

# **EXECUTIVE OFFICER'S REPORT**

*To The Imperial*

## **Local Agency Formation Commission**

**TO:**

Commissioner	<b>DAVID WEST</b> (Chair)	[Public]	Commissioner	<b>MICHAEL KELLEY</b>	[Supervisor]
Commissioner	<b>JASON JACKSON</b>	[City]	Commissioner	<b>RAY CASTILLO</b>	[Supervisor]
Commissioner	<b>MARIA NAVA-FROELICH</b>	[City]			
	(Vice Chair)				
	Alt Commissioner	<b>LUIS PLANCARTE</b>		[Supervisor]	
	Alt Commissioner	<b>JIM PREDMORE</b>		[City]	
	Alt Commissioner	<b>RALPH MENVIELLE</b>		[Public]	

**REPORT DATE:** November 30, 2017

**FROM:** Jurg Heuberger, AICP, CEP, Executive Officer

**PROJECT:** Justo Felix Annexation IM 3-15 (Imperial) Annexation

**HEARING DATE:** December 21, 2017

**TIME:** 8:30 AM

**AGENDA ITEM NO:** 10

**HEARING LOCATION:** El Centro City Council Chambers, 1275 Main Street, El Centro, CA

---

**RECOMMENDATION(S) BY THE EXECUTIVE OFFICER** (In summary & order)

---

- OPTION #1:** Approve the Annexation of the project as presented by the Executive Officer.
- OPTION #2:** Approve the Annexation of the project with modification following the hearing.
- OPTION #3:** Continue the Annexation of the project for not to exceed 70 days.
- OPTION #4:** Deny the Annexation as presented.

# Project Data:

## DATA & FACTS:

Project ID	IM 3-15	
Project Name:	Justo Felix	
Applicant/Proponent:	Justo Felix	
Application Type:	Petition	
Application Filed:	October 2015	EXHIBIT "A"
Certificate of Filing:	September 21, 2016	EXHIBIT "B"
Area/Size:	27.01 AC (per application filed) [please refer to application and map for accuracy]	
Location/Legal:	See attached map and legal description	EXHIBIT "C"
Proposed Project:	Annexation to City of Imperial	

## TAX AGREEMENT:

Board of Supervisors Action:	January 24, 2017    Minute Order #41	EXHIBIT "D"
City Resolution:	2017-01 dated January 18, 2017	EXHIBIT "E"
Tax Split:	Auditor-Controller Letter dated September 26, 2016	EXHIBIT "F"

## CEQA:

Lead Agency:	City of Imperial	
Documentation:	Mitigated Negative Declaration	EXHIBIT "G"

# ANALYSIS

## I: Project Description:

This project is the annexation of about 27.01 acres to the City of Imperial, creating an industrial area for truck parking/logistics.

The project abuts the City of Imperial on the west, east and south boundary and is contiguous to the unincorporated county on the north.

See the detailed project description on the attached Mitigated Negative Declaration prepared by the City of Imperial.

## II: City Council Approvals:

- 1) **RESOLUTION 2016-19:** Dated June 1, 2016, approving the Annexation, Pre-Zone and Negative Declaration, as approved by the City Council of the City of Imperial. **EXHIBIT "H"**
- 2) **RESOLUTION 2017-01:** Dated January 18, 2017, approving a Tax and Fiscal Impact Agreement between the City of Imperial and the County of Imperial for Annexation IM 3-15, as approved by the City Council of the City of Imperial. **EXHIBIT "I"**
- 3) **ORDINANCE # 790:** Dated June 15, 2016, an Ordinance of the City of Imperial approving a Pre-Zoning Designation of I-2 (Rail served Industrial) for Annexation IM 3-15 as approved by the City Council of the City of Imperial. **EXHIBIT "J"**
- 4) **RESOLUTION #2017-42:** Dated September 20, 2017, amending the Conditions of Approval, as approved by the City Council of the City of Imperial. **EXHIBIT "K"**

## III: County Land Use:

- 1) *County General Plan:* Under the County's General Plan, the area being proposed for annexation is shown to be Urban for the future expansion of Imperial.
- 2) *County Zoning:* M-2-U (Medium Industrial-Urban)
- 3) *Surrounding Land Uses:* Land uses surrounding the site are agricultural to the north, RR and industrial to the west and south and residential to the east.

