

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

September 14, 2022
Agenda Item 9

September 14, 2022 (Agenda)

LAFCO 22-06 West County Wastewater District - Out of Agency Service Request (155 and 177 Parr Blvd)

SYNOPSIS

This is a request by the West County Wastewater District (WCWD) to provide municipal wastewater service outside its jurisdictional boundary to two parcels located at 155 and 177 Parr Blvd in unincorporated Richmond. The parcels (APNs 408-090-055 and 408-130-041) total 26.38± acres as shown on Exhibit A.

Currently, APN 408-090-055 has one incomplete structure and APN 408-130-041 is vacant at this time. Construction of two warehouses is proposed for the site. The landowner received an approval from the County, and walls are erected. Building and utilities construction are pending. The parcels are contiguous to the District's service boundary and within WCWD's sphere of influence (SOI).

The County's General Plan designation for the parcels is Heavy Industry (HI) and the County's zoning designation is Planned Unit (P-1). The subject parcels are located within the Urban Limit Line.

DISCUSSION

Statutory Framework - The Government Code ("GC") and local LAFCO policies regulate the extension of out of agency service. 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 Policy - 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.

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 to proposed warehouses.

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.*

The subject parcel is contiguous to the District's boundary and can be annexed.

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, wastewater service, as appropriate. The LAFCO MSRs also recommend maintaining logical and orderly boundaries and avoiding creation of islands.

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., plan for annexation, pre-annexation agreement, etc.), which demonstrate that out of agency service is an intermediate step toward eventual annexation.

Given the subject parcels are contiguous to the District's boundary, annexation is possible.

Analysis – WCWD serves approximately 34,000 residences and 2,450 commercial and industrial businesses, with a total population of approximately 100,000 in the cities of Pinole, Richmond and San Pablo, and the unincorporated areas of East Richmond Heights, Bayview, El Sobrante, Rollingwood, and Tara Hills.

The District requests to provide municipal wastewater service outside its jurisdictional boundary to two parcels located at 155 and 177 Parr Blvd in unincorporated Richmond. The law permits LAFCO to authorize WCWD 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. There is currently no public health or safety threat on the subject parcels; thus, the proposed out of agency service is in anticipation of a future annexation.

Regarding infrastructure needed to serve the subject area, WCWD sewer mains are located on Parr Blvd and are within 30-40 feet of the subject parcels. Sewer laterals will be constructed on the parcels to connect to WCWD sewer mains. The landowners will complete construction necessary to connect to WCWD's collection system. The estimated improvement costs are approximately \$202,083. The landowner is responsible for paying all fees and costs for infrastructure improvements. It is estimated that the two warehouses will generate approximately 10,479 gallons of wastewater per day.

Environmental Review – In conjunction with the Scannell Properties warehouse project, Contra Costa County, as Lead Agency, prepared and certified an Environmental Impact Report (EIR) and Mitigation and Monitoring Reporting Program. The LAFCO Environmental Coordinator has reviewed the County's CEQA documentation and finds it adequate for LAFCO purposes.

Indemnification Agreement - WCWD has delivered to LAFCO an executed indemnification agreement providing for WCWD to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service.

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 *Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000* provides that LAFCO can approve or disapprove with or without amendments, 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 attached resolution approving the extension of out of agency wastewater service conditioned the following, including submittal of an annexation application.

- A. Find that, as a responsible agency under CEQA, LAFCO has reviewed and considered the environmental effects of the warehouse project in Contra Costa County's Environmental Impact Report for the warehouse project. LAFCO finds that all changes or alterations in the project that avoid or substantially lessen its environmental effects are within the responsibility and jurisdiction of the County and not LAFCO, and that these changes have been, or can and should be, adopted by the County as lead agency.
- B. Authorize WCWD to extend wastewater service outside its jurisdictional boundary to APNs 408-090-055 and 408-130-041 (26.38± acres) located at 155 and 177 Parr Blvd in unincorporated Richmond subject to the following terms and conditions:
 - 1. Sewer infrastructure and service is limited to the proposed two warehouses, and
 - 2. A commitment from the landowners to submit to LAFCO an application to annex the subject parcels to WCWD, along with the applicable annexation fees, by September 30, 2023.

Option 2 **Approve** the attached resolution approving the extension of out of agency wastewater service conditioned the following:

- A. Find that, as a responsible agency under CEQA, LAFCO has reviewed and considered the environmental effects of the warehouse project in Contra Costa County's Environmental Impact Report for the warehouse project. LAFCO finds that all changes or alterations in the project that avoid or substantially lessen its environmental effects are within the responsibility and jurisdiction of the County and not LAFCO, and that these changes have been, or can and should be, adopted by the County as lead agency.
- B. Authorize WCWD to extend wastewater service outside its jurisdictional boundary to APNs 408-090-055 and 408-130-041 (26.38± acres) located at 155 and 177 Parr Blvd in unincorporated Richmond subject to the following terms and conditions:
 - 1. Sewer infrastructure and service is limited to the proposed two warehouses.

Option 3 Deny the request, thereby prohibiting WCWD from providing wastewater service to the subject parcels.

