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October 31, 2012 (Agenda)

Contra Costa Local Agency Formation Commission
 651 Pine Street, Sixth Floor
 Martinez, CA 94553

October 31, 2012
 Special Meeting
 Agenda Item 10

Island Annexations and LAFCO Policies

Dear Members of the Commission:

In August 2011, Commissioners participated in a strategic planning workshop, at which time the Commission discussed several priority issues, including the annexation of small islands.

At the February 8, 2012 LAFCO meeting, the Commission held a workshop on island annexations. At that time, the Commission received a report which discussed the history of island annexation law, annexations and property tax exchange provisions, islands in Contra Costa County, and ideas for addressing island. The complete staff report is available online at www.contracostalafco.org.

BACKGROUND

Islands and LAFCO Law - Included among LAFCOs' charges are discouraging urban sprawl and encouraging logical and orderly local agency boundaries to promote the efficient extension of municipal services.

Since the enactment of the Knox-Nesbitt Act in 1963, unincorporated islands have been a concern for LAFCOs in that islands result in illogical boundaries and difficulty and confusion in the delivery of municipal service. Annexation of islands to cities is usually preferred, as it often results in a higher level of local service for the island residents. LAFCO law contains various provisions that encourage the annexation of islands (i.e., 56375, 56375.3, 56668), and provisions that discourage the creation of islands (i.e., 56744, 56757).

Since 1977, LAFCO law has contained provisions to encourage the annexation of small islands to cities, and provides an expedited process (without protest proceedings) for doing so. Current law (Gov. Code §56375.3) provides that the Commission shall approve annexation of an island if the island meets certain conditions, including size (150 acres or less) and characteristics (i.e., surrounded or substantially surrounded by a city or by a city and adjacent cities and/or the Pacific Ocean). The terms "surrounded or substantially surrounded" are not defined by statute, and interpretations are left to the discretion of each LAFCO. The existing streamlined provisions pertaining to small island annexations (i.e., waiver of protest proceedings) will sunset on January 1, 2014 unless there is legislation to eliminate or extend the sunset date.

There has been other recent legislation that supports the annexation of islands and the promotion of service efficiencies, including SB 375 (2008) relating to greenhouse gas emissions and sustainable communities, and SB 244 (2011) which encourages annexation and extension of services to disadvantaged unincorporated communities including islands.

Unincorporated islands continue to be a problem throughout the State. LAFCOs were recently polled regarding the number of small islands within each county and the timing of future annexations in light of the upcoming sunset on the island provisions; 28 LAFCOs responded to the survey.

Based on the survey responses, there are hundreds of small islands that could be annexed to cities via the expedited process currently contained in Government Code section 56375.3. The CALAFCO Legislative Committee is currently discussing possible legislation in 2013 relating to the extension of the island annexations provisions.

DISCUSSION

Islands in Contra Costa County – Contra Costa County has a number of unincorporated islands and pockets that result in service confusion and inefficiencies. LAFCO staff, with the help of County planning/GIS staff, compiled an inventory of islands. The list includes 16 islands that are less than 150 acres, plus five islands that are greater than 150 acres but less than 300 acres as shown on the attached map. Of the 21 islands identified, nearly all are urbanized and over half are built out or nearly built out. See February 8, 2012 staff report for a brief description of each island.

Of the 16 small islands (i.e., less than 150 acres), nine (A,B,C,E,I,J,L,Q,R) are completely surrounded by a city or cities, and seven are substantially surrounded (i.e., 61-98)%. Of the seven that are substantially surrounded, four (F,H,S,T) are connected to other unincorporated areas which are also substantially surrounded by a city or cities.

On October 10, 2012, during the discussion of the status of the Northeast Antioch proposed annexations, the Commission directed that the Policies & Procedures Committee review the existing LAFCO policies on island annexations and report back to the Commission with any proposed revisions.

On October 17, the Policies & Procedures Committee met to review the Commission's existing policies, along with the island annexation policies of a number of other LAFCOs. The Committee determined that a policy change clarifying LAFCO's authority under Government Code section 56375.3 was appropriate and should be recommended to the Commission. The proposed policy change is described below. LAFCO Legal Counsel has provided the following analysis of the proposed policy change.

