

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

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DATE: NOVEMBER 1, 2006
FROM: MICHAEL TUERPE, LAFCO Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: **Agenda Item #9** – LAFCO 3065 - City of Montclair Annexation No. 27
(West Island)

INITIATED BY:

City Council Resolution, City of Montclair

RECOMMENDATION:

Staff recommends that the Commission approve LAFCO 3065 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. Approve LAFCO 3065 as an island annexation, as defined in Government Section 56375.3, with the following terms and conditions:
 - a. That the City of Montclair's 3.89% Utility Users Tax will not be extended to the annexation area; and
 - b. The standard terms and conditions of approval that include the "hold harmless" clause for potential litigation.
3. Waive the protest proceedings, as authorized by Government Code Section 56375.3.
4. Adopt LAFCO Resolution #2947 setting forth the Commission's findings and determinations concerning this proposal.

BACKGROUND:

LAFCO 3065 proposes the annexation of a substantially-surrounded unincorporated island to the City of Montclair under the special “island annexation” provisions outlined in Government Code Section 56375.3.

The annexation, as initiated by the City, includes a total of 42.8 +/- acres and is within the City’s western sphere of influence. The island is surrounded by City boundaries on three sides and is generally bordered by State Street/Metrolink Line (existing City boundary) on the north, parcel lines west of Ramona Avenue (existing City boundary) on the east, Mission Boulevard (a portion being the existing City boundary) on the south, and the logical extension of Pipeline Avenue (existing City boundary) on the west. Location and vicinity maps and the City’s application are included as Attachments #1 and #2, respectively.

ISLAND ANNEXATION DETERMINATIONS:

In staff’s view, this proposal is a ministerial action for the Commission. This position is taken on the basis of the provisions within: 1) Government Code Section 56375(a) which requires the Commission to approve the annexation of “islands” of unincorporated territory; and 2) Government Code 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. Copies of these Government Code Sections are included as Attachment #3. If the Commission makes the statutory determinations for LAFCO 3065, as outlined below, then State law eliminates the protest provisions for landowners and registered voters and directs the waiver of the protest proceedings, as authorized by Government Code Section 56375.3:

- The area does not exceed 150 acres, and that the area constitutes the entire island. This area is 42.8 +/- acres and constitutes the entire island.
- The area is surrounded or substantially surrounded. This area is 94% surrounded by existing City of Montclair boundaries, as certified by the County Surveyor.
- The area is substantially developed or developing. This determination is based upon the findings that there is the availability of public utilities, there is the presence of public improvement, and there is physical improvement on many, if not most, of the properties.
- The area is not prime agricultural land. There is no prime agricultural land within this area as such is defined by LAFCO statutes.
- The area will benefit from the annexation or is receiving benefits from the annexing city. This area will benefit from the availability of municipal services from the City and is currently receiving benefits from the City

through the extension of sewer service outside the City's boundaries (a 74 space mobilehome park). Fire protection and paramedic services are currently provided by the City of Montclair Fire Department, through its assumption of the service responsibilities of the Monte Vista Fire Protection District upon its dissolution. The City has provided this service within its unincorporated sphere of influence for more than 40 years.

According to Government Code Section 56375.4, "the authority to initiate, conduct, and complete any proceeding pursuant to subdivision (a) of Section 56375.3 does not apply to any territory that, after January 1, 2000, became surrounded or substantially surrounded by the city to which annexation is proposed" (see Attachment #3). This island existed in its current configuration on January 1, 2000.

Staff has also reviewed the provisions of the Commission's additional policies related to the processing and evaluation of islands annexations. These policies, adopted March 31, 2005, are:

1. For the purpose of applying the provisions of Government Code Section 56375.3, the territory of an annexation proposal shall be deemed "substantially surrounded" if 52% of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by (a) the affected City or (b) the affected City and adjacent Cities, or (c) the affected City and a service impediment boundary as defined by the Commission to include, but not limited to, a freeway, a flood control channel or forest service land.

As noted above, this area is substantially surrounded, being 94% surrounded by existing City of Montclair boundaries as certified by the County Surveyor.

2. The Commission determines that no territory within an established County Redevelopment Area shall be included within an island annexation proposal, unless written consent has been received from the County Board of Supervisors and County Redevelopment Agency.

This area is within the existing Mission Boulevard Joint Redevelopment Project Area. Pursuant to the Commission's policy, the County Board of Supervisors and the County Redevelopment Agency have consented to the annexation of this area to the City. Copies of their respective resolutions are included as Attachment #4 to this report.

