

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

REGULAR MEETING

9:00 A.M.

MARCH 18, 2009

PRESENT:

COMMISSIONERS:	Jim Bagley, Alternate	Brad Mitzelfelt, Vice-Chairman
	Kimberly Cox	Mark Nuaimi, Chairman
	James V. Curatalo	Richard P. Pearson
	Neil Derry	Diane Williams, Alternate
	Larry McCallon	

STAFF: Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, Legal Counsel
Samuel Martinez, Senior LAFCO Analyst
Michael Tuerpe, LAFCO Analyst
Anna Raef, Clerk to the Commission
Rebecca Lowery, Deputy Clerk to the Commission
Angela Schell, Deputy Clerk to the Commission

ABSENT:

COMMISSIONERS: Paul Biane

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION –
CALL TO ORDER – 9:00 A.M.**

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

Chairman Nuaimi 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.

**SWEARING IN OF ALTERNATE BOARD OF SUPERVISORS MEMBER OF THE
COMMISSION**

Clerk to the Commission Anna Raef administers the Oath of Office to Alternate Board of Supervisors Member Neil Derry. Commissioner Derry will serve the unexpired term of Commissioner Mitzelfelt, expiring in May 2009, following his elevation to regular member.

**APPROVAL OF MINUTES FOR REGULAR MEETING OF FEBRUARY 18, 2009 – APPROVE
STAFF RECOMMENDATION**

Chairman Nuaimi calls for any corrections, additions, or deletions to the minutes. There are none. Commissioner Pearson moves approval of the minutes as presented, second by Commissioner Cox. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead).

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

LAFCO considers the items listed under its consent calendar. The consent calendar consists of:

ITEM 3. Approval of Executive Officer's Expense Report

ITEM 4. Ratify Payments as Reconciled for Month of February 2009 and Note Cash Receipts

A Visa Justification for the Executive Officer's expense report, as well as a staff report outlining the staff recommendation for the reconciled payments, have been prepared and copies of each are on file in the LAFCO office and are made a part of the record by their reference here.

Kathleen Rollings-McDonald, Executive Officer, states that a revised expense report was distributed to the Commission today and that expense report should be included in the motion.

Commissioner Pearson moves approval of the consent calendar as modified, second by Commissioner Mitzelfelt. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead)

CONTINUED/DISCUSSION ITEMS:

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3094/3115; AND (2) LAFCO 3094/3115 - SPHERE OF INFLUENCE AMENDMENTS (EXPANSIONS) FOR COUNTY SERVICE AREA 42 (ORO GRANDE) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider the proposed sphere of influence amendments (expansions) for County Service Area 42 (Oro Grande). Notice of the original hearing was advertised as required by law through publication in the *Daily Press*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, landowners and registered voters within and surrounding LAFCO 3094/3115, and those individuals and agencies requesting mailed notice.

Senior LAFCO Analyst Samuel Martinez presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Mr. Martinez states that County Service Area (CSA) 42 is a special district that provides water, sewer, park and recreation and street-lighting services in the Oro Grande community. He explains that LAFCO 3094 is a sphere expansion submitted by a property owner request and LAFCO 3115 is a sphere expansion with a companion annexation (LAFCO 3116) initiated by the County Board of Supervisors. He states that normally the sphere expansion and annexation would be taken together as they involve the same area. However, because another sphere expansion proposal is being considered simultaneously, LAFCO staff determined that the sphere proposals should be combined and considered independently by the Commission.

Mr. Martinez states that LAFCO 3094 was submitted as a non-contiguous sphere expansion which included a single parcel west of National Trails Highway. He says the parcel is currently developed as an apartment complex and mobile home park which is currently experiencing septic system failure. A notice of violation was issued by the County Department of Environmental Health relating to sewage issues on the site. He states that the property owner has requested

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

that the sphere be expanded to allow for the connection to the District's sewer facilities, either through annexation to the District or through an out-of-agency service agreement. He states that it is LAFCO staff's understanding that the property owner wishes to process an out-of-agency service agreement and that agreement can be submitted to LAFCO for authorization upon approval of the sphere expansion.

