

**MEMORANDUM
LOCAL AGENCY FORMATION COMMISSION**

TO: Local Agency Formation Commission
FROM: Stephen Lucas, Executive Officer
SUBJECT: **Agenda Item 4.4 - Review and Ratification of Sewer Service Extension and Annexation Agreement with the City of Chico.**
DATE: July 30, 2014 for the meeting of August 7, 2014

Summary

California Government Code Section 56133 (§56133) which became effective on January 1, 1994, requires cities and special districts to request and receive written approval from Local Agency Formation Commissions (LAFCOs) to provide new or extended services outside their jurisdictional boundaries with limited exemptions. The primary reason for this law was to allow LAFCOs the ability to coordinate the availability of backbone services (sewer, water, fire, etc.) with their core charges of managing growth, ensuring efficient delivery of services and creating logical jurisdictional boundaries. Extensions of service were not intended to supplant the logical annexation of territory to an agency, but rather provide a temporary measure in anticipation of a later change of organization.

The Commission and the City of Chico (City) have worked diligently for several years to find a local solution to address 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).

The Commission will review and consider for ratification a *Sewer Service Extension and Annexation Agreement* (Agreement) with the City. The Agreement provides direction to resolve three primary issues that LAFCo and the City have been discussing for a number of years in an effort to meet the above stated goals:

1. Correcting 62 non-compliant sewer connections occurring over a period of years; and
2. Annexing the unincorporated Chapman and Mulberry neighborhood islands; and
3. Establishing a process for future sewer extensions and annexations in all Chico urban areas not located within the Chapman/Mulberry island neighborhoods.

Staff recommends the Commission ratify the Agreement and direct its Staff to work diligently with the City to implement the Agreement.

Issue Background and Impetus for Agreement

Chico Area Groundwater Nitrate Contamination

- In the late **1970s**, the Department of Water Resources (DWR), in coordination with Butte County, assessed nitrate contamination in private wells in the Chico urban area and concluded that high nitrate levels existed, and that septic tanks were a major source of nitrate contamination in the shallow aquifer beneath the Chico urban area.
- In 1985 the **Nitrate Action Plan (NAP)** was adopted by the City of Chico and Butte County to address the high nitrate contamination issue. This Plan was amended in 1988 by the City and County to establish a time line to sewer all parcels less than one acre in size within the Chico Urban Area.
- In 1988, **County Service Area 114 (CSA 114)** was formed to provide for the financing of feasibility and planning studies, engineering studies, groundwater well monitoring, and environmental studies related to nitrate compliance in the Chico Urban Area.
- In 1990, **Prohibition Order No. 90-126** was issued by the Central Valley Regional Water Quality Control Board against individual landowners prohibiting waste discharges from individual disposal systems in the Chico urban area on parcels less than one acre in size after July 1, 1995. At the time, the Order affected approximately 30,000 residents in 12,000 dwelling units on 10,000 parcels, in the Chico urban area. Most of these areas have been annexed to the City during the interim period.
- In 2000, the **Chico Urban Area Nitrate Compliance Plan** was adopted by the County, delineating the areas throughout the Greater Chico Urban Area by development density with the highest priority for sewer, generally referred to as nitrate “hotspots.” This Plan (Chapter 7) discusses local government jurisdiction and coordination issues including the annexation policies and identifying the need for LAFCO to approve extensions of service outside jurisdictional boundaries. The Chapter also recognizes that LAFCO may need to consider and approve certain provisions of any annexation or service extension agreements between the City and County.
- In 2006, the **Chico Urban Area Joint Powers Financing Authority (JPFA)** was formed by the County and the Chico Redevelopment Agency for the purpose of obtaining a \$38 million State Revolving Loan from the State Water Resources Control Board to construct sewer improvements in the identified nitrate hot spots and offset various sewer connection fees required of individual landowners to include the Water Pollution Control Plant fee, sewer lateral fee, and the sewer main fee. This implementation phase of Chico Urban Area Nitrate Compliance Plan is known as the Chico Urban Area Nitrate Compliance Program.
- Beginning in 2010, the City of Chico began the installation of sewer lines in the unincorporated areas of the City including the Chapman and Mulberry neighborhoods.
- The Commission and the City of Chico (City) have worked diligently for the past several years to find a local solution to address two primary 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 reduce 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).

The greatly summarized points above represent the collective efforts of the County and City of Chico over the past 30 years to analyze and develop a comprehensive solution to address nitrate contamination in the groundwater related to the use of septic systems. Since the adoption of the Chico Urban Area Nitrate Compliance Plan in 2000, LAFCO in cooperation with the City, has approved approximately 135 annexations including numerous islands of unincorporated territory allowing the affected parcels access to municipal sewer services. The current Agreement will further the goals of extending City sewer services to the majority of eligible unincorporated territory.

