

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

January 13, 2021 (Agenda)

January 13, 2021
Agenda Item 8

LAFCO 20-08

City of Martinez - Out of Agency Service Request (Bay's Edge Subdivision 9065)

SYNOPSIS

This is a request by the City of Martinez to provide municipal water service outside its jurisdictional boundary to two parcels (APNs 375-311-001/-003) totaling 1.47+ acres. The subject area is located at 3128 Sycamore Street in unincorporated Martinez (Mt. View area). (See Map - Exhibit A).

The subject property is currently vacant. The project proponent obtained approval from the County for a tentative subdivision map and subdivision plan allowing for construction of 30 two-story attached townhomes. The 30 units will increase the County's housing stock in accord with General Plan policy.

The County's General Plan designation for the parcels is Multiple Family Residential – High Density (MH), and the zoning is Multiple Family Residential – maximum 29 units per acre (M-29). The subject parcel is located within the City of Martinez's sphere of influence (SOI) and within the City's Urban Limit Line. The subject area is surrounded by residential to the north, south and west, and light industrial to east.

As discussed below, the out of agency service (OAS) request is inconsistent with LAFCO statutes and local policies as there is no existing or impending public health or safety threat, and the project site is adjacent to the City limits and proposes new development. For these reasons, approval of the OAS request should be conditioned on an annexation application being submitted within a specified timeframe.

DISCUSSION

Statutory Framework – Out of Agency Service (OAS) - The Government Code and local LAFCO policies regulate the extension of out of agency service. Government Code (GC) §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.

LAFCO's Out of Agency Service Policies - The Commission's 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, in unique situations, for example in response to an existing or impending public health and safety threat (e.g., failing septic system or contaminated well), or in anticipation of a future annexation, out of agency service may be considered as a temporary measure.

LAFCO policies contain provisions relevant to this proposal including the following excerpts:

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

This out of agency service request is intended to serve development of 30 townhomes.

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

- *Annexation to cities and special districts involving territory located within the affected agency's SOI is generally preferred to out of agency service.*

The subject area is within the City's SOI and is contiguous to the City boundary.

- *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. The City has committed to the future annexation of several areas including the Mt. View area.

- *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 step toward eventual annexation.*

In the past 10 years, the City of Martinez attempted to annex North Pacheco, which was rejected by the voters. The City also successfully annexed a portion of Alhambra Valley. Further, the Martinez City Council adopted resolutions stating the City's intent to pursue annexation of the Alhambra Valley area by 2020, and annexation of the Pacheco Boulevard corridor including the Mt. View area by 2030.

In March 2020, the City retained a consulting firm (RSG) to provide a fiscal analysis of annexation of those areas within the City's SOI (i.e., Alhambra Valley, Mt. View, North Pacheco, Vine Hill, and PBF Energy – formerly Shell refinery). The study concludes that annexation of these areas is not financially viable for the City. The study is available on the City's website at:

https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/750184/Martinez_Annexation_Study_Final_Draft_11.12.2020.pdf.

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.

The City has obtained and recorded a DAA on the subject parcels.

c) 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*

The subject area is contiguous to the City boundary.

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., plan for annexation,

deferred annexation agreement, etc.), which demonstrate that out of agency service is an intermediate step toward eventual annexation.

Given the subject property is contiguous to the City boundary, annexation of this property is possible. The City's preference is to pursue annexation of the Mt. View and other areas in the future.

City's Prior and Future Commitment to Annexations - As noted in LAFCO's previous Municipal Service Reviews (MSRs), the City is providing water services beyond its corporate limits to over 1,500 water connections. Since 2012, the City has submitted 18 OAS applications to LAFCO, most of which have been in the Alhambra Valley, Mountain View and Pacheco areas. The LAFCO MSRs recommend that the City of Martinez annex areas receiving city services, as appropriate.

In response to LAFCO's concerns regarding the use of OAS, the Martinez City Council has taken various actions demonstrating its commitment to annexation of these areas a summarized below.

