

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF OCTOBER 19, 2005**

REGULAR MEETING

9:00 A.M.

OCTOBER 19, 2005

PRESENT:

COMMISSIONERS:	Paul Biane, Chairman	Mark Nuaimi
	Bob Colven, Vice Chairman	Richard P. Pearson
	Kimberly Cox	A.R. "Tony" Sedano, Alternate
	James V. Curatalo, Alternate	Diane Williams
	Dennis Hansberger	

STAFF:

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

ABSENT:

COMMISSIONERS:

Josie Gonzales, Alternate
Paul J. Luellig Jr., Alternate

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

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

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

APPROVAL OF MINUTES FOR REGULAR MEETING OF SEPTEMBER 21, 2005

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

CONSENT ITEMS

LAFCO considers the items listed under its consent calendar, which Chairman Biane states consists of: (1) approval of the Executive Officer's expense report; and (2) approval of payments as reconciled for the month of September 2005 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. Executive Officer Kathleen Rollings-McDonald reports that the Commissioners have been presented this morning with her expense report and Visa Justification Statement. She says they were not part of the Agenda Packets but are part of the consideration today.

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Staff recommendation is that the Commission approve the Executive Officer's expense report and payments as reconciled for the month of September and note the cash receipts.

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

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

CONTINUED ITEM

CONSIDERATION OF EXEMPTION REQUEST FOR LAFCO SC#255 – OUT-OF-AGENCY SERVICE CONTRACT FOR PROVISION OF WATER SERVICE BY COUNTY SERVICE AREA 70 IMPROVEMENT ZONE J TO TERRITORY WITHIN CITY OF HESPERIA – APPROVE STAFF RECOMMENDATION

LAFCO conducts a continued public hearing to consider an exemption from the provisions of Government Code Section 56133, as outlined in Government Code Section 56133 Subsection (e), for LAFCO SC#255-Out-of-Agency Service Contract for the Provision of Water Service by County Service Area 70 Improvement Zone J (hereinafter "Zone J") to Territory within the City of Hesperia. This hearing is continued from September 21, 2005. Notice of the September 21 hearing was advertised as required by law through publication in The Sun, the Victor Valley Daily Press and the Hesperia Resorter, newspapers of general circulation in the area. Individual mailed notice of this hearing was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that in April of 2005 the City of Hesperia, on behalf of the Hesperia Water District, asked the Commission to consider an exemption from the provisions of Government Code Section 56133 for the continued provision of water service by Zone J to areas recently annexed to the City and the Water District through LAFCO 2952 and LAFCO 2953. She says when the Commission considered those two annexations, agreements were included related to the severing of the Zone J system and the transfer to the City, which required that additional facilities be built. She explains that rather than preclude all development while the necessary infrastructure is being built, the City wanted to address an interim measure to allow Zone J to continue to provide water service within the areas of LAFCOs 2952 and 2953.

Ms. McDonald says staff believes an exemption, as outlined in Section 56133(e), applies to the interim provision of water service by Zone J, based on the four findings listed in the staff report. She notes that at the September hearing, this item was continued to allow additional time to work with all the parties. She points out that attached to the staff report is a letter from Tom Sutton, Director of the Special Districts Department, to the City of Hesperia outlining the contractual relationship and the changes that need to be processed to amend the prior agreements to reflect that relationship. She says that Contracts 04-904 and 04-905 are attached to Mr. Sutton's letter and that the Commission has been presented today with Contract 04-906 which specifically relates to LAFCO 2953. Ms. McDonald says the staff recommendation is that the Commission determine that LAFCO SC#255 is exempt from the provisions of Government Code Section 56133, as outlined in Subsection (e).

In response to inquiry of Commissioner Colven, Ms. McDonald states that the contracts talk about a maximum transition period of ten years.

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

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Tom Harp, Deputy Director of Development Services, representing the City of Hesperia and the Hesperia Water District, says the City and District support the staff recommendation. He says they signed the agreement with Zone J and intend to follow all the guidelines in that agreement.

Commissioner Pearson asks whether the pipe he noticed being laid on the west side of the Freeway this morning on his way to this hearing is part of this agreement. Mr. Harp responds that the pipeline is County Service Area 70's work and is part of the separation.

Tom Sutton, Director of the Special Districts Department, speaks in support of staff recommendation, stating he is confident that through the contracts with the City of Hesperia and the Hesperia Water District, as they go through the process of the transition between the City and the Zone J system, the necessary infrastructure will be put in place to physically separate the two water systems in the future. He notes that although a ten year timeframe is mentioned, they are looking at all the systems being in place in the next two or three years so that detachment will take place sooner than 10 years. Commissioner Pearson comments that he is impressed with the cordiality that has suddenly appeared between the City and the County. Regarding the pipeline mentioned by Commissioner Pearson, Mr. Sutton explains that it is the Las Banos pipeline, which is a major artery that will ensure that the northern portion of Zone J will remain whole, and he says the City of Hesperia and Zone J are splitting the cost of that pipeline.

Chairman Biane calls for further testimony. There is none and he closes the hearing.

