LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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DATE: **FEBRUARY 8, 2010**

FROM: **KATHLEEN ROLLINGS-McDONALD, Executive Officer**

TO: **LOCAL AGENCY FORMATION COMMISSION**

SUBJECT: **AGENDA ITEM #12 – REQUEST FOR RECONSIDERATION OF LAFCO 3067E – REORGANIZATION TO INCLUDE CITY OF SAN BERNARDINO ANNEXATION NO. 361 AND DETACHMENTS FROM THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, ITS VALLEY SERVICE ZONE AND ITS SERVICE ZONE PM-2 (PARAMEDICS), COUNTY SERVICE AREA 70 AND COUNTY SERVICE AREA SL-1 (AREA 5)**

RECOMMENDATION:

Deny the Request for Reconsideration submitted by Ms. Susan Hulse of the Commission's Approval of LAFCO 3067E as outlined in LAFCO Resolution No. 3075.

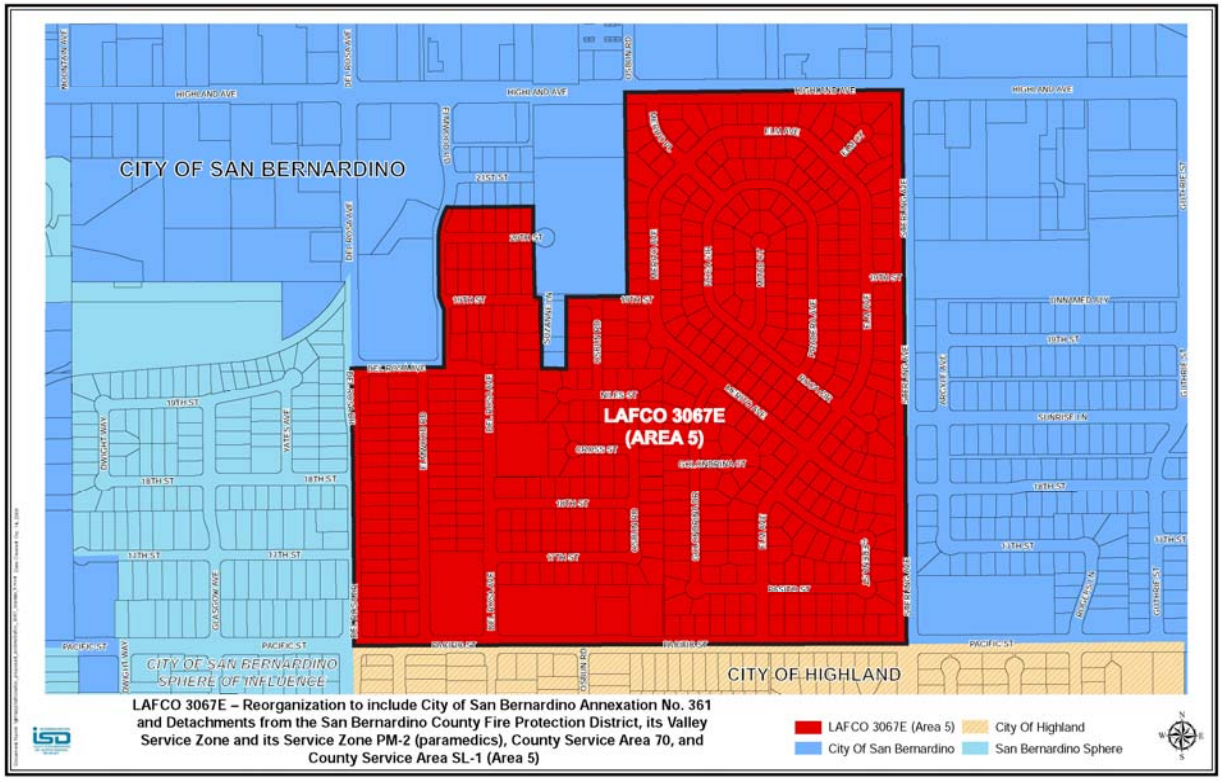
BACKGROUND:

State law allows a procedure whereby any affected agency or person may request reconsideration of a Commission resolution making determinations (Government Code Section 56895). The law provides that such a request must be submitted within 30 days of the adoption of the Commission's resolution making determinations; that it specifies the specific modifications to the resolution being requested; and that it outlines what new facts or different facts that could not have been presented previously are claimed to warrant the reconsideration. In addition, Commission policy supplements these requirements by adding that "Request for reconsideration will be granted only when the petitioner can present some compelling new evidence or show that significant factors relative to the situation were overlooked or have changed".

On December 17, 2009, Ms. Susan Hulse, resident within LAFCO 3067E (Island Area #5), submitted requests for reconsideration for each of the six island annexations to the City of San Bernardino approved by the Commission at its November 18, 2009 hearing (a copy of the request is included as Attachment #1). The submission was within the mandatory 30-day time period specified by State law. A copy of the Commission's Request for Reconsideration Policy and Procedure is included as Attachment #2 to this report, a map of LAFCO 3067E is included

as Attachment #3, and Resolution No. 3075 approving LAFCO 3067E is included as Attachment #4.

