

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

April 8, 2015
Agenda Item 7

April 8, 2015 (Agenda)

LAFCO 15-01

City of Concord - Out of Agency Service Request (Blair)

SUMMARY

This is a request by the City of Concord to provide sewer service outside its jurisdictional boundary and within the City's sphere of influence (SOI). The property is 0.28± acres (APN 116-063-006) located at 4761 Laura Drive in the unincorporated Ayers Ranch area. The City's request to provide out of agency sewer service is in response to an existing public health emergency as discussed below.

DISCUSSION

Statutory Framework – Out of Agency Service - The Government Code and local LAFCO policies regulate the extension of out of agency service. Government Code §56133 states that “A city or district may provide new or extended services by contract or agreement outside of its jurisdictional boundary only if it first requests and receives written approval from the Commission.” Further, the law provides that LAFCO may authorize a city or district to provide new or extended services under specific circumstances: a) outside the agency's jurisdictional boundary but within its SOI in anticipation of a future annexation; or b) outside its jurisdictional boundary and outside its SOI in response to an existing or impending threat to the public health or safety.

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

Background – As noted in both the 2014 and 2008 *LAFCO Water/Wastewater Municipal Service Reviews* (MSRs), the City of Concord has historically provided sewer service to unincorporated areas outside the City boundary, many without LAFCO's approval. More recently, the City has requested LAFCO's approval to extend service outside its boundary. Many of these out of agency service connections are located in the Ayers Ranch area, a 189-acre unincorporated island within Concord's SOI. Some parcels within this area are experiencing issues with septic systems, including failure, and have requested municipal sewer service from the City on an individual basis.

The City includes the Ayers Ranch island within its ultimate sewer service boundary. A significant portion of the island is developed or developable. In areas where there are concerns due to failing septic systems, the provision of municipal wastewater services would address public health issues.

The City reports that many property owners in the Ayers Ranch area have expressed opposition to annexation. Additionally, the City and the County have been unable to reach a mutually agreeable property tax sharing agreement should the area be annexed to Concord. In the meanwhile, the City appears willing, with LAFCO's approval, to extend sewer service to properties in this area that experience septic system failure.

Ayers Ranch has been placed by LAFCO within the City's SOI, signifying that the City is the logical, long-term service provider for this unincorporated island. The MSR reports recommend annexation of this area to the City of Concord. Annexation of the Ayers Ranch island, along with those unincorporated areas being served extra-territorially by the City, remains an important issue to resolve.

Out of Agency Service Request by City of Concord – The City requests to provide out of agency sewer service to one parcel located at 4761 Laura Drive in the unincorporated Ayers Ranch area. There is one single family residential home on the property. The law permits LAFCO to authorize the City to extend services outside its jurisdictional boundary either in response to an existing or impending threat to the public health or safety, or in anticipation of an annexation. The request by the City to provide sewer service to the subject property is in response to an existing public health situation.

In October 2014, the Contra Costa County Health Services Department (HSD) conducted an investigation of the septic system at the subject property and “found the septic system to be malfunctioning.” The HSD Specialist noted that “the soil within the drain field was completely saturated with effluent, preventing the soil from absorbing the wastewater, and resulting in ponding effluent within the drain field. This was directly observed by several excavations within the drain field from work completed by a plumbing contractor on a prior occasion.” Further, the Specialist noted that “due to the size of the parcel as well as existing trees and the placement of the existing drain field, there does not appear to be sufficient area available for a replacement drain field. Therefore, Contra Costa Environmental Health supports the property owners’ pursuit of an Out of Agency Service in order to connect to the City of Concord's municipal sewer system.”

The City's application notes that there is an existing sewer line located behind the subject property which is connected to the City's sewer system. Approximately 45 feet of lateral will be needed in order to connect the subject property to the City's sewer system. The property owners are required to sign a deferred annexation agreement with the City and pay all fees associated with the sewer connection.

