



## AGENDA ITEM 7A

**MEETING:** September 16, 2015

**TO:** Humboldt LAFCo Commissioners

**FROM:** George Williamson, Executive Officer

**SUBJECT:** **Proposed Annexation of 2212 Jacoby Creek Road to the City of Arcata**

The Commission will consider a proposal submitted by resolution of application by the City of Arcata for annexation of approximately 1.04 acres of land at 2212 Jacoby Creek Road (APN 511-011-006), generally located northeast of the Old Arcata Road and Jacoby Creek Road intersection adjacent to the existing City boundary. The City has provided written consent from the one affected landowner; however, based on stated opposition of annexation by the property owner, this matter has been agendized as a public hearing for Commission consideration pursuant to Government Code Section 56664.

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LAFcos are responsible under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 to regulate the formation and development of local governmental agencies and their municipal services. This includes approving or disapproving proposed changes of organization, such as city annexations, consistent with adopted policies and procedures pursuant to California Government Code (G.C.) Section 56375. LAFcos are authorized with broad discretion in amending and conditioning changes of organization as long as they do not directly regulate land use, property development, or subdivision requirements.

### A. BACKGROUND

The proposal includes annexation of 2212 Jacoby Creek Road (APN 511-011-006), generally located northeast of the intersection of Old Arcata Road and Jacoby Creek Road adjacent to the existing City boundary. The subject property is uninhabited (less than 12 registered voters), is within both the City's Sphere of Influence (SOI) and its Urban Services Boundary (USB), and is located outside of the coastal zone. The property is developed with the historic Jacoby Creek School building, now used for commercial and residential purposes.

Proceedings for this proposal were initiated by the City of Arcata in response to a previous emergency sewer connection that was extended to the subject property. In 2013, the City of Arcata applied to LAFCo for authorization to extend sewer services to the subject property due to health and safety concerns from a documented failure of an onsite wastewater system (City Resolution No. 123-20). The emergency sewer connection was approved by LAFCo on March 19, 2013, and subsequently connected on October 25, 2013. In accordance with Arcata Land Use Code Section 9.94.100, the

City requires annexation within 18 months from the date sewer services is provided. As such, the City circulated a Notice of Intent to Adopt a Resolution of Application for annexation on December 19, 2014, and approved the Resolution of Application on January 21, 2015 (Arcata Resolution No. 145-13). In addition, the City approved a General Plan Amendment to change the rezoning designation from Residential Very Low Density to Commercial Mixed on May 5, 2015 (Arcata Resolution No. 145-14). The rezoning was approved by ordinance on May 20, 2015 (Arcata Ordinance No. 1458).

## **B. DISCUSSION**

### Reasons for Proposal

According to the City's Resolution of Application, the principal reasons for the annexation are as follows:

1. The subject property is currently located within the land use jurisdiction of Humboldt County, but within in the City of Arcata's Sphere of Influence as adopted by the LAFCo and is within the City of Arcata's Urban Services Boundary per the Arcata General Plan;
2. LAFCo authorized emergency sewer service connection to the subject property on March 5, 2013;
3. The subject property was connected to City of Arcata sewer services on October 25, 2013;
4. Arcata Land Use Code Section 9.94.100 requires the property owner to apply for annexation within eighteen (18) months from the date sewer services is provided;
5. The property owner of the subject property provided written consent and a deed declaration for single parcel annexation on April 10, 2007, and March 29, 2013; and
6. The written consent was required by the City for extension of services (City Sewer) outside the City boundary based on public and environmental health and safety concerns from documented failure of the on-site wastewater system.

### General Plan Land Use/Rezoning

The former Jacoby Creek School is the main structure on the property, which is on the National Registry of Historic Places. Currently, there is a mix of residential and commercial uses within the main structure. The existing Humboldt County zoning is Apartment Professional (R-4) and the General Plan land use designation is Residential-Low Density (RL) within the Jacoby Creek Community Plan. According to the County's General Plan Update mapping, a Residential Estates (RE 2.5-5) land use designation is proposed for the subject parcel. The Arcata City Council Ordinance 1458 rezoned the subject property as Commercial Mixed (CM), with a Special Considerations-Commercial (:SCC) combining zone.