## IV: Sphere of Influence:

**EXHIBIT "L"**

The proposed project is within the boundary limits of the current Sphere of Influence for the City of Imperial.

## V: CEQA:

Mitigated Negative Declaration by the City of Imperial, Ca.

## **VI: State Law:**

### **Cortese/Knox/Hertzberg Reorganization Act of 2000:**

Government Code Section 56668 specifically requires that certain factors be considered in the review of any proposal, and shall include but not be limited to Items A through P.

- (A) *Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.*

**Comment:** The proposed project as identified in the staff analysis and Mitigated Negative Declaration, prepared by the City of Imperial is for the development of an industrial-trucking and logistics project.

This project would therefore have the potential to add a significant amount of large vehicle traffic to the area, but will not create any substantial growth in population.

The assessed value of adjacent homes is generally about \$250,000-\$400,000 and the natural boundary of the project is Clark Rd. on the east with the residential subdivision abutting Clark Rd. on the east side. On the west is the UP RR and industrial land to the west and south.

- (B) *Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.*

*'Services,' as used in this subdivision, refers to governmental services whether or not the services are services, which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.*

**Comment:** The change will result in the need for some new infrastructure and the project will use some amounts of capacity from the city in services. If annexed, this area will receive all of the services normally provided by the City, which therefore represents an impact to the City which has been addressed in the CEQA documentation.

- (C) *The effect of the proposed action and of alternative actions, on adjacent area, on mutual social and economic interests, and on the local governmental structure of the County.*

**Comment:** The proposed project will affect the adjacent areas in a number of ways, not the least of which is traffic, light and noise. While the project is generally consistent with the County and City General Plans, it will not be a significant economic boost to the City.

This project will affect traffic, presumably mitigated with the conditions of the City's approval, and it will impact specific services such as sewer and water, again, presumably adequately mitigated through conditions.

- (D) *The conformity of both the proposed and its anticipated effect with both the adopted Commission policies on providing planned, orderly, efficient pattern of urban development, and the policies and priorities set forth in Section 56377.*

**Comment:** The proposed project is consistent with the majority of growth related policies adopted by the Commission. This project by itself does not create an island provided the area to the north is not annexed. The project does not provide clean effective boundaries but the area to the north is not ready for annexation, hence the irregular city boundary is the result.

- (E) *The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.*

**Comment:** This project will not remove agricultural land as the land has not been in Ag use for some time and most recently was planned by the County for industrial and either used for industrial or left vacant.

- (F) *The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or of corridors of unincorporated territory and other similar matters affecting the proposed boundaries.*

**Comment:** the project does not create an island although the boundary is not as efficient or effective as normally desired. However, absent the area to the north being included the boundary is acceptable.

- (G) *A regional transportation plan adopted pursuant to Section 65080, and consistency with City and County General and Specific Plans.*

**Comment:** The project in and of itself may be considered consistent, however there are certain transportation issues that the public needs to recognize, and that is that an increase in large vehicles, i.e. Trucks and the associated noise will occur for the residents along the eastern boundary.

- (H) *The Sphere of Influence for any local agency, which may be applicable to the proposal being reviewed.*

**Comment:** This area is within the City of Imperial's Sphere of Influence.

- (I) *The comments of any affected local agencies.*

**Comment:** No significant adverse comments have been received for this project by any responsible agency.

- (J) *The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.*

**Comment:** The City has indicated that it has adequate capacity to service this project area.

- (K) *Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.*

**Comment:** The project as analyzed by the City of Imperial indicates that the City does have adequate water for this project.

- (L) *The extent to which the proposal will affect a city or cities and the county in achieving their respective far shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.*

**Comment:** This project may be consistent with the City's General Plan however the City must provide a certification to LAFCO that it is in conformity and compliance with this mandate.

