

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

October 8, 2008 (Agenda)

LAFCO 07-08 City of Concord - Out of Agency Service Agreement (Lenox Homes/Laurel Place)

SYNOPSIS The City seeks approval to extend sewer service outside of its boundaries and within its sphere of influence (SOI) to an 8-lot subdivision (3.7± acres) located at 4925 Laurel Drive in the unincorporated Concord area (APN 116-100-050).

ANALYSIS

1. LAFCO Approval is Required

State law requires LAFCO review and approval of both boundary changes and extensions of service without boundary changes.

Specifically, Government Code §56133 states that “A city or district may provide new or extended services by contract or agreement outside of its jurisdictional boundaries only if it first requests and receives written approval from the Commission.”

Further, the law provides that the Commission may authorize a city or district to provide new or extended services a) outside its jurisdictional boundaries but within its sphere of influence (SOI) in anticipation of a later change of organization, or b) outside its jurisdictional boundaries and outside its SOI to respond to an existing or impending threat to the public health or safety.

The area proposed for service is located within the City’s SOI. However, the City indicates it has no plans to annex the property; nor does an existing or impending threat to the health or safety of the public exist. Therefore, the application does not currently conform to the Government Code.

2. Request by City of Concord

The City requests authorization to provide sewer services outside of its boundaries and within its SOI to property located at 4925 Laurel Drive in the unincorporated Concord area.

The extension of service is requested in order to serve a proposed development of eight single-family residential dwelling units.

Historically, the City has provided sewer service to unincorporated areas outside the City boundaries and to the City of Clayton based on a 1964 City Council Resolution No. 2423, which established an “ultimate sewerage service boundary.” The City resolution indicates that said boundary shall subsequently be approved by the Board of Supervisors and LAFCO. Neither the County nor LAFCO has a record of such action.

Further, LAFCO law relating to out of agency service has changed significantly since 1964. In 1994, a provision was added to the Government Code requiring local agencies to receive approval from LAFCO to extend municipal services outside their jurisdictional boundary (Government Code §56133).

3. Existing Commission Policy Regarding Out of Agency Services

The Commission's current policy regarding out of agency service is consistent with State law in that annexations to cities and special districts are generally preferred for providing public services. However, there may be situations where health and safety, emergency service, or other concerns, would warrant out of agency service.

Out of agency service agreements are a temporary measure, typically considered in response to an existing or impending public health and safety threat (e.g., failing septic system); or in anticipation of a future annexation.

The area proposed for service (Laurel Place) is located in a 189-acre island, which is completely surrounded by the City of Concord. The elimination of islands results in more logical and orderly boundaries, eliminates service confusion and inequities, and enhances the level of municipal services to the area. LAFCO would urge the City to annex this island.

In the past, the Commission has approved out of agency service requests in response to an existing or impending public health and safety threat, and in anticipation of a future annexation. The Commission has approved out of agency service requests with a condition requiring future annexation of the property within a specified period of time.

4. Agreement Consenting to Annex

Whenever property may ultimately be annexed to an agency providing services through an out of agency service agreement, a standard condition is to require the landowner to record an agreement consenting to annex the territory.

Although the City indicates it has no plans to annex the project site, the property owner has submitted an agreement consenting to the future annexation of the property.

5. Impact on Planning and Land Use

The project site is located in a pocket of unincorporated land surrounded by the City of Concord to the east south and west, and the Concord Naval Weapons Station to the north. The project site is not contiguous to the City boundary; there are one or more intervening parcels between the project site and the city boundary. In order for the project site to annex to the city, one or more of the intervening parcels would also need to be annexed.

The underlying land use project is the development of eight single-family residential dwelling units. The project site has a County General Plan designation of Single Family Low Density. In February 2007, the County approved the 8-lot subdivision and rezoned the property from R-20 (20,000 square foot minimum lot size) to R-15 (15,000 square foot minimum lot size). The project was approved with two alternative proposed sewer alignments, both of which would connect the project to the City's existing line on Tobi Drive.

In May 2008, the applicant submitted a letter to the County requesting a modification to the conditions of approval as they relate to the sewer alignment and service by the City of Concord; and in August 2008, the County approved the request.

The revised system provides for connection to an adjacent 4-lot subdivision (MS89-116) as shown on the attached map. As proposed, the Laurel Place subdivision would connect to the lift station and force main of Subdivision MS89-116, which would serve both subdivisions (12 lots).

The reconfiguration of the sewer system does not alter the fact that the City must still obtain LAFCO approval to extend services outside its jurisdictional boundary. Further, it should be noted that sewer service to the 4-lot subdivision (MS89-116) was never authorized by LAFCO.

According to Lenox Homes, development of the Laurel Place subdivision will begin late Spring/early Summer 2009 with the delivery of homes by 2010.

