

**MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF FEBRUARY 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 January 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.

Commissioner Curatalo moves approval of the consent calendar 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, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane, Mitzelfelt.

REVIEW AND ACCEPT AUDIT REPORT FOR FISCAL YEAR ENDED JUNE 30, 2008 – APPROVE STAFF RECOMMENDATION

LAFCO conducts a hearing to review and accept the audit report for the Fiscal Year ended June 30, 2008. Notice of the hearing was advertised as required by law through publication in *The Sun*, a newspaper of general circulation in the area, pursuant to State law and Commission policy.

Michael Tuerpe, LAFCO Analyst, presents the staff report and states the independent auditor held a closing presentation with one member of the Administrative Committee and LAFCO staff. He states no concerns were expressed. He explains that fewer deferred revenues were carried over in comparison to the previous year, salaries and benefits were two percent under budget, and services and supplies were four percent under budget. In response to a question regarding the County Fire Reorganization, he states that costs were recouped for deposits; however, some costs related to the LAFCO fee, i.e., printing and postage, etc., were not recouped during the fiscal year. However, for the life of the proposal, most of the costs were recouped. He says that all litigation costs for the year were recovered and charges for services for proposals were about \$5,000 less than the previous year. He concludes that on the whole LAFCO is in better shape than the previous year and refers to page 3 of the audit which provides a comparison of the previous year to the current year.

Chairman Nuaimi states he participated in the conference call with the auditor and states that he has asked Ms. McDonald to address the way LAFCO treats the cash value of leave balances if a former County employee comes to LAFCO. He explains that currently a County employee's leave balances comes with the employee without funding and becomes a liability to LAFCO. He recommends a policy change which would insulate the Commission from that type of liability. Executive Officer Kathleen Rollings-McDonald states that as part of the budget review and potential policy and procedure change, staff will present to the Commission language that will allow for an employee in that situation to cash out leave time, come to LAFCO employment and provide to LAFCO the corresponding dollar amount in order to receive the leave balance.

Mr. Tuerpe states that a representative from the independent auditor is present should the Commission have questions.

Commissioner Pearson moves approval of the staff recommendation as presented, second by Commissioner McCallon. Chairman Nuaimi calls for opposition to the motion. There being none, the

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motion passes with the following vote: Ayes: Cox, Curatalo, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane, Mitzelfelt.

CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3113; AND (2) LAFCO 3113 - REORGANIZATION TO INCLUDE FORMATION OF COUNTY SERVICE AREA 120 AND DISSOLUTION OF COUNTY SERVICE AREA 70 IMPROVEMENT ZONES OS-1 AND OS-3 (CONTINUED FROM NOVEMBER 19, 2008)

LAFCO conducts a public hearing to consider the proposed reorganization to include formation of County Service Area 120 and dissolution of County Service Area 70 Improvement Zones OS-1 and OS-3. Notice of the original hearing was advertised as required by law through publication of a 1/8 page ad in *The Sun* and *Inland Valley Daily Bulletin*, newspapers of general circulation. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Ms. McDonald reports that this is a continued hearing on the proposed formation of County Service Area 120 (CSA 120) to provide habitat conservation and open-space management in a defined area generally north of the Cities of Rancho Cucamonga and Fontana and the area is outlined on the overhead display. She states that CSA 120 is defined as a single-purpose CSA governed by the Board of Supervisors under CSA law set out in Government Code Section 25210 et seq. Ms. McDonald indicates that at the November hearing LAFCO 3113 was expanded to include an additional 320 acres, which was a part of OS-1. The expansion territory is owned by the Habitat Trust for Wildlife and had been excluded by the County in its application. The modified boundary includes the entirety of OS-1 within the boundaries of the proposed CSA 120. She explains that OS-1 and OS-3 are improvement zones of CSA 70 which were formed for the purpose of providing habitat preservation services under its park and recreation function. OS-1 was intended to take control of the North Etiwanda Preserve, 700 acres set aside for environmental mitigation related to the construction of the 210 Freeway. She states that additional lands have been acquired by OS-1 and CSA 70 over the years. She points out OS-3 on the overhead display noting it was created in the western portion of the City of Rancho Cucamonga's northern sphere of influence. OS-3 does not own any conservation lands and is essentially a shell district at the present time.