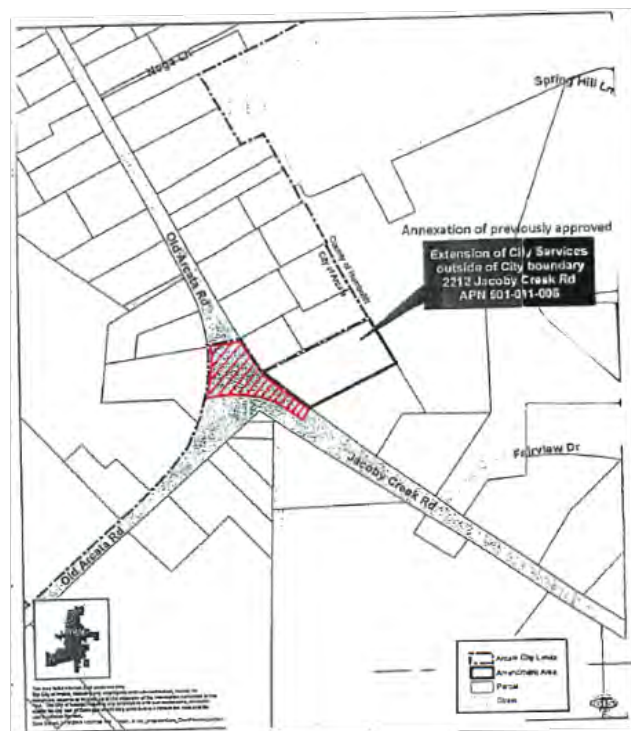
### Provision of Public Services

The subject parcel currently receives wastewater services from the City of Arcata provided under previous emergency action. Water service is currently provided by the Jacoby Creek County Water District (CWD) through a contract with the City of Arcata. As such, the City supplies water, maintains the infrastructure, and handles the entire monthly customer billing. There is a \$6.50 per month surcharge for each connection to be used by the Jacoby Creek CWD to pay the bond debt from the construction of the water system. The annexation of the subject parcel would result in a reduction of \$6.35 per month or \$76.20 per year of income to the Jacoby Creek CWD. LAFCo staff will consider a concurrent detachment of the subject parcel from the Jacoby Creek CWD (not part of the current proposal).

Police services are currently provided by the Humboldt County Sheriff and would become the responsibility of the City once annexation occurs. There would be no change in fire protection services currently provided by the Arcata Fire Protection District. According to the application, the City proposes that roads, drainage, and street lighting will all remain under County jurisdiction.

### Adjacent Road Right-of-Way

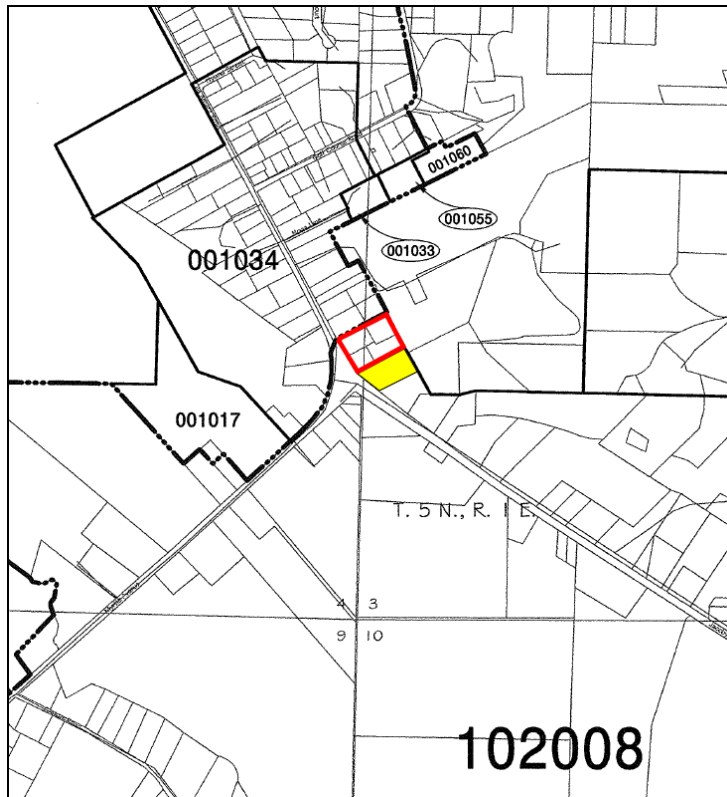
As noted above, the proposed annexation includes only the subject parcel and does not propose to include adjacent road rights-of-way. The Humboldt County Public Works Department has requested, as part of the annexation, that the City include Old Arcata Road and Jacoby Creek Road. In general, the additional area would follow the centerline of Jacoby Creek Road (see adjacent figure). LAFCo is recommending the adjacent right-of-way be included in the boundary in accordance with Government Code Sections 57329. This will be requested as part of the map and geographic description to be submitted prior to filing of the Certificate of Completion. It is important to note that LAFCo does not have the authority to impose any condition with respect to the standards or frequency of maintenance, pursuant to Government Code Section 56886.7(a).



### Coordination with the Board of Equalization

Upon review of Tax Rate Area (TRA) maps prepared by the State Board of Equalization (BOE), LAFCo staff identified a TRA discrepancy for four (4) parcels adjacent to the proposed annexation area. Staff contacted the BOE and a boundary correction will be processed for the 2016/17 tax roll. The BOE has asked that the County Auditor continue to show these parcels within TRA 001-034 (city), allowing the City to continue to receive property taxes. Considering the online BOE sales tax rates maps use the TRA lines as well, there will be a correction to the sales tax area in the next fiscal year.

