

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

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DATE: OCTOBER 15, 2007

FROM: SAMUEL MARTINEZ, LAFCO Analyst

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #8: LAFCO #3056 – City of Fontana Annexation No. 169

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 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 that:
- 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 the landowners parcels, Assessor Parcel Numbers (APNs) 0226-074-17, 18, 19 and 0226-075-21 and 22.
 - 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 within the annexation area addressing land uses and standards to be applied upon annexation of the property. 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 INFORMATION:

In March 2005, the City of Fontana submitted an application to LAFCO for the annexation of approximately 457+/- acres initiated by City Council resolution. The annexation area is generally located west of the I-15 Freeway and north of Coyote Canyon Road. Location and vicinity maps are included as Attachment #1 to this report.

At the time the application was submitted the annexation proposal was in response to the processing of a development application through the City of Fontana. The development, identified as Tentative Tract 17020, included a 302-lot residential development on a 213-acre site within the proposed annexation area. In its initial review of the proposal, LAFCO staff identified a concern regarding the environmental assessment of the proposal. It was determined that in order to move forward with the environmental processing of the annexation and the proposed Tentative Tract, the options would be:

1. LAFCO would act as lead agency under the California Environmental Quality Act (CEQA) and evaluate the annexation proposal including the Tentative Tract, which, at a minimum, would require an initial study and possibly an Environmental Impact Report (EIR); or,
2. LAFCO would be a responsible agency under CEQA and evaluate the project using the environmental documents prepared by the City, presumed to be an EIR, for the Tract development and the annexation.

In discussions with the City, the developer of the project chose the option of the City conducting the environmental review of the Tentative Tract and annexation. However, after several months of working with the City and possibly due to market demands slowing down, the developer withdrew its application from the City. In light of this change in direction, the City notified LAFCO of its desire to continue the annexation without the proposed development. As a result of this change, the City prepared a revised Plan for Service, including a Fiscal Impact Analysis that evaluates the annexation proposal based upon existing land uses and without a development project. In addition, the West Valley Water District also prepared a Plan for Service that evaluates the development potential of the area based on the assigned pre-zone designations adopted by the City, rather than a specific project. Other pertinent documents were also submitted in order to fulfill the necessary requirements to move forward and proceed with the annexation - without the proposed Tentative Tract.

Thus, this report will evaluate the proposal, as revised, and will discuss its effects within 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 457+/- acres and is located within portions of Sections 13 and 14 of Township 1 North, Range 6 West, San Bernardino Meridian. The site is generally bordered by: the eastern line of Section 13 on the east; a combination of parcel lines, Coyote Canyon Road and the I-15 Freeway (existing City of Fontana boundaries) on the south; parcel lines (existing City of Fontana boundary) on the west; and, parcel lines including the City of Los Angeles Department of Water and Power easement on the west. The site lies within the City of Fontana's northern sphere of influence.

The boundary as presented by the City is in the staff's view a logical boundary since it includes the whole area north of Coyote Canyon Road resulting in an easily identifiable boundary for service delivery - especially along Coyote Canyon Road.

However, there is a boundary issue to be evaluated by the Commission in regard to this proposal related to a future formation application which is discussed below.

Proposed County Service Area 120:

In a series of correspondence to the City, the County, through its Special Districts Department, outlined its proposal to include the annexation area within the boundaries of County Service Area (CSA) 120 to be submitted for LAFCO review in the near future. The Special Districts Department has sought the City's consent to the overlay of the proposed district.

The Commission may recall that in early 2004, an application was submitted by the County proposing the formation of a "habitat preservation and open space" County Service Area, identified as CSA 120 (North Etiwanda Open Space Preserve). The proposed boundary of CSA 120 included areas along the foothills above the Cities of Fontana and Rancho Cucamonga, including some portions that are, or in this case are proposed to be, within the corporate boundaries of both cities. The formation of CSA 120 is being proposed to provide open space and habitat conservation services. However, due to some modification in its proposed boundary and some additional data that was required of the County to submit back then, the proposal to form CSA 120 was taken off-calendar and eventually withdrawn.

