

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: FEBRUARY 7, 2012 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #8 – LAFCO 3169 – REORGANIZATION TO INCLUDE ANNEXATION TO THE TOWN OF APPLE VALLEY AND DETACHMENT FROM COUNTY SERVICE AREA 70 (ANNEXATION NO. 2008-001)

INITIATED BY:

Town Council Resolution, Town of Apple Valley

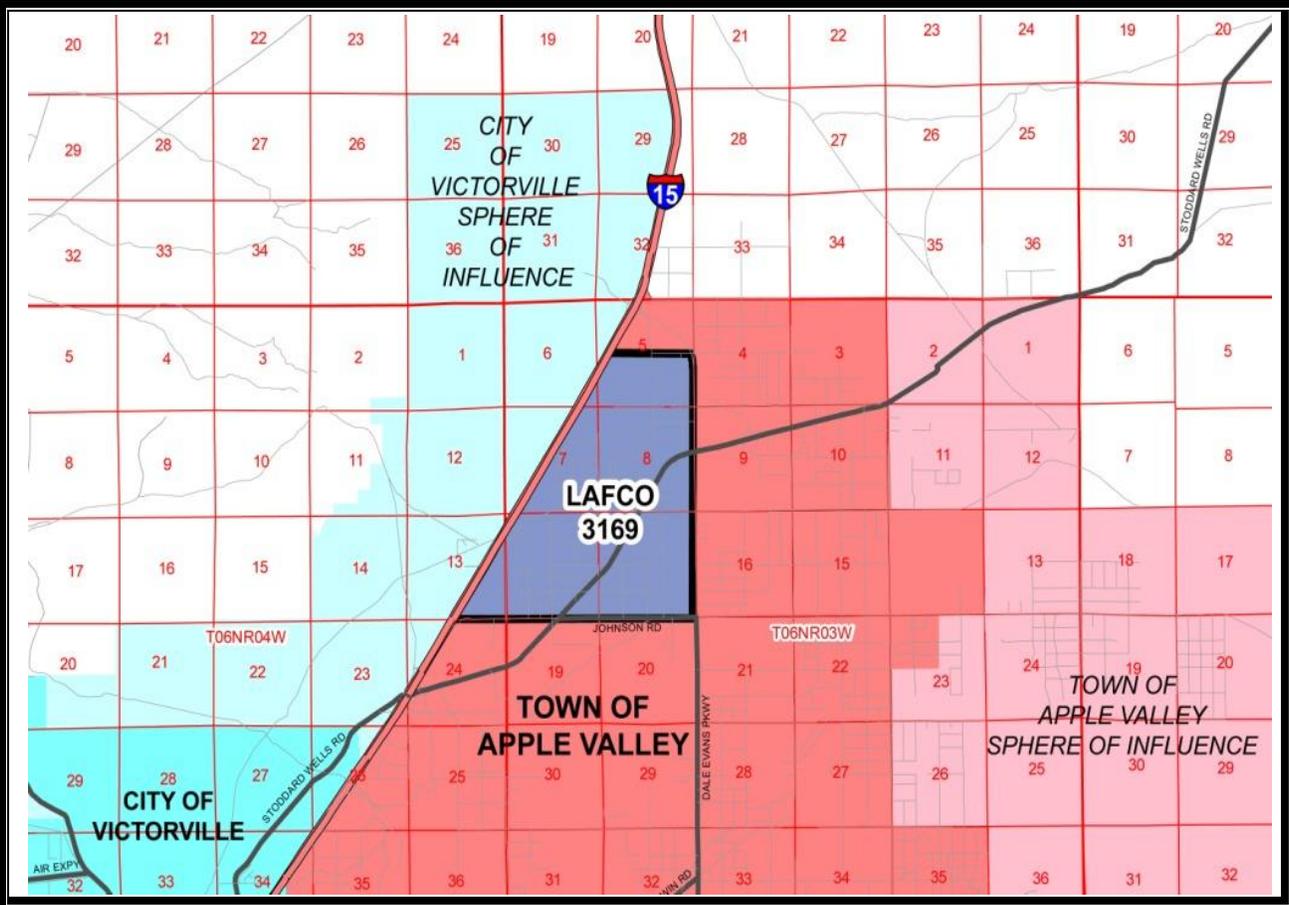
RECOMMENDATION:

1. With respect to environmental review, certify that the proposed reorganization to include Annexation to the Town of Apple Valley is statutorily exempt from the provisions of the California Environmental Quality Act and instruct the Executive Officer to file a Notice of Exemption within five (5) days of this action;
2. Approve LAFCO 3169 with the following conditions:
 - a. The Town of Apple Valley will accept the transfer of all previously offered or dedicated drainage easements within the affected area as shown on exhibits to the resolution of approval, which exclude any regional drainage facilities identified. The Town will assume authority over these drainage easements upon completion of LAFCO 3169;
 - b. Issuance of the Certificate of Completion shall be held in abeyance until the Town of Apple Valley provides an approved program to implement the terms of its "Amnesty Program" as outlined in Resolution No. 2012-01 related to the continuation of the existing County Solid Waste Management Land Use Disposal Facility Fee and companion "voucher" program for solid waste disposal for 46 properties within LAFCO 3169; and,

- c. Standard conditions for Indemnification, designation of the effective date and recognition of the change of organization by utility providers.
- 3. Adopt LAFCO Resolution #3156, setting forth the Commission’s findings, determinations, and conditions of approval concerning this proposal.

