

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

April 13, 2016
Agenda Item 7

April 13, 2016 (Agenda)

LAFCO 16-03

City of Concord - Out of Agency Service Request (Miller)

SUMMARY

This is a request by the City of Concord to provide sewer service outside its jurisdictional boundary and within the City's sphere of influence (SOI). The property is 1.43± acres (APN 116-130-050) located at 4981 Concord Blvd in the unincorporated Ayers Ranch area. The subject property is not contiguous to the City boundary. The City's request is to provide out of agency sewer service to a proposed subdivision (five lots) as discussed below.

DISCUSSION

Statutory Framework - 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 its jurisdictional boundary only if it first requests and receives written approval from the Commission.*" 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 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 generally 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.

Background – As noted in both the 2014 and 2008 *LAFCO Water/Wastewater Municipal Service Reviews* (MSRs), the City of Concord includes the Ayers Ranch area within its ultimate sewer service boundary. The Ayers Ranch area is a 189-acre unincorporated island within Concord's SOI. The City has historically extended sewer service to this area. More recently, and pursuant to State law, the City has requested LAFCO's approval to provide out of agency service. Some parcels in this area are experiencing issues with septic systems, including failure, and have requested municipal sewer service from the City on an individual basis. And while a significant portion of the island is developed, there are a number of vacant and under-developed properties in the area that will need municipal sewer service, including the subject property.

LAFCO has placed the Ayers Ranch within the City's SOI, signifying that the City is the logical, long-term service provider for this unincorporated island. The MSR reports recommend annexation of this area to the City of Concord. Annexation of the Ayers Ranch island, along with those unincorporated areas being served extra-territorially by the City, remains an important

issue to resolve. In September 2015, the Concord City Council took an affirmative step and adopted Resolution No. 15-59 establishing a non-binding strategy to annex Ayers Ranch by the year 2030. This signals the City's intent to annex the area in the future.

Out of Agency Service Request by City of Concord – The City requests to provide out of agency sewer service to property located at 4981 Concord Blvd in the unincorporated Ayers Ranch area. There is currently one single family residential home on the property. The property owner has approval from the County to build an additional five single family homes. The law permits LAFCO to authorize the City to extend services outside its jurisdictional boundary either in response to an existing or impending threat to the public health or safety, or in anticipation of an annexation. This request by the City to provide sewer service to the subject property is in anticipation of annexation.

The existing single family home is currently served by the City of Concord sewage system. The infrastructure needed to serve the proposed subdivision includes a 500 foot extension of the sewer main (6-inch diameter minimum), and lateral lines (4-inch diameter minimum). The project is estimated to generate approximately 195 gallons per day of wastewater. The property owner is responsible for the capital costs; future operations and maintenance costs will be the responsibility of the individual homeowners.

Environmental Review - Contra Costa County, as Lead Agency, prepared and certified a Mitigated Negative Declaration (MND) in conjunction with the proposed subdivision pursuant to the California Environmental Quality Act (CEQA), which is adequate for LAFCO purposes (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 sewer service to the project area will be provided by the City of Concord. The City indicates it is able and willing to service the project area. Should LAFCO approve the out of agency service, the property owner must then implement the required mitigations for the project, including LAFCO's approval for out of agency sewer service, prior to the County issuance of the building permit.

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. Find 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. Authorize the City of Concord to extend sewer service outside its jurisdictional boundary to the 1.43± acre parcel (APN 116-130-050) located at 4981 Concord Blvd in the Ayers Ranch area in unincorporated Contra Costa County subject to the following terms and conditions:
 - 1. Sewer infrastructure and service is limited to the proposed five single family residential units, and
 - 2. The City of Concord has delivered to LAFCO an executed and recorded deferred annexation agreement, and
 - 3. The City of Concord 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 Concord from providing sewer service to the subject property.

