

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

October 31, 2012 (Agenda)

October 31, 2012  
Special Meeting  
Agenda Item 9

LAFCO 11-09

Town of Discovery Bay Community Services District (DBCSD) - Out of Agency Service Request (Farnholz Property)

## SYNOPSIS

This is a request by DBCSD to provide sewer service outside its jurisdictional boundaries and outside the District's sphere of influence (SOI); the property is also outside the countywide voter approved Urban Limit Line (ULL). The property is 15.38± acres (APN 011-200-038) located at 14021 Highway 4 in unincorporated Byron (Attachment 1). The property houses a single family residential unit.

In accordance with the County General Plan, the property is designated as Agricultural Core and is zoned A-40 (Exclusive Agricultural – 40 acre minimum). The parcel is adjacent to the DBCSD boundary. Parcels to the north are within the District service boundary and are developed (single and multi family housing units). Parcels to the east, west and south are zoned for agricultural uses.

The District's request to provide out of agency water service is in response to an impending threat to the public health and safety as discussed below.

## DISCUSSION

### Statutory Framework – Out of Agency Service

The Government Code and local LAFCO policy regulate the extension of out of agency service. State law requires LAFCO review and approval of boundary changes and extensions of service without boundary changes. Government Code §56133 states that “A city or district may provide new or extended services by contract or agreement outside of its jurisdictional boundaries only if it first requests and receives written approval from the Commission.” Further, the law provides that LAFCO may authorize a city or district to provide new or extended services under specific circumstances: a) outside the agency's jurisdictional boundaries but within its SOI in anticipation of a future annexation; or b) outside its jurisdictional boundaries and outside its SOI in response to an existing or impending threat to the public health or safety.

The Commission's current policies regarding out of agency service are consistent with State law in that annexations to cities and special districts are usually preferred for providing municipal services. However, there may be situations where health and safety, emergency service, or other concerns warrant out of agency service. Historically, out of agency service is considered a temporary measure, typically in response to an existing or impending public health and safety threat (e.g., failing septic system, contaminated well); or in anticipation of a future annexation.

### Out of Agency Service Request by DBCSD

The District's request to provide out of agency sewer service is supported by correspondence from the County Environmental Health Department (EHD) - Attachment 2 - indicating that the property has a

failing septic system, is located within the 100 year flood plain, and in an area with shallow ground water. The EHD recommends that the property owner pursue municipal sewer through the District and abandon the existing septic system.

The law permits LAFCO to authorize DBCSD to extend services outside its jurisdictional boundary either in response to an existing or impending threat to the public health or safety, or in anticipation of an annexation. The request by DBCSD to provide sewer service to the property is in response to existing public health emergency.

In 2004, the Commission approved out of agency water and sewer service to a neighboring property located at 14051 Highway 4 (APN 011-200-020).

#### Sewer Service to the Farnholz Property

In July 2010, the County inspected the Farnholz property, revealed an improperly functioning sewage disposal system, noted violations and required the property owner to immediately abate the condition. In a more recent communication, the County EHD noted that the situation is an impending threat to the public health and safety, and recommended connection to the DBCSD sanitary sewer system.

DBCSD proposes to provide sewer service only to the existing single family residential unit. The infrastructure will include a new small package pump station adjacent to the Farnholz property, along with a new 2-inch discharge pipe that will connect to an existing discharge on the neighbor's property which feeds into the District's system. The property owner is responsible for all costs associated with the project.

#### Environmental Review

The District, as Lead Agency, found that the proposed extension of sewer service to the Farnholz property is exempt from the California Environmental Quality Act (CEQA) pursuant to §15061(b)(3), since it can be seen with certainty that there is no possibility that the action in question may have a significant effect on the environment. The LAFCO Environmental Coordinator has reviewed the environmental document and finds it is adequate for LAFCO purposes.