BACKGROUND:

The Town of Apple Valley has submitted an application which proposes to annex approximately 2,927 acres, generally bordered by a combination of parcel lines and Morro Road (existing Town boundaries) on the north, Dale Evans Parkway (existing Town boundaries) on the east, a combination of parcel lines and Johnson Road (existing Town boundaries) on the south, and the centerline of the Interstate 15 Freeway on the west. The study area is generally located in the northern Town of Apple Valley sphere of influence area, identified by the Town as the “Golden Triangle”. Location and vicinity maps are included as Attachment #1 to this report and shown below.



The Town's purposes in submitting this reorganization, as outlined in its application (included as a part of Attachment #2) and resolution of initiation are as follows:

1. The annexation will bring the planning, design, and construction of future development, including public roads, under the jurisdiction and direction of one entity and provide for the control, orderly development and logical growth in accordance with the Town General Plan.
2. The lands are within the Town of Apple Valley sphere of influence and contiguous with its existing corporate limits on the north, east and south. The annexation represents a logical extension of the Town's corporate limits to adequately plan for the anticipated future growth in the area.

As the map shown above illustrates, the area proposed for annexation is substantially surrounded by existing Town boundaries. In addition, it has been initiated by resolution of the Town Council; therefore, pursuant to the provisions of Government Code Section 56375(a) the Commission is required to approve this application. The relevant portion of §56375(a) reads as follows:

...However, a commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is any of the following:

(1) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land as defined in Section 56064, is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city. ...

LAFCO 3169 meets the criteria identified in Government Code §56375(a)(1) in that the area is surrounded on three sides by the existing boundaries of the Town of Apple Valley meeting the Commission's criteria for substantially surrounded; is substantially developing on the basis of developments anticipated in the region in support of the DesertXpress to Las Vegas and the Town's updated General Plan; does not contain prime agricultural lands as defined by Section 56064; is designated for urban growth by the general plan of the Town of Apple Valley; and is within the sphere of influence assigned the Town of Apple Valley. Therefore, the Commission must approve this proposal for change of organization. The only latitude afforded the Commission in this consideration relates to the terms and conditions which are applied as a function of its approval. While considered to be an "island" limiting the Commission's discretion in its review, the registered voters and landowners will ultimately determine the success or failure of this proposal at the protest proceeding required by law.

The narrative which follows addresses the four factors required for Commission consideration of any jurisdictional change – boundaries, land uses, service delivery and the effect on other local governments, and environmental considerations.

BOUNDARIES:

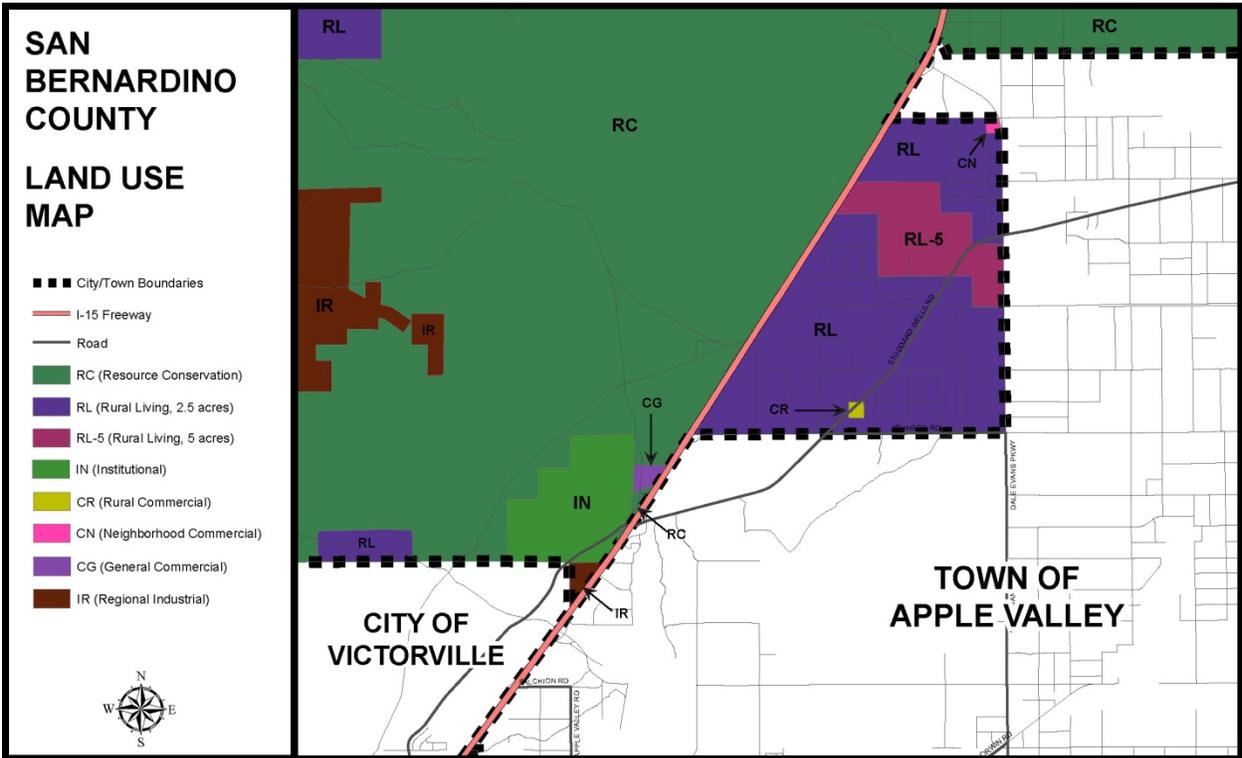
The area proposed for annexation is primarily vacant with some scattered residential uses along Stoddard Wells Road in the southeastern portion of the area. The study area is surrounded by: (1) vacant lands to the north within the Town including the Dale Evans Parkway on- and off-ramp to the I-15 freeway; (2) to the east within the Town of Apple Valley is a mix of a low density residential units, the County of San Bernardino Detention Center and a portion of the North Apple Valley Industrial Specific Plan; (3) to the south within the Town of Apple Valley is scattered residential development, the Walmart Distribution facility, and vacant lands; and (4) to the west is unincorporated lands within the City of Victorville sphere of influence which are primarily vacant lands proposed for development under the provisions of the Desert Gateway Specific Plan. The area to the west includes the proposed DesertXpress hub identified in the City of Victorville’s Desert Gateway Specific Plan.

