



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

7b

AGENDA REPORT
 Business | Action

March 3, 2025

TO: Chair Whitburn and Commissioners

FROM: Keene Simonds, Executive Officer
 Meghan Traynor, Analyst I

SUBJECT: **Proposed “Lank – Poinsettia Avenue Out-of-Agency Wastewater Services” | Buena Sanitation District (OAS25-04)**

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider a request by the Buena Sanitation District (Buena SD) involving new out-of-agency wastewater services to an incorporated parcel located within the City of San Marcos. The affected territory is presently part of a 0.5-acre parcel with a single-family residence at 806 Poinsettia Avenue. The purpose of the request is to facilitate a lot split and construction of an additional single-family residence plus two accessory units – one for the existing residence and one for the new residence. Staff recommends approval of the request with standard terms. Staff is relatedly recommending the Commission waive the otherwise special condition commonly applied to require the landowner to file an annexation proposal with LAFCO for future processing given local conditions as detailed. A categorical exemption is separately recommended to ensure compliance with the California Environmental Quality Act (CEQA).

BACKGROUND

Statute and Local Policies

Government Code Section 56133 prohibits cities or special districts from providing new or extended services by contracts outside of their jurisdictional boundaries without prior LAFCO

Administration Keene Simonds, Executive Officer 2550 Fifth Avenue, Suite 725 San Diego, California 92103 T 619.321.3380 E lafco@sdcountry.ca.gov www.sdlafco.org	Joel Anderson County of San Diego	Kristi Becker City of Solana Beach	Chair Stephen Whitburn City of San Diego	Vice Chair Barry Willis Alpine Fire Protection	Harry Mathis General Public
	Jim Desmond County of San Diego	Dane White City of Escondido	Marni von Wilpert, Alt. City of San Diego	Jo MacKenzie Vista Irrigation	Brigitte Browning, Alt. General Public
	Vacant County of San Diego	John McCann Alt. City of Chula Vista		David Drake, Alt. Rincon del Diablo	

review and approval less certain and limited exemptions. In addition, cities or districts may only provide services by contract outside of their boundaries and within their spheres of influence in anticipation of later annexations. If the affected territory lies outside the subject agencies’ spheres, outside-of-agency services may only be extended in response to documented threats to public health and/or safety as determined by LAFCO.

San Diego LAFCO’s current policies authorize the Executive Officer to approve outside-of-agency services in response to documented health, safety, or welfare impacts.¹ Otherwise, all out-of-agency approvals require formal Commission action.

Buena Sanitation District: Transitional Sphere & Policy Expectations

The affected territory lies outside Buena SD’s transitional sphere – also referred to as a zero sphere.² LAFCO approved a transitional sphere for the Buena SD in 1984, recognizing that the District’s service responsibility should ultimately be assumed by the City of Vista. This sphere designation includes provisions allowing *unincorporated* parcels in need of wastewater services to annex to the District until Buena SD merges with the City of Vista (emphasis added). Given the affected territory is located within the City of San Marcos, and a land swap between the two cities is unlikely, an out-of-agency service extension is requested.

Applicant Request

San Diego LAFCO received a request from the Buena SD on behalf of an interested landowner (Myles Lank) in January 2025 for approval to provide new wastewater services outside its jurisdictional boundary by contract to a 0.51-acre parcel comprising 806 Poinsettia Avenue (217-231-16). The subject parcel is currently developed with a 1,318 square-foot single-family residence built in 1970 and is presently serviced wastewater by Buena SD under a grandfathered 1970 agreement. The request seeks approval to make available wastewater services for a planned lot split and construction of an additional single-family residence and two ADUs for both residences (existing and planned). A map showing the affected territory is provided as Attachment One.

- * The Executive Officer has determined existing wastewater service to the residence at 806 Poinsettia does not require action by LAFCO given service commenced before Government Code Section 56133 was enacted and set January 1, 2001 as the effective date. However, because the original agreement associated with the existing residence was not previously approved by the Commission, the Executive Officer has determined the proposed service accommodation for the new development qualifies as “new” as opposed to “extended” and therefore requires LAFCO approval.

² Transitional spheres – or zero spheres – are absent any territory and may be designated for an agency, usually a special district when it is assumed the public service responsibility and function of the agency should ultimately be reassigned to another agency.

