

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: SEPTEMBER 9, 2020 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #9: Request for Reconsideration Submitted by Patrick Kaemerle (on behalf of Inland Real Estate Group, LLC) of the Commission's Approval of LAFCO 3241 – Reorganization to Include Annexation to the City of Rancho Cucamonga and Detachment from County Service Area 70 (Etiwanda Heights Neighborhood and Conservation Plan)

RECOMMENDATION:

Deny the Request for Reconsideration submitted by Mr. Kaemerle (on behalf of the Inland Real Estate Group, LLC) of the Commission's approval of LAFCO 3241 as outlined in LAFCO Resolution No. 3312 and proceed with the protest proceedings for LAFCO 3241.

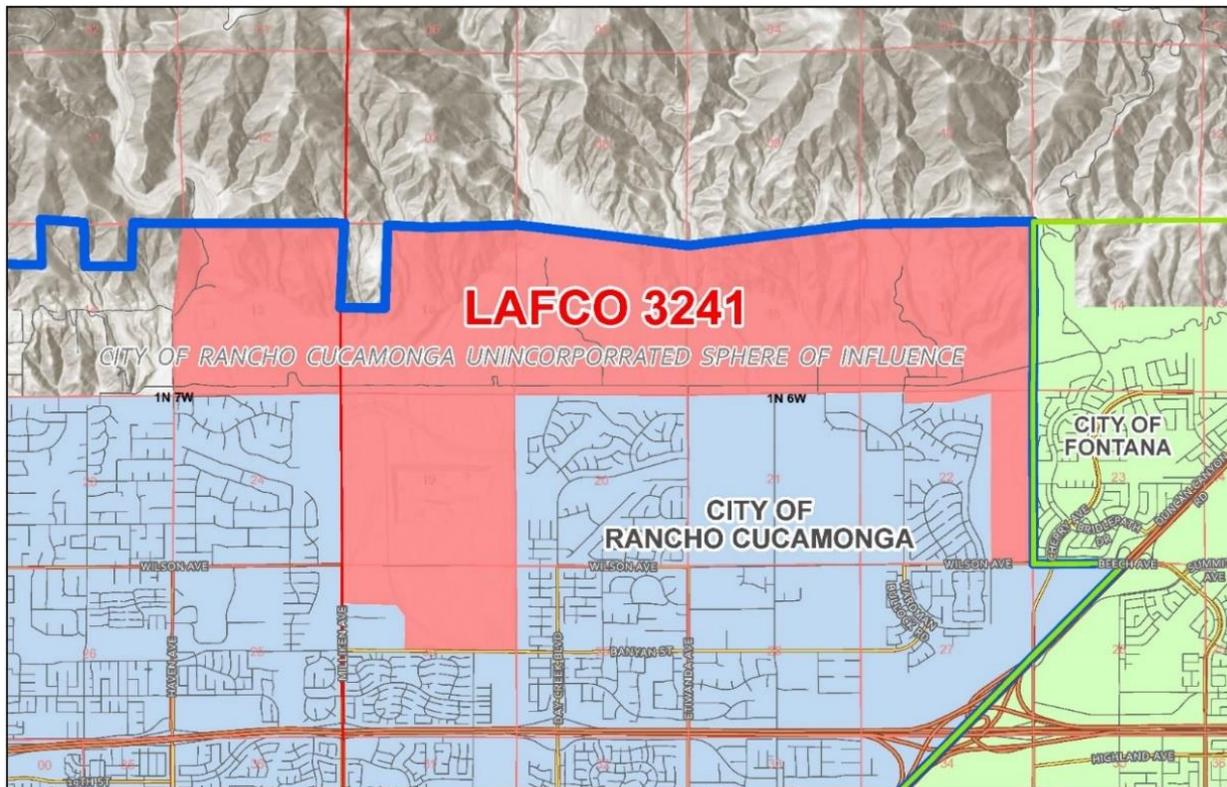
BACKGROUND:

State law allows a procedure whereby any person or affected agency may request reconsideration of a Commission resolution making determinations (Government Code Section 56895). The law provides that such a request must be submitted within 30 days of the adoption of the Commission's resolution making determinations; that it specifies the specific modifications to the resolution being requested; and that it outlines what new facts or different facts that could not have been presented previously are claimed to warrant the reconsideration. In addition, Commission policy supplements these requirements by adding that "Request for reconsideration will be granted only when the petitioner can present some compelling new evidence or show that significant factors relative to the situation were overlooked or have changed."

