

LOCAL AGENCY FORMATION COMMISSION
SAN BENITO COUNTY

2301 Technology Parkway
Hollister, CA 95023
Phone: (831) 637-5313

October 23, 2014 (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 and within its Sphere of Influence only if it first requests and receives Commission approval.

DISCUSSION

Issue To Be Clarified by the Commission

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 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.

An example of such an approval is LAFCO No. 489 to allow out-of-agency water and sewer service for CHISPA (Community Housing Improvement Systems and Planning Association, Inc.) which was approved by the Commission on August 28, 2014.

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. We do not find support in the record for that position.

History of Prior Water 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 attached Resolution No. 2011-129 (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 “Boundary Change Proposal Application” submitted by the City (Exhibit B) is somewhat confusing. It appears the City attempted to use an application for a boundary change such as an annexation 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.”

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

In November 2012 the LAFCO staff presented a report to the Commission (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 that was 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 November 29, 2012 the Commission adopted Resolution No. 2012-03 (Exhibit D) “Approving the Creation of the Hollister Urban Area Boundary to Provide Wastewater Services.” Specific clauses state:

- That 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 projects 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 change of organization such as an annexation.

It is clear 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 via specific annexations or out-of-agency service requests to provide sanitation services. (Emphasis added)

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

Bear in mind, the statute states “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.” It is doubtful the City made such a request or LAFCO approved such a request by adopting a generic urban area boundary to provide wastewater services.

I also feel this way because the procedure being used of the City requesting LAFCO to allow sewer service for specific projects is an informed process. Many projects to be served were not known when LAFCO adopted the urban area boundary. Currently we are able to discuss with the City and individual landowners terms and conditions such as a recorded consent to annex to the City pertaining to both current and future landowners.

Applicable Statutes

State law says a city or special district can provide services outside of its boundaries if it first requests and obtains LAFCO's approval. The language in Government Code Section 56133 is as follows:

“(a) 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.

“(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

(c) Pertains to property outside of the local agency sphere of influence

“(d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete.

“If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer.

“The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.”

General Analysis

It is clear to 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 within which it would favorably consider City annexations or sewer service extensions.

Commission Alternatives

Option 1 - Affirm the policy that within the City of Hollister sphere of influence the City can provide sewer services outside of its boundaries only it requests and receives subsequent approval from the commission.

Option 2 – Adopt a policy that allows the City to provide sewer services outside of its boundaries and within its sphere of influence without obtaining subsequent Commission approvals.

Recommendation

Adopt the attached resolution approving Option 1.

Please contact the LAFCO office if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Braitman", followed by a horizontal line.

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 the Commission may authorize new or extended services outside the City boundaries but within its sphere of influence in anticipation of a later change of organization, and

WHEREAS, the Commission has approved an Urban Area Boundary within which sewer services can be provided by the City of Hollister, 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 is in the best interests of the affected area and the total organization of local governmental agencies.

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 October 23, 2014 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