



Lou Ann Texeira
Executive Officer

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March 13, 2013
Agenda Item 6

March 13, 2013 (Agenda)

Contra Costa Local Agency Formation Commission (LAFCO)
651 Pine Street, Sixth Floor
Martinez, CA 94553

Northeast Antioch Monthly Update

Dear Commissioners:

On February 9, 2011 the Commission approved the extension of out of agency service by the City of Antioch and Delta Diablo Sanitation District to the Marsh Landing Generating Station (GenOn) property located in unincorporated Northeast Antioch. The Commission’s approval requires that the City and County provide LAFCO with monthly updates regarding the status of the Northeast Antioch annexation and the tax transfer negotiations. A subcommittee was formed to address these and other issues.

LAFCO representatives participated in monthly subcommittee meetings from April to October 2011; and the City and County have provided LAFCO with regular updates. In October 2012, the subcommittee resumed meeting. The subcommittee last met on January 28, 2013. Commissioners McGill and Meadows and LAFCO staff attended the subcommittee meeting and provided an update to the Commission in February 2013.

As reported in February, on February 1, 2013, the City of Antioch released a Mitigated Negative Declaration for the Northeast Antioch Reorganization, covering Areas 1, 2a and 2b. On February 20, the Antioch Planning Commission held a public hearing to receive public comment.

City staff has provided a written update, along with the February 20th Planning Commission Draft Meeting Minutes and the City’s Frequently Asked Questions – FAQ (Attachment 2).

On February 27, City, County and LAFCO staff participated in a neighborhood meeting with residents of Area 2b. The meeting was held at the Bridgehead Café in unincorporated Antioch (Area 2b) and was well attended. City staff distributed a FAQ informational piece.

The most prominent questions and concerns from the residents related to the following:

- Whether the City will *require* property owners to hook-up to city water/sewer following annexation
- The cost of hooking up to city water/sewer and ongoing cost of paying utility bills
- The millions of dollars the City will receive when it annexes Area 1, and that the City should pay the full cost of providing water/sewer to the residents in 2b
- The length of time it will take to construct the water/sewer lines (2-5 years) and what happens in the meanwhile if a system fails
- Zoning and preserving vineyards
- The City breaking Northeast Antioch up into three separate areas, and that it should be one annexation
- Not being able to vote and what constitutes an island
- What happens to private roads

On February 28, LAFCO received a letter from Jenny & Jenny, LLP representing residents of Area 2b (Attachment 3). The letter discusses two concerns regarding the proposed reorganization of Northeast Antioch: one related to the LAFCO protest proceedings and voting; the other relating to the City's recent environmental document.

City and County staff will be available at the March 13 LAFCO meeting to respond to Commissioner questions.

RECOMMENDATION

Receive the monthly update and provide comment and direction as appropriate.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

Attachments


Attachment 1 - February 13, 2013 City of Antioch Staff Report for Planning Commission – Public Hearing to Receive Comments on the Proposed Mitigated Negative Declaration – Northeast Antioch Reorganization

Attachment 2 – Northeast Antioch Update/February 20, 2013 City of Antioch Draft Planning Commission Meeting Minutes/Antioch's Frequently Asked Questions - Northeast Antioch Annexation

Attachment 3 – Letter dated February 27, 2013 to the City of Antioch from Jenny & Jenny, LLP

c: Distribution

**STAFF REPORT TO THE PLANNING COMMISSION
FOR CONSIDERATION AT THE MEETING OF FEBRUARY 20, 2013**

Prepared by: Victor Carniglia, City Consultant 

Date: February 13, 2013

Subject: Public Hearing to Receive Comments on the Proposed Mitigated Negative Declaration Prepared for the Northeast Antioch Reorganization, which addresses the Annexation to the City of Antioch and to the Delta Diablo Sanitation District of Approximately 678 Acres of Land Located Northeast of the Current City Limits of the City of Antioch, in three Separate Annexation Applications, Referred to as Areas 1, 2a and 2b

RECOMMENDATION

Staff recommends that the Planning Commission hold the public hearing and receive comments from the public on the Proposed Mitigated Negative Declaration prepared for the Northeast Antioch Reorganization.

It should be emphasized that the purpose of this agenda item is to receive comments on the Proposed Mitigated Negative Declaration. Representatives from the City's environmental consulting firm "Circle Point" will be present to record all the comments made during the public hearing. While the City's consultants and staff will, as appropriate, provide clarifications to questions raised at the hearing, the purpose of this agenda item is to receive and record comments, not to respond to the comments. Written responses to all comments raised at the Planning Commission hearing, as well as to any written comments received during the 30 day public review period, will be prepared by City staff and consultants after the public comment period closes. The 30 day public review period ends on Monday, March 4, 2013.

A copy of the Proposed Mitigated Negative Declaration is included in the Planning Commission packet. In addition to the enclosed document, there is also a separate document containing background reports that serves as the appendices to the Mitigated Negative Declaration. A copy of this separate appendices is available for review and download on the City's web site, where it is referred to as "Document 2" under the Northeast Antioch Annexation.

