

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

September 12, 2012 (Agenda)

September 12, 2012
Agenda Item 7

On July 11, 2012, LAFCO opened and continued the public hearing on the Alhambra Valley Annexation to the City of Martinez to September 12, 2012. The City requested that the hearing being continued.

On August 22, the City of Martinez held a special City Council meeting, at which time a majority of the City Council directed its staff to amend the boundary map of the current application for the Alhambra Valley annexation and to convey the preferred reduced boundary to LAFCO (Attachment 1).

The July 11th LAFCO staff report has been updated to include discussion of the reduced boundary option as follows.

LAFCO 11-07 Alhambra Valley Annexation to the City of Martinez

PROPONENT City of Martinez - Resolution No. 117-10 adopted December 1, 2010

ACREAGE & LOCATION The annexation area, as originally proposed, totals 393± acres (139 parcels) and is generally bounded by the City's current corporate boundary to the north, single-family homes and undeveloped hills to the east, Alhambra Valley Road and Briones Regional Park to the south, and undeveloped hills and rangeland to the west (see Attachment 2).

The reduced boundary option is approximately 316.4± acres (104 parcels) and includes Alhambra Valley Ranch, Stonehurst, Deer Creek and Valley Orchard subdivisions.

PURPOSE The purpose of the annexation is to extend municipal services to the area. The proposed annexation is in accordance with LAFCO law, LAFCO policies, and the LAFCO sub-regional and water/wastewater Municipal Service Reviews (MSRs) which identified out of agency water service as a concern and encouraged the City to annex areas currently receiving water service as appropriate. The Commission will also consider the corresponding detachment of the area from County Service Areas (CSAs) L-100 and P-6.

INTRODUCTION

In 1995, the City first began the process to annex the Alhambra Valley. In the last several years, the City resumed its analysis of the feasibility of annexing Alhambra Valley. Various land use, fiscal and environmental studies were prepared; and public hearings were held by the City's Planning Commission and the City Council.

In 2010, the City's Planning Commission reviewed and denied the proposed land use regulations related to the proposed annexation. The Planning Commission expressed concerns that the area proposed for annexation did not include all of the area covered by the Alhambra Valley Specific Plan (AVSP), and with the proposed General Plan updates in relation to timing of the City's General Plan update program. Subsequently, the City Council directed its staff to proceed with the annexation of a portion of the Alhambra Valley based on existing and future service needs and other factors as discussed below.

DISCUSSION

The Cortese Knox Hertzberg Act (CKH Act) sets forth factors that the Commission shall consider in evaluating any proposed change of organization or reorganization as discussed below (Government Code §56668). In the Commission's review and evaluation of these factors, no single factor is determinative; each is to be evaluated within the context of the overall proposal.

1. Consistency with the Sphere of Influence of Any Local Agency:

LAFCO is charged with both regulatory and planning functions. Annexations are basically a regulatory act, while establishing spheres of influence (SOIs) is a planning function. The SOI is an important benchmark as it defines the primary area within which urban development is to be encouraged. In order for the Commission to approve an annexation, it must be consistent with the jurisdiction's adopted SOI.

The annexation area, both the original and the reduced boundary option, are within the City of Martinez's SOI and within the adopted countywide Urban Limit Line (ULL). The City has excluded certain areas from the proposed annexation for various reasons as explained below, which results in some boundary irregularities.

2. Land Use, Planning and Zoning - Present and Future:

Existing land uses within the Alhambra Valley are subject to the Contra Costa County General Plan and Zoning Regulations, and the Alhambra Valley Specific Plan (AVSP). The annexation area contains primarily single-family residential and agricultural uses. The County and City General Plan and zoning designations are summarized below. The City's land use designations are generally in accordance with the AVSP. In order to achieve consistency with existing zoning regulations, the City created three new zoning districts specific to the Alhambra Valley.

County General Plan	City General Plan
AL (Agricultural Lands)	AL (Agricultural Lands)
OS (Open Space)	OS (Open Space)
SV (Single-Family Residential - Very Low)	ER-VL (Estate Residential – Very Low)
SL (Single-Family Residential – Low)	ER-L (Estate Residential – Low)
County Zoning	City Zoning
A-2 (General Agricultural)	AV/A-5 (Agriculture District)
R-20 (Single Family Residential -minimum lot size 20,000 sq. ft.)	AV/R-20 (Single-Family District; minimum lot size 20,000 sq. ft.)
R-40 (Single Family Residential -minimum lot size 40,000 sq. ft.)	AV/R-40 (Single-Family District; minimum lot size 40,000 sq. ft.)
P-1 (Planned Unit)	

Most of the territory the City is looking to exclude from the annexation under the reduced boundary option is zoned AV/R-40 with the exception of one area designated AV/A-5 and another property zoned AV/R-20.

While the annexation proposal does not propose any new development, the County is currently processing three development projects in the southeast area (i.e., in the area that would be outside the annexation area based on the City's reduced boundary option). The development projects include the Alhambra Valley Oaks (Busby property) 23-lot residential subdivision (SD02-8634), a 7-lot subdivision (Busby property) (SD05-8947), and the Creekside Oak Estates 7-lot residential subdivision (SD90-7609).

According to the County, municipal sewer service is needed to serve the projects as it is the only means of complying with the County Health Code, thus sewer services would be provided by Central Contra Costa Sanitary District (CCCSD). The properties were annexed to CCCSD in 2007 (CCCSD Annexations 168A and 168B). The County's conditions of approval specify that water service is to be provided by the City of Martinez. The properties currently have no water service as discussed below.

County staff reports that both the Busby projects have approved vesting tentative subdivision maps which will expire in 3-4 years. City staff indicates that these properties do **not** have a Deferred Annexation Agreement (DAA) and have no water infrastructure or service through Martinez. In 2005, the City provided a letter to the landowner/developer stating that Martinez can provide water service to the projects if certain conditions are met. The City reports that no improvements plans have been submitted, no physical work has been completed, the City's conditions have not yet been met, and consequently there is no water service to these properties.

The Creekside Oaks Estates project has an original map filed in 2004, and a revised recorded map filed in 2010. According to City staff, this property is subject to a DAA. In 2003, the City provided a letter to the County indicating that Martinez can provide water service to the project if certain conditions are met. City staff indicates that the conditions have largely been met. The City's authority to provide water absent annexation or through out of agency service is questionable.

Land uses surrounding the annexation area include open space and cattle grazing to the east, west, north and south; John Muir National Historic site to the north; and Briones Regional Park and rural residential to the south.

In conjunction with the 2007 annexation of a portion of the Alhambra Valley to the CCCSD, there is the potential for future development in the original annexation area, and an increase in housing units in accordance with the AVSP. There is limited development potential in the reduced boundary as discussed below.

The current and proposed uses are consistent with the County and City General Plans and zoning designations. No additional changes in land uses are proposed. No subsequent changes may be made to the General Plan or zoning for the annexation area that is not in conformance to the

prezoning designations for a period of two years after the completion of the annexation, unless the City Council makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the prezoning in the application to the LAFCO (Gov. Code §56375).

3. The Effect on Maintaining the Physical and Economic Integrity of Agricultural Lands:

No Prime Farmlands or Williamson Act contract lands are located within the annexation areas. Many of the properties in the annexation area contain small vineyards, small orchards, and a horse farm; however, this agricultural activity is not considered commercial. The proposal will not result in the conversion of farmland to non-agricultural uses.

4. Topography, Natural Features and Drainage Basins:

The annexation area is located in the relatively rural Alhambra Valley and Alhambra Creek watershed. The topography is characterized by both gently and steeply sloping hills. Vegetation consists of native oak woodland, natural grasses, residential landscaping, and small vineyards and orchards. Alhambra Creek roughly parallels Alhambra Valley Road through the proposed annexation area.

The proposal area is located in the San Francisco Bay Area approximately three miles south of Suisun Bay and the Carquinez Strait; and situated within the Briones Hills which are part of the Northern California Coast Range province.

5. Population:

There are approximately 127 dwelling units within the original annexation area – all of which are single-family homes on low-density residential lots. There is the potential to add approximately 32 single-family residential units in the annexation area which would result in a projected population increase of approximately 80 people.

In the reduced boundary area, there are approximately 82 dwelling units all of which are single-family homes on low-density residential lots, and there are approximately seven vacant lots. There is the potential to add approximately seven single-family residential units which would result in a projected population increase of 17± people.

6. Fair Share of Regional Housing:

One of the factors LAFCO must consider in its review of a proposal is the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. Regional housing needs are determined by the State Department of Housing and Community Development; the councils of government throughout the State allocate to each jurisdiction a “fair share” of the regional housing needs (Gov. Code §65584).

In Contra Costa County, the Association of Bay Area Governments (ABAG) determines each city's fair share of regional housing needs. Each jurisdiction is required in turn to incorporate its fair share of the regional housing needs into the housing element of its General Plan. In June 2008, ABAG released the Proposed Final Regional Housing Needs Allocation (RHNA) Plan for the period 2007-14. The City reports that its total RHNA for 2007-2014 is 1,060 units. Of that, 454 are market rate and 606 are affordable (i.e., 179 moderate, 166 low and 261 very low).

Any new housing units in the annexation area are likely to meet the above moderate income category given the allowed minimum lot size.

7. Governmental Services and Controls - Need, Cost, Adequacy and Availability:

Pursuant to Government Code §56653, whenever a local agency submits an annexation application, the local agency must also submit a plan for providing services to the annexation area. The plan shall include all of the following information and any additional information required by LAFCO:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

The City's "Plan for Providing Services within the Affected Territory," as required by Government Code §56653, is on file in the LAFCO office. The level and range of services will be comparable to those currently provided within the City.

The original area proposed for annexation contains 139 parcels; and the reduced boundary annexation area contains 104 parcels. The City will provide a range of municipal services to the area, including police, streets and infrastructure maintenance, stormwater, parks and recreation and other city services. Fire services will continue to be provided by the Contra Costa County Fire Protection District, treated water services will be provided by the City of Martinez, and sewer services will be provided by the Central Contra Costa Sanitary District and County Sanitation District No. 6 (Stonehurst subdivision only).

Following annexation, the City will provide municipal services to the area, including police and road maintenance, and the County will no longer provide these services.

The Martinez Police Department (PD) has 52 full time positions (i.e., 37 sworn, 16 support). The PD is supplemented by a volunteer program, two part-time Cadets, four Explorer volunteers, and eight police officers reserves.

The PD provides a full range of law enforcement services including patrol, dispatch (911), crime prevention, parking and traffic control, community policing, community awareness, and investigations. The PD has a Special Weapons and Tactics (SWAT) Team, a K-9 unit, a temporary holding facility, and conducts training. Martinez PD is also involved in various regional affiliations including the East Bay Regional Communication System, the Contra Costa Mobile Field Force, the Regional Crime Lab, and the Sheriff's Automated Regional Information Exchange System database.

The Martinez PD relies on the County Sheriff's Office (SO) for search and rescue services, long-term holding facilities and Animal Control, and the City of Walnut Creek for bomb squad services. The SO also provides emergency response in the event of a disaster within the City pursuant to a mutual aid agreement.

The City has established Neighborhood Policing Areas (NPA's) in which a police officer is assigned to each of the 24 NPA's to facilitate direct contact with residents or businesses within the NPA. The NPA officer serves as the liaison for the assigned area, and is available for neighborhood meetings, crime prevention issues, and to talk with residents about how the City can help improve the neighborhood.

The City of Martinez maintains over 122 miles of City streets and over 11 acres of public medians; the City does not maintain private roads. The City uses a combination of local and State funding to fund road improvements. In addition, the City and County periodically participate in joint road improvement projects.

The City and County have entered into a tax sharing agreement which provides for an exchange of property tax, and includes provisions related to two current residential development projects as previously approved by the County (i.e., fees, permits). City and County staff indicate that the reduced boundary option will not alter the tax exchange agreement.

Following annexation, the City of Martinez will provide municipal services to the annexation area, and the County will no longer provide these services. Consequently, if the Commission approves the original annexation, detachment from CSAs P-6 (police services) and L-100 (street lighting) should occur; and if the Commission approves the reduced annexation boundary, detachment from P-6 should occur. The effect of such detachments will result in the CSA's allocation of ad valorem property tax (1%) being transferred from the County to the City following annexation. Also, following detachment from P-6, any special taxes/ assessments associated with a P-6 zone would cease.

8. Timely Availability of Water and Related Issues:

The annexation area is within the City's water service area. Martinez provides water treatment and distribution services for residential, commercial, industrial, public and irrigation customers, as well as for fire protection uses. The City's sole source of water supply is untreated water purchased from Contra Costa Water District (CCWD). The City takes delivery of the water from the Martinez

Reservoir, a terminal reservoir for the Contra Costa Canal. The City's water treatment facilities have a total filtration capacity of 14.7 million gallons per day (mgd). Average daily water use in 2011 was 4.16 mgd. The City's water system includes eleven treated water storage reservoirs with a capacity of 9.6 million gallons (MG).

The CCWD supplies untreated water to the annexation area. CCWD provides wholesale and retail water, and serves an area of 220± square miles and approximately 550,000 people. Water service includes production, distribution, retail, treatment, recycling and conservation services. The CCWD's primary source of water supply is the United States Bureau of Reclamation's Central Valley Project.

