



CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

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March 23, 2011 (Agenda)

Contra Costa Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553

March 23, 2011
Agenda Item 6

**Request for Reconsideration – Out of Agency Service – Marsh Landing Generating Station
(Northeast Antioch)**

Dear Commissioners:

SUMMARY:

On February 9, 2011, the Commission conditionally authorized the City of Antioch to provide out of agency water and wastewater services, and the Delta Diablo Sanitation District (DDSD) to provide out of agency wastewater service to the Marsh Landing Generating Station (MLGS) located at 3210 Wilbur Avenue in the unincorporated northeast Antioch area. See attached staff report for background (Attachment 1).

Government Code Section 56895 provides that when LAFCO adopts a resolution making determinations, any person or affected agency may file a written request with LAFCO requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. Requests for reconsideration must be received within 30 days of the adoption of the LAFCO resolution. The deadline for submitting a request for reconsideration in response to the City of Antioch's out of agency service request was March 11, 2011.

On March 9, 2011, LAFCO received a request for reconsideration from Commissioner Dwight Meadows (Attachment 2). The letter was received in a timely manner and is presented for the Commission's consideration.

DISCUSSION

Commissioner Meadows states in his request for reconsideration that on February 9, the Commission authorized the City of Antioch and DDSD to provide out of agency services to the MLGS located in unincorporated Northeast Antioch; and that the Commission's approval included several conditions including a requirement that the City and County provide monthly updates to the LAFCO regarding the status of the annexation of Northeast Antioch and tax transfer agreement, and the status of the

joint City/County Economic Development Strategy for Northeast Antioch. See LAFCO resolution as revised on February 9 (Attachment 3).

In response to the condition, on March 1, the City and County submitted their first monthly update (Attachment 4). The Commission was disappointed with the report and expressed strong concern regarding the lack of progress on the part of the City and County toward reaching agreement on the property tax exchange and ultimate annexation of the area. These concerns were communicated to the agencies in a letter dated March 10 (Attachment 5). Commissioner Meadows echoed these concerns in his request for reconsideration.

The Commission granted its conditional approval based on “urgency” so as not to jeopardize funding for the project, and to address the immediate need for water and wastewater services as represented by the parties. The Commission believed there would be a good faith effort that the City and County would accelerate their efforts to reach agreement property tax exchange and expedite the annexation of Northeast Antioch.

As discussed in the February 9 LAFCO staff report, annexation of the entire Northeast Antioch area to the City of Antioch is the ultimate goal, and is necessary to address critical service and boundary issues. The Northeast Antioch area contains three subareas – Area 1 (industrial), Area 2c (marina) and Area 2b (Viera). In August 2007, the City of Antioch submitted to LAFCO an application to annex Area 1. The MLGS project site is part of the pending annexation application. The annexation proposal is currently incomplete as the City and County have been unable to reach agreement on the property tax transfer. (See February 9 staff report for discussion and maps).

Commissioner Meadows notes in his request for reconsideration that LAFCO staff was recently advised by County Environmental Health (EH) that GenOn is discussing with County EH a temporary sewer facility; and that this seems to conflict with the representation that out of agency service was urgently needed, and also appears to be new and different information.

Following the Commission’s February 9 action, LAFCO staff received an inquiry from County EH staff requesting an update on the out of agency service request. LAFCO staff indicated that on February 9, the Commission approved the City’s request. County EH staff stated that their office was contacted by GenOn (general contractor Kewitt) to inquire about obtaining a permit for a 24-month temporary sewer containment facility. This created some confusion regarding the need for temporary on-site sewer service, as according to GenOn and the City, the timeframe for connecting to City water via a tie-in is relatively short (e.g., less than a week); and connection to City sewer service would involve trenching and would take 6-8 weeks once it commences.

County EH staff has since clarified that no holding tank application has been received by County EH; and that following LAFCO’s February 9 action, GenOn submitted drawings for a new temporary holding sewer containment facility to eventually replace the old holding tank, which will be decommissioned. County EH staff believes the purpose of a temporary holding tank would be to provide sewer service during the construction phase. Several weeks ago, County EH requested information from Kewitt regarding the estimated number of workers and estimated waste flow to be served by the temporary facility, along with the name of a licensed pumper, and an updated construction schedule that includes tasks related to water/sewer utility work.

On March 17, GenOn provided LAFCO with a letter that addresses the request for reconsideration and responds to most of the issues in the above paragraph. The letter does not include an updated construction schedule reflecting the tasks/timeframe related to water and sewer utility work (Attachment 6). According to the construction schedule provided in December 2010, construction activity will run through April 30, 2013, with the commercial facility online date of July 1, 2013. It appears from GenOn’s letter that GenOn plans to rely on temporary on-site sanitary sewer services during the construction phase. GenOn indicates that while construction of the sewer line is

important, the most immediate concern is providing requisite certainty to its lenders. GenOn urges the Commission to reaffirm its approval of the out of agency service request in a way that removes any possibility of further reconsideration.

On March 17, the City and County provided a letter to LAFCO supplementing their March 1st update (Attachment 7). The letter explains the intent of the March 1st report and expresses regret for the negative impression it gave the Commission.

OPTIONS

The Commission can either approve or disapprove a request for reconsideration. If the Commission approves the request, it can do so with or without amendment, wholly, partially, or conditionally. The Commission shall adopt a resolution making determinations that shall supersede the resolution previously issued. Adoption of a superseding resolution, even if substantially similar to the original resolution, shall trigger a new 30-day reconsideration period. If the Commission disapproves the request for reconsideration, it will not adopt a new resolution, and the February 9, 2011 resolution will remain in effect. Disapproval of the request for reconsideration concludes the reconsideration process. These options are further discussed below.

Option 1 – Approve the request for reconsideration.

If the Commission believes that the request for reconsideration meets the statutory requirements, and presents new or different facts that could not have been presented previously to the Commission (i.e., pursuit of a temporary sewer containment facility through County EH), the Commission will need to adopt a resolution making determinations that supersede the February 9. The new resolution will either:

- A. Reverse the prior decision and deny the request for out of agency service; or
- B. Reaffirm the February 9 approval **without** amendments; or
- C. Reaffirm the February 9 approval **with** amendments.

If the Commission chooses to reaffirm the February 9 approval **with** amendments, these are some of the additional terms and conditions the Commission may wish to impose. Item #3 below was included in the original draft LAFCO resolution before modifications were made at the February 9 meeting.

1. Approve the out of agency service request conditioned upon the City and County reaching agreement on the property tax transfer relating to Northeast Antioch and providing resolutions of such agreement to LAFCO within 90 days, at which time the out of agency service will become effective.
2. Approve the out of agency service request conditioned upon the City and County providing LAFCO with a detailed timeline for completing the tax exchange negotiations and the economic strategic plan.
3. Authorize the City of Antioch and DDSD to temporarily extend service outside their jurisdictional boundaries to the MLGS property in anticipation of annexation. Require the City to amend the term of the September 2009 “pre-annexation” agreement with Mirant Delta LLC to specify that the service connections are temporary and shall terminate two years following LAFCO’s approval of the out of agency service request. LAFCO must be named third party beneficiary of the agreement. The agreement must state that if service is not terminated by the date specified, LAFCO will have the right to enforce the agreement and take any action under the

law or equity that LAFCO deems necessary to effect the termination of services. The agreement will provide that under the terms of the indemnification agreement with LAFCO, the City shall indemnify LAFCO against any expenses arising from any legal actions challenging the application and related actions.

4. Approve the out of agency service request conditioned upon one or more LAFCO members being appointed to the city/county economic development strategy work program committee.

Option 2 - Disapprove the request for reconsideration.

If the Commission believes that the request for reconsideration does not meet the statutory requirements, the Commission should disapprove the request for reconsideration. If the Commission disapproves the request, it shall not adopt a new resolution making determinations. The February 9, 2011 resolution will remain in effect, and the reconsideration process will be complete. No further reconsideration of the February 9, 2011 decision would be authorized under Government Code Section 56895.

Option 3 - Continue the matter.

If the Commission needs more information, the Commission should continue the matter.

RECOMMENDATIONS

1. Waive the LAFCO request for reconsideration fee - Government Code Section 56383 provides that the Commission may establish a schedule of fees for LAFCO proceedings, including reconsideration. The statute also provides that the Commission may reduce or waive a fee if it is in the public interest to do so. The Contra Costa LAFCO schedule of fees includes a fee of \$2,500 related to a request for reconsideration; and
2. Consider the options and provide direction to LAFCO staff.

Sincerely,

Lou Ann Texeira
Executive Officer

Attachments:

- Attachment 1 - February 9, 2011 LAFCO staff report and attachments
- Attachment 2 - Request for reconsideration from Dwight Meadows dated March 9, 2011
- Attachment 3 - February 9, 2011 LAFCO resolution as revised
- Attachment 4 - City of Antioch and Contra Costa County monthly update dated March 1, 2011
- Attachment 5 - Letter from Contra Costa LAFCO dated March 10, 2011
- Attachment 6 - Letter from GenOn dated March 17, 2011
- Attachment 7 - Letter from the City and Antioch and Contra Costa County dated March 17, 2011
- Attachment 8 - Government Code Sections 56383 (fees) 56895 (reconsideration)

Attachment 1

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

February 9, 2011 (Agenda)

LAFCO 10-12

City of Antioch/Delta Diablo Sanitation District (DDSD) - Out of
Agency Service Request - (Mirant Marsh Landing)

SYNOPSIS

This is a request by the City of Antioch to provide water and wastewater services outside its jurisdictional boundaries and outside the boundaries of DDSD. The subject property is a 27-acre parcel located at 3210 Wilbur Avenue in the unincorporated Antioch area. The property is located within the City of Antioch's Urban Limit Line and within both the City and DDSD spheres of influence (SOIs) (Attachment 1).

This is a complex application as it involves 1) municipal services to a \$650± million power plant located in the unincorporated county, 2) is located in an area which is part of a pending annexation application submitted to LAFCO in August 2007, and 3) is adjacent to areas that are within the City's SOI, that suffer from inadequate municipal services, and should also be annexed to the City of Antioch. These issues are further discussed below.

DISCUSSION

Statutory Framework – Out of Agency Service

The Government Code and local LAFCO policy regulate the extension of out of agency service.

State law requires LAFCO review and approval of boundary changes and extensions of service without boundary changes. Specifically, Government Code §56133 states that "A city or district may provide new or extended services by contract or agreement outside of its jurisdictional boundaries only if it first requests and receives written approval from the Commission." Further, the law provides that the Commission may authorize a city or district to provide new or extended services under specific circumstances: a) outside the agency's jurisdictional boundaries but within its SOI in anticipation of a future annexation; or b) outside its jurisdictional boundaries 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 usually preferred for providing public 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.

The subject property is located outside the City's boundary, within the City and DDSD SOIs. Assessor, County GIS, and LAFCO records dating back to the early 1980s show the Northeast Antioch

area as being included in Antioch's SOI, indicating that Antioch would be the logical service provider for this area.

Out of Agency Service Request by City of Antioch

The City requests to provide out of agency service to extend water and wastewater services to the future Marsh Landing Generating Station (MLGS). As a condition of out of agency service, the City required MLGS to enter into an annexation agreement. In September 2009, the City and MLGS entered into such an agreement. The agreement provides that MLGS support annexation of the property to the City; agree not to file or support an annexation to DDSO that does not include concurrent annexation to the City; and agree to pay the City the annexation fees. The agreement terminates upon annexation. The "pre-annexation" agreement contains no indication of when annexation will occur.

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 subject property does not have failing water or wastewater systems; thus the City's proposal does not demonstrate an existing or impending threat to the health and safety of the public. As discussed below, the City has not shown a reasonable anticipation of annexation. Thus, neither of the legal requirements authorizing out of agency service appear to have been met.

Prior Annexation Application – Issues and Question of Reasonable Anticipation

The application before the Commission is a request to provide out of agency service. However, it is important to note that the MLGS property is part of a pending annexation (reorganization) proposal submitted to LAFCO in August 2007. The reorganization proposal is currently incomplete as the City and County have been unable to reach agreement regarding the property tax transfer.

The annexation proposal is integral to LAFCO in terms of boundary and service issues. Further, the various project approvals and agreements, including the CEC approval and agreements between the City and MLGS, are based on the timely annexation of the property.

City, County and LAFCO staff have discussed annexation of the entire Northeast Antioch area, including Areas 1, 2a and 2b (Attachment 2) and the critical issues, which include the following:

1. ***Need for Municipal Services*** – There is a need for municipal services in Areas 1, 2a and 2b currently and in the future. This was substantiated in the recent LAFCO Municipal Service Review reports covering water, wastewater and city services.

Area 1 is predominately occupied by heavy industrial uses (with the exception of the Antioch Dunes National Wildlife Refuge). **Area 2a** - is currently occupied predominately by marina and storage uses. Area 2a is designated for "urban waterfront" development and "service commercial" uses. **Area 2b** - is primarily residential (120 units) with some limited commercial and industrial areas. Nearly all of the residential units utilize individual domestic wells (water) and septic

systems (wastewater). The present and future land uses in these areas dictate the need for municipal services.

This out of agency service request is the second request by the City to extend water and wastewater services to property located in Area 1. In April 2008, LAFCO approved an out of agency service extension to the PG&E property (3225 Wilbur Avenue) based on the fact that the Area 1 reorganization proposal was currently pending, and that it was anticipated that the City and County would reach agreement on the property tax exchange within the next 2-3 months, as represented by the City and County. At the time, PG&E was completing construction and needed water and sewer services in order to operate beginning in May 2008.

The existing residential, commercial and industrial uses in Areas 2a and 2b currently rely on well and septic systems. Given the current and future land uses - along with environmental and public health issues discussed below - water, wastewater and other municipal services are needed in all three areas; and in accordance with LAFCO statute and policies, the area should be annexed to the City.

2. ***Illogical Boundaries/Islands*** – An important factor LAFCO must consider in reviewing an application is the definiteness and certainty of the boundaries of the territory, conformance to lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting boundaries.

