

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

215 North D Street, Suite 204  
San Bernardino, CA 92415-0490 • (909) 383-9900 • Fax (909) 383-9901  
E-MAIL: [lafco@lafco.sbcounty.gov](mailto:lafco@lafco.sbcounty.gov)  
[www.sbclafco.org](http://www.sbclafco.org)

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**DATE: NOVEMBER 9, 2007**

**FROM: SAMUEL MARTINEZ, LAFCO Analyst**

**TO: LOCAL AGENCY FORMATION COMMISSION**

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**SUBJECT: Agenda Item #9: LAFCO 3081 – City of Montclair Annexation No. 28  
(Central Avenue/Phillips Boulevard)**

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**INITIATED BY:**

City Council Resolution, City of Montclair

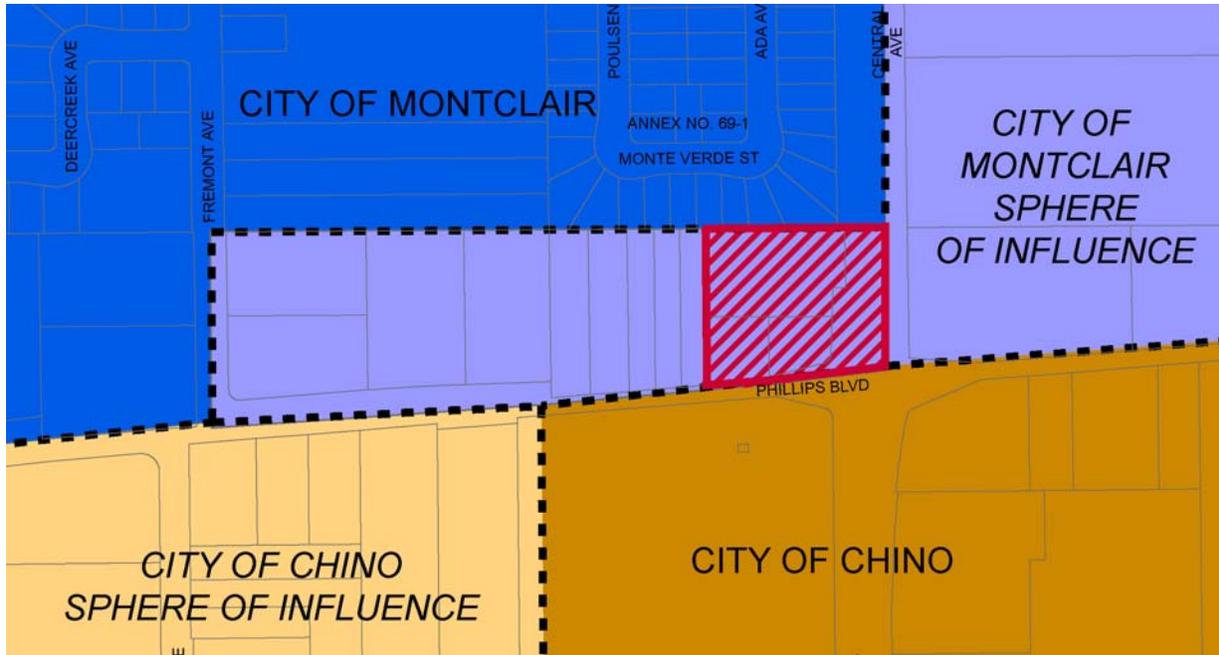
**RECOMMENDATION:**

Staff recommends that the Commission approve LAFCO 3081 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. Approve LAFCO 3081 – City of Montclair Annexation No. 28, as an island annexation, as defined in Government Code Section 56375.3, with the following conditions:
  - The City of Montclair’s 3.89% Utility Users Tax will not be extended to the annexation area; and,
  - The standard terms and conditions of approval that include the “hold harmless” clause for potential litigation.
3. Waive protest proceedings, as required by Government Code Section 56375.3; and,
4. Adopt LAFCO Resolution #2988 setting forth the Commission’s findings and determinations concerning this proposal.

