

**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: OCTOBER 12, 2004
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #7 – LAFCO 2953 -- City of Hesperia Reorganization No. 2003-02 Including Annexations to the City of Hesperia, Hesperia Water District, Hesperia Fire Protection District, and Hesperia Recreation and Park District, Detachment from County Service Area 70 Improvement Zone J, and Dissolution of County Service Area 70 Improvement Zone R-43 (Freeway Corridor – as modified)

INITIATED BY:

City of Hesperia Council Resolution and Resolutions of the Hesperia Fire Protection District and Hesperia Water District

RECOMMENDATION:

Staff is recommending that the Commission:

1. Take the following actions with respect to the environmental review for LAFCO 2953:
 - a. Certify that the Final Environmental Impact Report (EIR) prepared for the Oak Hills Community Plan, the Negative Declaration prepared for the Pre-zoning of the Oak Hills Community Plan area by the City of Hesperia and the Addendum prepared by the Commission's Environmental Consultant have been independently reviewed and considered by the Commission;
 - b. Determine that the final EIR and the Negative Declaration prepared by the City of Hesperia and the Addendum are adequate for the Commission's use to make its CEQA environmental determination as a Responsible Agency related to LAFCO 2953;

- c. Determine that the Commission does not intend to adopt alternatives for this project, other than those considered by the City, and that mitigation measures included in the City's environmental documents are the responsibility of the City, subsidiary districts, or others, not the Commission;
 - d. Adopt the Addendum and Statement of Findings, Facts, and Overriding Considerations as presented by the Commission's Environmental Consultant, Tom Dodson and Associates, as the CEQA environmental documentation for review of LAFCO 2953 as presented to the Commission by memorandum dated July 12, 2004; and,
 - e. Direct the Clerk of the Commission to file a Notice of Determination as a Responsible Agency within five days.
2. Modify LAFCO 2953 – Reorganization No. 2003-02 including Annexations to the City of Hesperia, and related agencies, et al. to exclude the areas requested by the City of Hesperia which includes the Quail Summit Tract and therefore removes the dissolution of County Service Area 70 Improvement Zone R-41; the parcels within Oak Ridge Estates, etc.
 3. Approve LAFCO 2953, as modified, subject to the following conditions:
 - a. County Service Area 70 Improvement Zone R-43 shall be dissolved as a function of this reorganization.
 - b. Upon the dissolution of County Service Area 70 Improvement Zone R-43 (hereinafter CSA 70 Zone R-43) the City of Hesperia shall be designated as the successor agency to all rights, responsibilities, properties, contracts, equipment, assets and liabilities, obligations and functions attributable to the road maintenance and improvement function of the Improvement Zone. The Hesperia Recreation and Park District shall be designated as the successor agency to all rights, responsibilities, properties, contracts, equipment, assets and liabilities, obligations and functions of CSA 70 Zone R-43 attributable to its streetlighting function. The City shall succeed to the annual special charge attributable to CSA 70 Zone R-43 upon its dissolution and shall implement cost-of-living increases annually as provided in its formation documents. This special charge revenue shall be divided annually as follows: the City of Hesperia shall receive 67.6% for road improvements/ maintenance within the area of the dissolved Zone R-43 and the City of Hesperia shall transfer to the Hesperia Recreation and Park District 32.4% for the payment of costs for streetlighting within the area.

- c. All special charges, including delinquent charges and any and all other collections or assets of the Improvement Zone to be dissolved, shall accrue and be transferred to the City of Hesperia as the successor agency to be distributed according to the percentages identified above.
 - d. Pursuant to the provisions of Government Code Section 56885.5(a)(4), the County of San Bernardino, as governing body for CSA 70 Zone R-43, is prohibited from taking the following actions unless an emergency situation exists as defined in Section 54956.5.
 1. Approving any increase in compensation or benefits for members of the governing board, its officers, or the executive officer of the agency;
 2. Appropriating, encumbering, expending, or otherwise obligating, any revenue of the agency beyond that provided in the current budget at the time the dissolution is approved by the commission.
 - e. The continued overlay of County Service Area 60 (Apple Valley Airport) in accordance with the provisions of Government Code Section 56375(n) and make appropriate findings pursuant to Government Code Section 29210.42.
4. Adopt LAFCO Resolution No. 2831 reflecting the Commission's findings, determinations and conditions for the modified proposal.