Primary Agreement Components

Article 1 - Annexation of Chapman/Mulberry Islands

1. City agrees to initiate by resolution of application the island annexations of the unincorporated islands of Chapman and Mulberry neighborhoods by October 31, 2014 and LAFCo agrees to defer and not record the Certificate of Completion for a 5 year period (est. 12/2019) to allow the City time to prepare for the provision of services to this territory. The City at its discretion, may request LAFCo to accelerate the annexation by recording the Certificate of Completion prior to the five year time frame.
2. LAFCo agrees to cap its fees at \$20,000 per island application and allow the City to pay an initial \$5,000 deposit at time of application with all remaining fee balances to be paid in three equal annual installments.
3. During the five year annexation deferral period, the City is pre-authorized to extend/connect sewer services to all eligible developed parcels within the Chapman/Mulberry Islands.
4. LAFCo retroactively authorizes all (30) previously identified non-compliant sewer connections located within the Chapman and Mulberry neighborhoods upon the submittal of the annexation application for these areas.

Article 2 - Correction of Non-Compliant Sewer Connections Outside of Islands

1. City shall make a single comprehensive application for non-compliant parcels within 90 days of Agreement execution for after-the-fact approval by LAFCo and LAFCo agrees to cap its processing fees at \$10,000 and allow the City to pay an initial \$5,000 deposit at time of application with all remaining fee balances to be paid in three equal annual installments beginning July 1, 2015.
2. City may file annexation application for contiguous parcels at its discretion.
3. LAFCO and City will work cooperatively to seek landowner Consent Covenants for said sewer extensions.
4. City will reimburse LAFCO \$17,606 for investigation/identification of non-compliant connections within 30 days of Agreement execution.

Article 3 - Procedures for New Sewer Service Extensions (outside of Chapman/Mulberry islands)

1. City agrees to follow state law and make application for all new sewer service connections to unincorporated parcels (outside of islands) and not connect any parcels to sewer without written LAFCo notification of approval.

2. Only developed parcels utilizing on-site sewer disposal systems prior to the execution of this Agreement are eligible for sewer connections. Undeveloped parcels or expansions in use are generally not eligible for extraterritorial sewer extensions unless unique circumstances exist.

Article 4 - Annexation of Extension Areas Receiving Sewer Services

1. All new sewer service connections outside of islands would continue to be processed on a case by case basis subject to existing LAFCO policies/fees which would consider both service extensions or annexations depending on circumstances (contiguity) and be periodically reviewed by the City and LAFCo with the goal of developing a program to proceed with an orderly annexation plan of areas currently served or planned to be served by City sewers.

Summary Observations:

Three years have passed since the Commission first presented the City with a Draft Master Sewer Service and Annexation Agreement in 2011 that was intended to expedite unincorporated sewer connections in support of the nitrate remediation effort and establish a certain annexation plan in conformance with local LAFCO policies and state law. During this time, 1) the City in cooperation with the County has installed sewer lines in the majority of the unincorporated areas within the City; 2) allowed 62 unauthorized sewer connections to occur; 3) the County completed an Annexation Feasibility Study which found the fiscal/service impact of annexation of the Chapman/Mulberry islands to the City was negligible and 4) the City has at the same time undergone a significant upheaval in its fiscal situation that has dramatically complicated its ability to provide municipal services to its current and planned populations. The Agreement will bring closure to some of these issues and finally unite the Chapman and Mulberry neighborhoods with the City that has surrounded them for decades.

Environmental Review

As there are no proposed changes to the land use designations or rezoning of properties in the Chapman and Mulberry annexation areas, any environmental impacts associated with the "island" annexations proposed in the Agreement would be adequately addressed by the Final Environmental Impact Report (EIR) prepared and certified for the Chico 2030 General Plan update (State Clearinghouse #2008122038). As was noted in the EIR: "This EIR is designed to programmatically and comprehensively analyze impacts associated with implementation of the proposed General Plan Update, including expansion of the City's SOI and future annexations consistent with the Land Use Diagram."

ACTION REQUESTED: Adopt Resolution No.03 2014/15 (Exhibit B) Ratifying the Sewer Service Extension and Annexation Agreement with the City of Chico.

