

Information presented to
the Commission at the

6.20.12 LAFCO hearing.



COPY

OFFICE OF THE CITY ATTORNEY
CITY OF SAN BERNARDINO

JAMES F. PENMAN
CITY ATTORNEY

January 4, 2011

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Kathleen Rollings-McDonald
Executive Officer
Local Agency Formation Commission (LAFCO)
215 North "D" Street, Suite 204
San Bernardino, CA 92415-0490

LAFCO
San Bernardino County

Re: January 19, 2011 LAFCO Public Hearing
Agenda Item No. 11, Islands Annexation Policies and Commission Directives on
Implementation of Island Policies

Dear Ms. Rollings-McDonald:

Your letter dated December 10, 2010, requested the City of San Bernardino's input on LAFCO's Island Annexation Policies, which will be discussed at the above-referenced Public Hearing.

Any LAFCO Policy regarding Island Annexations must exempt the City of San Bernardino in accordance with the August 13, 2010 Stipulated Judgment and Court Order in Susan Hulse v. LAFCO, et al, San Bernardino Superior Court Case No. CIVDS 1002077 (copy attached), which states, at Page 8, Section 5, the following:

Unless and until the California Legislature substantially revises Section 56375.3 and/or the LAFCO Act to allow annexations of territories that comprise less than an entire unincorporated island, LAFCO agrees it shall not condition any annexations requested by the City on the City's additional annexation of areas that comprise less than the entire unincorporated island of which they are a part. In addition, LAFCO further agrees that it will not withhold approval of annexations requested by the City because island annexations of less than an entire unincorporated island cannot be so conditioned.

As you know, in Hulse v. LAFCO, et al, the plaintiff was successful in reversing six Island Annexations which LAFCO forced the City of San Bernardino to accept during processing of the

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City's application for the Arrowhead Springs area annexation; and the plaintiff obtained \$100,000 from LAFCO and the City as reimbursement for the plaintiff's attorneys fees and costs of litigation.

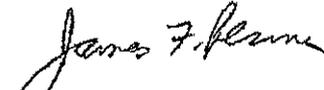
During the pendency of the Hulse v. LAFCO, et al lawsuit, as well as in July 2006, when the Mayor and Council considered Resolution No. 2006-247, the San Bernardino City Attorney's Office opined that LAFCO's Island Annexation policies violate Government Code Section 56375.3(b)(1) and (2). Section 56375.3(b)(1) requires that the territory (area) to be annexed "constitutes the entire island," and Section 56375.3(b)(2) requires that "The territory constitutes an entire unincorporated island located within the limits of a city" Government Code Section 56375.3 does not permit LAFCO to split up county unincorporated islands which exceed 150 acres, into smaller segments of 150 acres or less for annexation and thereby avoid landowner/voter protest proceedings. This opinion is supported by a 1980 California Attorney General Opinion, 63 Ops. Cal. Atty. Gen 343, and Schaeffer v. County of Santa Clara (1984) 155 Cal.App.3d 901, and Fig Garden Park No. 2 v. Local Agency Formation Commission of Fresno County (1984) 162 Cal.App.3d 336. Although this Attorney General's Opinion and these two appellate court decisions involve the predecessor statute to Government Code Section 56375.3, the operative language in the statute remains substantially the same.

Clark Alsop, of Best, Best & Krieger, LAFCO's General Counsel, has previously informed our office that one-half of the LAFCO attorneys in California agree with our legal opinion regarding Government Code Section 56375.3.

At the request of California State Senator Gloria Negrete McLeod (letters attached), the California Attorney General's Office is currently working on Opinion Request No. 10-902, which concerns these same issues regarding Government Code Section 56375.3.

We respectfully request that LAFCO suspend the implementation and the amendment of any LAFCO Policy regarding Island Annexations under Government Code Section 56375.3 until after the California Attorney General's Opinion is issued.

Very truly yours,


JAMES F. PENMAN
City Attorney

cc: Mayor and Councilmembers, City Clerk, City Manager