

LOCAL AGENCY FORMATION COMMISSION COUNTY FOR SAN BERNARDINO

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DATE: JUNE 12, 2012 
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #11 – REVIEW AND CONSIDERATION OF AMENDMENT
TO THE SAN BERNARDINO LAFCO POLICY AND PROCEDURE
MANUAL**

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Adopt the Mission Statement as presented by staff, or as modified at this hearing, which is:

“The broad mission of the Local Agency Formation Commission for San Bernardino County is to implement the legislative direction and policies embodied in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 in a manner that provides for an orderly and efficient growth pattern that reconciles the varied needs of San Bernardino County, promotes the Countywide Vision Statement, is in keeping with the provisions of the California Environmental Quality Act, and addresses the parameters of the principle acts for Cities and Special Districts.

One of the fundamental principles of the Local Agency Formation Commission is to ensure the establishment of an appropriate, sustainable, and logical municipal level government structure for the distribution of efficient and effective public services. The Local Agency Formation Commission for San Bernardino County will encourage and promote communication among agencies (public and private), property owners and residents of the County to achieve these goals. The Commission’s policies shall be carried out in an efficient and courteous manner.”

2. Repeal the existing San Bernardino LAFCO Policy and Procedure Manual, Human Resources Policies and Guidelines, and Benefits Plan;

3. Certify that the proposed revisions, amendments, and reorganization of the Policy and Procedure Manual are 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;
4. Provide staff with any changes, corrections or amendments to the Policy and Procedure Manual as presented;
5. Adopt the Policy and Procedure Manual as revised, reorganized and consolidated which includes the addition of the Environmental Policies and Guidelines, Human Resources Policies and Guidelines and Benefit Plan as a part of the Policy and Procedure Manual, as may be modified at the hearing;
6. Direct staff to prepare the resolution adopting the Policy and Procedure Manual and place the item on the Consent Calendar for the August 15, 2012 hearing; and,
7. Establish an annual review of the Policy and Procedure Manual to be undertaken in August or September of every year to ensure that the document remains current and relevant.

BACKGROUND:

At the September 19, 2011 hearing the Commission opened its review of the Update to the Policy and Procedure Manual including a separate discussion of the Island Annexation Policies under Government Code Section 56375.3 (copies of the staff reports and minutes of that hearing are included as Attachment #1 to this report). The bulk of the revisions to the manual were non-controversial, but several items were controversial with direction to staff to re-evaluate the proposed changes and in reference to the Island Annexation Policies to return as soon as possible following release of the Attorney General Opinion requested by Senator Negrete-McLeod.

This matter was originally continued to the Commission's January 18 and March 21, 2012 hearings. Staff was directed to return with a full consideration that also addressed policy declarations related to "Disadvantaged Unincorporated Communities" and the directives of Senate Bill 244, effective January 1, 2012. The materials which follow address these primary issues which require further policy interpretation by the Commission:

DISADVANTAGED UNINCORPORATED COMMUNITIES:

Since the September 2011 review of the Policy and Procured Manual Item, new legislation has been adopted related to disadvantaged unincorporated communities – SB 244 by Senator Lois Wolk became law on January 1, 2012. As the Commission is

aware these provisions expanded an existing factor and included the following new factor to be included in any service review conducted:

- (2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.

This legislation also provides the following definition for a disadvantaged unincorporated community:

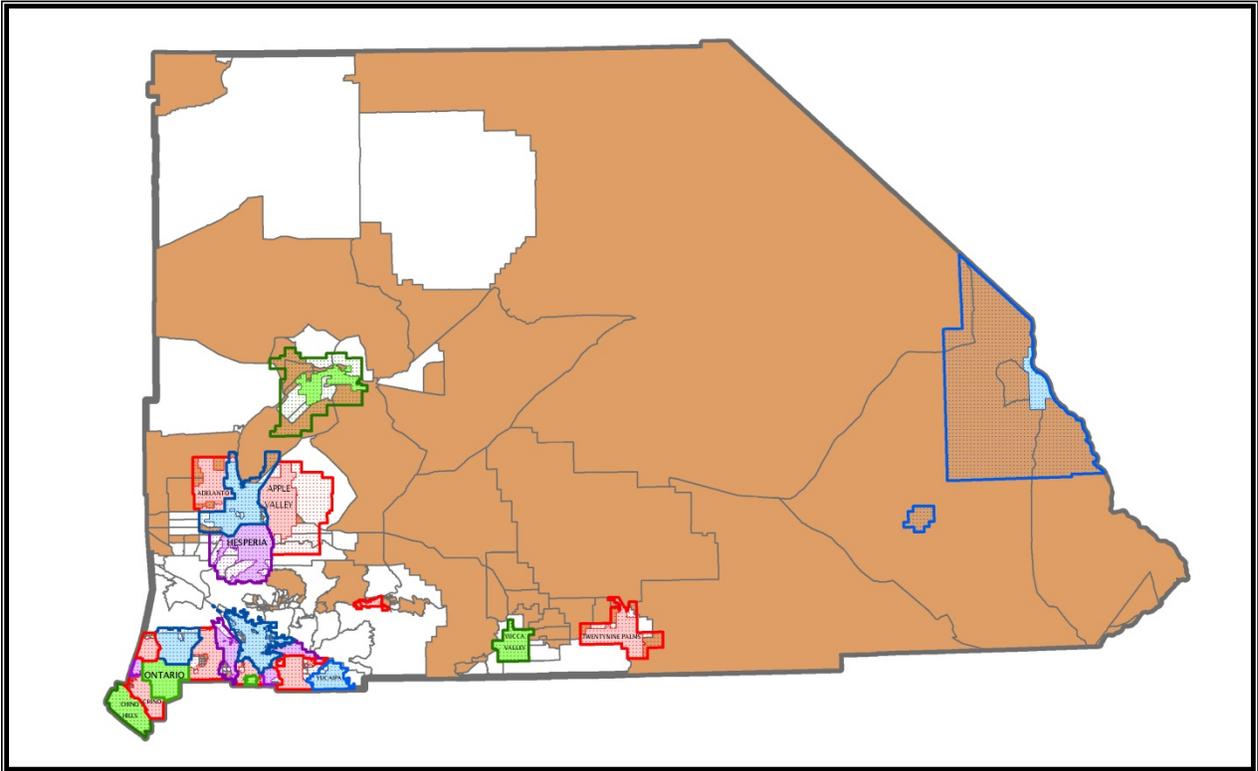
56033.5. "Disadvantaged unincorporated community" means inhabited territory, as defined by Section 56046, or as determined by commission policy, that constitutes all or a portion of a "disadvantaged community" as defined by Section 79505.5 of the Water Code.

Government Code Section 56046 states that "inhabited" means an area with 12 or more registered voters. Water Code Section 79505.5 states (a) "Disadvantaged community" means a community with an annual median household income that is less than 80 percent of the statewide annual median household income. These directions are further refined in the Wolk Bill in its land use planning definitions. These are defined as follows in Government Code Section 65302.10:

- (a) As used in this section, the following terms shall have the following meanings:
 - (1) "Community" means an inhabited area within a city or county that is comprised of no less than 10 dwellings adjacent or in close proximity to one another.
 - (2) "Disadvantaged unincorporated community" means a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income.
 - (3) "Unincorporated fringe community" means any inhabited and unincorporated territory that is within a city's sphere of influence.
 - (4) "Unincorporated island community" means any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean.
 - (5) "Unincorporated legacy community" means a geographically isolated community that is inhabited and has existed for at least 50 years.

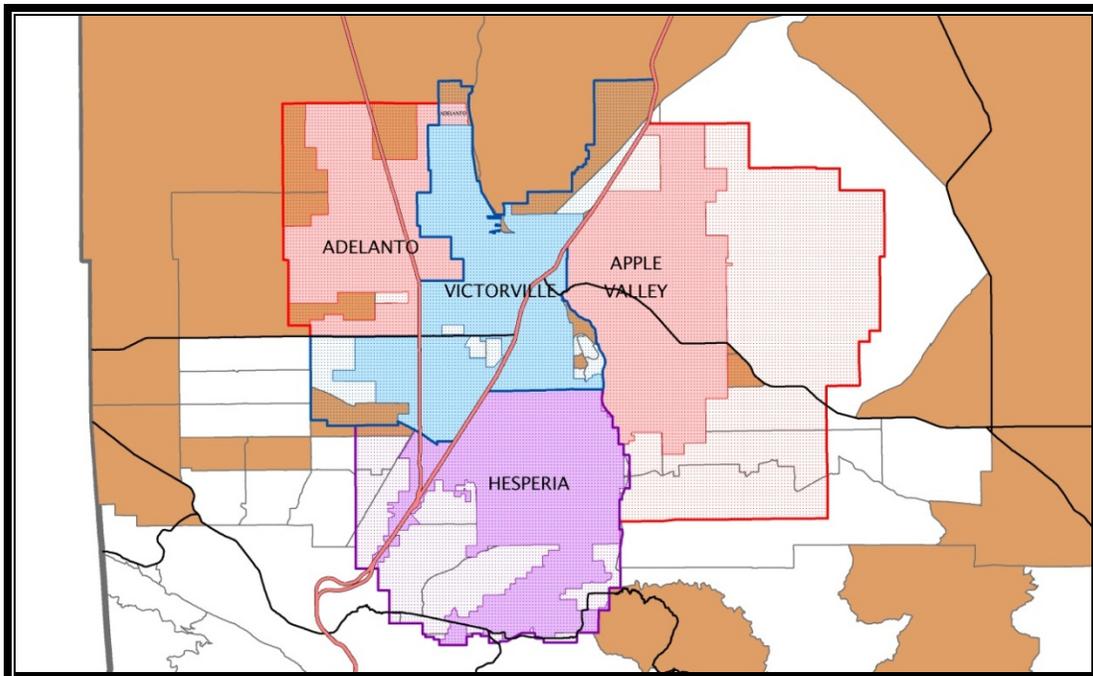
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Staff has looked into the application of the median income requirements utilizing the ESRI Business Analyst Online, a web-based application that can generate/evaluate demographic data. Staff has chosen this model as it is used by the County of San Bernardino in its utilization of income demographic data in many of its projects including the County Visioning Project. Other LAFCOs have chosen to use the American Communities Survey – a joint effort with the Census Bureau -- for the development of these criteria. LAFCO staff is proposing the adoption of a policy to use the ESRI data set for the County so that the interpretation of data is consistent across uses. The map which follows outlines those unincorporated areas which meet the criteria established by SB 244 on a countywide scale based upon the application of the income criteria:

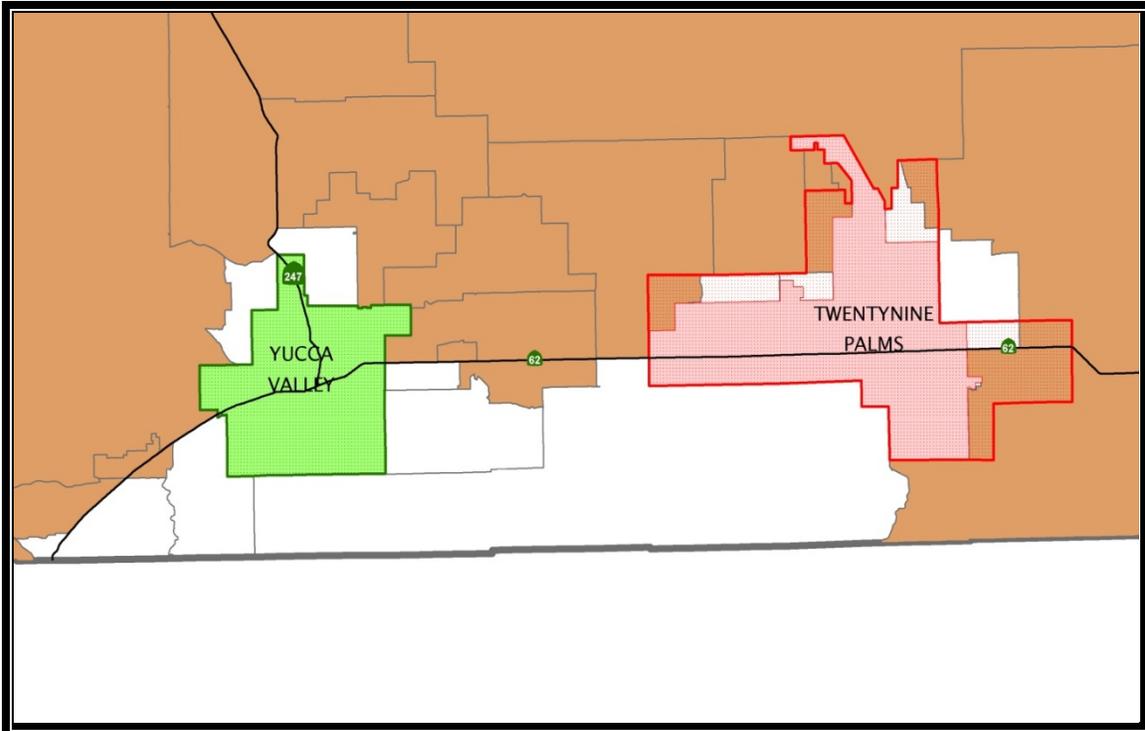


Regionally, this data become even clearer in its interpretation as shown below:

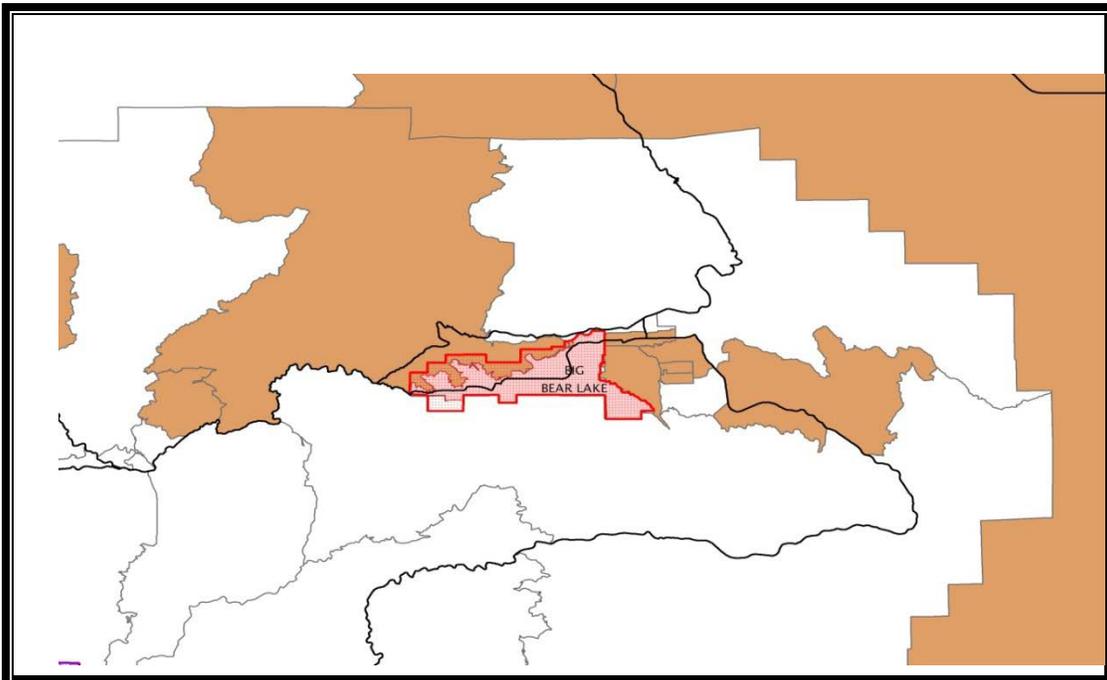
North Desert area:



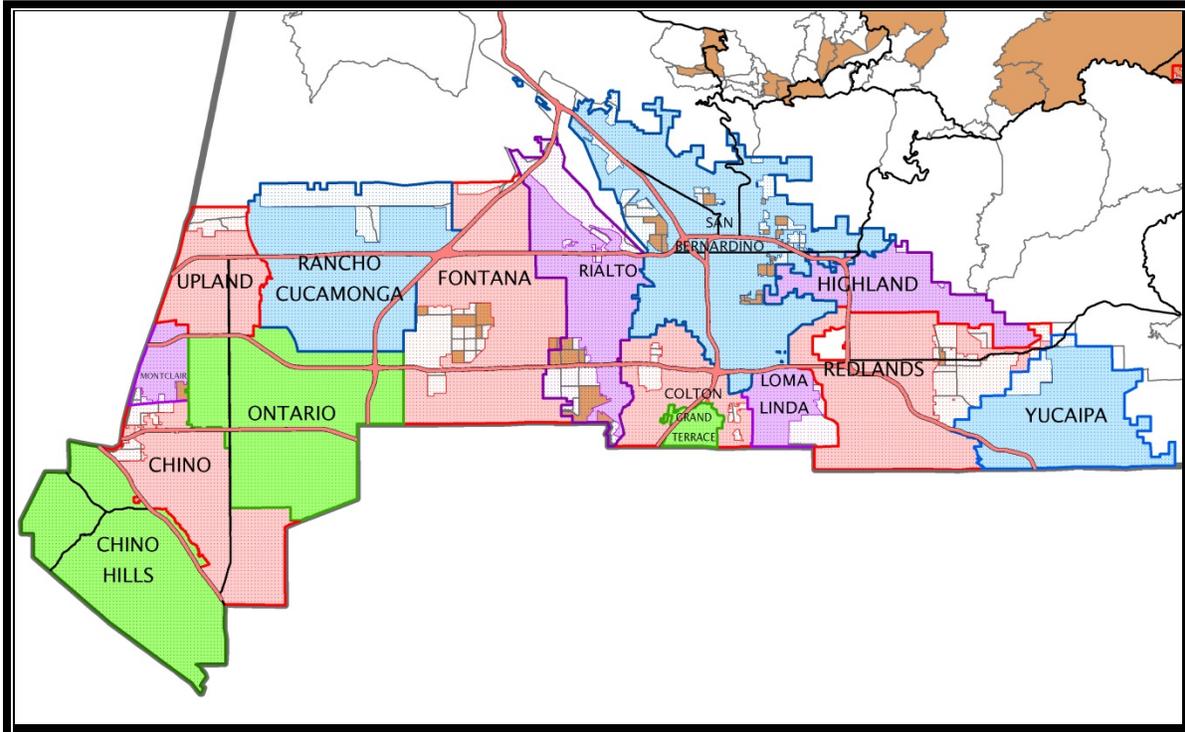
South Desert:



Mountain Region:



Valley Region:



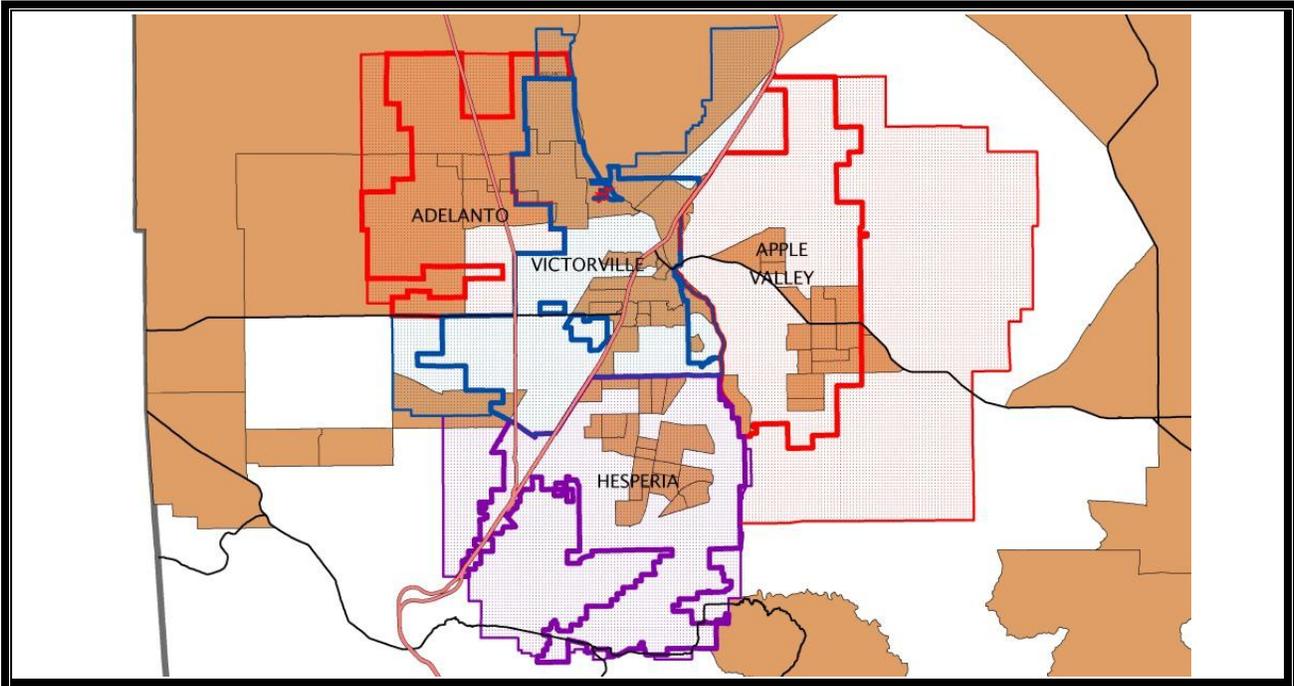
As these maps identify, additional policy declarations will be needed to implement the new provisions. Staff is proposing that the Commission adopt the following implementation policy related to the provisions to define disadvantaged unincorporated community:

12. Implementation of the Provisions of Disadvantaged Unincorporated Community Provisions:
 - a. Pursuant to Government Code Section 56033.5 the Commission determines to utilize the ESRI Business Analyst data to determine the 80% of statewide annual median income defining a disadvantaged unincorporated community.
 - b. Community shall mean the same as Government Code Section 65302.10 as follows "Community" means an inhabited area within a county that is comprised of no less than 10 dwellings adjacent or in close proximity to one another.

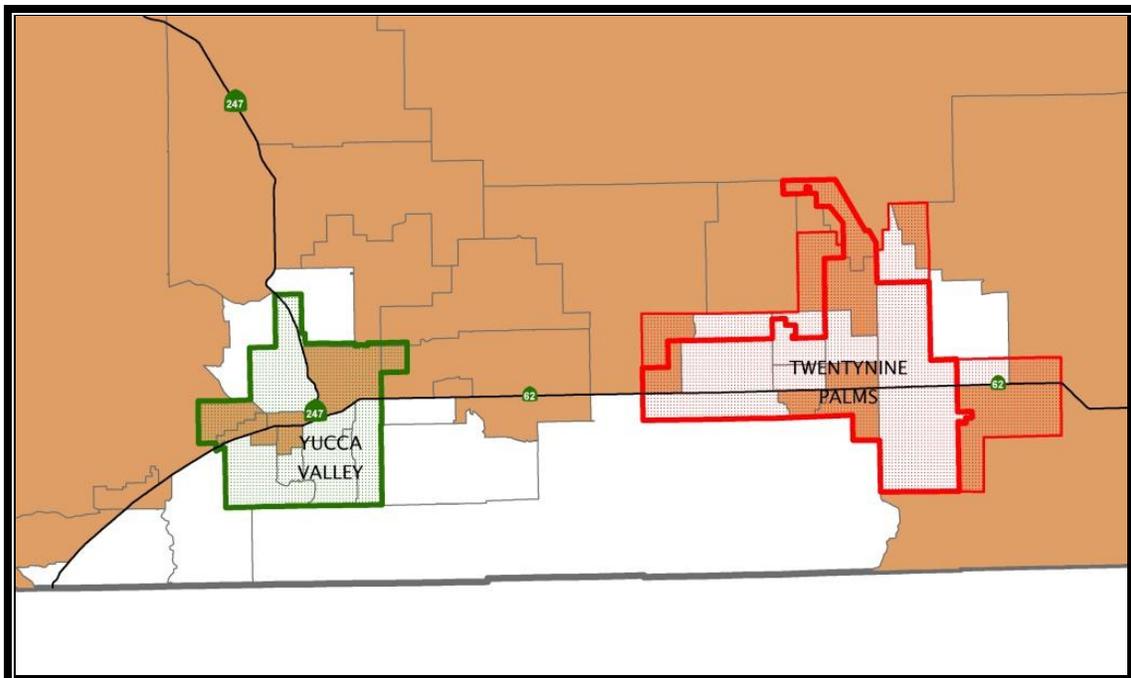
The Commission has seen the use of this information in the service reviews for the Twentynine Palms and Wonder Valley communities. While staff is implementing the provisions of the law, one point that remains overlooked, in the staff view, is that these disadvantaged unincorporated communities are adjacent to disadvantaged **incorporated** communities. The position that annexation will somehow change the overall service delivery patterns remains untested at this point and staff remains