BACKGROUND

Early last year the City was moving forward with the Northeast Antioch Annexation, including Rezoning and the Tax Transfer Agreement. At that point in time, the City's annexation application was only for Area 1. Area 1 is the approximately 481 acre industrial area located in close proximity to Wilbur Avenue. Maps showing the location and boundaries of Area 1, along with Areas 2a and 2b are contained in the attached

Mitigated Negative Declaration. As part of this 2012 effort, the City utilized a previously prepared environmental document that had been adopted by the City Council in 2010. During the public hearing process on the Rezoning for Area 1, which occurred during the late winter and spring of 2012, the City received comments questioning the adequacy of the 2010 Mitigated Negative Declaration. Given the comments received, and to ensure that all of the technical requirements of the State environmental requirements were being addressed, City staff and legal counsel determined that it would be appropriate for the City to update the 2010 environmental document. The consulting firm Circle Point was retained by the City in July 2012 to do the necessary update work. This updated environmental document is the Proposed Mitigated Negative Declaration currently before the Planning Commission.

As previously mentioned, the City's annexation application to LAFCO in the spring of 2012 only included the large 481 acre industrial Area 1. In May 2012, the City received a letter from LAFCO (the agency regulating annexations), stating that LAFCO determined it was necessary for the City to submit annexation applications for Areas 2a and 2b, in addition to the application for Area 1 already submitted by the City. Area 2a is located just west of Hwy 160 and north of Wilbur Avenue, and consists of the existing marinas along with storage uses and the Kiewitt facility. Area 2b is almost entirely residential with approximately 120 residential units, the vast majority of which are detached single family homes. In June 2012, the City Council considered this letter from LAFCO. Given the importance of the annexation of Area 1 to the City and the region, the City Council directed City staff to submit the annexation applications for Areas 2a and 2b as directed by LAFCO. As part of the discussion of the LAFCO letter, City Council members stated that they supported allowing the residents and property owners within Areas 2a and 2b to have a direct say on the question of whether Areas 2a and 2b would be annexed to the City.

It is important to note that while the preceding information on the annexation process provides the Planning Commission with the context in which the environmental document has been prepared, the question of how the annexation applications are ultimately processed will be determined by LAFCO, not the City, and this issue of process is not relevant to the findings and conclusions of the environmental document.

ANALYSIS:

Overview

The enclosed environmental document evaluates the impacts of the annexation of the three areas 1, 2a, and 2b. Unlike an annexation proposed on the City's undeveloped fringe, this annexation involves land that was either previously developed, or was developed in the past and is now either vacant or had structures demolished. In contrast with annexations on the City's edge where the underlying County land use designation is typically Agricultural, in this annexation the County's existing land use designations and the City's proposed land use designations are virtually identical for all three areas. In Area 1 the City's proposed designations are actually more restrictive and would permit lower intensity development. An example of this is the Federal Dunes

Wildlife preserve located in Area 1. The County General Plan depicts this area as Heavy Industrial, while the City General Plan calls for Open Space. This situation, in which the type and intensity of development that can occur in the annexation areas is similar whether the areas involved are under the County's jurisdiction or the City's, results in a more straightforward environmental analysis, as compared to the previously mentioned situation where a "green field" annexation occurs at the City's undeveloped edge.

Infrastructure

The City's ability to provide sanitary sewer and treated water will ultimately improve the environmental situation in the three annexations areas, given that the majority of the existing uses in the annexation areas rely on septic fields and wells. This question of infrastructure is particularly important in Area 2b, where the vast majority of the homes in the Viera Avenue neighborhood are on relatively small lots, and rely on aging septic systems and wells. In order to address this situation, the City along with the County, are proposing to jointly fund "backbone" sewer and water infrastructure to serve Area 2b. The cost of this infrastructure, which is currently estimated to be in the range of \$8 million to \$10 million, would be borne by the City and the County. Funding for connection fees and to construct laterals on private property connecting to the sewer and water systems, would need to come from other funding sources. In order to explore funding options for laterals and connection fees, the City is hiring a consulting firm that specializes in securing grant funding from such sources as Federal and State clean water programs. Given the intent of the City and County to fund this infrastructure as a component of the annexation process, the environmental document addresses the environmental impacts of installing this sewer and water infrastructure to Area 2b, along with limited storm drain improvements.

Infrastructure improvements for Areas 1 and 2a will be ultimately implemented through other means, such as future development projects or the possible future creation of financing districts. The environmental impacts of any such future infrastructure improvements in Area 1 and 2a would be addressed through the environmental analysis conducted as part of a future development project, or as part of the formation process of a financing district.

Process:

At the beginning of the public hearing, the consultant will present a summary of the Proposed Mitigated Negative Declaration. This will provide an opportunity for the Commission and the public to ask questions about the process, before making comments specifically on the environmental document. In order to give the Planning Commission a feel for "next steps" and the overall annexation process, the following is a tentative schedule for the annexation process:

- February 20, 2013: Planning Commission public hearing to receive verbal comments on environmental document.
- March 4, 2013: 30 day public comment period closes on environmental document.

- March 5 to March 21, 2013: City staff and consultants prepare written responses to comments received on environmental document (length of time depends on nature and number of comments received).
- March 26 or April 9, 2013: City Council meeting for action on the environmental document.
- April/May 2013: Planning Commission meeting to consider Rezoning for the three annexation areas.
- May/June 2013: City Council will consider Rezoning, the Tax Transfer and Infrastructure Funding Agreements with the County. Board of Supervisors will consider Tax Transfer and Infrastructure Funding Agreements
- July/August 2013: LAFCO consider the three annexation applications, either together or separately.

While the preceding tentative schedule gives an idea of the sequence and timing of the annexation process, unforeseen events could obviously change the timing.

