

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

July 13, 2016 (Agenda)

July 13, 2016  
Agenda Item 8

LAFCO 16-09      City of Martinez - Out of Agency Service Request (Sierra Avenue)

## SYNOPSIS

This is a request by the City of Martinez to provide municipal water service outside its jurisdictional boundary to one parcel located on Sierra Avenue in the unincorporated Mt. View area. The parcel (APN 375-253-002) is 0.12± acre (see Attachment 1). The lot currently contains a two-car garage, which is proposed for demolition to allow for future construction of a single family home. The parcel is part of a subdivision – entitled “Martinez Land Company Tract No. 6” – recorded in 1916. The property owners have applied to the County for a small lot design review; once granted, they can formally submit for a building permit. The property owners are currently preparing their building permit plans.

The property is zoned R-6 (single family, 6,000 sf minimum lot size) and the County’s General Plan designation is SH (single family residential – high). The City’s pre-zoning designation is comparable. The subject parcel is located within the City of Martinez sphere of influence (SOI) and within the City’s Urban Limit Line. Surrounding uses include single family residential to the north, south, east and west.

According to the City’s application, it is currently providing water service to the entire neighborhood surrounding the subject property. The area is also within the Mt. View Sanitary District service boundary.

## 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 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.

Out of Agency Service Request by City of Martinez and Background – As noted in both the 2014 and 2008 *Water/Wastewater* and the 2009 *Central County Sub-regional* LAFCO Municipal Service Reviews (MSRs), the City is providing water services beyond its corporate limits to 1,500± water connections. The LAFCO MSRs recommend that the City of Martinez annex areas receiving city services, as appropriate. The MSRs noted that the 1,500 water connections serve residents who do not have representation in terms of electing the Martinez City Council and governance issues. However, City staff notes that those residents who receive out of agency water service have the right to address the City Council regarding policy decisions. Further, they have equal rights under Proposition 218 to protest water rate increases such as the recently repealed drought “Temporary Pricing Adjustment.”

In the past five years, the City of Martinez initiated two annexation proposals. In 2011, the City submitted an application to annex 393± acres (139 parcels) in the Alhambra Valley. In response to community input and the City's request, LAFCO approved a reduced boundary comprised of 316± acres (104 parcels). The City expressed its ongoing commitment to annex Alhambra Valley; and subsequently, the City Council adopted two resolutions reaffirming its pledge to annex the Alhambra Valley in the future. Also, in 2011, the City submitted a proposal to annex the North Pacheco area. LAFCO approved the annexation; however, the voters rejected it.

In 2014, the City embarked on an updated fiscal analysis to study the potential annexation of several areas including North Pacheco (split into two separate study areas – A and B), Mt. View and Vine Hill/Arthur Road. City staff reports that the only area that showed a net positive was the portion of North Pacheco running north-south along Pacheco Blvd (Area A). The draft fiscal report was presented to the City Council subcommittee and to the City Manager and Assistant City Manager, but has not been presented to the City Council. According to City staff, the matter is currently on the back burner.

The law permits LAFCO to authorize the City to extend services outside its jurisdictional boundary in specific situations as described above. There is no public health/safety threat on the subject property. However, the City has taken actions to support the future annexation of this property, including rezoning the area, requiring the property owner(s) to sign and record a deferred annexation agreement, and completion of a study to assess the fiscal impacts of annexation of this and other unincorporated areas.

Conversely, the City's application for out of agency service indicates that annexation of this lot is not feasible at this time. Further, according to City staff, the 2014 fiscal study concluded that annexation of the Mt. View area is not fiscally viable.

While the City has taken some action in furtherance of future annexation of this property as noted above, the outcome of the 2014 fiscal study and apparent lack of interest by the City to annex this area, calls into question the likelihood of future annexation of this property.

In 2014, LAFCO staff advised City staff and the property owners of three options for water service on this property: 1) well water, 2) the property owners or the City could apply to LAFCO to annex the property to City as the parcel is contiguous to the City boundary, and 3) the City could apply on the property owners' behalf for out-of-agency water services provided the City has taken some definitive action that it will pursue annexation of this property in the future.

