

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

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DATE: JUNE 1, 2010

FROM: SAMUEL MARTINEZ, Senior LAFCO Analyst

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #7: LAFCO 3155 – Reorganization to Include Annexation to the City of Victorville and Victorville Water District, and Detachments from San Bernardino County Fire Protection District, its North Desert Service Zone, and County Service Area 70 (Coad Road Island)

INITIATED BY:

City of Victorville Council Resolution

RECOMMENDATION:

Staff is recommending that the Commission approved LAFCO 3155, by taking the following actions:

1. Adopt the Statutory Exemption that has been recommended for this proposal and direct the Executive Officer to file the Notice of Exemption within five (5) days;
2. Approve LAFCO 3155, as an island annexation, as defined in Government Code Section 56375.3, with the required determinations, the standard LAFCO terms and conditions that include the “hold harmless” clause for potential litigation costs, continuation of fees, charges, assessments, and the identification that the transfer of utility accounts will occur within 90 days of the recording of the Certificate of Completion;
3. Waive protest proceedings, as authorized by Government Code Section 56375.3; and,
4. Adopt LAFCO Resolution #3096 setting forth the Commission’s findings, determinations, and conditions for the proposal.

BACKGROUND INFORMATION:

LAFCO 3155 is a reorganization proposal of a totally surrounded unincorporated island which includes annexation to the City of Victorville (the “City”) and the Victorville Water District (a

subsidiary district of the City), and detachment from the San Bernardino County Fire Protection District (SBCFPD), its North Desert Service Zone, and County Service Area (CSA) 70. The reorganization area is generally located south of Coad Road and east of Hesperia Road, within the City of Victorville's unincorporated sphere of influence identified as the "Coad Road Island". Location and vicinity maps are included as Attachment #1 to this report.

The City's purpose in submitting this island annexation proposal, as outlined in its application, is to comply with a requirement that was imposed on LAFCO 3100, a previous reorganization proposal that was approved by the Commission in November 2009 (see Figure 1 below).



Figure 1 – Reorganization Area and LAFCO 3100

LAFCO 3100 was a reorganization proposal submitted by property owner petition to facilitate the development of an industrial project. The project sits on a total of 52 acres that included two parcels that were in the County's jurisdiction. In order to complete the project entitlement process through the City, the two unincorporated parcels had to be annexed into the City. At the outset of the process, LAFCO staff reviewed with City staff and representatives of the property owner the Commission's directives that require cities to address its islands when requesting approval of a development-related annexation. In the case of LAFCO 3100 (wherein the annexation area encompassed a portion of the City's Coad Road Island), there was the ability to expand the proposal to include the entire island. However, the developer of the industrial project wanted to finish the entitlement process without delay and did not favor expansion of its proposed annexation as it would require a protest process. Therefore, LAFCO 3100 was approved by the Commission with the following condition (LAFCO Resolution No. 3070, Condition No. 7):

"Protest proceedings for LAFCO 3100 shall be held in abeyance for a period not to exceed six (6) months as permitted by Government Code Section 56663 (c). The City of Victorville is required to initiate the annexation of the Coad Road Island, a totally surrounded island, during the identified six-month abeyance period. Compliance with this condition shall be deemed completed upon issuance of the Certificate of Filing for the island proposal identified by the Commission."

City staff worked over the last 19 months to address the initiation of the Coad Road Island. The City performed community outreach meetings, as required by Commission policy for island annexations, with residents and property owners within the island area on two separate occasions (the first meeting was initially held on August 24, 2008 and a second community meeting was held on August 13, 2009). On January 5, 2010, the City Council approved Resolution No. 10-001 initiating the City's annexation of the totally surrounded Coad Road Island; and acting as the Victorville Water District's ex-officio Board of Directors, the City Council also approved Resolution No. VWD-10-001 initiating the district's annexation of the Coad Road Island. LAFCO staff issued the Certificate of Filing for LAFCO 3155 on March 29, 2010, which allowed the protest proceedings for LAFCO 3100 to commence. The Protest Hearing for LAFCO 3100 was held on April 27, 2010; no protest was received and the Certificate of Completion for LAFCO 3100 was then issued.

