

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

175 West Fifth Street, Second Floor, San Bernardino, CA 92415-0490

• (909) 387-5866 • FAX (909) 387-5871

E-MAIL: lafco@lafco.sbcounty.gov

www.sbclafco.org

DATE: MARCH 25, 2005
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #2 – Discussion of Island Areas Under New Provisions
Government Code Section 56375.3**

BACKGROUND:

At the February hearing, staff presented a discussion item regarding the changes to Government Code Section 56375.3, identified as the “island annexation” provisions. At the conclusion of the item, the Commission directed staff to schedule a workshop to further review the questions of a definition for “substantially surrounded” as outline in the island annexation law and to request input from the cities regarding areas to be discussed.

To assist in the workshop session, Attachment #1 to this report provides the language of the Section 56375.3 (island annexation provisions) as it will exist until its January 1, 2007 sunset date, as well as the language of Section 56375.4 which imposes restrictions on the areas that can be considered as islands. Attachment #2 to the report provides the Commission’s existing island annexation policy that is under discussion.

The specific questions raised during the discussion of Government Code Section 56375.3 at the February hearing were:

1. What will be the Commission’s definition of “substantially surrounded” as used in this section?
2. Will the reduction of an existing island, through a supported annexation, allow the remaining area to be considered as an island under the provisions of Section 56375.3 and 56375.4? Current policy language does not allow this to take place.

QUESTION #1

In order to assist the Commission in further discussing Question #1, staff forwarded a letter to affected cities requesting that they provide maps that outlined areas which would qualify as substantially surrounded using the percentage criteria of 52% or greater surrounded, 66% or greater surrounded, and 75% or greater surrounded. Letters were not forwarded to the Cities of Big Bear Lake, Chino Hills, Grand Terrace, Highland, Ontario and the Town of Yucca Valley as their boundaries were coterminous with their sphere of influence as they existed on January 1, 2000. A request for response was not forwarded to the Cities of Needles, Rancho Cucamonga, Twentynine Palms, or Yucaipa as a review of their sphere of influence did not show an area which would exceed 50% surrounded for lands that were substantially developed or developing. Of the remaining cities, the following responses were received and they are included in Attachment #3 to this report. They are:

1. The City of Barstow provided information regarding the 52% or greater, surrounded areas. The City of Barstow has identified the following additional areas for consideration:
 - a. Area 5 – 52% surrounded
 - b. Area 6 – 54% surrounded
 - c. Area 7 – 52% surrounded
 - d. Area 8 – 74% surrounded

Staff has the following concerns with the City's presentation:

- a. For area #7 staff would question whether it complies with the requirement that an island annexation proposal "address the whole of the island" as outlined in Subsection (b) (1) of 56375.3.
- b. For area #8 the question would need to be resolved as to whether or not the area was substantially developed or developing in order to be considered as an island annexation.

In addition, the City of Barstow letter has questioned whether or not the area of Barstow Heights could be addressed through a series of island annexations. In staff's view such an attempt would raise the question of compliance with Section 56375.4 which requires that the island could not have been created after January 1, 2000.

2. The City of Chino has responded with a map that identifies areas that are 60% or greater surrounded.
3. The City of Colton has provided a response that includes one additional area which it deems to be 75% or greater surrounded. Staff's only concern with the City's presentation is whether it would comply with the requirement to that the

substantially surrounded area “address the whole of the island”.

4. The City of Fontana originally provided four maps outlining its determinations of areas which would qualify as substantially surrounded utilizing the criteria requested by LAFCO staff: areas 52% to 65% surrounded; areas 66% to 74% surrounded; and areas 75% or greater surrounded. Each of these determinations was provided on an individual map. The City also presented a consolidated map outlining the 28 island areas identified as follows:

ISLAND NUMBER	ACREAGE	PERCENTAGE SURROUNDED
1	128.6	89.5
2	128.1	88.4
3	116.8	65
4	20	75
5	10	75
6	124	89
7	42.3	90
8	44.4	91.7
9	107	96.1
10	99.5	94.2
11	114	95.4
12	91.5	72.5
13	42.5	71.5
14	11.9	69.7
15	20	66.9
16	36.6	62.4
17	112.2	57.5
18	54.8	52.4
19	130.4	63
20	30	62.2
21	20	64.3
22	105	57
23	32.1	53.1
24	149.2	60.3
25	89.9	58.5
26	10.8	59.4
27	99.9	62.3
28	11	57.9

Staff has the following questions related to this series of maps:

- a. Areas #17, #24 and #25 raise the question of whether or not the individual island areas address “the whole of the island” a finding required by Section 56375.3 Subsection (b)(1).

