

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

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DATE: JUNE 8, 2007

FROM: SAMUEL MARTINEZ, LAFCO Analyst

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #7: LAFCO #3077 – City of Fontana Annexation No. 170

INITIATED BY:

City of Fontana Council Resolution

RECOMMENDATION:

Staff is recommending that the Commission:

1. Take the following actions with respect to environmental review:
 - a) Certify that the City's Negative Declaration for Cherry Avenue-Hemlock Avenue, South Annexation 170 (Anx. 06-008) (SCH No. 2006081026) and the Addendum prepared by the Commission's Environmental Consultant, have been independently reviewed and considered by the Commission and its staff;
 - b) Determine that the City's environmental assessment and Negative Declaration, and the Addendum, are adequate for the Commission's use, as a CEQA responsible agency, for its consideration of LAFCO 3077;
 - c) Determine that the Commission does not intend to adopt alternatives or mitigation measures for the project; and that no mitigation was required for the project by the City's action;
 - d) Adopt the Addendum as presented by the Commission's Environmental Consultant, which addresses the environmental assessment for the additional acreage related to the right-of-way area that was not evaluated in the City's environmental document; and,

- e) Direct the Clerk to file a Notice of Determination within five (5) days and find that no further Department of Fish and Game filing fees are required by the Commission's approval since the City, as lead agency, has paid said fees.
2. Approve LAFCO 3077, with the following finding and conditions:
- a) Finding - The City of Fontana has outlined its agreement to assume land use control for the development project identified as the County-approved 136-unit apartment complex located at the southeast corner of Foothill Boulevard and Live Oak Avenue (APN 0230-081-01) upon completion of the annexation process subject to the County's Conditions of Approval for the Conditional Use Permit and the City's requirements as specified in its Pre-Annexation Agreement No. 07-01. This position is outlined in the City's letter dated June 5, 2007.
 - b) Conditions –
 - All streetlights currently the responsibility of County Service Area SL -1 within the annexation area shall be transferred to the City of Fontana upon successful completion of the annexation. The County Special Districts Department shall prepare the appropriate documentation to transfer the lights, LAFCO staff shall verify the data, and the City of Fontana shall sign the authorization form requesting Southern California Edison to transfer the specific lights to the City of Fontana accounts.
 - Standard 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. Adopt LAFCO Resolution #2973, setting forth the Commission's findings, determinations, and conditions for the proposal.

BACKGROUND INFORMATION:

In December 2006, the City of Fontana submitted an application to annex approximately 125+/- acres, initiated by City Council resolution. The annexation area is generally located along the south side of Foothill Boulevard extending between Cherry and Hemlock Avenues. Location and vicinity maps are included as Attachment #1 to this report.

The City's purposes in submitting this annexation, as outlined in its application, were as follows:

1. To provide municipal services such as street improvements, traffic control and zoning consistency along Foothill Boulevard;
2. Since the California Department of Transportation (CALTRANS) has relinquished responsibilities for Foothill Boulevard to the City of Fontana, the City desires to annex this stretch of Foothill Boulevard for future improvements; and,
3. To "square off" the City's boundaries along the south side of Foothill Boulevard, thereby reducing jurisdictional confusion between the City and County boundaries.

This report will discuss the four major areas of consideration – boundaries, land uses, service delivery and the effect on other local governments, and environmental considerations.

BOUNDARIES:

The proposed annexation area encompasses approximately 125+/- acres and is generally bordered by Foothill Boulevard (existing City of Fontana boundary) on the north, Hemlock Avenue on the east, parcel lines on the south, and Cherry Avenue (portion of existing City of Fontana boundary) on the west. The site lies within the City of Fontana's western sphere of influence.

It is LAFCO staff's position that this annexation proposal is a logical boundary since it includes whole blocks between Cherry and Hemlock Avenues along Foothill Boulevard. By taking the boundary along street centerlines, the proposal becomes an easily identifiable boundary for service delivery.

LAND USE:

Existing Land Uses:

The annexation area is currently a mix of vacant and developed lands. The existing uses include single-family and multi-family residential development in the interior of the annexation, and a mix of commercial uses generally along Foothill Boulevard. Surrounding land uses include: to the north (within the City of Fontana) a mix of commercial and residential development with scattered vacant lots, to the east a mix of commercial and residential development, to the south primarily residential development, and to the west (part City of Fontana) a mix of commercial and residential development.