REQUIRED PROVISIONS FOR ISLAND ANNEXATIONS:

In staff's view, LAFCO 3155 is a ministerial action for the Commission based upon Government Code Section 56375(a) that requires the Commission to approve the annexation of "islands" of unincorporated territory and Section 56375.3 then also requires the Commission to approve the annexation of island territory without the ability of protest if several basic determinations are made. Those determinations concern the size of the island, the configuration of city boundaries, the lack of prime agricultural land within the island area, the presence of development in the area, and the ability of the annexation area to benefit from or use municipal services from the City (see Attachment #2 to this report). The staff's responses to the required determinations for LAFCO 3155 are outlined as follows:

- The area does not exceed 150 acres; the island is 88+/- acres and constitutes the entire island of unincorporated territory;
- The area is totally or substantially surrounded; the reorganization area is totally surrounded by the City of Victorville and is wholly within it's sphere of influence;
- The annexation area is substantially developed or developing. This determination is based upon the findings that public utilities are available within the area, there are public improvements within the area, and there are physical improvements on many of the properties within the area;
- The annexation area is not prime agricultural land as such is defined by LAFCO statutes; and,
- The annexation area will benefit from the annexation; the area is already benefiting from the direct receipt of fire and park services through the City.

Staff has also reviewed the provisions of the Commission's additional policies related to the processing and evaluation of island annexations. Those policies, as adopted on March 31, 2005, are as follows:

1. 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 reorganization area is a totally surrounded island; therefore, this policy does not apply.

2. The Commission determines that no territory within an established County Redevelopment Area shall be included within an island annexation proposal, unless written consent has been received from the County Board of Supervisors and County Redevelopment Agency.

The reorganization area is not within an established County Redevelopment Area; therefore, this policy also does not apply.

However, the reorganization area is within the Victor Valley Economic Development Authority (VVEDA), a joint powers redevelopment authority made up of the Cities of Adelanto, Hesperia, Victorville, the Town of Apple Valley, and the County of San Bernardino, which was formed to carry out the redevelopment of the Southern California Logistics Airport (the former George Air Force Base facility) by promoting economic development in and around the airport utilizing the airport’s facilities.

3. The Commission directs that a City that proposes an island annexation proposal, as such is defined in Government Code Section 56375.3, shall be required to have conducted a public relations/education effort within the affected area prior to the placement of the item on a Commission agenda for consideration. Such outreach/education efforts shall include, but not be limited to, providing information on the grandfathering of existing legal County uses into the City, costs to the resident/taxpayer associated with annexation, and land use determinations. Documentation of these efforts shall be a part of the staff report presented for consideration by the Commission.

The City’s outreach program to discuss the issues of land use, plan for service, and costs, if any, to the residents within the annexation area, was carried-out on August 13, 2009. It should also be noted that the City met with residents for a similar community meeting on August 24, 2008. Copies of letters provided to landowners are included as attachment #3 to this report.

Based upon the information outlined above, it is the staff’s position that these mandatory determinations are clear; therefore, the Commission is:

1. Required by Government Code Section 56375(a) to approve the proposal as submitted by the City of Victorville; and,
2. Approve the proposal without the ability for protest from landowners and registered voters within the area (Government Code Section 56375.3).

The following provides a summary of the balance of the issues which the Commission reviews and considers in any jurisdictional change – boundaries, land uses, service delivery and the effect on other local governments, and environmental considerations.

BOUNDARIES:

The reorganization area is generally located south of Coad Road and east of Hesperia Road, within the City of Victorville's unincorporated sphere of influence.

Area 1 – Annexation to the City of Victorville and Detachment from CSA 70

Area 1 encompasses the entire unincorporated County island that includes approximately 88+/- acres generally bordered by a combination of Coad Road and parcel lines (existing City of Victorville boundaries) on the north, the eastern line of the railroad right-of-way (existing City of Victorville boundaries) on the east, a combination of Terra Linda Drive and parcel lines (existing City of Victorville boundaries) on the south, and Hesperia Road (existing City of Victorville boundaries) on the west. See Figure 2 below.

