

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

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DATE: SEPTEMBER 8, 2006

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #6 – LAFCO 3048B – CITY OF FONTANA
ANNEXATION NO. 168 (ISLAND NO. 3)**

INITIATED BY:

City Council Resolution, City of Fontana

RECOMMENDATION:

Staff recommends that the Commission approve LAFCO 3048B 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 3048B to exclude Assessor Parcel Number 0236-151-67 from consideration and approve the modified proposal as an island annexation, as defined in Government Code Section 56375.3, with the following terms and conditions:
 - a. That the City of Fontana's 5% Utility Users Tax will not be extended to the annexation area;
 - b. All streetlights currently the responsibility of County Service Area SL-1 within the annexation area shall be transferred to the City of Fontana upon successful completion of the annexation. 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,

- c. The standard terms and conditions of approval that include the “hold harmless” clause for potential litigation.
3. Waive protest proceedings, as required by Government Code Section 56375.3; and,
4. Adopt LAFCO Resolution #2939 setting forth the Commission’s findings and determinations concerning this proposal.

BACKGROUND:

At the August 16, 2006 hearing the Commission excluded Island No. 3 from consideration as a part of LAFCO 3048, established it as its own proposal, and continued the consideration to the September hearing. The rationale for the Commission’s determination to exclude Island No. 3 from those considerations related to the division of an existing parcel and owner’s land holdings as originally submitted. The parcel, APN 0236-151-67, is owned by Fedex Freight and LAFCO staff expanded the original application to include the whole of the merged parcel. This expansion is shown in the Figure below in blue and the merged parcel is outlined in red.



Following the mailing of individual landowner notification of the proposal’s consideration, the landowner, Fedex Freight Facility, indicated its position that it did not wish to have its land holdings separated between the County and the City of

Fontana. It also owns the parcel immediately north along Mulberry Avenue. In addition, Fedex expressed concern that an existing land use approval process in the County would be jeopardized by completion of the annexation. For these reasons, the landowner requested exclusion from the annexation. LAFCO staff, City of Fontana staff, and representatives for Fedex Freight met to discuss these issues. As a follow-up to that meeting, the City of Fontana has requested that the Fedex Freight parcel be excluded from consideration in its entirety at this time (copy of correspondence included as Attachment #2 to this report). The City has indicated that they are working toward the annexation of the entire area southerly of the I-10 freeway and would prefer to address the whole of the Fedex Freight land holdings in that follow-up proposal. The following map outlines the new configuration of Island No. 3 to be considered as LAFCO 3048B.



Therefore, it is staff's recommendation that the Commission delete APN 0236-151-67 from consideration in LAFCO 3048B and move forward with the balance of the annexation. Therefore, Island No. 3, as modified, is proposed as an "island annexation" under the provisions outlined in Government Code Section 56375.3. The modified island encompasses 108 +/- acres generally located west of Almond Avenue, north of Jurupa Avenue, east of Mulberry Avenue, and south of parcel lines. Location and vicinity maps and the City's application are included as Attachments #1 and #3 respectively to this report.

LAFCO staff's position is that this modified proposal is a ministerial action. This position is taken based on determinations required by Government Code Sections 56375(a) and 56375.3 (copies of these Code Sections are included as Attachment #4 to this report), which are discussed in detail below.

GOVERNMENT CODE SECTIONS 56375(a) and 56375.3:

Government Code Section 56375(a) requires the Commission to approve the annexation of “islands” of unincorporated territory and Government Code Section 56375.3 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 Commission is required to evaluate the island against the criteria outlined and make specific determinations regarding its compliance with these provisions. The specific evaluation of these criteria for Island No. 3 is as follows:

- The area does not exceed 150 acres; it is 108 +/- acres and constitutes the entire island of unincorporated territory;
- The area is totally or substantially surrounded; the area is substantially surrounded, being greater than 57% surrounded by existing City of Fontana boundaries;
- The study area is substantially developed or developing. This determination is based upon the findings that public utilities are available within the area, there are public improvements present within the area, and there are physical improvements on many, if not most, of the properties;
- The study area is not prime agricultural land as such is defined by LAFCO statutes; and,
- The study area will benefit from the annexation and some parcels within the area are currently receiving benefits from the annexing city through the extension of sewer service outside the City’s boundaries.

Staff has also reviewed the provisions of the Commission’s additional policies related to the processing and evaluation of island annexations. Those policies, adopted March 31, 2005, are as follows:

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 be limited to, a freeway, a flood control channel or forest service land.

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.
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.

Under the Commission's additional policies, the City of Fontana has conducted an extensive outreach program, which included mailed surveys, telephone surveys, and outreach meetings which discussed the issues of land uses within the City, costs, if any, to the residents, etc. None of the other policies apply to this modified proposal.

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 modified at the request of 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).

