

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

June 8, 2022  
Agenda Item 9

June 14, 2023 (Agenda)

LAFCO 23-10 City of Concord - Out of Agency Service Request (1857 Ayers Road)

## SYNOPSIS

This is a request by the City of Concord to provide municipal wastewater service outside its jurisdictional boundary to one parcel located at 1857 Ayers Road in unincorporated Concord. The parcel (APN 116-110-007) is 0.412± acres as shown on Exhibit A.

Currently, there is one single family home on the subject parcel. The home is served by an onsite septic system. The parcel is not contiguous to the City boundary; thus, annexation is not possible at this time.

Recently County EH Contra Costa County Environmental Health (EH) inspected the system and noted unusual liquid levels in the septic tank, and that the system might be failing. According to EH, *a failing septic system would constitute a potential immediate threat to health and safety*. On May 3, 2023, EH issued a septic tank abandonment permit. Municipal wastewater service is needed to serve the property.

Due to the circumstances, on May 16, 2023, the LAFCO Executive Officer issued an emergency approval for out of agency service (OAS) in accordance with LAFCO statute (Government Code (GC) §56133) and Contra Costa LAFCO's local policies. GC §56133(c) provides that *LAFCO can approve the extension of services outside a local agency's jurisdictional boundary and inside its sphere of influence to respond to an existing or impending threat to the health and safety of the public or the residents of the affected territory*. LAFCO's local policies authorize the Executive Officer to approve a city'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 County's General Plan designation for the parcel is Single Family Residential – Low Density and the County's zoning designation is R-20 (20,000 sq. ft. minimum). The City of Concord rezoned the property RR-20 (Rural Residential – 20,000 sq. ft. minimum), and the City's General Plan designation for the subject parcel is Rural Residential. Residential development surrounds the subject parcel to the north, south, east, and west. The subject parcel is located within the City of Concord's sphere of influence (SOI) and within the City's Urban Limit Line.

## DISCUSSION

Statutory Framework - The 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 before the Commission is intended to serve one existing single-family home with a failing septic system.

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 not contiguous to the City boundary and cannot be annexed at this time.

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

Given the subject property is not contiguous to the City boundary, annexation is not possible at this time. The subject parcel can be included with a future annexation of the Ayers Ranch island. The landowner is required to sign a pre-annexation agreement with the City consenting to the future annexation and agreeing not to protest any subsequent future annexation proceeding which provides that the landowners agree to 1) not protest any simultaneous or subsequent annexation proceedings, and 2) consent to annex the property to the City of Concord pursuant to any LAFCO terms and conditions.

Analysis – As noted in the 2014 and 2008 *LAFCO Water/Wastewater Municipal Service Reviews* (MSRs), the City of Concord includes the Ayers Ranch area within its ultimate sewer service boundary. The Ayers Ranch area is a 183-acre unincorporated island within Concord's SOI. The City has historically extended sewer service to this area. More recently, and pursuant to State law, the City has requested LAFCO's approval to provide out of agency service. Some parcels in this area are experiencing issues with septic systems, including failure, and have requested municipal sewer service from the City on an individual basis. While a significant portion of the island is developed, there are vacant and under-developed properties as well as properties with inadequate septic systems that will need municipal sewer service, including the subject property.

LAFCO placed the Ayers Ranch area within the City's SOI, signifying that the City is the logical, long-term service provider for this unincorporated island; and the MSRs recommend annexation of this area to the City of Concord. Annexation of the Ayers Ranch island, along with those unincorporated areas being served extra-territorially by the City, remains an important issue to resolve. In September 2015, the Concord City Council took an affirmative step and adopted Resolution No. 15-59 establishing a non-binding strategy to annex Ayers Ranch by the year 2030. This signals the City's intent to annex the area in the future.

Out of Agency Service Request by City of Concord – The City requests to provide out of agency sewer service to property located at 1857 Ayers Road unincorporated Concord. There is currently one existing single-family home on the subject parcel. The law permits LAFCO to authorize the City 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. This request by the City to provide sewer service to the subject property in response to a failing septic system and in anticipation of a future annexation per the City’s resolution.

Regarding infrastructure needed to serve the property, a public sanitary sewer main is present in Ayers Road. A new sewer line is needed to connect to the City’s existing main. It is estimated that one single family home will generate approximately 80-150 gallons of wastewater per day. The property owner is responsible for the capital costs; future operations and maintenance costs will be the responsibility of the individual homeowners.

Environmental Review – The City of Concord, as Lead Agency, found the project exempt per section 15303(a) in accordance with the California Environmental Quality Act (CEQA).

### **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 Act 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.
- A. Find the project exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15303(a).
  - B. Authorize the City of Concord to extend sewer service outside its jurisdictional boundary to the 0.412± acre parcel (APN 116-110-007-6) located at 1857 Ayers Road in the Ayers Ranch area in unincorporated Contra Costa County subject to the following terms and conditions:
    - 1. Sewer infrastructure and service is limited to the existing single-family home, and
    - 2. The City of Concord has delivered to LAFCO an executed and recorded pre-annexation agreement.

**Option 2**      **Deny** the request, thereby prohibiting the City of Concord from providing sewer service to the subject property.

