

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF OCTOBER 15, 2003**

REGULAR MEETING

9:00 A.M.

OCTOBER 15, 2003

PRESENT:

COMMISSIONERS:	Gerald W. Smith, Chairman	Neal Hertzmann, Alternate
	Jim Bagley, Vice Chairman	Richard P. Pearson
	Paul Biane	Bill Postmus
	Bob Colven	A. R. "Tony" Sedano, Alternate
	James V. Curatalo, Alternate	Diane Williams

STAFF: **Kathleen Rollings-McDonald, Executive Officer**
 Clark H. Alsop, Legal Counsel
 Debby Chamberlin, Clerk to the Commission

ABSENT:

COMMISSIONERS: **Dennis Hansberger, Alternate**

REGULAR SESSION - CALL TO ORDER - 9:03 A.M.

Chairman Smith calls the regular session of the Local Agency Formation Commission to order. Commissioner Colven leads the flag salute.

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

APPROVAL OF MINUTES FOR REGULAR MEETING OF SEPTEMBER 17, 2003

Chairman Smith calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner Colven moves approval of the minutes as presented, seconded by Commissioner Pearson. Chairman Smith calls for a voice vote on the motion and it is as follows: Ayes: Bagley, Biane, Colven, Pearson, Postmus, Smith, Williams. Noes: None. Abstain: None. Absent: None.

CONSENT ITEMS

LAFCO considers the items listed under its consent calendar, which Chairman Smith states consists of: (1) approval of the Executive Officer's expense report; and (2) approval of payments as reconciled for the month of September 2003. 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 September.

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

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

DISCUSSION ITEMS

(It is noted that Commissioner Biane announces he will abstain on voting on the next item due to a conflict and he leaves the hearing at 9:05 a.m.)

CONSIDERATION OF: (1) REVIEW OF NEGATIVE DECLARATION WITH MITIGATION MEASURES PREPARED BY COUNTY OF SAN BERNARDINO FOR 011410CU1/W161-105/2002/CUP01, CONDITIONAL USE PERMIT TO ESTABLISH JACK IN THE BOX RESTAURANT WITH DRIVE-THRU, AS CEQA RESPONSIBLE AGENCY FOR LAFCO SC#208; AND (2) LAFCO SC#208-IRREVOCABLE AGREEMENT TO ANNEX NO. 03-001 FOR SEWER SERVICE, CITY OF FONTANA - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for approval of an out-of-agency service agreement submitted by the City of Fontana (hereinafter referred to as "the City") for sewer service to APN 0237-054-19, which is generally located at the northwest corner of the intersection of Slover and Citrus Avenues, within the south central portion of the City's sphere of influence. The western portion of the parcel is proposed for development of a Jack in the Box restaurant with drive-thru facilities and parking on .6 acres. The eastern portion of the parcel is developed as a convenience store and gas station. Notice of this hearing has been advertised as required by law through publication in The Sun and Fontana Herald News, newspapers of general circulation in the area. Individual notice 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 County of San Bernardino Land Use Services Department processed the approval of a Conditional Use Permit for development of the restaurant, which included the requirement for connection to the City's sewer system. She notes that the staff report outlines the calculation of the City's charges for this connection, which are estimated to be about \$11,600, and says the LAFCO fee is \$700. She states that this parcel is contiguous to City boundaries along its eastern border, Citrus Avenue. She explains that the City has indicated that it is working on a comprehensive approach to annexation of the balance of the territory and did not want to pursue annexation of this single parcel. She says approval of this service contract will authorize the developer to proceed while the City packages up the overall annexation. Ms. McDonald states that this application has been reviewed against the criteria established by Commission policy and Government Code Section 56133 and says staff supports the City's request to provide sewer service to this parcel. She says the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) take the environmental actions listed as a responsible agency; (2) approve SC#208 authorizing the City to extend sewer services outside its boundaries to APN 0237-054-19; and (3) adopt LAFCO Resolution No. 2784 setting forth the Commission's findings, determinations, and approval of the agreement for service.

Commissioner Pearson asks when the City's General Plan will be up for approval. Ms. McDonald says she will let Ms. Henderson respond to that.

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

Cecilia Lopez-Henderson, Senior Administrative Analyst for the City, reports that the City Council will be adopting the Environmental Impact Report and General Plan in two weeks; that there will be a first reading on the zoning map and a second reading in November; and that everything will be complete in December. She says that after the first of the year, the Council will decide which areas in the comprehensive annexation program it will concentrate on. Commissioner Bagley asks whether there is a

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comprehensive annexation plan. Ms. Henderson responds that the City has rezoned its entire sphere in anticipation of the annexation program which is outlined in six major areas. Commissioner Bagley comments that he is glad to hear that so that the Commission does not have these small annexations every hearing.

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

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

(It is noted that Commissioner Biane returns to the hearing at 9:10 a.m.)

