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July 10, 2013
Agenda Item 8

July 10, 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 GenOn (NRG Energy) 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 efforts. 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, and last met on January 28, 2013.

On May 15, the Antioch Planning Commission considered the City’s CEQA document and pre-zoning, and forwarded the matter to the City Council for consideration/approval in July.

On May 22, a third community meeting was held at the Bridgehead Café (Area 2b). Agency staff responded to questions and comments relating primarily to zoning, utility hook-ups, the LAFCO process and designation of Area 2b as an island, and next steps. City staff distributed an informational packet at the community meeting which includes a meeting agenda, the City’s goals for Area 2b, and a tentative timeline/next steps (Attachment 1).

On May 22, LAFCO received a letter from Jenny & Jenny LLP, representing one of the residents of Area 2b (Attachment 2). In his letter, Mr. Jenny letter raises questions regarding the LAFCO process (i.e., protest proceedings) and island annexations, and the appropriateness of the City’s Mitigated Negative Declaration. On May 28, LAFCO staff responded to Mr. Jenny’s letter (Attachment 3).

In accordance with the City's tentative schedule for processing the Northeast Antioch annexations, the City Council will be asked to take action the rezoning, CEQA documents, tax sharing and infrastructure agreements sometime this month.

City and County staff will be available at the July 10 LAFCO meeting to provide additional information and respond to questions.

RECOMMENDATION - Receive the monthly update and provide comment and direction as desired.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

c: Distribution

Attachment 1 – May 22, 2013 Area 2b Community Meeting Agenda Packet

Attachment 2 – Letter from Jenny & Jenny, LLP

Attachment 3 – LAFCO's Response Letter to Jenny & Jenny, LLP

AGENDA

May 22, 2013 Neighborhood Meeting #3
Northeast Antioch Annexation
7:00pm, Bridgehead Café

1. **Introductions**
2. **Prezoning Goals:** Summary and discussion of the “Goals” to be implemented by the “S” Study District prezoning designation applicable to Area 2b, and as recommended for approval by the Planning Commission (*see Attachment “1”, list of “Goals” for Area 2b as supported by the Planning Commission*)
 - Description of “S” Study Zone “Goals” as recommended for approval on May 15, 2013 by the Planning Commission.
 - Discussion of possible additional/modified “Goals” to be added to Attachment “1”.
3. **Connection Fees/Costs:** Proposal whereby the “Annexation Incentive Funds” from GenOn would be allocated to fund the cost of sewer and water connections for income eligible existing owner occupied residential parcels in Area 2b.
4. **Next Steps/Schedule:** Schedule for the next steps in the Northeast Antioch Annexation process, including the prezoning, environmental documentation, the Tax Sharing Agreement between the City and the County, and the Infrastructure Funding Agreement between the City and the County (**see Attachment 2, tentative schedule for processing annexation**). The timing and dates shown in Attachment 2 are tentative and subject to change.
5. **Questions/Answers:** Open meeting to questions and answers from public on any issues not covered, or on issues needing clarification.

ATTACHMENT "1"

**City of Antioch Northeast Reorganization:
Goals for Annexation Area 2b to be implemented through the "S" Study District Process (Z-13-03), or
alternate means, such as General Plan changes or modifications to other Sections of the City Code**

The following are the goals the City intends to implement as part of the "S" Study District rezoning process for Area 2b. These goals may be implemented through the Zoning Ordinance, or by General Plan Changes, or through modifications to other pertinent sections of the City Code or other City requirements. The "S" Study District will give the City up to two years to develop appropriate zoning designation(s) to apply to Area 2b. The intended overall goal of this "S" Study District process will be the creation of new or modified City zoning designations that will appropriately accommodate existing and planned land uses and development for Area 2b. The following are the Goals that the City Council is directing City staff to address and otherwise incorporate into the zoning and other City regulations and requirements pertinent to Annexation Area 2b.

1) Development Standards

- a) Develop zoning regulations and development standards that best fit/accommodate existing structures, uses, and lots within Area 2b in order to minimize to the extent practical the number of non conforming buildings and uses, with the caveat that protection of public health and safety shall take precedence over ensuring zoning conformity.
- b) Develop zoning development standards applicable to Area 2b in such a manner as to preserve the existing rural character of the area.
- c) Develop an agricultural overlay zone to protect and maintain the existing agricultural uses in the area, including the extensive vintage grape vines. Allow existing agricultural uses to continue by "grandfathering" the existing agricultural uses upon annexation into the City.
- d) Address the keeping of boats, trailers, and other vehicles within Area 2b with the regulations that incorporate and reflect to the extent practical the current County requirements, as opposed to current City requirements concerning the keeping of boats, trailers, and other vehicles.
- e) Allow for building additions and other expansions of existing structures for properties where connections have been made to the City's sewer system, and where such additions/expansions meet the relevant zoning requirements applicable to Area 2b.
- f) Consider subdivisions in cases where properties meet minimum lot size and other relevant requirements, and have connections to City sewer systems.

