REGULAR MEETING 8:30 A.M. FEBRUARY 17, 2010

PRESENT:

COMMISSIONERS: Jim Bagley, Alternate Mark Nuaimi, Chairman
Paul Biane Richard P. Pearson
Kimberly Cox Robert Smith, Alternate
Neil Derry, Alternate Diane Williams, Alternate
Brad Mitzelfelt, Vice-Chairman

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

ABSENT:

COMMISSIONERS: James V. Curatalo
Larry McCallon

CONVENE CLOSED SESSION OF THE LOCAL AGENCY FORMATION COMMISSION – 8:30 A.M. – Conference room adjacent to the San Bernardino City Council Chambers located at 300 North “D” Street, First Floor, San Bernardino

Conference with Legal Counsel Significant Exposure to Litigation (Government Code Section 54956.9(b) – Circumstance Six Island Proposals identified as LAFCO 3067A through LAFCO 3067F

RECONVENE TO REGULAR SESSION – CALL TO ORDER – 8:56 A.M.

Chairman 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.

Commissioner Derry states that he will abstain from Item 9 as he has a conflict.

ANNOUNCEMENT OF ACTION FROM CLOSED SESSION

Chairman Nuaimi asks LAFCO Counsel Clark Alsop to report on action taken in closed session. Mr. Alsop states that no reportable action was taken in closed session.

CONSENT ITEMS – APPROVE STAFF RECOMMENDATIONS

LAFCO considers the items listed under its consent calendar. The consent calendar consists of Agenda Items:
MINUTES OF THE LOCAL AGENCY FORMATION COMMISSION
HEARING OF FEBRUARY 17, 2010

2. Approval of Minutes for Regular Meeting of January 20, 2010
3. Approval of Executive Officer’s Expense Report
4. Ratify Payments as Reconciled for Month of January 2010 and Note Cash Receipts
5. Review and Accept Audit Report for Fiscal Year Ended June 30, 2009
6. Review and Adoption of Amended Contract with Alcock and McFadden changing Scope of Work to include development of Performance Management Process and Expanded Job Profile for Executive Officer; and,
7. Authorize Payment of Stipend and Expenses for Chairman Nuaimi to Participate in All Meetings of the California Coalition of LAFCOs as its Interim Chair/Spokesperson

A Visa Justification for the Executive Officer’s expense report, as well as a staff report outlining the staff recommendation for the reconciled payments and the staff reports outlining the recommendations on the audit report, amended contract with Alcock and McFadden, and payment of stipend and expenses for Chairman Nuaimi’s participation in California Coalition of LAFCOs meetings, have been provided and copies of each are on file in the LAFCO office and are made a part of the record by their reference herein.

Commissioner Cox moves approval of the consent calendar, second by Commissioner Pearson. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitselfelt, Nuaimi, Pearson, Smith. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon

DISCUSSION ITEMS:

REQUEST FOR RECONSIDERATION SUBMITTED BY SUSAN HULSE OF THE COMMISSION’S APPROVAL OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3067A; AND (2) LAFCO 3067A – 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 1) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for reconsideration submitted by Susan Hulse of the Commission’s Approval of CEQA Statutory Exemption for LAFCO 3067A; and LAFCO 3067A – 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 1). Notice of the hearing was provided as required by law through publication in The Sun, a newspaper of general circulation. Individual mailed notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She states that Susan Hulse, on December 17, 2009, submitted a request for reconsideration pursuant to Government Code Section 56895. She states that Government Code Section 56895 specifies that in a reconsideration the applicant must request and identify the portions of the resolution they wish modified, and state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. The reconsideration policies of the Commission expand upon those provisions of law and identify that the request for reconsideration will be granted only when the petitioner can present some compelling new evidence or show that significant factors relevant to the situation were overlooked or have changed. She says that Ms. Hulse has identified several items, most important is the assertion that the Commission did not adequately consider the determination of the entire island of unincorporated territory. Ms. McDonald states that the staff report includes the Commission’s definition of “substantially surrounded.” She says that the Commission has determined that 52 percent of the linear boundary would define “substantially
surrounded" for the provision of Government Code 56375. She says that in developing this policy, the state law changed in 2005 and read as shown on the overhead display until January 1 of that year. The last provisions state that an island does not constitute a part of an unincorporated area that is more than 100 acres in area. Effective January 1, 2005, the provisions state that an island does not exceed 150 acres and the area constitutes the entire island. She explains that the omission of the statement “not part of a larger unincorporated area exceeding 100 acres” was significant in reviewing the islands. Ms. McDonald states that the question of the issue of the “entire island” was discussed at the previous hearing and there is no new information in the request for reconsideration regarding this issue. Ms. McDonald continues that the modification of the boundary of the island was also discussed at prior hearings. She says that the Commission did not fail to adequately discuss and disclose the fiscal impacts of island annexations in that the Commission reviewed the City’s fiscal impact analysis, discussed the connection with the Arrowhead Springs annexation tying the islands to revenue-producing areas. Ms. McDonald states that the question as to whether the Commission has the ability to tie together these actions was reviewed by the State Legislature who determined, in an uncodified section, that the County of Ventura LAFCO cannot apply such a condition in regard to the City of Simi Valley. She continues that in regard to the assertion that a violation of the California Environmental Quality Act occurred, LAFCO staff does not support the statement in that the exemption from CEQA was reviewed, as it relates to ministerial actions as outlined in Govt. Code Section 56375(a) and 56375.3. In addition, the staff report includes information that an additional exemption Class 19 would have applied if the ministerial act provision were not used in that the area is totally developed, indicating that there is no significant effect on the environment. Ms. McDonald continues that the question of piecemeal annexation of islands avoids the ability of cities to negotiate their boundaries as outlined. The staff’s response in this case, to negotiate the boundaries with the City of Highland, as identified in this request, is not available to this area unless substantial portions of the city were reorganized and the City of San Bernardino would have to consent to that. Ms. McDonald reports that the staff report states that this is not new information since the discussion of realigning and reorganizing the Cities of Highland and San Bernardino boundaries has been discussed since the day the certificate of completion for the City of Highland incorporation was signed. Therefore, it is the staff’s view that, based upon the criteria required for a request for reconsideration, the information submitted by Ms. Hulse does not meet the statutory threshold or Commission policy. It is therefore staff’s recommendation that the request for reconsideration be denied.

Ms. McDonald notes for the record that this morning Ms. Hulse submitted a letter, which has been placed at each Commissioner’s place, regarding the request for reconsideration.

(It is noted that Commissioner Williams arrived at 9:05 a.m.)

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

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Susan Hulse states that her request for reconsideration pertains to all six island annexations. She will address several points which apply to all six. She states she has submitted 27 letters from residents who could not attend the hearing. She says the recommendation for denial alleges that she has not shown there is new evidence or that the information was overlooked or changed. She summarizes the letter submitted today and states she believes she has met the threshold required by state law and the Commission’s policy. She asks that the Commission reconsider its action approving the island annexation and repeal the relevant resolutions. She strongly believes the island annexation policy violates the rights of the landowners and voters of the County of San Bernardino and the affected cities. She says that all voters and landowners have the right to be fully informed of the ultimate economic effects of full incorporation and whether or not the annexing cities can afford the additional burden. She questions whether this is the right time or economy to shift the burden of developed unincorporated islands to a financially strapped city. She points out the predicted five-year lag for development of the Arrowhead
Springs property. She says the small islands satisfy two basic agendas of the staff, including avoidance of protest proceedings where there is opposition to the annexation, and the ability to trade off giving cities something they want by requiring them to take in land, which is not as desirable. She states that the LAFCO record on the island annexation policy and the implementation of that policy by staff is clear that island boundaries have been drawn and revised for the sole purpose of expediting the annexation process, piecemealing fiscal and environmental analysis and stripping away the protest rights of the citizens and voters. She alleges the Commission’s annexation policy is being interpreted by LAFCO staff in a manner that she believes is illegal and offensive to the intent of the LAFCO act. Her letter cites the letter of the law and includes an Attorney General opinion and at least four appellate court cases, which support her position and the position of the San Bernardino City Attorney. She quotes Myers vs. Tulare County LAFCO which says that LAFCO should remain free from entanglement in the legal cobwebs spawned by such considerations as manipulation of boundaries and fraudulent circumvention of the LAFCO act for the purpose of depriving the residents the right to vote, and based upon the same language in the law, in 1980 the California Attorney General is quoted as stating, “We do not believe that the legislature intended piecemeal annexation as a means to thwart citizen participation in the decision process.” She says that under very similar acts, the Attorney General stated his opinion that a court would also strike down an attempt to split an entire island of more than 100 acres into two areas so as to preclude an election under the equivalent of Section 56375.3.