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

DISCUSSION ITEMS

CONSIDERATION OF: (1) REVIEW OF MITIGATED NEGATIVE DECLARATION PREPARED BY CITY OF REDLANDS FOR TENTATIVE TRACT MAP. NO. 16402, ZONE CHANGE NO. 391 AND ANNEXATION NO. 81, AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2989; AND (2) LAFCO 2989 – CITY OF REDLANDS ANNEXATION NO. 81 – CONTINUE TO NOVEMBER 16, 2005

Executive Officer Kathleen Rollings-McDonald presents some opening remarks before the Commission considers Items 5 and 6. Ms. McDonald states that the City of Redlands (hereinafter referred to as "the City") has submitted two annexation applications that present problems and are the beginning of issues the Commission will face in the near future related to the adoption of Measure U by the voters in the City. She explains that the requirements of Measure U indicate that the City cannot provide service outside its boundaries to property that is contiguous to its existing boundaries. She points out the annexation areas on the map on the overhead display, stating that both properties are contiguous to City boundaries. She says that in order to receive service, these properties must annex, contrary to other properties deeper into the heart of the Mentone or Crafton areas which receive service from the City through out-of-agency service contracts reviewed by the Commission. Ms. McDonald says the complexities and problems that will be discussed for the next two items will be encountered on a fairly routine basis in the future and are a direct ramification of this referendum by City voters.

LAFCO conducts a public hearing to consider a proposal submitted by the City to annex approximately 9.43 acres, generally bordered by Madeira Avenue on the north, parcel lines on the east, a combination of Cedar Lane and parcel lines on the south, and parcel lines on the west. The annexation area is within the City's eastern sphere of influence, within the community of Mentone. Notice of this hearing has been advertised as required by law through publication in The Sun and Redlands Daily Facts, newspapers of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments, those individuals and agencies requesting mailed notice, and landowners and registered voters pursuant to State law and Commission policy.

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LAFCO Analyst Michael Tuerpe 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. Mr. Tuerpe says the application for annexation by the property owners is for the receipt of water and sewer services from the City for a proposed subdivision for 27 lots, Tentative Tract No. 16402. He explains that because the property is contiguous to the City on its northern boundary, the City cannot extend its services to the property unless annexation occurs, as outlined in the City's Municipal Code Section 13.60.030 referring to changes adopted by Measure U, which was approved by voters in the City in 1997. He states the three reasons the City has indicated for submission of the annexation, as outlined in the staff report. Mr. Tuerpe says the site is currently vacant land. He discusses the surrounding land uses as well as the County's and City's assigned land use designations for the area, pointing out that they are generally compatible. He reports that the City pre-zoned the annexation area in January 2004, through approval of Zone Change No. 391.

Mr. Tuerpe states that this application proposes the first extension of the City's boundary southerly of Madeira Avenue since the boundary was first established in the 1950's and says this annexation will begin a piece-meal approach to annexation and a sawtooth pattern for service delivery. He discusses the three options staff feels the Commission has in addressing this boundary concern, which are outlined in the staff report. First, he says the Commission can expand LAFCO 2989 to include a larger area, such as the territory to the west between the proposed annexation and Crafton Avenue. However, he says this would not provide for a more logical, efficient and easily recognizable boundary between the City and County and says that, in staff's estimate, due to the number of developed parcels the status of the annexation would be changed to legally inhabited, giving review authority to the voters in the area. He says the City opposes this option because it does not want to force annexation and because the Mentone community has historically opposed annexation. He says the second option is to deny the application on the basis that the boundary does not provide for a logical and efficient service boundary. He reports that the developer of Tract 16402 opposes this because the tentative tract has been processing through the City for over two years; the receipt of water and sewer service is required for development at its anticipated intensity; and service from the City is contingent upon annexation. He says the City also opposes this option because annexation is required by its Municipal Code and 100% of the landowners have consented to the annexation. He says the third option, which is supported by the City and the developer, is that the Commission accept the City's proposal as presented.

Mr. Tuerpe says that development proposed along the periphery of the City's boundary will require more single parcel or subdivision annexations rather than out-of-agency service contracts. He reports that written opposition was received from 121 surrounding landowners or registered voters. He says the focal points of their concerns are: (1) they do not want to become part of the City; (2) they are satisfied with the services received from the County and private providers; (3) they believe the extension of services from the City can be accomplished without annexation; (4) County Fire Station No. 9 is less than one mile away; and (5) they oppose a piecemeal approach to annexation. He says those are much the same concerns expressed by LAFCO staff and the Commission, but he says the third statement is not the position taken by the City or LAFCO staff's understanding of the Municipal Code.

Mr. Tuerpe discusses the service issues, as outlined in the staff report. He says that the closest County fire station is 1.1 miles away and that the closest City station is 4.1 miles away. He reports that the City's Plan for Service indicates that its Fire Department can provide service to this site; but he says service will be provided to this area through mutual aid and joint response agreements with County Fire for the foreseeable future. He notes that the City's paramedic services are funded through a special tax assessment at a fixed rate. He discusses the other services to be provided, noting that law enforcement responsibilities will shift from the County Sheriff's Department to the City Police Department. He says the Plan for Service submitted by the City shows that the extension of its services will meet the needs of the tentative tract.