Mr. Martinez states that LAFCO 3115 was also submitted as a non-contiguous sphere expansion proposal. It included six developed parcels west of National Trails Highway and south of the parcel identified in LAFCO 3094. He says that LAFCO 3115 and its companion annexation proposal were submitted to allow for the transfer of water service responsibilities from a private entity, TXI Riverside Cement Company, to CSA 42. At the Departmental Review Committee, LAFCO staff received concurrence from representatives for both LAFCO 3094 and 3115 to combine both proposals and to expand them further to include area that would make the sphere expansion contiguous to the existing sphere boundary of CSA 42. He states that the overall sphere expansion, now identified as LAFCO 3115 as modified, encompasses 20.66 acres and is generally bordered by the boundary and sphere of CSA 64 on the east and south and parcel boundaries on the west and north, including territory east and west of National Trails Highway.

In reviewing the combined and expanded sphere area, Mr. Martinez notes one issue the Commission needs to address is that the new sphere boundary splits a parcel owned by the railroad. This is not consistent with state directives that require boundaries to conform to lines of assessment and ownership. However, the Commission can override such directive if it deems that there is a rationale to do so. He explains that in this case the one parcel is bisected by National Trails Highway and the inclusion of the entire parcel would create a peninsula between the existing sphere and the proposed sphere expansion. Expanding it further would include privately owned lands that have land use designations not identified in this process, and would delay the processing of these proposals further. He says that exclusion of the parcel would also create a peninsula. Therefore, in order to provide a logical sphere boundary, it is LAFCO staff's position that the sphere boundary should be expanded only to include the portion of the parcel that is along the right-of-way of National Trails Highway, and the remainder of the parcel that is easterly of the highway. This configuration provides an easily identifiable sphere boundary. Mr. Martinez provides an aerial view of the area and points out the six developed parcels and the parcel containing the apartment complex and mobile home park.

Mr. Martinez states that staff responses to the factors of consideration as required by state law for sphere amendments are outlined in the staff report. For environmental review, as CEQA lead agency, the Commission's environmental consultant has indicated that the Commission's review of LAFCO 3115 as modified is statutorily exempt from CEQA and this determination is based upon the finding that the Commission's approval of the sphere expansion has no potential for causing any physical changes in the environment. Therefore, the proposal is exempt from the requirements of CEQA.

Mr. Martinez concludes by stating that LAFCO staff supports approval of LAFCO 3115 as modified as it represents a reasonable amendment to the sphere for CSA 42. He states that approval of the modified proposal would allow the property owner of the parcel to connect to the District's sewer facilities either through annexation or through an out-of-agency service agreement, as well as allowing the transfer of domestic water service responsibilities from TXI, a private entity, to CSA 42. He adds that the modified sphere expansion area is a logical and easily identifiable boundary. LAFCO staff recommends approval of LAFCO 3115 as modified by taking the actions outlined in the staff report combining LAFCO 3094 and LAFCO 3115 into a single proposal and expanding it further to make the area contiguous to the existing boundary and

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

sphere for CSA 42, certifying that LAFCO 3115 as modified is statutorily exempt from CEQA, directing the Clerk to file the Notice of Exemption within five days, and adopting Resolution No. 3052 setting forth the Commission's findings and determinations for the sphere amendment.

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak.

Robert Malouf, resident of Helendale, states he owns two of the properties within LAFCO 3115. He states this matter was brought to his attention in 2007 when TXI invited comments from the property owners. He states that TXI has been the water purveyor for those homes for many years and says that when he purchased the homes he was told by TXI that it was the water provider at no charge to the property owners. He adds that he is not totally opposed to the current proposal, but he has asked TXI some questions which have not been answered. He points out that the infrastructure currently in place is absolutely inadequate and extending the water service would be a significant undertaking. He states that the residents of those homes are low-income people and asks if there would be a sewer hookup fee and who would be responsible for those fees. He says that TXI has been responsible for a water filtration service at each home due to the poor quality of the water. He asks if the current filtration system will be replaced and whose responsibility it is to pay the hookup fees.