The proposed reorganization is bounded on the north, east and south by the existing Town of Apple Valley boundaries. The western boundary is the centerline of the I-15 freeway. The territory is bisected by a private haul road identified as “Quarry Road” which is clearly visible on the map below. The annexation of this territory will provide a clear delineation between what is anticipated to be the City of Victorville, the territory west of the I-15 Freeway, and the Town of Apple Valley. Below is an aerial display of the reorganization’s location in reference to existing Town boundaries.

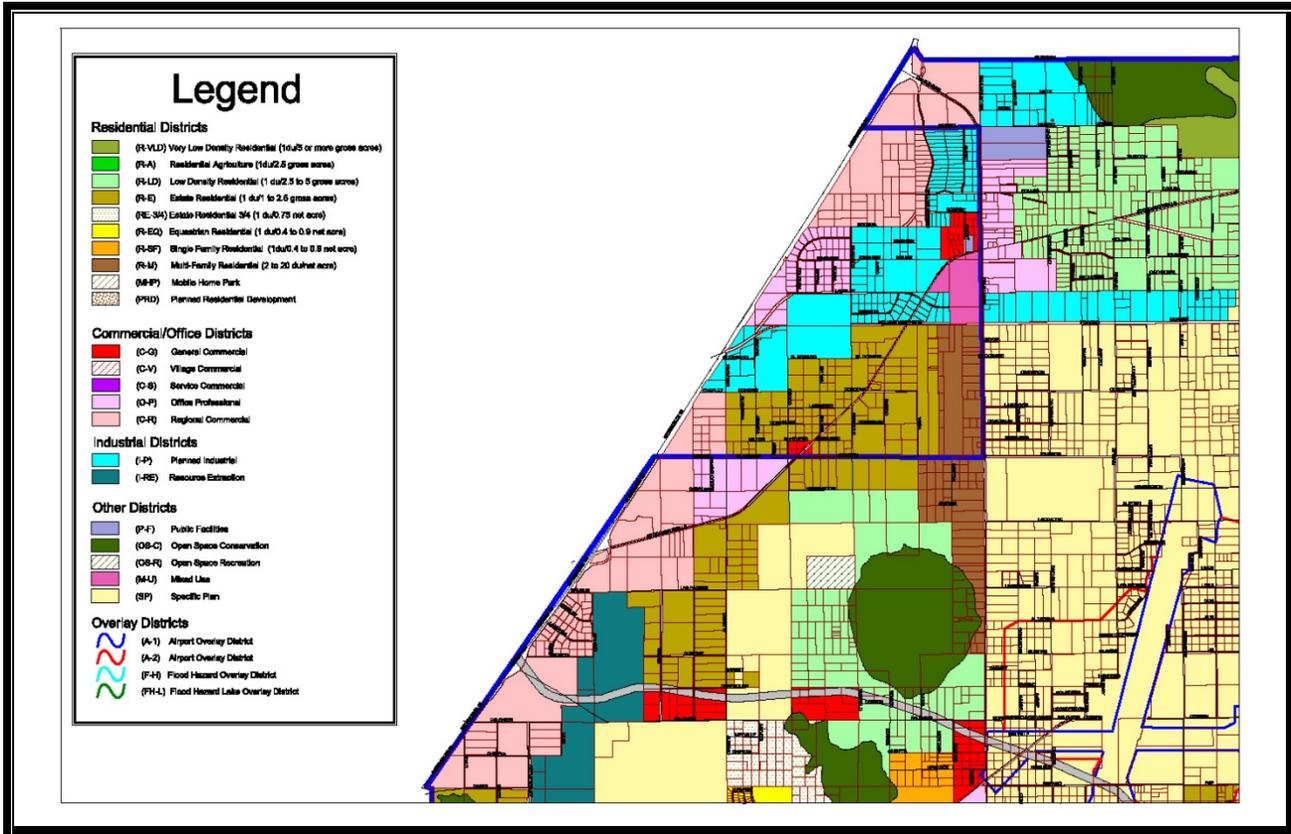


LAND USES:

The reorganization area is currently primarily vacant land with some scattered residential uses within the southeastern portion of the reorganization. The current County General Plan assigns the bulk of the area a land designation of Rural Living, with lot sizes of 2.5 acres and 5 acres. Other land uses includes two small areas designated Rural Commercial and Neighborhood Commercial. The location of the land use designations are shown on the map below.



The Town of Apple Valley has assigned the area pre-zone land use designations as a part of its General Plan Update. The information which follows identifies the land use type and its estimated acreage within the proposal area: Estate Residential (one unit to 2.5 acres – 778 acres); Multi Family Residential (2 to 20 dwelling units to the acre – 219 acres), Mixed Use (residential at 4 to 30 units to the acre/retail and office use permitted – 95 acres), General Commercial (53 acres), Regional Commercial (442 acres) Office Professional (183 acres) and Planned Industrial (812 acres). The Town’s pre-zone land use designations will take effect upon completion of the reorganization process and must remain in effect for a minimum of two years unless specific actions are taken by the Town Council. The map below provides an illustration of the Town’s proposed land uses in the area:

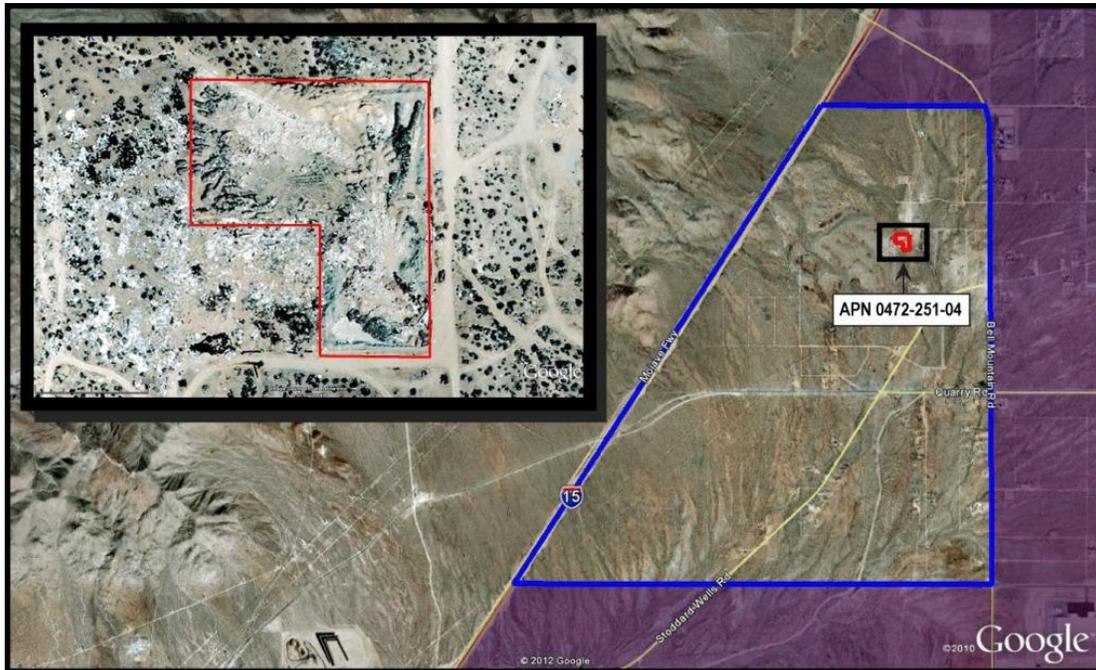


There are no current pending development projects within the reorganization study area. Therefore it is anticipated that buildout of the area will occur over the planning horizon of twenty years as identified in the Fiscal Impact Analysis.

On January 17, 2012 the Town of Apple Valley adopted Resolution No. 2012-01 (a copy is included as a part of Attachment #3 to this report) providing an “Amnesty Program” for the area it identifies as the Golden Triangle. In reference to land uses issue this resolution includes, but is not limited to, addressing the Town’s intent to allow for waiving of enforcement of particular Town codes or providing a grace period to bring property up to code compliance; and addressing retention of animal keeping. This program does not change current issues related to non-compliance with County Codes.