Mr. Tuerpe says that with 100% landowner consent and verification that the area is legally uninhabited, staff requested and received the City's concurrence to waive the protest proceedings as allowed under Government Code Section 56663. He says staff is, therefore, recommending that if the proposal is

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approved, the Commission waive the protest proceedings and direct the Executive Officer to complete the action.

Mr. Tuerpe discusses the environmental review for this proposal. He says the City's Initial Study for the pre-zoning of the annexation area has been reviewed by the Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, who has determined that the City's documents are adequate for the Commission's use in acting as a responsible agency. He says the actions to be taken by the Commission are outlined in the staff report.

In conclusion, Mr. Tuerpe states that staff supports approval of this proposal as presented because the area will benefit from the full range of services from the City; water and sewer service is required to develop the area at the land use intensity anticipated by the City and County General Plan land use designations; and those services cannot be provided without annexation. He says the staff recommendation is listed on pages one and two of the staff report and includes that the Commission: (1) take the actions outlined for environmental review; (2) approve LAFCO 2989 with the standard terms and conditions; (3) waive the protest proceedings with 100% landowner consent and concurrence of the City; and (4) adopt LAFCO Resolution No. 2899 setting forth the Commission's findings, determinations and conditions of approval.

Commissioner Curatalo asks whether the fire protection agreement between the City and County is mutual aid or automatic mutual aid. Mr. Tuerpe responds it is automatic aid. Commissioner Colven asks whether both the City and County fire stations offer paramedic service. Mr. Tuerpe responds that the County fire station does not offer paramedic service. Commissioner Cox comments that he stated there was 100% landowner consent and he also indicated there were 121 letters of opposition from surrounding landowners. She asks how many landowners there are in the annexation area and what the response time from the City Police will be. Mr. Tuerpe says that there are two landowners and he says he does not know the Police response time to the area and it was not indicated in the Plan for Service. Commissioner Nuaimi asks where the nearest residence in the City is to the annexation area. Executive Officer Kathleen Rollings-McDonald shows the area on the map displayed. She points out that the area to the north was annexed in the 1950's to include the Lockheed facility into the City. She says most of the lands existing in the City in this area are undeveloped or are industrial lands and that there are water conservation areas to the north.

Commissioner Hansberger discusses some history related to the Lockheed facility, stating it was annexed in the 1950's before LAFCO existed because the City wanted revenue and Lockheed benefited because the City was able to bring it infrastructure. He says it would have been wiser if back then an arrangement could have been made for the City to provide infrastructure for a fee so there would have been no need for annexation, which has resulted in this unfortunate land use pattern. He explains that the other extension of the City's boundary to the east goes out and annexes areas used for water collection in Mill Creek. He says part of the reason the City has infrastructure out there is due to the Tate and Hinkley Water Treatment Plants. Commissioner Hansberger says he disagrees that the area will get the full range of services from the City because it is almost impossible for the City to provide police protection there. He comments that it was mentioned that the fire station is about 1.1 miles from the area. However, he says the fire station is on Crafton Avenue, right next to the Elementary School, and is way under one mile from Madeira Avenue. He discusses that the City is the appropriate provider of water and sewer service, but says that because of Measure U, the City cannot provide service by contract and areas contiguous to the City must annex. He says he does not have a good answer for this problem but says all the players need to sit down and seek solutions to help prevent creating situations like those created in San Bernardino and Fontana. He questions whether there might be a way legislatively to get relief from Measure U. He says another option to explore is to try to include larger areas in an annexation. He discusses the area along the City boundary along Wabash Avenue where other sawtooth annexations have started. He says that although those annexations trouble him, that is a more logical area to create annexations because it is contiguous to existing service areas where the City already provides police and fire service on the opposite side of the street. He says the annexation area considered today is so far out of the City and they need to look to the City to try to find long-term solution that will work for everyone.

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Ms. McDonald says the staff report indicates that the City, LAFCO and the community need to face these questions and address them in a positive way because the Commission will be faced with more of these annexations. She says she will be attending a meeting of the Mentone Chamber of Commerce tomorrow night and that the topic will be "everything you ever wanted to know about annexation". Commissioner Hansberger comments that he heard then Redlands Mayor Cunningham several years ago say that one of the City's measures requires that its ultimate population cannot exceed 90,000. He asks if the City annexed all of Mentone, what happens when the population reaches 90,000. Ms. McDonald responds that she was not aware of that requirement. He says the Commission needs to be aware of those kinds of rules because if they exist, they limit the Commission and the City in terms of doing a good job. He discusses that the City is set up to provide urban/suburban services and says the question is whether these areas are going to be kept rural or be urbanized and who should be the service provider.

