

DATE: March 2, 2007

TO: LAFCO Members

FROM: Peter Banning, Executive Officer

SUBJECT: Executive Officer's Report & Recommendation
Proposed Annexation of the Lands of Jansheski et al to Sanitary District #5 (File #1281)

Summary

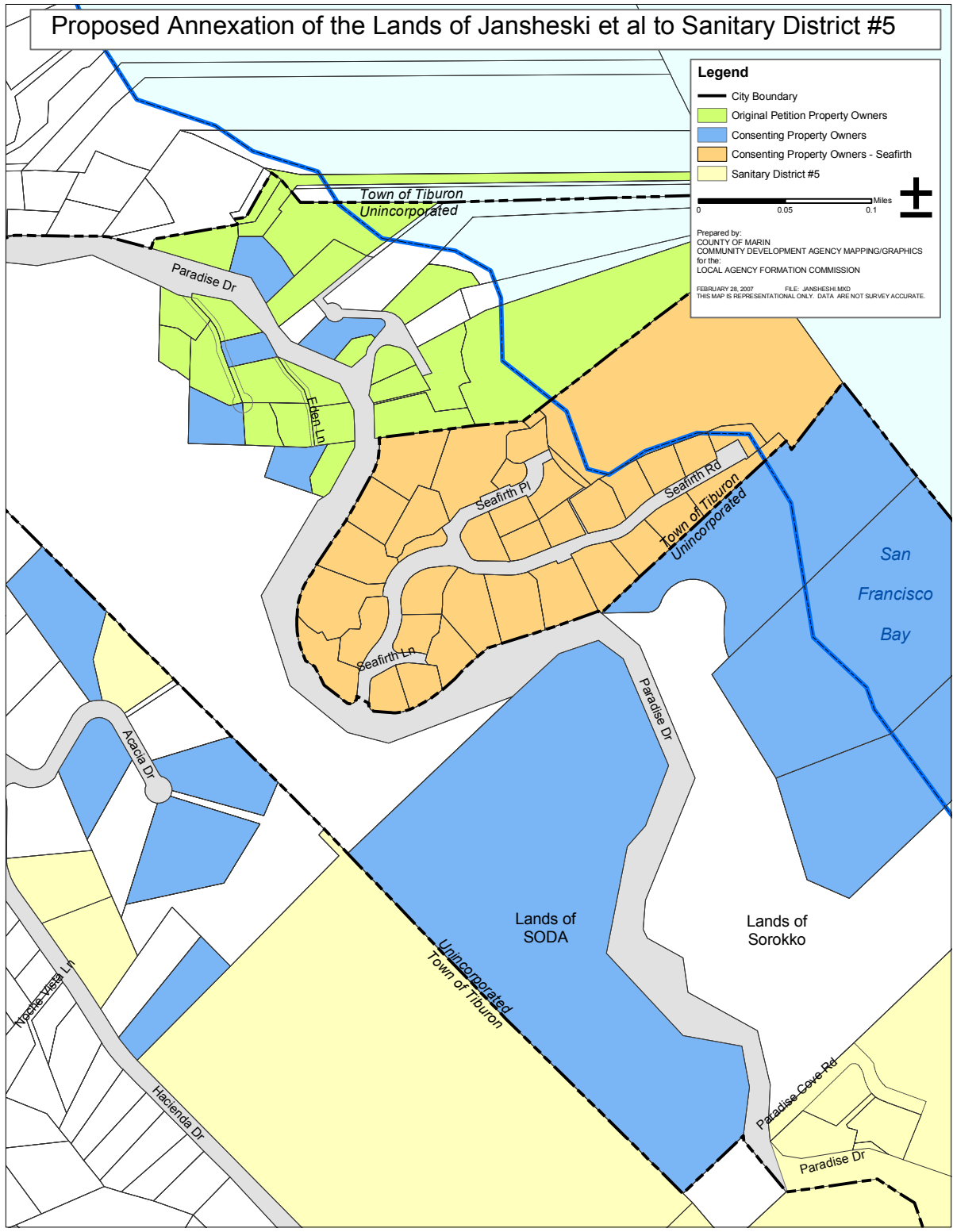
This proposal began as an effort of the applicant to obtain sewer service for his own residence at 4185 Paradise Drive, near its intersection with Trestle Glen Boulevard. Extension of service to this area would require installation of nearly one mile of new sewer main in Paradise Drive.