ATTACHMENT

Enclosed Mitigated Negative Declaration

To: Lou Ann Texeira
From: Victor Carniglia, Consultant for the City of Antioch
Date: March 5, 2013
Subject: Update on Northeast Antioch Annexation

The following is a brief update on the status of the Northeast Antioch Annexation, including 1) the status of the CEQA document, 2) a summary of the February 20, 2013 hearing held at the Planning Commission, and 3) follow up from last week's neighborhood meeting. Feel free to share this memo with LAFCO members as part of the monthly update process:

1)Mitigated Negative Declaration:

The 30 day public review period for the Mitigated Negative Declaration closed yesterday, Monday March 4, 2013. The City received a total of five comments from public agencies, namely the State Water Board, the Contra Costa Water District (CCWD), the County Health Department, The Delta Diablo Sanitation District (DDSD), and LAFCO. All of the agency comments could be characterized as either clarifications or corrections, and should prove to be straightforward for the City to respond to. The City also received a number of comments from residents and property owners in the annexation areas, primarily from Area 2b. While these letters did not specifically address the CEQA document, they generally opposed the annexation. These letters have been forwarded to the City's environmental consultant. In addition, the City received comment letters from two law firms, one from a firm representing a property owner that owns a home in Area 2b, and the other a letter commenting on the environmental document from the law firm representing West Coast Home Builders.

The City is now in the process of reviewing the comments received with the City's environmental consultant. At this point in time, given that the comment period just closed, we don't as yet have an estimated time frame to complete the response process, and publish the final environmental document.

2)February 20, 2013 Planning Commission Meeting:

This was a noticed public hearing held at the Planning Commission for the sole purpose of receiving verbal comments on the Mitigate Negative Declaration. As you are aware, such hearings under State environmental law are optional, but are encouraged by the State as a way of providing the public a forum to make verbal comments on an environmental document. There were approximately sixty members of the public in attendance. Attached are draft minutes of the meeting. As can be seen from the draft minutes, many of the comments made were directed at the annexation, not the environmental document. The vast majority of those speaking, who were primarily from Area 2b, opposed the proposed annexation. The City's consultant is preparing responses to the comments received at this meeting.

3)Neighborhood Meeting:

You were present at the February 27, 2013 neighborhood meeting held at the Bridge Head Café, so there is no reason to go into the details of what transpired. Approximately one hundred interested parties attended the meeting, the majority of whom appeared to be residents and/or property owners from Area 2b. Most participants filled out the "sign in" sheet, so their names/addresses can be added to our contact lists. Overall, the City representatives that attended felt the meeting was productive, as a

significant amount of information was presented and there was a good, healthy exchange of ideas and opinions as part of the question and answer period, which lasted for more than an hour. Attached is a copy of the Frequently Asked Questions (FAQ) prepared by the City that was handed out at the meeting. The City appreciates the template LAFCO provided for putting together this FAQ.

City staff is in the process of researching a number of the questions the City did not have answers to at the neighborhood meeting. As was discussed at the February 27 neighborhood meeting, the “game plan” is to have at least one follow up neighborhood meeting. The City is targeting the first week in April for this second neighborhood meeting, which will also be held at the Bridgehead Café. City staff is trying to finalize the date as soon as possible, so the City can send out notices of the meeting by the end of this week, or early next week. This advance notice will provide residents/property owners plenty of lead time.

It is probably fair to say that virtually every person that spoke at the neighborhood meeting opposed the annexation, at least as they understood it. While a wide range of questions and concerns were raised by residents, two of the most prominent issues/concerns that came up at the meeting concerned 1) the fact that the Area 2b residents/property owners would not be able to vote on the annexation as a consequence of the “island provisions” in State LAFCO law, and 2) the approximately \$14,000 cost of the City and DDS D sewer and water connection fees, with the total connection cost being closer to \$18,000 once the cost of constructing the sewer/water laterals and “decommissioning” septic tanks are taken into account. The fact that the City and County are proposing to invest a total of \$8 million to \$10 million to install the sewer/water system to serve Area 2b, the fact that the rezoning for Area 2b will provide flexibility so that residents will not have to hook up to the sewer system unless they have a failing septic system, and the fact that the City and DDS D will work with residents on deferring the timing of the payment of connection fees, did not appear to alleviate the resident’s concerns.

City staff will be exploring other ways of addressing this issue over connection fees prior to the next neighborhood meeting.

Attachments:

- Draft Minutes of February 20, 2013 Planning Commission meeting
- “FAQ” concerning annexation that was distributed at the February 27, 2013 neighborhood meeting

**CITY OF ANTIOCH
PLANNING COMMISSION MINUTES**

**Regular Meeting
6:30 p.m.**

**February 20, 2013
City Council Chambers**

CALL TO ORDER

Chairman Baatrup called the meeting to order at 6:30 p.m. on Wednesday, February 20, 2013, in the City Council Chambers. He stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on Thursday, February 28, 2013.

ROLL CALL

Present: Commissioners Motts, Sanderson, Westerman, Miller, Hinojosa
Chairman Baatrup and Vice-Chair Azevedo
Absent: None
Staff: Senior Planner, Mindy Gentry
City Consultant, Victor Carniglia
Public Works Director, Ron Bernal
City Attorney, Lynn Nerland
Minutes Clerk, Cheryl Hammers

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

Gerald Continente began to speak and asked what kind of project is causing this annexation.

Chairman Baatrup advised the speaker that public comments at this time were for items not on the agenda and that he could talk on this noticed item shortly. He then asked City Attorney Nerland to briefly explain the process.

