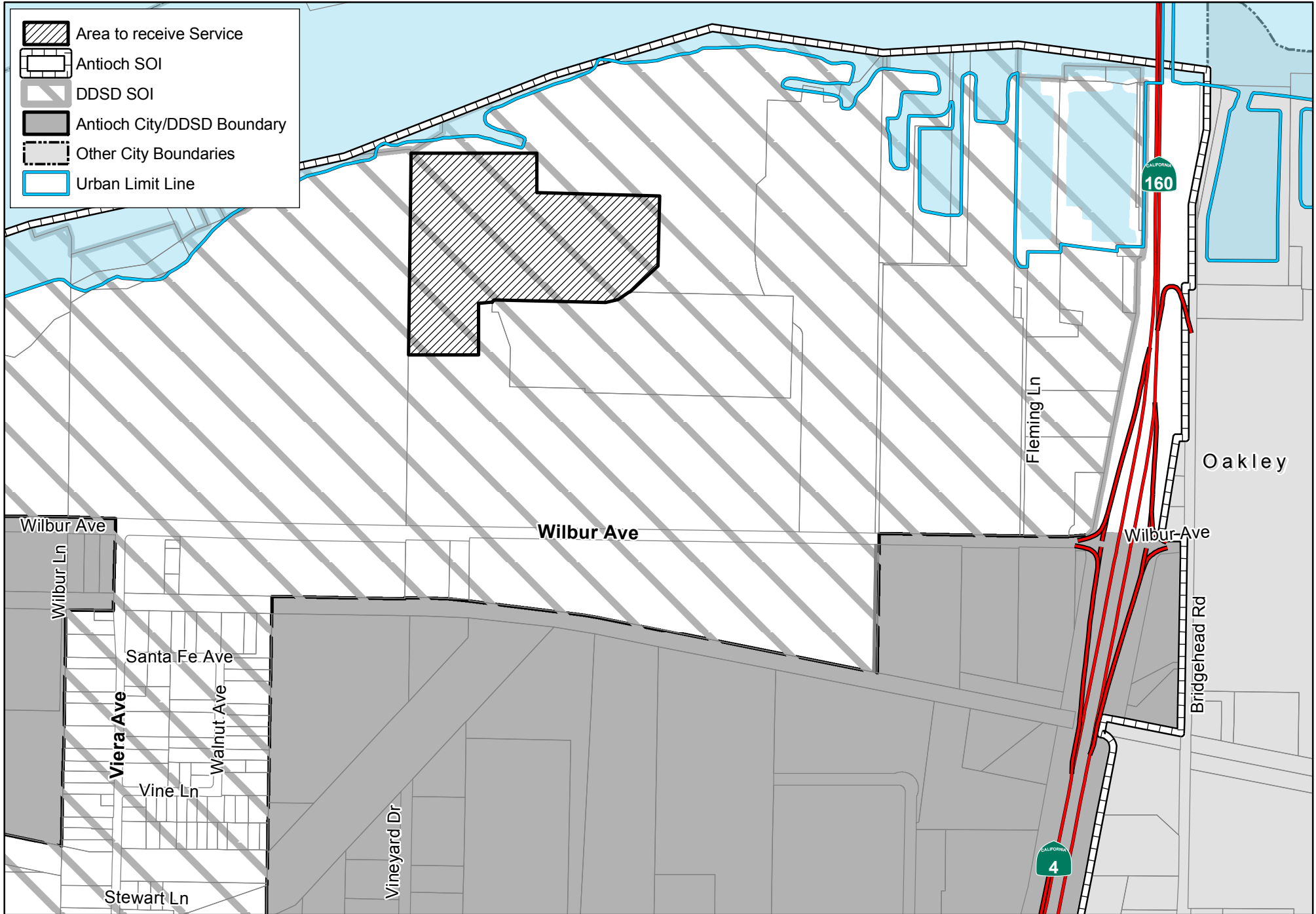








# LAFCO No. 10-12: City of Antioch/DDSD Out of Agency Service (Mirant Marsh Landing)



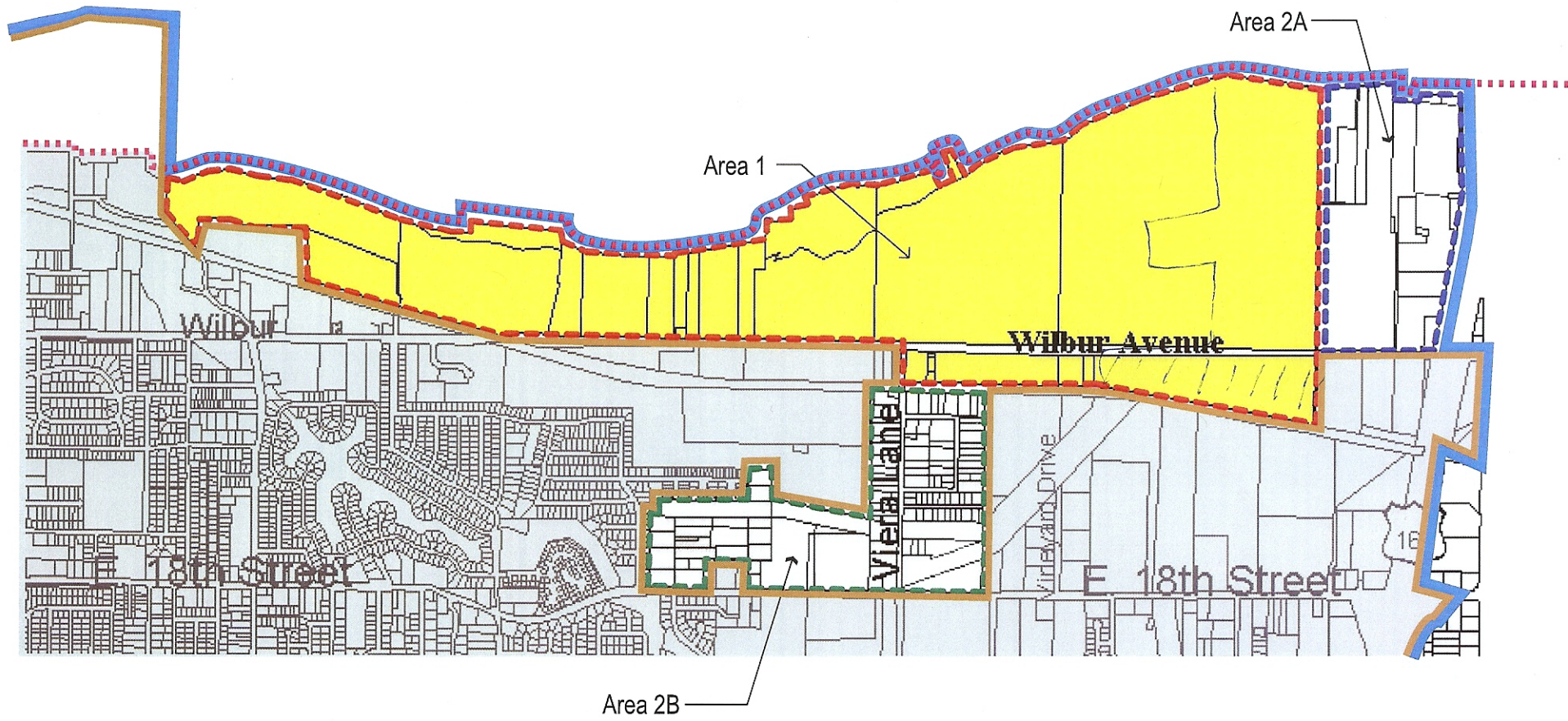
-  Area to receive Service
-  Antioch SOI
-  DDSD SOI
-  Antioch City/DDSD Boundary
-  Other City Boundaries
-  Urban Limit Line

0 125 250 500 Feet

Map created 01/27/2011  
 by Contra Costa County Department of Conservation and Development - GIS Group  
 651 Pine Street, 4th Floor North Wing, Martinez, CA 94553-0095  
 37.59:48.45N 122.06:35.384W

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.