County Land Use Designations:

The County's current land use designations for this area include: (1) Single Residential (RS) which allows single-family residential uses and other similar and compatible uses; (2) Multiple Residential (RM) which allows multiple and/or mixed residential uses, and other compatible non-residential uses; (3) Neighborhood Commercial (CN) which allows retail trade, personal services, repair services, lodging services, professional services, recreation and entertainment services, including other similar uses; and (4) General Commercial (CG) which allows many of the uses identified in the Neighborhood Commercial land use, including office and professional services, wholesaling and warehousing, contract/construction services, transportation services, open lot services, and many other similar uses.

City's General Plan:

The City of Fontana's General Plan designation for this area includes: Single-Family Residential (R-SF) which permits 2.1 to 5 dwelling units per acre; Medium-Density Residential (R-M) which permits mixed residential uses at 5.1 – 7.6 dwelling units per acre for single-family detached units and 7.7 – 12.0 dwelling units per acre for single-family attached units or multiple-family product types; and General Commercial (C-G) which permits a range of retailing, wholesaling, service activities, automobile dealerships and malls, including office and businesses providing professional services. As outlined above, the land use determinations between the City and County are generally compatible.

In addition, the City's General Plan has a Boulevard Overlay designation that includes parcels within the annexation area that are fronting Foothill Boulevard. The City's General Plan outlines that the "Boulevard Overlay" is intended to: (1) Encourage focused commercial development at key roadway intersections; (2) Enhance flexibility in developing by allowing for a complementary mix of higher density residential uses, professional offices, civic and institutional uses, and mixed-use projects that are compatible with those uses allowed by the underlying land use designation; (3) Ensure compatibility between adjoining uses; and (4) Provide a critical residential mass to support corridor commercial uses.

City's Pre-Zone Designations:

The City of Fontana has pre-zoned the annexation area for the following land uses: R-1 (Single-Family Residential), R-2 (Medium-Density Residential), and C-2 (General Commercial). These pre-zone designations were determined through the City's consideration of Ordinance No. 1444, which was adopted on March 16, 2004, for the pre-zoning of its sphere of influence. A subsequent action was taken by the City to pre-zone a portion of the annexation area through its consideration of Ordinance No. 1501, which was adopted on June 13, 2006. These land use designations are consistent with the City's General Plan 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 necessitates a departure from the pre-zoning outlined in the application made to the Commission.

County-Approved Project within the Annexation Area:

In January 2005, a group of property owners and developers submitted to the County a proposed Planned Development to establish 131 single-family residential units and a 110-unit apartment complex on approximately 23 acres located south of Foothill Boulevard, east and west of Live Oak Avenue, within the annexation area. It was identified early on that the project would require sewer service available in the area only through the City of Fontana.

However, in 2006, one of the property owners/developers pulled out of the project, which forced the remaining property owner to redesign the project and submit a new application to the County Land Use Services Department. The revised project, a 136-unit apartment complex on 6.32 acres located at the southeast corner of Foothill Boulevard and Live Oak Avenue (APN 0230-081-01), was resubmitted to the County in September 2006. The revision to the project did not change the County's requirement for connection to the City of Fontana's sewer collection system nor the City's requirement for authorizing such connection. The Conditions of Approval for the project reflects the need for an out-of-agency service agreement with the City of Fontana for the connection to the City's sewage collection system.

The processing of this new application further delayed the County's consideration of the proposal, with its first hearing before the Planning Commission on February 22, 2007, and final determination by the County Board of Supervisors on June 5, 2007. However, during the period of the County's processing, the City of Fontana submitted its Annexation No. 170, which includes this project, to the Commission for review on December 20, 2006. The City's application was deemed complete, through the issuance of the Certificate of Filing, on April 2, 2007, assigning the mandatory hearing date on the June 20th Agenda.

This created a timing issue for LAFCO, the property owner/developer, the County Land Use Services Department, and the City of Fontana related to the processing of the land use approvals for the project. This prompted several meetings between the City, the County, and the property owner/developer, including LAFCO staff, to discuss the issues related to the sewer service requirement for the project and the potential transfer of jurisdiction from the County to the City upon completion of the annexation.