Commissioner Nuaimi says this is a piecemeal approach to development; that 27 residences will be created which will have no association with City residents, only with neighbors across the wall who are County residents. He says the City of Fontana has been trying to work through its sawtooth approach and it is a ugly process. He asks whether the neighbors west of the annexation area want this development. Ms. McDonald responds that development has been advocated and she reports that the Boulder Creek subdivision immediately west was approved prior to Section 56133; it receives water and sewer service from the City; and has a County Service Area Improvement Zone to fund landscape maintenance and park and recreation services. She notes that immediately to the south is a development of the same nature as the one proposed. Commissioner Nuaimi suggests that there be a proactive outreach to those neighbors, indicating that the continued development of new neighborhoods cannot happen unless the development comes into the City, which cannot happen unless the residents come into the City. He asks whether the people in the subdivision immediately west of this annexation area were required to sign pre-annexation agreements. Ms. McDonald responds that was not required back then. She explains that the Commission is extending the exact same development pattern, but under new rules that took effect after the area to the west was developed. She says that to her knowledge, there has been no opposition from the people to the west to any of the development applications processed through the County.

Chairman Biane comments that with automatic aid, the fire station on Crafton Avenue is only about a half mile from the annexation area so it will always be first to respond. He points out that people in the County support that station through property taxes and he says there should be some negotiations with the City for reimbursement for services provided. Ms. McDonald responds that automatic aid includes a reimbursement for service.

Commissioner Hansberger comments that as a County Supervisor and policy maker representing this area, he was unaware of these proposed developments and only learned of them when he received his LAFCO Agenda. He says he respects the amount of time and energy the applicants have spent getting to this point today and does not want to pull the rug out from under them. He says he would like to know about projects like this early in the process so that they can be guided and directed in a way that will be successful for everyone. He says they need to be sure communication between the County and the City is good so that these issues can be addressed earlier. Chairman Biane agrees with Commissioner Hansberger's comments. He asks if an island will be created if they take this annexation and move east. Ms. McDonald responds that it will be a peninsula but would not qualify as an island annexation because the island must have been created prior to 2000.

Commissioner Curatalo discusses the differences between automatic aid and mutual aid, pointing out that the trigger that puts them into motion is a little different. He says that with mutual aid, if a resident calls 911, the closest unit must page a battalion chief, which approval takes minutes and affects the response time. He says that automatic aid is provided through an agreement between different entities where they are "on the ticket" automatically. He explains that with automatic aid, if the County station does not have paramedics, a City engine with paramedics will respond as backup so the people will receive upgraded service. Ms. McDonald adds that mutual aid is universal in California; that automatic aid is a separate agreement negotiated between fire providers; and that the County and City have an

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automatic aid agreement. So she says any backup would come from the City fire station with paramedics, which will provide for an increase in service, even though the closest station is a County fire station. Commissioner Williams comments that people being annexed into the City will be assessed the paramedic fee, but if the first responder is the County fire station, the service may be worthless if medical aid is needed. Ms. McDonald says that the backup responder would have paramedics and she points out that the County Fire staff are EMTs. Commissioner Hansberger says that American Medical Response (AMR) has paramedic units stationed closer than the City to fill the gap between Redlands and Yucaipa.

Commissioner Cox asks whether it is good land use planning to do piecemeal, sawtooth annexations. She notes that she came on this Commission at the end of the Donut Hole issue and asks whether the Commission is creating another Donut Hole-type situation with these types of annexations. Ms. McDonald responds that is possible, but she points out that these annexations that extend out make more people contiguous to City boundaries, meaning that in order to receive service, there will be more annexations. She says that given the General Plans of the County and City for the community north of the Zanja, all that area is intended to be highly developed. She says that once the areas with pre-annexation agreements are packaged together, there will be more annexations, but she says that will be a hostile effort.

Commissioner Nuaimi asks whether the City is expecting further development proposals adjacent to and/or between Annexations Nos. 81 and 83. Ms. McDonald says she assumes that ultimately will happen because there are large parcels to the east of Annexation No. 81 and, if development is proposed, the areas will be contiguous to the City, and this issue will again come before the Commission. Commissioner Nuaimi discusses that he believes there should be an outreach to the people in this area, letting them know that a development program will be taking place over the next few years and that development activity might provide a benefit to them, such as a park or service augmentation, to use as justification for them to annex. He says he believes that with piecemeal and sawtooth annexations, the Commission will be kicking itself in the future. Ms. McDonald says staff will be happy to work with the City and residents and says she will report in November as to her reception at the Mentone meeting tomorrow night. She says the Mentone community needs to understand that the City's referendum requires annexation for development along the City's existing boundaries. Commissioner Nuaimi comments that having gone through an outreach program in the Fontana area, he knows that when residents have misinformation, annexation is a bad word. He asks what kind of outreach has been done to lay out a plan for this community as to how development will take place. He discusses that the Commission wants cities to do proactive outreach. He says there should be a community meeting at the Elementary School to map out what the development plans are and to let people know that Measure U mandates annexation and it is in their best interest to get what they can out of the development activity. Commissioner Hansberger comments on the community pride in Mentone.