All three areas are contiguous to the existing City boundaries. Area 2b is an island pursuant to statute as it is substantially surrounded by the City of Antioch. Area 2b meets the statutory criteria for a streamlined annexation, as it is subject to the "island" provisions (Gov. Code §56375) and can be processed without protest proceedings. As discussed with City and County staff, the existing island provisions are scheduled to sunset on January 1, 2014, unless there is legislation to extend the date. We urge the City to utilize these streamlined island annexation provisions before the sunset date.

3. ***Public Health Issues*** – the Northeast Antioch area relies primarily on individual domestic wells and septic systems. Area 2b is inhabited with an estimated 120 residential units. According to County Environmental Health, Area 2b has significant water, wastewater and code enforcement issues. The water is high in nitrates and is undrinkable. The septic systems are 60± years old, have outlived their useful lives, and are failing. This area poses significant public health issues. Area 2b also has police and code enforcement issues which came to light in 2009 in conjunction with the Garrido/Dugard kidnapping investigation.

Health and safety would be promoted by annexation of the entire area.

4. ***Environmental Justice and Service to Disadvantaged Communities*** – One of the factors LAFCO must consider in its review of a proposal is the extent to which the proposal would 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 provision of municipal services to disadvantaged communities was at the forefront of LAFCO legislation in the last legislative session. A bill was introduced (AB 853) that dealt specifically with annexation and the extension of services (i.e., water, wastewater, fire) to disadvantaged inhabited communities which currently lack these services. Although AB 853 was vetoed, similar legislation has been introduced this session (SB 63). LAFCOs have been actively following this legislation.

5. ***Property Tax Exchange*** – The annexation of the subject property has stalled due to the inability of the City and County to reach agreement on the tax exchange. The Revenue & Taxation Code §99 provides that in the event that the affected parties cannot agree on the tax exchange, they are required to engage in a specific process which involve the following:

A) Select a third-party consultant to perform a comprehensive, independent fiscal analysis, funded in equal portions by the parties. The analysis is to be completed within 30 days. *In September 2009, a fiscal analysis of the annexation of Northeast Antioch was prepared by Gruen Gruen + Associates. This report could be used as a basis for the fiscal analysis required pursuant to the Revenue & Taxation Code.*

B) If, upon the completion of the fiscal analysis period, no exchange of property tax revenues is agreed upon by the parties, the city and the county shall mutually select a mediator, funded in equal portions by those agencies, to perform mediation for a period not to exceed 30 days.

C) If, upon the completion of the mediation period, no exchange of property tax revenues is agreed upon by the parties, the city and the county shall mutually select an arbitrator, funded in equal portions by those agencies, to conduct an advisory arbitration with the city and the county for a period not to exceed 30 days.

At the conclusion of this arbitration period, the city and the county shall each present to the arbitrator its last and best offer with respect to the exchange of property tax revenues. The arbitrator shall select one of the offers and recommend that offer to the governing bodies of the city and the county. If the governing body of the city or the county rejects the recommended offer, it shall do so during a public hearing, and shall, at the conclusion of that hearing, make written findings of fact as to why the recommended offer was not accepted.

LAFCO staff has advised city and county staff of these provisions. The city and county have not pursued this process.

6. ***Economic Strategy*** – On January 11, 2011, the Antioch City Council adopted a resolution and work program for implementing a joint city/county economic development strategy for the Northeast Antioch area. The City Council appointed Council members Rocha and Agopian to serve on the work program committee. The economic development strategy is proposed as a

possible solution to the impasse related to the annexation and property tax exchange. Pursuant to the City's work program, key issues to be addressed include: 1) negotiate revenue sharing, 2) address challenges facing the existing residential area, 3) possible formation of a redevelopment district, and 4) possible use of a port authority.

The work program identifies a number of assumptions, goals and tasks. One of the key tasks identified is for the parties to reach consensus on the financial issues relevant to the Northeast Antioch area. The 2009 Gruen Gruen + Associates fiscal analysis provides projected sales and property tax data, as well as several tax sharing options. This report could potentially serve as a basis for the economic development strategy. The City anticipates that such a program will take approximately 18-24 months to complete at a total cost of \$500,000-\$750,000 to be funded in equal portions.

We understand that County staff is currently working on an item to bring to the Board of Supervisors on February 8, to request that the Board adopt a work program and appoint a representative to continue dialogue with the City of Antioch on a joint city/county economic development plan.

Current and Future Land Uses and MLGS Project Timeline

Land uses in the area are generally heavy industrial, with the primary uses being electrical generating facilities and other industrial uses.

The MLGS will be a 760-megawatt natural gas-fired peaking facility to be located adjacent to the recently completed Gateway Power Station (PG&E) and the existing Contra Costa Generating Station (CCGS), an older facility that is scheduled to be retired when the MLGS is complete. Until recently, the 27-acre property contained several large above-ground fuel storage tanks. These tanks have been removed and the site is largely vacant. The City and County general plan designations for the area are consistent; both allow for heavy industrial uses.

According to City staff, State approval is required for power plants in excess of 50 megawatts. On May 30, 2008, an Application for Certification was filed with the California Energy Commission (CEC). In August 2010, the CEC granted its approval to construct and operate the MLGS, subject to the timely performance of the CEC's Conditions of Certification and Compliance and Compliance Verifications.

In accordance with the MLGS construction schedule (Attachment 3), site mobilization was to begin on January 17, 2011, however this task has been delayed to mid February per CEC staff. As of February 1, 2011, CEC staff indicates that some of the CEC conditions have not yet been met, including administrative approval of a soil remediation plan. Further, the State reports that there are other outstanding issues which may impact the construction schedule. Thus, the immediate need for water and sewer service is uncertain.

The City of Antioch provides water treatment and distribution, and wastewater collection services. The City's principal sources of untreated water supply are the San Joaquin River and the Contra Costa

Canal. Canal water is purchased from the Contra Costa Water District (CCWD). The City wastewater collection system discharges the wastewater into the DDS D conveyance system for treatment, disposal, and the production of recycled water.

Water Service - Historically, the City has provided water service the CCGS facility which is located outside the City's corporate boundaries. According to the City, water service has been provided to the site since the 1940s/1950s, which predates LAFCO. (Attachment 4).

According to the City, there is an existing water line on site that serves the remaining two units of the CCGS. This existing water line would be extended to the MLGS site. It is estimated that the MLGS will use a maximum of 50 acre-feet per year of water to serve process requirements. Process water requirements consist of evaporative cooler makeup, service water and combustion turbine washes. The MLGS will not include a steam cycle or utilize water for purposes of rejecting waste heat produced during power plant processes to the atmosphere. This avoids the need for a large water supply required by power generation projects that use water to reject waste heat from a steam cycle or other power plant processes.

According to MLGS representatives, the water line, a tie-in, can be completed on a relatively short time line (e.g., less than a week).

Sewer Service - The City indicates that there is an existing sewer line located on the north side of Wilbur Avenue, which lies east of the MLGS property. This sewer line will need to be extended along the Wilbur Avenue frontage, and a lateral line extended to the MLGS site. It is estimated that the MLGS will generate approximately 0.2 million gallons per day of process wastewater and 150 gallons per day of sanitary wastewater. According to the City, this existing line has capacity to handle the projected flows from the MLGS site. The facility will connect to the DDS D Bridgehead pump station conveyance facility. The DDS D indicates that it has the ability to serve the site (Attachment 5). MLGS representatives confirm that construction of the sewer connection could entail trenching across an access road on the existing property and along Wilbur Avenue. It is estimated that this connection work will take six to eight weeks once it commences.

According to CEC staff, the original MLGS application provided for use of municipal wastewater service and the use of groundwater (MLGS Commission Decision, August 2010, CEC-800-2010-017 CMF, Docket Number 08-AFC-03). In February 2010 (Attachment 6) and May 2010 (Attachment 7), the City of Antioch informed the CEC that it was in the process of annexing the MLGS site, along with the surrounding areas, and that annexation should be acted on by LAFCO in the late Spring/Summer 2010. The City's letters acknowledge that the primary source of water for the MLGS is projected to be from wells, and that this will require onsite water treatment. The City suggested to the CEC that the onsite treatment would be cumbersome, and that City water would be a better source. Pursuant to the City's offer to provide potable water to the site, CEC staff revised the Staff Assessment and concluded that the MLGS use of either groundwater or City water for process uses will comply with the CEC water policy. The CEC approval and related conditions maintain that the primary source of water shall be groundwater, and that the City of Antioch water is an alternative water source. The CEC Staff Assessment also notes that the small amount of potable water needed for domestic and sanitary water will be supplied by the City of Antioch via a connection to the existing line on the CCGS site.

The CEC terms and conditions also include provisions for MLGS contributing funds to the City of Antioch for water conservation measures and for other means of support to the City. In 2009, the City and the Mirant Delta LLC (MLGS) entered into a pre-annexation agreement and a separate community benefit agreement. The pre-annexation agreement provides that MLGS 1) support annexation of the property to the City; 2) agree not to file or support an annexation to DDS that does not include concurrent annexation to the City; and 3) agree to pay the City the annexation fees. The term of this agreement terminates upon annexation.

The community benefit agreement provides financial assistance to the City in support of the annexation of the Northeast Antioch area and protection of human health and the environment. Over the initial 10-year term of the agreement, contributions to the City will be approximately \$1,850,000. The agreement provides that after the 11th anniversary of the commercial operation date, subject to agreement, the parties will enter into an extension of the community benefit agreement which provides substantially the same economic return to the City. Presently, there is no community benefit agreement between Mirant and the County.

Both the Contra Costa County Department of Conservation and Development (Attachment 8) and the City of Antioch (Attachment 9) express support for the Commission's approval of the out of agency service request.

Environmental Impact of the Proposal

City staff has completed two environmental reviews that identify and assess the environmental effects of the annexation of all three areas to the City, as additional information to consider along with the fiscal analysis.

In March 2008, the City of Antioch, as Lead Agency, adopted an Initial Study/Negative Declaration with respect to the proposed extension of services to Area 1. More recently, in March 2010, the City adopted an Initial Study/Mitigated Negative Declaration with respect to the environmental impacts of extending services to Areas 1, 2a and 2b. The LAFCO Environmental Coordinator has reviewed these environmental documents and finds they are 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 Defer approval of the request for out of agency service until the parties have completed the process required pursuant to Rev & Tax Code §99 (i.e., fiscal analysis and possible mediation/arbitration) and have reported back to LAFCO.

At this time, there is not sufficient information available to determine whether there is a reasonable anticipation of annexation; in addition, there is a potential for the City and County to forego annexation in favor of the out of agency service process. For this reason, before LAFCO considers approval of the out of agency service request, it would be prudent to require the City and County to proceed with the process required by the Rev & Tax Code so that the Commission can determine if there is a reasonable anticipation of annexation. If the Rev & Tax Code process is unsuccessful, then LAFCO might potentially conclude that this out of agency service request is not, in fact, in anticipation of a future annexation, because the City and County cannot agree on the property tax exchange, and because it is contrary to LAFCo's mission. On the other hand, if Rev & Tax Code process is successful, then LAFCO might potentially conclude that there is a reasonable anticipation of annexation. At this time, there is not sufficient evidence in the record to make that determination.

According to statute, this process is expected to take up to 90 days, and could take less time should the parties agree to use the fiscal analysis previously prepared by Gruen Gruen + Associates as a basis for the negotiations.

Effects of Option 1 – This option would provide the City and County an opportunity to complete the process as required by the Rev & Tax Code, and potentially come to an agreement regarding the exchange of property tax.

This option would also provide the City and County additional time to formulate/modify the joint economic development strategy.

Further, this option provides LAFCO with additional assurance that the parties are working together to reach agreement on a comprehensive tax exchange agreement with the goal of annexing all of the Northeast Antioch area to the City of Antioch.

Although we believe that the MLGS construction could accommodate this 90-day delay, it is possible that such a delay could impact the project. The construction schedule provides that facility construction, startup and commissioning are expected to be complete by Spring/Summer 2013, with the commercial facility online date of July 1, 2013. The construction schedule provides that site mobilization was to commence on January 17, 2011. In recent discussions with CEC staff, we understand that site mobilization is delayed to mid February due to some outstanding CEC conditions. Significant construction activity, including site preparation and site grading is expected to commence on April 1, 2011. It is unknown whether a 90-day delay, to allow the City and County to pursue statutory requirements relating to the tax exchange agreement, will have a detrimental effect on construction activity.

The MLGS representatives have expressed concern that denial or delay in LAFCO's approval of the out of agency service request could impact the project funding

(Attachment 9). According to MLGS representatives, Mirant Marsh Landing, LLC ("MML") entered into a Credit Agreement, dated October 8, 2010, by and among the lenders and MML, as Borrower. The Credit Agreement addresses further approvals required for the MLGS project, including an "agreement and/or permit for sewer service from City of Antioch (to be obtained prior to completing the connection to the sewer line)." Given the focus on timely receipt of the various approvals, permits and agreements that are identified in the Credit Agreement, Section 5.11 of the Credit Agreement provides that MML is required, on a quarterly basis, to provide certified copies of any such approvals received and to provide prompt notice of any material dispute, litigation, investigation or proceeding that is expected to result in the rescission, termination, suspension or modification of any such approvals.

It is unknown whether a 90-day deferral of the out of agency service request will have a negative effect on the project funding.

Option 2

Deny the request, thereby prohibiting the City from providing water and wastewater services to the site prior to annexation. In accordance with the CKH Act and LAFCO policy, out of agency service is typically used as a temporary measure to remedy a public and health and safety threat; these conditions are not present in this case.

This out of agency service application could potentially circumvent the annexation process and requirements, and is contrary to the purpose and policies of LAFCO.

Annexation of the Northeast Antioch area is the preferred course as it promotes the efficient delivery and logical extension of municipal services, and encourages orderly growth and development – which reflect the foundation of LAFCO. The parties should complete the process as provided in the Rev & Tax Code to reach agreement on the property tax transfer and complete the annexation.

Effects of Option 2 – Denial of the application could result in MLGS having to meet its water and wastewater needs through on-site sources, which is currently inconsistent with the CEC approval and could necessitate reconsideration by the CEC. Further, according to MLGS representatives, on-site service would be in conflict with the MLGS loan agreements and could jeopardize the funding and feasibility of the project. The MLGS is a \$650± facility to be funded with a \$500± million credit facility (bond) and a \$150 million letter of credit.

