

**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**

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**SUBJECT: AGENDA ITEM #7 - LAFCO 3058 - CITY OF MONTCLAIR  
ANNEXATION NO. 26 (MONTE VISTA AVENUE ISLAND)**

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**INITIATED BY:**

City Council Resolution, City of Montclair

**RECOMMENDATION:**

Staff recommends that the Commission approve LAFCO 3058 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 3058 as an island annexation, as defined in Government Code 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 protest proceedings, as required by Government Code Section 56375.3; and,
4. Adopt LAFCO Resolution #2938 setting forth the Commission's findings and determinations concerning this proposal.

**BACKGROUND:**

In May 2006, the City of Montclair submitted an application to annex an area identified as the Monte Vista Avenue Island to the City under the special “island annexation” provisions outlined in Government Code Section 56375.3. The island encompasses 121 +/- acres generally located south of State Street, west of parcel lines, north of a combination of Mission Blvd., Howard Avenue, and parcels, and east of a combination of Monte Vista Avenue and parcel lines. In the center of the annexation area is non-contiguous territory within the City of Montclair. This territory is the City’s fire station and has been a part of the City since 1969. Location and vicinity maps and the City’s application are included as Attachments #1 and #2 respectively to this report.

The City of Montclair’s consideration of this area began as a request for annexation for development of approximately three (3) acres. In discussions with LAFCO staff related to the boundaries of the proposed annexation and the Commission’s position to resolve the island areas within the County, the City has responded with a proposal to address the entirety of the area. LAFCO staff’s position is that the proposal presented to the Commission is a ministerial action. This position is taken on the basis of determinations required by Government Code Sections 56375(a) and 56375.3 (copies of these Code Sections are included as Attachment #3 to this report), which are discussed in detail below.

**GOVERNMENT CODE SECTIONS 56375(a), 56375.3 and 56375.4:**

Government Code Section 56375(a) requires the Commission to approve the annexation of “islands” of unincorporated territory and 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 their compliance with these provisions. The specific evaluation of these criteria for the Monte Vista Avenue Island is as follows:

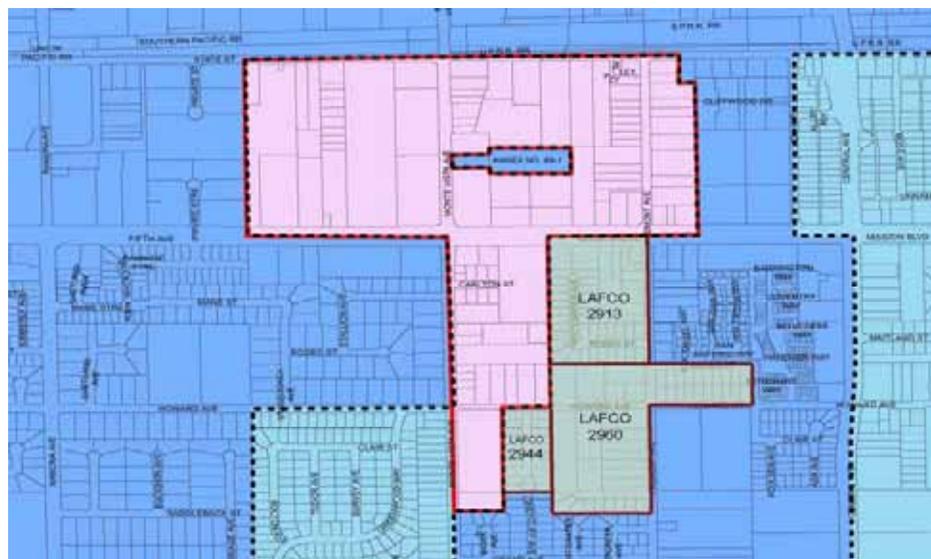
- The area does not exceed 150 acres; it is 121 +/- acres and constitutes the entire island of unincorporated territory;
- The area is totally or substantially surrounded; the area is substantially surrounded, being greater than 90% surrounded by existing City of Montclair boundaries (excluding the non-contiguous City portion);
- 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.

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”. The Monte Vista Avenue Island existed on January 1, 2000 and has been reduced three (3) times since that date:

1. LAFCO 2913 – completed on March 28, 2003, annexed approximately 15.3 acres west of Fremont Avenue, south of Mission Blvd.
2. LAFCO 2944 – completed on October 15, 2003, annexed approximately 4.9 acres south of Howard Avenue, north of parcel lines, bisected by Greycliff Avenue.
3. LAFCO 2960 – completed on July 30, 2004, annexed approximately 22.3 acres east and west of Fremont Avenue, generally south of Merle Street and its natural extension westward.

In each case, these annexations were processed with the right of protest by landowners and registered voters. Based upon these determinations, it is staff’s position that this island was created prior to January 1, 2000, and is currently substantially surrounded by the City of Montclair. Therefore, this proposal meets the requirements of Government Code Section 56375.4. The following figure illustrates the island and the annexations that have occurred as outlined above:



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 Montclair has conducted outreach meetings as well as its pre-zoning meetings to discuss the issue of land uses within the City, costs, if any, to the residents, etc. In addition, this Island Annexation 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. A copy of the Board Agenda Item is included as Attachment #4 to this report.

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 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 City of Montclair, north of the Metrolink right-of-way; industrial, business park, residential and vacant lands on the east within the City of Montclair; single and multi-family residential, commercial and vacant uses to the south; and business park, residential and vacant to the west.