**BACKGROUND:**

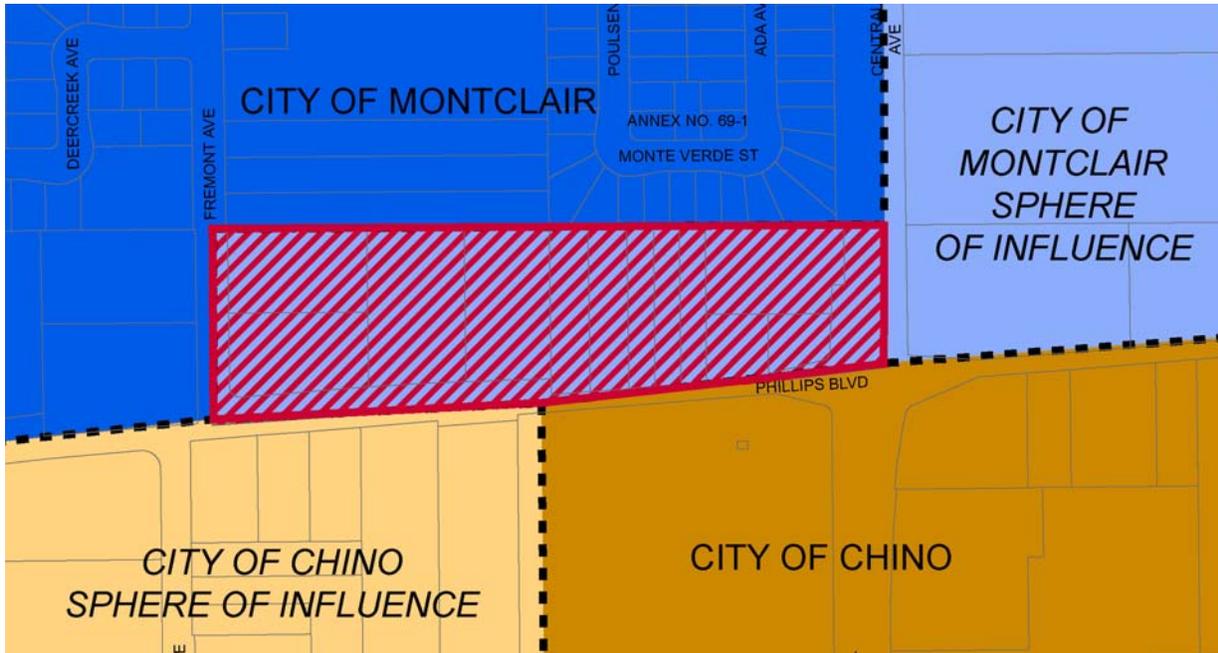
LAFCO 3081, as initiated by the City of Montclair, was originally submitted to LAFCO as a proposal to annex only a 2.31-acre area located at the northwest corner of Central Avenue and Phillips Boulevard, within the City of Montclair’s southern sphere of influence. The location map below defines the boundary of the original annexation proposal.



ORIGINAL ANNEXATION BOUNDARY OF LAFCO 3081

The application materials submitted by the City indicated that the proposal is in response to a request to process, through the City, a commercial development on the northern parcel within the annexation area. The parcel, which is currently vacant, will also require connection to the City’s sanitary sewer system. Due to annexation protest previously received from within and around the area, the City only included the parcels that supported the annexation.

However, as the staff began its review of the application, it was determined that the annexation, as initiated, would not provide for an effective service boundary for the City since it left a peninsula of unincorporated area between the annexation boundary and Fremont Avenue. Therefore, in order to address the creation of a peninsula of unincorporated area, staff has proposed the expansion of the proposal to include the entire unincorporated “island” area.



EXPANDED BOUNDARY OF LAFCO 3081

LAFCO 3081, as expanded, is an annexation of a substantially-surrounded unincorporated island to the City of Montclair and staff has processed it under the special “island annexation” provisions outlined in Government Code Section 56375.3. The area encompasses approximately 10.12+/- acres generally bordered by Central Avenue to the east, Phillips Boulevard (a portion being the existing City of Chino boundary) to the south, Fremont Avenue (existing City of Montclair boundary) to the west, and parcel lines (existing City of Montclair boundary) to the north. Location and vicinity maps and the City’s application are included as Attachments #1 and #2 to this report, respectively.

