

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF MAY 22, 2019

REGULAR MEETING

TO: Shiva Frentzen, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

PREPARED BY: Erica Sanchez, Assistant Executive Officer

AGENDA ITEM #7: AT&T / Bloxsom Out-of-Agency Service Agreement with El
Dorado County Fire Protection District – Request for
Commission Authorization

LAFCO Project No. 2019-03

PROPONENTS: El Dorado County Fire Protection District

DESCRIPTION OF PROJECT

Staff recommends that the Commission approve the AT&T / Bloxsom Out-of-Agency Service Agreement with the El Dorado County Fire Protection District in order to extend interim fire protection services to the subject parcel for a proposed telecommunications tower, in anticipation of annexation to the District within the next two years.

LOCATION

The proposed AT&T Gold Hill-Coloma Tower will be located on APN 089-010-75 (5621 Big Sky Ranch Road, Placerville), approximately 1,500 feet north of Thompson Hill Road near the intersection with Los Robles Road in the Gold Hill/Coloma area.

REASON FOR RECOMMENDED ACTION

On May 9, 2019, landowners Jason and Jennifer Bloxsom entered into an Out-of-Agency Service Agreement (OASA or Agreement) with El Dorado County Fire Protection District (EDCFPD or District) for the provision of fire protection and related services outside of the EDCFPD boundaries, in anticipation of future annexation. EDCFPD submitted the OASA to LAFCO for approval, as required by Government Code §56133(a), as LAFCO discretionary approval is necessary for the Agreement to take effect.

The OASA is needed to comply with an expedited Federal “shot clock” timeline and to ensure eventual annexation into EDCFPD. Through this contract, EDCFPD has the

ability to negotiate the terms of service, including the timeline by which the agreement is in effect, the timeline for annexation, and what compensation the District will receive in exchange for service.

BACKGROUND

Complete Wireless Consulting submitted an application to El Dorado County on behalf of AT&T Mobility for a conditional use permit to construct a new 115-foot communication tower in the Gold Hill/Coloma area. This application was made with consent from the landowners, Jason and Jennifer Bloxsom.

The unmanned facility will provide wireless high-speed internet and enhanced wireless network coverage. The facility consists of a 115-foot high stealth mono-broadleaf wireless communication tower, enclosed walk-in equipment shelter, and emergency backup power generator. The cell tower and all equipment will be located within a leased 2,500 square-foot fenced compound. The lease area is located in the northern-central portion of the 50-acre parcel, which also contains an existing single-family residence and barn. Access to the lease area and operation of the facility is not expected to interfere with existing uses or neighboring properties and views of the proposed facility will be screened by existing native oaks and grey pines in the vicinity.

APN 089-010-75 is not within the boundaries of the EDCFPD and annexation is necessary prior to receiving services from the District. The parcel is within the EDCFPD sphere of influence and is contiguous with EDCFPD's service area to the north and south (see maps under **Attachment A**). Annexation into EDCFPD will be required as part of the County's conditional use permit approval process, as the proposed telecommunications tower will result in an increased likelihood of the need for fire protection services to the site.

Out-of-Agency Service Agreement

The OASA is a contract between EDCFPD and the landowners. LAFCO is not a party to this agreement, but LAFCO's discretionary approval is required per Government Code §56133. The terms of the OASA (**Attachment B**) stipulate that EDCFPD will provide fire protection and related services to APN 089-010-75 at 1½ times the otherwise applicable fees, until LAFCO records the Certificate of Completion annexing the subject property into the District or until the Agreement is terminated, whichever comes first. The Agreement is valid for a period of two years; if the annexation has not been completed by May 9, 2021, the OASA will be terminated and service shall be discontinued.