**LEGEND**

- ..... Urban Limit Line
- City Sphere of Influence (SOI)
- City Boundary
- DDSD Service Boundary and SOI
- Area 1
- Area 2A
- Area 2B

**EXHIBIT 2**  
 Current Administrative Boundaries  
 Industrial Areas Along Wilbur Avenue –  
 Administrative Reorganization







LEGEND	
	EXISTING WATER LINE
	EXISTING CITY OF OAKLEY WATER LINE
	EXISTING STORM DRAIN
	EXISTING SEWER LINE
	EXISTING DUSD SEWER FORCE MAIN
	15" PGE SEWER LINE ADDITION





## Delta Diablo Sanitation District

OFFICE AND TREATMENT PLANT: 2500 PITTSBURG-ANTIOCH HIGHWAY, ANTIOCH, CA 94509-1373

TEL.: (925) 756-1900 ADMIN. FAX: (925) 756-1961 MAINT. FAX: (925) 756-1963 OPER. FAX: (925) 756-1962 TECH. SVCS. FAX: (925) 756-1960  
www.ddsd.org

January 20, 2011

Mr. Victor Carneglia  
City of Antioch  
P.O. Box 5007  
Antioch, CA 94531-5007



**SUBJECT: PROPOSED EXTRATERRITORIAL SANITARY SEWER SERVICE FOR MIRANT MARSH LANDING GENERATING STATION, 3201 WILBUR AVENUE, 26.84 ACRE PORTION OF APN 051-031-017, NORTHEAST ANTIOCH REORGANIZATION, AREA 1, ANTIOCH, CALIFORNIA**

Dear Mr. Carneglia:

This letter is to inform you that Delta Diablo Sanitation District has the ability to provide wastewater conveyance and treatment services and that the District will provide wastewater conveyance, treatment and disposal services upon approval by LAFCO of an extraterritorial service application, execution of a joint City or standalone extraterritorial agreement with the District, comply with all pretreatment requirements, and payment of all fees and charges. The subject area will be considered a part of Zone 3 of the District. The City of Antioch is responsible for sewer collection system services and we understand that Mirant MLGS is responsible for the extension of the City pipeline in Wilbur Avenue which flows easterly to the District's Bridgehead Pump Station conveyance facility. Mirant MLGS estimated peak wastewater discharge is 118 gpm.

Service to other parcels in Area 1 can be extended once the areas are annexed to the City and District and specific projects are identified and development occurs. Service will be subject to the planning and design review and approval of both the City of Antioch and Delta Diablo Sanitation District.

The District collects Capital Facility Capacity Charges to build conveyance and treatment capacity as it is consumed by new connections. Capacity is provided through facilities constructed by the District as prescribed in its Conveyance and Treatment Plant Master Plans. These master plans rely on the General Plans and City sewer planning reports for the communities in the District service area for information on future service needs. The District has both constructed and planned capacity in its conveyance and treatment systems to serve the Marsh Landing Generating Station site.

Mr. Victor Carneglia

January 20, 2011

PROPOSED EXTRATERRITORIAL SANITARY SEWER SERVICE FOR MIRANT MARSH  
LANDING GENERATING STATION, 3201 WILBUR AVENUE, 26.84 ACRE PORTION OF APN  
051-031-017, NORTHEAST ANTIOCH REORGANIZATION, AREA 1, ANTIOCH, CALIFORNIA  
Page 2

Please note service and available capacity is not guaranteed until the applicable fees are paid. If you have any questions, please feel free to contact Patricia Chapman at (925) 756-1939.

Sincerely,

*Don H. Allen for*

Caroline Quinn  
District Engineer

CQ/PEC:clg

cc: Darrell Cain, Laboratory Director, DDS  
Patricia Chapman, Associate Engineer, DDS  
Gary Darling, General Manager, DDS  
Dean Eckerson, Principal Engineer, DDS  
John Chilemi, Mirant Marsh Landing, LLC  
Lou Ann Texeira, Executive Director, LAFCO  
Karen Ustin, Business Services Director, DDS  
Chron File  
DEV.03-DEVDOC-841



February 17, 2010

John Chillemi  
 President, Mirant Marsh Landing, LLC  
 696 West 10th Street  
 Pittsburg, California 94565

**DOCKET**  
**08-AFC-3**

DATE FEB 17 2010

RECD. FEB 23 2010

Dear Mr. Chillemi:

The City of Antioch ("City") has had discussions with Mirant Marsh Landing, LLC ("Mirant") regarding the use of potable water and the discharge of process wastewater from the proposed Marsh Landing Generating Station ("MLGS"), a 760 megawatt natural gas-fired electricity generating facility that Mirant is developing at the site of the existing Contra Costa Power Plant. The City understands that Mirant proposes to discharge an estimated 0.2 million gallons per day of process wastewater, as well as 150 gallons per day of sanitary wastewater from the MLGS directly to the City's sanitary sewer line along Wilbur Avenue, which will convey the wastewater to the Delta Diablo Sanitation District's Bridgehead Lift Station. Delta Diablo Sanitation District treats sanitary sewer flows from the City of Antioch and as such, is the agency to be contacted to obtain permission to sewer into their system and plant. It is also our understanding that the MLGS will utilize approximately 50 acre-feet per year of potable water.

The City is capable of providing potable water and sewer collection services to the MLGS in sufficient quantities to accommodate the MLGS as outlined above, specifically the 0.2 million gallons per day of process wastewater, the 150 gallons per day of sanitary wastewater, and the need for 50 acre feet per year of potable water. Provision of these utilities by the City of Antioch is contingent on the property on which the MLGS is located being annexed into the City of Antioch. This annexation process, which has been formally initiated by the City of Antioch and includes the MLGS site, is well underway and should be acted on by LAFCO and finalized in the late Spring/Summer 2010.