Ms. McDonald explains that the territory included in the proposed CSA 120 includes land within existing municipalities, the Cities of Fontana and Rancho Cucamonga and both cities have consented by resolution to the overlay of CSA 120. She provides an aerial display of the topography of the area stating that 9,557 acres are included. The mitigation lands were acquired as conditions of approval for development projects approved by either the City of Rancho Cucamonga or City of Fontana. She says that general plan land use designations of both cities allow for minimal development and the county's general plan includes the designation of resource conservation. She states that the territory is legally inhabited with 67 registered voters most of whom are located in the Snowdrop area with a small number within the City of Rancho Cucamonga boundary proposed for inclusion. She states that the Commission must consider four primary issues: boundaries, service considerations, finances and environmental review.

She says that the boundaries were reviewed at the November hearing and as defined would include the entirety of the territory anticipated for acquisition for mitigation purposes. She states that the current land holdings have conservation easements to restrict their use. LAFCO staff believes the boundaries make sense from a service delivery standpoint, are recognizable and do not split parcels, all lands under conservation easement and those for potential mitigation are included, and do not infringe or restrict the sphere of influence of any other agency or impede the Commission's goals.

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Ms. McDonald states the agency is anticipated to perform one service specifically defined under County Service Law. She states that CSA 120 is not a typical district, as its anticipated power indicates it will have no hard infrastructure, roads, water lines, sewer lines or access for development. Ms. McDonald notes that CSA 120 is, in fact, intended to restrict development from these lands for the future. At the November hearing concerns were expressed by several agencies regarding the potential impact to their services. Representatives from the County, LAFCO staff, Cucamonga Valley Water District and Inland Empire Utilities Agency met to address those concerns. This formation will not impede or disrupt the use of the properties currently owned by the Districts and the County has indicated that future acquisitions will include sharing of information with those entities so that they know what lands are being acquired. She says the acquisition cannot restrict or land lock parcels which are privately owned. She states that the City of Fontana has required as a condition of its consent notification of future acquisitions and the County has agreed to include the City of Fontana in the notification process.

The current OS-1 has an advisory commission set out by its cooperative management agreement which includes specific participants including two members from recognized environmental groups, a representative from the County Board of Supervisors, a member of the City of Rancho Cucamonga, and a landowner within the area. The County has identified and LAFCO staff recommends that upon the formation that the advisory commission be expanded to include a member from the City of Fontana since territory within the City and its sphere is also included. She notes that the plan for service indicates that in the future the commission is to be expanded to include a representative from Upland. At present there are no lands included within the CSA that affect the City of Upland or its sphere of influence. She states that staff has not recommended the inclusion of an Upland representative at this time; however, if, in the future the district is expanded to include territory within Upland or its sphere, the advisory commission can be expanded.

Ms. McDonald points out that the lack of conservation easements on the parcels except the North Etiwanda Preserve was a concern discussed at the November hearing. In December the County Board of Supervisors authorized and the conservation easements have been recorded on the remaining parcels, resolving staff's concern. She states the policies and procedures for operation of the agency were questioned by staff as they included reference to the North Etiwanda Preserve only. No actions had ever been taken to expand the preserve to include the additional mitigation lands. She states that County staff has indicated that the practices that are used to operate other mitigation lands are the provisions of the cooperative management agreement. LAFCO staff recommends as a finding that the County and/or the advisory commission make a specific determination that the management practices in the North Etiwanda Management Plan and the cooperative management agreement are extended and the preserve is expanded to include those properties. There are provisions within the management plan to allow for that.

Ms. McDonald summarizes and states that the questions asked regarding service delivery by state law can be answered in this case. The formation represents the best available service option for delivery of open space and habitat conservation services in staff's opinion. She explains that it is a single entity providing a single service with no development-related interests. She says the reorganization provides for an advisory commission representing the affected entities and supports the cooperative management agreement in place. The alternative to this reorganization would be maintaining the status quo continuing to create improvement zones of CSA 70 that would be removed should City annexations take place in this area. She states that is part of the rationale for this formation process overall, as LAFCO staff could not recommend the continued overlay of CSA 70 following a City annexation, given its vast range of services. LAFCO staff believes this is the best alternative for the provision of these services.