LEGAL ANALYSIS

On June 1, 2012, the California Attorney General (AG) issued Opinion No. 10-902 regarding island annexations under Government Code section 56375.3. [95 Ops. Cal. Atty. Gen. 16 (2012).] The AG's Opinion concluded that an unincorporated island that exceeds 150 acres cannot be split into smaller segments of 150 acres or less in order to avoid a protest proceeding because that would disregard the statutory mandate that the "entire island" be annexed. The AG also opined that a small

island of unincorporated territory that is part of a large unincorporated island is not an “entire island” and may not be annexed to a city under Section 56375.3(a) without a protest proceeding.

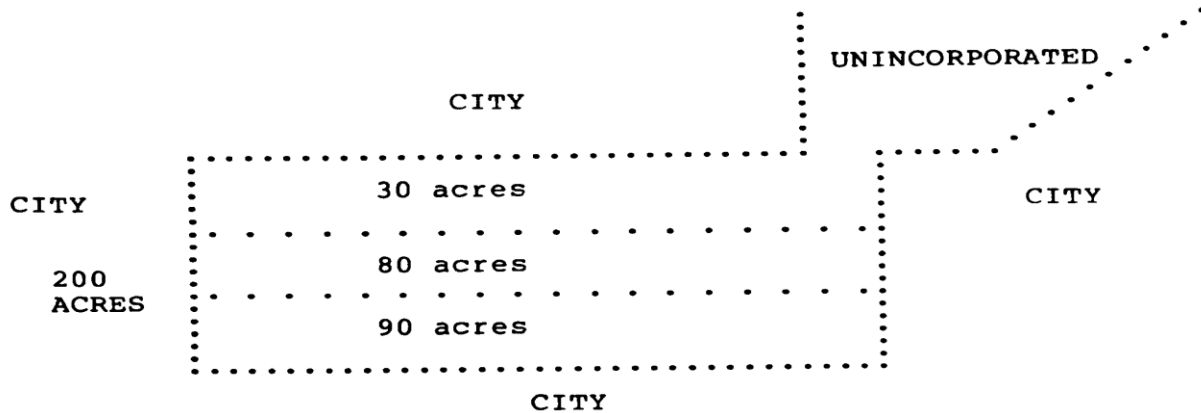
In 1980, the AG issued a similar opinion, concluding that the “entire island” requirement of the predecessor statute to Section 56375.3 demonstrated a legislative intent to preclude “the annexation of part of an island under this statutory provision.” (Emphasis added.) [63 Ops. Cal. Atty. Gen. 343, 345 (1980); 95 Ops. Cal. Atty. Gen. 16, 19.] This most recent AG’s Opinion is a variation on the same theme:

“An ‘island’ may not be a *part* of another island that is surrounded or substantially surrounded in the same manner.” (Emphasis added.) [95 Ops. Cal. Atty. Gen. 16.]

In essence, both AG’s Opinions reach the same conclusion: a small area of unincorporated territory cannot be annexed under Section 56375.3, without a protest proceeding, if it is “part” of a larger area of unincorporated territory. This is true even if both the small and the large territories are unincorporated islands. That is because the statute only allows the annexation of “entire” small islands. According to the AG’s interpretation, a small island that is “part of a larger island” is not an entire island.

The AG noted that neither the word “island” nor the phrase “entire island” are defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH); so, the AG consulted the dictionary. “Where the statutory scheme does not provide a definition, the general rule in scrutinizing the words of a statute is to ‘give them their usual ordinary meaning, which in turn may be obtained by referring to a dictionary.’” [95 Ops. Cal. Atty. Gen. 16, 19 (fn25) citing Smith v. Selma Community Hosp. (2010) 188 Cal. App. 4th 1, 30.] According to the dictionary, “island” means “something resembling an island by its isolated, surrounded, or sequestered position.” [95 Ops. Cal. Atty. Gen. 16, 19.] The word “entire” is defined to mean “with no element or part excepted,” “whole,” “complete,” or “total.” The AG concluded that, since section 56375.3 only authorizes the annexation of “entire” small islands, “[a]nnexing part of a given island would run afoul of the command of section 56375.3(b)(1) and (b)(2).” [95 Ops. Cal. Atty. Gen. 16, 24.]