After lengthy discussions, it was finally agreed that the annexation proposal was to move forward and that a mechanism to transfer the land use authority from the County to the City was to be determined prior to Commission consideration of the proposal. As outlined in the City's letter dated June 5, 2007, it was agreed that the City will continue processing the project subject to the County's Conditions of Approval, as well as the conditions outlined in the City's Pre-Annexation Agreement that was approved by the City Council on May 8, 2007. Upon completion of the

annexation process, the property owner/developer will start the plan check process with the City, pay all required development impact fees to the City, and work with City staff for issuance of grading and building permits.

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 annexation area include the Central Valley Fire Protection District (fire protection/paramedics), County Service Area SL-1 (streetlighting entity), and County Service Area 70 (multi-function entity primarily utilized to fund fire administration). In addition, the Fontana Water Company (private water company) provides retail water service to the area, the Inland Empire Utilities Agency overlays the area to provide for wastewater treatment services, and the Metropolitan Water District of Southern California overlays the area as the State Water Contractor.

The City of Fontana has provided a “Plan for Service” for this proposal as required by law and Commission policy. The City’s Plan for Service includes a Fiscal Impact Analysis which indicates that the property tax revenues anticipated to be received, sales tax revenues, utility tax on commercial properties, developer fees, and other assessment districts within the City are sufficient to fund the delivery of their services. The Plan is attached to this report for Commission review as part of Attachment #2, and in general, identifies the following:

- The City of Fontana provides for the sewage collection system within its boundaries, while the treatment of wastewater is the responsibility of the Inland Empire Utilities Agency. Sewage collection services are currently available within portions of the annexation area. Existing residences within the area will not be required to connect to sewer following the annexation unless there is a septic system failure.

In addition, there are a few parcels that receive sewer service from the City (through contract) within the annexation area. APN 0230-062-42 currently receives City sewers, through approval of LAFCO SC#190 (Irrevocable Agreement to Annex No. 02-07), which the Commission authorized on January 15, 2003 for a proposed construction storage yard. Four other parcels, APN’s 0230-071-08, 09, 10 and 11, were also authorized sewer connection through approval of LAFCO SC#159 on September 19, 2001, commonly known as the West Fontana Senior Housing Project (Pre-Annexation Agreement 01-01). Only the senior housing project and a couple of strip malls, that were part of the overall project identified in the Pre-Annexation Agreement, are currently receiving sewer service from the City. Upon completion of the annexation, sewer rates for these parcels will be reduced to the in-City rate.

- Water service is currently provided by the Fontana Water Company, a private water company regulated by the Public Utilities Commission. No change will occur for this service provider on the basis of this annexation.
- Law enforcement responsibilities will shift from the San Bernardino County Sheriff's Department and California Highway Patrol to the City of Fontana Police Department. The City has indicated that there will be no major impact to the City of Fontana Police Department through this annexation and that it has sufficient personnel and equipment to adequately serve the annexation area.
- Solid waste services are currently provided within the annexation area and within the City of Fontana by Burrtec Waste Industries. No change in service provider will occur through the annexation. The residential rate in the City is \$20.61 per month, which is \$0.38 more than what the current rate is within the area. However, the annexed area will be offered a more comprehensive service, which includes automated pickup of green waste, frail/handicapped service, free curbside used oil and filter pickup, and free additional recycling bins. Commercial and multi-family waste collection service rates will also change slightly, with varying rates based on container size and number of bins. However, fees for recycling service will be lower than what is currently charged within the area.
- Fire protection and paramedic services are currently provided by Central Valley Fire Protection District and no change will occur to this service provider through the annexation.
- Streetlights are currently funded in the annexation area through County Service Area SL-1. While the Plan for Service does not outline this service, the Commission's adopted policy requires documentation of the transfer of this responsibility through verification of lighting facilities to be transferred and requiring the submission by the City of a signed form authorizing the transfer upon completion of the annexation. Staff has included this condition in its recommendation. There are approximately 35 lights to be transferred and it is estimated that the annual cost of operation is \$3,500 (approximately \$100 per year energy costs). The property tax transfer from CSA SL-1 to the City is \$6,787, which can fund the cost of operating the 35 lights.

The only financial effect based upon the annexation to non-residential parcels in the area would be the 5% utility tax levied by the City of Fontana on all utility services (note: utility tax for residential parcels ended in 2004). However, this utility tax for non-residential parcels will expire in June 2009.