With reference to financial considerations, Ms. McDonald states that an outline was provided of the information upon which the Commission must make determinations that the agency is financially

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feasible, financially sustainable and will have reasonable reserves for the first three years of its existence. She says state law requires the Commission to make a determination on property taxes. The County Auditor/Controller-Recorder has provided information that CSA 70 OS-1 and OS-3 receive no share of the general ad valorem tax; therefore, there is no property tax to be transferred. The costs of its services are solely isolated to the revenues received during the mitigation acquisition process and/or interest from the endowment fund. She says that without property tax revenues there is no need for an appropriation limit. Ms. McDonald refers to a chart showing the proposed district's financial expenditures and revenues. The actuals from budget documents and/or audit reports for the agency were used to show the prior three years. For the current year, 2008-09, the OS-1 operations are generally reflective of the proposed budget for the agency. The chart indicates a slight deficit and County staff has indicated that from the budget standpoint it may show as a deficit, but the actual revenues are exceeding their anticipated expenditures at this point. She states that the proposed budgets for 2009-10 and 2010-11 were modified to reflect the interest income for those agencies, indicating a positive operation in the future.

Ms. McDonald states the 2008-09 budget identifies a substantial transfer out of \$1.8 million to complete the capital improvement program for the enhancement of the North Etiwanda Preserve, including a trail system and kiosks. She states that the staff report includes the funding sources for that program. She states that staff questioned the anticipated transfer of \$214,000+ from the endowment fund which would take it below its mandatory non-wasting balance. She says that this is an advance of funds to complete the operation and staff has indicated to the County that the funds must be returned prior to the end of the fiscal year as those funds have been impressed with a public trust.

Ms. McDonald explains how the endowment fund was acquired and refers to a list of lands including the years acquired and acreage. The endowment fund paid the County for the long-term operation of these lands. She says that presently the endowment fund should total \$1,594,250. The opening balance for 2008-09 is less than that amount and the County has provided information that it has transferred funds back to make that fund whole this year so that it will be at its required amount upon close of the fiscal year.

Two parcels are projected for acquisition, one each year, for a revenue transfer in of \$110,000 each year, and the use of revenues for investments. She points out that there was a mathematical error in the report and the slide shows the corrected figures. She states a concern was expressed at the November hearing regarding the lack of an adopted fee schedule. The County has adopted a fee schedule that sets forth its mechanism for payments for mitigation and the ongoing endowment fund. She states that LAFCO staff believes this formation is feasible and the plan for service and budget materials as supplemented show that it is sustainable. She states the District has the ability to provide a level of service including maintenance and operation of the mitigation lands for the future and the District will have a reasonable reserve in that the endowment fund is impressed with a public trust.

For environmental review, the Commission environmental consultant, Tom Dodson and Associates, has reviewed the proposal and determined that it is statutorily exempt from environmental review.

Ms. McDonald states the staff's recommendation is included in the staff report and asks that the Commission take those actions, certify that the proposal is statutorily exempt from environmental review, and approve the formation as modified. She states the proposed conditions A-H address the formation and transfer of responsibilities and obligations, authorize the services specific to this county service area, require the reconstitution of the advisory commission with the six members described, transfer all previously authorized fees and assessments and funds on deposit. Condition G states that the County must hold the endowment fund in public trust on behalf of CSA 120. Determinations were made regarding the lack of property tax transfer and appropriation limit.

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Ms. McDonald thanks the County staff for its work with LAFCO staff over the last four years on this proposal and its predecessor.

Commissioner Bagley asks what happens if the agency exhausts the endowment fund. Ms. McDonald states the agency is not allowed to use the endowment fund as it is non-wasting and must be held in trust. He asks how often the commission meets. Ms. McDonald states it is currently active and meets quarterly to review acquisitions and other considerations. Commissioner Bagley asks if there is private property which would account for the registered voters. Ms. McDonald confirms that there is private property. He asks if those individuals have any decision-making rights. Ms. McDonald states that they have the right to participate in the process just as any other advisory commission to the Board of Supervisors. He asks if the agency has the ability to expand its authority for other revenue sources. Ms. McDonald responds that the CSA can propose additional services but those services would have to be reviewed through a LAFCO process. There is a requirement for a plan for service and a funding source if any other service is anticipated. She points out that the support from the environmental community is due to the fact that this is a single-purpose entity with no interest in development to manage the lands. Commissioner Bagley states he would hate to see the agency expand in scope and practice. Ms. McDonald states that if there were a proposal for any kind of assessment or service charge under Proposition 218, those individuals would have an official say. The process for expanding the level of service for County Service Areas requires a LAFCO review versus the process for improvement zones, which does not. She says the lands acquired by this agency are negotiated between the developer needing mitigation land and the landowner and they must acquire the property, provide it to the County and then pay the endowment for maintenance. The acquisition, then, is a private-party practice.