Consistency with LAFCO Policies – Contra Costa LAFCO's policies (Attachment 2) are consistent with Government Code §56133, in that out of agency service can be extended either in response to a threat to the health and safety of the public (e.g., failed septic system, contaminated or dry well, etc.), or in anticipation of annexation.

In addition, the LAFCO policies contain the following provisions which are relevant to this proposal:

3) *Objective – Out of agency service is generally not intended to support new development.*

The out of agency service request is intended to serve development of one new single family residence.

4) *Out of Agency Service Policies: General Statements*

- a) *Annexation to cities and special districts involving territory located within the affected agency's SOI is generally preferred to out of agency service.*
- b) *LAFCO will consider applicable MSRs and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations.*  
The previous LAFCO MSRs recommended annexing properties that are receiving, or will require, City water service, as appropriate.

#### 5) *Form of Request*

##### *Request in Anticipation of Annexation*

*An out of agency service application must be accompanied by a change of organization or reorganization application, including an approved tax sharing agreement, in order for LAFCO to determine that the out of agency service is in anticipation of a change of organization (i.e., annexation) within the next 12 months. This dual application requirement may be waived in certain situations by the Commission if compelling justification is provided. Circumstances which may warrant such a waiver include, but are not limited to, the following:*

- *Lack of contiguity (e.g., city boundary) when the project was approved prior to 2011*
- *Service is only needed to serve a portion of a larger parcel, and annexation of the entire parcel is not desirable*
- *Other circumstances which are consistent with LAFCO statute and the policies of Contra Costa LAFCO*

*If immediate annexation (i.e., within 12 months) is not a feasible alternative, then the extension of services may be approved in anticipation of a later annexation if the agency provides LAFCO with a resolution of intent to annex, as well as appropriate assurances (e.g., rezoning, plan for annexation, deferred annexation agreement, etc.) which demonstrate that out of agency service is an intermediate steps toward eventual annexation.*

Given the subject property is contiguous to the City boundary and the City has not adopted a plan for annexation or a resolution of intent to annex this area in the foreseeable future, it appears that an application for annexation of this property is needed.

**Water Supply to the Subject Property** – The subject property is located in the Mt. View area, which is mostly developed and characterized by primarily residential with some commercial, industrial and public uses. Most of the developed properties in the Mt. View area receive water service through the City of Martinez.

The City indicates that it has adequate water to serve the subject property. According to the City, water service could be provided to the parcel from the City's existing 6-inch water main on Sierra Avenue. Infrastructure includes 20 linear feet of 1-inch diameter pipe, a water meter and a backflow prevention device. The service line will be used for domestic and fire supply.

The property owner is 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 City of Martinez found the project exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15303, and has filed a Notice

of Exemption. The LAFCO Environmental Coordinator has reviewed this document and finds it adequate for LAFCO purposes.

Request for Waiver of LAFCO Processing Fee – Should the Commission condition approval of the out of agency service request on the landowner submitting an annexation application, Tambri Heyden, property owner, has submitted a letter requesting that the Commission consider waiving the LAFCO fee associated with processing the annexation application (Attachment 3). Ms. Heyden indicates in her letter that it has been a lengthy and frustrating process. Further, Ms. Heyden notes that a small, single family home should not be burdened with having to pay two LAFCO application fees (i.e., out of agency service and annexation) instead of typically just one, due to the back burner status of the City's annexation fiscal study. The property owners have paid LAFCO's out of agency service fee of \$3,400. The LAFCO annexation processing fee for this type of proposal is \$3,915. An annexation application also requires preparation of a map and legal description and filing with the County Clerk and State Board of Equalization. There are additional costs and fees associated with these actions, which are not under the jurisdiction of LAFCO.

Government Code §56383 provides that the Commission may establish a schedule of fees and service charges for LAFCO proceedings. The statute also provides that *the Commission may reduce or waive a fee, service charge, or deposit if it finds that payment would be detrimental to the public interest. The reduction or waiver of any fee, service charge, or deposit is limited to the costs incurred by the commission in the proceedings of an application.*

Since 2005, the Commission has waived one proposal fee in conjunction with a similar proposal whereby the Commission approved an out of agency service request (City of Concord) conditioned on receipt of a corresponding annexation application. The previous applicant (landowner) requested a fee waiver due to financial hardship, which the Commission granted.