**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

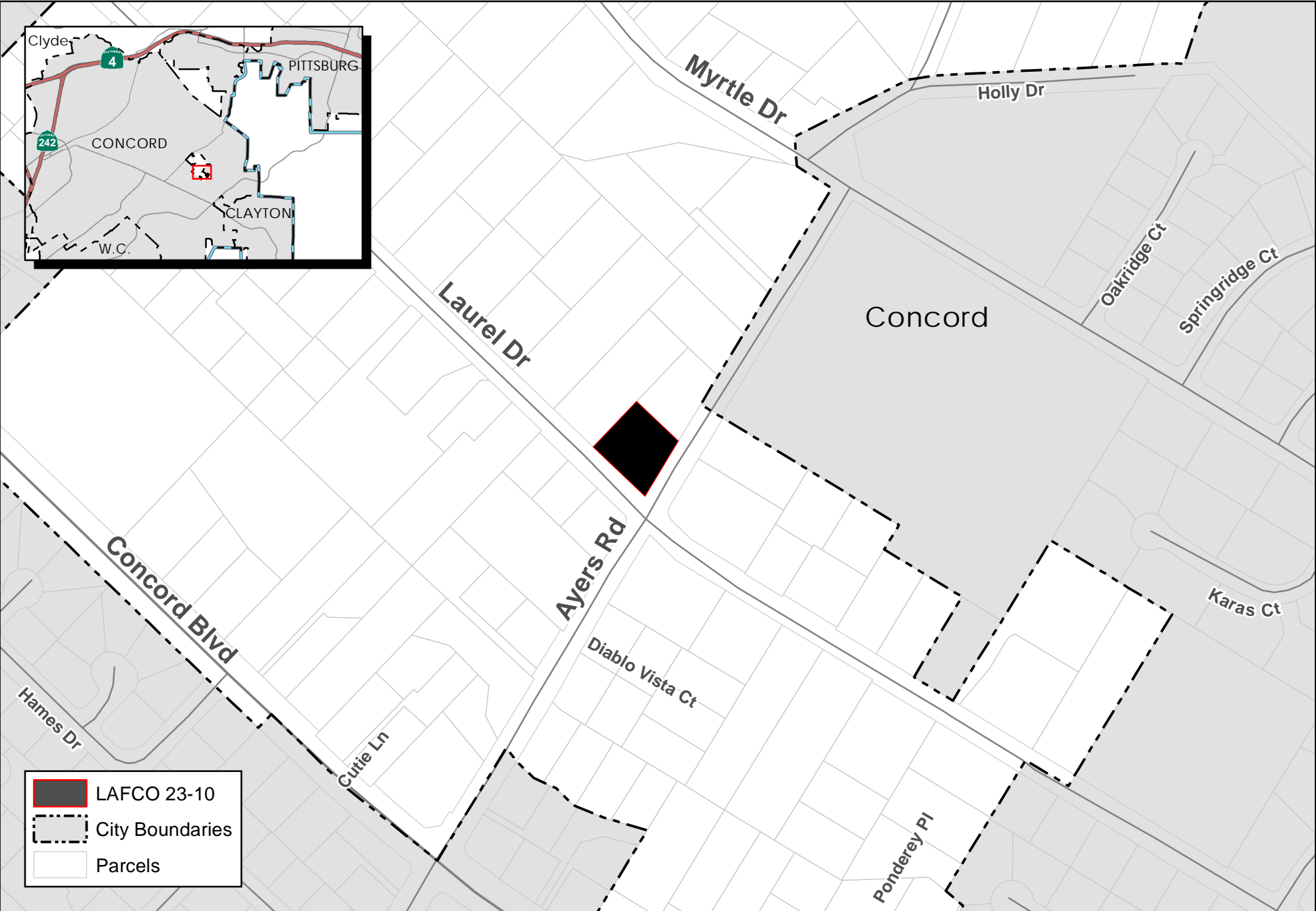
#### Exhibit

- A. Map of Property (APN 116-110-007-6)

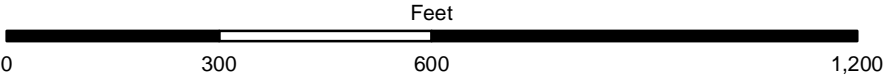
#### Attachment

- 1. Draft LAFCO Resolution 23-10
- c: Mitra Abkenari, Civil Engineer, City of Concord  
Carlton Thompson, City Engineer, City of Concord  
Kathleen Clark, Landowner  
John Wiggins, REHS, Supervising Environmental Health Specialist

LAFCO 23-10 City of Concord - Out of Agency Service (1857 Ayers Rd)



	LAFCO 23-10
	City Boundaries
	Parcels



**RESOLUTION NO. 23-10**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION  
COMMISSION AUTHORIZING THE CITY OF CONCORD TO PROVIDE  
OUT-OF-AGENCY WATER SERVICE TO APN 116-110-007-6 (1857 AYERS ROAD)**

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 property due to a failing septic system; and

WHEREAS, the City of Concord and the property owner will enter into a Deferred Annexation Agreement (DAA) and contract for sewer service in support of a future annexation of the property to the City of Concord by 2030 as described in the City of Concord Resolution No.15-59 adopted September 8, 2015; and

WHEREAS, the City of Concord has delivered to LAFCO an executed indemnification agreement providing for the City 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. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15303 of the CEQA Guidelines as a utility extension, consistent with the determination of the City of Concord, as Lead Agency.
- B. Authorize the City of Concord to extend wastewater service outside its jurisdictional boundary to APN 116-110-007 located at 1857 Ayers Road in unincorporated Contra Costa County (Concord area) subject to the following terms and conditions:
  - 1. Wastewater infrastructure and service is limited to the existing single-family residential unit on the subject parcel, and
  - 2. The City of Concord and the property owner have signed a DAA which was recorded as prescribed by law and runs with the land so that future landowners have constructive notice that their property is encumbered by a DAA, and
  - 3. Approval to extend City of Concord services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

\* \* \* \* \*

PASSED AND ADOPTED THIS 14<sup>th</sup> day of June 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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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 above.*

Dated: June 14, 2023

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Lou Ann Texeira, Executive Officer