On January 30, 2012, staff from LAFCO, the Town and the County met to review the terms of the Amnesty Program. One question raised at the meeting related to the provision of Resolution No. 2012-01 which states “... or the property is sold, refinanced or transferred, the property shall be brought back into code compliance.” The Town explained that the provisions of the resolution related to code compliance and the continuation of the Solid Waste Voucher program would end upon any transfer of title. LAFCO and County staff questioned whether title transfers such as creation of a living trust or the passing of property from parent to child would trigger the cessation of the Amnesty Program, to which Town staff has replied in the affirmative (letter dated February 2, 2012 included in Attachment #3).

As a part of this review, LAFCO staff requested that the County's Land Use Services Department, Code Enforcement Division provide information on any code enforcement issues pending. One outstanding code enforcement issue relates to illegal dumping and is an open case on Parcel 0472-251-04. Administrative citations have been issued, a total of 23 issued as of September 2011, with current fines outstanding. The aerial photo below shows the extent of these issues:



Upon completion of the annexation to the Town of Apple Valley, the code enforcement obligation will transfer from the County to the Town for compliance and closure.

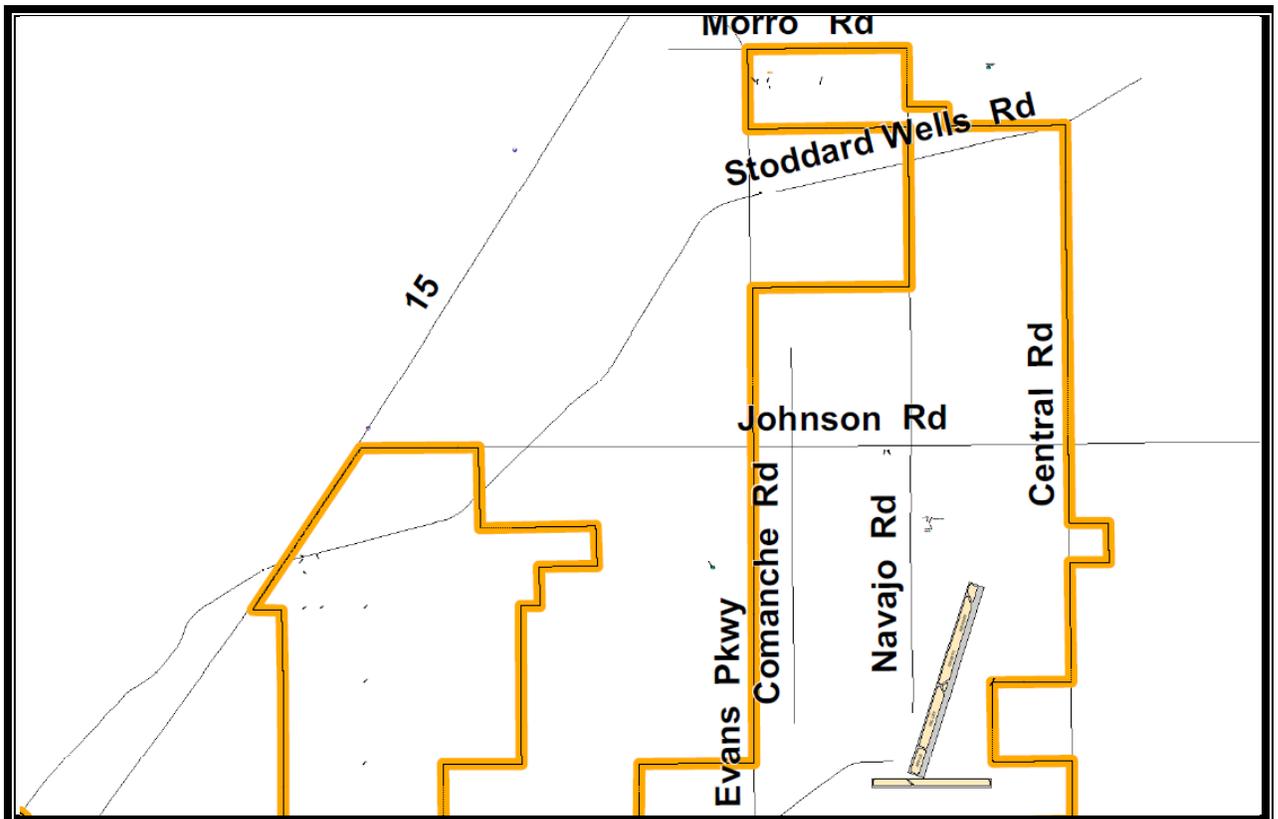
SERVICE DELIVERY:

The Town of Apple Valley has submitted a plan for the extension of its municipal services, including a Financial Impact Analysis, as required by law and Commission policy. The Plan does not identify the transfer of service from CSA 70 through detachment as it is the parent district to deliver site specific levels of service through the creation of zones. The Plan and Analysis are included as a part of Attachment #2 to this report. In general, the Plan identifies the following:

- The Town of Apple Valley provides for the wastewater collection and transportation system within its boundaries. Due to the predominant vacant nature of the study area, no infrastructure for wastewater collection exists. The scattered residences within the area utilize on-site waste disposal systems. Sewage collection services can be extended to the reorganization area upon request of property owners anticipating development and the payment of the

infrastructure extension cost. A Town of Apple Valley regional interceptor line extends southwest to northeast through the southeastern portion of the reorganization. Through annexation, the Town of Apple Valley will become responsible for the wastewater collection system; treatment and disposal will be provided by the Victor Valley Wastewater Reclamation Authority (VWRA) a joint powers entity.