Ms. Hulse does not believe that LAFCO staff has adequately advised the Commission on the law, and had the information been presented to the Commission, she believes the island annexations would not have been sought by the City nor expanded and approved by the Commission. She says the information is compelling and clearly shows significant information relative to the island annexations was withheld from the Commission and was overlooked when the Commission made its decision. She says that staff’s response to her request for reconsideration misconstrues the point that she was making about the cumulative fiscal impact of the multiple island annexations. She states that, based upon the fiscal information provided for each of the island annexation it is clear that deficit will exist, which must be covered by existing taxpayers within the City. She says that if that deficit is multiplied by the number of small pieces comprising the annexations, there will eventually be a bigger problem with the City’s ability to provide adequate emergency services throughout the City. She says this is true for the first six island annexations, the next proposed but not fully identified island annexations which were part of the Arrowhead Springs deal, and the future string of island annexations to eat up the rest of the large county islands separating San Bernardino and Highland. She states that no analysis has been done to determine that. She alleges that LAFCO staff and the Commission have deliberately and publicly admitted the boundaries of the island annexations were manipulated and established for the purpose of fitting in Section 56375.3 and to avoid the protest rights of the affected property owners. She says the island annexation policy has been deliberately manipulated to fit the rule by using common streets and roads as boundaries, giving the greatest latitude creating areas of less than 150 acres for annexation. She indicates that these streets and roads are not natural boundaries or impediments to the provision of services. She says the policy states that the Pacific Ocean, major drainage areas or the national forest are those natural boundaries.

She believes the City of San Bernardino has demonstrated an arrogant disregard for the Commission by their acts and omissions. She says the resolution was never amended by the City Council to expand Islands 1, 4, and 5 although City staff was requested and granted additional time to do this. She says the total acreage for Areas 1-6 was expanded from the initial 97 acres to the approved 344 acres, of which only 97 acres were covered in the resolution. She points out that this is not a minor adjustment and is more than 500 percent adjustment in land area and 300 percent increase in population to be served. She asks if anyone has asked the City Council if it approved that change.

Dan Bane, attorney for Ms Hulse, states that a number of citizens are willing to waive their time to speak in order to allow more time for Ms. Hulse to speak further. Mr. Bane addresses staff’s statement that there are no new facts or factors that were brought to light. He states that is not the standard of this Commission’s policy. He says there were significant factors overlooked, including that, in the application
by the City of San Bernardino, the City Attorney declined to sign the resolution citing Government Code Section 56375.3(b)(1) and 56375.3(b)(2). He says that these subsections indicate that the entire island granted must be 150 acres. He states this action does not constitute the entire island. He adds that the public outreach was insufficient in that a number of the islands were unilaterally increased in size after the City made its initial application. He says that, despite the fact that LAFCO increased the size, it does not appear that the City ever formally adopted that increase. He refers to Ms. McDonald’s statements regarding a previous Government Code section removing the 100-acre provision. He states that the 1980 provision appears to be the same as the current Government Code section and that the Attorney General opinion in those cases says that the actions of LAFCO were contrary to the intent of the statutes and the express court opinions and decided case law. He summarizes by stating that even if there was a reasonable difference on whether or not this current action complies with the law, LAFCO is supposed to be an unbiased and uninterested agency, therefore giving citizens the right to vote should be of no consternation to the Commission.

Don Hulse states he opposes the annexation.

Karen Melendrez states she has been a resident for 50 years and is happy being part of the County. She does not believe the County’s service should be removed without a vote. She says LAFCO staff has admitted that the boundaries of Area 1 were established by the City’s resolution and adjusted by the Commission to include additional territory. She says that, as noted in the City’s plan for services, the annexation submitted by resolution included approximately 97 acres. She reports LAFCO staff expanded the islands in November 2006 and February 2007 and those expansions increased the average to approximately 344 acres, which encompassed 3,300 people. She says that despite being instructed by the Commission, the City did not amend its annexation resolution and has never approved the expanded boundaries for Area 1, and the boundaries were expanded well beyond those proposed in 2005 based on the City’s understanding of the island annexation policy. She says that the boundary cut in half an unincorporated island based solely on the location of a north-south street and there is no legal justification for cutting the entire unincorporated island in half except for the specific purpose of satisfying the size requirements of Section 56375.3 to avoid the protest rights of the landowners and voters of the island. It is her opinion that the entire island will probably next be divided in half again to gobble up the entire island without allowing any landowner or voter protest. She alleges that when the boundaries of Area 1 were expanded the outreach required by LAFCO policy was not completed so that the residents and landowners in the expanded area did not receive essential information. She claims the staff report is inaccurate and should have been confirmed more carefully with City staff before the annexation was presented to the Commission for approval. She believes that simply advertising in the Sun and sending a single-page notice with a map are not outreach as outlined in Commission Policy No. 29.

Candy Rodriguez states that the area where she resides is over 250 acres, and as it is over 150 acres it should have been placed on a ballot for a vote. She says that chopping up the islands to avoid a vote is unfair. She contends that if this had placed to a vote the annexation would not have passed. She says it would have been fair to the people to allow them to vote on this annexation. She states that the Commission, as elected officials, took an oath to do right by the people. She hopes that the Commission will have an open mind and realize that this annexation is unfair as the citizens did not ask for annexation and should have been confirmed more carefully with City staff before the annexation was presented to the Commission for approval. She believes that simply advertising in the Sun and sending a single-page notice with a map are not outreach as outlined in Commission Policy No. 29.

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James Martin states he lived at 5589 N. Edgemont Drive for 47 years and has been totally satisfied with County services.

Phyllis Hodges states she has lived in the area since 2002. She believes the territory should remain in the County because the citizens did not vote on the annexation.

Laura Sullivan states she supports the comments made by previous speakers and adds that the state legislature gave the citizens the right to vote and it appears that LAFCO has attempted to circumvent that right by dividing the islands. She believes that in the simple interest of good government the citizens should be allowed to vote on this matter.

Barbara Sullivan states she lives at 5565 Edgemont Drive and is against the annexation and hopes the Commission will consider the feelings of the citizens.

Kevin Bush states that he owns four properties in the area. He does not believe the City will install sewers or any of the other amenities provided by a city. He says owners of rental properties will get stuck with the City’s rental program, which is very expensive.

Chairman Nuaimi closes the public hearing and calls for comments from staff to the statements presented. Ms. McDonald states staff has received two letters in support of Annexation Area No. 1. She says that Legal Counsel Alsop will respond to the issue regarding the Attorney General opinion. She stands by discussion held in 2005 regarding removing the stipulation regarding not being a part of a larger unincorporated area and she believes that, as outlined in the report, no new information has been provided that would point toward reconsideration of this proposal. She responds to the issue of requesting that the City readopt the resolution and says that when the islands were expanded discussion was held with the City of San Bernardino regarding amending the plan for service for submission to the Commission for its consideration. She says there was never a request made that the resolution be adopted but one would presume that the City of San Bernardino staff, in preparing the fiscal impact analysis and plan for service, would share that with the members of the City Council. Those requests were ongoing during the interim discussions on the issue of Arrowhead Springs and the continuing delay in addressing the island annexations. It was the request of the City that the two remain tied when, in fact, the islands could have moved forward much earlier. The Commission did accept the City’s request to maintain all items together.

