



Chairman

Sam Abed
Mayor
City of Escondido

April 3, 2017

7

Vice Chairwoman

Jo MacKenzie
Vista Irrigation District

TO: Local Agency Formation Commission

FROM: Executive Officer
Chief Analyst, Policy Research

Members

Bill Horn
County Board of
Supervisors

SUBJECT: "Greenwood Memorial Park Island Reorganization"
(City of San Diego) (RO17-01)

Dianne Jacob
County Board of
Supervisors

EXECUTIVE SUMMARY

Andrew Vanderlaan
Public Member

Lorie Zapf
Councilmember
City of San Diego

Proposed by resolution of the City of San Diego is a reorganization involving annexation of 24 unincorporated parcels, totaling approximately 120.67-acres, to the City of San Diego, with a concurrent detachment of the proposal area from County Service Area (CSA) No. 135 (Regional Communications System). The proposed reorganization area is located within the adopted sphere of influence of the City of San Diego and comprises an unincorporated island that is 100% surrounded by the City.

Vacant
City Member

Ed Sprague
Olivenhain Municipal
Water District

Alternate Members

The concurrent detachment from CSA No. 135 is necessary as the City would assume responsibility for emergency communication services for the proposal area upon annexation. Annexation of the proposal area would remove the largest existing unincorporated island within the City of San Diego's incorporated territory.

Greg Cox
County Board of
Supervisors

The City of San Diego has adopted a resolution of application to annex the unincorporated island pursuant to Government Code Sections 56375.3 and 56654, and submitted a plan for services in accordance with Government Code Section 56653, that describes how the City will extend and finance services to the proposal area. Additional discussion of the applicable island annexation provisions follows.

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Mayor
City of Lemon Grove

Harry Mathis
Public Member

Judy Hanson
Leucadia Wastewater
District

Executive Officer

The proposed reorganization area is located immediately to the east of the Mount Hope Cemetery, south of Market Street, west of Interstate 805 and north of Imperial Avenue within the community of Southeastern San Diego. The Greenwood Memorial Park & Mortuary has served as a cemetery since 1907, and accounts for the majority (approximately 116.0-acres) of the proposal area. The ownership of the remaining unincorporated parcels within

Michael D. Ott

Legal Counsel

Michael G. Colantuono

the proposal area are proposed as part of the reorganization to the City of San Diego.

The proposed reorganization territory also includes a drainage channel for the Chollas Creek Watershed that traverses the southeast corner of the proposal area from north to south. The City and the County of San Diego have negotiated a *Memorandum of Agreement* that will provide the City with a one-time payment of \$13.57 million for the assumption of storm water infrastructure maintenance responsibilities from the County following the reorganization. The City and County have determined that the negotiated payment will adequately cover the City's expenses associated with storm water facility maintenance for the next 100 years.

The proposal area is not presently located within the authorized service area of a public fire protection/emergency medical transport, sewer, or water service provider, and was never included within the service area of the San Diego County Water Authority (CWA). The City of San Diego is a member agency of the CWA and the Water Authority's Administrative Code provides for concurrent annexation when non-CWA territory is annexed to a member city. Following the proposed reorganization with the City of San Diego, the City would assume responsibility for the provision of fire, sewer, and water services to the proposal area in addition to the other urban services, such as fire protection, emergency medical transport, and police services, that are presently provided by the City within its incorporated territory.

In 1984, the County of San Diego and the City of San Diego entered into a Master Property Tax Agreement (MPTA) which establishes the property tax exchange rates for annexations of unincorporated territory to the City. Pursuant to the agreement and based upon the property tax assessments set by the County Assessor's Office for the properties within the proposed reorganization area, the City of San Diego will receive roughly \$8,400 annually in property tax revenues following the reorganization.

The City of San Diego has demonstrated that the proposed reorganization qualifies for the island annexation provisions under Section 56375.3 because: the reorganization area constitutes the entirety of an unincorporated island totaling less than 150 acres that is 100 percent surrounded by the incorporated territory of the City of San Diego; the reorganization area is located within the adopted sphere of influence of the City of San Diego and is substantially developed due to the availability of public utility services and the presence of physical improvements upon the parcels within the area; the reorganization area is not prime agricultural land as defined in California Government Code Section 56064; the reorganization area is designated for urban growth by the General Plan of the City of San Diego, and is not located within the sphere of influence of another city; and, is not a gated community where services are currently provided by a community services district.

LAFCO staff concurs with the City's determination that the proposed "Greenwood Memorial Park Island Reorganization" meets the criteria for application of the unincorporated island annexation provisions in Government Code Section 56375.3. Therefore, it is recommended that your Commission: determine that pursuant to Section

15061(b)(3) of the State CEQA Guidelines, the reorganization is not subject to the environmental impact evaluation process because it can be seen with certainty that there is no possibility for the proposed project to significantly impact the environment; make the required island annexation findings pursuant to Section 56375.3; approve the proposed reorganization, waiving the protest proceedings pursuant to Part 4 (commencing with Government Code Section 57000) entirely; and, ordering the reorganization subject to the one-time payment of \$13.57 million for the assumption of storm water infrastructure maintenance responsibilities from the County following the reorganization. Additional discussion and background information follows.