**REQUIRED PROVISIONS FOR ISLAND ANNEXATIONS:**

In staff’s view, LAFCO 3081 (as expanded by staff) is essentially a ministerial action for the Commission. Government Code Section 56375(a) requires the Commission to approve the annexation of “islands” of unincorporated territory and Section 56375.3 requires the Commission to approve the annexation of island territory without the ability of protest 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 annexation area to benefit from or use municipal services from the City (see Attachment #3 to this report). The staff’s responses to the required determinations for LAFCO 3081 are outlined as follows:

- The area does not exceed 150 acres; it is 10.12 +/- acres and constitutes the entire island of unincorporated territory;

- The area is totally or substantially surrounded; the area is substantially surrounded by approximately 72% of both the City of Montclair and the City of Chino’s existing boundaries, and the annexation area is wholly within the City of Montclair’s sphere of influence;
- The annexation area is substantially developed or developing. This determination is based upon the findings that public utilities are available within the area, there are public improvements within the area, and there are physical improvements on many of the properties within the area;
- The annexation area is not prime agricultural land as such is defined by LAFCO statutes; and,
- The annexation area will benefit from the annexation; the area is already benefiting from the direct receipt of fire service from the City and a parcel within the area is also benefiting from the receipt of sewer service from the City through an out-of-agency service agreement.

Government Code Section 56375.4 states that, “the authority to initiate, conduct, and complete any proceeding pursuant to subdivision (a) of Section 56375.3 does not apply to any territory that, after January 1, 2000, became surrounded or substantially surrounded by the city to which annexation is proposed.”

The island for the expanded proposal existed prior to January 1, 2000, but has been reduced two (2) times since that date. The following figure illustrates the island and the annexations that have occurred:



LAFCO 2969 was completed on March 7, 2005, which annexed approximately 11.83+/- acres generally west of Fremont Avenue, north of Phillips Boulevard and

east of Monte Vista Avenue. LAFCO 2980 was completed on June 21, 2005, which annexed approximately 8.16+/- acres generally west of Central Avenue, north of the current annexation area, and east of Fremont Avenue. Therefore, it is staff's position that this island was created prior to January 1, 2000, and has been substantially surrounded by the City of Montclair and the City of Chino's boundary. Therefore, this proposal meets the requirements of Government Code Section 56375.4.

Staff has also reviewed the provisions of the Commission's additional policies related to the processing and evaluation of island annexations. Those policies, as adopted on 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.

As noted above, the area is substantially surrounded, being 72% surrounded, by a combination of existing City of Montclair and City of Chino boundaries, as certified by the County Surveyor.

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.

The annexation area is not within an existing County Redevelopment Area; therefore, this policy does not apply to LAFCO 3081.

3. 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.

Since LAFCO staff expanded the proposal, processing it as an "island," the obligation for an outreach program to discuss the issues of land use, plan for service, and costs, if any, to the residents within the annexation area, was carried-out by LAFCO staff in two separate noticed-meetings. These

meetings were held at the City of Montclair’s hearing chambers with City staff present. The first meeting took place on September 14, 2007. At the meeting, it was discovered that none of the registered voters within the annexation area were notified of the meeting. Therefore, a second community outreach meeting was scheduled for October 17, 2007. This time, all landowners and registered voters were notified of the community meeting.

Based upon the information outlined above, it is the staff’s position that these mandatory determinations are clear; therefore, the Commission is:

1. Required by Government Code Section 56375(a) to approve the proposal as submitted by the City of Montclair and as expanded by LAFCO staff; and,
2. Required to approve it without the ability to protest from landowners and registered voters within the area (Government Code Section 56375.3).

The following provides a summary of 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, including environmental considerations.

**LAND USE:**

*Existing Land Uses:*

The annexation area is predominantly developed with single-family residences, one parcel is currently vacant. It is surrounded by residential development to the north within the City of Montclair, a school site to the east, residential development and a City of Chino parcel to the south; and residential development to the west within the City of Montclair.

*County Land Use Designations:*

The County’s current land use designations for this area include: RS-1 (Single Residential – one unit per acre) which allows single-family residential uses and other similar and compatible uses, and CN (Neighborhood Commercial) which allows retail trade, personal services, repair services, lodging services, professional services, recreation and entertainment services, including other similar uses.

*City’s General Plan:*

The City of Montclair’s General Plan land use designations for the area include the following: Very Low Residential, which allows for single-family residential uses (0 to 2 units per acre); Low Residential, which allows for single-family residential uses (3 to 7 units per acre); and Neighborhood Commercial, which allows limited retail opportunities generally located abutting residential uses. The Neighborhood Commercial designation was changed from Low Residential through a General

Plan Amendment that was approved by the City of Montclair through adoption of Resolution #07-2690 on June 4, 2007. Currently, these land use determinations between the City and County are generally compatible.

