

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

December 11, 2013  
Agenda Item 6

December 11, 2013 (Agenda)

LAFCO 09-05: Annexation 168C to Central Contra Costa Sanitary District (CCCSD)

PROPONENT: CCCSD by Resolution No. 2013-093 adopted November 15, 2012

ACREAGE & LOCATION The applicant proposes to annex 82.1± acres (eight parcels) in two separate annexation areas located in the unincorporated Alhambra Valley area near Martinez as generally described below and on the attached map (Attachment 1):

**Area 1**

**Parcel #3** 367-080-001: located at 5050 Alhambra Valley Rd (44.37± acres)

**Parcel #4** 367-090-016: located at 3 Millican Ct (3.88± acres)

**Parcel #5** 367-090-017: located behind 3 Millican Ct (5.15± acres)

**Parcel #6** 367-090-014: located off Gordon Way (5.00± acres)

**Parcel #7** 367-090-015: located off Gordon Way (11.21± acres)

**Parcel #8** 367-130-013: located at 295 Millthwait Dr (8.72± acres) – connected to CCCSD sewer

**Area 2**

**Parcel #1** 365-120-003: located at 1150 Briones Rd (1.75± acres) – connected to CCCSD sewer

**Parcel #2** 365-120-004: located at 1170 Briones Rd (2.07± acres) – connected to CCCSD sewer

SYNOPSIS

CCCSD filed an application with LAFCO to annex the properties to the District. All of the properties have petitioned CCCSD for annexation; three of the properties currently receive municipal sewer service from CCCSD via out of agency as unanimously approved by LAFCO in 2008. LAFCO conditioned its out of agency service approval on submittal of an annexation application within 12 months; CCCSD complied with this condition. The District included the remaining parcels at the request of some of the property owners, to bring in other properties that are in close proximity to the existing sanitary sewer system, to facilitate future conversion of septic systems and the extension of municipal sewer service to the properties.

Four of the properties are improved (1, 2, 4, 8) with a total of five single family dwelling units; the remaining four properties (3, 5, 6, 7) are undeveloped.

DISCUSSION

Government Code §56668 sets forth factors that the Commission is required to consider in evaluating any proposed boundary change as discussed below. In the Commission's review and evaluation, no single factor is determinative. In reaching a decision, each is to be evaluated within the context of the overall proposal.

**1. Consistency with the Sphere of Influence (SOI) of Any Local Agency:**

The areas proposed for annexation are within CCCSD's SOI and outside the County Urban Limit Line (ULL). The annexation area is part of an island comprised of 19 properties that are outside the ULL, but completely surrounded by properties that are inside the ULL. The countywide ULL resulted in the creation of a number of islands, including the subject area, and in splitting approximately 590 parcels throughout the County. While we recognize the challenges in establishing the countywide ULL, creating islands and splitting parcels are contrary to LAFCO's charge. Further, neither special districts nor LAFCO are bound by the ULL.

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

The County General Plan designation for the annexation area is Agricultural, and the zoning is General Agricultural (A-2) which allows one dwelling unit per five acres. CCCSD is not a land use agency, and no changes are proposed to County's General Plan or zoning designations as part of this proposal. There is a potential to add 8-12 single family dwelling units to the annexation area in accordance with the County general and specific plans for the Alhambra Valley.

In 1992, the County adopted the Alhambra Valley Specific Plan (AVSP), which sets forth the goals and policies designed to guide land use in the Valley. Alhambra Valley covers about 2,800 acres (4.5 square miles) and has over 650 residents. It is primarily a low-density residential area located within the Alhambra Creek watershed. A portion of the plan area is located within the SOI of the City of Martinez. In September 2012, LAFCO approved the annexation of approximately 316.4± acres (104 parcels) to the City of Martinez, including Alhambra Valley Ranch, Stonehurst, Deer Creek and Valley Orchard subdivisions located immediately west of Area 1 proposed for annexation to CCCSD. The City recently affirmed its intent to annex the Alhambra Valley as opportunities arise.

A significant amount of development has already occurred in the AVSP area. The AVSP estimated that a maximum of 231 additional new housing units could be developed. County records show that 81 dwelling units have been built since the 1992 AVSP approval. In 2004, the County approved an additional 23-lot subdivision. Annexation of this subdivision to CCCSD was approved by LAFCO in August 2007. Since 2007, the County has approved other development projects in the AVSP area that remain unconstructed. The AVSP area is not built out and can accommodate the proposed annexation.

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

The properties proposed for annexation contain no prime farmland or land covered under Williamson Act Land Conservation agreements. There are no agricultural uses on the parcels proposed for annexation.

**4. Topography, Natural Features and Drainage Basins:**

The annexation area is part of the Alhambra Creek Watershed, which is generally defined by hills to the east, south and west. The valley floor varies in width, with the adjacent, mostly tree covered hillsides rising from drainages of Vaca Creek, Arroyo Del Hambre, Sindicich, Strenzel Creek and Alhambra Creek.

**5. Population:**

There is a potential to add 8-12 single family dwelling units to the annexation area. These additional units could result in a population increase of 22-33 persons, based on the County's general and specific planning documents for the Alhambra Valley area.

**6. Fair Share of Regional Housing:**

In its review of a proposal, LAFCO must consider the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. The proposed annexation will have minimal effect on regional housing needs.

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

Whenever a local agency submits a resolution of application for a change of organization or reorganization, the local agency shall also submit a plan for providing services within the affected territory (Gov. Code §56653). The plan shall include all of the following information and any additional information required by the Commission or the Executive Officer:

- (1) An enumeration and description of the services to be extended to the affected territory.

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

The District's Plan for Providing Services is on file in the LAFCO office. The properties proposed for annexation are served by various local agencies including, but not limited to, Contra Costa County, Contra Costa County Fire Protection District, Contra Costa Water District and the City of Martinez (water service).

The proposal before the Commission is to annex the properties to CCCSD for the provision of sanitary sewer service, including collection, treatment and disposal.

CCCSD currently serves an estimated population of 467,500 residents in a 144-square-mile service area. CCCSD's wastewater collection system consists of 1,500 miles of sewer mains with 19 pump stations. The majority of CCCSD's system operates with gravity flow with some pumping stations and force mains. All sewer connections to the subject property will be either gravity flow or individual residential pump systems. The District's wastewater treatment plant provides secondary level treatment for an average dry weather flow of approximately 33.2 million gallons per day (mgd) of wastewater. The wastewater treatment plant has a permitted discharge limit of 53.8 mgd.