The recommendation is that both subdivisions along with the intervening developed parcel (see attached map) be annexed to the City of Concord as discussed below.

The City of Concord staff remains concerned regarding the potential annexation of the Ayres Ranch area as expressed by the former City Manager (see attached letter).

6. Environmental Impact of the Proposal

As the Lead Agency, Contra Costa County prepared an Initial Study/Mitigated Negative Declaration for the underlying project (8-lot subdivision and rezone). This included analysis of some LAFCO related issues including the extension of sewer services to the project site, but did not specifically mention LAFCO or annexation. County staff did address some of the LAFCO issues in a staff report to the County Planning Commission dated February 27, 2007.

The environmental document prepared by the County identifies a number of potential impacts to aesthetics, air quality, biological resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and utilities/service systems from the site development. Mitigation measures were adopted which reduced all impacts to less than significant. Copies of these documents are available for review in the LAFCO office.

The environmental document provided a description of the sewer services to the Laurel Place subdivision, but did not assess the extension of sewer services to any intervening properties. Should a subsequent annexation proposal be submitted, additional CEQA documentation may be needed to evaluate the extension of services to surrounding and/or intervening properties.

Should a subsequent annexation proposal to annex the Laurel Place subdivision, the 4-lot subdivision (MS 89-166) and/or the one intervening parcel (APN 116-120-049) be submitted, additional environmental documentation would be required in conjunction with the LAFCO

action. It should be noted that CEQA analysis was prepared for both subdivisions and the intervening property is already developed. The appropriate environmental documentation for such a proposal would be an addendum to the previously adopted environmental document(s).

Pursuant to CEQA Guidelines §15164, either the Lead Agency (i.e., County) or the Responsible Agency (i.e., LAFCO) can prepare an addendum to correct the environmental record for the project by explaining the need for annexation, explaining LAFCO's role, and assessing the extent of the environmental consequences resulting from this change. In accordance with CEQA guidelines, an addendum need not be circulated for public review. It is recommended that the Lead Agency prepare the addendum(s). Should the Commission direct LAFCO to prepare the addendum(s), the applicant will be responsible for all associated costs.

ALTERNATIVES FOR COMMISSION ACTION:

Option 1 Deny the request for out of agency service and encourage annexation of the area.

The proposed extension of service outside the City of Concord's jurisdictional boundaries does not comply with Government Code §56133 or with Contra Costa LAFCO policies relating to out of agency service. As indicated in its application, the City has no plans to annex the property. Further, the need for service, which is to serve new development, does not constitute an existing or impending threat to the health and safety of the public.

Option 2 Approve the request for out of agency service to property located at 4925 Laurel Drive in the unincorporated Concord area subject to the following conditions:

- a. An application to annex said parcel and one or more intervening parcels to the City is received in the LAFCO office within six months, or by close of business on April 10, 2009 (see attached resolution). An application to annex the properties can be submitted either by the City or an affected landowner(s) or registered voter(s); and
- b. The environmental document(s) prepared for subdivision(s) must be amended to address technical deficiencies and the LAFCO action through preparation of an addendum in conformance with CEQA; and
- c. All properties proposed for annexation must sign a pre-annexation agreement.

Option 3 Continue this matter to a future meeting in order to obtain more information.

RECOMMENDED ACTION:

Option 1

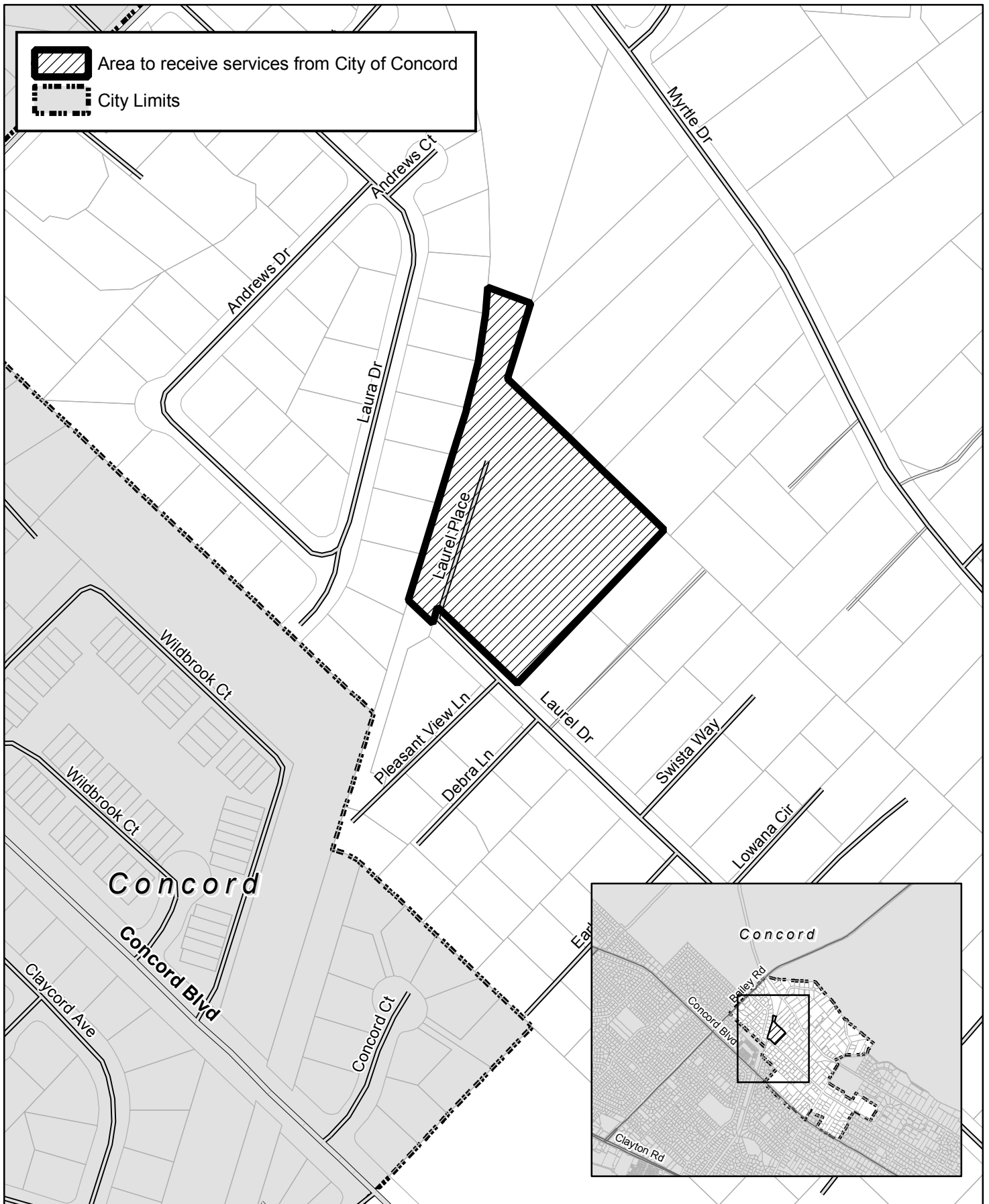
LOU ANN TEXEIRA, EXECUTIVE OFFICER
LOCAL AGENCY FORMATION COMMISSION



Attachments

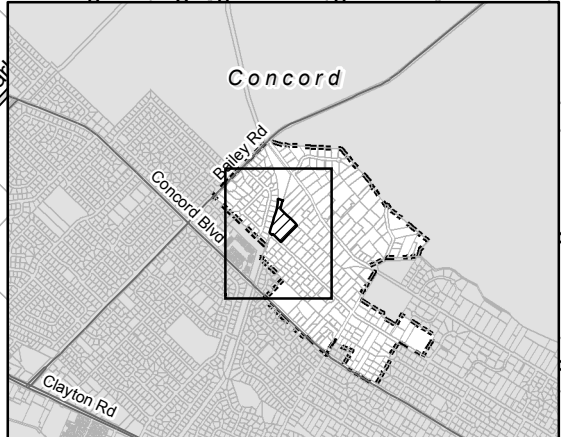
- Map
- Letter from City of Concord
- Draft LAFCO resolution

c: Distribution

LAFCO 07-08: City of Concord Out of Area Service Agreement (Lenox Homes/Laurel Place)

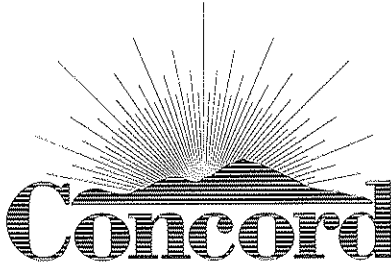


 Area to receive services from City of Concord
 City Limits



CITY OF CONCORD
1950 Parkside Drive
Concord, California 94519-2578
FAX: (925) 798-0636

OFFICE OF THE CITY MANAGER
Telephone: (925) 671-3150



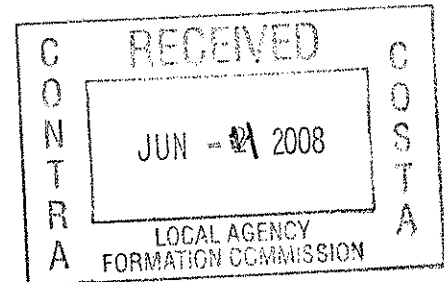
CITY COUNCIL
William D. Shinn, Mayor
Helen M. Allen, Vice Mayor
Guy S. Bjerke
Laura M. Hoffmeister
Mark A. Peterson

Mary Rae Lehman, City Clerk
Thomas J. Wentling, City Treasurer

Edward R. James, Interim City Manager

June 3, 2008

Lou Ann Texeira
Executive Officer
Contra Costa Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553-1229



RE: Out of Agency Service – Ayers Ranch

Dear Lou Ann:

Your May 19th letter noted that LAFCO is concerned with the perpetuation of requests for out of agency sewer service in the unincorporated Ayers Ranch area. You noted that the need for out of agency sewer service in the Ayers Ranch area is escalating. Further, you are providing notice to the City that the Commission discourages any additional requests for out of agency sewer service in the Ayers Ranch area.