- Water service is not currently provided within the study area. The existing residences rely upon wells or hauled water for their domestic uses. Water service is provided to the majority of the Town of Apple Valley through the Apple Valley Ranchos Water Company (hereafter shown as Apple Valley Ranchos), a privately-owned water utility governed by the California Public Utilities Commission (PUC). At present the study area is outside the certificated service area assigned Apple Valley Ranchos, as shown on the map below, thus it will require an expansion in order to provide service. The expansion process is required to be undertaken through the PUC prior to approval and/or proceeding with development of the area. The Plan for Service documents for the proposal identify that all costs associated with providing water service will be the responsibility of future development within the area. No response from Apple Valley Ranchos was included in the materials.



- Fire protection and paramedic services are currently provided by the Apple Valley Fire Protection District, which will continue to serve the area following annexation.
- Law enforcement responsibilities will shift from the San Bernardino County Sheriff's Department to the Town of Apple Valley's contract with the Sheriff's Department. Local traffic control will transition from the California Highway Patrol to the Town's contract with the County Sheriff.
- Solid Waste – The Town of Apple Valley has a franchise agreement with Burrtec Waste Industries for solid waste collection and disposal. In addition, the Town has a requirement for mandatory trash service. As a part of the Amnesty Program the Town has identified its desire to continue the County's Voucher Program allowing residents a choice in their method of solid waste disposal. On January 30, a meeting was held with staff from LAFCO, the Town, County Solid Waste and County Counsel to review the needed agreements to allow for the continuation of the Voucher Program.

The letter from the Town of Apple Valley, dated February 2, 2012, outlines this program (copy included in Attachment #3). Specifically, as a condition of approval for LAFCO 3169, the existing fee structure for the County's Land Use Refuse Disposal Fee will continue under the Town of Apple Valley for the current recipients, 46 parcels within LAFCO 3169. On February 7, 2012, LAFCO staff received the official response from the County indicating it could not provide for the continuation of the voucher program (a copy of the letter from the county Department of Public Works, Solid Waste Management Division included as Attachment #4 to this report) but would assist the Town in establishing its own program with a payment required to the County for the service.

After reviewing the County's response, LAFCO staff in conjunction with Town staff has determined the mechanics necessary for continuation of this program as required by the Town's Resolution No. 2012-01. They are:

- Pursuant to Government Code Section 56886(t) the Commission shall condition the approval of LAFCO 3169 on the continuation of the existing Solid Waste Land Use Refuse Disposal Fee by the Town of Apple Valley for the 39 parcels currently billed. The terms and conditions related to the County's adoption of this program shall apply to the Town's program, so there will be no change in the fee or program to eligible property owners.
- The Town will place the fee on the tax bill annually, account for the revenues in a separate fund, and establish a system for providing up to 54 trips per year to the Victorville Landfill to the eligible property owners.
- The Town and County of San Bernardino Department of Public Works, Solid Waste Management Division shall establish a system for charging

for the service provided by the Town’s voucher program at the Victorville landfill.

In discussion with County and Town staff, it is anticipated that the program will be similar to that currently in effect with the Helendale Community Services District, whereby a “voucher” or some method of identification is provided the property owners eligible for the service and the County bills the agency the actual cost for those actually utilizing the landfill, approximately \$13 per visit. This program is not available for expansion within the territory and will terminate upon any transfer of title associated with the property as outlined in the Town’s Amnesty program.

In order to implement this program, staff is recommending that a condition of approval be applied to the proposal as follows:

The existing San Bernardino County Land Use Refuse Disposal Fee and Voucher Program currently in effect within the territory shall be continued by the Town of Apple Valley for existing participants following annexation in accordance with the terms and conditions specified in Town of Apple Valley Resolution No. 2012-01 and the listing of parcel paying the fee included as Exhibit “B” to this resolution. The continuation of this fee is authorized pursuant to the provisions of Government Code Section 56886(t) and shall be applied by the Town of Apple Valley annually on the tax roll. The terms for continuation of the solid waste disposal voucher program and the establishment of a separate fund for accounting for revenues received shall be outlined in an approved program adopted by resolution of the Town Council of the Town of Apple Valley, a copy of which shall be submitted to the LAFCO office. The issuance of the Certificate of Completion for LAFCO 3169 shall be held in abeyance, not to exceed six (6) months from successful completion of the protest proceedings, until receipt of the signed resolution of the Town Council of the Town of Apple Valley.

