

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

August 10, 2016
Agenda Item 6

July 13, 2016 (Agenda)

LAFCO 16-02 Detachment from the Byron Bethany Irrigation District (BBID) and Proposed Detachment from the Town of Discovery Bay Community Services District (TODBCSD)

PROPONENT Contra Costa County, Resolution 2016/3

SYNOPSIS

The County has applied to Contra Costa LAFCO to detach 480± acres from BBID located in two separate areas in the unincorporated Discovery Bay area (west) as shown on the attached map (Attachment 1). The two areas encompass areas where the service boundaries of BBID and TODBCSD overlap. The overlap areas contain numerous parcels located in six tax rate areas. The TODBCSD provides potable water, wastewater and other services to the Discovery Bay area, including the overlap area. BBID is an irrigation district and does not provide water service to the overlap area as further discussed below.

UPDATE

Last month, LAFCO received a request from Rick Gilmore, BBID General Manager, to amend the proposal to include exclusion of Assessor Parcel Numbers (APNs) 011-190-044 and -045 from the proposed detachment from BBID, and to also detach these same two parcels from the TODBCSD (Attachment 2). These two parcels are part of BBID's pipeline corridor, and were deeded to BBID in conjunction with a previous Centex Homes development in the area. Due to the timing of BBID's request, the Commission could not fully consider the proposed amendment on July 13th, and the matter was continued to the August 10th LAFCO meeting.

BACKGROUND

BBID was formed in 1914 and provides agricultural water service in addition to delivering raw untreated water to the Mountain House community and the City of Tracy. BBID is a multi-county district serving portions of Alameda, Contra Costa and San Joaquin counties. BBID's services area is 30,000± acres, with a population of 13,000 (including the Mountain House community). BBID serves approximately 160 water connections including 150 agricultural surface irrigation uses and 10 municipal/industrial surface users. BBID relies on surface water with primary sources being the Central Valley Project Surface Area and pre-1914 water rights with Alameda, Contra Costa and San Joaquin counties. BBID operates as an enterprise district, with its primary revenue sources being property tax and service charges and fees.

San Joaquin is designated the principal county for LAFCO proceedings. In February 2016, Contra Costa LAFCO requested, and San Joaquin LAFCO approved, a transfer of jurisdiction to allow Contra Costa LAFCO to process the detachment proposal.

TODBCSD was formed in 1998 as the successor agency to County Sanitation District No. 19 (SD 19). TODBCSD provides water, sewer collection and disposal, levee maintenance, parks and recreation maintenance, landscaping and recreational services. TODBCSD's service area is 5,760± acres with a

population of approximately 14,000. TODBCSD serves 5,523 service connections (residential, commercial, irrigation), and relies on groundwater with six groundwater irrigation wells. TODBCSD operates as an enterprise district and receives a significant portion of its overall revenue from charges for services, and a minimal amount of property tax revenue.

Prior to the development of Discovery Bay West, the subject areas were used for agricultural purposes. BBID provided irrigation water for the agricultural uses in the area existing at the time. BBID receives a portion of the 1% property tax (Ad Valorem) in these areas. Once residential development replaced the agricultural uses in the area, BBID irrigation water was no longer used, and SD19/TODBCSD began providing water service to the area. These areas were never detached from BBID, and BBID continues to receive property taxes from these areas, currently estimated at \$685,000 per year.

Historically, there was discussion regarding BBID serving as a back-up water supply to these areas. However, it has since been determined that TODBCSD has an adequate water supply, and that having an additional irrigation water supply source provided by BBID appears to have limited value within the next 15-20 year planning horizon.

The issue of the overlap in service boundaries first came to the attention of Contra Costa LAFCO in 1993 in conjunction with annexation of the Albers property to SD 19 (TODBCSD's predecessor district). At that time, the Commission discussed detachment from BBID in conjunction with Albers annexation. BBID staff requested that LAFCO defer the detachment pending completion of BBID's groundwater management plan. The issue of detachment from BBID remained unresolved and annexations to TODBCSD continued, perpetuating the overlap.

In 2014, Contra Costa LAFCO completed its 2nd Round Countywide Water/Wastewater Municipal Services Review (MSR) and sphere of influence (SOI) updates. The MSR covered eight cities and 20 special districts including BBID and TODBCSD.