Option 3

Approve the out of agency service request and direct LAFCO staff to prepare and execute the LAFCO resolution reflecting the terms and conditions.

Effects of Option 3 – Approval of the out of agency service request would address the need for municipal water and wastewater service to the project site. However, once water and sewer services are extended to the site, there may be little incentive for the

City and County to continue to negotiate the tax exchange agreement and to complete the annexation.

This is the second out of agency service request presented to LAFCO since the proposal to annex Northeast Antioch (Area 1) was submitted to LAFCO in August 2007. The first out of agency service request was approved by LAFCO in April 2008 (PG&E/Gateway) with the understanding that the City and County would reach agreement on the property tax exchange by June 2008.

If the Commission is inclined to approve this out of agency service request, staff recommends such approval be subject to the following terms and conditions:

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed the City of Antioch's 2010 Mitigated Negative Declaration with respect to the proposed Northeast Antioch Area Reorganization project and adopts the findings included therein that approval of the out of agency service request would have no significant effects on the environment.
- B. Authorize the City of Antioch and DDSA to temporarily extend water service outside their jurisdictional boundaries to the MLGS 27-acre parcel located at 3210 Wilbur Avenue in the unincorporated Antioch area and in anticipation of annexation.
- C. Prior to the extension of service, the City must deliver an executed indemnification agreement. The indemnification agreement should require the City to indemnify LAFCO from costs or expenses, including attorneys fees, arising out of challenges to the out of agency service or incurred by LAFCO in order to terminate temporary services, should those temporary services extend beyond the authorized two year period.
- D. Require the City to amend the term of the September 2009 "pre-annexation" agreement with Mirant Delta LLC to specify that the service connections are temporary and shall terminate two years following LAFCO's approval of the out of agency service request. LAFCO must be named third party beneficiary of the agreement. The agreement must state that if service is not terminated by the date specified, LAFCO will have the right to enforce the agreement and take any action under the law or equity that LAFCO deems necessary to effect the termination of services. The agreement will provide that under the terms of the indemnification agreement with LAFCO, the City shall indemnify LAFCO against any expenses arising from any legal actions challenging the application and related actions.
- E. Require the City and County to initiate the tax transfer process required pursuant to Revenue & Taxation Code §99 and report back to LAFCO on May 11, 2011, regarding the status/outcome of the process and the status of the pending annexation of Northeast Antioch.
- F. Require the City and County to provide LAFCO with quarterly updates regarding the status of the economic development strategy.

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

RECOMMENDATION

Option 1

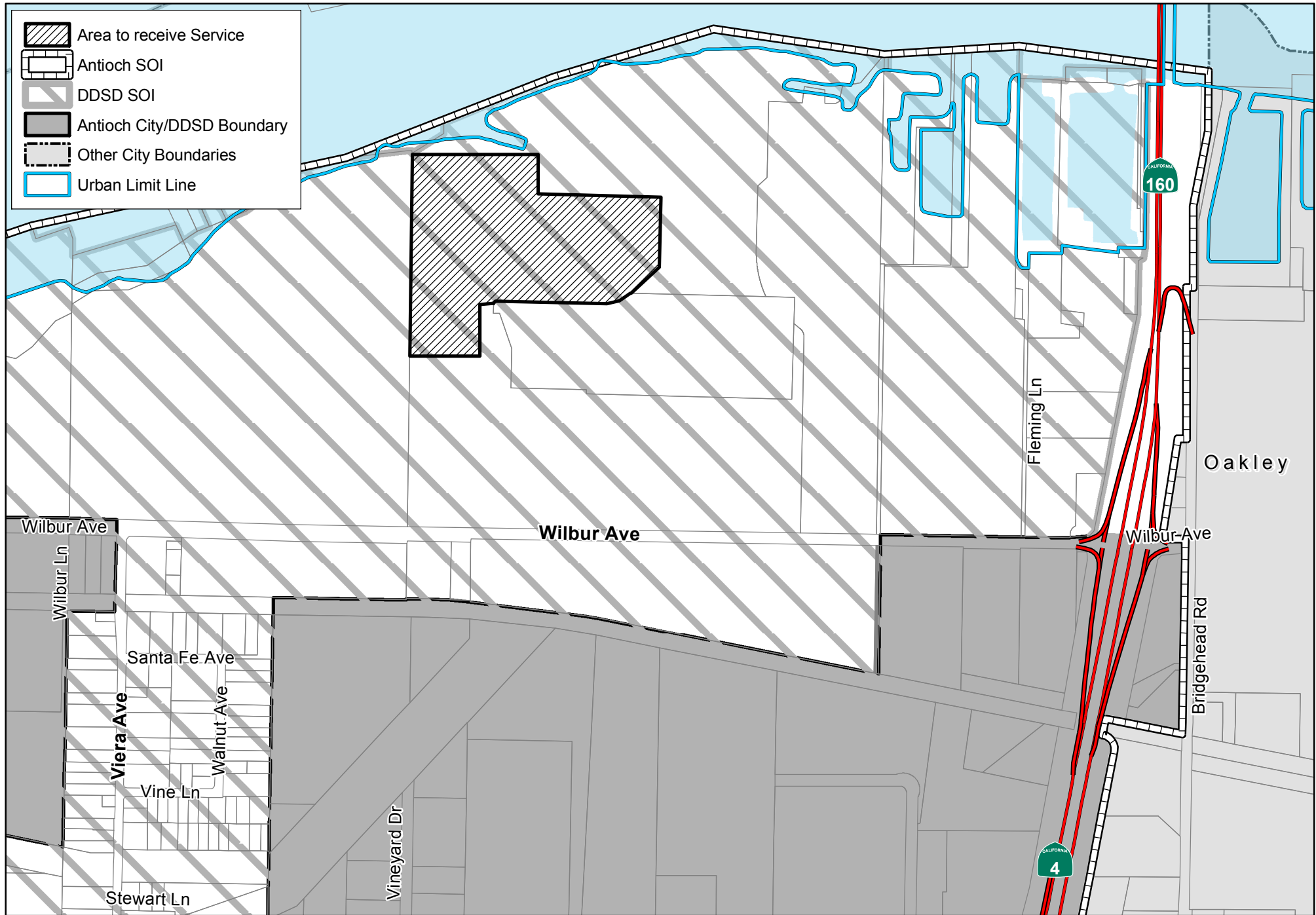
LOU ANN TEXEIRA, EXECUTIVE OFFICER
CONTRA COSTA LAFCO

Attachments

1. Map of Marsh Landing Generating Station Property
2. Map of Northeast Antioch- Areas 1, 2a and 2b
3. MLGS Construction Schedule (December 2010)
4. Map of Existing City Utilities
5. Will Serve Letter from DDS dated January 20, 2011
6. Letter from the City of Antioch to the CEC dated February 17, 2010
7. Letter from the City of Antioch to the CEC dated May 25, 2010
8. Letter from Contra Costa County Department of Conservation and Development to LAFCO dated January 31, 2011
9. Letter dated February 2, 2011 to LAFCO from the City of Antioch
10. Letter dated February 1, 2011 to LAFCO from Marsh Landing LLC (GenOn)

c: Distribution

LAFCO No. 10-12: City of Antioch/DDSD Out of Agency Service (Mirant Marsh Landing)



- Area to receive Service
- Antioch SOI
- DDSD SOI
- Antioch City/DDSD Boundary
- Other City Boundaries
- Urban Limit Line

Wilbur Ave

Wilbur Ave

Wilbur-Ave

Oakley

Fleming Ln

Bridgehead Rd

Santa Fe Ave

Viera Ave

Walnut Ave

Vine Ln

Stewart Ln

Vineyard Dr

0 125 250 500 Feet

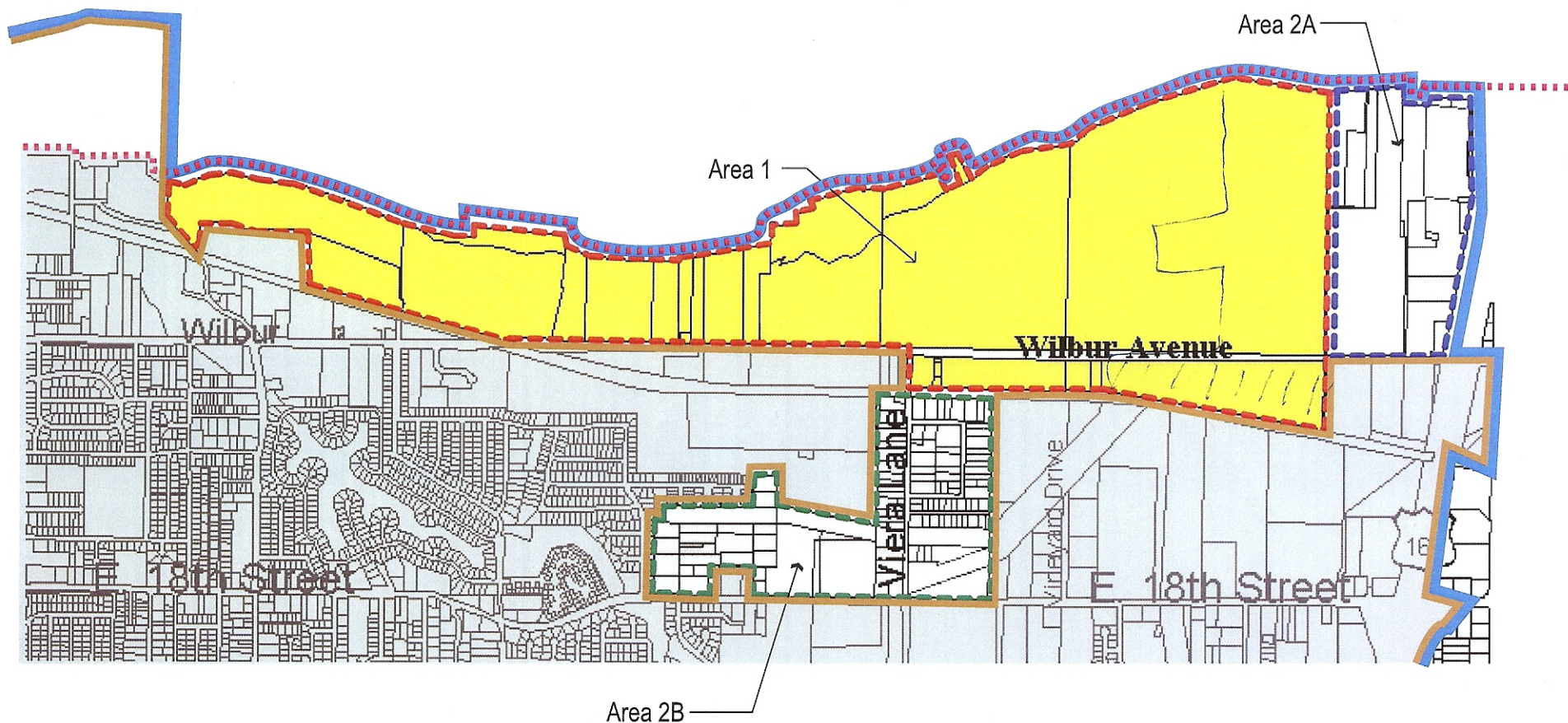
Map created 01/27/2011
by Contra Costa County Department of Conservation and Development - GIS Group
651 Pine Street, 4th Floor North Wing, Martinez, CA 94553-0095
37.594845N 122.0635384W

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.



Attachment 1



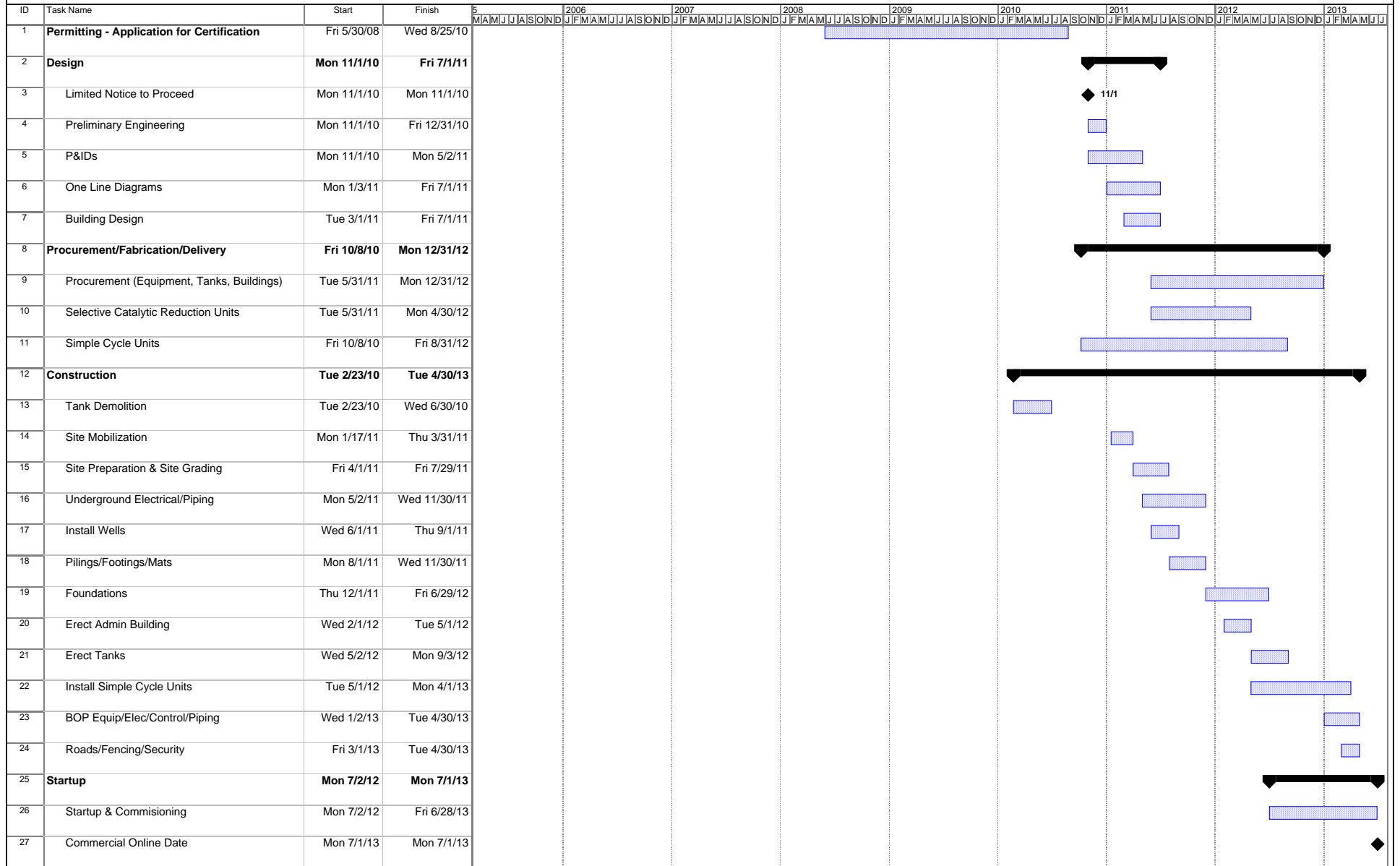


LEGEND

- | | |
|--|--|
| Urban Limit Line | Area 1 |
| City Sphere of Influence (SOI) | Area 2A |
| City Boundary | Area 2B |
| DDSD Service Boundary and SOI | |

