

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF FEBRUARY 16, 2005**

REGULAR MEETING

9:00 A.M.

FEBRUARY 16, 2005

PRESENT:

COMMISSIONERS:	Paul Biane, Chairman	Paul J. Luellig Jr., Alternate
	Bob Colven, Vice Chairman	Mark Nuaimi
	Kimberly Cox	Richard P. Pearson
	Josie Gonzales, Alternate	A.R. "Tony" Sedano, Alternate
	Dennis Hansberger	Diane Williams

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Clark H. Alsop, Legal Counsel
Jeffrey Goldfarb, Special Legal Counsel
Samuel Martinez, LAFCO Analyst
Debby Chamberlin, Clerk to the Commission

ABSENT:

COMMISSIONERS: **James V. Curatalo, Alternate**

REGULAR SESSION - CALL TO ORDER - 9:00 A.M.

Executive Officer Kathleen Rollings-McDonald calls the regular session of the Local Agency Formation Commission to order and leads the flag salute. Ms. McDonald welcomes the two newest members of the Commission, Dennis Hansberger and Mark Nuaimi.

SWEAR IN NEW MEMBERS OF THE COMMISSION

Clerk to the Commission Debby Chamberlin administers the Oath of Allegiance to Regular Board of Supervisors Member Dennis Hansberger, who is filling the unexpired term of Clifford Young, ending in May 2007, and Regular City Member Mark Nuaimi, who is filling the unexpired term of Jim Bagley, ending in May 2008.

Ms. McDonald requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

ELECTION OF CHAIRMAN AND VICE CHAIRMAN - PAUL BIANE ELECTED CHAIRMAN; BOB COLVEN ELECTED VICE CHAIRMAN

Executive Officer Kathleen Rollings-McDonald presents the staff report related to the election of the Chairman, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that when Jim Bagley lost his City Council seat in the November election, he was removed from his position on the Commission, leaving the Chairman position vacant. She opens the nominations for Chairman, to fill the balance of the term which will expire in May 2005.

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Commissioner Williams nominates Commissioner Biane, seconded by Commissioner Pearson. Ms. McDonald calls for further nominations. There being none, Commissioner Pearson moves to close nominations, seconded by Commissioner Colven. Ms. McDonald calls for a voice vote and Commissioner Biane is unanimously elected Chairman.

Ms. McDonald states that with the election of Commissioner Biane as Chairman, the position of Vice Chairman is now open.

Chairman Biane opens the nominations for Vice Chairman. Commissioner Williams nominates Commissioner Colven, seconded by Commissioner Cox. Chairman Biane calls for further nominations. There being none, he closes the nominations and asks if there are any objections to the nomination. There being none, Commissioner Colven is unanimously elected Vice Chairman.

APPROVAL OF MINUTES FOR REGULAR MEETING OF JANUARY 19, 2005

Chairman Biane calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner Colven moves approval of the minutes as presented, seconded by Commissioner Cox. Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Colven, Cox, Luellig, Pearson, Williams. Noes: None. Abstain: Biane, Hansberger, Nuaimi (Luellig voting in his stead). Absent: None.

CONSENT ITEMS

LAFCO considers the items listed under its consent calendar, which consists of: (1) approval of the Executive Officer's expense report; (2) approval of payments as reconciled for the month of January 2005 and noting cash receipts; and (3) approval of one service contract. A Travel Claim and Visa Justifications for the Executive Officer's expense report, and staff reports for the reconciled payments and the service contract, have been prepared and a copy of each is on file in the LAFCO office and is made a part of the record by its reference herein. Consent calendar items have been advertised as required by law through publication in The Sun, a newspaper of general circulation. In addition, the service contract was advertised in the Inland Valley Daily Bulletin, a newspaper of general circulation in the area.

The service contract proposal is summarized as:

LAFCO SC#229 - City of Chino Irrevocable Agreement to Annex for Sewer and Water Service (APN 1016-501-12)

The staff recommendation is that the Commission approve the Executive Officer's expense report and payments as reconciled and take the following actions for the service contract: (1) take the actions listed on pages one and two of the staff report related to the environmental review of the service contract and direct the Clerk to file a Notice of Determination; (2) approve SC#229 authorizing the City of Chino to extend sewer and water service outside its boundaries to APN 1016-501-12; and (3) adopt LAFCO Resolution No. 2860 outlining the Commission's findings, determinations and approval of the contract.

Chairman Biane asks whether there is anyone present wishing to discuss any of the consent calendar items. There is no one.

Commissioner Pearson moves approval of the consent calendar, seconded by Commissioner Colven. Chairman Biane calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, Nuaimi, Pearson, Williams. Noes: None. Abstain: None. Absent: None.

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Chairman Biane and Commissioner Hansberger announce that they have a conflict and will abstain from voting on Items 7A and 7B. Legal Counsel Clark Alsop also has a conflict on these items as his law firm Best Best & Krieger also represents property owners involved in the environmental litigation on LAFCO 2970A, the consolidated City of Rancho reorganization proposal. Commissioners Biane and Hansberger and Mr. Alsop leave the hearing at 9:10 a.m. The Commission is now represented by Special Legal Counsel Jeffrey Goldfarb of the law firm of Rutan and Tucker.