As noted above, three of the properties proposed for annexation currently receive municipal sewer service through CCCSD. The annexation could potentially extend service to 8-12 additional single family dwelling units. Based on the total number of potential units, the maximum demand for service is approximately 3,315 gallons of wastewater per day. Connection to CCCSD's public sewer system following annexation is voluntary.

CCCSD has infrastructure in the area and serves a significant number of properties surrounding the areas propose for annexation. In the vicinity of annexation Area 1, a majority of the properties on Gordon Way and Millican Court are connected to CCCSD sewer, and approximately 40% of the properties on Millthwait are connected to CCCSD. Service is available to all of the properties on these streets. Sewer service is not available to properties generally located to the north and west of Area 1. In the vicinity of annexation Area 2, water and sewer are available to the north along Quail Lane; however to the east, west and south, the area is parkland (Briones Regional Park).

Regarding infrastructure and improvements, in 2006-07, CCCSD constructed a 10-12 inch diameter trunk system in Alhambra Valley. In 2008-09, a neighborhood assessment district funded construction of 8-inch diameter public main sewer extensions that can provide service to the eight parcels proposed for annexation.

CCCSD indicates that most of the subject properties can be served by 4-inch diameter private lateral connections or individual, private residential pumping system connections to the adjacent 8-inch diameter public main sewers. There may be a need for short, public main extensions to serve the larger, subdividable parcels. These main extensions would be installed by the property owner/developer.

All capital costs including any required sewer main extensions, along with connections fees, will be borne by the property owner/developer. CCCSD funds the maintenance of all sewers through its annual sewer service charge. Some of the property owners may be eligible to participate in existing neighborhood assessment districts to assist with financing the main and trunk sewer construction costs, as well as associated connection fees.

CCCSD noted in its application that while some properties in the annexation area could remain on individual septic systems, or build new septic systems, this alternative is inconsistent with the County's

Health Regulations, which consider individual septic systems to be “a temporary means of sewage disposal... it will become necessary at some point in the future to install sanitary sewers and utilize a sewage treatment plant for disposal” (Section 420-6.204). Additionally, poor soil conditions and other site considerations may limit the ability of some properties to support new or replacement septic systems.

The District also notes that per a letter dated August 27, 2004, from the Contra Costa County Director of Environmental Health, “although advanced on-site wastewater treatment systems may solve problems for properties with failing conventional systems, their cost, including engineering, permits and installation is usually above \$25,000. The homeowner must also pay for an annual operating permit from this division, submit effluent sample results, and maintain a service contract on the system. Therefore, the plan to have public sewers available to existing residents of Alhambra Valley will provide a permanent and cost effective comparative solution to conventional systems that have or are approaching the end of their lifespan.”

**8. Timely Availability of Water and Related Issues:**

The annexation area is within the City of Martinez's water service area and within the City's SOI. Martinez provides water treatment and distribution services for residential, commercial, industrial, public and irrigation customers, as well as for fire protection uses. The City's sole source of water supply is untreated water purchased from Contra Costa Water District (CCWD). The City takes delivery of the water from the Martinez Reservoir, a terminal reservoir for the Contra Costa Canal. The City's water treatment facilities have a total filtration capacity of 14.7 million gallons per day (mgd). Average daily water use in 2011 was 4.16 mgd. The City's water system includes eleven treated water storage reservoirs with a capacity of 9.6 million gallons (MG).

The CCWD supplies untreated water to the annexation area. CCWD provides wholesale and retail water, and serves an area of 220± square miles and over 500,000 people. Water service includes production, distribution, retail, treatment, recycling and conservation services. The CCWD's primary source of water supply is the United States Bureau of Reclamation's Central Valley Project.

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

In accordance with LAFCO law and local LAFCO policies, LAFCO encourages local agencies to annex properties receiving out of agency service, as appropriate. The City has indicated its commitment to annexing areas that receive City water service as opportunities arise.

According to Martinez City staff, the City provides water to Parcels 4 and 8, and the vast majority of the surrounding parcels are served by City water. CCCSD staff indicates that Parcels 1 and 2 use on-site well water.

CCCSD staff indicates that the proposed annexation would have a minor effect on water usage, and would not lead to the construction of new or expansion of existing water facilities.

On November 26, LAFCO received a letter (Attachment 2) from Hal Olson, President, Alhambra Valley Improvement Association (AVIA). In his letter, Mr. Olson indicates that the AVIA is opposed

to the annexation and summarizes the reasons for the opposition, including concerns regarding water service, sewer infrastructure and proximity of the annexation area to the ULL. On December 2, LAFCO received a letter from Ted C. Radosevich (Attachment 3). Mr. Radosevich also raises concerns regarding the proximity of the annexation area to the ULL and to the John Muir National Historic site. These issues are discussed in the staff report.

**9. Assessed Value, Tax Rates and Indebtedness:**

The annexation area is within tax rate areas 76004. The assessed value for the annexation area is \$2,172,197 (2013-14 roll). The territory being annexed shall be liable for all authorized or existing taxes comparable to properties presently within the annexing agencies.

**10. Environmental Impact of the Proposal:**

On November 15, 2012, CCCSD, as Lead Agency, certified an Environment Impact Report (EIR) and adopted Findings of Fact in conjunction with the proposed annexation. The LAFCO Environmental Coordinator reviewed the documents and find they are adequate for LAFCO purposes.

**11. Landowner Consent and Consent by Annexing Agency:**

According to County Elections, there are fewer 12 registered voters in the area proposed for annexation. Thus, the area proposed for annexation is considered uninhabited.

CCCSD indicates that 100% of the affected landowners have provided written consent to the annexation. Thus, if the Commission approves the annexation, the Commission may waive the protest hearing (Gov. Code §56662). All landowners and registered voters within the proposal area(s) and within 300 feet of the exterior boundaries of the area(s) have received notice of the December 11 hearing.

**12. Boundaries and Lines of Assessment:**

The annexation areas are within CCCSD's SOI and are contiguous to existing CCCSD boundaries. The 2008 *Central County Water/Wastewater Municipal Services Review* (MSR) provided an assessment of CCCSD services. The MSR report noted that CCCSD was serving an estimated 180 parcels outside its service boundary; and that there were a number of small islands surrounded by the District and within its SOI. The MSR suggested annexing parcels receiving out of agency service, as well as islands and areas where there were concerns due to failing septic systems and related public health issues. Since 2008, CCCSD has made significant progress to validate sewer service connections and correct island and boundary irregularities. The proposed annexation will further these efforts. Further when the Commission approved out of agency service to Parcels 1, 2 and 8 in 2008, LAFCO conditioned its out of agency service approval on submittal of an annexation application. CCCSD has complied with this condition.