Nelson Day, Plant Engineer for TXI Cement, states the project originated because TXI is no longer comfortable supplying water to the properties and it has become evident that County service is required to adequately supply the homes. He states that TXI approached the County with the idea of connecting the homes to County service and TXI has committed to pay for all the piping connections, an additional well, the water main and connections to the homes. TXI will not undertake any plumbing to the interior of the homes.

Commissioner Cox refers to a March 2008 analysis from Wilson So which includes a water connection fee of \$17,000 and a sewer connection fee of \$26,000. She asks if TXI will pay those connection fees. Mr. Day states TXI will cover all the costs for the homes to which it currently supplies water, but will not cover costs for the mobile home park. Commissioner Cox asks if the owner of the mobile home park is aware of the connection fees involved. Mr. Martinez states the mobile home park has its own well and will not connect to the water system, and the six parcels will not connect to the sewer system. He explains that connection to the sewer system was added to the feasibility study in case a failure occurs in the future. Chairman Nuaimi states the reason the parcel is mandated to connect to the sewer system is that its septic system has failed and an order has been issued to repair. Commissioner Cox states this is an excellent proposal for the area.

Chairman Nuaimi asks if there is anyone else wishing to speak. James DeAguilera, attorney for the owner of the mobile home park and apartments, states a failure of the septic system has occurred and the sewer line is a considerable distance away from the property. He states that the only reasonable solution is to extend the sewer line and the landowner will pay connection fees. He adds that the downturn in the economy has caused problems for the landowner; therefore, he will meet with representatives of the Special Districts Department to determine if there are sources of public funding or public assistance to extend the sewer line.

Chairman Nuaimi asks if there are others who wish to speak. There is no one. Chairman Nuaimi closes the public hearing.

Commissioner Mitzelfelt states his question is with regard to the costs associated with extending the sewer line to serve the mobile home park and the other parcels.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

Jim Oravets, Engineering Manager of the Special Districts Department, states that CSA 42 is the closest agency to respond to both property owners' requests. He explains that the District is obligated to perform due diligence in the form of a feasibility study. He says studies were performed and the infrastructure needs are not insignificant. He states that providing water to the TXI parcels involves the addition of ½ mile of pipeline and for CSA 42 to provide water supply, TXI would have to drill and dedicate a new well to the District. In addition, bringing sewer to the mobile home park requires significant expense as a one-half mile pipeline would be required to get to that site. Due to the nature of the topography, a lift station must be constructed to pump back to the nearest gravity feed. He states the District is in no position to fund those improvements so they must be borne by the property owners. The District is willing to accept them for operation and maintenance if the work is done to District standards. He concludes by saying that the District has worked with both parties to make sure they understand the needs and the District standards for that infrastructure. With reference to ongoing costs, the addition of these properties into the District and monthly fees would cover all the operation and maintenance costs.

Commissioner Mitzelfelt asks if agreement to fund the improvements has been obtained. Mr. Oravets states there is no formal agreement, but the feasibility study identifies the requirements for service. He states that if the parties currently being served connect to the water system, one of the conditions of that service is that the infrastructure is completed. He adds that, in order for the properties to connect to the sewer and receive service from CSA 42, they are conditioned to build the infrastructure.

Chairman Nuaimi asks, since the apartment project is currently obligated to pay for the extension of sewer service, would there be a reimbursement agreement in place to reimburse the property owner if subsequent connections are made. Mr. Oravets states the District's ordinance does allow for reimbursement agreements. At the owner's request the agreement would be prepared that would bind benefiting parcels to a proportionate share of the cost to construct. Chairman Nuaimi asks if future failures of the septic system on the six homes would require them to connect to the sewer. Mr. Oravets states they would and would become part of the reimbursement agreement and would have to pay connection fees.

Commissioner Cox states the engineering analysis for connection to the mobile home park was done a year and a half ago and VVWRA's fees are listed; however, VVWRA has had a rate increase since that time. She suggested that the proponent obtain an updated amount.

Chairman Nuaimi asks if there are any other comments or questions. There are none.

Commissioner Mitzelfelt moves approval of LAFCO 3115 as modified as recommended by staff, second by Commissioner Pearson. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead)

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3116; AND (2) LAFCO 3116 - ANNEXATION TO COUNTY SERVICE AREA 42 (ORO GRANDE) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider the annexation to County Service Area 42 (Oro Grande). Notice of the original hearing was advertised as required by law through

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

publication in the *Daily Press*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, landowners and registered voters within and surrounding LAFCO 3116, and those individuals and agencies requesting mailed notice.

