

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION  
HEARING OF JULY 20, 2005**

**REGULAR MEETING**

**9:00 A.M.**

**JULY 20, 2005**

**PRESENT:**

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

**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**

**REGULAR SESSION - CALL TO ORDER – 9:07 A.M.**

Chairman Biane calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

**PRESENTATION OF RESOLUTION OF APPRECIATION TO LEGAL COUNSEL CLARK H. ALSOP**

Chairman Biane presents a resolution of appreciation to Clark H. Alsop for his thirty years of service as LAFCO Legal Counsel. Chairman Biane also presents a resolution of appreciation to Mr. Alsop on behalf of the County Board of Supervisors.

Chairman Biane 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 is no one.

**APPROVAL OF MINUTES FOR REGULAR MEETING OF MAY 18, 2005 – MINUTES APPROVED**

Chairman Biane calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner Pearson moves approval of the minutes as presented, seconded by Commissioner Colven. Chairman Biane calls for 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.

**CONSENT ITEMS**

LAFCO considers the items listed under its consent calendar. Chairman Biane states that the consent calendar consists of: (1) approval of the Executive Officer's expense report; and (2) approval of payments as reconciled for the months of May and June 2005 and noting cash receipts. A Visa Justification and Travel Claim for the Executive Officer's expense report and a staff report for the

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reconciled payments 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.

The staff recommendation is that the Commission approve the Executive Officer's expense report and payments as reconciled.

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

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

**DISCUSSION ITEMS**

**CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2973; AND (2) LAFCO 2973 - MONTE VISTA FIRE PROTECTION DISTRICT DISSOLUTION - APPROVE STAFF RECOMMENDATION**

LAFCO conducts a public hearing to consider the dissolution of the Monte Vista Fire Protection District (hereafter "MVFPD" or "District"). Notice of this hearing has been advertised as required by law through publication of a standard legal ad in The Sun and an eighth-page legal ad in the Inland Valley Daily Bulletin, newspapers of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments and those individuals and agencies 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 this dissolution was initiated by the Commission in November 2002 during the service review/sphere update hearing for the District. She explains that the processing of this dissolution was held in abeyance to allow for the completion of the annexation of the Ninth Street Island to the City of Upland, which was completed in 2004. She says this was necessary to assure the transfer of fire funding to the City of Upland since the island area was part of the MVFPD. She says the District was formed in 1948 to provide fire protection services to the community of Monte Vista. She says the City of Montclair was incorporated in 1956 (as the City of Monte Vista) but did not assume the fire protection services at that time. She says that in 1966, the City withdrew from the District to provide its own fire protection program and the City and County negotiated a contract for the City to provide fire protection services within the remaining area of MVFPD. She says fire protection services within the District have been provided by the City of Montclair for almost forty years. Ms. McDonald says the Commission initiated this dissolution to eliminate this paper district and to allow for the transfer of funding to the City.

Ms. McDonald discusses boundary issues, noting that staff discovered that there is an area of the District that has overlapped into a portion of the City of Montclair for forty years. She points out this area on the overhead display map and says this was discovered through the review of property tax distribution information. She says there has been no service impacts associated with this boundary discrepancy since the City has always provided this service. Ms. McDonald discusses the financial considerations, as outlined in the staff report. She says the County Board of Supervisors and the City of Montclair have adopted resolutions indicating that upon dissolution, all property tax revenues derived with the current boundaries of the District will be transferred to the City. She explains that as a condition of approval, upon completion of the dissolution, the District's Appropriation Limit of \$2.4 million will be transferred and added to the City of Montclair's Appropriation Limit. She discusses the budgetary information outlined in the staff report, pointing out that the information provided shows that the actual payments to the City of Montclair are less than the property tax revenues received by the District. She says dissolution will result in an approximate increase in funding of \$17,000 for the provision of fire services. Regarding service

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considerations, Ms. McDonald says there clearly will be no impact to the service provided within the boundaries of the District after its dissolution, through the inclusion of the condition of approval that requires the City of Montclair to continue the range and level of services currently provided within the District.

Ms. McDonald reports that no response to the notice of this hearing has been received from residents in the boundaries of the District and she says staff believes there is a lack of knowledge on the part of landowners that this agency exists. She says there have been no elections or reference to this agency on property tax bills, and the fire service is provided by trucks that say City of Montclair on their doors. She reports that the County Consolidated Fire Agency has indicated its support for dissolution. She indicates that the environmental considerations are outlined in the staff report and says Tom Dodson of Tom Dodson and Associates, the Commission's Environmental Consultant, has recommended a Statutory Exemption for this proposal.

Ms. McDonald says the findings required by Commission policy and State law are outlined in the staff report and are made a part of the record by reference herein. She says staff recommends approval of this dissolution for those reasons listed in the staff report. She says staff is also requesting that the Commission waive the requirement for individual notice of the protest proceedings and authorize completion of the proceedings pursuant to Government Code Section 57113 with a 10% protest level since the dissolution was initiated by the Commission.