**13. Environmental Justice:**

LAFCO is required to consider the extent to which proposals for changes of organization or reorganization will promote environmental justice. As defined by statute, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. The proposed annexation is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

**14. Disadvantaged Communities:**

In accordance with recent legislation (SB 244), local agencies and LAFCOs are required to plan for disadvantaged unincorporated communities (DUCs). Many of these communities lack basic infrastructure, including streets, sidewalks, storm drainage, clean drinking water, and adequate sewer service. LAFCO actions relating to Municipal Service Reviews, SOI reviews/amendments, and annexations must take into consideration DUCs, and specifically the adequacy of public services,

including sewer, water, and fire protection needs or deficiencies, to these communities. According to the County Planning Department, the annexation areas do not meet the criteria of a DUC.

ALTERNATIVES FOR COMMISSION ACTION

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

**Option 1**      Approve the annexation.

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the CCCSD District Annexation 168C – Alhambra Valley EIR prepared and certified by CCCSD and the Findings of Fact adopted therewith on November 15, 2012.
- B. Adopt this report, approve LAFCO Resolution No. 09-05 (Attachment 4), and approve the proposal, to be known as CCCSD Annexation 168C subject to the following terms and conditions:
  - 1. The territory being annexed shall be liable for the continuation of any authorized or existing special taxes, assessments and charges comparable to properties presently within the annexing agency.
  - 2. That CCCSD has delivered an executed indemnification agreement providing for CCCSD to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
- C. Find that the subject territory is uninhabited, the proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.

**Option 2**      Adopt this report and DENY the proposal.

**Option 3**      If the Commission needs more information, CONTINUE this matter to a future meeting.

RECOMMENDED ACTION:

**Approve Option 1.**

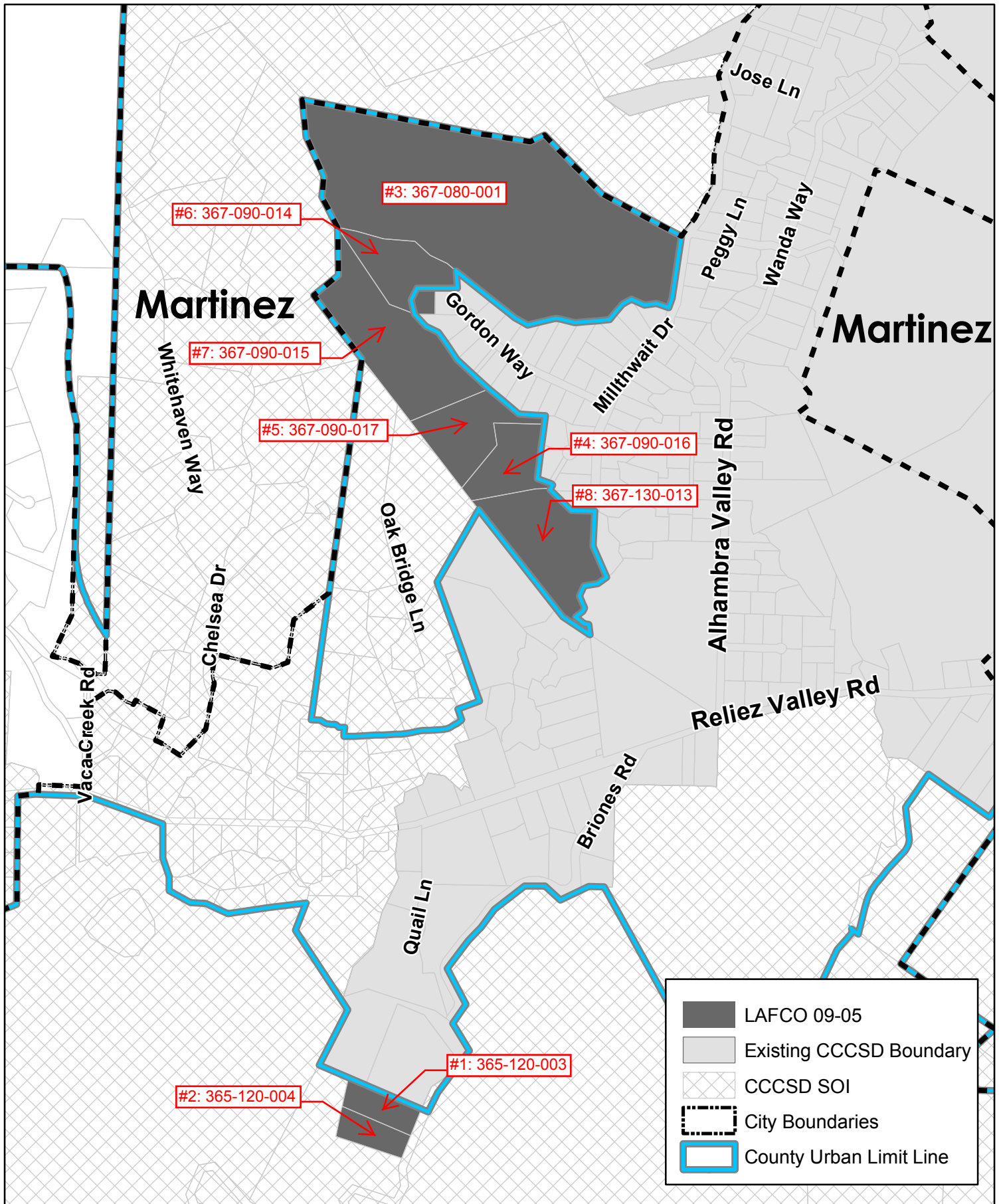
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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

Attachments

- 1 – CCCSD 168C Annexation Map
- 2 – Letter from Hal Olson
- 3 – Letter from Ted C. Radosevich
- 4 - Draft LAFCO Resolution 09-05

# LAFCO No. 09-05 Annexations 168C to Central Contra Costa Sanitary District



ALHAMBRA VALLEY IMPROVEMENT ASSOCIATION

November 26, 2013

Lou Ann Texeira, Executive Officer, LAFCO  
LAFCO Commissioners  
651 Pine Street, Sixth Floor  
Martinez, CA 94553-1229

RE: CCCSD Annexation No. 168C

Dear Ms. Texeira and Commissioners:

AVIA is in receipt of the notice of the Public Hearing for the above project, and is opposed for the following reasons:

- #1. All eight parcels are outside the Urban Limit Line.
- #2. According to state law when LAFCO considers a boundary change, water availability must be “timely and available” (Gov. Code 56668k).
- #3. The City of Martinez cannot provide water to parcels outside the ULL because the city will lose its substantial Contra Costa County Measure J Transportation Tax funds.
- #4. With the present annexation proposal water service by the city is neither timely, nor available. This annexation never should have been allowed to continue from the beginning.
- #5. Apparently CCCSD thinks it can do whatever it wants since there is no monetary penalty to pay for going beyond the ULL Remember that the Sanitary District had to finance the original trunk line itself when it could not form an assessment district to begin with.