EXHIBIT 2
Current Administrative Boundaries
Industrial Areas Along Wilbur Avenue –
Administrative Reorganization

Marsh Landing Generating Station



Date:12/15/10

Task



Critical Path Item ◆

Summary



Preliminary Project Schedule





Delta Diablo Sanitation District

OFFICE AND TREATMENT PLANT: 2500 PITTSBURG-ANTIOCH HIGHWAY, ANTIOCH, CA 94509-1373

TEL.: (925) 756-1900 ADMIN. FAX: (925) 756-1961 MAINT. FAX: (925) 756-1963 OPER. FAX: (925) 756-1962 TECH. SVCS. FAX: (925) 756-1960
www.ddsd.org

January 20, 2011

Mr. Victor Carneglia
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007



SUBJECT: PROPOSED EXTRATERRITORIAL SANITARY SEWER SERVICE FOR MIRANT MARSH LANDING GENERATING STATION, 3201 WILBUR AVENUE, 26.84 ACRE PORTION OF APN 051-031-017, NORTHEAST ANTIOCH REORGANIZATION, AREA 1, ANTIOCH, CALIFORNIA

Dear Mr. Carneglia:

This letter is to inform you that Delta Diablo Sanitation District has the ability to provide wastewater conveyance and treatment services and that the District will provide wastewater conveyance, treatment and disposal services upon approval by LAFCO of an extraterritorial service application, execution of a joint City or standalone extraterritorial agreement with the District, comply with all pretreatment requirements, and payment of all fees and charges. The subject area will be considered a part of Zone 3 of the District. The City of Antioch is responsible for sewer collection system services and we understand that Mirant MLGS is responsible for the extension of the City pipeline in Wilbur Avenue which flows easterly to the District's Bridgehead Pump Station conveyance facility. Mirant MLGS estimated peak wastewater discharge is 118 gpm.

Service to other parcels in Area 1 can be extended once the areas are annexed to the City and District and specific projects are identified and development occurs. Service will be subject to the planning and design review and approval of both the City of Antioch and Delta Diablo Sanitation District.

The District collects Capital Facility Capacity Charges to build conveyance and treatment capacity as it is consumed by new connections. Capacity is provided through facilities constructed by the District as prescribed in its Conveyance and Treatment Plant Master Plans. These master plans rely on the General Plans and City sewer planning reports for the communities in the District service area for information on future service needs. The District has both constructed and planned capacity in its conveyance and treatment systems to serve the Marsh Landing Generating Station site.

Mr. Victor Carneglia

January 20, 2011

PROPOSED EXTRATERRITORIAL SANITARY SEWER SERVICE FOR MIRANT MARSH
LANDING GENERATING STATION, 3201 WILBUR AVENUE, 26.84 ACRE PORTION OF APN
051-031-017, NORTHEAST ANTIOCH REORGANIZATION, AREA 1, ANTIOCH, CALIFORNIA
Page 2

Please note service and available capacity is not guaranteed until the applicable fees are paid. If you have any questions, please feel free to contact Patricia Chapman at (925) 756-1939.

Sincerely,

Don H. Allen for

Caroline Quinn
District Engineer

CQ/PEC:clg

cc: Darrell Cain, Laboratory Director, DDS
Patricia Chapman, Associate Engineer, DDS
Gary Darling, General Manager, DDS
Dean Eckerson, Principal Engineer, DDS
John Chilemi, Mirant Marsh Landing, LLC
Lou Ann Texeira, Executive Director, LAFCO
Karen Ustin, Business Services Director, DDS
Chron File
DEV.03-DEVDOC-841



February 17, 2010

John Chillemi
 President, Mirant Marsh Landing, LLC
 696 West 10th Street
 Pittsburg, California 94565

Dear Mr. Chillemi:

DOCKET**08-AFC-3**

DATE FEB 17 2010

RECD. FEB 23 2010

The City of Antioch ("City") has had discussions with Mirant Marsh Landing, LLC ("Mirant") regarding the use of potable water and the discharge of process wastewater from the proposed Marsh Landing Generating Station ("MLGS"), a 760 megawatt natural gas-fired electricity generating facility that Mirant is developing at the site of the existing Contra Costa Power Plant. The City understands that Mirant proposes to discharge an estimated 0.2 million gallons per day of process wastewater, as well as 150 gallons per day of sanitary wastewater from the MLGS directly to the City's sanitary sewer line along Wilbur Avenue, which will convey the wastewater to the Delta Diablo Sanitation District's Bridgehead Lift Station. Delta Diablo Sanitation District treats sanitary sewer flows from the City of Antioch and as such, is the agency to be contacted to obtain permission to sewer into their system and plant. It is also our understanding that the MLGS will utilize approximately 50 acre-feet per year of potable water.

The City is capable of providing potable water and sewer collection services to the MLGS in sufficient quantities to accommodate the MLGS as outlined above, specifically the 0.2 million gallons per day of process wastewater, the 150 gallons per day of sanitary wastewater, and the need for 50 acre feet per year of potable water. Provision of these utilities by the City of Antioch is contingent on the property on which the MLGS is located being annexed into the City of Antioch. This annexation process, which has been formally initiated by the City of Antioch and includes the MLGS site, is well underway and should be acted on by LAFCO and finalized in the late Spring/Summer 2010.

This letter also confirms that the City will allow the discharge of MLGS process and sanitary wastewater into the City's sanitary sewer system and connection to the City water system provided that Mirant provides and pays for all required physical connections to the City systems, pays all required and applicable fees in effect at the time of any connection, and agrees to enter into a reimbursement agreement with the City of Antioch to pay for Mirant's proportionate share of sanitary sewer capacity previously funded by a downstream property owner. This letter constitutes a "will-serve" letter that can be provided to the California Energy Commission in support of Mirant's application for certification of the MLGS.

Sincerely,

Ron Bernal, P.E.
 Director of Public Works

cc: Jim Jakel, City of Antioch City Manager
 Lynn Tracy Nerland, City of Antioch City Attorney
 Victor Carniglia, City of Antioch Project Manager
 Chip Little, Mirant

COMMUNITY DEVELOPMENT

P.O. Box 5007, Antioch, CA 94531-5007

May 25, 2010

Mr. Mike Monasmith
 California Energy Commission
 1516 Ninth St., MS-15
 Sacramento, CA 95814

Dear Mr. Monasmith:

Thank you for the opportunity to comment on the Staff Assessment (SA) for the Mirant Marsh Landing Generating Station (MLGS) Application for Certification (08-AFC-3). As the CEC is aware, the site where this project is proposed is in the City of Antioch's Sphere of Influence, and the City is now in the process of annexing the MLGS site, along with the surrounding area. We have a number of comments on the SA, most of which are minor in nature, as noted below:

1) Water Resources:

As indicated in previous correspondence to the CEC, the City of Antioch is capable of providing water for both process and potable water needs to the MLGS. The SA states that the primary source of water for the MLGS is projected to be from wells. This well water, which the SA indicates is brackish, will require onsite treatment in order to meet the water quality requirements of the MLGS. The SA further states that the onsite facilities to treat the well water would consist of a trailer with five pressure vessels, along with a trailer to hold the effluent from the water filtration process. The trailer handling the effluent would then need to be towed away to a licensed disposal site after approximately 24 hours of plant operation. Given the power profile of the MLGS, the SA estimates that this trailer would need to be towed to a disposal site approximately 71 times per year.

This entire well water treatment process from a City perspective seems cumbersome, with on site trailers that would need to be towed away as often as a daily basis. This arrangement seems all the more awkward given the fact that City treated water is readily available to serve the MLGS on site. Mirant has tested the City water, and has determined that the available City treated water meets their standards for operating the MLGS. The MLGS will be using City water as a potable water supply, irrespective of the use of wells for process water. As noted in earlier documentation to the CEC, the City has sufficient water supply and treatment capacity to provide the 50 acre feet per year of process water that the MLGS is projected to need.

Recently, CEC staff proposed a thoughtful and innovative solution to this water supply dilemma. This solution would involve Mirant utilizing City water for both potable and process uses. In order to offset the impact of MLGS water usage of the City's water supply, Mirant would provide the City with sufficient funding to correspondingly enhance the City's ongoing water conservation efforts. The City is very supportive of this approach proposed by the CEC, as it would avoid the awkward "trailer water treatment" scenario, while permitting the City to enhance its water conservation efforts, resulting in a rare "win, win". Given this, the City would prefer that the SA be modified to designate the City of Antioch as the primary source of process and potable water for the MLGS, with a mitigation measure added requiring Mirant to fund enhanced citywide water conservation efforts.

In the future, as the MLGS moves forward towards construction, it may be determined that it isn't feasible for the MLGS to utilize treated well water as process water. Under such a scenario, it is likely that the MLGS will realize construction cost savings by not having to drill the wells, install the pumps, construct water lines, purchase/lease the onsite process water treatment facilities etc. A portion of this future construction cost savings could be directed to further enhance the City's water conservation programs. This level of financial support has the potential to transform the City's water conservation program to a whole new level of effectiveness. In order to address this possibility, the City requests that any mitigation measure stipulating the applicant's support of

Building Services Phone (925)779-7065 – Fax (925)779-7034
 Planning Services Phone (925)779-7035 – Fax (925)779-7034
 Neighborhood Improvement Phone (925)779-7042 – Fax (925)779-7034
 Land Development/Engineering Phone (925)779-7035 – Fax (925)779-7034

**PROOF OF SERVICE (REVISED 4/19/10) FILED WITH
 ORIGINAL MAILED FROM SACRAMENTO ON 5/27/10**

TKG

Citywide water conservation efforts be written flexibly enough to allow the level of support to the City to be enhanced if it is determined that wells are ultimately not feasible as a source of process water for the MLGS.

2) Road Improvements:

The MLGS is proposed on an approximately 147 acre parcel that has significant frontage on Wilbur Avenue. Both the County and the City's General Plan show Wilbur Avenue as a four (4) lane arterial roadway. Currently, Wilbur Avenue is unimproved along the frontage of the parcel on which the MLGS is proposed, with no curb, gutter, sidewalk, or landscaping/irrigation. Based on the documentation in the SA, the MLGS will not generate significant traffic once the power plant is in operation. We surmise this is the reason that the CEC is not requiring Mirant in the SA to construct frontage improvements on Wilbur. As the CEC staff may be aware, there is currently a Parcel Map application being processed in the County to subdivide the property on which the MLGS is proposed into two separate parcels. We are working with Contra Costa County staff on the appropriate requirements for frontage improvements on Wilbur Avenue as a condition of approval of the Parcel Map application. As a result, we are not anticipating or requesting that the CEC address the question of Wilbur Avenue frontage improvements as part of the CEC review and approval process.

3) Land Use:

- a) Upon annexation the MLGS will be required to participate in the City wide streetlight landscape maintenance district. There is also a similar maintenance program for the County. The City is coordinating with the County in addressing this issue as part of the Parcel Map process just mentioned in this letter. While a mitigation measure is not necessary, the CEC may want to document this fact in the SA.
- b) It would be helpful in the SA if in the discussion on annexation to the City, it was also mentioned that annexation to the Delta Diablo Sanitation District (DDSD) is also required, and is part of the City's annexation application currently before LAFCO.

4) Public Health:

- a) While the Greenhouse Gas section of the AFC contains a detailed analysis of how the MLGS will favorably influence the "retirement" of older, less efficient power plants up and down the State, it does not specifically provide an analysis of the more local issue, namely the eventual retirement of Contra Costa 6 and 7, which are located on the same site as the MLGS. It is our understanding that there is not a legal requirement that Contra Costa Units 6 & 7 cease operation once the MLGS comes on line, although the Biology Section of the AFC under the heading "Noteworthy Public Benefits" states that the MLGS will replace the existing units.

In any case, it is likely that there is a strong positive correlation between the MLGS becoming operational, and the less efficient Contra Costa Units 6 and 7 being "retired". The retirement of these older, less efficient power plants should have a substantial net positive effect from a public health and air quality perspective. Given this, it would be useful for decision makers if the SA included data showing what the net effect would be on public health (and related issues such as air quality), in the likely scenario where the MLGS becomes operational and Contra Costa Units 6 and 7 are retired. The SA could include appropriate disclaimers making in clear that Contra Costa Units 6 and 7 are not required to come offline with the initiation of operation of the MLGS, and simply note that the MLGS increases the likelihood of their "retirement" in the near term.