BACKGROUND INFORMATION:

This is a continued hearing of a proposal which, in its original form, involved annexation of approximately 2,190 acres to the City of Hesperia and its family of special districts along the I-15 freeway corridor. The proposal was originally considered by the Commission at its July 21, 2004 hearing and was continued to the September 15th hearing with the direction to the City of Hesperia that it review the boundary of the proposal, given the opposition expressed by residents within the area. In addition, the Commission directed the City staff to work with the residents to address and/or alleviate their service concerns. The item was again continued, at LAFCO staff's request, to allow for the compilation of revised information for the proposal.

At the July hearing, the two primary concerns expressed by Commissioners were: first, the boundaries of the proposed annexation, given the opposition residents expressed at the hearing; and second was the long-term effect that the annexation of the freeway corridor would have on the future viability of an incorporated Oak Hills.

BOUNDARIES:

In response to the Commission's directive to return and review the boundaries of the annexation with the affected residents, the City of Hesperia scheduled a meeting for August 5th with the landowners and registered voters within the boundaries of LAFCO 2953. LAFCO staff also attended and participated in this meeting. As can be presumed, given the opposition expressed at the July hearing, the emphasis of those present was that the owners of residential lands within the boundaries wished to be excluded from the proposal. They again expressed their understanding that the proposal to be processed by the City was to have been for commercial and industrial lands only.

In the days following the meeting, City of Hesperia staff reviewed the comments and concerns expressed by those participating in the meeting and notified LAFCO staff on August 31st that it was requesting a modification in the boundaries of its application to exclude the majority of residential lands where opposition from residents had been received. The modified boundaries are identified on the map included in Attachment #1 and propose to exclude approximately 411 acres. The exclusions include the following:

- a. The residentially-developed areas north and south of El Centro Road, generally west of Lassen Road which includes the area identified by residents as the "Quail Summit" Tract. This modification would also exclude the dissolution of CSA 70 Improvement Zone R-41 as it provides streetlighting and road maintenance service to the Quail Summit Tract;
- b. The five parcels along Coriander Drive which are a part of the "Oak Ridge Estates" gated community;
- c. The developed residential properties along Oak Hills Road, southerly of Jenny Street;
- d. The four parcels east of Coleridge Road, south of El Centro Road and north of Rodeo Road; and
- e. The area at the northwest corner of the application, generally south of Cedar Street, west of Bellflower Street, north of the natural extension of Mesquite Street, and east of Verbena Road.

There are two other boundary modifications that need to be reviewed by the Commission. They are:

1. The City's proposed modifications do not include the exclusion of the property owned by Mr. Jose Naverette, who has submitted a written request

for exclusion (Attachment #2). Mr. Navarette owns parcel 3039-271-03 which is 19.42 acres in size, located easterly of Verbena Road (maps included in attachment). Mr. Navarette's property is designated Residential Estate under the City's Oak Hills Community Plan, corresponding to the County's jointly-adopted Oak Hills Community Plan designation of OH/RL (rural living), allowing for development at one unit per 2.5 acres. As the letter indicates, Mr. Navarette is in the process of building a home on his property. The single parcel which surrounds Mr. Navarette to the north, east, and south has not requested exclusion. The removal of Mr. Navarette's property would create yet another peninsula of unincorporated territory within the City of Hesperia; therefore, staff does not support this exclusion.

2. The City's proposed modification does not exclude the developing residential area of Tract 16272 on the east side of Interstate 15, at the request of the landowner. At the time the modification was submitted, LAFCO staff indicated its position that this Tract would be excluded on the basis of the existence of Improvement Zone R-43 of CSA 70 that addressed streetlighting and road maintenance. Staff's purpose in proposing this exclusion was that during the interim between hearings it was learned that pursuant to County land use approvals for this tract, the interior roads that were to be maintained by CSA 70 R-43 are private roads. LAFCO law prohibits the Commission from requiring a City to provide road maintenance on a private road. The annexation to the City of this area would remove this improvement zone that was a requirement of the conditions of approval for the tract, causing problems for the future development of the lots. Due to that situation, staff proposed the additional exclusion of the area of this improvement zone from the proposed reorganization.

Following the distribution of the staff report for continuation of the September 15th hearing acknowledging the staff's proposed exclusion, City representatives and the landowner of the tract, Michael Gallagher, contacted staff indicating their desire to maintain the area as a part of the application. Discussions ensued between the City staff, County Surveyor's office, County Counsel, and the property owner to resolve this issue. Ultimately, the private roads in this area have been deeded to the County and can be transferred to the City upon completion of the annexation (Attachment #3 provides the recorded documents). LAFCO staff no longer proposes the exclusion of this area.