The County has indicated that it wishes to resurrect this proposal to provide for the formation of a CSA to include the services to include the acquisition and preservation of land for the purpose of protecting sensitive and/or endangered species. Although this new proposal has not been officially filed with LAFCO for processing, the County indicated its plan to overlay the entire annexation area within the boundaries of the proposed CSA 120.

In its discussions with the City, the County has identified that there are three parcels within the annexation area that it manages as open space conservation land. It has requested that the City support the formation of CSA 120 by consenting to the overlay of the proposed CSA 120 boundary within the entire annexation area. The City's response indicates that they may have no concerns regarding the overlay of the parcels in question; however, it wished to reserve its right to support the overlay of the entire area being annexed until such time that the formation application is submitted to LAFCO. The County's letter and the City's response, including the follow-up correspondence between the two entities are included as Attachment #4 to this report.

It is LAFCO staff's position that since the actual formation application for CSA 120 has not been submitted to LAFCO, there is no official position to be taken at this time. Therefore, staff believes that the annexation proposal should move forward without an actual commitment to consent to the overlay for the entirety of the annexation area. Once the formation proposal for CSA 120 is officially filed with LAFCO, staff will then request, as required by law, the consent of both the City of Fontana and the City of Rancho Cucamonga, to the overlay of the District within the corporate boundaries of the Cities.

LAND USE:

Existing Land Uses:

The annexation area is currently a mix of mostly vacant land and a few residences in some of the parcels. The existing uses include single-family residential development, utility easements, and open space. Surrounding land uses include: primarily vacant land to the north, a freeway (I-15) to the east, residential development to the south (existing City of Fontana), and a mix of vacant land and residential development to the west (existing City of Fontana).

County Land Use Designations:

The County's current land use designations for this area include: RS-1 (Single Residential with minimum 1 acre lot size) which allows for single-family residential uses, incidental agricultural and recreational uses, and similar and compatible uses; RL (Rural Living with minimum 2½ acre lot size) which allows for rural residential uses, incidental agricultural uses, and similar and compatible uses; SD-RES (Special Development with a focus on Residential Planned Development projects) which allows for a combination of residential, commercial, industrial, agricultural, open space, and recreation uses, and similar and compatible uses; and FW (Floodway) which provides sites for animal keeping, grazing, crop production, and similar and compatible uses.

City's General Plan:

The City of Fontana's General Plan designation for this area includes: Residential Estates (R-E) which permits 2 dwelling units per acre; Residential Planned Community (R-PC) which provides for the managed growth of master planned communities offering a mix of residential housing types and amenities at 3.0 – 6.4 dwelling units per acre; Public Utility Corridors (P-UC) which is used to indicate locations that contain easements for public utilities; and Open Space (OS) which are areas that have been planned to remain in a natural condition, which in this case, the foothills of the San Gabriel Mountains bordering the National Forest. The character of these areas are to remain natural and only permits a number of uses such as quarries, flood control channels, ground water percolation basins and agriculture. As outlined above, the land use determinations between the City and County are generally compatible.

City's Pre-Zone Designations:

The City of Fontana has pre-zoned the annexation area for the following land uses: R-E (Residential Estates), R-PC (Residential Planned Community), P-UC (Public Utility Corridors), and OS-N (Open Space-Natural). 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. 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 a finding, at a noticed 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.

Based on the City's General Plan/Pre-zone designations for the area, the proposed annexation area will allow for a maximum of approximately 1,350 dwelling units at build-out.

In addition to the issues regarding land use identified above, LAFCO staff has become aware that two (2) of the property owners within the annexation area have been working with the City on questions related to the uses allowed on their properties following annexation, including the possibility of "grandfathering-in" the uses allowed on their properties by the County. Below is a summary of the two agreements:

City of Fontana's Agreement with Mr. Merl Landmesser and Landmesser Family Trust:

A property owner within the annexation area Mr. Landmesser, on behalf of Landmesser Family Trust, submitted a letter to the City requesting its concurrence on the number of horses allowed on their properties following annexation based on the existing County land use designation specific to their parcels. The City responded in support to the request by Mr. Landmesser to allow the maximum number of horses permitted on each of their parcels based on the County's land use. Since the City has agreed to the landowner's request, LAFCO will include a finding identifying the City's agreement with Mr. Landmesser/ Landmesser Family Trust and the acknowledgement of land use authority regarding the number of horses allowed on APNs 0226-074-17, 18, 19 and 0226-075-21 and 22. A copy of the City's response and Mr. Landmesser's letter are included as part of Attachment #5 to this report.

