



Date: December 1, 2008 for December 8, 2008 Agenda  
To: LAFCO Commissioners  
From: Patrick M. McCormick, Executive Officer  
Subject: Reconsideration of LAFCO Application No. 913, Formation of a Bonny Doon Fire Protection District and Detachment of Bonny Doon from County Service Area 48 (County Fire)

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*Summary: On November 5, 2008, the Commission passed Resolution No. 913 to disapprove an application concerning fire protection in Bonny Doon and County Service Area 48 (County Fire). The LAFCO statutes specifically allow any interested party to request that LAFCO reconsider a resolution concerning a governmental boundary change application. The Commission has scheduled a public hearing for December 8, 2008 to consider a request for reconsideration of Resolution No. 913 that was filed by the Bonny Doon Volunteer Fire/Rescue, Inc. on October 17, 2008.*

*Recommendation: Conduct a public hearing and vote to disapprove the reconsideration request.*

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On October 31, 2006, the non-profit Bonny Doon Volunteer Fire/Rescue, Inc. submitted a petition and application to LAFCO to form a 49 square-mile fire protection district and to detach Bonny Doon from County Service Area 48 (County Fire). After preparation of an Executive Officer's Report and public notices, LAFCO held a public hearing on the application during the evening of September 22, 2008. On September 22, 2008, LAFCO indicated its intent to disapprove the application, and its decision was finalized by adoption of Resolution No. 913 making determinations on November 5, 2008.

After LAFCO adopts a resolution making determinations concerning a governmental boundary reorganization proposal, State law (Government Code § 56895) allows any person to file a written request for reconsideration of the LAFCO resolution. Bonny Doon Volunteer Fire/Rescue, Inc. filed such a letter dated October 17, 2008 and signed by Donita Springmeyer (part of Attachment I)

LAFCO staff accepted the request for reconsideration on October 17, 2008, but the Commission did not adopt Resolution No. 913 until November 5, 2008. Once LAFCO adopted Resolution No. 913, LAFCO scheduled the public hearing on the request for reconsideration for the next available meeting for which notice could be provided. In support of its request for reconsideration, the Bonny Doon

Volunteer Fire/Rescue letter cites facts, discrepancies, and potential code infractions in the following areas:

- Public hearing procedures
- Lack of commission member independent judgment
- Lack of substantial evidence supporting decision rationale
- Prejudicial abuse of discretion
- Conflict with Health and Safety Code (Fire Protection District Law) and California Constitution (Proposition 172).

Under separate cover, LAFCO Counsel has provided the Commission with an attorney-client privileged analysis of the legal issues raised in the Bonny Doon reconsideration request.

The staff has attached, and incorporates by reference, materials from the record of the September 22, 2008 meeting and the November 5, 2008 meeting:

- Resolution No. 913 (Attachment A)
- Materials presented by Bonny Doon Volunteer Fire/Rescue, Inc. to LAFCO on the record of LAFCO's November 5, 2008 meeting. (part of Attachment I).
- Agenda for September 22, 2008 (part of Attachment K)
- Written Materials presented at September 22, 2008 hearing (Attachment L)
- Supplemental Staff Memo issued September 18, 2008 (Attachment M)
- Staff Report issued September 8, 2008 (Attachment N, separate document)
- Minutes of September 22, 2008 hearing (Attachment W).

Near the beginning of the current (December 8, 2008) LAFCO agenda packet, one can review the draft minutes for the November 5, 2008 meeting. Other new materials included in the agenda packet for the December 8<sup>th</sup> meeting are:

- Letter of Friends of Bonny Doon Fire dated December 1, 2008 (Attachment E)
- Email of Paul Krug dated December 1 2008 (Attachment F)
- Letter of Arnie Wernick dated November 20, 2008 (Attachment G).

### Discussion

The reconsideration statute (Government Code § 56895(b)) contemplates that the party making a request for reconsideration will state new or different facts in the reconsideration request that could not have been presented previously. The Bonny Doon proponents' reconsideration materials cover a range of issues, many of which have been debated throughout the LAFCO review and hearing

process. Staff review indicates that Bonny Doon proponents in their reconsideration materials have not presented any new or different facts generally, nor any relevant facts that could not have been presented at the September 22, 2008 hearing. However, your Commission should evaluate all written or oral evidence in the reconsideration request.

LAFCO's role in reviewing governmental boundary reorganization applications is to weigh competing interests. If the Bonny Doon area were detached from County Service Area 48 (County Fire), the information in the record supports the conclusion that the proposal would degrade fire protection and emergency response services elsewhere in rural Santa Cruz County due to the loss of County Service Area 48 revenues greatly exceeding the operational savings that could be realized by County Service Area 48 due to Bonny Doon detachment. Each Commissioner can review the extensive record and should make an independent decision on the reconsideration in light of the whole record.

The LAFCO staff remains available if the Commission has any questions about the data, other information, and analysis presented in the Executive Officer's Report or elsewhere in the record of the Bonny Doon application.

### Process

Government Code § 56895 (Attachment D) specifies the reconsideration process. Staff has noticed a public hearing for December 8, 2008. On December 8, 2008, LAFCO should hold a public hearing and consider all oral and written testimony. The Commission may continue its consideration for up to 35 days (January 12, 2009). If the Commission disapproves the reconsideration request, the Commission is not required to adopt a new resolution. Bonny Doon Volunteer Fire/Rescue, Inc. may withdraw its request at any time prior to the conclusion of the reconsideration by the Commission.

### Alternatives

Upon conclusion of the hearing, the Commission may consider the following alternatives:

1. Major re-direction, such as approving a new fire district.  
Approve the request for reconsideration, which should also include some direction to staff regarding the additional process and information needed to consider a different resolution for acting upon Application Number 913.
2. Minor amendment.  
Reconsider Resolution No. 913 and make minor amendments to the resolution, such a changing the wording of a determination.

3. Disapproval.

Disapprove the reconsideration by motion. Resolution No. 913, adopted on November 5, 2008 would remain in effect.

Recommendation

The staff RECOMMENDS that the Commission, by motion, disapprove the reconsideration request. The substance of the letter requesting reconsideration is that the proponents, Bonny Doon Volunteer Fire/Rescue, Inc., continue to weigh the data in a manner that shows fire protection and emergency services can be improved in Bonny Doon through implementation of their proposal. This is essentially the same argument that was made in the record of the original hearing on September 22, 2008 and November 5, 2008. The staff believes that the Commission has conducted a fair process and substantial evidence supports the Commission's decision.

cc: Bonny Doon Volunteer Fire/Rescue, Inc.  
--Tom Scully  
--Donita Springmeyer  
--Mike Phinn  
Friends of Bonny Doon Fire  
County of Santa Cruz  
--Board of Supervisors  
--County Administrative Officer  
--Department of General Services  
John Ferreira, CAL FIRE Unit Chief  
Paul Krug  
Arnie Wernick

Attachments: See list on next page.