

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

Sept 11, 2019  
Agenda Item 6

September 11, 2019 (Agenda)

LAFCO 19-04 City of Martinez - Out of Agency Service Request – 2913 Merle Avenue

## SYNOPSIS

This is a request by the City of Martinez to provide municipal water service outside its jurisdictional boundary to one parcel (APN 375-301-024) located at 2913 Merle Avenue in unincorporated Martinez (Attachment 1). The lot is currently vacant, and the landowner proposes to construct a single-family home.

The subject property is located within the City's sphere of influence (SOI) and Urban Limit Line. Surrounding land uses include single family residential to the north, south, east and west. The City is currently providing water service to the neighborhoods surrounding the subject property. The subject property is also within the Mt. View Sanitary District (MVSD) 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 authorizes LAFCO to allow 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.

City's Prior and Future Commitment to Annexations – As noted in LAFCO's previous 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 do not have representation in terms of electing the Martinez City Council and governance issues. However, these residents may address the City Council regarding policy decisions; and have equal rights under Proposition 218 to protest water rate increases.

The City of Martinez previously demonstrated commitment to annexing these 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.

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 Mt. View area, is not financially viable.

In addition to prior annexation efforts, the City has adopted resolutions stating the City's intent to pursue annexation of the Alhambra Valley area by 2020, and annexation of the Pacheco Boulevard corridor including the Mt. View area by the year 2030.

Since 2012, the City of Martinez has submitted 14 out of agency service applications to LAFCO including the subject proposal. In response to a recent increase in the number of out of agency service requests, the Commission asked the City to provide an update on future annexation activity. In June 2019, the City provided LAFCO with an update indicating that the City Council identified annexations as one of its top five goals over the next two years, and within the next year will explore an annexation study for the Mt. View/Pacheco Corridor and the Alhambra Valley areas.

Consistency with LAFCO Policies – The City has applied to LAFCO to extend out of agency water service to the subject property, which is in the Mt. View area. 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 adjacent to the City boundary; however, the City does not support annexing a single parcel in a neighborhood.

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 Mt. View area.

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 indicated its commitment to the future study and annexation of the Mt. View area. The City has also obtained and recorded a deferred annexation agreement on the subject parcels.

Water Supply to the Subject Property – The subject property is in the Mt. View area, which is characterized by high density single family residential use. The Mt. View area is partially served with water service through the City of Martinez and sewer service through the MVSD.

The City indicates that it has adequate water to serve the subject property. Water service will be provided from the existing 6-inch main on Merle Avenue. The water service lateral will consist of approximately 20 linear feet of one-

inch diameter pipe and a water meter. The one-inch water service line will be used for combined domestic water and fire supply.

**Environmental Review** – The City of Martinez found the extension of water service to the subject exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines sections 15303(a) and (d), and has filed a Notice of Exemption. The LAFCO Environmental Coordinator has reviewed the City's CEQA documentation and finds its 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.

**Option 1**     **Approve** the out of agency service request as proposed and approve Resolution No. 19-04 (Attachment 2).

- A. Find that the project is exempt pursuant to sections 15303(a) and (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 2913 Merle Avenue in unincorporated Martinez subject to the following terms and conditions:
  - 1. Water infrastructure and service is limited to one single family dwelling 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 to obtain more information.

### **RECOMMENDATION**

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

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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LAFCO

#### **Attachments**

- 1. Map of 2913 Merle Avenue
  - 2. Draft LAFCO Resolution 19-04
- c:     Scott Alman, City of Martinez  
       Randy Leptien, City of Martinez  
       Khalil Yowakim, City of Martinez  
       Jim Farr, Property Owner



**RESOLUTION NO. 19-04****RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
AUTHORIZING THE CITY OF MARTINEZ TO PROVIDE  
OUT-OF-AGENCY WATER SERVICE TO 2913 MERLE AVENUE**

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 California Government Code); and

WHEREAS, at the time and in the manner required by law the Executive Officer gave 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(a) and (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 property located at 2913 Merle Avenue (APN 375-301-024) located in unincorporated Contra Costa County subject to the following terms and conditions:
  - 1. Water infrastructure and service is limited to one single family 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 to 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 run 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 11<sup>th</sup> day of September 2019, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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TOM BUTT, 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: September 11, 2019

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Lou Ann Texeira, Executive Officer