

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

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DATE: NOVEMBER 9, 2006

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #8 – LAFCO 3048A – REORGANIZATION TO INCLUDE CITY OF FONTANA ANNEXATION NO. 168 AND DETACHMENT FROM THE BLOOMINGTON RECREATION AND PARK DISTRICT (BLOOMINGTON ISLANDS)

INITIATED BY:

City Council Resolution, City of Fontana

RECOMMENDATION:

Pursuant to existing Commission policies and directives of State law, staff recommends that the Commission approve LAFCO 3048A by taking the following actions:

1. Adopt the Statutory Exemption that has been recommended for this proposal, and direct the Clerk to file a Notice of Exemption within five (5) days of this action;
2. Modify LAFCO 3048A as presented to the Commission to exclude the detachment from Bloomington Recreation and Park District as requested by the City of Fontana;
3. Approve LAFCO 3048A – Reorganization to Include City of Fontana Annexation No. 168, as island annexations, as defined in Government Code Section 56375.3, with the following terms and conditions:
 - a. Determine that there are two proposals pending before the Commission, LAFCO 3048A (City of Fontana Annexations) and LAFCO 3075 (Bloomington Incorporation), which are inconsistent with each other. Pursuant to its policy, the Commission determines the priority of consideration to support the annexation of territory to an existing agency,

the City of Fontana. Therefore, LAFCO 3048A, the proposal first filed with the Commission, shall proceed;

- b. The City of Fontana's 5% Utility Users Tax on commercial properties will not be extended to the reorganization area;
 - c. All streetlights currently the responsibility of County Service Area SL-1 within the reorganization area shall be transferred to the City of Fontana upon successful completion of the reorganization. The County Special Districts Department shall prepare the appropriate documentation to transfer the lights, LAFCO staff shall verify the data, and the City of Fontana shall sign the authorization form requesting Southern California Edison to transfer the specific lights to the City of Fontana accounts; and,
 - d. The standard terms and conditions of approval that include the "hold harmless" clause for potential litigation.
4. Waive protest proceedings, as required by Government Code Section 56375.3; and,
 5. Adopt LAFCO Resolution #2933 setting forth the Commission's findings and determinations concerning this proposal.

However, if the Commission determines to override its policy directives, as outlined in Policy #5 to annex to an existing agency over creation of a new governmental entity, then the actions necessary would be as follows:

1. Defer consideration of LAFCO 3048A for six months to allow for the submission of a complete application for LAFCO 3075 – Reorganization to Include Incorporation of the City of Bloomington, Dissolution of the Bloomington Recreation and Park District and Improvement Zone DB-1 of County Service Area 70 and Detachment from County Service Areas 38, 70, and SL-1;
2. Require the Bloomington Incorporation Commission (BIC) to submit a complete application for LAFCO 3075 by February 28, 2007, which includes all of the following:
 - a. Submission of the standard forms required for processing the application, outlined as follows: Justification for Proposal, a Feasibility Study in keeping with the Commission's incorporation policy, and maps and a legal description of the proposal;
 - b. The required filing fees and deposits for processing as outlined under the Commission's existing Fee Schedule and the Commission's discussion as

outlined in the minutes of the February 15, 2006 hearing related to LAFCO 2981 identified as follows:

(1)	Incorporation Filing Fee	\$ 8,200
(2)	LAFCO Legal Counsel Representation Deposit (costs will be those actually charged):	\$ 1,040
(3)	Environmental Review Deposit (per discussion at the February 15, 2006 hearing – estimated cost to be deposited)	\$ 20,000
(4)	Deposit for Display Ad Requirement	\$ 750
(5)	Deposit for Comprehensive Fiscal Analysis (per discussion at the February 15, 2006 hearing – estimated cost to be deposited)	<u>\$ 80,000</u>
	TOTAL	\$109,990

BACKGROUND:

At the August 16, 2006 hearing, the Commission continued consideration of LAFCO 3048A, the island annexation proposal submitted by the City of Fontana for the four Bloomington islands, to the November hearing to allow for completion of the registered voter petition circulation and review process for the Bloomington Incorporation. Attached to this staff report are the location and vicinity maps and a copy of the August Hearing staff report as Attachments #1 and #2 respectively.