Senior LAFCO Analyst Samuel Martinez presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Mr. Martinez states LAFCO 3116 is the annexation which was submitted with its companion sphere proposal, LAFCO 3115, to transfer provision of water responsibility from a private entity to CSA 42. He says LAFCO 3116 was submitted as a non-contiguous annexation. LAFCO staff received concurrence to include additional area to make the annexation boundary contiguous to the existing boundary for CSA 42. He states the revised annexation area encompasses 16.98 acres and by expanding this proposal it is LAFCO staff's position that the modified annexation proposal, identified as LAFCO 3116 as modified, is a logical boundary and easily-identifiable boundary for service delivery. He says the proposed annexation boundary, like the sphere expansion, is not consistent with state directives because it splits a parcel. LAFCO staff recommends that the Commission accept the modified boundary that splits the railroad parcel. He states that the proposed annexation is a mix of vacant lands and residential development and the County's land use designation for the area is Rural Living, which is consistent with the existing land use for the area. No change in land use is anticipated at this time nor are there any development proposals in process.

Mr. Martinez states the feasibility study indicates that the District is capable of providing water service to the annexation area subject to the completion of all improvements, including the installation of the eight-inch water main along National Trails Highway, and the construction of a new water well, as the District's current supply of potable water is insufficient to serve the annexation area. CSA 42 has identified all costs related to the extension of water service to the annexation area in the feasibility study as outlined in the staff report. He says that in addition to these costs, TXI will be responsible for the entire cost of the construction and installation of the water well, as well as all on-site improvements. He states that, although sewer service is not a requirement, the feasibility study outlines how it would be provided in the future to the area and that the District is capable of providing sewer service to the annexation area upon completion of the on-site and off-site improvements.

Mr. Martinez states that the Commission's environmental consultant indicates that LAFCO 3116 as modified is statutorily exempt from the requirements of CEQA.

Mr. Martinez concludes by stating that LAFCO 3116 as modified represents a reasonable annexation to CSA 42 and staff recommends approval on the basis that the annexation would allow the transfer of domestic water service responsibilities from TXI to CSA 42 and the modified annexation area is an easily-identifiable boundary for service delivery. Therefore, LAFCO staff recommends approval of LAFCO 3116 as modified by taking the actions identified in the staff report, expanding LAFCO 3116 to include additional area to make the annexation contiguous to the existing boundary for CSA 42 to be identified as LAFCO 3116 as modified, certifying that it is statutorily exempt from CEQA and directing the Clerk to file a notice of exemption within five days, approving LAFCO 3116 as modified with the standard terms and conditions and adopting LAFCO Resolution No. 3053 setting forth the Commission's findings and determinations and conditions of approval for the annexation.

Chairman Nuaimi calls for comments or questions of the Commission. There are none.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

Chairman Nuaimi opens the public hearing and calls upon those wishing to speak. There is no one.

Commissioner Mitzelfelt moves approval of LAFCO 3116 as modified as recommended by staff, second by Commissioner Cox. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead)

Commissioner Bagley states the map for CSA 42 shows a non-contiguous area of the City of Adelanto and points out some islands on the map. Ms. Cox states those are the City's well sites. Ms. McDonald states they are mostly municipally-owned well sites. Commissioner Bagley asks if there are interties going across the City of Victorville. Ms. McDonald states that to her knowledge there are no interties in that area. They are simply piped to the City of Adelanto for its water service.