The following provides abbreviated responses to the balance of the issues which the Commission reviews and considers in all annexation proposals – land use, service effects and the effect on other levels of government and environmental considerations.

LAND USE:

The study area is currently a mix of developed and vacant lands. Developed lands include mixed-use commercial, industrial and residential development. It is surrounded by industrial and business park uses on the north within the unincorporated area; Kaiser High School on the east within the City of Fontana; single- and multi-family residential, commercial and vacant uses to the south within the City of Fontana; and public uses (detention basin) to the west within the City of Fontana.

The City's General Plan land use designation for the area is Light Industrial (I-L) which allows for employee-intensive uses such as business parks, research and development, technology centers, corporate and support office uses. The current County land use designation for the annexation area is Community Industrial. The land use determinations between the City and County are generally compatible.

The City has pre-zoned the annexation area M-1, which accommodates employee-intensive uses such as business parks, research, and technology centers, but does not permit heavy manufacturing, processing of raw materials, or businesses which generate high volumes of truck traffic. The pre-zone designation will need to be maintained for a two-year period following annexation (Government Code Section 56375(e)) unless specific determinations are made by the City Council at a public hearing.

LAFCO staff has reviewed the question of handling the transition of land use projects from the County to the City upon completion of the island annexation. It has been identified that there are a number of projects currently in process at the County affected by this action; however, as of the date of this report, no specific number has been identified. The City, by letter included as Attachment #5 to this report, outlines its position on how it will honor the County's land use approvals for projects and will assume responsibility for assurance of compliance with the County's conditions of approval.

SERVICE ISSUES AND EFFECTS ON OTHER LEVELS OF GOVERNMENT:

The City of Fontana has submitted a "Plan for Service" for LAFCO 3048B, which addressed the entirety of the 32 islands proposed for annexation originally. This Plan has been supplemented by additional responses by City staff and a copy of the Plan is included as part of Attachment #3 to this report. Highlights of the Plan and related information include the following:

- Sewage collection services will become available directly through the City upon completion of the annexation. For those areas which have out-of-agency service contracts for receipt of sewer services currently, the monthly rate will be reduced to in-city charges.
- Water service is provided to the island area by the Fontana Water Company, a private water company governed by the Public Utilities Commission. No change in this service will take place on the basis of the island annexation.
- Law enforcement responsibilities will shift from the County Sheriff's Department, which operates out of the Fontana Substation facility, to the City of Fontana Police Department. The City indicates that its Police Department will absorb this territory into its existing beat system surrounding the sites. The City has indicated that additional police

personnel will be required in order to provide its level of service and that they have set in motion the steps necessary to acquire the officers and other employees. The financing of this service will be through the ad valorem property tax received by the City from within the annexation area.

- Solid waste services are currently provided within the annexation area by Burrtec Waste Industries. Pursuant to City policy, residents of newly-annexed areas may continue to use their current refuse hauler for up to five years but all City residents and businesses are required to have mandatory trash pickup. Residents may choose to transition at any time during this period. The City's current residential rate is \$20.61 per month for pick up, which includes the provision of containers for normal, recyclable and green waste. Commercial rates vary depending on the type and frequency of pick up but all services within the City of Fontana are to be provided by its franchised waste collection provider, Burrtec Waste Industries.
- Fire protection and paramedic services are currently the responsibility of the Central Valley Fire Protection District and will be unchanged by this annexation. Ambulance services are currently the responsibility of American Medical Response (AMR) within both the City territory and the unincorporated islands under consideration. No change in this service will take place as a consequence of the annexation.
- Streetlights are currently funded within the majority of the island area through County Service Area SL-1. While the Plan for Service does not specifically outline the transfer of this responsibility, the Commission's adopted policy requires documentation of the transfer of this responsibility through verification of lighting facilities to be transferred and requiring the submission by the City of a signed form authorizing the transfer upon completion of the annexation. Staff has included this condition in its recommendation for approval. There are nine (9) lights to be transferred and it is estimated that the annual cost of operation is \$900 (approximately \$100 per year energy costs). The ad valorem property tax attributable to CSA SL-1 within Island No. 3 to be transferred to the City is \$3,125, which significantly exceeds the estimated cost of continuing this service.

