

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
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Commissioner Hansberger says that regarding Item No. 5, he is not clear whether he has a conflict. He says he will abstain from voting on that item because he is not sure of the date of the contribution and says it would have exceeded the amount allowed.

APPROVAL OF MINUTES FOR REGULAR MEETING OF OCTOBER 20, 2004

Chairman Bagley 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 Bagley calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Colven, Cox, Hansberger, Pearson, Williams. Noes: None. Abstain: None. Absent: Biane (Hansberger voting in his stead), Young.

CONSENT ITEMS

LAFCO considers the items listed under its consent calendar, which Chairman Bagley states consists of: (1) approval of the Executive Officer's expense report; and (2) approval of payments as reconciled for the month of October 2004 and noting cash receipts. A Travel Claim and Visa Justification for the Executive Officer's expense report, and a staff report for the 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. Staff recommendation is that the Commission approve the Executive Officer's expense report and payments as reconciled for the month of October and note the cash receipts.

Executive Officer Kathleen Rollings-McDonald reports that the Commission has been presented this morning with a supplemental expense report that was not a part of the agenda packets and requests that it be included in this item.

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

Commissioner Pearson moves approval of the consent calendar, seconded by Commissioner Colven. Chairman Bagley calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Colven, Cox, Hansberger, Pearson, Williams. Noes: None. Abstain: None. Absent: Biane (Hansberger voting in his stead), Young.

Chairman Bagley announces that there was no reportable action taken during the Closed Session.

CONTINUED ITEMS

CONTINUED FROM OCTOBER 20, 2004 -- CONSIDERATION OF: (1) FINAL ENVIRONMENTAL IMPACT REPORT ADOPTED BY CITY OF RANCHO CUCAMONGA FOR HENDERSON CREEK PROPERTIES GENERAL PLAN AMENDMENT/ETIWANDA NORTH SPECIFIC PLAN AMENDMENT/DEVELOPMENT AGREEMENT/TENTATIVE TRACT MAP/ANNEXATION (STATE CLEARINGHOUSE NO. 2003111057), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2964; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO 2964 - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (HENDERSON CREEK PROPERTIES--DRC2003-00753) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a continued hearing to consider LAFCO 2964, initiated by the City Council of the City of Rancho Cucamonga (hereinafter referred to as "the City"). This hearing was continued from October 20,

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and notice of the original hearing was advertised as required by law through publication in The Sun and the Inland Valley Daily Bulletin, newspapers of general circulation in the area and by individual notice to landowners and registered voters pursuant to State law and Commission policy. 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 its reference herein. Ms. McDonald reports that this item was continued from the October hearing to allow for completion of negotiations and discussions between the City and the developer of the Henderson Creek project. She says the maps attached to the staff report and presented on the overhead display identify the location of this proposal, noting that the aerial display map identifies the location of this annexation, as well as the other three proposal areas presented to the Commission by the City. As discussed in October, she says a settlement agreement was reached between the developer of Henderson Creek and the Spirit of the Sage Council and the Habitat Trust for Wildlife Inc. However, she explains that the issue discussed in October was that approval by the City of another qualified conservation entity is required before compliance with the City's adopted Mitigation Measure for approval of this project is satisfied. She reports that in the interim between last month's hearing and today, the developer met with the City and outlined a process to be undertaken for that review. She says that attached to the staff report is a letter from the City indicating its support to proceed with this annexation.

Ms. McDonald says the staff recommendation is outlined on pages one and two of the staff report and includes that the Commission: (1) take the actions listed with respect to the environmental review for LAFCO 2964; (2) approve LAFCO 2964 with the standard terms and conditions; (3) waive the protest proceedings, as permitted by Government Code Section 56663(c); and (4) adopt LAFCO Resolution No. 2849 setting forth the Commission's terms, conditions, findings and determinations for approval.

Commissioner Pearson comments that he thought they were trying to consider all four of the City's applications at one time. Ms. McDonald responds that the staff report for this item last month indicated that the most optimum course would be to consider all four applications together. However, she explains that position has changed since the other three applications are being litigated, and a settlement has been reached on this application. She notes that Item 6 on today's agenda will address the remaining three applications and says the issue of consolidating those will be discussed at that time.

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

Steven Stewart, representing Henderson Creek Properties, the developer, says he is available to answer any questions. Mr. Stewart says they met with the City and are meeting the City's needs and desires regarding the mitigation issue. He says the issue of whether annexation of their project area would create an island of unincorporated territory was discussed and says it does not appear that this annexation will have any adverse impact in any regard. He requests approval today, stating they are well on their way through the engineering plan check process and are anxious to move forward.