On August 14, 2020, Mr. Patrick Kaemerle, on behalf of the Inland Real Estate Group, LLC, a property owner within LAFCO 3241, submitted a request for reconsideration (a copy of the request is included as Attachment #1) for the reorganization proposal that includes annexation to the City of Rancho Cucamonga—LAFCO 3241—approved by the Commission at its July 15, 2020 hearing by adopting Resolution No. 3312 (included as

Exhibit A to Attachment #1) (the “Request for Reconsideration”). The Request for Reconsideration was submitted timely within the mandatory 30-day period specified by State law. A copy of Government Code Section 56895 regarding reconsideration is included as Attachment #2, and a copy of the Commission’s Policy and Procedure related to Requests for Reconsideration is included as Attachment #3.

The following information provides a summary of the issues Mr. Kaemerle raised in the Request for Reconsideration as support for reconsideration, along with the staff responses related to each of those issues. The Commission will need to consider the issues and responses and determine whether the Request for Reconsideration presents “new or different facts” and presents “compelling new evidence” or “show that significant factors relative to the situation were overlooked or have changed” in conformance with adopted Commission policies and State law to warrant granting reconsideration. A map of the area involved in LAFCO 3241 is shown below:



LAFCO 3241 Vicinity Map

ISSUES FOR RECONSIDERATION:

The Request for Reconsideration indicates that “critical factors in the Commission’s decision were overlooked and not considered or not adequately understood, erroneously leading to approval of LAFCO 3241.”

1. First, Mr. Kaemerle questions the County Assessor’s valuation of the exempt parcels (parcels exempt from assessment by the County) within LAFCO 3241.

During the processing of the proposal, LAFCO staff requested the County Assessor’s office to provide land values for the exempt parcels within LAFCO 3241, for protest purposes, pursuant to Government Code Section 56126 (see request included as Attachment #4). Government Code Section 56126 reads as follows:

“Upon request by the executive officer or the clerk of any county or district, the assessor of any city, county, or district shall furnish estimated assessed valuations, determined by the same methods and valuations used in preparing the last equalized assessment roll, in both of the following cases:

(a) Where real property is owned by a public agency and no assessed value for that real property is shown on the roll.

...

Any of these estimates shall be conclusively presumed to be assessed values for the purpose of this division, but shall be given no force or effect for other purposes.”

In addition Government Code Section 56710(a) governs the method for how the Assessor is to assess such land:

“The assessed value to be given land exempt from taxation or owned by a public agency shall be determined by the county assessor, at the request of the executive officer, in the same amount as the county assessor would assess that land, if the land were not exempt from taxation or owned by a public agency.”

Based on LAFCO staff’s request, the Assessor’s office provided its response on the land values for the exempt parcels, which were made a part of Determination #2 to Resolution No. 3312 (see pages 3 and 4 of Exhibit A to Attachment #1). The County Assessor’s office provided a statement on how it determined the land values for the exempt parcels (see email response included as Attachment #5).

Again, the Executive Officer’s role was to request the County Assessor to provide land values for the exempt lands within LAFCO 3241, for its use in determining valuation of protest for the protest proceedings for LAFCO 3241. In response, the County Assessor’s office provided the requested information, which was made available to the Commission at the July 2020 Hearing and made a part of Resolution No. 3312.

Based on the above information, including the noted Attachments, with regard to the valuation of the exempt parcels, the Request for Reconsideration presents no “new or different facts that could not have been presented previously,” no “compelling new evidence,” or showing that “significant factors relative to the situation were overlooked or have changed” to warrant a reconsideration of Resolution No. 3312.

2. Mr. Kaemerle also makes the assertion that portions of letters opposing LAFCO 3241 were not read in full into the record and, therefore, a thorough review of all relevant information was not considered by the Commission.

The Commission's Notice of Hearing (as published in the newspaper), the Notice to Landowners and Registered Voters within the area, as well as the Agenda Notice that is posted on the Commission's website, clearly identify how one can provide comment including participating in the Zoom meeting and providing comments when the item is being discussed as well as providing written comments, limited to a maximum of 250 words, which are then read into the record at the appropriate time (see Attachment #6).

One written comment was received prior to the publication of the staff report. Said comment letter was, in fact, included as an attachment to the staff report presented to the Commission at its July hearing.

