unincorporated island completely surrounded by the Town of Apple Valley. Since the east side of Interstate 15 within the Town’s unincorporated sphere cannot be developed in conformity with the Town’s standards unless the area is annexed, the Commission determines, pursuant to the provision of Government Code Section 56375(m), to waive the restrictions on the creation of a totally surrounded island contained within Government Code Section 56744 because it would be detrimental to the orderly development of the community, and it further determines that the area to be surrounded cannot reasonably be annexed to another city or incorporated as a new city.



LAND USE:

The existing County land use designations for the reorganization area include RL (Rural Living – one unit; minimum 2.5 acres) and RL-5 (Rural Living – one unit; minimum 5 acres). The land use designation tentatively proposed for this area in the Countywide Plan is Special Development, which the County anticipates to be consistent with the Town’s anticipated land use plan.

The Town of Apple Valley has assigned the area pre-zone land use designations as a part of its General Plan Update, which include the following: Estate Residential (1 unit/1 to 2.5 acres), General Commercial (retail and services), Regional Commercial (retail, services, restaurant, and hotel/motel), Office Professional (office and ancillary retail), and Planned Industrial (warehousing, light manufacturing, research/development, and administrative). The Town’s pre-zone designations will take effect upon completion of the reorganization process and must remain for a minimum of two years unless specific actions are taken by the Town Council.

County Land Use Services Department identifies a current planning project in the area for a minor use permit to construct a wireless communication facility and related equipment shelter. The Town provided a letter dated November 6, 2018 stating that it would accept the approved entitlement for the wireless communication facility with all related conditions of approval. The Town’s letter also identifies acceptance of any ongoing code enforcement activities.

SERVICE DELIVERY AND EFFECTS ON OTHER LOCAL GOVERNMENTS:

Upon completion of the reorganization, the area will receive services from the Town of Apple Valley including, but not limited to: sewer, roads, law enforcement, park and recreation, general government and other municipal type services. There will be no change in jurisdiction for the Mojave Water Agency (State Water contractor), Apple Valley Fire Protection District (fire protection/paramedic), Mojave Desert Resource Conservation District (portion), and County Service Area 60 (Apple Valley Airport).

The Town of Apple Valley has submitted a plan for the extension of its municipal services, including a Financial Impact Analysis, as required by law and Commission policy. The Plan and Analysis are included as a part of Attachment #2 to this report. In general, the Plan identifies the following:

Wastewater

The Town of Apple Valley provides for the wastewater collection and transportation system within its boundaries. Due to the predominant vacant nature of the study area, no infrastructure for wastewater collection exists. Through annexation, the Town of Apple Valley will become responsible for the wastewater collection system; treatment and disposal would be provided by the Victor Valley Wastewater Reclamation Authority

(VWRA), a joint powers entity. Currently, there are no sewer facilities in the reorganization area. In the future, wastewater collection services could be extended to the reorganization area upon request of property owners anticipating development and the payment of the infrastructure extension cost. A Town of Apple Valley regional interceptor line traverses approximately ½ mile east of the reorganization area.

Water

An organized water service is not currently present within the study area. Water service is provided to the majority of the Town through the Liberty Utilities Company, a water utility governed by the California Public Utilities Commission (“PUC”). At present the study area is outside the certificated service area assigned Liberty Utilities, thus it would require an expansion in order to provide service. The expansion process is required to be undertaken through the PUC prior to approval and/or proceeding with development of the area. The Plan for Service documents for the proposal identify that all costs associated with providing water service would be the responsibility of future development within the area.

Fire Protection and Paramedic

Fire protection and paramedic services are currently provided by the Apple Valley Fire Protection District, which will continue to serve the area following annexation.

Law Enforcement

Law enforcement responsibilities will transfer from the San Bernardino County Sheriff’s Department to the Town of Apple Valley, who contracts with the Sheriff’s Department. Local traffic control will transition from the California Highway Patrol to the Town’s contract with the County Sheriff.

Roads

County maintained roads within the area shall transfer to the Town of Apple Valley upon completion of LAFCO 3229.

Solid Waste

The annexation area is currently undeveloped and generates no solid waste. Upon annexation, the Town of Apple Valley will be responsible for providing solid waste management services to future development in the annexation area. Burrtec Waste Industries provides the Town with solid waste collection and disposal services through its contractual agreement with Apple Valley. Solid waste collection and disposal services are provided on a fee basis to residential, commercial, and industrial customers.

