

**STAFF REPORT**  
 Meeting Date: May 19, 2004

**Agenda Item 8**

**TO:** LAFCO Commissioners

**FROM:** Everett Millais, Executive Officer

**SUBJECT:** Review of Policy Relating to Annexation of Unincorporated Island Areas By Cities

**RECOMMENDATION:**

Review the policy relating to annexation of unincorporated island areas by cities and provide direction to staff about any changes to the policy or repeal of the policy.

**DISCUSSION:**

Background

In April 2003 the Commission adopted the attached policy as part of Section 3.2.3 of the Commissioner's Handbook (Attachment A). The policy was developed after LAFCO staff was directed to review all areas in the County that qualified as "islands" under what is now Government Code Section 56375.3 and after a presentation to the Commission in February 2003 that reviewed each qualifying island area and provided some policy options for the Commission to consider. Prior to the February 2003 presentation the mayor of each city in the County was sent a letter, with a copy to each city manager, inviting them to the February meeting. A copy of the Staff Report for the February 19, 2003, meeting is attached, including Section 56375.3, maps of the qualifying island areas and a copy of the County Counsel's response to questions about island annexations to cities (Attachment B).

The Commission is aware that under current law changes of organization or reorganization can be initiated by a petition of property owners or by the legislative body

**COMMISSIONERS AND STAFF**

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<b>COUNTY:</b> Kathy Long Linda Parks <i>Alternate:</i> Steve Bennett	<b>CITY:</b> Evaristo Barajas, Chair Don Waunch <i>Alternate:</i> John Zaragoza	<b>SPECIAL DISTRICT:</b> Jack Curtis, Vice Chair Dick Richardson <i>Alternate:</i> Ted Grandsen	<b>PUBLIC:</b> Louis Cunningham  <i>Alternate:</i> Kenneth M. Hess
<b>EXECUTIVE OFFICER:</b> Everett Millais	<b>LAFCO ANALYST:</b> Hollie Brunsky	<b>OFFICE MANAGER/CLERK:</b> Debbie Schubert	<b>LEGAL COUNSEL:</b> Noel Klebaum

of any affected local agency (any agency whose sphere of influence contains, or would contain, any territory being considered, such as a city, a district or the County). Typically, unless all the property owners involved in a change of organization or reorganization consent, and unless there are less than 12 registered voters within the territory involved, LAFCO must conduct protest proceedings, known as conducting authority proceedings. As a part of this process, both property owners who own property in the subject territory and registered voters residing in the subject territory may file written protests. Depending on circumstances, either a majority of the property owners who own a majority of the assessed land value within the subject territory, or a majority of the registered voters within a subject territory at an election, may require the termination of a change of organization or reorganization proposal.

While the regular change of organization and reorganization process remains available, Government Code Section 56375.3 provides for an optional process for island areas that meet specified requirements. For island areas that meet the requirements of Section 56375.3 only the surrounding city may initiate a change of organization or reorganization. If a city initiates a change of organization or reorganization proposal pursuant to Section 56375.3, LAFCO must provide notice and hold a hearing, but there is no protest process and LAFCO cannot deny the proposal.

The legislature has long recognized that island areas surrounded by cities are inefficient, difficult and expensive to serve, and contrary to orderly growth and development, one of the basic legislative purposes of LAFCOs. Section 56375.3, the current island annexation provisions, reflect and revise a program that was in statute from 1977 to 1988. The prior program was also designed to encourage and expedite the annexation of unincorporated island areas. In establishing the current policy, your Commission was aware of the legislature's intent and was also aware that Section 56375.3 "sunsets" or expires as of January 1, 2007, unless renewed by the legislature. Thus, via policy, your Commission wanted to make sure that cities used the expedited process provided by Section 56375.3.

The Commission's Annexation of Unincorporated Island Areas By Cities policy is just that, a policy. It is not a hard and fast rule, and may be applied at the discretion of the Commission as it considers any qualifying proposal. On its face, the intent of the Commission was to not even consider applying the policy unless the underlying proposal would result in the significant new urban development.

Since the policy was adopted in April 2003, there has only been one qualifying proposal filed with the Commission. That proposal was initiated by the City of Oxnard and involved a reorganization of more than 40 acres in area for a new residential development. In that instance the Commission did not apply the policy because the island area involved is a part of the Oxnard Airport runway owned by the County of Ventura. Annexation of that island area would trigger annexation to the Calleguas Municipal Water District and the

payment of stand-by water charges to Metropolitan Municipal Water District for no underlying service benefit to any agency or property owner.

In January 2004 staff received a copy of a draft EIR for a project known as the Runkle Canyon Specific Plan for the City of Simi Valley. This project includes residential development on approximately 140 acres in the northern portion of the specific plan area and implementation of the specific plan will require both a sphere of influence amendment, including areas outside the City of Simi Valley's CURB boundary, and a reorganization that would potentially qualify under the Annexation of Unincorporated Island Areas By Cities policy. LAFCO staff notified the City of Simi Valley staff of this fact. It was at that time that LAFCO staff became aware of strong opposition of even the concept of the Commission's island annexation policy by both the City of Simi Valley and by GreenPark Companies, the Runkle Canyon project's developer.