Citing to three court cases, the AG acknowledged that it is not necessary that a territory be completely surrounded in order to qualify as an entire unincorporated island. [See 95 Ops. Cal. Atty. Gen. 16 at 21, 22 and 25 (fn 56) citing Fig Garden Park No. 2 Assn. v. Local Agency Formation Commn., (1984) 162 Cal. App. 3d, 336; Schaeffer v. County of Santa Clara (1984) 155 Cal. App. 3d 901; and Scuri v. Bd. of Supervisors of Ventura Co., (1982) 134 Cal.App.3d 400.] The AG used the diagram below to illustrate the point that a substantially surrounded area of unincorporated land can still be an entire island in its own right, even if that island is connected to a larger unincorporated territory. [95 Ops. Cal. Atty. Gen. 16, 20-21.]



The AG's Opinion does not discuss whether a small island of unincorporated territory can be "connected" to a large unincorporated island without being a "part" of that larger island. Having introduced the word "part" into the lexicon of undefined terms, the AG neglected to provide a specific definition for that term; so, we refer to the dictionary. The Merriam-Webster Dictionary [<http://www.merriam-webster.com/dictionary>] defines the word "part" as follows: "(1) One of the often indefinite or unequal subdivisions into which something is or is regarded as divided and which together constitutes the whole (2) an essential portion or integral element." The most apt definition of the word "part" in the context of island annexations is "essential portion or integral element." The word "connected," defined to mean "joined or linked together," implies a less significant relationship. Relying on the dictionary's definition of "part" the AG's conclusion might be restated as follows:

A small island of unincorporated territory that is an integral or essential part of a larger unincorporated island is not an entire island and may not be annexed to a city without a protest proceeding under Government Code section 56375.3(a).

Government Code section 56375(f) empowers a LAFCO to determine the boundaries of any proposals before it. Therefore, it is up to each LAFCO to use its own discretion in making decisions related to annexations, including whether an unincorporated area is "substantially surrounded," an "island," an "entire island," or now, "part of a larger island." [See 95 Ops. Cal. Atty. Gen. 16, 20, 22, discussing LAFCO's discretion in determining whether an area is "substantially surrounded" or an "island."] A LAFCO's discretion is quasi-legislative and is reviewed by courts only for determination of whether there was "fraud" or a "prejudicial abuse of discretion." [Gov. Code sec, 56107; 95 Ops. Cal. Atty. Gen. 16, 20 and 22.]

If this Commission decides that it is important to continue to use section 56375.3 to facilitate the annexation into cities of small islands of unincorporated territory that are connected to larger unincorporated areas, a modification of the Island Annexation Policies is recommended. The proposed addition to the policy suggests certain factors that the Commission may consider in determining whether unincorporated territory is an integral or essential part of a large unincorporated

island: (a) topography, (b) geography, (c) land uses, (d) infrastructure and (e) patterns of service delivery. The purpose of the proposed policy is to allow the Commission to interpret section 56375.3, in light of the AG's Opinion, so that it can continue to reasonably and rationally implement the statute in this County.

It should be noted that, although opinions of the AG are entitled to great weight, they are not binding on the courts. [*Homes on Wheels v. City of Santa Barbara* (2004) 119 Cal. App.4th 1173, 1178.] Under Government Code section 56107, neither an order for annexation nor the Commission's underlying decisions as to whether an unincorporated area constitutes a small island, a large island, or a part of a large island, should be set aside by the court unless the complaining party can establish that his rights were adversely and substantially affected, and that the Commission's determinations were the result of fraud or were not supported by substantial evidence in light of the whole record. [95 Ops. Cal. Atty. Gen. 16, 20.] The outcome of any litigation depends as much on the facts as it does on the law. However, to the extent that the Commission's decisions are guided by the statutes, case law, its own policies, and supported by the facts, these determinations should be difficult to overturn.

Northeast Antioch Annexations – On October 10th, the Commission discussed the recent AG Opinion and the Contra Costa LAFCO island annexation policies as related to the City of Antioch's Northeast Antioch annexation efforts.