5) Visual Impacts:

The section on visual impacts is very thorough although there are a couple of issues we would like to see addressed/clarified:

- a) The SA recommends a number of mitigation measures that involve providing landscaping around the "facility boundaries" in order to visually screen the project. It's unclear in reading the report what constitutes the facility boundaries. From a City perspective, we feel it is most important to enhance the visual character of the overall site on which the MLGS is located. While screening the immediate boundaries of the 27 acre site on which the MLGS is proposed is useful, the reality is that this 27 acre site is located over 1000 feet from Wilbur Avenue, which is the location from which the general public would be viewing the property. We feel that the efforts in landscaping the immediate boundaries of the MLGS would be better spent enhancing the Wilbur frontage of the 147 acre parcel on which the MLGS is proposed.
- b) The most significant visual "blight" in the area is the existing 400 ft. plus tall stack that is a component of the exiting Contra Costa power plants. As previously discussed under the Public Health section of this comment

Mr. Mike Monasmith
California Energy Commission
May 26, 2010
Page 3

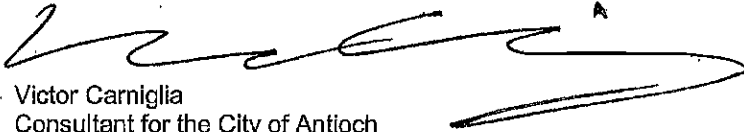
letter, the City understands that the proposed MLGS is not tied to the existing Contra Costa Power facilities located on the same site as the MLGS. The purpose of this comment is to be on record that the City hopes that the removal of the 400 ft. stack is a first step in the eventual decommissioning of the Contra Costa Power facilities.

6) Socioeconomics:

- a) The project site, as correctly noted, is in the Antioch Unified School District. The report indicates that the school impact fee for the proposed \$550 million MLGS construction project is only \$6,120. While we understand that the MLGS will generate significant property tax for schools, this school impact fee seems vanishingly small for a project of this scale, and works out to be just .001% of the total project cost. It would be helpful for the SA to clarify how this school impact fee was calculated.
- b) The report indicates that the County's share of property tax would be roughly \$6 million/yr. and refers to a report titled URS 2009b. It would be helpful to see how this was calculated, and if the report discussed the fact that upon annexation the City of Antioch would share in the property tax based on the formulas agreed to by the City and the County in the Tax Transfer Agreement negotiated as part of the annexation process.

Thank you again for the opportunity to comment on the Staff Assessment, and we look forward to continuing to work closely with CEC staff on the MLGS application. Please feel free to contact me if you have any questions concerning the preceding comments, phone 925-779-7036, or e mail vcarniglia@ci.antioch.ca.us.

Sincerely,



Victor Carniglia
Consultant for the City of Antioch

cc Jim Jakel, City Manager
Lynn Nerland, City Attorney
Mindy Gentry, Associate Planner
City Council

Department of
Conservation &
Development

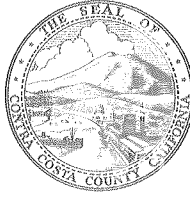
Contra
Costa
County

Catherine O. Kutsuris
Director

Aruna Bhat
Deputy Director
Community Development Division

Community Development Division

County Administration Building
651 Pine Street
North Wing, Fourth Floor
Martinez, CA 94553-1229



Phone:

January 31, 2011

Ms. Lou Ann Texeira
Executive Officer
Contra Costa Local Agency Formation Commission
651 Pine Street, 6th Floor
Martinez, CA 94533

Subject: *Comments on City of Antioch & Delta Diablo Sanitation District Out of Agency Service Agreement Request for Mirant Marsh Landing (LAFCO 10-2)*

Dear Ms. Texeira:

The Contra Costa County Department of Conservation & Development has reviewed the proposed Out of Agency Service Agreement Request (LAFCO 10-2) that would provide potable water service, sewer collection services, and likely process water services from the City of Antioch and sewer treatment services from Delta Diablo Sanitation District to the Mirant Marsh Landing power plant. The Mirant Marsh Landing power plant is located on 27-acre site in a northeast area of unincorporated Antioch that covers approximately 670 acres of land area mostly devoted to industrial use with small pockets of residential use.

Given that the California Energy Commission has granted Mirant Marsh Landing, LLC approval to construct and operate a 760 megawatt power plant, the Department supports this application for the out of agency service agreement to ensure that the power plant is provided with essential water and sewer services for its construction and operation in a timely manner. While it is acknowledged that the City of Antioch had previously initiated the annexation process at Contra Costa LAFCO to bring the 697 acre northeast Antioch area into the city's jurisdiction, the Department believes that it is essential for the power plant be connected to municipal or public water and sewer services so as not to delay its construction and operation.

Please note that Contra Costa County and the City of Antioch have engaged in a dialogue on economic development strategy for the unincorporated northeast Antioch area where the Mirant Marsh Landing power plant is located. Both jurisdictions believe that while the Northeast Antioch area has good waterfront and rail access to create development opportunities, these opportunities have been unrealized due to a number of factors that may require joint or coordinated actions. This dialogue is in recognition that regardless of jurisdictional boundaries there is a mutual interest in promoting the long term development of this area to create jobs, enhance the tax base, address health and safety issues, and resolve outstanding municipal service and fiscal issues. County and City staff have developed a work program for the preparation of a Joint City/County Economic Development Strategy, which is a framework for identifying, discussing, and possibly resolving differences of interest and approach. It is our expectation that this dialogue on an economic development strategy for the unincorporated northeast Antioch area will result in a mutual resolution of several issues that will help to inform the annexation process already initiated by the City of Antioch at Contra Costa LAFCO. The Board of Supervisors is expected to consider this matter at their February 8, 2011 meeting.

Thank you for your consideration of our comments on the Mirant Marsh Landing Out of Agency Service Agreement Request (LAFCO 10-2). Should you have any question, please feel free to contact me.

Sincerely yours,



Catherine O. Kutsuris
Director, Conservation & Development

CC: Members, Board of Supervisors
D. Twa, CAO
J. Jakel, City of Antioch
J. Chilemi, Mirant Marsh Landing, LLC



February 2, 2011

Dear LAFCO Commissioners:

The City of Antioch appreciates LAFCO's consideration of our application scheduled to be considered at the February 9, 2011 meeting. The City is requesting the right to enter into an Out of Agency Service Agreement with GenOn (formerly known as Mirant), for the purpose of the City of Antioch and Delta Diablo Sanitation District (DDSD) providing needed services to GenOn's proposed 760 megawatt power plant, known as the Marsh Landing Generating Station (MLGS). The requested services include the provision of City potable water and sewer collection, with sewer treatment services to be provided by DDSD. The MLGS is proposed to be located on the north side of Wilbur Avenue, directly west of the existing PG&E Gateway Power Plant. The area where the MLGS is proposed (referred to by the City as the Northeast Antioch Area), has been in the City's Sphere of Influence (SOI) from the time the City's SOI was first established, and is within the City's Urban Limit Line (ULL).

Background: As LAFCO Commissioners may be aware, the City submitted an annexation application for the Northeast Antioch Area over three years ago. Since that time the City has actively pursued this annexation, and has been working with the County to reach a mutual agreement on the terms of the Tax Transfer Agreement. Despite concerted efforts by both parties, the City and the County have had a difficult time coming to terms on the Tax Transfer Agreement. There are several reasons for this lack of agreement, as noted below:

- Current Fiscal Environment: In these difficult economic times, both the City and County have a heightened sensitivity to protecting and enhancing their revenues, both existing and future. This heightened sensitivity has made it much more challenging to deal with the uncertainties inherent in any revenue negotiation, such as the Tax Transfer Agreement.
- Inclusion of Existing "Viera" Residential Area in Annexation: At the time the City submitted its annexation application, LAFCO staff requested that the "Viera" residential area be included as part of the annexation request. This is the existing residential area located in the vicinity of Viera Avenue, and contains over 100 primarily single family homes, two hundred plus residents, and more than 120 registered voters. While City staff considered this request by LAFCO staff to be reasonable in the context of establishing logical jurisdictional boundaries, it has created significant complications in negotiating the Tax Transfer Agreement.
- Lack of Services in Residential Area: The complications relating to the Viera residential area arise from the fact that the existing residential area lacks many urban services, with the majority of the homes on septic systems and wells. The County Health Department has determined that a number of the wells and septic fields in this area are failing, or are in danger of failing. These public health concerns can only be expected to worsen in the future. Engineering estimates of the cost to provide these services to the residential area are in excess of \$15 million. It is not reasonable to assume that the residents in the "Viera" residential area can bear this entire cost, due in no small part to the relatively low assessed values in the area. Attempts by City and County staff to explore utilizing the Tax Transfer

Agreement as a mechanism to fund a portion of these infrastructure costs has proven unsuccessful.

After having worked with preceding issues and complications over the last three years, both the City and County staffs have come to the conclusion that attempting to address the complex issues facing the Northeast Antioch Area solely through the mechanism of the Tax Transfer Agreement is unlikely to be successful. In addition, it has become clear that in order for this almost 600 acre Northeast Antioch Area to reach its full economic development potential, City utilities and services were going to need to be provided. It is no longer possible, as it was in the past, for new industrial uses or other types of development to pump water from the San Joaquin River, and discharge it back directly into the river. Without City and DDSD sewer and water services, land uses in the Northeast Area are limited to such activities as mini storage, RV lots, and similar low intensity, low tax base, low job generating activities that have little to no sewer or water demand.

At an April 2010 meeting with City staff, Supervisor Glover suggested the possibility of the City and County reaching a broader based solution involving the City and County working together in a joint economic development effort. The vision was that higher intensity, higher tax base uses could be developed with the availability of City and DDSD sewer and water services, which ultimately generate more tax base for all parties to share. Following up on this idea, City and County staff working together prepared a Work Program (a copy of which is attached) that identifies the steps that need to be implemented to bring to fruition this joint economic development concept. This Work Program, which includes the creation of a City Council/Supervisor Subcommittee, was approved by the Antioch City Council on January 11, 2011 and is scheduled to be acted upon by the Board of Supervisors on February 8, 2011. While it is recognized that the Work Program involves a number of ambitious steps that may prove to be daunting and difficult to negotiate, it nevertheless provides a clear path forward to achieve a solution that will address the interests of all parties.

Benefits of the MLGS, Environmental and Fiscal: At the time the City's annexation application was submitted to LAFCO over three years ago, GenOn was still early on in the complex State review process. Since that time GenOn, due in large part to the merits of their MLGS proposal, have secured their required approvals from the State Public Utilities Commission, The California Energy Commission, and the Bay Area Air Quality Management District. The advantages of the MLGS that came to light as part of this State review and approval process include the ability of the MLGS facility to function as a large "peaker" power plant to rapidly come on line during peak demand. For the MLGS this peak will coincide with the reduced power generation from the "wind farms" across the river in Solano County, as summer winds die down and people turn on their air conditioners. Aside from this symbiotic relationship with the "wind farms" in neighboring Solano County, the high efficiency of the new MLGS will result in the accelerated closure of the existing power plants on the GenOn property (the facilities with the 300 foot high stack just west of the Antioch Bridge). These older, less efficient power plants will no longer draw large quantities of water straight from the river, and return that water heated back into the river.

The fiscal benefits of the MLGS are as significant as the environmental benefits. The MLGS alone will generate almost \$6 million a year in new property tax. Significant sales tax will also be generated, particularly during the construction phase. Hundreds of high paying union jobs will be created at a time when the economy has significantly impacted the building trades, along with approximately 16 full time jobs. GenOn in the past has taken an active, leadership role in local communities, sponsoring and participating in community events.

Out of Agency Request: This then brings us back to the issue at hand, the Out of Agency request. Realistically it will take two or more years to discuss, negotiate, resolve, and implement the Work Program as outlined in the attached document. The Tax Transfer

Agreement and subsequent annexation would be products of this two year process. This long time frame is completely unworkable for GenOn. As previously mentioned, GenOn now has all their key discretionary approvals from the State. They have contracts with PG&E in terms of the timing of power delivery. They also have financial obligations with their lenders. While GenOn is in a much better position to respond to questions about their specific timing constraints, what is obvious is that the timing of approximately two year joint economic development path the City and County are on in no way comes close to fitting GenOn's timeline. GenOn in good faith supported the City in our annexation application over three years ago, and they continue to support the annexation process. If the timing on the annexation had gone as hoped over three years ago, then GenOn would not be in the position they are now. From a City perspective, the current situation facing GenOn is a good example of what the State intended when the Out of Agency Service provisions were implemented in State law a number of years ago. It should be noted that LAFCO staff has raised the possibility of "conditioning" any Out of Agency Service Agreement with a set, specific time period. The City and GenOn consider such an approach to be unworkable. To require an Out of Agency Agreement to be renewed or extended after, for example, a year, two years, four years etc, implies that such an extension may not be granted. The implication of such a non renewal would be that somehow LAFCO and/or the City would force the utilities to be disconnected from the MLGS power plant as such services would be dependent on having a valid Out of Agency Service Agreement. More importantly, GenOn feels that the uncertainty created by a time specific Out of Agency Agreement would create significant problems with their lenders. The City strongly recommends that the Out of Agency Agreement, if approved by LAFCO, extend until such time as the annexation is complete.

Mediation over the Tax Transfer Agreement: Lastly, LAFCO staff has brought up the fact that the City and the County have not availed themselves of the mediation process as provided for under LAFCO law as a mechanism to reach a resolution on the terms of the Tax Transfer Agreement. As previously mentioned, the City and County are now in the process of developing and implementing a strategy to move the annexation forward that both parties feel should lead to a broad based agreement. Aside from the fact that the City and County are now moving forward on a mutually agreed upon path, the LAFCO mediation process is not a magic panacea. The mediation process is expensive, and likely will require both sides to fund an arbitrator. Aside from the cost, the mediation process is non binding, as either the City or the County, through a vote of the Council or Supervisors could decide not to agree to any arbitrator imposed settlement. Given the circumstances facing this issue, it is moot in relation to the Out of Agency Agreement, which needs to be resolved in a much more immediate timeframe than a non binding arbitration process could provide.

I apologize for the length of this letter, but I felt it was important to clarify issues from a City perspective, particularly given the importance of GenOn's project for the City, the County, and the region. Please feel free to contact me if you have any comments or questions concerning this material (925) 779-7011.

Sincerely,



Jim Jakel
City Manager

Attachment

cc: Mayor and City Council

WORK PROGRAM FOR THE PREPARATION OF A JOINT CITY/COUNTY ECONOMIC DEVELOPMENT STRATEGY FOR THE NORTHEAST ANTIOCH AREA

Updated January 5, 2011

INTRODUCTION: In preparing a Work Program for a project as complex the proposed Joint Economic Development Strategy there is a benefit in identifying the goals that both parties hope to accomplish. This section identifies these goals, along with the key assumptions on which this Work Program is based. It is important to note that this Work Program, along with the Goals and Assumptions on which the Work Program is based, may evolve and change over time through the work of the City Council/Board of Supervisor Subcommittee, to be established as defined in Task #1 of this Work Program.

