

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

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**DATE :**        **JANUARY 8, 2010**

**FROM:**       **KATHLEEN ROLLINGS-McDONALD, Executive Officer**

**TO:**           **LOCAL AGENCY FORMATION COMMISSION**

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**SUBJECT:    AGENDA ITEM #6 – REQUEST FOR WAIVER OR REDUCTION IN  
              FILING FEES FOR THE RECONSIDERATION REQUEST SUBMITTED  
              FOR LAFCO 3067A, 3067B, 3067C, 3067D, 3067E, AND 3067F (City of  
              San Bernardino Islands)**

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**RECOMMENDATION:**

Staff recommends that the Commission deny the request for waiver or reduction of filing fees for the submission of the six requests for reconsideration.

**BACKGROUND:**

On December 17, 2009, Ms. Susan Hulse, resident within LAFCO 3067E, submitted requests for reconsideration of each of the six island annexations to the City of San Bernardino approved by the Commission at its November 18, 2009 hearing. Ms. Hulse submitted the payment of the mandatory reconsideration fees totaling \$6,600 (\$1,100 per reconsideration request) along with a request for waiver or reduction in the filing fees pursuant to the Commission's adopted policy (copy included as Attachment #1 to this report). Policy #18 (copy included as Attachment #2 to this report) reads in part:

...The Commission may waive the filing fee if it first determines that payment would be detrimental to the public interest (required by Government Code Section 56383). A waiver of fees is limited to those costs incurred by the Commission in processing the proposal...

Ms. Hulse expresses her opinion that the requirement that she pay for the reconsideration request along with the requirement to pay an individual fee for each reconsideration is detrimental to the public interest for the following reasons:

1. Ms. Hulse identifies her position that the fee for reconsideration violates the provision of Government Code Section 56383 in that the fee "should not exceed the estimated reasonable cost of providing the service for which the fee is charged".

Staff’s response to this assertion is that the fee applied to requests for reconsideration included in the adopted LAFCO Schedule of Fees, Deposits, and Charges is designed to recover the cost of advertising the reconsideration in the same manner as the original proposal, as required by law (Government Code Section 56895). These costs include the provision of individual notice to registered voters and landowners within and surrounding the island area (copying charges, postage, translation services into Spanish) as well as the legal advertisement in a newspaper of general circulation. The actual costs for providing the mandatory notice for the individual islands for the November hearing are shown in the chart below:

Actual Costs for LAFCO 3067 A-F

Proposal	Notice provided to Landowners and Registered Voters Within Boundaries			Notice to Landowners and Registered Voters Surrounding Island boundaries			Legal Ad	ROV Charge for Preparation of Lists	GIMS Preparation of Landowner Listings	TOTAL
	Printing	Envelope	Postage	Printing	Envelope	Postage				
A	\$ 109.20	\$ 27.30	\$ 347.62	\$ 137.76	\$ 34.44	\$ 438.54	\$ 161.70	\$ 222.50	\$ 43.91	\$ 1,522.97
B	\$ 11.40	\$ 2.85	\$ 36.29	\$ 137.76	\$ 34.44	\$ 438.54	\$ 161.70	\$ 222.50	\$ 43.91	\$ 1,089.39
C	\$ 6.72	\$ 1.68	\$ 21.39	\$ 137.76	\$ 34.44	\$ 438.54	\$ 161.70	\$ 222.50	\$ 43.91	\$ 1,068.64
D	\$ 47.28	\$ 11.82	\$ 150.51	\$ 122.68	\$ 30.67	\$ 390.53	\$ 161.70	\$ 222.50	\$ 43.91	\$ 1,181.60
E	\$ 137.64	\$ 34.41	\$ 438.15	\$ 122.68	\$ 30.67	\$ 390.53	\$ 161.70	\$ 222.50	\$ 43.91	\$ 1,582.19
F	\$ 1.20	\$ 0.30	\$ 3.82	\$ 122.68	\$ 30.67	\$ 390.53	\$ 161.70	\$ 222.50	\$ 43.91	\$ 977.31
<b>TOTAL</b>	<b>\$ 313.44</b>	<b>\$ 78.36</b>	<b>\$ 997.78</b>	<b>\$ 781.32</b>	<b>\$ 195.33</b>	<b>\$ 2,487.20</b>	<b>\$ 970.20</b>	<b>\$ 1,335.00</b>	<b>\$ 263.46</b>	<b>\$ 7,422.09</b>

Translation charges were not included for these notices as the standard notice template inserting the individual area descriptions were used. However, translation costs will be included for the reconsideration as no template currently exists for this notice. Therefore, the costs for reconsideration will be higher than those shown above. As the chart identifies, the reconsideration fee, as required by law, will cover the estimated reasonable cost for providing for the mandatory advertising of the consideration of each reconsideration request, but no staff time, legal counsel review, or staff report preparation. Therefore, staff does not support a fee waiver or reduction.