I must point out that the perceived escalation in the need for out of agency sewer service mainly stems from the County continuing to approve residential developments in the area. The City's records indicate that since 2001, of the 40 out of agency sewer service connections, 22 were related to tentative maps approved by the County and 4 related to emergency connection. The remaining 14 were related to connections where sewer mains were already available.

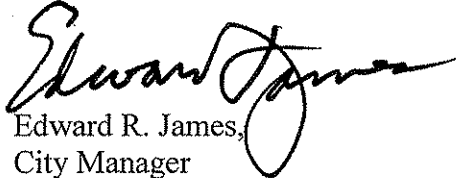
We appreciate the Commission's recognition of the fiscal challenges faced by cities and the continuing costs associated with annexing a large area, such as the Ayers Ranch area. The Commission suggested that staff from the City and County meet to discuss anticipated developments in the area and annexation related issues. City staff is prepared to meet with County staff. However, we wish to make our position clear – the City will only consider the annexation of the Ayers Ranch area provided all of the following conditions are met:

1. The County must agree to a full transfer of property tax (and any sales tax). The City recognizes that the amount of taxes that the Ayers Ranch area generates is much less than the cost of anticipated City services.
2. The County has to bring the condition of the roadway infrastructure (including appurtenant structures) to a condition so that it does not become a maintenance burden to the City. Alternatively, the County may provide funding to the City at an agreed upon amount and terms of payment, for the repair of the roadway infrastructure.

3. The Ayers Ranch area property owners must petition the City for annexation of the area with an initial vote representing at least 50% of the property owners and resulting in at least 2/3 of the property owners voting for the annexation. Due to the cost associated with the annexation process, the City needs an assurance that the property owners are in support of the annexation. As you may know, the majority of owners and residents have not been in favor of annexation in the past.

Thank you for facilitating a resolution of the Ayers Ranch area annexation issue.

Very truly yours,



Edward R. James,
City Manager

cc: Mayor and Councilmembers
Craig Labadie, City Attorney
Mark Boehme, Senior Assistant City Attorney
Alex Pascual, Director of Building, Engineering, & Neighborhood Services
Peggy Lefebvre, Director of Finance
Jim Forsberg, Director of Planning & Economic Development
Qamar Khan, Director of Public Works

RESOLUTION NO. 07-08

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING THE CITY OF CONCORD TO
PROVIDE OUT-OF-AGENCY SERVICES (LAUREL PLACE)

WHEREAS, the above-referenced request has been filed with the Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act (Section 56000 et seq. of the Government Code); and

WHEREAS, at the time and in the manner required by law the Executive Officer has given notice of the Commission's consideration of this request, and

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to this request including, but not limited to, the Executive Officer's report and recommendation, and

WHEREAS, the project approval is needed to comply with a sewage disposal condition, and

WHEREAS, the property owner has signed a pre-annexation agreement consenting to a future annexation of the property to the City of Concord, and

WHEREAS, there is no potential for significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED DETERMINED AND ORDERED by the Contra Costa Local Agency Formation Commission as follows:

- (1) The proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3).
- (2) The City is hereby authorized to extend city sewer services outside of the City to property located at 4925 Laurel Drive in the unincorporated Concord area subject to the following conditions:
 - a. An application to annex said parcel and one or more intervening parcels to the City is received in the LAFCO office within six months, or by close of business on April 10, 2009 (see attached resolution). An application to annex the properties can be submitted either by the City or an affected landowner(s) or registered voter(s); and
 - b. The environmental document(s) prepared for subdivision(s) must be amended to address technical deficiencies and the LAFCO action through the preparation of an Addendum in conformance with CEQA; and
 - c. All properties proposed for annexation must sign a pre-annexation agreement; and

d. Prior to the extension of service, the City shall deliver an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the extension of out of agency service.

(3) Approval to extend City services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

PASSED AND ADOPTED THIS 8th day of October 2008, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

GAYLE UILKEMA, VICE CHAIR, CONTRA COSTA LAFCO

I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated above

Dated: October 8, 2008

Lou Ann Texeira, Executive Officer