2) Sewer and Water Connection

- a) Address the City's existing code requirement mandating the connection to the City sewer system for residential and commercial uses that are within 200 feet of a City sewer system, by preparing a modified standard applicable specifically to Area 2b that would waive the distance requirement for a mandatory sewer connection in the event the septic system is functioning properly, as determined by the County Environmental Health Department.
- b) Acknowledge that within Area 2b sewer connections will be required as dictated by the County Environmental Health Code, and not by the City's 200 foot distance standard. It is the City's understanding that County Environmental Health requires a residence/business to connect to an existing sewer system in the event all of the following circumstances apply; 1) there is an available sewer within 300 feet, and 2) the septic system is not functioning properly as determined by County Environmental Health, and 3) the septic system will require a major repair as determined by County Environmental Health.

ATTACHMENT "1"

- c) It is the City's intent that the City's current regulations regarding water connections will be applicable to Area 2b. These current City regulations do not require a property relying on a well for potable water to connect to an available City water system. Any such connections to a City water system will be made at the discretion of the Area 2b resident/property owner. Additionally, any residents/property owners that choose to hook up to the City's potable water system, may continue to use their well water for non potable purposes such as irrigation, subject to the installation of valves and other devices as required by the City Engineer.

3) Streets

- a) Develop a City of Antioch standard street section applicable to Area 2b that takes into account the existing street network, widths, and drainage. Such a modified street section will permit narrower streets without the standard requirements for curb/gutter/sidewalk along the entire street frontage.
- b) The City has no interest in proposing or supporting extending any of the existing streets, public or private, within Area 2b to connect with/or extend to streets outside of Area 2b, as such connections are not needed for circulation purposes, nor for emergency vehicle access.
- c) The City has no interest in acquiring, condemning, or otherwise taking over ownership of any part or portion of the many private streets located within Area 2b. The City will not install infrastructure or make any improvements within privately owned streets unless and until all of the owners of that privately owned street voluntary agree to grant the City the necessary rights of way/easements in which to install the infrastructure.

4) Livestock

- a) Utilize the existing municipal code requirements pertaining to livestock. In cases where the City requirements are more restrictive than the County regarding the keeping of animals, then the City will "grandfather" animals allowed under the County, provided the conditions are determined safe and sanitary by the City.

5) Home Occupations

- a) Utilize the existing municipal code requirements for home occupational use permits. In cases where the City's Home Occupation ordinance is more restrictive than the County regarding home based businesses, the City will "grandfather" any home based business legally established and allowed under the County.

ATTACHMENT "2"

Tentative Schedule for Processing Annexation/Reorganization of Area 2b

The following schedule is tentative, and is subject to change. Prior to a specific hearing it would be prudent to verify with City representatives if the hearing date is still valid. Contact **Mindy Gentry** at [mgentry@ci.antioch.ca.us](mailto:mgency@ci.antioch.ca.us) , (925)779-7035; or **Victor Carniglia** at vcarniglia@municipalresourcegroup.com , (925) 770-7036

July 9, 2013: City Council hearing to consider the following items:

- **Environmental Documentation**, Mitigated Negative Declaration.
- **Mitigation Monitoring and Reporting Program** for Mitigated Negative Declaration.
- **Rezoning** for Areas 1, 2a, and 2b.
- **Tax Transfer Agreement** with the City to determine how tax revenues will be shared between City and County.
- **Infrastructure Funding Agreement** with the City determining 1) the extent of the sewer/water/storm infrastructure improvements serving Area 2b, 2) the sharing of the infrastructure costs, 3) agreement on formation of a program to fund infrastructure connection costs for qualified residents in Area 2b.
- **Staff Reports:** For the July 9, 2013 date the staff report would be available July 3, 2013. Copies of the reports would also be available at City Hall.

July 2013 or August 2013: Board of Supervisors meeting to consider the following items. (The exact date of the Board action would be determined once City Council has taken action):

- **Tax Transfer Agreement** with the County to determine how tax revenues will be apportioned between City and County.
- **Infrastructure Funding Agreement** with the County determining, 1) the sharing of the infrastructure costs, 2) the timing of the installation of the infrastructure improvements, 3) agreement on formation of a program to fund infrastructure connection costs for qualified residents in Area 2b.