The following 2015/16 BOE TRA figure shows the four parcels in question in red, and the subject property in yellow (TRA boundaries are noted by six digit numbers).



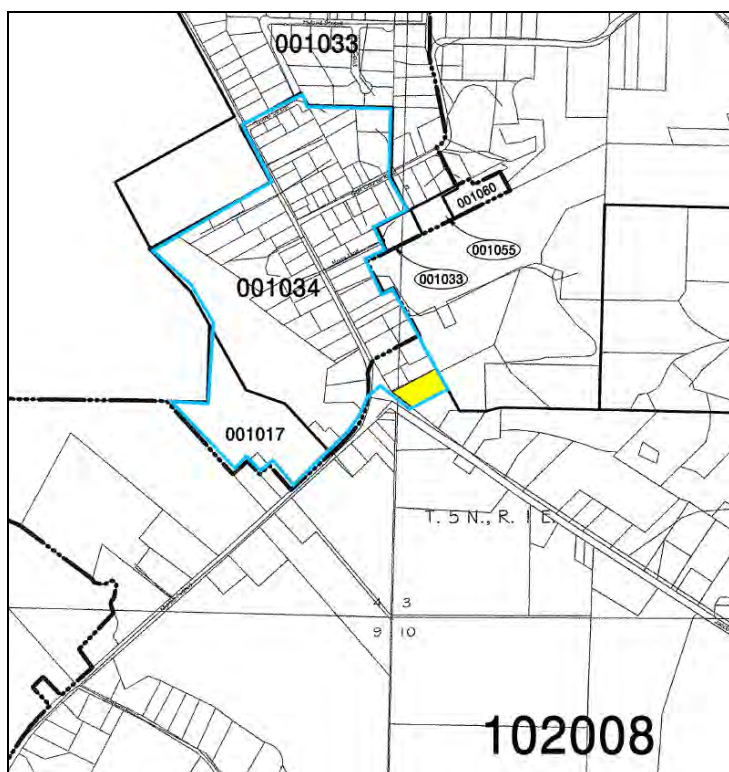
### Need for Future Detachment of the Jacoby Creek County Water District

The Jacoby Creek County Water District (CWD) has an outstanding Davis-Grunsky Loan with the State Department of Water Resources, loan #D-GLC 40, for installation of water lines within the District. In 1982, the Commission considered the Bayside Heights Reorganization, which consisted of annexation of 121 acres to the City of Arcata and detachment of 53 acres from the Jacoby Creek CWD (see Bayside Heights Reorganization Record, Attachment D). This Bayside Heights Reorganization encompassed property on both sides of Old Arcata Road and stretched from

Sunnybrae to the north, to the intersection of Old Arcata Road and Jacoby Creek Road to the south (just north of 2212 Jacoby Creek Road).

During the Commission's review of the Bayside Heights Reorganization in 1982, it was determined that the detachment would financially burden the Jacoby Creek CWD's ability to pay off its loan. In response, the City and District entered into a second amendment to its original agreement in 1973, which provides as follows: 1) the ownership of the infrastructure within the annexation area shall remain the property of the District; 2) the City shall assume full financial responsibility for the management, operation, and maintenance of the water system in the annexation area; 3) the City will continue to bill customers within the annexation area both regular in-city water rates and a fee to retire the existing State loan owned by the District; and 4) once the existing loan is fully paid, the annexation area shall be detached from the District and maps of the District shall be redrawn to reflect said detachment. Presently, the provisions for infrastructure, management, operation, maintenance, and billing (numbers 1-3 above) are currently being implemented. The detachment requirement would need to be expanded to include the proposed annexation area. The following BOE TRA figure shows the expanded detachment area in blue and the subject property in yellow.

Staff recommends a condition of approval be incorporated that would require the City and District to amend its existing agreement to include the proposed annexation area. This condition also clarifies that once the District's loan is fully paid, the City will submit an application to LAFCo for detachment of this area. This is considered to be a City responsibility in that the City annexations created the overlapping boundaries that would be remedied by detachment.