Ms. McDonald says the staff recommendation is outlined on pages one through three of the staff report and includes that the Commission: (1) determine that LAFCO 2973 is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five working days; (2) approve LAFCO 2973, subject to the conditions listed in the staff report; (3) waive the requirement for individual notice of the protest proceeding as authorized due to the anticipated number of notices exceeding 1,000 and direct the Executive Officer to provide for publication of the protest notice in newspapers of general circulation as authorized by Government Code Section 56157; and (4) adopt LAFCO Resolution No. 2886 setting forth the Commission's findings and determinations concerning this proposal.

Commissioner Pearson asks whether the existence of the District area within the City of Montclair was discovered during the service review process. Ms. McDonald says it was not, but it was discovered during the property tax transfer process. She says staff received tax rate information as to where the District generates its revenues and she says there were three Tax Rate Areas inside the City boundary. She says no one has any information indicating that area was detached from the District so it has been a part of it since about 1966.

Commissioner Colven comments that Ms. McDonald indicated that many people are not aware of this agency. He asks if she believes that if individual notice of this dissolution had been provided, there might have been a different outcome today. Ms. McDonald responds that some people might have been surprised about the dissolution since they did not even know the District existed. But she points out that, while Commission policies do not require that individual notice be provided for a dissolution proposal, individual notice of the protest proceeding is required unless the number of people to be notified exceeds 1,000.

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

Commissioner Williams moves approval of staff recommendation, 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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**CONSIDERATION OF: (1) REVIEW OF NEGATIVE DECLARATION PREPARED BY CITY OF CHINO FOR PREZONE 2005-01, AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2982; AND (2) LAFCO 2982 - CITY OF CHINO ANNEXATION NO. 2004-01 - APPROVE STAFF RECOMMENDATION**

LAFCO conducts a public hearing to consider a proposed annexation of a totally surrounded unincorporated island of territory located within the City of Chino's northwestern sphere of influence. The annexation, as initiated by the City of Chino (hereafter "the City"), includes a total of 14.4+/- acres generally located east and west of Norton Avenue, south of Walnut Avenue. Notice of this hearing has been advertised as required by law through publication in The Sun and the Inland Valley Daily Bulletin, newspapers of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments, those individuals and agencies requesting mailed notice, and landowners and registered voters pursuant to State law and Commission policy.

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 reports that this proposal is in response to a commitment made by the City during consideration of the annexation of the Agricultural Preserve (LAFCO 2908) to initiate this island annexation within one year of approval of that proposal. She says the area is currently developed with 11 existing single-family residential units and says the City's Plan for Service indicates that the City is capable of maintaining or exceeding the current service levels provided by the County. She notes that water service is presently provided to the area by the City.

Ms. McDonald discusses that staff believes this proposal is a ministerial action since the Commission clearly can make those findings for an island annexation provided in Government Code Section 56375.3 and outlined in the staff report. She says in staff's view, the Commission is required to approve this annexation and waive the protest proceedings.

Ms. McDonald states that the findings required by Commission policy and State law are outlined in the staff report and are made part of the record by their reference herein. She says the City conducted a public meeting regarding this annexation to meet with the landowners and residents in the area. She says that some people had concerns, but no protest has been identified. She reports that over 700 individual notices were mailed to landowners and voters inside the area and surrounding the area and she says no comments or protests have been received. She notes that it was identified in the letter mailed out by LAFCO staff that this would be an island annexation proposal and there would be no protest. She says the Commission's Environmental Consultant, Tom Dodson of Tom Dodson & Associates, reviewed the City's environmental assessment and determined that it is adequate for the Commission's use as a CEQA responsible agency. She says the necessary actions to be taken by the Commission for the environmental review are outlined in the staff report.

Ms. McDonald says it is staff's position that this proposal meets the criteria of law for an island annexation and the Commission is required to approve it. She says the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) take the recommended actions listed related to the environmental review; (2) approve LAFCO 2982 as an island annexation, as defined in Government Code Section 56375.3; (3) waive the protest proceedings, as authorized by Government Code Section 56375.3; and (4) adopt LAFCO Resolution No. 2887 setting forth the Commission's findings, determinations and conditions of approval for the proposal. She shows photos of the annexation area.

Chairman Biane opens the public hearing and asks if there is anyone wishing to speak on this item.

Major (retired) John De Mille, a landowner within the annexation area, states that since 1965, landowners in this area have been before the Commission six times to keep from being annexed to the City because they have had nothing but problems with the City. Mr. De Mille explains they were on their own water system for many years, even though the City had a water line going right down the road in front of them. He says that when the City put in the regional sewer line it was placed 16 feet below ground level on the south side of Walnut Avenue and the landowners had permission from the County to have the City stub

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lines up within four feet so they would not have to pay extra money. He says their soil is all sand and to go down 16 feet would have required shoring up, which increases the cost tremendously. He says, however, that the City's Engineer in charge of that portion of the project at that time refused to install the agreed to stubs.