Reduction or waiver of the LAFCO fee is a policy issue to be determined by the Commission in accordance with the statute and local LAFCO policy.

## **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 with or without amendments, wholly, partially, or conditionally, or deny 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 the project is exempt pursuant to section 15303 of the CEQA Guidelines, consistent with the determinations of the City of Martinez.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to APN 375-054-014 located on Sierra Avenue in unincorporated Contra Costa County subject to the following terms and conditions:
  - 1. Water infrastructure and service is limited to one proposed single family dwelling unit,
  - 2. The City of Martinez has delivered to LAFCO an executed deferred annexation agreement (DAA), and the DAA was 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,

3. 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
4. An application to annex the subject parcel to the City of Martinez is submitted to LAFCO by January 13, 2017.

**Option 2**      **Approve** the out of agency service request with the following terms and conditions.

- A. Find that the project is exempt pursuant to section 15303 of the CEQA Guidelines, consistent with the determinations of the City of Martinez.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to APN 375-054-014 located on Sierra Avenue in unincorporated Contra Costa County subject to the following terms and conditions:
  1. Water infrastructure and service is limited to one proposed single family dwelling unit,
  2. The City of Martinez has delivered to LAFCO an executed and recorded deferred annexation agreement that runs with the land and binds future property owners, and
  3. 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 3**      **Deny** the request, thereby prohibiting the City of Martinez from providing water service to the project site.

**Option 4**      **Continue** this matter to a future meeting in order to obtain more information.

**RECOMMENDATION**

**Option 1 – Approve out of agency service request** with conditions including that a corresponding annexation application be submitted to LAFCO within six months.

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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LAFCO

**Attachments**

1. Map of Project Site
  2. LAFCO Policies for Out of Agency Service Agreements
  3. Letter from Tambri Heyden, Property Owner
  4. LAFCO Resolution 16-09
- c:      Tim Tucker, City of Martinez  
         Tambri Heyden and David Montalbo, Property Owners

# LAFCO No.16-09 City of Martinez Out of Agency Service (375-054-014)



## 2.1. **POLICIES AND STANDARDS**

### J. Policies for Out of Agency Service Agreements

#### 1) Introduction:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) requires a city or special district to obtain written approval from LAFCO prior to providing new or extended service outside its jurisdictional boundary, with certain exceptions (Gov. Code §56133). This section of the CKH sets forth a two-pronged test or criteria under which requests for out of agency services may be approved: either in response to an existing or impending threat to the health or safety of the public, or in anticipation of a later change in organization (i.e., annexation) for areas within the subject agency's sphere of influence (SOI). Specific procedures for submitting an out of agency service application can be found in Contra Costa LAFCO's Commissioner Handbook, section 3.15 Provision of Services by Contract.

#### 2) Purpose:

The purpose of these policies is to guide the Commission in reviewing city and district requests to provide new or extended services by agreement outside their jurisdictional boundaries. This includes establishing policies and procedures to ensure that the application meets one of the two criteria under which approval may be granted, and to ensure consistency with respect to form, review and consideration of requests.

#### 3) Objective:

The objective of these policies is to ensure that the extension of services by cities and districts outside their jurisdictional boundaries is logical and consistent with supporting orderly growth and development in Contra Costa County. Out of agency service is generally not intended to support new development.

#### 4) Out of Agency Service Policies: General Statements

- a) Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is generally preferred to out of agency service.
- b) LAFCO will consider applicable Municipal Service Reviews (MSRs) and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations.
- c) Requests for out of agency service agreements are subject to the applicable provisions of the California Environmental Quality Act (CEQA).
- d) Commission approval is not required for cities or districts to provide new or extended services outside their jurisdictional boundaries if any of the exemptions apply in accordance with §56133(e) – see Section 3.15 for exceptions. The Commission encourages cities and districts to work with the Executive Officer in determining when the statutory exemptions may apply.