Goals to Achieve through the Joint City/County Economic Development Strategy:

1. **Need to increase job creation:** The Northeast Antioch Area, which contains hundreds of acres of vacant and underdeveloped land, has the potential for the development of the type of land uses that could bring hundreds and perhaps thousands of new, well paying jobs to Eastern Contra Costa County. East County currently suffers from a poor jobs housing ratio.
2. **Need to enhance the existing tax base:** While the existing industrial area along Wilbur Avenue currently generates a net tax surplus, the opportunity exists to significantly increase the tax base above current levels through the development/redevelopment of vacant and underutilized properties with new, higher intensity job generating uses. Power plants, such as Mirant and Gateway, appear to have the greatest near term potential to enhance the existing tax base, given their relatively small footprint and high capital cost. However, the job creation they bring is limited particularly when compared to the cost to construct this type of facility.
3. **Need to complete the annexation process:** Annexation of the Northeast Antioch Area to the City of Antioch and DDSD is a necessary precondition to provide water and sewer services to the area. The development of the type of higher intensity uses needed to increase job generation and enhance the tax base is only possible by making City and DDSD sewer and water services available through annexation. Realizing annexation is a key goal of this effort. The successful negotiation of a tax sharing agreement between the City and the County is the key to moving the annexation process forward to a successful conclusion.
4. **Need to address the sewer/water problems facing the existing residential area:** The majority of existing residential uses in the Northeast Antioch Area lack sewer and water service, as they depend on aging septic fields and wells. This situation presents a significant potential public health issue that needs to be resolved. Resolution of this issue will likely require funding from outside the existing residential area, given the high cost of constructing utilities to serve the area and the relatively low assessed value of the existing residential uses.
5. **Need to address the zoning/building code status of the existing housing in residential area:** The existing residential area likely contains many non-conforming, substandard structures and uses. Balancing the desire of the existing residents to maintain what they consider the character of the area with the need to appropriately address public health safety issues will present be a challenge that needs to be addressed.

Key Assumptions that Shape How the Work Program is Structured.

1. **Geographic Boundary of Annexation:** The Antioch City Council has to date authorized submitting an annexation application for only the Industrial Area, known as Area 1. LAFCO staff has stated that they would not support the annexation of the Industrial Area (refer to Area 1 on the attached map) that does not address in some fashion the Viera residential subarea (Area 2b) and the existing marinas (Area 2a). The City may in the future choose to add these two areas to the annexation application pending a satisfactory resolution to the Tax Transfer Agreement with the County.
2. **Assumption of Residential "Island" Determination by LAFCO:** Based on discussions with LAFCO staff, it is the understanding of the City and County that LAFCO staff would recommend that LAFCO find the marina and residential marina areas (Areas 2a and 2b) are "islands" for the purpose of annexation under LAFCO law, assuming these areas meet the "island" criteria as established by LAFCO law. It is the City's and County staff's understanding that if such an "island" determination is made by LAFCO, that the existing residents within the "island" area would not have the discretion to vote on the annexation. Such discretion would exist with LAFCO.
3. **"Island" Determination by LAFCO:** The Joint Economic Development Strategy will need to take into account the possibility that LAFCO may determine that Areas 2a and 2b are not "islands". If this is the case, one option would be for Areas 2a and 2b to remain in the County. Over time these residential properties contiguous to the City boundary could singly or in groups annex to the City and DDSB when they desire to hook up to City sewer and water service.

WORK PROGRAM

TASK #1: Finalize Work Program and form a City Council/Board of Supervisors

Subcommittee: Given the complex and potentially controversial issues involved with formulating and implementing a Joint Economic Development Strategy for an area with the size and diversity of Northeast Antioch, it would be appropriate early on to form a Council/Supervisor Subcommittee to review/update the work program on an ongoing basis, and to provide a "sounding board" for City and County staff on policy and political issues that arise during the process:

- **Subtask 1a, City/County staffs finalize Work Program:** This will likely take several iterations, and will include preparing time lines for the various tasks, and more detail on the parties responsible for each task.
- **Subtask 1b, Form Council/Board Subcommittee, get Work Program approved:** Membership of a Subcommittee could consist of 1 City Council and 1 Board of Supervisor Member. The finalized Work Program could either be brought to the full City Council/Board of Supervisors for their approval, or approved by the Subcommittee
- **Subtask 1c, Public Information Strategy:** It would be useful early on to address how and when the residents/property owners in the Northeast Antioch Area would be kept informed and have input on the preparation of the Joint Economic Development Strategy. This issue of public notification is particularly critical for the residential area, where premature or late

notice on project status could aggravate resident's concerns. The Council/Supervisor Subcommittee would approve the public information strategy. Updating of polls of residents previously conducted by the City in 2008 may be considered.

- Responsible Party: City/County staff

- Subtask 1d, Estimate in as Much Detail as Possible the Cost of Carrying Out the Work Program, and Identify City/County/ and other Funding Sources: Performing the various tasks identified in the work program will take a commitment from both the City and County in terms of staff time and financial resources. Costs of performing the tasks in the work program need to be estimated in more detail as the Work Program moves forward, and will require securing the financial resources needed to offset City staff and consultant costs. This may require finding new funding sources, or shifting current resources to this effort. The significant cost items would likely involve updates to the existing fiscal analysis of the annexation, preparing documents and plans relating to establishing a redevelopment district, and the preparation of CEQA documents. The existing Negative Declaration prepared by the City for the Northeast Annexation and certified in June 2010 would serve as a basis for any CEQA analysis.

The City and County agree to split the cost of performing the various tasks in the Work Program on a 50/50 basis, with the exception that each agency will be responsible for funding and securing funding sources as necessary for their respective staff costs.

TASK #2: City/County consensus on Fiscal Analysis: The key precondition to preparing and implementing the Joint Economic Development Program envisioned is for the City and County staff and decision makers to agree on the specifics of the financial issues relevant to the Northeast Antioch Area:

- Subtask 2a, Gruen Report: County staff needs to review in detail the assumptions and analysis contained in the report "Fiscal Impacts of the Annexation of the Northeast Antioch Area, October 2009" prepared by Gruen/Gruen Associates for the City of Antioch. This analysis contains data on existing and projected property and sales tax for the Northeast Antioch area broken out by subarea, and presents several scenarios assuming a range of possible tax sharing between the City and the County. This Gruen Study also contains a detailed cost analysis prepared by the engineering firm of Carlson/Barbee/Gibson, working as a sub consultant to Gruen that provides detailed cost estimates of providing sewer, water, storm drain, roads and other infrastructure to the annexation area. County staff needs to review this analysis, and get comfortable with the data and the conclusions.
 - Responsible Party: Review of Gruen report by County staff, followed by meeting with City staff and Gruen to respond to questions, with revisions to Gruen report as appropriate. Gruen report could then be brought to the Council/Supervisor Subcommittee for their review and approval.
- Subtask 2b, Gas Surcharge and other possible revenue sources: During the discussions over the last year on the annexation, the issue was raised by County staff of the possibility of the County or City collecting a significant amount of tax revenue through a "Gas Tax Surcharge" from gas fired power plants. County records showed such tax revenue received by the County from the Northeast Antioch Area for the years 2000-2007. However, there were unanswered questions over the applicability of this tax source to Mirant, and how recent State legislation may have changed how this tax is collected. This needs to be clarified.

- Responsible Party: County staff would research the amount of gas tax surcharge revenue collected in the past. City/County staff would jointly research the potential for revenue from this tax, and other “exotic” possible sources of tax revenue.

TASK #3: Explore possible formation of redevelopment district within Northeast Antioch Area:

The use of redevelopment funding is a logical tool to finance the needed infrastructure for the area, which currently lack most basic infrastructure, other than roads. The flip side of this issue is the extent the use of redevelopment funding could impact City/County General fund revenue.

- Subtask 3a: City/County staffs prepare a “white paper” on the procedural steps necessary to implement a redevelopment district in the Northeast Antioch Area, and determine how this could be coordinated with the City’s current plan to merge its existing redevelopment districts. Determine the possibility of structuring a redevelopment district in such a manner so as to minimize the impact on General Fund revenue. Also, consider ways to address possible concerns of residents in area to the issue of redevelopment district formation.
 - Responsible Party: City/County staff working jointly, acknowledging that the County has more expertise and experience in dealing with redevelopment related issues.
- Subtask 3b: Determine fiscal implications of possible formation of redevelopment district. Gruen report does not explicitly address redevelopment district formation, although the report contains useful source data, such as existing and projected assessed values that would be useful in a fiscal analysis of redevelopment.
 - Responsible Party: County/City staff would prepare a work scope for Gruen (or other mutually agreed upon consultant) to analyze fiscal implications/benefits of redevelopment district formation. Determine estimated redevelopment plan adoption costs (including CEQA) and how to fund these consultant costs.
- Subtask 3c: Define the project boundaries and prepare a Redevelopment Plan for the Project Area along with corresponding CEQA documents.

TASK #4: Negotiate possible “revenue sharing” between the City and the County: With the information from Tasks #2 and #3 in hand, the City and the County should be in a position to discuss/negotiate possible revenue sharing for the Northeast Antioch Area. This negotiation will need to take into account all relevant variables, including the need to provide sufficient funding to subsidize the basic infrastructure needed to serve the residential area.

- Subtask 4a: City/County staffs negotiate an agreement balancing the items listed above. Perhaps develop two or three different revenue sharing scenarios.
- Subtask 4b: Bring the draft revenue sharing agreement and any alternate revenue sharing scenarios to the Council/Supervisor Subcommittee for their review and comment.
- Subtask 4c: It is anticipated that one of the key “products” of the revenue sharing agreement would be resolution to the issue of the Tax Transfer Agreement required for annexation.
- **TASK #5: City/County Land Use Requirements for Northeast Antioch Area:** The City and County General Plan designations are very similar for the industrial subarea (Area 1), but tend to differ for the marina and residential areas (Areas 2a and 2b). The City has not

yet rezoned the area, so zoning can't currently be compared. City/County staff need to work together to evaluate the range of land use possibilities for the Northeast Antioch Area to ensure a consistent set of land use designations. In addition, land use designations and development standards need to be established that further the City /County goals for the area, including job creation and enhancing the tax base.

- Subtask 5a: Both jurisdictions may need to amend their General Plans and zoning/prezoning as necessary for consistency and to help achieve the same mutual land use goals for the area. The land use goals would reflect the overall goals identified at the beginning of this work program, which would focus on land uses that provide significant job creation as well as increased tax base.
- Subtask 5b: Any General Plan or zoning changes will require environmental documentation, which could be prepared jointly with one jurisdiction acting as lead agency.
- Subtask 5c: Any change of General Plan/zoning would require public notice of the area in question.
- Subtask 5d: The concept of permit streamlining could be explored to enhance the attractiveness of the area to end users/investors. This could be reflected in the zoning code for the area. A related approach would be to prepare environmental documentation (i.e. a Project Level EIR) that prospective employers/investor could use to facilitate their own environmental clearance for their project.
- Subtask 5e: It will be necessary to formulate pre zoning for the residential area 2b. Alternately a "study" zone could be used.
 - Crafting zoning for this area will be a challenge given the wide "variety" of buildings within the residential area.
 - County Code Enforcement may need to provide data on the number and location of non conforming structures in the residential area.

TASK #6: Formalizing Coordination of Economic Development/Marketing Efforts for the Northeast Antioch Area: Due to budget cuts the City has a very limited economic development function. The County has more staff that carry out economic development duties, but this staff is currently spread over a wide range of projects. Possible ways to formalize economic development coordination are as follows:

- Subtask 6a: City and County could agree to commit staff and/or financial resources to seek grant funding supportive of economic development in the area. The City currently employees a lobbyist that could be helpful in this regard.
- Subtask 6b: City and County could consider maintaining a joint web site to market the area.

TASK #7: Explore Possibility of Formation of Port Authority: The Northeast Antioch Area currently has deep water access and is located along an existing shipping channel. The area is also well served with rail access.

- Subtask 7a: City and County jointly explore the economic potential of the area as a port, and explore the possible formation of a joint City/County Port Authority. This will likely require a feasibility and fiscal analysis by a consultant.

Other TASKS as determined by the City/ County Subcommittee

WORK PROGRAM FOR THE PREPARATION OF A JOINT CITY/COUNTY ECONOMIC DEVELOPMENT STRATEGY FOR THE NORTHEAST ANTIOCH AREA

Updated January 5, 2011

INTRODUCTION: In preparing a Work Program for a project as complex the proposed Joint Economic Development Strategy there is a benefit in identifying the goals that both parties hope to accomplish. This section identifies these goals, along with the key assumptions on which this Work Program is based. It is important to note that this Work Program, along with the Goals and Assumptions on which the Work Program is based, may evolve and change over time through the work of the City Council/Board of Supervisor Subcommittee, to be established as defined in Task #1 of this Work Program.

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- Subtask 5e: It will be necessary to formulate pre zoning for the residential area 2b. Alternately a "study" zone could be used.
 - Crafting zoning for this area will be a challenge given the wide "variety" of buildings within the residential area.
 - County Code Enforcement may need to provide data on the number and location of non conforming structures in the residential area.