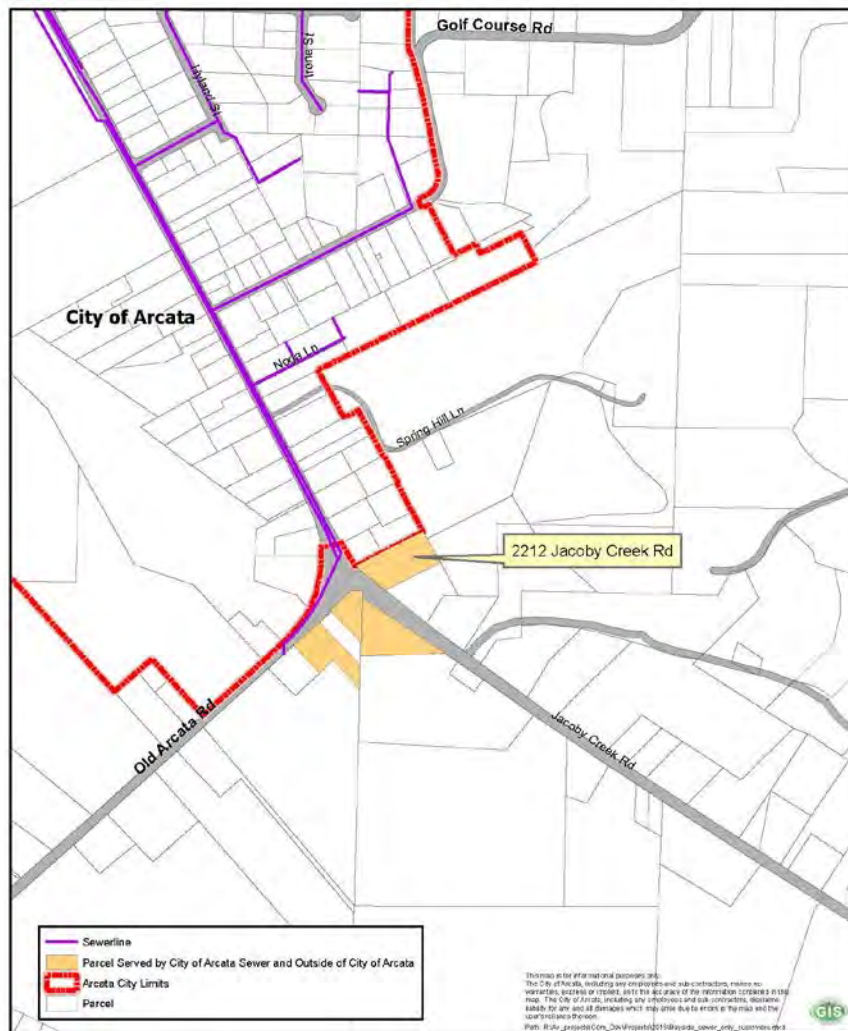




## Parcels with Sewer Service Connections Outside City Limits

There are several parcels in the Bayside area that have existing connections to the City's sewer system, although outside the city limits. A listing of parcels, as provided by the City, are included in the following table:

Parcel Number	Address	Description	Year Sewer Connected
501-012-012	1928 Old Arcata Road	Mistwood Center for Education	Prior to 1980
501-012-002	2297 Jacoby Creek Rd	Bayside Grange	Prior to 1980
501-012-005	1950 Old Arcata Rd	Multi-Family Residential	Prior to 1980



Each of the existing sewer connections were established prior to the enactment of Government Code Section 56133 in 2001. Prior to the requirements of Section 56133, cities and districts could extend services without LAFCo review and approval. As such,

these connections are considered “pre-existing” and are not subject to LAFCo review. However, it is the Commission’s policy that any expansion or intensification of outside agency services shall be considered a new request, subject to all the requirements of new outside agency service area requests.

While there are additional sewer services in the immediate area, the City of Arcata is not proposing annexation of those serviced properties at this time. Instead, the City is pursuing annexation of the subject property in accordance with Arcata Land Use Code Section 9.94.100, which requires city annexation within 18 months from the date sewer services is provided.

### Out-of-Agency Service Requirements

Pursuant to Section 56133, 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, or outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory, under specified circumstances.

Some LAFCOs use more stringent approaches to ensure that an out-of-agency service approval is “in anticipation of a later change of organization”. These include requiring the agency to provide a resolution of intent to annex within a specified timeframe or requiring the agency to submit an annexation application with the application for out-of-agency service request. Other LAFCOs simply consider a proposal’s location within an existing sphere of influence as equating to “anticipation of a later change of organization”, regardless of whether annexation is contemplated in the near-term. This latter approach is the current policy of Humboldt LAFCo. This is in recognition that conditioning approvals upon a future boundary change is difficult to enforce, given the Commission’s limited power to initiate annexations. Instead, LAFCo and/or the affected agency typically require consent-to-annex agreements, which serves to minimize potential barriers to an anticipated annexation. This was required by the City of Arcata in accordance with Arcata Land Use Code Section 9.94.100, which requires the property owner to apply for annexation within 18 months from the date sewer services is provided. The City action of requiring written consent from the landowner of 2212 Jacoby Creek Road is consistent with this code provision.

### Property Owner Consent

The City has provided written consent from the affected landowner within the proposed annexation area. The property owner signed a Landowner Consent/Petition to Annexation on April 10, 2007, as well as a recorded Declaration of Condition Regarding Pending Property Annexation at the Humboldt County Recorder’s Office on October 23, 2013 to provide constructive notice to property owners (see Attachment B).