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

Mary Ellen Harris, a resident of the Plumwood Lane development west of and adjacent to the annexation area, speaks in opposition stating that more study is needed. She says she does not think people are anti-development, but they want to be a separate entity from Redlands and it is time for Mentone to study becoming a city. Ms. Harris discusses her concern that the City cannot provide adequate water and sewer service to the people in this area now and she says adding another area to the system will make the problem worse. She says that water pressure became very low a couple of years ago and says it was fixed, but she says now they have high water pressure and all the irrigation lines are breaking. She discusses sewer problems, stating that in July she was walking through the Elementary School area and smelled gas. She says she notified the School Principal and the Gas Company and says the Fire Department checked into it. She says she also mentioned that a woman living in the complex on the corner of Sierra Pine and Crafton Avenue told her that she gets a sewer gas smell, which is where the main sewer line comes out. Ms. Harris reports that the sewer exploded in front of that woman's house in August; that the street was dug up and closed for months; and that she is not convinced that it was fixed. She discusses that she is happy with the services of County Fire and the Sheriff. She comments that the City has trouble responding to calls in downtown Redlands and asks how it will respond to this area so far out. She says the only thing the City patrols out in this area is the industrial park, which is gated and has

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24 hour security of its own and does not need to be patrolled. She says there should be a cumulative impact study done of the traffic with the other developments that are going in and says there needs to be a stoplight at Wabash and Lugonia Avenues. Commissioner Hansberger says the stoplight is a joint project of the County, the City, and CALTRANS and he reports they have gone out to bid for a stoplight there. Ms. Harris says the people of Mentone do not want to be annexed and she asks the Commission to study cityhood for Mentone.

Linda Arnold, a resident of Boulder Creek on Maplewood Lane, west of the annexation area, says she submitted a letter opposing annexation. Ms. Arnold says they moved to Mentone after living in Redlands for 21 years; that they like the community and ruralness of the area and love the services they currently receive from County Fire and the Sheriff. She says Boulder Creek residents have their own park assessment district and pay a fee for the beautifully maintained park. She says she is not opposed to development because people have a right to do whatever they want with their property in order to develop it, but says she has a problem with a City that she is not a part of setting development standards for the area in which she lives. She says they pay an outside-City rate for water and sewer service and are happy with their service and oppose piecemeal annexations. She says she is concerned about a neighborhood right next to hers having different police and fire service, as it will lead to confusion for everyone.

John Jaquess, City Planner, states that the issue from the City's perspective is fairly straightforward because Measure U says the City cannot provide water and sewer service to property contiguous to City boundaries unless it annexes. He says the City is responding to requests of property owners in this annexation and the next one to be considered and says the City has no plans or intention of expanding annexations to include people who are not interested in annexing. He says the City is trying to help the developer build houses. He says questions were asked about fire and police services and says he is not an expert in those areas and would have asked experts to be here today had he known those issues would come up.

Commissioner Hansberger asks Mr. Jaquess to take the message back to the City that the Commission and the County want to work with the City on a more sensible solution for this issue. He says he does not know what the solution is or whether they can get any legislative relief. He notes that Mr. Jaquess has insight that may help because he worked as the Deputy San Bernardino County Planning Director and now is working for the City.

Commissioner Pearson discusses that when Jim Bagley was on the Commission, he made a strong pitch to a group from Mentone that was before the Commission in force in opposition to an annexation. He says Mr. Bagley told the Mentone people that Redlands will annex its sphere and they should take steps toward cityhood or be swallowed up. He says now four or five years later, the Commission is still hearing the same thing from Mentone residents. Commissioner Pearson says he does not know that further study will solve much because as long as Measure U exists, every project will have to deal with this issue. He says this annexation represents a very irrational development pattern that is not to the liking of this Commission or CALAFCO, nor one that should be encouraged. He says since this is a law passed by City voters, when the City comes forward with piecemeal annexations, the Commission is charged with the responsibility to tell the City it should put together an annexation package that makes for a sensible annexation area to which the City can provide its services in an efficient way. He says this annexation is totally wrong.

Commissioner Sedano asks how much money the developer has paid to the City. Mr. Jaquess says the developer paid about \$15,000 in fees to process his subdivision and says the \$190,000 mentioned in the staff report probably includes development impact fees that will be charged in the future when building permits are issued. Commissioner Sedano says the forgotten person is the developer who has spent thousands of dollars to purchase land and now wants to develop it and get his money back, but cannot because of Measure U. He says forcing the City to make a package deal is not fair to the developer and says he thinks the Commission has no alternative but to approve Option 3, to accept the City's proposal as presented, and let the developer do his work.