The proposed annexation would have no effect on water usage, and would not lead to the construction of new or expansion of existing water facilities.

As noted in the 2008 LAFCO MSR report, the City is providing water service to areas outside the corporate boundaries of Martinez but within the water service boundary affirmed by the City in October, 1987. In 1987, the City Council adopted Resolution No. 169-87, requiring properties contiguous to the City boundary to complete annexation prior to receiving water service. Those properties that are not contiguous must execute a DAA, with annexation to occur at a time determined by the City Council. The City serves an estimated 1,499 accounts that are outside the City's corporate boundaries; the majority of these were established prior to 2001.

Government Code §56133 requires local agencies to receive approval from LAFCO to extend municipal services outside their jurisdictional boundaries; this does not apply to service that a city or district was providing on or before January 1, 2001. The statute provides that, "A city or district may provide new or extended service by contract or agreement outside of its jurisdictional boundaries only if it first requests and receives written approval from the Commission." Further, the Commission may authorize a city or district to provide new or extended services under specific conditions: a) outside its jurisdictional boundaries but within its SOI *in anticipation of a later change of organization* (i.e., annexation); or b) outside its jurisdictional boundaries and outside its SOI *to respond to an existing or impending threat to public health or safety*.

In accordance with LAFCO law and local LAFCO policies, LAFCO encourages local agencies to annex properties receiving out of agency service, as appropriate.

The discussion above highlights the concerns that would affect current development projects if they are removed from the proposed annexation under the reduced boundary option, and the provision of future water service to these serve these projects.

9. Assessed Value, Tax Rates and Indebtedness:

The original annexation area is within tax rate areas (TRAs) 76001, 76004 and 76022. The assessed value is \$218,850,030 (2010-11 roll). The reduced boundary area is within TRA 76004 and the assessed value is \$95,665,133 (2010-11 roll). The territory being annexed shall be liable for

all authorized or existing taxes comparable to properties presently within the annexing agencies, including the City's Measure H park bonds approved by the voters in 2008 [Gov. Code §56886(t)].

10. Environmental Impact of the Proposal:

As Lead Agency under CEQA, the City of Martinez adopted a Negative Declaration for the Alhambra Valley Annexation Project on December 1, 2010. The LAFCO Environmental Coordinator has reviewed the document and finds it adequate for LAFCO purposes.

Copies of the environmental document were previously provided to the members of Commission and are available for review in the LAFCO office.

11. Landowner Consent and Consent by Annexing Agency:

According to County Elections, there are more than 12 registered voters in the area proposed for annexation; thus, the area is considered inhabited.

Less than 100% of the affected landowners/voters have provided written consent to the annexation. Thus, the Commission's action is subject to notice, hearing, as well as protest proceedings. All landowners and registered voters within the original proposal area and within 300 feet of the exterior boundaries of the original proposal area received notice of the July 11, 2012 hearing. Also, although not required by law, LAFCO mailed a second notice regarding the September 12th hearing and reduced boundary option to all landowners/voters within the original proposal area and within 300 feet of the exterior boundaries of the original proposal area.

As of this writing, LAFCO has received written and verbal objections from approximately 11 affected registered voters/landowners, several of whom have signed DAAs. Given the objections received, a protest hearing may be required (Gov. Code §56663). If the Commission approves the reduced boundary option, a protest hearing will be required if any landowner/voter within the reduced boundary area, and not subject to a DAA, objects to the annexation.

12. Boundaries and Lines of Assessment:

Both the original and the reduced boundary annexation areas are contiguous to the existing City boundary. Both the original and reduced boundary annexation areas contain one split parcel (APN 367-230-025). The reason for the split parcel is that a portion of the parcel is outside the voter approved ULL, and the City is precluded from annexing property to the City which is located outside the ULL in accordance with the provisions of Measure J without jeopardizing the City's share of local transportation funding.

A map and legal description to implement the original boundary change have been received and are being reviewed by the County Surveyor. A map and legal description for the reduced boundary option are being prepared by the City and are subject to review and approval by the County Surveyor.

The boundaries as originally proposed and under the reduced boundary option are irregular. The criteria the City used in determining the boundary configuration are as follows:

- Within the City's SOI as required by statute
- Contiguity to the City limits as required by statute
- Within the countywide voter approved ULL as required by Measure J
- Properties with signed DAAs – of the 139 parcels originally proposed for annexation 83 properties currently receive City water service (Attachment 3) and 112 have signed DAAs. According to City staff, of the 104 parcels within the reduced boundary option, 82 currently receive City water service and 99 have signed DAAs
- In accordance with recommendations contained in the LAFCO sub-regional and water/wastewater MRSs
- Avoid parcel splits (Attachment 4)
- In accordance with the desires of the residents, including both those desiring to be annexed to the City as well as those who do not wish to be annexed to the City

On August 22nd, the Martinez City Council discussed the proposed annexation boundary and directed its staff to convey to LAFCO the City's preference for a reduced boundary.

The City indicates that its request for a reduced boundary is to respond to community input while maintaining consistency with the Martinez General Plan and the LAFCO MSR. The Martinez General Plan includes a policy stating that all developed but presently unincorporated areas within the City's SOI should be annexed to the City to ensure an equitable tax distribution and cohesive neighborhood units for public service purposes. Unincorporated and inhabited territory within the Alhambra Valley is served by a mix of special districts and CSAs. The City notes it is already providing urban services to much of the developed area of Alhambra Valley, even areas outside the City's municipal boundary.

As noted in the LAFCO MSR, the City is providing water services beyond its corporate limits to approximately 1,500 water connections. These 1,500 water connections represent residents who do not have representation concerning policy, rates, or governance of their water supply. The City notes that the intent of the annexation boundary revision is to incorporate the developed properties already receiving urban water service, while eliminating areas not currently developed. The City believes this change will be responsive to community concerns while maintaining consistency with the General Plan and LAFCO policies, and will increase the likelihood of success of the proposed annexation.

In response to the City's action on August 22nd regarding the reduced boundary option, LAFCO received two letters dated August 29, 2012: one from the Alhambra Valley Improvement Association (AVIA) and one from John A. Ricca property owner at 111 Vaca Creek Way (Attachment 8). Both parties request modifications to the reduced boundary option, including the removal of properties located at 5370 Alhambra Valley Road and 101, 111 and 121 Vaca Creek Way from the annexation area. A map depicting these properties is attached (Attachment 9).

Boundaries and lines of assessment are one of 15 factors the Commission must consider in its review of a proposal. LAFCO has the authority to amend the proposed annexation boundaries (Gov. Code §56375). In accordance with LAFCO's mission, LAFCO staff concludes that areas receiving and requiring city services should be annexed to the City.

13. Environmental Justice

Beginning January 1, 2008, Government Code §56668(o) requires that LAFCO consider the extent to which proposals for changes of organization or reorganization will promote environmental justice. As defined by statute, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.

Neither the original nor the reduced boundary annexation options are expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

14. Comments from affected landowners, voters and residents

As of this writing, LAFCO has received written and verbal objections from 11 affected registered voters/landowners; consequently, a protest hearing is required. LAFCO has also received objections from several landowners/voters who reside outside the annexation area.

In addition, on July 2, 2012, LAFCO received correspondence from the AVIA (Attachment 5) expressing concerns with the proposed annexation. The concerns deal primarily with the annexation boundary, municipal service and fiscal issues. LAFCO staff has addressed these issues in the staff report.

As stated in their letter, the AVIA is representing an unincorporated group of Alhambra Valley residents who oppose the City's plans for the proposed annexation and who own property developed prior to 1987 at which time the City instituted DAAs. It is unclear as to how many of these residents are affected landowners or registered voters (i.e., own property and/or reside in and are registered voters within the annexation area).

At the July 11 LAFCO hearing, 17 individuals spoke in opposition to the annexation. Of these, 11 reside **outside** the annexation boundary, and six reside within the original annexation boundary. It appears that several of the individual who spoke in opposition to the annexation reside within the area proposed for removal under the reduced boundary option.

Also, as noted above, there are two requests that specific properties be removed from the reduced boundary option.

ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted the Commission should consider taking one of the following options:

Option 1 Approve the original annexation boundary including the amendment to detach the annexation area from CSAs P-6 and L-100.

This option proposes to annex 139 parcels, of which 112 properties are subject to a DAA, and 83 receive City water service. This option proposes to bring a greater number of properties into the City than the reduced boundary option, including the three properties currently under development which will require City water service. However, there is the potential for a greater number of affected landowners/voters to protest this annexation, which could result in a vote and possible termination of the annexation.

The Commission's approval of Option 1 is subject to the following actions:

- A. The Commission, as a Responsible Agency, determines that it has reviewed and considered the environmental determinations prepared by the Lead Agency – City of Martinez – contained in the *Alhambra Valley Annexation Initial Study/ Negative Declaration*.
- B. Adopt this report and the attached resolution (Attachment 6) approving the proposal to be known as the **Alhambra Valley Reorganization: Annexation to the City Martinez and Concurrent Detachment from CSA P-6 and CSA L-100 (TRA 76001)** subject to terms and conditions including the following:
 1. That the subject territory shall be liable for the continuation of any authorized or existing special taxes, assessments and charges comparable to properties presently within the annexing agency.
 2. That the City has delivered an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
- C. Find that the proposal has less than 100% landowner/voter consent; and is subject to a protest hearing. Contra Costa LAFCO is designated to conduct the protest hearing, the authority for which has been delegated to the LAFCO Executive Officer, who shall give notice and conduct a public hearing on the matter pursuant to the Government Code.

Option 2 Approve the reduced annexation boundary option including the amendment to detach the annexation area from CSA P-6.

This option proposes to annex 104 parcels, of which 99 properties are subject to a DAA, and 82 receive City water service. This option proposes to bring fewer properties into the City than under the original boundary proposal, and excludes the three properties currently under development which will require City water service. However, there is the potential for fewer affected

landowners/voters to protest this annexation, which could increase the potential for a successful annexation.

The Commission's approval of Option 2 is subject to the following actions:

- A. The Commission, as a Responsible Agency, determines that it has reviewed and considered the environmental determinations prepared by the Lead Agency – City of Martinez – contained in the *Alhambra Valley Annexation Initial Study/ Negative Declaration*.
- B. Adopt this report and the attached resolution (Attachment 7) approving the proposal to be known as the **Alhambra Valley Reorganization Reduced Boundary Option: Annexation to the City Martinez and Concurrent Detachment from CSA P-6** subject to terms and conditions including the following:
 - 1. That the subject territory shall be liable for the continuation of any authorized or existing special taxes, assessments and charges comparable to properties presently within the annexing agency.
 - 2. That the final map and legal description are subject to approval by the County Surveyor.
 - 3. That the City has delivered an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
- C. Find that the proposal has less than 100% landowner/registered voter consent; and is subject to a protest hearing. Contra Costa LAFCO is designated to conduct the protest hearing; the authority for which has been delegated to the LAFCO Executive Officer, who shall give notice and conduct a public hearing on the matter pursuant to the Government Code.

Option 3 Adopt this report and deny the proposal.

- A. Certify it has reviewed and considered the information contained in the Initial Study/Negative Declaration as prepared and adopted by the City of Martinez.

Option 4 Continue the matter to a future meeting

RECOMMENDED ACTION:

Option 4. Given the complexities relating to water service and the various boundary options proposed by the City and others, staff feels that additional information is needed.