Land Use

Existing - County of San Diego

The proposed “Greenwood Memorial Park Island Reorganization” area includes 24 unincorporated parcels, totaling approximately 120.67-acres, with the primary acreage belonging to the Greenwood Memorial Park & Mortuary. Land uses within the proposed reorganization area are established by the County of San Diego General Plan and are designated within the County Islands Community Planning Area. The existing use designations for the proposal area are Public/Semi-Public Facility; and Village Residential (VR-4.3), 4.3 du/ac. The present zoning designations are Special Purpose (S80); and Residential-Variable (RV), 4.3 du/ac.

Surrounding incorporated land uses include residential and industrial to the north; residential and I-805 to the east; residential and commercial to the south; and institutional (Public Facility – Cemetery) to the east. The northern border of the proposal area includes a rail line right-of-way owned by the San Diego & Arizona Eastern Railway Co. The eastern portion of the proposal area contains parcels owned by the YMCA of San Diego, the City of San Diego, and one private residence. A drainage channel for the Chollas Creek Watershed traverses the southeast corner of the proposal area from north to south.

Proposed - City of San Diego

The proposed “Greenwood Memorial Park Island Reorganization” area is surrounded by the City of San Diego Southeast San Diego Community Planning Area. The City has adopted amendments to its General Plan and Southeast San Diego Community Plan that establish use designations for the island proposal area as Institutional (Institutional, Public and Semi-Public Facilities).

The City of San Diego General Plan states that the Institutional land use designation is intended to provide for uses that are identified as public or semi-public facilities in the community plan and which offer public and semi-public services to the community. Permitted uses may include but are not limited to: airports, military facilities, community colleges, university campuses, landfills, communication and utilities, transit centers, water sanitation plants, schools, libraries, police and fire facilities, cemeteries, post offices, hospitals, park-and-ride lots, government offices and civic centers.

The City has also adopted pre-zoning for the proposal area as AR-1-2 (Agricultural Residential), which requires minimum 1-acre lots; and RM-1-1 (Residential-Multiple Unit), which permits a maximum density of 1 residential dwelling unit for each 3,000 square feet of lot area.

The City of San Diego Municipal Code states that the purpose of the Agricultural Residential (AR) zones is to accommodate a wide range of agricultural uses while also permitting the development of single dwelling unit homes at a very low density. The agricultural uses are limited to those of low intensity to minimize the potential conflicts with residential uses. The AR zone is applied to lands that are in agricultural use or that are undeveloped and not appropriate for more intense zoning. Residential development opportunities are permitted with a Planned Development Permit at various densities that will preserve land for open space or future development at urban intensities when and where appropriate.

The City of San Diego Municipal Code states that the purpose of the Residential-Multiple Unit (RM) zones is to provide for multiple dwelling unit development at varying densities. The RM zones individually accommodate developments with similar densities and characteristics. Each of the RM zones is intended to establish development criteria that consolidates common development regulations, accommodates specific dwelling types, and responds to locational issues regarding adjacent land uses.

No new development or changes in land uses within the proposal area are proposed as part of the reorganization to the City of San Diego. The City's proposed land use and rezoning designations would allow the reorganization area's existing uses to continue at present levels following the proposed reorganization. The City's proposed land uses would be allowed to be modified and/or expanded with a Process 4 Conditional Use Permit, which is similar to how the facilities are currently regulated under the County's Jurisdiction.

Public Services

Fire Protection and Emergency Medical Transport

The proposed reorganization is not presently located within an authorized service area of a public service provider for structural fire protection or emergency medical services. The City of San Diego Fire Department has two fire stations near the proposal area: Station 19 at 35th Street and Oceanview, and Station 12 at Willie James Jones and Imperial Avenue. Both stations are located approximately 1.5-miles from the proposal area. Response times from to the proposal area are estimated at 5 minutes for priority calls.

Police

The San Diego County Sheriff's Department is responsible for police services within the unincorporated areas of San Diego County. The Sheriff's Department Lemon Grove Substation is the closest to the proposal area (approximately 5.7-miles away), located at 3240 Main St, Lemon Grove, CA 91945.

The closest City of San Diego Police Department station is the Southeastern Division, Beat 441, located at 7222 Skyline Drive, SD 92114, which is approximately 4.0 miles from the proposal area. Response times from the Southeastern Division Station to the proposal area are estimated at 6 minutes for emergency calls.

Roadway Maintenance

On the effective date of the reorganization, responsibility will be transferred to the City of San Diego for all roads and highways within the proposal area that are part of the county road system pursuant to Section 941 of the Streets and Highways Code (Government Code Section 57329); however, the City is not required to improve the affected roads or highways to city standards.