In August 2007, the City of Antioch submitted an application to LAFCO to annex a portion of Northeast Antioch (Area 1). The Area 1 annexation application remains incomplete and is missing a number of required components including a map and legal description, final approved environmental documents, Plan for Providing Municipal Services, City Council resolution approving rezoning of the annexation area, and City and County resolutions approving property tax exchange. Until LAFCO receives these items, the application will remain incomplete.

LAFCO has been involved in ongoing discussions with the City and County regarding the annexation of Northeast Antioch to the City. In May 2012, LAFCO sent a letter to the City reiterating its desire that the City annex all of Northeast Antioch, including areas 2A and 2B, and encouraging the City to submit annexation applications for Areas 2A and 2B prior to January 1, 2014, which is when the streamlined annexation provisions are scheduled to sunset. Area 2B was previously identified by LAFCO staff as an island that meets the criteria for the streamlined annexation provisions pursuant to Government Code section 56375.3, as Area 2B is under 150 acres and is substantially surrounded (i.e., 93%) by the City of Antioch. Area 1 is not considered an island, and Area 2A is not currently an island, but would become an island if the City annexes Area 1.

The City has not yet submitted applications to annex Areas 2A and 2B, and is currently revising its environmental document and infrastructure plans. We expect that once these documents are complete, the City will submit annexation applications for Areas 2A and 2B.

The City and County have provided the Commission regular updates regarding the Northeast Antioch annexation efforts. During the update on October 10th, City staff has expressed concern with the recent AB Opinion and the ability of LAFCO to process this annexation using the streamlined provisions provided in section 56375.3.

Contra Costa LAFCO's Policies on Island Annexations - The Policies & Procedures Committee recommends the following additions (as shown in **red**) to the Commission's island annexation policies:

2.1. POLICIES AND STANDARDS

E. Island Annexation Policies

(1) *General Policies*

Recognizing that cities are the most logical providers of municipal services, and that unincorporated islands can be more effectively and efficiently served by surrounding cities, LAFCO is committed to the annexation of urban island areas.

LAFCO will collaborate with the County and cities in facilitating annexation of unincorporated urban islands.

LAFCO encourages the County and cities to coordinate development standards in urban island areas to facilitate the annexation of urban islands.

The Government Code contains special provisions for annexing small islands, which facilitate the annexation of islands of less than 150 acres (§56375.3).

In the interest of orderly growth and development, cities should annex urban unincorporated islands within their current SOIs before seeking to add new lands to their boundaries.

(2) *Annexation of Small Islands*

The Legislature has delegated to local LAFCOs the authority to determine the boundary of any proposal. The purpose of this section is to recognize and harmonize existing legislation with a June 1, 2012, Opinion of the California Attorney General [95 Ops. Cal. Atty. Gen. 16 (2012)] regarding island annexations under Government Code section 56375.3. This policy will apply only until January 1, 2014, unless Government Code section 56375.3(a)(1)(A), or a successor statute, is amended to apply to changes of organization initiated on or after January 1, 2014.

(a) Whether unincorporated territory is an "island," an "entire island or entire unincorporated island," "part of a larger island," "surrounded," or "substantially surrounded," are determinations to be made by the Commission, on a case by case basis, based on the evidence and before it at the time those determinations are made.

(b) A small island of unincorporated territory that is connected to and an integral or essential part of a large unincorporated island is not an entire island and may not be annexed to a city without a protest proceeding under Government Code section 56375.3(a).

(c) A small island of unincorporated territory that is connected to, but not an integral or essential part of a large island, may be determined by the Commission to be an entire island or an entire unincorporated island under Government Code section 56375.3(b).

(d) The following factors may be considered by the Commission in determining whether unincorporated territory is an integral or essential part of a large unincorporated island: (a) topography, (b) geography, (c) land uses, (d) infrastructure and (e) patterns of service delivery.