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

Commissioner Williams says she and Commissioner Biane and other City representatives met with the developer; that they are satisfied that steps have been taken to solve the problems that were discussed; and that they urge the Commission to approve this annexation. She says that although it would be ideal to do one big annexation of all the areas at one time, and while this annexation is a little bit piecemeal, that is what happens when one application is ready to go forward and others are not. She says that rather than hold up this developer, the City has submitted a letter of support for the annexation to move forward.

Commissioner Sedano says he agrees with Commissioner Williams and wanted the annexation to move forward last month. He says he is glad the problems have been resolved.

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Commissioner Pearson moves approval of staff recommendation, seconded by Commissioner Colven.

Chairman Bagley calls for any objections to the motion. There being none, he calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Colven, Cox, Hansberger, Pearson, Williams. Noes: None. Abstain: None. Absent: Biane (Hansberger voting in his stead) and Young.

DISCUSSION ITEMS

(It is noted that Commissioner Hansberger has announced that he will abstain on this item due to a possible conflict. He leaves the hearing at 9:45 a.m.)

CONSIDERATION OF: (1) FINAL ENVIRONMENTAL IMPACT REPORT ADOPTED BY COUNTY OF SAN BERNARDINO FOR LYTLE CREEK NORTH PLANNED DEVELOPMENT PROJECT (STATE CLEARINGHOUSE NO. 99051013), AS CEQA RESPONSIBLE AGENCY FOR LAFCO SC#243; (2) ADOPTION OF FINDINGS OF FACT AND STATEMENT OF OVERRIDING CONSIDERATIONS; AND (3) LAFCO SC#243 - WEST VALLEY WATER DISTRICT OUT-OF-AGENCY SERVICE AGREEMENT (LYTLE CREEK NORTH) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider an application submitted by the West Valley Water District (hereinafter referred to as "the District") requesting that the Commission authorize it to provide water service outside its boundaries to the development project commonly known as the "Lytle Creek North Planned Development Project" (hereinafter referred to as "Lytle Creek North PDP"). 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 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 identifies the area to be provided service on the map on the overhead display. She says the development project encompasses approximately 647+/- acres, 641+/- acres of which are outside the District's existing boundaries. She notes that the environmental review documents for this project were provided to the Commission at last month's hearing. She explains that the District, on behalf of the property owner, submitted this request for a service contract as an interim step for the provision of water while the District's annexation application for this property, identified as LAFCO 2971 filed on October 29, 2004, is processed.

Ms. McDonald summarizes the existing land use approvals for the Lytle Creek North PDP processed by the County of San Bernardino, as outlined in the staff report. She notes that the County's review of the land use approvals included the preparation, circulation and adoption of an Environmental Impact Report (EIR) and the preparation of adoption of a Statement of Overriding Considerations. She says the processing of this project also included litigation against the environmental documents adopted by the County, but she reports that the litigation was settled in March 2002 by agreement between the property owner and the proponents of litigation. Ms. McDonald says that on two occasions over the last three years the Commission has reviewed information related to this project. She says the first discussion was in November 2001 related to the Commission's new authority to review development proposals that required the extension of new urban services into previously unserved unincorporated territory. She says staff presented questions related to the Conditions of Approval to be considered by the Board of Supervisors and says it was discussed that verification that the entire area of this project was within the District's sphere of influence was needed. A copy of the staff report for the November 2001 agenda item is attached to the staff report for this consideration. She says that in June 2004 the Commission conducted the municipal service review and sphere update for the District and confirmed that the whole of the Lytle Creek North PDP was within the District's sphere.

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Ms. McDonald reports that the property owner wants to record its Master Tract No. 15900 and, in order to do so, must meet the Conditions of Approval required by the County. She says the two conditions that primarily affect today's considerations are listed in the staff report. She says Condition No. 129 indicates that the water purveyor will be the West Valley Water District, or as otherwise approved by the Commission, and says that Condition No. 136 relates to a will-serve letter that the applicant must submit from the water purveyor to the County that demonstrates that sufficient water resources will be available to all phases of the proposed project. She explains that the will-serve letter is an agreement or contract for service outside the District's boundaries and, for this letter to be valid for the County's use in reviewing the availability of water, the Commission must authorize the District to provide the service. She says the Commission's resolution, a draft of which is attached to the staff report, will convey approval of the will-serve letter to the County. Ms. McDonald notes that the applicant provided an outline of the costs for the service. She says that although the December 2003 Water Facilities Feasibility Study does not specifically identify all the costs, the service review materials identified all costs for bringing service to this area through the District.