Sewer and Water Services

The proposed reorganization area is not presently located within an authorized service area of a public service provider for sewer or water services. The City of San Diego provides both domestic water and wastewater (sewer) services within its incorporated territory, and recycled water service in limited areas. The City has indicated that it has sufficient infrastructure, capacity, and supply to extend water, recycled water, or wastewater services to the proposal area following annexation; however, no new development within the proposal area is proposed as part of the reorganization to the City of San Diego.

Environmental Review

The California Environmental Quality Act (CEQA) (Public Resources Code §§21000, et seq.) and the State CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§15000, et seq.) require that the environmental impacts of a project be examined before a project is approved. The proposed “Greenwood Memorial Park Island Reorganization” involves annexation of approximately 120.67-acres of unincorporated territory to the City of San Diego with a concurrent detachment of the proposal area from CSA No. 135. The proposal area contains unincorporated parcels that have been developed with land use and zoning designations adopted by the County of San Diego. The City of San Diego has adopted General Plan, Southeast San Diego Community Plan, and zoning designations in advance of the proposed reorganization, which are substantially similar to the existing County designations for the proposal area.

The City’s land use and zoning designations provide for the existing uses within the proposal area to continue at the same levels following the reorganization with the City. No new development or changes to the existing uses within the proposal area are proposed as part of the reorganization; therefore, it can be seen with certainty that there is no possibility for the proposed reorganization to significantly impact the environment, and the proposed reorganization is exempt from environmental review pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

In addition, after completing a consistency evaluation, the City of San Diego concluded that current land uses within the proposed annexation area would continue following the proposed reorganization, and that no increase in density or intensity within the local community planning area would occur as a result of the annexation of the proposal area.

The City of San Diego determined that the proposed annexation would not result in new impacts or changed circumstances that would require a new environmental document per State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) because the annexation is consistent with the City's previously certified Final Environmental Impact Report (FEIR) for the update to the Southeast San Diego Community Plan.

Unincorporated Island Annexation Provisions and Policies

The California Legislature has recognized that unincorporated islands create inefficiencies in the delivery of municipal services, support incompatible land use planning, and increase jurisdictional confusion and costs in the local delivery of services. Accordingly, the Cortese-Knox-Hertzberg Act of 2001 includes specific provisions [Government Code Sections 56375 (a)(4) & 56375.3] that require LAFCO to approve annexations to cities of qualifying unincorporated islands, without protest or election, when initiated by resolution of the annexing city, if certain conditions are met.

Government Code Sections 56375 (a)(4) & 56375.3

The unincorporated island annexation provisions were amended in 2005 to increase the maximum size of qualifying unincorporated islands that could be annexed by a city without formal protest to 150 acres. Under the island annexation provisions, LAFCO is required to: conduct a noticed public hearing on the proposal; approve the annexation of the qualifying unincorporated island; and waive protest proceedings, if the Commission determines that **all** of the following conditions are met:

- The annexation or reorganization of the unincorporated island is proposed by resolution of the annexing city.
- The unincorporated island does not exceed 150 acres in area, and that area constitutes the entire unincorporated island.
- The annexation territory constitutes an entire unincorporated island located within the limits of a city or constitutes a reorganization containing a number of individual unincorporated islands.
- The unincorporated island is surrounded or substantially surrounded by the annexing city or by the annexing city and adjacent cities, or by the annexing city and a county boundary or the Pacific Ocean.
- The unincorporated island is substantially developed or developing based on the availability of public utilities, presence of public improvements or the presence of physical improvements on the parcels within the area.
- The unincorporated island is not prime agricultural land as defined in the Cortese-Knox-Hertzberg Act (Government Code Section 56064).

- The unincorporated island will benefit from the annexation or reorganization or is receiving benefits from the annexing city.
- The unincorporated island is not a gated community where services are currently provided by a community services district.

San Diego LAFCO Legislative Policy L-105 (Unincorporated Islands)

Following enactment of the island annexation streamlining provisions in 2000, San Diego LAFCO adopted Legislative Policy L-105 (Unincorporated Islands) which established a local policy to consider the creation of unincorporated islands on a case-by-case basis and to promote infill development and discourage urban sprawl. The Policy is intended to balance the negative implications of unincorporated islands with the need to promote orderly development, the efficient provision of public services, and the reduction of the size of existing islands or other illogically configured areas. Legislative Policy L-105 requires the following factors to be considered by the Commission:

1. The consistency of the annexation proposal with the spheres of influence of all affected agencies.
2. Whether an unincorporated island that would be created is already substantially surrounded by the annexing city.
3. Whether the size of existing islands and other illogically configured areas will be reduced.
4. The effect of island prohibition provisions on creating secondary impacts, such as urban sprawl, inefficient service delivery, etc.
5. The ability to facilitate infill development within the annexation area.
6. The ancillary benefits associated with annexation that may offset disadvantages associated with the creation of unincorporated islands.
7. The environmental impacts that could be addressed through annexation of territory to a subject agency.
8. The existing or potential health or safety concerns that may be resolved through the annexation of island areas or other similar areas.
9. The need for essential city services within the annexation area.
10. The ability to consolidate and simplify the provision of public services.
11. The effect on the provision of public services within existing and newly created island area(s).
12. The completion of a survey of residents within the potential island or other illogically configured area to determine their willingness to be added to the annexation proposal.