The information which follows will provide a summary of the issues for reconsideration raised by Ms. Hulse in her letter dated December 17, 2009 as they relate to LAFCO 3067E identified as Area #5; along with the staff responses related to each of those issues. The Commission will need to consider the issues and responses and determine whether the request presents "new or different facts" and presents "compelling new evidence" that has changed or was overlooked in conformance with adopted Commission policies and State law to warrant reconsideration. A map of the area of consideration is shown below:



ISSUES FOR RECONSIDERATION:

1. "Violations of Section 56375.3 of the Cortese-Knox-Hertzberg Local Government Reorganization Act and the LAFCO's own adopted policy." The assertion is that the Commission did not adequately consider the determination of the "entire island of unincorporated territory".

   The Commission's policies related to island annexations adopted in March 2005 and updated in October 2006 indicated its definition of substantially surrounded as follows:

   > For the purpose of applying the provisions of Government Code Section 56375.3, the territory of an annexation proposal shall be

> deemed "substantially surrounded" if 52% of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by (a) the affected City or (b) the affected City and adjacent Cities, or (c) the affected City and a service impediment boundary as defined by the Commission to include, but not be limited to, a freeway, a flood control channel or forest service land.

The question of the "entire island" determination is a policy determination as well. The peninsula of territory described in Island Area #4, as originally submitted and as modified by the Commission, is functionally separated from the balance due to the means of receiving service. Therefore, the staff position has been that the peninsula island meets the policy declaration of the "entire island' as required by Government Code Section 56375.3.

The legislature has acknowledged these types of areas through its inclusion of a "substantially surrounded" island. It would have been quite simple to limit the definition to a totally surrounded island if the intent was to be to exclude territory that was a part of other areas of unincorporated territory. That is not the case. The Commission's policy defines what it believes local conditions and circumstance require, as outlined by the Cortese-Knox-Hertzberg Local Government Reorganization Act, by weighing the total community service needs against total financial resources which reflect local circumstances, conditions and resources.

Prior to January 1, 2005, the language of Government Code Section 56375.3 read as follows:

> … (b) Subdivision (a) applies to territory that meets all of the following requirements:
>
> > (1) It does not exceed 75 acres in area, that area constitutes the entire island, and that island does not constitute a part of an unincorporated area that is more than 100 acres in area.
>
> …

This language would have precluded the territory of Island #5 from being considered under the provisions of Government Code Section 56375.3.

However, effective January 1, 2005 new provisions related to Government Code Section 56375.3 were implemented pursuant to changes initiated by Senate Bill 1266 (Torlakson) which changed determination #1 to read as follows:

> … (1) It does not exceed 150 acres in area, and that area constitutes the entire island. …

The exclusion of the language related to not being a part of a larger unincorporated area allows the Commission to address the substantially surrounded area within Island Area #5 which is a part of a larger unincorporated area. The Commission's review of its Island policy in March 2005 was directly related to the change in statute.

Island Area #5 is surrounded by City of San Bernardino boundaries on two sides (north and east) and by the City of Highland boundary on the south side. This represents 88% of its boundary based upon linear length of the boundary. The western boundary is defined as the centerline of Del Rosa Drive (the Commission's policy requires the use of centerline of streets as boundaries due to service delivery and development processes) from the intersection at which Del Rosa Avenue becomes Del Rosa Drive to its intersection with the City of Highland boundary at the centerline of Pacific Street. As outlined in the minutes of the November 18, 2009 hearing, the issue of the development of the boundary for Island Area #5 was discussed at length, from the City's original submission to the Commission's modification of the boundary. Therefore, it is the staff's position that the discussion of the boundary does not constitute new information or information that was overlooked or has changed.

In addition, in the discussion of this question Ms. Hulse asserts that the LAFCO staff did not include in its discussion that the City did not comply with the Commission's policy regarding outreach to the island areas. Staff disagrees on this point since the City conducted outreach prior to submission of its application in July 2006 pursuant to the Commission's policy in place at the time. The Commission changed its policy in October 2006 to reflect "prior to placement on the Commission's agenda for consideration". The first hearing on the island application took place in November 2006, at which time the Commission modified the boundary for LAFCO 3067E. The hearing was continued from time-to-time since the City of San Bernardino requested that it be heard at the same time as LAFCO 3050 (Arrowhead Springs). Status Reports were presented during the interim with the identification that LAFCO staff would re-advertise and notice the hearing for final consideration. All the statutorily required notice was provided for the consideration of LAFCO 3067E Reorganization identified as Island Area #5 and no additional outreach was required.

2. "Failure to adequately evaluate and disclose the ultimate fiscal impacts of island annexations."

Ms. Hulse's assertion as presented in the request for reconsideration is that the materials presented for the consideration of LAFCO 3067A through F did not include a discussion of the fiscal impacts of the annexation, that such impacts were not considered by the Commission, the City who prepared the document, or those citizens who were notified of the consideration both within and surrounding the areas.