Chairman Nuaimi clarifies that the updated plan for services analysis provided in November 2009 did cover the expanded areas for all the islands. Ms. McDonald states that the six that were submitted to the Commission that were modified and the boundaries that were addressed in the fiscal impact analysis in November encompass the areas that the Commission reviewed and approved.

Chairman Nuaimi comments on the issue of the outreach requirement and says that the fact is that the outreach requirement is one that the Commission imposed on agencies because the Commission did not want residents to come to this meeting for the first time hearing about an island annexation thinking that their taxes would increase and fees and assessments would be imposed upon them. The Commission mandated that cities provide an outreach program for island annexations in order to ensure that dialog occurred between the cities and the residents. He counters the argument that full discussion was not held with LAFCO’s attorney by stating that he was on the Commission when the island annexation policy was developed and extensive legal dialog and debate was held regarding what constituted an island, what defines “substantially surrounded,” and what provided breaks in service so that islands could be defined. He explains that often islands are formed as a result of friendly annexations and the state legislature provided tools to LAFCOs for dealing with islands by eliminating the right to protest in exchange for not imposing the current utility tax that exists within the City.
Chairman Nuaimi closes the public hearing and calls for further questions from the Commission. Commissioner Derry comments that he will not participate in the vote; however, his position has been clear in the past as a City Councilman and now as a member of the Board of Supervisors. He states that most of the citizens in attendance today are his constituents. He says that if he were participating in the vote he would vote for reconsideration.

Chairman Nuaimi states that in San Bernardino’s case in 2003 there were island annexations where protest proceedings were not enacted and Commissioner Derry spoke in favor. Commissioner Derry states that he learned his lesson and those areas were under 75 acres. Chairman Nuaimi states that the territory was determined to be islands and the legislature changed the definition of islands.

Commissioner Biane states that this is an issue that commissioners do not agree upon. He says that today it is important to commend Commissioner Derry for giving his constituents their say; however, he is in disagreement with Commissioner Derry, the policy of the Commission to promote and facilitate island annexations is appropriate and, as advised by counsel, is legal.

Commissioner Biane moves approval of staff’s recommendation, second by Commissioner Pearson. Commissioner Bagley states the legislation has given LAFCOs conflicting messages and he believes that if LAFCO ever errs on the side of establishing a policy it should err by allowing the citizens to vote. He says that he appreciates the comments of those present and they did not go unheard. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead).

(It is noted that Commissioner Derry leaves at 9:47 a.m.)

REQUEST FOR RECONSIDERATION SUBMITTED BY SUSAN HULSE OF THE COMMISSION’S APPROVAL OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3067B; AND (2) LAFCO 3067B – 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 2) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for reconsideration submitted by Susan Hulse of the Commission’s Approval of CEQA Statutory Exemption for LAFCO 3067B; and LAFCO 3067B – 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 2). Notice of the hearing was provided as required by law through publication in The Sun, a newspaper of general circulation. Individual mailed notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. She points out Area 2, which is territory in the area of Lynwood Drive. She states the boundaries in this area were created in 1959 under the Uninhabited Territories Act that allowed uninhabited territory with consent of the landowner to be annexed. She indicates on the overhead display that the only way to access City territory is through County territory. She says the request for reconsideration has identified the same primary issues regarding the assertion of not representing the entire unincorporated island, CEQA determinations, and financial impacts. Staff disagrees and points out that if the legislature intended to require that islands be totally surrounded it would have said so in the provisions of Section 56375.3. She says the question of “substantially surrounded” is a relevant issue. Island Area No. 2 clearly meets the island characterization. As indicated before, fiscal impacts for annexation of this territory have been discussed and disclosed and
staff does not believe that new information has been provided, nor has new information been provided regarding a CEQA exemption issue and the ministerial action that it represents. As previously identified, staff recommends, based upon the Commission’s policies and the provisions of the reconsideration statute in Cortese-Knox-Hertzberg, that the Commission deny the reconsideration request.

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

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Susan Hulse states that based upon the vote on Island 1 she believes the following may be futile. She truly believes the public has a right to know and participate in the decision-making that affects their properties and levels of service made available when the annexing city runs out of money. She contends that, as stated by the court in the Myer case and quoted by the Attorney General, staff’s implementation of the LAFCO island annexation policy is infected with subterfuge, evasion and illegality. She says this could not have been the intent of the Commission when it approved the policy or the island annexation. She does not believe that LAFCO staff has dotted the i’s or crossed the t’s in providing information on which the Commission could have made an informed decision on the island annexations. She says that these defects in the process are compelling and she still believes that it justifies the Commission’s approval of her request and the rescission of the remaining island annexations. She addresses Chairman Nuaimi and states that he said in November that this Commission did the same thing to Fontana. She asks him if he is aware of the differences between what occurred in Fontana versus this case. She says the City of Fontana has an Annexation Coordinator who was available to answer questions. In this case, she says that she was given a phone number for Adam Raymond from the City Manager’s Office who told her there was nothing that could be done. She says that the residents of Fontana had a public hearing prior to adoption of the resolution. She maintains that the citizens of San Bernardino were not made aware of the adoption of the resolution because it was intermingled with the Arrowhead Springs annexation. She says that the City of Fontana spent months doing outreach before and after the annexation, and the City of San Bernardino did not do so in this case. She contends that she asked LAFCO staff for a copy of the outreach materials which staff could not provide. She says she asked three City departments for a copy of the outreach materials but was not provided with that material. She says LAFCO and the City took away the citizens’ constitutional right to vote and treated them like stepchildren. She says the community does not understand how LAFCO, as an elected body representing the citizens, can say the City is right and the citizens are wrong.

Dan Bane, attorney with the law firm of Sheppard Mullin Richter & Hampton for Ms. Hulse, states that the wisest thing said today was that where reasonable minds differ we should err on the side of giving citizens the right to vote. He says he feels consternation to hear that the legislature intended this type of action where island annexations can occur without protest. He states the Commission is ramming a square peg in a round hole by sawing off the corners and says that it appears that the Commission’s stance is based on the interpretation of “substantially surrounded.” He maintains that provision has been decided by four appellate court cases and by an Attorney General opinion. He believes it would be appropriate for this Commission and would show a good-faith effort to give these citizens their right to vote and allow them to have their input and to address the cumulative fiscal impacts. Mr. Bane states that the City Attorney did not agree with these annexations. Chairman Nuaimi asks Mr. Bane to not repeat statements that were made previously.

Don Hulse asks the Commission to reconsider and give the citizens the right to vote.

Karen Melendrez states there is no legal justification for chopping up small arms of an entire unincorporated island except for the specific purpose of satisfying size requirements of Section 56375.3 to
avoid protest rights of the landowners and voters of the island. She says the entire island will next be divided again in order to gobble up the entire island without any landowner or voter protest. She asserts that using the imaginary boundary of a street does not satisfy the geographic or service barrier standard for drawing boundary lines, and Areas 2, 3 and 6 can be equally accessed and serviced by the County through the remnant of the entire unincorporated island until such time as the entire island is annexed. She says that Area 2 is only 67 percent surrounded and the City has adopted 75 percent as noted in its letter dated March 17, 2005. She questions if the County surveyor provided this information as required by the policy workshop of March 2005.

Candy Rodriguez states that she agrees with Susan Hulse and gives her time to speak to Ms. Hulse so that she can read letters to the Commission. Chairman Nuaimi declines to allow that.

Laura Sullivan and Barbara Sullivan were not in attendance, but Chairman Nuaimi notes their opposition for the record.

Chairman Nuaimi closes the public hearing and calls for further questions from the Commission.

Mr. Alsop states the issue for consideration is whether there is new information that justifies reconsideration and adds that he wishes to respond to Mr. Bane’s statement that there are court cases and Attorney General opinions interpreting the statute. He clarifies that there are court cases and Attorney General opinions interpreting the prior statute, not the current statute, which is not the same.

