

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

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DATE: MAY 4, 2007

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #7 – LAFCO 3048A-2 – CITY OF FONTANA
ANNEXATION NO. 168 (BLOOMINGTON ISLAND #5)**

INITIATED BY:

City Council Resolution, City of Fontana

RECOMMENDATION:

The staff recommends that the Commission approve LAFCO 3048A-2 by taking the following actions:

1. Adopt the Statutory Exemption that has been recommended for this proposal, and direct the Clerk to file a Notice of Exemption within five (5) days of this action;
2. Modify LAFCO 3048A-1 by dividing it into three individual annexations proposals, with Island No 5 to be known as LAFCO 3048A-2;
3. Approve LAFCO 3048A-2 – City of Fontana Annexation No. 168, as modified, as an island annexation, as defined in Government Code Section 56375.3, with the following terms and conditions:
 - a. That the City of Fontana’s 5% Utility Users Tax on commercial properties will not be extended to the annexation area;
 - b. 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 has prepared the appropriate

documentation to transfer the lights; LAFCO staff has verified the data; and the City of Fontana has signed the authorization form requesting Southern California Edison to transfer the specific lights to the City of Fontana accounts; and,

- c. The standard terms and conditions of approval that include the “hold harmless” clause for potential litigation.
4. Waive protest proceedings, as required by Government Code Section 56375.3; and,
5. Adopt LAFCO Resolution #2965 setting forth the Commission’s findings and determinations concerning this proposal.

BACKGROUND:

In December 2005, the City of Fontana initiated and submitted to LAFCO an application to annex 32 separate islands to the City under the special “island annexation” provisions outlined in Government Code Section 56375.3. Upon receipt of the application, LAFCO staff divided the proposal into two separate applications – LAFCO 3048 for 28 of the islands and 3048A for the four islands associated with the community of Bloomington (Islands #4, #5, #26 and #27). In addition, LAFCO staff included the detachment from the Bloomington Recreation and Park District for Islands #4, #26 and #27 as a function of the reorganization in keeping with Commission policies. Therefore, LAFCO 3048A, as originally modified, was a proposal for annexation of four (4) individual islands, totaling approximately 289 +/- acres, located in the southeastern portion of the City of Fontana’s sphere of influence to the City and removal from the jurisdiction of the local Recreation and Park District.

This proposal was originally considered on August 16, 2006. At that hearing it was continued to the November 15, 2006 hearing to allow the community of Bloomington to seek to initiate an incorporation of its area. At the November 15th hearing, the proposal was again continued to the May 16, 2007 hearing to allow the Bloomington community to submit a complete incorporation proposal including the required fees and deposits by the end of February 2007. However, at that hearing the reorganization proposal was also divided into four individual annexations; a single island was approved, Island #27; and the remaining three islands were continued to today’s hearing.

In prior reports, LAFCO staff discussed the issue of conflicting proposals related to the community of Bloomington pursuant to the provisions of Government Code Section 56655. The incorporation proposal, identified as LAFCO 3075, for the community of Bloomington failed to achieve a complete application by the

Commission's required submission date of February 28, 2007. Therefore, it is the staff's position that there are no pending applications within this area that would require a determination pursuant to Government Code Section 56655.

As outlined in prior staff reports related to the consideration of this area, it is staff's position that LAFCO 3048A-2 is a ministerial action. This position is taken on the basis of determinations required by Government Code Sections 56375(a) and 56375.3 which are discussed below.

GOVERNMENT CODE SECTIONS 56375(a) AND 56375.3:

Government Code Sections 56375(a) and 56375.3 require the Commission to approve the annexation of island territory if several basic findings are made concerning the size of the island, the configuration of city boundaries, the lack of prime agricultural land within the island area, the presence of development in the area, and the ability of the study area to benefit from or use municipal services from the City. The Commission is required to evaluate the island against the criteria outlined and make specific determinations regarding its compliance with these provisions. That specific evaluation criterion is as follows:

- The area does not exceed 150 acres, and constitutes the entire island of unincorporated territory;
- The study area constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands;
- The area is totally or substantially surrounded, as such has been defined by Commission policy;
- The study area is substantially developed or developing, based on findings that there is the availability of public services, there is the presence of public improvements in the area, and there are physical improvements on many, if not most, of the properties;
- The study area is not prime agricultural land as such is defined by LAFCO statutes; and,
- The study area will benefit from the annexation or is receiving benefits from the annexing city.