CA Nerland said that after the Planning Commission will be receiving comments on the Mitigated Negative Declaration. She said that to speak on that item that a speaker card, which is the yellow card in the back, needs to be completed and placed in the basket to be given to the Chair. Then a speaker will be called up with the next person on deck so to speak. If someone is here on behalf of a group they would be given five minutes and otherwise individuals would be given three minutes to speak. She stated that there will not be dialogue with the Commission and that comments or questions would be recorded. Any questions about the annexation process could be answered by staff. She asked that speakers not duplicate comments.

CONSENT CALENDAR

1. Approval of Minutes: January 16, 2013

On motion by Commissioner Westerman, and seconded by Vice Chair Azevedo, the Planning Commission approved the Minutes of January 16, 2013.

AYES: Baatrup, Azevedo, Motts, Sanderson, Westerman, Miller
NOES: None
ABSTAIN: Hinojosa
ABSENT: None

END OF CONSENT CALENDAR

NEW PUBLIC HEARING

2. Public hearing to receive comments on the Northeast Antioch Reorganization Mitigated Negative Declaration.

City Consultant, Victor Carniglia, provided a summary of the staff report dated February 13, 2013. He said that John Cook with Circlepoint will provide overview of document. He went through the timeline and indicated that there were flyers in the back and one provided information on a neighborhood meeting with representatives of the City, County, and LAFCO next Wednesday, February 27, 2013, at 7:00 p.m. at the Bridgehead Café.

John Cook gave background of his firm and CEQA. He said that this is a public opportunity to comment on the environmental document. He went through his PowerPoint presentation. He said that they did find that any impacts the project could have can be mitigated. That this is part of public review process, that the document has been published, that there is a 30 day comment period, that comments will be addressed in the final document and then brought back for a decision by City Council.

Chairman Baatrup asked staff what is the driving force behind the City moving forward with the annexation.

City Consultant Carniglia stated that historically this area, which is not within the City, has the potential to create new jobs, and for any development to occur in this large industrial area, City services are required. He said that the City did provide services to the PG&E and GenOn plants which have minimal environmental impact and which have a significant tax base. He said that because of the tax base and the areas economic development potential, it is in the interest of the City to annex this area. When the City filed its application for Area 1, LAFCO requested applications be submitted for Areas 2a and 2b as well.

OPENED PUBLIC HEARING

Bill Worrell, lifetime resident of Antioch representing the Sportsman Yacht Club spoke in favor of the annexation, but stated that the marina (Area 2) does not want to be annexed. He said that the City has in the past had a poll of registered voters which did not pass. He said that their club which was formed in the early 30s has a main feature the ferryboat Sausalito, and that they are a family club with membership of local residents.

Karri Campbell representing Calpine and the Riverview Energy Center, said that they have heard about the requirement to utilize public utilities; however, their power plant is currently connected to Delta Diablo Sanitation but on a well and therefore would not be required to connect to City water.

CC Camiglia said that the City does have an ordinance in place with distance requirement mandating sewer hookups.

Mary Angel Tarango said that she has lived on Viera for almost 50 years, that everyone in that area has a septic and well and asked what is going to happen regarding hookups and taxes.

Chairman Baatrup said that he is not sure if that is an issue for the environmental document.

CC Carniglia said that the neighborhood meeting one week from today should provide answers.

Gerald Continente asked regarding Area 1, what kind of project is being proposed and for Area 2b what is the impact on ground water. He also wanted to know what kind of fee would be charged to hookup to services, and if the fee could be waived.

Chairman Baatrup said that no projects are proposed at this moment, that there is no development at this point and that this is a step in the annexation process and to bring utilities into Area 2b.

CC Carniglia said that part of this project is to install sewer and water in Area 2b to allow hookup which should improve the ground water situation and that the overall environmental effect of such hookups would be positive.

Chairman Baatrup said that the environmental document does address water and sewer for those parts of area, and the speaker may want to review the document. He said that more information can be obtained by attending the neighborhood meeting or following up with staff.

CA Nerland referenced Section XVII which starts on page 73 of the environmental document and talks about environmental impacts.

Douglas Tokes spoke to say that he lives on Trembath Lane, that he is on a two acre parcel, that he has no desire to hookup to sewer but would like to hook up to water. He said that he was also concerned about the possibility of extending the road through,

which they don't want. He said that a lot of residents on Trembath and Sinclair have 1+ acre lots and that he would like to see "give and take" when they do improvements.

Ken Wentworth said that he lives on Trembath Lane, that he understands the City would receive one million dollars from GenOn to finish the annexation process.

Chairman said that he knew nothing about that.

Mr. Wentworth said that he happily moved to the County after living within the City limits, that he chose to live there, that he has a septic and a well and that he does not need the City's help. He said that he did spend time on Monday driving up Wilbur and found that some business owners don't know if they are in the County or the City, that none of the businesses knew about this hearing, that many of his neighbors did not receive any notice and that he does not want to spend his time notifying the neighbors.

CC Camiglia said that they rely on property owner lists prepared by the county assessor and that he will double check to verify that the list they have is the current one. He said that the notices go to the property owners, which may or may not be the person in the residence.

Chairman Baatrup said that the process is to notify the affected property owners and that staff will take another look to verify the accuracy of the notice lists.

Marilyn Placial asked if more notices would be sent out before the next meeting or should they go door to door.

CC Camiglia said that notices will be sent out for the meeting next week and that the hearings identified in the presentation will also require notices.

CLOSED PUBLIC HEARING

Chairman Baatrup stated that there would be no action or decision tonight, that there will be a neighborhood meeting at the Bridghead Café for dialogue and that the Planning Commission could provide comments to staff on the environmental document, now or in writing separately.

CA Nerland said that either way was fine.

