

January 22, 2015 (Agenda)

Local Agency Formation Commission  
2301 Technology Parkway  
Hollister CA 95023

**Implementing Hollister Urban Service Area With  
Respect to Extending City Sewer Services**

Dear Members of the Commission:

RECOMMENDATION

It is recommended the Commission adopt the enclosed resolution verifying that the City of Hollister is authorized to provide sewer services outside of its boundaries only if it first requests and receives specific Commission approval.

DISCUSSION

This matter was presented to the Commission in October 2014 and continued to this date without the Commission taking any action or making any decisions.

Introduction

A situation has arisen which requires Commission direction regarding the procedure to allow the City of Hollister to provide sewer services outside of its boundaries.

The LAFCO staff believes the current procedure being used is proper. In this process (a) the City requests approval to provide sewer services without annexation for a specific area outside the City and (b) LAFCO considers and decides on that request.

One such request was approved by the Commission on August 28, 2014. It allows out-of-agency water and sewer service for CHISPA (Community Housing Improvement Systems and Planning Association, Inc.). This proposal is LAFCO No. 489.

Some landowners or their representatives, however, think the Commission in late 2012 gave blanket approval to the City to provide sewer services outside its boundary without having to obtain LAFCO approval for specific extensions. As we will explain, we do not find support in the record for that position.

History of Relevant District, City and LAFCO Actions

In January 2011 the San Benito County Water District approved the “Hollister Urban Area Water and Wastewater Master Plan” and “Coordinated Water Supply and Wastewater Treatment Plan Program” by adopting its Resolution No. 2011-13.

In October 2011 the Hollister City Council adopted Resolution No. 2011-129 (attached as Exhibit A) which (a) accepts the Program EIR prepared by the County Water District and (b) directs the City staff to submit an application to LAFCO “to initiate proceedings to establish the boundary lines of the Hollister Urban Area.”

The City-submitted “Boundary Change Proposal Application” (attached as Exhibit B) is somewhat confusing. It appears the City attempted to use an application for an actual boundary change when no such boundary change was being requested.

This application states on page 5 that “The project consists of establishing the boundaries of the Hollister Urban Area. No development is proposed with this application. Future development is speculative at this time.”

Page 6 states “Project consists of establishing the boundary lines for the Hollister Urban Area.” and “Future development is speculative at this time.” Page 8 states “This application consists of establishing the boundary lines for the Hollister Urban Area.”

The LAFCO staff presented a report dated November 29, 2012 (attached as Exhibit C) stating the City of Hollister and San Benito County Water District request that a specific boundary be adopted to provide expanded urban services.

The LAFCO staff recommended that the Commission approve the EIR as certified by the San Benito County Water District, make determinations of appropriateness and authorize proceedings for the creation of the Hollister Urban Area Boundary.

On that date the Commission adopted Resolution No. 2012-03 (attached as Exhibit D) “Approving the Creation of the Hollister Urban Area Boundary to Provide Wastewater Services.” Specific clauses state:

- The boundary creation of the attached territory (Exhibit 1) is hereby approved.
- The Executive Officer will prepare and execute a certificate of Completion and shall make the findings required by law.
- The applicant and owner shall sign the Hold Harmless Agreement provided by the LAFCo Authority within 10 days of the project’s approval.



This Resolution is confusing to say the least. The title states it is “. . . approving the creation of the Hollister Urban Area Boundary to Provide Wastewater Services LAFCo File No. 202-481.” It references “preliminary proceedings for the boundary creation” and states “The Executive Office will prepare and execute a certificate of Completion and shall make the filings required by law” as if the action being taken was an actual boundary change such as an annexation.

What is clear is that the Commission, in adopting Resolution No. 2012-03, was accepting the service area boundary for the newly expanded wastewater treatment facility, thereby expressing its willingness to entertain applications within that area to allow the City to provide sanitation services either via specific annexations or out-of-agency service requests. (Emphasis added)

There is no evidence in the record that the Commission was approving actual service extensions any more than the City or County were approving individual land use projects within that area when they approved the Urban Area Boundary.

The relevant State statute provides that the City may provide new or extended services outside its jurisdictional boundaries only if it first requests and receives written approval from the Commission. It is doubtful the City made such a request or LAFCO approved such a request by adopting a generic urban area boundary where wastewater services can be provided.

I also feel this way since the procedure actually being used consists of the City requesting LAFCO to allow sewer service for specific projects is a public and informed process.

Many of the specific projects to be served by City sewers were not known when LAFCO adopted the urban area boundary. Under the current procedure we are able to discuss with the City and individual landowners terms and conditions of LAFCO approval such recordation of a “consent to annex” to the City which can apply to future landowners.

