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February 13, 2013
Agenda Item 6

February 13, 2013 (Agenda)

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

Northeast Antioch Monthly Update

Dear Commissioners:

On February 9, 2011 the Commission approved the extension of out of agency service by the City of Antioch and Delta Diablo Sanitation District to the Marsh Landing Generating Station (GenOn) property located in unincorporated Northeast Antioch. The Commission’s approval requires that the City and County provide LAFCO with monthly updates regarding the status of the Northeast Antioch annexation and the tax transfer negotiations. A subcommittee was formed to address these and other issues.

LAFCO representatives participated in monthly subcommittee meetings from April to October 2011; and the City and County have provided LAFCO with regular updates. In October 2012, the subcommittee resumed meeting. The subcommittee last met on January 28, 2013; Commissioners McGill and Meadows and LAFCO staff attended the subcommittee meeting.

At the meeting, the subcommittee discussed the island status of Area 2B and indemnification issues; and received updates on the City’s CEQA document for Areas 1, 2A and 2B, cost estimates associated with water/sewer infrastructure to Northeast Antioch, and hiring Dudek to pursue grant opportunities to help with water/sewer infrastructure costs for Area 2B. The subcommittee also discussed next steps including finalizing the property tax exchange and infrastructure agreements, and a public education/outreach campaign relating to the proposed annexations (see attached meeting packet).

At the LAFCO meeting on February 13, Commissioners McGill and Meadows will provide additional information. Also, City and County staff will be available to respond to questions.

RECOMMENDATION

Receive the monthly update and provide comment and direction as appropriate.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

c: Distribution

**CITY OF ANTIOCH, CONTRA COSTA COUNTY, & LAFCO
NORTHEAST ANTIOCH ANNEXATION SUBCOMMITTEE**

AGENDA

Monday, January 28, 2013

5:30 p.m.

Antioch City Hall

3rd Floor

Antioch, CA 94509

AGENDA ITEMS:

1. Introductions
2. Public comment on any item not on this agenda (speakers may be limited to three minutes).
3. Receive update on status of LAFCO issues:
 - a. Island status of 2B
 - b. Indemnification
 - c. Recommended conditions and their effect on the tax exchange agreement
4. Receive update regarding CEQA documentation reports for Areas 1, 2A, and 2B.
5. Receive update on infrastructure costs and consider treating infrastructure under a separate agreement
6. Receive update on Dudek contract
6. Next Steps

**CITY OF ANTIOCH, CONTRA COSTA COUNTY, & LAFCO
NORTHEAST ANTIOCH ANNEXATION SUBCOMMITTEE**

Monday, January 28, 2013
Agenda Item #3A

To: Subcommittee Members

From: Rich Seithel, Pat Roche, Contra Costa County;
Victor Carniglia, Mindy Gentry, City of Antioch

Subject: Update on Area 2B Island Status

During the August 22, 2011 Subcommittee meeting, it was recognized that one of the key assumptions outlined in the original Work Program is the “Assumption of Residential ‘Island’ Determination by LAFCO and that LAFCO would find the residential area (Areas 2B) an island for the purpose of annexation under LAFCO law and in compliance with Government Code section 56375.3.”

Background:

As the annexation of Area 2B continues to be an issue during property tax negotiations, and in an effort to help accelerate negotiations, on May 9, 2012, Contra Costa LAFCO approved a letter reinforcing the island position (Attachment #1). This letter, addressed to the City of Antioch and Contra Costa County, advised that, “Area 2b is a small island that is substantially surrounded by the City of Antioch. Government Code section 56375.3 currently provides an expedited process to allow the City to annex this island without a protest proceeding provided the boundary change proposal is submitted by January 1, 2014.” It was also stated in this letter that, “As previously discussed with the City and County, and at the Northeast Antioch Subcommittee meetings, LAFCO staff urges the City to annex all of Northeast Antioch (Areas 1, 2a and 2b)”.