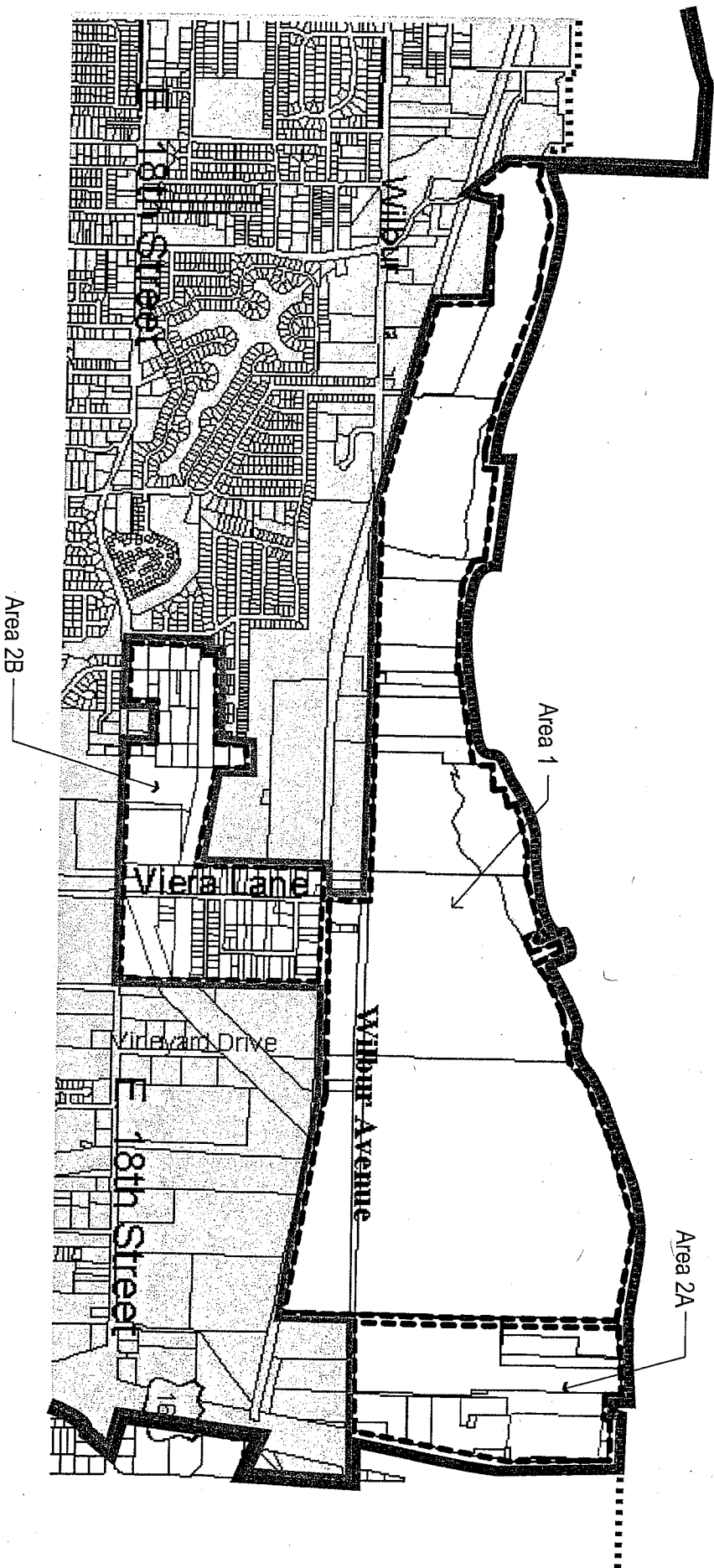
TASK #6: Formalizing Coordination of Economic Development/Marketing Efforts for the Northeast Antioch Area: Due to budget cuts the City has a very limited economic development function. The County has more staff that carry out economic development duties, but this staff is currently spread over a wide range of projects. Possible ways to formalize economic development coordination are as follows:

- Subtask 6a: City and County could agree to commit staff and/or financial resources to seek grant funding supportive of economic development in the area. The City currently employees a lobbyist that could be helpful in this regard.
- Subtask 6b: City and County could consider maintaining a joint web site to market the area.

TASK #7: Explore Possibility of Formation of Port Authority: The Northeast Antioch Area currently has deep water access and is located along an existing shipping channel. The area is also well served with rail access.

- Subtask 7a: City and County jointly explore the economic potential of the area as a port, and explore the possible formation of a joint City/County Port Authority. This will likely require a feasibility and fiscal analysis by a consultant.

Other TASKS as determined by the City/ County Subcommittee



LEGEND

- Urban Limit Line
- City Sphere of Influence (SOI)
- City Boundary
- DDSD Service Boundary and SOI
- Area 1
- Area 2A
- Area 2B

EXHIBIT 2
Current Administrative Boundaries
Northeast Antioch Reorganization



GenOn Energy, Inc.
696 W. 10th Street
P.O. Box 192
Pittsburg, CA 94565

February 1, 2011

By Email and U.S. Mail

Contra Costa Local Agency Formation Commission
651 Pine Street, 6th Floor
Martinez, CA 94553

Re: Application for Out of Agency Service Agreement by City of Antioch

Dear LAFCO Commissioners:

On behalf of Mirant Marsh Landing, LLC (MML), a subsidiary of GenOn Energy, Inc., we urge the Contra Costa Local Agency Formation Commission (LAFCO) to approve the application for Out of Agency agreement (OOA) authority by the City of Antioch (City). The OOA is critical to the future of the Marsh Landing Generating Station, a project on the verge of construction that promises millions of dollars in tax revenue and significant numbers of jobs in Contra Costa County (County). We understand LAFCO's strong interest in the County and the City completing the proposed annexation. Nonetheless, Marsh Landing embodies too many positives for the economic future of the County and the City to jeopardize Marsh Landing's future by forcing it to wait on vital services until the annexation process is complete. Approving the OOA will help ensure that the promise represented by Marsh Landing comes to fruition.

The OOA would allow the City and DDS to provide water, sewer collection, and sewer treatment services at the Marsh Landing site, which is currently in an unincorporated section of the County. The City already provides water to our Contra Costa Generating Station, which is directly adjacent to Marsh Landing and located in the County. There is also an existing sewer line adjacent to the project. The OOA would only encompass 27 acres, or roughly 5%, of the almost 600 acre annexation area. While relatively small in scope, these services are vital to the project.

A substantial factor in the success of the Marsh Landing project is the Credit Agreement by and among MML, as Borrower, and the signatory lenders and their agents. As the initiation of construction approaches, MML and its lenders are focused on eliminating the material risks to the project. As with any financed project, risks to the project schedule and budget, in particular, represent risks to the financing and, ultimately, the project itself. In the event that MML experiences cost overruns or construction delays, including delays attributable to securing an agreement for water, sewer collection, and sewer treatment services from the City

and DDSD, that materially exceed the project budget or schedule agreed with the lenders, the lenders' funding obligations could be suspended. Approving the OOA as soon as possible will remove significant risks to the project budget and schedule and, accordingly, will represent a significant step forward towards ensuring that Marsh Landing gets built.

Importantly, the OOA should continue in place until the County and the City complete the annexation. Limiting the OOA to a date certain would create uncertainty in the event the OOA were to expire prior to the annexation. We have actively supported the annexation throughout the process and will continue to support it. The City and the County recently developed an annexation work plan (approved by the Antioch City Council earlier this month and to be considered by the Contra Costa Board of Supervisors at its February 8th meeting), demonstrating that there is significant momentum toward completing the annexation. Furthermore, we have communicated our willingness to assist in the funding of costs associated with that work plan. We have a \$1.8M community benefits agreement with the City of Antioch that is contingent on annexation – an incentive to keep pursuing annexation.

Marsh Landing has achieved all major milestones, including site permitting through the California Energy Commission, negotiation of a power purchase agreement with PG&E, and approval of that power purchase agreement by the California Public Utilities Commission. Construction is imminent. Marsh Landing also enjoys a broad range of support, which is not surprising. The project benefits the community by creating jobs and generating tax revenue. The project also benefits the environment, because it will directly lead to the retirement of two units that rely on once-through cooling, employs best available control measures for emissions and will help California integrate the substantial intermittent, renewable resources scheduled to come on-line in the next decade. As a result, the City, the County, DDSD and organized labor all support the construction of Marsh Landing.

I cannot emphasize enough how critical the OOA is to the future of Marsh Landing. We urge you to recommend that the LAFCO approve the OOA at its meeting on February 9th.

Very truly yours,



John V. Chillemi
President
Mirant Marsh Landing, LLC

Attachment 2

DATE: March 9, 2011
TO: Lou Ann Texeira, Executive Officer, Contra Costa LAFCO
FROM: Commissioner Dwight Meadows
SUBJECT: Out of Agency Service - Marsh Landing Generating Station (Northeast Antioch)

As allowed under Government Code Section 56895, I would like to request reconsideration of the resolution adopted by LAFCO on February 9, 2011 as related to the subject proposal.

On February 9, 2011, the Commission authorized the City of Antioch (water/wastewater) and Delta Diablo Sanitation District (wastewater) to provide out of agency services to the Marsh Landing Generating Station located in unincorporated Northeast Antioch.

The Commission's approval included several conditions including a requirement that the City and County provide monthly updates to the LAFCO regarding the status of the annexation of Northeast Antioch and tax transfer agreement, and the status of joint City/County Economic Development Strategy for Northeast Antioch.

On March 1, the City and County submitted the first monthly update. The letter does not show expedited effort, and it appears that little progress has been made.

The Commission granted its conditional approval based on "urgency" for the need for water and wastewater services as represented by the parties, and on good faith that the parties would accelerate their efforts to reach agreement on the annexation of Northeast Antioch and the property tax exchange.

Also, last week, LAFCO staff was advised by County Environmental Health that Genon is discussing with County Environmental Health a temporary sewer facility. This seems to conflict with the representative that out of agency service was urgently needed.

Based on the foregoing, I am asking LAFCO to reconsider its February 9 decision at the April 13, 2011 meeting.

Dwight Meadows



Attachment 3

RESOLUTION NO. 10-12**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
AUTHORIZING THE CITY OF ANTIOCH AND DELTA DIABLO SANITATION DISTRICT TO
PROVIDE OUT-OF-AGENCY SERVICES (WATER AND WASTEWATER) TO THE MARSH
LANDING GENERATING STATION LOCATED AT 3210 WILBUR 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 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 and wastewater services to the property and in anticipation of a future annexation, and

WHEREAS, the property owner has consented to a future annexation of the property to the City of Antioch and to the Delta Diablo Sanitation District (DDSD).

WHEREAS, the City of Antioch and Contra Costa County have agreed to work together to implement a joint city/county economic development strategy for the Northeast Antioch area to address issues including land use, infrastructure and municipal services, health and safety, fiscal impacts including revenue sharing and annexation.

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

- (1) Find that, as a Responsible Agency under CEQA, the Commission has reviewed the City of Antioch's 2010 Mitigated Negative Declaration with respect to the proposed Northeast Antioch Area Reorganization project and adopts the findings included therein that approval of the out of agency service request would have no significant effects on the environment.
- (2) Authorize the City of Antioch to extend water and wastewater services and DDSD to extend wastewater service outside their jurisdictional boundaries to the MLGS 27-acre parcel located at 3210 Wilbur Avenue in the unincorporated Antioch area in anticipation of annexation.
- (3) Prior to the extension of service, the City must deliver to LAFCO's Executive Officer an executed indemnification agreement in a form approved by the Executive Officer, indemnifying LAFCO from all costs and expenses, including attorneys fees, arising out of challenges to the out of agency service agreement or related matters.
- (4) Require the City and County to initiate the tax transfer process required pursuant to Revenue & Taxation Code §99, if, after a two year period, the City and County have not made substantial progress in resolving the terms of the tax transfer agreement. LAFCO shall make the determination as to whether substantial progress has been made.

- (5) Require the City and County to provide LAFCO with monthly updates regarding the following matters: (a) the status of the matters covered in the Work Program for the Preparation of a Joint City/County Economic Development Strategy for the Northeast Antioch Area, dated January 5, 2011, or as may be subsequently amended by the parties; (b) the status of the annexation of Northeast Antioch; and (c) the status of a tax transfer agreement.
- (6) Approval to extend City and DDSD services beyond those specifically noted herein is withheld and is subject to future LAFCO review.

* * * * *

PASSED AND ADOPTED THIS 9th day of February 2011, by the following vote:

AYES:	Glover, McNair, Meadows, Schmidt, Schroder, Tatzin
NOES:	Uilkema
ABSTENTIONS:	None
ABSENT:	None

MARTIN MCNAIR, 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 9, 2011

Lou Ann Texeira, Executive Officer

As amended on February 9, 2011

Attachment 4

March 1, 2011

Lou Ann Texeira, LAFCO Executive Director
651 Pine Street, 6th Floor
Martinez, CA 94553

Dear Lou Ann,

At the February 9, 2011 LAFCO meeting, LAFCO requested monthly updates from the City of Antioch and the County on the status of the Northeast Annexation process. The following is a summary of the actions that have occurred relating to the Northeast Annexation since the February 9, 2011 LAFCO meeting:

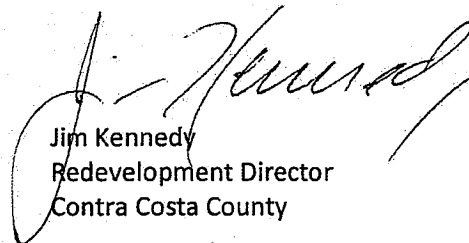
- On Wednesday, February 23, 2011, City and County staffs met to discuss the annexation process. The primary topic of discussion was the Work Program for the Joint City/County Economic Development effort and the Fiscal Analysis. It was agreed by all parties that a market analysis is needed so that the Fiscal Analysis can be modified to more accurately project future revenue. The existing Gruen Fiscal Study used broad assumptions about the type and intensity of future development that was projected to occur in the Northeast Annexation Area in the future. Once this Market Analysis is complete, then the Fiscal Analysis can be updated utilizing the land used projections derived from the Market Analysis. City and County staff's are currently working on a Request for Proposal (RFP) to send to qualified consulting firms. This RFP will likely be released the second week in March, with proposals from consultants submitted the first week in April.
- The first meeting of the City Council/ Board of Supervisors Subcommittee is tentatively scheduled for the week of April 25-29. The agenda for this meeting is still tentative, but will likely focus on the Economic Development Plan Work Program. Staff is attempting to schedule a presentation by the County Health Department at this meeting to provide the Subcommittee with background information on the extent of public health problem currently facing the residents in the existing Viera residential area, given the reliance of homes in that area on wells and septic fields.

If you or any members of LAFCO have any questions on the preceding information, please let us know and we will respond as quickly as we can.