- (M) *Any information or comments from the landowner or owners, voters, or residents of the affected territory.*

**Comment:** Please see attached. Property owners directly East of the project have submitted comments and concerns which LAFCO cannot ignore and which must be addressed.  
EXHIBIT "M"

- (N) *Any information relating to existing land use designations.*

**Comment:** N/A

- (O) *The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.*

**Comment: The proposed project is essentially an industrial project planned for heavy truck parking and logistics.**

- (P) *Other considerations!*  
**COMMENT: N/A**

## **VII: Public Notice:**

Public notice for the proposed project hearing before the Imperial County Local Agency Formation Commission has been given, according to Section 56660 and 56661. Notice was issued in the form of a publication in the IV Press at least twenty-one (21) days prior to said hearing, and posted on our webpage. In addition, direct mail notices were at least sent to all property owners within 300 ft. in the incorporated territory and within ½ mile of the unincorporated areas.

## **IX: Report:**

In accordance with Section 56665, the Executive Officer has prepared a report, and presented said report to your Commission and to any public member requesting such report. In addition, a copy of said report has been issued to the applicant, the County Counsel, County Executive Office, County Public Works, Imperial Irrigation District, City of Imperial, El Centro Regional Medical Center, and the Applicant.

## **X: Conflict of Interest Statement:**

To date (at the writing of this report, May 1, 2017) no Commissioner has indicated that there is any conflict of interest with regard to this project, nor has any Commissioner reported any communications with the Applicant, Proponent or Opponent. The Commissioners will be asked to declare that during and prior to the public hearing. The Executive Officer does not have any known conflict of interest, does not own any property within the project area, but does own a home within an older section of the City of El Centro.

## **XI: Clarification of CKH conditions applicable to this annexation:**

- a) Gov. Code 56895: Reconsideration: this section allows for any person or agency to request a reconsideration of the decision made by the Commission if such a request is received by the Executive Officer within 30 days of the initial decision by the Commission. If such a request is received the Executive Officer has to follow the procedures within this section to schedule the hearing.
- b) Gov. Code 57076: Landowner-voter districts: the Commission, not more than 30 days after the conclusion of the hearing, shall make a finding regarding the value of written protests filed and not withdrawn, and take on the following actions:
  - a) Terminate proceedings if a majority protest exists in accordance with Section 57078
  - b) Order the change of organization or reorganization subject to an election within the affected territory if written protest have been filed and not withdrawn represent either of the following:
    - (1) Twenty-five percent or more of the number of owners of land who also own 25 percent or more of the assessed value of land within the territory.
    - (2) Twenty-five percent or more of the voting power of landowner voters entitled to vote as a result of owning property within the territory.
  - c) Order the change of organization or reorganization without an election if written protests have been filed and not withdrawn by less than 25 percent of the number of owners of land who own less than 25 of the assessed value of land within the affected territory
- c) Gov. Code 57078: Majority protest: In the case of any reorganization or change of organization, a majority protest shall be deemed to exist and the proposed change of organization shall be terminated if the commission finds that written protests filed and not withdrawn prior to the conclusion of the hearing represent any of the following
  - (a) In the case of uninhabited territory, landowners owning 50 percent or more of the assessed value of land within the territory.
  - (b) In the case of inhabited territory, 50 percent or more of the voting power of the voters entitled to a vote as a result of owning land within the district.

# **EXECUTIVE OFFICERS RECOMMENDATION:**

## **RECOMMENDATION:**

It is the recommendation of the Executive Officer that LAFCO conduct a public hearing and consider all information presented in both written and oral form. The Executive Officer then recommends, assuming no significant public input warrants to the contrary, that LAFCO take the following action:

### **Option # 1:**

- 1: Certify the Mitigated Negative Declaration certified by Imperial in (June 1, 2016).
- 2: Make the finding that this project with the conditions imposed herein (or as modified) is in substantial compliance with the provisions of the Cortese/Knox/Hertzberg Reorganization Act of 2000 and the Imperial County LAFCO Policy, and Procedures.
- 3: Make the findings pursuant to Gov. Code Section 56375 that:
  - a) The project has been pre-zoned under the City of Imperial's current zoning Ordinance.
  - b) The project is prohibited per section 56375 (e) from being "re-zoned" for a period of two years following annexation.
  - c) The project is contiguous to the City, does not create an island, and is a logical extension of the City within the sphere of Influence, and or urban area plan.
  - d) The protest proceedings pursuant to Part 4 commencing with Section 57000 are hereby initiated, and are in compliance with the resolution of approval by the Commission.
- 4: Approve the **Annexation**/subject to all of the following conditions:
  - A. Authorize the Executive Officer to forward the Resolution of approval to the City of Imperial, as an information item **and for compliance with all relevant conditions imposed herein**. (*Pursuant to the Cortese/Knox/Hertzberg Reorganization Act of 2000, enacted through AB 2838, a conducting authority process, i.e. the City being the Conducting Authority, no longer exists and the LAFCO has been delegated the Conducting Authority Process*).
  - B: Pursuant to Cortese-Knox-Hertzberg, authorize the Executive Officer to record the annexation with the County Recorder and the State Board of Equalization, **ONLY** upon compliance by the applicant and the City, with all applicable conditions, payment of requisite fees, and receipt of all documents necessary and required from the proponents, the City and/or other agencies.
  - C: The Annexation boundary shall be as per map and legal description (**EXHIBIT A**) attached hereto. The annexation shall include all contiguous Roads; Road Right of Ways; Canals, Canal Right of Ways; and Public Easements. The final annexation map shall be prepared by a California Licensed Engineer licensed to practice in the Category of work to be performed. Said final map shall be reviewed by the Surveyor of the County of Imperial and the Public Works Director of the City of Imperial to assure that the map complies with the correct boundary and surveying requirements, as well as legal descriptions. Project shall not record until both County and City Public Works Directors have provided a letter stating compliance.
  - D: The City of Imperial shall transmit to the Executive Officer **certified copies** of all approvals given or required to be given by the City of Imperial in approving the land use projects reported herein, including tax agreements unless that information has already been submitted.

- E: The City of Imperial shall within 90 days of the hearing by LAFCO, approving the annexation, submit to the LAFCO a full City Boundary Map depicting the new annexation as part of the overall City Boundary. This City Boundary map shall be signed by a licensed Engineer and shall be submitted as follows;
- a) A digital copy in AutoCAD 2009 or later format
  - b) A 24" x 36" or larger copy
  - c) A 18" x 24" copy.
- F: Upon receipt of the City Boundary Map required in condition E, the Executive Officer shall transmit said map to all affected public agencies, including but not limited to law enforcement, Assessor, etc.
- G: The applicant (petitioner) and/or the City as appropriate shall provide to LAFCO the following items in order to complete the processing of the annexation.
- 1) Eight (8) copies of the Annexation maps and legal descriptions prepared by the licensed engineer, and one "Mylar" copy meeting the size established by the County Recorder's office.
  - 2) Check made payable to the State Board of Equalization as required by Statute.
  - 3) Check payable to LAFCO as determined by the Executive Officer to fully offset the cost of processing the application, including all costs incurred by County or City departments charged with the responsibility to review any portion of this project.
  - 4) A letter from the Petitioners agreeing to the terms and conditions of the LAFCO and waiving all rights to an appeal, or reconsideration of the LAFCO decision, unless petitioner can show that a technical error occurred that would have or could have altered the decision of the LAFCO.
- H: The annexation shall not be recorded until all conditions have been completed and all costs paid in full.
- I: The City of Imperial shall not change any of the zone(s) within the boundary of the project annexation area for a period of two years from the date of recordation, subject to the Government Code Section in the Cortese/Knox/Hertzberg Reorganization Act of 2000. The City shall notify the LAFCO and the County of any proposed change of zone within the boundary area at least 90 days prior to any such Council Hearing, if such is requested prior to the termination of 24 months from recordation. If the City does change the zone or the envisioned land use analyzed within this land use process, in the future and it affects any tax split agreements with other agencies, then the City shall be required to make the appropriate adjustments, with County.
- J: The City shall not enter this property into any type of "redevelopment" program or such other program that would adversely change the Fiscal impacts or in any way affect any fiscal impacts or tax sharing agreements with other agencies. If the City, following annexation and after recordation, does change the project so as to change the Fiscal information/outcome upon which LAFCO and/or other agencies relied, the City shall be required to fund any deficit that may occur as a result of their change.
- K: All conditions of approval made by or given by the City as evidenced by the Resolutions or Ordinances adopted by the City shall be part of the Conditions of LAFCO in this annexation as if written herein.
- L: The City shall require all IID canals that are within or contiguous to the project, to be under grounded (or eliminated), except for the Canals identified by the IID as not feasible, such as the Central Main Canal. Applicant shall provide to LAFCO assurance acceptance to the Executive Officer which may include bonds or other certificates that said condition shall be complied with. If the IID determines that a canal shall not be undergrounded, it must do so in writing to LAFCO, stating the reasons for its decision and accepting full responsibility in the event a safety issue shown in the EIR as a possibility occurs.
- M: The annexation shall not record until the City provides to LAFCO a hard copy as well as a digital copy of the "mitigation" measures that will be required to be implemented for this project. These mitigation