During the October 10, 2012 LAFCO meeting, City staff expressed concern with the ability of LAFCO to process this annexation using the streamlined provisions provided in section 56375.3. In order to further clarify their “Island” position, on October 10, 2012, LAFCO Commission directed their Policies & Procedures Committee to review the existing LAFCO policies on island annexations and report back to the Commission with any proposed revisions.

On October 31, the Policies & Procedures Committee recommended, and Commission approved, the following policy:

POLICIES AND STANDARDS

Island Annexation Policies

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.

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.

Area 2B Applicability

Arguably, LAFCO's Island Annexation Policy section (c) best describes Area 2B. Area 2B is 108 acres that is currently 93% surrounded by the City of Antioch, primarily residentially-zoned, and connected to Area 1 by Vierra Avenue and major access via E. 18th St. Area 1 is primarily industrial-zoned, waterfront property with major access via Wilbur Avenue.

The application of Island Annexation Policy (c) allows Area 2B to be processed as a small island and waives protest proceedings.

**CITY OF ANTIOCH, CONTRA COSTA COUNTY, & LAFCO
NORTHEAST ANTIOCH ANNEXATION SUBCOMMITTEE**

Monday, January 28, 2013
Agenda Item #3B

To: Subcommittee Members

From: Rich Seithel, Pat Roche, Contra Costa County;
Victor Carniglia, Mindy Gentry, City of Antioch

Subject: Update on Indemnification

At the LAFCO meeting on December 12th, city staff expressed concern with the new "*Island Annexation Policy*" and potential risk, particularly as it relates to processing Area 2B as a small island and waiving the protest proceedings. The City requested that LAFCO waives the indemnification requirements relative to the island annexation proceedings. In response, the Commission requested that the City, County and LAFCO staff and legal counsels meet to discuss the indemnification issue.

On December 19th, County, LAFCO, and City staff and legal counsels had a positive and productive meeting. The parties concurred on the terms of an indemnity agreement. Attached is suggested language.

**AGREEMENT BETWEEN
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AND THE CITY OF ANTIOCH
REGARDING NORTHEAST ANTIOCH REORGANIZATION AREA 2B (LAFCO 12-07)**

THIS AGREEMENT dated this ____ day of January 2013 is entered into by and between the Contra Costa Local Agency Formation Commission ("LAFCO"), a public agency, and the City of Antioch, (Agency) a municipal corporation in the State of California.

Recitals

1. The Agency submitted a reorganization application to LAFCO.
2. LAFCO's review and/or approval is conditioned upon, among other things, the Agency and LAFCO entering into an agreement to indemnify LAFCO against any expenses arising from any legal actions challenging the application and subsequent actions.

NOW, THEREFORE, LAFCO and Agency agree as follows:

Section 1. Indemnification. Except as otherwise provided herein, in the event any legal action or proceeding is instituted against LAFCO (or naming LAFCO as a real party in interest) challenging the review and/or approval of the application, or any of LAFCO's actions related thereto, the Agency shall indemnify LAFCO from any costs or liabilities incurred by LAFCO as a result of any such action or proceeding, including any award to opposing counsel of attorney's fees or costs. The Agency also agrees to reimburse LAFCO for the Commission's reasonable expenses resulting from any such legal action or proceeding. Such expenses include LAFCO's counsel's charges for representing LAFCO in any such action, costs of preparing the administrative record in any such action (including LAFCO staff costs), and all other expenses incurred by LAFCO as a result of any such action or proceeding. The Agency will not be required to indemnify LAFCO for any proportion of liability that a court determines is attributable to any negligent or wrongful decision that LAFCO makes regarding the application of its Island Annexation Policies to the annexation of Area 2B.

LAFCO intends to use its staff to represent it in this action. LAFCO will coordinate the defense of this action with the Agency. LAFCO retains the right to obtain outside counsel to represent it in litigation, if necessary. LAFCO will do so only after consultation with the Agency.

Section 2. Miscellaneous Provisions.