On September 25th, the BIC submitted its incorporation petition to the LAFCO Executive Officer. As required by statute, staff forwarded the petition to the County Registrar of Voters for certification. On October 17, 2006, a Notice of Insufficiency, copy included as Attachment #3, was issued for the Bloomington Incorporation petition (LAFCO 3075). As identified on the Notice, BIC had until 5:00 p.m. on November 1st to turn in its supplemental petition. On November 1st, BIC submitted a supplemental petition purported to contain 486 signatures. This supplemental petition was forwarded, the same day, to the County Registrar of Voters office to provide certification of the valid signatures. The Registrar's response, provided on November 8th, indicates that the combined original and supplemental petitions contain sufficient valid signatures to initiate the incorporation proposal for the City of Bloomington (25% of the registered voters within the area proposed for incorporation).

With the certification that the petitions are sufficient to initiate this action, staff has evaluated LAFCO 3048A against existing Commission policies and State law related to conflicting proposals. The following provides the staff's analysis of the determinations required by Government Code Sections 56655, 56375(a) and 56375.3 (copies of these Code Sections are included as Attachment #4 to this report), which relate to further consideration of this application.

GOVERNMENT CODE SECTION 56655:

Government Code Section 56655 provides the following language:

“If two or more proposals pending before the commission conflict or in any way are inconsistent with each other, as determined by the commission, the commission may determine the relative priority for conducting any further proceedings based on any of those proposals. That determination shall be included in the terms and conditions imposed by the commission. In the absence of that determination, priority is given to that proceeding which shall be based upon the proposal first filed with the executive officer.”

In the present case, there are two proposals pending before the Commission which are inconsistent with one another – LAFCO 3048A proposing the annexation of four islands of territory to the City of Fontana and LAFCO 3075 proposing to incorporate the same four islands as a part of the larger City of Bloomington.

The Commission has adopted a policy to direct its action when faced with a determination of the priority of action as required by Government Code Section 56655. That policy reads as follows:

POLICY #5 - PRIORITIES FOR ANNEXATION AND FORMATION
(Adopted April 12, 1972; amendment adopted August 27, 1986.)

The Commission will consider the following priorities or guidelines for annexation and formation with the provision that overriding circumstances must be stated in exceptions:

- a. Annexation to an existing city or district instead of formation of a new agency.
- b. Annexation to a city rather than a district if both can provide comparable services.
- c. Annexation to a multi-purpose district in preference to annexation to a single purpose district.
- d. Formation of a new political entity as the last and least desirable alternative.

In keeping with this policy declaration, without a circumstance to override the determination, staff's recommendation is that LAFCO 3048A would have priority over the processing of LAFCO 3075. Therefore, it is the staff's recommendation that no change in priority of processing for this proposal be made and that LAFCO 3048A should move forward.

However, in the prior considerations by the Commission related to this proposal, it has been indicated that deference should be given to the local group looking at the possibility of incorporation of a City of Bloomington. If the Commission determines that this remains an overriding circumstance in the present case, then the Commission could continue LAFCO 3048A to allow for submission of a complete incorporation application for LAFCO 3075. A complete application would include the submission of the required forms, Feasibility Study, maps and a legal description, and the payment of the appropriate filing fees and deposits.

As was discussed by the Commission at the February 15, 2006 hearing, BIC will be responsible for payment of all fees associated with the Incorporation application; the fees and deposits will be provided upfront and the application is to be submitted within one year of the determination, or by no later than February 2007. Therefore, in order to move forward with the incorporation application, it is staff's recommendation that BIC be required to provide:

- The forms and materials required for processing of the application, including the preliminary Feasibility Study, maps and a legal description.
- Payment of all fees and deposits for application processing. As outlined at the February 2006 hearing, the environmental processing was estimated to be approximately \$20,000, and staff has estimated that the cost for preparation of the statutorily-required Comprehensive Fiscal Analysis (CFA) at \$80,000 (Menifee Valley in Riverside cost estimated at \$64,000), LAFCO Filing Fee for Incorporation of \$8,200, Legal Counsel Representation Deposit of \$1,040, and the Deposit required for provision of a display ad for legal advertising of \$750. This is a total of \$109,990.
- That these fees, deposits and application materials be submitted to the LAFCO Executive Officer by no later than February 28, 2007.