ORAL COMMUNICATIONS

None.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

Vice Chair Azevedo said that Transplan met Thursday evening and received a report about bringing mobility to Contra Costa. He said that items of note are: the fourth bore of the Caldecott Tunnel should open late 2013; State Route 4 East, Pittsburg to Hillcrest BART Station, is on schedule and should be completed as proposed; the Sandcreek interchange should open sometime by the end of the year; had a presentation regarding sustainability and transportation and a presentation on onramp metering.

ADJOURNMENT

Chairman Baatrup adjourned the Planning Commission at 7:30 p.m.

Respectfully Submitted,
Cheryl Hammers

Frequently Asked Questions Concerning (FAQ's) Concerning the Proposed "Northeast Antioch Annexation" February 27, 2013

Part 1: Description, History, City's Reasons for Proposed Annexation

#1. What is annexation? Annexation is a process that permits a city or other government agency to add land to its boundaries. A city may annex land by filing an application with the Local Agency Formation Commission (LAFCO).

#2. What is LAFCO? Every County in California has a LAFCO. LAFCO is an independent agency, and not part of any city, county or special district. LAFCO is responsible for overseeing orderly growth and development, including the extension of government services to those who need them. Before deciding whether to approve an annexation, LAFCO will hold public meetings to give members of the public the opportunity to express their opinions on the annexation.

The LAFCO Board typically meets in Martinez once a month, and consists of seven voting members: two members of the Board of Supervisors, two representatives from cities, two representatives from special districts, and one "at large" public member, plus one alternate member in each category. For more information regarding Contra Costa LAFCO please visit the website at www.contracostalafco.org or call (925) 335-1094.

#3. What is being proposed? The City is proposing to annex a total of 678 acres to the City of Antioch and to the Delta Diablo Sanitation District (DDSD). The proposed annexation involves three separate applications, consisting of applications to annex Area 1 (481 acre industrial area centered on Wilbur Avenue), Area 2a (94 acre area primarily occupied by marinas located east of Area 1 and west of Hwy 160), and Area 2b (the 103 acre residential area generally located near Viera Avenue, Saint Claire Drive and Trembath Lane). See attached map for the location of the proposed annexation, including the boundaries of Areas 1, 2a, and 2b.

#4. What is the history behind the proposed annexation? In 2007, the City submitted an annexation application to LAFCO requesting permission to annex Area 1 (the industrial area along Wilbur) to the City. At that time, the City conducted polls to determine the interest of residents/property owners in annexing. This polling showed that the majority of residents/property owners in Areas 2a and 2b opposed annexation to the City. Based on this polling, the City declined to submit annexation applications for Area 2a and 2b. In May 2012 LAFCO sent a letter to the City strongly recommending that the City submit annexation applications for Area 2a and Area 2b, in addition to the application already submitted for Area 1. LAFCO made this request to avoid the annexation of Area 1 creating small isolated pockets of land that were not part of the City and that would be difficult for the County to efficiently serve. In June 2012 the Antioch City Council, upon consideration of LAFCO concerns and the importance to the City and region of annexing Area 1, directed City staff to submit annexation applications for Areas 2a and 2b, as urged by LAFCO.

#5. What are the City's reasons for requesting the proposed annexation, and what are the benefits to the City? The City has two key reasons for pursuing the annexation. The first is to increase the City's tax base. The annexation of Area 1 will increase the City's annual tax revenue by an estimated \$1.2 million per year. The recently built PG&E Gateway Power Plant, and the soon to be completed NRG Energy power plant, account for almost \$1 billion in new assessed value. Annexation will allow the City to collect its share of this new tax base. In addition to this new tax revenue, NRG Energy committed to pay the City \$1 million if the City completes the annexation process (\$1 million was also committed to the County by NRG Energy). This payment from NRG Energy to the City is proposed to be structured as \$100,000 per year over 10 years. It should be clear in comparing the dollar amounts that the \$1.2 million a year in new tax revenue is the City's primary financial incentive for moving the annexation process forward, not the \$100,000 a year payment from NRG Energy, which would end after 10 years.

The City's other key reason for pursuing the annexation is to enhance East County's economic development potential in the short and long term. The industrial uses that previously occupied Area 1 have disappeared over the years, in part due to State and Federal environmental regulations that restrict industrial uses from pumping water from the river and either returning the processed water back to the river, or to a septic field close to the river. The City sewer and water infrastructure that could be extended to Area 1 as a result of annexation would increase the economic development potential of Area 1. New industrial development in Area 1 would further increase the area's tax base, as well as bringing new jobs to the region.

As previously discussed, the primary reason the City is requesting annexation of Area 2a and 2b is a result of the City's desire to comply with LAFCO's request to include Areas 2a and 2b with the City's Area 1 annexation application, and to avoid the creation of areas that would be inefficient for the County to serve. Both Areas 2a and 2b have a low tax base and generate minimal tax revenue, while the City's projected costs to serve these two areas exceeds the tax revenue from Area 2a and 2b. Nevertheless, combined with the annexation of Area 1, the net revenue from the annexation of all three areas 1, 2a, and 2b would be significantly positive for the City.

Part 2: How Annexation is Decided, Process for Annexation

#6. Who decides whether an annexation is approved or not? The seven LAFCO Commissioners are the ones who decide whether to approve an annexation application, with or without conditions, or they may decide to deny the annexation request. This decision making process by LAFCO is conducted with public notice and a public hearing in which residents/property owners and other interested parties will be able to make comments and voice concerns.