This letter also confirms that the City will allow the discharge of MLGS process and sanitary wastewater into the City's sanitary sewer system and connection to the City water system provided that Mirant provides and pays for all required physical connections to the City systems, pays all required and applicable fees in effect at the time of any connection, and agrees to enter into a reimbursement agreement with the City of Antioch to pay for Mirant's proportionate share of sanitary sewer capacity previously funded by a downstream property owner. This letter constitutes a "will-serve" letter that can be provided to the California Energy Commission in support of Mirant's application for certification of the MLGS.

Sincerely,

Ron Bernal, P.E.  
 Director of Public Works

cc: Jim Jakel, City of Antioch City Manager  
 Lynn Tracy Nerland, City of Antioch City Attorney  
 Victor Carniglia, City of Antioch Project Manager  
 Chip Little, Mirant

Department of Public Works

P.O. Box 5007 • 1201 W. 4<sup>th</sup> Street • Antioch, CA 94531-5007 • Tel: 925-779-6950 • Fax: 925-779-6897 • www.ci.antioch.ca.us

## COMMUNITY DEVELOPMENT



P.O. Box 5007, Antioch, CA 94531-5007

May 25, 2010

Mr. Mike Monasmith  
 California Energy Commission  
 1516 Ninth St., MS-15  
 Sacramento, CA 95814

Dear Mr. Monasmith:

Thank you for the opportunity to comment on the Staff Assessment (SA) for the Mirant Marsh Landing Generating Station (MLGS) Application for Certification (08-AFC-3). As the CEC is aware, the site where this project is proposed is in the City of Antioch's Sphere of Influence, and the City is now in the process of annexing the MLGS site, along with the surrounding area. We have a number of comments on the SA, most of which are minor in nature, as noted below:

1) Water Resources:

As indicated in previous correspondence to the CEC, the City of Antioch is capable of providing water for both process and potable water needs to the MLGS. The SA states that the primary source of water for the MLGS is projected to be from wells. This well water, which the SA indicates is brackish, will require onsite treatment in order to meet the water quality requirements of the MLGS. The SA further states that the onsite facilities to treat the well water would consist of a trailer with five pressure vessels, along with a trailer to hold the effluent from the water filtration process. The trailer handling the effluent would then need to be towed away to a licensed disposal site after approximately 24 hours of plant operation. Given the power profile of the MLGS, the SA estimates that this trailer would need to be towed to a disposal site approximately 71 times per year.

This entire well water treatment process from a City perspective seems cumbersome, with on site trailers that would need to be towed away as often as a daily basis. This arrangement seems all the more awkward given the fact that City treated water is readily available to serve the MLGS on site. Mirant has tested the City water, and has determined that the available City treated water meets their standards for operating the MLGS. The MLGS will be using City water as a potable water supply, irrespective of the use of wells for process water. As noted in earlier documentation to the CEC, the City has sufficient water supply and treatment capacity to provide the 50 acre feet per year of process water that the MLGS is projected to need.

Recently, CEC staff proposed a thoughtful and innovative solution to this water supply dilemma. This solution would involve Mirant utilizing City water for both potable and process uses. In order to offset the impact of MLGS water usage of the City's water supply, Mirant would provide the City with sufficient funding to correspondingly enhance the City's ongoing water conservation efforts. The City is very supportive of this approach proposed by the CEC, as it would avoid the awkward "trailer water treatment" scenario, while permitting the City to enhance its water conservation efforts, resulting in a rare "win, win". Given this, the City would prefer that the SA be modified to designate the City of Antioch as the primary source of process and potable water for the MLGS, with a mitigation measure added requiring Mirant to fund enhanced citywide water conservation efforts.

In the future, as the MLGS moves forward towards construction, it may be determined that it isn't feasible for the MLGS to utilize treated well water as process water. Under such a scenario, it is likely that the MLGS will realize construction cost savings by not having to drill the wells, install the pumps, construct water lines, purchase/lease the onsite process water treatment facilities etc. A portion of this future construction cost savings could be directed to further enhance the City's water conservation programs. This level of financial support has the potential to transform the City's water conservation program to a whole new level of effectiveness. In order to address this possibility, the City requests that any mitigation measure stipulating the applicant's support of

Building Services Phone (925)779-7065 - Fax (925)779-7034  
 Planning Services Phone (925)779-7035 - Fax (925)779-7034  
 Neighborhood Improvement Phone (925)779-7042 - Fax (925)779-7034  
 Land Development/Engineering Phone (925)779-7035 - Fax (925)779-7034

PROOF OF SERVICE (REVISED 4/19/10) FILED WITH  
 ORIGINAL MAILED FROM SACRAMENTO ON 5/27/10

TKG

**DOCKET****08-AFC-3**DATE MAY 25 2010RECD. MAY 27 2010



Citywide water conservation efforts be written flexibly enough to allow the level of support to the City to be enhanced if it is determined that wells are ultimately not feasible as a source of process water for the MLGS.

2) Road Improvements:

The MLGS is proposed on an approximately 147 acre parcel that has significant frontage on Wilbur Avenue. Both the County and the City's General Plan show Wilbur Avenue as a four (4) lane arterial roadway. Currently, Wilbur Avenue is unimproved along the frontage of the parcel on which the MLGS is proposed, with no curb, gutter, sidewalk, or landscaping/irrigation. Based on the documentation in the SA, the MLGS will not generate significant traffic once the power plant is in operation. We surmise this is the reason that the CEC is not requiring Mirant in the SA to construct frontage improvements on Wilbur. As the CEC staff may be aware, there is currently a Parcel Map application being processed in the County to subdivide the property on which the MLGS is proposed into two separate parcels. We are working with Contra Costa County staff on the appropriate requirements for frontage improvements on Wilbur Avenue as a condition of approval of the Parcel Map application. As a result, we are not anticipating or requesting that the CEC address the question of Wilbur Avenue frontage improvements as part of the CEC review and approval process.

3) Land Use:

a) Upon annexation the MLGS will be required to participate in the City wide streetlight landscape maintenance district. There is also a similar maintenance program for the County. The City is coordinating with the County in addressing this issue as part of the Parcel Map process just mentioned in this letter. While a mitigation measure is not necessary, the CEC may want to document this fact in the SA.

b) It would be helpful in the SA if in the discussion on annexation to the City, it was also mentioned that annexation to the Delta Diablo Sanitation District (DDSD) is also required, and is part of the City's annexation application currently before LAFCO.

4) Public Health:

a) While the Greenhouse Gas section of the AFC contains a detailed analysis of how the MLGS will favorably influence the "retirement" of older, less efficient power plants up and down the State, it does not specifically provide an analysis of the more local issue, namely the eventual retirement of Contra Costa 6 and 7, which are located on the same site as the MLGS. It is our understanding that there is not a legal requirement that Contra Costa Units 6 & 7 cease operation once the MLGS comes on line, although the Biology Section of the AFC under the heading "Noteworthy Public Benefits" states that the MLGS will replace the existing units.