DISCUSSION

This item is for San Diego LAFCO to consider approving Buena SD’s request under Government Code Section 56133 to provide new out-of-agency wastewater services (collection, treatment, and disposal classes) to facilitate a planned lot split involving 806 Poinsettia Avenue. The Commission maintains discretion to approve the request with or without terms so long as the latter does not directly regulate land use, property development, or subdivision requirements. Additional discussion on proposal purpose, land use policies, and Commission focus follows.

Proposal Purpose

The purpose of the request is to extend out-of-agency wastewater service in support of the landowner’s planned lot-split and construction of an additional single-family residence and two accessory dwelling units per residence.

Current and Planned Land Uses

The affected territory consists of a single parcel, developed with a single-family residence built in 1970. The City of San Marcos designates the subject parcel with a Residential Low zoning assignment, which sets the minimum lot size at 10,000 square feet or 0.23 acres and allows a maximum density of four units per acre. The planned development would comply with these allowed uses, maximizing the permissible density.

Commission Focus

Staff has identified two central and sequential policy items for San Diego LAFCO in considering the merits of the requested approval for the Buena SD to provide new out-of-agency wastewater services to the affected territory. These items involve the stand-alone merits of the (a) timing of the requested service extension itself and (b) whether discretionary terms are appropriate. The Commission must also consider other relevant statutes as detailed.

ANALYSIS

The following analysis address the two policy considerations outlined in the preceding section most relevant to San Diego LAFCO consideration of the requested authorized – timing of the out-of-agency service and whether terms are appropriate.

Policy Consideration | Timing of the Out-of-Agency Wastewater Service

Underlying San Diego LAFCO’s consideration of the request is the timing and whether the membership believes the extension of municipal wastewater service is merited and – if yes – whether it is readily available. Should the preceding determinations be in the affirmative the Commission is tasked with proceeding to consider most appropriate delivery means, annexation or outside service extension. Staff’s analysis of these two related factors follows.

- Need and Availability of Service

The affected territory, located within an urbanized area of the City of San Marcos, is presently part of a 0.51 acre-parcel developed with a single-family residence. The Buena SD is currently providing wastewater service to the existing residence via an 1970s out-of-agency service agreement. The landowner seeks approval to provide new wastewater services in support of a planned lot-split and construction of an additional single-family residence along with two accessory dwelling units – one for each residence. The extension of Buena SD’s wastewater service to the affected territory is readily available. It is projected the new maximum average day wastewater demand generated within the affected territory post development is 750 gallons per day based on accommodating three additional planned units (one single-family residence and two ADUs). This projected amount can be readily accommodated without adverse impacts given it represents 0.021% of the existing available capacity of the wastewater system.³

- Out-of-Agency Service v. Annexation

Annexations are the preferred method under LAFCO law for implementing boundary changes that formalize the relationship between land and service providers unless local conditions suggest otherwise. In this case, local conditions justify an out-of-agency service extension as the most effective means to provide wastewater services to the affected territory given annexation would not be orderly or efficient at this time. Most notably, the Commission’s prior designation of Buena SD transitional sphere suggests the current request for out-of-agency services is appropriate, as it supports the short-term development and aligns with the Commission’s long-term planning goals. Buena SD’s transitional sphere was established in 1984 with the expectation of annexation to the City of Vista when the timing is appropriate. Given the affected territory lies within the City of San Marcos, and a land swap between the cities is improbable, the out-of-agency service extension is the most practical and effective solution to meet the immediate service needs while remaining in alignment with the Commission’s long-term planning goals.

Policy Consideration | Potential Terms

Staff believes it would be appropriate for San Diego LAFCO to condition approval to accommodate the allowance for three residential units (one additional single-family residence and two accessory dwelling units). The application of standard approval terms also appears sufficient. This includes the applicant paying any outstanding fees necessary to complete the approval per the San Diego LAFCO fee schedule. Conversely, consideration has been given consistent with practice to require the landowner to file an annexation proposal with LAFCO for future processing in conjunction with expediting the anticipated annexation under statute. Staff believes it is appropriate to proceed without this term given local conditions and the impracticability of timing a future annexation given the preceding considerations.

³ One single-family residence and two accessory dwelling units use a total of 750 gallons per day, while Buena Sanitation District’s capacity at Encina Wastewater Authority is 5.89 million gallons per day (MGD) and its average daily flow at the same facility is 2.03 MGD.

RECOMMENDATION

It is recommended San Diego LAFCO conditionally approve the requested out-of-agency wastewater service authorization allowing Buena SD to provide new service within the undeveloped portion of the affected territory to accommodate a planned lot split and construction of three new units (single-family residence and two accessory dwelling units) This recommendation is consistent with Alternative One below.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO and can be accomplished through a single-approved motion.