Mr. De Mille says they are not protesting this annexation because they know that they cannot protest, because of the law. He says he owns the center parcel of the three, 2.5 acre parcels and has the riparian water rights to flood irrigate 8.8 acres. He says the City has yet to answer him but he wants to know whether the City will do with him like it did everyone else and fill his well with gravel. He says several people want to put in strawberry patches. He asks for a correction to the staff report because it says the area is not prime agricultural land, which he says is a falsehood because six acres are prime agricultural land and still have large animals on them. He says the City has indicated it will put in curbs and sidewalks on Walnut Avenue at no expense to the landowners and when and if they decide to come off septic systems, the City has indicated it will extend the sewer line to their property. Mr. De Mille asks that the Commission assure that the City will do these things for the landowners. He says that since 1965, the City has "put the screws" to them many times and that the landowners are not happy about annexation but know it is inevitable.

Commissioner Curatalo comments that he knows that the City historically has a lot of agriculture, but he asks Legal Counsel Clark Alsop about the definition of "prime agricultural land" as used in LAFCO law. Mr. Alsop responds that for LAFCO purposes, that term relates to the production of crops or animals on the land, so it is a commercial dollar value. He says this area is used as residential property so it is not agricultural land. Commissioner Pearson comments that he believes all the Williamson Act contracts in this area have expired, so the Agricultural Preserve designation no longer applies. Mr. Alsop says the prime agricultural definition is in the Act for contemplating agricultural uses, not residential uses; and he says this area is already developed residential. Commissioner Sedano asks if someone from the City is present to respond to Mr. De Mille.

Brent Arnold, City Planner, says he is aware of a long history of annexation attempts related to this area. Mr. Arnold says he has a copy of the minutes adopted by the City Council agreeing that the City will, in the future, install curbs, gutters and sidewalks and will extend the sewer lines from the City's main trunk to the properties. He says he is not in a position to comment on Mr. De Mille's well. He says the water basin where Mr. De Mille's property is located has been adjudicated, which means that how those waters and wells should be used has been decided by the courts. He says in most cases a private well can only be used for agricultural purposes. He suggests that Mr. De Mille contact him and he will put him in touch with the City's Water Services Division for a determination on the status of his well. Mr. De Mille comments that the City has been working with the landowners in this area.

Commissioner Cox asks Mr. Arnold whether the landowners will be prohibited, based on City zoning, from engaging in any agricultural endeavors or whether they will be grandfathered in. Mr. Arnold responds that if they can demonstrate they have used their property for agricultural purposes, they will be able to maintain that use on their property under the City's nonconforming use provisions of the Zoning Code. Commissioner Cox asks whether that applies if they have been fallow for several years and then choose to put in a strawberry crop. Mr. Arnold responds that if the use was vacated for more than 180 days, the City would not allow that use. He notes that in the RD 4.5 designation, some agricultural uses are permitted, and says he thinks that includes a row crop and a truck garden.

Commissioner Curatalo asks Mr. De Mille if the water from his well was going to be used only on site or whether it would be taken off site. Mr. De Mille responds that it would be on part of the original old Butterfield land which he says includes the three, two-plus acre parcels and what used to be the old wash that went through that area.

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 Colven 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, Nuaimi, Pearson, Williams.

**CONSIDERATION OF: (1) FINAL ENVIRONMENTAL IMPACT REPORT AND ADDENDUM TO FINAL ENVIRONMENTAL IMPACT REPORT (FOR FONTANA DEVELOPMENT CODE UPDATE) ADOPTED BY CITY OF FONTANA FOR FONTANA GENERAL PLAN UPDATE (STATE CLEARINGHOUSE NO. 2003031083), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2984; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO 2984 - CITY OF FONTANA ANNEXATION NO. 158 - APPROVE STAFF RECOMMENDATION**

LAFCO conducts a public hearing to consider a proposal to annex 10+/- acres to the City of Fontana (hereafter "the City") initiated by the City Council through adoption of a resolution of application. The annexation area is generally located at the southwest corner of the intersection of Randall and Poplar Avenues. Notice of this hearing has been advertised as required by law through publication in The Sun and the Fontana Herald News, newspapers of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments, those individuals and agencies requesting mailed notice, and landowners and registered voters pursuant to State law and Commission policy.

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 the City's reasons for this annexation request are outlined in the staff report. She discusses the proposed boundary of the annexation, stating it creates a new peninsula on the west side of the central portion of the City. She says this was of concern to staff and that options available to address this issue are outlined in the staff report. She says the first option is to expand the proposal to include the southerly area between Poplar Avenue and Lime Street. However, she reports that this expansion will make the proposal legally inhabited and subject to protest proceedings, so the City and developer object to this alternative. She says the second option is to deny the application since the boundary as presented does not provide for a logical and efficient service boundary. She reports that the developer of Tract 16658 and the City also oppose this option since the developer has been processing his tentative tract and annexation application through the City for almost two years and owners of eight of the ten parcels have consented to the annexation. She says the third option for the Commission is to accept the City's position that it will submit a subsequent annexation to address the boundary configuration in the near future, as part of the City's overall island annexation program.