The petition of application was signed by 22 additional property owners before being submitted to LAFCO in December. Since that time, 44 more property owners have submitted their written consent to annexation, requesting that their properties be added to the proposal boundaries. The requests for amendment of the proposal include all 30 property owners in the Seafirth area.

The map on the following page shows the properties of the original petitioners and others consenting and seeking annexation to the District. Sanitary District #5 has sufficient capacity at its Paradise Cove treatment plant and welcomes the proposal.

The proposed annexation is subject to environmental review under the California Environmental Quality Act (CEQA). Staff retained the services of Davidson Land Use Consulting to perform the initial study required by CEQA. The initial study was published on February 16, 2007 and distributed to relevant public agencies and interested persons. The study recommends that the Commission adopt a Negative Declaration of Environmental Impact along with necessary mitigation measures to be enforced by LAFCO and the County Department of Public Works.

The applicant has worked with LAFCO staff, Sanitary District #5, Seafirth Homeowners Association and affected property owners to find workable solutions to a series of issues surrounding extension of the sewer. Extension of service to this area would reduce the prospect of failing septic systems in the area and enable Seafirth Homeowners Association to close its private treatment facilities. Staff recommends approval subject to conditions and the determination of final annexation boundaries.



In July of 2001, the Commission approved another significant extension of sewer main in Paradise Drive (Annexation of the Lands of Shaw (File #1197). That application was followed by a series of repetitive annexation applications by nearby property owners seeking connection to the new main. In this instance, staff has encouraged the applicant to seek the participation of additional interested property owners in his application in order to facilitate a more orderly, less repetitive boundary change process. The petition submitted with the application includes the signatures of 23 property owners. Since the petition was submitted, staff has received requests for inclusion of 49 additional parcels.

The proposal would extend sewer service to an area subject to failure of existing on-site wastewater systems and an obsolete private sewage treatment plant. Sanitary District #5 has stated that it is unable to efficiently extend service to the area. The District supports the proposed annexation and has sufficient treatment capacity to provide service to approximately 70 residences that might connect to the new sewer main.

Staff recommends approval of the proposal subject to modification of its boundaries. Other proposed terms and conditions are aimed at reducing risks to the proponent, to individual property owners connecting to the new sewer main and to Sanitary District #5.

General Information

Proposal Description:	Annexation of 90 acres of incorporated and unincorporated land to Sanitary District #5.
Proposal Location:	Tiburon Peninsula, Paradise Drive area
No. of Parcels:	75
Acres:	90 acres proposed, 63 acres recommended.
Development Potential:	
Applicants:	Mark Jansheski, 3 Rolling Hills Rd, Tiburon and 22 additional petitioners.
Consent of Property Owner(s):	No
Public Hearing Required:	Yes

Number of Registered Voters: 20 (subject to updated information)

City or County: The Seafirth area is in the Town of Tiburon. The balance of the affected area is unincorporated.

Assessed Value: \$60,586,384

Property Tax Exchange: None

Current and Proposed Provision of Services

	<u>Current:</u>	<u>If Approved:</u>
Police:	County Sheriff & Tiburon Police	No Change
Fire:	Tiburon FPD	No Change
Water:	MMWD	No Change
Sewer:	No Service	Sanitary District #5
Streets:	County/ Private (Seafirth)	No Change
Planning:	County/Tiburon	No Change

Comments of Affected Agencies

County Environmental Health Services (EHS): EHS reports replaced and failing systems in the proposal area and that the area on-site wastewater systems are disadvantaged by steep slopes and shallow soils. "Numerous complaints of failing septic systems have been reported in past years."

Sanitary District #5: The District provided the proponent with a will-serve letter on December 11, 2007. The letter supports the project and states that sufficient treatment capacity exists at the Paradise Cove plant to serve at least 70 additional residences. In separate communication to LAFCO, the District consents in writing to the proposed annexation and to waiver of conducting authority proceedings.