In any case, it is likely that there is a strong positive correlation between the MLGS becoming operational, and the less efficient Contra Costa Units 6 and 7 being "retired". The retirement of these older, less efficient power plants should have a substantial net positive effect from a public health and air quality perspective. Given this, it would be useful for decision makers if the SA included data showing what the net effect would be on public health (and related issues such as air quality), in the likely scenario where the MLGS becomes operational and Contra Costa Units 6 and 7 are retired. The SA could include appropriate disclaimers making in clear that Contra Costa Units 6 and 7 are not required to come offline with the initiation of operation of the MLGS, and simply note that the MLGS increases the likelihood of their "retirement" in the near term.

5) Visual Impacts:

The section on visual impacts is very thorough although there are a couple of issues we would like to see addressed/clarified:

a) The SA recommends a number of mitigation measures that involve providing landscaping around the "facility boundaries" in order to visually screen the project. It's unclear in reading the report what constitutes the facility boundaries. From a City perspective, we feel it is most important to enhance the visual character of the overall site on which the MLGS is located. While screening the immediate boundaries of the 27 acre site on which the MLGS is proposed is useful, the reality is that this 27 acre site is located over 1000 feet from Wilbur Avenue, which is the location from which the general public would be viewing the property. We feel that the efforts in landscaping the immediate boundaries of the MLGS would be better spent enhancing the Wilbur frontage of the 147 acre parcel on which the MLGS is proposed.

b) The most significant visual "blight" in the area is the existing 400 ft. plus tall stack that is a component of the exiting Contra Costa power plants. As previously discussed under the Public Health section of this comment

Mr. Mike Monasmith  
California Energy Commission  
May 26, 2010  
Page 3

letter, the City understands that the proposed MLGS is not tied to the existing Contra Costa Power facilities located on the same site as the MLGS. The purpose of this comment is to be on record that the City hopes that the removal of the 400 ft. stack is a first step in the eventual decommissioning of the Contra Costa Power facilities.

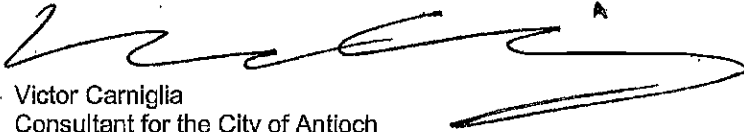
6) Socioeconomics:

a) The project site, as correctly noted, is in the Antioch Unified School District. The report indicates that the school impact fee for the proposed \$550 million MLGS construction project is only \$6,120. While we understand that the MLGS will generate significant property tax for schools, this school impact fee seems vanishingly small for a project of this scale, and works out to be just .001% of the total project cost. It would be helpful for the SA to clarify how this school impact fee was calculated.

b) The report indicates that the County's share of property tax would be roughly \$6 million/yr. and refers to a report titled URS 2009b. It would be helpful to see how this was calculated, and if the report discussed the fact that upon annexation the City of Antioch would share in the property tax based on the formulas agreed to by the City and the County in the Tax Transfer Agreement negotiated as part of the annexation process.

Thank you again for the opportunity to comment on the Staff Assessment, and we look forward to continuing to work closely with CEC staff on the MLGS application. Please feel free to contact me if you have any questions concerning the preceding comments, phone 925-779-7036, or e mail [vcarniglia@ci.antioch.ca.us](mailto:vcarniglia@ci.antioch.ca.us).

Sincerely,



Victor Carniglia  
Consultant for the City of Antioch

cc Jim Jakel, City Manager  
Lynn Nerland, City Attorney  
Mindy Gentry, Associate Planner  
City Council

Department of  
Conservation &  
Development

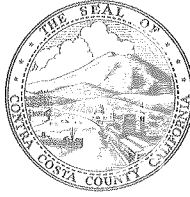
Contra  
Costa  
County

Catherine O. Kutsuris  
Director

Aruna Bhat  
Deputy Director  
Community Development Division

Community Development Division

County Administration Building  
651 Pine Street  
North Wing, Fourth Floor  
Martinez, CA 94553-1229



Phone:

January 31, 2011

Ms. Lou Ann Texeira  
Executive Officer  
Contra Costa Local Agency Formation Commission  
651 Pine Street, 6<sup>th</sup> Floor  
Martinez, CA 94533

Subject: *Comments on City of Antioch & Delta Diablo Sanitation District Out of Agency Service Agreement Request for Mirant Marsh Landing (LAFCO 10-2)*

Dear Ms. Texeira:

The Contra Costa County Department of Conservation & Development has reviewed the proposed Out of Agency Service Agreement Request (LAFCO 10-2) that would provide potable water service, sewer collection services, and likely process water services from the City of Antioch and sewer treatment services from Delta Diablo Sanitation District to the Mirant Marsh Landing power plant. The Mirant Marsh Landing power plant is located on 27-acre site in a northeast area of unincorporated Antioch that covers approximately 670 acres of land area mostly devoted to industrial use with small pockets of residential use.

Given that the California Energy Commission has granted Mirant Marsh Landing, LLC approval to construct and operate a 760 megawatt power plant, the Department supports this application for the out of agency service agreement to ensure that the power plant is provided with essential water and sewer services for its construction and operation in a timely manner. While it is acknowledged that the City of Antioch had previously initiated the annexation process at Contra Costa LAFCO to bring the 697 acre northeast Antioch area into the city's jurisdiction, the Department believes that it is essential for the power plant be connected to municipal or public water and sewer services so as not to delay its construction and operation.



Please note that Contra Costa County and the City of Antioch have engaged in a dialogue on economic development strategy for the unincorporated northeast Antioch area where the Mirant Marsh Landing power plant is located. Both jurisdictions believe that while the Northeast Antioch area has good waterfront and rail access to create development opportunities, these opportunities have been unrealized due to a number of factors that may require joint or coordinated actions. This dialogue is in recognition that regardless of jurisdictional boundaries there is a mutual interest in promoting the long term development of this area to create jobs, enhance the tax base, address health and safety issues, and resolve outstanding municipal service and fiscal issues. County and City staff have developed a work program for the preparation of a Joint City/County Economic Development Strategy, which is a framework for identifying, discussing, and possibly resolving differences of interest and approach. It is our expectation that this dialogue on an economic development strategy for the unincorporated northeast Antioch area will result in a mutual resolution of several issues that will help to inform the annexation process already initiated by the City of Antioch at Contra Costa LAFCO. The Board of Supervisors is expected to consider this matter at their February 8, 2011 meeting.

Thank you for your consideration of our comments on the Mirant Marsh Landing Out of Agency Service Agreement Request (LAFCO 10-2). Should you have any question, please feel free to contact me.

Sincerely yours,



Catherine O. Kutsuris  
Director, Conservation & Development

CC: Members, Board of Supervisors  
D. Twa, CAO  
J. Jakel, City of Antioch  
J. Chilemi, Mirant Marsh Landing, LLC



February 2, 2011

Dear LAFCO Commissioners:

The City of Antioch appreciates LAFCO's consideration of our application scheduled to be considered at the February 9, 2011 meeting. The City is requesting the right to enter into an Out of Agency Service Agreement with GenOn (formerly known as Mirant), for the purpose of the City of Antioch and Delta Diablo Sanitation District (DDSD) providing needed services to GenOn's proposed 760 megawatt power plant, known as the Marsh Landing Generating Station (MLGS). The requested services include the provision of City potable water and sewer collection, with sewer treatment services to be provided by DDSD. The MLGS is proposed to be located on the north side of Wilbur Avenue, directly west of the existing PG&E Gateway Power Plant. The area where the MLGS is proposed (referred to by the City as the Northeast Antioch Area), has been in the City's Sphere of Influence (SOI) from the time the City's SOI was first established, and is within the City's Urban Limit Line (ULL).

