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December 12, 2012 (Agenda)

December 12, 2012  
 Agenda Item 7

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 beginning in April 2011; and the City and County have provided LAFCO with regular updates since then. The subcommittee last met regularly in October 2011. Since then, the parties have been engaged in the tax transfer negotiations, and other activities as previously reported to the Commission. On October 1, 2012, the subcommittee resumed meeting. Commissioners McGill and Meadows, along with LAFCO staff attended the subcommittee meeting.

At the LAFCO meeting on October 10<sup>th</sup>, City staff provided a summary of issues discussed at the subcommittee meeting. City staff reported on the status of revisions to the City’s CEQA document, new (higher) cost estimates associated with water/sewer infrastructure to Northeast Antioch, and the concept of a Joint Powers Agreement between the City and County for services to the annexation area. There was also discussion of Area 2B in light of the recent Attorney General Opinion relating to island annexations.

On October 31, the Commission adopted revisions to the Commission’s island annexation policy. The revised policy recognizes and harmonizes the existing statute with the recent Attorney General Opinion, and provides provisions relating to small islands. Currently, there are 16 small islands in Contra Costa County, to which the revised policy can be applied. During the October 31<sup>st</sup> meeting, City staff expressed concern with the policy, the supporting analysis, and the potential legal risk, particularly as it relates to Area 2B as discussed below.

Status of Northeast Antioch Reorganization

In August 2007, the City of Antioch submitted an application to LAFCO to annex a portion of Northeast Antioch (Area 1). The Area 1 annexation application remains incomplete and is missing several required

components including a map and legal description, final approved environmental documents, City Council resolution approving rezoning of the annexation area, and City and County resolutions approving property tax exchange. Until LAFCO receives these items, the application remains incomplete.

Since 2007, LAFCO has been involved in discussions with the City and County regarding the annexation of Northeast Antioch. In May 2012, LAFCO sent a letter to the City reiterating its desire that the City annex all of Northeast Antioch, including areas 2A and 2B, and encouraging the City to submit annexation applications for Areas 2A and 2B prior to January 1, 2014, which is when the streamlined annexation provisions are scheduled to sunset. Area 2B was previously identified by LAFCO staff as an island that meets the criteria for the streamlined annexation provisions pursuant to Government Code section 56375.3, as Area 2B is under 150 acres and is substantially surrounded (i.e., 93%) by the City of Antioch. Area 1 is not considered an island, and Area 2A is not currently an island, but would become an island if the City annexes Area 1.

On November 30, the City submitted an application to LAFCO to annex Area 2B. As noted in the City's cover letter (attached). This application is presently incomplete and is missing a final approved environmental document, a City Council resolution approving rezoning of the annexation area, City and County resolutions approving property tax exchange, LAFCO processing fees and other items. Until LAFCO receives these items, the application remains incomplete.

The City has not yet submitted an application to annex Area 2A.

The City has asked LAFCO to provide direction related to preparing and processing its Area 2B reorganization proposal, including whether an indemnification agreement (full, partial or none) will be required as part of the application. Issues the Commission may wish to consider when evaluating the extent to which indemnification is necessary or appropriate in this matter might include the following: (1) the Commission's standard indemnification requirement; (2) whether the City should be required to indemnify LAFCO for actions taken by the City as part of this process, such as environmental review and other City Council actions related to this matter; and (3) whether the Commission wishes to exclude certain actions taken by LAFCO from the indemnification requirements. For example, if the Commission were inclined to alter its standard indemnification language, one option would be for the Commission to carve out from the City's responsibility any liability that a court determines is attributable only to LAFCO's negligence.

#### RECOMMENDATION

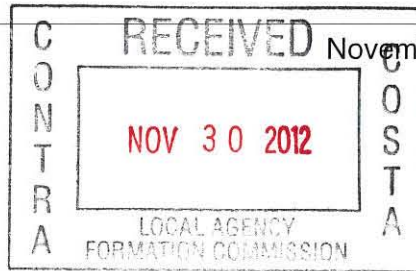
Receive the monthly update, consider the City's request, and provide further direction as appropriate.

Sincerely,

LOU ANN TEXEIRA  
EXECUTIVE OFFICER

Attachment – Area 2B Application Cover Letter from the City of Antioch

c: Distribution



Lou Ann Texeira, LAFCO Executive Director  
651 Pine Street, 6<sup>th</sup> Floor  
Martinez, CA 94553

Dear Lou Ann,

As you are aware, earlier this year LAFCO requested that the City of Antioch submit reorganization applications for what are referred to as Areas 2a and 2b of the Northeast Antioch Area. In June 2012, the Antioch City Council, in compliance with LAFCO's request, directed City staff to submit reorganization applications for Areas 2a and 2b. Soon after the City Council action, I contacted you and we discussed how to best package and submit the applications for these two areas in light of the fact that major components of LAFCO's submittal requirements had not yet been completed, and would not likely be completed for several months. Specifically, at the time of our discussion 1) the environmental document for the annexation was in the process of being comprehensively updated, 2) the rezoning for Area 2a and 2b had not been approved by the City Council, as action by the Council on the rezoning was dependant on the completion of the update to the environmental document, and 3) while progress had been made on the Tax Transfer Agreement between the City and the County, negotiations were still continuing due largely to significant changes in the infrastructure cost estimates, with the result that any action on this Tax Agreement by the Antioch City Council and the Board of Supervisors was likely several months away. The policy of LAFCO is that an annexation or reorganization application will not be considered to be complete, and therefore will not be processed, until all of the components of the application have been submitted as required.

Given the number of major outstanding components of the annexation applications for Area 2a and 2b, you indicated that your preference was that the City hold off on submitting the applications until such time as all the submittal prerequisites had been met, so that complete applications could be submitted. This was prudent advice at the time given that any applications materials submitted by the City would simply be stored at your office pending the receipt of the outstanding items. Also, if the completion of the application package took longer than expected (as has been all too often the case with this annexation process) then some of the submittal materials, such as property owner lists and registered voter lists, would run the risk of growing old, and out of date.

However, as a result of the issues that have arisen specifically about how Area 2b will be processed, it now appears to be appropriate to submit an incomplete reorganization application for Area 2b to try to get clarity on the issue of indemnity, as the requirement for an applicant to indemnify LAFCO is part of the LAFCO application process. The City has made it clear at past LAFCO hearings that the City will not indemnify LAFCO in the event that LAFCO waives the protest hearing process for Area 2b, with the result that Area 2b registered voters and property owners are not able to vote on the question of annexation to the City of Antioch. We are therefore requesting that LAFCO grant the City an indemnity waiver in the circumstance that LAFCO waives the protest hearing process for Area 2b. We are also requesting that this issue

of the indemnity waiver be placed on the upcoming December 12, 2012 LAFCO meeting, along with the issue of the procedures for processing the reorganization of Area 2b. While we realize that this request is only two weeks prior to the December 12 meeting, this issue of how to process the reorganization of Area 2b has been the subject of discussion at numerous recent LAFCO meetings. In the event additional discussion/analysis of this issue of indemnity is warranted beyond the December 12, 2012 meeting, then at least we will have had the benefit of exploring and discussing the issue with LAFCO at the December 12, 2012 meeting.

Let me know if you have any comments or questions concerning the submittal and this request.

Sincerely,

  
Victor Carniglia  
Consultant for the City of Antioch

Cc Jim Jakel, City Manager  
Lynn Tracy Nerland, City Attorney  
Dan DoPorto, Consulting Attorney  
Wade Harper, Mayor Elect  
Gary Agopian, City Council Member  
Mary Rocha, City Council Member