Vice Chairman Colven assumes the Chair.

CONTINUED ITEMS:

CONTINUED FROM JANUARY 19, 2005 -- CONSIDERATION OF REQUEST FOR OVERRIDE OF COMMISSION POLICY RELATED TO DEFERRAL OF PROCESSING APPLICATIONS FOR PROJECTS PENDING SETTLEMENT OF LITIGATION FOR LAFCO 2970A - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (ETIWANDA CREEK--DRC 2003-01164), (RICHLAND PINEHURST--DRC2002-00865) AND (TRACY DEVELOPMENT--DRC2003-01051) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a continued hearing to consider a request submitted by the City of Rancho Cucamonga for an override of the Commission's policy related to deferral of applications for projects pending settlement of litigation. Notice of the original hearing was advertised as required by law. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Ms. McDonald states that at the November 17, 2004 hearing, the Commission indicated its intent to approve the request by the City of Rancho Cucamonga (hereinafter "the City") to override its policy to await completion of environmental litigation before commencing the processing of a proposal. However, she says the Commission questioned whether special conditions could be applied to alleviate service confusion if the litigation was successful and continued the hearing, with direction to Special Legal Counsel Goldfarb to review the options discussed and come back today with a recommended action. These options included: (1) the ability to condition the completion of the action upon either a resolution of the lawsuits in a way that they are either dismissed with prejudice or there is a judicial determination that the environmental documents for the approval was correct, or (2) the deferral of the transfer of property tax revenues. She discusses the three separate concerns staff and Mr. Goldfarb had with these options, which are outlined in the staff report, and says they came up with an alternate approach they believe resolves the concerns related to potential service confusion if the litigation is successful. She reads the proposed condition that will require the City to submit an out-of-agency service contract with the County to continue to provide service to the area of LAFCO 2970A, a consolidated proposal related to projects identified as Etiwanda Creek, Richland Pinehurst and Tracy Development, while the environmental litigation is resolved. She says staff met with the City and its Legal Counsel and that the City submitted a letter indicating support for the condition, a copy of which is attached to the staff report. Ms. McDonald says the staff recommendation is that the Commission take official action to override its policy to await the conclusion of environmental litigation prior to consideration of the application for LAFCO 2970A and direct that the proposed condition to address service mechanisms in the event of court approval of the environmental litigation be included in resolution approving this item.

Mr. Goldfarb says the biggest concern the Commission faced in terms of waiving its policy was what the results would be if the litigation was successful—the undoing of the annexation and the service confusion that would result. He says this condition provided the solution they felt would best serve the Commission. Ms. McDonald says the Commission has been presented today with a letter received from Craig Sherman, representing the Spirit of the Sage Council and Habitat Trust for Wildlife Inc., indicating opposition to a policy waiver. She says staff disagrees with Mr. Sherman's notion that indemnification is unclear because Condition No. 6 in the draft resolution identifies that the City will be responsible for all legal costs associated with any litigation.

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Chairman Colven asks if there are any questions of staff. There being none, he opens the hearing.

Brad Buller, City Planner, says City staff has worked diligently with LAFCO staff and Mr. Goldfarb and supports the staff recommendation. He says the City is committed to serving this area and accepts the condition, should the litigation be successful.

Chairman Colven asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Pearson moves approval of staff recommendation, seconded by Commissioner Cox. Chairman Colven calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Colven, Cox, Nuaimi, Pearson, Williams. Noes: None. Abstain: Biane and Hansberger. Absent: None.

CONTINUED FROM JANUARY 19, 2005 -- CONSIDERATION OF: (1) REVIEW OF MITIGATED NEGATIVE DECLARATION PREPARED BY CITY OF RANCHO CUCAMONGA FOR ANNEXATION DRC2003-01164, ETC. AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2970A (ETIWANDA CREEK); (2) FINAL ENVIRONMENTAL IMPACT REPORTS ADOPTED BY CITY OF RANCHO CUCAMONGA FOR: A) ANNEXATION DRC2002-00865, ETC.--RICHLAND PINEHURST INC. (STATE CLEARINGHOUSE NO. 2002091053); AND (B) ANNEXATION DRC2003-01051, ETC.--TRAIGH PACIFIC (STATE CLEARINGHOUSE NO. 2003081085), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2970A (RICHLAND PINEHURST AND TRACY DEVELOPMENT); (3) ADOPTION OF FINDINGS OF FACT AND STATEMENTS OF OVERRIDING CONSIDERATIONS (RICHLAND PINEHURST AND TRACY DEVELOPMENT); AND (4) LAFCO 2970A - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (ETIWANDA CREEK--DRC2003-01164), (RICHLAND PINEHURST--DRC2002-00865) AND (TRACY DEVELOPMENT--DRC2003-01051) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a continued hearing to consider a consolidated reorganization including annexations to the City of Rancho Cucamonga and West Valley Mosquito and Vector Control District. Notice of the January 19, 2005 hearing was advertised as required by law. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonalds states that at the November 17, 2004 hearing, the Commission consolidated three proposals submitted by the City, all of which are being litigated by the Spirit of the Sage and Habitat Trust for Wildlife Inc., into a single application, now identified as LAFCO 2970A. Ms. McDonald says that since the Commission has approved the override of its policy, it can now consider this proposal. She shows the consolidated area on the map on the overhead display. She discusses the rationale for the consolidation of the three individual proposals (LAFCO 2965--Etiwanda Creek project area; LAFCO 2967--Richland Pinehurst Development project; LAFCO 2970--Tracy Development project). She explains that staff's rationale for the consolidation was not related to California Environmental Quality Act (CEQA) considerations, but was in relationship to Commission direction to provide for the most effective and efficient service boundaries and to prohibit the creation of islands, as outlined in the staff report.