Environmental Review

The City of Concord, as Lead Agency, has determined that the project is exempt from the California Environmental Quality Act (CEQA), and has prepared a Notice of Exemption, which is adequate for LAFCO purposes.

ALTERNATIVES FOR COMMISSION ACTION

LAFCOs were formed for the primary purpose of promoting orderly development through the logical formation and determination of local agency boundaries, and facilitating the efficient provision of public services. The CKH provides that LAFCO can approve or disapprove with or without amendment, wholly, partially, or conditionally, a proposal. The statute also provides LAFCO with broad discretion in terms of imposing terms and conditions. The following options and recommended terms and conditions are presented for the Commission's consideration.

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

- A. Find that the project is exempt pursuant to section 15268(b)(4) of the CEQA Guidelines, consistent with the determination of the City of Concord acting as Lead Agency.
- B. Authorize the City of Concord to extend sewer service outside its jurisdictional boundary to the 0.28± acre parcel (APN 116-063-006) located at 4761 Laura Drive in the Ayers Ranch area in unincorporated Contra Costa County subject to the following terms and conditions:
 - 1. Sewer infrastructure and service is limited to the existing single family dwelling unit, and
 - 2. The City of Concord has delivered to LAFCO an executed and recorded deferred annexation agreement, and
 - 3. The City of Concord has delivered to LAFCO an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service.

Option 2 **Deny** the request, thereby prohibiting the City of Concord from providing sewer service to the subject property.

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

RECOMMENDATION

Option 1

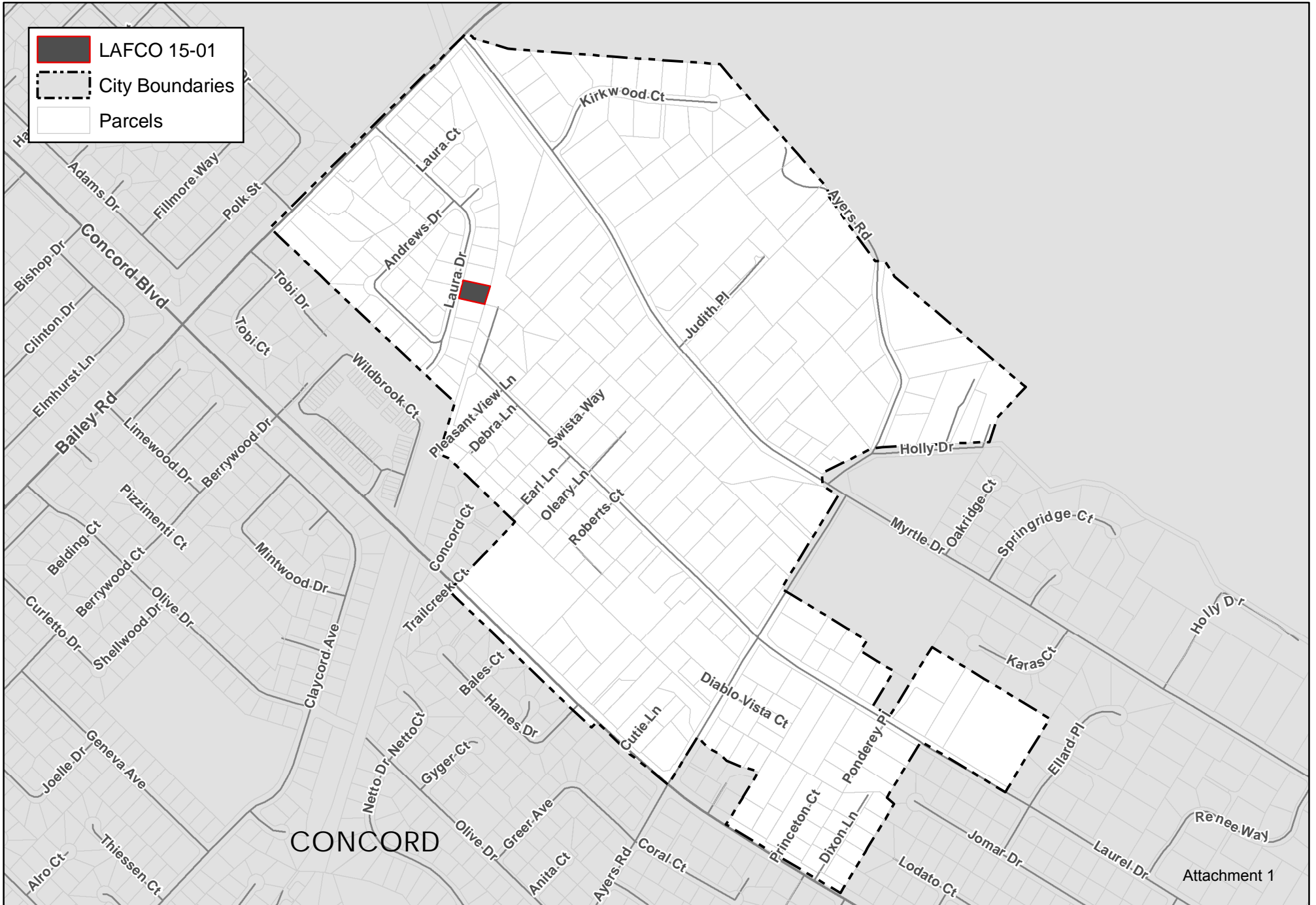
LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LAFCO