Ms. McDonald says this application has been reviewed against the criteria established by Commission policy and Government Code Section 56133 and that staff believes that the Commission can support approval of this service contract based on those determinations outlined on page six of the staff report. She says the findings required by Commission policy and State law, as well as a discussion of the environmental review that has taken place, are outlined in the staff report and are made a part of the record by their reference herein. She says the Commission's Environmental Consultant Tom Dodson is here today to review the Statement of Overriding Considerations that has been prepared for adoption by the Commission and other necessary actions that must be taken.

Tom Dodson says the Statement of Overriding Considerations which has been presented to the Commission for adoption is an edited version of the one used by the County when it approved this project and certified the EIR. He explains that it consists of three components, the first of which is a set of findings made for all the environmental issues, which are laid out in Section D. He says the next component is an identification of facts available in the EIR to support the findings made by the County in the EIR related to significant impacts. He notes that Section D is broken down to say that these are issues found either to be nonsignificant without mitigation or nonsignificant after the application of mitigation, or that these are the impacts considered to be significant. He says there were significant impacts identified, which is why the Statement of Overriding Considerations was prepared. Mr. Dodson says the key component is discussed in Section E on page 55 of the Statement, which is a list of the benefits that accrue to the County that outweigh the significant impacts that will result from implementation of the project. He explains that the Commission must make a finding in the Statement that these benefits outweigh the significant impacts and conclude that if the benefits outweigh the significant impacts, it will adopt the overriding considerations for approval of the service agreement.

Commissioner Pearson comments that it is difficult to separate the issues and focus only on the out-of-agency service agreement, which is fairly straightforward. He says some things do not appear to be addressed in the environmental review documents as well as they might be in the whole picture. He asks whether there is any ongoing litigation involved with this project. Mr. Dodson responds that there was extensive litigation but he says that to the best of his knowledge, it has been resolved, with a lot of compromise. He notes that the applicant has obtained most of the required regulatory permits. He says this is a very complicated project but says the Commission needs to look at this from the perspective that the Commission is a step in the process and that the project requires this component in order to move forward.

Ms. McDonald says that the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) take the actions listed for the environmental review for SC#243; (2) approve SC#243 authorizing the District to extend water service outside its boundaries to serve Master Tentative Tract No. 15900, a development project needing 3,315 equivalent development units of water service on APNs #0239-016-24, -32, -33, and -34 comprising approximately 641+/- acres; and (3) adopt LAFCO Resolution No. 2852 setting forth the Commission's findings, determinations and approval of the agreement.

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

It is noted that Commissioner Hansberger returns to the hearing at 10:03 a.m. It is also noted that Legal Counsel Clark Alsop leaves the hearing at 10:03 a.m. Mr. Alsop has a conflict on the next item as his law firm, Best Best & Krieger, also represents property owners involved in the environmental litigation on two of the City of Rancho Cucamonga proposals (LAFCOs 2967 and 2970). The Commission is now represented by Special Legal Counsel Jeffrey Goldfarb of the law firm of Rutan and Tucker.

CONSIDERATION OF REQUEST FOR OVERRIDE OF COMMISSION POLICY RELATED TO DEFERRAL OF PROCESSING APPLICATIONS FOR PROJECTS PENDING SETTLEMENT OF LITIGATION FOR LAFCO 2965 - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (ETIWANDA CREEK--DRC2003-00164); LAFCO 2967 - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (RICHLAND PINEHURST--DRC2002-00865); AND LAFCO 2970 - REORGANIZATION INCLUDING ANNEXATIONS TO CITY OF RANCHO CUCAMONGA AND WEST VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT (TRACY DEVELOPMENT--DRC2003-01051) - CONTINUE CONSIDERATION OF WAIVER OF ENVIRONMENTAL LITIGATION POLICY TO JANUARY 19; APPROVE CONSOLIDATION OF THREE APPLICATIONS INTO SINGLE REORGANIZATION PROPOSAL AND SCHEDULE FOR HEARING ON JANUARY 19, 2005