skeptical that annexation, in and of itself, will change any of these service questions. The two maps which follow identify the disadvantaged communities within cities showing that the question is larger than just if the area is unincorporated.

North Desert Cities:



South Desert Cities:



In the staff view, the question of the definition of community is one that “you know it when you see it” but which is difficult to assign as a policy declaration. As we begin implementation of the provision of SB 244, it is the staff’s position that the policy declaration presented provides a beginning point which will be modified and clarified in the future as we gain experience in its use.

- SB 244 also includes a new requirement regarding annexations of 10 acres or larger to a City which is adjacent to a “disadvantaged unincorporated community” which is included in the Code Section identified as powers and duties of the Commission (Govt. Code Section 56375). That new section reads:

Code Section 56375(a)(8):

(A) Except for those changes of organization or reorganization authorized under Section 56375.3, and except as provided by subparagraph (B), a commission shall not approve an annexation to a city of any territory greater than 10 acres, or as determined by commission policy, where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation, unless an application to annex the disadvantaged unincorporated community to the subject city has been filed with the executive officer.

(B) An application to annex a contiguous disadvantaged community shall not be required if either of the following applies:

- (i) A prior application for annexation of the same disadvantaged community has been made in the preceding five years.*
- (ii) The commission finds, based upon written evidence, that a majority of the residents within the affected territory are opposed to annexation.*

Staff is proposing that the Commission adopt the following implementation policy related to this Code Section:

13. Disadvantaged Unincorporated Community Annexation Pursuant to Government Code Section 56375(a)(8):
 - (a) Based upon local circumstance the Commission determines that the requirement for imposition of subsection (A) of Government Code Section 56375(a)(8) setting forth the requirement for a supplemental annexation to the City of the disadvantaged unincorporated community shall be imposed as follows:
 - a. Valley and Mountain Cities – annexation greater than 10 acres
 - b. North and South Desert Cities – annexation greater than 25 acres

- (b) The Commission determines that no annexation required to be submitted pursuant to this section shall create an island or peninsula of unincorporated territory substantially surrounded by the City to which the annexation is proposed or the annexing city and an adjacent city.
- (c) The Commission determines that in implementing subsection (B) (ii), it shall consider written evidence of opposition to include an application for sphere of influence removal or petitions for creation of a new government which were unsuccessful.

It is the staff's position that these two policies will set the framework for implementation of the provisions of SB 244. It is anticipated that at the first update of the manual in August or September of 2013 these provision will be re-analyzed and possibly modified.

ISLAND ANNEXATION UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 56375.3

At the September 2011 hearing the Commission determined that it would continue consideration of its Island Policy until the Attorney General Opinion requested by Senator Gloria Negrete-McLeod was received. At the January 2012 hearing staff identified that the draft opinion had been submitted for review and at that time no further movement for release of the opinion had taken place. On June 1, 2012, the long awaited Attorney General Opinion was released, No. 10-902, which answers the three questions posed by Senator McLeod:

1. What constitutes an "island" within the meaning of Govt. Code Section 56375.3, pertaining to the annexation of surrounded or substantially surrounded islands of unincorporated territory?
2. Does Govt. Code Section 56375.3 require the annexation of an "entire island" or "entire unincorporated island" as set forth, respectively, in subdivisions (b)(1) and (b)(2) of that statute?
3. May a LAFCO split up an unincorporated island that exceeds 150 acres into smaller parcels in order to utilize the streamlined "island annexation" procedures set forth in Govt. Code Section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required?

The following provides a synopsis of the Opinion's conclusions (included as Attachment #2 to this report) that (1) the island must be totally or substantially surrounded and may not be part of another island that is surrounded or substantially surrounded in the same manner; (2) the statute requires the annexation of an "entire island" or "entire unincorporated island" as set forth in the statute and provides it analysis of this issue; and (3) a LAFCO may not split up an unincorporated island that exceeds 150 acres into smaller segments of 150 acres or less in order to utilize the streamlined "island annexation" procedures.