Background: As LAFCO Commissioners may be aware, the City submitted an annexation application for the Northeast Antioch Area over three years ago. Since that time the City has actively pursued this annexation, and has been working with the County to reach a mutual agreement on the terms of the Tax Transfer Agreement. Despite concerted efforts by both parties, the City and the County have had a difficult time coming to terms on the Tax Transfer Agreement. There are several reasons for this lack of agreement, as noted below:

- Current Fiscal Environment: In these difficult economic times, both the City and County have a heightened sensitivity to protecting and enhancing their revenues, both existing and future. This heightened sensitivity has made it much more challenging to deal with the uncertainties inherent in any revenue negotiation, such as the Tax Transfer Agreement.
- Inclusion of Existing "Viera" Residential Area in Annexation: At the time the City submitted its annexation application, LAFCO staff requested that the "Viera" residential area be included as part of the annexation request. This is the existing residential area located in the vicinity of Viera Avenue, and contains over 100 primarily single family homes, two hundred plus residents, and more than 120 registered voters. While City staff considered this request by LAFCO staff to be reasonable in the context of establishing logical jurisdictional boundaries, it has created significant complications in negotiating the Tax Transfer Agreement.
- Lack of Services in Residential Area: The complications relating to the Viera residential area arise from the fact that the existing residential area lacks many urban services, with the majority of the homes on septic systems and wells. The County Health Department has determined that a number of the wells and septic fields in this area are failing, or are in danger of failing. These public health concerns can only be expected to worsen in the future. Engineering estimates of the cost to provide these services to the residential area are in excess of \$15 million. It is not reasonable to assume that the residents in the "Viera" residential area can bear this entire cost, due in no small part to the relatively low assessed values in the area. Attempts by City and County staff to explore utilizing the Tax Transfer

Agreement as a mechanism to fund a portion of these infrastructure costs has proven unsuccessful.

After having worked with preceding issues and complications over the last three years, both the City and County staffs have come to the conclusion that attempting to address the complex issues facing the Northeast Antioch Area solely through the mechanism of the Tax Transfer Agreement is unlikely to be successful. In addition, it has become clear that in order for this almost 600 acre Northeast Antioch Area to reach its full economic development potential, City utilities and services were going to need to be provided. It is no longer possible, as it was in the past, for new industrial uses or other types of development to pump water from the San Joaquin River, and discharge it back directly into the river. Without City and DDS D sewer and water services, land uses in the Northeast Area are limited to such activities as mini storage, RV lots, and similar low intensity, low tax base, low job generating activities that have little to no sewer or water demand.

At an April 2010 meeting with City staff, Supervisor Glover suggested the possibility of the City and County reaching a broader based solution involving the City and County working together in a joint economic development effort. The vision was that higher intensity, higher tax base uses could be developed with the availability of City and DDS D sewer and water services, which ultimately generate more tax base for all parties to share. Following up on this idea, City and County staff working together prepared a Work Program (a copy of which is attached) that identifies the steps that need to be implemented to bring to fruition this joint economic development concept. This Work Program, which includes the creation of a City Council/Supervisor Subcommittee, was approved by the Antioch City Council on January 11, 2011 and is scheduled to be acted upon by the Board of Supervisors on February 8, 2011. While it is recognized that the Work Program involves a number of ambitious steps that may prove to be daunting and difficult to negotiate, it nevertheless provides a clear path forward to achieve a solution that will address the interests of all parties.

Benefits of the MLGS, Environmental and Fiscal: At the time the City's annexation application was submitted to LAFCO over three years ago, GenOn was still early on in the complex State review process. Since that time GenOn, due in large part to the merits of their MLGS proposal, have secured their required approvals from the State Public Utilities Commission, The California Energy Commission, and the Bay Area Air Quality Management District. The advantages of the MLGS that came to light as part of this State review and approval process include the ability of the MLGS facility to function as a large "peaker" power plant to rapidly come on line during peak demand. For the MLGS this peak will coincide with the reduced power generation from the "wind farms" across the river in Solano County, as summer winds die down and people turn on their air conditioners. Aside from this symbiotic relationship with the "wind farms" in neighboring Solano County, the high efficiency of the new MLGS will result in the accelerated closure of the existing power plants on the GenOn property (the facilities with the 300 foot high stack just west of the Antioch Bridge). These older, less efficient power plants will no longer draw large quantities of water straight from the river, and return that water heated back into the river.

The fiscal benefits of the MLGS are as significant as the environmental benefits. The MLGS alone will generate almost \$6 million a year in new property tax. Significant sales tax will also be generated, particularly during the construction phase. Hundreds of high paying union jobs will be created at a time when the economy has significantly impacted the building trades, along with approximately 16 full time jobs. GenOn in the past has taken an active, leadership role in local communities, sponsoring and participating in community events.

Out of Agency Request: This then brings us back to the issue at hand, the Out of Agency request. Realistically it will take two or more years to discuss, negotiate, resolve, and implement the Work Program as outlined in the attached document. The Tax Transfer



Agreement and subsequent annexation would be products of this two year process. This long time frame is completely unworkable for GenOn. As previously mentioned, GenOn now has all their key discretionary approvals from the State. They have contracts with PG&E in terms of the timing of power delivery. They also have financial obligations with their lenders. While GenOn is in a much better position to respond to questions about their specific timing constraints, what is obvious is that the timing of approximately two year joint economic development path the City and County are on in no way comes close to fitting GenOn's timeline. GenOn in good faith supported the City in our annexation application over three years ago, and they continue to support the annexation process. If the timing on the annexation had gone as hoped over three years ago, then GenOn would not be in the position they are now. From a City perspective, the current situation facing GenOn is a good example of what the State intended when the Out of Agency Service provisions were implemented in State law a number of years ago. It should be noted that LAFCO staff has raised the possibility of "conditioning" any Out of Agency Service Agreement with a set, specific time period. The City and GenOn consider such an approach to be unworkable. To require an Out of Agency Agreement to be renewed or extended after, for example, a year, two years, four years etc, implies that such an extension may not be granted. The implication of such a non renewal would be that somehow LAFCO and/or the City would force the utilities to be disconnected from the MLGS power plant as such services would be dependent on having a valid Out of Agency Service Agreement. More importantly, GenOn feels that the uncertainty created by a time specific Out of Agency Agreement would create significant problems with their lenders. The City strongly recommends that the Out of Agency Agreement, if approved by LAFCO, extend until such time as the annexation is complete.