LAFCO conducts a public hearing to consider a request submitted by the City of Rancho Cucamonga (hereinafter referred to as "the City") for an override of the Commission's policy related to deferral of applications for projects pending settlement of litigation. 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 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 states that the Commission has received three applications for annexation to the City (LAFCOs 2965, 2967 and 2970) and she points out the location of each proposal area on the map on the overhead display. She reports that for each application, LAFCO staff modified its processing to include annexation of the territory to the West Valley Mosquito and Vector Control District, to comply with the Commission's concurrent annexation policies, notified interested parties and circulated the applications for comments. She says the Commission was notified in each case by Craig Sherman, attorney for Spirit of the Sage Council and Habitat Trust for Wildlife Inc., that he had filed litigation questioning the environmental processing of these applications by the City, and requesting that the Commission deny the applications or defer them until the litigation is resolved. She says the City was notified of the Commission's policy to await the resolution of environmental litigation before beginning its official review of the applications and she says the City has requested that the Commission waive its policy. Ms. McDonald discusses that this policy was borne from two lawsuits challenging environmental determinations—one related to the annexation of the Chino Airport to the City of Chino and one related to a proposal for annexation to the City of Rialto. As outlined in the staff report, she discusses the problems and confusion that were created when the court found that the environmental documents were deficient and the properties had to be removed from each City's boundaries. She points out that the Commission did waive its policy in 2002 for the City of

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Rancho Cucamonga annexation of Rancho Etiwanda Estates, for which she says there were no ill effects.

Ms. McDonald says the staff recommendation is that the Commission uphold its policy that its consideration will await conclusion of the environmental litigation currently filed against the City's three applications. However, she says if the Commission chooses to override its policy, staff recommends that these three applications be consolidated into one application, for those reasons outlined in the staff report, to be known as LAFCO 2970A (rather than LAFCO 2965A is listed in the staff report). She explains that LAFCOs 2967 and 2970 have majority landowner support for annexation and that LAFCO 2964 has 100% landowner consent, so they will move forward and be completed. However, she says LAFCO 2965 has the potential to be defeated by landowner protest, which would leave a 300-acre island of unincorporated territory totally surrounded by City boundaries. Additionally, she reports that LAFCO 2965 was terminated due to failure to complete the property tax transfer process; but she says the City is reinitiating its application tonight.

Commissioner Sedano asks what the timeline is on the resolution of litigation. Ms. McDonald says the City may be able to provide information about the court hearing process and possible settlements. Special Legal Counsel Jeff Goldfarb comments that this is a writ of mandate case and he says that type of case usually goes much quicker than the typical protracted kind of trial. However, he says parties can agree to continuances in settlement conferences, so they could be looking at a period of six to twelve months for resolution. Commissioner Colven asks what the magnitude of the litigation is. Ms. McDonald responds that to LAFCO, litigation is always of a large magnitude because the Commission is required to ensure that the services to be provided are sufficient for the development. She adds that if the Commission waives its policy, the City needs to be aware that if the Commission is pulled in to the litigation, the City must fund LAFCO's participation in the lawsuit. She notes that the property owner for the Richland Pinehurst project has indicated support for the waiver, but she says staff has not heard from the property owner of the Tracy project. Commissioner Sedano asks if sticking with the Commission's policy would help expedite the resolution of the litigation. Ms. McDonald responds that she thinks the City would argue that it would not and that it would instead allow for a more protracted process.

Commissioner Hertzmann comments that in looking at the statements in the lawsuit documents, it appears that the attorney filed the same thing for each application, and seems to be trying to "wield a club". He asks whether, rather than the City caving in, the City could be held responsible for paying any costs involved, if the court later reverses the environmental finding. Ms. McDonald responds that the legal defense policy does not cover staff costs, but she says the Commission could make part of its recommendation that all costs associated with the future processing of this proposal be the obligation of the City.

Mr. Goldfarb says he believes Commissioner Hertzmann is asking whether, since the City is requesting a waiver of the Commission's policy, as a condition of that waiver the City can be required to pay any costs associated with any reversals of the actions taken by the Commission, including the payment of staff costs. He says that would be within the power of the Commission.

Commissioner Hansberger discusses that if there were some mechanism by which the distribution of the property tax revenues could remain constant during the litigation, the Commission could approve the annexation and, if the City lost the lawsuit, the annexation would be nullified. However, he says if the City prevails in the litigation, the annexation would mature at that point and all property tax transfers would occur. Ms. McDonald says she believes he is talking about awaiting the protest proceeding to finalize the annexation, since that is the only alternative the Commission has. She says the Commission is directed by law to send the application forward, unless it conditions it on some action being taken. Commissioner Hansberger comments that Ms. McDonald is constraining herself with the existing rules. He says that what he is talking about is a desired outcome, and says he realizes that will require some changes.

Mr. Goldfarb says it sounds as though Commissioner Hansberger is suggesting that the intent of the Commission would be to approve the annexation, but that there be a condition precedent to the effective date of that approval that the litigation must be resolved.

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Commissioner Pearson says he knows where Commissioner Hansberger is heading and says he tends to agree with him. However, he discusses the problems of dealing with the impacts when property tax revenues are transferred and then the money has to be taken back. He says he would like to hear the City comment on this "quasi action" that is being discussed.