3. The Commission directs that a City proposing to initiate an island annexation proposal shall have conducted a public relations effort within the area prior to the adoption of its resolution of initiation. Such efforts shall include, but not be limited to, providing information on the grandfathering of existing legal County uses into the City, costs to the resident/taxpayer associated with annexation, and land use

determinations. Documentation of these efforts shall be a part of the application submitted for consideration by the Commission.

The City fulfilled this requirement with an outreach meeting prior to adopting its resolution of initiation as well as a conducting a pre-zone meeting to discuss the issue of land uses within the City and costs, if any, to the residents.

Based upon the information outlined above, it is 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 Montclair; and,
2. Required to approve it without the ability to protest from landowners and registered voters within the area (Government Code Section 56373.3).

The following is information which is required for Commission consideration for any jurisdictional change.

LAND USE:

The study area is currently predominantly developed lands that include a mix of residential (mobilehome park and single-family residences), commercial, and industrial uses. It is surrounded by industrial uses and a conservation basin to the north, commercial uses to the east, commercial and residential uses to the south, and commercial uses to the west.

County General Plan

The current County land use designation for the annexation area is Service Commercial (CS). This designation, with a few exceptions, does not permit residential uses (County Development Code 84.0355). The mobilehome park and single-family residences within this proposed annexation area are not allowed in the CS designation, but the County's Land Use Services Department confirms that the residential uses have permits and existed prior to the assignment of this land use designation through adoption of the 1989 County General Plan.

City General Plan

The City's General Plan land use designation for the area is Limited Manufacturing (the most-intensive industrial operations) and Business Park (light warehousing, assembly, or manufacturing; office and retail use). The land use determinations between the City and County are generally compatible and do not allow for residential uses.

City Pre-Zone

The City has pre-zoned the annexation area Limited Manufacturing (M-1) and Manufacturing Industrial Park (MIP) through adoption of City of Montclair Ordinance 06-883 on March 20, 2006. These pre-zone designations will need to be maintained for a two-year period following annexation unless specific determinations are made by the City Council at a public hearing (Government Code Section 56375(e)). The pre-zone designations are:

- M-1, north of Third Street and its logical extension, allows for limited manufacturing and limited industrial (City Municipal Code 11.32).
- MIP, south of Third Street and its logical extension, provides the appropriate environment for industry, light manufacturing, and related services (11.30).

As Figure 1 and 2 below illustrate, the General Plan and pre-zone land use designations split the parcels which comprise the Shady Lane mobilehome park (indicated by the diagonal hatch marks). Staff questioned the apparent inconsistency between the City’s General Plan and pre-zoning and the existing parcelization in the area. The City indicates that its General Plan designations and pre-zoning are consistent and that its pre-zone designations are about future development patterns rather than following existing parcel lines.

Figure 1. City of Montclair General Plan

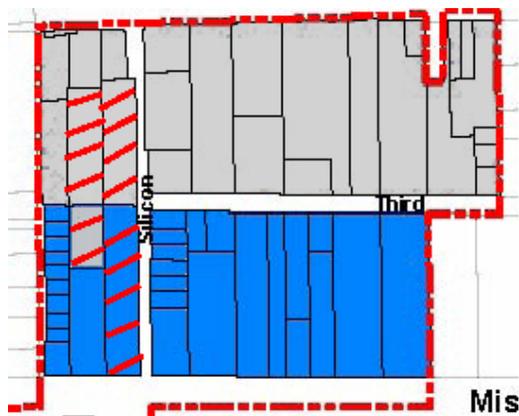
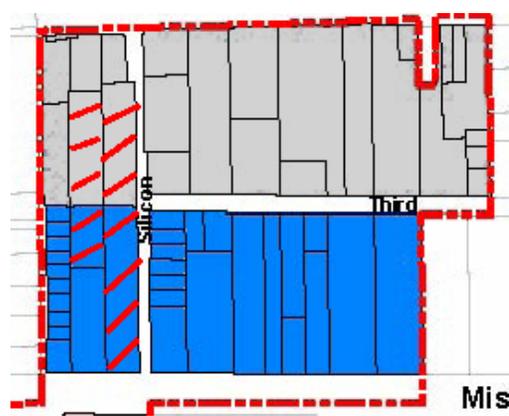