*City's Pre-Zone Designations:*

The City pre-zoned the annexation area with the following designations: R-1(20) (Single-Family Residential, minimum 20,000 sq. ft. lot area), R-1(11) (Single-Family Residential, minimum 11,000 sq. ft. lot area), and C-2 (Restricted Commercial). The R-1(20) and the R-1(11) pre-zone designations were determined through the City's consideration of Ordinance #06-883, which was adopted on March 20, 2006. The C-2 pre-zone designation was determined through its consideration of Ordinance #06-888, which was adopted on December 18, 2006. These zoning 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 unless the City Council makes the finding, at a public hearing, that a substantial change has occurred in circumstances that necessitates a departure from the given zoning designation(s).

**SERVICE ISSUES AND EFFECTS ON OTHER LOCAL GOVERNMENTS:**

The City of Montclair has submitted a "Plan for Service" for this proposal as required by law and Commission policy. A copy of the Plan is included as part of Attachment #2 to this report. Highlights of the Plan and related information include the following:

- The City of Montclair provides for sewage collection within its boundaries, while the treatment of wastewater is the responsibility of the Inland Empire Utilities Agency. Sewage collection service is currently available within the annexation area; however, most of the parcels are on septic systems. Existing residences within the area will not be required to connect to the City's sewer following the annexation unless there is a septic system failure or if the property owner wishes to develop the property or substantially expand the existing structure on the property. However, all developed properties that are not currently connected to sewer will be assessed a sewer standby charge of \$2.35 per month per dwelling unit.

One parcel within the annexation area, Assessor Parcel Number (APN) 1014-041-03, currently receives sewer service from the City through an out-of-agency service contract. In addition, the parcel proposed for development, APN 1014-041-01, is proposing to connect to the City's sewer facilities.

- Water service is provided to the area by the Monte Vista Water District. No change in service provider will occur through completion of this annexation.

- Law enforcement responsibilities will shift from the County Sheriff's Department, which currently operates out of the Chino Hills Substation facility, to the City of Montclair Police Department. The City indicates that its Police Department, which provides service to areas immediately adjacent to the area, will absorb this territory into its existing beat system surrounding the area.
- Solid waste services are currently provided within the annexation area by one of three companies: Burrtec Waste Industries, Universal Waste Systems, or Waste Management. Pursuant to City policy, residents must use the City's franchised refuse hauler, Burrtec Waste Industries. The City will assume billing responsibility for solid waste collection, and all City residents and businesses are required to have mandatory trash pick-up. The Plan for Service indicates that those residents utilizing a solid waste hauler other than Burrtec Waste Industries will have five years before mandatory transfer to the City's franchise hauler.
- Fire protection and paramedic services are currently provided by the City of Montclair through its assumption of the service responsibilities of the Monte Vista Fire Protection District upon its dissolution. No change in this service will take place on the basis of the annexation.

Since no election is possible under the island annexation provisions, the City's 3.89% Utility Users Tax cannot be extended to the properties within the annexation area. Therefore, 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.

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

**ENVIRONMENTAL CONSIDERATIONS:**

It is to be noted that the City of Montclair prepared two environmental documents for the annexation area, which are both tied to the proposal. These documents are as follows:

- The City's Negative Declaration for Case No. 2006-6 establishing pre-zone designations within the City of Montclair's sphere of influence, which includes the pre-zone designations R-1(20) and R-1(11) that were assigned for the expanded portion of the proposal's boundaries; and
- The City's Negative Declaration for Annexation No. 28 (Case No. 2006-35) for the proposed annexation, the pre-zone designation of C-2 for the original annexation area, the general plan amendment to change the original annexation area from Low Density Residential to Neighborhood

Commercial, and for the construction of a commercial project and its associated public improvements located within the proposed annexation.

However, 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 #4 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.

**CONCLUSION:**

It is the staff’s position that LAFCO 3081, as expanded, is a ministerial action - one which the Commission has no discretion but to approve. This position is based on the requirements set forth in Government Code Section 56375(a) that state “a Commission shall not have the power to disapprove an annexation to a city, initiated by resolution, of contiguous territory that is ... (1) surrounded or substantially surrounded by the city to which annexation is proposed.” In addition, it is the staff’s position that if the Commission makes the mandatory determinations outlined in Section 56375.3 and its supplemental policies, protest will not be allowed. We believe that those findings are easily made in this case:

- The annexation area comprises a total of 10.12+/- acres, which makes the island less than the 150-acre threshold;
- The annexation area is approximately 72 percent surrounded by the City of Montclair and the City of Chino’s existing boundaries, and the annexation area is wholly within the City of Montclair’s sphere of influence;
- The area is substantially developed or developing based on the presence of existing development in the area and the availability of public services as indicated in the Plan for Service;
- The area does not contain any prime agricultural land; and
- The area can benefit from the availability of municipal services from the City of Montclair as reflected in the Plan for Service. The area is already benefiting from the direct receipt of fire service from the City and a parcel within the area is also benefiting from the receipt of sewer service from the City through an out-of-agency service agreement.

