

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

November 12, 2008 (Agenda)

LAFCO 08-26

Central Contra Costa Sanitary District (CCCSD) - Out of Agency Service Request (Briones Road/Millthwait Drive)

SYNOPSIS

CCCSD seeks approval to extend sewer service outside of its boundaries and within its sphere of influence (SOI) to three parcels located at 1150 and 1170 Briones Road and 295 Millthwait Drive in the unincorporated Martinez area (APNs 365-120-003-6/004-4 and 367-130-013-9).

ANALYSIS

1. State Law Requires LAFCO Approval

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.”

The statute 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, and b) outside its jurisdictional boundaries and outside its SOI to respond to an existing or impending threat to the public health or safety.

2. Request by CCCSD

CCCSD requests authorization to provide sewer services outside of its boundaries and within its SOI to three properties located at 1150/1170 Briones Road and 295 Millthwait Drive in the unincorporated Martinez area.

The properties proposed for service are located within CCCSD’s SOI. The District indicates that it plans to annex the properties within the next year. CCCSD indicates that the properties are currently served by septic systems which are 40-50 years old and reaching the end of what CCCSD staff considers their useful lives.

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); and/or in anticipation of a future annexation.

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.

The affected property owners have submitted petitions for out of agency service as well as annexation covenants consenting to the future annexation of their properties.

5. Impact on Planning and Land Use

The properties proposed for service are located in the Alhambra Valley area in unincorporated Martinez as shown on the attached map. In 2007, the Commission approved two annexations within the adjacent Alhambra Valley area. In August 2007, the Commission approved the Securities Owners Corporation Reorganization which included annexation of 15.03± acres (23-lot Alhambra Valley Estates Subdivision) to CCCSD and CSA L-100 (LAFCO 07-12).

In November 2007, the Commission approved the annexation of 302± acres (242 parcels) to CCCSD (Annexation No. 168). This area comprises the lower region of the Alhambra Valley, bordered on the north and east by the City of Martinez, on the south by Briones Regional Park, and on the west by properties on Castle Creek Court, Millthwait Drive and Gordon Way (LAFCO 07-19).

All of the properties in LAFCO 07-12 and 07-19 annexations were located within CCCSD's SOI and inside the County's ULL. Further, these two annexations were consistent with the County General Plan and Alhambra Valley Specific Plan, and provided for a logical and orderly extension of the CCCSD's service boundary.

The properties proposed for out of agency service are located at 1150 Briones Road (1.74± acres), 1170 Briones Road (2.07± acres) and 295 Millthwait Drive (8.72± acres). The properties located on Briones Road back up to Briones Regional Park and contain one single-family residence which straddles the two parcels, plus a miscellaneous structure; the property located on Millthwait Drive is adjacent to the Arroyo Del Hambre Creek, and contains two single-family residences – the historic 1892 John Swett House and the 1848 Altamirano Adobe. The annexation area is part of the Alhambra Creek Watershed.

With regard to the subject properties, neither of the property owners has reported problems with their existing septic systems. Further, the County Environmental Health Department (EH) is unaware of problems or deficiencies with the septic systems on these properties.

According to County EH, there is no general rule regarding the useful life of a septic system; the life of these systems is dependent on a number of variables including location and soil conditions, regular maintenance, frequency of exceeding capacity, and other factors. County EH staff report that they have inspected septic systems, some of which date back to the early 1900s, and found them still functional.

However, should the septic systems of the subject properties fail, County EH indicates that given the large land area of the Millthwait parcel, the existing system could be replaced. With regard to the

Briones properties, it would be difficult to replace the existing septic system, given the limited lot size, elevation, and the clay soil conditions.

The subject properties, along with six other properties also located outside the countywide Urban Limit Line (ULL), were originally included in CCCSD Annexation No. 168, as discussed above. Due to various complexities relating to the ULL and environmental issues, CCCSD amended its prior application to remove all nine of these parcels.

Subsequently, five of the nine properties petitioned CCCSD for out of agency service and annexation. Two of these properties are pending development (minor subdivisions with two units on each property). The three subject properties are developed. The property on Millthwait Drive currently receives water service from the City of Martinez; the two properties on Briones Road rely on well water. CCCSD indicates that the Briones property owners are planning to obtain City water in the future.