Ms. McDonald shows photos of the area on the overhead display. She says staff recommends that the Commission accept the City's position that it will address the boundary configuration at a later date through the island annexation program. She discusses the current land uses, which are a mix of vacant and developed lands with six existing single-family residential units. She reports that the proposed subdivision, Tentative Tract 16658, has been reviewed and approved by the City to create 26 lots on approximately 6.8 acres.

Ms. McDonald discusses the service considerations, as outlined in the staff report. She reports that sewage collection services will be provided by the City through a proposed sewer line extending from Poplar Avenue and she says sewer service is required for the development of Tract 16658. She says the balance of the area is on septic systems and landowners are not automatically required to connect to City sewer upon annexation. She says water service, currently provided by the Fontana Water Company, and fire protection and paramedic services, currently provided by the Central Valley Fire Protection District, will not change and that law enforcement responsibilities will shift from the County Sheriff's Department to the City. She says a new standard condition of approval has been included in the resolution regarding the transfer of streetlight facilities; that existing streetlights in the area will be transferred from County Service Area SL-1 to the City; and that the required transfer forms to be processed as part of the completion package to secure the change of responsibility have been signed and received by staff.

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Ms. McDonald discusses the environmental review of this proposal, stating that the Commission will be a CEQA responsible agency using the City's Final Environmental Impact Report and Addendum for its General Plan Update and pre-zoning of its sphere of influence. She says the necessary actions to be taken by the Commission, as recommended by Tom Dodson of Tom Dodson and Associates, the Commission's Environmental Consultant, are outlined in the staff report and that Mr. Dodson has prepared a Statement of Overriding Considerations.

Ms. McDonald says 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 says over 200 notices were sent to landowners and registered voters inside the annexation area and surrounding the area and that no opposition has been received. She notes that a few calls asking for clarification were received. She says staff supports approval of the proposal as presented since the City has committed to address the boundary issue to the south. Ms. McDonald says the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) take the recommended actions listed related to the environmental review; (2) approve LAFCO 2984 with the conditions listed in the staff report; and (3) adopt LAFCO Resolution No. 2888 setting forth the Commission's findings, determinations and conditions of approval for the proposal.

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

Commissioner Williams moves approval of staff recommendation, seconded by Commissioner Colven. Chairman Biane calls for 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.

**CONSIDERATION OF REQUEST FOR REDUCTION IN FILING FEES SUBMITTED BY THUNDERBIRD COUNTY WATER DISTRICT FOR LAFCO 2992 - SPHERE OF INFLUENCE REVIEW (EXPANSION) FOR THUNDERBIRD COUNTY WATER DISTRICT - APPROVE STAFF RECOMMENDATION**

LAFCO conducts a public hearing to consider a request submitted by the Thunderbird County Water District (hereafter "the District") for a waiver of the filing fees associated with its sphere of influence review (LAFCO 2992). Notice of this hearing has been advertised as required by law through publication in The Sun, a newspaper of general circulation. Individual mailed notice was provided to affected and interested agencies, County departments, and those individuals and agencies 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 the District has concurrently initiated proposals to expand its sphere and annex a parcel at the request of the property owner who is requesting water service for a potential subdivision in the County. She reports that the District has paid the full fee for the review of the annexation proposal. She says staff supports the District's request for a waiver of the fee for the sphere review since the two proposals will be addressed concurrently, will be placed on one agenda, and require one legal advertisement and one staff report. In response to inquiry of Commissioner Colven, Ms. McDonald says the study area contains about 164 acres; is intended for a residential development; and she is not sure what the present zoning is or what the proposed density for the development is. However, she notes that information will be provided as part of the review of the proposals.

Commissioner Cox asks why the four lots on the east side of the proposed annexation area have not been included, pointing out that a little peninsula will be created. She asks if the District has made any effort to contact those landowners. Ms. McDonald says the District has not, as far as she knows, and she says this application relates to a feasibility study addressing service provisions to this anticipated development area. She says staff will address the creation of this peninsula and who serves those parcels as part of the overall application review. Commissioner Cox says she knows that area is very

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rural and those parcels could be on wells, but she says she would appreciate it if that issue could be looked at during the process.

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

Chairman 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, Nuaimi, Pearson, Williams. Noes: None. Abstain: None. Absent: None.

**CONSIDERATION OF REQUEST SUBMITTED BY BLOOMINGTON INCORPORATION COMMISSION FOR CITY ANNEXATION MORATORIUM WITHIN THE COMMUNITY OF BLOOMINGTON PROPOSED FOR REMOVAL FROM THE SPHERE OF INFLUENCE OF THE CITIES OF RIALTO AND FONTANA – DENY REQUEST FOR MORATORIUM; CONTINUE CONSIDERATION OF SPECIAL COUNSEL TO AUGUST 17, 2005**

It is noted that Legal Counsel Clark Alsop leaves the hearing at 10:00 a.m. Mr. Alsop has indicated he has a conflict on the next item due to his dual representation as LAFCO Legal Counsel and City Attorney for the City of Fontana and the controversy associated with the sphere reduction proposal submitted by the Bloomington Incorporation Commission. Jeffrey Goldfarb of the law firm of Rutan and Tucker is present should the Commission have any questions of him.