Mediation over the Tax Transfer Agreement: Lastly, LAFCO staff has brought up the fact that the City and the County have not availed themselves of the mediation process as provided for under LAFCO law as a mechanism to reach a resolution on the terms of the Tax Transfer Agreement. As previously mentioned, the City and County are now in the process of developing and implementing a strategy to move the annexation forward that both parties feel should lead to a broad based agreement. Aside from the fact that the City and County are now moving forward on a mutually agreed upon path, the LAFCO mediation process is not a magic panacea. The mediation process is expensive, and likely will require both sides to fund an arbitrator. Aside from the cost, the mediation process is non binding, as either the City or the County, through a vote of the Council or Supervisors could decide not to agree to any arbitrator imposed settlement. Given the circumstances facing this issue, it is moot in relation to the Out of Agency Agreement, which needs to be resolved in a much more immediate timeframe than a non binding arbitration process could provide.

I apologize for the length of this letter, but I felt it was important to clarify issues from a City perspective, particularly given the importance of GenOn's project for the City, the County, and the region. Please feel free to contact me if you have any comments or questions concerning this material (925) 779-7011.

Sincerely,



Jim Jakel  
City Manager

Attachment

cc: Mayor and City Council

# WORK PROGRAM FOR THE PREPARATION OF A JOINT CITY/COUNTY ECONOMIC DEVELOPMENT STRATEGY FOR THE NORTHEAST ANTIOCH AREA

Updated January 5, 2011

**INTRODUCTION:** In preparing a Work Program for a project as complex the proposed Joint Economic Development Strategy there is a benefit in identifying the goals that both parties hope to accomplish. This section identifies these goals, along with the key assumptions on which this Work Program is based. It is important to note that this Work Program, along with the Goals and Assumptions on which the Work Program is based, may evolve and change over time through the work of the City Council/Board of Supervisor Subcommittee, to be established as defined in Task #1 of this Work Program.

## Goals to Achieve through the Joint City/County Economic Development Strategy:

1. **Need to increase job creation:** The Northeast Antioch Area, which contains hundreds of acres of vacant and underdeveloped land, has the potential for the development of the type of land uses that could bring hundreds and perhaps thousands of new, well paying jobs to Eastern Contra Costa County. East County currently suffers from a poor jobs housing ratio.
2. **Need to enhance the existing tax base:** While the existing industrial area along Wilbur Avenue currently generates a net tax surplus, the opportunity exists to significantly increase the tax base above current levels through the development/redevelopment of vacant and underutilized properties with new, higher intensity job generating uses. Power plants, such as Mirant and Gateway, appear to have the greatest near term potential to enhance the existing tax base, given their relatively small footprint and high capital cost. However, the job creation they bring is limited particularly when compared to the cost to construct this type of facility.
3. **Need to complete the annexation process:** Annexation of the Northeast Antioch Area to the City of Antioch and DDS D is a necessary precondition to provide water and sewer services to the area. The development of the type of higher intensity uses needed to increase job generation and enhance the tax base is only possible by making City and DDS D sewer and water services available through annexation. Realizing annexation is a key goal of this effort. The successful negotiation of a tax sharing agreement between the City and the County is the key to moving the annexation process forward to a successful conclusion.
4. **Need to address the sewer/water problems facing the existing residential area:** The majority of existing residential uses in the Northeast Antioch Area lack sewer and water service, as they depend on aging septic fields and wells. This situation presents a significant potential public health issue that needs to be resolved. Resolution of this issue will likely require funding from outside the existing residential area, given the high cost of constructing utilities to serve the area and the relatively low assessed value of the existing residential uses.
5. **Need to address the zoning/building code status of the existing housing in residential area:** The existing residential area likely contains many non-conforming, substandard structures and uses. Balancing the desire of the existing residents to maintain what they consider the character of the area with the need to appropriately address public health safety issues will present be a challenge that needs to be addressed.

## Key Assumptions that Shape How the Work Program is Structured.

1. **Geographic Boundary of Annexation:** The Antioch City Council has to date authorized submitting an annexation application for only the Industrial Area, known as Area 1. LAFCO staff has stated that they would not support the annexation of the Industrial Area (refer to Area 1 on the attached map) that does not address in some fashion the Viera residential subarea (Area 2b) and the existing marinas (Area 2a). The City may in the future choose to add these two areas to the annexation application pending a satisfactory resolution to the Tax Transfer Agreement with the County.
2. **Assumption of Residential "Island" Determination by LAFCO:** Based on discussions with LAFCO staff, it is the understanding of the City and County that LAFCO staff would recommend that LAFCO find the marina and residential marina areas (Areas 2a and 2b) are "islands" for the purpose of annexation under LAFCO law, assuming these areas meet the "island" criteria as established by LAFCO law. It is the City's and County staff's understanding that if such an "island" determination is made by LAFCO, that the existing residents within the "island" area would not have the discretion to vote on the annexation. Such discretion would exist with LAFCO.
3. **"Island" Determination by LAFCO:** The Joint Economic Development Strategy will need to take into account the possibility that LAFCO may determine that Areas 2a and 2b are not "islands". If this is the case, one option would be for Areas 2a and 2b to remain in the County. Over time these residential properties contiguous to the City boundary could singly or in groups annex to the City and DDS when they desire to hook up to City sewer and water service.

## WORK PROGRAM

### **TASK #1: Finalize Work Program and form a City Council/Board of Supervisors**

**Subcommittee:** Given the complex and potentially controversial issues involved with formulating and implementing a Joint Economic Development Strategy for an area with the size and diversity of Northeast Antioch, it would be appropriate early on to form a Council/Supervisor Subcommittee to review/update the work program on an ongoing basis, and to provide a "sounding board" for City and County staff on policy and political issues that arise during the process:

- **Subtask 1a, City/County staffs finalize Work Program:** This will likely take several iterations, and will include preparing time lines for the various tasks, and more detail on the parties responsible for each task.
- **Subtask 1b, Form Council/Board Subcommittee, get Work Program approved:** Membership of a Subcommittee could consist of 1 City Council and 1 Board of Supervisor Member. The finalized Work Program could either be brought to the full City Council/Board of Supervisors for their approval, or approved by the Subcommittee
- **Subtask 1c, Public Information Strategy:** It would be useful early on to address how and when the residents/property owners in the Northeast Antioch Area would be kept informed and have input on the preparation of the Joint Economic Development Strategy. This issue of public notification is particularly critical for the residential area, where premature or late



notice on project status could aggravate resident's concerns. The Council/Supervisor Subcommittee would approve the public information strategy. Updating of polls of residents previously conducted by the City in 2008 may be considered.

- o Responsible Party: City/County staff

- Subtask 1d, Estimate in as Much Detail as Possible the Cost of Carrying Out the Work Program, and Identify City/County/ and other Funding Sources: Performing the various tasks identified in the work program will take a commitment from both the City and County in terms of staff time and financial resources. Costs of performing the tasks in the work program need to be estimated in more detail as the Work Program moves forward, and will require securing the financial resources needed to offset City staff and consultant costs. This may require finding new funding sources, or shifting current resources to this effort. The significant cost items would likely involve updates to the existing fiscal analysis of the annexation, preparing documents and plans relating to establishing a redevelopment district, and the preparation of CEQA documents. The existing Negative Declaration prepared by the City for the Northeast Annexation and certified in June 2010 would serve as a basis for any CEQA analysis.