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

ENVIRONMENTAL CONSIDERATIONS:

The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed this proposal and recommends that the island annexation is statutorily exempt from the California Environmental Quality Act (CEQA). This determination

is based on the fact that the Commission has no discretion in its review of this proposal and must approve the project. Such a “ministerial action” is exempt from environmental review pursuant to Section 15268 of the State CEQA Guidelines. A copy of Mr. Dodson’s analysis is included as Attachment #6 to this report. It is recommended 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 all proposals considered:

1. The Registrar of Voters Office has determined that the study area is legally inhabited, containing 73 registered voters as of August 24, 2006.
2. The study area is within the sphere of influence assigned the City of San Fontana.
3. The County Assessor’s Office has determined that the assessed valuation of land and improvements within the study area is \$20,646,163 (\$10,573,343 land; \$10,072,820 improvements) as of March 28, 2006.
4. Legal advertisement of the Commission’s consideration has been provided through publications in *The Sun* and *The Herald News*, 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. Individual notice has been provided to registered voters and landowners within the annexation area (totaling 132), and to all voters and landowners located within roughly 1,350 feet of the exterior boundaries of the annexation site (totaling 842) in accordance with State law and adopted Commission policies. To date no written opposition has been received. This determination will be updated at the hearing.
6. The City of Fontana has pre-zoned the study area for Limited Manufacturing (M-1). This zoning designation conforms to the Light Industrial land use designation for the area as reflected on the City of Fontana’s adopted General Plan map. This pre-zone designation is generally consistent with the existing land use for the area, and this designation will take effect upon annexation. Pursuant to the provisions of Government Code Section 56375(e), the pre-zoning designation 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 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 in its review of the application; and it 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 #6.

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

County of San Bernardino
Central Valley Fire Protection District
County Service Area SL-1
County Service Area 70
Inland Empire Resource Conservation District
Metropolitan Water District of Southern California
Inland Empire Utilities Agency (formerly known as the Chino Basin
Municipal Water District) and its Improvement District C

County Service Area SL-1 and 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 public 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 progression of development. The City of Fontana 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 and Commission policy. 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, and fees for service. Water service to the island areas is currently provided by the Fontana Water Company, fire protection/paramedics services are currently provided by the Central Valley Fire Protection District and ambulance service is provided by American Medical Response. 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 #3).

The City of Fontana has indicated in its application and Plan for Service that its 5% Utility Users Tax on commercial properties will not be extended to this area upon annexation. In addition, LAFCO staff has included a condition in its recommendation for approval that indicates that the utility tax will not be applied to the island annexation areas.

10. The developing portion of the study area can benefit from the availability and extension of municipal services from the City of Fontana. Some of the currently developed properties within the area proposed for annexation have benefited from the receipt of City sewer service through out-of-agency service contracts.
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 have no effect on the City's ability to achieve its fair share of the regional housing needs as the territory is zoned for industrial land uses.
13. The County of San Bernardino and the City of Fontana have successfully negotiated a transfer of property tax revenues that will take effect upon completion of this annexation. This negotiated agreement fulfills the requirements of Section 99 of the Revenue and Taxation Code. However, the modification in area for Island #3 will require renegotiation of the property tax distribution as outlined in Revenue and Taxation Code Section 99(b)(7).
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 the staff's position that LAFCO 3048B is a ministerial action requiring approval, one over which the Commission has no discretion. This position is based on the requirements set forth in Government Code Section 56375(a) that state "a Commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that is ... (1) surrounded or substantially surrounded by the city to which annexation is proposed." In addition, it is the staff's position that if the Commission makes the mandatory determinations outlined in Section 56375.3 and its supplemental policies, no protest will be allowed. We believe that those findings are easily made in this case:

- The modified study area comprises a total of 108 +/- acres, which makes the island less than the 150-acre threshold;
- The modified study area is 57 +/- percent surrounded by the City of Fontana, and the study area is wholly within the City of Fontana's sphere of influence;

- The area is substantially developed or developing based on the presence of existing public utilities in the area, the existing development in the area and the availability of public services as indicated in the Plan for Service;
- The area does not contain any prime agricultural land; and
- The area can benefit from the availability of municipal services from the City of Fontana as reflected in the Plan for Service.

In addition, this proposal complies with the Commission's revised policies related to the processing of islands in that the City has conducted a public relations effort prior to adoption of its resolution of initiation.

It is staff's position that approval of this proposal will provide a clear delineation of law enforcement responsibility, will provide for ease in response to needs of residents and landowners to receive sewer service without the added burden required to complete out-of-agency service contracts, and will define the responsible agency to turn to for needed road improvements. Approval of this proposal addresses the needs for service now and in the future.

For all the reasons outlined above, and throughout the staff report, LAFCO staff recommends approval of LAFCO 3048B, as modified. If the Commission concurs with the staff determinations related to the statutorily required factors, then it is required to approve this proposal, regardless of any protest that might be submitted for this item.

KRM

Attachments:

- 1 -- Maps – Vicinity and Location
- 2 -- Letter from City of Fontana, Dated August 24, 2006, Requesting Exclusion of APN 0236-151-67
- 3 -- City of Fontana Application and Plan for Service
- 4 -- Government Code Sections 56375 and 56375.3
- 5 -- Letter from City of Fontana Outlining Position on Assumption of Land Use Review Approvals and Code Enforcement Issues
- 6 -- Letter from Tom Dodson and Associates on Environmental Determination
- 7 -- Draft Resolution No. 2939