Drainage

The County Public Works Department requests a condition of approval that all existing drainage easements be transferred to the Town. While County maintained roads are transferred as a matter of law, in some instances the transfer of drainage easements has not taken place; therefore, the County requests that this be included in the Commission's decision specifically. Therefore, staff is recommending that this matter be included as a condition of approval for LAFCO 3229:

Condition – The Town of Apple Valley will accept the transfer of all previously offered or dedicated drainage easements within the affected area as shown on exhibits to the resolution of approval, which exclude any regional drainage facilities identified. The Town will assume authority over these drainage easements upon completion of LAFCO 3229.

Fiscal Impact Analysis

The Town has included a Fiscal Impact Analysis, as required by Commission policy, which outlines the total potential costs and revenues to the Town. The cost/revenue analysis identifies that at each phase of buildout will have a positive cash flow position for the Town and the overlaying Apple Valley Fire Protection District. The materials identify the Town's continuing allocation of 3% of its ad valorem property tax share to the park and recreation fund, established after the dissolution of the Apple Valley Park and Recreation District and the designation of the Town as its successor agency.

As required by Commission policy and State law, the Plan for Service along with the Financial Impact Analysis, shows the ability of the Town of Apple Valley to extend its services to the area upon need through future development and to maintain existing services at the time of reorganization.

ENVIRONMENTAL CONSIDERATIONS:

The Town of Apple Valley prepared an Addendum to the Environmental Impact Report (SCH#2008091077) for the Apple Valley 2009 General Plan and Annexation 2008-001.

The Town's environmental assessment, which includes the 2009 General Plan Environmental Impact Report and the Addendum, has been reviewed by the Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, who determined that, if the Commission chooses to approve LAFCO 3229, the Town's documents are adequate for Commission's use as a responsible agency under CEQA (California Environmental Quality Act). The following are the necessary environmental actions to be taken by the Commission as a responsible agency under CEQA:

- a. Certify that the Commission, its staff, and its Environmental Consultant have independently reviewed and considered the Town of Apple Valley's Addendum to the Environmental Impact Report (SCH#2008091077) prepared

- by the Town for the Apple Valley 2009 General Plan Amendment and Annexation 2008-001;
- b. Determine that the Town's environmental assessment are adequate for the Commission's use as a CEQA Responsible Agency for its consideration of LAFCO 3229;
 - c. Determine that the Commission does not intend to adopt alternatives or additional mitigation measures for the project; that the mitigation measures identified in the Town's environmental documents are the responsibility of the Town and/or others, not the Commission; and,
 - d. Direct the Executive Officer to file the Notice of Determination within five (5) days and find that no further Department of Fish and Wildlife filing fees are required by the Commission's approval of LAFCO 3229 since the Town of Apple Valley, as lead agency, has paid said fees.

CONCLUSION:

LAFCO 3229 was submitted to bring planning, design, and construction of future development, including public roads, under the jurisdiction and direction of one entity, and provide proper control, orderly development, and logical growth in accordance with the Town of Apple Valley's General Plan.

LAFCO staff supports approval of LAFCO 3229 as the reorganization area will benefit from the full range of municipal services available through the Town of Apple Valley upon future development. Further, the east side of Interstate 15 within the Town's unincorporated sphere cannot be developed in conformity with the Town's standards unless the area is annexed.

However, approval of this proposal calls into question the issue related to creating the totally surrounded island territory. LAFCO staff has addressed this by:

- Including a determination required by Government Code § 56375(m), which can be applied to this proposal; and,
- Including a condition that requires the Town to initiate the remainder of the island within one year of the Commission's approval of LAFCO 3229.

For all the reasons outlined in the report above, staff recommends approval of LAFCO 3229.

DETERMINATIONS:

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

1. The reorganization area is legally uninhabited containing zero registered voters as certified by the Registrar of Voters as of November 1, 2018.
2. The County Assessor's Office has determined that the total assessed valuation of land within the reorganization area is \$11,775,061 as of August 2, 2018, broken down as: \$11,033,461 (land) and \$741,600 (improvements).
3. The reorganization area is within the sphere of influence assigned the Town of Apple Valley.
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. In accordance with State law and adopted Commission policies, LAFCO staff has provided individual notice to:
 - landowners (206) and registered voters (0) within the reorganization area (totaling 206 notices), and
 - landowners (220) and registered voters (23) surrounding the reorganization area (totaling 243 notices).