County Community Development Agency (CDA): County CDA has provided basic general plan and zoning information for the project area. CDA's comments on the Initial Study are anticipated prior to the April 12, 2007 LAFCO meeting.

Town of Tiburon: The staff of the Town of Tiburon states that:

It was the consensus of the Town council that the annexation would be a positive step in addressing sanitary sewer issues and failing septic systems in the Paradise Drive area of the Tiburon Peninsula. The Town Council found the proposal consistent with Tiburon General Plan policies provided that each owner included in the (unincorporated portion of) the annexation enter into the Town's standard "annexation agreement" with the Town prior to issuance of the Certificate of Completion.

The Town of Tiburon would support a LAFCO deferral of the dual annexation policy provisions for this application provided that such agreements are secured and recorded.

The Town's comments were not associated with land parcels currently under subdivision review.

Marin Municipal Water District: no comment

Marin County Committee on School District Organization: no comment

Discussion & Analysis

This proposal requests annexation of approximately 90 acres in the Paradise Drive area to Sanitary District #5 for the purpose of extending sewer service.

The proponent plans to construct approximately 6,397 feet of sewer main in the Paradise Drive right-of-way from the intersection of Playa Verde Road to the proponent's residence, now under construction immediately north of Eden Lane. The line will be constructed to the requirements of Sanitary District #5 and will connect to the District's main and the Paradise Cove treatment plant. In addition, all 30 property owners in Seafirth Estates subdivision and the Seafirth Estate Company (the homeowner's association) have requested inclusion in the proposal's annexation boundaries. Inclusion of Seafirth and connection to the sewer main would allow the Seafirth Estate Company to close its small private sewage treatment plant, shown below. Approximately 22 other property owners to the north and south of Seafirth have also requested inclusion in the annexation, a total of 75 parcels as shown on the map on page 2. The project's physical improvements are described in the attached Initial Study.

All property owners affected by the annexation shown on the map have consented to the annexation in writing. Following annexation, however, access to the new private sewer main must occur by contract between property owners and the proponent. Property owners in Seafirth are represented by their homeowners association. The Seafirth Estate Company will negotiate uniform contract terms for all its members. Other private property owners wishing to connect must individually come to agreement with the proponent.

The proponent will be required to obtain an encroachment permit from the County Department of Public Works prior to construction in the Paradise Drive right-of-way. The proponent will retain private ownership of the constructed sewer line until Sanitary District # 5 assumes ownership. Connecting property owners must also pay connection fees to the District at the rate of \$325 per fixture. The District's connection fees are standard and set by the District Board by resolution.

The price of connection to the private sewer main and other contractual terms will be determined by the proponent. As of the date of this staff report, the proponent will charge \$10,000 to \$20,000 per connection to the privately owned sewer main according to incentives for group participation (for Seafirth) and early sign-up. The proponent has not provided estimated construction and other project costs.

Financial Feasibility

The Commission has a general interest in ensuring that the proposed sewer improvements will be completed if the proposed boundary change is approved, but may not determine price or other terms of contract. Participation in the project by property owners is voluntary.

The project carries inherent risks for both the proponent and for participating property owners. The proponent must finance the entire construction cost of the project until reimbursed by other participants. Although the proponent can create price incentives for early participation, not all property owners will elect to connect to the sewer immediately. An unknown number will elect to delay for an unknown period of time. Project costs and timing of reimbursement therefore cannot be reliably estimated. Construction costs, as always, are subject to unforeseen conditions. As a private entrepreneur, the proponent also stands to profit from the project if sufficient participation is attained in a reasonable time period.

Affected property owners are offered a beneficial service by a private vendor rather than a public agency. Although the cost of participation is very much lower than the long-term cost of on-site wastewater systems, the cost is still very substantial. Property owners have voiced concern over assurance of project completion, the time the line will remain in private ownership, line maintenance under private ownership

and a general desire for financial security and transparency. Participation by affected property owners will be maximized to the extent that these issues can be resolved.

Negotiations on contractual terms are ongoing between the proponent, affected property owners and Sanitary District #5. LAFCO may attach terms and conditions of approval that may help to resolve these issues as discussed below.

Treatment Capacity

Sanitary District #5 states in its letter of December 11, 2006 that the District has sufficient treatment capacity to provide service to the project area.