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Commissioner Nuaimi points out that if Measure U were not in place, the application before the Commission today would be an out-of-agency service contract. He says the residents have indicated they receive good service from the County fire station and the County Sheriff. He asks whether the Commission could mandate that an out-of-agency service agreement be imposed so that the City would negotiate with the County to provide Sheriff and fire service in this area. He says the area would stay as the unincorporated Mentone community until enough development has amassed so that the City could provide the police and fire service. Ms. McDonald says the Commission can request that the City contract with the County to provide certain levels of service but she says that to receive the water and sewer service required by this development, the property has to be part of the City. Legal Counsel Clark Alsop comments that the Commission can say it does not think annexation is appropriate and that contracting with the City for service is the way to go; but he says the Commission cannot make that happen. Commissioner Nuaimi explains that the annexation could occur so technically the area would be part of the City to facilitate connection to the water and sewer systems. He says that although they would be City residents, for practical purposes they would be Mentone community residents receiving the same services from the same service providers as their neighbors. He says the Commission could approve the annexation with the stipulation that City enter into a service agreement with the County to provide police and fire services. Mr. Alsop explains that the Commission could do that but he discusses that down the line, that possibly could be disputed, which happened in Riverside County where the dual provision of services authority occurred with the City of Corona. He notes that issue went to Court and the District, rather than the City, won. Commissioner Nuaimi comments that Commissioner Sedano is right—a developer should not be held hostage by a measure. He says the Commission will be conducting service reviews for entities on a periodic basis so, to facilitate development but also insure continuity of the community without artificial barriers, if sometime in the future there are enough City residents in this area that it makes sense to transition services to the City, that call can be made.

Mr. Alsop suggests that if the Commission wants to pursue this, it should get input from the City as to whether it will consent to having City territory served by the County. He says it may be worthwhile to continue this matter, unless Mr. Jaquess can respond on the City's behalf right now. Commissioner Hansberger points out that the opposite situation exists in the Donut Hole area and there is currently an arrangement where the County gives up 90% of the sales tax revenue to the City in exchange for the City providing services there. He says this is a discussion they should have with the City and there may be a way to enter into a similar but reverse agreement for the provision of service. He says he will not ask Mr. Jaquess to respond since he has not explored this with the City Council. Commissioner Nuaimi says he would oppose this annexation as presented because creating an artificial barrier of municipal services makes no sense. Commissioner Hansberger asks if Commissioner Nuaimi is suggesting that this matter be continued or that it be approved and the service matter pursued. Commissioner Nuaimi responds that he does not want to mislead anyone and says if this comes back to the Commission as it is currently packaged, he will oppose it.

Commissioner Biane asks Mr. Alsop if he could research the legality of Measure U and whether it is challengeable by the residents of Mentone or the Commission on the basis that it is not legal to force annexation by holding people hostage for water service. Mr. Alsop responds that Measure U was passed in 1997 and he assumes that the time to challenge it is gone. He says the Commission must deal with the existing facts that it has an annexation proposal in front of it and that the City has Measure U.

Commissioner Biane says he senses there is an interest in continuing this item. He says he also does not think landowners should be held hostage, but he says the Commission's interest is in providing logical services and there are questions that need to be answered before they make any decisions.

Commissioner Cox states that Commissioner Pearson very eloquently summed up some of her feelings. She says she does not think this application is good land use planning and she sees this situation being repeated maybe ten times in the next few years as different developments come along. She says they are kidding themselves if they believe that the developer was naïve that this measure existed and asks when the property was last purchased. She says the development community is astute and politically active and understands the tenants of cities in the areas in which they are looking to build and develop.

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Commissioner Pearson moves, seconded by Commissioner Colven, to continue this matter to November 16, 2005, to allow time for the City and the County to discuss how to approach this issue. Ms. McDonald clarifies that the motion is to continue the hearing to request additional information from the City and the County, including Commissioner Nuaimi's questions related to a contractual relationship for municipal services beyond water and sewer. Chairman Biane states he also would like a legal opinion as to the legality of Measure U and whether it is challengeable. Commissioner Hansberger says he will take on the responsibility of arranging this discussion with the appropriate parties. Ms. McDonald notes that the agenda packages are mailed out on November 9 so additional direction to staff needs to be provided fairly quickly.

Chairman Biane calls for a voice vote on the motion and it is as follows: Ayes: Biane, Colven, Cox, Hansberger, Nuaimi, Pearson and Williams. Noes: None. Abstain: None. Absent: None.

CONSIDERATION OF: (1) REVIEW OF MITIGATED NEGATIVE DECLARATION PREPARED BY CITY OF REDLANDS FOR CONDITIONAL USE PERMIT NO. 818, ZONE CHANGE NO. 402 AND ANNEXATION NO. 83, AS CEQA RESPONSIBLE AGENCY FOR LAFCO 2990; (2) REVIEW OF ADDENDUM PREPARED BY LAFCO ENVIRONMENTAL CONSULTANT TO ADDRESS CALTRANS RIGHT-OF-WAY AREA AS CEQA LEAD AGENCY FOR LAFCO 2990; AND (3) LAFCO 2990 – CITY OF REDLANDS ANNEXATION NO. 83 – CONTINUE TO NOVEMBER 16, 2005

LAFCO conducts a public hearing to consider a proposal submitted by the City of Redlands (hereinafter referred to as "the City") to annex approximately 6.42 acres, generally located at the northwest corner of the intersection of Mentone Boulevard and Amethyst Street. The annexation area is within the City's eastern sphere of influence, within the community of Mentone. Notice of this hearing has been advertised as required by law through publication in The Sun and Redlands Daily Facts, newspapers of general circulation in the area. Individual mailed notice was provided to affected and interested agencies, County departments, those individuals and agencies requesting mailed notice, and landowners and registered voters pursuant to State law and Commission policy.