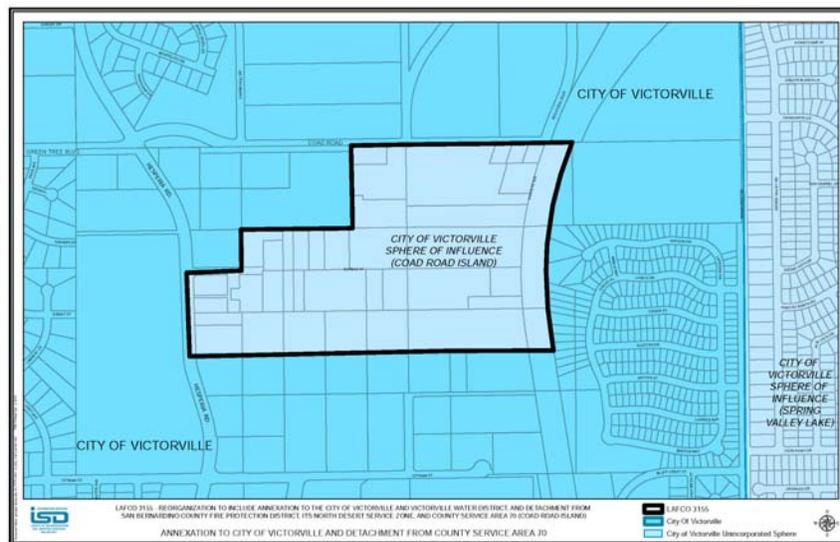


Figure 2 – LAFCO 3155 (Area 1)

Area 2 – Annexation to the Victorville Water District

Area 2 includes a portion of Area 1 that encompasses approximately 81.5+/- acres generally bordered by a combination of Coad Road and parcel lines (existing Victorville Water District boundaries) on the north, the eastern line of the railroad

right-of-way (existing Victorville Water District boundaries) on the east, a combination of Terra Linda Drive and parcel lines (existing Victorville Water District boundaries) on the south, and a combination of Hesperia Road and parcel lines (existing Victorville Water District boundaries) on the west. Approximately 6.5 acres of Area 1 are already a part of the Victorville Water District. See Figure 3 below.

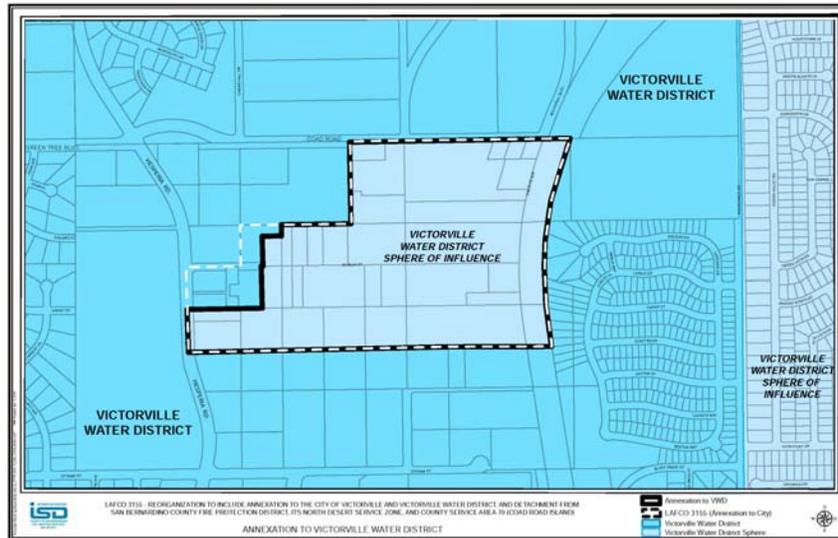


Figure 3 – LAFCO 3155 (Area 2)

Area 3 – Detachment from San Bernardino County Fire Protection District and its North Desert Service Zone

Area 3 encompasses approximately 8+/- acres, which includes the railroad right-of-way area between Coad Road and Terra Linda Drive. See Figure 4 below.