Commissioner Biane moves approval of the item, second by Commissioner Mitzelfelt. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead)

REQUEST FOR RECONSIDERATION SUBMITTED BY SUSAN HULSE OF THE COMMISSION'S APPROVAL OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3067C; AND (2) LAFCO 3067C – 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 3) – APPROVE STAFF RECOMMENDATION

(It is noted that Commissioner Derry returns at 9:50 a.m.)

LAFCO conducts a public hearing to consider a request for reconsideration submitted by Susan Hulse of the Commission’s Approval of CEQA Statutory Exemption for LAFCO 3067C; and LAFCO 3067C – 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 3). Notice of the hearing was provided as required by law through publication in *The Sun*, a newspaper of general circulation. Individual mailed notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Ms. McDonald states that Island 3 is east of area 2. She states that her presentation and response on the issues remain the same as in the previous items. LAFCO staff has addressed the issue of the entire island of unincorporated territory. Issues regarding fiscal, cumulative and environmental impacts for the six islands have all been addressed. Staff does not believe that this avoids the ability of cities to negotiate their boundaries. As stated for the previous items, staff recommends denial of the request. Ms. McDonald clarifies that the fees paid by Ms. Hulse will be reimbursed upon receipt of those fees from the County.
Chairman Nuaimi calls for questions from the Commission.

Commissioner Cox requests that the map be left visible on the overhead display during public testimony and that those giving testimony identify if they reside in the island in question.

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Susan Hulse states she does not live in Area 3 and says that the territory south of Area 3 is a County island. She says it is her contention that Area 3 is part of the larger territory to the south. She refers to service issues in this area and states there is a cul de sac that can only be accessed through County territory. She questions how that would improve access to the City. She asks that this information be considered in the Commission’s decision on this item. Chairman Nuaimi states the annexation goes to the centerline of the road and that access is provided through the City.

Dan Bane states that there is no case law with the present iteration of the act; however, the cases cited interpreted a 1980 provision, which contained substantially identical language to the present act. He adds that all of the opinions, including the Attorney General opinion, interpret what “substantially surrounded” means. He explains that he has referred to a prior version including the interpreting case law and tried to determine what a court would decide constitutes “substantially surrounded” and “entire island.” He encourages the Commission to review the letter submitted today because it sheds light on the issues.

Karen Melendrez states she does not reside in this area. She reiterates that the citizens should have a vote in this matter. She says there are many citizens in the area who are aged and are not comfortable coming to the hearing to speak.

Candy Rodriguez states she lives in Area 1. She notes that she is in opposition to the item.

Chairman Nuaimi notes for the record that Laura Sullivan is in opposition to the item.

Chairman Nuaimi closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Cox moves approval of the item, second by Commissioner Pearson. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead).

REQUEST FOR RECONSIDERATION SUBMITTED BY SUSAN HULSE OF THE COMMISSION’S APPROVAL OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3067D; AND (2) LAFCO 3067D – 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 4) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for reconsideration submitted by Susan Hulse of the Commission’s Approval of CEQA Statutory Exemption for LAFCO 3067D; and LAFCO 3067D – 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 4). Notice of the hearing was provided as required by law through publication in The Sun, a newspaper of general circulation. Individual mailed notice of this hearing was provided to affected and interested agencies, and those individuals and
Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. She says LAFCO 3067(D) is Island Area No. 4. She says this area complies with Commission policies, which were redrafted after 2005. With regard to the allegation that piecemeal annexation avoids the ability of cities to negotiate their boundaries, she points out the city and sphere of influence boundaries for the City of San Bernardino and City of Highland. She says some of the speakers have indicated that they wish to negotiate the boundaries with the City of Highland as well as the City of San Bernardino. She reports that over the years since the incorporation of the City of Highland this has been a matter of discussion. She points out that the Cities of San Bernardino and Highland were requested to address the issues of spheres of influence during their service reviews because the precursor to annexation is the determination of the sphere of influence. She says that neither city requested a change in the sphere boundaries; however, a committee exists comprised of representatives of both cities to realign and negotiate exchanges of territory. On two occasions territory was exchanged between the City of San Bernardino and City of Highland and LAFCO staff has assisted by providing information. She says one complication in the realignment process is the inclusion of the San Bernardino territory in the Inland Valley Development Authority, since the City of Highland does not sit on that board. LAFCO staff has discussed the possibility of creating a clear boundary that would use centerlines of streets, highways and freeways to prevent service confusion as shown on the overhead display. She explains that the spheres of influence were reaffirmed for both cities in this area during their respective services reviews; however, that does not preclude the ability to negotiate city boundaries. Ms. McDonald reiterates as outlined in the staff report that it is staff’s position that the request for reconsideration be denied.

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

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Susan Hulse states she does not live in Area 4, but believes Area 4 is part of the larger island attached to Area 5. She states Commission policies and legislative rulings do not require boundaries to be the centerline of the street, although it is past practice. She asks that the letters that were delivered today be made part of the record. She says the City never resolved to expand into Area 4 and this was done at Commissioner Hansberger’s recommendation in November 2007. She states that in February 2007 City staff was requested to obtain City Council approval and Commissioner Biane commented that he hoped the City would take that action by the April 2007 meeting; however, the City did not take that action. She believes that taking Del Rosa Avenue/Drive is wrong, as there was a problem with one side of the street being in San Bernardino and the other side of the street being County territory. She says that when fire trucks arrived there was question about which side of the street accidents had occurred. She believes that when the City of Highland incorporated it became more complicated because the City of San Bernardino has one corner, the City of Highland has another corner and the County has another corner; however, that should not be a problem because there is a mutual agreement that says whichever agency arrives first can solve the problem. She again requests that the citizens be given a vote.

Dan Bane requests that all his previous comments are incorporated by reference as well as all comments and letters submitted by the general public.

Don Hulse states he does not live in Area 4 and believes that that Area 4 and Area 5 are the same area. He says that 23 years ago this same issue came up for a vote and he would like the right to vote again.

Candy Rodriguez submits signed petitions from voters and landowners.

Chairman Nuaimi notes for the record that Laura Sullivan is in opposition to the item.
William Deon lives in Area 4 at 25152 19th Street and states he speaks for himself and his wife and asks that the citizens be given the right to vote.

Chairman Nuaimi closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Biane moves approval of the item, second by Commissioner Pearson. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead)

REQUEST FOR RECONSIDERATION SUBMITTED BY SUSAN HULSE OF THE COMMISSION’S APPROVAL OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3067E; AND (2) 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) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for reconsideration submitted by Susan Hulse of the Commission’s Approval of CEQA Statutory Exemption for LAFCO 3067E; and 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). Notice of the hearing was provided as required by law through publication in The Sun, a newspaper of general circulation. Individual mailed notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that Island Area No. 5’s northern and eastern boundaries are defined by the City of San Bernardino and the southern boundary is the City of Highland. She says this is the territory that is 130 acres and staff believes this area is substantially surrounded and constitutes the entire island. The fiscal impacts related to service delivery have been addressed and there has not been a violation of CEQA. She reiterates her prior statement that the negotiation of the boundaries could take place through facilitation by this Commission or through the existing committee comprised of members of the Cities of San Bernardino and Highland. She states that staff recommends denial of the request for reconsideration.

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

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Chairman Nuaimi notes that Howard Below and Catherine Below are not present and have indicated opposition to Items 8-13.

Vern Barnum speaks in favor of the staff recommendation and commends LAFCO for its work. He states he resides in Area 5 and has been a member of the citizen patrol in the area for a number of years and believes that police protection in the County islands is inadequate. He says there is only one deputy to cover 40 county islands and it often takes two hours for a deputy to respond to an incident. He says the City has determined that it will be able to serve the areas adequately for both police and traffic control. He adds that city trash pickup would be excellent, as currently Cal Disposal does not provide good service.
Judith Barnum, 6798 Golondrina Drive, states she lives in Area 5 and believes the City would provide better service in enforcing code requirements, as well as water and trash service.