CONSIDERATION OF: (1) REVIEW OF NEGATIVE DECLARATION WITH MITIGATION MEASURES PREPARED BY COUNTY OF SAN BERNARDINO FOR 11762CF1/E210-58/2003/MRG01/CUP01, PARCEL MERGE AND CONDITIONAL USE PERMIT TO ESTABLISH A 6,627 SQUARE FOOT FIRE STATION WITH DOUBLE APPARATUS BAY, AS CEQA RESPONSIBLE AGENCY FOR LAFCO SC#211; AND (2) LAFCO SC#211-IRREVOCABLE AGREEMENT TO ANNEX NO. 2003-01 FOR SEWER SERVICE, CITY OF SAN BERNARDINO - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for approval of an out-of-agency service agreement submitted by the City of San Bernardino (hereinafter referred to as "the City") in response to an application for sewer service from the County of San Bernardino for its proposed fire station for the Central Valley Fire Protection District. This facility is to be built on the western side of Macy Street, in the community of Muscoy, on lands that were privately donated for development of a new fire station. 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 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 County of San Bernardino Land Use Services Department processed approvals for the contract area, including a merger of two lots (APNs 0268-041-12 and -13) and a Conditional Use Permit to establish a 6,627 square foot fire station with a double apparatus bay on 1.19 acres. She notes that the Board of Supervisors authorized the signing of an irrevocable agreement to annex with the City and that the City Real Property Section processed the application. She reports that the County will be required to pay a \$1,250 LAFCO application fee and about \$6,000 in connection charges. Ms. McDonald states that this application has been reviewed against the criteria established by Commission policy and Government Code Section 56133 and says staff supports the City's request to provide sewer service to the proposed fire station development. She says the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) take the environmental actions listed as a responsible agency; (2) approve SC#211 authorizing the City to extend sewer services outside its boundaries to the proposed fire station for the Central Valley Fire Protection District on APNs 0268-041-12 and -13; and (3) adopt LAFCO Resolution No. 2785 setting forth the Commission's findings, determinations, and approval of the agreement for service.

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

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

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(It is noted that Commissioners Biane, Postmus, and Curatalo announce that they have conflicts and will abstain on the next item. They leave the hearing at approximately 9:15 a.m.)

CONSIDERATION OF: (1) REVIEW OF NEGATIVE DECLARATION PREPARED BY CITY OF UPLAND FOR COLLEGE HEIGHTS PRE-ZONE NO. PZC-02-02 AND ENVIRONMENTAL ASSESSMENT REPORT EAR NO. 1410 (SCH#2003021122) AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2941; AND (2) LAFCO 2941-CITY OF UPLAND ANNEXATION NO. 56 (COLLEGE HEIGHTS) - APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a proposal initiated by the City of Upland (hereinafter referred to as "the City") to annex approximately 342 acres, generally located in the southwestern portion of the City's sphere of influence. The site is generally bordered by the City of Upland boundaries on three sides, Foothill Boulevard on the north, Benson Avenue on the east, and Arrow Route on the south. The western boundary line is the Los Angeles/San Bernardino County line abutting the City of Claremont. Notice of this 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. Individual notice of this hearing was provided to affected and interested agencies, County departments, those individuals 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 identifies the annexation area on the display map. She explains that the identification of this boundary is important because Government Code Section 56375(a) provides that if the Commission makes the findings listed on page three of the staff report, it will not have the power to disapprove this annexation. She says it is staff's position that the Commission can make those findings and must, therefore, approve the annexation, and that the only element of discretion for the Commission relates to the consideration of the terms and conditions to be imposed. Ms. McDonald says an additional boundary issue that needs to be considered relates to the "Ninth Street" island, which meets the criteria of Government Code Section 56375.3, which addresses island areas of less than 75 acres. She discusses the Commission's position that when a city proposes a "desirable" annexation, it should also look at its island areas. She discusses how the Commission has approached its response to handling these island areas, which is outlined in the staff report. She explains that in this case, the City does have the community of San Antonio Heights within its sphere of influence. She says, however, this community has historically opposed annexation; and says that under the terms of an agreement with the County in 1989, the City agreed to provide sewer service to that community without requiring an irrevocable agreement to annex from the landowners. She says staff is recommending that the Commission condition approval of this annexation on the initiation of annexation of the Ninth Street island.

Ms. McDonald discusses the land use issues, which are outlined in the staff report. She discusses the service issues, summarizing the highlights of the City's plan for service, a copy of which is attached to the staff report. She notes that the only financial effect to the existing and future business owners will be the imposition of the City's business license and sign registration services.