#6. Even the Sanitary District admits that “ a sanitary system may be growth inducing in the sense that the units allowed to be constructed under the existing zoning and land use designations **MAY BE MORE LIKELY TO BE BUILT** with an available samitary sewer than they would be if those units had to rely on a septic system” (p.2-2, Final Environmental Impact Report).

#7. CCCSD states that the proposed annexation is “adjacent” to existing CCCSD boundaries and within its “Sphere of Infludence.” However CCCSD stops there. There is no reason given to serve beyond the ULL. (p.1-1, Final EIR)

#8. Because “someone inquired” about Sanitary District service is not a valid reason to spend a vast amount of money to study the issue. The main point is that the Sanitary District does what it wants to do, and will flex its muscle to do so.

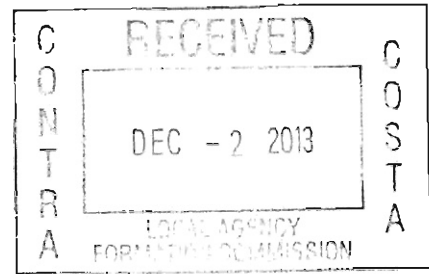
#9. Serving water to the eight parcels should be done first, however that may be done, THEN the District could move to annex.

The Board of Directors of AVIA voted unanimously against the Sanitary District’s current proposal and hopes that the LAFCO Commissions will do the same.

Sincerely,

Hal Olson, President, AVIA  
22 Wanda Way  
Martinez, CA 94553  
925-228-7473  
marieolson@earthlink.net

**Ted C. Radosevich**  
**Attorney at Law**  
**(SBN 84692)**  
**135 Gordon Way**  
**Martinez, CA 94553**  
**510-658-1150**  
**tedratso@gmail.com**



November 27, 2013

Lou Ann Texeria  
Executive Office, LAFCO  
651 Pine Street  
Martinez, CA 94553

RE: CCCSD Proposed Annexation 168C  
Alhambra Valley

Dear Ms. Texeria,

Thank you for the formal notice of the hearing before LAFCO on the above matter. I have sent several comment letters over the years setting forth the legal and policy reasons that this matter should not go forward as proposed by CCCSD. I have attached copies of two of the more relevant background letters, which I submit to inform the LAFCO members of the full background, and to make sure that the public record contains all information should further legal action be needed. I ask that you make sure LAFCO members and staff are provide copies of this material in advance of the December 11, hearing, which I plan to attend.

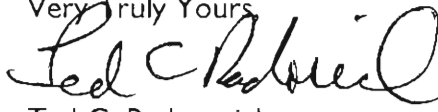
In its review and consideration of this matter CCCSD, continued to ignore existing County policy, public policy and the voter approved Urban Limit Line to move forward with this annexation. Most troubling and improper is CCCSD's action to annex into its jurisdiction a now vacant 44 acre parcel directly adjacent to the John Muir National Historic site. (APN 367-080-001 if I read the maps correctly).

There is no basis in law or public policy to annex this large, vacant and undeveloped parcel currently outside the voter approved Urban Limit line into CCCSD. The clear reason that the owners want such action is for them to obtain an economic windfall by increasing potential development rights for their undevelopable parcel beyond the Urban Limit Line. This is exactly the type of annexation that LAFCO, which is designed to promote and preserve the larger public interest, should deny. There is no public reason for this 44 acre property to be annexed in contravention to the established Urban Limit Line.

While CCCSD in its environmental document approved in late 2012 expressly limits its review to the alleged minor impacts of building actual sewer lines, and expressly disavows and defers CEQA review of the impacts of development to other agencies in the future, there is no reason for LAFCO to assent. LAFCO could reasonably approve the annexation with respect to other parcels, and eliminate the 44 acre parcel from consideration. There may be policy reasons to allow annexation of other small parcels, most of which have homes and all of which are much, much smaller than the 44 acre parcel – which parcel borders the Muir Historic Site.

I ask that LAFCO members step up to the public duties and obligations vested in them, look at the long term issues at stake, and support the existing Urban Limit Line by deny the annexation with respect to the 44 acre parcel.

I thank you for your consideration.

Very Truly Yours  
  
Ted C. Radosevich

Enc. - two letters

cc: National Park Service  
Honorable George Miller  
Tamara Galanter, Esq.  
(Shute, Mihaly & Weinberg, LLP)

Exh. A.

**Ted C. Radosevich  
Attorney at Law  
(SBN 84692)  
135 Gordon Way  
Martinez, CA 94553  
510-658-1150**

September 27, 2012

Mr. Russell Leavitt  
Environmental Coordinator  
Central Contra Costa Sanitary District  
5019 Imhoff Place  
Martinez, CA 94553

RE: Draft EIR/IS Proposed Annexation I68C  
Alhambra Valley

Dear Mr. Leavitt:

I am writing to express my concerns with respect to the very limited focus of the Final EIR on the above mentioned project – the proposed annexation of 8 parcels into the Contra Costa County Central Sanitary District (“Central San”) service area.

What has become clear from review of the Final EIR is that staff of Central San is taking a very, very limited and narrow view of the CEQA law as it applies to this project. It is apparent that you are purposely not analyzing a range of arguably potential impacts and disclaiming any responsibility to address any potential impacts beyond those very limited impacts from the construction and installation of 4-inch diameter lateral sewer lines and 8 inch sewer mains at 8 parcels. (Master Comment No. 6).

As such, it appears that the project you are analyzing is only the very narrow and limited sewer related work, and are stating that the potential impacts that might follow from construction of new housing or other development on the subject properties is wholly, and solely, within the future jurisdiction of other public agencies. Such a narrow analysis of the potentially significant adverse environmental impacts violates both the letter and spirit of CEQA. In addition, by approving an extension to these parcels, Central San is violating Contra Costa County voter approved Measure C as well as the Contra Costa County General Plan. The comment letter filed by the County confirms this view.

Since the EIR specifically refused to consider and indeed rejected all requests, demands and efforts to have Central San to consider the potentially significant adverse environmental impacts of the development of these parcels, any future development for

any of these parcels will not be able to rely upon this truncated EIR and will need to analyze the then-current environmental impacts of development under CEQA.

