

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

May 10, 2023 (Agenda)

May 10, 2023  
Agenda Item 6

LAFCO 23-06 West County Wastewater District - Out of Agency Service (OAS) Request  
(Richmond Country Club)

## SYNOPSIS

This is a request by the West County Wastewater District (WCWD) to provide municipal wastewater service outside its jurisdictional boundary to numerous parcels located totaling 25.51± acres north of Richmond Parkway/east of Giant Highway (City of Richmond) as shown on Exhibit A.

The parcels are currently vacant. Wastewater services are needed to serve construction of 69 single family homes. The parcels are contiguous to the District's service boundary and within WCWD's sphere of influence (SOI). The landowner has also submitted a corresponding annexation proposal for this project. The proposed annexation is also on the May 10, 2023, LAFCO agenda.

The OAS request is not an emergency health and safety matter as no wastewater is currently being generated at this time. A majority of the subject parcels are located outside of WCWD's service boundary. The remainder of the parcels are either partially or fully annexed to the District. Based on the location of the parcels and proposed land use, annexation to the District is logical. WCWD is applying for OAS while the developer/landowner proceeds with the proposed annexation due to the landowner's timing and construction schedule.

The City's General Plan designation for the parcels is Low Density Residential and the City's zoning designation is Single Family Low Density Residential (RL2). 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 proposed development of 69 single family homes. A corresponding annexation application was also submitted and is on the May 10, 2023, LAFCO meeting agenda.

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. A corresponding annexation application was also submitted and is on the May 10, 2023, LAFCO meeting agenda.

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 the 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.*

The subject parcels are contiguous to the District's boundary. A corresponding annexation application was also submitted and is on the May 10, 2023, LAFCO meeting agenda.

Analysis – WCWD serves 34,000 residences and 2,450 commercial and industrial businesses, with a population of approximately 103,214 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 serve the Richmond Country Club residential project (75 parcels) totaling 25.51± acres north of Richmond Parkway/east of Giant Highway (City of Richmond). LAFCO statutes allow 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 annexation.

Regarding infrastructure needed to serve the subject area, the pertinent public WCWD sewer main is located at the Giant Highway/Collins Avenue/Griffin Drive intersection. A sewer main extension that is approximately 3,500 linear feet will be necessary to transfer the wastewater from the northern portion of the project (private portion of the sewer main collection system) to the southern portion of the project near WCWD's portion of the sewer main collection system. The developer/owner will be required to complete construction necessary to connect to the collection system. Sewer laterals will be constructed on the parcels to facilitate sewer collection from the parcels into the collection system. The estimated improvement costs are approximately \$1,495,000. The landowner is responsible for paying all fees and costs for infrastructure improvements. It is estimated that the 69 single family homes will generate approximately 18,630 gallons of wastewater per day.

Environmental Review – In conjunction with the Richmond Country Club project, the City of Richmond, as Lead Agency, prepared and certified a Negative Declaration and Mitigation Measures. The LAFCO Environmental Coordinator has reviewed the City's CEQA documents and finds them 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 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 residential project in City of Richmond's Negative Declaration and Mitigation Measures for the Richmond Country Club Residential Project. 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 City and not LAFCO, and that any changes have been, and can and should be, adopted by the City as the lead agency.
- B. Authorize WCWD to extend wastewater service outside its jurisdictional boundary to the Richmond Country Club residential project (75 parcels) totaling 25.51± acres north of Richmond Parkway/east of Giant Highway (City of Richmond) subject to the following terms and conditions:
  - 1. Sewer infrastructure and service is limited to the proposed residential project.

**Option 2**     Deny the request, thereby prohibiting WCWD from providing OAS wastewater service to the subject parcels.

**Option 3**     Continue this matter to a future meeting to obtain more information.

**RECOMMENDATION:** Option 1

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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LAFCO