- Roads – County maintained roads within the area shall transfer to the Town of Apple Valley upon completion of LAFCO 3169. The Transportation Planning Division of County Public Works has identified the following as the current County maintained roads within the area to be transferred:

Road Name	Sequence Limits	Road & Sequence Nbr	Yard	System Section	Supv Dist	Region
DALE EVANS PARKWAY	JOHNSON RD N/.37M N,COLUSA RD	283925-010	16	JB	1	APPLE VALLEY
STODDARD WELLS ROAD	JOHNSON RD NE/DALE EVANS PKWY	774300-035	16	JL	1	STODDARD WELLS
COLUSA ROAD	.08M W,WILLOW SPGS AVE E/DALE EVANS	249000-010	16	SA	1	STODDARD WELLS
JOHNSON ROAD	STODDARD WELLS RD E/DALE EVANS PKWY	449900-010	16	SA	1	STODDARD WELLS
LANGLEY STREET	FAIRFIELD AVE E/0020ME,STODDARD WELL	484950-010	16	SA	1	STODDARD WELLS
SHORT AVENUE	COLUSA N/MORRO	751950-010	16	SA	1	STODDARD WELLS

- Drainage – The Plan for Service identifies that the Town of Apple Valley is responsible for local drainage management (page 11 of the Plan for Services). During the review, LAFCO was requested by Mr. Mazin Kasey, Deputy Director

of the Department of Public Works, to include a condition of approval transferring all offered or dedicated drainage easements to the Town. While County maintained roads are transferred as a matter of law, in some instances the transfer of drainage easements has not taken place; therefore, the County is requesting that this be included in the Commission's decision specifically. The Town of Apple Valley Engineer has provided the Town's consent for this transfer (Attachment #5); therefore, staff is recommending that this matter be included as a condition in the resolution of approval.

The Town has included a Fiscal Impact Analysis, as required by Commission policy, which outlines, on page 21, the Total Potential Costs/Revenues to the Town of Apple Valley, summarized on Table 4. The cost/revenue analysis identifies that at each phase of buildout will have a positive cash flow position for the Town of Apple Valley and the Apple Valley Fire Protection District which currently overlays the site. The materials identify the Town of Apple Valley's continuing allocation of 3% of its ad valorem property tax share to the park and recreation fund, established after the dissolution of the Apple Valley Park and Recreation District and the designation of the Town as its successor agency.

In conclusion, the Plan for Service, along with the Financial Impact Analysis, shows the ability of the Town of Apple Valley to extend its services to the area upon need through future development and to maintain existing services at the time of reorganization. The Amnesty Program provides for further clarification of the manner in which the Town will provide for continuation of existing uses after the transfer of land use authority as well as allowing the existing residents options for solid waste disposal services.

ENVIRONMENTAL CONSIDERATIONS:

As identified for LAFCO 3163 The Town of Apple Valley prepared a Final Environmental Impact Report (Final EIR) for the Town's General Plan Update and the pre-zoning for Annexations 2008-001 and 2008-002. LAFCO 3163 represented Annexation No. 2008-002. The Town's environmental assessment was reviewed by the Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, and copies of the documents were forwarded to the Commission on March 31, 2011 for review.

Under normal circumstances the Commission would be a responsible agency utilizing these documents for review of the application presently before it, LAFCO 3169. However, since the Commission has no discretion in the review of this application under the provision of G.C. §56375(a), Mr. Dodson has recommended the adoption of a statutory exemption for LAFCO 3169 (copy of letter included as Attachment #6). This recommendation is based on the finding that the Commission has no discretion in the approval process for the reorganization; therefore, the project is ministerial. Ministerial projects are exempt from the requirements of CEQA under Section 15268 of the State CEQA Guidelines. If the Commission concurs in this determination, it is recommended that it adopt the Statutory Exemption for this project and direct the Executive Officer to file a Notice of Exemption with the appropriate agency within five days.

CONCLUSION:

The Town of Apple Valley proposed the annexation of what it describes as the “Golden Triangle” to assure that the Town’s development standards are met in the future for this gateway to the Town. As the City of Victorville’s plans for the Gateway Specific Plan and DesertXpress hub move forward, directly across the I-15 Freeway, the development pressures will take on new, and in some cases renewed, significance for the Town.

State law requires that the Commission approve LAFCO 3169. Even without this mandate, LAFCO staff would support approval of LAFCO 3169 as the reorganization area will benefit from the full range of municipal services available through the Town of Apple Valley upon future development. In addition, the success of the reorganization will clearly identify the entity that landowners will need to work with to review any potential plans for development, infrastructure improvement, and development standards for the future. For all the reasons outlined in the report above, staff recommends approval of LAFCO 3169.

DETERMINATIONS:

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 Registrar of Voters Office has determined that the study area is legally inhabited, containing 54 registered voters as of January 23, 2012.
2. The County Assessor has determined that the assessed value of land and improvements within the annexation area is \$46,588,859 (land - \$43,500,539; improvements - \$3,088,320).
3. The area is within the sphere of influence assigned the Town of Apple Valley.
4. Commission review of this proposal has been advertised in *The Daily Press*, a newspaper of general circulation within the study 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 notices to landowners and registered voters within the annexation area (totaling 416 notices), and to landowners and registered voters surrounding the study area (totaling 502 notices) in accordance with State law and adopted Commission policies. To date, no comments or protest have been received regarding the proposal.
6. The Town of Apple Valley has assigned the area pre-zone land use designations as a part of its General Plan Update. The information which follows identifies the

land use type and its estimated acreage within the proposal area: Estate Residential (one unit to 2.5 acres – 778 acres); Multi-Family Residential (2 to 20 dwelling units to the acre – 219 acres), Mixed Use (residential at 4 to 30 units to the acre/retail and office use permitted – 95 acres), General Commercial (53 acres), Regional Commercial (442 acres) Office Professional (183 acres) and Planned Industrial (812 acres). This zoning designation conforms to the adopted General Plan for the Town of Apple Valley and is consistent with surrounding land uses within the Town. Pursuant to the provisions of Government Code Section 56375(e), this zoning designation shall remain in effect for at least two years following annexation unless specific actions are taken by the Town Council.