A. Successors and Assigns. This agreement shall apply to, bind and inure to the benefit of successors in interest of the parties hereto, including heirs, assigns,

executors, administrators and all other parties, whether they succeed by operation of law or voluntary acts.

B. No Third-Party Beneficiaries. This agreement is entered only for the benefit of the parties executing this agreement and not for the benefit of any other individual, entity or person.

C. Amendments. This agreement may be amended in writing by the mutual agreement of the original parties or their successors in interest.

D. Applicable Law. This agreement shall be construed and enforced in accordance with the laws of the State of California.

E. Counterparts. This agreement may be executed and delivered in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CONTRA COSTA LOCAL AGENCY
FORMATION COMMISSION**

**AGENCY / LANDOWNER / REGISTERED
VOTER**

LAFCO Executive Officer

Attest:

Approved as to form:

Approved as to form:

LAFCo Legal Counsel

Attorney

**CITY OF ANTIOCH, CONTRA COSTA COUNTY, & LAFCO
NORTHEAST ANTIOCH ANNEXATION SUBCOMMITTEE**

Monday, January 28, 2013
Agenda Item #3C

To: Subcommittee Members

From: Rich Seithel, Pat Roche, Contra Costa County;
Victor Carniglia, Mindy Gentry, City of Antioch

Subject: Recommended conditions and their effect on the tax exchange agreement

On December 19th, County, LAFCO, and City staff and legal counsels met to discuss indemnity issues and potential LAFCO conditions on the annexation applications. The parties concurred on the terms of an indemnity agreement. In addition, there was an agreement on next steps relating to the property tax sharing and infrastructure agreements between the City and County, and the LAFCO processing of the three applications (Areas 1, 2A, and 2B) in terms of the preferred order and potential LAFCO terms and conditions.

Briefly, three major points of agreement are:

1. Area 1 will not be annexed unless Area 2B is annexed;
2. Area 2B will not be annexed unless Area 1 is annexed, and;
3. Area 2B will precede Area 1.

**CITY OF ANTIOCH, CONTRA COSTA COUNTY, & LAFCO
NORTHEAST ANTIOCH ANNEXATION SUBCOMMITTEE**

Monday, January 28, 2013
Agenda Item #4

To: Subcommittee Members

From: Rich Seithel, Pat Roche, Contra Costa County;
Victor Carniglia

Subject: Update of the Annexation's CEQA Documentation

As the Subcommittee is aware, the City of Antioch has been updating the CEQA documentation previously prepared for the Northeast Antioch Annexation. In the Spring of last year the City received a set of detailed and extensive comments on the Mitigated Negative Declaration previously prepared for the annexation. In reviewing these comments in the Spring of 2012, the City determined that the Mitigated Negative Declaration as prepared was adequate to address the annexation and related actions, such as rezoning. However, this same legal analysis determined that an action by the City/County on an Infrastructure Funding Agreement to provide the needed sewer and water to Subarea 2b would require additional environmental work beyond what was contained in the Mitigated Negative Declaration. As a result, in June of 2012 the City retained the environmental consulting firm Circle Point to do the needed environmental work consisting of an update of the original document, along with an analysis of the potential environmental impacts of constructing the infrastructure planned for Subarea 2b.

This additional environmental work is now complete in the form of a revised Mitigated Negative Declaration. The City intends to publish this revised Mitigated Negative Declaration for public comments on Friday February 1, 2013. Prior to this February 1, 2013 publication date the City will be meeting with the party that submitted the detailed set of environmental comments in the Spring of 2012. The public comment period for the revised Mitigated Negative Declaration will run for 30 days, and will conclude on Monday March 4, 2013. The City will hold a public hearing at the Planning Commission meeting on Wednesday February 20, 2013 to receive verbal comments on the revised environmental document. Once the public comment period is closed on March 4, 2013, the City will then respond in writing to any comments received as appropriate, and the final environmental document will then be prepared. The tentative date for the City Council to consider adopting the final Mitigated Negative Declaration is Tuesday March 26, 2013. Action by the City Council on the environmental document could occur prior to or subsequent to this March 26, 2013 date, depending on the number of comments received. Once the environmental document is adopted, the City will be able to take

action on rezoning the areas being annexed, as well as other annexation related actions. The County and LAFCO will rely on this final Mitigated Negative Declaration, given the role of both agencies as “Responsible Agencies” under CEQA.