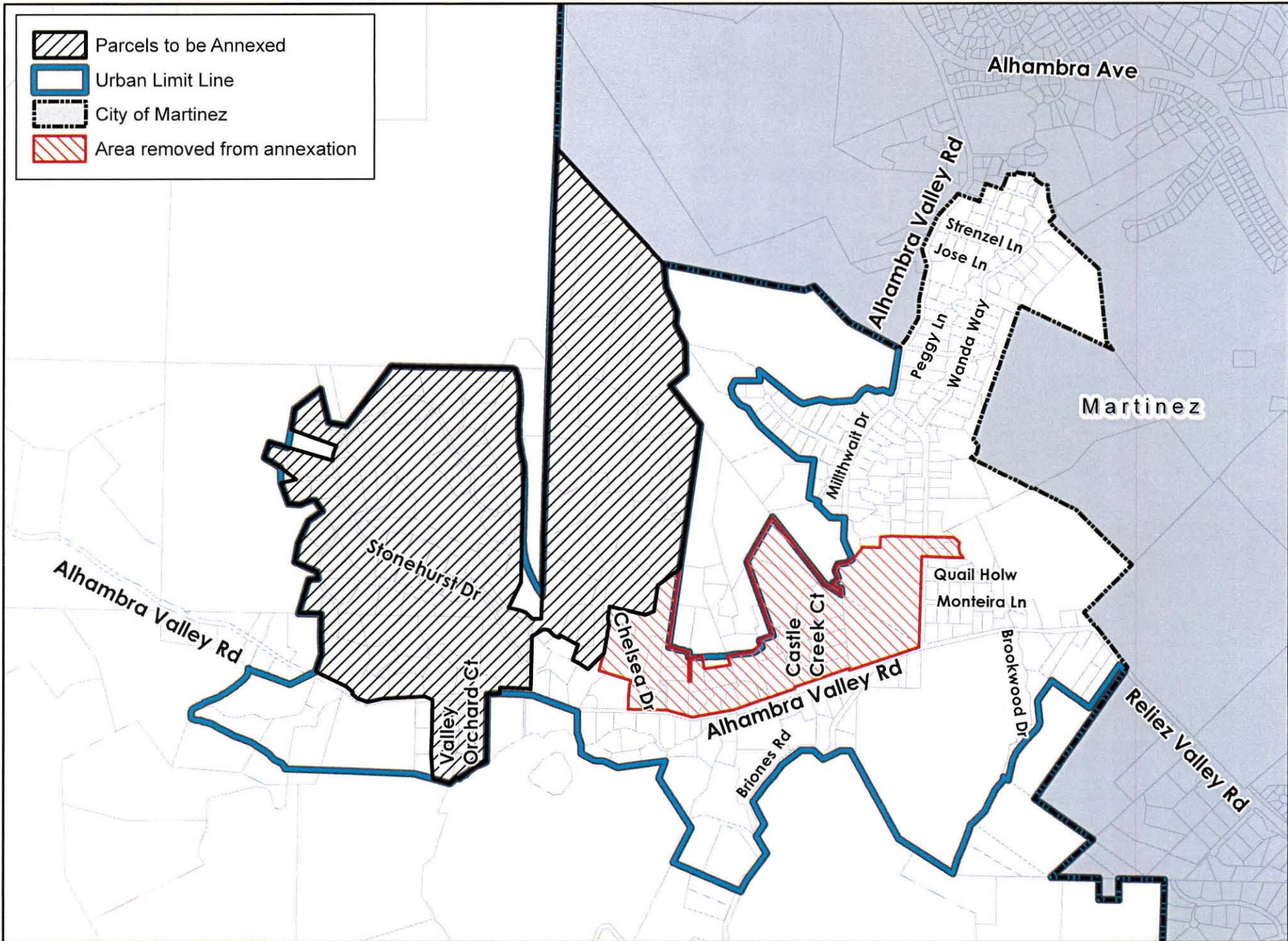
LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

c: Distribution

Attachments

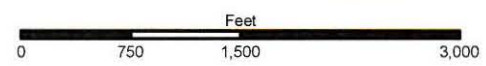
1. Map of Reduced Boundary Option
2. Map of Original Annexation Area
3. Map Showing Deferred Annexation Agreements
4. Map Showing Parcels Split by the Annexation
5. Correspondence from the Alhambra Valley Improvement Association – July 2012
6. Draft LAFCO Resolution – Original Boundary Option
7. Draft LAFCO Resolution – Reduced Boundary Option
8. Communications dated August 29, 2012 from AVIA and John A. Ricca Requesting Modifications to the Reduced Boundary Option
9. Map of Reduced Boundary Option with Other Properties Proposed for Removal

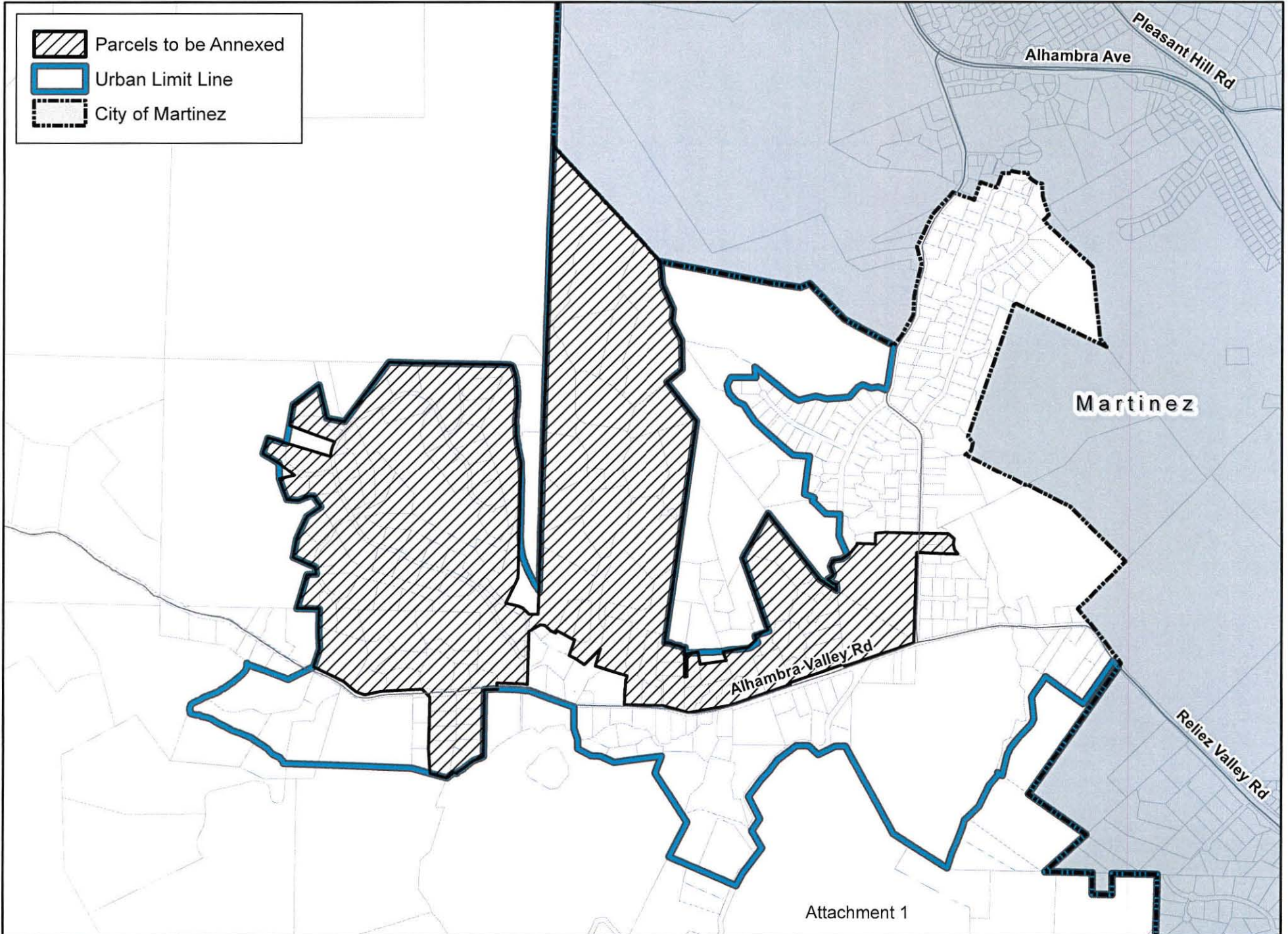
LAFCO No. 11- 07: Alhambra Valley Annexation to City of Martinez - Reduced Boundary Option



Map created 8/27/2012
 by Contra Costa County Department of
 Conservation and Development, GIS Group
 30 Muir Road, Martinez, CA 94553
 37.59.41.791N 122.07.03.756W

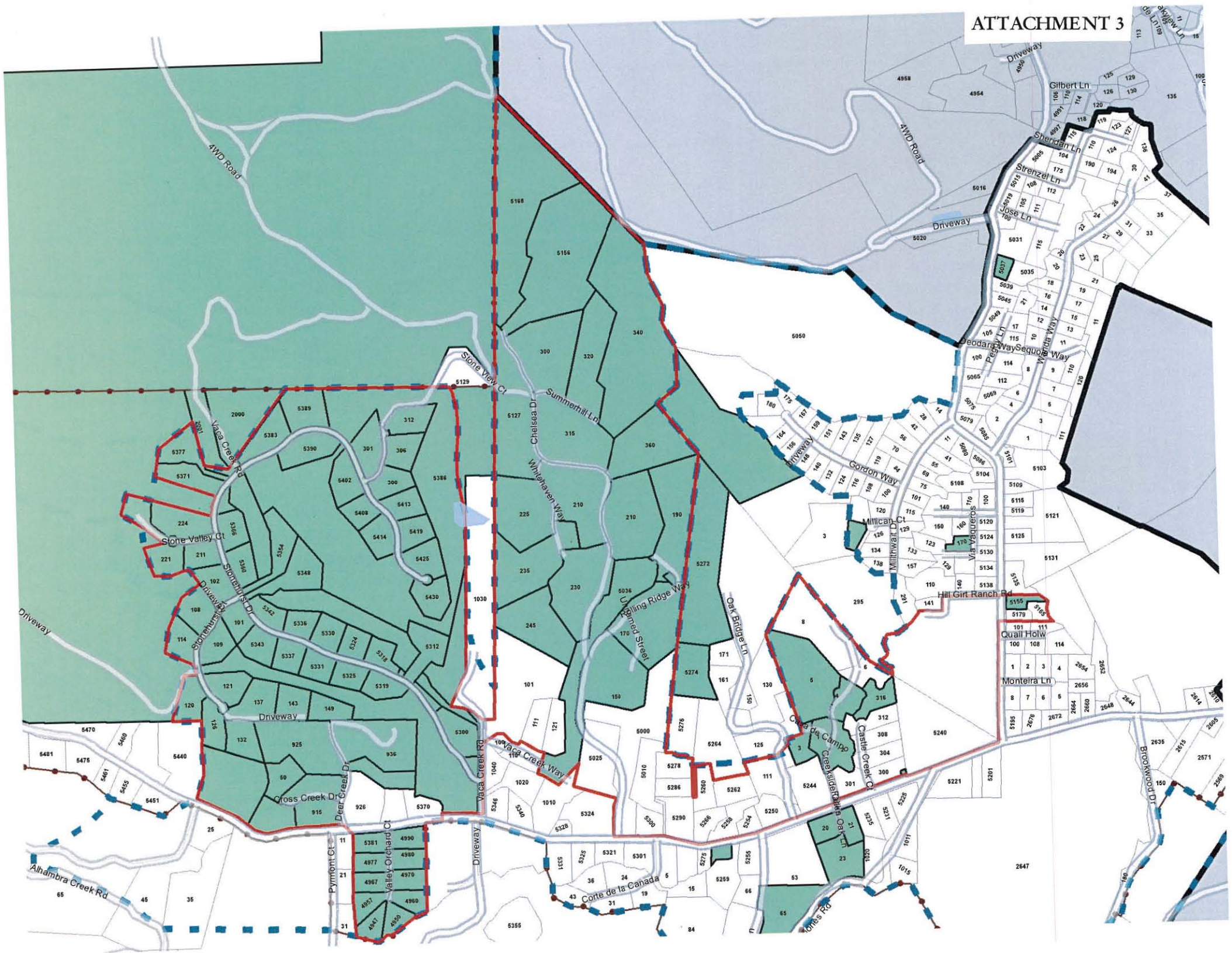
This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.



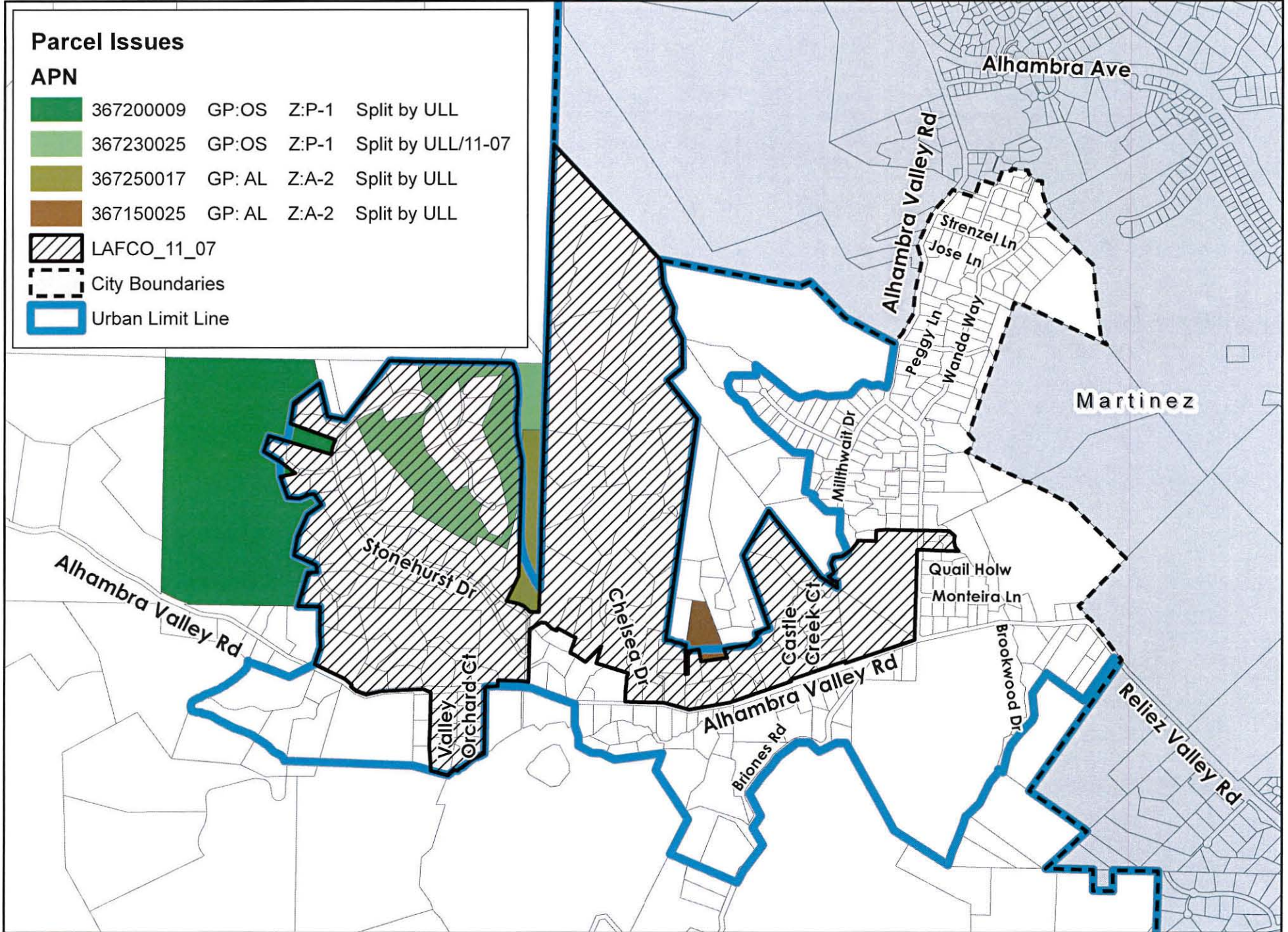


Attachment 1





LAFCO No. 11- 07: Alhambra Valley Annexation to City of Martinez



Parcel Issues

APN

- 367200009 GP:OS Z:P-1 Split by ULL
- 367230025 GP:OS Z:P-1 Split by ULL/11-07
- 367250017 GP: AL Z:A-2 Split by ULL
- 367150025 GP: AL Z:A-2 Split by ULL