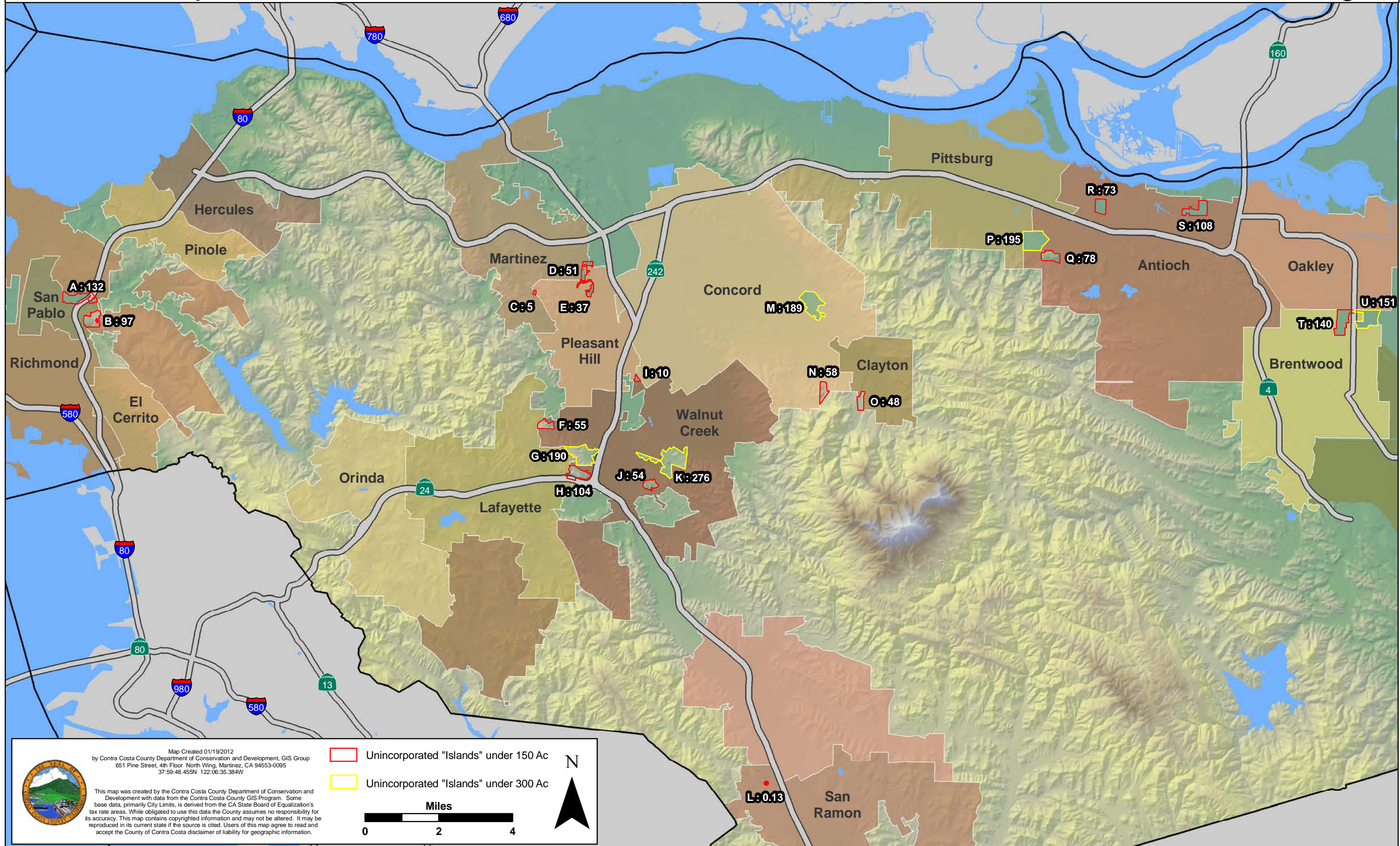
RECOMMENDATION - It is recommended that the Commission approve the revisions to the island annexation policies as submitted by the Policies & Procedures Committee, and provide other direction as desired.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

Attachment - Map of Unincorporated Islands Under 300 Feet in Contra Costa County
c: Distribution

Unincorporated "Islands" under 300 Acres in Contra Costa County



Map Created 01/19/2012
 by Contra Costa County Department of Conservation and Development, GIS Group
 651 Pine Street, 4th Floor North Wing, Martinez, CA 94553-0095
 37:59:48.455N 122:06:35.384W

This map was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.