Ms. McDonald summarizes the four factors that must be considered by the Commission for this proposal. First, she discusses boundary issues, stating that the consolidated reorganization proposes annexation of approximately 703 acres to the City and the West Valley Mosquito and Vector Control District (hereinafter "the WVMVCD"). She says the area is surrounded on three sides by the City boundary and on its northern edge by the Etiwanda Preserve Open Space area. She reports that with the consolidation of the three proposals, there are no boundary issues to be resolved. Next, she discusses land use issues, stating the Commission has been presented with documents related to land use reviews and approvals

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by the City, which rezoned the area as required by law. She notes that the existing land use is primarily vacant, with two residences in the area identified as Etiwanda Creek. She says the various land use designations assigned by the City for each individual project are outlined in the staff report, pointing out that they are predominately residential in nature and require the full range of municipal services.

Ms. McDonald discusses the service issues, pointing out that the current service needs are minimal since the area is predominately vacant at this time. She says Plans for Service were submitted for each individual area and that each includes a fiscal analysis that indicates that revenues are sufficient to support the ongoing maintenance and operation of services. She explains that annexation will remove the area from County Service Area 70 and its Improvement Zone OS-1 (hereinafter "CSA70 OS-1"). However, she explains that there is an application currently in process (LAFCO 2977) to create County Service Area 120, which will overlay the City and administer the open space and habitat conservation functions currently performed by CSA 70 OS-1 and OS-3, which will be dissolved. She says there is a condition in the draft resolution that if CSA 120 is formed prior to the completion of this proposal, it be retained as an overlaying agency, waiving the automatic detachment of county service areas within a city annexation. Ms. McDonald says the area will also be annexed to the WVMVCD, which provided a Plan for Service. She says that Plan indicates that the area will be removed from the County of San Bernardino's Vector Control Program and will be included within the WVMVCD's assessment program, which has a \$10 per developed parcel charge for funding of its services.

Ms. McDonald says that Tom Dodson, the Commission's Environmental Consultant, will go over the environmental review for this proposal. Mr. Dodson says that a Mitigated Negative Declaration was adopted by the City for the Etiwanda Creek project area because there is no proposed development in that area and there will be no physical changes in the environment with any potential for significant impacts. He says that the Richland Pinehurst and Tracy project areas have proposed developments, which are what will ultimately physically change the environment upon annexation. He says the City prepared Environmental Impact Reports (EIRs) and Statements of Overriding Considerations for these two areas and says he used the City's documents to prepare Statements of Overriding Considerations on behalf of the Commission, as a responsible agency. He says that when these developments move forward, there will be significant adverse impacts, primarily related to construction activities, air pollution, and traffic issues that cannot be mitigated. He explains that by adopting the Statements of Overriding Considerations, the Commission is indicating it concurs with the City that the project benefits that accrue to the community are valid reasons for adopting the Statements.

Ms. McDonald says that staff believes that this consolidated reorganization complies with directives of State law and Commission policy and is a very straightforward item of consideration that should be approved. She notes that Finding No. 2 in the draft resolution identifies a land value for exempt lands within the area, since State law requires that public landowners be able to protest the same as private landowners. She says individual notice of the January 19 hearing was mailed to landowners and voters within and surrounding the proposal area. She reports that one phone call was received from a landowner in opposition and says the only written opposition received was from Mr. Sherman. She says the Commission has been presented today with a letter of support from Craig Page on behalf of Tracy Development. Ms. McDonald says the staff recommendation is outlined on pages one through four of the staff report and includes that the Commission: (1) take the listed actions related to the environmental review for the consolidated reorganization; (2) approve LAFCO 2970A, with the various conditions listed; and (3) adopt LAFCO Resolution No. 2861 setting forth the Commission's terms, conditions, findings and determinations for approval.

Mr. Goldfarb states that Ms. McDonald has explained that this is not a single project for purposes of CEQA but three individual projects for purposes of CEQA. He explains that the act of consolidating the three individual projects into a single one had nothing to do with staff conclusions on the environmental characteristics or issues created by each project, but was solely related to the legal obligation to make sure an island was not created as a result of this annexation. He says if the areas were not consolidated, an island could potentially have been created.

Chairman Colven opens the public hearing and calls on those wishing to speak.

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Brad Buller, City Planner, says this area has been in the City's sphere of influence for many years, with the City's ultimate goal to annex it. He says the City appreciates the Commission's willingness to listen to all the ingredients that have brought them to this point.

Commissioner Sedano says the City did an outstanding job and that Commissioner Williams must be very proud of City staff. Commissioner Williams states that the City has a great Planning staff. In response to inquiry of Chairman Colven, Mr. Goldfarb says a settlement of the lawsuits should not affect the action taken today by the Commission. He says if litigation is successful, the annexation would be declared null and void; but he adds that with the condition included in the draft resolution, there will be a seamless transition of services being provided to the area.

