

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

February 13, 2019
Agenda Item 6

February 13, 2019 (Agenda)

LAFCO 18-16 City of Martinez - Out of Agency Service Request (2 Millican Court)

SYNOPSIS

This is a request by the City of Martinez to provide municipal water service outside its jurisdictional boundary to one vacant parcel (APN 367-111-002) located at 2 Millican Court in the Alhambra Valley in unincorporated Martinez (see Attachment 1). The property is 0.65± acres and development of a single family residential unit is proposed for the site in accordance with the Alhambra Valley Specific Plan.

The subject property is located within the City of Martinez sphere of influence (SOI) and is within and abuts the City's Urban Limit Line (ULL). Surrounding land uses include low density single family residential (SL) to the north, south and east; and land designated by the County as "Agricultural Land (A-2) to the west. The County General Plan designation for the parcel is Single Family Residential – Low (SL) and the County's zoning is Single Family Residential R-20 (lot size 20,000 sq. ft. minimum). The City's land use designation for the parcel is Rural Residential (RR-40P).

The City indicates that the subject property is surrounded by existing homes that are currently being served by the City's water system. The subject property is also within the Central Contra Costa Sanitary District (CCCSD) service boundary.

DISCUSSION

Statutory Framework – Out of Agency Service – The Government Code (GC) and local LAFCO policies regulate the extension of out of agency service. GC §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 (Attachment 2) 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.

City's Prior and Future Commitment to Annexations – As noted in the 2008 and 2014 *Water/Wastewater* and 2009 *Central County Sub-regional* Municipal Service Reviews (MSRs), the City is providing water services beyond its corporate limits to an estimated 1,500 water connections. The LAFCO MSRs recommend that the City of Martinez annex areas receiving city services, as appropriate. The MSRs note that the 1,500 water connections serve residents who do not have representation in terms of electing the Martinez City Council and governance issues. City staff notes that those residents who receive out of agency water service have a voice, as they have the right to address the City Council regarding policy decisions; and they have equal rights under Proposition 218 to protest water rate increases.

The City of Martinez has previously demonstrated a commitment to annexing unincorporated areas through prior actions including preparing fiscal studies analyzing the impacts of annexing these areas to the City (i.e., Alhambra Valley, North Pacheco, Mt. View); rezoning these areas; adopting resolutions affirming the City's pledge to annex these areas (i.e., Alhambra Valley, Mt. View); and prior annexation efforts including the successful annexation of a portion of Alhambra Valley, and the attempted annexation of North Pacheco, which was approved by LAFCO, but rejected by the voters. Further, the City requires property owner(s) to sign and record a deferred annexation agreement when applying for out of agency service, which precludes the landowner(s) from protesting future annexation.

While the City has taken actions in furtherance of future annexations of most of these areas, the outcome of the fiscal studies shows a negative fiscal impact to the City; thus, annexation of most of these areas, including the Alhambra Valley, is not financially viable. It should be noted that the subject parcel is included in the Alhambra Valley Specific Plan, but was not part of the City's 2011 Alhambra Valley annexation application.

Since 2012, the City of Martinez has submitted 11 out of agency service applications to LAFCO including the subject proposal. Of the 11 proposals submitted in the last six years, eight are in the Alhambra Valley area and three are in the Mt. View area.

As noted below, in 2011-12, the City previously attempted to annex a portion of the Alhambra Valley and was partially successful. The City has adopted two resolutions stating the City's intent to pursue annexation of the Alhambra Valley area by 2020. In 2016, the City adopted two resolutions indicating its intent to annex property along the Pacheco Boulevard corridor including the Mt. View area by the year 2030. In accordance with the Commission's request in January 2019, the City will provide an update and estimated timeframe on future annexation activity to LAFCO by June 30, 2019.

Consistency with LAFCO Policies – The City has applied to LAFCO to extend out of agency water service to the subject property, which is located in the Alhambra Valley. There are currently no public health/safety issues on the property. The extension of water service will enable development of the property.

Contra Costa LAFCO's policies are consistent with GC §56133, in that out of agency service can be extended either in response to a threat to the health and safety of the public (e.g., failed septic system, contaminated or dry well, etc.), or in anticipation of annexation.

In addition, the 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 a single family residential unit.

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.*

The subject area is not adjacent to the City boundary and cannot be annexed at this time.

