

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

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DATE: May 10, 2004
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #8: Consideration of Exemption from Government Code Section 56133 for LAFCO SC#223 – Relinquishment of Foothill Boulevard by the California Transportation Commission to the City of Fontana

INITIATED BY:

City of Fontana

RECOMMENDATION:

Determine that LAFCO SC#223 complies with the exemption listed within Government Code Section 56133 Subsection (e) and, therefore, does not require Commission approval to proceed.

BACKGROUND:

Beginning January 1, 2002, contracts between two or more public agencies were required to be reviewed and approved by the Commission pursuant to the provisions of Government Code Section 56133. However, when the Legislature amended these provisions to require LAFCO review of contracts between public agencies, they also noted that there could be instances where an exemption would remain appropriate. Included in this legislative amendment was specific exemption language contained in Subsection (e) which reads in part:

“This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider...”

On March 24, 2004, the City of Fontana submitted its request for a determination by the Commission that the contract relinquishing obligations for Foothill Blvd. was exempt from the provisions of Government Code Section 56133. The staff believes that the above quoted exemption in Subsection (e) of Section 56133 applies to the contract between the City of Fontana and the California Department of Transportation (CALTRANS) relinquishing the State's obligations for maintenance of State Highway Route 66, also known as Foothill Boulevard. The area of involved in the contract for relinquishment (Foothill Blvd. as it extends from East Avenue to Maple Avenue) is identified on the vicinity map included as Attachment #1. The City's request along with background information on the relinquishment is included in Attachment #2 to this report for Commission review.

Per the terms of the information received in the City's request, this relinquishment was effective March 9, 2004 – the date that the California Transportation Commission (hereinafter CTC) Resolution No. R3571 was recorded in the County Recorder's Office (Attachment H of the City's package included as Attachment #2). Therefore, the action before the Commission is a housekeeping item merely to note the existence of the agreement and confirm its exemption. Staff is recommending confirmation of the exemption of this contract on the basis of the following findings:

1. The contract presented is between the City of Fontana and the CTC. In addition, as required by the CTC, the County of San Bernardino has adopted a resolution consenting to the relinquishment and approving the assumption of service by the City of Fontana (resolution adopted February 4, 2003 included in City submission {Attachment #2 to the staff report} as Attachment "E").
2. The public service to be provided is road maintenance of Foothill Blvd. as a public street, not a state highway – the general service already being provided by an existing public service provider -- CALTRANS.
3. The City of Fontana is contracting to provide the services of road maintenance and operation for the area defined as the Foothill Blvd. area (full roadway widths including acquisition of right-of-way easements within the unincorporated sphere) as an alternative to the provision of these services through CALTRANS. Pursuant to the terms as outlined in Resolution No. 2003-05 (included in the City's submission {Attachment #2} identified as Attachment "D"), the City proposes to provide for upgrades and ongoing maintenance of the State Highway as a local street, Foothill Blvd.

4. The level of service to be provided through this contractual relinquishment is consistent with the level of service contemplated by CALTRANS, the existing public service provider. The City of Fontana through adoption of its General Plan, Circulation Plan and Capital Improvement Plan has outlined the service necessary for maintaining the roadway. These plans would apply whether under CALTRANS control or City of Fontana control.

The only question not specifically addressed was the transfer of the financial obligations for the signals, and possibly highway lighting, along Foothill Blvd. as it transitions to the City. CALTRANS has been responsible in the past for the maintenance and operation of the signals and whatever highway lighting was installed for the State Highway. The state highway designation has been removed, per the terms of SB 857, so it is believed that this responsibility will also be transferred to the City. City staff has reviewed this question and responded that the \$500,000 payment identified in the CTC Agreement provides for transference of all services for this roadway even though the signals are not specifically identified in the materials (outlined in Attachment "G" in the City's submission).

On the basis of the findings outlined above, the staff is recommending that the Commission determine that pursuant to Government Code Section 56133 Subsection (e), the contract for relinquishment of State Highway Route 66 for areas outside the City of Fontana boundaries, but within its sphere of influence, is not subject to the provisions requiring review and approval of the Commission. As noted above, the only troubling aspect was that the request was submitted after the effective date of the action. The provisions of Government Code Section 56133 require Commission review and approval -- and staff would also infer exemption from -- prior to the culmination of the contract for service outside an agency's boundaries.

KRM/

Attachment:

1. Map of relinquishment area within and outside the City boundaries of the City of Fontana
2. City of Fontana Request for Confirmation of Exemption -- LAFCO SC#223
3. Government Code Section 56133