The City and County agree to split the cost of performing the various tasks in the Work Program on a 50/50 basis, with the exception that each agency will be responsible for funding and securing funding sources as necessary for their respective staff costs.

**TASK #2: City/County consensus on Fiscal Analysis**: The key precondition to preparing and implementing the Joint Economic Development Program envisioned is for the City and County staff and decision makers to agree on the specifics of the financial issues relevant to the Northeast Antioch Area:

- Subtask 2a, Gruen Report: County staff needs to review in detail the assumptions and analysis contained in the report "Fiscal Impacts of the Annexation of the Northeast Antioch Area, October 2009" prepared by Gruen/Gruen Associates for the City of Antioch. This analysis contains data on existing and projected property and sales tax for the Northeast Antioch area broken out by subarea, and presents several scenarios assuming a range of possible tax sharing between the City and the County. This Gruen Study also contains a detailed cost analysis prepared by the engineering firm of Carlson/Barbee/Gibson, working as a sub consultant to Gruen that provides detailed cost estimates of providing sewer, water, storm drain, roads and other infrastructure to the annexation area. County staff needs to review this analysis, and get comfortable with the data and the conclusions.
  - o Responsible Party: Review of Gruen report by County staff, followed by meeting with City staff and Gruen to respond to questions, with revisions to Gruen report as appropriate. Gruen report could then be brought to the Council/Supervisor Subcommittee for their review and approval.
- Subtask 2b, Gas Surcharge and other possible revenue sources: During the discussions over the last year on the annexation, the issue was raised by County staff of the possibility of the County or City collecting a significant amount of tax revenue through a "Gas Tax Surcharge" from gas fired power plants. County records showed such tax revenue received by the County from the Northeast Antioch Area for the years 2000-2007. However, there were unanswered questions over the applicability of this tax source to Mirant, and how recent State legislation may have changed how this tax is collected. This needs to be clarified.

- Responsible Party: County staff would research the amount of gas tax surcharge revenue collected in the past. City/County staff would jointly research the potential for revenue from this tax, and other “exotic” possible sources of tax revenue.

**TASK #3: Explore possible formation of redevelopment district within Northeast Antioch**

**Area**: The use of redevelopment funding is a logical tool to finance the needed infrastructure for the area, which currently lack most basic infrastructure, other than roads. The flip side of this issue is the extent the use of redevelopment funding could impact City/County General fund revenue.

- Subtask 3a: City/County staffs prepare a “white paper” on the procedural steps necessary to implement a redevelopment district in the Northeast Antioch Area, and determine how this could be coordinated with the City’s current plan to merge its existing redevelopment districts. Determine the possibility of structuring a redevelopment district in such a manner so as to minimize the impact on General Fund revenue. Also, consider ways to address possible concerns of residents in area to the issue of redevelopment district formation.
  - Responsible Party: City/County staff working jointly, acknowledging that the County has more expertise and experience in dealing with redevelopment related issues.
- Subtask 3b: Determine fiscal implications of possible formation of redevelopment district. Gruen report does not explicitly address redevelopment district formation, although the report contains useful source data, such as existing and projected assessed values that would be useful in a fiscal analysis of redevelopment.
  - Responsible Party: County/City staff would prepare a work scope for Gruen (or other mutually agreed upon consultant) to analyze fiscal implications/benefits of redevelopment district formation. Determine estimated redevelopment plan adoption costs (including CEQA) and how to fund these consultant costs.
- Subtask 3c: Define the project boundaries and prepare a Redevelopment Plan for the Project Area along with corresponding CEQA documents.

**TASK #4: Negotiate possible “revenue sharing” between the City and the County**: With the information from Tasks #2 and #3 in hand, the City and the County should be in a position to discuss/negotiate possible revenue sharing for the Northeast Antioch Area. This negotiation will need to take into account all relevant variables, including the need to provide sufficient funding to subsidize the basic infrastructure needed to serve the residential area.

- Subtask 4a: City/County staffs negotiate an agreement balancing the items listed above. Perhaps develop two or three different revenue sharing scenarios.
- Subtask 4b: Bring the draft revenue sharing agreement and any alternate revenue sharing scenarios to the Council/Supervisor Subcommittee for their review and comment.
- Subtask 4c: It is anticipated that one of the key “products” of the revenue sharing agreement would be resolution to the issue of the Tax Transfer Agreement required for annexation.
- **TASK #5: City/County Land Use Requirements for Northeast Antioch Area**: The City and County General Plan designations are very similar for the industrial subarea (Area 1), but tend to differ for the marina and residential areas (Areas 2a and 2b). The City has not

yet rezoned the area, so zoning can't currently be compared. City/County staff need to work together to evaluate the range of land use possibilities for the Northeast Antioch Area to ensure a consistent set of land use designations. In addition, land use designations and development standards need to be established that further the City /County goals for the area, including job creation and enhancing the tax base.

- Subtask 5a: Both jurisdictions may need to amend their General Plans and zoning/prezoning as necessary for consistency and to help achieve the same mutual land use goals for the area. The land use goals would reflect the overall goals identified at the beginning of this work program, which would focus on land uses that provide significant job creation as well as increased tax base.
- Subtask 5b: Any General Plan or zoning changes will require environmental documentation, which could be prepared jointly with one jurisdiction acting as lead agency.
- Subtask 5c: Any change of General Plan/zoning would require public notice of the area in question.
- Subtask 5d: The concept of permit streamlining could be explored to enhance the attractiveness of the area to end users/investors. This could be reflected in the zoning code for the area. A related approach would be to prepare environmental documentation (i.e. a Project Level EIR) that prospective employers/investor could use to facilitate their own environmental clearance for their project.
- Subtask 5e: It will be necessary to formulate pre zoning for the residential area 2b. Alternately a "study" zone could be used.
  - Crafting zoning for this area will be a challenge given the wide "variety" of buildings within the residential area.
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**Other TASKS as determined by the City/ County Subcommittee**