In addition, the Commission has adopted its own policies related to the processing and evaluation of island annexations. Those policies, adopted March 31, 2005, are as follows:

1. For the purpose of applying the provisions of Government Code Section 56375.3, the territory of an annexation proposal shall be deemed “substantially surrounded” if 52% of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by (a) the affected City or (b) the affected City and adjacent Cities, or (c) the affected City and a service impediment boundary as defined by the Commission to include, but not be limited to, a freeway, a flood control channel or forest service land.
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 adoption of its resolution of initiation. 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.

Island 5 encompasses the unincorporated area within the City of Fontana eastern sphere of influence generally located north of Randall Avenue, east of Alder Avenue (existing City of Fontana boundary), south of parcels lines (existing City of Fontana boundary) and west of Maple Avenue (existing City of Rialto boundary). The following responds to the determinations required for this area:

- The area is 100 +/- acres in size, as verified by the County Surveyor’s Department, within the 150 acre threshold, and encompasses the entire substantially surrounded island;
- The area is substantially surrounded. The island is 62% surrounded by a combination of the existing City of Fontana and City of Rialto boundaries, complying with Commission policy definitions, as verified by the County Surveyor’s Department;

- The study area is substantially developed or developing, on the basis that public services are available in the area, there are public improvements in the area, and there are physical improvements on many, if not most, of the properties;
- The study area does not contain prime agricultural land as such is defined by LAFCO statutes;
- The study area will benefit from the annexation and several parcels within the boundaries of the island are currently receiving benefits from the City of Fontana through receipt of sewer service provided through out-of-agency sewer agreements;
- The City of Fontana has conducted an extensive outreach program prior to submission of the reorganization application; and,
- The area is not included within an established County Redevelopment Area. The County Redevelopment Agency had established a preliminary redevelopment area for the community of Bloomington but it has never been finalized.

It is the staff's position that these mandatory determinations are clear; therefore, the Commission is required by Government Code Section 56375(a) to approve this proposal and to approve it without the ability to protest from landowners and registered voters within the area (Government Code Section 56375.3).

The following provides abbreviated responses to the balance of the issues which the Commission reviews and considers in all annexation proposals – land use, service effects and the effect on other levels of government and environmental considerations.

LAND USE:

The City of Fontana adopted its General Plan Update in October 2003 and adopted the pre-zoning of its sphere of influence through adoption of an amended Zoning Map on April 15, 2004. The City's land use designation for the island area is Single-Family Residential (R-SF) which allows for single-family dwellings. The pre-zone designation is R-1. This pre-zone designation is required to be maintained for a two-year period following annexation (Government Code Section 56735 (e)) unless specific determinations are made by the City Council at a public hearing.

LAFCO staff, members of the City of Fontana staff and County Land Use Services personnel have met to review issues related to the handling of the transition of

land use projects from the County to the City. It has been identified that there are numerous projects currently in process at the County affected by this action; however, as of the date of this report no specific number has been identified. The City, by letter included as Attachment #3 to this report, outlines its position on how it will honor the County's land use approvals for projects and will assume responsibility for assurance of compliance with the County's conditions of approval. However the City reserves the right to require compliance with City design standards and on-site improvement plans.

SERVICE ISSUES AND EFFECTS ON OTHER LEVELS OF GOVERNMENT:

The City of Fontana has provided a "Plan for Service" for LAFCO 3048 and 3048A combined as required by law and as modified by Commission policy. A copy of the Plan, including supplemental information, is included as part of Attachment #2 to this report. Highlights of the Plan related to Island #5 and related information include the following:

- Sewage collection services will become available directly through the City upon completion of the annexation. For those parcels which currently have out-of-agency service contracts for receipt of sewer services, the monthly rate will be reduced to in-City charges (a reduction to \$15.06 per month). There are five (5) irrevocable agreements to annex for out-of-agency service within Island #5.
- Water service is provided to Island #5 by the Fontana Water Company. No change in service provider will occur through completion of this annexation.
- Law enforcement responsibilities will shift from the County Sheriff's Department, which operates out of the Fontana Substation facility, to the City of Fontana Police Department, while traffic control responsibilities will shift from the California Highway Patrol to City Police. The City indicates that its Police Department will absorb this territory into its existing beat system surrounding the sites. The City has indicated that additional police personnel will be required in order to provide its level of service and that it has set in motion the steps necessary to acquire the officers and other employees. The financing of this service will be through the ad valorem property tax received by the City from within the overall island annexation areas, including Island #5.
- Solid waste services are currently provided within the annexation area by EDCO Company, identified in the supplemental Plan materials submitted by the City of Fontana as a "sister" company (assumed to be subsidiary) of