It is the position of staff that LAFCO 3077 is a straightforward and logical extension of service delivery by the City of Fontana. As required by Commission policy and State law, the Plan for Service submitted by the City of Fontana indicates that the extension of its services will maintain, and/or exceed, current service levels provided by the County.

ENVIRONMENTAL CONSIDERATIONS:

There are a number of environmental documents that have been prepared for the project area, which are all tied to the annexation proposal. These documents are:

- The County's Mitigated Negative Declaration for the General Plan Land Use District Amendment from CG and CN to RM, Conditional Use Permit to create 136-unit apartment complex on 6.32 acres, Development Code Amendment and major variance, which addresses the County-approved project within the proposed annexation boundary;
- The City's Negative Declaration for Cherry Avenue-Hemlock Avenue, South Annexation 170 (Anx. 06-008)(SCH No. 2006081026), which addresses the annexation proposal;
- The City's Mitigated Negative Declaration for General Plan Amendment No. 05-004, Zone Change No. 05-003, Tentative Tract Map No. 17566 and Design Review No. 05-027, which subsequently pre-zoned a portion of the annexation area; and
- The City of Fontana Final Environmental Impact Report (FEIR) for its General Plan Update and the Addendum to the FEIR (for the Fontana Development Code Update), which pre-zoned the City's sphere of influence.

Upon further review of these environmental documents by LAFCO Staff and the Commission's Environmental Consultant, it was determined that the Commission can rely solely on the City's Negative Declaration (SCH No. 2006081026) for its CEQA determination of this annexation proposal. Although the pre-zone designations for the area were evaluated through the FEIR for the City's General Plan Update and the Mitigated Negative Declaration for Zone Change No. 05-003 (pre-zoning for a portion of the annexation area), the City's environmental document for Annexation No. 170 evaluates the pre-zone designations that were assigned for the annexation area and considers the effects between the existing and the proposed land uses. In addition, the proposed 136-unit apartment complex has been adequately addressed in the City's environmental document for Annexation No. 170 since the proposed project is consistent with the City's pre-zone for the area.

One issue that needs to be addressed is the discrepancy of approximately 1.5 acres between the actual annexation area identified in the City's application (125 +/- acres) and the acreage identified in the City's environmental document for Annexation 170 (123.5 +/- acres). This discrepancy was attributed to the exclusion of the right-of-way area that is a part of the entire annexation. In order to provide for the environmental assessment for the entire annexation area, Mr. Dodson prepared an Addendum to the City's environmental document that addresses the inclusion of the right-of-way area. The Addendum provides substantiation that the additional acreage for the annexation

will not require the preparation of a new negative declaration or environmental impact report.

Therefore, the City's environmental document and the Addendum prepared by Mr. Dodson, taken together, are adequate for the Commission's use as a responsible agency under CEQA. Mr. Dodson has indicated that the necessary environmental actions to be taken by the Commission, as a responsible agency under CEQA, are as follows:

- Determine that the City's environmental assessment and Negative Declaration prepared for the annexation proposal and the Addendum prepared by the Commission's Environmental Consultant, have been independently reviewed and considered by the Commission and its staff.
- Determine that the City's environmental assessment and Negative Declaration, and the Addendum, are adequate for the Commission's use as a CEQA responsible agency for its determinations related to LAFCO 3077;
- Determine that the Commission does not intend to adopt alternatives or mitigation measures for the project; and that no mitigation was required for the project by the City's action;
- Adopt the Addendum as presented by the Commission's Environmental Consultant that addresses the environmental assessment for the additional acreage related to the right-of-way area that was not included in the City's environmental document; and,
- Direct the Clerk to file the Notice of Determination within five days and find that no further Department of Fish and Game filing fees are required by the Commission's approval since the City, as lead agency, has paid said fees.

CONCLUSION:

Therefore, in compliance with directives of State law and Commission policies, it is staff's position that this annexation is a straightforward item of consideration and should be supported. As outlined in the staff report, the annexation provides for a logical service boundary and it provides for a coordinated land use approach along the Foothill Boulevard corridor. In addition, through the relinquishment of Foothill Boulevard to the City of Fontana by CALTRANS, the City will now have full authority to, not only plan, but to actually manage all street improvements and traffic control measures along Foothill Boulevard through a more efficient coordination between the various City departments (i.e. Planning, Engineering, Public Works, Police, etc.). For these reasons, and those outlined throughout the staff report, the staff supports the approval of LAFCO 3077.