Commissioner Cox asks if the property to the north of this area is held by the Department of Forestry. Ms. McDonald states there may be privately-owned parcels in the mountain areas and there may be possessory interest on the national forest land.

Chairman Nuaimi states there appears to be a tract map recorded for future residential development. He asks if, as this appears to not be habitat or open-space conservation land, it would make sense to exclude that area from this boundary. Ms. McDonald states there are parcels within the boundary that have development and the City of Rancho Cucamonga has consented to those parcels being included because there are trails through the property. Chairman Nuaimi states that at the eastern boundary, as it approaches Fontana, is a county flood control facility that comes down through the developments and it appears that only a portion of that San Sevaine system is included in the boundaries. He asks why that entire flood control facility is not included within the boundary. Ms. McDonald states they are parcel boundaries so the parcel may be much larger. Chairman Nuaimi states it appears half the spillway is included within the boundary. Jeff Rigney, Director of Special Districts, states that these boundaries were worked out with County Flood Control.

Tom Dodson states he has been working on the basins with the Flood Control District regarding recharging the basins for Inland Empire Utilities Agency and he believes the reason is that when the mitigation was established for the creation of the basins it only included only the western portion. The areas to the east and north were created as basins and therefore were not included in the mitigation package as they are not being managed and maintained for mitigation as offset. Ms. McDonald states that for the formation process, this is the negotiated agreement with County Flood Control. She states that when the sphere of influence is reviewed the question will be asked if the area should be included in the sphere. She points out that this entity will require establishment of a sphere of influence within one year.

Mr. Dodson states that if new areas are added a substantial expenses will be incurred for creation and maintenance if it is designated as permanent open space for mitigation purposes as opposed to flood control purposes. He states that an agency typically negotiates an agreement, in this case, Flood

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Control with US Fish and Wildlife Service and Department of Fish and Game. This mitigation reflects the commitments made by Flood Control to maintain it in perpetuity as mitigated are. He says the remainder of the area is not in that role as Flood Control would incur an expense by including it. Chairman Nuaimi states that much of the area is currently under water and will be dry by the summer; therefore, there is no real habitat being maintained there.

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

Commissioner Pearson moves approval of the staff recommendation 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, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane, Mitzelfelt.

CONSIDERATION OF REQUEST FOR RECONSIDERATION OF:

- A. (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3016; AND (2) LAFCO 3016 – SERVICE REVIEW/SPHERE OF INFLUENCE UPDATE (AMENDMENT) FOR THE CITY OF BARSTOW;**

- B. (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3031; AND (2) LAFCO 3031 – SERVICE REVIEW/SPHERE OF INFLUENCE UPDATE (AMENDMENT) FOR THE ODESSA WATER DISTRICT; AND**

- C. (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3032; AND (2) LAFCO 3032 – SERVICE REVIEW/SPHERE OF INFLUENCE UPDATE (AMENDMENT) FOR THE BARSTOW FIRE PROTECTION DISTRICT**

LAFCO conducts a public hearing to consider a request for reconsideration of LAFCO 3016, LAFCO 3031 and LAFCO 3032. Notice of the reconsideration was advertised as required by law through publication of a 1/8 page ad in the *Desert Dispatch*, a newspaper of general circulation. Individual notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