CCCSD has opted to initially pursue out of agency service for the three developed properties. Depending on LAFCO's action, CCCSD may then apply for out of agency service for the other undeveloped properties.

As proposed, CCCSD would allow the property owners to extend "single-residence-serving laterals" to the subject properties, which would connect the existing structures to already-approved, minimum-sized (8" diameter) public main sewers. The Millthwait Drive property directly abuts the end of the sewer line on Millthwait and their laterals would be on site. The laterals serving the Briones Road properties would cross an easement through one of the properties to the north to reach the end of the sewer on Quail Lane. The sewer systems would be gravity flow. According to District staff, these main sewers are in the process of being constructed as part of the neighborhood assessment districts. CCCSD staff believes it would benefit both the applicants and the neighbors to allow the subject properties to participate in these assessments districts, so that the costs may be shared among additional property owners.

The subject properties are within the CCCSD SOI and are contiguous to the CCCSD boundary. As noted above, these properties are outside the countywide voter-approved ULL.

All three of the parcels have a County General Plan designation of Agricultural Lands, and a zoning designation of A-2 (parcel 5-acre minimum). Under the present land use and zoning designations, no further development can occur on these parcels. Further subdivision of these properties is not possible without General Plan and zoning changes. General Plan amendments to allow a new land use designation for these parcels would also require a change to the County ULL.

The subject properties are within the City of Martinez SOI. The City's General Plan does not include designations for the two properties on Briones Road; the City has pre-zoned the property on Millthwait Drive ECD-R-100-P (Environmental Conservation District – One-Family Residential: 100,000 sq. ft. minimum lot area – Prezoned District). Under the City land use designations, a maximum of four lots could result. However, future development of this property may be difficult due to topography, trees, and other physical challenges.

The County General Plan policies discourage the extension of sewer services across the County ULL to parcels designated for non-urban uses such as agriculture. In accordance with the County General Plan,

extension of water or sewer service is typically a prelude to the eventual conversion of such land designated for agricultural purposes to urban uses, including residential development at higher densities.

LAFCO has its own policies intended to promote orderly growth and development by determining logical boundaries, preserving open space and agricultural land, and encouraging development of vacant land within cities and urban service areas. In addition, LAFCO has its own policies regarding land use as indicated below (2.1 Policies and Standards):

“In considering proposals that would facilitate or lead to intensification of land uses, the Commission will consider consistency of the application with city and County general and specific plans that are relevant to the proposal or the affected territory.

The Commission will generally favor adopted plans that are supportive of the Commission's responsibility to discourage urban sprawl, preserve open space and prime agricultural lands, provide for efficient public services and encourage the orderly formation and development of local agencies.”

6. Environmental Impact of the Proposal

As the Lead Agency, CCCSD found that the proposed extension of sewer service to each of the properties is exempt from the California Environmental Quality Act (CEQA) pursuant to Class 3, §15303 (New Construction or Conversion of Small Structures), since it would allow sewer service to a limited number of new residences; and §15061(b)(3), since it can be seen with certainty that there is no possibility that the action in question may have a significant effect on the environment.

CCCSD indicates in its application that it intends to include the three subject properties in a future annexation proposal covering a larger number of Alhambra Valley properties similarly situated within “an outside the ULL island,” but cannot do so presently due to the time required to prepare such an application and its associated environmental document.

ALTERNATIVES FOR COMMISSION ACTION:

Option 1 Deny the request for out of agency service.

The subject properties do not have failing septic systems; and should the existing systems fail, it is possible to repair and/or replace these systems. The Millthwait property has adequate land area to replace the existing septic system, if needed. The Briones properties would have difficulty replacing the existing system; however, repair is an alternative.

All of the subject properties are outside the countywide voter approved ULL and are zoned by the County for agricultural land uses. The subject properties are within the City of Martinez SOI. The City's General Plan does not include designations for the two properties on Briones Road; the City has pre-zoned the property on Millthwait Drive ECD-R-100-P (Environmental Conservation District – One-Family Residential: 100,000 sq. ft. minimum lot area – Prezoned District) which would allow up to four lots.

In consideration of an application, the Commission's policies give equal weight to city and County general and specific plans that are relevant to the proposal or the affected territory.