- In 2012, the City successfully annexed a portion of the Alhambra Valley, and attempted to annex North Pacheco; however, the annexation was rejected by the voters.
- The City Council adopted resolutions stating the City's intent to pursue annexation of the Alhambra Valley area by 2020, and annexation of the Pacheco Boulevard corridor including the Mt. View area by the year 2030.
- In June 2019, the City provided LAFCO with an update indicating that the City Council identified annexations as one of its top five goals over the next two years, and within the next year will explore an annexation study for the Mt. View/Pacheco Corridor and the Alhambra Valley areas.
- On October 23, 2019, the Martinez City Council hosted a community workshop to discuss annexation of the Alhambra Valley, Mountain View, North Pacheco, and Vine Hill areas. The City Council agreed to move forward with an annexation study.
- As noted above, the City recently retained RSG to provide a fiscal analysis of annexation of those areas within the City's SOI.

Water Supply to the Subject Property – The subject property is in the Mt. View area, which is characterized by high density single family residential use. The Mt. View area is partially served with water service through the City of Martinez and receives sewer service through the Mt. View Sanitary District.

As noted in the City's application, the infrastructure needed to serve the project includes approximately 600 linear feet of 8-inch water main for domestic and fire use. Each of the lots will have a separate water system consisting of a one-inch lateral pipe, a one-inch water meter, and a backflow device. All required construction costs will be borne by the property owner(s). The demand for water is approximately 5.08 acre feet per year for both indoor and outdoor use. The City indicates it has adequate water to serve the subject property.

Environmental Review – In 2006, Contra Costa County, as Lead Agency, prepared and approved an Initial Study/Mitigated Negative Declaration (IS/MND) in conjunction with the proposed development project pursuant to the California Environmental Quality Act (CEQA), which is adequate for LAFCO purposes (available through the LAFCO office). The MND identified potentially significant effects (i.e., Air Quality, Biological Resources, Geology/Soils, Hydrology and Noise). 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 domestic water service to the project area will be provided by the City of Martinez. 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 water service, prior to the County issuance of the building permit.

In 2020, the County prepared an Addendum to the 2006 IS/MND. The Addendum addresses issues not previously covered in the IS/MND including identifying LAFCO as a Responsible Agency pursuant to CEQA, discussing the need for OAS, the deferred annexation agreement and/or annexation, and approval by LAFCO to allow for municipal water service by the City of Martinez.

Comments from Affected Agencies/Other Interested Parties:

On January 5, 2021, LAFCO received a letter from the landowner representative, a copy of which is attached (Attachment 2).

CONSISTENCY ANALYSIS

As noted above, this application for OAS is inconsistent with the following LAFCO OAS policies as recapped below:

- *Policy: OAS is generally not intended to support new development.*

This OAS request is intended to serve development of 30 townhomes.

- *Policy: Annexation to cities and special districts involving territory located within the affected agency's SOI is generally preferred to out of agency service.*

The subject area is within the City's SOI.

- *Policy: LAFCO will consider applicable MSRs and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations. 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.

- *Policy: 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.*

No annexation application was included with the OAS application. The Commission should condition approval of the OAS application on an application being submitted within 12 months.

- *Policy: 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*

The subject area is contiguous to the City boundary.

- *Policy: 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., plan for*

annexation, deferred annexation agreement, etc.), which demonstrate that out of agency service is an intermediate step toward eventual annexation.

In the past 10 years, the City of Martinez has made some efforts to annexation some of the areas within its SOI. In 2011, the City attempted to annex North Pacheco, which was rejected by the voters. Also, in 2011, the City successfully annexed a portion of Alhambra Valley.

Further, the Martinez City Council adopted resolutions stating the City's intent to pursue annexation of the Alhambra Valley area by 2020, and annexation of the Pacheco Boulevard corridor including the Mt. View area by 2030.

As noted in the LAFCO MSRs, the cities of Concord (wastewater) and Martinez (water) have a history of OAS service extensions.

The Commission recently approved two OAS applications submitted by the City of Concord. Both applications involve property that is contiguous to the City boundary. With both applications, the Commission conditioned the extension of OAS on an annexation application being filed with LAFCO with 12 months. The developer has complied with these conditions. The most recent LAFCO OAS approval was in August 2020 and included the following condition:

Wastewater service is conditioned on a commitment from the developer to submit to LAFCO an application to annex the subject parcel to the City of Concord, along with the applicable annexation fees, by August 11, 2021, which will include a commitment that in no event will any home be sold on the property before a complete annexation application has been submitted to Contra Costa LAFCO.

ALTERNATIVES FOR COMMISSION ACTION

The following options are presented for the Commission's consideration. If the Commission is inclined to approve the OAS request, the Commission should consider adding a condition like the one applied to the City of Concord application as noted in Option 1 (#4) below.