As you have stated in the Master Comments (including, but not limited to) Nos. 3 and 4 the various potential impacts raised by various commenters, including myself in my letter of September 2, 2010, are the appropriate purview of, and will be reviewed by Contra Costa County or other appropriate agencies, when and if parcels that are currently undeveloped are submitted for review and full CEQA analysis. This relates as well to the letter from the National Park Service, my own letter and comments at the public hearing on December 8, 2011 that potentially significant adverse environmental impacts that would or might arise on the John Muir National Historic Site from any development on the currently uninhabited Parcel 3. Central San asserts that any and all impacts from actual future on site work will be subject to CEQA analysis when and if changes in the current status of that parcel are proposed before the appropriate local governmental body. It should be clear that any efforts to develop Parcel 3, which this and other commentators reasonably suggested Central San remove from this Project, will be subject to significant community, County, National Park and legal challenges.

From the written record, it is apparent that Central San has put very clear limitations on the scope, purpose and nature of the CEQA review of Annexation 168C, and what this CEQA document does, or does not, purport to address. In determining what future action to take with respect to the Final EIR, I will certainly act with this written record in mind.

Very Truly Yours,

Ted C. Radosevich

cc: Kent Alm, Esq.  
Contra Costa County  
National Park Service  
Honorable George Miller

Ted C. Radosevich  
Attorney at Law  
(SBN 84692)  
135 Gordon Way  
Martinez, CA 94553  
510-658-1150

September 2, 2010

Via Fax and US Mail

Contra Costa County Central Sanitary District  
To Whom it Concerns:

RE: Draft EIR/IS Proposed Annexation 168C  
Alhambra Valley

As set forth in detail below, the draft EIR fails to meet the legal standards required under the California Environmental Quality Act ("CEQA"). The so-called analysis in the draft EIR considers only a few, limited discrete categories in which the analysis of impact is primarily deferred, or in which "factual" statements are made without any evidence to support them. In addition, numerous areas of required statutory analysis are simply ignored based on assertions, without any substantial evidence, that there are no potential significant adverse environmental impacts based on a cursory Initial Study which ignores or "defers" analysis to other agencies or the future.

Lack of Project Description. In order for an EIR to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a "truncated project concept" violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. *San Joaquin Raptor*, 27 Cal. App. 4th at 729-30.

CEQA requires that an EIR identify and analyze the "whole of the project." The CEQA Guidelines define a project "as the whole of an action, which has potential for resulting in a physical change in the environment, directly or ultimately . . ." CEQA Guidelines Section 15378. The courts have consistently held that an EIR must examine

a project's *potential* to impact the environment, even if the development may not ultimately materialize. *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 279, 282. Because the extension of sewer services will, by CCCSD's own admission, facilitate ultimate development, (see e.g. Initial Study, page 26 first full paragraph) the annexation will serve as the crucial "first step" toward approval of any particular development project. Thus, the EIR must evaluate the environmental impacts of such development. *City of Carmel-By-the-Sea v. Bd. of Supervisors of Monterey County* (1986) 183 Cal. App. 3d 229, 244; *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 409.

In the case of District Annexation 168C, it is clear that this is just one step in some larger project that CCCSD has in mind. Indeed, to date with Annexations 186 A and B, CCCSD seems intent on piecemealing its annexation efforts to avoid serious environmental review. The "Project" must be described as the ultimate, final project for CCCSD in this region so that the full impact can be analyzed. For example, the current proposed annexation had twice the number of initial properties involved (See, July 19, 2010 CCCSD notice letter, second full paragraph). What is next when some or all of these property owners have a different view? What about other unserved properties in this area. What is the "ultimate" build out that CCCSD has in mind? And whatever that is, that is the Project that must be fully analyzed. CCCSD has stated in numerous places (see e.g. Chapter 3 B. Annexation Objectives, pg. 3-1, and Chapter 5, Alternatives, pg. 5-4) that its goal is to end the use of septic systems "in order to prevent degradation of Alhambra Creek and its tributaries". With this as the stated goal, the proper Project to be analyzed is the entire area in this Alhambra Creek watershed with septic systems, and not the piecemeal attempt of Annexation 186C for nine parcels. If this approach is allowed without change, no doubt in the next few years we will see Annexations 186 D, E, F, G, H, etc... All without proper CEQA analysis.

Existing and Local Setting: Failure to Describe John Muir National Historic Site.

In what can only be described as a breathtaking omission, the draft EIR has no real description of the fact that the largest undeveloped parcel considered for annexation (Parcel 3, 44 acres) borders the southern boundary of the National Park Site named in honor of the founder of the American Environmental Movement – John Muir. (See Attachment A, 2 page document from NPS website). This underscores the cavalier approach to undertaking CEQA compliance in this annexation. How could one not be aware of the John Muir National Historic Site? "[A]ccurate and complete information pertaining to the setting of the project and surrounding uses" is critical to an evaluation of a project's impact on the environment. *San Joaquin Raptor/Wildlife Center v. Stanislaus County*, 27 Cal.App.4th 713, 728 (1994); see also *Friends of the Eel River v. Sonoma County Water Agency*, 108 Cal.App.4th 859, 875 (2003) ("incomplete description of the Project's environmental setting fails to set the stage for a discussion of significant effects"). This omission alone is enough to make the entire draft EIR legally indefensible. And of course there is no analysis of the potential environmental impacts because this National Park is simply ignored. Nothing more needs to be added other than to indicate that if CCCSD does not go back to the drawing board on this issue, a Court will surely Order them to do so.

District Annexation 168 C Improperly Segments the True Project. Agencies may not improperly “segment” projects in order to avoid preparing an EIR; instead, they must consider related actions in a single document. *Laurel Heights*, 47 Cal.3d. 376-395 (1988). “Not to require this would permit dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” CEQA regulations require that an EIR describe the entirety of a project, including reasonably foreseeable future actions that are part of a project, and must analyze those reasonably foreseeable actions. 14 Cal. Code Regs § 15378(a).

As discussed above with the Project Description, CCCSD has embarked on a rolling series of annexations, the most recent of which are being done in small slices to avoid a true environmental review. The assertion of lack of potential significant impacts in the Initial Study is premised on the relatively small number of parcels in this action. But, as indicated by their own documents, CCCSD desires to expand outside the Urban Limit Line, and originally proposed an annexation with twice the number of parcels. To meet CEQA’s legal standards, CCCSD needs to fully analyze all the potential impacts of the full reach of its likely service area in the Alhambra Valley, and the Alhambra Creek Watershed. While an EIR need not include speculation about future environmental consequences of a project, an “EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effect.” *Laurel Heights*, 47 Cal.3d at 394-396. Under the *Laurel Heights* standard, “the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action.” *Id.* at p. 396. However, there must be discussion “in at least general terms” of future activity in connection with a project, even if the project is contingent on uncertain occurrences. *Laurel Heights*, 47 Cal.3d at 398. *Laurel Heights* requires a project proponent to analyze future expansion and other such action in an EIR if there is “telling evidence” that the agency has either made decisions or formulated reasonably definite proposals as to expand a project in the future. *Id.* at 396-397.