Figure 2. City of Montclair Pre-Zoning



In addition, the City is aware of the inconsistency between its General Plan and pre-zoning and the legal residential uses in the County. The City addressed this issue during its public outreach program and in correspondence with LAFCO (materials included in Attachment #5). The City assured these residents that, "...land uses and improvements with legal, non-conforming status would be allowed to remain..." (City letter dated July 3, 2006, Page 2). This information was also conveyed in a bi-lingual question and answer sheet the City has made available (Question and Answer Sheet, Page 1). To further address these concerns, the City states in a letter dated October 26, 2006:

“...the City intends to accept all uses and improvements legally established through the County of San Bernardino upon annexation, irrespective of the proposed City zoning designations...Expansion or modification of all legal, non-conforming structures and uses, such as the Shady Lane Mobile Lodge and scattered residential uses, would be subject to the provisions of Section 11.78.060 of the Montclair Municipal Code”.

However, this code section authorizes “... reconstruction or alterations that do not enlarge or increase the size of a nonconforming building”. Thus, the City intends to accept these residential units, but the City Municipal Code does not allow for construction of additions (or enlargements) to such dwellings.

LAFCO staff has reviewed the question of handling the transition of current land use projects from the County to the City upon completion of the island annexation. The City has outlined its intent to accept any land use projects currently in process with the County.

Of special notice, however, is a current Conditional Use Permit (CUP) application for a Recreational Vehicle sales and rental business located at 4238-4252 Mission Boulevard (APNs 1012-172-02 and 03) which is in process through the County’s Current Planning Division of the Land Use Services Department. The Recreation Vehicle sales and rental business is currently in operation, but approval of the CUP has not been issued. The business is operating without a permit and is, therefore, operating illegally in the County. County staff continues to work with the applicant to resolve these issues.

The City has indicated that if the business receives approval of its CUP and is in compliance with the County conditions before the issuance of the Certificate of Completion, then the City will accept this project subject to the conditions of the County. However, if the CUP is not approved by the County prior to the issuance of the Certificate of Completion, the City will consider the use illegal and recommend that the City’s Code Enforcement Division close the business immediately. In order to re-establish the business, the City will require the property owner to submit a new CUP application to the City. The City reserves the right to modify or expand conditions beyond those required by the County and the CUP will then have to be approved by the City’s Planning Commission before the business will be allowed to operate. A copy of the City’s letter dated November 2, 2006 is included as Attachment #6 to this report.

PLAN FOR SERVICE:

The City of Montclair has submitted a plan for municipal services as required by law, and the plan is attached to this report for Commission review as a part of Attachment #2. In general, the Plan identifies the following:

- Much of the area proposed for annexation is currently on septic systems. Since the 1994 statutory requirement for LAFCO to review service contracts, only one service contract for sewer has been approved within the proposed

area: the Shady Lane Mobile Lodge at 4138 Mission Blvd. (APNs 1012-181-05 and 06). There will be no effect on existing septic system users in the unincorporated area, except for septic system failures and expansion projects which would require sewer service. New developments may be required to connect to the City's sewer system, where sewer lines are available, and will be extended at property owner's expense. In addition, properties adjacent to an existing sewer line but not connected will be assessed a sewer standby charge of \$2.35 per month per dwelling unit for residences and per parcel for commercial/industrial.

Environmental Health Services Division of the Department of Public Health for the County supports this annexation to provide sewer service.

- Water service is currently provided by the Monte Vista Water District. No change in service provider will occur as a result of this proposal.
- Fire protection and paramedic services are currently provided to the area by the City of Montclair Fire Department, through its assumption of the service responsibilities of the Monte Vista Fire Protection District upon its dissolution. The City has provided these services within its unincorporated sphere of influence for more than 40 years through contract with the Monte Vista Fire Protection District. The City's Fire Station is located approximately one mile from the center of the island area. No change in service provider will occur as a result of this proposal. Financing of this service has been previously provided through the dissolution process.
- Law enforcement will shift from the County Sheriff's Department to the City of Montclair Police Department. The County Sheriff operates out of the Chino Hills substation, located approximately six miles from the center of the annexation area.

Upon annexation, the City of Montclair will assume responsibility for serving the area. The City of Montclair Police Department is located at 5111 Benito Street, approximately three miles from the center of the annexation area. The Police Department provides service surrounding the island and has sufficient response personnel, equipment, and financing to adequately serve the area.