#### 5) Form of Request:

##### a) All Requests

Requests to authorize out of agency service shall be filed with the Executive Officer by the affected city or district. The application shall be signed by an authorized representative of the city or district. Requests shall be made in writing with a completed LAFCO application, payment in the amount prescribed under the Commission's adopted fee schedule, appropriate environmental document, proposed service agreement, and an executed and recorded deferred annexation agreement (DAA) and waiver of property owner protest rights. The recorded DAA shall run with the land and be binding on all future owners of the property. An indemnification agreement will be required with each application.

All requests for out of agency service are subject to the applicable provisions of CEQA.

##### b) Requests Due to Health or Safety Emergency

The Commission may authorize a city or district to provide new or extended services outside their jurisdictional boundary and outside or inside their SOI in response to an existing or impending threat to public health or safety (“emergency” – e.g., failing well or septic system) with documentation from the County Environmental Health Division, and in accordance with §56133(c) and LAFCO procedures. If LAFCO approves an emergency out of agency service request, and the city or district fails to initiate the provision of services within six months of the Commission’s approval, the out of agency service approval shall expire, unless otherwise specified by LAFCO.

The Commission authorizes the LAFCO Executive Officer, in consultation with the Chair or Vice Chair, to approve a city’s or district’s request for out of agency service if there is an existing or impending public health or safety emergency, as documented by the County Environmental Health Division. The Executive Officer shall report to the Commission on his or her administrative approval of any emergency out of agency service agreements at the next regularly scheduled LAFCO meeting. Such administrative approval can be made if the following criteria are met:

- The property is currently developed
- The lack of service being requested constitutes an *immediate* (i.e., approval needed within two months) health and safety concern as documented by County Environmental Health
- There are physical restrictions on the property that prohibit a conventional service delivery method (i.e., septic tank, private well, etc.)

c) Requests in Anticipation of Annexation

An out of agency service application must be accompanied by a change of organization or reorganization application, including an approved tax sharing agreement, in order for LAFCO to determine that the out of agency service is in anticipation of a change of organization (i.e., annexation) within the next 12 months. This dual application requirement may be waived in certain situations by the Commission if compelling justification is provided. Circumstances which may warrant such a waiver include, but are not limited to, the following:

- Lack of contiguity (e.g., city boundary) when the project was approved prior to 2011
- Service is only needed to serve a portion of a larger parcel, and annexation of the entire parcel is not desirable
- Other circumstances which are consistent with LAFCO statute and the policies of Contra Costa LAFCO

If immediate annexation (i.e., within 12 months) is not a feasible alternative, then the extension of services may be approved in anticipation of a later annexation if the agency provides LAFCO with a resolution of intent to annex, as well as appropriate assurances (e.g., rezoning, plan for annexation, deferred annexation agreement, etc.) which demonstrate that out of agency service is an intermediate steps toward eventual annexation.

6) Review of Request

The Executive Officer shall review the request in accordance with CKH and LAFCO’s policies and procedures.

7) Consideration of Request

Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation. The Executive Officer will present his or her report and recommendation at a public



hearing for Commission consideration in accordance with CKH and LAFCO's policies and procedures. The Executive Officer's written report will be made available to the public for review prior to the scheduled hearing and include an evaluation of the following factors:

- a) The ability of the applicant to extend the subject service to the affected land without adversely affecting current service levels within the existing service boundary.
- b) If the request is to address a health or safety emergency, whether the documentation satisfactorily demonstrates compliance with CKH and LAFCO policies and procedures.
- c) If the request is in anticipation of future annexation, whether the application provides adequate assurances in furtherance of a future annexation.
- d) The application's consistency with the policies and general plans of affected local agencies.
- e) The application's effect on growth and development within and adjacent to the affected land; and whether the out of agency service extension will contribute to premature development of fringe areas or development in areas designated for non-urban uses.
- f) Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

The Commission and the Executive Officer, as authorized by the Commission, may approve the request for out of agency service with or without conditions, or may deny the request. Unless otherwise specified in the LAFCO resolution of approval, out of agency service is allowed for the subject application only, and any future extension or expansion of service is subject to LAFCO's approval.