Chairman Colven asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

Commissioner Pearson moves approval of staff recommendation, seconded by Commissioner Williams. Commissioner Pearson thanks the City staff and LAFCO staff, Mr. Dodson and Mr. Goldfarb, stating this was a technically involved issue that has been well handled. Chairman Colven calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Colven, Cox, Nuaimi, Pearson, Williams. Noes: None. Abstain: Biane and Hansberger. Absent: None.

It is noted that Commissioners Biane and Hansberger and Legal Counsel Clark Alsop return to the hearing, and Special Counsel Jeffrey Goldfarb leaves the hearing, at 9:33 a.m. Commissioner Biane assumes the Chair.

DISCUSSION ITEMS

Chairman Biane states that he has been requested by Commissioner Nuaimi to take Item No. 10 out of order, because he wishes to participate in the island discussion and may not be able to do so if one of the other items carries the island discussion past the time he will need to leave the hearing. No concern is expressed by Commission members to the movement of Item No. 10.

DISCUSSION OF ISLAND AREAS UNDER NEW PROVISIONS OF GOVERNMENT CODE SECTION 56375.3 – DIRECT STAFF TO SCHEDULE WORKSHOP AS SOON AS POSSIBLE

LAFCO conducts a public hearing to discuss changes in Government Code Section 56375.3, which took effect January 1, 2005, related to the annexation of island areas. Notice of this hearing was advertised as required by law through publication in The Sun, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Ms. McDonald says staff's intent in scheduling this item was to go over the Commission's current policies related to island annexations, provide additional information regarding the changes in Government Code Section 56375.3 and to receive direction from the Commission. She notes that this legislation will sunset on January 1, 2007, and says time is of the essence if cities are to pursue annexation of their islands. She says Government Code Section 56375 establishes what an island is and indicates that the Commission cannot deny an application submitted by resolution of a city council if it finds that the area: (1) is surrounded or substantially surrounded by the City proposing annexation; (2) is substantially developed or developing; (3) is not prime agricultural land; (4) is designated for urban growth by the general plan of the annexing city; and (5) is not within the sphere of influence of another city. She reports that several years ago, Section 56375.3 removed the ability of landowners and voters to protest, with a sunset date of January 1,

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2007 for these provisions to expire. Ms. McDonald states that the legislative changes that took effect January 1 increase the allowable acreage from 75 to 150 acres and eliminate the provision that the area could not constitute a part of an unincorporated area of more than 100 acres in size. She points out that limitations on the processing of island annexations are outlined in Government Code Section 56375.4, and included in the staff report, noting that this provision does not apply to territory that, after January 1, 2000, became surrounded or substantially surrounded by the city to which annexation is proposed

As listed on page four of the staff report, Ms. McDonald reports that there are 12 totally surrounded island areas within the County's cities which are less than 150 acres. Attached to the staff report are maps of potential island areas. She notes that the City of Chino has initiated an application for the annexation of its island Area 6 as it committed to do when it proposed annexation of the Agriculture Preserve. She says staff is awaiting submission of additional documents in order to process that application. She also notes that the map for the City of Needles outlines an island. She explains, however, that this island is wholly Indian land which cannot be annexed without the consent of the Bureau of Indian Affairs and the Indian Tribe.

Ms. McDonald discusses the Commission's Policy 29, adopted in January 2000, which is outlined in the staff report. This policy includes: (1) that a city may not reduce the size of an existing island through the normal annexation process in order to annex the remaining island under Government Code Section 56375.3; (2) that the annexing city is required to provide a hearing as the conducting authority for the island annexation (the element of the policy requiring the city to act as conducting authority was rescinded effective January 1, 2000 since there is now a total waiver of protest proceedings); and (3) that the Commission will define the term "substantially surrounded" on a case-by-case basis. Ms. McDonald says the policy that "substantially surrounded" will be defined on a case-by-case basis caused the most consternation for LAFCO staff and the cities. She points out that island annexations are not popular because they take away the ability of landowners and voters to protest. She says city staff wants some assurance that an area it presents to its Council as substantially surrounded will be accepted by the Commission as substantially surrounded, or a "hornets nest" will have been stirred up for nothing. She says staff has identified some areas it believes could comply with the definition of substantially surrounded, and says the staff report includes the definition of substantially surrounded adopted by LAFCOs throughout the State and an example of policy language adopted by Napa LAFCO.

Ms. McDonald displays city maps and reviews the various areas that staff feels could be considered substantially surrounded, stating that when possible, street centerlines were used to define the separation between island areas. She states that Barstow has two areas. She states that Chino, as mentioned earlier, has initiated annexation of one island and has several other areas that qualify as substantially surrounded. She says Colton has two areas that qualify, one of which is the Riverside-Highland Mutual Water Company facility, and she does not know whether the City will want to annex it. In response to Commissioner Nuaimi, Ms. McDonald explains that the larger area on the map in white is substantially surrounded but is larger than 150 acres. Commissioner Nuaimi asks whether there is a 150 acre component of that area that is substantially surrounded. Ms. McDonald responds there is, but she says a roadway could not be found to use to separate the area into a more efficient area.