#### General Analysis

The law clearly states a City can provide services outside of its boundaries only if it first requests and obtains LAFCO’s approval. The language in Government Code Section 56133 (a) is as follows:

“A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.

As noted in Section 56133 (b) if services are to be provided within the City sphere of influence, this authorization can be in anticipation of a future annexation. This is the basis of LAFCO requiring the recorded “consent to annex” that applies to those purchasing a portion of the property within the City sphere of influence.

“(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization

The law also allows LAFCO to authorize the City to provide out-of-agency sewer services not only within its sphere of influence but also outside of its sphere. The specific language in subsection (c) refers to extending such services to respond to a public health or safety threat, such as a failing septic system

“(c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:

(1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission

In our reading of the statute, subsection (a) confers a general authority for LAFCO to allow out of boundary services within limitation on whether the affected property is within or outside of the city sphere.

#### City Sphere of Influence vs. City Wastewater Treatment Plan Service Area

I am informed that the designated service area of the City’s new wastewater treatment is an area larger than the City Sphere of Influence. This was done partly to ensure there will be sufficient connections to make facility services efficient and economical.

It is clear to the LAFCO staff that by approving the creation of the Hollister Urban Area Boundary to provide wastewater services the Commission was not approving specific annexations or out-of-agency service agreements. It was, however, agreeing on the area



where sewer service extensions could be favorably considered even though a portion of that area is not within the City sphere of influence.

The recommendation that City be authorized to provide sewer services outside of its boundaries only if it first requests and receives Commission approval is not meant to frustrate or undermine this reality; we are anticipating receiving a proposal within the not too distant future to allow the City to serve a proposed new subdivision which is located outside of its sphere of influence.

If there is any question about this matter the staff suggests there be a discussion with the City of Hollister about the concept of having essentially two spheres of influence, one for the City itself which would reflect the area within which annexations to the City could occur and another sphere of influence for the City's wastewater service area which could be larger than the City's actual sphere of influence.

#### Commission Alternatives

Option 1 - Affirm the policy that the City of Hollister can provide sewer services outside of its boundaries only if it requests and receives specific approval from the Commission, and that such services can be provided:

- Within the City sphere of influence in anticipation of the potential annexation of the affected property and
- Outside the City sphere of influence within the approved service area of the City's wastewater treatment plant.

Option 2 – Adopt a policy the City can provide sewer services outside of its boundaries without obtaining specific Commission approvals.

#### Recommendations

Approve Option I by adopting the attached resolution.

It is further recommended the Commission (a) approve the attached map showing the service area boundary for the City of Hollister's wastewater treatment facility and (b) encourage the City and County to require urban density development within this area to connect to the wastewater treatment system as a condition of development approval.

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Please contact the LAFCO office if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Bob Braitman". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

BOB BRAITMAN  
Executive Officer

RESOLUTION OF SAN BENITO LOCAL AGENCY FORMATION COMMISSION  
SETTING FORTH POLICY ON INITIATING AND CONSIDERING OUT-OF-AGENCY  
SEWER SERVICE AGREEMENTS FOR THE CITY OF HOLLISTER

WHEREAS, Local Agency Formation Commission procedures are conducted pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Sections 56000 et seq. of the Government Code); and

WHEREAS, Government Code Section 56133 states that a city may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the Commission, and

WHEREAS, the Commission has approved an Urban Area Boundary within which sewer services can be provided by the City of Hollister, and

WHEREAS, this Urban Service Area Boundary includes territory both within and outside of the adopted Sphere of Influence for the City, and.

WHEREAS, in order to provide sewers to properties within the Urban Area that are located outside the City boundary, the City must first obtain Commission approval to either annex the territory or provide sewer services without annexation, and

WHEREAS, the Commission finds adoption of this policy is needed to avoid confusion and misunderstanding regarding the procedures to be followed in authorizing the City of Hollister to provide sewer services outside of its boundaries, and

WHEREAS, this policy is in the best interest of the affected area and the overall organization of local governmental agencies in San Benito County.

NOW, THEREFORE, BE IT RESOLVED DETERMINED AND ORDERED by the Local Agency Formation Commission of San Benito County that for the City of Hollister to provide sewer services outside of its boundaries to a specific territory it must first request and receive written approval from the Commission.

This resolution was adopted on January 22, 2015 and is effective on the date signed by the Chair.

San Benito LAFCO  
Out of Agency Sewer Services for City of Hollister

AYES:

NOES:

ABSTAINS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chair  
San Benito Local Agency Formation Commission

ATTEST

\_\_\_\_\_  
Bob Braitman, Executive Officer  
San Benito Local Agency Formation Commission



**Legend**

-  Hollister Urban Area
-  Ridgemark Service Area

Map Prepared for San Benito County, Aug. 2012  
Source: Wallace Group and San Benito County