Unincorporated Island Annexation - Provisions and Policies Evaluation

Government Code Section 56375.3 - Island Conditions

The City of San Diego has adopted a resolution of application to annex the unincorporated island pursuant to Government Code Section 56375.3, and submitted a plan for services in accordance with Government Code Section 56657, that describes how the City will extend and finance services to the proposal area. The following discussion provides evaluation of the applicable island annexation conditions for the proposed reorganization area.

- *The annexation or reorganization of the unincorporated island is proposed by resolution of the annexing city.*

The City of San Diego has adopted a resolution of application to annex the unincorporated island pursuant to Government Code Section 56375.3, and identified the applicable conditions that qualify the island for automatic annexation to the City without protest.

- *The unincorporated island does not exceed 150 acres in area, and that area constitutes the entire unincorporated island.*
- *The annexation territory constitutes an entire unincorporated island located within the limits of a city or constitutes a reorganization containing a number of individual unincorporated islands.*
- *The unincorporated island is surrounded or substantially surrounded by the annexing city or by the annexing city and adjacent cities, or by the annexing city and a county boundary or the Pacific Ocean.*

The proposed reorganization area is located within the adopted sphere of influence of the City of San Diego and consists of 24 unincorporated parcels totaling approximately 120.67-acres. The proposal area constitutes the entirety of an unincorporated island that is 100% surrounded by San Diego incorporated territory.

- *The unincorporated island is substantially developed or developing based on the availability of public utilities, presence of public improvements or the presence of physical improvements on the parcels within the area.*
- *The unincorporated island will benefit from the annexation or reorganization or is receiving benefits from the annexing city.*

The proposed reorganization area is presently developed with existing uses and physical improvements and is currently receiving service benefits from the surrounding City of San Diego. Annexation to the City will benefit the existing island by increasing the availability of public utilities to the proposal area and by reducing the possibility for jurisdictional confusion in the provision of emergency services.

- *The unincorporated island is not prime agricultural land as defined in the Cortese-Knox-Hertzberg Act (Government Code Section 56064).*
- *The unincorporated island is not a gated community where services are currently provided by a community services district.*

The proposed reorganization area is not prime agricultural land as defined in the Cortese-Knox-Hertzberg Act (Government Code Section 56064), and is not a gated community where services are currently provided by a community services district.

Legislative Policy L-105 Factors of Consideration

1. *The consistency of the annexation proposal with the spheres of influence of all affected agencies.*
2. *Whether an unincorporated island that would be created is already substantially surrounded by the annexing city.*
3. *Whether the size of existing islands and other illogically configured areas will be reduced.*

The proposed reorganization area is located within the adopted sphere of influence of the City of San Diego and consists of 24 unincorporated parcels totaling approximately 120.67-acres. The proposal area constitutes the entirety of an unincorporated island that is 100% surrounded by San Diego incorporated territory. Annexation of the proposal area will eliminate the largest existing unincorporated island within the City of San Diego.

4. *The effect of island prohibition provisions on creating secondary impacts, such as urban sprawl, inefficient service delivery, etc.*
5. *The ability to facilitate infill development within the annexation area.*
6. *The ancillary benefits associated with annexation that may offset disadvantages associated with the creation of unincorporated islands.*

The proposed reorganization area is an existing unincorporated island surrounded by City of San Diego incorporated territory. Reorganization of the proposal area with the City of San Diego will promote efficient service delivery and facilitate infill development in accordance with the surrounding incorporated territory.

7. *The environmental impacts that could be addressed through annexation of territory to a subject agency.*
8. *The existing or potential health or safety concerns that may be resolved through the annexation of island areas or other similar areas.*

The proposed reorganization area contains existing land uses and development that have been allowed in accordance with the land use and zoning designations of the County of San Diego. The City of San Diego has adopted similar land use and zoning designations for the proposal area that will allow the current uses and development to continue following the proposed reorganization.

The City has determined that the proposed reorganization area will be in conformance with the City's General Plan and Southeast San Diego Community Plan, and that no new environmental impacts will result from the annexation to the City. Therefore, pursuant to Section 15061(b)(3) of the State CEQA Guidelines, the proposed reorganization is not subject to the environmental impact evaluation process because it can be seen with certainty that there is no possibility for the proposed project to significantly impact the environment, and the activity is not subject to CEQA.