#### Agreement Consenting to Annex

Whenever property may ultimately be annexed to an agency providing services through an out of agency service agreement, a standard condition is to require the landowner to record an agreement consenting to annex the territory. The affected property owner has petitioned the District for out of agency service and has signed and recorded a deferred annexation covenant with the District consenting to the future annexation of their property. The agreement runs with the land.

### **ALTERNATIVES FOR COMMISSION ACTION**

LAFCOs were formed for the primary purpose of promoting orderly development through the logical formation and determination of local agency boundaries, and facilitating the efficient provision of

public services. The CKH provides that LAFCO can approve or disapprove, with or without amendment, wholly, partially, or conditionally, a proposal. The statute also provides LAFCO with broad discretion in terms of imposing terms and conditions. The following options and recommended terms and conditions are presented for the Commission's consideration.

**Option 1**      **Approve** the out of agency service request with the following terms and conditions.

- A. Finds that the project is exempt pursuant to the California Environmental Quality Act (CEQA) pursuant to §15061(b)(3).
- B. Authorizes DBCSD to extend sewer service outside its jurisdictional boundaries and outside its SOI only to the existing single family residential unit located at 14021 Highway 4 in unincorporated Byron (APN 011-200-038) subject to the following terms and conditions:
  - 1. Infrastructure is limited to a 2-inch discharge pipe and infrastructure as noted in the District's application.
  - 2. DBCSD has delivered to LAFCO an executed indemnification agreement providing for DBCSD to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service.

**Option 2**      **Deny** the request, thereby prohibiting DBCSD from providing sewer service to the Farnholz property.

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

## **RECOMMENDATION**

### **Option 1**

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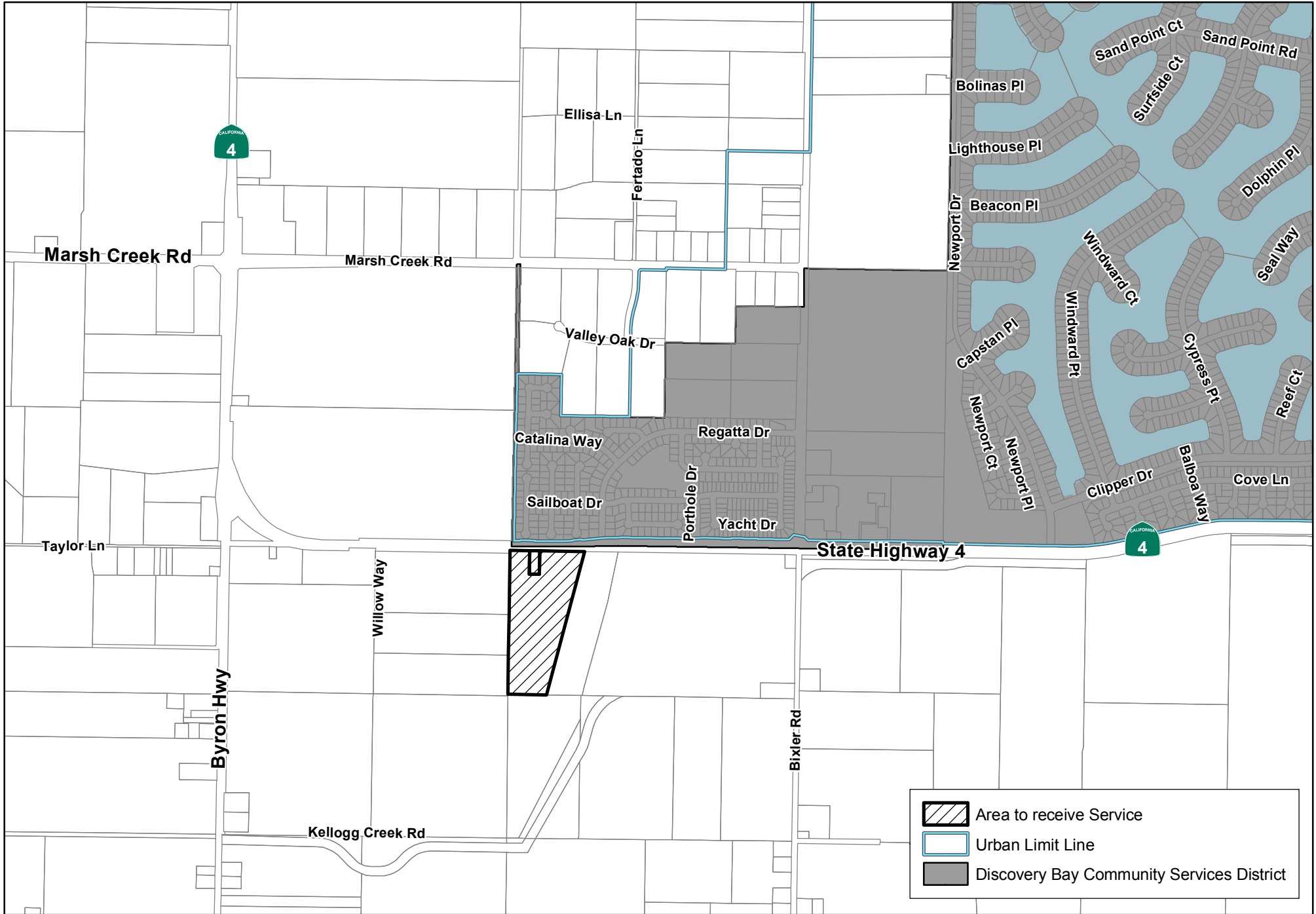
LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LAFCO




