

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

July 13, 2011  
Agenda Item 7

July 13, 2011 (Agenda)

LAFCO 11-03 Mt. Diablo Scenic Blvd. Annexation to Diablo Community Service District (DCSD)

PROPONENT Landowners/Petitioners

ACREAGE & LOCATION The applicant proposes to annex 11± acres (eight properties) located on the eastern side of upper Mt. Diablo Scenic Blvd. and are contiguous to the existing District boundaries (Attachment 1).

SYNOPSIS

Seven property owners filed a petition and application with LAFCO to annex eight properties to DCSD. The purpose of the annexation is to receive District services, and to facilitate improvements to Mt. Diablo Scenic Blvd.

In May 2011, the Commission approved an expansion to the District's sphere of influence (SOI) to include the eight properties.

DISCUSSION

The Government Code sets forth factors that the Commission is required to consider in evaluating any proposed boundary change as discussed below (Government Code §56668). In the Commission's review and evaluation, no single factor is determinative. In reaching a decision, each is to be evaluated within the context of the overall proposal.

1. *Consistency with the Sphere of Influence (SOI) of Any Local Agency:*

The area proposed for annexation is within DCSD's SOI and within the County Urban Limit Line.

2. *Land Use, Planning and Zoning - Present and Future:*

Present land use in the area is residential; seven of the parcels are developed and one is undeveloped. The existing County General Plan designation for the area is Single Family Residential Low, and the properties are Zoned A2 - General Agricultural. The proposed annexation will not facilitate or result in changes in land use.

3. *The Effect on Maintaining the Physical and Economic Integrity of Agricultural Lands:*

There are no current Williamson Act Land Conservation Agreements within the project site.

4. *Topography, Natural Features and Drainage Basins:*

The area proposed for annexation lies at the foot of Mt. Diablo. The eastern portion of the properties is adjacent to the Mt. Diablo State Park boundary. The properties are moderately wooded with oak and mountain laurel trees. Mt. Diablo Scenic Blvd. winds along the western edge of the properties and terminates at the lower gate of the State Park.

The area to the west is developed and includes the Diablo Country Club which lies in the valley of Crook's Creek. Lake Diablo, a three-acre dammed creek, lies at the northern end of the Club properties adjacent to the State Park boundaries. The areas to the east and north include the foothills of Mount Diablo and are part of the State Park. The Park's lower reaches are largely grassland, scrub oaks and Manzanita.

5. *Population:*

There are six existing single-family dwelling units and one property containing two dwelling units. There is one vacant lot in the area proposed for annexation. The proposal will not facilitate development or a population increase.

6. *Fair Share of Regional Housing:*

Pursuant to Government Code §56668, LAFCO must consider in the review of a proposal the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. The proposed annexation will have no effect on regional housing needs.

7. *Governmental Services and Controls - Need, Cost, Adequacy and Availability:*

In accordance with Government Code §56653, whenever a local agency submits a resolution of application for a change of organization or reorganization, the local agency shall also submit a plan for providing services within the affected territory. The plan shall include all of the following information and any additional information required by the Commission or the Executive Officer:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

The "Plan for Providing Services within the Affected Territory," as required by Government Code §56653, is on file in the LAFCO office. The properties proposed for annexation are served by various local agencies including, but not limited to, Contra Costa County, the San Ramon Valley Fire Protection District, Central Contra Costa Sanitary District, and East Bay Municipal Utility District (EBMUD).

The proposal before the Commission is to annex the properties to Diablo CSD in order to receive District services, including road improvement and maintenance services.

DCSD is an independent special district formed in 1968 as a successor district to the Diablo Utility District. The District serves the Diablo community, located northeast of the Town of Danville, between the unincorporated communities of Alamo and Blackhawk. The District encompasses 1.56± square miles and serves approximately 1,200 residents. Except for the recently approved amendment to the District's SOI related to the subject annexation, the District's SOI is coterminous with its service boundary.

DCSD currently provides police/security, street lighting, road maintenance, parks and recreation services (i.e., equestrian trails, parks, recreational buildings) as described below. Also, in 2008, LAFCO authorized the District to activate its latent power to finance the operations of a Municipal Advisory Council (MAC). The District is funded primarily through property tax, a special tax/assessment, and other fees for service.