September 11, 2013 or October 9, 2013: LAFCO hearing to consider the following items:

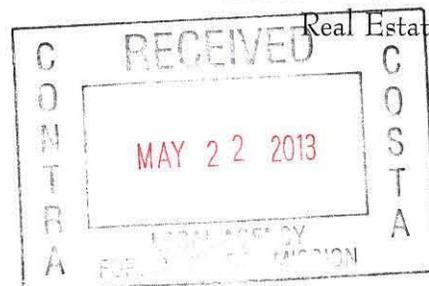
- **LAFCO's consideration of the annexation/reorganization of Area 2b.**

JENNY & JENNY, LLP
Attorneys at Law

Scott E. Jenny, Esq.
Richard K. Jenny, Esq.

Old City Hall Building
706 Main Street, Suite C
Martinez, California 94553
Telephone: (925) 228-1265
Facsimile: (925) 228-2841
JJJLLP.com

Eminent Domain
Inverse Condemnation
Real Estate Law



Commissioner
LAFCO
651 Pine Street, 6th Floor
Martinez, CA 94553

Re: Northeast Antioch Reorganization Mitigated Negative Declaration

Dear LAFCO:

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 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.

III. CONCLUSION.

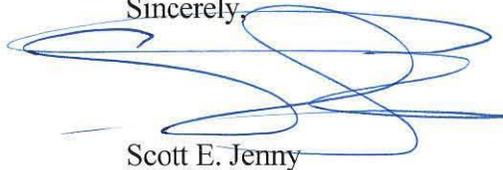
For the foregoing reasons, my clients object to the Northeast Antioch Reorganization Project and Mitigated Negative Declaration. Please make this letter a part of the administrative record, and please copy me with future actions taken on this Project. Please respond in writing to the above

LAFCO
May 20, 2013
Page Four

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 blue ink, consisting of several overlapping loops and a horizontal line, positioned above the name Scott E. Jenny.

Scott E. Jenny

/SEJ

cc: Clients

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

651 Pine Street, Sixth Floor • Martinez, CA 94553-1229

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May 28, 2013

Scott E. Jenny, Esq.
Jenny & Jenny, LLP, Attorneys at Law
Old City Hall Building
706 Main Street, Suite C
Martinez, CA 94553

Dear Mr. Jenny,

On May 22, 2013, Contra Costa LAFCO received your letter, the subject of which is "***Northeast Antioch Reorganization Mitigated Negative Declaration.***" Your letter raises questions regarding the LAFCO process (i.e., protest proceedings) and island annexations, and the appropriateness of the City of Antioch's Mitigated Negative Declaration.

In response to your questions and concerns, we offer the following.

1. You ask that LAFCO make your letter a part of the administrative record.

Response: We will do so and will provide copies to the Commissioners.

2. You ask that LAFCO copy you on future actions taken on the project.

Response: We will add you to the LAFCO agenda distribution list.

3. You request that LAFCO respond in writing to the intertwined comments regarding the June 2012 Attorney General's (AG) opinion regarding island annexations and its relevance to the Northeast Antioch protest proceedings, and the City's proposed Mitigated Negative Declaration (MND).

Response: Regarding the June 2012 AG opinion, in your letter, you share your interpretation of LAFCO law and the AG opinion regarding islands, and conclude that "the City and LAFCO must present an annexation application for the entire 678 acres..." and not split them into three separate areas.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 empowers a LAFCO to determine the boundaries of any proposals before it. Therefore, it is up to each

LAFCO to use its own discretion in making decisions related to annexations, including whether an unincorporated area is “substantially surrounded,” an “island,” an “entire island,” or “part of a larger island.” [See 95 Ops. Cal. Atty. Gen. 16, 20, 22, discussing LAFCO’s discretion in determining whether an area is “substantially surrounded” or an “island.”]

Pursuant to statute, case law and local LAFCO policies, the Commission may use Government Code section 56375.3 to facilitate the annexation to cities of small islands of unincorporated territory that are connected to larger unincorporated areas. The Commission will determine the applicability of the statute and local LAFCO policy at the time it considers an annexation proposal, along with the corresponding staff analysis and all available facts.

Regarding the appropriateness of the City’s MND, please note that in most annexation proposals, LAFCO is considered a "Responsible Agency", and the "Lead Agency" (in this case, the City of Antioch) prepares the CEQA document pursuant to the California Environmental Quality Act (CEQA).

As a Responsible Agency, LAFCO has more limited authority than a Lead Agency pursuant to Title 14. California Code of Regulations, Chapter 3: Guidelines for Implementation of the California Environmental Quality Act, including, but not limited to section 15096.

At the time the Commission considers an annexation proposal, it is asked to take action on the Lead Agency's CEQA document, and will do so once presented with a staff analysis and all available facts.

Sincerely,



Lou Ann Texeira
Executive Officer