### **Attachments**

- 1. Out of Agency Service Map (Farnholz Property)
- 2. Communications from Contra Costa County Environmental Health Department
- 3. Draft LAFCO Resolution

c: Virgil Koehne, DBCSD  
Salavador Ruiz, County EHD  
Wayne & Anita Farnholz, Property Owners

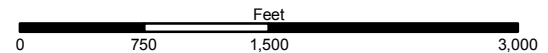
# LAFCO No. 11-09: Town of Discovery Bay Community Services District Out of Agency Service (Farnholz)



	Area to receive Service
	Urban Limit Line
	Discovery Bay Community Services District

Map created 08/05/2011  
 by Contra Costa County Department of Conservation and Development - GIS Group  
 651 Pine Street, 4th Floor North Wing, Martinez, CA 94553-0095  
 37.59.48.455N 122.06.35.384W

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



WILLIAM B. WALKER, M.D.  
HEALTH SERVICES DIRECTOR  
SHERMAN L. QUINLAN, REHS, MPH  
ENVIRONMENTAL HEALTH DIRECTOR



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ENVIRONMENTAL HEALTH

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Concord, California 94520  
Ph (925) 692-2500  
Fax (925) 692-2502  
www.cocoeh.org

**CERTIFIED MAIL**

July 23, 2010

Wayne C. and Anita Farnholtz  
954 Country Ln  
Walnut Creek, CA 94596-6143

RE: Improperly functioning sewage disposal system at 14021 State Highway 4, Byron  
Assessor's Parcel Number: 011-200-038

Dear Mr. & Mrs. Farnholtz:

Inspection of the above-referenced property on July 22, 2010, revealed an improperly functioning sewage disposal system, (standing wastewater in excavation next to septic tank). This is a violation of Contra Costa County Ordinance Code, Section 420-6.303, the California Health and Safety Code Section 5411 and the Uniform Plumbing Code Sections 301 and 319. In accordance with the provisions of Contra Costa County Ordinance Code, Section 420-6.311 you, as owner of the property, are required to abate the condition immediately.

