

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

August 8, 2018 (Agenda)

August 8, 2018  
Agenda Item 6

LAFCO 18-10 City of Concord - Out of Agency Service Request (Bailey Road/Myrtle Drive)

## SYNOPSIS

This is a request by the City of Concord to provide municipal wastewater service outside its jurisdictional boundary to one parcel located at the southwest corner of Bailey Road and Myrtle Drive unincorporated Concord. The parcel (APN 116-070-007) is 3.8± acres (see Attachment 1). The lot is currently vacant. The proposed land use is construction of seven single family homes (Laurel Place II). The County's General Plan designation for the parcel is Single Family Residential – Low Density. The property owner has applied to the County for two entitlements: a rezone from R-20 Single Family Residential (20,000 sq. ft. minimum lot size) to R-15 Single Family Residential (15,000 sq. ft. minimum lot size); and a vesting tentative map. In September 2017, the County approved the rezoning and tentative map. The applicant is currently working with the County to fulfil the conditions of approval and complete the final map and improvement plans. The developer anticipates obtaining a grading permit in late summer and initiating site work by the end of September 2018.

The City of Concord has rezoned the property RR-20 (Rural Residential – 20,000 sq. ft. minimum). The subject parcel is located within the City of Concord's sphere of influence (SOI) and within the City's Urban Limit Line. Residential development surrounds the project site to the west, south, and southeast, with undeveloped land associated with Concord Naval Weapons Station to the north and northeast.

## DISCUSSION

Statutory Framework - 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 its jurisdictional boundary only if it first requests and receives written approval from the Commission.” 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.

LAFCO's Policy - 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.

LAFCO policies contain the following provisions which are relevant to this proposal:

3) *Objective – Out of agency service is generally not intended to support new development.*

The out of agency service request is intended to serve development of one new single family residence.

4) *Out of Agency Service Policies: General Statements*

a) *Annexation to cities and special districts involving territory located within the affected agency's SOI is generally preferred to out of agency service.*

See #5 below.

b) *LAFCO will consider applicable MSRs and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations.*

The previous LAFCO MSR's recommended annexing properties that are receiving, or will require, City wastewater service, as appropriate.

5) *Form of Request*

*Request in Anticipation of Annexation*

*An out of agency service application must be accompanied by a change of organization or reorganization application, including an approved tax sharing agreement, in order for LAFCO to determine that the out of agency service is in anticipation of a change of organization (i.e., annexation) within the next 12 months. This dual application requirement may be waived in certain situations by the Commission if compelling justification is provided. Circumstances which may warrant such a waiver include, but are not limited to, the following:*

- *Lack of contiguity (e.g., city boundary) when the project was approved prior to 2011*
- *Service is only needed to serve a portion of a larger parcel, and annexation of the entire parcel is not desirable*
- *Other circumstances which are consistent with LAFCO statute and the policies of Contra Costa LAFCO*

*If immediate annexation (i.e., within 12 months) is not a feasible alternative, then the extension of services may be approved in anticipation of a later annexation if the agency provides LAFCO with a resolution of intent to annex, as well as appropriate assurances (e.g., rezoning, plan for annexation, deferred annexation agreement, etc.), which demonstrate that out of agency service is an intermediate steps toward eventual annexation.*

Given the subject property is contiguous to the City boundary, annexation of this property is possible. The developer's preference is to annex the property to the City of Concord following completion of sale and occupancy of the units, in approximately 12-18 months. The same developer went through a similar process with LAFCO on a development adjacent to the subject parcel. While annexation is generally preferred, it should be noted that annexation of the subject parcel will create an island.

Analysis – As noted in the 2014 and 2008 *LAFCO Water/Wastewater Municipal Service Reviews* (MSR's), the City of Concord includes the Ayers Ranch area within its ultimate sewer service boundary. The Ayers Ranch area is a 183-acre unincorporated island within Concord's SOI. The City has historically extended sewer service to this area. More recently, and pursuant to State law, the City has requested LAFCO's approval to provide out of agency service. Some parcels in this area are experiencing issues with septic systems, including failure, and have requested municipal sewer service from the City on an individual basis. While a significant portion of the island is developed, there are a number of vacant and under-developed properties in the area that will need municipal sewer service, including the subject property.