The Initial Study points out that if all parcels that could potentially be served by the proposed sewer line were developed to the extent allowed by current zoning and all existing residential uses connected to the new sewer, resulting wastewater flows would exceed the current treatment capacity to the Paradise Cove treatment plant. However, not all property owners will elect to connect to the new main immediately, especially those with existing on-site wastewater systems that are functioning properly. If this proposal is approved, LAFCO and Sanitary District #5 will be able to monitor plant capacity, limiting new connections if necessary while ensuring that some treatment capacity remains to allow for failing on-site systems in an emergency.

Recommended Annexation Boundary

As described above, the area proposed for annexation is composed of the parcels of the original petitioners as shown in green on the map on page 2. Since the initiation of annexation proceedings, other property owners who would also benefit from available sewer service have requested that the annexation area be amended to include their parcels. If the Commission approves the proposal, the Commission will also determine the final annexation area.

Five parcels on Hacienda and Acacia Drive, shown on the left side of the map on page 2 are outside of the area analyzed in the initial study and therefore may not be included in the present annexation proposal. Also, the area shown as the Lands of SODA is a part of a subdivision proposal to be processed by the Town of Tiburon and is subject to its own environmental analysis and concurrent annexation to the Town. Staff recommends that these areas not be included in the current annexation to Sanitary District #5. The recommended annexation area is shown on page 12.

Sphere of Influence

The entire area proposed for annexation is within the adopted sphere of influence of Sanitary District #5 as adopted by LAFCO on October 13, 2005.

Dual Annexation Policy

Parts of the area proposed for annexation are outside the boundaries of the Town of Tiburon but within the Town's sphere of influence and therefore subject to the Commission's Dual Annexation Policy. Under the policy, staff refers a proposed special district annexation to the Town, inquiring if, in the Town's view, the project should be required to annex to the Town immediately or if annexation to the Town should be deferred by agreement with affected property owners in the unincorporated area. The Town has requested that annexation of the proposal area be deferred in this case, with the execution of standard property owner agreements made a condition of LAFCO's approval.

However, the construction of the proposed sewer main for this project will pass by two areas proposed for subdivision known as the SODA and Sorokko properties. These projects are opposite each other on Paradise Drive and are labeled on the maps for this report. Both projects are located in unincorporated territory within the sphere of influence of the Town of Tiburon and therefore are subject to the County's requirement that they connect to a public sewer (if available within 400 feet) and to LAFCO's Dual Annexation Policy.

The SODA project is now preparing to initiate development processing in the Town of Tiburon. SODA will connect to the sewer and annex to the Town. The Sorokko project is well advanced in development processing with the County. The draft EIR for the project should be issued in one or two months. The Sorokko project proposes on-site wastewater systems, has not sought annexation to Sanitary District #5 and therefore has not been subject to the Dual Annexation Policy.

The Jansheski sewer line would pass in front of the Sorokko project, placing the site within 400' thereby invoking County policies requiring connection to the sewer. The County is likely to enforce the 400 foot rule requiring Sorokko to connect to Sanitary District #5. This requirement will, in turn, trigger LAFCO's Dual Annexation Policy. The Town has repeatedly stated that it desires to annex the Sorokko project and control land use on the site.

It can be argued that requiring the Sorokko project to annex to Tiburon prior to obtaining the approvals sought for the project at a fairly late stage in the development approval process does not represent "... orderly growth and development " that LAFCO is charged with pursuing under Government Code 56001. Also, the County and the Town of Tiburon continue to discuss the high costs of maintenance and risk of failure of the Paradise Drive roadway that would be included in annexation of either the SODA or the Sorokko sites. Tax revenues associated with either or both annexations would be insufficient to cover the Town's costs under the existing property tax transfer agreement. This problem is has not been resolved.

The staffs of the County and the Town do not appear to have flexibility in implementation of the 400' rule or the Town's stated desire to annex the Sorokko project. LAFCO's policy says that the Commission will give "great weight" to the Town's wishes on the timing of the annexation, but the Commission makes the final decision on how the Dual Annexation Policy will be implemented.

The Commission may wish to consider appointing a temporary sub-committee of its members to address this problem in the month between March and April LAFCO meetings.