Ms. McDonald says the problem is that the protest proceeding is a ministerial action, unless the Commission imposes some specific conditions on the review and approval of the application. She says staff can present some alternatives when it is time to present the application package to the Commission, but she says the City should respond to what its position is on today's discussions.

Commissioner Cox asks whether the legitimacy of the Spirit of the Sage as a non-profit group has been proven. Ms. McDonald says that is one of the issues the City is addressing and that Mr. Buller from the City can discuss that.

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

Craig Page, representing the Tracy Development, says they support the City's request for a waiver of the Commission's policy. Regarding the status of the litigation, Mr. Page says there have been discussions between Tracy representatives and Spirit of the Sage, and he says he knows representatives of Richland Pinehurst have participated in some settlement discussions. He says he understands that hearings are scheduled for May, June and July, 2005.

Tom Sanhamel, representing Richland Pinehurst, says a copy of their letter of support is attached to the staff report. Mr. Sanhamel reports that there was a mandatory settlement conference last week and he says Richland Pinehurst is confident that a settlement can be reached with the Spirit of the Sage. He says they would like to be able proceed independently and not be tied to the other projects, pointing out that their project, which is in the southwest corner of the proposal area, would not create an island if it were annexed. He reports that they are actively processing all their improvement plans and are actively proceeding with the project, as they believe the litigation can be resolved.

Brad Buller, City Planner, asks that the Commission move forward with the applications as requested by the City, although he says they understand why the other two annexations caused the Commission to adopt this policy. He says the City feels very confident with its environmental documentation and has had to deal with the Spirit of the Sage with almost every annexation in this area. He reports that the issue of the Spirit of the Sage as the recipient of mitigation land is still being discussed and says the City has requested that Spirit of the Sage provide a lot of information which will have to be evaluated. Commissioner Curatalo asks what kind of agreements have been made in the negotiations where there have been settlements with the Spirit of the Sage. Mr. Buller responds that some settlements by previous developers have included both land and dollars for the support of that land; but he points out that those settlements are outside the City's actions.

Commissioner Pearson discusses that they have been discussing this morning an interim status that might help move this application along, but he asks Mr. Buller whether the City can live with the possible ramifications involved if the City had to pay back revenues that had been exchanged. Mr. Buller says he cannot speak on behalf of the City Council as far as what position it would take on the deferral of the property tax revenue exchange. He notes that if the Commission is pulled in to the lawsuit, the developers of the two projects would be responsible for all costs related to the legal ramifications of future actions. Commissioner Pearson says it might be wise to continue this matter to January so that the City Council can be apprised of some possible actions that could be taken. Mr. Buller says the City will go along with whatever decision the Commission makes, but he says the City supports an action to move forward with the annexation as it is. Commissioner Pearson points out that Mr. Buller has just indicated that he is not comfortable speaking on behalf of the Council today without its okay, and Commissioner Pearson says he believes the Council should fully understand what is involved in any action the Commission may take. Mr. Buller says he is not sure that all the mechanics of Commissioner

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Hansberger's suggestion have been resolved so he says he is not sure exactly what information he would need to take back to the Council.

Ms. McDonald points out that the Commission is not approving the annexation at this hearing. She says the only action today is whether to support a request for a waiver of the Commission's policy as requested by the City. She says if the waiver is approved, staff will schedule these applications for hearing and discussions and questions about the process if the environmental litigation prevails would be a part of that future staff report. Commissioner Pearson asks if the Commission can deal with the recommendation to consolidate the applications today. Ms. McDonald responds that the three separate applications can be modified to consolidate them into a single reorganization proposal.

In response to inquiry of Commissioner Hertzmann, Ms. McDonald says if the Commission denies the request for a waiver of its policy, there will be no hearing before the Commission until the litigation is resolved. She notes that possible hearing dates in May, June and July of 2005 were mentioned and says, depending on those dates and actions taken, along with the Commission's 21-day notice period, the first Commission review would not occur until September or October of next year. She explains that if the policy is waived, the applications are ready for review and could be on the January agenda, with a protest hearing conducted within 45 to 60 days if the annexation is approved, and completion of the annexation by May, before the first court date is even scheduled. Mr. Goldfarb points out that if there is a trial court, an appeal occurs in California as a matter of right, which he says could add an additional nine months after the trial court hearing.

