

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

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**DATE:** APRIL 7, 2006  
**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT: Agenda Item #13:** Consideration of Request for Override of Commission Policy Related to Deferral of Applications for Projects Pending Settlement of Litigation

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**REQUESTED BY:**

City of San Bernardino, applicant; and,  
American Development Group Inc., developer of the project

**RECOMMENDATION:**

Staff recommends that the Commission deny the request for waiver of its policy to await completion of the environmental litigation prior to conducting the public hearing to consider the proposals for jurisdictional change.

However, if the Commission determines to waive its policy to await the outcome of the environmental litigation for these applications, the staff recommends that the Commission indicate its intent to include the following language should LAFCO 3050 be approved:

*“In the event that a court of competent jurisdiction invalidates the annexation of the properties for any reason, the City of San Bernardino shall enter into an out-of-agency service agreement with the County of San Bernardino for the provision of all services in that area that the City proposes to take over in the change of jurisdiction process, and present the same to LAFCO pursuant to Government Code Section 56133 within 60 days of such a court determination. The City of San Bernardino shall provide written consent to this condition within five (5) working days of the approval of this resolution.”*

**BACKGROUND INFORMATION:**

The Commission has received two applications from the City of San Bernardino related to the Arrowhead Springs Specific Plan areas identified as follows:

**LAFCO 3053 – Sphere of Influence Review (Expansion) for City of San Bernardino (Arrowhead Springs Specific Plan Area)** – The study area encompasses approximately 3.9+/- acres generally located northeast of Highway 18 and west of Old Waterman Canyon Road in the northern City of San Bernardino sphere of influence area. The study area is generally bordered by Highway 18 on the south and west, parcel lines on the north, and Old Waterman Canyon Road on the east.

**LAFCO 3050 – Reorganization to Include City of San Bernardino Annexation No. 359 (Arrowhead Springs Specific Plan Area)** – The study area consists of two separate annexation areas totaling approximately 1,572 +/- acres located in the City of San Bernardino's northern sphere of influence. The study areas are individually described as follows:

**Area 1** – encompasses approximately 1,296+/- acres generally located north of the City of San Bernardino boundaries, east of Highway 18. The annexation area includes the historic Arrowhead Springs Hotel and grounds. The area is generally bordered by the City of San Bernardino limits on the west and parcel lines on the north, east, and south.

**Area 2** – encompasses approximately 276+/- acres generally located east and west of Highway 18 in the Old Waterman Canyon area. The annexation area is generally bordered by the City of San Bernardino limits on the south and parcel lines on the west, north, and east.

LAFCO staff has begun processing these applications, notified interested parties, and circulated the applications for review and comment. However, the Environmental Impact Report prepared and certified by the City of San Bernardino for the Arrowhead Springs Specific Plan is the subject of litigation filed by the Center for Biological Diversity. To date, LAFCO staff has not received a copy of this litigation.

LAFCO staff has discussed with representatives of the City of San Bernardino and the developer of the project the Commission's standard operating procedure that it will await resolution of environmental litigation prior to beginning the Commission's official consideration of an application. The City of San Bernardino and the attorney for the developer of the Arrowhead Springs Specific Plan, American Development Group, Inc., have responded that they are concerned that through the application of this procedure, staff is not "processing" the application and they wish to request that the Commission waive its policy to await resolution of the litigation prior to further consideration. The letters indicate the

understanding that the imposition of this practice relates to staff's concern regarding the potential litigation costs to the Commission.

For clarification, the preliminary processing of the application is currently underway, with an initial application review meeting scheduled for April 13<sup>th</sup>. In response to the contention that the Commission's practice relates to concern regarding costs, the Commission's practice for awaiting resolution of environmental litigation before Commission consideration of the applications is not related to cost, but to the potential confusion of service providers and the distributors of property tax and other revenue streams. This practice was borne from two lawsuits challenging environmental determinations – one related to the annexation of the Chino Airport to the City of Chino and the other related to a proposal for annexation to the City of Rialto. In each case, the Commission proceeded with the annexation process in compliance with the California Environmental Quality Act (CEQA) provisions as outlined in Sections 15231 and 15233 directing responsible agencies that, unless and until the environmental documents were determined to be deficient by a court of law, they should be considered adequate for use. In each case the applications for annexation was completed and, subsequently, the courts determined that the environmental documents were deficient and required that further environmental review be conducted.

The court determinations required that the Commission:

1. Remove the areas annexed through the filing and recording of Certificates of Completion detaching the area from the cities;
2. Notify the affected agencies, such as the State Board of Equalization, the County Assessor, Auditor-Controller, law enforcement and fire dispatch centers, etc., that the area needed to be returned to the County's and prior agency jurisdiction; and,
3. Notify the appropriate taxing authorities that the property tax and subvention revenues should be returned to the prior agencies.

The resulting confusion for the many elements of government which provide services, such as law enforcement, fire protection providers, the changes to the 911 dispatch systems, property tax distribution and other revenues which are apportioned, either at the State or local level, prompted the Commission to adopt the standard practice related to awaiting completion of the litigation process to schedule Commission consideration. This process has worked well for the Commission in situations such as the annexation to the City of Ontario of its sphere of influence in the Agricultural Preserve and the City of Chino Annexation known as Subarea 1 of the Agricultural Preserve.

In the present situation, staff believes that the Commission's policy should be maintained on the basis that it would reduce the potential for confusion as outlined above should the litigation be successful. It is, therefore, staff's recommendation that the request for waiver be denied.

However, it should be noted that there is precedent to waive the imposition of this practice if the Commission chooses. Specifically, in November 2004, for a consolidated City of Rancho Cucamonga annexation identified as LAFCO 2970A, the City requested and the Commission granted a waiver related to litigation much the same as the proposals currently under consideration. That request from the City indicated that it wished the Commission to proceed with the application on the basis that, unless and until the courts determined the environmental documents to be inadequate, CEQA requires that they be considered adequate for review by the Commission as a responsible agency. In that case, the Commission agreed to move forward but imposed a condition of approval that required the City of Rancho Cucamonga to agree to the continuation of service to the area if the litigation challenging the environmental documents was successful. The imposition of this condition allowed the proposal to be completed and ultimately the litigation was settled without effect on the annexation process. The language of that condition was as follows:

*“In the event that a court of competent jurisdiction invalidates the annexation of any of the properties for any reason, the City of Rancho Cucamonga shall enter into an out-of-agency service agreement with the County of San Bernardino for the provision of all services in that area that the City and/or West Valley Mosquito and Vector Control District proposes to take over in the change of jurisdiction process, and present the same to LAFCO pursuant to Government Code Section 56133 within 60 days of such a court determination. The City of Rancho Cucamonga shall provide written consent to this condition within five (5) working days of the approval of this resolution.”*

If the Commission chooses to override its environmental practice and proceed with its consideration of the proposals, LAFCO 3050 and 3053, then staff would propose the imposition of the same condition if the reorganization application is approved.

In conclusion, the staff believes that the standard practice to await a resolution of the litigation prior to the Commission's consideration so that there is no potential for jurisdictional confusion is valid. However, if the Commission believes that it should move forward with the consideration of the proposals, following completion of the applications' required processing, the staff would recommend the same conditional language as included for the City of Rancho Cucamonga proposal.

KRM/

Attachments:

- 1 – Maps of LAFCO 3053 (Sphere) and LAFCO 3050 (Reorganization)
- 2 – City of San Bernardino Letter Requesting Waiver of Commission Policy
- 3 – Letter from Mr. John Nolan, Gresham Savage Nolan & Tilden, Attorney for American Development Group, Developer of Arrowhead Springs Specific Plan