LAFCO Legal Counsel has reviewed the Opinion and has identified that he has questions about the conclusions identified in Footnote 47 on page 9, but response to the Opinion remains a policy declaration for the Commission.

Staff's review of the Opinion identifies the need for further discussion of Policy Item #1, the Commission's definition of substantially surrounded. This is based upon the Opinion's discussion; pages 8 and 9, of the term substantially which states that substantially surrounded should be "surrounded, to a large degree or in the main". At the March 31, 2005 hearing where the Island Annexation Policy was adopted (copy of this staff report included as Attachment #3), staff's recommendation was that to apply a percentage to this determination it should be set at 60% to comply with the general, normal understanding of the term substantial. Given the new evidence of the Attorney General Opinion, it is again staff's recommendation that the first item of the policy increase the percentage to 60 or 66 from the existing 52% to better reflect the determinations.

In addition, the Opinion reasserts the definitions of *Fig Garden Park No. 2 Association vs LAFCO* as to whether portions of larger unincorporated islands could be annexed under the Island Annexation provisions of Govt. Code Section 56375.3. On page 7 of the Opinion, the Attorney General provides its analysis of the question noting that it would not assign a mathematical equivalent to the question, but there is strong guidance in the prior rulings on the matter regardless of the language "and the island does not constitute a part of an unincorporated area that is more than 100 acres in area" being removed in 2004. That guidance is that a single island cannot be broken up into smaller parts. Staff will use this guidance for future considerations of islands annexations submitted by a City for Commission review.

Also, since the September hearing, the State has eliminated redevelopment agencies which affects the current policy language. The Island Annexation Policy as currently written reads 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.
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.

3. The Commission directs that a City proposing to initiate an island annexation proposal shall have conducted a public relations effort within the area prior to the placement of the item on a Commission agenda for consideration. Such 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 application submitted for consideration by the Commission.

With the demise of Redevelopment Agencies effective this Fiscal Year, staff recommends that Item #2 be eliminated.

At the September 2011 hearing the Commission proposed to amend Item #1 to include language that identifies lands administered by the federal government rather than the term of “forest service land” and did not support staff’s proposed amendments to the Island policies related to its historic practice to require Cities to address their islands as a function of a development-related annexation request. Instead, the Commission directed staff to draft a policy statement that it would not impose its historic practice based upon the enactment of SB 89 funding restrictions and to include language stating so in the policy. To reflect this direction, staff is presenting the following new language for Item #3 of the Island Policy:

The Commission identifies that following passage of SB 89, an urgency budget bill for Fiscal Year 2011-12 removing the motor vehicle in-lieu fees that were provided to incorporations and inhabited annexations completed after 2004, it will no longer automatically require annexation of island areas as a part of a development-related annexation application. The Commission believes that the removal of this discretionary funding renders island annexation unsustainable without additional revenues and discussion of supplemental funding would necessitate a protest process.

In order for the Commission to be apprised of the effects of this change in philosophy and policy, it directs that upon receipt of a development-related annexation or reorganization application, which anticipates development of 500 or more dwelling units and/or 500,000 square feet of commercial/ industrial development, LAFCO staff shall, within 90-days, place an item on the Commission’s Information Item calendar to review that City’s unincorporated island areas which meet the criteria identified in Government Code Section 56375.3. It is understood that this is a policy declaration of the Commission which may be overridden based upon individual circumstance.

The manual included for Commission consideration includes this proposed language as Policy #10 within the Project/Application Processing section which is proposed to read 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 60% 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 lands administered by the federal government.
2. 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.
3. The Commission identifies that following passage of SB 89, an urgency budget bill for Fiscal Year 2011-12, removing the motor vehicle in-lieu fees that were provided to incorporations and inhabited annexations completed after 2004 it will no longer require annexation of island annexations as a part of development-related application. The Commission believes that the removal of this discretionary funding renders island annexation unsustainable without additional revenues and discussion of supplemental funding would necessitate a protest process.

In order for the Commission to be apprised of the effects of this change in philosophy and policy, it directs that upon receipt of a development-related annexation or reorganization application, which anticipates development of 500 or more dwelling units and/or 500,000 square feet of commercial/ industrial development, LAFCO staff shall, within 90-days, place an item on the Commission’s discussion calendar to review that City’s unincorporated island areas which meet the criteria identified in Government Code Section 56375.3. It is understood that this is a policy declaration of the Commission which may be overridden based upon individual circumstance.

ENVIRONMENTAL REVIEW GUIDELINES

Over the last several months staff and the Commission’s Environmental Consultant, Tom Dodson of Tom Dodson and Associates, have worked to overhaul the Environmental Review Guidelines, Policies and Procedures. The revised section has

also been reviewed by LAFCO Legal Counsel. The materials included in the Revised Manual, Section 5, include updates and changes to the language which have taken place over the last sixteen years. In addition, the materials include clarified sections related to the Commission's responsibilities in implementing CEQA. Staff believes that these revisions provide a more comprehensive approach to the application of CEQA and the State CEQA Guidelines for LAFCO applications and considerations.