In accordance with Government Code Section 56662, the Commission may make determinations upon the proposal without notice and hearing and may waive protest proceedings entirely if: 1) an affected local agency has not submitted a written

demand for notice and hearing within 10-days of receiving the LAFCo Notice of Filing (dated August 21, 2015; see Attachment A); and 2) the proposal is accompanied by proof, satisfactory to the Commission, that all the owners of land within the affected territory have given their written consent to the proposal. It should be noted that the property owner has informed LAFCo that consent was provided solely based on the need to make the emergency sewer connection and that the property owner opposes annexation. As such, the Commission is voluntarily considering this matter at a public hearing pursuant to Government Code Section 56664.

## **C. ANALYSIS**

The analysis of the proposal is organized into two sections. The first section considers the proposal relative to the factors mandated for review by the Legislature anytime LAFCos review boundary changes. The second section considers issues required by other applicable State statutes in processing boundary changes, such as environmental compliance with the California Environmental Quality Act.

### ***Required Factors for Review***

G.C. Section 56668 requires the Commission to consider 16 specific factors anytime it reviews proposals for a change of organization or reorganization involving cities. The majority of the prescribed factors focus on the impacts of the proposed boundary changes on the service and financial capacities of the affected agencies. No single factor is determinative. The purpose in considering these factors is to help inform the Commission in its decision-making process.

A summary of key statements and conclusions generated in the review of the mandated factors for the proposal follows, with a complete analysis provided in Attachment E.

- The City of Arcata provided sufficient notice to interested and subject agencies of its intent to adopt a resolution of application, pursuant to GC Section 56654(c). LAFCo staff also provided a Notice of Filing to interested and subject agencies (see Notice of Filing, Attachment A).
- Staff met with the property owner and representatives on September 1, 2015, and has received multiple emails concerning the proposed annexation. Comment letters were also received on September 1 and September 2 (see Attachment C).

### ***Other Considerations***

- Environmental Review

The City of Arcata, as lead agency, determined that the project is categorically exempt from further review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15319(a), Annexation of Existing Facilities, which exempts the annexation of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning (City Resolution



No. 145-14). The Commission, as responsible agency, directs the Executive Officer to file a Notice of Determination with the Humboldt County Clerk.

- o Master Property Tax Exchange Agreement

California Revenue and Taxation Code Section 99(b)(6) requires the adoption of a property tax exchange agreement by the affected local agencies before LAFCo can consider a proposed boundary change. The proposal would apply a master property tax exchange agreement adopted by the City and the County in 1980; an agreement specifying Arcata shall receive 36.36 percent of the County's existing portion of property tax revenues generated from the affected territory. Neither agency objects to the application of the referenced agreement.

- o Conducting Authority Proceedings

All proposed boundary changes approved by the Commission are subject to conducting authority proceedings (i.e., a protest hearing) unless waived in accordance with criteria outlined under G.C. Section 56662. Given that the affected territory is uninhabited, all landowners have provided their written consent, and no written opposition to a waiver of protest proceedings has been received by an affected local agency, staff recommends the Commission waive the conducting authority/protest proceedings.

#### **D. RECOMMENDATION**

The proposed annexation of 2212 Jacoby Creek Road to the City of Arcata appears appropriate relative to the factors required by statute for consideration. It is recommended the following conditions of approval be applied with delegation to the Executive Officer to determine when the requested actions have been sufficiently satisfied before proceeding with a recordation.

- o Completion of the 30-day reconsideration period provided under G.C. Section 56895.
- o Submittal of a final map and geographic description of the affected territory conforming to the requirements of the State Board of Equalization. The boundary shall be adjusted as originally proposed to include the adjacent right-of-way in accordance with Government Code Section 57329.
- o Payment of any outstanding fees as identified in the Commission's adopted fee schedule.
- o The City shall coordinate with the Jacoby Creek County Water District to amend the agreement between the City and District dated September 24, 1973, and amended on July 20, 1976 and December 28, 1982, to include the proposed annexation area. Once the District's loan is fully paid, the City will submit an application to LAFCo for detachment of the area within the City Limits from the Jacoby Creek County Water District.

### ***Alternatives for Commission Action***

Staff has identified three options for Commission consideration with respect to the proposal. These options are summarized below.

- Alternative Action One (Recommended):  
Adopt the draft resolution identified as Attachment F, approving the proposal with the recommended conditions along with any desired changes as requested by the Commission.
- Alternative Action Two:  
Continue consideration of the item to the next regular meeting and provide direction to staff for additional information as needed.
- Alternative Action Three:  
Disapprove the proposal. Disapproval would statutorily prohibit the initiation of a similar proposal for one year unless a request for reconsideration is filed and approved within 30 days of Commission action.