Commissioner Cox asks for clarification of the statement mentioned earlier that if a decision were made today, it could be held in abeyance. Ms. McDonald says the decision could not be held in abeyance, but she explains that a condition could be made that the conduct of the protest proceeding would be held in abeyance up to six months, on the basis of some other action needed to be taken. However, she points out that the protest proceeding cannot be held up for longer than six months and says six months will not provide enough time for resolution of the environmental litigation. She notes also that if the Commission approves the annexation, it would probably be notified that it had become a party to the litigation and would be enjoined from acting until resolution of the litigation.

Commissioner Hansberger asks Legal Counsel if there is any mechanism that would allow the Commission to approve the annexation and let the City resolve the balance of the issues, while holding in abeyance the property tax transfers and other responsibilities. He says he is thinking more in a policy sense, rather than just for this one annexation.

Mr. Goldfarb responds that could potentially be considered, but on a case-by-case basis. He says it would be interesting to look into the idea that the annexation could be conditioned to say that in order for the Commission's action to become effective, one of the things that would have to transpire is resolution of the lawsuit in a way where it is either dismissed with prejudice or there is a judicial determination that the environmental documentation for the approval was correct. He says he cannot say today whether that is possible but says he thinks that is something that merits looking into, if the Commission wishes him to do so.

Commissioner Hansberger asks whether they could simultaneously schedule for the January agenda a determination as to a possible policy and the hearing for an action on the annexation. Ms. McDonald says the items could be heard one after the other. Commissioner Hansberger says they may wish to bring this whole issue back in January and ask Legal Counsel to research some of the questions that have been asked today. Ms. McDonald requests that if the Commission continues the consideration of the waiver policy to January, it may go ahead and consider the consolidation of the three applications into one application for the January agenda.

Commissioner Hansberger moves that consideration of the waiver of the environmental litigation policy be continued to January 19, 2005 and that LAFCOs 2965, 2967 and 2970 be consolidated into a single reorganization proposal and scheduled for consideration on January 19, 2005. The motion is seconded by Commissioner Pearson.

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Commissioner Sedano says he disagrees with the motion because it is not fair for the Commission to block the City's progress. He says he thinks Commissioner Williams is well aware of the consequences if the litigation is successful and that the City Council is totally prepared if that happens. He says if he were voting, he would recommend that the City's request for the waiver of the policy be approved.

Commissioner Hansberger says he believes his motion accomplishes the same thing, in the sense that the Commission cannot take an action on the annexation today anyways. He says his motion will allow the City to argue its whole case at one time; and, if the waiver is approved, the Commission will proceed with the annexation in its next action. He says he believes there is a sentiment to approve the waiver, but says the concern is what are the consequences of that and how can they be minimized.

Commissioner Williams says the motion will also offer another opportunity for settlement hearings that indicate that the annexation is moving forward at a rapid pace. She urges that the Commission read the letter from City Manager Jack Lam, especially the second paragraph which she says explains how, if the LAFCO process is impeded, the party suing is given a bigger club as leverage. She says she supports the motion because it moves things along.

Commissioner Hertzmann says his concern is that the Commission will be totally different in January, so they will have to start all over. He suggests approving the waiver and having staff and Legal Counsel come back with a recommendation that carries out Commissioner Hansberger's suggestions.

Commissioner Hansberger says he believes both issues belong before the Commission at the same time, and says if the waiver is determined to be appropriate, the Commission can proceed to consider the annexation. He says he believes the issues belong under one roof at one time, rather than having one body grant the waiver at one hearing, and then the next body possibly having to deal with complications that have been created by the first decision. Commissioner Hertzmann asks about approving the waiver in concept today and then affirming or denying it in January. Commissioner Hansberger responds that is what his motion infers. He says he will amend his motion to add that it is the sentiment of the Commission to grant the waiver, subject to the discussion about its consequences and the various remedies for the problems that might be presented if the annexation were to go forward.

Commissioner Curatalo questions whether the waiver could be granted with stipulations that would protect everyone's interests. Mr. Goldfarb responds that his only concern is that he does not have an answer today as to whether the Commission's desire to ensure that the approval of the action goes forward, but is contingent upon the resolution of those lawsuits, can effectively be carried out. He says the legal question is whether the Commission can include that condition precedent—which would be to approve the annexation on Day A, with a condition that it only become effective upon the resolution of the lawsuit. He says it sounds great in concept, and he thinks it is potentially possible, but he says he would rather be able to provide the Commission with a definitive answer, which he cannot do today.