Commissioner Hansberger comments that the use of a roadway creates clarity, but says he is not sure that is the only reasonable line to use because properties or houses facing one another on the same street can end up being served by different entities. He suggests possibly using rear property lines. He urges that, if it appears sensible to annex an area and there is no street, staff look for other sensible demarcations. Ms. McDonald responds that if properties are subdivided in a uniform manner, it would be possible to do as Commissioner Hansberger suggested. But she adds that in areas such as the one being discussed, she doubts that has occurred. In response to inquiries of Commissioner Nuaimi, Ms. McDonald discusses that there are no limitations to having two islands that are adjacent to one another that are both substantially surrounded; and she says that the centerlines of freeways have been used as the dividing line between entities, such as between the Cities of San Bernardino and Loma Linda.

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Chairman Biane asks about a situation where a city is moving forward with an annexation that creates a smaller island of less than 150 acres. He asks whether the remaining island would now qualify under the 150 acre limitation, if the island had existed before 2000. Legal Counsel Clark Alsop says the Commission must factor in the issue of service delivery to what is left of the island area and whether just a portion of the island should be annexed, if it all cannot be annexed. He says as long as the finding can be made that the area was substantially surrounded prior to 2000, even if something has happened in the intervening time, he believes the case can still be made that the remaining area is an island under these provisions. Ms. McDonald states that she believes the Commission would have to modify Policy 29 and remove the element that indicates that a city is not permitted to do that. She says that policy was adopted in January 2000 to provide some direction to cities in moving forward with these provisions. Chairman Biane asks whether this Commission can modify that policy and Ms. McDonald responds that it can.

Commissioner Pearson discusses that it would be a good thing to revisit the policy and consider some modifications in the future.

Ms. McDonald points out two substantially surrounded islands in Hesperia. She says Loma Linda has four totally surrounded islands and reports that there is a pending application for annexation initiated by landowner petition for Area 2. She says that Area 1 is the Peterson Tract; that Area 4 is the community of Bryn Mawr, and that Area 3 is a storage facility along Barton Road. Commissioner Hansberger comments that the Peterson Tract has been discussed for as long as he can remember. He says the community wants services but is usually opposed to annexation. He notes that Area 4 is a historic area, with an ethnic community that feels threatened by Loma Linda. Ms. McDonald reports that staff has discussed with the City of Loma Linda the Commission's procedure of using a "velvet hammer"; that if the City proposes an advantageous annexation, the Commission will require that these islands be annexed.

Ms. McDonald says Montclair has two substantially surrounded areas. She notes that the staff report identifies a question related to whether Area 2 qualifies as an island because the City has processed two annexations along the southeastern border of the island area over the last three years. She says the annexations were at the request of landowners in the area, and not for the purpose of reducing the area to comply with the island provisions, and says staff believes this area would qualify. However, she says if the Commission is concerned about the two previous annexations, staff believes the use of Mission Boulevard as the southern boundary would allow for the area to be an island. Commissioner Nuaimi asks why the area east of Area 2, north of Mission Boulevard, is not an island since it is surrounded on three sides by incorporated boundaries. McDonald states that may just be an oversight and says if it meets the acreage criteria, she assumes it would comply. She explains that the City property "floating" in Area 2 is municipally-owned property where the City's fire station is located.

Ms. McDonald points out Rialto's three totally surrounded islands and Area 4, which is substantially surrounded. She explains that in Area 4, the El Rancho Verde Country Club area has been a defined community for more than 30 years. Ms. McDonald discusses that San Bernardino has a number of island areas, noting that the only access to Area 9 is through the City of San Bernardino. Commissioner Nuaimi comments that the acreage for Area 7 is listed as 47 acres, while Area 8, which looks smaller, is listed as having 100 acres. Ms. McDonald says those figures will be rechecked with the Surveyor, as they may be reversed. She notes that the Arrowhead Suburban Farms area would qualify but says she does not know whether the City would want to address any alterations to this established community.

Ms. McDonald reports that Victorville has one totally surrounded area. She says Area 2 could qualify as substantially surrounded, but says she believes it is designated as open space and may not qualify under the provisions of "developing or substantially developed".

Ms. McDonald says staff is asking today for direction and guidance as to whether the Commission believes these areas presented qualify as islands under the special island annexation provisions and whether their annexation should be pursued. She asks whether the Commission's three policy declarations for islands still represent the policy direction it wishes to take for the balance of the two years for which these special provisions apply.

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Legal Counsel Clark Alsop states that the issue is how proactive the Commission wishes to be--whether it wants to make changes to Policy 29; whether it wants to be reactive to what the cities want to do; or whether it wants to encourage the cities to annex their islands.

Chairman Biane asks what the dialogue has been with the cities used as examples today. Ms. McDonald responds that all cities with island areas were provided a copy of the staff report. She says staff was waiting to see what the policy direction of the Commission was before opening official discussions with the cities. Chairman Biane asks what the legislation states as far as a definition of substantially surrounded. Ms. McDonald responds that the law provides no direction on what substantially surrounded is and gives each individual LAFCO the ability to define it, which is why she provided information as to the six LAFCOs which have defined substantially surrounded. She points out that if the Commission does define substantially surrounded, it will also apply to other annexations, removing the Commission's ability to deny that proposal, unless substantially surrounded is defined by policy direction only for the provisions of Government Code Section 56375.3. Chairman Biane asks whether the legislation says anything about one of the boundaries being a State or Federal forest. Ms. McDonald responds that the legislation does not make any reference to the boundary of a national forest, only the Pacific Ocean.