The eight properties extend to the centerline of Mt. Diablo Scenic Blvd. and public use of the road for access to the Mt. Diablo State Park is provided by a public access easement held by the State. The attached map shows a parcel that is adjacent to the annexation area, but is not included in the proposed annexation as it does not have frontage on Mt. Diablo Scenic Blvd. The road is approximately one mile in length, terminating at the lower end of the Park gate. The lower half of Mt. Diablo Scenic Blvd. was constructed and improved in 2001 in conjunction with the Diablo Ranch Estates development; the upper half has not been improved in many years and has significantly deteriorated to a point where it poses an increasingly serious safety risk.

Mt. Diablo Scenic Blvd. is a private road, owned jointly by the landowners of the properties along its length. The western side of the road is within the DCSD boundaries. The owners on the eastern side of the road include the Athenian School and Diablo Rancho Estates on lower Mt. Diablo Scenic Blvd., and the petitioners on upper Mt. Diablo Scenic Blvd.

Neither the County nor DCSD will assume responsibility for road maintenance as the road does not presently meet local agency standards. The County Public Works Department estimates that road repairs will cost between \$135,000 for minimal overlay work, and up to \$500,000 for a reconstruction. The source of funding has not been identified.

The State has a road easement for access to Mount Diablo State Park, and there is significant Park and bicycle use on the road. Over the years, there have been discussions among the property owners, DCSD, County and State officials and other interested parties, including Save Mount Diablo and the cycling community, regarding options for improving the road.

On June 14, representatives from the offices of Senator DeSaulnier's and Assembly Member Buchanan, California Department of Parks & Recreation, County Public Works, Save Mount Diablo, and LAFCO staff met to discuss the history/disposition of the road and the interest/role of the various agencies. Together, the group developed a plan to facilitate future improvements to and maintenance of Mt. Diablo Scenic Blvd. Next steps involve exchanging information (i.e., County's private road standards, examples of private road maintenance agreements, road standards of the Diablo Ranch Estates project, etc.); developing short and long range road improvement/maintenance agreements; and developing a contract for initial road repair work. The tasks were assumed by the various parties.

All parties agreed that the annexation was a first step in the right direction and supported bringing the proposal forward to the Commission at this time.

#### 8. *Timely Availability of Water and Related Issues:*

The area proposed for annexation is located within the EBMUD service area. EBMUD provides wholesale water, retail water, wastewater collection and wastewater treatment services for an area of 331± square miles in Contra Costa and Alameda counties, serving over 1.4 million people. Water service includes production, distribution, retail, treatment, recycling and conservation services. Historically, over 90% of EBMUD's water comes from the Mokelumne River watershed. Other water sources include local watershed runoff and Central Valley Project (CVP) (Sacramento River).

The proposed annexation will have no effect on water usage, and will not lead to the construction of new or expansion of existing water facilities.

9. *Assessed Value, Tax Rates and Indebtedness:*

The area proposed for annexation is within tax rate area 66057. The assessed value for the annexation area is \$6,970,075 (2010-11 roll). The territory being annexed shall be liable for all authorized or existing taxes comparable to properties presently within the annexing agencies.

10. *Environmental Impact of the Proposal:*

With respect to the environmental review, LAFCO staff has reviewed the proposed SOI amendment and annexation, and has determined that the project is exempt from the California Environmental Quality Act (CEQA). The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing significant effect on the environment. While the annexation would have no effect on the physical environment, future road improvement work could be considered a "project" under CEQA and environmental review may be required at that time.

11. *Landowner Consent and Consent by Annexing Agency:*

According to County Elections, there are fewer than 12 registered voters in the area proposed for annexation. Thus, the area proposed for annexation is considered uninhabited.

The annexation application was filed by seven of the eight landowners, and indicates that less than 100% of the affected landowners voters have provided written consent to the annexation. Thus, the Commission's action is subject to notice, hearing, as well as conducting authority (protest), proceedings. All landowners and registered voters within the proposal area(s) and within 300 feet of the exterior boundaries of the area(s) have received notice of the July 13 hearing. If the Commission approves the annexation, a subsequent notice and protest hearing will follow. Authority to conduct the protest hearing has been delegated to the LAFCO Executive Officer.