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

The previous LAFCO MSRs recommended annexing properties that are receiving, or will require, City water service, as appropriate. The City has committed to the future annexation of the Alhambra Valley.

- c) *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.*

The City has previously attempted to annex a portion of the Alhambra Valley and has been partially successful. To affirm its commitment to the future annexation of this area, the City Council adopted two resolutions (2012 and 2014) asserting the City's intent to pursue annexation of this area by 2020.

In addition, the City has obtained and recorded a deferred annexation agreement on the subject parcel.

Water Supply to the Subject Property – The subject property is located in the Alhambra Valley, characterized as an established semi-rural community. The Alhambra Valley is partially served with water service through the City of Martinez and sewer service through CCCSD. The subject property is within the CCCSD service boundary.

The City indicates that it has adequate water to serve the subject property. According to the City, the water service lateral will consist of approximately 45 linear feet of one-inch diameter pipe, a meter and a backflow device. The service laterals will be used for a combined domestic water and fire supply. Water service will be provided from an existing 4-inch water main on Millican Court in front of the subject property. The area is steep, most of which is over 10% slope. City staff has confirmed that the City's infrastructure is adequate for this topography. The property owner is responsible for all site development, improvements and start-up costs including those associated with the domestic water system; operational and maintenance costs will be funded through water service and water usage fees collected by the City of Martinez.

Environmental Review – The City of Martinez found the extension of water service to the parcel exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15303(d), and has filed a Notice of Exemption. The LAFCO Environmental Coordinator has reviewed this document and finds it is adequate for LAFCO purposes.

ALTERNATIVES FOR COMMISSION ACTION

LAFCOs were formed for the primary purpose of promoting orderly development through the logical formation of local agency boundaries, and facilitating the efficient provision of public services. The CKH provides that LAFCO can approve with or without amendments, wholly, partially, or conditionally, or deny 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. In addition, it is recommended that the Commission request the City to provide an update to LAFCO on future annexation activity within a timeframe specified by the Commission.

Option 1 **Approve** the out of agency service request as proposed and approve Resolution No. 18-12 (Attachment 3).

- A. Find that the project is exempt pursuant to section 15303(d) of the CEQA Guidelines, consistent with the determinations of the City of Martinez.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to one vacant parcel (APN 367-111-002) located at 2 Millican Court (Alhambra Valley) in unincorporated Martinez subject to the following terms and conditions:
 - 1. Water infrastructure and service is limited to one single family residential unit,
 - 2. The City of Martinez has delivered to LAFCO an executed 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
 - 3. The City of Martinez 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 Martinez from providing water service to the subject property.

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

RECOMMENDATION

Option 1 – Approve out of agency service request with conditions as noted.