Burrtec Waste Industries. Pursuant to City policy, residents must use the City's franchised refuse hauler, Burrtec Waste Industries, and all City residents and businesses are required to have mandatory trash pickup. The City's current residential rate is \$20.61 per month (as of the November 2006 hearing) for pick up, which includes the provision of containers for normal, recyclable and green waste. This rate is eight (8) cents lower than existing EDCO rates. Commercial rates vary depending on the type and frequency of pick up but all services within the City of Fontana are to be provided by its franchised waste collection provider, Burrtec Waste Industries.

- Fire protection and paramedic services are currently the responsibility of the Central Valley Fire Protection District and will be unchanged by this annexation. Ambulance services are currently the responsibility of American Medical Response (AMR) within both the City territory and the unincorporated island under consideration. No change in this service will take place as a consequence of the annexation.
- Streetlights are currently funded within the majority of the island areas through County Service Area SL-1. While the Plan for Service does not specifically outline the transfer of this responsibility, the City's letter in the update of that document identifies that 37 lights will transfer to City responsibility within Islands #4, #5, #26 and #27. 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 transfer as a condition in its recommendation for approval.

As required by Commission policy and State law, the Plan for Service submitted by the City of Fontana shows that the extension of its services will maintain, and/or exceed, current service levels provided through the County.

ENVIRONMENTAL CONSIDERATIONS:

The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed this proposal and has indicated that it is his recommendation that the island annexation is statutorily exempt from the California Environmental Quality Act (CEQA). This determination is based on the fact that the Commission has no discretion in its review of this proposal and must approve the project. Such a "ministerial action" is exempt from environmental review pursuant to Section 15268 of the State CEQA Guidelines. A copy of Mr. Dodson's analysis is included as Attachment #5 to this report. It is

recommended that the Commission adopt the Statutory Exemption for this proposal and direct the Clerk of the Commission to file a Notice of Exemption with the appropriate agency within five days.

FINDINGS:

The following findings are required to be provided by Commission policy and Government Code Section 56668 for all proposals considered:

1. The Registrar of Voters Office has determined that the island area is legally inhabited, containing 275 registered voters as of April 10, 2006.
2. The study area is within the sphere of influence assigned the City of Fontana.
3. The County Assessor's Office has determined that the assessed valuation of land and improvements for Island #5 is \$30,270,679 (\$7,511,196 land; \$22,759,483 improvements).
4. All notices required by State law and local Commission policies have been provided. Individual notice was provided to registered voters and landowners within the reorganization area (totaling 451), and to all voters and landowners located within roughly 1,350 feet of the exterior boundaries of the reorganization area (totaling 2,015) for the original hearing on the four island reorganization. Comments from landowners, registered voters, and any affected local agency have been reviewed and considered by the Commission in making its determination. To date verbal expression of opposition has been received in the LAFCO staff office expressing concern regarding road maintenance and upgrade and development standards; and written opposition has been received.
5. Legal advertisement of the Commission's consideration has been provided through publication in *The Sun*, and *The Herald News*, newspapers of general circulation within the study area for the original hearing. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification for the original and continued hearings.
6. The City of Fontana pre-zoned its sphere of influence through adoption of its General Plan Update in October 2003 and its Zoning Map was updated to include the pre-zoning of its sphere of influence on April 15, 2004. The land use designation is outlined in the narrative portion of this staff report. Pursuant to the provisions of Government Code Section 56375(e), this zoning designation shall remain in effect for two years following

annexation unless specific actions are taken by the City Council at a public hearing.