To date, no written comments in support or opposition have been received. Comments from registered voters, landowners, and other individuals and any affected local agency in support or opposition will be reviewed and considered by the Commission in making its determination.

6. The Town of Apple Valley has assigned the reorganization area pre-zone land use designations as a part of its 2009 General Plan Update, which include the following: Estate Residential (1 unit/1 to 2.5 acres), General Commercial (retail and services), Regional Commercial (retail, services, restaurant, and hotel/motel), Office Professional (office and ancillary retail), and Planned Industrial (warehousing, light manufacturing, research/development, and administrative). These zoning designations are consistent with the Town's General Plan and is generally compatible with the surrounding land uses in the area. The Town's pre-zone designations will remain in effect for a minimum of two years following annexation unless specific actions are taken by the Town Council.

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 3229 includes the eastern portion of the I-15 Freeway, which is part of the RTP-SCS’s State highway improvement (expansion/rehabilitation) program including reconstruction of Stoddard Wells Road Overcrossing and as well as Stoddard Wells Road.
8. As CEQA responsible agency, the Commission’s Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has reviewed the Town of Apple Valley’s environmental documents for the reorganization proposal and has indicated that the Town’s environmental documents for the reorganization proposal are adequate for the Commission’s use as CEQA responsible agency. The Town of Apple Valley prepared an Addendum to the Environmental Impact Report (SCH#2008091077) for the Town of Apple Valley 2009 General Plan and Annexation 2008-001.

9. The reorganization area is served by the following local agencies:

- Apple Valley Fire Protection District
- County of San Bernardino
- County Service Area 60 (airport)
- County Service Area 70 (unincorporated County-wide multi-function)
- Mojave Desert Resource Conservation District (portion)
- Mojave Water Agency

County Service Area 70 will be detached upon successful completion of this proposal. None of the other agencies will be directly affected by the completion of this proposal through an adjustment in their boundaries as they are regional in nature.

10. The Town of Apple Valley has submitted a plan for the extension of municipal services to the study area, as required by law, along with a Financial Impact Analysis required by Commission policy. These plans are included as a part of Attachment #2 to this report and indicate that the Town can maintain and/or improve the level and range of services currently available in the area.

The Plan for Service and Fiscal Impact Analysis have been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56668. The Plan for Service and the Fiscal Impact Analysis conform to those adopted standards and requirements.

11. The reorganization proposal complies with Commission policies that indicate the preference for areas proposed for development at an urban-level land use to be included within a Town or City so that the full range of municipal services can be planned, funded, extended and maintained.

However, the approval of this proposal will create an island of unincorporated territory to be totally surrounded by the Town. Based on the termination of LAFCO 3169 in 2012 due to registered voter protest, LAFCO 3229 cannot be expanded to eliminate the island area without the risk of terminating again.

12. The reorganization area can benefit from the availability and extension of municipal services from the Town of Apple Valley upon future development.
13. This proposal will assist the Town of Apple Valley's ability to achieve its fair share of the regional housing needs as the land use designations for the area include Estate Residential, which allows one unit to 2.5 acres.
14. With respect to environmental justice, which is the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services, the following demographic and income profile was generated using ESRI's Community Analyst within the Town of Apple Valley and within and around the reorganization area (2018 data) :

Demographic and Income Comparison	Town of Apple Valley (%)	Reorganization Area and Unincorporated Sphere (%)
Race and Ethnicity		
• African American Alone	9.3 %	8.5 %
• American Indian Alone	1.2 %	0.8 %
• Asian Alone	3.4 %	5.9 %
• Pacific Islander Alone	0.5 %	0.8 %
• Hispanic Origin (Any Race)	39.5 %	25.4 %
Median Household Income	\$55,261	\$82,990

Through future development, the reorganization area will benefit from the extension of services and facilities from the Town and, at the same time, the approval of the reorganization proposal will not result in the unfair treatment of any person based on race, culture or income.

15. The County of San Bernardino and the Town of Apple Valley have successfully negotiated a transfer of property tax revenues that will be implemented upon completion of this annexation. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.
16. The map and legal description, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

SM/MT

Attachments:

1. [Vicinity Map](#)
2. [Application and Plan for Service](#)
3. [Environmental Response from Tom Dodson and the Town's Addendum to the Environmental Impact Report \(SCH#2008091077\) for the Apple Valley 2009 General Plan and Annexation 2008-001](#)
4. [Draft Resolution No. 3280](#)