LAFCO_11_07

City Boundaries

Urban Limit Line



ALHAMBRA VALLEY IMPROVEMENT ASSOCIATION

TO: Lou Ann Texeira, Executive Director of LAFCO
LAFCO Commissioners

FROM: Alhambra Valley Improvement Association (“AVIA”)

RE: The City of Martinez’s Proposed Piecemeal Annexation of the Alhambra Valley

Part I: DESCRIPTION OF AVIA

The Alhambra Valley Improvement Association (“AVIA”) is an unincorporated group of Alhambra Valley residents who oppose the City’s plans for the proposed annexation. Hal Olson is the president of AVIA.

Part II: LEGAL REPRESENTATION

Two years ago AVIA retained Allan Moore and Brian Mulry of Gagen/McCoy in Danville to represent members of AVIA who have not signed Deferred Annexation Agreements with the city.

In 2010, Allan Moore met with Karen Majors, Assistant City Manager of Martinez at the time, AVIA officers and Lou Ann Texeira. Brian Mulry represented AVIA at the Planning Commission Meetings and the City Council Meeting. Both attorneys have written letters to the city during the course of the annexation process. (True and correct copies of those letters are attached hereto at **Exhibit A.**) Mr. Moore and Mr. Mulry continue to work with AVIA in its opposition to the City’s proposed annexation.

PART III: BACKGROUND

Two members of the Martinez City Staff and one consultant have been in charge of the annexation proposal for Alhambra Valley:

1. Karen Majors, Assistant City Manager, helped initiate the proposed Annexation in 2009 and retired in mid-year, 2010.
2. Terry Blount, Planning Manager, took over in 2010. He was in charge during the Planning Commission Meetings and the City Council Meeting when the annexation came before both hearing bodies. In the summer of 2011, Mr. Blount’s services were cut back to half-time. From what we understand, Mr. Blount will no longer be a City employee in the summer of 2012. We understand that at this time he may work with the City in a limited capacity from another geographical location, and that he is no longer in charge of the annexation.

3. Dina Tasini, who we understand is an independent consultant, is now in charge of the annexation.

The Martinez City Council has named two council members (Council members Mike Menesini and Lara Delaney) to the Ad Hoc Alhambra Valley Annexation Committee. It appears that the meetings are unannounced and there are no minutes of meetings.

The City Council hired CH2M Hill to do the Initial Study of the Alhambra Valley annexation proposal. The Initial Study divided the Valley into three Areas:

Area A: All parcels west of the Intersection at Reliez Valley Road & Alhambra Valley Road

Area B: Millthwait/Gordon, Millican Court & part of Alhambra Valley Road

Area C: All county area east of Alhambra Valley Road from Sheridan Lane south and east to the city boundary line on Reliez Valley Rd.

PART III: AVIA's ARGUMENTS AGAINST ANNEXATION

1. LAFCO Should Attempt to Annex All of Alhambra Valley, or Annex Nothing, to Avoid Piecemeal Pockets of Unincorporated Areas

Alhambra Valley is a serene, peaceful and unified geographic area. It is nestled between Mount Wanda to the north and Briones Park to the south. The annexation isolates the north-western half of the Valley by needlessly dividing cohesive neighborhoods into separate political boundaries and violating proper planning and best management practices. It leaves a small group of county homes completely surrounded by the City's proposed Annexation, creating islands or "pockets" of unincorporated areas.

The City should be attempting to annex the Valley in its entirety to avoid governmental overlapping and preserve geographic unity. Karen Majors, former Assistant City Manager who was formerly tasked with the proposed Annexation, stated to Mr. and Mrs. Olson in 2009: "In my talks with the county they thought it [the Valley] should be totally annexed or not at all."

2. The City has repeatedly gerrymandered boundaries in Alhambra Valley. Gerrymandering is an "unfair, politically divisive process."

In the 2009 Dec. 8 Staff Report to the Martinez Planning Commission, Karen Majors stated: "City staff is proposing an annexation area that contains mostly property owners with Deferred Annexation Agreements such that the 25% protest level is not exceeded." (City Staff Report, p.2.) Terry Blount, Martinez's Planning Manager who

later took charge of annexation upon Ms. Majors' retirement, stated: "The district was drawn purposely to minimize, or eliminate if possible, the ability for it to go to a vote." (Contra Costa County Times, August 23, 2010.)

In three separate instances, the City has "purposely" gerrymandered the proposed Annexation boundary to avoid protest votes.

First, the City realized early on that there was a potential that the proposed Annexation would come to a vote and that the threshold 25% protest vote would be reached unless the City's proposed Annexation eliminated Area B, approximately 65 parcels.

In the second case, the City again realized that the Valley residents were organizing and may still achieve the 25% threshold protest vote against the Annexation, so the City further gerrymandered boundaries by eliminating approximately 37 parcels south of Alhambra Valley Road (except Valley Orchard). These 37 parcels were directly across the street from the Annexation area, and many of them had signed agreements stating they would not protest annexation.

Again, for a third time, the City gerrymandered the Annexation boundary by eliminating 9 properties on Vaca Creek Way, Vaca Creek Road, and Alhambra Valley Road, creating an island at or near the center of the annexation area in an attempt to secure the proposed Annexation from the threshold 25% protest vote.

In sum, the City persisted in repeatedly gerrymandering the Annexation area borders for the sole reason of attempting to curb public participation in the LAFCO process. In other words, numerous times during this process the City has attempted to create an annexation boundary that excludes those residents that have the ability to protest the proposed Annexation. The Cortese-Knox Act forbids local governments from forming annexation boundaries on the basis of curbing public participation, at the expense of reasoned planning principles. For example, Govt. Code 56668 states that LAFCO frowns upon the "creation of islands or corridors of unincorporated territory."

AVIA respectfully requests that LAFCO keep in mind that both Karen Majors and Terry Blount have readily admitted on the public record that the City's purpose in creating the proposed Annexation boundary is so the annexation does not reach the 25% protest threshold that would push the proposed Annexation to a popular vote. Certainly, forming Annexation boundaries on the basis of voter suppression strategy does not equate to good land use planning practices.

3. The Annexation Map Has Serious Boundary Flaws.

The only place the annexation area is adjacent to the city is high in the hills where three properties in Alhambra Valley Ranch touch the U.S. Government's Mt. Wanda property. In this area, there is no road, nor does it appear that there ever will be one.

Therefore, from the north, one must approach the annexation area via Alhambra Valley Road at Sheridan Lane, or from the east at Reliez Valley Road.

When one takes the approach at Sheridan Lane, one finds that the Annexation Area has been separated from the city by ONE MILE of county road. By so doing the city has eliminated Area B, thus creating an island of unincorporated area. Additionally one must travel a MILE further on county road to get to the major subdivisions of Stonehurst and Alhambra Valley Ranch. The city has leapfrogged certain unincorporated areas with its proposed boundary lines. Other examples that depict the poor planning of the proposed Annexation Area's boundaries are as follows:

- The annexation area needlessly crosses roads in two places, leaving a cookie cutter boundary.
- In one place it encroaches into Area C across Alhambra Valley Road solely to include three homes on the east side, and in the other it crosses Alhambra Valley Road on the south side to include the ten homes on Valley Orchard Court.
- In addition, three homes on Pymont Court are separated from the annexation on the west side, isolating the city from the adjacent Urban Limit Line and creating a small COUNTY ISLAND CORRIDOR within the Urban Limit Line.
- The City also has omitted nine properties at Vaca Creek Road, creating another COUNTY ISLAND for the sole purpose of eliminating property owners with protest rights. This elimination leaves conflicting boundaries between county and city, confusing responsibilities for road and creek maintenance, police service, and other local government services.
- Approaching Alhambra Valley from Reliez Valley Road, the City has created yet another serious cookie cutter boundary. Valley Orchard has been included in the annexation area causing a boundary protrusion across Alhambra Valley Road to the south.

Originally, Karen Major stated in the Initial Study that she wanted to "clear up boundary lines." The City has done just the opposite. Just one look at a map of the proposed Annexation area indicates that the oddly shaped area has been drawn for no other logical reason than to simply curb opposition to the proposed Annexation.

4. In 2010, the Martinez City Planning Commission Voted Unanimously Against the Annexation.

On or about June 28, 2010, the Martinez Planning Commission voted unanimously, 4 votes to 0, to deny the proposed annexation. According to excerpts from an article published by the Martinez News Gazette on July 8, 2010, Commissioner Harriett Burt rejected the proposal as a “contrived situation that is not honest.” Ms. Burt also stated, “The strongest [concern] is the fact that the annexation presented to us was not based on any logic but the impeding of a protest filing...If we do piecemeal on this kind of a basis, there will be problems for other people [in the future].” Commissioner Mike Marchiano stated: “There’s no way I can support this. The drawing of this [annexation map], the gerrymandering of this...to think that because you took city water, that some way or another, you are not allowed to protest the fact that you can become a member of the city, that sticks in my craw.” Similarly, Commissioner Paul Kelly stated, “I cannot in good conscience vote for this.” Planning Commission Chairperson Donna Allen concluded the Commissioners’ comments by stating, “It seems very premature to me to be looking at annexation prior to the formation of the General Plan.”

In view of the fact that the Planning Commission voted down the annexation 4-0 with one abstention, and in view of the fact that the whole Valley is not included, not to mention the serious flaws in the annexation, this annexation proposal should be denied.¹ The bottom line is that the city’s own Planning Commission could not approve the annexation.

5. Since 1987, Martinez Has Been Coercively Forcing Alhambra Valley residents to Enter Into Deferred Annexation Agreements (“DAAs”).

The city has been withholding water for new homes in the Alhambra Valley area unless the owners sign a DAA agreeing not to protest annexation. We understand that, in 1987, Jeff Walter, the City Attorney at the time, created a two step DAA plan that changed the historic way the city provided water to the Valley.

- First, the original developers were to sign a DAA that put the properties in the new subdivisions under deferred annexation that would run with the land.
- Second, when the lots were sold, and each new owner completed his home and requested water from the City, the property owner would be denied water unless the property owner agreed to sign a DAA giving up his right to protest annexation.

Imagine that you have just paid many thousands of dollars for a lot, made a huge investment in building a very expensive new home, paid the architect, engineer, and builder, and satisfied all the county regulations and paid all associated permit fees.

¹ The resolution to deny the annexation was voted 3 to 1. One of the commissioners who voted in the 4-0 tally was not present at the meeting to adopt the denial resolution, and the one who voted for the annexation was not present at the June 28, 2012 Planning Commission meeting when the annexation was unanimously defeated.

Unexpectedly, you are ordered to sign away your protest rights to annexation, or else you cannot have city water and live in your new home with public water. Meanwhile, the concept of “deferred annexation” was never explained or disclosed to you. How would you feel?

A typical DAA reads as follows: “...in exchange for the city’s agreeing to extend water service... [the owner] will support such annexation and refrain from protesting such annexation.” A typical DAA also states that the city can sell the property owner’s property if the owner defaults on the agreement. That information should have been under disclosure to the buyers.

The City Council Staff Report for the December 1, 2010, City Council Meeting states on p. 9, “The deferred annexation agreements are legal documents that were executed at the time the properties requested City water service.”