All other written comments that were received after the publication of the staff report—sent via email to lafco@lafco.sbcounty.gov, regular mail, or via the online comment page—were read into the record, the first 250 words of each written comment. Mr. Kaemerle's letter was the only written comment that was not read into the record at his request since he opted to speak into the record during the hearing. It must be noted, however, that all written comments received prior to 5:00 pm the day before the hearing, including Mr. Kaemerle's letter, were provided to all Commission members via email (see Attachments #7a and #7b) and were also posted on the Agenda Page of the Commission's website (see Attachment #8).

Two comments were received after 5:00 pm the day before the hearing. Ms. Rebecca Burchett's email/letter and Mr. Anthony Cheng's email were sent at 7:01 pm and 10:36 pm on Tuesday, July 14, 2020, respectively. The morning of the hearing, before the opening of office hours, staff checked their emails and date stamped the emails with times of 7:42 am and 7:41 am, respectively. At the hearing, the first 250 words of Ms. Burchett and Mr. Cheng's written comments were read into the record and were also posted on the Agenda Page of the Commission's website together with the rest of the written comments received.

The Commission's requirements for providing comments was clearly outlined in the published notice, the notice that was sent to landowners and registered voters within LAFCO 3241, as well as the agenda that is posted on the Commission's website. LAFCO staff took the liberty to email the Commission with copies of all written comments that were received by the end of the day prior to the hearing in order to give the Commission the opportunity to review said written comments beforehand, instead of just listening to them being read into the record.

Based on the above information, including the noted Attachments, with regard to comment letters and comments from the public, the Request for Reconsideration presents no "new or different facts that could not have been presented previously,"

no “compelling new evidence,” or showing that “significant factors relative to the situation were overlooked or have changed” to warrant a reconsideration of Resolution No. 3312.

3. “LAFCO 3241 is patently unfair and inequitable to Hillside Owners.”

The issue raised by Mr. Kaemerle pertains to the Transfer of Development Rights (TDR) Program that the City, as part of its approval of the Etiwanda Heights Neighborhood and Conservation Plan (Specific Plan), included a TDR program for the Rural/Conservation Area of the Specific Plan.

In considering a proposal, the Commission is required to include information on land use(s) in its review of a proposal. However, the Commission is prohibited from regulating land use and from imposing any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements pursuant to Government Code Section 56375(a)(6).

As outlined in the staff report presented to the Commission at its July hearing, information was provided on the existing uses and the current land use designations within LAFCO 3241 including the City’s pre-zone designations for the Rural/Conservation Area and the Neighborhood Area of the Specific Plan, as well as information on this TDR program that would provide an incentive and a mechanism for land owners within the Rural/Conservation Area to sell the development potential of their lands to developers in the Neighborhood Area. In addition, LAFCO staff also provided the Commission with a copy of the Specific Plan as an attachment to the staff report, which the Specific Plan outlines the TDR program in detail.

Again, the Commission is precluded from directly regulating land use. However, information on land use designations, including the TDR program, was provided to the Commission and discussed at length at its July hearing.

Based on the above information, the Request for Reconsideration presents no “new or different facts that could not have been presented previously,” no “compelling new evidence,” or showing that “significant factors relative to the situation were overlooked or have changed” to warrant a reconsideration of Resolution No. 3312.

4. “The Hillside Owners are being forced, against their will, to become part of the city, but are getting no city-district utility services in return.”

The issue raised by Mr. Kaemerle pertains to the Commission’s action overriding its policy related to concurrent city-district annexation of all community-based agencies and the services provided within the Rural/Conservation Area.

As outlined in the staff report presented to the Commission at its July hearing, it was noted that the Rural/Conservation Area is being set aside for conservation and, therefore, will not require municipal services from either the Cucamonga Valley Water District or the Inland Empire Utilities Agency (including the Metropolitan Water

District of Southern California). For this reason, the Commission took the action to override its policy related to the concurrent annexation of all community-based agencies. However, the City's certified Plan for Service outlines its ability to provide its range of services for the entire reorganization area, including the Rural/Conservation Area (i.e. fire protection services through its subsidiary district, the Rancho Cucamonga Fire Protection District, that already serves the area; law enforcement services through the City's contract with the County Sheriff's Department, etc.) This information was provided to the Commission and discussed at its July hearing.

Based on the above information, the Request for Reconsideration presents no "new or different facts that could not have been presented previously," no "compelling new evidence," or showing that "significant factors relative to the situation were overlooked or have changed" to warrant a reconsideration of Resolution No. 3312.