STATUS REPORT – LAFCO 3082 - SPHERE OF INFLUENCE REVIEW (EXPANSIONS) FOR CITY OF VICTORVILLE AND VICTORVILLE WATER DISTRICT (CONTINUED FROM SEPTEMBER 17, 2008)

Executive Officer Kathleen Rollings-McDonald presents the staff report on the progress of LAFCO 3082, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Ms. McDonald states that when the City of Victorville initiated its municipal service review and the consolidation of the Victor Valley Water District and Baldy Mesa Water District, the Commission separated its 37,000-acre sphere expansion to the north into a separate proposal. In order to move forward the completion of the City of Victorville's General Plan was required. She announces that the City adopted its General Plan last October and there has been no litigation relating to that General Plan, so processing can now move forward. She points out on the map the general area of the surrounding entities, Apple Valley, Victorville, Adelanto, Helendale CSD, and the City of Barstow sphere of influence. Ms. McDonald states that also in process is a sphere of influence establishment for the Helendale CSD that envisions expansion outside its existing boundaries. She explains that since there are two competing proposals for the same territory, staff will move forward with them at a single hearing so that the Commission is presented with all information.

She states on February 23, 2009 she met with the Interim City Manager, Jim Cox, and Assistant City Manager, Doug Robertson, for the City of Victorville, to review the processing materials needed to move forward. She explains that the proposal is over three years old, so staff has asked for updated municipal service review information for the City including budgets and audits, as well as the municipal service review materials for the Victorville Water District sphere expansion. LAFCO staff has also received information from the City of Adelanto indicating its support for relieving itself of that sphere territory along Helendale Road. She states that Helendale Road in that area is a dirt path and currently splits parcels. The recommendation of the City of Adelanto was to take it along the centerline of the roadway; however, that is impossible, so full parcel boundaries will be evaluated. In addition, she states that LAFCO staff became aware of the Soledad Canyon Mine Act, HR5887, a House of Representatives bill that proposed a land swap to remove mining activities in the Santa Clarita area in Soledad Canyon by CEMEX through transfer to the City of Victorville area. She explains that that transfer would include transition of BLM lands to CEMEX and to the City of Victorville. She states a map outlining this area is included in the Commission's packet showing that most of the transferred

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

properties are within the sphere of influence expansion proposed by the City of Victorville. She states that, following her meeting with the City of Victorville staff, in a series of newspaper articles beginning March 2, the current financial straits of the City of Victorville became apparent. She states that the City's audit was delayed and when completed, the auditor would not issue an opinion. This is an unprecedented action. In addition, there are issues relating to bonding and other financial information that may, in fact, impact the ability of the City of Victorville to fund its services in the future. Ms. McDonald contacted the City to determine if it had changed its position on LAFCO 3082. She says the City has indicated that it wishes to move forward.

Ms. McDonald states this is the final status report and the matter will be brought to hearing by summer.

Chairman Nuaimi calls for questions from the Commission.

Commissioner Mitzelfelt asks Ms. McDonald if she is aware of the County's comments submitted to the City of Victorville prior to its adoption of its General Plan Update. Ms. McDonald states she received a copy of the expression of concern from the County. Commissioner Mitzelfelt asks how Ms. McDonald sees the CEMEX issue relating to this proceeding. She states that it will be an informational item as HR5887 died with the last Congress; however Representative McKeon is putting forth another version of it to be introduced this year. Commissioner Mitzelfelt asks if the Helendale and Victorville applications will be considered at the same time. Ms. McDonald confirms that they will be considered at the same hearing.

Commissioner Cox comments that HR5887 is a win-win bill; however, her only objection is that it specifically designates that the property goes to the City of Victorville rather than San Bernardino County. She would prefer the property going to the County or a designated successor entity and at some point the Commission may wish to address the unusual characteristics of that language. Ms. McDonald states that if, in fact, the City were to acquire those 8,000 acres, it would be a taxpayer on the tax roll because it would not be used for municipal purposes and could not be annexed because it is larger than 300 acres, making it a taxpayer on the property it owns outside its boundaries.

Commissioner Mitzelfelt states that it was his understanding that the BLM would give some land to CEMEX in that area to mitigate CEMEX's losses for closing down Santa Clarita. He states it is his understanding that it is Victorville's intention to develop the land and the City's plans include a desert express train station, which conflicts with the County landfill. He expresses concern about the mining operations and the cement operations currently paying property taxes to the County. The proposed sphere expansion appears to include that area which would cause a loss of funds to the County, although it has been indicated that the area would be carved out. Ms. McDonald states that would depend on the location and configuration because the sphere will consider service delivery issues. She states that hopefully all those questions will be resolved through staff's research and discussion with the City.