Further, the City appears to be improperly relying on DAAs that actually cannot be produced in their files. According to the City, it should have 83 DAAs within the annexation area; however, it appears the City has only 23 of these signed documents. The 60 who have not signed DAAs should be allowed to protest and should not be disenfranchised. In essence, the City is relying on DAAs that do not in fact exist in its records.

In its response to its above record-keeping problem, the City claims that when the original developers signed DAAs with the City, those DAAs in effect bind the future owners not to protest. In fact, the subsequent property owner was not a signatory to the developer’s DAA. On the contrary, the DAA apparently was not disclosed to the new property owners.

The city knew that the deferred annexation process would be heard by LAFCO and that the city would need signed agreements at that time. That’s the process that was established twenty-five years ago. The City simply did not follow through and get the DAAs they needed in most cases.

It is wrong to deny the right of protest and the right to vote for residents and/or voters who have never signed a DAA and for whom there are no DAAs in existence in the City Clerk’s Office. A Public Records Search (Feb. 17, 2012 Tim Tucker to Harold Olson) has revealed that approximately 60 properties in the annexation area have no DAAs on file.

6. Measure H - Taxation without Representation.

This annexation would force residents to pay taxes for Measure H, a 2008 thirty million dollar (\$30,000,000) park, library, and pool bond issue that was passed within the City. Residents in the Annexation area, who were at the time county voters, could not vote on it. Residents subject to annexation are upset about the possibility of paying a tax that they never had the power to vote on when the tax measure was originally passed.

7. Government Code 56668 states that LAFCO must consider “sufficiency of revenue for those services following the proposed boundary change.”

Martinez’s Fiscal Impact Report by Economic and Planning Systems states that Area A, at build out, will result in a deficit for the City. Due to gerrymandering of the Annexation Area boundary line by the City to avoid protest votes, Area A of the proposed Annexation Area is now much smaller since it has excluded 46 properties that the City feels will assist Alhambra Valley residents in achieving the 25% protest vote threshold. As a result, there will be much less revenue generated than originally anticipated.

It appears the City did not like the above deficit projections in the draft report, so it had a second study made that showed a surplus for the City. How can a smaller area generate more money than it did originally? Based on the initial City Financial Impact Report, it appears the “sufficiency of revenue” is certainly in jeopardy.

8. Road Problems

The annexation area is too far from City roads. Govt. Code 56747 (a) (2) states: “The property to be annexed shall not be annexed if the distance between the boundary of the annexing City and the point closest to the annexing city at which the road strip connects with the abutting property, as measured by the road strip, is more than one-half mile.” The city boundary on the north at Sheridan Lane at Alhambra Valley Road is well in excess of a half mile from the annexation area at Hill Girt Ranch Road. Likewise, the south-east city boundary on Reliez Valley Road is also well in excess of one half mile away from the annexation area at Alhambra Valley Road.

In addition, the city should have a road maintenance agreement with the county. Without such an agreement in place might not both sides avoid repairing roads. The lack of an agreement will further impact “the sufficiency of revenue” issue above.

9. Stormwater Drainage.

The city has proposed to annex part of Vaca Creek and Arroyo del Hambre Creek without a stormwater drainage plan. Because of the elimination of the nine properties in the Vaca Creek area, the city has divided the watershed, obfuscating the responsibility between the city and county for creek maintenance.

Currently, substantial taxes are paid by homeowners for stormwater drainage. How is the City going to carry out its new responsibility in exchange for the taxes it will receive? The City’s position is that stormwater structures are in place to address this issue; however, who will pay for the undermining of structures, which occurs often in the creek? The City will receive tax money but has shown no willingness to take responsibility for drainage repairs.

10. Alhambra Valley Should Remain Under a Single Police Jurisdiction.

A single police jurisdiction, as it is now, presents no problems when emergencies arise. With the piecemeal annexation an additional policing service is added to the Valley. Therefore, the annexation area map will bring County Sheriff and City police responsibilities into conflict.

First, in the Vaca Creek area as well as east and south of Alhambra Valley Road, some areas will be patrolled by the Martinez Police on one side of the street, while the County Sheriff still patrols the other side.

Second, the City police responsibility encroaches into Area C for three homes, while all the rest of Area C is County patrolled. In essence, next door neighbors have differing police services. In this example Area B, which is an "island" of County jurisdiction, is also county patrolled.

If someone from the Valley calls 911 how does the dispatcher know which police patrol to send? More than likely both departments would respond. This problem does not exist now, and if the Valley were totally annexed this problem would not be created. Most Valley residents prefer the single policing unit from which they currently benefit.

11. Martinez is very likely to increase density in Alhambra Valley.

In January, 2011, Martinez amended its General Plan to include a new Housing Element increasing density. "The Housing Element allows for, and encourages, higher density developments." (Martinez News Gazette).

The city has a history of allowing more units than originally permitted by zoning. For example, with Barelessa Palms, the zoning called for 17 units. The Council approved 49 units. As another example, with Cascara Canyon, the zoning called for 20 units. The Council overruled the Planning Commission and approved 42 units. Currently, the Planning Commission is considering a PUD adjacent to the Muir Shopping Center where more than the allowable zoning is being considered.

So, what does all this mean for Alhambra Valley? It means that after two years the City can reduce the five acre pre-zoning in the annexation area to two and one-half acre parcels as the city had it zoned originally. There seems little doubt that the City will double the density in Alhambra Valley as they have consistently done within Martinez. If this happens, the rural atmosphere that residents treasure in the Valley would be destroyed. Given the City Council's propensity for development, increased density in the Valley is less a possibility and more of a probability.

IN SUMMATION, Alhambra Valley is a serene, peaceful and unified Valley. There is no compelling reason for the arbitrary and piecemeal local government boundary division that is proposed in our Valley by the proposed Annexation. Clearly, if

the Valley is to be annexed, it should be annexed in one piece, not severed for political purposes and tax gain.

As set forth herein, AVIA and numerous individual Valley residents respectfully request that you please deny the City's proposed Annexation application, and retain all of Alhambra Valley under a unified local government. We look forward to working with you and the LAFCO Board throughout the City's continuing application and hearing process.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Hal Olson".

Hal Olson
President, AVIA

Exhibit A follows



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December 1, 2010

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Please Reply To:
Danville

Via Hand-Delivery - December 1, 2010

Honorable Mayor Schroder and
Members of the City Council
City of Martinez
525 Henrietta Street
Martinez, CA 94553

Re: *AVIA Opposition to Proposed Alhambra Valley Annexation Project*

Dear Honorable Mayor Schroder and Members of the City Council:

Our offices continue to represent members of the Alhambra Valley Improvement Association ("AVIA") who have not signed Deferred Annexation Agreements and who oppose the City's proposed annexation of the Alhambra Valley area into the City of Martinez. This letter represents our comments on the proposed Alhambra Valley Annexation Project ("Annexation Project"). Our clients object to the proposed Annexation Project because the required findings under the Cortese-Knox-Herzberg Local Government Reorganization Act ("Cortese-Knox Act") cannot be made to justify the Annexation Project, which, with an awkwardly shaped and gerrymandered boundary line, is contrary to land use planning principles.

The Cortese-Knox Act sets forth factors at Government Code section 56668 to be considered in review of a proposal for annexation. Those factors include such considerations as: "population and density," "land area and land use," "topography," "natural boundaries," and "the need for organized community services." Such considerations take into account the "continuity and proximity of services, such as

schools, road infrastructure, and the definiteness and certainty of the boundary area." (Gov't Code, § 56668; emphasis added.)

Here, however, the City is proposing to "gerrymander" the annexation area boundary line for the sole purpose of "capturing" property owners with deferred annexation agreements. This strategy has the sole purpose of avoiding the threat of opposition from residents who are not subject to deferred annexation agreements. We submit that such a rationale for drawing up an annexation area does not follow the required findings set forth in the Cortese-Knox Act and thus is not a legally permissible basis for proposing an annexation area.

City Staff's intent is clear in its Staff Report, where it states its rationale for annexing this newly proposed area:

[U]sing the location of the properties with deferred annexation agreements as the primary emphasis, staff determined that in order to annex as many of them as possible and create an annexation area with the most logical boundary, that with the exception of the properties on Valley Orchard Court and the cluster on the eastside of Alhambra Valley Road directly south of Hill Girt Ranch Road, the annexation area should include all properties north and west of Alhambra Valley Road (see Attachment B). While this boundary includes a number of properties on the north side of Alhambra Valley Road just past the intersection with Reliez Valley Road without agreements, the majority of these had to be included in order to reach those properties with agreements in the eastern part of the proposed annexation area. Properties in an area to be annexed have to be contiguous to one another in order to be considered by LAFCO. They also have to be within the Urban Limit Line. This is the proposed annexation area that the Planning Commission considered. (City Staff Report, p. 5. Emphasis added.)

Upon further reflection staff has determined that there is one part of the proposed annexation area where there is a logical cluster of properties without deferred annexation agreements that should be excluded from the proposed annexation area to reduce the overall number of properties included that do not have agreements. This cluster includes all of the properties with an address on Vaca Creek Road and Vaca Creek Way — a total of nine properties. (Id.)

Honorable Mayor Schroder and Members of the City Council

December 1, 2010

Page 3


In other words, City Staff adjusted the boundary of the proposed annexation area for the sole purpose of minimizing public opposition. When City Staff first began the annexation consideration process, they had proposed to annex an area that was much larger and was more contiguous with City boundaries. But when City Staff realized they would face substantial opposition from residents not encumbered by deferred annexation agreements, they began to carve out an awkward jigsaw puzzle-like area that is serviced by one road to and from the City and is largely not contiguous with current City boundaries. In this latest revision, City Staff is yet again chipping away at its already awkwardly-shaped annexation area because, "upon further reflection," City Staff has realized there would still be a chance that residents could garner the 25% protest level required to push the proposed annexation to a popular vote.

By choosing to gerrymander the boundary line in an attempt to take out as many people as possible who would protest the annexation, City Staff is really forming an annexation area with boundaries that are drawn with the "primary emphasis" of avoiding public participation in the annexation process. This approach is contrary to the Cortese-Knox Act's required findings, which are limited to land-use considerations. Further, the proposed annexation area boundary creates an awkwardly shaped annexation area that is contrary to the Cortese-Knox Act's planning goals of encouraging "orderly growth and development" and a "logical formation and determination of boundaries." (Cortese-Knox Act, Gov't Code, § 56001).

For the above reasons, we respectfully request that the City Council follow the three-to-one recommendation of the City's Planning Commission and deny the Annexation Project as proposed. Thank you for your time and consideration regarding this important matter. If you have any questions, please feel free to contact our offices.

Very truly yours,

Gagen McCoy
A Professional Corporation



Brian P. Mulry

BPM:mam
cc: Clients



GagenMcCoy

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May 19, 2010

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Please Reply To:
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Via Hand-Delivery - May 19, 2010



Ms. Karen Majors
Director, Community and Economic
Development
City of Martinez
525 Henrietta Street
Martinez, CA 94553

Re: *AVIA Opposition to Proposed Alhambra Valley Annexation Project*

Dear Ms. Majors:

Our offices continue to represent members of the Alhambra Valley Improvement Association (“AVIA”) who have not signed Deferred Annexation Agreements and who oppose the City’s proposed annexation of the Alhambra Valley area into the City of Martinez. This letter represents our comments on the proposed Alhambra Valley Annexation Project (“Annexation Project”) and the City’s Initial Study and proposed negative declaration. Our clients object to the proposed Annexation Project for the following reasons: (1) the Annexation Project abandons many of the goals and policies of the Alhambra Valley Specific Plan (“AVSP”) without studying the environmental effects of such a change, and (2) the required findings under the Cortese Knox Act cannot be made to justify the Annexation Project.

Thus, we respectfully request that the City deny the approval of the proposed Annexation Project, or at a minimum refuse to certify the negative declaration and require further environmental review as required by CEQA.

1. CEQA Requires Further Study of a Project When a “Fair Argument” Can Be Made, Based on Substantial Evidence, that a Project May Have a Significant Effect on the Environment

CEQA excuses the preparation of an Environmental Impact Report (EIR) and allows for the use of a negative declaration only when an initial study shows that there is no substantial evidence that the project may have a significant effect on the environment. (*San Bernardino Audubon Society v. Metropolitan Water District* (1999) 71 Cal.App.4th 382, 389-390, citing CEQA Guidelines, §15070.) If a “fair argument” can be made, based on substantial evidence on the record, that a project may have a significant effect on the environment, then an EIR is required. (*Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1.) In certain situations where a straightforward negative declaration is not appropriate, the agency may permit use of a mitigated negative declaration. (See CEQA, §21064.5; CEQA Guidelines, §15064, subd. (f)(2).)

Here, a negative declaration is inappropriate because there is substantial evidence on the record that the proposed Annexation Project may have a significant effect on the environment. First, the City’s Annexation Project fails to include key goals and policies of the AVSP that would essentially disappear if the Annexation Project is approved. Second, as part of the Annexation Project, the City proposes significant road improvements on Alhambra Valley Road and Reliez Valley Road while abandoning the *process* set forth in the AVSP for constructing the road improvements.