Option 1 **Approve** the out of agency service request and attached Resolution 20-08 conditioned on the following:

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Initial Study/Mitigated Negative Declaration and Addendum prepared and approved by Contra Costa County.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to 1.47± acres (APNs 375-311-001 and -003) located at 3128 Sycamore Street in unincorporated Contra Costa County (Mt. View area) subject to the following terms and conditions:
 - 1. Water infrastructure and service is limited to the proposed 30 townhomes, and
 - 2. The City of Martinez has delivered to LAFCO an executed and recorded deferred annexation agreement, 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, and
 - 4. Water service is conditioned on a commitment from the developer to submit to LAFCO an application to annex the subject parcels to the City of Martinez, along with the applicable annexation fees, by January 12, 2022, which includes a commitment that in no event will any home be sold on the property before a complete annexation application has been submitted to Contra Costa LAFCO.

Option 2 **Approve** the out of agency service request and attached Resolution 20-08 conditioned on the following:

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Initial Study/Mitigated Negative Declaration prepared and Addendum approved by Contra Costa County.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to 1.47± acres (APNs 375-311-001 and -003) located at 3128 Sycamore Street in unincorporated Contra Costa County (Mt. View area) subject to the following terms and conditions:
 - 1. Water infrastructure and service is limited to the proposed 30 townhomes, and
 - 2. The City of Martinez has delivered to LAFCO an executed and recorded deferred annexation agreement, 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 subject parcels absent annexation.

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

RECOMMENDATION

Option 1


LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LAFCO

Exhibit

- A. Map of Property (APNs 375-311-001 and -003)

Attachments

- 1. LAFCO Resolution 20-08
 - 2. Letter dated January 5, 2021 from Wilson F. Wendt, Landowner Representative
- c: Khalil Yowakim, City of Martinez
 Victoria Walker, City of Martinez
 Lambert Chee, LC Martinez Properties, LLC
 Wilson F. Wendt, Miller, Starr Regalia
 Jennifer Cruz, Contra Costa County

RESOLUTION NO. 20-08

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING THE CITY OF MARTINEZ TO PROVIDE
OUT-OF-AGENCY WATER SERVICE TO APNs 375-311-001 and -003 (BAY'S EDGE)**

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 California Government Code); and

WHEREAS, at the time and in the manner required by law the Executive Officer gave 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. As a Responsible Agency under CEQA, the Commission has considered the information contained in the Mitigated Negative Declaration/Initial Study and Addendum as prepared and certified by Contra Costa County.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to APNs 375-311-001 and -003 (Bay's Edge Subdivision 9065) located in unincorporated Contra Costa County subject to the following terms and conditions:
 - 1. Water infrastructure and service is limited to 30 townhomes on the subject 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, and
 - 3. The City of Martinez and the property owner have signed a deferred annexation agreement (DAA), and the DAA was recorded as prescribed by law and run with the land so that future landowners have constructive notice that their property is encumbered by the DAA, and
 - 4. Water service is conditioned on a commitment from the developer to submit to LAFCO an application to annex the subject parcels to the City of Martinez, along with the applicable annexation fees, by January 12, 2022, which includes a commitment that in no event will any home be sold on the property before a complete annexation application has been submitted to Contra Costa LAFCO.
- 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 THIS 13th day of January 2021, by the following vote:

AYES:

NOES:
ABSENT:
ABSTAIN:

CHAIR, CONTRA COSTA LAFCO

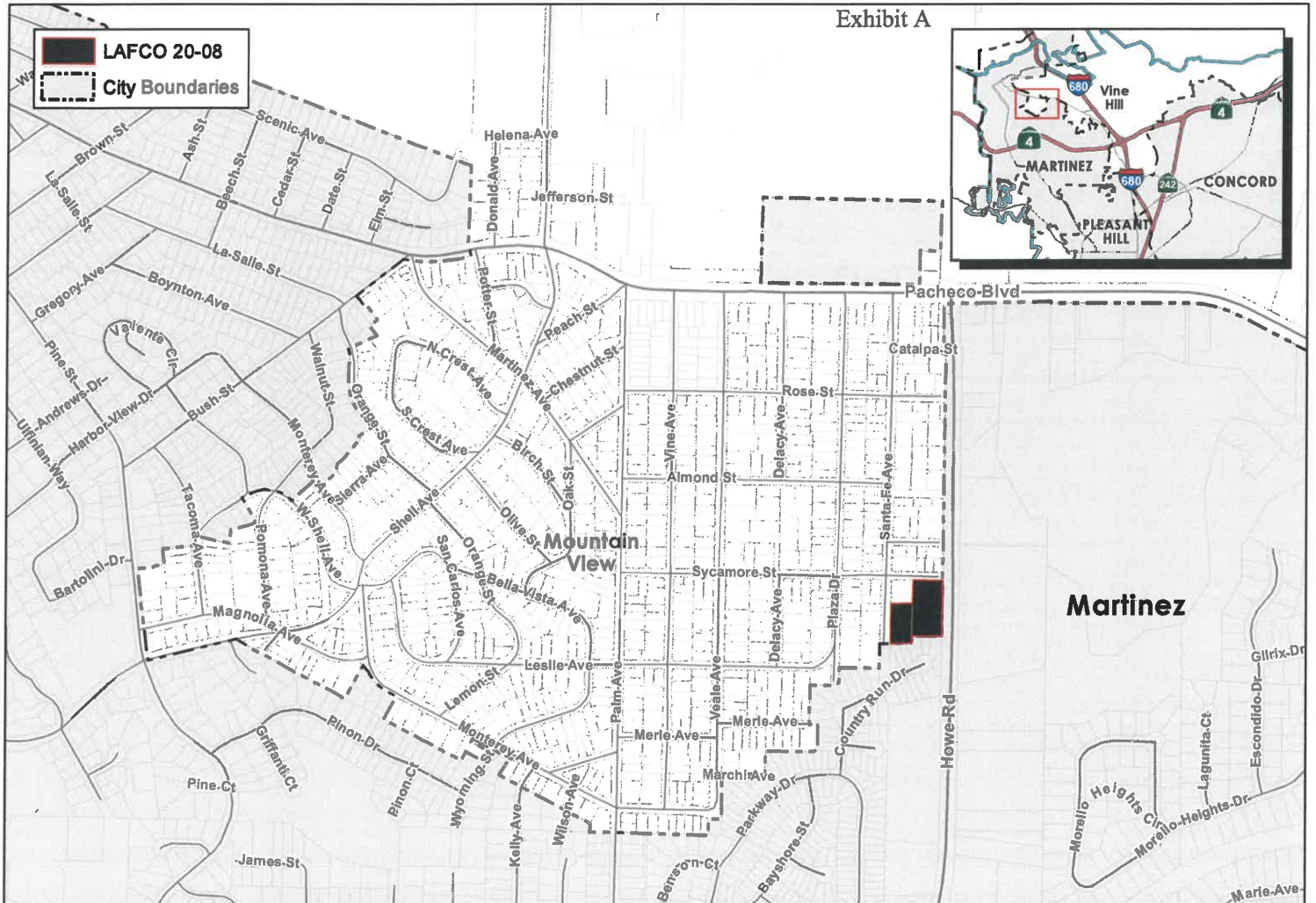
I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated above.

Dated: January 13, 2021

Lou Ann Texeira, Executive Officer

LAFCO No.20-08 City of Martinez Out of Agency Service (Bay's Edge, Subdivision 9065)

Exhibit A



Map created 12/07/2020
by Contra Costa County Department of
Conservation and Development, GIS Group
30 Main Road, Martinez, CA 94553
37:58:41.761N 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.

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January 5, 2021

VIA E-MAIL

Contra Costa County – Local Agency
Formation Commission
44 Muir Road, 1st Floor
Martinez, CA 94553
Attn: Lou Ann Texeira, Executive Director
Email: LouAnn.Teixeira@lafco.cccounty.us

Re: City of Martinez – Out of Agency Service Request
(Bay's Edge Subdivision 9065)

Honorable Commission Chairperson and Members:

Our office represent L.C. Martinez Properties LLC ("Owner"), the owner of approximately 1.5 acres of vacant property in Contra Costa County, ("County") adjacent to the City of Martinez ("City"). In 2006, a tentative map for the 30-unit Bay's Edge Townhome Subdivision (the "Project") was approved by the County with a condition that water service be provided by the City through an out of agency service agreement ("OSA") and that the Project either be: (1) annexed to the City; or (2) a deferred annexation agreement be executed and recorded by the Owner. At that time neither the County, the City nor the Owner was aware that such an OSA required LAFCO approval. It did; and, for that reason, this request is on your January 13 agenda, over fourteen years from tentative map approval. The tentative map has been extended for as long as legally permitted and now expires in 2022.