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

RECOMMENDATION

Option 1

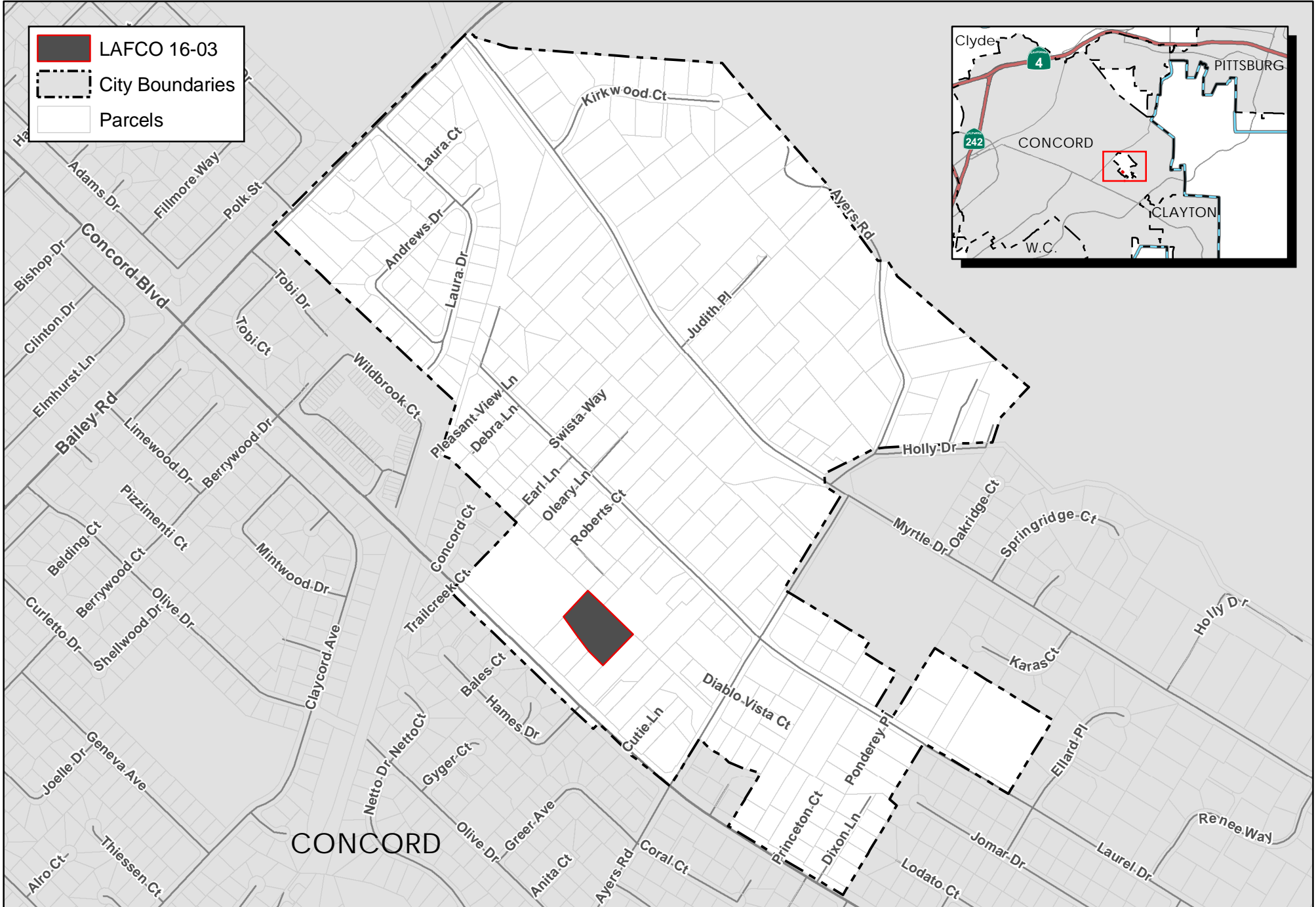
LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LAFCO

Attachments

- 1. Map of Property located at 4891 Concord Blvd
- 2. LAFCO Resolution 16-03

c: Distribution

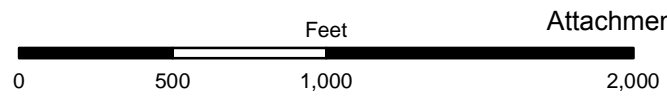
LAFCO No.16-03 City of Concord Out of Agency Service (John Miller)



- LAFCO 16-03
- City Boundaries
- Parcels

Map created 03/07/2016
 by Contra Costa County Department of Conservation and Development, GIS Group
 30 Muir Road, Martinez, CA 94553
 37:59:41.791N 122:07:03.756W

This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.



Attachment 1



RESOLUTION NO. 16-03**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING THE CITY OF CONCORD TO PROVIDE OUT OF AGENCY SEWER SERVICE TO THE
MILLER PROPERTY LOCATED AT 4981 CONCORD BLVD (APN 116-130-050)**

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 sewer service to the property to serve a small subdivision (five lots); and

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

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

- A. Find 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. Authorize the City of Concord to extend sewer service outside its jurisdictional boundary to a 1.43± acre property located at 4981 Concord Blvd (APN 116-130-050) in unincorporated Contra Costa County subject to the following terms and conditions:
 - 1. Sewer infrastructure and service is limited to the proposed five single family dwelling units,
 - 2. The City of Concord 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 Concord 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 Concord services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

* * * * *

PASSED AND ADOPTED AS REVISED THIS 13th day of April 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MARY N. PIEPHO, 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: April 13, 2016

Lou Ann Texeira, Executive Officer