LAFCO Analyst Samuel Martinez is prepared to present 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. Commissioner Hansberger notes that staff has indicated that one of the options available is expansion of this proposal to include four parcels to the north so that a peninsula is not created. He asks Mr. Martinez whether there is anything else that makes this annexation different from the previous one that would prevent continuing this hearing also for one month. Mr. Martinez responds that his presentation would echo a lot of what was mentioned by Mr. Tuerpe. He says this area is located very near to annexation area No. 81 and is the area that is located about one mile from the fire station on Crafton Avenue.

Commissioner Pearson moves, seconded by Commissioner Colven, that this item be continued to November 16, 2005.

Executive Officer Kathleen Rollings-McDonald states that with this annexation there is a way to create a logical service boundary, including the peninsula to the north. She says that if this hearing is continued, if the Commission wishes, staff can contact the landowners and residents on those four parcels and ask their position on annexation.

Chairman Biane opens the public hearing and calls on the landowner to speak.

David Higginson says he is representing the landowner, the Amethyst Bible Church, as the project architect, a Church member and the Building Committee chair person. Mr. Higginson says their Church has about 70 members who have been in a building program for about 10 years and raised a half million dollars to build on this property they own out right. He says their existing lease is up in June 2006 and they have plans ready to go back to the City to move forward with their project. He requests that they be allowed to move forward, stating that if the Commission conditions their project so that it is held in

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abeyance until the City initiates the annexation of the four parcels to the north of the Church's property, that could set them back another two years.

Commissioner Hansberger says the Commission expects to ultimately resolve this problem but says he understands the concerns about the timing issue. Ms. McDonald says there is no easy answer to this. She says if the Commission approves staff recommendation, a period of time would be required to request that the City initiate annexation of the four parcels. She says that if the County and City can arrange to agree to allow for the review of the Church's development plans and the processing and preparation for building permits while the Commission works on these issues, the timing issue might not be a problem. But she notes that the problem will be when there is the need for the water and sewer connection. Legal Counsel Clark Alsop says the Commission needs to be aware that even if it approves this annexation on the condition that it be held in abeyance until the City initiates annexation of the four parcels to the north, that does not insure that those parcels will ever be annexed. Ms. McDonald explains that if this proposal is expanded, staff would have to evaluate whether or not the ownership is sufficient to move forward with the annexation and there would need to be an expanded environmental review and other things. She reports that the two parcels developed to the north currently receive water service from the City so she assumes those would not be a major problem and says that none of the property owners to the north submitted letters in opposition to this annexation. Commissioner Hansberger asks what will happen if those four parcels are not annexed and Ms. McDonald responds that the Church property will be in the City and they will have the same problem.

Commissioner Sedano says he feels very strongly that the Commission should go with the developers. He says they have spent a lot of time and money and it does not make sense for the Commission to deny annexation just because of Measure U. Ms. McDonald comments that the real problem is purchasing property along the periphery of the City and she says it is a problem that will not go away. Commissioner Williams asks that staff provide in future staff reports the date when the property was purchased. Ms. McDonald reports that for the prior annexation application along Madeira Avenue, the property was purchased two years before the application was submitted. Commissioner Williams says she agrees with Commissioner Sedano, but she says disclosures are made when someone buys a parcel of land and they are made aware that Measure U is part of the package. Commissioner Hansberger comments that the Church situation is a bit different; that the Church is not in the development arena.

Commissioner Hansberger asks whether there is anything that can be done to facilitate the Church proceeding with the technical activities, such as building permits, while the Commission contemplates this for a month. John Jaquess, Redlands City Planner, reports that the Church has an approved Conditional Use Permit through the City which was approved at a public hearing, with notice provided to all surrounding property owners. He says if the Church chooses to submit construction plans, the City would go through the plan check process for that, but he says the Church should be asked whether it is willing to do that without annexation being completed. Commissioner Hansberger asks Mr. Higginson whether they can wait until next month to hear how the service issues will be resolved, if the City goes ahead and processes some of the project's activities. Mr. Higginson says the Church can do that. He says the Church's resources are limited and they were concerned about this annexation being denied, which would put them in limbo. He reports they have owned the property for eight to ten years and says that in the beginning, they were in the middle of whether this would be a County or a City project. He says they have been going through the annexation and planning processes about two years and they were shocked when they received the staff report because this is the first they heard about the issue of piecemeal annexation. Commissioner Williams says the Church is the kind of victim she was speaking about—that through no fault of its own, the Church has been "Measure U'd". Mr. Higginson says the Church started out as the Redlands Bible Church, but, upon moving to Mentone, changed its name to Amethyst Bible Church to be more reflective of the community they are trying to reach out to. Commissioner Hansberger notes that another complication is that a majority of the City Council members are up for election in a couple of weeks.