Sincerely,



Jim Jakel
Antioch City Manager



Jim Kennedy
Redevelopment Director
Contra Costa County

cc: Antioch City Council
County Board of Supervisors
Rich Seithel, County Administrator's Office
Catherine Kutsuris, DCD
Patrick Roche, DCD

Attachment 5

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

651 Pine Street, Sixth Floor • Martinez, CA 94553-1229

e-mail: LTexte@lafco.cccounty.us

(925) 335-1094 • (925) 646-1228 FAX



March 10, 2011

Mayor James D. Davis
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

Supervisor Gayle Uilkema, Chair
Contra Costa County Board of Supervisors
651 Pine Street, First Floor Room 108A
Martinez, CA 94553

Northeast Antioch Status Report

Dear Mayor Davis and Chair Uilkema:

As a Commissioner and past Chair of the Contra Costa Local Area Formation Commission (LAFCO), I am writing on behalf of LAFCO to express the Commission's disappointment with the lack of progress by the City and County as reflected in the March 1 update to the Commission.

On February 9, 2011, the Commission authorized the City of Antioch and Delta Diablo Sanitation District to provide out of agency services to the Marsh Landing Generating Station (Genon). The Commission's approval was conditional and included a requirement that the City and County provide the Commission with monthly updates regarding the status of the annexation of Northeast Antioch, tax transfer negotiations, and the joint city/county economic development program for Northeast Antioch.

On March 1, the City and County submitted the first monthly update. In the view of the Commission, the report demonstrated an unacceptably casual approach to the annexation of this area by both the City and County. It appeared to the Commission that little or no progress had been made to facilitate the annexation or to negotiate a property tax exchange agreement.

The Commission acted swiftly on February 9 to approve the out of agency service request at the behest of the City and County. This action was based on the parties' representation that the Commission's approval was a matter of extreme "urgency." It was suggested that if the Commission did not act promptly, funding for the project could be lost. The Commission was also told that there was an immediate need for timely water and wastewater services to serve the project site. In turn, the Commission expected that the City and County would immediately initiate work toward the property tax exchange agreement and annexation of the area.

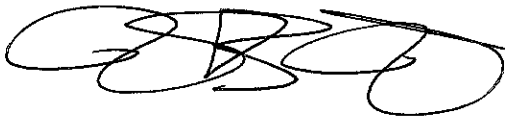
The March 1 letter reported that since February 9, only one meeting has occurred among City and County staff, and that a meeting of the City/County Subcommittee has been *tentatively* scheduled for the week of April 25-29. The report did not provide LAFCO with any sense of a timeframe for tax exchange

negotiations and annexation activities, nor did it appear that these issues were going to be seriously discussed any time soon.

At the March 9 LAFCO meeting, in a lengthy discussion, the Commission expressed strong concern about the lack of progress on the part of the City and County, and the potential for reconsideration of the LAFCO decision was raised.

After the March 9 meeting, a written request for reconsideration of the Commission's February 9, 2011 decision to allow out of agency services to the Marsh Landing Generating Station (Genon) was filed with LAFCO's Executive Officer. As required by Government Code Section 56895, the Commission will consider this request at the April 13 LAFCO meeting. I assume that representatives from the City and County will be present at that meeting and prepared to fully address our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin McNair', with a long horizontal line extending from the end of the signature towards the right.

Martin McNair, Commissioner and Past Chair
Contra Costa LAFCO

cc: Each Commissioner, Contra Costa LAFCO
Members of the Antioch City Council
Members of the Contra Costa County Board of Supervisors
Jim Jakel, City Manager, City of Antioch
David Twa, County Administrator
Gary Darling, General Manager, Delta Diablo Sanitation District
Rich Seithel, Senior Deputy County Administrator
Pat Roche, County Planner
Jim Kennedy, County Redevelopment Director
John V. Chillemi, President, Mirant Marsh Landing LLC

Attachment 6

March 17, 2011

Via Electronic Mail and US Mail

Ms. Lou Ann Texeira, Executive Officer
Contra Costa Local Agency Formation Commission
651 Pine Street, 6th Floor
Martinez, CA 94553

Re: City of Antioch Out of Agency Agreement

Dear Ms. Texeira:

On behalf of GenOn Marsh Landing, LLC (GML), a subsidiary of GenOn Energy, Inc., we provide the following response to your request for information communicated electronically on March 14, 2011. Your request for information was made in connection with a March 9, 2011 motion for reconsideration of the Local Agency Formation Commission's (LAFCO's) decision at its February 9, 2011 meeting authorizing the City of Antioch (City) to enter into an Out of Agency Agreement (OOA) with GML.¹ Your request seeks information regarding a request to the Contra Costa County (County) Environmental Health Department for an on-site septic permit. A subsequent email from you on March 16, 2011 clarified the information you are seeking to include a specific discussion of the authority sought from the County, the number of construction workers that will be on-site, the amount of estimated waste flow, and the availability of an updated construction schedule.

To date, the only permit application filed with the County on behalf of GML is one seeking the removal of an **existing** septic tank. That tank must be removed to proceed with construction activities at the site.

GML has not filed an application for permit for a temporary sanitary waste holding tank, nor has a final decision been made to do so, although there is a distinct likelihood that such application will be made. As GML enters the construction phase for its Marsh Landing Generating Station, we must plan for the storage and disposal of construction sanitary waste. One commonly pursued option for projects of this duration and which GML's general contractor has broached with the County, is the placement of a temporary holding tank. Such a temporary holding tank would serve the temporary modular buildings to be erected on site for the construction phase of the project. In all candor, the holding tank approach provides a more pleasant experience, as compared to portable sanitation boxes (i.e., porta-potties), for the 55-60 project personnel who will spend the next several years working out of those modular buildings. Estimated daily flow associated with the temporary holding tank approach is 360 gallons per day. Even with the temporary holding tank, it will be necessary to place a number of porta-potties to accommodate the approximately 300 construction workers who will be on-site during the construction phase of the project.

¹ The motion for reconsideration relies on the purportedly new fact that GenOn's representatives discussed with County permitting staff the possibility of a temporary sewer facility.

Regarding an updated construction schedule, GML has nothing further to provide beyond the construction schedule that was previously provided to you in advance of the February 9, 2011 LAFCO meeting. While GML and its general contractor continue to work on a more developed construction schedule, nothing can be finalized along these lines until preliminary contingencies are removed, including the final approval of the OOA.

The motion for reconsideration suggests that the urgency surrounding approval of the OOA at the February 9, 2011 LAFCO meeting was based on GenOn's need to begin construction of a new sewer line and that the possibility of a temporary sanitation solution obviates that urgency. GML cannot emphasize enough that the most critical concern regarding a prompt, final resolution of the OOA relates to the financing of the Marsh Landing project. Although project schedule, and more specifically construction of the sewer line, remain important, the most immediate concern is still providing the requisite certainty to our lenders. In the event that GML experiences delays attributable to securing an agreement for water, sewer collection and sewer treatment services that materially exceed the schedule agreed with the lenders, the lenders' funding obligations could be suspended. The OOA eliminates that uncertainty and, when final, provides the lenders the assurance they need. The urgency to eliminate this uncertainty remains as strong as it was on February 9, 2011; until the City's authority to provide services under the OOA becomes final, construction of the Marsh Landing Generating Station remains at risk. For this reason, we urge LAFCO to affirm the validity of its order authorizing the OOA and to do so in a way that removes any possibility of possible further reconsideration of its order.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,



John V. Chillemi
President
GenOn Marsh Landing, LLC

cc: *Via U.S. Mail:*
 LAFCO Commissioners and Alternates
 Jim Jakel – City of Antioch
 Rich Seithel – Contra Costa County
 Greg Feere – Contra Costa Building and Construction Trades Council

Attachment 7

March 17, 2011

Contra Costa Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553-1229

Dear Chairman McGill and Commission Members:

We are aware that on the March 9, 2011 LAFCO meeting, LAFCO Board members, in the context of the monthly update on the status of the Northeast Antioch Annexation, expressed serious concerns about the apparent lack of progress on the annexation. We are also in receipt of letters from Martin McNair, Commissioner and Past Chair, expressing the Commission's disappointment over the pace of the annexation process, as well as a letter from Commissioner Meadows requesting that LAFCO reconsider its action on the Out of Agency Agreement between the City of Antioch and GenOn (formerly Mirant).

Both the City and County staff want to take this opportunity to express regret for the negative impression that our update letter created with the Commission. Let us assure you that at the February 9, 2011 LAFCO meeting, we heard loud and clear the concern LAFCO Commissioners expressed that the annexation process be completed in an expeditious manner. Perhaps our understanding about LAFCO's concerns with progress on the annexation process was not clearly conveyed in our March 1, 2011 update letter. However, in preparing the March 1, 2011 update letter we made a deliberate decision to be as conservative as possible in providing information to LAFCO.

We would like to take this opportunity to explain further about our activities since the February 9th LAFCO meeting. First, City/County staff met on February 23, 2011 (within two weeks of the 2/9/2011 LAFCO meeting) wherein it was agreed that the next step would be to prepare a market study to update the existing fiscal analysis previously prepared for the City of Antioch. A Request For Proposals (RFP) was prepared and issued to solicit consultant assistance in preparing an industrial market survey. Second, in scheduling the initial meeting of the City Council/Supervisor Subcommittee we wanted to ensure that there would be specific issues of substance for the Subcommittee to address, rather than convening meeting that would be merely organizational. The primary focus of the first Subcommittee meeting scheduled for the week of April 25-29 is to review the consultant proposals and make a selection. The April 25-29 dates reflected the time needed to distribute the RFP, and receive and evaluate consultant proposals on the market analysis.

In hindsight, while the word "tentative" was overused in the update letter, its use simply reflected the fact that we did not have an exact date that week in April confirmed by all parties, and we had not yet finalized the agenda for a meeting that was over a month away.

As LAFCO Commissioners are aware, the City and County staffs put together a detailed Work Program for the Northeast Antioch Annexation that was previously distributed to LAFCO. At the February 9, 2011 LAFCO meeting, both City and County staffs stated that it could take approximately 2 years to complete the Work Program, and reach agreement on the terms of the Tax Transfer Agreement.

By preparing and presenting this Work Program we were under the impression that LAFCO understood that resolution to the terms of the Tax Transfer Agreement was a long term process, and that any immediate resolution on the Tax Transfer Agreement, while possible, was unlikely. We reached this conclusion due largely to the fact that the fiscal analysis completed by Gruen and Associates leads us to conclude that any agreement between the City and the County will need to include more than more than just splitting sales and property tax, given the very high cost of infrastructure needed to serve the existing residential area and the need to build that infrastructure in a timely manner. This does not mean the issue cannot be resolved. However, it means that the process to resolve it is more complex than a "typical" annexation, which is illustrated in the previously distributed Work Program.

We hope the preceding discussion helps to clarify the City and County staff actions since the February 9, 2011 LAFCO meeting in terms of City/County staff follow up on the annexation process. Given LAFCO's concerns, we will move the annexation process as expeditiously as possible.

Staff will be in attendance at LAFCO's Special Meeting scheduled for Wednesday, March 23, 2011, and will be available to address Commissioner questions.

Sincerely,



Jim Jakel
Antioch City Manager



Catherine Kutsuris
Director, Department of Conservation & Development,
Contra Costa County

cc: Members, Antioch City Council
Members, Board of Supervisors
Rich Seithel, County Administrator's Office
Victor Carniglia, Consultant, City of Antioch

Attachment 8

Processing fees

56383. (a) The commission may establish a schedule of fees and a schedule of service charges for the proceedings taken pursuant to this division, including, but not limited to, all of the following:

- (1) Filing and processing applications filed with the commission.
- (2) Proceedings undertaken by the commission and any reorganization committee.
- (3) Amending a sphere of influence.
- (4) Reconsidering a resolution making determinations.

Reasonable cost

(b) The fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016. The service charges shall not exceed the cost of providing service for which the service charge is charged and shall be imposed pursuant to Section 60016.

Deposit

(c) The commission may require that an applicant deposit some or all of the required amount that will be owed with the executive officer before any further action is taken. The deposit shall be made within the time period specified by the commission. No application shall be deemed filed until the applicant deposits the required amount with the executive officer. The executive officer shall provide the applicant with an accounting of all costs charged against the deposited amount. If the costs are less than the deposited amount, the executive officer shall refund the balance to the applicant after the executive officer verifies the completion of all proceedings. If the costs exceed the deposited amount, the applicant shall pay the difference prior to the completion of all proceedings.

Fee waiver

(d) The commission may reduce or waive a fee, service charge, or deposit if it finds that payment would be detrimental to the public interest. The reduction or waiver of any fee, service charge, or deposit is limited to the costs incurred by the commission in the proceedings of an application.

Mandatory time limits

(e) Any mandatory time limits for commission action may be deferred until the applicant pays the required fee, service charge, or deposit.

Fees for signature verification

(f) The signatures on a petition submitted to the commission by registered voters shall be verified by the elections official of the county and the costs of verification shall be provided for in the same manner and by the same agencies which bear the costs of verifying signatures for an initiative petition in the same county.

Incorporation fees; loan from general fund

(g) For incorporation proceedings that have been initiated by the filing of a sufficient number of voter signatures on petitions that have been verified by the county registrar of voters, the commission may, upon the receipt of a certification by the proponents that they are unable to raise sufficient funds to reimburse fees, service charges, or deposits for the proceedings, take no action on the proposal and request a loan from the General Fund of an amount sufficient to cover those expenses subject to availability of an appropriation for those purposes and in accordance with any provisions of the appropriation.

Repayment provisions

Repayment of the loan shall be made a condition of approval of the incorporation, if successful, and shall become an obligation of the newly formed city. Repayment shall be made within two years of the effective date of incorporation. If the proposal is denied by the commission or defeated at an election, the loan shall be forgiven.

Written requests for amendment or reconsideration of resolutions

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

Time tolled

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

Next agenda

(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

Withdrawal

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.

Final action

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

Changes to resolution; further proceedings

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.

Article 4. Amendment

56897. If pursuant to Section 56895, the commission approves any addition, deletion, amendment, or revision of its resolution making determinations, further proceedings for the change of organization or reorganization shall be taken in compliance with that addition, deletion, amendment, or revision. Any provision of this division requiring compliance with the resolution adopted by the commission making determinations shall be deemed to include any addition, deletion, amendment, or revision made to that resolution.