

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

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**DATE: NOVEMBER 13, 2007**

**FROM: SAMUEL MARTINEZ, LAFCO Analyst**

**TO: LOCAL AGENCY FORMATION COMMISSION**

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**SUBJECT: Agenda Item #8: LAFCO 3056 – City of Fontana Annexation No. 169**

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**RECOMMENDATION:**

Staff is recommending that the Commission:

1. Take the following actions with respect to environmental review:
  - a) Certify that the Final Environmental Impact Report (FEIR) (State Clearinghouse No. 2003031083) and Addendum to the FEIR (Fontana Development Code Update) adopted by the City of Fontana for the Fontana General Plan Update and pre-zoning of its sphere of influence have been independently reviewed and considered by the Commission, its staff, and the Commission's Environmental Consultant;
  - b) Determine that the FEIR and the Addendum to the FEIR are adequate for the Commission's use, as a CEQA Responsible Agency, for its consideration of LAFCO 3056;
  - c) Determine that the Commission does not intend to adopt alternatives or mitigation measures for the project; that the mitigation measures identified in the City's environmental documents are the responsibility of the City and others, not the Commission;
  - d) Adopt the Findings of Fact and Statement of Overriding Considerations as presented by the Commission's Environmental Consultant; 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 3056 including the standard conditions of approval related to indemnification of legal costs and including the findings to:
  - a) Acknowledge that an agreement between the City and property owner, Merl Landmesser and Landmesser Family Trust, has been reviewed and approved by the City that specifically outlines the number of horses allowed on Assessor Parcel Numbers (APNs) 0226-074-17, 18, 19 and 0226-075-21 and 22, the landowner's parcels within the annexation area;
  - b) Acknowledge that a Pre-Annexation Agreement is currently being finalized between the City and a property owner, Gary Simpson, for APNs 0226-074-09, 22, and 23, the landowner's parcels within the annexation area, addressing land uses and standards to be applied upon annexation of the properties. The Pre-Annexation will need to be finalized prior to the issuance of the Certificate of Completion approving the annexation by both the City and Mr. Simpson, otherwise the agreement will be deemed null and void; and,
3. Adopt LAFCO Resolution #2984, setting forth the Commission's findings, determinations, and conditions for the proposal.

**BACKGROUND:**

The Commission determined to continue all discussion items, including LAFCO 3056, that were on the October 24, 2007 Agenda to the November 28, 2007 hearing due to the wildfires that were taking place throughout San Bernardino County and all over the State of California. Below is a summary of what has transpired between the October 24<sup>th</sup> hearing date and the date of this report.

**Letter from the City of Fontana**

On October 23, 2007, the City of Fontana submitted a letter requesting that the Commission approve LAFCO 3056, as recommended by LAFCO staff. The letter (included as Attachment #1 to this report) outlines the City's opposition to the other option outlined in the original staff report regarding the Pre-Annexation Agreement between the City and Gary Simpson. The options given were to either:

1. Acknowledge the proposed agreement with Mr. Simpson as a finding of Commission approval noting that if both parties have not finalized the agreement by the time the Certificate of Completion is issued, the agreement will be deemed null and void; or,
2. Continue the proposal to allow sufficient time to complete the negotiations for this agreement.

Staff's recommendation was to take Option #1. As of the date of this report, the agreement between the City and Mr. Simpson has not been finalized and staff's recommendation remains to approve the proposal with Option #1 as a finding of the Commission.

### **Registered Voters within LAFCO 3056**

On November 1, 2007, LAFCO staff received an email letter from Mr. Gary Simpson indicating his understanding that there had been a change in the number of registered voters within the annexation area (copy included as Attachment #2 to this report). The letter indicates that four (4) individuals residing at 4833 Roadrunner Road had registered with the Registrar of Voters (ROV) as of October 30, 2007. Therefore, Mr. Simpson indicates his position that the number of voters within LAFCO 3056 has changed, from 11 to 15 registered voters.

This question relates to the determination required of the Commission for processing of the protest procedures as to whether the study is "legally inhabited." This determination is significant in that should it be deemed legally inhabited, the registered voters would ultimately decide the fate of the proposal.

The definition of "inhabited" is outlined in Government Code Section 56046 as follows:

*"Inhabited territory" means territory within which there reside 12 or more registered voters. The date on which the number of registered voters is determined is the date of the adoption of a resolution of application by the legislative body pursuant to Section 56654, if the legislative body has complied with subdivision (b) of that section, or the date a petition or other resolution of application is accepted for filing and a certificate of filing is issued by the executive officer. All other territory shall be deemed "uninhabited."*

In the case of LAFCO 3056, the determination is required at the time the certificate of filing is issued by the Executive Officer. The following identifies the process utilized in making this determination for LAFCO 3056.

Under normal processing, LAFCO staff requests a certification from the ROV through the circulation of the Notice of Filing. The standard certification for LAFCO 3056 (included as part of Attachment #3) was issued on April 5, 2006, indicating that there were 16 registered voters within LAFCO 3056 as of April 5, 2006. As noted in the original staff report, the proposal was deferred for processing while the City reviewed a potential development application. In May 2007, the City notified LAFCO that it wished to continue with the application without the anticipated development proposal and the staff review was reactivated.

A second certification was requested from the ROV as a part of the process of preparing the required Notice to Landowners and Registered Voters for the October 24<sup>th</sup> hearing, a notification process made prior to the hearing. This certification

(included as part of Attachment #3), was issued on September 18, 2007, indicating that there were only five (5) registered voters within LAFCO 3056.

The change from 16 to 5 voters prompted LAFCO staff to question the number of voters certified by the ROV. The re-certification by the ROV (included as part of Attachment #3) was issued on October 3, 2007, indicating that there are 11 registered voters within LAFCO 3056. Included with this certification, the ROV explained in an email letter to LAFCO (included as part of Attachment #3) that there was an error in the previous certification. The error, according to the ROV, was due to a zip code change for Coyote Canyon Road, which was overlooked in the second certification.

Although staff is aware that the certification issued on October 3, 2007 was done after the Certificate of Filing was issued on September 26 (copy included as Attachment #4 to this report), staff has relied upon this determination as it is a correction to the certification issued on September 18, 2007. Each of these certifications shows that LAFCO 3056 is legally “uninhabited.” Therefore, it is the staff’s position that LAFCO 3056, with 11 registered voters, remains legally “uninhabited.”

**CONCLUSION:**

No other information has been received related to this proposal; therefore, there is no change in the original staff report, its conclusions or in staff’s recommendations.

Included as part of the attachments are copies of the original staff report, the vicinity and location maps, and the draft Resolution No. 2984, which outlines the staff’s recommendations.

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Attachments:

1. Letter from the City of Fontana Dated October 23, 2007
2. Email from Mr. Gary Simpson
3. Registrar of Voters Certifications Issued April 5, 2006, September 18, 2007, and October 3, 2007 (Including an Email from ROV Identifying the Error)
4. Copy of Certificate of Filing
5. Staff Report Dated October 15, 2007
6. Location and Vicinity Maps
7. Draft Resolution No. 2984