Therefore, as a function of the reorganization, CSA 70 Zone R-43 (Tract 16272) is proposed to be dissolved and its functions transferred to the City of Hesperia for road maintenance and the Hesperia Recreation and Park District for the streetlighting services. Staff is proposing conditions of approval that will require the City to succeed to the special charges of this agency, establish a distribution methodology utilizing a percentage

distribution of the service charge, and transferring all the assets of this agency upon its dissolution.

The original staff report for this proposal included a condition that would hold the protest proceeding for this application in abeyance until such time as a contract for severing the water system between the County of San Bernardino, on behalf of County Service Area 70 Improvement Zone J (hereinafter Zone J), and the Hesperia Water District was adopted. That agreement has been signed by the County and the Hesperia Water District (a copy is included as Attachment #4 to this report) so the conditional approval has been removed from the staff's recommendation.

OAK HILLS COMMUNITY:

At the July 21, 2004 hearing the Commission discussed its concern regarding the division of the Oak Hills community through approval of LAFCO 2953 into two parts, east and west. Specific discussion of the issue of the viability of the incorporation for this community was discussed and the need for immediate attention to this possibility was outlined by Commission members.

Attached to this staff report is a chronology of the involvement of San Bernardino LAFCO with the Oak Hills community over the past thirty years, including the reviews of possible incorporation of this community. In 1994, a committee of concerned Oak Hills citizens had a feasibility study prepared by a highly-regarded incorporation consultant who indicated that incorporation of this predominantly rural-residential community was not viable without the imposition of a per-parcel or per-acre tax to fund its required services.

Since that evaluation, State law, Commission policy, and, most recently, financial issues at the State level have only made the discussion of incorporation more difficult. In the case of the community of Oak Hills, legislation recently enacted in response to the State's budget crisis has eliminated one of its largest anticipated general revenue sources -- Motor Vehicle License fees (known as Motor Vehicle In-Lieu fees). In the 1994 study, these revenues were identified as follows:

1994-95 Transition Year Total General Revenues	\$141,737
Motor Vehicle License Fee Revenue within this amount	\$108,213
1995-96 Total Anticipated General Revenues (without per parcel tax)	\$648,964
Motor Vehicle License Fee Revenue within this amount	\$216,426
1996-97 Total Anticipated General Revenues (without per parcel tax)	\$785,074

Motor Vehicle License Fee Revenue within
this amount

\$216,426

This does not take into account the ongoing shifts in property tax revenues to the State that has occurred during this period which would also decrease the revenue base. So, the viability of cityhood, unless the land use persuasion of the community was to change, does not appear to be valid.

For clarification, a copy of the staff report presented to the Commission at its February 1994 hearing regarding the sphere of influence expansion for the City of Hesperia is also attached to this report, as well as the section outlining the Incorporation Consultant's findings (Attachment #5).

FINDINGS:

The findings required to be provided by Commission policy and Government Code Section 56668 have been modified to address the changes in boundaries proposed for the application. They are:

1. The Registrar of Voters Office has determined that the study area, as modified to include 1,779 acres, is legally uninhabited, containing 5 registered voters, as of September 15, 2004.
2. The study area is within the sphere of influence assigned for the City of Hesperia and its community of special districts.
3. The County Assessor's Office has determined that the assessed valuation of land and improvements within the modified study area is \$10,137,080 (\$7,230,796 land; \$2,906,284 improvements).
4. Legal advertisement of the Commission's original consideration was provided through publication in *The Hesperia Resorter*, *The Daily Press* and *The Sun*, newspapers of general circulation within the study area. Individual notice of the original hearing and the continuation of the hearing has been provided to those individuals and agencies having requested such notification.
5. LAFCO staff has provided an individual notice to the landowners and registered voters within the reorganization area, and to landowners and voters within 1350 feet surrounding the study area of the original hearing. In addition, individual notice of the modification in boundaries and the continuation to the October 20th Hearing was mailed to each landowner and registered voter within the boundaries of the reorganization area. These notices exceed the requirement of state law and adopted Commission policies (copies included as Attachment #6). Protest has been received to the notice of the modified application from a landowner along the western

boundary and considered by the Commission in making its final determination.

6. The City of Hesperia has processed a Community Plan and Pre-zoning of the reorganization area and the Oak Hills community in its entirety. These land use designations and the City's processing are more fully discussed in the narrative of the original staff report dated July 12, 2004. The designations assigned include commercial, industrial and rural residential within the area. These land uses conform to the General Plan of the City of Hesperia, as modified. Pursuant to the provisions of Government Code Section 56375(e) these 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 the City of Hesperia's Initial Study and Negative Declaration (for the pre-zoning of the Oak Hills Community Plan area) and the EIR and Statement of Overriding Considerations prepared for the Oak Hills Community Plan. Mr. Dodson has determined that these documents taken together are adequate for the Commission's review of the proposed reorganization as a responsible agency. Copies of the City's environmental documents were presented to the Commission at the June 16th hearing.