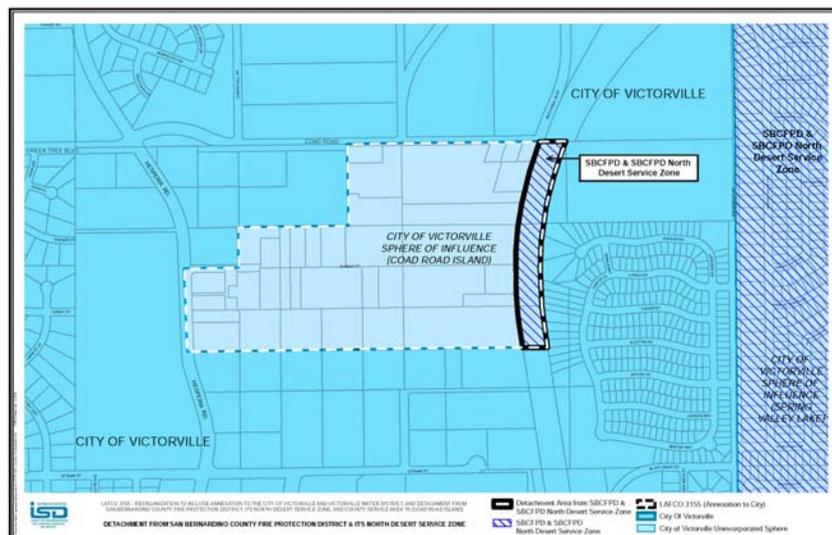


Figure 4 – LAFCO 3155 (Area 3)

No boundary issue has been identified. It is LAFCO staff's position that this reorganization proposal provides for a logical boundary since it removes an island of unincorporated territory within the City. It also cleans up the Victorville Water District's boundary by removing an island territory within the district.

LAND USE:

Existing Land Uses:

The reorganization area is currently a mix of residential, commercial, and industrial development together with some vacant lands and the railroad right-of-way. Surrounding land uses include: vacant lands (within the City) on the west, vacant lands (within the City) on the north, a mix of vacant land and residential development (within the City) on the east, and vacant lands (within the City) on the south. See Figure 5 below.

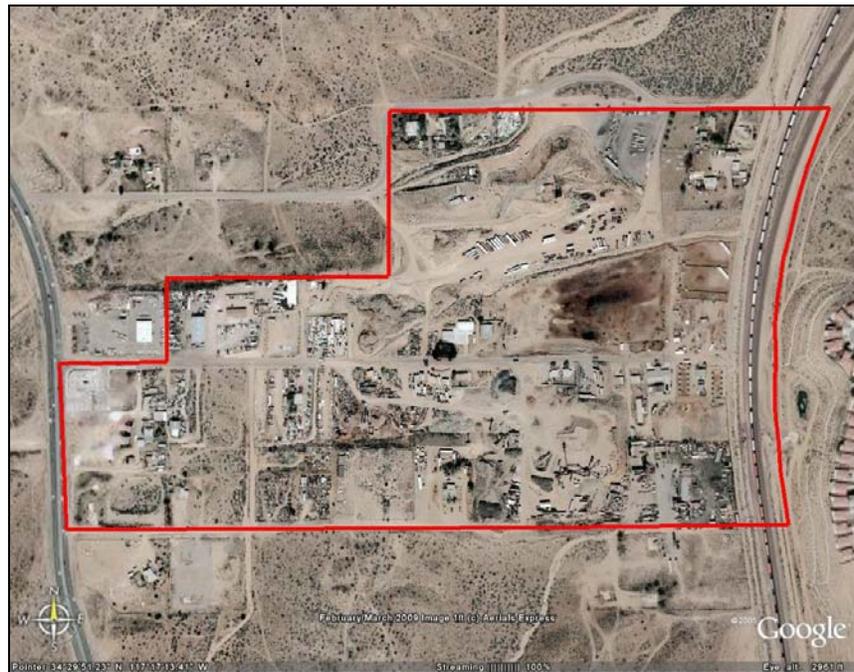


Figure 5 – Aerial Map

County Land Use Designation:

The County's current land use designations for the area are General Commercial (CG) and Community Industrial (IC). CG allows for retail trade and personal services, lodging services, office and professional services, recreation and entertainment services, wholesaling and warehousing, contract/construction services, transportation services open lot services, and similar and compatible uses. IC allows for light industrial uses such as light manufacturing uses, wholesale/ warehouse services, contract/construction services, transportation services, agriculture support services, incidental commercial and accessing residential uses, and similar and compatible uses (with limited outside storage).

City's General Plan:

The City of Victorville's General Plan land use designations for the area are Commercial and Light Industrial. Commercial corresponds to a wide range of retail commercial, service commercial, and office commercial activities. Light Industrial allows for industrial activities that do not require any significant site or structure requirements that are so specialized that would limit future use of the structures and/or site by other industrial activities. As outlined above, the land use determinations between the City and County are generally compatible.

City's Pre-Zone Designations:

The City processed the pre-zoning for the entire Coad Road Island through its review of the City's General Plan Update 2030. The City's pre-zone designations for the overall reorganization area are: C-2 (General Commercial) and M-1 (Light Industrial).

These pre-zone designations were determined through the City's consideration of Ordinance No. 2225, which was adopted on November 4, 2008. These pre-zone designations are consistent with the City's General Plan land use designations for the area and are also consistent with surrounding land uses. Pursuant to the provisions of Government Code Section 56375(e), these zoning designations shall remain in effect for a period of two (2) years following annexation. The law allows for a change in designation if the City Council makes the finding, at a public hearing, that a substantial change has occurred in circumstances that necessitate a departure from the pre-zoning outlined in the application made to the Commission.

All existing legal uses and improvements within the reorganization area, as well as all legal non-conforming uses and improvements that were established through the County, shall be grandfathered-in the City.

SERVICE ISSUES AND EFFECTS ON OTHER LOCAL GOVERNMENTS:

In every consideration for jurisdictional change, the Commission is required to look at the existing and proposed service providers within an area. Current County service providers within the reorganization area include County Service Area 60 (Apple Valley Airport (portion) and County Service Area 70 (multi-function entity). In addition, the following entities overlay the reorganization area: San Bernardino County Fire Protection District and its North Desert Service Zone (railroad right-of-way portion), Mojave Desert Resource Conservation District (portion), and Mojave Water Agency (the State Water Contractor).

The City of Victorville and the Victorville Water District have submitted Plans for Service as required by law and Commission policy. The City's plan, which includes a Fiscal Impact Analysis, is included as part of Attachment #3 and the District's plan is included as Attachment #4 to this report. Of note, during the property tax transfer negotiations required for this reorganization, the implementation of the standard formula for property tax transfers would have provided a less than 7% share to the City of Victorville. In keeping with the County's revised policy related to City annexations, the process is providing for a transfer of a 7% share of the general ad valorem property tax to the City. In addition, based on

existing pass-through agreements between the City of Victorville and VVEDA, the annexation of the territory to the City will receive a share of the property tax increment from the area along with the frozen property tax base transferred as a function of this reorganization.

The plans for services, in general, identify the following:

- The City provides for sewage collection within its boundaries through its assumption of the service responsibilities of the Victorville Sanitary District, which was recently dissolved. Treatment of wastewater is the responsibility of the Victor Valley Wastewater Reclamation Authority. Upon annexation, developed parcels within the area will not be required to connect to the City's sewer facilities unless there is a septic system failure or if an existing development (or structure on the property) is expanded. However, all new development will require connection to the City's sewer facilities.
- Water service will be provided by the Victorville Water District, a subsidiary district of the City. Currently, the district's existing facilities include a 12-inch water main in Hesperia Road and an 8-inch water main in Eureka Street. New development, including existing development that elect to connect to the district's water facilities, will be required to pay connection fees that would include a proportionate share of the cost to install/construct new water facilities needed to serve the area.
- Law enforcement responsibilities are currently provided by the San Bernardino County Sheriff's Department, which will continue to serve the area following the annexation. The City contracts for its law enforcement services with the County Sheriff's Department.
- Fire protection and paramedic services are currently provided by the City through its assumption of the service responsibilities of the Victorville Fire Protection District, which was recently dissolved. The City currently contracts with the San Bernardino County Fire Protection District to provide for fire suppression and paramedic services. No change will occur for this service provider on the basis of this annexation.
- Solid waste services are currently provided within the annexation area by the Victorville Disposal Company (Burrtec Waste Industries), the City's solid waste contractor. No change will occur for this service provider on the basis of this annexation.

It is the position of staff that LAFCO 3155 is a straightforward and logical extension of service delivery boundaries through the City of Victorville and its subsidiary district, the Victorville Water District. As required by Commission policy and State law, the Plan for Services submitted by the City and the Victorville Water District indicate that the extension of services within the reorganization area will maintain, and/or exceed, current service levels provided through the County and its special districts.

ENVIRONMENTAL CONSIDERATIONS:

It is to be noted that the City of Victorville certified the Final Environmental Impact Report that was prepared for its General Plan 2030, which pre-zoned multiple areas within the City's unincorporated sphere of influence, including the Coad Road Island.

However, the Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed this proposal and has indicated that it is his recommendation that the island annexation is statutorily exempt from the California Environmental Quality Act (CEQA). This determination is based on the fact that the Commission has no discretion in its review of this proposal and must approve the project. Such a "ministerial action" is exempt from environmental review pursuant to Section 15268 of the State CEQA Guidelines. Therefore, it is recommended that the Commission adopt a Statutory Exemption for this proposal.

CONCLUSION:

It is the staff's position that LAFCO 3155 is a ministerial action - one which the Commission has no discretion but to approve. This position is based on the requirements set forth in Government Code Section 56375(a) that state "a Commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that is ... (1) surrounded or substantially surrounded by the city to which annexation is proposed." In addition, it is the staff's position that if the Commission makes the mandatory determinations outlined in Section 56375.3 and its supplemental policies, protest will not be allowed. LAFCO staff believes that those findings are easily made in this case:

- The annexation area comprises a total of 88+/- acres, which makes the island less than the 150-acre threshold;
- The reorganization area is totally surrounded by the City of Victorville's existing boundaries, and is wholly within the City of Victorville's sphere of influence;
- The area is substantially developed or developing based on the presence of existing development in the area and the availability of public services as indicated in the Plan for Service;
- The area does not contain any prime agricultural land; and
- The area can benefit from the availability of municipal services from the City of Victorville and the Victorville Water District as reflected in the Plans for Services. The area is already benefiting from the direct receipt of fire and park services through the City.

In addition, this proposal complies with the Commission's revised policies related to the processing of islands in that an outreach effort, conducted by City staff, was performed prior to the placement of the item on a Commission agenda for consideration.

If the Commission concurs with these staff determinations, then it is required to approve LAFCO 3155 and waive the protest hearing as part of its approval of this proposal, regardless of any protest that might be submitted for this item.

FINDINGS:

The following determinations are required to be provided by Commission policy and Government Code Section 56668 for any change of organization/ reorganization proposal:

1. The County Registrar of Voters Office has determined that the reorganization area is legally inhabited, containing 16 registered voters as of March 18, 2010.
2. The County Assessor has determined that the total assessed value of land and improvements within the reorganization area is \$1,122,748 (land - \$448,115 -- improvements - \$674,633).
3. The area is within the spheres of influence assigned the City of Victorville and Victorville Water District.
4. Commission review of this proposal has been advertised in *The Daily Press*, a newspaper of general circulation within the reorganization area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.
5. LAFCO staff has provided individual notice to the landowners and registered voters within the reorganization area (totaling 37) and to landowners and registered voters surrounding the reorganization area (totaling 724) in accordance with State law and adopted Commission policies. To date, opposition has been verbally expressed during the community outreach meeting; however, no written opposition has been received by LAFCO staff.
6. The area was included in the City's General Plan Update 2030 which also pre-zoned the reorganization area for the following land uses: C-2 (General Commercial) and M-1 (Light Industrial). Pursuant to the provisions of Government Code Section 56375(e), these pre-zone designations shall remain in effect for two years following annexation unless specific actions are taken by the City Council.