- Solid waste services are currently provided by Burrtec Waste Industries, Universal Waste Systems, or Waste Management. City policy states that residents must use the City's franchised waste hauler and the City would bill property owners for the collection. However, those owners who currently contract with a waste hauler other than Burrtec can continue those contracts for a maximum of five years before being required transfer to the City's franchise hauler.
- Library service will be provided by the City of Montclair Public Library.
- The City will provide streetsweeping on a weekly basis following annexation.

- There are no County-funded streetlights within the proposal area.
- Three County maintained roads will be transferred to the City. There is an existing private road located on APN 1012-181-18 providing access from State Street. There will be no change in status for this roadway following completion of the annexation; its maintenance will remain the responsibility of the property owner.
- The Fiscal Impact Analysis included as a part of the Plan for Service, identifies the number of dwellings (100) and residents (250) to remain static through 2022. Estimations for the following revenues and expenditures are included in the Analysis.
 - Restricted revenues include Measure I, AB 2766 Vehicle Registration fees¹, and Gas Taxes.
 - Unrestricted revenues include Motor Vehicle In-Lieu fees, AB 1602 Vehicle License fees, and Property Tax.
 - The City already provides fire protection to the area, and the City provides code enforcement and police protection surrounding the area. The City indicates its position that this annexation requires no additional staff to provide service to this area.
- Upon annexation, businesses would be subject to an annual business license fee based on a gross sales of 30 cents per \$1,000 plus a base fee of \$55. This information was obtained from the City's pre-annexation workshop handouts (Attachment #5, Question and Answer Sheet, Pg. 1).

Since no election is possible under the island annexation provisions, extension of the City's 3.89% Utility Users Tax cannot be authorized as a part of this review. Therefore, as a condition of approval, the extension of the City's Utility Users Tax is prohibited without a subsequent election.

As required by Commission policy and State law, the Plan for Service submitted by the City of Montclair shows that the extension of its services will maintain, and/or exceed, current service levels provided through the County.

ENVIRONMENTAL:

The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed this island annexation proposal and recommends that it is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the fact that the Commission's approval of this application is a ministerial action, as the Commission has no discretion, and is,

¹ Sections 44220 through 44247 of the Health and Safety Code (AB 2766) authorize air pollution control districts to impose a \$2 to \$4 motor vehicle registration fee to provide funds for air districts to meet new responsibilities mandated under the California Clean Air Act. The fees are distributed on a per capita basis and the City receives a \$1.23 per capita share.

therefore, exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15268. A copy of Mr. Dodson’s recommendation is included for the Commission’s review as Attachment #7. Staff recommends that the Commission adopt the Statutory Exemption for this proposal and direct the Clerk of the Commission to file a Notice of Exemption with the appropriate agency within five days.

FINDINGS:

The following findings are required to be provided by Commission policy and Government Code Section 56668 for any change of organization/reorganization proposal:

1. The Registrar of Voters has determined that the study area is legally inhabited, containing 84 registered voters as of October 12, 2006.
2. The proposed annexation area is within the sphere of influence assigned for the City of Montclair.
3. The County Assessor has determined that the value of land and improvements within the annexation area is \$10,275,017 (\$4,593,020 -- value of land; \$5,681,997 -- value of improvements).
4. Legal advertisement of the Commission’s consideration has been provided through publications in the *Inland Valley Daily Bulletin* and the *Sun*, newspapers of general circulation in the area. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
5. All notices required by State law and local Commission policies have been provided. Individual notice has been provided to registered voters and landowners within the annexation area (totaling 120), and to all voters and landowners located within roughly 1,350 feet of the exterior boundaries of the annexation site (totaling 696). Comments from landowners, registered voters, and any affected local agency have been reviewed and considered by the Commission in making its determination. To date, no opposition to this proposal has been received.
6. The City of Montclair has pre-zoned the study area for Limited Manufacturing (M-1) and Manufacturing Industrial Park (MIP). These zoning designations do not appear to conform to the Limited Manufacturing and Business Park designations for the area as reflected on the City of Montclair’s General Plan map. However, the City has indicated that the Limited Manufacturing General Plan designation is consistent with its Manufacturing Industrial Park zoning. Furthermore, the existing residential uses within the annexation area do not conform with the existing County land use designations or City pre-zone designations. The City has indicated its intent to allow for the continued residential uses pursuant to its Municipal Code 11.78.060, as they

are considered legal, non-conforming uses in the County. The City's pre-zoning designations will take effect upon annexation. Pursuant to the provisions of Government Code Section 56375(e), the pre-zoning designations shall remain in effect for two years following annexation unless specific actions are taken by the City Council.