LAFCO conducts a public hearing to consider two requests submitted by the Bloomington Incorporation Commission (hereinafter "BIC")—one for the abstention of certain Commissioners from participating in hearings for the sphere of influence reductions proposed by BIC and the second for the establishment of an annexation moratorium until the community can vote on the possibility of incorporation. Notice of this hearing has been advertised as required by law through publication in The Sun, a newspaper of general circulation in the area. Individual mailed 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 its reference herein. Ms. McDonald introduces Jeffrey Goldfarb. Ms. McDonald says BIC has submitted two letters to the Commission as part of its sphere of influence reduction proposal. She says the letter dated June 29, 2005, asks that Commissioners Hansberger, Nuaimi and Gonzales not participate in the hearings on the sphere reductions or the incorporation when they are submitted in the future. She says BIC's June 5, 2005 letter requests that the Commission establish a moratorium on annexations within the area proposed for incorporation, so that BIC can complete their processing of the incorporation.

On the first issue, Ms. McDonald says staff has indicated in the staff report that the letter does not clearly explain BIC's position as to why these three Commissioners are perceived to "have allegiances that are not furthered by Bloomington's incorporation" or that they are biased and lack objectivity. She explains that Government Code Section 56325.1 indicates that Commissioners are not required to remove themselves from a consideration on the basis of any of their affiliations. Therefore, she says staff does not believe there is any requirement for any members to recuse themselves from these considerations.

Regarding the issue of the moratorium, Ms. McDonald says that upon receipt, BIC's letter requesting a six month moratorium on annexations was submitted to the Cities of Fontana (hereafter "Fontana") and Rialto (hereafter "Rialto") indicating that such a moratorium would be for a two-year period, rather than six months. As outlined in the staff report, Ms. McDonald discusses that there is a precedent for BIC's request. She says that in 1971, the Commission granted a five-year moratorium with the consent of Fontana, Rialto and the County to allow the community of Bloomington time to address the issue of future governance. She points out, however, that the laws governing LAFCO at that time did not require that a sphere of influence be established. She says that under current law, an annexation cannot be addressed

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unless it is consistent with the sphere of the agency to which annexation is proposed. She says staff, therefore, believes that the application to be presented for the sphere reductions would accomplish BIC's goal. Also, Ms. McDonald explains that Legal Counsel has indicated that he does not believe a moratorium is allowable under current State laws since the Commission is required, in certain instances, to approve an annexation, such as certain island annexations. As outlined in the staff report, Ms. McDonald further discusses that a moratorium may not be necessary. She points out that the Commission is guided by Government Code Sections 56655 and 56657 relating to conflicting proposals and Government Code Section 56375.5 regarding consistency with sphere determinations. She says Section 56655 indicates that if two or more proposals are pending addressing the same area that are in conflict or inconsistent, unless the Commission takes a specific action, it must consider the application first in line. She says BIC's sphere reduction proposal is first in line. Regarding BIC's request, Ms. McDonald says staff (1) does not believe the Commission is authorized to allow a moratorium on annexation requests; and (2) believes that if the sphere proposal moves forward and the reductions are approved, this question is moot because the two applications for annexation to the City of Rialto, which have not yet been deemed to be complete, would not move forward.

Regarding the Legal Counsel issue, Ms. McDonald says Legal Counsel Clark Alsop, who is a member of the law firm of Best Best & Krieger and the City Attorney for Fontana, has indicated that due to the objection filed by the City of Fontana over the sphere proposal, he will not participate as LAFCO Legal Counsel. She says Jeff Goldfarb was contacted and he indicated he was able and willing to represent the Commission, so he is present today to do so. She says staff is requesting that he be authorized as Special Counsel and that BIC be notified that they will be responsible for payment of his services from this day forward.

Ms. McDonald states the staff recommendation is that the Commission: (1) deny the request for an annexation moratorium; and (2) retain Jeffrey Goldfarb as Special Counsel for LAFCO 2981.

Commissioner Gonzales says she does not have a vote in this matter as the Alternate Member, but she strongly urges the other Commissioners to take their responsibilities seriously and not shirk them. She says it is difficult to step forward and take responsibility when there is opposition and easy to take responsibility when there is support. She says the public must understand that when they fail to go out and vote, they cannot complain after others have voted people into positions of power with responsibility to take difficult positions in the direction they want to guide the future of their communities. She notes that even now some of the Commissioners are experiencing the "squeezing of the negative element" in their communities; but she says the Commissioners must stand united and do what is right for the future.

Chairman Biane opens the public hearing and asks if there is anyone wishing to speak on this item.