Option 3 **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 Subject Parcels (APNs 408-090-055 and 408-130-041)

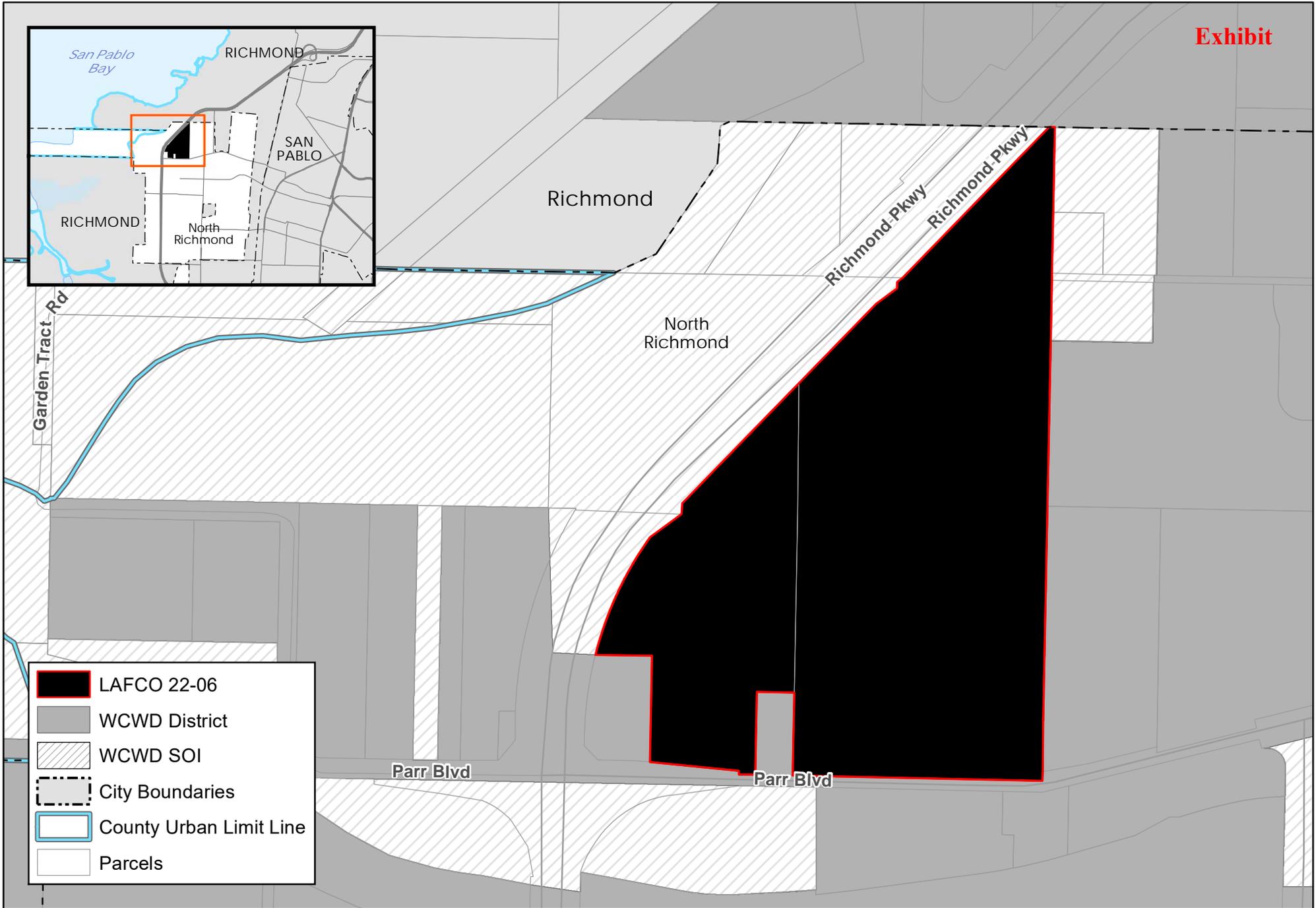
Attachment

- 1. Draft LAFCO Resolution 22-06

c: Marcus McNeil, Engineer II, West County Wastewater District
Mac Carlson, Scannell Properties LLC

LAFCO 22-06 – West County Wastewater District - Out of Agency Service (155 & 177 Parr Blvd - Richmond)

Exhibit



	LAFCO 22-06
	WCWD District
	WCWD SOI
	City Boundaries
	County Urban Limit Line
	Parcels



RESOLUTION NO. 22-06

Attachment

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING WEST COUNTY WASTEWATER DISTRICT TO PROVIDE
OUT-OF-AGENCY WASTEWATER SERVICE TO 155 and 177 PARR BLVD - RICHMOND**

WHEREAS, the above-referenced request was filed with the Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (California Government Code Section 56000 et seq.); 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 to provide wastewater services to the subject properties to facilitate construction of two warehouses; and

WHEREAS, the West County Wastewater District (WCWD) delivered to LAFCO an executed indemnification agreement providing for the District to indemnify LAFCO against any expenses arising from any legal actions challenging the out of agency service.

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

A. The Commission is a Responsible Agency under the California Environmental Quality Act (CEQA), and in accordance with CEQA, makes the following findings and determinations:

As to the Scannell Properties Project, the Commission has considered the environmental effects of the project as shown in Contra Costa County’s Environmental Impact Report (September 2021). The Commission finds that all changes or alterations in the project that avoid or substantially lessen its significant environmental effects are within the responsibility and jurisdiction of the County and not LAFCO, and that these changes have been, and can and should be, adopted by the County as the lead agency.

B. Authorize the WCWD to extend wastewater service outside its jurisdictional boundary to APNs 408-090-055 and 408-130-041 located at 155 and 177 Parr Blvd (Richmond) subject to the following terms and conditions:

1. Wastewater infrastructure and service is limited to two warehouses on the subject parcels, and
2. The WCWD has delivered to LAFCO an executed indemnification agreement providing for the District to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service, and

C. Approval to extend WCWD services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

* * * * *

PASSED AND ADOPTED THIS 14th day of September 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ROB SCHRODER, 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: September 14, 2022

Lou Ann Texeira, Executive Officer