On January 17, 2012 the Town of Apple Valley adopted Resolution No. 2012-01 providing an “Amnesty Program” for the Golden Triangle area which includes, but is not limited to, addressing the Town’s intent to allow for waiving of enforcement of particular Town codes or providing a grace period to bring property up to code compliance; addressing the retention of a voucher program for trash service; and addressing retention of animal keeping. This program supplements the Pre-zoning and transfer of land use authority to the Town of Apple Valley through approval of LAFCO 3169 and will become effective upon issuance of the Certificate of Completion for this application.

7. The Commission’s Environmental Consultant, Tom Dodson and Associates, has recommended that this proposal is statutorily exempt from environmental review. The basis for this recommendation is that this reorganization is a ministerial action, required by the terms of Government Code Section 56375(a), without discretion in the Commission’s consideration of this proposal. Approval of a ministerial action is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA), Section 21080(b), the State CEQA Guidelines, Section 15268, and the Commission’s adopted CEQA Guidelines. Mr. Dodson recommends that the Commission adopt the Statutory Exemption and direct its Executive Officer to file a Notice of Exemption within five (5) days with the San Bernardino County Clerk of the Board of Supervisors.
8. The area in question is presently served by the following local agencies:
 - County of San Bernardino
 - Apple Valley Fire Protection District
 - Mojave Water Agency
 - Mojave Desert Resource Conservation District (portions)
 - County Service Area 60 (Apple Valley Airport)
 - County Service Area 70 (multi-function unincorporated area Countywide)

County Service Area 70 will be detached upon successful completion of this proposal. None of the other agencies will be directly affected by the completion

of this proposal through an adjustment in their boundaries as they are regional in nature.

9. The Town of Apple Valley has submitted a plan for the extension of municipal services to the study area, as required by law, along with a Financial Impact Analysis required by Commission policy. These plans are included as a part of Attachment #2 to this report and indicate that the Town can maintain and/or improve the level and range of services currently available in the area.

In addition, the Town has adopted an Amnesty Program, as defined by Resolution No. 2012-01 which outlines its continuation of the existing County Land Use Refuse Disposal Fee system for existing residences within the area. As a condition of approval for LAFCO 3169, the continuation of the fee will be authorized, the continuation of the Voucher program will be implemented by the Town of Apple Valley, and the Certificate of Completion will be held in abeyance until a copy of the approved program implementing the voucher system by the Town Council is received by LAFCO.

10. The reorganization proposal complies with Commission policies that indicate the preference for areas proposed for development at an urban-level land use to be included within a Town or City so that the full range of municipal services can be planned, funded, extended and maintained.
11. The reorganization area can benefit from the availability and extension of municipal services from the Town of Apple Valley upon future development.
12. This proposal will assist the Town's ability to achieve its fair share of the regional housing needs as the land use designation range from Estate Residential, which allows one unit to 2.5 acres, up to Medium Density Residential which allows from 4 to 20 units to the acres. The method for transfer of regional housing allocation units (RHNA) is a process conducted by the Southern California Association of Governments (SCAG) and not a part of the LAFCO process.
13. With respect to environmental justice, the proposed reorganization will not result in the unfair treatment of any person based upon race, culture, or income.
14. The County of San Bernardino and the Town of Apple Valley have successfully negotiated a transfer of property tax revenues that will be implemented upon completion of this annexation. 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.

KRM/

Attachments:

1. [Vicinity Maps and Annexation Area Map](#)
2. [Town of Apple Valley Resolution No. 2011-36, Application, Plan for Services, and Financial Impact Analysis](#)
3. [Letter from Town of Apple Valley Dated February 2, 2012 Related to Contract for Voucher Program, Resolution No. 2012-01 Amnesty Program, Town of Apple Valley Staff Report for January 10, 2012 Council Meeting](#)
4. [County Solid Waste Management Department Position on Continuation of Land Use Refuse Disposal Fee within the area of LAFCO 3169](#)
5. [Letter from Town of Apple Valley Engineer Dated December 14, 2011 Consenting to Assumption of Offered or Dedicated Drainage Easements, Memorandum from Mazin Casey, Deputy Director, Department of Public Works Requesting Addition of Condition of Approval for Transfer of Drainage Easements](#)
6. [Response from Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, including Candidate Findings of Fact and Statement of Overriding Considerations](#)
7. [Draft Resolution #3156](#)