The City’s Annexation Project attempts to get rid of many of the key goals and policies in the AVSP, which has been the guiding land use document for the annexation area for approximately 18 years. Such a dramatic shift in land use in the annexation area may cause environmental effects and should be studied in further detail, as required by CEQA.

A. The City’s Omission of Key Policies in the AVSP May Have a Significant Effect on the Environment.

The City proposes a number of General Plan Amendments and the incorporation of the AVSP Design Guidelines in its Annexation Project, which appear to be generally consistent with the AVSP. However, under the Annexation Project the entire AVSP will not be incorporated into the City’s planning scheme for the Alhambra Valley annexation area. As a result, the City abandons a number of key AVSP goals and policies that have guided the development of the annexation area for the last 18 years. The City’s abandonment of these key goals and policies would have a significant effect on the environment because many AVSP goals and policies would no longer be applicable to the annexation area if LAFCO were to approve the annexation.

Abandoning many of the AVSP's key goals and policies will inevitably impact how future development and planning strategies are considered in the proposed annexation area. For example, there are numerous AVSP goals and policies that seek to "encourage and enhance" agriculture and to "maintain and promote a healthy agricultural economy in the Alhambra Valley area." (AVSP, p. 9-10.) However, none of these key goals and policies would carry over to the City's General Plan policies for the Alhambra Valley annexation area. Without such goals and policies, planning decisions in the proposed annexation area would not be required to consider the preservation of the agricultural economy of the area. This abandonment of such planning goals and policies represents one example of how the newly proposed annexation would have a significant effect on the environment.

Similarly, the City fails to include key AVSP goals and policies related to all of the major categories listed in the AVSP, including, the environment, new development, public services and facilities, agricultural resources, traffic circulation and scenic parks, scenic resources and community design, and intergovernmental cooperation. In particular, the key goals and policies related to intergovernmental cooperation would be especially significant given the fact that the further gerrymandered annexation area would give rise to overlapping planning and service issues as the Alhambra Valley would be carved up into an unorganized pockets of unincorporated area interwoven with the annexation area.

An abandonment of the AVSP may result in potentially significant environmental effects for the area. Thus, further environmental review is required to determine the environmental effects to the Alhambra Valley annexation area in losing the planning protections afforded it through the AVSP's key goals and policies and implementation plans.

B. The City's Proposed Road Improvements to Alhambra Valley Road and Reliez Valley Road May Have a Significant Effect on the Environment and Have Not Been Adequately Studied.

As a component of the Annexation Project, the City proposes amendments to the current City of Martinez General Plan ("General Plan") to require certain road, trail and bike path improvements on Alhambra Valley Road and Reliez Valley Road. The City would require the following road improvements on Alhambra Valley Road: travel lanes and shoulders, trails and drainage facilities, and a Class III bike path connecting with the Reliez Valley Road bike path westward to Bear Creek Road and Castro Ranch Road. (Martinez General Plan Amendments - DRAFT, p. 3.) With respect to Reliez Valley Road, the proposed General Plan Amendment would require the following improvements: construction of drainage, road shoulders; separated trail improvements; turning lanes; repaving/reconstruction of the existing roadbed as necessary; and

landscape improvements. (Martinez General Plan Amendments - DRAFT, p. 3.) While some of these improvements are also listed in the AVSP, some improvements, such as the Class III bike lane, have not been included in the AVSP and thus their environmental effects have not been studied.

The City fails to develop an implementation plan for developing these improvements, while the AVSP had set forth a specific implementation plan for the road improvements to mitigate potentially significant effects on the environment and on neighbors' quality of life. The AVSP contemplated a "scenic corridor improvement plan" to be drafted that conformed with the goals and policies of the AVSP. (AVSP, p. 57.) For example, the AVSP required that neighborhood groups and the City of Martinez be provided an opportunity to comment on the proposed improvement plan prior to the commencement of any construction activity. (*Id.*) Under the City's proposed General Plan Amendment, no scenic corridor improvement plan is required -- the City may simply construct the improvements without any plan, further study, or public comment.

The environmental effects of the City's proposal for road improvements without the implementation plan has not been studied, and a fair argument, based on substantial evidence on the record, can be made that these improvements will have a significant effect on the environment without a detailed implementation plan.

Further, the proposed General Plan Amendment fails to include many of the policies outlined in the Traffic, Circulation, and Scenic Routes section of the AVSP. For example, the City fails to amend the City's General Plan to prohibit the construction of solid board fencing along Alhambra Valley Road and Reliez Valley Road, which was included as "Policy 7" in the Traffic, Circulation, and Scenic Routes section of the AVSP. As described in more detail above, the City is selecting certain policies from the AVSP for inclusion into the City's General Plan, while omitting other important AVSP policies without studying the effects of these key omissions.

Also, as the General Plan Amendment and AVSP indicate, both Alhambra Valley Road and Reliez Valley Road contain many heritage quality trees. While the proposed General Plan amendment requiring these improvements would mandate that an "attempt" be made to preserve the heritage quality trees, this requirement provides much less protection than what is provided under the AVSP. In the AVSP, an inventory must be developed which identifies existing mature trees and other significant vegetation along Alhambra Valley Road and Reliez Valley Road which could be affected by any future road improvements. (*Id.*) "This inventory should be used to develop an overall scenic corridor improvement plan" (*Id.*) However, the proposed General Plan Amendment simply selects a part of the AVSP referring to preservation of the heritage trees in a way that would allow the trees to be cut down and removed if absolutely necessary for these improvements. This scenario would have a significant effect on the aesthetic

environment in the Alhambra Valley area, and must be properly analyzed upfront and early in the process, as CEQA requires.

A fair argument can be made that these deviations from the AVSP would have a significant effect on the environment. The AVSP contains key goals and policies meant to address potentially significant impacts associated with road improvements in the Alhambra Valley annexation area. By abandoning key goals and policies and procedural safeguards that would address these potentially significant impacts, the City now fails to adequately mitigate those potentially significant impacts.

The City has failed to include any discussion of the City's proposed road improvements without an implementation plan in the "Transportation/Traffic" section of the Initial Study, and has failed to properly study the omission of key AVSP goals and policies that will not be incorporated into the City's General Plan. (Initial Study, p. 79.) The environmental effects of these actions have not been properly studied, as required by CEQA.

2. The City's Annexation Project Fails to Satisfy the Necessary Findings for Annexation as Set Forth in the Cortese-Knox Act.

The Cortese-Knox Act sets forth factors at Government Code section 56668 to be considered in review of a proposal for annexation. Those factors include such considerations as: population and density, land area and land use, topography, natural boundaries, and the need for organized community services. Such considerations take into account the continuity and proximity of services, such as schools, road infrastructure, and the definiteness and certainty of the boundary area. (*Id.*; emphasis added.)

Here, however, the City is proposing to "gerrymander" the annexation area boundary line for the sole purpose of "capturing" property owners with deferred annexation agreements. When the City first began the annexation consideration process, they had proposed to annex an area that was much larger and was more contiguous, but when the City realized they would face substantial opposition, they began to carve out an awkward jigsaw puzzle-like piece that is serviced by one road to and from the City and is largely not contiguous with current City boundaries. By choosing to draw the line to take out as many people as possible who would be able to protest, the City is attempting to annex an area that is awkwardly shaped and is interrupted with large pockets of areas that would remain unincorporated.

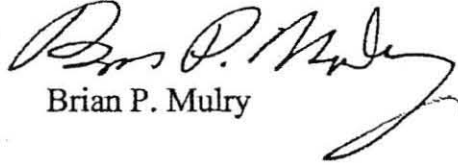
The above strategy for annexation is contrary to the Cortese-Knox Act's findings, as well as its planning goals of encouraging "orderly growth and development" and a "logical formation and determination of boundaries." (Cortese-Knox Act, Gov't Code, § 56001).

Ms. Karen Majors
May 19, 2010
Page 6

For the above reasons, we respectfully request that the City deny the approval of the proposed Annexation Project, or at a minimum refuse to certify the negative declaration and require further environmental review as required by CEQA. If you have any questions, please feel free to contact our offices.

Very truly yours,

Gagen McCoy
A Professional Corporation



Brian P. Mulry

BPM:mam
cc: Clients



GagenMcCoy

The Law Offices of
Gagen, McCoy, McMahon, Koss
Markowitz & Raines
A Professional Corporation

William E. Gagen, Jr.
Gregory L. McCoy
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Allan C. Moore
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Of Counsel
Linn K. Coombs

December 15, 2009

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279 Front Street
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Telephone: (925) 837-0585
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Napa Valley Office
The Offices At Southbridge
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Telephone: (707) 963-0909
Fax: (707) 963-5527

Please Reply To:

Danville

Via E-mail and U.S. Mail

Ms. Laura Austin
Administrative Aide III
City of Martinez – City Hall
525 Henrietta Street
Martinez, CA 94553

Re: *Request for Notification of Public Meetings, Hearings, and/or Reports on the City's Proposed Annexation of the Stonehurst/Alhambra Valley Area*

Dear Ms. Austin:

Our office continues to represent the Alhambra Valley Improvement Association (“AVIA”) in its opposition to the City of Martinez’s proposed application for annexation of the Stonehurst/Alhambra Valley area into the City (“proposed annexation”). The proposed annexation area is generally located southwest of the City and is currently considered to be a part of unincorporated Contra Costa County.

We understand that the City has committed monies to studying the proposed annexation and preparing an application for submittal to the Local Agency Formation Commission (“LAFCO”). We respectfully request that the City timely notify our office of any upcoming City meetings, hearings, and/or reports regarding the proposed annexation or any related issues such as proposed rezoning plans, boundary considerations, or other City strategies that may affect the proposed annexation application. Notice of such City meetings, hearings, and/or reports will allow our office


Ms. Laura Austin
December 15, 2009
Page 2

to effectively participate on behalf of AVIA in the public review of the City's proposed annexation application.

If you have any questions, please contact our office. Thank you for your time and consideration regarding this important matter.

Very truly yours,

Gagen McCoy
A Professional Corporation


Brian P. Mulry

ACM:mam
✓ cc: clients
Ms. Karen Majors

RESOLUTION NO. 11-07**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION MAKING DETERMINATIONS AND APPROVING ALHAMBRA VALLEY REORGANIZATION: ANNEXATION TO THE CITY OF MARTINEZ AND CORRESPONDING DETACHMENTS FROM COUNTY SERVICE AREAS P-6 AND L-100**

WHEREAS, a proposal to annex territory within the Alhambra Valley was filed with Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code section 56000 et seq.); and

WHEREAS, the Executive Officer has examined the application and executed her certification in accordance with law, determining and certifying that the filing is sufficient; and

WHEREAS, at the time and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the proposal; and

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations therein, and the report and related information have been presented to and considered by the Commission; and

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental document or determination, consistency with the sphere of influence, contiguity with the City boundary, and related factors and information including those contained in Government Code section 56668; and

WHEREAS, at a public hearing on July 11, 2012, the Commission opened the public hearing, received public comment, and continued the hearing to September 12, 2012; and

WHEREAS, at a public hearing on September 12, 2012, the Commission amended the City's proposal to include the concurrent detachment of the subject property from County Service Areas P-6 and L-100 (TRA 76001); and

WHEREAS, the annexing agency has consented to waiving the conducting authority proceedings; and

WHEREAS, the irregular configuration of the annexation boundary as proposed by the City of Martinez is justified by the unique circumstances of this annexation in that the purpose of the annexation is to include properties currently receiving city services as well as properties that are subject to Deferred Annexation Agreements relating to water services, while excluding properties that are outside the countywide voter approved urban limit line; and

WHEREAS, the annexation boundary includes one split parcel, but otherwise avoids splitting parcels; and

WHEREAS, the annexation is consistent with orderly growth and development pursuant to Government Code section 56001 because it annexes areas that currently are receiving out of area service; and
WHEREAS, the Local Agency Formation Commission finds the proposal to be in the best interest of the affected area and the total organization of local governmental agencies within Contra Costa County.

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. The Commission certifies it reviewed and considered the information contained in the Alhambra Valley Annexation Project Initial Study/Negative Declaration as prepared and adopted by the City of Martinez.