The necessary actions to be taken by the Commission, as a responsible agency, include the following:

- a. Certify that the EIR prepared for the Oak Hills Community Plan, the Negative Declaration prepared for the Pre-zoning of the Oak Hills Community Plan area by the City of Hesperia and the Addendum prepared by the Commission's Environmental Consultant have been independently reviewed and considered by the Commission;
- b. Determine that the final EIR and the Negative Declaration prepared by the City of Hesperia, and the Addendum are adequate for the Commission's use to make its CEQA environmental determination as a Responsible Agency related to LAFCO 2953;
- c. Determine that the Commission does not intend to adopt alternatives for this project, other than those considered by the City, and that mitigation measures included in the City's environmental documents are the responsibility of the City, subsidiary districts, or others, not the Commission;
- d. Adopt the Addendum and Statement of Findings, Facts, and Overriding Considerations as presented by the Commission's Environmental Consultant, Tom Dodson and Associates, as the CEQA

environmental documentation for review of LAFCO 2953 as presented to the Commission by memorandum dated July 12, 2004; and,

- e. Direct the Clerk of the Commission to file a Notice of Determination as a Responsible Agency within five days and find that no further Department of Fish and Game filing fees are required by the Commission's approval since the City, as lead agency, has paid said fees.
8. Upon annexation, the City and affected agencies will extend their services as required by the progression of development as outlined in the Plans for Service included within the original staff report dated July 12, 2004. The financial information portion of the Plans for Service indicates that supplemental funding through the formation of a Community Facilities District, or other similar financing issue, will be required for this area. Through these mechanisms, the Plans state that the level of service will be adequate for the development anticipated and that the revenues to be provided through the financing mechanisms are anticipated to be sufficient to provide for the infrastructure and ongoing maintenance and operation of the services from the City of Hesperia, Hesperia Water District, Hesperia Fire District and Hesperia Recreation and Park District.
9. The modified study area is presently served by the following public agencies:

County of San Bernardino
County Service Area 38 (fire protection)
County Service Area 60 (Apple Valley Airport)
County Service Area 70 and its Improvement Zones:
 Zone J (domestic water purveyor)
 Zone R-43 (road maintenance and streetlighting – Tract 16272)
Mojave Water Agency and its Improvement District No. 1
Mojave Desert Resource Conservation District

County Service Area 38, County Service Area 70 and County Service Area 70 Improvement Zone J will be detached upon successful completion of this annexation. Pursuant to the provisions of Government Code Section 57025, individual notice of the protest proceeding shall be provided to landowners within the modified boundary due to the detachment of the improvement zone.

Improvement Zone R-43 of County Service Area 70 will be dissolved as a function of this reorganization. As a condition of approval, staff is recommending that the City of Hesperia shall succeed to the special charges of this agency and annually distribute these revenues to the Hesperia Recreation and Park District for the provision of streetlighting services and to the City for road maintenance within the area.

As a condition of approval, County Service Area 60 will be retained overlaying the area. The continued overlay of CSA 60 is appropriate based on the regional nature of its Apple Valley Airport function. This overlay is authorized by Government Code Section 56375(n) if the Commission finds that the continued overlay is justified to help preserve the health, welfare, and safety of present and future inhabitants of the study area and the region and that it will not affect the ability of the City to provide any service.

None of the other agencies will be directly affected by the completion of this proposal through an adjustment in their boundaries.

10. The annexation proposal complies with Commission policies and State law that indicate the preference for areas proposed for development at an urban-level land use to be included within a City so that the full range of municipal services can be planned, funded, extended and maintained.
11. The City of Hesperia and Hesperia Recreation and Park District have submitted Plans for Service, as required by law and Commission policy (included as a part of the original staff report) and the City and District have indicated that the modification in boundaries has a negligible effect on those documents. The City's Plan for Service (which addresses service provision by the City and its subsidiary Fire and Water Districts) outlines that the agencies can provide their services to the area based upon the land use plans provided within the Oak Hills Community Plan. The Plan for Service provided by the Hesperia Recreation and Park District outlines the services to be extended by the District (park and recreation services as well as streetlighting and public landscaping). The Plan provided by the District indicates "parks, open space, trails, street lights and other required infrastructure will be provided by the developer using agreed upon programs between City and developer." The Park District indicates that it will include the areas within existing assessment districts for ongoing maintenance and operations.
12. Comments from landowners, registered voters, and affected local agencies have been reviewed and considered by the City in requesting the modification in boundaries. Comments from landowners and affected agencies have been reviewed and considered by the Commission in making its final determinations on the application.
13. The modified study area can benefit from the availability of municipal-level services from the City of Hesperia and its related special districts.
14. This proposal may assist the City's ability to achieve its fair share of the regional housing needs upon development of the small amounts of

residential development included within the modified application.