Sesario Perez, 5624 Wadsworth Ave., Highland, states that he has experienced two annexations, one in the state of Texas and one in Highland. Mr. Perez states that when his property was annexed to the City of Highland the citizens were promised that the City of Highland would become a prosperous city and would serve all its citizens equally. He says that he owns a home that was vandalized and is having difficulty getting the individual prosecuted by the Sheriff’s Department. He believes that these annexations should be put on hold until the City is more stable financially. He refers to an annexation in which he was involved where some people lost their homes because the City and developers took their property through eminent domain to build malls and expresses concern that the same thing could occur here.

Elizabeth Murphy, 6813 Golondrina Drive, states she has lived at this address for 52 years and this has come up a number of times in the past. She recalls that the mayor once came to a public meeting and the sentiment of the community has always been “no.” She believes the Commission has failed in its duty to the public by not allowing the citizens to vote.

Susan Hulse states she lives in Area 5 and questions why the centerline of the street would be the boundary. She points out that the City of Highland is directly below all these areas. She says that this area should be made part of the City of Highland rather than the City of San Bernardino. She again emphasizes that the Commission removed her right to vote. She says that staff was instructed to facilitate the meetings but she does not believe that the Cities of Highland and San Bernardino were encouraged to participate. She believes that trash and Sheriff service in her area is excellent. She says that County services in all County islands are excellent. She asks that all testimony and letters that have been submitted be considered. She does not believe that the Commission knew that the original submission was 97 acres and was increased to 337 acres without City Council approval. She says that new evidence has been presented. She points out that there are three actions the Commission could take: 1) deny her request; 2) approve her request; or 3) continue the matter for further review and community outreach.

Dan Bane requests that all public comments, oral or written, from Items 8-11 be incorporated into the administrative record.

Don Hulse states the County islands receive good trash and Sheriff services. He requests the right to vote.

Candy Rodriguez states that she is opposed to the annexation and supports Susan Hulse.

Karen Melendrez, lives in Area 5 and believes service by the County is excellent. She says outreach required by LAFCO policy was not completed. She says the boundaries of Area 5 were established by City resolution and then adjusted by the Commission to expand the area to include additional territory. She continues that, as noted in the City’s plan for services dated 2009, the annexation included 97 acres, 1,100 people, and LAFCO staff expanded the islands in November 2006, and the Commission expanded the islands in February 2007. She says that the expansion increased the acreage to approximately 344, which encompassed 3,300 people. She says that, despite being instructed by the Commission, the City did not amend its annexation resolution and has never approved the expanded boundaries for Area 5. She adds that most of Area 5 was not considered by the City to be eligible for island annexation in 2005 and the ultimate boundaries of Area 5 have been expanded well beyond those proposed by the City in 2005 and have been gerrymandered to connect to Modified Area 5 separated by a roadway for the sole purpose of meeting the requirements of Section 56375.3 and to avoid a public protest. She says that, as clearly expressed by LAFCO’s Executive Officer at the November 18, 2009 hearing, Areas 4 and 5 were created separately in order to meet the threshold of an island annexation and there is no legal justification for cutting the entire unincorporated island into pieces, except for the specific purpose of satisfying the size requirements of this section to avoid the protest rights of owners. She says the entire island will probably next be divided with several north-south streets into three or four new islands. She says LAFCO staff did...
not facilitate any meetings between the Cities of San Bernardino and Highland to work out the boundary issues as was directed by the Commission at the October 2006 meeting. She contends that to date there have been no discussions between the two cities on this issue and Areas 4 and 5 were created in direct violation of the principals of law and the 1980 Attorney General opinion discussed in Ms. Hulse’s letter. She says when the boundaries were expanded the outreach required by LAFCO policy was not completed so that the residents and landowners in the expanded area did not receive essential information about the annexation. She alleges the staff report on outreach is inaccurate and should have been confirmed more carefully with City staff before the annexation was presented to the Commission for the approval. She concludes by stating that she does not wish to be part of a City that cannot manage its problems.

Chairman Nuaimi notes for the record that Laura Sullivan is in opposition to the item.

Garrett Grosich states he lives in Bloomington and is here today to show his support for Ms. Hulse and the other residents in the affected areas. He does not believe the situation has been addressed legally and believes LAFCO should ask for an Attorney General opinion before taking action. He commends Commissioner Derry for admitting that he made an error on annexation issues in the past and taking the position that the residents be allowed to vote. He suggests that Commissioner Derry or Supervisor Gonzales request an Attorney General opinion.

Chairman Nuaimi closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Biane explains the makeup of the Commission and states that the Commission is comprised of two City representatives, two members of the Board of Supervisors, two Special Districts representatives, one member of the public, and one alternate from each of those categories. He explains that this is a true representative form of government and the members of the Commission make decisions on behalf of their constituents.

Commissioner Biane asks Legal Counsel Clark Alsop to speak regarding Attorney General opinions. Mr. Alsop states that the Attorney General will issue opinions upon requests by certain groups, the County for example. He says that LAFCO does not have the right to ask directly, nor do cities. He explains that the courts sometimes follow and sometimes disagree with Attorney General opinions, and sometimes the Attorney General refuses to issue an opinion. Mr. Alsop does not believe an Attorney General opinion is needed in this case.

Commissioner Biane moves approval of the item, second by Commissioner Smith. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead)

REQUEST FOR RECONSIDERATION SUBMITTED BY SUSAN HULSE OF THE COMMISSION’S APPROVAL OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3067F; AND (2) LAFCO 3067F – 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 6) – APPROVE STAFF RECOMMENDATION

LAFCO conducts a public hearing to consider a request for reconsideration submitted by Susan Hulse of the Commission’s Approval of CEQA Statutory Exemption for LAFCO 3067F; and LAFCO 3067F – 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 6). Notice of the hearing was provided as required by law through publication in The Sun, a newspaper of general circulation. Individual
mailed notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

Executive Officer Kathleen Rollings-McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that this area is north of Pacific St. as shown on the overhead display. She reiterates that staff has identified its position on fiscal and environmental impacts and that CEQA has not been violated. With reference to piecemeal annexations, staff has identified its position regarding the exchange of territory and the renegotiation and realignment of boundaries. Staff believes that the test and threshold for reconsideration has not been met and recommends denial of the request for reconsideration.

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

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Susan Hulse states she has spent $6,600 on this request and believed the Commission would consider her points. She says that she has been told this would be a futile effort. She reiterates that the law says that the people have the right to vote on an island consisting of over 150 acres and the Commission has taken away the residents’ right to vote. She states that she contacted Assemblyman Emmerson who brought her to Sacramento on four occasions to hear her position, and his opinion was changed. She says that Island 6 is part of the 400 acres including Islands 4 and 5. She again asks that the islands be considered in their entirety. She points out that no one involved in these annexations voted for any of the Commissioners making these decisions. She states she is very disappointed.

Dan Bane requests that all the public comments written and oral be incorporated into this matter from Agenda Items 8-12.

Donald Hulse states he believes the Commission does not represent him as neither he nor any of the people in these areas voted for the members of the Commission.

Candy Rodriguez has no comment. Commission Nuaimi notes for the record Ms. Rodriguez’s opposition to the item.

Chairman Nuaimi closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Cox moves approval of the item, second by Commissioner Pearson.

Commissioner Bagley states for the record that he appreciates Ms. Hulse’s tenacious work. He states that the citizens who incorporated the City of Highland made a determination years ago that they did not want to be part of the City of San Bernardino, so it is problematic when there is an island between these two incorporated cities. If there is one redeeming value to being incorporated into a city, the residents will have the ability to vote on a smaller scale for the representatives who make determinations in their lives and how municipal services are paid for. He explains that LAFCO’s job is to look at the embedded islands and make determinations on who is best suited to provide municipal services. The areas are not the same as they were 20 years ago and have become more urbanized. He does, however, feel it is important that the public have the right to vote. Mandates are placed upon LAFCO that are beyond this Commission’s determinations, so the passions expressed here should be expressed to the state legislature. He thanks the citizens and understands their frustrations. He encourages the citizens to stay involved in the process.

Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain:
None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead)

Chairman Nuaimi comments that he appreciates everyone here taking the time to come and voice their opinion. He explains that all fees paid by Ms. Hulse will be reimbursed upon receipt of the reimbursement from the County, so this is not a $6,600 futile effort. His opinion is that piecemeal friendly annexations in the past have occurred which do not honestly support efficient delivery of service. He says the state legislature realized that and has often reconsidered the issue of protest proceedings in island annexation, but left the definition of what constitutes an island vague. In doing so, they empowered LAFCOs to make that determination. He says that there is not a constitutional right to vote when it comes to an organization boundaries. He says that prior to the actions in the past decade, cities would come to LAFCO and LAFCO had the discretion to decide whether the territory was an island. He says that he believes decisions were based upon whether there were resources being generated in the island that the county wanted to keep for their general fund, so no annexations of islands were made. In the last decade the law was changed and cities were given the tools to address islands through LAFCO’s interpretation of what is an island and what is “substantially surrounded.” He comments that he is proud of the outreach effort Fontana made to its citizens. He believes San Bernardino will do a good job of welcoming its new residents to the community. LAFCO gave cities the tool and certainty that if they matched and used those tools it was a ministerial action on LAFCO’s part, meaning LAFCO has no discretion. He points out that Supervisor Gonzales sat on this Commission at the time those tools were defined. He says that ideally one entity should provide municipal services to spheres of influence. Cities should be able to provide municipal services within five years to their spheres. The state legislature gave LAFCOs the responsibility to define how tools are used and cities have gone forward and incorporated islands. He believes cities are doing a good job because it is good government. It is his hope that this explanation will help the residents to understand why LAFCO did what it did.

THE HEARING IS ADJOURNED AT 11:05 A.M. AND RECONVENES AT 11:25 A.M.

CONSIDERATION OF: (1) REVIEW OF MITIGATED NEGATIVE DECLARATION PREPARED FOR THE HI-DESERT WATER DISTRICT WATER RECLAMATION FACILITY, WASTEWATER TREATMENT PLANT AND SEWER COLLECTION SYSTEM PROJECT (SCH NO. 2009061035), AS CEQA RESPONSIBLE AGENCY FOR LAFCO 3084; AND (2) LAFCO 3084 – HI-DESERT WATER DISTRICT EXPANSION OF SERVICE UNDER ITS AUTHORIZED SEWER FUNCTION TO INCLUDE COLLECTION, TREATMENT, RECLAMATION AND DISPOSAL – APPROVE STAFF RECOMMENDATION

(It is noted that Legal Counsel Alsop leaves the hearing; Special Counsel Jeff Goldfarb takes his place at the dais.)

LAFCO considers Review of Mitigated Negative Declaration Prepared for the Hi-Desert Water District Water Reclamation Facility, Wastewater Treatment Plant and Sewer Collection System Project (Sch No. 2009061035), as CEQA Responsible Agency for LAFCO 3084; and LAFCO 3084 – Hi-Desert Water District Expansion of Service Under its Authorized Sewer Function to Include Collection, Treatment, Reclamation and Disposal. Notice of the hearing was provided as required by law through publication in the Hi-Desert Star, a newspaper of general circulation, through publication of an 1/8th page legal ad in lieu of individual notice because the number of notices to be provided would have exceeded 1,000. Individual mailed notice of this hearing was provided to affected and interested agencies, and those individuals and agencies requesting mailed notice.

LAFCO Analyst Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Tuerpe states that LAFCO 3084 is an application by the District to expand the service description of its active sewer function to allow it to begin providing sewer service.
Mr. Tuerpe states that the District’s legal counsel is Best Best & Krieger, as is the Commission’s. At the beginning of the processing of this application, the Commission did not approve a conflict of interest waiver for legal counsel; therefore Jeff Goldfarb is now representing LAFCO.

Mr. Tuerpe explains that since 1976, the active services of the District included the sewer function, but with service descriptions limited to planning and engineering, in preparation of the District providing the actual service in the future. Additionally, since that time the Colorado River Basin Regional Water Quality Control Board (hereafter Regional Water Board) has identified the District as the appropriate sewerage agency in the area whenever such services become necessary. Mr. Tuerpe notes that the expansion of a service description, as with the activation of a function, cannot be limited to a specific portion of a district; it is available throughout its jurisdiction. Mr. Tuerpe notes that approval of the District’s request would allow the District to proceed in development of the regional wastewater treatment plant. Construction of this plant is in direct response to the Regional Water Board’s determination that nitrates be reduced in the groundwater from the unregulated discharge of wastewater. As the lead agency, the District has undertaken a project to actively collect, transport, treat, reclaim, and dispose of wastewater through development of the regional treatment plant.

Mr. Tuerpe points out on the overhead display Phase 1 of the project, anticipated to initially convey wastewater from the central portion of the Town of Yucca Valley along 29 Palms Highway currently discharged to septic tanks and existing package treatment plants to the proposed Wastewater Reclamation Facility. In the future, if Phase 1 facilities do not adequately protect groundwater quality or should further capacity be needed, Phase 2 and Phase 3 facilities will be designed. He points out those phases on the overhead display. He says that, additionally, the District has confirmed that the plant is anticipated to accept septage from individual septic tanks and subsurface disposal systems from within the entirety of its boundaries. In support of the project, the Town of Yucca Valley and the Regional Water Board have adopted resolutions of support for the project.

As for environmental considerations, Mr. Tuerpe states that the Commission is a responsible agency for the expansion of the range of services provided under the District’s existing sewer function. The Commission’s environmental consultant, Tom Dodson, is the District’s environmental consultant for this matter. Therefore, Mr. Dodson has recused himself from the LAFCO processing of this application. LAFCO staff has reviewed the final mitigated negative declaration that was prepared for the District’s project and has determined that the District’s environmental assessment is adequate for the Commission’s use in its review of LAFCO 3084 as a CEQA Responsible Agency.

Mr. Tuerpe concludes by stating that LAFCO staff supports expansion of authorized services of the active sewer function for Hi-Desert Water District in order for the District to actively provide sewer service within its boundaries.

Chairman Nuaimi calls upon Ed Muzik, General Manager, Hi-Desert Water District, to speak. Mr. Muzik states the District fully supports staff’s recommendation. He explains that the Yucca Mesa area is excluded from the area to be sewered. Chairman Nuaimi asks if, in the future, the Yucca Mesa area needs a sewer treatment facility it would be a separate facility. Mr. Muzik confirms that that is correct. Chairman Nuaimi states that he does not believe there has been a fiscal impact analysis done determining the rate structure for future customers. Mr. Muzik states that is correct. Chairman Nuaimi asks what the time frame is for that. Mr. Muzik states the District is now developing its assessment district and within six to 12 months the rate review should be completed. Chairman Nuaimi asks about generating the $121 million for the project cost and asks if, without this determination, the District is precluded from applying for federal and state funds. Mr. Muzik states the District must become the sewer ing authority in order to go forward. The District Board has indicated that, if this does not occur, septic prohibition will be imposed in 2015.

Chairman Nuaimi calls for questions from the Commission.
Commissioner Mitzelfelt asks how an outside entity would mandate a sewer system causing loss of local control. Mr. Muzik states a similar issue has occurred in Los Osos and a law was passed requiring the local agency to provide the sewer system. He states that the District is trying to avoid that scenario and is applying for as much grant funding as possible in order to minimize the impact to its customers. Chairman Nuaimi asks if it would result in a moratorium or a prohibition against additional development. Mr. Muzik states that would probably be the case.

Ms. McDonald explains that the Yucaipa Valley was subject to the same situation in the Dunlap Acres area, which mandated the development of a regional wastewater treatment plant and removal of septic systems due to groundwater contamination. She says that with the concurrence of the County the assessment district for funding the regional system included territory outside the Water District’s boundaries and the Water District moved forward with the mandate. During the interim, there was, in fact, a moratorium on new construction and some prohibitions were made on expansion of existing residences if the load increased the size of the septic system that was needed.