5. "LAFCO 3241 contains very detailed information for the Neighborhood Area... The Hillside area has nothing planned."

The issue raised by Mr. Kaemerle again pertains to the Specific Plan information adopted by the City.

As noted earlier, the Commission is required to include land use information in its review of a proposal but is precluded from directly regulating land use.

Information on the Specific Plan was outlined in the staff report presented to the Commission at its July hearing. LAFCO staff also provided the Commission with a copy of the Specific Plan as an attachment to the staff report that, in fact, provide specific development standards for the Rural/Conservation Area as well as existing trail network, trail types, and a Trail Master Plan for the Rural/Conservation Area. In addition, LAFCO staff also provided the Commission with a copy of the City's environmental assessment prepared for the project that provide additional information on the project. Again, this information was provided to the Commission and discussed at its July hearing.

Based on the above information, the Request for Reconsideration presents no "new or different facts that could not have been presented previously," no "compelling new evidence," or showing that "significant factors relative to the situation were overlooked or have changed" to warrant a reconsideration of Resolution No. 3312.

6. "The land values assigned by the County Assessor at the request of LAFCO, to the Public Parcels are grossly inflated."

The issue raised by Mr. Kaemerle pertains again to the County Assessor's valuation of the exempt parcels in comparison with the parcels assessed by the County. Mr. Kaemerle also requested a breakdown of the land values for all the parcels currently assessed by the County.

The County Assessor indicated that the assessed valuation that it prepared for the exempt parcels reflect the prescribed method in accordance with the Revenue and Taxation Code for preparing the annual roll. It also noted that the Southern California Edison parcels are assessed annually by the State Board of Equalization.

The evaluation of protest for LAFCO 3241, which is considered an uninhabited territory (less than 12 registered voters), is determined based on the current assessed value of land within the area. The assessed valuation of land is tied to when one acquires a property. In other words, identical properties can have vastly different land values – one whose ownership has remained the same from 30 or 40 years ago and those lands that have recently been purchased.

As noted in Determination #2 to Resolution No. 3312, the total land value identified for all the parcels assessed by the County is \$22,593,649. Attachment #9 provides a listing of all the parcels assessed by the County and the land value currently assigned for each parcel. The total value matches the total value in the staff report and in Resolution No. 3312.

Based on the above information, including the noted Attachment, the Request for Reconsideration presents no “new or different facts that could not have been presented previously,” no “compelling new evidence,” or showing that “significant factors relative to the situation were overlooked or have changed” to warrant a reconsideration of Resolution No. 3312.

CONCLUSION:

It is the staff’s position that the Request for Reconsideration submitted by Mr. Kaemerle has not met the requirements for granting reconsideration under both State law and Commission policy. This is because, as outlined above, the Request for Reconsideration presents no “new or different facts that could not have been presented previously,” no “compelling new evidence,” or showing that “significant factors relative to the situation were overlooked or have changed” to warrant a reconsideration of Resolution No. 3312. On that basis, in the staff view, Commission policy and State law direct that the Request for Reconsideration not be granted. Therefore, the staff’s recommendation is that the Commission deny the request.

/sm

Attachments:

1. [Request for Reconsideration Letter from Patrick Kaemerle, on behalf of the Inland Real Estate Group, LLC, Dated August 14, 2020](#)
 - [Exhibit A – LAFCO Resolution No. 3312 Approving LAFCO 3241](#)
 - [Exhibit B – Mr. Kaemerle’s Letter to the Commission Dated July 11, 2020](#)
 - [Exhibit C – Additional Comment Letters Addressed to the Commission](#)
 - [Exhibit D – County Land Use Designation Research](#)

- [Exhibit E – Parcel Detail Printouts](#)
- 2. [Government Code Section 56895](#)
- 3. [Commission’s Policy and Procedure Related to Requests for Reconsideration](#)
- 4. [Request for Values of Exempt Properties Dated June 25, 2020](#)
- 5. [Response from the County Assessor on the Land Values for the Exempt Parcels](#)
- 6. [Notice of Hearing, Notice to Landowners/Registered Voters within LAFCO 3241, and Agenda Notice](#)
- 7. [Email\(s\) Sent to Commissioners Regarding Written Comments Received](#)
 - A. [July 14, 2020, sent at 1:07 PM](#)
 - B. [July 14, 2020, sent at 5:20 PM](#)
- 8. [LAFCO Webpage for July 15, 2020 Agenda](#)
- 9. [Listing of Land Values for Parcels Assessed by the County](#)