Eric Davenport, Chairman of BIC, requests that the issue of retaining Special Counsel for this proposal be tabled so that BIC can discuss how they want to proceed since they will be responsible for paying the attorney fees. Regarding BIC's request for certain Commissioners to recuse themselves from participating in the sphere review proposal, Mr. Davenport says they feel Commissioners Hansberger, Gonzales and Nuaimi have a vested interest, although it may not be personal, which may or may not reflect on how they would vote on the sphere removal, since that would alter plans they have made in the Bloomington area. Regarding the moratorium, he says if the sphere removal is approved, they do not have to worry about a moratorium. He explains that in doing the Feasibility Study, they felt that every time someone "takes a chunk off" the Bloomington area, that is another dollar that cannot be used to establish that Bloomington can govern itself and pay for the necessary services. He says the longer this goes on and the more people want to annex, the less money they will have and it becomes an uphill battle.

Virginia Geil, a resident of Bloomington, asks that the Bloomington people be given permission to develop their town the way they want to develop it. She says people will live on their land and provide for their families, which is why they need one acre parcels and need to be removed from the spheres of Fontana and Rialto. She asks what will happen to Bloomington's cemetery--whether it will be filled in and houses put in over the top of it. She says the people in Bloomington are determined, but they cannot take any

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more annexations and do not want to be in any city's sphere. She says she and her daughter Pam are hoping for the best for Bloomington.

Juanita Reece, a resident of Bloomington, states that she read the letter dated June 29 from Fontana. She says her home is in Area 3 discussed in that letter and says she was told by a developer that she would soon be annexed to Fontana. She asks whether the annexation of Area 3 has been started yet.

Cecilia Lopez-Henderson, Fontana's Annexation Program Coordinator, reports that the City's survey of the island annexations started last Monday and they anticipate completion possibly in the next two or three weeks. She says once the survey results have been tabulated, the City will do an outreach and she says the results will be made public once the City Council has reviewed them. She says that Area 3 is part of the survey and that the City hopes to annex that area for the Empire Center.

Commissioner Nuaimi explains that the City is doing a public opinion survey of the current City residents and in the unincorporated sphere area to find out their opinions and what their assumptions of annexation are. He says that is the first step of what will be the island annexation process, noting that Fontana has about 32 islands to be annexed. He says the annexation has not been initiated yet but says the City is focused on this outreach so that everyone will be aware of what is happening and when it will happen.

Mr. Davenport states that BIC conducted "walks and talks" in the area, asking people whether they were for or against annexation. He says if they were against annexation, they were asked to sign a petition. He notes that attached to the staff report is a petition in opposition to an annexation to the City of Rialto along Cactus Avenue. He says they have also done a lot of work in Fontana along the Bloomington borders to see who is for or against annexation and would be happy to submit those petitions. He notes that a few people are for annexation, but most are against it.

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

Commissioner Cox says Mr. Davenport has asked that the Commission delay a decision on retaining Special Counsel since BIC needs to decide whether it wants to, or can, pay for Legal Counsel services. She says she is not sure this can be delayed since the Commission's Legal Counsel has chosen not to represent the Commission. Ms. McDonald says that the law specifies that when Special Legal Counsel is required, those fees can be charged to the applicant, which is BIC. In answer to inquiry of Commissioner Williams, she says the legal fees will be billed to BIC monthly.

Commissioner Sedano discusses that after reading the staff report and listening to dialogue, it is his opinion that there is no reason to make any changes here; that the spheres should be left as they are and the annexations be allowed to take place. He says Bloomington has heart, but has no resources and will not have them. He says it is just a matter of time before they will have to face reality that they are not going to have the money to do what they want to do. He says the Bloomington community should work with the cities to be sure the uses they are concerned they might lose will be "grandfathered" in.

Commissioner Pearson asks for clarification on the options staff is presenting today, and asks if the Commission could deny the moratorium but, at the same time, approve the sphere removals. Ms. McDonald explains that the Commission is not considering the application for any sphere reductions today. She says the staff report indicated that once the sphere review proposal is presented to the Commission for consideration, if the sphere reductions are approved, that is, in essence, a moratorium on annexations because there would be no consistency with those spheres. She says BIC is asking that the Commission at this time institute a moratorium on any annexation applications; and she says staff is indicating that it cannot legally be done and that the processing of the other proposal would accomplish BIC's goal if the sphere reductions are approved. Commissioner Pearson says he thought they might have had another option today but he says it is important that the people of Bloomington understand they do not. He says he appreciates the history of the governance of the Bloomington community attached to the staff report. He says he is familiar with the incorporation process which, under the best of circumstances, is a very tough road. He says times have really changed over the last 40 years and says

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there are even very substantial differences in the financial guidelines pertaining to incorporation from what he faced 20 years ago when Apple Valley incorporated. He discusses that he is not sure the community will be able to accomplish the goal of incorporation. He discusses that the Municipal Advisory Council (hereafter "MAC") could be used as an avenue to work with cities regarding the community's needs, concerns and interests. He says the comment was made that the people of Bloomington get nothing from Fontana and Rialto. He points out that they are not voters in those cities and there is no legal requirement for those cities to respond to the Bloomington people; but says he thinks that, as good neighbors, these cities have an interest in working with the Bloomington people. He says he appreciates the interest, dedication and willingness of the Bloomington people to stand out and say they need to become their own city, but he says it may not be possible for them to do that and they need to reevaluate their own steps to see how far they should continue with this process.

