

DATE: May 4, 2007

TO: LAFCO Members

FROM: Peter Banning, Executive Officer

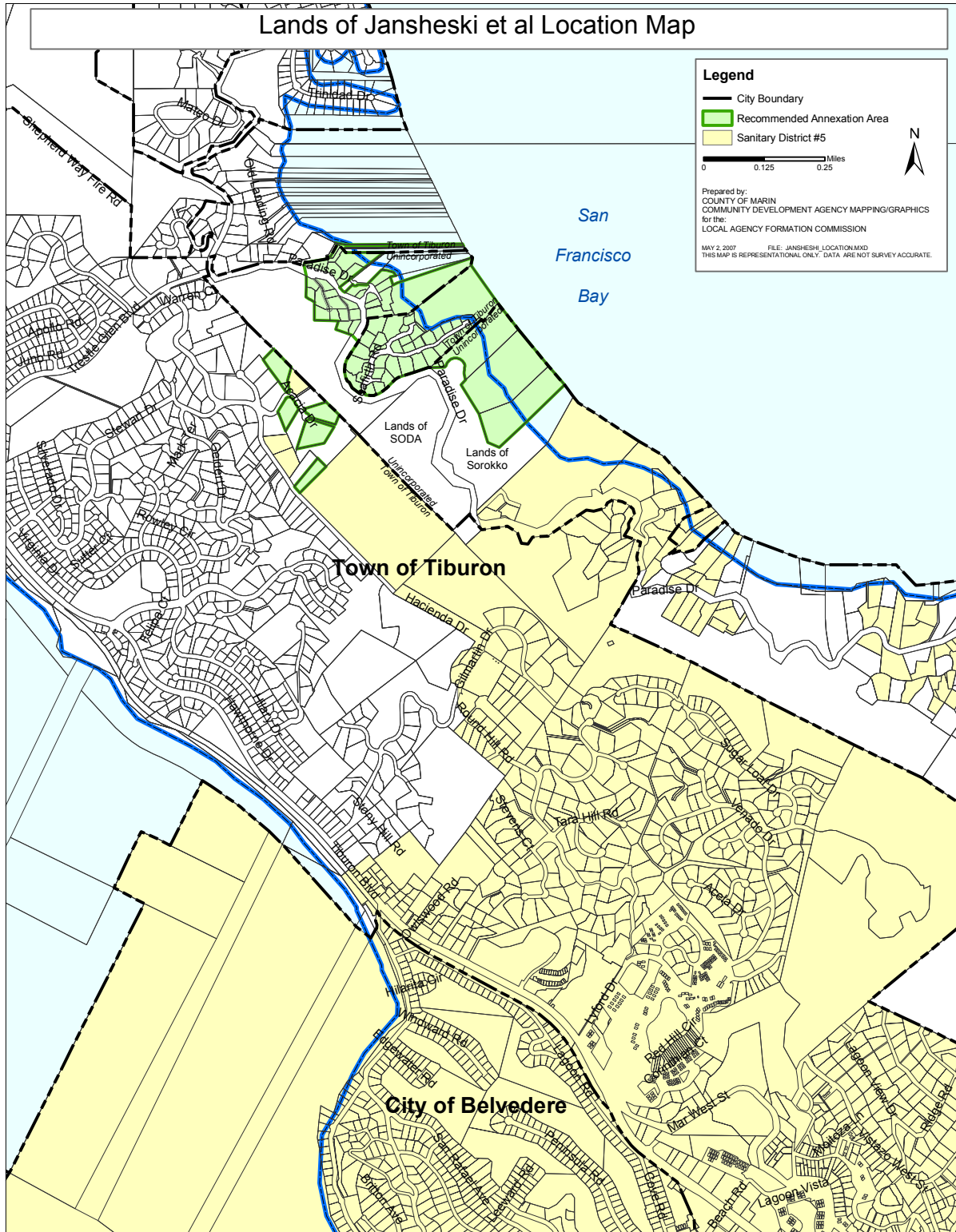
SUBJECT: **Proposed Annexation of the Lands of Jansheski et al to Sanitary District #5 (File #1281)**

### **Summary and Recommendation**

LAFCO opened the public hearing on the proposed Annexation of the Lands of Jansheski et al to Sanitary District #5 at its March 8, 2007 meeting and continued the hearing through its April meeting in order to allow the proponent, property owners, LAFCO and Sanitary District # 5 additional time to resolve a variety of issues. The ongoing discussions included the need for terms and conditions suggested in the staff report of March 1, 2007, and issues related to implementation of the Commission's Dual Annexation Policy.