Contra Costa LAFCO
Resolution No. 11-07

2. Said reorganization is hereby approved.
3. The subject proposal is assigned the distinctive short-form designation:

ALHAMBRA VALLEY REORGANIZATION: ANNEXATION TO CITY OF MARTINEZ AND CORRESPONDING DETACHMENT FROM COUNTY SERVICE AREAS P-6 AND L-100
4. Said territory is found to be inhabited.
5. The proposal has less than 100% landowner/registered voter consent; and is subject to a protest hearing. Contra Costa LAFCO is designated to conduct the protest hearing; the authority for which has been delegated to the LAFCO Executive Officer, who shall give notice and conduct a public hearing on the matter pursuant to the Government Code.
6. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Attachment 1, attached hereto and made a part hereof.
7. The subject territory shall be liable for any existing bonded indebtedness of the annexing agencies, if applicable.
8. The subject territory shall be liable for any authorized or existing taxes, charges, and assessments comparable to properties within the annexing agencies.
9. That the City delivered an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the reorganization.
10. All subsequent proceedings in connection with this reorganization shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

PASSED AND ADOPTED THIS 12TH day of SEPTEMBER 2012, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

DON TATZIN, CHAIR, CONTRA COSTA LAFCO

ATTEST: *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 12, 2012

Lou Ann Teixeira, Executive Officer

RESOLUTION NO. 11-07R**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION MAKING DETERMINATIONS AND APPROVING ALHAMBRA VALLEY REORGANIZATION: ANNEXATION TO THE CITY OF MARTINEZ AND CORRESPONDING DETACHMENT FROM COUNTY SERVICE AREA P-6 - REDUCED BOUNDARY OPTION**

WHEREAS, a proposal to annex territory within the Alhambra Valley was filed with Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code section 56000 et seq.); and

WHEREAS, the Executive Officer has examined the application and executed her certification in accordance with law, determining and certifying that the filing is sufficient; and

WHEREAS, at the time and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the proposal; and

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations therein, and the report and related information have been presented to and considered by the Commission; and

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental document or determination, consistency with the sphere of influence, contiguity with the City boundary, and related factors and information including those contained in Government Code section 56668; and

WHEREAS, at a public hearing on July 11, 2012, the Commission opened the public hearing, received public comment, and continued the hearing to September 12, 2012; and

WHEREAS, at a public hearing on September 12, 2012, the Commission amended the City's proposal to include the concurrent detachment of the subject property from County Service Area P-6, and reduced the annexation boundary as shown in Attachment 1; and

WHEREAS, the annexing agency has consented to waiving the conducting authority proceedings; and

WHEREAS, the irregular configuration of the annexation boundary as proposed by the City of Martinez is justified by the unique circumstances of this annexation in that the purpose of the annexation is to include properties currently receiving city services as well as properties that are subject to Deferred Annexation Agreements relating to water services, while excluding properties that are outside the countywide voter approved urban limit line; and

WHEREAS, the annexation boundary includes one split parcel, but otherwise avoids splitting parcels; and

WHEREAS, the annexation is consistent with orderly growth and development pursuant to Government Code section 56001 because it annexes areas that currently are receiving out of area service; and

WHEREAS, the Local Agency Formation Commission finds the proposal to be in the best interest of the affected area and the total organization of local governmental agencies within Contra Costa County.

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

Contra Costa LAFCO
Resolution No. 11-07R

1. The Commission certifies it reviewed and considered the information contained in the Alhambra Valley Annexation Project Initial Study/Negative Declaration as prepared and adopted by the City of Martinez.
2. Said reorganization is hereby approved.
3. The subject proposal is assigned the distinctive short-form designation:

ALHAMBRA VALLEY REORGANIZATION: ANNEXATION TO THE CITY OF MARTINEZ
AND CORRESPONDING DETACHMENT FROM COUNTY SERVICE AREA P-6
4. Said territory is found to be inhabited.
5. The proposal has less than 100% landowner/registered voter consent; and is subject to a protest hearing. Contra Costa LAFCO is designated to conduct the protest hearing; the authority for which has been delegated to the LAFCO Executive Officer, who shall give notice and conduct a public hearing on the matter pursuant to the Government Code.
6. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Attachment 1, attached hereto and made a part hereof.
7. The subject territory shall be liable for any existing bonded indebtedness of the annexing agencies, if applicable.
8. The subject territory shall be liable for any authorized or existing taxes, charges, and assessments comparable to properties within the annexing agencies.
9. That the City delivered an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the reorganization.
10. All subsequent proceedings in connection with this reorganization shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

PASSED AND ADOPTED THIS 12TH day of SEPTEMBER 2012, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

DON TATZIN, CHAIR, CONTRA COSTA LAFCO

ATTEST: *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 12, 2012

Lou Ann Texeira, Executive Officer

August 29, 2012

Lou Ann Texeira, Executive Officer, LAFCO
LAFCO Commissioners
651 Pine Street, Sixth Floor
Martinez, CA 94553



RE: The "Reduced Boundary Option"

Dear Ms. Texeira and Commissioners:

There are two cases where the "Reduced Boundary Option" should be amended.

In the first case, 5370 Alhambra Valley Road was never intended to be in the option by the Martinez City Council.

Here is a copy of the Action Minutes of the special meeting held Wednesday, August 22, 2012, of the Martinez City Council. The minutes are written by Mercy Cabral, the Deputy City Clerk:

From: "Mercy Cabral" <mcabral@cityofmartinez.org>
Date: August 28, 2012 5:15:46 PM PDT
To: "Marie Olson" <marieolson@earthlink.net>
Subject: 08/22/12 action minutes

This is what the city attorney reported out:

As a result of LAFCO's Municipal Service Review, the City was asked to consider annexation of those developed subdivisions with urban services. Subsequent to the LAFCO meeting in July, staff was asked to again review the proposed boundaries. Based thereon, staff is

suggesting that the City request LAFCO to revise the boundary to include just those subdivisions as were originally contemplated, which are in fact, currently receiving urban services.

This is what was agreed to by consensus:

It was agreed by general consensus (three Councilmembers) to request LAFCO to amend the application to revise the boundary to include just those subdivisions as were originally contemplated, which are in fact, currently receiving urban services.

Mercy G. Cabral

D

It was very clear to all who attended the meeting that “just” the four subdivisions were to be in the “reduced boundary option,” and it is very clear in the minutes that both the Council and the Assistant City Attorney stated the same thing. The four subdivisions originally contemplated were Alhambra Valley Ranch, Stonehurst, Deer Creek, and Valley Orchard.

The “reduced boundary option” does not reflect exactly what the Council voted on. It does include the four subdivisions, but it also contains the additional pre-1987 property of 5370 Alhambra Valley Road, a property that AVIA and our attorneys from Gagen/McCoy represented from the very beginning.

For approximately one mile along the north side of Alhambra Valley Road from the Reliez Valley Road to the Deer Creek subdivision every home is excluded in the Reduced Boundary Option. 5370 AV Road is the last home completing the clear and

logical road frontage line. The annexation of Valley Orchard subdivision does not in any way require the inclusion of 5370 AV Road. The city declared that they “just” want to annex the four subdivisions. They did not include any incidental, pre-1987, non-deferred homes.

AVIA feels that for those two reasons 5370 AV Road should not be included in the “reduced boundary option.”

The second case involves the homes on Vaca Creek Way.

The city boundary should be located north of the homes on Vaca Creek Way in order to keep the neighborhood intact and avoid jurisdictional conflicts.

None of the properties cited above are in the four subdivisions that the city wants to annex. For that reason alone they should be excluded from the option.

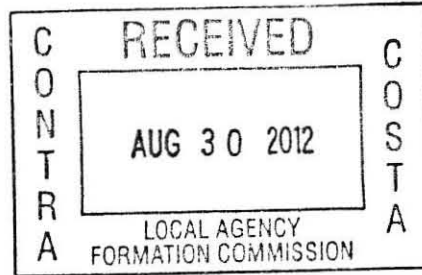
Sincerely,

A handwritten signature in cursive script that reads "Hal Olson".

Hal Olson, President, AVIA
22 Wanda Way
Martinez, CA 94553
925-228-7473

August 29, 2012

Commissioners, LAFCO
651 Pine Street, Sixth Floor
Martinez, CA 94553-1229



**Re: LAFCO No. 11-07 Alhambra Valley Annexation to City of Martinez
Inclusion of Three Vaca Creek Way Properties**

Dear Commissioners:

I am writing on behalf of myself and my wife (111 Vaca Creek Way in the Alhambra Valley); Dave and Pat Gilberti (101 Vaca Creek Way); and, Gilbert and Nancy Matsuoka (121 Vaca Creek Way).¹ The City of Martinez ("the City") has included our three properties within the annexation area in the last two iterations of its Annexation Plan despite the facts that (1) none of us has signed a Deferred Annexation Agreement (DAA); (2) none of us has a community of interest with the developments around us whose developers did sign DAA's; (3) we have a definite community of interest with our neighbors who live across the street and with those on Vaca Creek Road; (4) the properties across the street and those on Vaca Creek Road have been *excluded* from the City's Annexation Area, thus dividing our neighborhood down the middle; and (5) there is a simple solution that will eliminate these problems and will eliminate our opposition to the City's currently proposed annexation plan.

Background

Vaca Creek Way is a short, narrow, one-lane, dead-end road with five houses, which is accessed via Vaca Creek Road, which itself, is a short, dead-end road with three houses.² The City has drawn the annexation line down the middle of Vaca Creek Way, so that 101, 111, and 121 Vaca Creek Way are included in the annexation area, but the two properties on the other side of Vaca Creek Way, and all of the properties on Vaca Creek Road, have been excluded.

LAFCO SHOULD REQUIRE THE CITY TO EXCLUDE OUR THREE PROPERTIES FROM THE ANNEXATION AREA.

The properties on Vaca Creek Way have no community of interest with those in Stonehurst or Alhambra Valley Ranch. None of our properties has access to either development, except through the main gates of those communities. (111 Vaca Creek

¹ All of these individuals are registered voters at their respective residence addresses identified here and are owners of their respective residences.

² The Dunivan property is also on Vaca Creek Road, but it is outside the urban limit line, and thus, could not be annexed even if the City wanted to do so.

Way does not even abut either of those developments.) None of the properties on Vaca Creek Way and Vaca Creek Road are subject to DAA's, because we all hooked up to the Martinez Water District lines before 1987. Whereas, all of the properties in Stonehurst and Alhambra Valley Ranch are subject to DAA's. The properties on Vaca Creek Way and Vaca Creek Road share a main water line that is separate from the water lines in Stonehurst and Alhambra Valley Ranch. Finally, Stonehurst and Alhambra Valley Ranch are gated communities with their own Homeowner Associations; the Vaca Creek properties are outside those gates and are not part of any Homeowner Association.

However, those of us at 101, 111, and 121 Vaca Creek Way have a community of interest with our neighbors on Vaca Creek Way. We are, in essence, an isolated community, because we share a private, dead-end road. We share responsibility for road maintenance and community "watch." By putting the dividing line between city and county down the middle of our private road, the City has created the opportunity for delays in law enforcement response, because time will be taken to determine whether City Police or the County Sheriff would respond. For example, if I called 911 because I saw a situation across the street that needed law enforcement, my call would go the City, but the dispatcher would then have to call the County Sheriff, because my neighbor would be in the County. That delay could literally mean life or death.

Section 58641 of the Cortese-Knox-Hertzberg Act³ requires that LAFCO consider the "Need for organized community services, present cost and adequacy of government services and controls, probable future needs, probable effect of the annexation and of alternative courses of action on the cost and adequacy of services and controls in the area and vicinity." The requirement will not be met if the City is permitted to draw the annexation boundary line down the middle of Vaca Creek Way, because of the confusion and delay of emergency services on Vaca Creek Way, but it would be met if LAFCO requires the City to redraw the map as we are requesting.

Another criterion that LAFCO needs to consider when developing annexation boundaries is the "desires of residents." Redrawing the annexation map will accomplish this criterion and not adversely affect the other criteria.

Finally, the City Attorney's report of last Wednesday's (August 22, 2012) special meeting of the City Council states:

As a result of LAFCO's Municipal Service Review, the City was asked to consider annexation of those developed subdivision with urban services. Subsequent to the LAFCO meeting in July, staff was asked to again review the proposed boundaries. Based thereon, staff is suggesting that the City request LAFCO to *revise the boundary to include just those subdivisions as were originally contemplated*, which are in fact currently receiving urban services. (Emphasis Added.)

³ Cal. Gov't. Code Section 56000, et seq.

The official "Action Minutes" of that meeting show that that is what the City Council approved:

It was agreed by general consensus (three Council members) to request LAFCO to amend the application to revise the boundary to include *just those subdivisions as were originally contemplated*, which are in fact receiving urban services. (Emphasis added.)

There is no dispute that "subdivisions originally contemplated" refers only to Stonehurst, Alhambra Valley Ranch, Deer Creek, Cross Creek, and Valley Orchard subdivisions, and does not include any houses on Vaca Creek Way. Thus, the proposed map submitted by the City does not match the Resolution the City itself adopted upon which the proposed LAFCO approval is predicated. This deviation between the Resolution and the proposed map is a significant defect that would invalidate any approval by LAFCO of the proposed annexation.

The Solution

These problems can be easily rectified by requiring the City to redraw the Annexation Area boundary to go around the East side of 121 Vaca Creek Way and the North side 121 and 101 Vaca Creek Way, instead of going down the middle of Vaca Creek Way. This solution keeps our neighborhood intact; eliminates the potential for emergency services delays; results in all of the properties in Stonehurst and Alhambra Valley Ranch that signed annexation agreements within the annexation area, and those of us who have not, outside the annexation area.

Because the current map does not conform to the City's most recent Resolution, the LAFCO Executive could withdraw her "completeness determination" and ask the City to submit a map that conforms to the Resolution or LAFCO could reject the City's application as being nonconforming.