The City's General Plan land use designations for the area includes Industrial Park and Business Park which allows for industrial, office and commercial uses, General Commercial which allows for retail commercial and office uses and Low Density Residential which allows for single-family residential dwelling units with a density of three to seven dwelling units to the acre. The current County land use designations for the annexation area are Community Industrial, Service Commercial, General Commercial, Neighborhood Commercial, and RS-20M for single-family residential with a minimum of half-acre lots. The land use determinations between the City and County are generally compatible.

The City has pre-zoned the annexation area: Limited Manufacturing (M-1), Manufacturing Industrial Park (MIP), Restricted Commercial (C-2), and Single-Family Residential (R-1). These pre-zone designations were established through adoption of City of Montclair Ordinance 05-867 on September 6, 2005 and are consistent with the City's General Plan designations. These pre-zone designations 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 Montclair has submitted a "Plan for Service" for LAFCO 3058 as required by law and as modified by Commission policy. A copy of the Plan is included as part of

Attachment #2 to this report. Highlights of the Plan and related information include the following:

- Much of the area proposed for annexation is currently on septic systems. However, since the 1994 statutory requirement for LAFCO to review service contracts, only one service contract for sewer has been approved within the proposed area: 4910 Howard Street (APN 1011-471-12). 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, those developed properties adjacent to an existing sewer line will be assessed a sewer standby charge of \$2.35 per month per dwelling unit or per parcel for commercial or industrial uses.
- Water service is provided to the island area by the Monte Vista Water District. Supplemental information related to the Plan for Service has been received from the District and a copy is included as Attachment #6 to this report. No change in service provider will occur through completion of this annexation.
- Law enforcement responsibilities will shift from the County Sheriff's Department, which currently operates out of the Chino Hills Substation facility, to the City of Montclair Police Department. The Chino Hills Substation is located approximately 6 ½ miles from the center of the island annexation. The City indicates that its Police Department will absorb this territory into its existing beat system surrounding the sites. 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 one of three companies: Burrtec Waste Industries, Universal Waste Systems, or Waste Management. Pursuant to City policy, residents must use the City's franchised refuse hauler, Burrtec Waste Industries. The City will assume billing responsibility for solid waste collection, and all City residents and businesses are required to have mandatory trash pickup. The Plan for Service indicates that those residents utilizing a solid waste hauler other than Burrtec Waste Industries will have five years before mandatory transfer to the City's franchise hauler.
- Fire protection and paramedic services are currently provided by the City of Montclair, 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. No change in this service will take place as a consequence of the annexation.
- There are no County-funded streetlights within the territory of LAFCO 3058.

The Plan for Service submitted by the City indicates that the annexed area will be subject to the City's existing 3.89% Utility Users Tax. However, since no election is possible under the Island Annexation provisions, extension of this special 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 CONSIDERATIONS:**

The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed this proposal and has indicated that it is his recommendation 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 #7 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 61 registered voters as of May 19, 2006. The number of registered voters as of the date of mailing of the individual notices, August 29, 2006, shows a total of 59 registered voters within the island.
2. The study area is within the sphere of influence assigned the City of San Montclair.
3. The County Assessor's Office has determined that the assessed valuation of land and improvements within the study area is \$39,264,397 (\$16,336,779 land; \$22,927,618 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. Individual notice has been provided to registered voters and landowners within the annexation area (totaling 147), and to all voters and landowners located within roughly 1,350 feet of the exterior boundaries of the annexation site (totaling 1,091) in accordance with State law and adopted Commission policies. To date verbal expression of opposition has been received in the LAFCO staff office; however, no written opposition has been received. This determination will be updated at the hearing.
6. The City of Montclair has pre-zoned the study area for Limited Manufacturing (M-1), Manufacturing Industrial Park (MIP), Restricted Commercial (C-2) and Single-Family Residential (R-1). These zoning designations conform to the Industrial Park, Business Park, General Commercial and Low Density Residential designations for the area as reflected on the City of Montclair's General Plan map. The pre-zone designations are consistent with the existing land use for the area, and these designations 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 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 in its review of the application, 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
  - Monte Vista Water District
  - Inland Empire Resource Conservation District
  - Chino Basin Water 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
  - 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 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, 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. 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 minimal effect on the City's ability to achieve its fair share of the regional housing needs as the majority of the 22+/- acre area zoned for residential use is predominantly developed at this time.
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 the staff's position that LAFCO 3058 is a ministerial action, one which the Commission has no discretion but to approve. 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, not protest will be allowed. We believe that those findings are easily made in this case:

- The study area comprises a total of 121 +/- acres, which makes the island less than the 150-acre threshold;

- The study area is 90+ percent surrounded by the City of Montclair, and the study area is wholly within the City of Montclair'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 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 Montclair as reflected in the Plan for Service.

It is the staff's determination that this proposal complies with Government Code Section 56375.4 which requires that the island be created prior to January 1, 2004. As outlined in this report, the island in its present form is a portion of the Monte Vista Avenue Island which has existed for more than 20 years. Since January 1, 2000, its size has been reduced three times through processing of applications before LAFCO which allowed for landowner and registered voter protest.

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 and the County Board of Supervisors and the County Redevelopment Agency have consented to the annexation of this territory which is a part of the Mission Boulevard Joint Redevelopment Area.

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 3058. 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 -- City of Montclair Application and Plan for Service
- 3 -- Government Code Sections 56375 and 56375.3
- 4 -- County Board of Supervisors and County Redevelopment Agency Consent to Annexation of Mission Boulevard Joint Redevelopment Area Territory
- 5 -- Letter from City of Montclair Outlining Position on Assumption of Land Use Review Approvals and Code Enforcement Issues

- 6 -- Letter from the Monte Vista Water District Dated July 13, 2006
- 7 -- Letter from Tom Dodson and Associates on Environmental Determination
- 8 -- Draft Resolution No. 2938