The MSR included a discussion of the overlap area, noting that districts' water systems have very different infrastructure, given that BBID relies on surface water and TODBCSD relies on ground water; and that it is unlikely that BBID could provide water service to the overlap areas without incurring significant cost to build a new water system for this area. The MSR recommended that consideration be given to detaching the overlap areas from BBID; and that further study should be undertaken to fully analyze the service and fiscal implications of such a detachment to both residents and the BBID.

In late 2015, there were a number of meeting with the affected agencies. In November 2015, the Contra Costa County Board of Supervisors (BOS) voted unanimously to pursue the detachment, and directed County staff to prepare a resolution of application to LAFCO. In early December 2015, the TODBCSD voted unanimously to support the detachment.

DISCUSSION

In January 2016, the County submitted applications to Contra Costa and San Joaquin LAFCOs to detach the overlap areas from BBID. Included with the County's application was a request that San Joaquin LAFCO transfer jurisdiction to Contra Costa LAFCO. As noted above, San Joaquin is the principal county for LAFCO proceedings, as defined by Gov. Code §56066 (i.e., the county having the greatest portion of the assessed value, as shown on the last equalized assessment roll of the county or counties,

of all taxable property within the district). Contra Costa LAFCO submitted a request to San Joaquin LAFCO for transfer of jurisdiction, which San Joaquin LAFCO approved on February 11, 2016.

Gov. Code §56668 sets forth factors that the Commission must consider in evaluating a proposed boundary change as discussed below. In the Commission's review, 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 detachment are within the SOIs of both BBID and TODBCSD. The subject areas are also inside the County's Urban Limit Line (ULL), with the exception of the pipeline corridor (APNs 011-190-044/-045), which is outside the ULL. Presently, there is no proposal to modify either District's SOI in conjunction with the proposed detachments. If desired, applications to detach the subject areas from the districts' respective SOIs can be submitted in the future.

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

Land uses in the subject areas primarily include single family residential, along with parks, a manmade lake, school, commercial, and open space. The County General Plan designations for the areas include: Agricultural Core (AC), Agricultural Lands (AL), Commercial (CO), Multiple-Family Residential – Low Density (ML), Office (OF), Open Space (OS), Parks/ Recreation (PR), Public/Semi-Public (PS), Single-Family Residential – High Density (SH), and Single-Family Residential – Medium Density (SM). The Zoning designations include: General Agricultural (A-2), Heavy Agricultural (A-3), Exclusive Agricultural (A-40), and Planned Unit (P-1).

The subject areas are surrounded primarily by residential to the east and north, and mostly agricultural lands and agricultural core to the west and south. There are currently no known entitlement applications pending for properties in the subject areas. *No land use changes will occur as a result of the proposed detachments.*

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

As noted above, the subject areas include some land designated for agricultural uses. The subject areas contain no Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. No portion of the subject property is currently under a Williamson Act Land Conservation Act agreement. *The proposed detachment will not result in the loss of agricultural land.*

4. Topography, Natural Features and Drainage Basins:

The subject properties are flat with manmade bodies of water within the area; surrounding areas are primarily residential to the east and agricultural to the west.

5. Population:

The proposed detachments will have no effect on population.

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 detachments will have no effect on regional housing needs.*

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

Whenever an application for a change of organization or reorganization is submitted to LAFCO, the applicant must 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 properties currently receive water service from TODBCSD. The subject areas are also served by various local and regional agencies including, but not limited to, Contra Costa County, Byron Brentwood Knightsen Union Cemetery District (BBKUCD), East Contra Costa Fire Protection District (ECCFPD), and TODBCSD. *No change in the provision of service is proposed.*

8. Timely Availability of Water and Related Issues:

The proposal before the Commission, as amended, is to detach two areas from BBID, excluding APNs 011-190-044/-045, and to detach these same two parcels from the TODBCSD. As noted above, these areas currently receive water from TODBCSD. The proposal, as amended, will have no foreseeable impact on water service to the subject areas, as BBID does not currently, nor is anticipated to, provide water service to the subject areas. TODBCSD indicates that it has adequate capacity to continue to serve the subject areas today and in the future, and supports the proposal. Further, there will be no impact to the two parcels proposed for detachment from TODBCSD, as these parcels do not require potable water service, and will remain within the BBID service area.