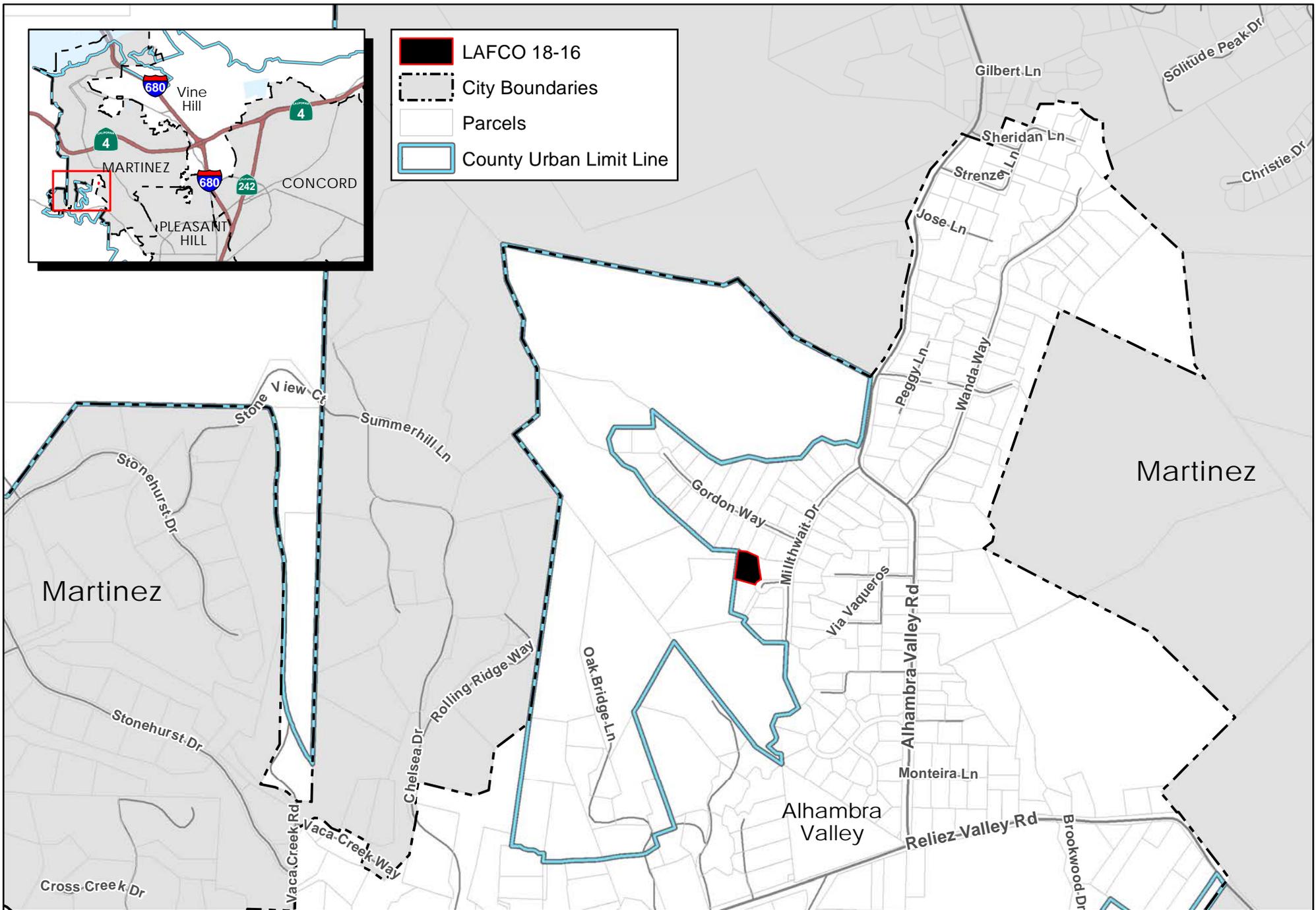
LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LAFCO

Attachments

- 1. Map of APN 367-111-002
- 2. LAFCO Policies for Out of Agency Service Agreements
- 3. Draft LAFCO Resolution 18-16

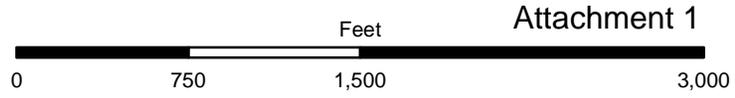
c: Tim Tucker, City of Martinez
 Khalil Yowakim, City of Martinez
 Ryan Spencer, Property Owner

LAFCO No.18-16 City of Martinez Out of Agency Service (2 Millican Ct, 367-111-002)



Map created 01/17/2019
 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.



2.1. POLICIES AND STANDARDS

J. Policies for Out of Agency Service Agreements

1) Introduction:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) requires a city or special district to obtain written approval from LAFCO prior to providing new or extended service outside its jurisdictional boundary, with certain exceptions (Gov. Code §56133). This section of the CKH sets forth a two-pronged test or criteria under which requests for out of agency services may be approved: either in response to an existing or impending threat to the health or safety of the public, or in anticipation of a later change in organization (i.e., annexation) for areas within the subject agency's sphere of influence (SOI). Specific procedures for submitting an out of agency service application can be found in Contra Costa LAFCO's Commissioner Handbook, section 3.15 Provision of Services by Contract.

2) Purpose:

The purpose of these policies is to guide the Commission in reviewing city and district requests to provide new or extended services by agreement outside their jurisdictional boundaries. This includes establishing policies and procedures to ensure that the application meets one of the two criteria under which approval may be granted, and to ensure consistency with respect to form, review and consideration of requests.

3) Objective:

The objective of these policies is to ensure that the extension of services by cities and districts outside their jurisdictional boundaries is logical and consistent with supporting orderly growth and development in Contra Costa County. Out of agency service is generally not intended to support new development.

4) Out of Agency Service Policies: General Statements

- a) Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is generally preferred to out of agency service.
- b) LAFCO will consider applicable Municipal Service Reviews (MSRs) and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations.
- c) Requests for out of agency service agreements are subject to the applicable provisions of the California Environmental Quality Act (CEQA).
- d) Commission approval is not required for cities or districts to provide new or extended services outside their jurisdictional boundaries if any of the exemptions apply in accordance with §56133(e) – see Section 3.15 for exceptions. The Commission encourages cities and districts to work with the Executive Officer in determining when the statutory exemptions may apply.