Terms and Conditions

Government Code Section 56886 provides LAFCO with the authority to attach a wide variety of terms and conditions to its approval of changes of local government organization. Such terms and conditions of approval are often of vital importance to an orderly boundary change and development process. The section reads, in part:

56886. Any change of organization or reorganization may provide for, or be made subject to one or more of, the following terms and conditions. However, none of the following terms and conditions shall directly regulate land use, property development, or subdivision requirements:

....

(h) The acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal.

(i) The disposition, transfer, or division of any moneys or funds, including cash on hand and moneys due but uncollected, and any other obligations.

(j) The fixing and establishment of priorities of use, or right of use, of water, or capacity rights in any public improvements or facilities or of any other property, real or personal.

...

(v) Any other matters necessary or incidental to any of the terms and conditions specified in this section.

The authority to attached terms and conditions under the above subsections of GCS 56886 are important to resolving several unusual aspects of the current proposal, especially the private ownership and development of the sewer line, the uncertainty of sufficient participation and the uncertainty of prospective participants, where some have the advantage of professional representation and some do not.

LAFCO's approval process should attempt to enhance the feasibility of the project and its longer-term stability by requiring that Sanitary District #5 and proponent enter into a reimbursement agreement that includes provisions for the generally stated issues (more precise language for terms and conditions will be included in

staff's draft resolution of approval to be submitted for the Commission's April meeting):

- Construction of sewer facilities to the requirements of Sanitary District #5;
- Demonstration of adequate warranties and maintenance of the sewer line while under private ownership;
- Limitation on the time of private ownership to a period not more than 18 months;
- Provision for an impartial agent to collect, hold and disburse funds during private ownership period;
- Definition of total reimbursement to proponent for costs of construction, finance , insurance, escrow, and a specified margin of profit;
- Specifies continuous, stable price or price schedule for connection through both private and District ownership under a rational method of apportionment;
- Reimbursement to the proponent by or through the District outstanding amounts following transfer of ownership to the District.
- Refund of money in excess of defined costs if appropriate.

Reimbursement agreements are common in cases where a private developer provides infrastructure beneficial to the public as well as his own project. Although such agreements may create some administrative burden, the District has acknowledged the need for this project and its strong support. Equity, stable price, and transparent dealings are essential to attracting adequate participation of property owners and close cooperation between the proponent and the District.

