

**MEMORANDUM
LOCAL AGENCY FORMATION COMMISSION**

TO: Local Agency Formation Commission

FROM: Stephen Lucas, Executive Officer

SUBJECT: **Agenda Item 4.3 - Update on the Implementation of the Sewer Service Extension and Annexation Agreement with the City of Chico.**

DATE: October 28, 2015 for the meeting of November 5, 2015

Background

The Commission entered into the Sewer Service Extension and Annexation Agreement (Agreement) with the City of Chico on February 7, 2015. The Agreement addressed five primary issues:

1. Compensate LAFCO for the costs associated with reviewing city-wide sewer service connections and the discovery of 62 non-compliant connections; and
2. Retroactively authorize the 62 non-compliant sewer extensions; and
3. Pre-authorize sewer service extensions to developed parcels within the unincorporated Chapman and Mulberry neighborhood islands; and
4. Annexation of the unincorporated Chapman and Mulberry neighborhood islands; and
5. Develop an annexation plan for remaining unincorporated territory within the City's sphere of influence that is expected to connect to the City sewer system in the coming years.

Goals

The Agreement demonstrated a cooperative effort to achieve three fundamental goals of good governance:

1. Two disadvantaged unincorporated island communities (DUCs) begin a managed transition to incorporated status in 5 years allowing both the City and affected residents to gradually prepare for annexation. The annexation will allow the residents of these islands to be fully integrated into the socio-economic fabric of the City of Chico including receiving the full range of municipal services and the right to participate in City elections and serve on City boards and commissions. This action will also allow the County to reallocate its scarce resources from serving small urban islands in the middle of the City to its more rural residents who are solely reliant on stretched County services.
2. Residents within these island DUCs will have access to City sewer services through an expedited process which furthers the goals of the Nitrate Compliance Program and allow property owners the opportunity to abandon existing septic systems and make improvements to existing structures. This process over time is likely to increase property values and enhance the overall socio-economic well being of these communities.
3. Existing unauthorized sewer connections will be appropriately approved by the Commission as required by State law, thus ending the need for further legal action. It also reinforces the understanding of the legislature's clear intent that extending city services outside city boundaries should be done in anticipation of annexation and as a part of an overall growth management/annexation strategy.

Agreement Implementation

The Agreement established the following implementation actions which are followed with the status of each action.

Article 1 - Chapman and Mulberry Islands

- Sections 1.01 and 1.02: The Agreement requires the City to make application for the island annexations of the Chapman and Mulberry neighborhoods prior to April 30, 2015. Fees shall not exceed \$20,000 per application and an initial deposit of \$5,000 is to be submitted with applications.
 - Both the Chapman and Mulberry annexations were submitted within the deadline and approved by the Commission at its July 2, 2015 meeting.*
 - All required fees were submitted with applications. Both annexations were processed under budget. Total cost for the Chapman annexation was \$15,682 and the Mulberry Annexation was \$12,077. The City had the option to pay the remainder in three equal installments or in a lump sum and has elected to make all payments in full.*
- Section 1.03(a): The Commission shall not file the Certificate of Completion (COC) for the Chapman and Mulberry island annexations for a period of 5 years. The City has the option to request an immediate filing of the COC at its discretion.
 - The project conditions set the effective date of the annexations for July 1, 2020, at which time the COC will be recorded. The City has to date, made no inquires to accelerate the annexation schedule. Several landowners within the island areas whose parcels have development potential have indicated they may request the City to consider this option now that economy is improving.*
- Section 1.03(c): As a part of the island annexation (reorganization) applications, the City will request the Commission pre-authorize the extension of sewer services to all eligible, developed parcels within these island areas pursuant to the Agreement.
 - The pre-authorization request was built into the Chapman and Mulberry annexation applications and was approved by the Commission at its July 2, 2015 meeting in conjunction with the related annexation approvals.*
 - Owners of developed parcels within the islands can contact the City directly to obtain sewer services and require no LAFCo review. A developed parcel is defined as a parcel utilizing an onsite septic system prior to February 2015. Parcel owners within the islands wishing to expand an existing use (an additional EDU) or to develop a vacant parcel must contact LAFCo to determine if a sewer service extension or annexation is required as discussed below in Section 3.04*
- Section 1.04: Upon approval of the Chapman and Mulberry annexations, all parcels connected to sewer service without prior LAFCO approval will be considered compliant.
 - As a part of the Chapman and Mulberry island annexation approval conditions (Section 3.C), all non-compliant parcels within the island were deemed compliant.*

Article 2 - Non-Compliant Connections Outside of Islands

- Section 2.01(a): The Agreement requires the City to submit a single comprehensive application for all non-compliant sewer connections outside of the Chapman/Mulberry islands no later than May 18, 2015.
 - ☑ *The City complied with the deadline and the Commission heard and approved the application at its September 9, 2015 meeting.*
- Section 2.02(a)(c): City agrees to reimburse LAFCo for its staff time expended in determining and identifying the non-compliant connections in the amount of \$17,606 by March 19, 2015.
 - ☑ *The City has submitted this payment prior to the deadline.*
- Section 2.02(b)(c): City agreed to pay the processing costs for a single comprehensive application for non-compliant connections based on actual costs but not to exceed \$10,000 and each elective annexation per LAFCo adopted fee and deposit schedule.
 - ☑ *All required fees were submitted with applications. The application was processed under budget at total cost \$6,000. The City had the option to pay the remainder in three equal installments or in a lump sum and has elected to make all payments in full.*