If the request to provide out of agency service is approved or denied, the applicant may request reconsideration within 30 days citing the reasons for reconsideration.

1731 First Avenue  
Martinez, CA 94597  
June 20, 2016

Ms. LouAnn Texeira, Contra Costa LAFCO Executive Officer  
651 Pine Street, 6<sup>th</sup> Floor  
Martinez, CA 94553

RE: Out-of-Agency Water Service Application - infill parcel on Sierra Avenue,  
Martinez

Dear Ms. Texeira,

Thank you for meeting with us and the City of Martinez to discuss the issues and solutions to the out-of-agency water service application submitted by the City of Martinez, on our behalf as the property owners of the remaining infill parcel on Sierra Avenue, Martinez. My husband and I are very distressed by the news that the water service application might not be approved to allow Martinez's issuance of a "will serve" water utility letter, given our parcel is contiguous to the City of Martinez boundary, therefore requiring annexation under state law. To verify availability of water utilities to our parcel at time of construction, a "will serve" letter is required for our Contra Costa County, single family home building permit application.

For more than two years, as advised by you during an initial phone call back in January 2014, I have repeatedly followed up with the City of Martinez Finance Department and Community Development Department staff as to the status of their annexing the Mountain View area in which our parcel is located. So as not to be caught between the opposing interests of LAFCO and the City of Martinez, we waited for the completion and outcome of Martinez's fiscal analysis of potential annexation areas, including the Mountain View area in which our parcel is located. We had requested to receive a copy of the consultant's annexation fiscal impact report, annexation subcommittee agenda so that we could attend the meeting and notification of when the Martinez City Council would hear this report presentation.

Numerous City obstacles and delays occurred in the timeline of these action steps and only through vigilant contact did we receive definitive information in January of this year that the report was not forwarded to the Council given its recommendations and that the City of Martinez had no interest in annexing the Mountain View area at this time. Upon hearing this, I requested that the City contact LAFCO to advise them of its lack of interest in annexing so that we could proceed with an out-of-agency service application and move forward with the building permit process. We were unaware that LAFCO staff, at that time, relayed to the City of Martinez that a LAFCO approval of an out-of-agency water

1731 First Avenue  
Martinez, CA 94597  
June 20, 2016

service application would not meet state regulations. Therefore, we proceeded to apply to the City of Martinez for out-of-agency water service, attaching a deferred annexation agreement. If we had been advised of LAFCO's position, we would have submitted an application directly to LAFCO, so as not to subject ourselves to the additional cost and processing time of the out-of-agency service application.

Ms. Teixeira has been very sensitive to the time and cost of the delays, thus far, and our desire to complete the building permit, construction, inspection and certificate of occupancy processes in the County, prior to being annexed into the City of Martinez. In light of this, she has offered several possible solutions to allow the out-of-agency water service application to move forward to the LAFCO Board with a recommendation for approval or approval with conditions. If the LAFCO Board's position is that our parcel must be annexed within a definite time period, requiring us to incur another application fee, we would request consideration of an annexation application fee waiver. We look forward to the opportunity to discuss this further with you.

Regards,

  
Tambri Heyden

**RESOLUTION NO. 16-09****RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
AUTHORIZING THE CITY OF MARTINEZ TO PROVIDE OUT-OF-AGENCY WATER SERVICE  
TO APN 375-054-014 (SIERRA AVENUE)**

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 properties in anticipation of a future annexation; and

WHEREAS, the City of Martinez and the property owners 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. Find that the project is exempt pursuant to section 15303 of the CEQA Guidelines, consistent with the determination of the City of Martinez.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to APN 375-054-014, located on Sierra Avenue in unincorporated Contra Costa County subject to the following terms and conditions:
  - 1. Water infrastructure and service is limited to one single family dwelling unit on the parcel,
  - 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,
  - 3. The City of Martinez and the property owner(s) have signed the deferred annexation agreement (DAA), and the DAA was 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, and
  - 4. An application to annex the subject parcel to the City of Martinez, along with the applicable annexation fees, be submitted to LAFCO by January 13, 2017.
- 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 July 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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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: July 13, 2016

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Lou Ann Texeira, Executive Officer