The Draft EIR Improperly Defers Analysis of Impacts. It is basic and undisputed CEQA law that an EIR cannot defer analysis to the future or to other agencies. The draft EIR and the related Initial Study consistently avoid any analysis. For example, in Aesthetics, Biological Resources, Geology and Soils, Hydrology and Water Quality, Population and Housing, and Transportation/Traffic, to name but a few, the Initial Study says the County, or others will evaluate and act in a manner to reduce the impacts to less than significant. CCCSD takes the position that “someone else will address all these likely impacts”. That is simply not good enough under CEQA.

CEQA does not allow an EIR to defer analysis and mitigation to a future time. *Sundstrom v. Mendocino County* (1988) 202 Cal. App. 3d 296. A project’s impacts must be analyzed, disclosed, and mitigated at the “earliest feasible stage in the planning



process.” *Id.* at 307; see also CEQA Guidelines § 15126.4(a) (1) (B) (“Formulation of mitigation measures should not be deferred until some future time.”). The proper time to analyze these impacts is at this stage. As the Initial Study states (Pg 26, 1st full paragraph) but the proceeds to ignore, “To the extent sanitary sewer service removes this constraint [to be able to build new homes] the project could potentially result in indirect growth in the area.” The initial study admits Annexation 186C will be growth inducing, and then proceeds in the draft EIR to not analyze any of the potential impacts as required by law.

Cumulative Impacts Argument Is Inadequate. Under the CEQA Guidelines, “a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts” CEQA Guidelines § 15130(a)(1). In order complete this analysis, the EIR must first consider and analyze the cumulative impacts associated with similar past, present and future projects. CEQA Guidelines § 15130(b). Because “[c]umulative impacts can result from individually minor but collectively significant projects” (CEQA Guidelines § 15355(b)), an impact that appears less than significant (or mitigable to such a level) when only the project is scrutinized may turn out to contribute to a significant cumulative impact. In that case, the EIR must determine whether the project’s contribution is “cumulatively considerable,” that is, whether its “incremental effects . . . are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” CEQA Guidelines § 15065(a) (3). Thus, even where a project may only contribute a minor amount to a large problem, agencies are still required to analyze whether the project’s contribution is considered significant in light of the nature of the larger problem. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718. The annexation proposed has cumulative effects, and is growth inducing. Indeed, at Page 6-4 CCCSD states “Annexation can also remove a constraint to a denser land use designation.” Then without any evidence it states there is no indication the County will change the designation. Where is that information from, who said it, and how long is it good for... until the next election, next planning director, etc? CCCSD says the annexation could be growth inducing, and then here, as elsewhere fails to undertake any analysis.

The Draft EIR is fundamentally inconsistent with the County General Plan and Urban Limit Line. The proposed annexation is inconsistent with the General Plan and the Urban Limit Line, including provisions adopted by the voters. All the parcels are outside the ULL, and the proper method to change the ULL is with the voters, which can and has been done where proper in the past. The CCCSD factual bases for the “consistency” assertions are simply false.

In Table 6 Goal 3-F, CCCSD asserts consistency by implying residential development exists in all the parcels. In fact, in only 4 of 9 parcels do homes currently exist, and the land mass covered by those homes is less than 20% of the total acreage to be annexed. By CCCSD’s logic, if one parcel of dozens had one home their action would somehow be “consistent. That is clearly false and legally inadequate. If CCCSD were to only annexing the 4 parcels with homes, its argument would have a factual basis.

As it stands it does not since development factually does not exist on either the majority of parcels or acreage.

Goal 3-1 requires effective coordination. These properties ARE outside the ULL established the voters and proper local jurisdictions. It is mere bootstrapping to argue, as CCCSD does, that the sphere of influence coverage means that the ULL does not matter. If these properties were to be INSIDE the ULL it would be done. CCCSD's attempt to bring them inside the ULL is clearly in conflict with the current law. Similarly Policy 3-10 discourages services, particularly growth inducing infrastructure [like sewers]. CCCSD in an argument worthy of a "logic free zone" nonetheless asserts, absents facts, that annexation actually supports this policy. CEQA requires substantial evidence and CCCSD presents none. If a change is warranted there is a simple means to do so that has occurred – a voter approved change.

Other Policy Goals are simply ignored by bald assertions of consistency. For example, Policy 3-28. Here CCCSD's response states that most of the land to be annexed is above 26% slopes, but that annexation is still consistent. From Figure 7, it appears that about 90% of parcel 3 has slopes above 26% and should not be buildable at all. Yet in spite of this, CCCSD asserts its annexation is consistent, and as throughout the draft EIR, indicates the County, or someone else will deal with environmental impacts or General Plan consistency later. Similarly Goal 8-B is to preserve natural resources. CCCSD admits that nearly 80% of the acreage to be annexed is in parcels without homes, and that the purpose of the annexation is to allow homes to be built. Constructions, homes, roads, yards and traffic use will surely impact these 70 acres of undeveloped land, but CCCSD just ignores the impact. Policy 8-5 relates to scatter urban development. That is exactly what this annexation will bring – new homes and development on 5 undeveloped parcels comprising some 70 undeveloped acres. Even CCCSD admits a conflict here, but simply ignores it. Goals 9-A and 9-B are obviously ignored. There is simply no analysis of the impacts, and as noted above no discussion or review of the impacts on the John Muir National Historic Site.

Other examples, exist which are too numerous to mention. In sum, CCCSD has provided no facts to support its argument of consistency. And how could it. The land at issue is outside the established, voter approved ULL. CCCSD is trying to circumvent that process in spite of the law and voter action by asserting "we think it is consistent". Such an argument simply fails.

Defects in the Initial Study and Failure to Analyze in the EIR. As noted above, the Initial Study and draft EIR essentially ignored all the potentially significant impacts. There is little, if any, factual basis asserted for this approach, and, of course, deferral to a future date is improper. A few key areas are noted.

Aesthetics. Building homes on undeveloped land will have an obvious impact, particularly with respect to Parcel 3 (and perhaps 4) on the John Muir Site. In addition if homes are built at or near now vacant ridge tops, since builder typically build as high as possible for views, there could also be scenic impacts on Briones Regional Park. The Regional Park is mentioned but ignored in the analysis. Similarly, there are no street

lights in this area, and the construction potential of nearly 20 new homes, most likely "McMansions" or "trophy homes" would have significant light and glare impacts on existing residents and nearby Regional and National Parks.