- Attachments: 1. Sewer Service Extension and Annexation Agreement
2. Draft LAFCo Resolution No. 03 2014/15

RESOLUTION NO. 03 2014/15

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
OF THE COUNTY OF BUTTE
MAKING DETERMINATIONS AND APPROVING THE
SEWER SERVICE EXTENSION AND ANNEXATION AGREEMENT
BETWEEN LAFCO AND THE CITY OF CHICO**

RESOLVED, by the Local Agency Formation Commission of the County of Butte, State of California, that

WHEREAS, the Commission (LAFCo) and the City of Chico (City) have worked diligently for many years to: 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 mitigate 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 concerns via the annexation process per the Cortese Knox Local Government Reorganization Act of 2000 (GC56000); and

WHEREAS, LAFCo and the City desire to enter into a Sewer Service Extension and Annexation Agreement (Agreement) that will address these two mutually desirable goals; and

WHEREAS, Government Code Section 56133 requires LAFCo approval for all extensions of service by the City outside its boundaries; and

WHEREAS, LAFCO has determined that the City has connected 62 properties outside City boundaries to its sewer system without obtaining LAFCO approval in violation of Government Code §56133; and

WHEREAS, LAFCo has requested that the City take action to correct the violations either through making application for extensions of service or annexation or a combination thereof; and

WHEREAS, many of the violations occurred within unincorporated islands, and peninsulas which are of concern to LAFCo as they create fragmented City and County boundaries, inefficient service delivery patterns and the selective provision of municipal services with its related governance and environmental justice concerns; and

WHEREAS, the City is experiencing severe fiscal issues that make it more difficult for the City to fund the necessary applications and commit to immediately annexing existing developed areas and provide services commensurate with other City residents; and

WHEREAS, LAFCo and the City desire to implement a program to correct the violations of §56133 and eliminate or reduce unincorporated islands, in a manner that accommodates the City's fiscal constraints and allows LAFCo to comply with state law and local policies;

WHEREAS, LAFCo and the City have determined that the most desirable, reasonable and effective approach to resolving these issues is to enter into an agreement that will result in: 1) retroactively authorizing the 62 identified non-compliant sewer connections; 2) initiating the

annexation of the two large islands of completely surrounded unincorporated territory known as the Chapman and Mulberry neighborhoods; and 3) establishing a process for future sewer extensions and annexations in all Chico urban areas not located within the Chapman/Mulberry island neighborhoods; and

WHEREAS, the Commission must consider this Agreement pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and the local policies of the Commission and make a determination based on the Commissions independent judgment; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56133, set August 7, 2014 as the public hearing date to consider this Agreement and at said meeting this Commission heard and received all oral and written protests, objections and evidence which were made, presented or filed, and all persons present were given an opportunity to hear and be heard with respect to this proposal; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56133 and 56665, has reviewed this Agreement and prepared multiple reports and memorandums, including recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

NOW, THEREFORE, the Local Agency Formation Commission of the County of Butte **DOES HEREBY RESOLVE AND DETERMINE** as follows:

Section 1. General Action

The Commission determines that the Sewer Service and Annexation Agreement as described in Attachment 1 supports the goals of 1) addressing all currently non-compliant and future sewer service extensions and 2) the annexation of specified islands of unincorporated territory and meets LAFCo state and local statutory and policy objectives.

Section 2. Findings in Support of Determination

Environmental Action:

- A. The Commission finds that as there are no proposed changes to the land use designations or rezoning of properties in the Chapman and Mulberry annexation areas, any environmental impacts associated with the "island" annexations proposed in the Agreement would be adequately addressed by the Final Environmental Impact Report (EIR) prepared and certified for the Chico 2030 General Plan update (State Clearinghouse #2008122038). As was noted in the EIR: "This EIR is designed to programmatically and comprehensively analyze impacts associated with implementation of the proposed General Plan Update, including expansion of the City's SOI and future annexations consistent with the Land Use Diagram."

General:

- A. The Commission has considered the factors determined by the Commission to be relevant to this Agreement, including, but not limited to, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; specifically, Government Code

Sections 56001; 56100; 56301; 56133; and 56668; as well as Commission policies as generally discussed in the staff report dated July 30, 2014.

- B. The Commission through this Agreement recognizes the important public health goal of replacing existing septic systems with connection to a sanitary sewer system while also recognizing the equally important value of creating logical boundaries, encouraging greater efficiencies in the delivery of services and addressing environmental justice concerns.
- C. The Commission through this Agreement determines that the need for sewer services and the public policy objectives defined in the CKH Act and local Commission policies related to logical boundaries, the efficient delivery of services and the promotion of environmental justice concerns are not mutually exclusive, but can be harmonized through the thoughtful and deliberate execution of the Sewer Service Extension and Annexation Agreement.

PASSED AND ADOPTED by this Local Agency Formation Commission of the County of Butte, on the 7th day of August 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINS:

ATTEST:

Clerk of the Commission

CARL LEVERENZ, Chair
Butte Local Agency Formation Commission