Alternative One (recommended):

- (a) Approve the requested out-of-agency wastewater service authorization between the Buena SD and landowner at 806 Poinsettia Avenue subject to the scope and terms as provided in the preceding sections.
- (b) Authorize the Executive Officer to file a Notice of Exemption consistent with the finding the request qualifies as a “project” under the California Environmental Quality Act but exempt from further review under State CEQA Guidelines Section 15319(b) given no more than 4 dwelling units are planned for development.

Alternative Two:

Continue item to a future meeting.

Alternative Three:

Disapprove the request.

PROCEDURES

This item has been placed on the agenda for action as part of San Diego LAFCO’s business calendar. The following procedures are suggested in the consideration of this item:

- 1) Receive verbal report from staff unless waived.
- 2) Discuss item and consider recommendation.

On behalf of the Executive Officer,

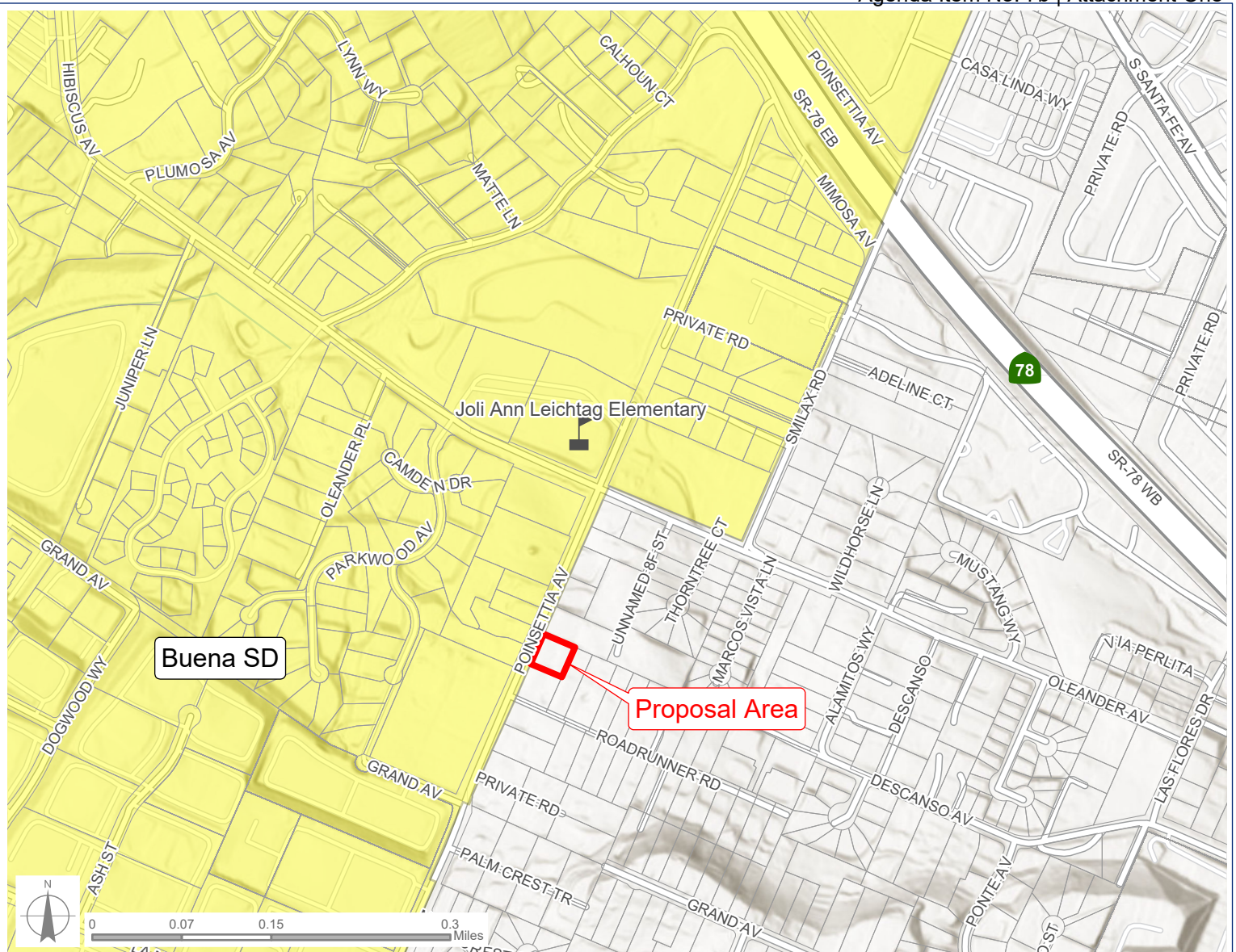


Meghan Traynor
Analyst I

Attachments:

- 1) Map of the Affected Territory
- 2) Related Requested Documents

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OAS25-04

"LANK - POINSETTIA AVENUE OUT-OF-AGENCY WASTEWATER SERVICES" | BUENA SANITATION DISTRICT

- Proposal Area
- Buena SD



San Diego County
Local Agency Formation Commission
 Regional Service Planning | Subdivision of the State of California

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CONTRACTUAL SERVICE AGREEMENT APPLICATION FORM

In addition to the materials required for any change(s) of organization, submit the following items:

1. One copy of either an approved Resolution of the City Council/District Board of Directors or a letter from the City Manager/District General Manager requesting approval for a contractual service agreement.
2. One copy of the contract or agreement stipulating the terms and conditions of extending service to the property signed by the property owner(s) and the agency that is to provide the service.
3. LAFCO processing fee. Contact the LAFCO office or refer to fee schedule.

Print/Type Name: Myles Lank

Property Address: 806 Poinsettia Ave, San Marcos, CA 92078

Phone #: 310-902-8631 Date: 1/23/25

This application is used by LAFCO staff to provide supplemental information for contractual service agreement requests.

1. What type or types of public service(s) will be provided? Sewer
2. Why is the service needed? If the service agreement is in response to an emergency health and safety situation, such as a failed septic system, provide information documenting the circumstances (e.g., letter from the County Department of Environmental Health). Building of 1 SFR and 1 ADU.
3. If a jurisdictional change, such as annexation, is not possible at this time, explain the circumstances that prevent annexation and when the jurisdictional change is anticipated. n/a
4. Are there any jurisdictional issues associated with the YES NO
(If yes, please complete the LAFCO Policy L-107 form)

 1/23/25

San Diego Local Agency Formation Commission
2550 Fifth Ave., Suite 725
San Diego, CA 92103
(619) 321-3380



January 28, 2025

San Diego County LAFCO
Attn: Keene Simonds
2550 Fifth Avenue, Suite 725
San Diego, California 92103

Re: Out of Area Service Agreement Request – 806 Poinsettia Ave., San Marcos, CA

Dear Mr. Simonds,

The Buena Sanitation District is requesting approval from San Diego LAFCO to provide wastewater services to an existing single-family residence, a second new single-family residence, and two new accessory dwelling units at 806 Poinsettia Ave., San Marcos, CA (APN 217-231-16) which is outside of the Buena Sanitation District boundary.

Buena Sanitation District public sewer infrastructure is readily available and has adequate capacity to provide service to the property. Pursuant to the August 1989 Agreement between the City of San Marcos and Buena Sanitation District, and the 2007 Amendment, BSD is willing to offer sewer service to this property. The agreement will be memorialized with an Out-of-Area Sewer Service Agreement, recorded in the office of the County Recorder.

Pursuant to direction received from your office, a check for \$1,921.50 is included with this request.

I appreciate your consideration in this manner. Please feel free to reach out to Steve Nowak at 760-643-5403 or snowak@vista.gov with any questions you may have.

Sincerely,


John Conley
District Manager

RECORDING REQUESTED BY:
BUENA SANITATION DISTRICT

WHEN RECORDED MAIL TO:

**BUENA SANITATION DISTRICT
200 CIVIC CENTER DRIVE
VISTA, CA 92084-6275
ATTN: DISTRICT CLERK**

Fee Exempt: Government Code Section 27383

APN: 217-231-16-00

**OUT OF AREA SEWER SERVICE AGREEMENT
806 Poinsettia Ave., San Marcos, CA**

THIS AGREEMENT is entered into as of 28, 2025 ("Agreement Date"), by and between the **BUENA SANITATION DISTRICT**, a county sanitation district, ("District") and, **Myles J. Lank and D'Lynn M. Lank, Trustees, or their successors in interest, of the Myles J. Lank and D'Lynn M. Lank Living Trust dated June 9, 2017, and any amendment thereto** ("Owner/Developer").