The responsibility for storm water infrastructure maintenance on the proposal area will transfer from the County to the City following the proposed reorganization. The City and County have negotiated a one-time payment of \$13.57 million to the City that is intended to adequately cover expenses associated with long-term storm water facility maintenance and monitoring for the proposal area over the next 100 years.

9. *The need for essential city services within the annexation area.*
10. *The ability to consolidate and simplify the provision of public services.*
11. *The effect on the provision of public services within existing and newly created island area(s).*

The proposed reorganization is not presently located within an authorized service area of a public service provider for sewer or water services. The City of San Diego is a full-service city that provides fire protection, emergency medical transport, police, domestic water, recycled water, and wastewater (sewer) services within its incorporated territory. The City has indicated that it has sufficient infrastructure, capacity, and supply to extend public services to the proposal area following annexation; however, no new development within the proposal area is proposed as part of the reorganization to the City of San Diego.

12. *The completion of a survey of residents within the potential island or other illogically configured area to determine their willingness to be added to the annexation proposal.*

The City of San Diego has concluded that annexation of the proposal area is consistent with the goals and policies of the General Plan and Southeastern San Diego Community Plan, and has determined that annexation of the unincorporated County island will ensure orderly growth and provide the efficient delivery of services without significantly impacting City funds or existing services. The City held noticed public hearings for the proposed reorganization in accordance with Government Code Sections 56375.3 and 56654. No opposition from affected landowners to inclusion within the proposed reorganization was reported by the City.

Staff Conclusion and Recommendation

LAFCO is charged with authority to encourage logical and orderly development and the efficient extension of governmental services through consideration of proposed sphere and jurisdictional changes. The proposed “Greenwood Memorial Park Island Reorganization” has been submitted by the City of San Diego in accordance with Government Code Section 56375.3, which provides for the automatic annexation of qualifying unincorporated islands to a city if the proposal meets specific criteria.

LAFCO staff has coordinated with staff from the City and County of San Diego and County of San Diego Supervisor Cox in anticipation of the submittal of the proposed “Greenwood Memorial Park Island Reorganization.” This approximate 120.67-acre unincorporated island annexation proposal represents the culmination of many years of discussion between the City and the County of San Diego and proposes the elimination

of the largest unincorporated island within the City's incorporated territory.

The City states that the proposal area currently receives benefits from the City and that reorganization of the unincorporated island area with the City of San Diego would benefit the territory by encouraging the efficient provision of municipal services and by reducing the potential for jurisdictional confusion related to the provision of emergency services to the area. No opposition to the proposal has been received. The County and the City have adopted a Memorandum of Agreement that requires the County to pay \$13,569,345 to the City for the City's assumption of responsibilities for compliance with water quality regulations for the proposal area.

The City of San Diego has demonstrated that the proposed reorganization qualifies for the island annexation provisions under Section 56375.3 because the reorganization area constitutes the entirety of an unincorporated island totaling less than 150 acres that is 100 percent surrounded by the incorporated territory of the City of San Diego; the reorganization area is located within the adopted sphere of influence of the City of San Diego and is substantially developed due to the availability of public utility services and the presence of physical improvements upon the parcels within the area; the reorganization area is not prime agricultural land as defined in California Government Code Section 56064; the reorganization area is designated for urban growth by the General Plan of the City of San Diego, and is not located within the sphere of influence of another city; and, is not a gated community where services are currently provided by a community services district.

LAFCO staff concurs with the City's determination that the proposed "Greenwood Memorial Park Island Reorganization" meets the criteria for application of the unincorporated island annexation provisions in Government Code Section 56375.3. Therefore it is:

EXECUTIVE OFFICER RECOMMENDATION

- (1) Find in accordance with the Executive Officer's determination, that pursuant to Section 15061(b)(3) of the State CEQA Guidelines, the "Greenwood Memorial Park Island Reorganization" is not subject to the environmental impact evaluation process because it can be seen with certainty that there is no possibility for the proposed project to significantly impact the environment, and the activity is not subject to CEQA; and,
- (2) Find that, pursuant to Government Code Section 56375(a)(4)(A)&(C), the Commission, after notice and hearing, must approve the proposed "Greenwood Memorial Park Island Reorganization" involving annexation of the proposal area to the City of San Diego with a concurrent detachment from County Service Area No. 135 (San Diego County Regional Communications System); because the reorganization was initiated by resolution of the City of San Diego; the reorganization territory is contiguous to and is 100 percent surrounded by the

City of San Diego; the reorganization territory is substantially developed or developing because of the availability of public utility services, the presence of public improvements, and the presence of physical improvements upon the parcels in the area; the reorganization territory is not prime agricultural land, as defined by Government Code Section 56064; the reorganization area is designated for urban growth by the General Plan of the City of San Diego, and is not located within the sphere of influence of another city; and the proposal involves an annexation or reorganization of an unincorporated island meeting the requirements of Government Code Section 56375.3; and,