LAFCO Analyst Michael Tuerpe reports that at the October 2008 hearing, LAFCO staff presented the municipal service reviews and sphere of influence updates for the community of Barstow. Those reviews included consideration of the City of Barstow and its subsidiary district, the Odessa Water District and the independent Barstow Fire Protection District. He states that the Barstow community was expanded to include the remainder of the Hinkley area defined by CSA 70 Zone W and the affirmation of the balance of the spheres. He states that after the Commission approved LAFCO staff's recommendations, a reconsideration request was submitted by the Executive Officer and received by the Clerk to the Commission in order to correct the community definition for Barstow due to two oversights requiring a proposed sphere expansion and a proposed sphere reduction. He notes, however, that the basic issues considered by the Commission in October remain unchanged. He points out the proposed sphere expansion and proposed sphere reduction on the overhead display noting that the lands are currently vacant. He states that one parcel, under government ownership, is partially within and partially outside the community of Barstow due to a 1996 sphere expansion for these agencies which did not include the entirety of the parcel. He says there are also five privately owned parcels within the area and the Mojave River generally traverses the area in an east west direction. Therefore, LAFCO staff recommends a sphere expansion for the City of Barstow and its related districts to include the remainder of the parcel and the five private parcels.

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He points out the sphere reduction area to the south and says the entirety of one parcel is within the boundaries of the Daggett Community Services District and half the parcel is within the sphere of influence of the City of Barstow and its related districts. Daggett CSD is currently the responsible service provider. The parcel is under government ownership and the land is vacant. He says this occurred in 1973 when the sphere was established for the community of Barstow and it split the parcel along the interstate. A 1984 sphere expansion and annexation by Daggett CSD included the southern half of that parcel; however, the City of Barstow, Odessa Water District and Barstow Fire Protection District did not respond to the request for comments. LAFCO staff processed the application and did not include the reduction of the sphere of influence of the City of Barstow and its related districts and the Commission approved the proposal. This oversight has existed since that time and this "clean-up" action would remove this parcel from the Barstow community to remain within the Daggett CSD, as it is the responsible service provider.

He states that LAFCO staff asks that the Commission take the actions outlined on pages 1 and 2 of the staff report. He again notes that the basic issues considered by the Commission in October remain unchanged. The City of Barstow and its subsidiary district, Odessa Water District, have provided a letter of no objection and the Barstow Fire Protection District has provided a letter of support for this action.

Chairman Nuaimi asks if there are questions from the Commission. There are none.

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

Commissioner McCallon moves approval of the staff recommendation as presented, 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, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane, Mitzelfelt.

REVIEW AND APPROVAL OF ENGAGEMENT OF THE FIRM ROSENOW SPEVACEK GROUP INC. TO PERFORM THE INDEPENDENT FINANCIAL ANALYSIS OF LAFCO 3076

Ms. McDonald states this item is the review and request for approval for engagement of the firm Rosenow Spevacek Group Inc. (RSG) to conduct the independent financial analysis that the Commission requested at the last hearing regarding the consolidation of the San Bernardino Valley Municipal Water District (MUNI) and the San Bernardino Valley Water Conservation District. She says that she met with the general managers of both districts following that hearing to establish a potential list of agencies that were acceptable to perform the analysis. RSG was one of the firms that LAFCO staff believes could perform the work in a timely manner and perform it well. She states that the Conservation District submitted a list of three firms which also included RSG. MUNI did not provide a list but requested that Rogers, Anderson, Malody & Scott (RAMS) would be capable of performing the review. She states that LAFCO staff asked RSG to provide an outline of any conflict with working with any of the districts, their law firms or LAFCO. She states that the staff report includes an attachment indicating that RSG has worked *with*, not *for*, the firm of Rutan and Tucker, including Mr. Cosgrove, the general counsel for the Water Conservation District. She states this information was provided to both parties. The Water Conservation District did not believe this constituted a significant conflict in order to remove RSG from consideration; however, MUNI disagreed and believed it would constitute a conflict and asked that another firm be engaged to perform the independent financial analysis. She states that she has reviewed with the representatives of RSG the questions regarding the issue of separation. Specifically, Task No. 3 of RSG's proposal indicates that it will not entertain or receive communication by telephone or email with any of the parties that are concerned with this and will work with LAFCO staff to provide the review. She adds that RSG contacted her to say that California Strategies has a principal, Jon Withers, who was chairman of the Orange County LAFCO and remains

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a member of Orange LAFCO. California Strategies is a consultant for the Water Conservation District. She states that this does not change the opinion that RSG can provide an ethical wall that allows them to prepare this report on behalf of LAFCO. She asks that the Commission authorize her to contract with the firm to perform the service the Commission has requested. Ms. McDonald states Ken Lee, one of the principles, is present and is available to answer questions.