Ms. McDonald discusses the issue of fire protection service, indicating that County Service Area (CSA) 38 currently provides service to this area from County Station 12, which is about 4½ miles away, within the San Antonio Heights community. She says the City Fire Department can provide service to this site from Station 3 which is located about one mile from the center of the annexation area. She says the County Fire Department submitted a letter, a copy of which is attached to the staff report, expressing its concern about the loss of revenues that will result with this annexation, which will affect the operation of Station 12 and be detrimental to the balance of the County areas to be served. She reports that this issue was discussed at the LAFCO Departmental Review Committee meeting on June 17, 2003, with representatives of County Fire, the City Fire Department and the County Administrative Office. She says that later, staff received a letter from the Mt. Baldy Volunteer Fire Department, a copy of which is attached

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to the staff report, asking for assurance of continued support from CSA 38 for their operation in the area north of San Antonio Heights and expressing concern about response times. She discusses that during the property tax negotiation process, it was determined that CSA 38 will lose about \$100,300 and that CSA 70 will lose about \$22,200. She says the staff report outlines information provided by the County Assessor and Auditor-Controller offices estimating the revenues generated within the San Antonio Heights and Mt. Baldy Village communities. Ms. McDonald says staff brought up the question of a possible automatic aid agreement between the County and the City since that type of relationship exists in a number of other areas; and she reports that on July 28, the City Council authorized its Fire Chief to negotiate with the County to resolve these concerns. She says the City Fire Department submitted to County Fire and Mt. Baldy Fire Departments a request for information and a list of 68 questions. She says that as of October 3, the only response received was from Mt. Baldy Fire Department, but she says she understands that information has now been submitted by the County Fire Department. She says the Commission needs to address this issue, but she points out that the Commission cannot require the City to enter into an agreement to serve outside its sphere, nor can the Commission require the County, on behalf of CSA 38, to negotiate with the City for service provision. She says that staff recommends that the Commission make a finding in its resolution that the County and City should negotiate an agreement regarding the future fire protection services in this portion of the Valley area.

Ms. McDonald states that the environmental issues are outlined in the staff report, along with the necessary actions the Commission must make as a responsible agency. She says individual notice was mailed to landowners and voters and that two responses were received, one which is attached to the staff report. She says the Commission has been presented this morning with a letter of opposition received from a landowner, outlining three areas of concern, 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 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 the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) take the actions listed related to the environmental assessment of the project; (2) approve LAFCO 2941, subject to the listed conditions; and (3) adopt LAFCO Resolution No. 2786 setting forth the Commission's findings, determinations and conditions of approval. She notes that the draft resolution omitted the section outlining the required findings the Commission must make pursuant to Government Code Section 56375.3(a) and says a revised draft resolution has been provided to the Commission.

Commissioner Colven asks whether Chief Hills responded to the City Fire Chief's questions. Ms. McDonald says the City can respond to that.

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

Jeff Bloom, the City's Community Development Director, says the City has had many ongoing discussions with Chief Hills and staff to try to resolve the fire protection issues. He says the College Heights island can be more effectively served from the City's Station 3 and he adds that fire service for the Ninth Street island will improve dramatically. He says the City is happy to work cooperatively to address the CSA 38 issues and service to San Antonio Heights and Mt. Baldy, but he says the City cannot volunteer its services. He notes that the County station at the top of Euclid Avenue is only supported by a couple of firefighters at one time, so he says they have limitations to providing service without calling for backup. He says it will take some time to work out these issues. Mr. Bloom says the City sees a lot of development proposals in and around the College Heights island area and is working to improve the basins for flood control in the little sliver of City area immediately south of the island. Regarding solid waste services, he says the five-year phase-out period required by State law will help people "make the jump" from the County's provider, to Burrtec Waste Industries, the City's provider. He says there are some discrepancies in costs between the two providers but says he understands the County continues to negotiate new proposals for waste hauling so costs would probably be equalized over time, whether the area is in the County or the City. He says business licenses are a revenue device for cities and that cannot be changed. Mr. Bloom discusses the condition of annexation related to the Ninth Street island. He says the City Council is prepared to adopt a resolution initiating annexation of that

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smaller island, but he says they wanted to get through the hearing process on the College Heights annexation first. He says the City requests that the "initiation" of the Ninth Street island annexation be fulfilled by the Council adopting its resolution of initiation and forwarding it to LAFCO. He says that will allow the College Heights annexation to be completed and allow the City to move forward with plans to provide additional services and development financing in that area that are contingent upon this annexation. He says the City is developing a storm basin and water recharge basin and is working to complete the project for the developments in the City; but he says it will also benefit the people in the island area who would have no where else to take the storm water if they want to continue developing. Mr. Bloom says the City's Fire Chief John Scanlon is here to respond on the latest discussions with Chief Hills.

Commissioner Colven says Mr. Bloom indicated that the City Council will pass a resolution initiating annexation of the smaller island. He says the Commission will need at least that resolution, or an irrevocable statement that the City will proceed with that annexation. Mr. Bloom responds that the City Council is prepared to adopt a resolution of initiation. He says they anticipated that they would complete this hearing and then the official protest process, and then the City Council would adopt its resolution at the first available meeting after the protest hearing. In response to inquiry of Commissioner Pearson, Mr. Bloom reiterates that the City Council agrees to the condition related to the smaller island, but says they ask that the initiation be fulfilled by the adoption of the City Council's resolution. He explains that City staff had to work very hard with County staff regarding the property tax agreement and he says the City does not want that issue to delay the completion of the College Heights annexation.