9. Assessed Value, Tax Rates and Indebtedness:

The areas proposed for detachment are within tax rate areas (TRAs) 66043, 66047, 66048, 66050, 66055, and 66056. The assessed value for the subject areas is \$182,410,892 (2015-16 roll). As noted above, BBID currently receives approximately \$685,000 per year of the property tax within the six TRAs. Pursuant to the Revenue and Taxation Code, whenever there is a proposal to modify the boundary of a special district, the County negotiates the tax exchange on behalf of the districts. The County is required to consult with the affected districts. Consultations occurred with BBID, TODBCSD and BBKUCD. Also, the County had discussions with ECCFPD. The ECCFPD lacks sufficient funding resulting from low property tax allocations which have resulted in reductions in ECCFPD's fire and emergency medical services, despite increasing call volumes. This situation necessitated supplemental funding from the County and the cities of Brentwood and Oakley to temporarily sustain ECCFPD.

On June 14, 2016, the BOS adopted a property tax exchange resolution providing that BBID's share of the base and annual tax increment in the subject TRAs, that would otherwise be allocated to BBID, shall be allocated to Contra Costa County. Further, the BOS directed County staff to prepare a second property tax exchange agreement to annually transfer the reallocated tax revenue from the six subject TRAs from the County to ECCFPD for as long as the taxes continue to be allocated to the County, unless an application to initiate dissolution of ECCFPD is filed with LAFCO, at which point the property tax transfer would automatically terminate. Following LAFCO's approval, County staff will bring the second property tax exchange agreement to the BOS for approval.

BBID submitted a letter to the County indicating that the District takes strong exception to the "pass-through" property tax exchange agreement recently adopted by the BOS, and prefers that the property tax currently going to BBID in the subject areas, be allocated directly to ECCFPD.

The exclusion of APNs 011-190-044/-045 from the proposed detachment from BBID, and the proposed detachment of these same two parcels from the TODBCSD, will exempt BBID from paying annual property tax on the two BBID owned parcels (approximately \$217 per year). There will be no fiscal impact associated with detaching these two parcels from TODBCSD, as TODBCSD receives minimal revenue from property taxes, and does not receive property tax revenue in the subject area.

10. Environmental Impact of the Proposal:

Contra Costa County, as Lead Agency, has determined that the proposal is exempt from the California Environmental Quality Act (CEQA) pursuant to sections 15061(b)(3). The LAFCO environmental coordinator agrees with this determination.

11. Landowner Consent and Comments by Any Affected Local Agency:

According to County Elections, there are more than 12 registered voters in the areas proposed for detachment; thus, the subject areas are considered inhabited. In the case of inhabited boundary changes, LAFCO will conduct a protest hearing should the Commission receive an objection from any landowner owning land with the subject areas, or any registered voter residing with the subject areas. LAFCO has received at least one objection to the proposed detachment from an affected landowner/voter; consequently, a protest hearing is required.

Regarding comments from other affected local agencies, LAFCO is aware that TODBCSD supports the proposed detachment, as amended.

In accordance with LAFCO's statutory noticing requirements [Gov. Code §56157(h)], LAFCO noticed this hearing in a display ad in a newspaper of general circulation. The statute provides that *if the total number of notices required to be mailed exceeds 1,000, then notice may instead be provided by publishing a display advertisement of at least one-eighth page in a newspaper, at least 21 days prior to the hearing.* The total number of notices for this proposal exceeds 1,000.

12. Boundaries and Lines of Assessment:

The areas proposed for detachment follow lines of assessment. A map and legal description to implement the proposed boundary is subject to final approval by the County Surveyor.

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 detachments are not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

14. Disadvantaged Communities:

In accordance with Senate Bill 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 boundary changes 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 GIS/Demographics division, the areas proposed for detachment 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 actions:

Option 1 Adopt this report and approve the proposed detachment from BBID, excluding APNs 011-190-044/-045, and detaching these same two parcels from TODBCSD, as requested by BBID.

- A. Determine that the proposal is exempt from CEQA pursuant to sections 15061(b)(3).
- B. Adopt this report, approve LAFCO Resolution No. 16-02 (Attachment 3), and approve the proposal, to be known as the *Detachment from the Byron Bethany Irrigation District and Detachment from the Town of Discovery Bay Community Services District* subject to the following terms and conditions:
 1. That Contra Costa County has delivered an executed indemnification agreement providing for the County to indemnify LAFCO against any expenses arising from any legal actions challenging the detachment.
 2. The detachment has no effect on BBID's or TODBCSD's authority to collect taxes for bonded indebtedness.
- C. Find that the subject territory is inhabited, that LAFCO has received written opposition to the proposed detachment from BBID, and that a protest hearing is required.

Option 2 Adopt this report and approve the detachment as originally proposed by the applicant (County).

- A. Determine that the proposal is exempt from CEQA pursuant to sections 15061(b)(3).