In addition, upon annexation, the City intends to grandfather-in all legal uses and improvements, as well as legal non-conforming uses and improvements, which were established through the County.

7. The Commission's Environmental Consultant, Tom Dodson and Associates, has indicated that the review of this annexation is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding

that the Commission's approval of this application is ministerial, in that based upon the findings required by Government Code Section 56375(a), the Commission has no discretion in its action on the proposal other than approval. Therefore, a Statutory Exemption as authorized under Section 15268 of the State CEQA Guidelines is appropriate. A copy of Mr. Dodson's response is included for the Commission's review as Attachment #5 to this report.

8. The area in question is presently served by the following local agencies:

County of San Bernardino
Mojave Desert Resource Conservation District (*portion*)
Mojave Water Agency and its Improvement Districts A and 1
San Bernardino County Fire Protection District and its North Desert Service Zone (*portion*)
County Service Area 60 (Apple Valley Airport)(*portion*)
County Service Area 70 (multi-function unincorporated area Countywide)

The proposal will annex the territory to the City of Victorville and Victorville Water District and will detach the territory from the San Bernardino County Fire Protection District, its North Desert Service Zone, and County Service Area 70 as a function of the reorganization. None of the other agencies are affected by this proposal as they are regional in nature.

9. The City of Victorville has submitted a plan for the extension of municipal services to the reorganization area, as required by law. This plan is included as part of Attachment #3 to this report, which indicates that the City can, at a minimum, maintain the level of service delivery and can improve the level and range of selected services currently available in the area. The financial information presented within the Plan for Service indicates that the extension of services can be maintained and operated after the reorganization through existing and potential revenue resources available through the transfer of property taxes and fees for service.

The plan for service submitted by the Victorville Water District outlines how it will extend service to the area. This plan is included as Attachment #4 to this report, which indicates that the district can, at a minimum, maintain the level of service delivery and can improve the level and range of service currently available in the area. The financial information presented within the Plan for Service indicates that the extension of services can be maintained and operated after the reorganization through fees for service.

10. The reorganization proposal is consistent with State law and complies with Commission policies that indicate the preference for all island areas to be included within the boundaries of the City surrounding them. The inclusion within the Victorville Water District complies with the Commission's concurrent annexation policy which requires concurrent annexation to all of the local agencies serving the community.

11. The reorganization area can benefit from the availability and extension of municipal services from the City and the Victorville Water District and has benefitted from the delivery of fire and park services through the City.
12. This proposal will not assist in the City's ability to achieve its fair share of the regional housing needs since the entire reorganization area is zoned for commercial and industrial uses.
13. With respect to environmental justice, the reorganization area would benefit from the extension of services and facilities from the City and Victorville Water District; and, at the same time, will not result in unfair treatment of any person based on race, culture or income.
14. The County of San Bernardino (on its own behalf and that of the Victorville Water District) and the City of Victorville have successfully negotiated a transfer of property tax revenues that will be implemented upon completion of this reorganization. This fulfills the requirements of Section 99 of the Revenue and Taxation Code.
15. The map and legal description, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

/sm

Attachments:

1. [Vicinity and Location Maps of the Reorganization Area](#)
2. [Government Code Sections 56375 and 56375.3](#)
3. [City's Application and Plan for Services](#)
4. [Victorville Water District's Plan for Service](#)
5. [Response from Tom Dodson and Associates](#)
6. [Draft Resolution No. 3096](#)