- (3) Determine that, pursuant to Government Code Section 56375.3 the Commission must approve the proposed reorganization after notice and hearing, and waive protest proceedings because: the reorganization was initiated by resolution adopted by the City of San Diego on December 23, 2016, the City of San Diego conducted a public hearing on the resolution of application for the annexation of territory as described in Government Code Section 56375.3, the notice of the hearing was published pursuant to Government Code Sections 56153 and 56154, and any landowner was given an opportunity to present his or her views at the hearing; and,
- (4) Find for the reasons set forth in the Executive Officer's Report, pursuant to Government Code Section 56375.3 (b), the reorganization territory:
 - A. Does not exceed 150 acres, and that area constitutes the entire island;
 - B. Constitutes an entire unincorporated island within the limits of the City of San Diego;
 - C. Is 100 percent surrounded by the City of San Diego;
 - D. Is substantially developed or developing because of the availability of public utility services, the presence of public improvements, and the presence of physical improvements upon the parcels in the area;
 - E. Is not prime agricultural land, as defined by Government Code Section 56064;
 - F. Will benefit from the reorganization and is receiving benefits from the City of San Diego;
 - G. Is not an island that is a gated community where services are currently provided by a community services district; and,
- (5) Approve the proposed "Greenwood Memorial Park Island Reorganization" involving annexation of the proposal area to the City of San Diego with a concurrent detachment from County Service Area No. 135 (San Diego Regional Communications System); and,

- (6) Adopt the form of resolution as summarized in these recommendations approving the reorganization for the reasons set forth in the Executive Officer's Report, waiving the Conducting Authority proceedings according to Government Code Section 56375.3(a) pursuant to Part 4 (commencing with Government Code Section 57000) entirely, and ordering the reorganization subject to the following conditions:

County shall pay to the City \$13,569,345 and the City shall assume certain responsibilities related to compliance with water quality regulations, as more fully set forth in the Memorandum of Agreement between the City and County.

Respectfully submitted,



MICHAEL D. OTT
Executive Officer



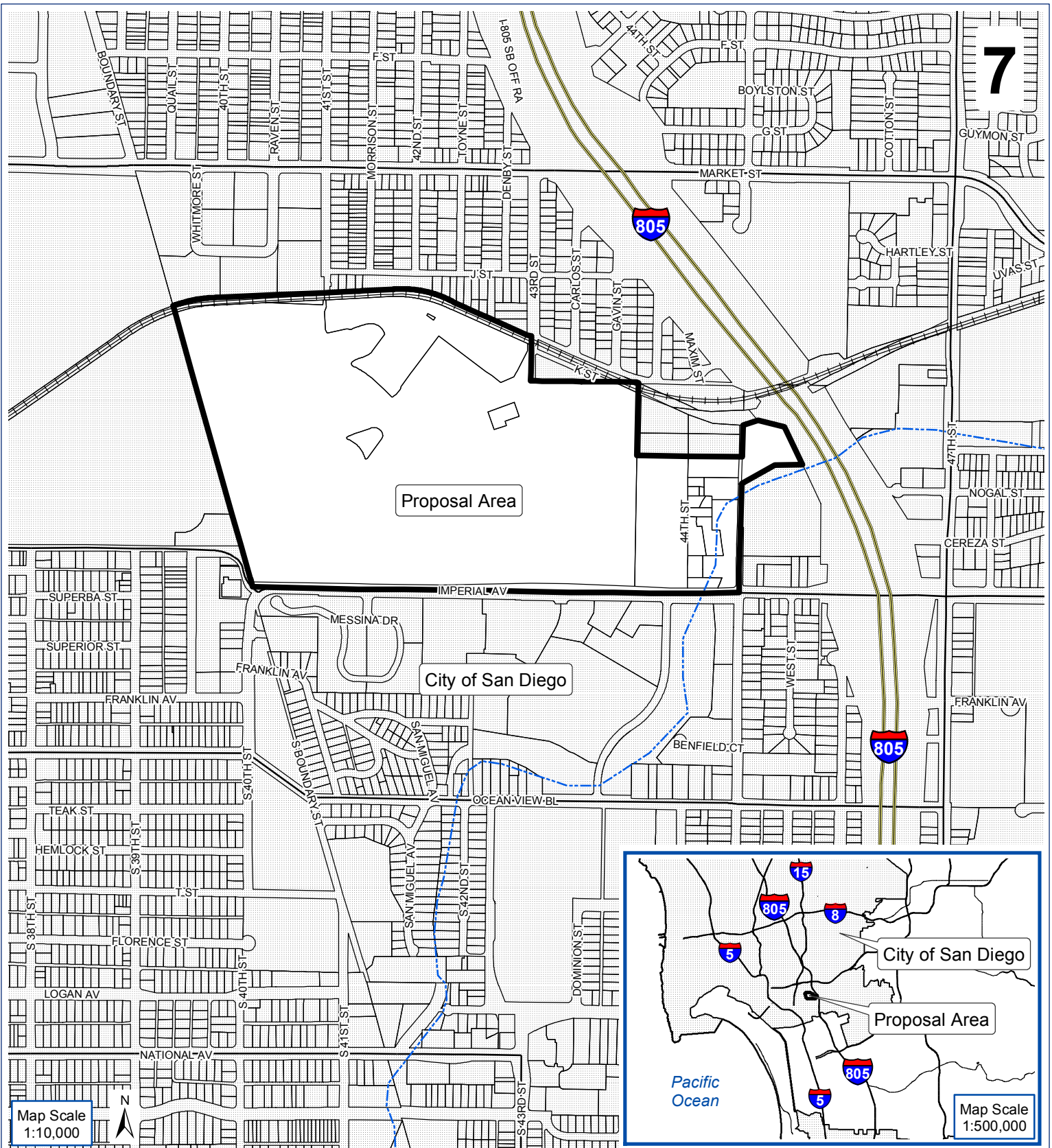
ROBERT BARRY, AICP
Chief Analyst, Policy & Research