ADDITIONAL UPDATES TO POLICY MANAUL:

The materials which follow provide for responses to the items identified in the prior hearings and the revisions which are recommended by staff to each of the Sections of the Manual:

HUMAN RESOURCES POLICIES AND PROCEDURES AND BENEFIT PLAN:

Based upon actions taken during the Fiscal Year 2012-13 Budget Review, this portion of the Policy and Procedure Manual has been updated to include the Clerk to the Commission/Office Manager and LAFCO Secretary positions. No other changes have been included and the former separate documents are included in their entirety in the new Policy and Procedure Manual.

PROJECT/APPLICATION PROCESSING POLICIES:

The Commission's request that the policies outline the requirement that any resolution of application to be submitted clearly identify that the adopting entity understands the Commission's Indemnification policy. The new policy states:

12. RESOLUTION OF INITIATION REQUIREMENT (Adopted June 20, 2012)

The Commission requires that for any resolution initiating an application for change of organization, in addition to the requirements outlined in Government Code Section 56654, it shall include a provision acknowledging the Commission's requirement for legal indemnification as outlined in Policies 10 and 11 of the Accounting and Financial Section of this Manual.

FORMS:

The Commission is required to adopt its forms for use, at a minimum, to address the submission of protest. For San Bernardino LAFCO, the Commission has reviewed and adopted the full range of forms used in application processing. In the September 2011 discussion the following changes to forms were proposed and continue to be recommended:

1. Notice of Intent to Circulate Petition and Landowner Consent forms have been corrected to make them official forms and remove confusion as to their use as examples for submission. This change will require applicants in the future to use

these forms only for processing.

2. LAFCO staff has renamed the former “Justification for Proposal” form to “Application and Preliminary Environmental Description” form. The former name was confusing to many applicants. In addition, following the questions which arose with the processing of the San Bernardino Island application, the form now includes a clear identification of indemnification and the clear understanding regarding the extension of existing taxes, fees, and assessments upon annexation.
3. Supplement forms for all changes have been updated to outline the requirement for submission of a Fiscal Impact Analysis which addresses a minimum five-year projection of revenues and expenditures for the change.
4. The Application for Service Extension has been updated to include the indemnification requirement.
5. Under Service Reviews, the number of forms has been reduced to a single form for use in the mandatory service review process. Prior forms have been deemed to be checklists, listing of guidelines and/or data sheets for staff support not really a form subject to Commission review and adoption.

Staff is proposing the addition of an Environment Checklist form to this listing as recommended by the Commission’s Environmental Consultant. The form proposed is the one included as Appendix G in the State CEQA Guidelines and a copy is included in the draft Manual presented to the Commission. The balance of the forms within this section is unchanged. Staff is recommending that the Commission adopt these forms.

ENVIRONMENTAL CONSIDERATION:

At the July 2011 hearing, staff identified that the review of the efforts to revamp, revise, and reorganize the Manual with the Commission’s Environmental Consultant, Tom Dodson, and Legal Counsel resulted in the recommendation that an environmental assessment of the project be undertaken. This prompted the need to continue the consideration to the September hearing. At the September 2011 hearing, the island annexation changes under discussion, prompted the Commission’s Environmental Consultant to recommend a continuance to review any potential environmental impacts based upon the Commission’s direction.

Mr. Dodson has reviewed the actions proposed to revise, reorganize, and update the Policy and Procedure Manual, including the Environmental Review Policies, and has indicated that it is his recommendation that the matters are statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission’s approval of the updated Manual has no potential to cause an adverse effect on the environment; and therefore, the project is exempt from the requirements of CEQA as outlined in the State CEQA Guidelines, Section 15061(b)(3)

and the Commission's Environmental Guidelines. It is recommended that the Commission 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:

First, staff recommends that the Commission adopt its Mission Statement, providing for amendments, additions, or changes to the statement provided. Second, staff recommends that the Commission provide its additions, amendments or corrections to the revamped and reorganized Manual and take the actions necessary to adopt the new document. Finally, staff recommends that the Commission establish an annual review of its Policy and Procedure Manual, to take place at the August or September hearing of each year, to make sure that the document remains current in the future.

KRM/

Attachments:

1. [Minutes from September 2011 hearing; Staff Reports from January 2012 and September 2011 Related to Policy and Procedure Manual Consideration; and Island Annexation Staff Report for September 2011 hearing](#)
2. [Attorney General Opinion No. 10-902 Dated June 1, 2012](#)
3. [Staff Report Dated March 25, 2005 related to policy definition of substantially surrounded and excerpt of minutes related to consideration](#)
4. [Revised and Amended Policy and Procedure Manual](#)
5. [Letter Dated May 30, 2012 from Tom Dodson and Associates Recommending a Statutory Exemption](#)