7. The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed this island annexation proposal and recommends that it is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of this application is a ministerial action, as the Commission has no discretion, and is, therefore, exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15268. A copy of Mr. Dodson's recommendation is included for the Commission's review as Attachment #7.

8. The area in question is presently served by the following local agencies:

County of San Bernardino
County Service Area 70
Chino Basin Water Conservation District
Inland Empire Resource Conservation District
Inland Empire Utilities Agency (formerly known as the Chino Basin Municipal Water District) and its Improvement District C
Monte Vista Water District
Metropolitan Water District of Southern California
West Valley Mosquito and Vector Control District

County Service Area 70 will be detached from the area upon successful completion of the annexation as required by Government Code Section 25210.90. No other agencies will be affected by this proposal as they are regional in nature.

9. Upon annexation, the City will extend its services as required by the existing land uses and the progression of development. The City of Montclair has submitted a plan for the extension of municipal services to the study area and certified the adequacy of the Plan, as required by law. The financial information presented within the Plan for Service indicates that the extension of services can be maintained and operated through the existing revenue resources available through the transfer of property taxes, utility rates, subventions, and fees for service. The Plan for Service indicates that the City can, at a minimum, maintain the level of service delivered and can improve the level and range of selected services currently available in the area. (See Attachment #2).

10. The developing portion of the study area can benefit from the availability and extension of municipal services from the City of Montclair. Properties within the area currently receive benefits through an out-of-agency service

contract for sewer service (a 74 space mobilehome park) and the receipt of fire protection services.

11. The annexation proposal complies with Commission policies and directives and State law that indicate the preference for all island areas to be included within the boundaries of the City surrounding them.
12. This proposal will not assist in the City's ability to achieve its fair share of the regional housing needs as there is no residential component to the land uses anticipated for the area and the existing residences are few in number.
13. The County of San Bernardino and the City of Montclair have successfully negotiated a transfer of property tax revenues that will take effect upon completion of this annexation. This negotiated agreement fulfills the requirement of Section 99 of the Revenue and Taxation Code.
14. The map and legal description, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

CONCLUSION:

It is staff's position that LAFCO 3065 is essentially a ministerial action on the basis that the Commission is required by Government Code Section 56375(a) to approve this proposal. In addition, if it makes the mandatory determinations outlined in Section 56375.3, no protest will be allowed. We believe those findings are easily made in this case:

- The study area comprises a total of 42.8 +/- acres, which makes the island less than the 150 acre threshold;
- The study area is substantially surrounded by the City of Montclair, being 94% surrounded by the City as certified by the County Surveyor, and the study area is wholly within the City's sphere of influence;
- The area is substantially developed or developing based on the presence of existing development in the area and the availability of public utilities as indicated in the Plan for Service;
- The area does not contain any prime agricultural land; and
- The area can benefit, and has benefited, from the availability of municipal services from the City of Montclair as reflected in the Plan for Service.

It is staff's determination that this proposal complies with Government Code Section 56375.4 because the island was created prior to January 1, 2000 and is currently surrounded by the City.

In addition, this proposal complies with additional Commission policies related to island annexation provisions because the City conducted a public relations effort prior to adoption of its resolution of initiation, and the County Board of Supervisors and County Redevelopment Agency have consented to the annexation of this territory which is a part of the Mission Boulevard Joint Redevelopment Area.

If the Commission concurs with these staff determinations, then it is required to approve this proposal and waive the protest hearing as part of its approval of this application, regardless of any protest that might be submitted for this item.

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Attachments:

1. Vicinity Maps and Annexation Area Map
2. City of Montclair's Application and Plan for Service
3. Government Code Sections 56375(a) and 56375.3 through 56375.5
4. County Board of Supervisors and County Redevelopment Agency Consent to Annexation of Mission Boulevard Joint Redevelopment Area Territory
5. Letters from City of Montclair dated July 3, 2006 and October 26, 2006, City Municipal Code 11.78.060, and Question and Answer Sheet
6. Letter from the City of Montclair dated November 2, 2006
7. Response from the Commission's Environmental Consultant, Tom Dodson and Associates
8. Draft Resolution #2947