Attachments

- 1. Map of Property Located at 4761 Laura Drive
- 2. LAFCO Resolution 15-01

c: Distribution

LAFCO No. 15-01 City of Concord Out of Agency Service (Blair)



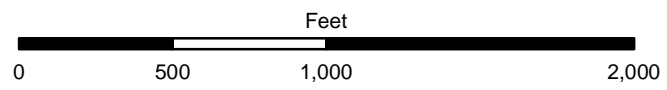
- LAFCO 15-01
- City Boundaries
- Parcels

CONCORD

Attachment 1

Map created 03/31/2015
 by Contra Costa County Department of
 Conservation and Development, GIS Group
 30 Muir Road, Martinez, CA 94553
 37:59:41.791N 122:07:03.756W

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



RESOLUTION NO. 15-01**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING THE CITY OF CONCORD TO PROVIDE OUT-OF-AGENCY SEWER SERVICE TO THE
BLAIR PROPERTY LOCATED AT 4761 LAURA DRIVE (APN 116-063-006)**

WHEREAS, the above-referenced request has been filed with the Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act (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 this request; and

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

WHEREAS, out of agency service approval is needed in order to provide sewer service to the property in response to a public health situation; and

WHEREAS, the City of Concord and the property owner have entered into a Deferred Annexation Agreement in support of the future annexation of the property to the City of Concord.

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

- A. Find that the project is exempt pursuant to section 15268(b)(4) of the CEQA Guidelines, consistent with the determination of the City of Concord acting as Lead Agency.
- B. Authorize the City of Concord to extend sewer service outside its jurisdictional boundary to a 0.28± acre property located at 4761 Laura Drive (APN 116-063-006) in unincorporated Contra Costa County subject to the following terms and conditions:
 - 1. Sewer infrastructure and service is limited to the existing single family dwelling unit,
 - 2. The City of Concord has delivered to LAFCO an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions to challenging the out of agency service, and
 - 3. The City of Concord and the property owner(s) have signed a deferred annexation agreement (DAA), and that the DAA is recorded as prescribed by law and runs with the land so that future landowners have constructive notice that their property is encumbered by the DAA.
- C. Approval to extend City of Concord services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

* * * * *

PASSED AND ADOPTED AS REVISED THIS 8th day of April 2015, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ROB SCHRODER, CHAIR, CONTRA COSTA LAFCO

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

Dated: April 8, 2015

Lou Ann Texeira, Executive Officer