The deposits outlined above for environmental processing and preparation of the CFA exceed the deposits required by the Commission's existing Fee Schedule. The current Fee Schedule requirements are a \$750 deposit for environmental processing and a \$15,000 deposit for preparation of the CFA with "the balance due prior to the Commission's consideration". The staff-recommended deposits required are in keeping with the determinations made during the February 2006 hearing that the proposal can

proceed “with all costs to be paid by BIC”. Staff’s concern is that to begin the process to prepare the CFA without sufficient funding on file for completion may place the Commission in a position of being unable to recoup the costs for preparation of that study. In staff’s opinion, the provision of the estimated cost for completion of the study is appropriate, with the proviso that the contract to be entered into specifically indicate that the work can only be done for the funds on deposit with LAFCO; and if those funds are wholly expended, all work will cease until another deposit is provided. In this way, the other entities which are obligated to fund LAFCO, the County, the 24 Cities and the Independent Special Districts, are not required to fund the completion of the CFA contracted for the Bloomington Incorporation.

In addition, it should be clearly outlined that the Commission cannot deny LAFCO 3048A, so deferral of a decision on this proposal does not resolve this dilemma. This position is based upon the language of Government Code Section 56375(a) which requires the Commission to approve the annexation of “islands” of unincorporated territory if they are initiated by City resolution, and Government Code Section 56375.3 which requires the Commission to approve the annexation of island territory without the ability of protest if several basic findings are made concerning the size of the island, the configuration of city boundaries, the lack of prime agricultural land within the island area, the presence of development in the area, and the ability of the study area to benefit from or use municipal services from the City. The original staff report for this reorganization, (provided as a part of Attachment #2 to this report) outlines the responses required for each individual island, noting that they each qualify under these provisions. There has been no change to those determinations in the interim and those determinations are not reiterated here.

Therefore, without the conflicting proposal, based upon the information outlined in the original staff report, it remains the staff’s position that these mandatory determinations are clear; therefore, the Commission is:

1. Required by Government Code Section 56375(a) to approve the proposal as submitted by the City of Fontana; and,
2. Required to approve it without the ability to protest from landowners and registered voters within the area (Government Code Section 56375.3).

CONCLUSION:

It is staff’s position that pursuant to Policy #5 of the Commission, the priority for determination of conflicting proposals would support the approval of LAFCO 3048A. In addition, it remains staff’s position that LAFCO 3048A must be approved by the Commission based upon the factors outlined in Government Code Sections 56375(a) and 56655. In addition, it remains staff’s position that the Commission is required to make

the mandatory determinations outlined in Section 56375.3, and approve the proposal without protest by landowners and registered voters.

However, if the Commission believes the sufficiency of the petition for initiation of the proposal for Incorporation of the City of Bloomington, et seq. (LAFCO 3075) provides an overriding circumstance to implementation of Policy #5, then staff recommends that LAFCO 3048A be deferred for six months, since the Commission cannot deny the application, to the May 2007 hearing; that BIC be required to submit a full and complete application, which would include the payment of deposits for the anticipated full cost for preparing a CFA and environmental review document for the Incorporation; and that the full and complete application be submitted by no later than February 28, 2007, in keeping with the determination made by the Commission at its February 15, 2006 hearing that such application be provided within one year of that hearing.

KRM

Attachments:

- 1 -- Maps – Vicinity and Individual Islands
- 2 -- Staff Report for August 16, 2006 Hearing (Without Attachments) and Excerpt of Minutes for August 16, 2006 Hearing on LAFCO 3048A
- 3 -- Items Related to LAFCO 3075 – Incorporation of City of Bloomington Et Seq.
 - Notice of Sufficiency Dated November 8, 2006 (Supplemental Petition)
 - Notice of Insufficiency Dated October 17, 2006
 - Excerpt of Minutes for February 15, 2006 Hearing
- 4 -- Government Code Sections 56655, 56375(a) and 56375.3
- 5 -- Letter from Tom Dodson, LAFCO Environmental Consultant
- 6 -- Draft Resolution No. 2933