LAFCO has placed the Ayers Ranch area within the City's SOI, signifying that the City is the logical, long-term service provider for this unincorporated island; and the MSR's 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. In September 2015, the Concord City Council took an affirmative step and adopted Resolution No. 15-59 establishing a non-binding strategy to annex Ayers Ranch by the year 2030. This signals the City's intent to annex the area in the future.

Out of Agency Service Request by City of Concord – The City requests to provide out of agency sewer service to property located at southwest corner of Bailey Road and Myrtle Drive unincorporated Concord. The parcel (APN 116-070-007) is currently vacant. The property owner has approval from the County to build an additional seven single family homes. 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. This request by the City to provide sewer service to the subject property is in anticipation of annexation, as the property is contiguous to the City boundary.

The infrastructure needed to serve the proposed subdivision includes a main extension (15-inch diameter), 744 feet of pipe, and seven lateral lines (4-inch diameter minimum). The project is estimated to generate approximately 195 gallons of wastewater per day per unit. The property owner is responsible for the capital costs; future operations and maintenance costs will be the responsibility of the individual homeowners.

Environmental Review – Contra Costa County, as Lead Agency, prepared and certified an Initial Study/Mitigated Negative Declaration (MND) in conjunction with the proposed subdivision pursuant to the California Environmental Quality Act (CEQA), which is adequate for LAFCO purposes (available through the LAFCO office). The MND identified a number of potentially significant effects (i.e., Air Quality, Biology, Geology and Noise). Mitigation measures were adopted which reduced all impacts to a less than significant level; therefore, there are no significant and unavoidable impacts.

The MND noted that sewer service to the project area will be provided by the City of Concord. The City indicates it is able and willing to service the project area. Should LAFCO approve the out of agency service, the property owner must then implement the required mitigations for the project, including LAFCO's approval for out of agency sewer service, prior to the County issuance of the building permit.

#### **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 conditioned the following, including submittal of an annexation application.

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Initial Study/Mitigated Negative Declaration prepared and certified by Contra Costa County.
- B. Authorize the City of Concord to extend sewer service outside its jurisdictional boundary to the 3.8± acre parcel (APN 116-070-007) located at the southwest corner of Bailey Road and Myrtle 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 proposed seven single family residential units, 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.
  - 4. A commitment from the developer to submit to LAFCO an application to annex the subject parcel to the City of Concord, along with the applicable annexation fees, by August 7, 2019.

**Option 2**      **Approve** the out of agency service request with the following terms and conditions.

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Mitigated Negative Declaration prepared and certified by the County.
- B. Authorize the City of Concord to extend sewer service outside its jurisdictional boundary to the 3.8± acre parcel (APN 116-070-007) located at the southwest corner of Bailey Road and Myrtle 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 proposed seven single family residential units, 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 3**      **Deny** the request, thereby prohibiting the City of Concord from providing sewer service to the subject property.