Commissioner Pearson asks whether the area at the northwest corner of the annexation area is a flood control area and he says it appears that area is within Safety Zone Area 2 of the Cable Airport. He questions the Environmental Impact Report which indicates under the sections of Hazards and Noise that there are no impacts, so no need for mitigation. Mr. Bloom responds that the area Commissioner Pearson is questioning is on the southwest corner of Monte Vista Avenue and Foothill Boulevard and he says it is a large gravel pit owned by the Claremont Colleges. He says the land use designation on that property is Institutional and that the College has plans to use it; but he says the property is split by the County line, causing jurisdictional complications. In terms of safety, he says the only thing there is an archery range, on the Los Angeles County side. He says that with development of that property in the future, airport land use issues will have to be considered, but he says the City did not think that impacted this annexation. He discusses that there is also a partially-filled gravel pit, which is the site of the College Park Development Project, in the incorporated area of the City immediately to the south of the island. He reports that the City will move in dirt to fill the gravel pit for development, which he says will create the flood control capacity to take care of the new island.

Commissioner Pearson says the most serious concern to him is the issue of the provision of fire service and the potential loss of a station. He comments that the City Fire Chief asked a number of questions of County Fire related to negotiations for service in this area and he says it is important that the Commission hear input on answers to those questions. Mr. Bloom responds that there is tremendous financial pressure on CSA 38 because it has lost revenues due to annexations in the West End. He says the City would like to annex what it can serve. He says the City will not annex the San Antonio Heights area and has offered to work out service arrangements due to the fact that CSA 38 is increasingly unable to take care of that area.

City Fire Chief John Scanlon reports that the City will be able to take care of the College Heights area from its Station 3 which is located about one mile from the area. He says when LAFCO asked the City to look into possibly providing service to the San Antonio Heights and Mt. Baldy areas, he went to the City Manager and Council for authority to pursue negotiations on an agreement; and then, on August 20, he sent questionnaires to County Fire and the Mt. Baldy Volunteer Fire Department. He reports that as of September 25, he has received a response from Chief Stead of the Mt. Baldy Fire Department. He says he just received a response back from County Fire last Thursday and is trying to analyze the answers and get back to Chief Hills with other questions. He says his department wants to provide the best service possible and wants to know what they would be getting into and what would be expected of them. In answer to inquiry of Chairman Smith, he reports that his department is a full-service department with a

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three-man engine company with paramedics, a hazmat team, and a contract with Ontario for a bomb squad. Regarding the concern about losing Station 12, Chief Scanlon says the City has Station 2 at 21st Street and San Antonio on the west end, and Station 3 at 13th Street and Benson Avenue. He reports that plan checks have been submitted for a new station at 18th Street and Campus, which will be in service approximately in July of next year and will serve the east end of San Antonio Heights.

Gabriel Elliott, Consulting Planner for the City, asks for Commission support, stating that the City has been trying to do this annexation for a long time and it has been a long, hard process. Mr. Elliott says the City, in doing its rezoning, tried to be sure it was consistent with the County's current zoning. He says the plan for service lays out what the City plans to do in the area. He comments that letters of opposition should be expected because there are people within this area who do not currently have to pay license fees or are on septic systems, and they have grounds for concern. He says the City is willing to work with anyone to be sure their concerns are resolved, but he points out that there is not a lot that can be done about the City business license fees. He notes that the City Attorney looked into a possible waiver of business license fees, but Mr. Elliott reports that a waiver probably cannot be legally supported. He says the business license fees are based on revenues and it is unlikely that many people will have to pay a fee on the high end of the range.

Commissioner Colven asks if he is familiar with the Eleventh Street Business Park. Mr. Elliott responds that he spoke with the person who signed that letter of opposition, who was concerned they might be required to hook up to the City's sewer system. He points out that if someone's current septic system ruptures, there may be no choice other than to hook up to the City's system, so he says that issue is not something that is strictly tied to this annexation. He says the City has regulations regarding sewer connections and it is not realistic for people to think that they will automatically be required to connect. Mr. Elliott says there are benefits to coming into the City, such as faster response times for police, fire and emergency services and the upgrades the City might do in the annexation area. He says in the long run, annexation will be a positive thing for businesses.

Chairman Smith calls on those wishing to speak in opposition to this item.

Richard Hermann states that he owns approximately four and one-half acres in the area with an industrial use and about 40 tenants. Mr. Hermann says he canvassed his tenants and the neighboring businesses and says everyone he talked to was opposed to annexation. He says they are not only concerned about business license fees, but they are also concerned about the City's sign fee and additional regulations that the City has, which are more onerous than the County. He says they are happy with the police and fire service provided by the County and feel there is no need for any upgrades at this time. He reports that his tenants have said that the City's Code Enforcement people have been out and writing them up for things the City finds disagreeable, yet he says the County has not found any problems in the years he has owned the property. Mr. Hermann says many people in the area are ignorant as to how to protest or there would be more people present today. He notes that he only received his notice two weeks ago and says that with more time, he could have put together a petition opposing annexation that most of the people and business owners in the area would have signed. He says that his building's sprinklers are dropped into the spray booth of one of his tenant's automotive repair shop. He reports that his tenant was told him that if they are annexed to the City, he will have to install a chemical system in addition to the water sprinkler system, which would cost \$30,000. Mr. Hermann says the City's plan for service on page 8 does not show a category for what he would have to pay in a business license fee for his commercial property.