#7. What are the next steps for the annexation process, and how can residents/property owners have input and become involved in the process? The annexation process includes a number of procedural steps to be conducted by the City, by the County, and by LAFCO. Public hearings will be held at upcoming City Planning Commission meetings and City Council hearings, at which time any interested parties can make comments and express concerns in relation to the

proposed annexation. Similar public hearings will also be held by the Board of Supervisors. The LAFCO Board will ultimately hold a public hearing to make a decision on the City's annexation applications. The LAFCO Board may consider all three of the City's applications at the same hearing, or may consider them over separate hearings.

Part 3: Proposed Sewer and Water Improvements, Roads, Hookups

#8. What infrastructure improvements, if any, are being proposed as part of the annexation process, and how would they be funded? The City, in conjunction with the County, is proposing to install approximately \$8 to \$10 million in infrastructure improvements to specifically serve Area 2b. These improvements include constructing sewer and water lines to be installed within the existing Area 2b street system, as well as a sewer connection to Wilbur Avenue (the City already has a large water line in Viera Ave. and Wilbur). Storm drainage improvements are also proposed, along with road resurfacing in conjunction with the sewer/water work. These improvements represent a very significant investment by both the City and County in Area 2b. This investment works out to be \$80,000 to \$100,000 per existing property within Area 2b (City records show that there are 101 existing parcels within the boundary of Area 2b). The City's share of this cost will be funded by "new" tax revenue that will be accruing to the City with the annexation of Area 1. Residents/property owners will not be required to fund any portion of the \$8 to \$10 million cost to construct the proposed sewer/water improvements. However, it is likely residents /property owners will have to pay for part or all of the cost of connecting to the new sewer/water system at the time a connection is made to the system, as discussed in more detail under Item #12 of this FAQ.

It is important to note that the City would need the permission of property owners to install sewer and water improvements in private streets, or to make any other improvements/changes to private streets. City records show that Trembath Lane, Mike Yorba Way, Saint Claire Drive, Stewart Lane, and Vine Lane are private streets. Viera Avenue, Santa Fe Avenue, Walnut Avenue, Bown Lane, and Wymore Way are currently public streets owned by the County. Upon annexation these public streets would become City streets. Annexation would not affect the status of private streets, which would remain private after annexation.

#9. What are the benefits to the residents/property owners of the installation of the proposed sewer/water system? Area 2b has a wide diversity of lot sizes, ranging from lots as small as 10,000 square feet to lots 2 acres or more in size. If there are problems with the septic fields and wells in Area 2b, such problems would most likely occur where the septic fields and well heads are located in close proximity to each other on the smaller lots in the area. Currently, Area 2b is operating without a sewer or potable water system if failures arise with existing wells/septic fields/ wells, At some point in the future such failing wells/septic fields may no longer be able to be fixed or corrected on site, or the "fix" will be prohibitively expensive. The proposed sewer/water system within Area 2b would provide residents/property owners in Area 2b with a reliable option when other options are no longer possible, viable, or cost effective.

#10. When will the planned sewer and water improvements be made? The City and the County will need to set aside funding so enough funds (\$8 million to \$10 million) can be accrued over time to construct the sewer and water systems. If the City and the County are able to finance the cost of the sewer and water improvements, the sewer/water systems could be

installed within 2 to 3 years after annexation. If affordable financing is not available, then it would be at least 5 years before construction could begin, given the time needed to accrue the needed funding. Given this timing issue, the City will be exploring the possibility of installing water service prior to the more expensive sewer service.

#11. Will residents/property owners be required to hook up to the new sewer/water systems?

The City's existing ordinance stipulates that any property with a septic system that is located within 200 feet of a City sewer line is required within 30 days to hook up to the sewer line. The City ordinance is written the way it is, as the City has not faced a situation similar to Area 2b with a large number of existing properties on septic systems. Given this situation, City staff will be proposing to City Council as part of the rezoning for Area 2b that hook ups not be required in the case of larger lots where County Health Department has determined that the existing septic system is operating correctly. City Council will be considering this issue as part of the rezoning process for Area 2b. Properties relying on wells are not required by City Code to hook up to nearby City water lines.

#12. What would be the cost to residents/property owners to hook up to City sewer and water?

The City's current connection fee to hook a "typical" residential unit for water service, including the water meter cost is \$6180. The charge to hook up to the City sewer system is \$2229. In addition to City fees, Delta Diablo Sanitation District (DDSD) has a facility fee of \$5033. The total of these connection fees is a one-time payment of \$13,442 to hook up to the sewer and water systems. While these one time costs are considerable, they need to be compared to the ongoing costs of maintaining and periodically rebuilding septic fields and wells. The cost to replace a failing septic field to meet current standards is approximately \$40,000 to \$60,000.

In addition to one-time hook up costs, there are ongoing costs to use the sewer/water systems. The typical water bill for residential units in the City located near Area 2b is about \$55/month, or \$660/year. If residents continue to use a well for irrigation purposes, the typical monthly water bills should be less than half this amount. If a property owner wished to operate a well in addition to the City water service, then a device called a "double check valve" would need to be installed. DDSD collects an annual charge of \$262 per unit to fund their ongoing sewage treatment operation. This amount is typically collected with the property tax bill.

#13. What can be done by the City or others to reduce or offset the utility hook up costs?

Neither the City nor DDSD offers waivers for the cost of connection fees. However, the City in the past has offered deferrals in paying such connection costs, whereby payments could be spread out over multiple years. In addition, the City is planning to hire a consultant that specializes in securing grant funding from State and Federal agencies to pay for and otherwise offset the cost of such connections fees. There is grant funding currently available at the State and Federal level to address "clean water" issues. City Council will be considering this fee deferral issue as part of the hearing process on the annexation in order to avoid creating hardship situations.