City of Fontana's Pre-Annexation Agreement with Mr. Gary Simpson:

Another property owner within the annexation area, Mr. Gary Simpson, has been negotiating a Pre-Annexation Agreement with the City of Fontana that outlines a request to "grandfather-in" a number of land uses and/or standards on APNs 0226-074-09, 22, and 23. At this time, the Pre-Annexation Agreement between the City and Mr. Simpson has not been finalized. On October 3, 2007, LAFCO received a copy of the City's letter to Mr. Simpson, dated October 1, 2007, identifying some of the City's concerns regarding the agreement. The City's letter to Mr. Simpson is also included as part of Attachment #5 to this report.

It is LAFCO staffs understanding that both parties are looking forward to achieving a final resolution to the land use questions soon. However, as of the date of this report, neither the property owner nor the City have agreed on the terms of the agreement.

In order to address this concern, the Commission has the following options to consider:

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. The Commission can continue the proposal to allow sufficient time to complete the negotiations for this agreement.

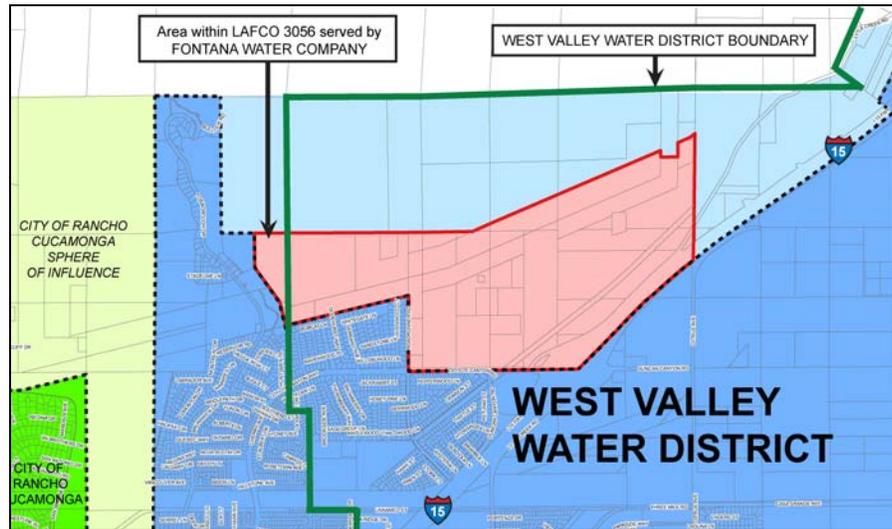
It is staff's recommendation that the Commission choose option #1 which acknowledges the negotiations underway between the City and Mr. Simpson, but does not impede the progress of the annexation. As noted, if the Pre-Annexation Agreement is not finalized prior to the issuance of the Certificate of Completion then the land use requirements of the City will prevail for the parcels.

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. The current County service providers within the annexation area include the Central Valley Fire Protection District (fire protection/paramedics) and County Service Area 70 (multi-function entity primarily utilized to fund fire administration). In addition, the West Valley Water District and the Fontana Water Company (private water company) provides retail water service to portions of 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 and the West Valley Water District (WVWD) have submitted plans for service(s) for this proposal as required by law and Commission policy. The City's Plan for Services, which was revised following the withdrawal of the proposed Tentative Tract, includes a Fiscal Impact Analysis that indicates that the property tax revenues anticipated to be received, sales tax revenues, and other assessment districts within the City, are sufficient to fund the delivery of their services. The City's revised Plan (dated July 2007) and the WVWD's revised Plan (dated September 19, 2007) are included as part of Attachment #2 and as Attachment #3 to this report, and in general, identifies the following:

- The annexation area is generally within the service boundary of WVWD except for a small portion along the westernmost part of the annexation boundary which is within the service area of the Fontana Water Company, a private water company regulated by the Public Utilities Commission. No change will occur for these service providers on the basis of this annexation.