- B. Adopt this report, approve LAFCO Resolution No. 16-02 (Attachment 3 – to be amended), and approve the proposal, to be known as the *Detachment from the Byron Bethany Irrigation District* subject to the following terms and conditions:
1. That Contra Costa County has delivered an executed indemnification agreement providing for the County to indemnify LAFCO against any expenses arising from any legal actions challenging the detachment.
 3. The detachment has no effect on BBID's authority to collect taxes for bonded indebtedness.
- C. Find that the subject territory is inhabited, that LAFCO has received written opposition to the proposed detachment from BBID, and that a protest hearing is required.

Option 3 Adopt this report and DENY the proposal.

Option 4 CONTINUE this matter to a future meeting.

RECOMMENDED ACTION:

Option 1 - Approve the detachment from BBID, excluding APNs 011-190-044/-045, and detaching these same two parcels from TODBCSD

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

Attachments

- 1 – BBID Detachment - Option 1 Map (as requested by BBID)
- 2 –BBID Detachment – Option 2 Map (as originally proposed)
- 3 - Draft LAFCO Resolution 16-02

c: David Twa, County Administrator, Contra Costa County
Julie Enea, Contra Costa County Administrator's Office
Rick Gilmore, General Manager, BBID
Catherine Kutsuris, Interim General Manager, TODBCSD

RESOLUTION NO. 16-02

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
 MAKING DETERMINATIONS AND APPROVING DETACHMENTS FROM
 THE BYRON BETHANY IRRIGATION DISTRICT AND THE TOWN OF DISCOVERY BAY
 COMMUNITY SERVICES DISTRICT

WHEREAS, a proposal submitted by Contra Costa County to detach two areas from the Byron Bethany Irrigation District (BBID) was filed with Executive Officer of the Contra Costa Local Agency Formation Commission (LAFCO) pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code section 56000 et seq.); and

WHEREAS, the Executive Officer has examined the application and executed her certification in accordance with law, determining and certifying that the filing is sufficient; and

WHEREAS, subsequently, BBID requested that LAFCO exclude two BBID owned parcels [Assessor Parcel Numbers (APNs) 011-190-044 and -045] from the proposed detachment, and detach these same two parcels from the TODBCSD; and

WHEREAS, the exclusion of APNs 011-190-044 and -045 from the proposed detachment will be beneficial to BBID, and the detachment of these same two parcels from the TODBCSD will avoid another overlap in service boundaries; 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 Executive Officer has reviewed available information and prepared a report including her recommendations therein, and the report and related information have been presented to and considered by the Commission; and

WHEREAS, at a public hearing held on July 13, 2016, and continued to August 10, 2016, 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, provision of services, and related factors and information including those contained in Gov. Code §56668; and

WHEREAS, the proposed detachment from BBID will correct a boundary overlap between BBID and the Town of Discovery Bay Community Services District (TODBCSD) as discussed in LAFCO's 2014 Countywide *Water/Wastewater Municipal Services Review*; and

WHEREAS, LAFCO finds the proposal, as amended per BBID's request, to be in the best interest of the affected areas 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 proposal is exempt from CEQA pursuant to sections 15061(b)(3).
2. Said detachment is hereby approved as amended to include the exclusion of APNs 011-190-044 and -045 from the BBID detachment, and the detachment of these two parcels from the TODBCSD, as requested by BBID.
3. The subject proposal is assigned the distinctive short-form designation:

**Detachment from the Byron Bethany Irrigation District and Detachment from the
 Town of Discovery Bay Community Services District**

Contra Costa LAFCO
Resolution No. 16-02

4. Said territory is found to be inhabited and LAFCO has received objections from affected landowners/voters; thus, a protest hearing is required.
5. The boundaries of the affected territory are found to be definite and certain as depicted in Attachment 1, attached hereto and made a part hereof. Final approval of the maps and legal descriptions is subject to approval by the County Surveyor.
6. Contra Costa County has delivered an executed indemnification agreement providing for the County to indemnify LAFCO against any expenses arising from any legal actions challenging the detachments.
7. The detachments have no effect on BBID's or TODBCSD's authority to collect taxes for bonded indebtedness.
8. All subsequent proceedings in connection with these detachments shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

* * * * *

PASSED AND ADOPTED THIS 10TH day of August, 2016, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

MARY N. PIEPHO, CHAIR, CONTRA COSTA LAFCO

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

Dated: August 10, 2016

Lou Ann Teixeira, Executive Officer