Commissioner Hansberger asks whether they could have more than one definition for substantially surrounded and whether they could determine that substantially surrounded has something to do with service needs and provision, not just geography, which he says is sometimes misleading. Ms. McDonald responds that since the definition is a policy declaration, she believes that language could be included. She says, however, that her concern is whether that changes the case-by-case definition the Commission now has. Commissioner Hansberger discusses a situation where he says the City of Redlands annexed an area in San Timoteo Canyon and that the only access to that area was to leave Redlands, go through Loma Linda and into Colton, up Reche Canyon and then come in from the back way. He says that did not make sense because Redlands could not reasonably serve that area, even though it looked on the map geographically like the area was attached to Redlands. He says access and service provisions should be considered when doing these annexations.

Chairman Biane asks what direction staff needs to bring this issue back at a future date. Ms. McDonald states that if the Commission wishes to revisit Policy 29 regarding island annexations, direction should be given that it wishes to change the first element of the policy that eliminates a city's ability to reduce the size of an existing island by annexing other areas of the island, and the third element of the policy as far as an actual definition of substantially surrounded. She says staff will work with the cities to come up with some definitions of substantially surrounded for further discussion by the Commission.

Commissioner Pearson states that Commissioner Hansberger's point is appropriate because it opens the door to look at what an area has to deal with as far as service issues. He discusses his concern about locking into a specific percentage for defining what is substantially surrounded, noting that the Commission has looked at many areas and done a good job over the years of determining what is substantially surrounded, without having a specific size definition. He points out that the Commission's trend over the past two years has been to take a more proactive stance with the cities, without receiving too much negative feedback, so he says they should approach this in a more proactive way. He adds this may be a good time to have a workshop.

Commissioner Nuaimi says it strikes him that the Commission's policy has somewhat neutered the intent of Government Code Section 56375.3 because of the first element of the policy and because there is not a definite percentage for what is substantially surrounded that the cities can use as a guideline. He says he is concerned about keeping the definition vague, without using a percentage, and is also concerned that this not be overstudied, since the clock is ticking with the January 1, 2007 sunset date.

Commissioner Gonzales comments that she likes the service needs assessment-type of approach discussed by Commissioner Hansberger. She says the pockets lead to a negative image for the surrounding area because they usually are either undeveloped or underdeveloped and, in many cases, create nonconforming uses, resulting in a damaged relationship with the adjacent city. She says that with

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the rapid amount of growth that is taking place, the Commission should take responsibility and start minimizing these situations.

Chairman Biane says that this issue is probably deserving of a special workshop, as suggested by Commissioner Pearson. He says the Commission needs to see what areas would qualify using different percentages, such as 52% and 66%, and says each of the areas discussed need to be looked at more thoroughly. He asks Ms. McDonald how much time staff needs to prepare for a workshop.

Ms. McDonald says a lot of the work has already been done and staff just needs direction as to what kind of information the Commission wants to be presented with. Commissioner Nuaimi encourages the cities present today that are interested in promoting island annexations to go back and do an analysis of which areas are substantially surrounded, using 52%, 66% and 75%, and which areas they would pursue for annexation.

Commissioner Hansberger moves to schedule a workshop at the earliest date possible where there is an agenda light enough that a substantial discussion can be held. Ms. McDonald asks that the workshop be held on a different date than a regularly-scheduled Commission hearing because the upcoming agendas are already very full. She notes that March 30 is the fifth Wednesday of the month and says the Chambers are available. Chairman Biane asks that staff check with the Commissioners and try to find the best date for the workshop. Commissioner Hansberger withdraws his motion, stating that Chairman Biane's direction to staff to schedule the workshop is sufficient.

(It is noted that Commissioner Nuaimi leaves the hearing at 10:23 a.m.)

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2963; AND (2) LAFCO 2963 – REORGANIZATION TO INCLUDE CONSOLIDATION OF INLAND EMPIRE WEST RESOURCE CONSERVATION DISTRICT AND EAST VALLEY RESOURCE CONSERVATION DISTRICT AND ANNEXATIONS TO EAST VALLEY RESOURCE CONSERVATION DISTRICT – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a reorganization to include consolidation of Inland Empire West Resource Conservation District and East Valley Resource Conservation District and annexations to the District. Notice of this hearing was advertised as required by law and Commission policy by publication of an eighth-page legal ad in The Sun and the Inland Valley Daily Bulletin, and by publication in the Riverside Press Enterprise, newspapers of general circulation in the area. Individual notice of the hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that in January 2004, the Commission reviewed and considered the municipal service review/sphere update for the three valley Resource Conservation Districts (hereinafter "RCD"s). She says that at that hearing, the Commission approved a sphere expansion for the East Valley RCD to include all of the Valley area, excluding the territory of Riverside-Corona RCD, and also approved a zero sphere for the Inland Empire West RCD, indicating that the two Districts should be consolidated. She says that after that action each District established subcommittees of their Boards to review their options and began developing a consolidation plan to present to the Commission and preparing the necessary documents to merge the functions of the Districts. She says that today the Commission is considering the creation of this new agency, to be known as the "Inland Empire Resource Conservation District". She notes that the Commission cannot deny this application because it was submitted by substantially similar resolutions adopted by the Board of Directors of each District. She says the Commission will focus today on the requested terms and conditions for the consolidation which are outlined in Attachment 3 to the staff report. She says one condition that had to be negotiated with the two Districts related to the appointment of the incumbent Board of Directors. She reports that East Valley RCD has a seven member Board and currently has four active Directors, and that the Inland Empire West RCD has a five member Board with