In staff's view, the negotiations in the last two months have produced agreements that will reduce the need for terms and conditions to LAFCO's approval. Agreements adopted by the Town of Tiburon and to be considered May 7<sup>th</sup> by Sanitary District #5 will address most of the issues that previously proposed terms and conditions addressed and does so in a more direct and efficient manner.

The map below shows the area proposed for annexation to Sanitary District #5, its relationship to the District's existing jurisdiction and to the jurisdiction of the Town of Tiburon.



## Proposed Terms & Conditions

The proponent, Sanitary District #5 and the Town of Tiburon, with input from affected property owners, have actively developed agreements intended to meet the proposed terms and conditions. The Tiburon Town Council met on May 2, 2007 and adopted a "deferred annexation" agreement with the owners of the Sorokko property (see Attachment A. The particular circumstances of this property and their interaction with the Commission's Dual Annexation Policy was a specific concern of the March 1st staff report and of subsequent meetings of an ad hoc study committee of LAFCO members.

The Sanitary District #5 board will meet on May 7, 2007 to consider entering into an interim agreement with the proponent leading to a reimbursement agreement on completion of sewer improvements (See Attachment B). The draft interim agreement, if adopted by Sanitary District #5, will meet several important conditions proposed earlier by LAFCO staff. The following paragraphs discuss how proposed terms and conditions are met under these agreements and what terms and conditions remain to be attached to the Commission's approval of the annexation, if granted.

### Conditions Relating to Property Owners

1. Limitation on the time of private ownership to a period not more than 18 months;
2. Provision for an impartial agent to collect, hold and disburse funds during private ownership period;
3. Definition of total reimbursement to proponent for costs of construction, finance , insurance, escrow, and a specified margin of profit;
4. Specifies continuous, stable price or price schedule for connection through both private and District ownership under a rational method of apportionment;
5. Reimbursement to the proponent by or through the District outstanding amounts following transfer of ownership to the District.
6. Refund of money in excess of defined costs if appropriate.

The proposed interim agreement between the proponent and Sanitary District #5 commits the District to facilitating reimbursement of the proponent if specified conditions are met including a cap on total reimbursements of \$550,000, future public input on documented costs to be reimbursed under the cap, and no provision for profit margin under the cap.

The simple terms of the interim agreement have positive implications for affected property owners. The cap on total project costs to be reimbursed to the proponent is based on cost information developed by all affected parties over the past two months. Reimbursement will be based on actual costs documented by the proponent. The District is required to accept ownership and maintenance responsibility upon

completion of the improvements to District specifications. The proponent will not receive reimbursement until the improvements are accepted by the District and a reimbursement agreement is instituted.

Under these terms, property owners are assured of a reasonable price of approximately \$10,000 per connection. Although none of the terms require a continuous stable price at that amount, there is no incentive for any party to create excessive or differential connection fees. (The proponent has stated his intention to charge \$10,000 per connection for those wishing to acquire rights of use prior to transfer of ownership to the District. See Attachment C). The agreement provides great incentive for the immediate transfer of ownership to the District. Property owners thereby have a choice of entering into a right-to-use agreement with the proponent during the construction period or waiting until the District accepts ownership and sets up a reimbursement agreement. If total project costs prove less than \$550,000, reimbursements may be made to property owners who have paid fees in excess of a fair share of the actual costs.

In staff's opinion, the proposed interim agreement between the proponent and Sanitary District #5 meets the purposes of the above terms and conditions proposed in the March 1, 2007 staff report. The interim agreement effectively partners the District with LAFCO in ensuring the rational implementation of new service to the affected area. If the agreement is executed, the Commission need not include the above terms and conditions in its resolution making determinations.

#### Conditions Relating to Sanitary District #5

7. Construction of sewer facilities to the requirements of Sanitary District #5;
8. Demonstration of adequate warranties and maintenance of the sewer line while under private ownership;

The interim agreement requires that the sewer line be constructed to District specifications. Incentives provided for the immediate transfer of ownership to the District remove the need for maintenance provisions; the sewer line will only be operated as a public facility under the District's responsibility. Normal construction warranties will apply. Again, if the interim agreement is executed, the Commission need not include these terms and conditions in its resolution making determinations.

#### Conditions Relating to LAFCO Policy

9. Issuance of an encroachment permit by the County Department of Public Works;
10. The County's agreement to enforce environmental mitigation measures proposed in the initial study;

11. Execution of property owner agreements for implementing the Dual Annexation Policy;
12. Amendment of the area to be annexed (The Commission must set final annexation boundaries);
13. Provision by the proponent of a map and legal description of the annexation area as approved by LAFCO;

The County Department of Public Works (DPW) has stated that annexation proceedings must be complete prior to the issuance of the required encroachment permit. Under DPW's process, LAFCO cannot effectively attach this condition as the Commission has no means of enforcement after completion of annexation proceedings. The County has agreed to enforce mitigation measures with the exception of protection of archaeological resources under Mitigation Measure N.1.A. See Environmental Review below and response to comments on the Initial Study.