Government Code Section 56133

State Law generally prohibits local agencies from extending services outside of their jurisdictional boundaries. However, Government Code §56133(a) allows a city or district to provide new or extended services by contract or agreement outside of its jurisdictional boundaries, if it first requests and receives written approval from LAFCO. Government Code §56133(b) allows LAFCO "to 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." (**Attachment C**)

Federal Communications Commission (FCC) "Shot Clock"

In order to streamline the wireless infrastructure siting review process, the Federal Communications Commission (FCC) has adopted "shot clocks" that establish time frames within which state and local governments must complete their reviews of wireless facilities. The shot clock provides that a local jurisdiction must act on an application for the construction of new infrastructure within 150 days; there are potential consequences if a municipality fails to act on the application during the specified time frame. A shot clock begins to run when an application is first submitted, not when the application is deemed complete.

The proposed AT&T tower is subject to the 150-day shot clock, which will terminate on June 30. The shot clock applies to all approvals for the conditional use permit, thus El Dorado County needs to also act on the building permit and any other approvals within the 150-day timeline. If approvals are not acted on within the 150-day timeline, the conditional use permit, building permit, and any other approvals shall be approved and issued without review.

Given the accelerated shot clock timeline, annexation cannot be completed before the applicant applies for a building permit. Therefore, El Dorado County has agreed to include the approved OASA as a condition of approval for the conditional use permit, followed by annexation into the District within five years (the terms of the OASA require annexation within two years). County Planning staff has requested that LAFCO approve the OASA before the May 23, 2019 Planning Commission hearing, to ensure that it can be completed prior to the expiration of the shot clock.

OASA and Annexation: Separate LAFCO Actions

LAFCO approval of the OASA and LAFCO approval of the annexation are two separate and independent actions. Approval of the OASA does not automatically approve the annexation, nor does it compel the Commission to approve the annexation; each of these actions is discretionary and will be considered on their own merits by the Commission. Government Code §56133 allows LAFCO to approve this OASA between the landowner and EDCFPD solely and exclusively as a temporary solution for the AT&T Tower to meet its strict "shot clock" deadlines, in anticipation of a later change of organization.

The landowners, represented by AT&T, are expected to submit an annexation petition to LAFCO shortly after the OASA approval. The petition is expected to be processed and considered by the Commission within the next two years. At that time, the Commission will have the authority to approve, deny, or conditionally approve the annexation. The applicant is aware that there should be no expectation that approval of the OASA translates to an automatic approval of the project. EDCFPD also recognizes that there are two separate discretionary actions involved since the OASA contract states services will be terminated if the annexation petition fails at LAFCO or is abandoned by the applicant.

California Environmental Quality Act (CEQA)

El Dorado County is the lead agency for the cell tower conditional use permit. As the lead agency, El Dorado County has prepared a Draft Mitigated Negative Declaration for the conditional use permit and subsequent annexation, which is expected to be considered and adopted by the El Dorado County Board of Supervisors sometime in June 2019.

El Dorado LAFCO is the lead agency for the OASA. Staff has reviewed the proposed OASA consistent with the California Environmental Quality Act (Pub. Res. Code, § 21000, et seq.; hereinafter, "CEQA"). Staff recommends that the Commission find the OASA exempt from CEQA pursuant to the "common sense" exemption set forth in State CEQA Guidelines section 15061(b)(3).

Section 15061(b)(3) provides that a project is exempt from CEQA where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." This exemption applies here. In particular, El Dorado LAFCO's approval of the OASA would merely permit the EDCFPD to provide fire protection services and related services—e.g., rescue services, emergency medical services, hazardous material emergency response services, ambulance services, and other services related to the protection of lives and property—to a single parcel of property ("Subject Property").

The District's provision of these services to the Subject Property will not require the construction of a new fire station, will not adversely impact the District's ability to serve its existing service population, and will not have any foreseeable impact on the environment. To the contrary, the District's provision of fire protection services to the Subject Property will affirmatively benefit the environment by mitigating against the potential risk of wildfires at the Subject Property.

For the foregoing reasons, Staff recommends that the Commission direct staff to prepare, execute, and file with the El Dorado County Clerk a Notice of Exemption within five (5) working days of the Commission's approval of the proposed OASA.

ATTACHMENTS

- Attachment A: Project Area Maps
- Attachment B: Out-of-Agency Service Agreement
- Attachment C: Government Code §56133
- Attachment D: Notice of Exemption to be filed for the Out-of-Agency Service Agreement