Due to the immediate health hazard and public nuisance created by this condition, you must attend to this matter in an expeditious manner. Contra Costa County Ordinance Code, Section 420-6.1002 requires that any person or firm engaged in the cleaning of septic tanks shall have a valid Public Health License to Operate issued by the Health Officer. In the event that septic system repairs or replacement is necessary to abate the above-described violation, obtain a septic system repair permit from Contra Costa Environmental Health prior to the commencement of any work.

Your prompt attention to the matter is required to avoid further enforcement action.

If you have any question, please contact me at 925- 692-2562, weekdays between 7:30 a.m. and 9:00 a.m.

Sincerely,

Salvador M. Ruiz, REHS  
Environmental Health Specialist II

cc: Byron Sanitary District, 7995 Bruns Rd, Byron, CA 94514  
Contra Costa County Building Department  
Paul Chahin, Stephens Property Management, 1330 N. Broadway, Suite C, Walnut Creek, CA 94595

SR:ac





Salvador.Ruiz@hsd.cccounty.us  
03/03/2011 04:13 PM

To Lou Ann Texeira <LTexe@lafco.cccounty.us>  
cc John.Wiggins@hsd.cccounty.us  
bcc

Subject Re: APN 011-200-038

History: This message has been replied to and forwarded.

Hi Lou Ann,

Back on July 2010, during a site visit to the subject site, I observed wastewater or standing ground water in a trench that had been dug to make repairs to the existing septic system. According to the tenants, the septic system was backing up, the tank had been pumped and they wanted to have the system repaired. Based on my observations, the septic system is either failing or is discharging wastewater into the ground water. Either of these situations is an impending threat to the public health and safety, the water wells in the area could be impacted.

Although there is plenty of open space in the parcel to replace the septic system, the parcel is within the FEMA 100 year flood plain and the ground water is shallow. Based on current requirements, a septic system shall not be approved within the 100 year flood plain. In order to protect the ground water, an alternative system could be the only option.

Based on the existing conditions, Contra Costa Environmental Health recommends to pursue connection to the DBCSD sanitary sewer system and have the existing septic tank properly abandoned under permit by Contra Costa Environmental Health.

Salvador M. Ruiz, REHS  
Environmental Health Specialist II  
Contra Costa Environmental Health  
(925) 692-2562

RESOLUTION NO. 11-09

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
AUTHORIZING TOWN OF DISCOVERY BAY COMMUNITY SERVICES DISTRICT TO  
PROVIDE OUT-OF-AGENCY SERVICES TO PROPERTY LOCATED AT  
14021 HIGHWAY 4 IN UNINCORPORATED BYRON (APN 011-200-038)

WHEREAS, the above-referenced request has been filed with the Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act (Gov. Code §56000 et seq.); and

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

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to this request including, but not limited to, the Executive Officer's report and recommendation; and

WHEREAS, out of agency service approval is needed in order to provide sewer services to the property in response to an impending threat to the public health and safety; and

WHEREAS, the property owners have signed a pre-annexation agreement consenting to a future annexation of the property to Discovery Bay Community Services District (DBCSD); and

WHEREAS, there is no potential for significant adverse environmental impacts.

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

- (1) The proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3).
- (2) Discovery Bay Community Services District is hereby authorized to extend sewer services outside of the District's boundary and sphere of influence to property located at 14021 Highway 4 (APN 011-200-038) subject to all of the following conditions:
  - a. Sewer infrastructure is limited to the existing single family residential unit located at 14021 Highway 4; and
  - b. Infrastructure is limited to a 2-inch discharge pipe and infrastructure as noted in the District's application; and
  - c. DBCSD has delivered to LAFCO an executed indemnification agreement providing for DBCSD to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service.

- (3) Approval to extend District services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

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PASSED AND ADOPTED THIS 31<sup>st</sup> day of October 2012, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
DON TATZN, CHAIR, CONTRA COSTA LAFCO

*I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated above*

Dated: October 31, 2012

\_\_\_\_\_  
Lou Ann Texeira, Executive Officer