Chairman Nuaimi asks if there are questions from the Commission. There are none.

Commissioner Cox asks if a firm could be found that both entities agree upon. She comments that California Strategies is very powerful and very active. Ms. McDonald states there was no provision of an alternative provided by MUNI. She adds that since the districts were informed that this is being performed on behalf of LAFCO there has been no further indication of concern.

Commissioner McCallon states RSG has indicated that it is able to provide an ethical wall and since MUNI has not proposed another firm it would probably be difficult to find a firm both agencies would agree upon. He supports the staff recommendation.

Chairman Nuaimi agrees and comments that he was very offended by the Water Conservation District's press release after the last action and states it was inappropriate and unprofessional. He points out that, since the Water Conservation District supports this firm and LAFCO staff has recommended this firm, this in effect silences the biggest critic of the process. Ms. McDonald states RSG is very familiar and has dealt with contentious issues in the past. She says it has been agreed that the draft report presented by RSG will be shared with MUNI and the Water Conservation District and a meeting will be held where the report will be discussed before it is released to the Commission.

Chairman Nuaimi strongly encourages both parties to cease issuing any further press releases indicating a position of this Commission, as they do not speak for the Commission.

Commissioner Cox asks for clarification that the firm would be working for the Commission and not the Districts. Ms. McDonald states the contract is with the Commission and the recommendation is to authorize staff to contract with RSG.

Commissioner Curatalo thanks Ms. McDonald and staff and Mr. Dodson for their professionalism, patience and credibility in this process. He does believe this analysis will help the Commission make a quality decision.

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

Chairman Nuaimi states he believes the Commission is going above and beyond by hiring an independent firm to provide this analysis.

PENDING LEGISLATION REPORT

Ms. McDonald distributes her written report and states that at the CALAFCO retreat and Board meeting last Thursday and Friday, action was taken related to legislation. The deadline for submission of bills to the Legislative Council was January 30; however, the final date for initiation in the respective houses of the legislature is February 27. She says the legislation will limit the number of bills each legislator can initiate, so the CALAFCO legislative issues have been converted into its Omnibus Bill. One of those is for conduct of future council elections in an incorporation, which includes the requirement for a ballot measure that questions whether council members will be voted at large by

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district or from district. This measure is very confusing and it is being proposed that, since the first council is elected at large, the question of whether it is at large or by council is a LAFCO determination as part of the review process. There would then be the possibility of a City Council changing that requirement on its own resolution or by petition of the electorate.

She states there are changes to the Revenue and Tax Code. With regard to annexation of private railroad properties the law is being changed to say that if the railroad does not respond within a period of time their protest does not count.

She reports that while San Bernardino LAFCO has had the practice historically to establish a sphere of influence within one year of the formation of a special district, there has been some question whether or not the law clearly specifies that. The Omnibus Bill will make that language specific that an incorporation and a formation require the establishment of a sphere of influence within one year or at the time of formation.

She states the final item in the Omnibus Bill is to codify the process to change a CSD's name or any other district's name. Other items will be taken under submission later on or under separate legislation.

The CALAFCO Board has adopted its legislative policies which included policies related to the issue of SB375. She says the legislative policies included an anticipated change to address language in SB375. At the Board meeting, the CALAFCO Executive Board directed its Executive Director to support the suspension of implementation of SB375 and AB32, as was envisioned when the Governor signed those bills. Ms. McDonald's written report includes the specific language that in the event of extraordinary circumstance, catastrophic events or threats of a significant economic harm, the Governor may adjust the applicable deadlines for individual regulations or for the state in the aggregate to the earliest feasible date. The expressed concern from the CALAFCO Executive Board was that, given the economic times, given the uncertainty of the future, they believe this implementation should be suspended. She says that one person identified that SCAG has indicated that implementation of SB375 will cost approximately \$45,000,000. Ms. McDonald has included a copy of a letter from the Orange County Division of the League of California Cities requesting that. Given the significance of SB375, Ms. McDonald states it is important for the Commission to know the current stance is to request suspension of those deadlines for the current year.

She adds that legislation will be sparse this year.