**Option 4**      **Continue** this matter to a future meeting in order to obtain more information.

**RECOMMENDATION**

**Option 1**

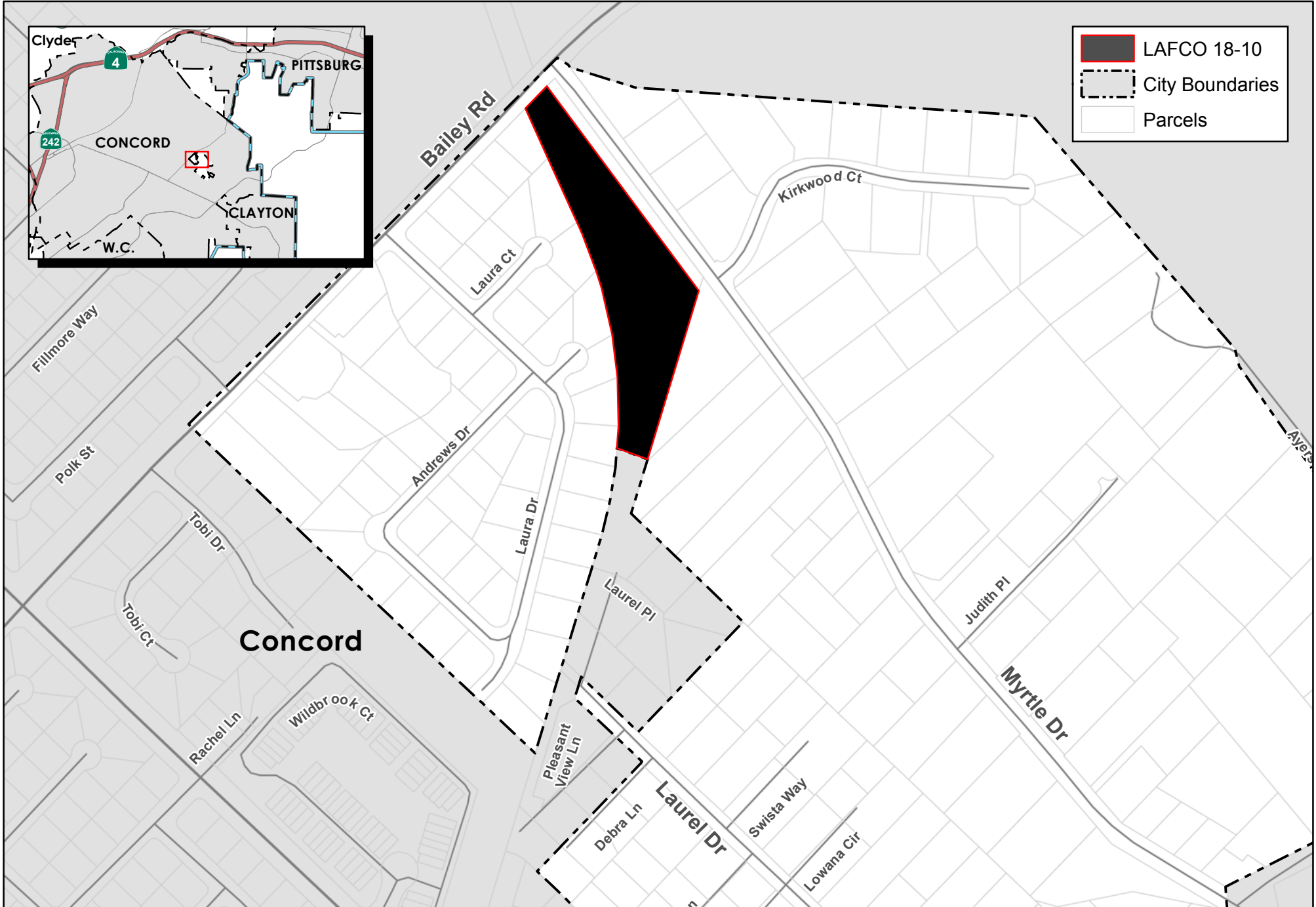
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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LAFCO

Attachments

- 1. Map of Property (APN 116-070-007)
- 2. LAFCO Resolution 18-10

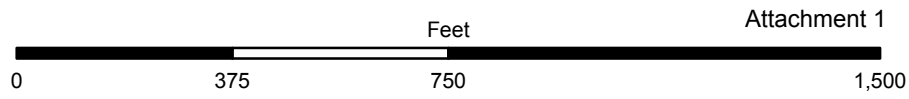
c: Distribution

# LAFCO 18-10 City of Concord Out of Agency Service Request (Laurel Place II)



Map created 7/17/2018  
 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 OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
AUTHORIZING THE CITY OF CONCORD TO PROVIDE OUT-OF-AGENCY SEWER SERVICE  
TO APN 116-070-007 (BAILEY ROAD / MYRTLE DRIVE)**

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 wastewater services to the property in anticipation of a future annexation; and

WHEREAS, the City of Concord and the property owners 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, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Initial Study/Mitigated Negative Declaration prepared and certified by Contra Costa County.
- B. Authorize the City of Concord to extend wastewater service outside its jurisdictional boundary to APN 116-070-007, located at the southwest corner of Bailey Road and Myrtle Drive in unincorporated Contra Costa County subject to the following terms and conditions:
  - 1. Wastewater infrastructure and service is limited to a 7-lot single residential subdivision on the parcel,
  - 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 the deferred annexation agreement (DAA), and the DAA was 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, and
  - 4. Wastewater service is conditioned on a commitment from the developer to submit to LAFCO an application to annex the subject parcel to the City of Concord, along with the applicable annexation fees, by August 7, 2019.
- 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 8<sup>th</sup> day of August 2018, by the following vote:

AYES:  
NOES:  
ABSTENTIONS:  
ABSENT:

\_\_\_\_\_  
Michael R. McGill, 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: August 8, 2018

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Lou Ann Texeira, Executive Officer