7. The Commission's Environmental Consultant, Tom Dodson and Associates, has indicated that the review of this island area annexation is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of this application is ministerial, in that based upon the findings required by Government Code Section 56375(a), the Commission has no discretion in its action on the proposal other than approval. Therefore, a Statutory Exemption as authorized under Section 15268 of the State CEQA Guidelines is appropriate. A copy of Mr. Dodson's response is included for the Commission's review as Attachment #5 to this report.
8. Upon annexation, the City of Fontana will extend its services as required by the existing and anticipated land uses. The City has submitted a "Plan for Service" as required by law which indicates that revenues are anticipated to be sufficient to provide the level of services identified by the City for such items as law enforcement, planning, street maintenance, etc. The Plan notes that additional personnel will be required for provision of law enforcement services and other services to the annexation area. Solid Waste Services are franchised to be provided within the City of Fontana by Burrtec Waste Industries, while the current provider is EDCO Company. The transfer in solid waste provider will be required. Water service to the island area is currently provided by the Fontana Water Company, fire protection/paramedics are currently provided by the Central Valley Fire Protection District and ambulance service is provide by American Medical Response. All of these service providers will remain unchanged. A copy of the City's Plan and updated information on the Plan is included for the Commission's review as a part of Attachment #2.

The City of Fontana has indicated in its application and Plan for Service that its 5% Utility Users Tax on commercial properties will not be extended to the area upon annexation. In addition, LAFCO staff has included a condition in its recommendation for approval that indicates that the utility tax will not be applied to the island annexation area.

9. The area in question is presently served by the following public agencies:

County of San Bernardino
Inland Empire Resource Conservation District
Inland Empire Utilities Agency and its Improvement District "C"
Central Valley Fire Protection District

County Service Area (CSA) SL-1 (streetlighting)
CSA 70 (multi-function)

CSA SL-1 and CSA 70 will be detached through successful completion of this annexation as required by Government Code Section 25210.90. 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.

10. The annexation proposal complies with Commission policies and directives and State law that indicate the preference for all island areas to be included within the boundaries of the City surrounding them to provide for a more efficient and effective service delivery system.
11. The study area can benefit from the availability of municipal-level services from the City of Fontana and several parcels within the areas of annexation have benefited in the past from the receipt of out-of-agency sewer service from the City of Fontana.
12. This proposal will have minimal effect on the City of Fontana's ability to achieve its fair share of the regional housing needs as it is primarily built-out residential uses or zoned for commercial/industrial use.
13. The County of San Bernardino and the City of Fontana have successfully negotiated a transfer of property tax revenues that will take effect upon completion of this annexation. This negotiated agreement 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.

CONCLUSION:

It is staff's position that LAFCO 3048A-2 must be approved by the Commission without protest by landowners and registered voters. This position is based upon the factors outlined in Government Code Section 56375(a). In addition, it is the staff's position that the Commission is required to make the mandatory determinations outlined in Section 56375.3. Staff believes these determinations are easily made for Island #5 as follows:

- The island annexation area is 100 +/- acres; therefore, it meets the defined statutory threshold of less than the 150 acres;

- The area is substantially surrounded by City boundaries as defined by Commission policy and State law. The area is 62% surrounded as determined by the County Surveyor;
- The area is within the City of Fontana sphere of influence;
- The area is substantially developed or developing;
- The area does not contain prime agricultural land as defined by LAFCO statutes; and,
- The area has benefited and/or can benefit from the availability of municipal services from the City of Fontana.

Approval of this proposal will provide a clear delineation of law enforcement responsibility, will provide for ease in response to needs of residents and landowners to receive sewer service without the added burden required to complete out-of-agency service contracts, and will define the responsible agency to turn to for needed road improvements. Approval of this proposal addresses the needs for service now and in the future, and it precludes the stranding of existing infrastructure.

For all the reasons outlined above, and throughout this staff report and those of prior hearings, LAFCO staff recommends approval of LAFCO 3048A-2. If the Commission concurs with the staff determinations related to the statutorily required factors, then it is required to approve this proposal, regardless of any protest that might be submitted at the hearing. State law also requires the Commission to waive the protest hearing on this proposal, and staff's recommendation includes that action as part of its approval of this proposal.

KRM

Attachments:

- 1 -- Maps – Vicinity and Individual Island
- 2 -- City of Fontana Application, Plan for Service, Update to Plan for Service and Supplemental Information on the Four Individual Islands
- 3 -- Letter from City of Fontana dated August 7, 2006 Outlining Position on Assumption of Land Use Review Approvals and Code Enforcement Issues
- 4 -- Letter from City of Fontana dated March 16, 2007 Outlining the Location of Existing Irrevocable Agreements to Annex within Islands
- 5-- Letter from Tom Dodson and Associates on Environmental Determination
- 6-- Draft Resolution No. 2965