RECITALS

1. Owner/Developer has applied to District for sewer service for the real property hereinafter described ("Property") now under Owner/Developer's ownership to facilitate construction of a new single-family residence and two accessory dwelling units.
2. The Property is outside the District limits.
3. It has been determined to be in the public interest to provide sewer service to this Property.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1. Owner/Developer shall acquire any necessary off-site easements, shall construct the mainline sewer and lateral to a point on the Property as determined by District's Department of Engineering, and shall be responsible for all costs including engineering, permits, inspection and any other costs related to the physical construction of the sewer. Owner/Developer shall comply will all rules, regulations, ordinances or statutes currently in effect or as may be amended from time to time. Owner/Developer agrees to indemnify, defend and hold harmless District for any loss, damage, or claim of damage resulting from an alleged or actual failure of the domestic sewer lateral or the District sewer main.

SECTION 2. Owner/Developer shall pay sewer capacity fees, sewer service fees, and permit fees to District as required by District from time to time. Sewer service charges will be billed as determined by District and shall be paid within thirty (30) days of the billing date. If within that 30 day period, such charges have not been paid, Owner/Developer and its successors in interest hereby authorize the filing of a law suit in a court of competent jurisdiction by District. Parties refusing to pay their sewer service charge within the specified time shall, in addition be liable for any and all cost of suit and reasonable attorney's fees incurred by District in initiating any legal action pursuant to the terms of this Agreement.

SECTION 3. Owner/Developer irrevocably agrees to grant to District, without compensation, an on-site sanitary sewer easement, if necessary in the sole discretion of District, for the future extension of the sewer.

SECTION 4. Subdivision and/or development shall be compatible with District's General Plan and shall be in

Out-of-Area Sewer Service Agreement

806 Poinsettia Ave., San Marcos, CA

APN: 217-231-16-00

Page 2

conformance with District development standards, including District review and approval of the site development plan and payment of any development fees not required by the County but required by District, such as drainage fees and traffic mitigation fees.

SECTION 5. District will provide sewer service upon satisfaction of the conditions set forth in this Agreement, applicable law, and other requirements which are standard preconditions to the provision of sewer service.

SECTION 6. A description of the Property upon which Out of Area Service Agreement is imposed is described in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 7. The obligations of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Property and shall be binding on the successors and assigns of Owner/Developer, including all estates and interests in the Property. Notwithstanding the foregoing, the decision to initiate or support an application for annexation to the Local Agency Formation Commission ("LAFCO") is reserved to the sole discretion of District, and this Agreement does not contain any representation or commitment that District will initiate or support such an application in the future. LAFCO must approve any annexation to District.

SECTION 8. This Agreement shall continue in perpetuity or until this Agreement is terminated as hereinafter specified, whichever occurs first.

SECTION 9. This Agreement may be terminated by the District by giving Owner/Developer, its heirs, successors or assigns, five (5) days advance written notice if [1] Owner/Developer fails to pay the fees described in paragraphs One (1), Two (2), Three (3) or Five (5) above, or [2] the annexation is not approved for any reason.

[Continued on page 3.]

Out-of-Area Sewer Service Agreement

806 Poinsettia Ave., San Marcos, CA

APN: 217-231-16-00

Page 3

SECTION 10. This Agreement is subject to the LAFCO review and approval. It shall be effective following execution by the parties and upon approval by LAFCO. Should LAFCO fail to approve this Agreement it shall be of no further force or effect.

SECTION 11. This Agreement contains the entire agreement between the parties, and neither party relies upon any warranty or representation made by either party if not contained in this Agreement.

IN WITNESS, WHEREOF, the parties hereto have executed this Agreement as of the Agreement Date.

“DISTRICT”

“OWNER/DEVELOPER”

BUENA SANITATION DISTRICT, a county sanitation district

Myles J. Lank and D’Lynn M. Lank, Trustees, or their successors in interest, of the Myles J. Lank and D’Lynn M. Lank Living Trust dated June 9, 2017, and any amendment thereto

By: _____
JOHN CONLEY, DISTRICT MANAGER

By: _____

NAME/TITLE

BY: _____

Name/Title

(When signing as Corporation necessary signatures are President OR Vice President AND Secretary OR Assistant Secretary.)

NOTE: A CALIFORNIA ALL PURPOSE NOTARY ACKNOWLEDGMENT MUST BE ATTACHED FOR ALL SIGNATURES ABOVE

ATTEST:
KATHY VALDEZ, DISTRICT CLERK

By: _____

APPROVED AS TO FORM:
WALTER CHUNG, DISTRICT ATTORNEY

By: _____

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