Agricultural Resources. There is no detail or current description of agricultural uses, so, of course, there is no way to analyze potential impacts. On parcel 3, dozens if not hundreds of mature, producing olive trees exist, likely planted by John Swett or perhaps even John Muir. The Initial Study states there will be a loss of agriculture, but states, without any facts or basis "additional development of these properties does not necessarily mean the loss of agricultural use". These are simply ignored because CCCSD did not look at agricultural issues in a serious manner. CEQA does not allow agencies to "hope" no impacts will occur and hence avoid analysis. It requires analysis.

Air Quality. Consistent with its inadequate approach the Initial Study states any development will have to meet Bay Area Clean Air Plan. There is no analysis of the impacts of all the construction and use of the new homes and development. The narrow discussion of pipeline construction does not evaluate the true potential impacts of the annexation.

Biological Resources. The Initial Study states there are at least 17 sensitive species in the area of the proposed annexation, and admits that residential development "could" adversely impact the species. Here, even CCCSD had to acknowledge an impact. Indeed in the 70 some acres of undeveloped land, building and housing will necessarily fracture and fragment the habitat. Household pets such as dogs, cats, horses, etc., will effectively drive out most if not all of these species. But CCCSD says someone else will look at this potentially significant adverse environmental impact someday.

Cultural Resources. No discussion at all of the John Muir historic site. What more needs to be said. There is accordingly no factual basis for this to topic area to be left out of the draft EIR. But it was.

Hydrology and Water Quality. The initial study states that the resulting housing development would create additional impervious surfaces, with potential significant adverse impacts. Then without any factual analysis or evidence asserts "the amounts and concentrations would be less-than-significant". The whole purpose of CEQA is to require the very analysis CCCSD simply avoids.

Population and Housing. The Initial study states that the availability of sewer will remove the constraints on housing development on these currently undeveloped or underdeveloped lands. It states this could potentially result in "growth", and then defers to the County's purported future actions or other future constraints. A true analysis of these impacts needs to comply with CEQA

Public Services. The Initial Study concludes, without factual basis, that public service needs could not be potentially significant because the area is already developed. However, that assertion flies in the face of the fact that roughly 70 acres of the proposed annexation are undeveloped, and, of course, the fact that all the land is outside the ULL. Rather than analyze these potential impacts, the Initial Study, again, simply defers this to "separate environmental review" sometime in the unknown future.

Transportation. While the proposed annexation assumes nearly 20 new homes could be built, transportation issues are ignored. At the hearing held on August 18, 2010 at the CCCSD offices, neighborhood outside the annexation area, but adjacent to it objected to the lack of traffic analysis. They pointed out that announced plans by the

owner of Parcel 9 to build two 6,000 square foot homes. These homes are predicted to have 5 cars each, adding dozens of daily car trips down the narrow, unpaved Oak Bridge Road. The neighbors testified to existing traffic issues, and restricted emergency access in the current setting. An analysis of traffic impacts is needed. Similar analysis is needed with respect to Parcel 3, with the potential for 8 homes which will likely empty into the narrow Alhambra Valley road near Millthwait, where danger and warning signs already exist. The impact of all this additional traffic is required.

Alternative Analysis is incomplete. Since the draft EIR fails to provide an adequate environmental review, the alternative analysis is fundamentally flawed. Even in the areas where a reasonable alternative exists to lessen the potential impacts noted above, as in Alternative 4, it is summarily rejected without any factual basis or reasoned analysis.

Alternative 4 would exclude by far the largest parcel, Parcel 3. This parcel contains 44 acres, is now wholly undeveloped, but has the potential for 8 homes. It comprises of nearly ½ the land outside the ULL, and borders the John Muir Historic Site. Adopting Alternative 4 would be a reasonable action to remove many of the potential adverse environmental impacts. However, CCCSD rejects the Alternative, apparently because the property owner, who is and has been outside the ULL “has expressed interest in development”. It might appear to an outside observer that the CCCSD staff is more concerned about a property owner’s large economic gain rather than compliance with CEQA or good public policy. In a final ironic note (page 5-4) CCCSD states its concern about septic and the degradation of Alhambra Creek if building is approved by the County without sewers. In every other issues of environmental concern, CCCSD assumes, assures and relies on the County taking all the proper environmental actions, yet in this one situation they apparently assume that the County Health Department will not address environmental issues properly, and as a result sewer service must be extended, and Alternative 4 rejected.

In sum, the Alternative analysis is flawed, and the only Alternative that would significantly reduce potential environmental impact – Alternative 4 - is rejected out of hand because the property owner wants to build and CCCSD believes the County will not impose proper health constraints.

A review of the Initial Study and the draft EIR demonstrate that for whatever reason CCCSD was intent on pushing through the Annexation 186C without any serious and legally sufficient environmental review. Perhaps the hope was that this would sneak by without any public review. Perhaps the staff is overworked and simply did not have the time or resources to meet the legally required standard. The fact that the existence of the John Muir Historic Site was not even discussed indicates the latter.

In any event the document is defective, needs to be re-written and recirculated. However, the better course would just be to drop the effort altogether. It is not clear why tens of thousands of dollars of ratepayer money is being spent to annex land outside the ULL. Rates have already gone up for customers such as me. The better course is to use ratepayer money wisely, pull the draft EIR and stop the process.

The alternative is costly litigation, sure loss in Court, and payment of tens of thousands of dollars in legal fees.