Chairman Biane says he agrees with Commissioner Hansberger's comments and especially with Commissioner Sedano's comments. He says it is not the intent of the Commission to hold up the Church's development but there are enough questions that it is appropriate to continue the matter.

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Commissioner Nuaimi says that because this is not a residential development, the concerns he discussed and the position he had on the prior annexation as far as municipal services to residential developments are not the same for the Church's application. He says the Church is not creating a neighborhood but a destination that probably will not be seeking a lot of police and fire services.

Commissioner Sedano asks Commissioner Pearson if he would consider changing his motion. Commissioner Pearson responds that he would not because there are questions that need to be answered by the City and County and he feels that one month is a reasonable time for that discussion to take place. He says he agrees with Commissioner Nuaimi that the Church situation is somewhat different, but not in the whole picture because some of the same issues still apply. He says Measure U is the problem they have to deal with. Commissioner Hansberger discusses the problem of some site distance issues that need to be corrected in this area. He says Garnet Avenue is very dangerous and the County, City and CALTRANS need to resolve those alignments.

Chairman Biane calls for a voice vote on the motion for a continuance and it is as follows: Ayes: Biane, Colven, Cox, Hansberger, Nuaimi, Pearson and Williams. Noes: None. Abstain: None. Absent: None.

PENDING LEGISLATION

Ms. McDonald states she has given the Commissioners today a copy of a report dated September 12, 2005 related to Local Government Bills During 2005 and outlining the status of various bills. She notes that of importance to the Commission is AB 1234 which was signed by the Governor and relates to special districts ethics and compensation issues for travel. She says she has also provided a copy of a letter from Christine Kehoe, Chair of the Senate Committee on Local Government, who authored SB 135, the rewrite of CSD law. She says she is notifying all CSD's of the requirement that services not currently active in the CSD will become latent powers as of January 1, 2006 and they will be identified as part of the service review process for special districts. She also reports that AB 1746, the LAFCO omnibus bill, was signed and gives until January 1, 2008 for the completion of service reviews.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald reports that she and Legal Counsel Clark Alsop attended the CALAFCO Legislative meeting last Friday. She says the Committee is still looking at a possible rewrite of Government Code Section 56133 but she says there is no agreement among LAFCO staff and the Committee. She reports that Chairman Biane was elected to the CALAFCO Executive Board again and is the Co-Chair of the Planning Committee for next year's Annual Conference.

Ms. McDonald reports that the Commissioners received a request in their agenda packets to let her know by today if they object to a waiver of Legal Counsel conflict and want Special Counsel for LAFCO 2998-Service Review and Sphere of Influence Update for Apple Valley Fire Protection District. She says she has reviewed this with Clark Alsop, whose law firm of Best Best & Krieger also represents the Fire Protection District, and they do not believe there is any conflict.

Ms. McDonald says the December hearing would be held on December 21, just before Christmas. She says that presently there are only one or two items that would be ready for a December hearing unless something were to be continued from the November hearing. She asks for the Commissioner's positions on whether or not to hold a December hearing. There is a consensus that there not be a December hearing.

Ms. McDonald states that at the last hearing, Commissioner Cox asked staff to look into the possibility of changing the Commission hearing date. She reports that the availability of the Chambers is fairly restricted and says the only other time that would be routinely available would be the third Thursday of every month. She says she does not know whether that would create a conflict for anyone but can put

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the matter on the November agenda for consideration since the Commission has a standing Rule of Order related to its hearing date. She says that for those Commissioners on SANBAG, the third Wednesday can create a problem time wise. Chairman Biane asks that staff poll the Commissioners for their position on a possible change.

Ms. McDonald reports that staff is working on replacing the chairs in the Chambers. She says she will report in November on the meeting to be held in Mentone tomorrow night. She reports that the first meeting of the Committee comprised of the San Bernardino Valley Water Conservation District, San Bernardino Valley Municipal Water District and the water stakeholders regarding LAFCO 2919 will be held at 2:00 p.m. on October 28 in the Joshua Room in the County Government Center.

COMMISSIONER COMMENTS

Commissioner Sedano thanks the Commission members for their support of his candidacy for a position on the Board of the Special Districts Risk Management Authority. He reports that he heard he lost by only nine votes. He says he had good time at the Conference and stood up for and spoke on behalf of LAFCO as people were taking the Commission to task for its responsibilities. He says he told them LAFCO has certain rules and policies to follow and that special districts have certain things they must do.

Commissioner Nuaimi thanks Ms. McDonald for attending the City Council presentation on the island annexations. He says the annexation map was presented and the survey results were discussed, along with a discussion on the education program on annexation that the City of Fontana will be launching.

COMMENTS FROM THE PUBLIC

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

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 11:10 A.M. ON MOTION OF COMMISSIONER COLVEN, SECONDED BY COMMISSIONER COX.

ATTEST:

DEBBY CHAMBERLIN
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

PAUL BIANE, Chairman