### Exhibit

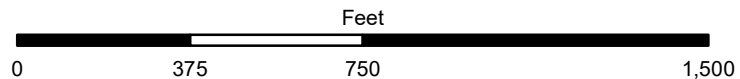
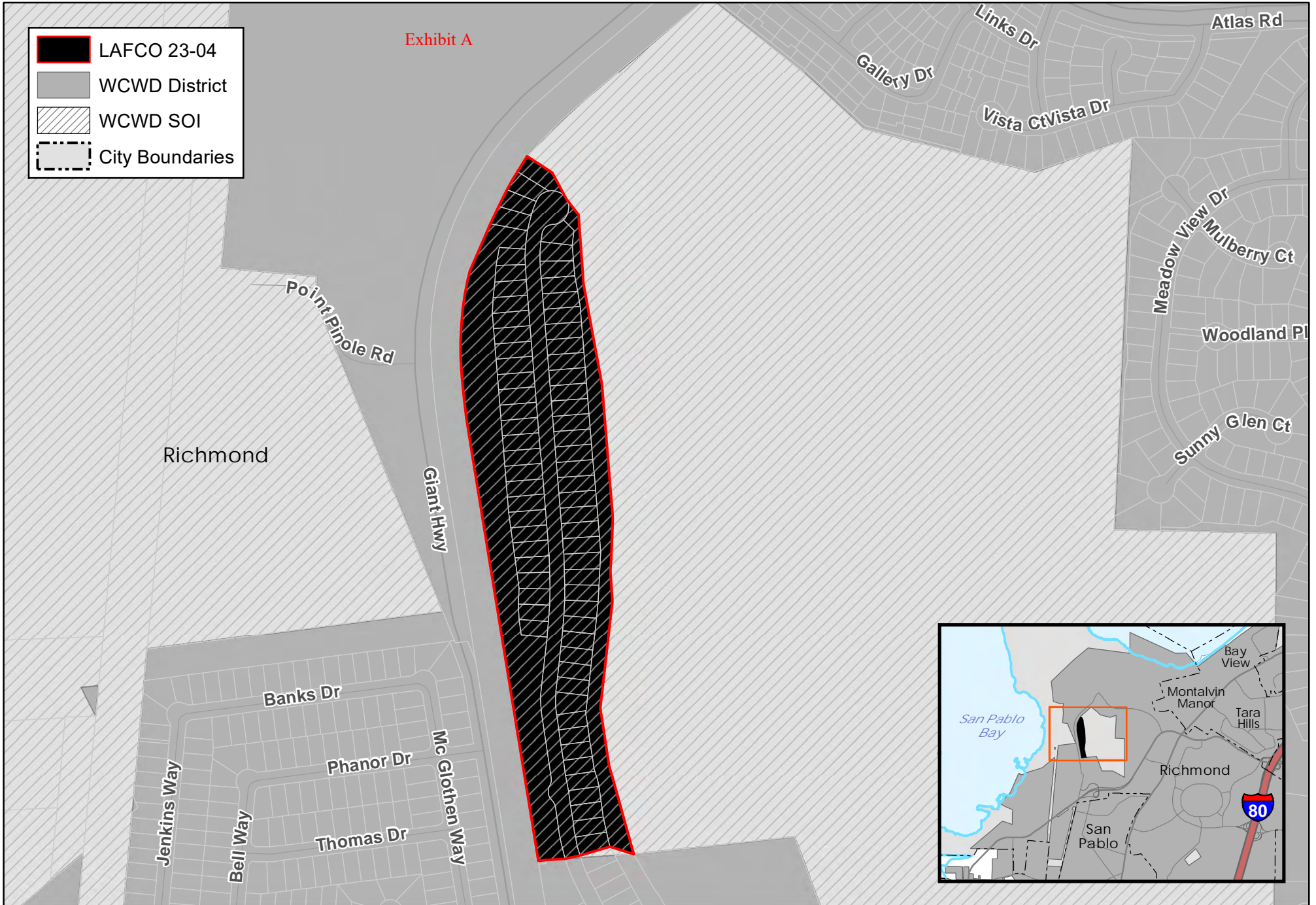
- A. Map of Subject Parcels

### Attachment

- 1. Draft LAFCO Resolution 23-04

c: Andrew Clough, General Manager, West County Wastewater District  
Armondo Hodge, Engineer III, West County Wastewater District  
Andrew Grant, Forward Planning Manager, Meritage Homes

# LAFCO 23-04 - Out of Agency Service – West County Wastewater District – Meritage Homes/Richmond Country Club



**RESOLUTION NO. 23-04**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
AUTHORIZING WEST COUNTY WASTEWATER DISTRICT TO PROVIDE  
OUT-OF-AGENCY WASTEWATER SERVICE TO THE RICHMOND COUNTRY CLUB  
RESIDENTIAL PROJECT**

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 69 single family homes; 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 Richmond Country Club residential project, the Commission has considered the environmental effects of the project as shown in City of Richmond’s Initial Study/Negative Declaration (December 2020). 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 City and not LAFCO, and that any changes have been, and can, and should be, adopted by the City as the lead agency.
- B. Authorize the WCWD to extend wastewater service outside its jurisdictional boundary to serve 69 single family homes (numerous parcels) located north of Richmond Parkway and east of Giant Highway near 1 Markovich Lane (Richmond) subject to the following terms and conditions:
  - 1. Wastewater infrastructure and service is limited to the subject parcels; and
  - 2. Approval to extend WCWD services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

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PASSED AND ADOPTED THIS 10<sup>th</sup> day of May 2023, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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FEDERAL GLOVER, 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: May 10, 2023

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Lou Ann Texeira, Executive Officer