Initially, let me stress that any actions you take will not set a troublesome precedent. This situation is a "perfect storm" of absolutely unique land use and municipal organization issues. We are respectfully asking you to adopt Option 2 set out in your staff report and approve the OSA without requiring the Owner to submit an application for annexation within 12 months; but, instead rely on the commitment of the City to attempt to annex all of the Mt. View area within two years.

A. The "Perfect Storm": The Project was approved in 2006 by the County. The final map has never been recorded given the doleful economic conditions following the 2008 crash. The Project will provide thirty units of desperately needed housing and the only water physically available is from the City.

1. The Final Map Must Be Approved And Recorded By The County: Over a year ago (when the Owner belatedly discovered LAFCO approval necessary for the OSA), we discussed with the City the annexation of the Project before final map approval. That is impossible. The California Government Code provides if property subject to an approved tentative map is annexed into a city prior to final map approval, then it must conform to all city standards. The Project does not comply with a number of city standards and would have to be completely redesigned.

However, the same Government Code section provides if the Project is amended after final map approval, then the County standards will apply. In a series of meetings over the last year, both the City and the County have agreed that the final map can be approved and recorded in the County and a deferred annexation agreement shall be executed and recorded; consenting to its annexation by the City at a later date in an overall attempt to annex all of Mt. View at one time, which the City says they intend to attempt within two years.

2. Option 1 Will Not Work For The Project: Your excellent staff has been enormously helpful and generous with their time over the last year and has prepared a staff report that sets out two options for approval and recommends Option 1. This option would require the Owner to comply with your policy 2.1(5) and submit to LAFCO an application for annexation into the City within 12 months along with all appropriate annexation fees which would include the cost of a CEQA document totaling more than \$100,000. The Project and the LAFCO approval of the OSA is covered by a mitigated negative declaration with a recently adopted Addendum, but annexation would almost certainly require at least a focused EIR. Additionally, the City has requested the Owner not to do anything to attempt to annex piecemeal before the City attempts an overall annexation by Mt. View. In that case, the City will pay all costs of annexation effort. The Owners are not professional developers and have suffered enormous losses in unanticipated processing costs. Additionally, an application from the Owner would pursuant to your policies require the negotiation and submittal of a tax sharing agreement with the application. If Option 1 is selected, it's likely that the Owner will simply abandon the Project and walkaway to avoid further costs to a project already uneconomic.

3. We Urge You To Approve Option 2: That option would approve the OSA, require the execution and recordation of a deferred annexation agreement, which will consent in perpetuity to the annexation of the Project but rely on the City's commitment to try and annex Mt. View within two (2) years and not require the submittal of an annexation request to the Owner within twelve (12) months.

4. Policy 2.1(5)(c) Allows You To Approve Option 2: Your policies generally require a request for OSA approval to be accompanied within twelve months by an application for annexation. However, this policy allows you to waive this dual application requirement if you find a "compelling justification." We

Honorable Commission Chairperson and Members
Attn: Lou Ann Texeira
January 5, 2021
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respectfully suggest the unique facts of this Project plus both the City's and the County's feeling on the appropriateness of the overall annexation of Mt. View and their request the Owner not unilaterally apply for annexation until the City can mount an annexation campaign, constitutes such a compelling justification.

B. Conclusion: Again, if you approve Option 2 you will not be establishing a harmful precedent. A situation like this will never come to you again. The Project will likely not go forward if you require of the Owner other expenses of annexation which could total well over a \$100,000. The City has said they will bear those costs and have requested the Owner do nothing prior to an attempt at over-all annexation. What you will be doing is the following:

1. Allow the construction of thirty units of desperately needed housing; which, though not subject to the County's affordable housing requirements will be at a market price as affordable as anywhere in the County.
2. Provide the County with RHNA market rate credits for the thirty units.
3. Ensure that in the annexation effort of the City of all Mt. View, the Project has consented in perpetuity to annexation.

Thank you for taking the time to fully understand this complex situation.

Very truly yours,

MILLER STARR REGALIA

Wilson F. Wendt

Wilson F. Wendt

WFW:nmf

cc: Clients
John Kopchik
Eric Figueroa
Eric Zell
Khalil Yowakim
Victoria Walker