**CITY OF ANTIOCH, CONTRA COSTA COUNTY, & LAFCO
NORTHEAST ANTIOCH ANNEXATION SUBCOMMITTEE**

Monday, January 28, 2013
Agenda Item #5

To: Subcommittee Members

From: Rich Seithel, Pat Roche, Contra Costa County;
Victor Carniglia, Mindy Gentry, City of Antioch

Subject: Receive infrastructure update

In the summer of 2012 the City became aware that the City's previous estimates of the cost of bringing infrastructure to Area 2b were significantly understated. GenOn at the time was in the process of receiving bids to construct a 15 inch sewer line along its Wilbur Avenue frontage. The unit cost estimates GenOn was receiving were anywhere from two to three times higher than the cost estimates previously prepared by the City's engineering consultant, Carlson/Barbee/Gibson (CBG). Further analysis by CBG determined that due to complications created by the unique soil conditions in the area combined with the high water table resulted in infrastructure cost estimates to serve Area 2b with sewer and water, along with some storm drainage, rising from approximately \$6 million to \$8 million to a range closer to \$15 to \$18 million.

Further analysis determined that the majority of this increased cost was due to the inherent difficulties in installing vitreous clay pipe (VCP) in a setting with high water table and the soil conditions specific/unique to the annexation area. GenOn's engineers determined that the cost could be significantly reduced if plastic pipe was substituted for the VCP pipe. While plastic sewer pipe has not typically been utilized by the City, it has been successfully used by a number of other jurisdictions in the Bay Area, including Central San.

CBG is in the process of revising its cost estimates based on the assumption of utilizing plastic sewer pipe. These new cost estimates may be ready to be presented to the Subcommittee at the January 28, 2013 Subcommittee meeting.

Furthermore, as discussed previously in Agenda Item #3, on December 19th, County, LAFCO, and City staff and their respective legal counsels met to discuss indemnity issues and potential LAFCO conditions on the annexation applications. There was also an agreement on next steps relating to the property tax sharing and infrastructure agreements between the City and County. In addition to the three major points of agreement outlined in Agenda Item #3C, the parties agreed that it may be more

appropriate for the infrastructure provision to be handled in a separate agreement due to:

- Moving infrastructure cost target;
- Accelerate the property tax exchange agreement, and;
- Allow Dudek an opportunity to evaluate project.

Staff is recommending that the Subcommittee approve removing the infrastructure from the property tax exchange agreement and address the infrastructure in a separate agreement.

**CITY OF ANTIOCH, CONTRA COSTA COUNTY, & LAFCO
NORTHEAST ANTIOCH ANNEXATION SUBCOMMITTEE**

Monday, January 28, 2013
Agenda Item #6

To: Subcommittee Members

From: Rich Seithel, Pat Roche, Contra Costa County;
Victor Carniglia, Mindy Gentry, City of Antioch

Subject: Update on Dudek contract

City and County staff have been in contact with the consulting firm Dudek, which has extensive expertise in the field of securing grants and grant writing. Given the public health problems confronting annexation Area 2b, and the fact that the income levels in Area 2b are significantly below the County median, combined with Dudek's skills and experience in securing grant funding, City and County staff are optimistic that grant funding can be secured in the near future to help offset the high cost of bringing needed sewer and water infrastructure to Area 2b. While the City had previously wanted to retain Dudek back in 2012 to begin to "test the waters" for grant funding, the City was unable to do so due to lack of funding. That funding issue has finally been resolved in the last several weeks, allowing the City to retain Dudek.