Peter Cherbak says that last Sunday several people went around the area to try to get the reaction of the voters to this proposal and he reports they were only able to locate six voters. Mr. Cherbak says he also talked to many of the property owners and business people and says that none of them expressed anything but delight with the way the County has been administering the area, and they are satisfied with County services. He says he thinks there will be more problems if the area becomes part of the City than if it stays a County island, because the County will lose revenue. He says it was mentioned that only 50% of the area is developed and he says that almost all of the area that is not developed belongs to the City. He notes that the City recently acquired two percolation basins on Eleventh Street that run south,

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but he says most of the area has buildings and houses on it. He reports that he obtained signatures from voters in the Ninth Street island opposed to this annexation. He says if the City were really interested in the sewer problems and getting people off septic tanks, it would be willing, under any conditions, to put them on the sewer system. However, he says that is contingent upon people agreeing to annex. Mr. Cherbak presents a petition signed by registered voters in opposition to this proposal and asks how many voters there are in the area. He asks that the Commission do a lot of considering before it allows annexation of this area.

Ms. McDonald reports that there are 29 voters and says the protest proceedings will be initiated after approval of annexation by the Commission. She explains that once the Notice of the Protest Proceedings is advertised in the newspapers, then the period in which circulation of petitions and the solicitation of protests begins. She says the petition submitted by Mr. Cherbak will become part of the record, but she says it will need to be redone during the protest period in order for the protests to be valid.

Commissioner Sedano comments that Mr. Hermann said he received his notice two weeks ago. He asks what the Commission's notice policy is. Ms. McDonald responds that notice to landowners and voters inside the annexation area and within 1,350 feet surrounding it was mailed out 21 days prior to the hearing. In answer to inquiry of Commissioner Bagley, she says that notice of the protest proceedings will be advertised in The Sun and the local newspaper and that people who want to receive individual notice can contact the LAFCO office. She says the Commission has authorized the Executive Officer to conduct the protest hearing, which will be held in these Chambers, and says the protests must be in writing and dated and will be evaluated at the hearing. Commissioner Bagley comments that he is surprised to see the interest in this annexation and wants to be sure people understand the protest process.

Commissioner Hertzmann asks what the significance of the protest hearing if the Commission has no power to disapprove this annexation. Ms. McDonald explains that landowners and voters in this area have the right to protest, which is contrary to the annexation provisions for islands of 75 acres or less, where there is no protest. She says that if at least 25% and less than 50% of the voters, or 25% to 100% of the landowners owning at least 25% of the land value protest, an election will be called; and that if 50% or more of the voters protest, the annexation will be terminated. She adds that if there is sufficient protest to call an election, the City will be requested to conduct that election.

Forrest Rinard, owner of the Buffalo Inn Restaurant on Foothill Boulevard, says that when the restaurant was built, Foothill Boulevard was small. He says his major concern is that now Foothill Boulevard has grown into the Inn's frontage and he is not familiar with what other ramifications there are involving the Foothill Boulevard section which is becoming more narrow to business areas. He comments that his property is zoned as M-2, Light Manufacturing, and says he wants to develop the back of the property into a motorhome storage area. He says he wants to know how this annexation will affect him as a business owner and would like some feedback about what will happen if this area is annexed. He asks whether there are any "hidden things" that will cause the business owners problems, what kind of financial implications there are other than business licenses, and whether he will have to close off the front of his building.

Commissioner Bagley asks him whether he has talked to the City yet. Mr. Rinard says he came down from Utah a few days ago and has not talked to the City. Commissioner Bagley asks him who currently provides law enforcement services to his restaurant, noting that the closest County station is about ten miles away. Mr. Rinard says they have only had a few incidents and that the Sheriff has done a good job of responding. Commissioner Bagley says this area is totally surrounded and is destined to become a part of the City, which is the logical service provider. Commissioner Sedano tells Mr. Rinard that although he has some valid points, he has failed to have any dialogue with the City. He suggests that when Mr. Rinard leaves the hearing, he should go and talk to the City officials and he believes his concerns will then be erased.

Pat Van Duessen, a property owner on Benson Avenue below Foothill Boulevard, says his main concern is what his business license will cost. He says he talked to the City and they gave him a copy of the plan

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for service. He says the City representatives said earlier that the cost of a business license will be based on gross sales; however, he says that page eight of the plan for service says nothing about gross sales. He reports that he had a business in the City prior to moving where he is now and that he paid over \$800 per year for that license, based on his gross sales. He says he is happy with the fire and sheriff services he currently receives from the County and says one reason he likes being in the County is that he knows what it was like dealing with the City. Commissioner Bagley asks him how he was aware of this hearing. Mr. Van Duessen says he received a letter from LAFCO, which was mailed out September 23.