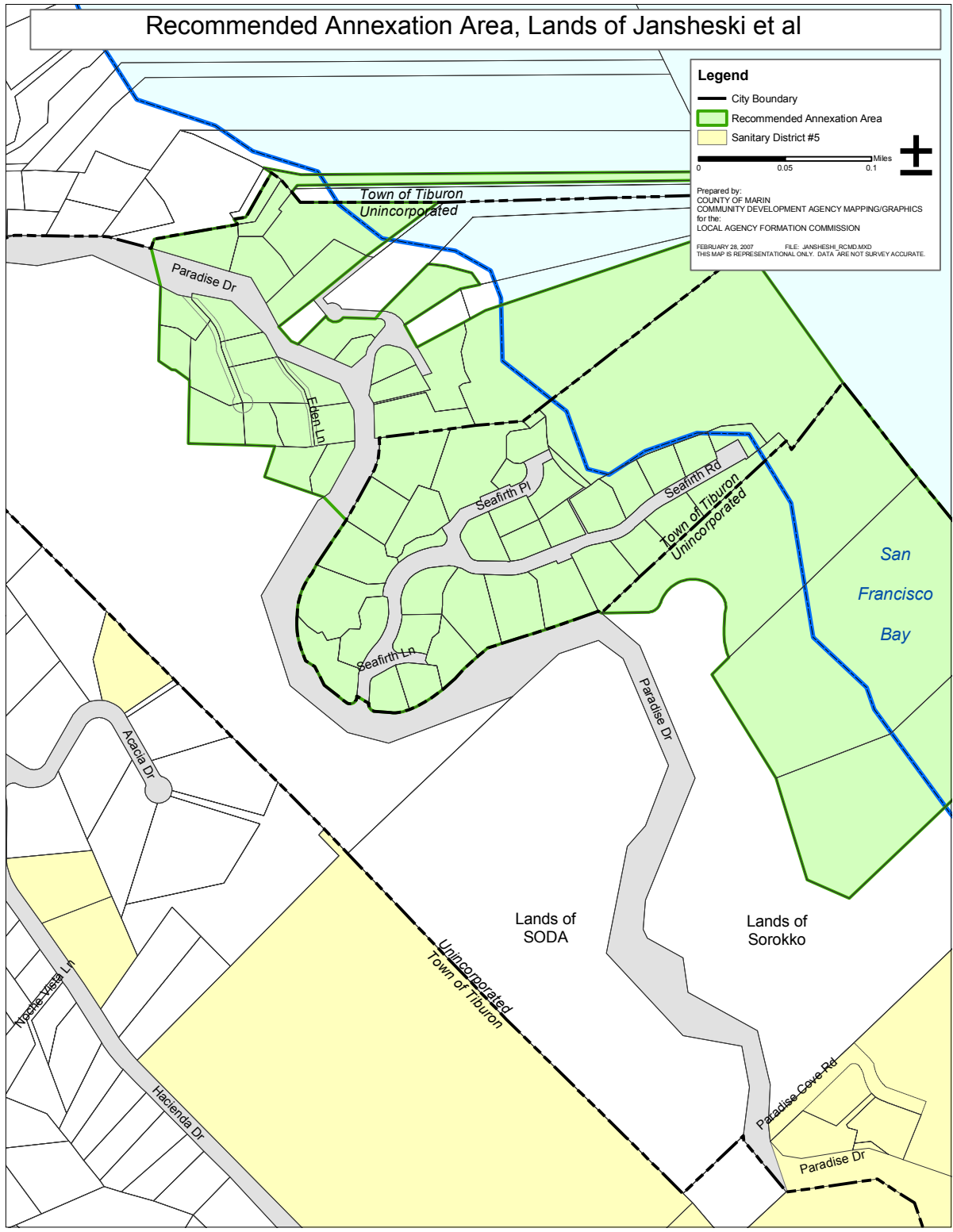
Other necessary terms and conditions should include the issuance of an encroachment permit by the County Department of Public Works, the County's agreement to enforce environmental mitigation measures proposed in the initial study, execution of property owner agreements for implementing the Dual Annexation Policy, amendment of the area to be annexed (as shown on page 12) and provision by the proponent of a map and legal description of the annexation area as approved by LAFCO. Proposed terms and conditions will be more precisely defined in the staff report and recommendation to be issued for the Commission's meeting April 12, 2007.

Environmental Review

This proposal is a project as defined by the California Environmental Quality Act (CEQA). LAFCO, acting as lead agency under CEQA, has contracted with a consultant to examine the potential for significant environmental impacts. The consultant has produced the attached Initial Study pursuant to the State CEQA Guidelines. The Initial Study discusses growth inducement and other potential

environmental issues associated with the project and recommends that although the proposed project could have significant effects on the environment, there will not be a significant effect in this case because mitigation measures described in the Mitigation Monitoring and Review Program have been added to the project and agreed to by the applicant and responsible agencies. The period for review and comment on the Initial Study and proposed Negative Declaration extend through March 20, 2007. LAFCO must extend the public hearing to the April 12, 2007 meeting in order to receive and respond to comments. The Initial Study and the proposed Mitigated Negative Declaration are attached to this staff report for the Commission's consideration.

Environmental documents prepared for this project, including the Initial Study and Notice of Intent to Adopt a Mitigated Negative Declaration, have been published and circulated as required by CEQA. The documents are also available for downloading from the Commission's website.



Recommendation

This project 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 unable to provide service. Availability of sewer service in this area would provide significant economic and safety benefits to area property owners. Staff will recommend approval of the proposed annexation as shown on page 12 subject to terms and conditions described above.

For the March 8, 2007 meeting, staff recommends that the Commission open the hearing for public testimony and continue the hearing to the April 12, 2007 meeting. As discussed above, the Commission may also wish to consider appointment of a temporary subcommittee to address issues connected to future annexations of subdividing areas to the Town of Tiburon.

Respectfully submitted,

Peter Banning
Executive Officer