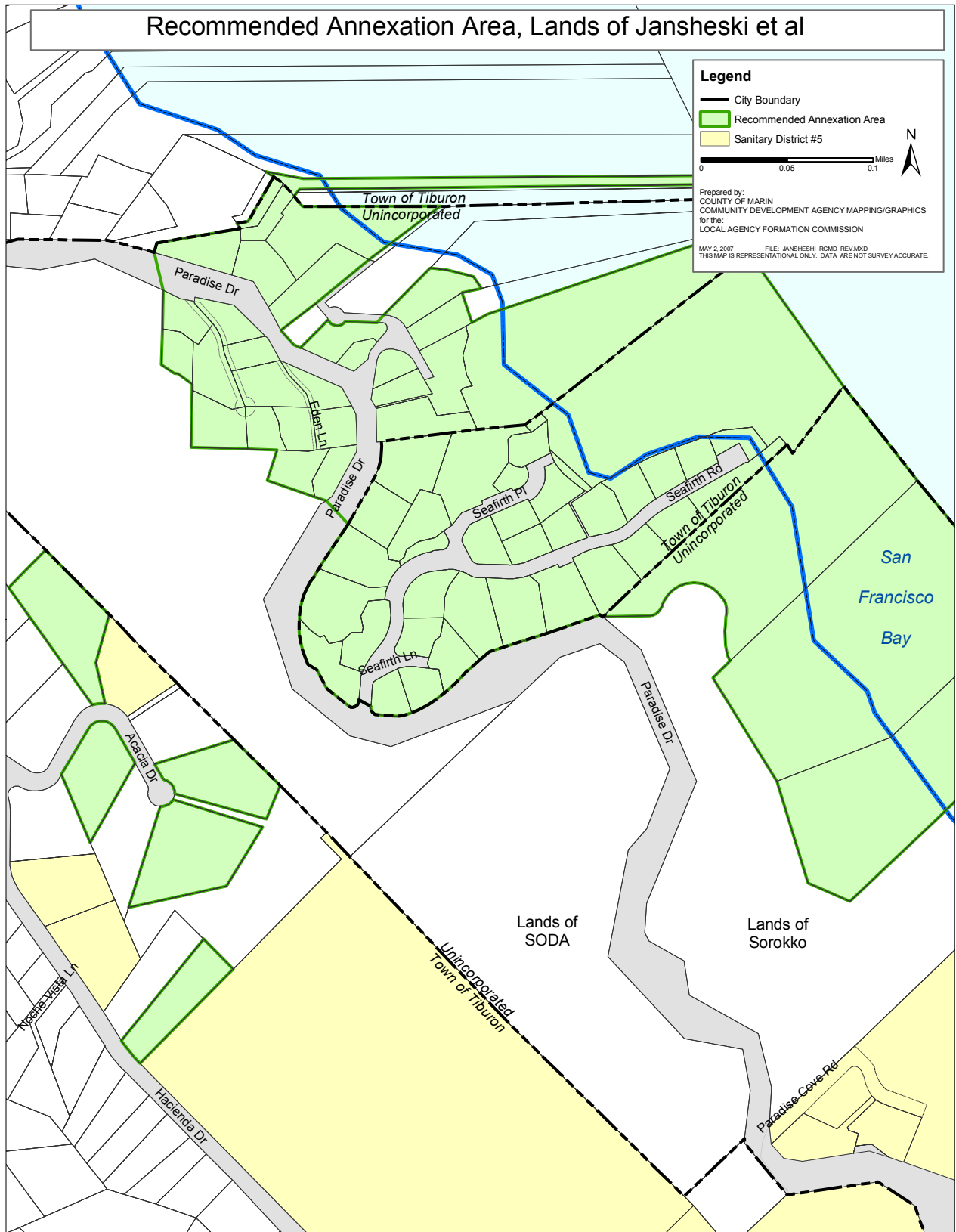
With respect to the property owner agreements associated with the implementation of the Commission's Dual Annexation Policy, the usual requirement that each affected property owner in the unincorporated area sign an agreement with the Town of Tiburon not to oppose annexation to the Town in the future would impose an impractical administrative burden on completion of this proposal. As has been the case with recent annexations to Sanitary District #5 in this area, annexation of unincorporated parcels to the Town at the present time would result in illogical boundaries or inefficient provision of local services. Therefore, annexation of territory to the Town should be deferred as recommended by the Town in its earlier correspondence. The deferral of the policy requires agreements between the Town and individual property owners.