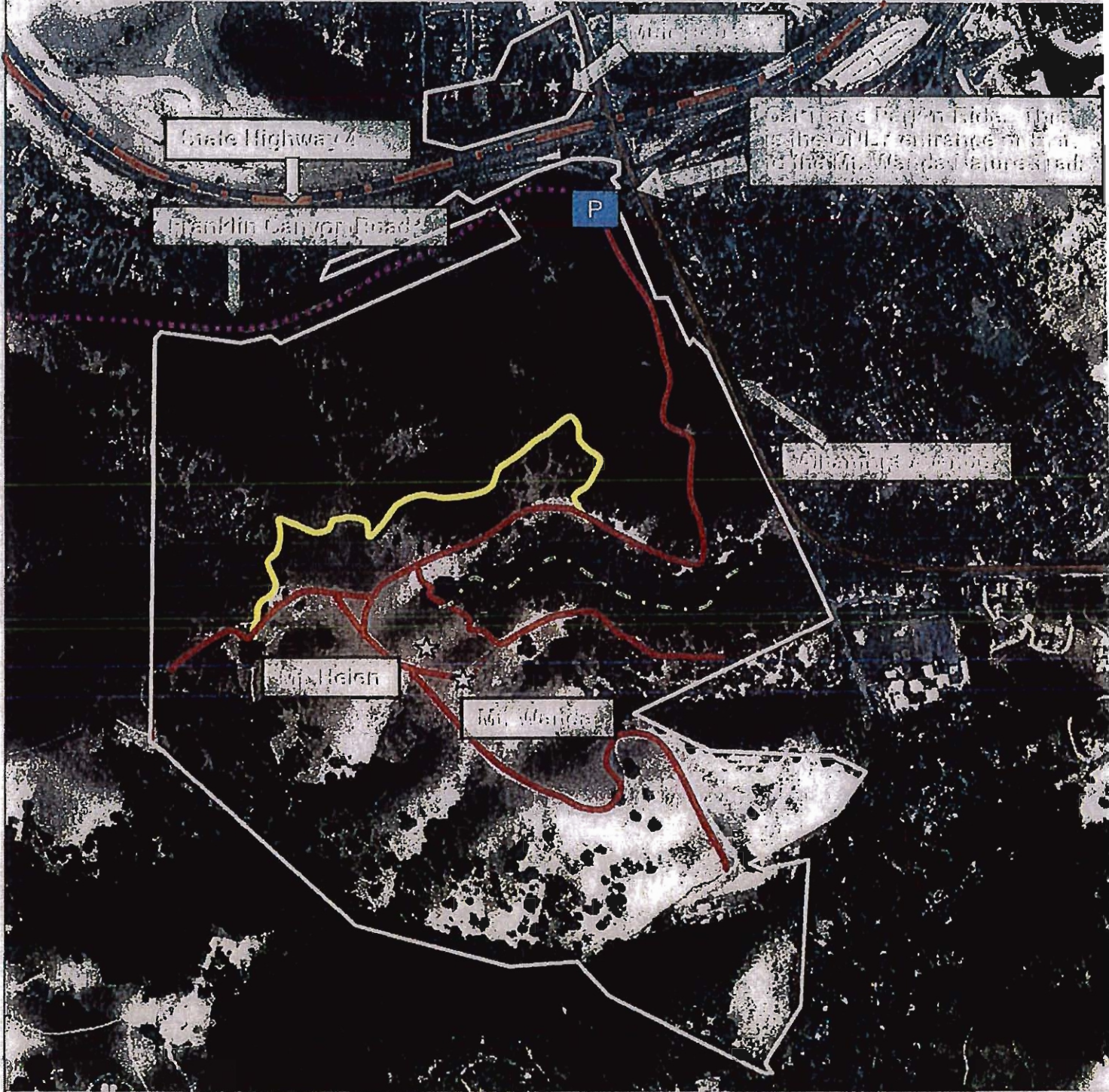
Very Truly Yours,

Ted C. Radosevich

Enc.

cc: John Muir Historic Site  
Supervisor Uilkema  
Congr. George Miller  
All Board Members, CCCSD

# Mt. Wanda



CalTrans Parking Lot. This is the OPLC entrance to the Mt. Wanda Nature Trail.

Mt. Helen

Mt. Wanda

➤ **CalTrans parking lot and TrailHead.**  
(at Franklin Canyon Road and Alhambra avenue)



➤ **Points of Interest**



➤ **Main Fire Road**



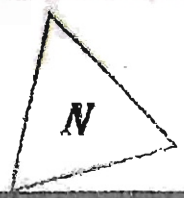
➤ **Nature Trail**



➤ **Riparian Trail**



➤ **Park Boundary**





## Mt. Wanda Area

Area open seven days a week – Sunrise to Sunset.

*"Another lovely day, mostly solid sunshine. Took a fine fragrant walk up the west hills with Wanda and Helen, who I am glad to see love walking, flowers, trees and every bird and beast and creeping thing. Buttercup, clover, gilia, Brodiaea, Allium, Dodecatheon, larkspur and portulacas are in flower. The oaks are in full leaf. A fine fragrant walk, the babies are delighted."* John Muir, April 12, 1895

John Muir lived and worked in the Alhambra Valley for 32 years. He had a loving wife Louie, and two daughters, Wanda and Helen. The family had 2,600 acres, of which about 2,200 were used for growing a variety of fruit. Named after his eldest daughter, Mt. Wanda is 326 acres of oak woods and grasslands. The Muir family never used it for fruit production, but as an escape for the daughters to take nature walks with "Papa".

- The entrance gate for the Mt. Wanda Area is located by the Park & Ride lot on Franklin Canyon Road and Alhambra Ave. It is an uphill saunter of half a mile to the nature trail, and one mile to the top. The highest point in the park is the summit at 640 feet.
- Please wear good walking shoes and comfortable clothes. Bring your own drinking water. The weather in early June may reach 100 degrees.
- There is no camping or fires or fireworks allowed on Mt. Wanda.
- Dogs are permitted, but must stay on leash. Please clean up after your dog.
- All fire roads dead-end at private property, there is currently one way in and one way out. There are no connections to other trails yet. Please do not climb fences.
- Please respect all wildlife and plants. Take only memories and photos, and leave nothing but footprints.

**RESOLUTION NO. 09-05**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
MAKING DETERMINATIONS AND APPROVING  
ANNEXATION 168C TO CENTRAL CONTRA COSTA SANITARY DISTRICT**

WHEREAS, the above-referenced proposal 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 (Section 56000 et seq. of the Government Code); and

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

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental document or determination, Spheres of Influence and applicable General and Specific Plans; and

WHEREAS, information satisfactory to the Commission has been presented that no affected landowners/registered voters within the annexation area object to the proposal; and

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

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

1. The Commission certifies it reviewed and considered the information contained in Central Contra Costa Sanitary District (CCCSD) District Annexation 168C – Alhambra Valley Environmental Impact Report as prepared and certified by CCCSD.
2. Said annexation is hereby approved.
3. The subject proposal is assigned the distinctive short-form designation:

**ANNEXATION 168C TO CENTRAL CONTRA COSTA SANITARY DISTRICT**

4. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Exhibit A, attached hereto and made a part hereof.
5. The subject territory shall be liable for any authorized or existing taxes, charges and assessments comparable to properties within the annexing agency.
6. That CCCSD delivered an executed indemnification agreement between the CCCSD and Contra Costa LAFCO providing for CCCSD to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.



Contra Costa LAFCO  
Resolution No. 09-05

7. The territory proposed for annexation is uninhabited.
8. The proposal has 100% landowner consent and the conducting authority (protest) proceedings are hereby waived.
9. All subsequent proceedings in connection with this annexation shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

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PASSED AND ADOPTED THIS 11<sup>th</sup> day of December 2013, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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FEDERAL GLOVER, 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.*

Dated: December 11, 2013

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Lou Ann Texeira, Executive Officer