Chairman Bagley states there is an amendment to the original motion. Commissioner Pearson ask for clarification of the amendment. Commissioner Hansberger says his motion as amended is that the Commission grant the consolidation of LAFCOs 2965, 2967 and 2970 into a single action; continue the request for a waiver of its litigation policy to the January 19 hearing, indicating that the Commission favors a waiver of the policy, subject to a determination on several issues discussed today, which is to be brought back by LAFCO staff and Legal Counsel for consideration in January; and that the annexation be scheduled for January 19 as a subsequent matter. Commissioner Pearson seconds the motion as amended.

Chairman Bagley calls for further questions or discussion. There being none, he calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Colven, Cox, Hansberger, Pearson, Williams. Noes: None. Abstain: None. Absent: Biane (Hansberger voting in his stead) and Young.

(It is noted that Clark Alsop returns to the hearing at 10:56 a.m. and is now representing the Commission as Legal Counsel. It is noted that Commissioner Cox leaves the hearing at 10:56 a.m.)

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CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2945; AND (2) LAFCO 2945 – SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR COUNTY SERVICE AREA SL-1 – CONTINUE TO JANUARY 19, 2005

LAFCO conducts a public hearing to consider a service review and sphere of influence for County Service Area SL-1. Notice of this hearing was advertised as required by law through publication in The Sun, a newspaper of general circulation in the area. 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 its reference herein. Ms. McDonald says that staff is recommending that this item be continued to the January 19, 2005 hearing. She says the staff report outlines some concerns that have come about since this review began. She identifies the boundaries of this District on the map provided on the overhead display and the large map displayed that was prepared using Tax Rate Areas (TRAs) to identify where the revenue sources for CSA SL-1 are. She says CSA SL-1 is a streetlighting agency that was assumed by many to encompass the entire valley portion of the County, which she says it does not. She discusses that it has been discovered that one TRA in the City of Redlands and one TRA in the City of Colton continue to pay SL-1 and says LAFCO staff has undertaken further review and requested Southern California Edison to assist in locating actual streetlights that are billed to this agency. She reports that Southern California Edison is putting together this information at no charge. Ms. McDonald notes that the second staff recommendation asks that staff be directed to request “an audit” of the streetlight services billed to CSA SL-1 through Southern California Edison. She says that Southern California Edison has indicated that the word “audit” should not be used because it would require that they send people out into the field to identify every streetlight pole and then bill the Commission. She asks that staff be directed to seek additional data and information from Southern California Edison relative to the streetlights they bill to the County.

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

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

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 2976; AND (2) LAFCO 2976 – CONFIRMATION OF OPEN-SPACE AND HABITAT CONSERVATION POWERS FOR COUNTY SERVICE AREA 70 (UNINCORPORATED COUNTY TERRITORY – APPROVE STAFF RECOMMENDATION)

LAFCO conducts a public hearing to consider the confirmation of open-space and habitat conservation powers for County Service Area 70 (CSA 70). 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 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 reports that during the review of a Board of Supervisors Agenda item related to the formation of CSA 70 Improvement Zone GH, LAFCO staff questioned the Special Districts Department about the proposed authorization of open-space and habitat services for that improvement zone, since those services had not been authorized through the LAFCO process. She says that Special Districts staff explained that CSA 70 began providing open-space and habitat preservation services, under its park and recreation function, with the creation of CSA 70 Improvement Zone OS-1 in 1994. She says the conservation community was concerned that the

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use of park and recreation services had a connotation of potentially some active use of these lands, which she says was not the case for the North Etiwanda Open Space and Habitat Preservation Plan and the North Etiwanda Preserve, which were what Zone OS-1 was created to administer. She says special legislation was sponsored by San Bernardino County to authorize activation of this miscellaneous extended service, and says the County then formed Improvement Zone OS-3 in January of 2001, identifying its active service to be open-space preservation and habitat conservation. She reports that the process to activate this power through LAFCO has never been undertaken so this oversight has been perpetuated.

Ms. McDonald says the staff recommendation is that the Commission: (1) certify that LAFCO 2976 is statutorily exempt from environmental review and instruct the Clerk to file a Notice of Exemption within five days; (2) confirm the delivery of open-space and habitat conservation services as an authorized power of CSA 70, amending the Rules and Regulations Affecting Special Districts to reflect this addition; and (3) adopt LAFCO Resolution No. 2854 setting forth the Commission's findings, determinations and approval of this action. She notes that Finding No. 4 in the staff report indicates that the service area for CSA 70 is the unincorporated area of the County and that upon this authorization, this service can be performed through the creation of an improvement zone within the unincorporated area of the County.