- Ms. Hulse has identified that the public interest to “protect and preserve the interests of the residents and citizens of the City and County” from LAFCO’s policy addressing the annexation of unincorporated islands transcends her personal interest in the outcome of LAFCO 3067E; therefore, she should not be required to pay any fee for processing.

Staff’s response to this assertion is that LAFCO provided individual notice to registered voters and landowners within and surrounding the areas of consideration identifying the proposals, identifying that if the Commission determined that they met the criteria identified by statute that the individual proposals would be required to be

approved by the Commission without the ability to protest their completion. The notices identified the location and timing for the Commission’s hearing as well as where an individual could review the staff reports, including attachments, for these considerations on the internet. The chart below identifies the number of notices provided in reference to each of the proposals. As the chart illustrates, the staff utilized the groupings of northern and southern islands to notify the landowners and voters surrounding the proposals to avoid duplication and reduce costs.

<b>Proposal</b>	<b>Number of Registered Voters and Landowners within</b>	<b>Number of Registered Voters and Landowners Surrounding</b>	<b>Total Number of Notices Provided</b>
<b>A</b>	910	1,148	<b>2,058</b>
<b>B</b>	95	1,148	<b>1,243</b>
<b>C</b>	56	1,148	<b>1,204</b>
<b>D</b>	394	1,023	<b>1,417</b>
<b>E</b>	1,147	1,023	<b>2,170</b>
<b>F</b>	10	1,023	<b>1,033</b>
<b>TOTAL</b>	<b>2,612</b>	<b>6,513</b>	<b>9,125</b>

Staff believes that the public interest has been preserved and protected through the provision of notice of the actions to be presented to the Commission. Participation in the government process for review has been preserved and protected as evidenced by those who attended the hearing to outline their position on these proposals, including Ms. Hulse, and by those who provided written expression of their positions. Therefore, staff does not support a waiver or reduction in the fees charged for reconsideration.

3. Ms Hulse identifies her position that the requirement to pay the reconsideration fee for each proposal considered by the Commission is “disproportionate, unjust and detrimental to the public interest”. The basis for the assertion is that the City paid only a single fee when submitting the reorganization and the Commission’s current fee schedule provides for a reduced fee for island annexation applications.

Staff’s response is that at the time the City of San Bernardino submitted the reorganization proposal, the filing fee was limited to a deposit toward the direct costs of processing the proposal. Such deposit excluded the payment for LAFCO staff time. However, the fee submitted by the City of San Bernardino included a deposit for legal counsel costs and a per island charge calculated as shown in the excerpt from the adopted Schedule of Fees and Charges for Fiscal Year 2006-07 below:

*Island Annexations Filed Pursuant to  
Govt. Code Section 56375.3*

- |    |                                 |                           |
|----|---------------------------------|---------------------------|
| a. | <i>Totally Surrounded</i>       | <i>\$1,250 per island</i> |
| b. | <i>Substantially Surrounded</i> | <i>\$2,000 per island</i> |

*(Fee anticipates payment direct cost associated with Commission processing of the application. However, if charges exceed the fee, Cities will be required to reimburse the Commission for all additional charges prior to completion of the action. If charges billed to LAFCO are less than the amount of deposit, the balance of the deposit will be refunded to the applicant City.)*

The Commission's position in adopting the fee schedule was that the public benefit of removing these islands of unincorporated territory, which are an impediment to efficient and effective service delivery, supported the fee reduction to encourage these applications. The current Schedule of Fees, Charges and Deposits includes a reduction in the LAFCO fee, rather than solely payment of direct costs as in the year LAFCO 3067A through F were initiated but maintains the per island or area assessment. It should be noted that under the current Schedule the other deposits required at the time of application submission (environmental review, notice, legal counsel) are unchanged by island status.

Therefore, based upon the determinations outlined above regarding the reasonable estimated cost for providing for a reconsideration request presentation to the Commission, staff does not support the assertion that the charges are disproportionate, unjust or detrimental to the public interest. Therefore, staff does not support the reduction or waiver of the fees.

Based upon the positions outlined above, LAFCO staff recommends that the Commission deny the request for fee waiver or reduction submitted by Ms. Hulse.

Attachment:

1. [Letter from Ms. Susan Hulse Request Waiver or Reduction of Fees](#)
2. [LAFCO Commission Policy #18 Waiver Provisions](#)