EXECUTIVE OFFICER'S ORAL REPORT

Ms. McDonald states that with reference to representation on the CALAFCO Executive Board, she and Commissioner McCallon attended the CALAFCO Executive Board meeting on Friday of last week. On the previous Thursday a retreat was held where the question of representation was discussed. She states the Thursday meeting was very disconcerting to the LAFCOs present. She adds that a presentation was made in November to the Executive Board and an ad hoc committee was formed to look at the question of representation and report back at the retreat. She states that at the retreat immediately prior to the discussion of the item, the Chairman of the Board distributed information that said over the last 22 years Southern California had been adequately represented, so there was not an issue to be discussed in his opinion. At that point George Spiliotis, Executive Officer for Riverside County, and Ms. McDonald were called to make their presentation. She states that the recruitment committee on Thursday was directed to seek representatives from Southern California because the change to regional representation must be by bylaw change. In order for a bylaw change to go to the general assembly for action at its September-October annual conference, it must be released no later than August. She states that at the end of Thursday the Southern California group was very discouraged; however, on Friday, when the item was brought forward at the Board meeting,

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the recruitment committee was directed to seek representatives for election at the next annual conference. She states that thanks to Susan Vicklund-Wilson from Santa Clara County, an ad hoc committee of the Executive Board was formed to look at regions for the Executive Board and necessary bylaw changes to be presented to the general assembly. That committee includes Ms. Wilson, Cheryl Brothers from Orange County, Simon Salinas from Monterey County and Alan Settles from San Luis Obispo County. She states that Mr. Salinas had prepared a report in which he supported the regions that the Southern California LAFCOs had recommended. She says a presentation will be made at the May Executive Board meeting.

An additional issue regarding bylaw changes, the fee increase is now part of the bylaws and is tied to the CPI, so that even under current conditions, increases in dues will take place. There has been discussion by the Executive Board to take action to remove that from the bylaws, as a bylaw change requires action by the general assembly.

Commissioner Pearson asks Ms. McDonald what her reaction is to the proposal made to use CSDA's regional plan. She states that, on Thursday, the Executive Board did not like that proposal and there was a hesitance to change the status quo; however, on Friday they decided to consider all regions. Interestingly, according to George Spilitios from Riverside County, the Chairman of the Board of Directors tried to come up with regions and it was too difficult, leading to his opinion that the at-large status should remain. The ad hoc committee now understands the issue and is willing to look at this carefully. She adds that a meeting of the Southern California LAFCOs is planned for sometime in March. When that meeting is scheduled the Commission will be notified.

Commissioner McCallon comments that Friday was an education for him and it was apparent that participation by the Southern California LAFCOs would certainly raise the competency of the Board. He notes that the Vice Chairman who proposed the committee spoke in terms of a northern, central and southern breakdown.

Ms. McDonald states that next month's hearing will include an update on the Victorville sphere expansion, the Arrowhead Springs annexation to the City of San Bernardino and its islands, and annexations to CSA 42. She says she will be meeting with representatives of Campus Crusade this month.

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.

ADJOURN TO CLOSED SESSION OF THE LOCAL AGENCY FORMATION COMMISSION –
Conference Room adjacent to the San Bernardino City Council Chambers located at 300 North D Street, First Floor, San Bernardino.

The hearing is adjourned to closed session at 10:18 a.m.

Personnel (Government Code Section 54957)

Employee Evaluation – Executive Officer

RECONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION

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

Chairman Nuaimi calls the regular session of the Local Agency Formation Commission back to order at 10:23 a.m.

Legal Counsel Clark Alsop announces that the Commission met in closed session to consider the employee evaluation of Kathleen Rollings-McDonald, Executive Officer. He states a four percent merit increase retroactive to January 1, 2009, and a cost-of-living increase of three percent effective July 1, 2009, were proposed.

Commissioner Curatalo moves, seconded by Commissioner Nuaimi, approval of a four percent merit increase, retroactive to January 1, 2009, and a three percent cost-of-living increase effective July 1, 2009, for Ms. McDonald. Chairman Nuaimi calls for opposition to the motion. There being none, the motion passes with the following vote: Ayes: Cox, Curatalo, McCallon, Nuaimi, Pearson. Noes: None. Abstain: None. Absent: Biane, Mitzelfelt.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 10:25 A.M.

ATTEST:

ANNA M. RAEF
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

MARK NUAIMI, Chairman