

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

March 13, 2013 (Agenda)

March 13, 2013  
Agenda Item 7

LAFCO 13-01 City of Martinez - Out of Agency Service Request (Gateway Estates)

**SYNOPSIS**

This is a request by the City of Martinez to provide water service outside its jurisdictional boundary to a 7± acre parcel (APN 367-140-010) located at 5240 Alhambra Valley Road in unincorporated Contra Costa County (Attachment 1). The property is currently vacant with a County approved Vesting Tentative Map (Subdivision 05-8947) for seven residential lots (40,000 sq. ft. minimum). The County zoning is Residential (R-40) with a General Plan designation of Single Family Residential Very Low Density. Surrounding uses include single family residential to the west and south, and a 15-acre undeveloped parcel to the north/northeast.

**DISCUSSION**

Statutory Framework – Out of Agency Service - The Government Code and local LAFCO policies regulate the extension of out of agency service. Government Code §56133 states that “A city or district may provide new or extended services by contract or agreement outside of its jurisdictional boundary only if it first requests and receives written approval from the Commission.” Further, the law provides that LAFCO may authorize a city or district to provide new or extended services under specific circumstances: a) outside the agency’s jurisdictional boundary but within its sphere of influence (SOI) in anticipation of a future annexation; or b) outside its jurisdictional boundary and outside its SOI in response to an existing or impending threat to the public health or safety.

The Commission’s current policies regarding out of agency service are consistent with State law in that annexations to cities and special districts are usually preferred for providing municipal services. However, there may be situations where health and safety, emergency service, or other concerns warrant out of agency service. Historically, out of agency service is considered a temporary measure, typically in response to an existing or impending public health and safety threat (e.g., failing septic system, contaminated well); or in anticipation of a future annexation.

Out of Agency Service Request by City of Martinez and Background - The County is currently processing three development projects in the southeast Alhambra Valley area, one of which is the subject property (SD05-8947). The other two include a 23-lot subdivision (SD02-8634), and the Creekside Oak Estates 7-lot residential subdivision (SD90-7609).

The County conditioned these projects on receiving municipal sewer service through Central Contra Costa Sanitary District (CCCSD) and water service through the City of Martinez. The properties were annexed to CCCSD in 2007; however, the properties currently have no water service. In December 2012, the Commission approved the City’s request to extend out of agency water service to SD02-8634. In the near future, the City expects to submit at least one more out of agency service request to extend municipal water service to the Creekside Oak Estates project.

The subject property has an approved Vesting Tentative Subdivision map that will expire in 2015. In 2005, the City provided comments to the County regarding the proposed subdivision, including conditions related to the provision of water service. One of the conditions is that the property owner enter into a Deferred Annexation Agreement; this condition has been met. There are a number of conditions that are currently outstanding (e.g., grading plan, improvement plans, final map).

In June 2011, the City submitted an application to LAFCO to annex 393± acres (139 parcels) in the Alhambra Valley, including the subject property. In August 2012, the Martinez City Council discussed the proposed annexation boundary and directed its staff to convey to LAFCO the City's preference for a reduced boundary in response to community input while maintaining consistency with the Martinez General Plan and the LAFCO Municipal Service Reviews (MSRs). [Note: Both the 2008 Water/Wastewater and 2009 Central County Sub-regional MSRs noted that the City is providing water services beyond its corporate limits to 1,500± water connections. These 1,500 water connections represent residents who do not have representation concerning policy, rates, or governance of their water supply. The MSRs recommended that the City of Martinez annex areas receiving city services, as appropriate]. In September 2012, the Commission approved the Alhambra Valley annexation reduced boundary, which excludes the subject property and the other two proposed subdivisions.

The law permits LAFCO to authorize the City to extend services outside its jurisdictional boundary in specific situations as described above. The request by the City to provide water service to the property is in anticipation of a future annexation. In furtherance of the City's request to provide out of agency service, we note the following:

- The Martinez General Plan includes policies and land use designations supporting the annexation of portions of Alhambra Valley to the City.
- The City has established design guidelines for portions of Alhambra Valley.
- The City has prepared environmental and fiscal analyses and adopted a property tax sharing agreement for portions of Alhambra Valley.
- In 2011, the City submitted a proposal to LAFCO to annex nearly 400± acres of land within the Alhambra Valley. In response to community input, the City requested that the annexation area be reduced to 316± acres, as approved by LAFCO in September 2012.
- On December 5, 2012, the Martinez City Council adopted a resolution reaffirming its intent to annex the Alhambra Valley to the City as opportunities arise. The resolution sets forth goals relating to community outreach and education.