### ***Procedures for Consideration***

This item has been agenized for consideration as part of a noticed public hearing. As such, the following procedures are recommended with respect to the Commission's consideration of this item:

- A. Receive verbal report from staff
- B. Open the public hearing and invite testimony
- C. Discuss item and – if appropriate – consider action on recommendation:

*"I move to adopt Resolution No. 15-12, approving the Annexation of 2212 Jacoby Creek Road to the City of Arcata, as described in the staff report, subject to the recommended conditions".*

### ***Attachments***

- Attachment A: LAFCo Notice of Filing
- Attachment B: Property Owner Consent Forms
- Attachment C: Property Owner Correspondence (September 1<sup>st</sup> and September 2<sup>nd</sup>)
- Attachment D: Bayside Heights Reorganization Record
- Attachment E: LAFCo Required Factors for Review
- Attachment F: Draft LAFCo Resolution of Approval (No. 15-12)



1125 16<sup>th</sup> Street, Suite 202, Arcata, CA 95521  
 (707) 445-7508 / (707) 825-9181 fax  
[www.humboldtlafo.org](http://www.humboldtlafo.org)

## NOTICE OF FILING

**DATE:** August 21, 2015

**TO:** Arcata Fire Protection District  
 Jacoby Creek County Water District  
 Humboldt Bay Municipal Water District  
 Humboldt County Planning and Building Department  
 Humboldt County Public Works Department  
 Humboldt County Sheriff's Office  
 Humboldt County Elections Office  
 Humboldt County Assessor's Office  
 Humboldt County Auditor's Office  
 Humboldt County Administrative Office

**FROM:** Colette Metz, LAFCo Administrator

**SUBJECT:** APPLICATION RECEIVED – CITY OF ARCATA JACOBY CREEK RD ANNEXATION

### APPLICATION INFORMATION

**Project:** Proposed Annexation of 2212 Jacoby Creek Road to the City of Arcata  
**Location:** 2212 Jacoby Creek Road (see Exhibit A)  
**APNs:** 501-011-006  
**Notice:** The above referenced proposal has been submitted to LAFCo and this notice of filing is being issued in accordance with Government Code Section 56658(b)(1). If you wish to receive a copy of the application and supporting documents, please contact LAFCo at 445-7508. We request agency comments by **September 4, 2015**.

LAFCo has received a proposal submitted by Resolution of Application from the City of Arcata for annexation of approximately 1.04 acres of land at 2212 Jacoby Creek Road (APN 511-011-006), generally located northeast of the intersection of Old Arcata Road and Jacoby Creek Road adjacent to the existing City boundary. The subject property is uninhabited (less than 12 registered voters), is within both the City's Sphere of Influence (SOI) and its Urban Services Boundary (USB), and is located outside of the coastal zone.

In 2013, the City of Arcata applied to LAFCo for authorization to extend sewer services to the subject property due to health and safety concerns from a documented failure of an onsite wastewater system (City Resolution No. 123-20). The emergency sewer connection was approved by LAFCo on March 19, 2013, and subsequently connected on October 25, 2013. In accordance with Arcata Land Use Code Section 9.94.100, the City requires annexation within 18 months from the date sewer services is provided. As such, the City circulated a Notice of Intent to Adopt a Resolution of Application for annexation on December 19, 2014, and approved the Resolution of Application on

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**Please Note: The City has provided written consent from the affected landowner within the proposed annexation area. In accordance with Government Code Section 56662, the Commission may make determinations upon the proposal without notice and hearing and may waive protest proceedings entirely if: 1) an affected local agency has not submitted a written demand for notice and hearing within 10-days of receiving this notice, and 2) the proposal is accompanied by proof, satisfactory to the Commission, that all the owners of land within the affected territory have given their written consent to the proposal. It should be noted that the property owner has informed LAFCo that consent was provided solely based on the need to make the emergency sewer connection and that the property owner opposes annexation. As such, the Commission will voluntarily consider this matter at a public hearing pursuant to Government Code Section 56664.**

#### Reasons for Proposal

According to the Resolution of Application, the principal reasons for the annexation are as follows:

1. The subject property is currently located within the land use jurisdiction of Humboldt County, but within in the City of Arcata's Sphere of Influence as adopted by the LAFCo and is within the City of Arcata's Urban Services Boundary per the Arcata General Plan;
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5. The property owner of the subject property requested the single parcel annexation on April 10, 2007, and March 29, 2013; and
6. The annexation request is a result of extension of services (City Sewer) outside the City boundary based on public and environmental health and safety concerns from documented failure of the on-site wastewater system.

#### General Plan Land Use/Rezoning

The former Jacoby Creek School is the main structure on the property, which is on the National Registry of Historic Places. Currently, there is a mix of residential and commercial uses within the main structure. The existing Humboldt County zoning is Apartment Professional (R-4) and the General Plan land use designation is Residential-Low Density (RL) within the Jacoby Creek Community Plan. According to the County's General Plan Update mapping, a Residential Estates (RE 2.5-5) land use designation is proposed for the subject parcel. The Arcata City Council Ordinance 1458 rezoned the subject property as Commercial Mixed (CM), with a Special Considerations-Commercial (:SCC) combining zone.