12. *Boundaries and Lines of Assessment:*

The annexation area is within DCSD's SOI and contiguous to existing DCSD boundaries. All of the properties proposed for annexation extend to the centerline of Mt. Diablo Scenic Blvd. In September 2009, LAFCO completed the *Central County Subregional MSR* covering city and other municipal services. The MSR included a review of DCSD services and boundaries and provided SOI options and recommendations. One of the options was to expand the District's SOI. As noted in the MSR report, DCSD staff indicated that the District was considering expanding its SOI and service boundary to include the subject properties along Mt. Diablo Scenic Blvd, noting that this area contains a number of residences which have a community of interest with Diablo, as they have Diablo addresses, use the Diablo Post Office, and travel on Diablo roads; and that these residents could potentially benefit from services provided by DCSD.

13. *Environmental Justice:*

LAFCO is required to consider the extent to which proposals for changes of organization or reorganization will promote environmental justice. As defined by statute, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. The proposed annexation is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

#### ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted the Commission should consider taking one of the following options:

**Option 1** Approve the annexation to Diablo CSD as submitted to include 11± acres (eights parcels) as shown on the attached map (Attachment 1).

- A. Determine that the project is exempt pursuant to CEQA Guidelines, Section 15061(b)(3).
- B. Adopt this report and approve the proposal, to be known as *Mt. Diablo Scenic Blvd. Annexation to Diablo Community Services District* subject to the following terms and conditions:
  - 1. The territory being annexed shall be liable for the continuation of any authorized or existing special taxes, assessments and charges comparable to properties presently within the annexing agency.
  - 2. That the applicant has delivered an executed indemnification agreement providing for the applicant to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
- C. Find that the subject territory is uninhabited, and that less than 100% of the affected landowners have consented to the annexation.
- D. Designate the Contra Costa LAFCO as the conducting authority for the protest proceedings; the authority for which has been delegated to the LAFCO Executive Officer, who shall give notice and conduct a public hearing on the matter pursuant to the Government Code.

**Option 2** Adopt this report and DENY the proposal.

**Option 3** If the Commission needs more information, CONTINUE this matter to a future meeting.

#### RECOMMENDED ACTION:

**Approve Option 1.**

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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

**RESOLUTION NO. 11-03**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
MAKING DETERMINATIONS AND APPROVING  
MT. DIABLO SCENIC BLVD ANNEXATION  
TO DIABLO COMMUNITY SERVICES DISTRICT**

WHEREAS, the above-referenced proposal 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 the proposal; and

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental document or determination, Spheres of Influence and applicable General and Specific Plans; and

WHEREAS, information satisfactory to the Commission has been presented that no affected landowners/registered voters within the annexation area object to the proposal; and

WHEREAS, the Local Agency Formation Commission determines the proposal to be in the best interests of the affected area and the total organization of local governmental agencies within Contra Costa County;

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. That Commission determines the project is exempt from environmental review pursuant to CEQA Guidelines, Section 15061(b)(3).
2. Said annexation is hereby approved.
3. The subject proposal is assigned the distinctive short-form designation:

**MT. DIABLO SCENIC BLVD ANNEXATION TO DIABLO COMMUNITY  
SERVICES DISTRICT**

4. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Exhibit A, attached hereto and made a part hereof.
5. The subject territory shall be liable for any authorized or existing taxes, charges and assessments comparable to properties within the annexing agency.

Contra Costa LAFCO  
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6. That the applicant delivered an executed indemnification agreement between the applicant and Contra Costa LAFCO providing for the applicant to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
7. The territory proposed for annexation is uninhabited.
8. The proposal has less than 100% consent of affected landowners, and is subject to a conducting authority proceeding.
9. All subsequent proceedings in connection with this annexation shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

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PASSED AND ADOPTED THIS 13<sup>th</sup> day of July 2011, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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MICHAEL R. MCGILL, 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.*

Dated: July 13, 2011

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Lou Ann Texeira, Executive Officer

# LAFCO No. 11-03: Mt. Diablo Scenic Blvd. Annexation to Diablo Community Services District