Water service is currently provided by the WVWD to three parcels within its service area within the proposed annexation boundary. The WVWD's revised Plan for Service indicates that there is enough water supply and storage capacity to serve the annexation area upon development based on the existing General Plan/Pre-zone designations for the area. It also indicates that the proposed annexation will have minimal effect on the WVWD's existing operations, facilities, and service. In addition, the revised Plan identifies that the "Four-Party Agreement" between the WVWD, San Bernardino Valley Municipal Water District, Inland Empire Utilities Agency and Metropolitan Water District of Southern California will be unaffected by the annexation of this area to the City. The Four Party Agreement addresses the potential for transport of water derived from within the San Bernardino Basin to the Chino Basin through implementation of sewers.

- Sewage collection services are currently not available within the annexation area. However, the City of Fontana, in its master plan for sewers, has made provisions to serve the area (*Note: the City of Fontana provides for the collection and transportation system for wastewater generated within the area; however, the treatment of wastewater is the responsibility of the Inland Empire Utilities Agency*). Once sewer service is available, existing residences within the area will not be required to connect to sewer unless a septic system failure occurs.
- Law enforcement responsibilities will shift from the San Bernardino County Sheriff's Department to the City of Fontana's Police Department. The City has indicated that there will be no significant impact to the City's Police Department nor will the annexation require additional personnel and equipment to serve the area since the majority of the annexation area is currently vacant.

- Fire protection and paramedic services are currently provided by Central Valley Fire Protection District (CVFPD) and no change will occur to this service provider through the annexation.

However, completion of this annexation will remove the State Responsibility Area (SRA) designation for wildland fire protection for the area. While the City contracts with CVFPD for its fire services, wildland fire protection will become the financial responsibility of the City upon completion of this annexation as outlined in State law. As a result, the City has entered into an agreement with CVFPD, through the County, to pay \$6 per acre annually to provide the required wildland fire protection service. In addition, CVFPD participates in a Master Mutual Aid Agreement with neighboring local, state, and federal fire agencies related to wildland fire protection. This agreement is included as Attachment #4 to this report.

It is the position of staff that LAFCO 3056 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 Services submitted by the City of Fontana, including the Plan for Service submitted by the WVWD, indicates that the extension of its service(s) will maintain, and/or exceed, current service levels provided by the County.

ENVIRONMENTAL CONSIDERATIONS:

The City of Fontana prepared a FEIR for its General Plan Update and an Addendum to the FEIR (for the Fontana Development Code Update) which addressed the pre-zoning of its sphere of influence, copies of these documents were provided to Commissioners at the November 2004 hearing and to new Commissioners upon their appointment. The City's environmental assessment has been reviewed by the Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates. Mr. Dodson has determined that the City documents are adequate for Commission use. Attachment #7 to this report includes the letter presented by Mr. Dodson outlining his recommendations and a Draft Candidate Findings of Fact and Statement of Overriding Considerations.

Mr. Dodson has indicated that the necessary environmental actions to be taken by the Commission, as a responsible agency under CEQA, are as follows:

- Certify that the 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;
- 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;

- 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;
- Adopt the Findings of Fact and Statement of Overriding Considerations as presented by the Commission's Environmental Consultant; and,
- 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.

CONCLUSION:

It is the position of LAFCO staff that, in compliance with directives of State law and Commission policies, this annexation is a logical and reasonable extension of the City of Fontana and should be supported. Those parcels currently undeveloped are anticipated to develop at a level that will require a broad range of municipal services. Therefore, the area will benefit from the full range of services to be provided by the City of Fontana. For these reasons, and those outlined throughout the staff report, the staff supports the approval of LAFCO 3056.

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. State law indicates that an area containing 12 or more registered voters is determined to be "legally inhabited". The County Registrar of Voters Office has certified that the annexation area is legally uninhabited, containing 11 registered voters as of October 3, 2007. A copy of this certification is included as Attachment #8 to this report.
2. The County Assessor has determined that the total assessed value of land and improvements within the annexation area is \$19,976,169 (land - \$18,033,090 -- improvements - \$1,943,079). The area is within the sphere of influence assigned the City of Fontana.