Article 3 - All New Sewer Service Extensions to Unincorporated Parcels

- Section 3.01: The City agrees that no further sewer service extensions will be made to properties outside City boundaries without obtaining prior LAFCo approval and promises to train and monitor its staff to assure implementation of this commitment.
 - ☑ *The City has worked cooperatively with both LAFCo and County staff to properly address sewer service extension requests and created internal memos describing the process to follow for such requests. Staff reviews septic destruction permits for irregularities to monitor compliance.*
- Section 3.04(a): Only developed parcels utilizing on-site septic systems are eligible for out-of-agency sewer connections pursuant to the Agreement.
 - ☑ *Developed parcels are routinely processed for both emergency and non-emergency sewer connections. In most cases the sewer connections are approved with an Annexation Consent and Covenant Agreement being executed by the landowner. In instances where parcels are contiguous to City boundaries the Commission has opted to require a follow-up annexation application.*
 - ? *There are individual cases where a parcel may be contiguous to City boundaries, but a logical boundary cannot be created unless other unaffected parcel owners also agree to annexation. In these cases, staff may recommend a service extension rather than an annexation of the parcel.*
- Section 3.04(b): Undeveloped unincorporated parcels are not eligible for out of agency connection approval. Undeveloped parcel owners seeking sewer service connections from the City would be directed by the City to submit an application for annexation.

- ? *There have been limited concerns posed concerning the application of this criteria within the Chapman and Mulberry islands. The most straight forward question is why should these parcels be required to seek annexation when the entire island will be annexed in 5 years time.*

The answer relates to the intent of the Agreement which was to allow developed parcel owners an easier path forward for switching from existing septic systems to sewer connections in support of the Nitrate Compliance Plan without the need for immediate annexation. There was never any intent to streamline sewer connections for new development given the City's staunch opposition to a comprehensive annexation plan and the Commission's state mandate to encourage logical boundaries and service provisions. The compromise Agreement allowed both goals to be met while also providing sewer services to developed parcels in need. Both the City and LAFCO representatives concurred that the Agreement was not intended to address, allow or promote new development or the expansion of existing uses which would most appropriately be resolved by a comprehensive annexation plan, which was not a viable alternative in the near term.

The owner of an undeveloped parcel within the Chapman/Mulberry islands has the option to either:

- 1) *Wait 5 years until the island annexations are effective; or*
- 2) *Request the City to expedite the effective dates of annexation as allowed within the structure of the Agreement (Section 1.03(a)).*

All other owners of undeveloped parcels seeking to develop must make application for annexation to the City.

These cases (2) to date, are outliers and may not represent a substantial reason to modify the terms of the Agreement, which has provisions to expedite the annexation of the entire island(s) to accommodate new development. Any alteration to the terms of the Agreement would require joint action by the Commission and the City Council.

- Section 3.04(c): Existing uses of developed parcels cannot be expanded without further review by LAFCO staff who will either recommend the City request an individual sewer extension request or initiate an annexation.

- ? *As with undeveloped parcels discussed above, concerns with this provision of the Agreement have been few and the explanation for the provision essentially identical. However, in the case of an existing developed parcel owner seeking an expansion of use, the Agreement does allow for a service extension option along with an annexation option to be determined by the Commission.*

- Section 4.01: The Agreement directs all new sewer service extensions outside of the island areas to be reviewed individually pursuant to current LAFCo policies and State law. The City and LAFCo will need to periodically review approved sewer extensions outside of the Islands and agree to develop a plan and program to proceed with the orderly annexation of all other areas into which the City has or plans to extend sewer services. Annexation proceedings may be commenced by the City or by individual landowner petition over time with an overall goal of eventually annexing all areas in which the City is extending sewer services to establish logical

boundaries and service delivery. The Agreement establishes no specific date to develop an annexation plan and this will be further explored by LAFCo, City and County staff in a cooperative manner.

? *Both City and LAFCO staff continue to discuss an overall annexation strategy for unincorporated areas outside of the Chapman and Mulberry islands. These areas are diverse in uses, geographically dispersed around the City and are not characterized by clear boundaries such as the islands were. There are also numerous new infill development proposals that must be addressed and will assist in the economic recovery of the City and implementation of the City's General Plan. In the interim, LAFCO staff continues to recommend annexations of contiguous parcels seeking sewer extensions, but this approach does not necessarily support logical boundaries in all instances.*

Summary/Conclusion

The Commission worked diligently and patiently with the City of Chico for several years to develop the Agreement that addressed two important State directed goals:

- 1) Implement the Chico Urban Area Nitrate Compliance Program to address the documented public health need to convert existing on-site individual septic systems to municipal sewer service to address nitrate contamination in the groundwater per the Central Valley Regional Water Quality Control Board Prohibition Order No. 90-126; and
- 2) Provide for logical jurisdictional boundaries, the effective delivery/extension of municipal services and address environmental justice via the annexation process per the Cortese Knox Local Government Reorganization Act of 2000 (GC56000).

As demonstrated above, the Agreement has met its goals and has in most respects been diligently implemented by the City of Chico to date. City staff have worked cooperatively with LAFCo staff and the professional relationship/communication between the staff's following the approval of the Agreement has greatly improved. Although to a lesser degree of involvement in the implementation, County Administrative Staff and Planning Staff have also cooperatively assisted in addressing details related to development of unincorporated parcels within and outside of the annexation islands. This cooperation has help to avoid missteps in the implementation process and increased both education and communication of LAFCo efforts and policies.

The only implementation questions involve the restrictions related to sewer extension for expansions of existing uses and the development of vacant parcels. These could be addressed through an Agreement amendment or through a more aggressive annexation program from the City.

The single remaining outstanding implementation effort related to future annexations (Section 4.01) remains under discussion and will evolve over time as additional development is proposed. While there is more work to be done in the remaining unincorporated areas to further extend sewer services and replace existing septic systems, the Agreement has proven to be a good model for further efforts.

ACTION REQUESTED: Receive update and provide any direction or comments to staff.