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Police services are currently provided by the Humboldt County Sheriff and would become the responsibility of the City once annexation occurs. There would be no change in fire protection services currently provided by the Arcata Fire Protection District. According to the application, the City proposes that roads, drainage, and street lighting will all remain under County jurisdiction.

### Adjacent Road Right-of-Way

As noted above, the proposed annexation includes only the subject parcel and does not propose to include adjacent road rights-of-way. The Humboldt County Public Works Department has requested, as part of the annexation, that the City include Old Arcata Road and Jacoby Creek Road. In general, the additional area would follow the centerline of Jacoby Creek Road (see adjacent figure). LAFCo will consider amending the proposal to include the adjacent right-of-way in accordance with Government Code Sections 56668(f) and 57329. As such, LAFCo does not have the authority to impose any condition with respect to the standards or frequency of maintenance, pursuant to Government Code Section 56886.7(a).

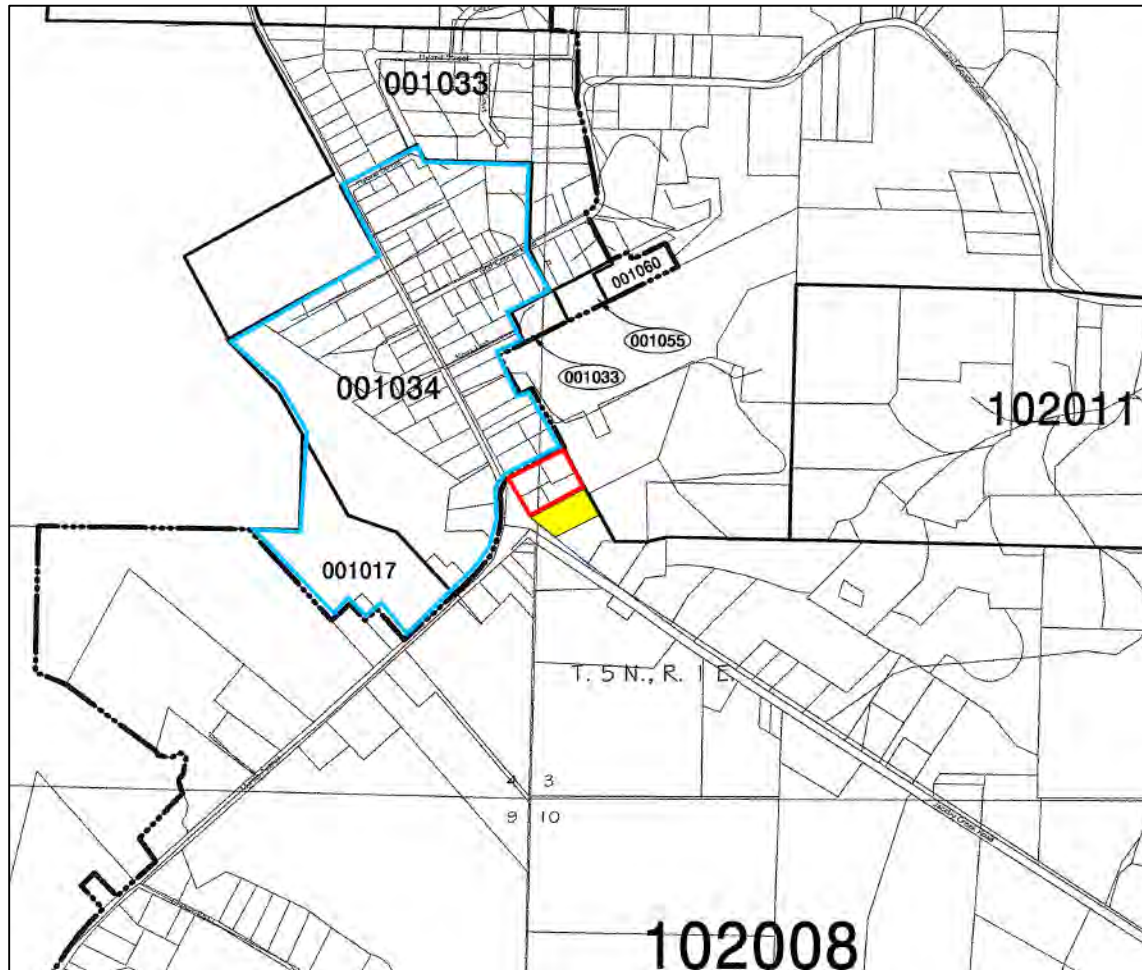


### Tax Rate Area Maps

Upon review of Tax Rate Area maps prepared by the State Board of Equalization, there are four Assessor's Parcels (APNs 501-011-025, -026, -027, and -028) that are shown outside what the City considers their current city limits (see area in red below). As such, the City is not receiving property taxes for these parcels. LAFCo staff will review previous annexation records and will coordinate with the applicant, the State Board of Equalization, the Humboldt County Assessor, and the Humboldt County Auditor to determine the status of these parcels.