#14. What improvements are planned to the existing road system? Will curb and sidewalks be installed? Will roads be widened and extended?

The City is not proposing to modify any of the current road designs within Area 2b. No "standard" city street improvements, such as curb,

gutter, sidewalk are being proposed for Area 2b, nor are any widenings or extensions of existing streets being considered. The City has no interest or incentive to modify the existing street system within Area 2b (other than to address any existing public safety issues). Any road improvements would be very expensive given that they would almost certainly require the acquisition of private property, to say nothing for the cost of construction. It is the City's understanding that the majority of the residents in Area 2b want to preserve the current "rural" character of the area, including the current design of the road system. Preserving the current rural road design of Area 2b would also be consistent with the City's desire to minimize costs. As mentioned previously, the City would not be able to make changes to privately held roads without the permission of those parties owning the private road. As with other issues, the City Council will be discussing this issue of road design as part of the annexation's public hearing process on the rezoning.

Part 4: Fiscal Effects of Annexation, Taxes, Other Costs

#15. How will annexation effect the taxes paid by property owners/residents in the areas being proposed for annexation?

- **Property Taxes:** Property taxes will not be affected by annexation to the City. Property taxes will not change as the tax rates are the same for the City and the County. In addition, annexation will not trigger a reassessment of property.
- **Sales Taxes:** As with property tax, the sales tax rate in the City is the same as the County.
- **School Costs:** The areas proposed for annexation are already within the Antioch Unified School District. Annexation will have no impact on school costs, or school attendance.
- **Streetlight Landscape District:** The City is not proposing to place Area 2b within a streetlight landscape district, as Area 2b does not contain parks, public landscaping, or streetlights requiring City maintenance. There is currently an assessment the property owners within Area 1 and Area 2b pay to the County District "CSA L-100". Once the area is annexed to the City, and detached from L-100, the special assessment will cease. This will result in a cost savings to those property owners who currently pay this assessment.
- **Cost of Business License:** The City's formula for computing the cost of business licenses in most cases results in a lower cost than a comparable County business license

Part 5: Zoning, Grandfathering of Existing Uses/Businesses, Code Enforcement

#16. What will be the impacts of annexation in terms of land use and zoning requirements? Will existing structures and uses be "grandfathered"?

The City is required by State law to "prezone" any land proposed for annexation. "Prezoning" is the zoning designation adopted by the City Council that would "replace" the existing County zoning at the time when an area is annexed to the City. There are currently a number of County zoning designations that apply to Area 2b, which are depicted on the attached map (see attached map showing County zoning designations). It is the City's intent to adopt a "Study" zone rezoning for Area 2b, given that the City does not currently have any zoning designations that would be a good "fit" for Area 2b. This "Study" zone will duplicate the current County zoning, which will give the City time to develop zoning designation specifically applicable Area 2b. The City's intent is to "grandfather" all existing building and land uses in Area 2b that are consistent with the current County zoning

regulations. The City will also consider “grandfathering” improvements that are not consistent with the County zoning regulations at the time of annexation, as long as such improvements do not constitute a public health safety issue. The City’s goal is to develop a zoning designation that encourages new investment and improvements within Area 2b, rather than making properties and improvements non-conforming, which would only stifle new investment. The City Council will consider rezoning in the upcoming months as part of the annexation process.

#17. What will happen with existing businesses if the area is annexed to the City? If the existing business is associated with a residential use, then it would likely be permitted under the City’s Home Occupation Ordinance which is similar to the County’s. The City’s Home Occupation Ordinance has a number of restrictions, including limiting the size of the vehicle associated with the business to a maximum of one ton. Business owners should contact the City to determine if their home business is consistent with the City’s requirements. In the case of a legally established commercial use under the County not associated with a residence, then such an activity would be eligible to be “grandfathered” under the City’s zoning. An exception to this would be a commercial/industrial use that creates significant negative impacts on nearby residential uses.

Part 6: Other Potential Concerns/Effects of Annexation

#18. What would be the impact of annexation on fire service? Contra Costa County Fire Protection District currently serves the annexations areas, and this service would not be changed/impacted by the proposed annexation. The provision of City water to the area, along with associated fire hydrants, would enhance the ability of the Fire District to serve the area.

#19. How would annexation affect the keeping of pets and/or larger animals such as horses and livestock? There would be no change in terms of the keeping of pets, as the City regulations in relation to pets is similar to the County. Since the City provides its own animal services operation in a building in downtown Antioch near the Police Department, residents would have more convenient access to such pet related services, as compared to traveling to the County facility in Martinez.

The City allows the keeping of horses and other animals based on meeting certain minimum lot size requirements. Residents with any such larger animals should contact the City to determine if they would meet City requirements upon annexation.

Follow up questions:

If you need clarification on the preceding information, or have additional questions please contact Mindy Gentry, Senior Planner for the City of Antioch at 925-779-6133 (mgentry@ci.antioch.ca.us), or Victor Carniglia, Consultant for the City of Antioch at 925-779-7036 (vcarniglia@municipalresourcegroup.com)

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Eminent Domain
Inverse Condemnation
Real Estate Law

February 27, 2013

Mindy Gentry
Senior Planner
City of Antioch Community Development Department
City of Antioch
P.O. Box 5007
Antioch, CA 94531

Re: Northeast Antioch Reorganization Mitigated Negative Declaration

Dear Ms. Gentry:

I represent John C. Mitosinka and Carey Mitosinka of 1277 St. Clair Drive in Antioch. On behalf of my clients, I offer the following objections to the North East Antioch Reorganization Annexation.