- b. Area #18 includes a portion of the San Sevaive Redevelopment Area, which may cause concerns on processing. Staff has been unable to resolve that question in time to include the information within the staff report.
5. In addition, the City of Fontana submitted an additional map for consideration that expands the number of areas of consideration and reconfigures many of the areas identified on earlier City maps. The changes identified on the map, labeled as “Proposed Alternative No.4”, affects areas primarily in the southern portion of the City’s sphere of influence. This map outlines 30 island areas as follows:

ISLAND NUMBER	ACREAGE	PERCENTAGE SURROUNDED
1A	108.4	68.3
1B	120.1	55.2
2A	106.7	86.9
2B	142.8	57.1
3	92.7	55.3
4	250	75
5	10	75
6	124	89
7	42.3	90
8	44.4	91.7
9	107	96.1
10	99.5	94.2
11	114	95.4
12	91.5	72.5
13	113.3	56
14	117.3	54.5
15	20	66.9
16	36.6	62.4
17	112.2	57.5
18	92.5	72.4
19	130.4	63
20	30	62.2
21	20	64.3
22	105	57
23	131.3	77.8
24	149.2	60.3
25	89.9	58.5
26	10.8	59.4
27	99.9	62.3
28	116	52
29	144	54.5
30	111.7	58.1

Staff has the following questions and/or concerns related to areas defined on this map:

- a. Areas #1A and #1B, #13, #14 and #29, #17, #24, and #25, would need to meet the criteria of addressing “the whole of the island” as required by statute. When taken together they address the whole of the island, but a specific determination would need to be made for separating them into individual actions. This would be a policy declaration of the Commission.
 - b. Area #2B requires the completion of Area #2A, in staff’s view, to be considered surrounded; Area #3, #23, and #30, in staff’s view, require the completion of another annexation to be considered surrounded, #13 and #18 require completion of another annexation to be considered surrounded. Therefore, the question of whether or not the island being considered was created prior to January 1, 2000, as required by Section 56375.4, would need to be determined by the Commission.
6. The City of Hesperia has provided a response of additional areas for consideration without providing an outline of the percentage surrounded by the City. It appears to staff that these areas would exceed the 66% percentage surrounded criteria. However, the boundaries in Summit Valley were created in 2002; therefore, areas #3, #4, and #5 would not qualify under these provisions. Areas #6, #7 and #8 would not qualify under the finding that the area is to be substantially developed or developing as determined through the availability of public services, the presence of public improvements and/or the presence of physical improvements within the area as outlined in statute.
 7. The City of Montclair has identified two additional areas to those previously identified by staff. The two areas are located in the City’s eastern sphere of influence and are identified as being 70% or greater surrounded utilizing the City of Montclair, City of Ontario and City of Chino boundaries. However, these areas would require a determination as to whether or not they constitute the “whole of the island” as required by Section 56375.3(b) (1).
 8. The City of Rialto indicated its support for the staff’s recommended areas on the north end which were totally surrounded or 75% surrounded. The City has indicated it was not prepared to address the areas in the southern portion of the City’s sphere at this time.
 9. The City of San Bernardino has indicated its support for the determination that 75% surrounded is deemed “substantially”. They provided no additional maps as they did not support a smaller percentage.

The Cities of Adelanto, Loma Linda, Upland, Victorville and Town of Apple Valley did not provide a response to the request.

To answer Question #1, the Commission will need to identify policy language to define how it wishes to proceed on the subject of substantially surrounded. As noted in the February staff report, many LAFCOs have wrestled with making just such a determination. A review Webster's Dictionary defines "substantial" in the context of area as "considerable in quantity: significantly large" and "being largely but not wholly that which is specified".

The most liberal determination of substantially surrounded within the State has been taken by Orange LAFCO who has indicated that 51% surrounded constitutes "substantially surrounded". However, the majority of LAFCOs who have adopted policy declarations on this question indicate 75% or greater constitutes substantially surrounded. In staff's view, the removal of residents and landowners ability to vote on the question of annexation should require more than a simple majority of area to be surrounded. In keeping with that view, and as a means for starting further discussion on this policy, staff has provided the following potential policy language:

"For the purpose of applying the provisions of the Government Code Section 56375.3, the subject territory of an annexation proposal shall be deemed "substantially surrounded" if 60% of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by the affected City or the affected City and adjacent Cities."

In addition, it should be noted that the definition of "substantially" surrounded is only one of six mandatory findings that must be made when the Commission reviews an island annexation proposal.

QUESTION #2

The final question raised at the February hearing related to discussion of whether or not the reduction of an existing island through annexation would maintain the area's ability to be processed under the provisions of Section 56375.3. The Commission's existing policy declaration does not allow for such an occurrence and that language reads as follows:

The Commission will not permit a city to reduce the size of an existing island through normal annexation proceedings for the purpose of allowing the remaining island to be processed under AB 1555 (Government Code Section 56375.3).

This is purely a policy declaration by the Commission. If the Commission upholds this policy it would require the reduction or removal of areas under consideration as islands by the Cities of Chino, Fontana, and Montclair. The Commission has the ability to indicate that it will not permit a city to reduce the size of an area through island annexation proceedings, but allow for such a reduction under normal annexation proceedings. If the Commission chooses to retain the existing policy, staff would suggest, however, that it be rewritten to exclude the reference to AB 1555 and identify that it relates to the provisions of Government Code Section 56375.3.

CONCLUSION

The matters presented in this workshop report are purely policy declarations of the Commission; therefore, no specific recommendation has been made staff. Notice of the Workshop has been provided to all the Cities with island areas identified in this report to allow for their participation in the workshop discussion.

KRM

Attachments:

- #1 -- Island Annexation Provisions within Cortese-Knox-Hertzberg Local Government Reorganization Act
- #2 -- Commission Policy #29 Related to Island Annexations
- #3 -- City Responses to Potential Substantially Surrounded Island Areas:
 - a. City of Barstow
 - b. City of Chino
 - c. City of Colton
 - d. City of Fontana
 - e. City of Hesperia
 - f. City of Montclair
 - g. City of Rialto
 - h. City of San Bernardino