5) Form of Request:

a) All Requests

Requests to authorize out of agency service shall be filed with the Executive Officer by the affected city or district. The application shall be signed by an authorized representative of the city or district. Requests shall be made in writing with a completed LAFCO application, payment in the amount prescribed under the Commission's adopted fee schedule, appropriate environmental document, proposed service agreement, and an executed and recorded deferred annexation agreement (DAA) and waiver of property owner protest rights. The recorded DAA shall run with the land and be binding on all future owners of the property. An indemnification agreement will be required with each application.

All requests for out of agency service are subject to the applicable provisions of CEQA.

b) Requests Due to Health or Safety Emergency

The Commission may authorize a city or district to provide new or extended services outside their jurisdictional boundary and outside or inside their SOI in response to an existing or impending threat to public health or safety (“emergency” – e.g., failing well or septic system) with documentation from the County Environmental Health Division, and in accordance with §56133(c) and LAFCO procedures. If LAFCO approves an emergency out of agency service request, and the city or district fails to initiate the provision of services within six months of the Commission’s approval, the out of agency service approval shall expire, unless otherwise specified by LAFCO.

The Commission authorizes the LAFCO Executive Officer, in consultation with the Chair or Vice Chair, to approve a city’s or district’s request for out of agency service if there is an existing or impending public health or safety emergency, as documented by the County Environmental Health Division. The Executive Officer shall report to the Commission on his or her administrative approval of any emergency out of agency service agreements at the next regularly scheduled LAFCO meeting. Such administrative approval can be made if the following criteria are met:

- The property is currently developed
- The lack of service being requested constitutes an *immediate* (i.e., approval needed within two months) health and safety concern as documented by County Environmental Health
- There are physical restrictions on the property that prohibit a conventional service delivery method (i.e., septic tank, private well, etc.)

c) Requests 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.

6) Review of Request

The Executive Officer shall review the request in accordance with CKH and LAFCO’s policies and procedures.

7) Consideration of Request

Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation. The Executive Officer will present his or her report and recommendation at a public

hearing for Commission consideration in accordance with CKH and LAFCO's policies and procedures. The Executive Officer's written report will be made available to the public for review prior to the scheduled hearing and include an evaluation of the following factors:

- a) The ability of the applicant to extend the subject service to the affected land without adversely affecting current service levels within the existing service boundary.
- b) If the request is to address a health or safety emergency, whether the documentation satisfactorily demonstrates compliance with CKH and LAFCO policies and procedures.
- c) If the request is in anticipation of future annexation, whether the application provides adequate assurances in furtherance of a future annexation.
- d) The application's consistency with the policies and general plans of affected local agencies.
- e) The application's effect on growth and development within and adjacent to the affected land; and whether the out of agency service extension will contribute to premature development of fringe areas or development in areas designated for non-urban uses.
- f) Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

The Commission and the Executive Officer, as authorized by the Commission, may approve the request for out of agency service with or without conditions, or may deny the request. Unless otherwise specified in the LAFCO resolution of approval, out of agency service is allowed for the subject application only, and any future extension or expansion of service is subject to LAFCO's approval.

If the request to provide out of agency service is approved or denied, the applicant may request reconsideration within 30 days citing the reasons for reconsideration.

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING THE CITY OF MARTINEZ TO PROVIDE OUT-OF-AGENCY WATER SERVICE
2 MILLICAN COURT (APN 367-111-002)**

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

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

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 15303(d) of the CEQA Guidelines, consistent with the determination of the City of Martinez.
- B. Authorize the City of Martinez to extend water service outside its jurisdictional boundary to 2 Millican Court (APN 367-111-002), located in the unincorporated Alhambra Valley subject to the following terms and conditions:
 - 1. Water infrastructure and service is limited to one single family residential dwelling unit on the subject parcel,
 - 2. The City of Martinez has delivered to LAFCO an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the out of agency service, and
 - 3. The City of Martinez and the property owner have signed a 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.
- C. Approval to extend City of Martinez services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

* * * * *

PASSED AND ADOPTED THIS 13th day of February 2019, by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

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: February 13, 2019

Lou Ann Texeira, Executive Officer