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

INITIATION OF SERVICE REVIEWS AND SPHERE OF INFLUENCE UPDATES FOR ALL VICTOR VALLEY/BARSTOW/NORTH COUNTY AREA LOCAL AGENCIES – APPROVE STAFF RECOMMENDATION

LAFCO considers the initiation of service reviews and sphere of influence updates for the local agencies located in the North County - Victor Valley/Barstow area (roughly from the north facing slope of the mountains to Mountain Pass and from the Los Angeles County Line to Newberry Springs). Notice of this consideration has been advertised as required by law through publication in The Sun and the Daily Press, newspapers of general circulation in the area. Individual notice of this consideration 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 staff is recommending that the Commission initiate service reviews and sphere updates for the 41 agencies which are listed by community on pages two through four of the staff report. She notes that County Service Areas 70 and 38 have not been included since those studies have been deferred until the County's fire protection reorganization study is completed. Ms. McDonald says staff will hold a meeting in January in the Victor Valley area with the affected agencies to outline the information that will be requested, what this process involves and the potential timeline for the studies. She points out that the staff report identifies a number of agencies over which the Commission has no purview but which will have an impact on these service reviews, such as Improvement Zones J and L of County Service Area 70.

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

Commissioner Curatalo moves approval of staff recommendation, seconded by Commissioner Pearson. Chairman Bagley calls for any objections to the motion. There being none, he calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Colven, Curatalo, Hansberger, Pearson, Williams. Noes:

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None. Abstain: None. Absent: Biane (Hansberger voting in his stead), Cox (Curatalo voting in her stead) and Young.

PENDING LEGISLATION

Ms. McDonald states that she has no legislative report to present. She reports that she will attend the CALAFCO legislative meeting in Sacramento on Friday. She says they will discuss rewriting Government Code Section 56133 related to out-of-agency service contracts, and will be looking at modifications that will make that section clearer. She says that at the January hearing she will present the Commission with an outline of the legislation and changes effective January 1.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald reports that on the January 19 agenda will be two out-of-agency service contracts for the City of Redlands, the continued consideration of the service review for County Service Area SL-1, the continued consideration of the request for override of the Commission's environmental litigation policy, consideration of the annexation to the City of Rancho Cucamonga discussed earlier, annexations to the Cities of Fontana and Montclair, a request for waiver or deferment of filing fees submitted by the Bloomington Incorporation Commission for a sphere of influence reduction for the Cities of Fontana and Rialto and a quarterly financial report for October 1 through December 31, 2004. She points out that at their places this morning, the Commissioners have been presented with the environmental review documents for the Fontana annexation on the January agenda and she says that as the Commissioners leave today, they will be provided with the environmental review documents for the City of Rancho Cucamonga annexation related to the Richland-Pinehurst and Tracy Development projects. She asks that they hold on to the environmental review documents they received for the review of the service contract for the Lytle Creek North project since those documents will be used for the annexation of that area to the West Valley Water District.

She notes that the Commission has been presented with the announcement of the City Selection Committee meeting on January 5, 2005. She says this will be Commissioner Bagley's last hearing. She says he will be asked to return in January for presentation of a resolution at a luncheon in his honor. Commissioner Pearson moves adoption of a resolution for Commissioner Bagley, seconded by Commissioner Colven, and unanimously approved.

Ms. McDonald reports that two more applications have been received, one for formation of County Service Area 120 and one for annexation to the City of Upland of another portion of the College Heights area, west of Central Avenue to the County line. She says the proposal for the consolidation of East Valley and Inland Empire West Resource Conservation Districts is being processed and may be presented to the Commission in February.

COMMISSIONER COMMENTS

Commissioner Sedano says he is sick and disappointed that the Commission is losing two of the best Commissioners it has ever had in Commissioners Bagley and Hertzmann. He adds that Commissioner Young, who is also leaving the Commission, did a commendable job in the short time he was on the Commission. He says it will be very interesting to see the new makeup of the Commission. Commissioner Colven says "ditto" to those comments.

Commissioner Hansberger presents to Commissioner Bagley a resolution on behalf of the San Bernardino County Board of Supervisors, initiated at the request of Commissioner Biane. Commissioner Hansberger says he is deeply disappointed to lose Commissioner Bagley's service, stating that he is one of a handful of unique elected officials who speaks up, even though he may be the only one with that

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point of view in the room. He says Commissioner Bagley has made enormous contributions by forcing discussions in many different arenas that deserve to be had.

Commissioner Bagley tells staff that they are first rate professionals and says it has been a pleasure working with them. He says he does not know what the future will bring, but says he is happy to have been able to serve on the Commission.

COMMENTS FROM THE PUBLIC

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

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 11:20 A.M.**

ATTEST:

DEBBY CHAMBERLIN
Clerk to the Commission

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PAUL BIANE, Vice Chairman