measures will be made a part of the Resolution of approval by LAFCO and to the extent applicable will be required to be implemented or bonded for as appropriate.

- N: The annexation shall not record until the City provides to LAFCO a certified statement from the City Engineer that the City has the capacity to provide sewer and water services to this project.
- O: **The Applicant shall post a bond or other surety, in the amount equal to \$134,520.00 (as shown on EXHIBIT B), attached hereto, with an annual increase of 3% escalation for a maximum of 5 years. The bond with escalation shall remain in place until the impacts to the Clark Rd. area are accomplished. The bond or surety shall be kept on file with LAFCO.**

**Option # 2:** Approve the Annexation of the project with modification following the hearing.

**Option # 3:** Continue the Annexation of the project for not to exceed 70 days.

**Option # 4:** Deny the Annexation as presented.

### **LAFCO Policy:**

The proposed annexation application appears to be consistent with the Cortese/Knox/Hertzberg Reorganization Act of 2000, the Imperial LAFCO Policies and Procedures and the County of Imperial General Plan (Chapter IV. B. of LAFCO's Policies, Standards and Procedures). Furthermore, the City has (according to the Service Area Plan and/or its resolution of application and resolutions of approval) the ability to supply the necessary public service, and has assured LAFCO that it has the capacity to service the area.

**NOTE: All "cc" submittals are the Executive Officer's Report only. Attachments are generally too voluminous and are only supplied on CD. Information about the project may also be found on the LAFCO web page at [www.iclafco.com](http://www.iclafco.com).**

cc:	County Board of Supervisors	Applicant
	County Executive Officer	Auditor – Controller
	County Assessor	County Public Works Director
	Raymond Loera, Sheriff	APCD
	Imperial Irrigation District, General Manager	County Office of Education
	Fire/OES	City of Imperial
	County Counsel	
	Planning Director/County	
	IM 3-15 Justo Felix (Imperial)	

#### **ATTACHMENTS:**

EXHIBIT A- APPLICATION  
EXHIBIT B- CERTIFICATE OF FILING  
EXHIBIT C- ANNEXATION MAP  
EXHIBIT D- TAX AGREEMENT  
EXHIBIT E- CITY RESOLUTION #2017-01  
EXHIBIT F- AUDITOR-CONTROLLER LETTER  
EXHIBIT G- MITIGATED NEGATIVE DECLARATION  
EXHIBIT H- CITY RESOLUTION #2016-19  
EXHIBIT I- CITY RESOLUTION #2017-01  
EXHIBIT J- CITY ORDINANCE #790  
EXHIBIT K- CITY RESOLUTION #2017-42  
EXHIBIT L- SPHERE OF INFLUENCE MAP  
EXHIBIT M- PROPERTY OWNER LETTERS