Commissioner Nuaimi comments that he thinks it is premature to make any determinations one way or the other as to whether the Bloomington community has the resources to do what its heart wants it to be able to do. He discusses that he personally thinks his job is to ensure that what the Commission does is best for the entire region and he thinks having local municipal services providing service to the Bloomington residents is what is best for everyone. He says the question he has is whether the sphere review, which has not been presented to the Commission yet, is predicated on Bloomington's ability to pursue incorporation or on the likelihood of Fontana or Rialto not being able to annex within a five-year time frame. Ms. McDonald says the sphere review will be predicated on the ability of Bloomington to incorporate. She says BIC is preparing a preliminary feasibility study on the potential for incorporation as a part of the package to address the sphere reductions because that is what would support changing the spheres. She says the Commission will be presented with that information in a staff report for full consideration at a future date. She explains that she does not know when that hearing date will be, reporting that the Departmental Review Committee meeting was held on July 12 and supplemental information has been requested. She says the proposal today is only related to a moratorium request and she apologizes if the staff report was confusing.

Commissioner Hansberger asks what the law says about Special Counsel. Ms. McDonald explains that when Legal Counsel cannot represent the Commission, it is required to obtain Special Counsel; and, according to Cortese-Knox-Hertzberg, it is to be paid for through the processing of fees. She says that since applicants are charged direct costs, they are also charged the additional costs for Mr. Goldfarb. Commissioner Hansberger discusses that it seems unfair that an applicant would be responsible to pay for Special Counsel because the Commission's attorney has a conflict by reason of his employment, in this case as Fontana's City Attorney. He says anybody should be able to come before the Commission with equal standing. He says they may not be able to resolve this issue but he says he thinks this is contrary to a doctrine of fairness to all applicants because it bars some applicants by reason of economics and favors others. He explains that if the reason for hiring Special Counsel was because the applicant is a developer who uses Best Best & Krieger, and he comes before the Commission, whose Legal Counsel is an attorney for Best Best & Krieger, then that applicant came with his conflict. But he says when that type of situation does not exist, then the Commission should look at the circumstances. Ms. McDonald says if the Commission chooses, it can go against its policy and waive the fee in the Fee Schedule which requires that BIC pay the Special Counsel costs.

Commissioner Nuaimi comments that in this instance, there was not a request for the Commission's Legal Counsel to "back off". Ms. McDonald explains that Mr. Alsop indicated that due to the controversy associated with this proposal and the fact that his firm represents Fontana, he wanted to remove himself from these discussions. She notes that the policy adopted by the Commission at its May hearing outlines how this process works.

Commissioner Curatalo says he understands that the Commission needs to deal with any conflicts but he says that citizens are paying for the Commission and City Councils with their taxes. He says he believes that "staring down the barrel" of unknown legal fees would be a deterrent and a heavy consideration for people in pursuing something they wanted from any governing body. He says the Bloomington people did not come here with any conflict and he would feel very uncomfortable putting the Commission's legal fees on their backs.

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Mr. Goldfarb says the issue can be broken up into two separate and independent issues--who the Commission wants to retain as Counsel and who will pay for the attorney's services. He says the second part of the question can be continued to the next hearing if the Commission wishes. Ms. McDonald says the Commission can choose to retain Mr. Goldfarb, waive the payment of his fees by BIC, and absorb those costs.

Chairman Biane says he would like to continue the question of the payment of Special Counsel fees to the August hearing so research can be done on a possible solution and bring the Commission's focus back to the moratorium issue.

Commissioner Nuaimi comments that Fontana's sphere is a very small component of the overall Bloomington issue. He says he respects Mr. Alsop's perception that, because of his role with Fontana, he needs to conflict out because this is a controversial issue. However, Commissioner Nuaimi says he really does not think the controversy is on the Fontana component per se.

Ms. McDonald says if the Commission wishes, this issue can be placed on the August 17 agenda to address whether it perceives there is a controversy requiring Mr. Alsop to recuse himself, and, if so, retain Mr. Goldfarb and decide who will pay for his services.

Chairman Biane says that will be the direction to staff. He brings back the question on the moratorium and asks if there are any further questions or comments. Commissioner Williams moves to deny the request for an annexation moratorium and to continue the issue related to Special Counsel and payment of his fees to the August 17, 2005 hearing. The motion is seconded by Commissioner Nuaimi.

Virginia Geil asks to speak again. She says she was on the Municipal Advisory Council for over ten years and says that they used to have the developers come in and talk to the people. However, she says that for the last six or eight months, the developers were not allowed to talk to the MAC, but they were controlled by the other Cities. She says that years ago, the Cities of Rialto, Fontana and Colton were invited to come talk at the MAC meetings to tell the people about their plans.

Chairman Biane calls for any objections to the motion. There are none and the voice vote is as follows: Ayes: Biane, Colven, Cox, Hansberger, Nuaimi, Pearson, Williams. Noes: None. Abstain: None. Absent: None.