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 annexation area is legally inhabited, containing 322 registered voters as of May 14, 2007.
2. The County Assessor has determined that the total assessed value of land and improvements within the annexation area is \$44,836,754 (land - \$23,076,506 -- improvements - \$21,760,248).
3. The area is within the sphere of influence assigned the City of Fontana.
4. Commission review of this proposal has been advertised in *The Sun*, and the *Fontana Herald News*, newspapers of general circulation within the annexation 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 annexation area (568) and to landowners and voters surrounding the annexation area (858) in accordance with State law and adopted Commission policies. To date, no written comments or protests to this annexation proposal have been received from area landowners or registered voters.
6. The City of Fontana has pre-zoned the annexation area for the following land uses: R-1 (Single-Family Residential), R-2 (Medium-Density Residential), and C-2 (General Commercial). In addition, a portion of the area is overlaid with the City's Foothill Boulevard Overlay District, which has additional land use regulations and development standards specific to the parcels fronting Foothill Boulevard. 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.

The development project identified as the County-approved 136-unit apartment complex located at the southeast corner of Foothill Boulevard and Live Oak Avenue (APN 0230-081-01) will transfer to the City upon completion of the annexation. The City will assume land use control for the development and continue processing the project subject to the County's Conditions of Approval for the CUP, as well as the City's requirements as specified in its Pre-Annexation Agreement that was approved by the City Council on May 8, 2007 and signed by the property owner. Upon completion of the annexation process, the property owner/developer will start the plan check process with the City, pay all required development impact fees to the City, and work with City staff

for issuance of grading and building permits. This position is outlined in the City's letter dated June 5, 2007.

7. The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed the City's Initial Study and Negative Declaration prepared for the annexation proposal. Mr. Dodson has prepared an Addendum to the City's document that addresses the environmental assessment for the additional acreage related to the right-of-way area that was not included in the City's evaluation. Mr. Dodson has determined that, if the Commission approves the annexation proposal, the City's environmental assessment and Negative Declaration, and the Addendum, are adequate for the Commission's review of the annexation area as a responsible agency. The necessary actions to be taken by the Commission, as a responsible agency, are outlined in the narrative portion of this report.
8. The area in question is presently served by the following local agencies:
 - County of San Bernardino
 - Metropolitan Water District of Southern California
 - Inland Empire Resource Conservation District
 - Inland Empire Utilities Agency (formerly known as Chino Basin Municipal Water District) and its Improvement District C
 - Central Valley Fire Protection District
 - County Service Area SL-1 (streetlighting)
 - County Service Area 70 (multi-function unincorporated area Countywide)

Detachment of CSA SL-1 and CSA 70 will automatically occur upon successful completion of this proposal as required by Government Code Section 25210.90. The transfer of streetlight responsibilities of CSA SL-1 is a condition of approval. None of the other agencies are affected by this proposal as they are regional in nature.
9. The City of Fontana has submitted a plan for the extension of municipal services to the annexation area, as required by law. The financial information presented within the Plan for Service indicates that the extension of services can be maintained and operated within the existing revenue resources available through the transfer of property taxes, extension of commercial utility tax, and fees for service. This Plan is attached for Commission review and 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.
10. The annexation proposal is consistent with State law and complies with Commission policies that indicate the preference for areas proposed for development at an urban-level land use to be included within a City so that the full range of municipal services can be planned, funded, extended and maintained.

11. The annexation area can benefit and has benefited from the availability and extension of municipal services from the City of Fontana. Some parcels within the annexation area have benefited from the receipt of sewer service, by contract, from the City.
12. This proposal will assist the City's ability to achieve its fair share of the regional housing needs within the annexation area upon development of the proposed apartment complex, and the development of the vacant parcels that have a residential land use designation sometime in the future.
13. The County of San Bernardino and the City of Fontana 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.
14. The map and legal description, as revised, are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's Office.

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Attachments:

1. Vicinity and Location Maps of Annexation Area
2. City Application and Plan for Services
3. Letter from the City of Fontana, the City's Pre-Annexation Agreement, and the County's Conditions of Approval
4. Response and Addendum from Tom Dodson and Associates and the City's Environmental Assessment and Negative Declaration for the Proposed Annexation
5. Draft Resolution No. 2973