Staff disagrees with this assertion on the basis that the fiscal impact analysis which addressed the six islands was included as an attachment to the staff report, which was available on the Commission's website, clearly identified a shortfall in revenue. The Commission's policy regarding tying island annexations to development related proposals whose revenue stream exceeds the cost of service rather than a failure to evaluate the ultimate fiscal impact of island annexations, speaks directly to addressing this very question. It is a well known fact that older residential developed areas do not pay their own way for the delivery of municipal level services. This situation is an indirect consequence of the implementation of Prop 13. The assessed valuation of

these areas is tied to acquisition date and total sales price, not a uniform calculation of value. Under the current assessment scenario identical homes can pay vastly different property tax amounts – one whose ownership has remained the same since 1979 and those recently purchased. Current economic realities are requiring all levels of government to reassess their level of service, this includes the County of San Bernardino current provider of service and the City of San Bernardino proposed provider of service. Providing for the most efficient and effective service delivery boundaries is even more important in this new fiscal reality.

The question of tying a revenue producing annexation with unincorporated island annexations was reviewed by the State Legislature in 2004 as a potential statewide policy. The City of Simi Valley initiated legislation that would prohibit a LAFCO from connecting a development related annexation to an action related to the islands as Ventura LAFCO had a similar policy to that of San Bernardino LAFCO. However, the ultimate determination of the State Legislature and Governor through approval and adoption of Statutes of 2004 Chapter 805 was an uncodified statute relating only the City of Simi Valley leaving such determinations of policy to the local LAFCO and its cities. In San Bernardino County it has been the practice of the Commission to tie such proposals together, as is illustrated by the Arrowhead Springs Annexation and the City's islands.

3. "Violation of the California Environmental Quality Act"

Ms. Hulse asserts that since the Commission misused the provision of Government Code Section 56375.3 it cannot be considered to be exempt as defined in Mr. Dodson's analysis and recommendation. The consideration of the statutory exemption proposed for Island Area #1 did identify that the area was determined to be exempt on the basis that the action was ministerial in nature. Staff continues to support that fact. No new information has been presented related to the discussion of the environmental determination to compel a reconsideration of this determination.

However, as an aside note for the proposal, the territory would also qualify for an exemption on the basis that the territory is fully developed and the annexation of such territories are considered to be categorically exempt from CEQA (Section 15319 of the CEQA Guidelines) identified as a Class 19 exemption.

4. "Piecemeal annexation of County islands avoids the ability of cities to negotiate their boundaries."

The sphere of influence assigned to cities and special districts determines where they can grow and obligates them by Commission policy to plan to extend their range of services. The sphere of influence for the City of San Bernardino in its eastern area was refined in 1987 to exclude the area proposed for incorporation of the City of Highland (LAFCO 2425), retaining the territory of LAFCO 3067E within the City of San Bernardino sphere of influence. The City of Highland sphere of influence was assigned in 1988 following its incorporation as coterminous in consultation with the City.

During 2003 and 2004 the Commission conducted service reviews for both cities which asked the question of whether either City would request a sphere of influence amendment related to the boundaries in this area. At the time, neither City requested a sphere of influence amendment but both established committees to look into the potential for realigning the overall city boundaries in the area. Realignment has been a point of discussion since the incorporation of the City of Highland was initiated when the cityhood consultant indicated one of the rationales for incorporation was that it would allow the new city to negotiate and "arrange land exchanges to lead toward rational boundary configurations".

Therefore, it is LAFCO staff's position that the assertion regarding renegotiation of boundaries is not new nor was it overlooked during the Commission's considerations. The Commission is required to determine that the area is within the sphere of influence of the City (Government Code Section 56375.5) for any proposed annexation. LAFCO continues to encourage the Cities of San Bernardino and Highland to work toward a resolution of the boundaries as they have done in the past through exchange of territories along Third Street and east Highland Avenue. This position is based upon the fact that State law specifies that if a City objects to the detachment of territory it can stop such a proposal prior to consideration by the Commission. Without concurrence from both cities to detach territory, realignment will not take place.

CONCLUSION:

It is the staff's position that the reconsideration request submitted by Ms. Hulse has not shown that there is new evidence regarding this issue or that information relative to the specific consideration for the annexation of Island Area #5 and the resolution adopted approving it under the provision of Government Code Section 56375.3 were either overlooked or have changed. On that basis, in the staff view, Commission policy and state law direct that this request for reconsideration not be granted. Therefore, the staff's recommendation is that the Commission deny the request.

/KRM

Attachments:

1. Letter from Ms. Susan Hulse Request for Reconsideration Dated December 17, 2009
2. Request for Reconsideration Policy and Procedure
3. Map of LAFCO 3067E as Approved on November 18, 2009
4. LAFCO Resolution No. 3075 Approving LAFCO 3067E
5. Excerpt of the Minutes for the November 18, 2009 Hearing Related to the Consideration of LAFCO 3067E and the Discussion Related to All Six Islands
6. Excerpt from the Staff Report Dated November 9, 2009 Related to LAFCO 3067E including the Information Related to All Six Islands and the Updated Plan for Service Dated November 2009