(It is noted that Legal Counsel Clark Alsop returns to the hearing.)

**PRELIMINARY YEAR-END FINANCIAL REPORT**

LAFCO Executive Officer Kathleen Rollings-McDonald presents the staff report outlining the preliminary year-end financial report for Fiscal Year 2004-05, a copy of which is on file in the LAFCO office and is made part of the record by its reference herein. Ms. McDonald states that the spreadsheet attached to the staff report outlines the preliminary year-end expenditures and receipts for the current Fiscal Year. She discusses one issue related to the closure of the 2000 Series for FY 04-05, stating that Series was over expended by \$26,985, due to increased costs for printing and mailing, increased legal advertising costs, and Special Counsel costs which exceeded projections. She notes that the Special Counsel costs are returned to the Commission in the revenue account. Ms. McDonald explains that the spread sheet shows that the fee revenue projections for the year have been exceeded, but did not achieve the anticipated year-end total. She says the original staff report for the Budget identified the receipt of the filing fees for the County Fire Reorganization. She says that although that proposal and its fee revenue have not yet been received, the Commission is still only slightly below its projections.

Ms. McDonald says a chart attached to the staff report identifies the number of applications received and shows why the revenue received is double what was anticipated. Ms. McDonald states that the staff recommendation is listed on page one of the staff report and includes that the Commission: (1) increase

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the Appropriation Authority within the 2000 Series by \$26,985 for Fiscal Year 2004-05 by taking the listed actions; and (2) for Fiscal Year 2005-06, acknowledge a decrease in Cash Carryover of \$46,441, for a revised total of \$104,244.

Chairman Biane calls for any questions. There are none.

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

**PENDING LEGISLATION**

Ms. McDonald says she has provided to the Commission for its information a copy of the CALAFCO Legislative Summary Report and has included copies of the analysis of bills of importance to the Commission. She reports the following: SB 135 proposes a rewrite of Community Services District law; AB 1234 affects compensation to public officials; AB 1746 is the Cortese-Knox-Hertzberg omnibus bill; AB 818 proposes to extend the sunset on special provisions for qualifying city annexations in the property tax process; and SB 1100 relates to required notification on fire protection issues. She says no action is required.

**EXECUTIVE OFFICER'S ORAL REPORT**

Ms. McDonald introduces Michael Tuerpe, who has accepted the position of LAFCO Analyst and will start on Monday, July 25.

Ms. McDonald states that the Commissioners received a written Executive Officer's report in their agenda packages. She says that report includes information on nominations for membership on the CALAFCO Board of Directors that are due by August 8. She reports that Chairman Biane currently is a County Member and has indicated an interest in continuing his participation on that Board. She says he must be nominated by the Commission for that office and says there are other vacancies if other Commissioners are interested.

Commissioner Williams nominates Chairman Biane for the position of County Member on the CALAFCO Executive Board, seconded by Commissioner Colven. There are no other nominations. Chairman Biane asks if there are any objections to his nomination. There being none, his nomination is unanimously approved.

Ms. McDonald says that her written report also included a reminder that registration information for the CALAFCO Annual Conference scheduled for September 6-9, 2005 is due to Ms. Chamberlin today.

Ms. McDonald reports that the August 17 hearing agenda should be light. She says it will include the continued consideration of the service review/sphere update for San Bernardino Valley Water Conservation District, a City of Fontana service contract, the initiation of the dissolution of Parker Dam Park and Recreation District and the continued consideration of Special Legal Counsel for the sphere review proposal submitted by the Bloomington Incorporation Commission. She reports that the tentative September 21 hearing agenda is light at this time, with a potential request for exemption from service contract provisions for County Service Area 70, Improvement Zone J and possibly a request for reduction in filing fees for the County Fire reorganization. She says that she understands that a request for the initiation of the Fire Reorganization is on the County Board of Supervisor's Agenda for July 26.

Ms. McDonald reports that the Commission has received its first proposal for the new fiscal year--the formation of the Helendale Community Services District. She says the petition have been submitted to the Registrar of Voters for certification as to their sufficiency.

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**COMMISSIONER COMMENTS**

Chairman Biane acknowledges that former Chairman Gerald Smith is present at today's meeting. He announces that today is Commissioner Gonzales' birthday and wishes her a happy birthday on behalf of the Commission.

Commissioner Cox thanks Commissioner Gonzales for her earlier comments that the Commissioners must stand strong in what they are doing and must stand firm on the law. She notes that she personally is taking some significant hits from another public organization because of her representation on this Commission, but says all the Commissioners do from time to time as controversial issues come before them. She says she appreciates the support she has received.

**COMMENTS FROM THE PUBLIC**

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

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS  
ADJOURNED AT 11:03 A.M., ON MOTION BY COMMISSIONER NUAIMI, SECONDED BY  
COMMISSIONER PEARSON.**

**ATTEST:**

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**DEBBY CHAMBERLIN**  
Clerk to the Commission

**LOCAL AGENCY FORMATION COMMISSION**

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**PAUL BIANE, Chairman**