Water Supply to the Proposed Subdivision - The proposed subdivision is surrounded by homes currently connected to the City's water system. It is anticipated that a 6- or 8-inch water line will be constructed as part of the subdivision improvements. And that the water line will tie into a City of Martinez main line.

The developer will be responsible for all site development, improvement and start-up costs including those associated with the domestic water system; operational and maintenance costs will be funded through water service and water usage fees collected by the City of Martinez.

Environmental Review - The County, as Lead Agency, prepared and certified the Gateway Estates Mitigated Negative Declaration (MND) in 2005 (available through the LAFCO office). The MND identified a number of potentially significant effects. Mitigation measures were adopted which reduced all impacts to a less than significant level. Therefore, there are no significant and unavoidable impacts.

The MND noted that water service to the project area will be provided by the City of Martinez. The City purchases both raw and treated water from the Contra Costa Water District. The water is sourced from the Sacramento Delta at Old River and Rock Slough, and then stored in the Los Vaqueros Reservoir. The City indicates it has adequate water to serve the site.

The developer is working to complete a number of mitigation measures prior to the County approving the final map, including LAFCO's approval for water service through the City of Martinez.

### **ALTERNATIVES FOR COMMISSION ACTION**

LAFCOs were formed for the primary purpose of promoting orderly development through the logical formation and determination of local agency boundaries, and facilitating the efficient provision of public services. The CKH provides that LAFCO can approve or disapprove with or without amendment, wholly, partially, or conditionally, a proposal. The statute also provides LAFCO with broad discretion in terms of imposing terms and conditions. The following options and recommended terms and conditions are presented for the Commission's consideration.

**Option 1**      **Approve** the out of agency service request with the following terms and conditions.

- A. Finds that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Mitigated Negative Declaration prepared and certified by the County.
- B. Authorizes the City of Martinez to extend water service outside its jurisdictional boundary to the 7± acre parcel (APN 367-140-010) located at 5240 Alhambra Valley Road in unincorporated Contra Costa County subject to the following terms and conditions:
  - 1. Water infrastructure and service is limited to the proposed 7-lot subdivision, and
  - 2. The City of Martinez has delivered to LAFCO an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service.

**Option 2**      **Deny** the request, thereby prohibiting the City of Martinez from providing water service to the project site.

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

### **RECOMMENDATION**

**Option 1 – Approve out of agency service request**

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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LAFCO

#### Attachments

- 1. Map of Project Site
- 2. LAFCO Resolution 13-01

c: Distribution

**RESOLUTION NO. 13-01**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
AUTHORIZING THE CITY OF MARTINEZ TO PROVIDE OUT-OF-AGENCY WATER SERVICE TO THE  
GATEWAY ESTATES PROPERTY LOCATED AT 5240 ALHAMBRA VALLEY ROAD (APN 367-140-010)**

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, out of agency service approval is needed in order to provide water services to the property in anticipation of a future annexation; and

WHEREAS, the City of Martinez and the property owner have entered into a Deferred Annexation Agreement in support of the future annexation of the property to the City of Martinez.

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

- A. Finds that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the 2005 Mitigated Negative Declaration prepared and certified by Contra Costa County, and in the County's CEQA documentation.
- B. Authorizes the City of Martinez to extend water service outside its jurisdictional boundary to a 7± acre property located at 5240 Alhambra Valley Road (APN 367-140-010) in unincorporated Contra Costa County subject to the following terms and conditions:
  - 1. Water infrastructure and service is limited to the proposed 7-lot subdivision,
  - 2. The City of Martinez has delivered to LAFCO an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service, and
  - 3. The City of Martinez and the property owner(s) have signed a deferred annexation agreement (DAA), and that the DAA is recorded as prescribed by law and runs with the land so that future landowners have constructive notice that their property is encumbered by the DAA.
- C. Approval to extend City of Martinez services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

\* \* \* \* \*

PASSED AND ADOPTED AS REVISED THIS 13<sup>th</sup> day of March 2013, by the following vote:

AYES:  
NOES:  
ABSTENTIONS:  
ABSENT:

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FEDERAL GLOVER, 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: March 13, 2013

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Lou Ann Texeira, Executive Officer

# LAFCO No. 13-01 City of Martinez Out of Agency Service (Busby)