A City staff member told me that the reason the City wanted to draw the annexation line down the middle of Vaca Creek Way was because "it was a straight line." As you know, none of the City's proposed annexation maps, including the rest of the most recent map, is drawn based on straight lines. Indeed, many of the annexation boundary lines were drawn to conform to property boundary lines, just as we are requesting be done in our case. Thus, our proposed solution solves the problems associated with drawing the line down the middle of Vaca Creek Way, is more consistent with the terms of the Cortese-Knox-Hertzberg Act, is more consistent with the City Council's own Resolution of last week, and has no negative consequences. Thus, it is the most reasonable alternative, and LAFCO should require the City to revise their plan and map accordingly.

PROBLEMS WITH THE CURRENT ANNEXATION PLAN

If LAFCO does not require the City to revise the Vaca Creek Way boundary lines as we have requested, there are several additional bases upon which we can challenge the City's current annexation plan, if we chose to do so.

In addition to our three properties on Vaca Creek Way, the City map also includes the property at 5370 Alhambra Valley Road owned by the Rosenquist's. They are not in any of the developments specifically referenced in the City Resolution, and they have not signed a DAA, so in addition to our properties, there is another included in the revised map that does not conform to the City's Resolution. Accordingly, LAFCO must throw out the map entirely and reject the City's annexation proposal, or at the very least, require the City to revise its map to conform to its own August 22, 2012, Resolution.

The former City Manager testified at a Planning Commission meeting that the reason the Alhambra Valley annexation process began was because Mayor Schroder (who is a member of LAFCO) told her that he wanted to "set an example" for the other LAFCO members. It was not to benefit the residents of Martinez or the Alhambra Valley. This reason does not comport with the rational basis requirements of the Cortese-Knox-Herzberg Act.

The City staff and Mayor Schroeder have admitted in Planning Commission testimony, to the press, and in official documents that the annexation area was designed, and changed several times, in order to prevent a protest vote (i.e., keeping the number of voters who had not signed DAA's below 25% of the voters in the annexation area). The City knows that it would lose such a protest vote. There is a strong argument that the City's admitted attempt to disenfranchise voters violates the Cortese-Knox-Herzberg Act and other laws.

The only contiguous border between the City and the proposed annexation area is a short stretch of pasture high in the hills between Alhambra Valley Ranch and Mt. Wanda National Park where no road is possible. It also creates a peninsula of City property that juts into the County that would completely surround the annexation area, except for this small strip of pasture. This obvious gerrymandering is contrary to the requirements of the Cortese-Knox-Herzberg Act.

The Alhambra Valley residents will be required to pay Measure H Bond tax, even though they were not within the City at the time the Measure was on the ballot. This is very different from requiring someone who voluntarily purchases a property within the City limits to pay the tax; the Alhambra Valley residents within the annexation area are being forced into the City unwillingly and required to pay a tax that they did not have the chance to vote upon. I know that "taxation without representation" is a trite phrase, but it is true in this case, and it poses legal problems to the annexation plan.

The City is asking LAFCO to rely on the City's December 2010 Negative Declaration of environmental impact. Yet, the most recent annexation plan area is substantially

different than the one upon which the December 2010 Negative Declaration was based. As you know, when a "Proposed Project" is changed as substantially as has the City's Annexation Plan for Alhambra Valley, the CEQA review document needs to be revised and reissued for public circulation and comment. If LAFCO does not require that the City resubmit a CEQA-compliant Negative Declaration contain an environmental assessment based on an accurate description of the Proposed Project, then LAFCO will be in violation of the Cortese-Knox-Hertzberg Act.

The Cortese-Knox-Hertzberg Act provides for two separate protest procedures: one involves 25% of the land owners who own at least 25% of the proposed annexation area land, and the other involves 25% of the registered voters in the annexation area. The DAA's that I have seen mention "property owners". So, there is a good argument that the DAA's do not waive a *registered voter's* right to protest annexation as a *registered voter*, under the registered voter procedure, but only a property owner's right to protest annexation pursuant to the landowner procedure.

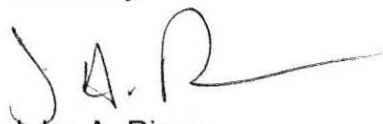
There is also support for the argument that a developer's DAA does not bind subsequent owners of lots within a development, if the owner did not have notice of the DAA. Accordingly, the residents of several of the lots that were signed only by developers, could challenge the current annexation plan that claims to exclude them from protesting annexation.

This is not an exhaustive list of possible claims against LAFCO that could be brought should LAFCO approve the City's annexation application in its current form and map.

* * *

I plan to attend the LAFCO hearing on this matter on September 12, 2012, at 1:30 p.m., but if you or your staff have questions, or would like further information, before the hearing, please have your staff contact me.

Sincerely,



John A. Ricca
111 Vaca Creek Way
Martinez, CA 94553






Mailing Address:
6680 Alhambra Ave., #414, Martinez, CA 94553
Tel: (925) 229-1639
Email: jricca@comcast.net

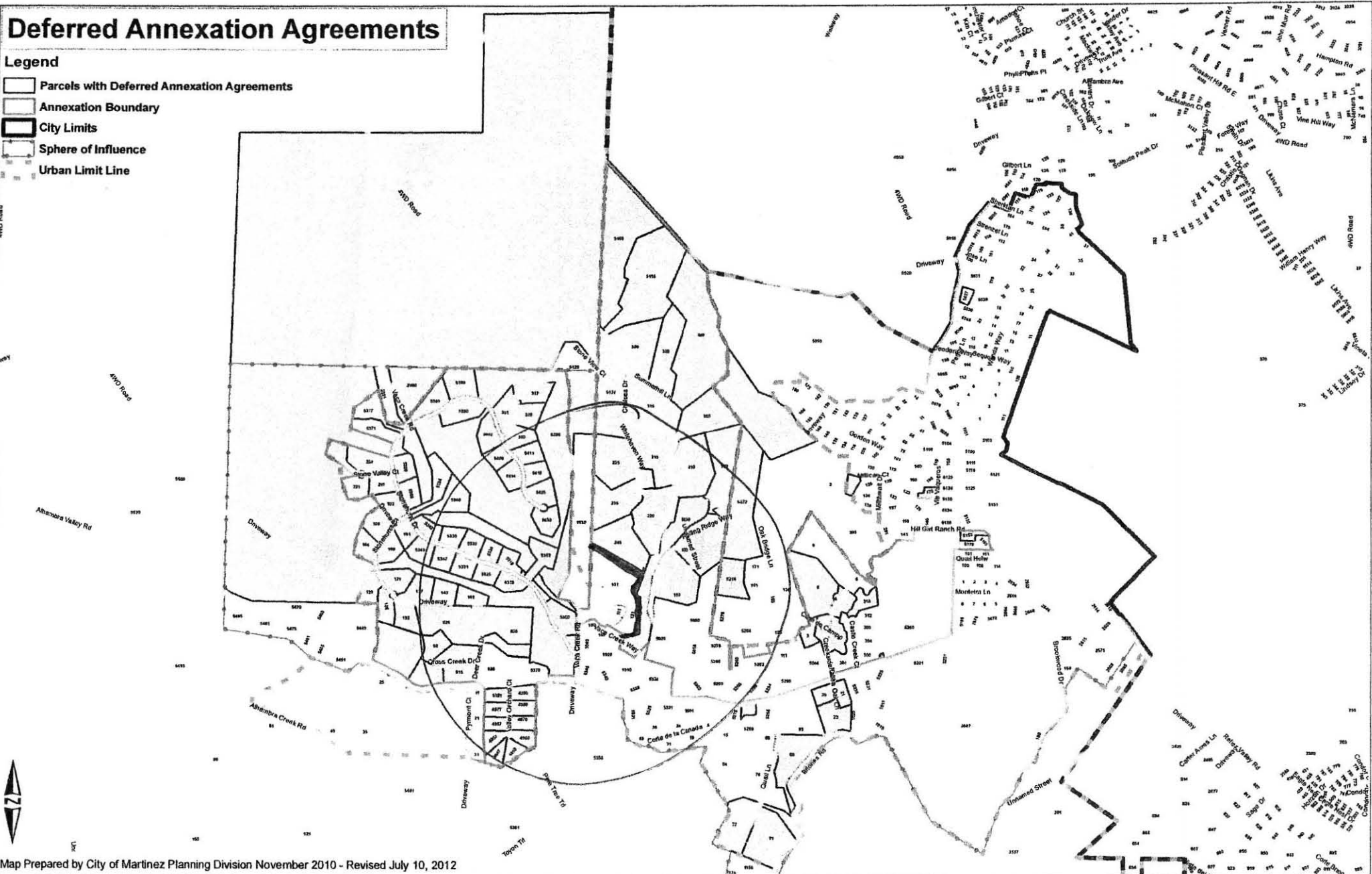
Enclosure: Map With Requested Boundary Changes Added

(NOTE: I used the previous version of the map because it is easier to see the Vaca Creek Properties than on the new map, but the City's annexation boundary lines are identical.)


Deferred Annexation Agreements

Legend

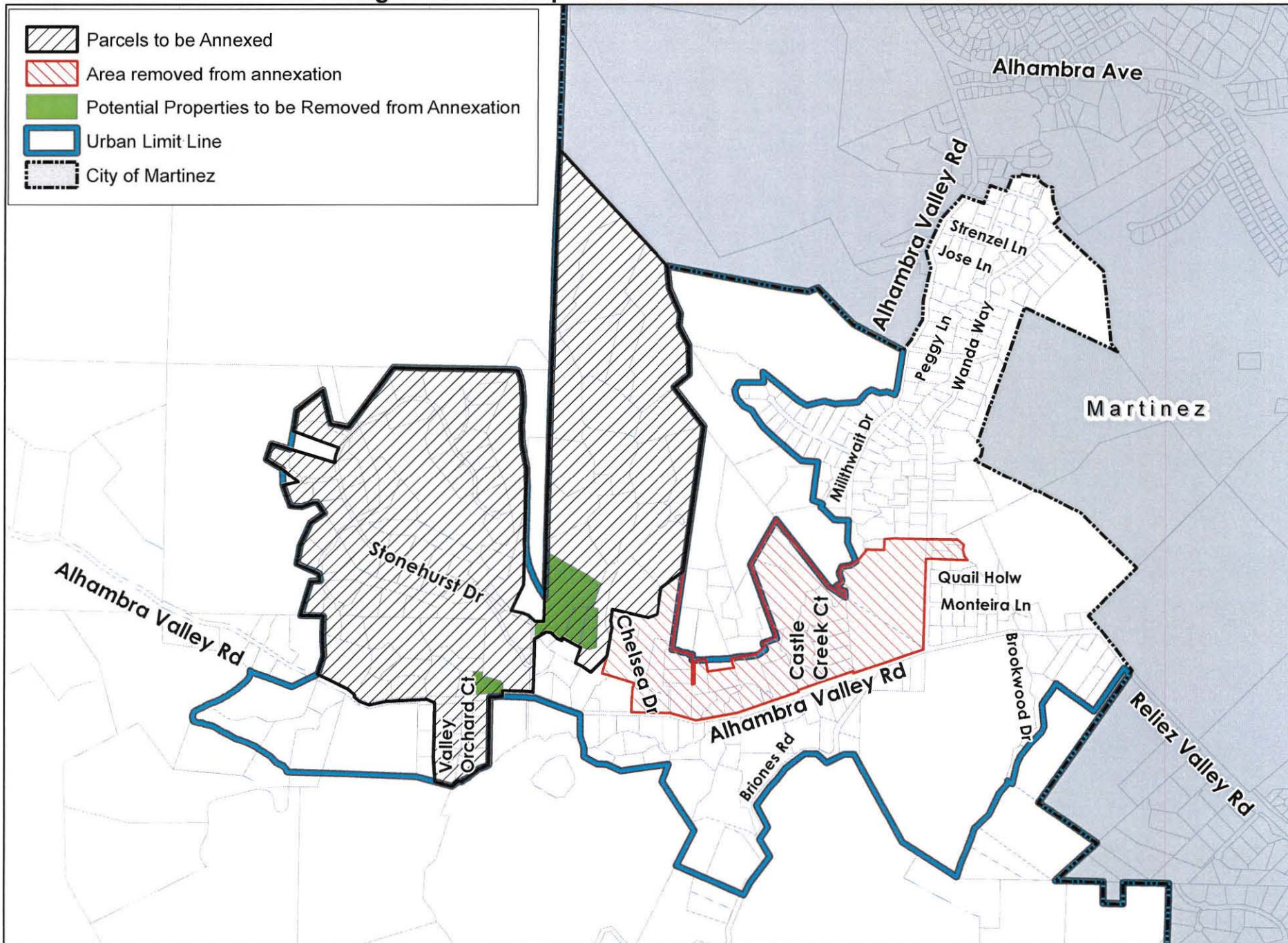
-  Parcels with Deferred Annexation Agreements
-  Annexation Boundary
-  City Limits
-  Sphere of Influence
-  Urban Limit Line



Map Prepared by City of Martinez Planning Division November 2010 - Revised July 10, 2012

 = Requested Change

LAFCO No. 11- 07: Alhambra Valley Annexation to City of Martinez - Reduced Boundary Option Including Potential Properties to be Removed from Annexation



Map created 8/30/2012
by Contra Costa County Department of
Conservation and Development, GIS Group
30 Muir Road, Martinez, CA 94553
37°59'41.781"N 122°07'03.756"W

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