15. The County of San Bernardino and the City of Hesperia have successfully negotiated a transfer of property tax revenues for the original reorganization proposal. This negotiated agreement fulfills the requirements of Section 99 of the Revenue and Taxation Code.

Modification of the proposal will require a renegotiation of this property tax distribution pursuant to the provisions of Section 99 Subsection (b)(7) of the Revenue and Taxation Code. A renegotiation of this property tax distribution would need to be requested by one of the parties and completed within the timeframe outlined in Section 99(b)(7).

16. Maps and legal descriptions, as revised pursuant to City modifications, are in substantial compliance with LAFCO and state standards through certification by the County Surveyor's Office.

CONCLUSION:

Staff indicated in the original staff report that it had wrestled with the issue of the boundary configuration presented by this reorganization. Modifications to exclude residential territory proposed by the City have not extinguished the staff's concern regarding a four-mile strip of City territory essentially separating the Oak Hills community into two parts. So, the Commission will need to evaluate this modified proposal against the policies and direction of State law and the Commission's policies. Staff's position, as it was at the original hearing, is that the policy standards developed by the State and the Commission point toward the approval of this proposal. These policies are:

- Urban level development should be included within a municipal service provider or providers. The level of service anticipated by the commercial and industrial developments within the proposed annexation need the availability of sewer service, at present only available in this area from the Hesperia Water District without formation of a new service entity; it will need increased levels of law enforcement, a service available through the City of Hesperia with its contract with the County Sheriff, etc.;
- On more than one occasion, the Commission has reviewed the future governance issues for the community of Oak Hills based upon the desires of a majority of the residents and landowners that a rural lifestyle be maintained, as illustrated by the Chronology included with this report as Attachment #5. In 1994, a committee of residents contracted for a feasibility study to be prepared by a well-known consultant – whose findings were that incorporation was not financially feasible without the imposition of special taxes. In the interim, financing issues for incorporations have become even more restricted, the Commission has adopted specific policies

regarding incorporation that would question the viability for the community of Oak Hills, and recent changes in State law has excluded one of the largest general revenue generators anticipated in the original feasibility study – Motor Vehicle License Fees – from a new incorporation effort.

- The Community Plan adopted by the City of Hesperia and the County of San Bernardino solidifies the residential zones requested by the Community and accommodates urban-level development along the freeway corridor, a development intensity requiring a higher level of service than is currently available through overlaying providers.
- The plans developed for this area require the reliance upon facilities which are master planned to be developed by the City and its subsidiary districts; therefore, this project should be included within the boundaries of these agencies to allow for extension of these services and development of the necessary financing mechanisms for their installation.
- The area has been a part of the sphere of influence of the City and its related special districts since 1994 through approval of LAFCO 2763. That sphere of influence determination included specific conditions of the Commission regarding future annexations within the Oak Hills community, such as, awaiting the completion of community plans for the development of the area. Over the ten plus years since its approval, these conditions have been addressed and completed by the City of Hesperia.

Based upon these elements of review, the staff is recommending that the Commission approve the proposal, as modified by request of the City of Hesperia, by taking the actions listed under the recommendation section.

KRM/

Attachments:

- 1 -- City Request for modification of boundaries and maps identifying the City of Hesperia proposed modification
- 2 -- Letter from Mr. Jose Navarette and map of property location
- 3 -- Map outlining area of CSA 70 Improvement Zone R-43 and documents completing the dedication of road easements to the County of San Bernardino
- 4 -- Agreement between County of San Bernardino, on behalf of CSA 70 Zone J, and the Hesperia Water District for the separation of water systems
- 5 -- Oak Hills/Hesperia Chronology of LAFCO considerations, Findings Section of Oak Hills Incorporation Feasibility Study dated February 1994, and LAFCO staff report for consideration of Study Committee and LAFCO 2763 dated February 7, 1994

- 6 -- Copies of correspondence sent to Registered Voters and Landowners within and surrounding LAFCO 2953 on its consideration
- 7 -- Original Staff Report (without attachments) for LAFCO 2953 dated July 12, 2004
- 8 -- Draft LAFCO Resolution No. 2831