At this point in time it is important to emphasize that the Ventura LAFCO has no pending proposal on file that might trigger the Commission's island annexation policy, nor has the Commission or staff received anything in writing from any city, property owner or developer objecting to the concept of the policy. As relayed to LAFCO staff during several conversations and during at least two meetings, however, the City of Simi Valley has an unofficial policy of not wanting to cause anyone to be annexed against their will, no matter what the service implications to the City or any other governmental agency. Further, both the City and the developer object to the policy as it could potentially cause residents from one or more of the Simi Valley islands to object to the Runkle Canyon Specific Plan project and could potentially cause delays in the project's overall approval.

The City of Simi Valley's and GreenPark Companies' objections to the Ventura LAFCO island annexation policy have resulted in the introduction of AB 2306 (Richman) that would change state law to prohibit any LAFCO from requiring an annexing local agency to initiate proceedings for a change of organization or reorganization of territory that was not contained in the local agency's annexation proposal. Discussion and possible action on this pending legislation is the subject of a separate agenda item. However, since the Ventura LAFCO is the only LAFCO in the state with such an island annexation policy, and since the City of Simi Valley will be filing reorganization proposals with LAFCO in the near future, it is appropriate for the Commission to offer the City of Simi Valley, the Runkle Canyon Specific Plan developer and any other interested parties further opportunities to express their concerns directly to the Commission. It is recommended that the Commission review its Annexation of Unincorporated Island Areas By Cities policy in light of the concerns expressed and provide direction to staff about any changes to the policy or repeal of the policy.

## Policy Options:

The Commission has at least three options as a part of its review of the island annexation policy:

1. The Commission can decide to keep its policy, either as is or with slight modifications that would still provide the discretion to condition a change of organization or reorganization upon the initiation of the annexation of qualifying unincorporated island areas. As background to this option, County Counsel, who serves as LAFCO legal counsel, was requested to re-review the existing policy, especially in light of an opinion prepared by GreenPark Companies' legal counsel that was provided to the Assembly Local Government Committee as a part of the legislative deliberations on AB 2306 (Attachment D). This recent review by the Commission's legal counsel is attached and clearly supports the Commission's ability to maintain and use its discretion in applying the existing policy (Attachment C).

It considering whether or not to maintain the existing island annexation policy, the Commission should consider that, as with any of its policies, it might have to defend itself should any party aggrieved by the application of the policy file a lawsuit. Further, if AB 2306 is enacted in its current form, it would become effective on January 1, 2005, and would pre-empt and prohibit the Commission from applying the existing or any similar island annexation policy.

If the Commission desires to leave the existing policy in place, no action is necessary. If changes are desired, but within the context of allowing the Commission to condition a change of organization or reorganization upon the initiation of island annexations pursuant to Section 56375.3, it is recommended that staff be directed to return with the draft revisions for consideration at the July meeting.

2. The Commission could revise the policy to change the context away from utilizing Section 56375.3 and have it be operational under other provisions of the law that provide for protest proceedings to occur. An example of such a policy might be that for any city change of organization or reorganization of 40 acres or more for urban development purposes, the Commission could require that the applicant city conduct a survey of all property owners within all island areas and include all consenting, contiguous owners as a part of the basic change of organization or reorganization proposal. As a result of the survey, the applicant city and/or the Commission could decide whether or not to include any other properties, but this would be done based on the protest proceeding requirements and limitations in the law.

This type of policy would continue to express the Commission's desire that cities take meaningful, proactive steps to annex unincorporated island areas. Such a policy could continue after Section 56375.3 sunsets, would apply even if AB 2306 is enacted in its current form and could apply to all unincorporated island areas regardless of size. The downside of this type of policy would be the probable piecemeal annexation of unincorporated island areas over an extended period of time. This could lead to even greater service delivery issues for either the applicant city or the County, or both. It would also likely lead to longer LAFCO processing times and costs for developers who may be the real parties in interest for a given proposal.

If the Commission desires to consider this type of survey, protest proceedings type of revision to the existing policy, it is recommended that it direct staff to prepare such a revision for consideration at the July or a subsequent meeting.

3. The Commission could repeal its island annexation policy and not have any written policy about the annexation of unincorporated island areas by cities. A decision to repeal the existing policy can be made at the May 19 meeting or at any subsequent meeting. Any such action should direct that the Commissioner's Handbook be modified accordingly.

Attachments:

- A. Commissioner's Handbook Section 3.2.3 – Annexation of Unincorporated Island Areas By Cities – the existing Ventura LAFCO island annexation policy.
- B. Staff Report dated February 19, 2003, containing background information used for the development of the existing island annexation policy, including Government code Section 56375.3, descriptions and maps of qualifying island areas and a copy of the County Counsel's January 2003 responses to questions posed about island annexations.
- C. County Counsel's re-review opinion of the Commission's existing island annexation policy.
- D. Opinion of Nossaman, Guthner, Knox & Ellittott, LLP provided to the officers of GreenPark Companies RE: Annexation of County Land – Runkle Canyon Project

(Contact the LAFCO office at 654-2576 for a copy of Attachment D.)