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three members currently sitting on the Board. She says there is a condition proposed that consolidates those two Boards, giving the new District a seven member Board, and says there are other conditions that include that future Boards be appointed in lieu of election, identify how the initial Board will be constituted, and how the terms of office will be established for the members of the new agency. Ms. McDonald notes that the Districts' resolutions were silent regarding the use of the County Treasury or the operation of the Districts as their own treasury. She reports that resolutions have been received in the interim indicating that both Districts operate as their own treasury and that a condition has been included to allow that to continue for the consolidated agency. She says the balance of the conditions are relatively routine.

Ms. McDonald discusses that as part of the reorganization application, two totally surrounded islands of territory are proposed for annexation, identified as: (1) the Alta Loma community within the City of Rancho Cucamonga; and (2) the territory surrounded by the three RCDs in the general area of the I-10 and I-215 intersections within the Cities of Colton and San Bernardino. She explains that approval of these annexations to the new District will provide for a single unified District to provide resource conservation district education and service needs to the residents in the valley. She notes that the Commission's Environmental Consultant Tom Dodson and Associates has indicated that a Statutory Exemption applies to this proposal. Ms. McDonald states that the findings required by Commission policy and State law are outlined in the staff report and are made a part of the record by their reference herein. She points out that included in the definition of the Board of Directors is that a representative of Riverside County is to be appointed, since approximately 12% of the Registered Voters reside in, and 22% of the land area is within, Riverside County. She says the balance of the findings are relatively routine, noting that one of the conditions is that the existing property tax revenue of both Districts will be transferred to the successor District.

Ms. McDonald states that the Commission has been presented today with a letter from both Districts requesting that the effective date of the consolidation be deferred to July 1, 2005, to allow time for all of the working mechanisms for the consolidation to be up and running as of the first of the new fiscal year and staff concurs with including that as a condition of approval. She says the staff recommendation is listed on pages one through three of the staff report and includes that the Commission: (1) determine that the reorganization including consolidation is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption; (2) approve LAFCO 2963, subject to the standard terms and conditions and those supplemental terms and conditions included in the staff report, including the additional condition that the effective date of the reorganization be deferred to July 1, 2005; (3) waive the requirement for individual notice of the protest proceeding as authorized, due to the anticipated 600,000+ notices required, and direct the Executive Officer to provide for publication of the protest notice pursuant to Government Code Section 56157; and (4) adopt LAFCO Resolution No. 2862 setting forth the Commission's terms, conditions, findings, and determinations for approval.

Chairman Biane opens the public hearing and asks David Hansberger, General Manager of the East Valley RCD and Interim General Manager of the Inland Empire West RCD, whether he has anything to add.

Mr. Hansberger says the Districts agree with staff recommendation. He emphasizes that an effective date of July 1 will make the consolidation go smoother and will be less costly for the Districts.

Chairman Biane comments that the Board members representing the Inland Empire West RCD have given Mr. Hansberger high marks and praise for the job he has done in piloting this process. He asks whether there is currently a Board member representing the Riverside area. Mr. Hansberger responds that the East Valley RCD has one member who lives in Calimesa and that the Inland Empire West RCD has one member whose dairy businesses are in San Bernardino County but he lives in Riverside County.

Chairman Biane asks if there is anyone else wishing to speak on this item. There is no one and he closes the hearing.

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Commissioner Pearson moves approval of staff recommendation, seconded by Commissioner Cox. Chairman Biane calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, Luellig, Pearson, Williams. Noes: None. Abstain: None. Absent: Nuaimi (Luellig voting in his stead).

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2977; AND (2) LAFCO 2977 – REORGANIZATION TO INCLUDE COUNTY SERVICE AREA 120 FORMATION AND DISSOLUTION OF COUNTY SERVICE AREA 70 IMPROVEMENT ZONES OS-1 AND OS-3 (NORTH ETIWANDA AREA) – CONTINUE TO MAY 18, 2005

LAFCO conducts a public hearing to consider a reorganization to include County Service Area 120 formation and dissolution of County Service Area 70 Improvement Zones OS-1 and OS-3 (North Etiwanda area). Notice of this hearing was advertised as required by law and Commission policy by publication of an eighth-page legal ad in The Sun and the Inland Valley Daily Bulletin, newspapers of general circulation in the area. Individual notice of the hearing was provided to affected and interested agencies, County departments and those individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. McDonald states that staff is recommending a continuance of this hearing to May 18, 2005, to allow time to compile additional information needed for the review of this proposal. She notes that the Commission has been presented today with a letter from Craig Sherman, representing the Spirit of the Sage Council and Habitat Trust for Wildlife Inc., indicating opposition to the ultimate approval of this proposal but supporting staff recommendation for a continuance of this hearing.