Mr. Hermann says it has been mentioned that the City is not interested in annexing the San Antonio Heights area because the residents living there have vehemently indicated for years that they do not want to be annexed. He says that the City tries every so many years to annex the College Heights and Ninth Street islands, and he says people in these two islands are no less vehemently opposed to being in the City than those people in San Antonio Heights.

Chairman Smith calls for further speakers. There being none, he closes the hearing.

Commissioner Pearson discusses the service problems the island areas are experiencing, pointing out that law enforcement and fire services are very challenging in many areas. He says CSA 38 has significant problems and it does not make sense that County agencies must cross city areas to serve islands. He says LAFCO is mandated to look at the island areas, particularly regarding the provision of services, and to eliminate them if possible. He says that because of the continuing increase in costs to serve the islands, there could be a degradation of the service in islands and LAFCO must look at those factors.

Mr. Hermann comments that they used to have Forestry fire protection all year round. But he says that now, with the changes, the California Department of Forestry (CDF) maintains the station at the mouth of San Antonio Canyon for six months and that service comes from the County at Station 12 the other six months. He says if there is a major forest fire, there would be inadequate service which could endanger the San Antonio Heights area. Commissioner Sedano asks Chief Scanlon whether the City has ever responded to that area to help out. Chief Scanlon responds that they have responded, and do respond, to that area through a mutual aid agreement.

Peter Hills, Fire Chief, San Bernardino County Fire Department, clarifies that there is a U.S. Forest Service Station at the mouth of San Antonio Canyon, which he says is typically just staffed during the fire season, along with a majority of the CDF stations. He says that prior to the County assuming responsibility for CSA 38, CDF was managing that contract and there was a County engine and a CDF brush-type 3 engine at Station 12 in San Antonio Heights, in addition to the Forest Service Station at the mouth of the canyon. He says when the contract changed over to the County, there is now both a structure and brush engine at Station 12. Chief Hills says County Fire is committed to looking at a solution for how to continue providing protection for the San Antonio Heights and Mt. Baldy communities, but he says it will take a while to sort everything out because it is a complex issue. He notes that prior to the City coming in with the annexation, discussions were held in the community of San Antonio Heights regarding the level of fire protection. He says there will probably be communications with the community to see whether they want to look at the costs of the County providing service versus the pros and cons of a contract relationship with the City. He says that dialogue will continue.

Greg Putnam, an employee in the area, says the people are happy with the response times for police and fire services and that money is the concern. He says business owners want to know what they will have to do to update their property to meet City codes, when they comply now under County codes.

Commissioner Sedano reiterates that it is imperative for people to start a dialogue with the City and he encourages the City to try to satisfy the concerns of these people.

Mr. Bloom states that the City lives by the same basic codes that the County and all other local governmental agencies do, including the Uniform Fire Code and Building Code adopted by the State. He says the differences and exceptions relate more to new development than existing development; and he

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emphasizes that if people were doing things legally in the County, they will continue to be legal upon annexation to the City. He says if there is a difference in terms of zoning, they may become legal, non-conforming uses. He notes that everyone on the mailing list used by LAFCO was sent the information packet referred to by Mr. Rinard and says they talked with a number of people. Mr. Bloom says that the basin projects referred to by Mr. Cherbak are already within the City limits and he says that most of that area is vacant land. He notes that as they get closer to Benson Avenue, the area is more heavily urbanized and already developed. He says the City does not think that there will be sweeping changes as people come into the City, but they believe it will be a gradual transition as the area continues to develop.

Commissioner Williams urges Mr. Bloom to send someone to the businesses in the area to conduct a "PR" campaign and reiterate the information the City has been providing. She comments that the City is regulated by the same regulations as the County, as far as Air Quality Management District regulations and Environmental Protection Agency standards. Mr. Bloom responds that many of the businesses are auto service related and he says the current State regulations apply in the County as well as the City. He notes that cities may be a little more aggressive in enforcement of the codes. Commissioner Williams points out that in the City of Rancho Cucamonga, about 99.9% of the Code Enforcement calls are responding to a call from someone complaining. She says the City should meet with the businesses and tell them what changes they can expect. Mr. Bloom reports that some business which were previously connected to City sewer services will see a rate reduction because there is an out-of area service charge. He reiterates that no one will be forced to connect to the sewer system unless they are required to do so by a State or Federal agency or their system fails.

Commissioner Hertzmann asks whether an election, if one is called, will be for voters or property owners. Ms. McDonald responds that the election would be only for the registered voters. She says the landowners can force an election of the voters, but the landowners will not decide the fate of the annexation.