Pursuant to the provisions of Government Code Section 56126, the County Assessor was requested to assign land values to the public lands within the annexation site for protest purposes only. The values for these publicly held lands are listed separately as shown below for the individual parcels:

PARCEL OWNERSHIP	PARCEL NUMBER	VALUE
City of Los Angeles	0226-075-37	\$13,500
County Service Area 70	0226-074-07	\$6,624,000
	0226-074-29	\$4,079,000
	0226-371-08	\$5,309,000
S. B. County Flood Control District	0226-075-36	\$3,718,000
Southern California Edison Company	0226-074-14	\$433,500
	0226-074-15	\$1,481,000
	0226-074-16	\$1,241,000
	0226-075-09	\$2,864,000
	0226-075-14	\$12,500
	0226-075-20	\$648,000
	0226-411-07	\$157,500
West Valley Water District	0226-074-28	\$1,248,000

3. 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.
4. LAFCO staff has provided individual notice to the landowners and registered voters within the annexation area (34) and to landowners and voters surrounding the annexation area (691) 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.
5. The City of Fontana has pre-zoned the annexation area for the following land uses: R-E (Residential Estates), R-PC (Residential Planned Community), P-UC (Public Utility Corridors), and OS-N (Open Space-Natural). 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 Commission identifies that an agreement between the City and property owner, Merl Landmesser and Landmesser Family Trust, that specifically outlines the number of horses allowed on the landowners parcels, APNs 0226-074-17, 18, 19 and 0226-075-21 and 22, has been reviewed and approved by the City as indicated in its letter to Mr. Landmesser dated October 1, 2007.

The Commission identifies that a Pre-Annexation Agreement is currently being finalized between the City and property owner, Gary Simpson, which outlines a request to “grandfather-in” a number of land uses and/or standards on APNs 0226-074-09, 22, and 23, the property owner’s parcels within the annexation

area. Prior to the issuance of the Certificate of Completion finalizing the annexation, both the City and Mr. Simpson will have to have completed the Pre-Annexation Agreement; otherwise, the agreement will be deemed null and void.

6. The Commission's Environmental Consultant, Tom Dodson and Associates, has reviewed the City of Fontana's FEIR, Addendum to the FEIR and the Statement of Overriding Considerations prepared for the City of Fontana's General Plan Update and pre-zoning of its sphere of influence. Mr. Dodson has determined that these documents, taken together, are adequate for the Commission's review of the proposed annexation as a responsible agency. Copies of the City's environmental documents were presented to Commission members at the November 17, 2004 hearing and were provided to new Commission members who took office thereafter. The necessary actions to be taken by the Commission, as a responsible agency, are outlined in the narrative portion of this report.
7. 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 Districts C and 1
 - Central Valley Fire Protection District
 - West Valley Water District (portion of the area)
 - County Service Area 70 (multi-function unincorporated area Countywide)

Detachment of CSA 70 will automatically occur upon successful completion of this proposal as required by Government Code Section 25210.90. None of the other agencies are affected by this proposal as they are regional in nature.

8. The City of Fontana has submitted a plan for the extension of municipal services to the annexation area, as required by law. Included as an attachment to the City's Plan is a Plan for Service prepared by the West Valley Water District for its service area. 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 and fees for service. This Plan is attached for Commission review and indicates that the City can, at a minimum, maintain the existing level of service delivery and can improve the level and range of selected services currently available in the area.
9. The annexation proposal is consistent with State law and complies with Commission policies that indicate the preference for areas proposed for future 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.

10. The annexation area can benefit from the availability and extension of municipal services from the City of Fontana and its related service providers.
11. This proposal will assist the City's ability to achieve its fair share of the regional housing needs within the annexation area upon future development of the vacant parcels that have a residential land use designation.
12. 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.
13. 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. West Valley Water District Plan for Service
4. Letter from Special Districts and Letter from the City of Fontana, Including Follow-up Correspondence Regarding CSA 120
5. Response from City of Fontana to Mr. Merl Landmesser (Property Owner), Letter from Mr. Landmesser to the City, and Letter from the City of Fontana to Mr. Gary Simpson (Property Owner)
6. City of Fontana Agreement with CVFPD for Wildland Fire Protection
7. Response from Tom Dodson and Associates and Candidate Findings of Fact and Statement of Overriding Considerations
8. ROV Voter Count Certification
9. Draft Resolution No. 2984