Commissioner McCallon asks if LAFCO should make these concerns known officially to the sponsor of HR5887. Chairman Nuaimi asks Legal Counsel Clark Alsop if the Commission can give direction on this matter today. Mr. Alsop states that, while this is a status report, if the Commission wishes to ask the Executive Officer to make those comments known, it could do so. Ms. McDonald states the bill is currently being revamped by Representative McKeon and she is not aware that it has been reintroduced. If the direction of the Commission is to convey to Representative McKeon its concerns regarding the impact on the sphere of influence, perhaps

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

working with the County Legislative Office would achieve that. Commissioner Mitzelfelt volunteers to take the lead with the County Legislative Office to write that letter.

Commissioner Bagley states the bill is very unusual in that it addresses land transfers specifically to the City of Victorville. He believes it is precedent-setting and there may be some unintended consequences.

Chairman Nuaimi states it is the consensus of the Commission to have Ms. McDonald identify LAFCO's issues and the County Legislative Office to carry the message forward.

STATUS REPORT – LAFCO 3050 – REORGANIZATION TO INCLUDE CITY OF SAN BERNARDINO ANNEXATION NO. 360 (ARROWHEAD SPRINGS SPECIFIC PLAN AREA) (CONTINUED FROM SEPTEMBER 17, 2008) – APPROVE STAFF RECOMMENDATION

STATUS REPORT – LAFCO 3067A-3067F – CITY OF SAN BERNARDINO ANNEXATION NO. 361 (ISLANDS 1-6) (CONTINUED FROM SEPTEMBER 17, 2008) – APPROVE STAFF RECOMMENDATION

Ms. McDonald presents the staff report, a copy of which is on file in the LAFCO office and is made a part of the record by reference herein. Ms. McDonald states she has met with representatives of the City of San Bernardino to question the status of the response to LAFCO's issues on the operation of water and wastewater service for the Arrowhead Springs proposal. She states that Campus Crusade for Christ, the landowner of the area, has regained control of the area following cancellation of its contractual obligations with developers. Campus Crusade for Christ has indicated that it will work directly with the City to resolve questions on this matter and move it forward. She states that she has indicated the position that this matter should move forward or the Commission could deny LAFCO 3050 without prejudice allowing resubmission after resolution outside the constraints of the LAFCO process. She states that the City and Campus Crusade have indicated that that is not their preference; that they have in fact moved forward, and are getting to the point where they can resolve the water and wastewater operational issues for the specific plan. She says that attached to today's report are two letters; one from the Interim City Manager for the City of San Bernardino, and one from Campus Crusade requesting additional continuance on the matter.

Ms. McDonald states that the City Manager's letter indicates the City's preference that the tying of the six islands to LAFCO 3050 continues. The City's letter indicates it will be looking for additional possible support since Campus Crusade is a tax exempt entity so the City will not receive revenues until the property is actually sold for development purposes. She says the City has indicated that that is the reason for the reluctance to put together the information on the updated plan for service that is needed to move forward with the community meetings related to the annexation of the island areas. Ms. McDonald states it is staff's recommendation that the Commission direct staff to place LAFCO 3050 on the September 2009 hearing agenda. The matter would then be readvertised. She states that representatives from Campus Crusade and the City of San Bernardino are present to answer questions.

Chairman Nuaimi states that, as he remembers, it was demonstrated that the islands were financially self-sufficient with the VLF backfill component that would take place. Ms. McDonald states LAFCO staff prepared plan-for-service materials and City representatives had questions and wished to go back to the City Council to review those modifications. She states that has not yet taken place and the request for continuance is to allow that to happen.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

Commissioner Curatalo asks if the September date is agreed-upon by the City. Ms. McDonald states there was no date provided by the City; however, she believes the establishment of a hearing date may provide incentive to move this forward more quickly. She has not heard from any of the parties that a September date is objectionable.