I. THE LANDOWNERS ARE ENTITLED TO PROTEST PROCEEDINGS.

The owners of property located within proposed areas of annexation are generally permitted to vote on whether or not to annex. This gives them the opportunity to choose for themselves which jurisdiction, the city or county, they will be part of. Annexation voting occurs through what is known as "protest hearing proceedings." The landowners affected by the Northeast Antioch Reorganization Annexation are entitled to protest proceedings and a vote thereon. As clearly stated in LAFCO's Northeast Antioch Monthly Update dated September 12, 2012, attached hereto as Attachment 1:

Since the June update, City, County and LAFCO staff received Attorney General (AG) Opinion No. 10-902 relating to island annexations. The opinion concludes that LAFCO may not split a larger island into smaller segments of 150 acres or less in order to utilize the streamlined annexation procedures set forth in Government Code section 56372.3 and thereby avoid the protest proceedings that would otherwise be required.

A copy of Attorney General (AG) Opinion No. 10-902 is attached hereto as Attachment 2. In that Opinion, the AG discusses the annexation process. The AG defines an "island" as unincorporated property that is completely surrounded, or substantially surrounded, by the city to which annexation is proposed or completely surrounded by the city to which annexation is proposed and adjacent cities.

To reduce the cumulative environmental impacts of the Project, the City has broken up the 678 acre project into Subareas 1, 2a and 2b. Subarea 1 consists of 481 acres; Subarea 2a consists of 94 acres; and Subarea 2b consists of 103 acres. This is an improper method of breaking up the subject property into smaller islands which avoids the protest reviews. Dividing islands into smaller segments of 150 acres or less, avoiding the landowner/voter protest proceedings, is not permitted. Areas 2a and 2b do not qualify as islands and the landowners are entitled to protest proceedings. The three subareas must be considered a single area exceeding 150 acres, and therefore the provisions of Section 56375.3 are not permitted. LAFCO lacks discretion or authority to use streamlined procedures to annex an island that exceeds 150 acres in area. Thus, LAFCO lacks discretion or authority to use the streamlined procedures to annex subareas 2a and 2b without the protest procedures.

The Attorney General concludes:

A Local Agency Formation Commission may not split up an unincorporated island that exceeds 150 acres into smaller segments of 150 acres or less in order to utilize the streamlined "island annexation" procedures set forth in Government Code section 56375.3 and thereby avoid the landowner/voter protest proceedings that would otherwise be required.

Subareas 2a and 2b must be considered as a part of the 678 acres and not broken into islands. Thus, the City and LAFCO must present an annexation application for the entire 678 acres, prezone the entire 678 acres, and consider the entire 678 acres in the appropriate CEQA document. To date this has not occurred as the 678 acres has been approached piecemeal, which is not permitted under the AG's opinion, and is therefore illegal. Then, landowner protest and voting procedures must be permitted for the landowners of all 678 acres.

II. A MITIGATED NEGATIVE DECLARATION IS IMPROPER.

My clients object to the project being adopted by way of a Mitigated Negative Declaration rather than a formal Environmental Impact Report. To reduce the cumulative environmental impacts of the Project, the City has broken up the 678 acre project into Subareas 1, 2a and 2b. Subarea 1 consists of 481 acres; Subarea 2a consists of 94 acres; and Subarea 2b consists of 103 acres. This is an improper method to review such a project. By breaking the project into different sub-parts, the environmental impacts are lessened.

California law defines the "Project" as "the whole of an action." In *City of National City v. State of California* (1983) 140 Cal. App. 3d 598, the court defined a project. In footnote 2 on page 603, the *National City* court stated:

In determining what is a project within CEQA, California Administrative Code, title 14, section 15037 provides:

(a) Project means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, . . .'

More specifically, subdivision (c) states:

The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (Emphasis added & some internal quotes omitted)

In *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal. App. 3d 577 the court stated (p. 592, emphasis added):

CEQA mandates that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences. (City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1452 [263 Cal.Rptr. 340].) CEQA attempts to avoid this result by defining the term "project" broadly. (Ibid.) A project under CEQA is the whole of an action which has a potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. (McQueen v. Board of Directors (1988) 202 Cal.App.3d 1136, 1143 [249 Cal.Rptr. 439].)" (Emphasis added)

Thus, the "project" is defined by the environmental documents, and cannot "become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." This is exactly what the City of Antioch is doing in this annexation process.

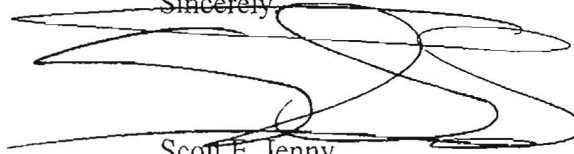
Mindy Gentry
February 27, 2013
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III. CONCLUSION.

For the foregoing reasons, my clients object to the Northeast Antioch Reorganization Project and Mitigated Negative Declaration. Please make this letter a part of the administrative record, and please copy me with future actions taken on this Project. Please respond in writing to the above intertwined comments regarding the AG's opinion and its relevance to the Northeast Antioch Annexation protest proceedings and the proposed project Mitigated Negative Declaration.

Thank you.

Sincerely

A handwritten signature in black ink, appearing to be "Scott E. Jenny", written over a horizontal line.

Scott E. Jenny

/SEJ

cc: Clients
LAFCO