Commissioner Sedano says he is shocked by the amount of protest today and is disappointed that the City did not do a better job of telling the people what will happen upon annexation. He says the protest could have been eliminated if the City had done a better "PR" job.

Chairman Smith says the Commission must follow the State laws related to annexation. He says if the people become part of the City, they will have a say and a vote in the government. He asks whether there is any further discussion by the Commission. There is none.

Commissioner Bagley moves approval of staff recommendation, seconded by Commissioner Pearson and carried. Chairman Smith calls for any objections to the motion. There being none, he calls for a voice vote on the motion, announcing that he will abstain. The vote is as follows: Ayes: Bagley, Colven, Pearson, Williams. Noes: None. Abstain: Biane, Curatalo, Postmus, Smith. Absent: None.

Commissioner Bagley reemphasizes that existing uses will be grandfathered in as non-conforming uses and says the only change he sees is the business license fee. He says the rate for connection to the sewer system will go down for those that are currently outside the City and receiving service. He says the City has a signage fee that the County does not have. He says the Commission is compelled by State law to encourage annexations when they are logical and says it is probably time for this annexation to occur. He points out that there will be an opportunity for people to protest the annexation.

(It is noted that Commissioners Biane and Curatalo return to the hearing at approximately 10:50 a.m.)

CONSIDERATION OF: (1) REVIEW OF NEGATIVE DECLARATION WITH MITIGATION MEASURES PREPARED BY CITY OF MONTCLAIR FOR CASE NO. 2003-4, ANNEXATION #22, AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2944; AND (2) LAFCO 2944-REORGANIZATION TO INCLUDE CITY OF MONTCLAIR ANNEXATION NO. 22 AND DETACHMENT FROM MONTE VISTA FIRE PROTECTION DISTRICT - APPROVE STAFF RECOMMENDATION

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LAFCO conducts a public hearing to consider annexation of approximately five acres to the City of Montclair (hereinafter referred to as "the City") and concurrent detachment from the Monte Vista Fire Protection District (hereinafter referred to as "the Fire Protection District"). The reorganization area is a single parcel located south of Howard Street, between Fremont and Monte Vista Avenues, contiguous on its southern side to the current boundaries of the City. Notice of this 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. Individual notice of this hearing was provided to affected and interested agencies, County departments, those individuals 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 discusses the existing and surrounding land uses, as outlined in the staff report. She says the City rezoned the area for single-family residential uses and approved Tentative Tract Map No. 16484 allowing for an 18-unit single-family residential subdivision, which is consistent with the City's General Plan for the area. Ms. McDonald reports that this proposal extends a "sawtooth" pattern of annexations. She says the City contacted the surrounding property owners who indicated they did not wish to be included in this annexation. She explains, however, that this parcel is proposed for development and needs City sewer service. She notes that the City's policy is that parcels which are contiguous to the City, proposing new development requiring sewer service, must annex. She highlights the City's plan for service, which she says indicates that the City can meet or exceed the level and range of services currently available in the area.

Ms. McDonald discusses the concern expressed by the County Fire Department regarding the loss of revenues, the piecemeal approach to annexation, and the potential future problems that could occur if the City chose to cancel its fire contract with the Fire Protection District. She explains that since 1967, when the City took over operation of the fire protection services in its corporate boundaries, it has contracted with the County, through the Fire Protection District, to provide service to the unincorporated area. She says there is no anticipated change to this contract. She reports that the Commission initiated the dissolution of the Fire Protection District through the West Valley service review process, but says that application has been held in abeyance pending annexation of the small island area within the City of Upland's sphere of influence. She explains that if the Fire Protection District were dissolved prior to annexation of that island, then the City of Upland would lose the revenues it receives for fire protection services.

Ms. McDonald states that the City conducted the environmental assessment for Tentative Tract 16484 and the annexation area and says that LAFCO's Environmental Consultant has indicated that the City's documents are adequate for the Commission's use as a CEQA responsible agency. She states that the findings required by Commission policy and State law are outlined in the staff report and are made a part of the record by their reference herein. She reports that the Assessor's office has verified that the annexation area possesses 100% landowner consent and is legally uninhabited, and she says both the City and the Fire Protection District have consented in writing to the waiver of the protest proceedings allowed under Government Code Section 56663. Ms. McDonald states that the staff recommendation is listed on page one of the staff report and includes that the Commission: (1) take the necessary environmental actions identified in the staff report; (2) approve LAFCO 2944 as submitted; (3) waive the protest proceedings; and (4) adopt LAFCO Resolution No. 2787 setting forth the Commission's findings, determinations and standard conditions of approval.