Commissioner McCallon moves approval of staff recommendation, second by Commissioner Curatalo. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, Derry, McCallon, Mitzelfelt, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead)

PENDING LEGISLATION REPORT

Ms. McDonald states the CALAFCO legislation report was distributed to the Commission today. She says there were 2,680 bills initiated by the deadline in February. She states that Senator Dutton has initiated a bill to propose deferring implementation of SB375 and AB32 due to the current economic conditions. Commissioner Mitzelfelt states the Board of Supervisors will take a position on that at its next meeting. Commissioner McCallon states he believes it only addresses AB32, and not SB375.

Ms. McDonald states SB1109 (Blakeslee) is a spot bill that will be modified to address the issue of district insolvency as there is potential for dissolution of districts that have become insolvent over the last 18 months to two years. She explains that LAFCO law does not provide a specific process to look at the question of insolvency, the successor agency and the limitation of liability. She says SB1109 is being reviewed by a committee of LAFCO Executive Officers, including Ms. McDonald, Senator Blakeslee's office and other stakeholders to look at the potential to develop a mechanism to isolate liability to the lands and/or people who incurred it, especially if the successor for a special district must be the County. Rather than take the position that another County-governed entity could provide that restriction on liability, this would clearly define it in State law. She explains that this was prompted by the issues related to the Los Osos Community Services District in San Luis Obispo County. Their liabilities relate to a settlement agreement and lawsuits over the failure to install a sewer system over groundwater degradation problems. She says those lawsuits were brought by the Water Quality Control Board and countersued by a group of homeowners for growth inducement. In order to resolve these issues and assure that the liabilities do not become those of the whole of San Luis Obispo County, a bill was submitted last year for temporary receivership through the County to be followed by permanent resolution.

Ms. McDonald states that CALAFCO sponsored a workshop on SB375 where positions of the LAFCO community, including the major concern that the one element not heard from in this process are special districts, were presented. She states that, as a panelist, her presentation showed what municipal service reviews show, including spheres of influence with land use designations of one to two and one-half units in the high desert. In looking at places to institute sustainable community strategies, it is not clear that there is water, sewer or other quality of life providers in the area because they are provided by special districts. She states that at the end of the discussion, the head of the SCAG division looking to implement sustainable community strategies, offered, and LAFCOs in southern California accepted, the opportunity to have a voting seat on the program planning technical advisory committee. She states that is a monumental change in philosophy at SCAG. The southern California LAFCOs' representative will be Kim Uhlich from Ventura County. Ms. McDonald will assist.

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF MARCH 18, 2009**

Commissioner Cox states that she has long been a proponent of forming an MPO in San Bernardino, Riverside and Imperial Counties. She encourages those Commissioners who serve on SANBAG to evaluate that discussion. Commissioner McCallon states he shares the concern; however, as the chair of the Policy Committee responsible for implementation of SB375 at SCAG, and the incoming first vice president of SCAG, he has worked very hard to get LAFCO involved in the process. He states San Bernardino County has good representation in SCAG and he believes it is being effective. He suggests waiting one year before considering whether a separate MPO is needed. Commissioner Mitzelfelt states he has spoken with Riverside County Supervisors and SB375 is of concern to them also. Chairman Nuaimi states representatives from San Bernardino County and its cities have taken a very active leadership role in SCAG. Commissioner Cox states there seems to be a disconnect with Los Angeles and Orange Counties and particularly the northern part of San Bernardino County. Ms. McDonald states that a major concern of the LAFCO community is special districts, and perhaps a conversation could be held with the special districts in San Bernardino County. Commissioner McCallon points out that the chair of the technical advisory group is Ty Schuiling from SANBAG.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald states the April hearing will include a review of the budget. The May agenda will include the Yermo, Daggett, and Newberry Community Services Districts municipal service reviews, and the City of Adelanto municipal service review will be scheduled for May or June.

Ms. McDonald distributes a conflict waiver notice relating to a summons for a Superior Court case related to the City of Fontana islands. The waiver of conflict is requested in order for Best Best and Krieger to continue to represent LAFCO in that matter. She explains that unless any individual commissioner expresses opposition, the waiver will move forward.

COMMISSIONER COMMENTS

Chairman Nuaimi calls for comments from the Commission. There are none.

COMMENTS FROM THE PUBLIC

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

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 10:15 A.M.

ATTEST:

ANNA M. RAEF
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

MARK NUAIMI, Chairman