There are approximately 30 unincorporated property owners that would be affected by this requirement. The probability that one or more property owners would be unable to immediately execute an agreement with the Town is extremely high. In order to avoid the indefinite delay of completion of annexation proceedings, staff recommends that the term and condition set by the Commission require Sanitary District #5 to agree to require connecting property owners to show evidence that such an agreement is in effect for their property prior to connection. The District's board will consider directing its staff to aid LAFCO in implementation of its policy at its meeting on May 7, 2007.

Following additional environmental review and the receipt of additional property owner consent, the final proposal boundaries should include five additional parcels with access from Acacia and Hacienda Drive in the Town of Tiburon as shown on page 7. Terms and conditions of approval should include the provision by the proponent of a map and legal description of the final annexation area in the technical format required to meet the standards of the State Board of Equalization.

At this writing, it is not clear from the environmental review conducted to date that sufficient treatment capacity exists in the District's Paradise Cove treatment plant to provide service to the SODA and Sorokko properties. Those parcels are not shown in the map of recommended annexation boundaries. Staff will work with the District prior to the Commission's May 10<sup>th</sup> meeting to clarify the capacity issue and add these parcels to the recommended boundary if possible.

It should be noted that 100% of the property owners included in the annexation area shown on the map recommended for approval have consented in writing to annexation to Sanitary District #5 and that protest proceedings will therefore not be required.



## **Environmental Review**

LAFCO has received several letters of comment on the proposed Mitigated Negative Declaration (MND). In general, these letters support approval of the proposed annexation but seek to correct errors in the MND, and to clarify some of the mitigation and monitoring provisions. Many of the comments encourage inclusion of the Acacia/Hacienda properties in the annexation action, and encourage connection to the "'93 Line" as environmentally beneficial actions. Staff is providing the Commission with a formal response to some of these comment letters (see Attachment D). Several comment letters were received just prior to distributing this packet. A response to these subsequent comments will be forwarded to the Commission early next week.

After reviewing the comments on the proposed Mitigated Negative Declaration, there is no substantial evidence in the record that the project will have a significant effect on the environment that cannot be mitigated or avoided. Similarly there is no evidence that requires substantial modification of the MND. Staff is recommending modifications that:

1. Clarify some of the mitigation and monitoring measures;
2. Correct errors in the Mitigated Negative Declaration
3. Allow for inclusion of Acacia/Hacienda properties in the annexation area with sanitary services extended within an adjoining fire road alignment; and
4. Require utilization of the '93 Line to connect to Sanitary District #5 facilities

These recommended modifications are not made in response to new significant impacts, do not create new significant impacts, and are not necessary to mitigate avoidable significant impacts. Based on this analysis, staff continues to recommend that the Commission adopt the Mitigated Negative Declaration prior to acting on the proposed annexation. The revised mitigation and monitoring program is included with this report as Attachment E.

## **Recommendation**

Annexation of the proposal area is consistent with the adopted sphere of influence of Sanitary District #5. The District has adequate treatment capacity to serve the proposal area and is prepared to extend service. Approval of the proposal has the potential to address long-term environmental protection issues related to on-site and private wastewater systems in an area that Sanitary District #5 has been previously unable to provide service. Availability of sewer service in this area would provide significant economic and safety benefits to area property owners. Staff recommends

approval of the proposed annexation as shown on page 7 above subject to limited terms and conditions specified below.

Recommended Commission Action, by Resolution:

1. Adopt the mitigated Negative Declaration of Environmental Impact prepared for this project, and require the project sponsor to comply with the attached Mitigation Monitoring and Reporting Program.
2. Find that changes or alterations to the project and mitigation measures to lessen environmental effects to less than significant levels as identified in the Mitigated Negative Declaration are acceptable and adopt a mitigation monitoring and reporting plan identifying those agencies that are responsible for compliance and are empowered to sanction non-compliance.
3. Approve the proposed Annexation of the Lands of Jansheski et al to the Tiburon Sanitary District as shown on page 7 subject to the following terms and conditions:
  - A. The applicant shall provide a map and legal description of the approved annexation area meeting the standards of the State Board of Equalization as approved by the County Surveyor.
4. Direct staff to complete annexation proceedings pursuant to Government Code §57000 et seq. and in accordance with policies and procedures adopted by the Commission.

Respectfully submitted,

Peter Banning  
Executive Officer