It is the staff's determination that this proposal complies with Government Code Section 56375.4 which requires that the island be created prior to January 1, 2000. As outlined in this report, the island in its present form has existed for at least 13 years. However, its size has been reduced twice since January 1, 2000 through the processing of LAFCO 2969 and 2980.

In addition, this proposal complies with the Commission's revised policies related to the processing of islands in that the annexation area is "substantially surrounded" by 72% of the combined boundaries of the City of Montclair and City of Chino, more than the 52% threshold identified by the Commission, and that a public-relations effort, conducted by LAFCO staff, was performed prior to the placement of the item on a Commission agenda for consideration.

If the Commission concurs with these staff determinations, then it is required to approve this proposal and waive the protest hearing as part of its approval of this application, regardless of any protest that might be submitted for this item.

**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 annexation area, as modified, is legally inhabited containing 21 registered voters as of August 17, 2007.
2. The area is within the sphere of influence assigned the City of San Montclair.
3. The County Assessor's Office has determined that the assessed valuation of land and improvements within the annexation area, as modified, is \$2,826,356 (\$1,266,608 - land -- \$1,559,748 - improvements).
4. Legal advertisement of the Commission's consideration has been provided through publications in *The Sun* and the *Inland Valley Daily Bulletin*, newspapers of general circulation in the area. As required by State law, individual notification was provided to affected and interested agencies, County departments and those agencies and individuals requesting mailed notice.
5. Individual notice has been provided to registered voters and landowners within the annexation area (totaling 33), and to all voters and landowners located within roughly 700 feet of the exterior boundaries of the annexation site (totaling 563) in accordance with State law and adopted Commission policies. To date, opposition has been verbally expressed during the community outreach meeting; however, no written opposition has been received.

6. The City of Montclair has pre-zoned the annexation area for R-1(20), R-1(11), and C-2. These zoning designations are consistent with the City of Montclair’s General Plan designation of Very Low Residential, Low Residential, and Neighborhood Commercial.

Pursuant to the provisions of Government Code Section 56375(e), these pre-zone designations shall remain in effect for a minimum of two years following the 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 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 #4 to this report.

8. The area in question is presently served by the following local agencies:

- County of San Bernardino
- County Service Area 70
- Monte Vista Water District
- Inland Empire Resource Conservation District
- Chino Basin Water Conservation District
- Metropolitan Water District of Southern California
- Inland Empire Utilities Agency (formerly known as the Chino Basin Municipal Water District) and its Improvement District C
- West Valley Mosquito and Vector Control District

County Service Area 70 will be detached from the area upon successful completion of the annexation as required by Government Code Section 25210.90. No other agencies will be affected by this proposal as they are regional in nature.

9. The City has submitted a “Plan for Service” as required by law which indicates that the City can, at a minimum, maintain the level of service delivered and can improve the level and range of selected services currently available within the annexation area. A copy of this Plan is included for the Commission’s review as part of Attachment #2.
10. The annexation area can benefit from the availability and extension of municipal services from the City of Montclair. The area is already benefiting from the direct receipt of fire service from the City and a parcel within the area is also benefiting from the receipt of sewer service from the City

through an out-of-agency service agreement. In addition, the parcel proposed for development is proposing to connect to the City's sewer facilities.

11. 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.
12. This proposal will have no effect on the City's ability to achieve its fair share of the regional housing needs since the area zoned for residential use is fully developed.
13. The County of San Bernardino and the City of Montclair have successfully negotiated a transfer of property tax revenues for the modified area that will take effect upon completion of this annexation. This negotiated agreement fulfills the requirement 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. Maps – Vicinity and Location
2. City of Montclair Application and Plan for Service
3. Government Code Sections 56375 and 56375.3
4. Letter from Tom Dodson and Associates on Environmental Determination
5. Draft Resolution No. 2988