MDO:RB:trl

Attachments




Vicinity Map

Exhibit A: Memorandum of Agreement between County of San Diego and City of San Diego



RO17-01

PROPOSED "GREENWOOD MEMORIAL PARK ISLAND REORGANIZATION" (CITY OF SAN DIEGO)

-  Proposal Area
-  City of San Diego
-  Railroad

**MEMORANDUM OF AGREEMENT RELATED TO THE ANNEXATION OF SOUTHEASTERN SAN DIEGO
COUNTY ISLAND**

This Memorandum of Agreement related to the Annexation of Southeastern San Diego County Island (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and the County of San Diego, a political subdivision of the State of California (County), effective on 20 January 2017, 2016, subject to the following terms and conditions:

RECITALS

WHEREAS, the jurisdictional boundaries of the County include an approximately 121 acre island of territory (Southeastern San Diego County Island, or Island) surrounded on all sides by the City between Interstates 15 and 805 just south of Highway 94 containing the privately operated Greenwood Memorial Cemetery and other land uses as more particularly shown on the Sphere of Influence map affirmed by the San Diego Local Agency Formation Commission (SDLAFCO) on March 3, 2008 and attached hereto as Exhibit A;

WHEREAS, the City intends to submit to SDLAFCO an application to annex the Island into the City, subject to certain terms and conditions;

WHEREAS, owners and operators of municipal separate storm sewer systems (MS4s) must comply with the requirements of a Municipal Stormwater Permit (MS4 Permit) issued by the California Regional Water Quality Control Board, San Diego Region (Regional Board), referred to as Order No. R9-2013-0001 as amended by Orders No. R9-2015-0001 and R9-2015-0100, and as may be subsequently amended or superseded;

WHEREAS, the Southeastern San Diego Island is located in the watershed of Chollas Creek, a 303(d) listed waterbody per 33 U.S.C § 1313, subject to Total Maximum Daily Loads (TMDLs) for bacteria, metals, and Diazinon by Regional Board Order Nos. R9-2010-0001, R9-2007-0043 and R9-2002-0123 and may be subject to additional TMDLs for, among other things, benthic community degradation and sediment toxicity; and

WHEREAS, the City is willing to accept specific responsibilities related to stormwater and non-stormwater discharges regulated by the MS4 Permit (MS4 Permit Compliance, as described below) from the Island in exchange for the payment of \$13,569,345 by the County to the City, as more fully set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the above-stated Recitals and subject to the terms and conditions set forth below, the City and County (each, a Party and, collectively, Parties) enter into the following Agreement:

SCOPE OF AGREEMENT: The Parties agree that the scope of this Agreement is limited to the Parties' responsibility for MS4 Permit Compliance as described herein and that this Agreement shall not be construed to affect either of the Parties' rights, obligations, or liability with respect to any other matter, including, but not limited to, that this Agreement does not require or effect a change in ownership of property and that it does not change each Party's responsibility or liability with respect to any hazardous substance contamination asserted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act.

COUNTY PAYMENT: Within sixty (60) days of SDLAFCO's execution of a certificate of completion regarding the change of organization to annex the Island into the City, County shall pay to City \$13,569,345 (County Payment). The County shall not owe the City any other sums pursuant to this Agreement.