Chairman Nuaimi asks if the Water District is also the Watermaster for the basin. Mr. Muzik states a separate entity is the Watermaster, but the same Board of Directors governs it. Chairman Nuaimi asks if part of this treatment plant would take the effluent for recharge purposes. Mr. Muzik confirms that is correct. Chairman Nuaimi asks if 250 feet have been recharged through the feeder system and if the expectation is that this would then allow for full recovery of the basin. Mr. Muzik explains that the goal of the District is to recharge more water when it is available and the District gets its water from Mojave Water Agency. Given the current conditions in California, the current allocation is five percent, so Mojave Water Agency gets only five percent of its entitlement of approximately 80,000 acre feet. Mr. Muzik thanks LAFCO staff for its assistance in this process.

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Bill Horne states that he is not opposed to a 100 percent reclamation plan, but EPA grants of close to $2 million have spent so far. He says that every drop of water that goes into the basin must be bought back from Mojave Water Agency so the water is not being reclaimed. He states that in 1999 the water would be recharged and put into the pipeline coming down from Mojave Water Agency, placed into the basin and held for six months so many feet away from the wells and the water could be used as potable water. He says that that, however, has been changed to require the water to be held for 16 years or more. He notes that LAFCO’s staff report states that Phase 1 could start and finish the wastewater treatment plant if Phase 1 lowers the nitrate levels, which are now below the maximum contaminant level. He contends that the reason the nitrates rose to start with is that the water rose and intercepted the first 200 feet of the land, which was saturated with nitrates and other material. He says that this has been known for years. He says that the staff report states that the high nitrate levels were taken from a production well on the Joshua Tree Retreat. He says this is outside the boundaries of the Hi-Desert Water District. He says LAFCO staff has omitted from the map the unserved area of about 10 square miles between the Ames Basin and the Warren Valley Basin. He says the Ames Basin is in high overdraft and the residents of the Yucca Mesa area are served by only one well from the Hi-Desert Water District. He says the judge stated that the water produced in the Warren Valley Basin stays in the Warren Valley Basin, however there is a space of 10 square miles between the Warren and Ames basins, which includes many homes being served.

Ramon Mendoza states he belongs to a corporation and has provided the alternate bid to the Hi-Desert Water District. He says the corporation can take care of Phases 1, 2 and 3 producing clean water and cleaning black water for $100 million. He says Phase 1 only is projected at $125 million. He says the company he represents intends to build units that can do the work within the Town of Yucca Valley. He points out that preserving natural resources means preserving the existing water, not importing water. He says this affects the entire state because the water being obtained from the delta is polluted and the reason...
the aquifers are polluted is because polluted water is being discharged into the basin. He says there is no proof that the septic tanks are polluting the area. He states he was a member of the Regional Water Quality Control Board and resigned in order to join the company he now represents because that company has a better idea. He says he was also a member of the outreach group for the Hi-Desert Water District and when that group asked for data the only data available came from the company he represents. He contends his company is the only entity that can tell which septic tanks are polluted and which are not. He is concerned about the hydrogeological units and questions how it will be measured to insure that water does not go down to Joshua Tree. He comments that water is moving faster than USGS says it is and that USGS’s budget was eliminated from the delta, which shows that they are not measuring total nitrogen and e coli, but are adding salt. He says he has salt on his swamp cooler. He says that an economic study was not done. He comments that water is now being produced from the atmosphere, from kit plants and with an electrogravitic coupling which cleans the system and can be produced inexpensively. He says that there are no fire hydrants in the area and he believes that an assessment district would be a waste of time.

Dave Mahaffey states that he has worked in the wastewater field for many years and that he has the ability to take wastewater from septic tanks from the ground. He contends he would have the ability to then turn the desert green. He says he has documentation including lab reports where the faucet spigot feeds the community and it is clear that the delta water, in fact, is 5,200 times over the EPA limits. He says he has lab tests that will identify the e coli content or inherent bacteria. He submits documentation that he says will show that cleaner water can be made from wastewater.

Chairman Nuaimi closes the public hearing and calls for further questions from the Commission. There are none.

Commissioner Cox moves approval of the item, second by Commissioner Pearson. For clarification purposes, Chairman Nuaimi reads the staff recommendations. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Biane, Cox, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead).

Counsel Goldfarb leaves the dais; Legal Counsel Alsop returns to the hearing.

SERVICE REVIEW FOR THE COMMUNITY OF YUCCA VALLEY WHICH INCLUDES THE REVIEW OF COUNTY SERVICE AREA (CSA) 70 IMPROVEMENT ZONE R-26, CSA 70 IMPROVEMENT ZONE R-29, CSA 70 IMPROVEMENT ZONE W-4, AND CSA 70 IMPROVEMENT ZONE TV-5, AND THE FOLLOWING SPHERE OF INFLUENCE UPDATE/AMENDMENT REVIEWS:

A. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3134; AND (2) LAFCO 3134 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR TOWN OF YUCCA VALLEY

B. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3140; AND (2) LAFCO 3140 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR HI-DESER Water District

C. CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3142; AND (2) LAFCO 3142 - SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR YUCCA VALLEY AIRPORT DISTRICT - APPROVE STAFF RECOMMENDATION

(It is noted that Commissioner Biane leaves at 11:55 a.m.)

LAFCO considers Service Review for the Community of Yucca Valley which Includes the Review of
County Service Area (CSA) 70 Improvement Zone R-26, CSA 70 Improvement Zone R-29, CSA 70 Improvement Zone W-4, and CSA 70 Improvement Zone TV-5, and the following Sphere Of Influence Update/ Amendment Reviews: CEQA Statutory Exemption for LAFCO 3134 and LAFCO 3134 - Service Review and Sphere Of Influence Update for Town of Yucca Valley; CEQA Statutory Exemption for LAFCO 3140; and LAFCO 3140 - Service Review and Sphere Of Influence Update for Hi-Desert Water District; and CEQA Statutory Exemption for LAFCO 3142; and LAFCO 3142 - Service Review and Sphere Of Influence Update for Yucca Valley Airport District.

Ms. McDonald presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference herein. Ms. McDonald states that she will abbreviate her report in the interests of time. She states that the staff report outlines information related to the Yucca Valley community. She says that the staff recommendations include a minor expansion of the Hi-Desert Water District sphere of influence in the north, assignment of a zero sphere of influence to the Yucca Valley Airport District, affirmation of the existing coterminous sphere of influence for the Town of Yucca Valley, and retention of the Yucca Valley Community definition as the sphere of influence for the Hi-Desert Water District as it has been established for more than 30 years. She states that the staff report reviews all issues relating to finances and operations.

She explains that the zero sphere of influence recommendation for the Yucca Valley Airport District is based upon staff concerns regarding its financial viability, the location of the airport and its inability to grow, the loss of its FAA designation precluding it from seeking FAA funding, and problems associated with its past general manager which prevent it from seeking state funding until the $1.2 million embezzlement is resolved.

Chairman Nuaimi states that, considering the history provided in the staff report, including the conscious decision that removed Yucca Mesa from the incorporation proceedings of the Town of Yucca Valley, and the Town’s rescission of its application to expand its sphere of influence, he would not support expanding the Town’s sphere beyond the current sphere.

Commissioner Derry moves approval of the item, second by Commissioner Cox.

Chairman Nuaimi opens the public hearing and calls upon members of the public who wish to speak on this item.

Ms. McDonald states that each Commissioner has been provided with a packet of materials from the Stop Yucca Mesa Annexation Coalition.

Elizabeth Karman, resident of Yucca Mesa, thanks Ms. McDonald and LAFCO staff for a very well done report.

David Cooper, resident of Yucca Mesa, states he is in support of staff’s recommendation and states that the community would prefer to be labeled as the Community of Yucca Mesa as opposed to being included with the Community of Yucca Valley.