The Commission's policies generally favor adopted plans that are supportive of the Commission's responsibility to discourage urban sprawl, preserve open space and prime agricultural lands, provide for efficient public services and encourage the orderly formation and development of local agencies.

Further, the Commission's 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. Out of agency service is considered a temporary measure typically in response to an existing or impending public health and safety threat, and in anticipation of a future annexation.

Denial of the request to extend out of agency service does not preclude CCCSD from applying to LAFCO to annex these or other parcels.

Option 2

Approve the request for out of agency service to the properties located at 1150 and 1170 Briones Road (APNs 365-120-003-6/004-4). These properties are within the CCCSD SOI and contiguous to the District boundaries. Further, the District has indicated that it is requesting out of agency service in anticipation of a future annexation which is expected to occur within the upcoming year, in accordance with Government Code §56133. The property owner has submitted an annexation covenant consenting to the future annexation of the property.

According to County Environmental Health, should the septic system on these properties fail, it would be difficult to replace the existing system given the limited lot size, elevation, and the clay soil conditions.

Approval of out of agency service is subject to the following conditions as included in the attached resolution:

- a. Sewer infrastructure is limited to "single-residence-serving laterals" to the subject properties, which would connect the existing structures to already-approved, minimum-sized (8" diameter) public main sewers; and
- b. An application to annex said parcels to CCCSD is received in the LAFCO office within 12 months, or by close of business on November 12, 2009. An application to annex the properties can be submitted either by the District or an affected landowner(s) or registered voter(s); and
- c. The appropriate environmental document(s) must accompany the annexation application.

Option 3

Approve the request for out of agency service to the subject properties located at 1150 and 1170 Briones Road and 295 Millthwait Drive (APNs 365-120-003-6/004-4 and 367-130-013). These properties are within the CCCSD SOI and contiguous to the District boundaries. Further, the District has indicated that it is requesting out of agency service in anticipation of a future annexation which is expected to occur within the upcoming year, in accordance with Government Code §56133. The property owners have submitted annexation covenants consenting to the future annexation of their properties.

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- c. The appropriate environmental document(s) must accompany the annexation application.

Option 4 Continue this matter to a future meeting in order to obtain more information.

RECOMMENDED ACTION:

Option 1

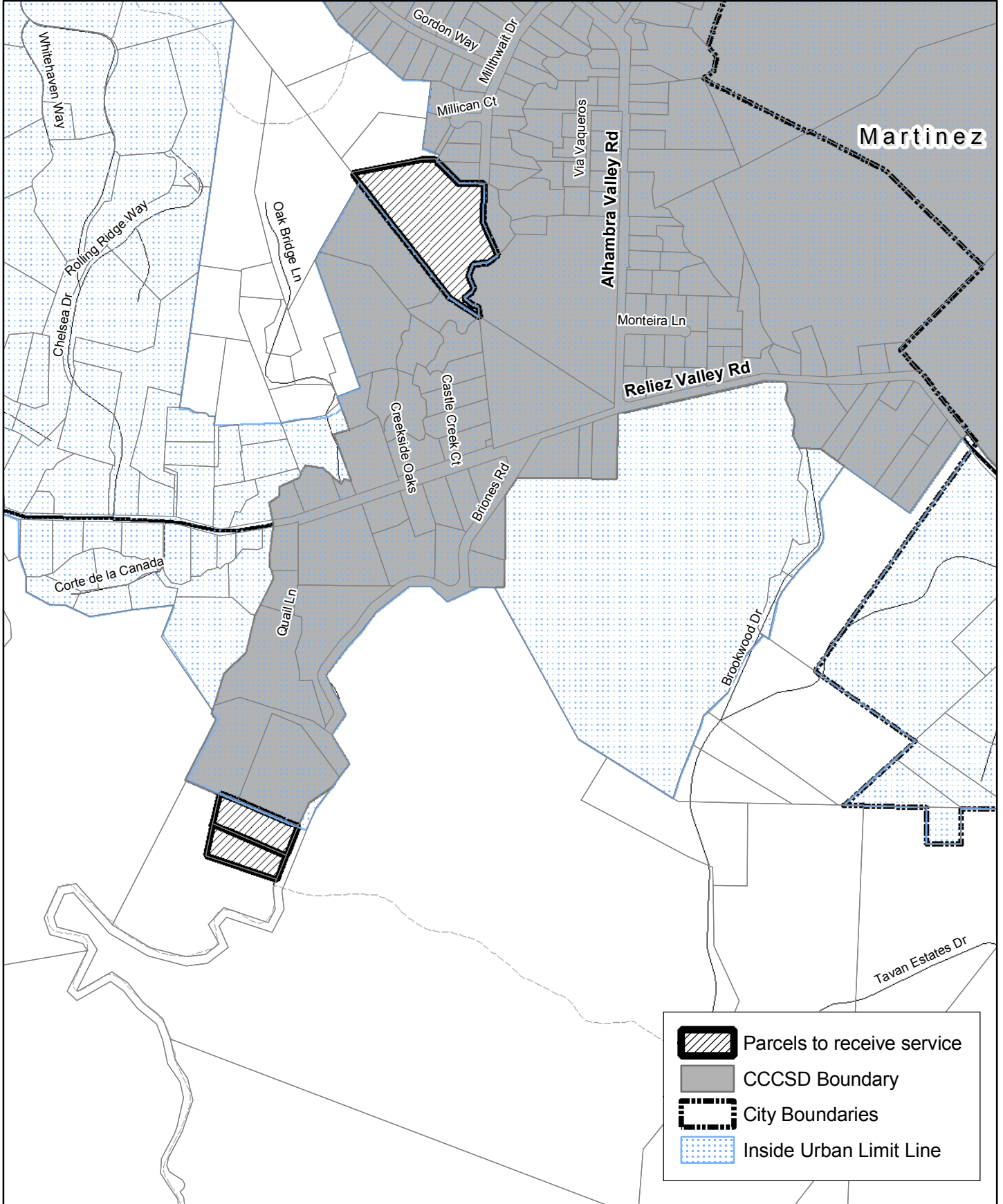
LOU ANN TEXEIRA, EXECUTIVE OFFICER
LOCAL AGENCY FORMATION COMMISSION

Attachments

- Map
- Draft LAFCO resolutions

c: Distribution

LACFO No. 08-26: Central Contra Costa Sanitary District Out of Area Service Request N0. 168 D.1



RESOLUTION NO. 08-26

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING CENTRAL CONTRA COSTA SANITARY DISTRICT TO
PROVIDE OUT-OF-AGENCY SERVICES (1150 AND 1170 BRIONES ROAD)

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 (Gov. Code §56000 et seq.); 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 property owner has signed a pre-annexation agreement consenting to a future annexation of the property to Central Contra Costa Sanitary District; and

WHEREAS, out of agency service to the subject properties is in anticipation of a future annexation, pursuant to Government Code Section 56133; 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 Sections 15303 and 15061(b)(3).
- (2) Central Contra Costa Sanitary District is hereby authorized to extend sewer services outside of the District's boundary to properties located at 1150 and 1170 Briones Road in the unincorporated Martinez area subject to the following conditions:
 - a. Sewer infrastructure is limited to "single-residence-serving laterals" to the subject properties, which would connect the existing structures to already-approved, minimum-sized (8" diameter) public main sewers; and
 - b. An application to annex said parcels to CCCSD is received in the LAFCO office within 12 months, or by close of business on November 12, 2009. An application to annex the properties can be submitted either by the District or an affected landowner(s) or registered voter(s); and
 - c. The appropriate environmental document(s) must accompany the annexation application; and

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

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

PASSED AND ADOPTED THIS 12th day of November 2008, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ROB SCHRODER, 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: November 12, 2008

Lou Ann Texeira, Executive Officer

RESOLUTION NO. 08-26

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
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PROVIDE OUT-OF-AGENCY SERVICES
(1150 AND 1170 BRIONES ROAD AND 295 MILLTHWAIT DRIVE)

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 (Gov. Code §56000 et seq.); and

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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 property owners have signed a pre-annexation agreement consenting to a future annexation of the property to Central Contra Costa Sanitary District; and

WHEREAS, out of agency service to the subject properties is in anticipation of a future annexation, pursuant to Government Code Section 56133; and

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Lou Ann Texeira, Executive Officer