CITY ASSUMPTION OF LIABILITY FOR MS4 PERMIT COMPLIANCE: Upon City's receipt of the County Payment or upon the effective date of the change of organization, whichever comes later, City shall assume all responsibility and liability, at City's sole cost and expense, for MS4 Permit Compliance, which may include the responsibility to investigate, monitor, report, remediate, and completely resolve any TMDLs, orders, or other regulatory actions now in existence or subsequently imposed in the Chollas Creek Watershed to ensure compliance with federal, State, and local clean water laws for which County may otherwise be responsible by virtue of County's former ownership or control of facilities or regulation of land and activities within the Island. Complete resolution of a TMDL, order, or regulatory action shall mean and include, without limitation, any and all action required of City to fully comply with the TMDL Effluent Limitations specified in the MS4 Permit and any implementation plan or other similar plan to eliminate or reduce point or non-point source discharges and to fully

EXHIBIT A

and finally resolve any enforcement action for alleged non-compliance with a TMDL, order, law, regulation, or administrative action. Nothing in this Agreement shall prohibit City from contesting a TMDL, order, or regulatory action.

MUTUAL WAIVER AND RELEASE: Each Party waives and releases any and all claims, demands, costs, or lawsuits of any kind or character, whether based in law or equity, resulting from the City's annexation of the Island and assumption of responsibility for MS4 Permit Compliance that either Party may have against the other or seek to assert against the other, except that each Party may seek to enforce the terms of this Agreement. Except as otherwise provided by this Agreement, each Party waives all rights that may exist under Civil Code § 1542 or any similar authority. Civil Code § 1542 provides that, **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

This provision shall become effective upon City assumption of liability for MS4 Permit Compliance in accordance with the terms of this Agreement.

MUTUAL DEFENSE AND INDEMNITY. City agrees to defend and indemnify County, and County's Board of Supervisors, officers, agents and employees (collectively County Party), against any and all claims, demands, costs, orders, administrative enforcement actions, judgments or lawsuits of any kind or character, whether based in law or equity (collectively Claims), asserted against County for a responsibility or liability assumed by City pursuant to this Agreement; provided, however, this obligation shall not extend to and include any Claims resulting from the sole negligence or willful misconduct of a County Party.

County agrees to defend and indemnify City, and its elected officials and its officers, agents, and employees (collectively City Party), against any and all claims, demands, costs, orders, administrative enforcement actions, judgments or lawsuits of any kind or character, whether based in law or equity (collectively Claims), asserted against City for a responsibility or liability assumed by County pursuant to this Agreement; provided, however, this obligation shall not extend to and include any Claims resulting from the sole negligence or willful misconduct of a City Party.

These provisions shall become effective upon City assumption of liability for MS4 Permit Compliance in accordance with the terms of this Agreement.

SUCCESSORS, ASSIGNS & DELEGATES: Each Party's obligations under this Agreement may only be assigned, assumed, or delegated upon the express written consent of the other Party. Each Party's assignees, successors, and delegates shall assume all obligations of the assigning Party under this Agreement.

COMMUNICATIONS and NOTICE: All written correspondence, information, or notices required to be exchanged between the parties pursuant to this Agreement shall be delivered in person or sent by first-class, United States mail, postage prepaid, to the addresses identified below:

If to: County of San Diego
Department of Public Works
5510 Overland Avenue, Suite 410
San Diego, CA 92123

Attention: Richard E. Crompton, Director of Public Works

If to: City of San Diego

Planning Department
1010 Second Avenue, Suite 1200
San Diego, CA 92101

Attention: Jeff Murphy, Planning Director

Such written correspondence, information, or notices may be sent in the manner specified herein to such other persons and addresses as either Party may from time to time designate by mail as provided in this section. A Party may change its address by giving notice in writing to the other Party and thereafter all written correspondence, information, or notices shall be delivered or sent to such new address.

ENTIRE AGREEMENT: This Agreement, including the Exhibit, represents the full and entire agreement between the Parties with respect the matters covered herein. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda, or agreements are in conflict with this Agreement, are replaced by this Agreement. Neither Party is relying on any oral promises or representations outside this Agreement.

AMENDMENT: This Agreement may not be modified or amended in any respect except by written agreement duly approved and signed by the Parties.

GOVERNING LAW AND VENUE: This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement shall be deemed made and entered into in San Diego County, California which shall also be deemed to be the sole and proper venue for any action or proceeding relating to this Agreement.

WAIVER: No waiver by either Party of a breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same.

INTERPRETATION: This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

COUNTERPARTS: This Agreement may be executed in counterparts each of which shall be considered an original.



EXHIBIT: The Exhibit identified is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, City and County have executed this Agreement as of the day and year first above written.

CITY OF SAN DIEGO

By: [Signature]
Name: STACEY LONEDRIS
Title: Asst. City Clerk

COUNTY OF SAN DIEGO

By: [Signature]
Name: David Hall
Title: Clerk of the Board

APPROVED AS TO FORM:

By: [Signature]
Name: Keely M. Halsey
Title: Deputy City Attorney

APPROVED AS TO FORM:

By: [Signature]
Name: Thomas C. Boxwith
Title: Sr. Deputy County Counsel

Approved and/or authorized by the
Board of Supervisors of the County of San Diego.
Meeting Date: 10/19/16 Minute Order No. 14
By: [Signature] Date: 1/19/17
Deputy Clerk of the Board Supervisors