Robert Dunn, Vice President of the Yucca Valley Airport District, states the Airport District disagrees with the staff recommendation and states that the District does receive public funding, including a CalTrans grant. He says the Governor’s Office of Emergency Services did approve a grant for $1.8 million, of which the general manager embezzled $1.3. He explains that the remaining funds were never deposited with the District and the court decided that both the State of California and the District were defendants. He says the District does experience revenue challenges, but it is reapplying for FAA funds and the District requests that the current sphere of influence be affirmed. He comments that LAFCO staff has been extremely helpful, especially Michael Tuerpe.
Lori Herbel, Mayor Pro Tem for the Town of Yucca Valley, thanks the Commission for affirming the Council’s decision to withdraw its application to expand its sphere of influence by 22.4 square miles. Ms. Herbel commends the Commission and states that the Town has not done a very good job of communicating with the Mesa, so a committee has been formed including two council members and two representatives from the Mesa in order to move forward with better understanding.

Commissioner Derry states, regarding the Airport District, there are three options for the Commission’s consideration and one is to affirm the existing coterminous sphere. Ms. McDonald states that staff’s recommendation on the zero sphere was made considering 30 years of history. The District was formed in order to improve and augment the airport. As there is no property tax funding to support the District, the District was to seek a method to do that. She states that, through discussions with Mr. Dunn and other representatives of the airport, they are looking at forming an assessment district to fund the airport. She expresses concerns about its long-term viability as there is no staff and the airport relies on an honor system for customers of the airport. She says that part of the reason for the recommendation of a zero sphere would be to consider other options, possibly to go back to the property owners’ association that previously existed, as Yucca Valley Airport Inc. still owns the airport and leases it to the District. She explains that the other option for the District would be to maintain the coterminous sphere.

Commissioner Derry amends his motion to include affirmation of the existing sphere of influence for the Yucca Valley Airport District, Commissioner Cox withdraws her second, second by Commissioner Smith.

Commissioner Cox states that if staff’s recommendation is adopted there would be no change to the District itself, but in five years it could come back to the Commission and prove its viability, at which time an additional sphere could be granted. Mr. Dunn comments that this would be taking a step backward, so he concurs with Commissioner Derry’s recommendation to affirm the existing sphere.

Commissioner Pearson states that, as an aviator himself, he finds that what has taken place over the last 30 years requires caution, and the zero sphere of influence would meet the needs of the community and the airport. He believes the staff recommendation is appropriate and would give the airport the opportunity to show good faith.

Chairman Nuaimi expresses concern that maintaining the current sphere would send the message to continue planning for the sphere, when in reality the obligations and requirements of the initial formation have not been met. He says that a stronger message will be sent by zeroing the sphere.

Commissioner Derry withdraws his motion and moves approval of the item, second by Commissioner Cox.

Chairman Nuaimi asks about the designation of the Community of Yucca Mesa. Ms. McDonald states that the community of Yucca Valley has been defined by the Commission for over 30 years through the Hi-Desert Water District and its predecessors, Yucca Valley Fire Protection District and Park District. She says that staff does not recommend any change, as it has no effect on the sphere of influence or on the desire to create a Municipal Advisory Council. She says that formation of the Yucca Mesa Municipal Advisory Council would be an excellent vehicle for working with the Two Plus Two Committee in coordinating issues for the Mesa.

Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Cox, Derry, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead)

**CONSIDERATION OF REQUEST TO CHANGE THE APRIL 21, 2010 HEARING LOCATION TO THE CITY OF VICTORVILLE COUNCIL CHAMBERS AND TIME TO 5:00 P.M. – APPROVE STAFF RECOMMENDATION**
Commissioner Mitzelfelt explains that he requested that the April hearing be held in Victorville for the convenience of the residents in and around the Oro Grande area, Victorville and Helendale that would be affected by the proposed sphere changes in that area.

Commissioner Pearson questions if the Adelanto matter would also be considered at that time. Ms. McDonald states that it will and the City of Adelanto will be advised of the change of venue.

Commissioner Cox asks how the affected property owners will be notified of this venue change. Ms. McDonald states that due to the number of landowners a 1/8th page legal ad will be published, and those individuals and agencies on the extensive mailing list will receive individual notice. Commissioner Cox asks if it is possible to mail notices to the landowners. Ms. McDonald states that this would include everyone in the Helendale sphere establishment and everyone in the Victorville sphere expansion request. Ms. McDonald states that, if directed by the Commission, that can be done with the understanding that Victorville and Helendale will share the cost. She explains that everyone who is affected would receive direct notice. For example, for the City of Adelanto, the property owner who is the applicant and multiple representatives of the City would be notified. Commissioner Mitzelfelt asks if there would be any other agenda items affecting areas outside of the high desert. Ms. McDonald states that if the hearing is moved to Victorville the agenda would only include high desert items.

Commissioner Cox asks legal counsel if she can participate in the vote because her affiliation with one of the applicants. Legal Counsel Clark Alsop states that she can because this action merely schedules a meeting.

Commissioner Mitzelfelt moves approval of the item, including a provision to mail individual notices to landowners and registered voters affected by the sphere change requests, second by Commissioner Smith. Chairman Nuaimi calls for opposition to the motion. There being no opposition, the motion passes with the following vote: Ayes: Cox, Derry, Mitzelfelt, Nuaimi, Pearson, Smith, Williams. Noes: None. Abstain: None. Absent: Biane (Commissioner Derry voting in his stead), Curatalo (Commissioner Smith voting in his stead), McCallon (Commissioner Williams voting in his stead).

PENDING LEGISLATION ORAL REPORT

Ms. McDonald states she has provided a written legislative report, which provides the legislative platform prepared by the Coalition of California LAFCOs. She says that Chairman Nuaimi is the spokesperson for that group. Bylaws are being prepared with hopes that the organization will be up and running by July, regardless if the regional concept for CALAFCO is supported. She states that AB853 (Arambula) is moving forward. CALAFCO has worked with the author to give a new definition to an unincorporated fringe community and an unincorporated island community. She says this would be yet another mechanism to force annexation of areas. It is staff’s position that the letter of concern stand until the bill is amended. Amendments are expected, but unless new language is written CALAFCO will not withdraw or change its position to oppose. Chairman Nuaimi clarifies that if residents petition in an unincorporated area that a city does not wish to annex, those residences can be automatically incorporated into the City regardless of whether the city wants or can provide service. Ms. McDonald states that 25 percent of voters petitioning the Board of Supervisors would require the application to be presented and there is no fiscal impact analysis, no requirement for prezoning, and if the county and a city refuse to negotiate on a property tax exchange the Commission would be required to provide an exchange based upon revenue neutrality provisions that apply to incorporations. This bill would make LAFCO the determiner of what revenues would be included.

AB300 (Caballero) relates to the subdivision map act and water conservation measures that will be required as a part of the review of subdivisions for improvements. Ms. McDonald says that water management criteria would become tied to the land and part of CC&Rs that must be proven to be done.
This would become an issue relating to water supply discussions.

**EXECUTIVE OFFICER’S ORAL REPORT**

Ms. McDonald reports that the Commission will not meet in March. The April hearing will be held in Victorville and the May hearing will include the selection process for the public member and adoption of the budget, along with other matters.

**COMMISSIONER COMMENTS**

Commissioner Cox asks if it might be of interest for the Commission to hold a workshop on its designation of what a surrounded island is, perhaps for the benefit of some of the newer commissioners. Chairman Nuaimi asks if there are additional island applications. Ms. McDonald states at present there are none. The only expected application would be Victorville’s Coad Road application; however, that has not been submitted to date.

Commissioner Mitzelfelt states that in light of the busy schedule up to May and a new public member being appointed, perhaps sometime after May would be best. Chairman Nuaimi suggests waiting at least six months to consider feedback from San Bernardino and Fontana. Ms. McDonald suggests including Loma Linda, Montclair and Upland in those discussions.

**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 12:30 P.M.**

**ATTEST:**

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ANNA RAEF, Recording Secretary

LOCAL AGENCY FORMATION COMMISSION

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MARK NUAIMI, Chairman