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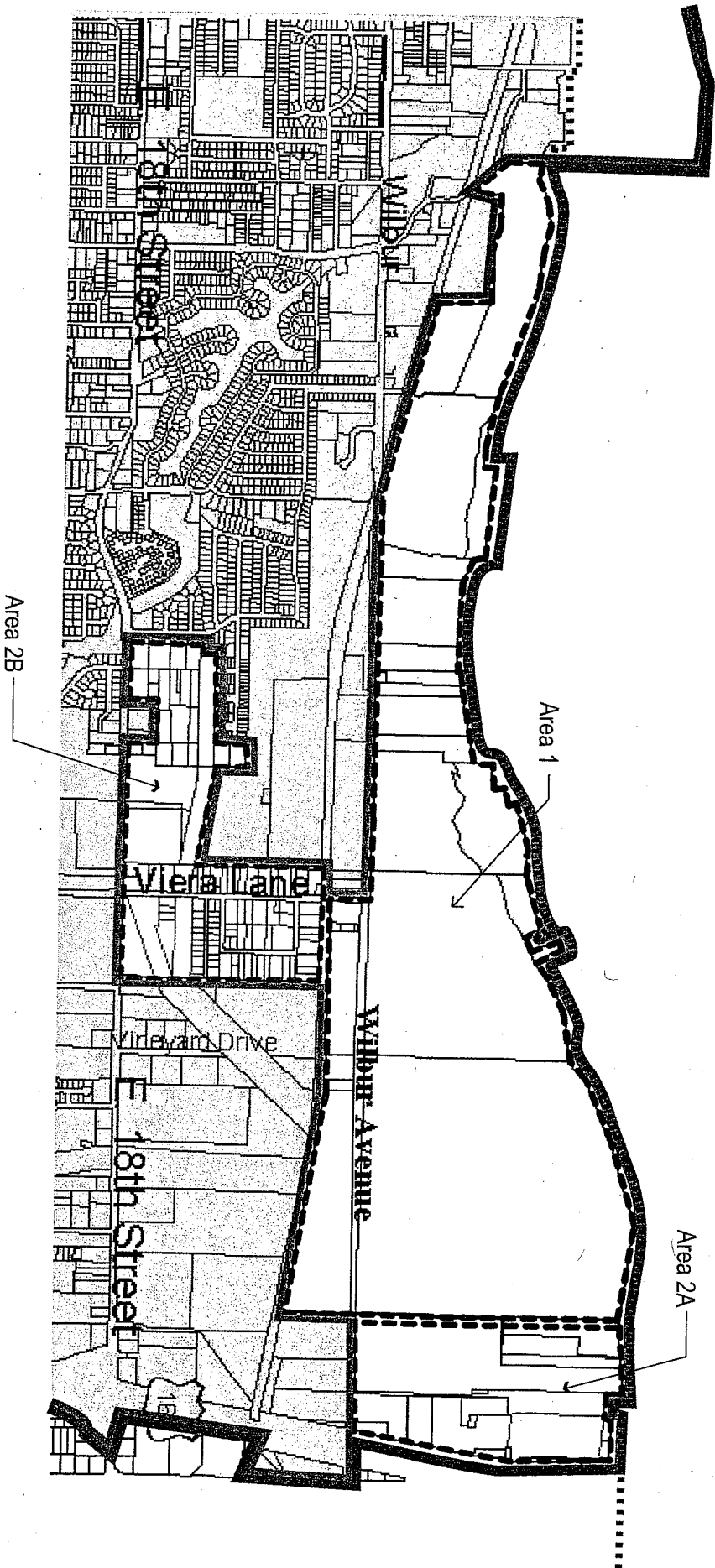
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**Other TASKS as determined by the City/ County Subcommittee**



**LEGEND**

- ..... Urban Limit Line
- City Sphere of Influence (SOI)
- City Boundary
- ▨ DSD Service Boundary and SOI
- Area 1
- Area 2A
- Area 2B

**EXHIBIT 2**  
 Current Administrative Boundaries  
 Northeast Antioch Reorganization





GenOn Energy, Inc.  
696 W. 10<sup>th</sup> Street  
P.O. Box 192  
Pittsburg, CA 94565

February 1, 2011

**By Email and U.S. Mail**

Contra Costa Local Agency Formation Commission  
651 Pine Street, 6th Floor  
Martinez, CA 94553

Re: Application for Out of Agency Service Agreement by City of Antioch

Dear LAFCO Commissioners:

On behalf of Mirant Marsh Landing, LLC (MML), a subsidiary of GenOn Energy, Inc., we urge the Contra Costa Local Agency Formation Commission (LAFCO) to approve the application for Out of Agency agreement (OOA) authority by the City of Antioch (City). The OOA is critical to the future of the Marsh Landing Generating Station, a project on the verge of construction that promises millions of dollars in tax revenue and significant numbers of jobs in Contra Costa County (County). We understand LAFCO's strong interest in the County and the City completing the proposed annexation. Nonetheless, Marsh Landing embodies too many positives for the economic future of the County and the City to jeopardize Marsh Landing's future by forcing it to wait on vital services until the annexation process is complete. Approving the OOA will help ensure that the promise represented by Marsh Landing comes to fruition.

The OOA would allow the City and DDSD to provide water, sewer collection, and sewer treatment services at the Marsh Landing site, which is currently in an unincorporated section of the County. The City already provides water to our Contra Costa Generating Station, which is directly adjacent to Marsh Landing and located in the County. There is also an existing sewer line adjacent to the project. The OOA would only encompass 27 acres, or roughly 5%, of the almost 600 acre annexation area. While relatively small in scope, these services are vital to the project.

A substantial factor in the success of the Marsh Landing project is the Credit Agreement by and among MML, as Borrower, and the signatory lenders and their agents. As the initiation of construction approaches, MML and its lenders are focused on eliminating the material risks to the project. As with any financed project, risks to the project schedule and budget, in particular, represent risks to the financing and, ultimately, the project itself. In the event that MML experiences cost overruns or construction delays, including delays attributable to securing an agreement for water, sewer collection, and sewer treatment services from the City

and DDSD, that materially exceed the project budget or schedule agreed with the lenders, the lenders' funding obligations could be suspended. Approving the OOA as soon as possible will remove significant risks to the project budget and schedule and, accordingly, will represent a significant step forward towards ensuring that Marsh Landing gets built.

Importantly, the OOA should continue in place until the County and the City complete the annexation. Limiting the OOA to a date certain would create uncertainty in the event the OOA were to expire prior to the annexation. We have actively supported the annexation throughout the process and will continue to support it. The City and the County recently developed an annexation work plan (approved by the Antioch City Council earlier this month and to be considered by the Contra Costa Board of Supervisors at its February 8<sup>th</sup> meeting), demonstrating that there is significant momentum toward completing the annexation. Furthermore, we have communicated our willingness to assist in the funding of costs associated with that work plan. We have a \$1.8M community benefits agreement with the City of Antioch that is contingent on annexation – an incentive to keep pursuing annexation.

Marsh Landing has achieved all major milestones, including site permitting through the California Energy Commission, negotiation of a power purchase agreement with PG&E, and approval of that power purchase agreement by the California Public Utilities Commission. Construction is imminent. Marsh Landing also enjoys a broad range of support, which is not surprising. The project benefits the community by creating jobs and generating tax revenue. The project also benefits the environment, because it will directly lead to the retirement of two units that rely on once-through cooling, employs best available control measures for emissions and will help California integrate the substantial intermittent, renewable resources scheduled to come on-line in the next decade. As a result, the City, the County, DDSD and organized labor all support the construction of Marsh Landing.

I cannot emphasize enough how critical the OOA is to the future of Marsh Landing. We urge you to recommend that the LAFCO approve the OOA at its meeting on February 9<sup>th</sup>.

Very truly yours,



John V. Chillemi  
President  
Mirant Marsh Landing, LLC