Chairman Biane asks if there is anyone wishing to speak on this item. There is no one.

Commissioner Williams moves approval of staff recommendation, seconded by Commissioner Pearson. Chairman Biane calls for any objections to the motion. There being none, the voice vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, Luellig, Pearson, Williams. Noes: None. Abstain: None. Absent: Nuaimi (Luellig voting in his stead).

PENDING LEGISLATION

Executive Officer Kathleen Rollings-McDonald states that she has no legislative report to present.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald states that the Commission has been presented today with a letter from the Town of Apple Valley withdrawing its application for dissolution of County Service Area 60 for the time being to allow the Town to negotiate with the affected agencies in the area. She says the Commission has also been presented with a copy of a Board of Supervisors agenda item related to a workshop on the County Fire reorganization.

Ms. McDonald says that February 1 was a "red letter day" for LAFCO staff. She reports that in the morning the County directed its staff to initiate the County Fire reorganization, which she says probably will be the most monumental consideration ever undertaken by this Commission; on that evening, the City of Fontana directed its staff to review the possibility of withdrawal from that reorganization; and she learned that later that evening, the City of Victorville initiated the dissolution of its three subsidiary districts. She notes that at the last hearing she discussed that a student intern would be sufficient to help move proposals along, but she says that at the March hearing staff will present a request to recruit for another LAFCO Analyst since the activity levels are escalating, with a number of annexations that will be coming in, and the Fire Reorganization, which she reiterates will be a monumental task.

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Ms. McDonald says the Commission has been presented with a copy of a City of Victorville Agenda Item to provide interim management and supervision services to the Baldy Mesa Water District. She says staff received a number of phone calls following the Water District's action and wanted the Commission to be aware of what was proposed. She points out that the Commission has no authority over this issue; that the City is not extending any services but is offering its management expertise to the Water District. She says the Commission has been presented with a copy of the CALAFCO Sphere Newsletter and notes that the opening article is related to the future of incorporations based on the actions of the State through the budget process where the "motor vehicle in lieu" fees to incorporating areas are now almost nothing. She states the Commission has been presented with the Statement of Economic Interests Form 700, which is due April 1. Legal Counsel Clark Alsop reminds the Commission that its jurisdiction is County wide.

Ms. McDonalds reports that on the March 16 agenda will be two service contracts, the municipal service review/sphere update for San Bernardino Valley Water Conservation District, an annexation to the City of Fontana, a request to recruit for a LAFCO Analyst, and a request for waiver of Legal Counsel conflict for Clark Alsop related to the County Fire reorganization. She reports that the April 20 agenda will include the opening of the budget review process and review of filing fees and says there are 14 items on that agenda, including the municipal service review/sphere update for County Service Area SL-1, the dissolution of the Monte Vista Fire Protection District, possibly the dissolution of County Service Area 110, and annexations to the Cities of Fontana, Upland, Highland and Montclair.

Ms. McDonald reports that a number of letters have been received from the State Department of Fish and Game (DFG) indicating that LAFCO did not comply with the environmental filing fee requirements. She says staff has indicated to the DFG that in every instance, the Commission was the responsible agency and had no obligation to pay a fee. She says the DFG decided to go back and audit the filing fee receipts for 2004 that the Clerk of the Board of Supervisors is required to file with the DFG; but she says the DFG did not review any environmental documents or Notices of Determinations. In all instances, she says the lead agency was the County of San Bernardino for the development project, and she says the County's Notice of Determinations, which were filed in 2003, were not subject to the DFG's audit. McDonald says staff is providing a letter reiterating its position that LAFCO will not pay as a responsible agency because that is not required by law. She notes that in two cases where there were some questions about the filing fee or discrepancies, those will be resolved with the County since the County has paid the fee. She says the letter will be provided to the DFG at its offices in Ontario Sacramento. She says no other LAFCOs have received audit notices.

COMMISSIONER COMMENTS

Commissioner Sedano says he talked with Mr. Bagley who asked that he convey his thanks for the lunch last month. Commissioner Sedano says he thinks having a workshop on the island annexations is an excellent idea but he requests that it not be held on March 30, which is his 70th birthday.

Chairman Biane reports that he and Ms. McDonald attended the CALAFCO Executive Board meeting on January 28. He says he is glad that this Commission is represented on the Legislative Subcommittee of the CALAFCO Executive Board, but he reports that the Executive Board spent about two hours talking about what they wanted to eat at the annual conference. Commissioner Hansberger asks where the Conference will be held. Ms. McDonald says it will be in Monterrey September 6-9. Commissioner Hansberger says he wishes it would be held in some location that is convenient to get to, not in Monterrey or Lake Tahoe.

COMMENTS FROM THE PUBLIC

Chairman Biane calls for comments from the public. There are none.

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THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 10:45 A.M., ON MOTION OF COMMISSIONER COLVEN, SECONDED BY
COMMISSIONER WILLIAMS.

ATTEST:

DEBBY CHAMBERLIN
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

PAUL BIANE, Chairman