Commissioner Pearson asks whether approval of this annexation could be conditioned upon annexation of the larger island area to the north of this project. Ms. McDonald responds that the Commission's direction to staff was to make that type of condition for islands that were determined to be totally surrounded; and she says the Commission deferred consideration of islands considered to be "substantially surrounded", which the island to the north was considered to be. She says the Commission indicated to cities that it would consider on a case-by-case basis what would be considered "substantially surrounded". Commissioner Bagley comments that his concern is the Commission will continue to annex

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only one parcel to the City of Fontana and five acres to the City of Montclair, which is a waste of resources. Ms. McDonald says if the Commission wishes to revisit its policy as to what will be considered as "substantially developed" under the island annexation provisions, staff will draft policy language for consideration. She adds that this may assist a number of other cities because there are other areas that could be annexed if the Commission is willing to determine that they comply with those island annexation provisions. Further discussion follows, with Commissioner Bagley discussing that strategic planning needs to take place to address this issue.

In response to inquiry of Commissioner Hertzmann, Legal Counsel Clark Alsop explains that the statute does not define "substantially surrounded". He says that what the Commission defines "substantially surrounded" to mean is a policy decision, noting that some commissions in the State define it as more than 50% surrounded. Commissioner Biane suggests that this issue be brought back for further discussion. Ms. McDonald says she will bring back information on the issue of "substantially surrounded" and a comparison of what other LAFCOs have determined regarding this matter.

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

Steve Lustro, Montclair City Planner, says he speaks for the City when he says they would wholeheartedly embrace a Commission decision to better define "substantially surrounded", because the City does not like bringing in little pieces at a time for Commission consideration. He says if there is a small piece of development that wants to be annexed, the City does its best to contact surrounding property owners to see if the annexation area can be expanded. He says that if the Commission makes a policy determination as to what "substantially surrounded" means, whether it is 50% or up to 75% to 80%, the City has a couple of areas that would qualify under the island annexation provisions and would be happy to bring those areas into the City. Mr. Lustro thanks LAFCO staff for their help and asks that the Commission support this annexation.

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

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

NOTE RECEIPT OF PROPOSAL INITIATED BY LANDOWNER PETITION-LAFCO 2949-REORGANIZATION TO INCLUDE ANNEXATIONS TO YUCAIPA VALLEY WATER DISTRICT AND ITS IMPROVEMENT DISTRICT NO. 1 (TENTATIVE TRACT 30386, CITY OF CALIMESA, RIVERSIDE COUNTY)

LAFCO notes receipt of a landowner-initiated proposal for the annexation of approximately 82 acres to the Yucaipa Valley Water District and its Improvement District No. 1 for the receipt of water and sewer service for a proposed residential development. Notice of this item has been advertised as required by law through publication in The Sun and the Yucaipa-Calimesa News Mirror, newspapers of general circulation in the area. Individual notice of this item 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 explains that State law requires that any proposal involving annexation to a special district, not filed by the district, must be placed on the next available Commission agenda as an information item. She reports that the area of consideration is located within Riverside County, within the corporate limits of the City of Calimesa, adjacent to the Calimesa Golf and Country Club. She says the Yucaipa Valley Water District supports this annexation and that San Bernardino LAFCO will begin to process this application as the "principal county" for the District. She states that no action is required.

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PENDING LEGISLATION

Ms. McDonald says the Commissioners received in their packets a copy of the legislative briefing document given out at the CALAFCO Conference. She says that they have been presented this morning with a copy of the CALAFCO Legislative Chair Report to the CALAFCO Board of Directors, which outlines which bills have been signed by the Governor.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald says that the next meeting will be November 19. She reports that on that agenda will be consideration of an exemption for the sale of wastewater capacity by the City of Colton to a developer in Riverside County, some service reviews, possibly an annexation to the City of Fontana, and the service review and sphere expansion for the West Valley Mosquito and Vector Control District. She reports that the County Board of Supervisors approved a modification to the policy on property tax transfers to guarantee that all cities receive a minimum of 7%. She notes that some additional items were included in the Board's action about which staff is seeking advice from the County Administrative Office, and she says staff will bring back as an information a report on any implications those items may have on the Commission.

Ms. McDonald points out that a new item has been added to the Agenda for comments from the Commissioners.

COMMISSIONER COMMENTS

Commissioner Sedano comments that a nice letter was received from Robert Reiter, General Manager of the San Bernardino Valley Municipal Water District, complimenting the Commission on its selection of Ms. McDonald as the Executive Officer. On a personal note, Commissioner Sedano announces that he volunteered to be Co-Chairman of the United Way Campaign this year. He encourages everyone to "give with your heart".

Chairman Smith reports that he enjoyed the CALAFCO Conference and says the LAFCO 101 Workshop was very good. He says copies of the handouts from the Workshop should be made for the Commissioners who did not attend it. He says that next year's conference will be held September 8-10 at Disneyland. He says that Ken Lee of Orange LAFCO has indicated that he will push for a meeting of the Southern Region LAFCOs, which include San Bernardino, Los Angeles, Orange, Imperial, Riverside, and San Diego, next year in March. Chairman Smith reports on the results of the CALAFCO Executive Board elections.

COMMENTS FROM THE PUBLIC

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

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS
ADJOURNED AT 11:18 a.m.**

ATTEST:

DEBBY CHAMBERLIN

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Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

GERALD W. SMITH, Chairman