In addition, there are two Tax Rate Areas (001-034 and 001-017) for which the Jacoby Creek CWD is a taxing entity within the current City Limits (see area in blue below).

Should LAFCo determine that the subject parcel be detached from the Jacoby Creek CWD, a larger detachment to include these additional properties may be necessary. LAFCo will consider the bonded indebtedness of the Jacoby Creek CWD in this decision.



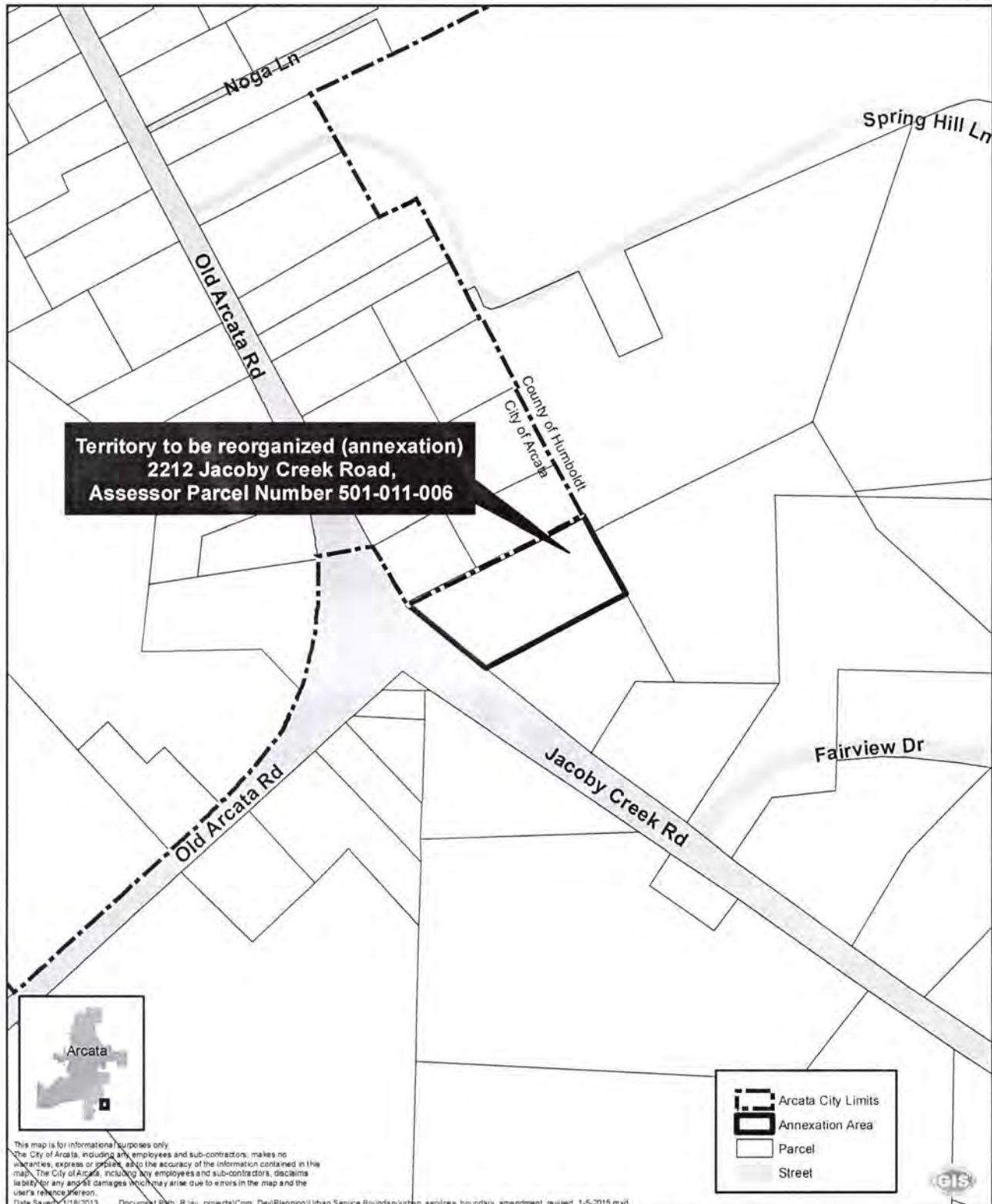
#### Property Tax Exchange

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If you have any questions regarding this proposal or wish to request a copy of the application, please contact LAFCo at [administrator@humboldtlafo.org](mailto:administrator@humboldtlafo.org) or (707) 445-7508.

Cc: Joe Mateer, City of Arcata





City of Arcata  
 Environmental Services

**Territory to be reorganized (annexation)**  
**2212 Jacoby Creek Road**  
**Assessor Parcel Number 501-011-006**  
 File number 067-009-Annx



0 100 Feet

## EXHIBIT "C" - Landowner Consent to Annexation Form

Local Agency Formation Commission of Humboldt County

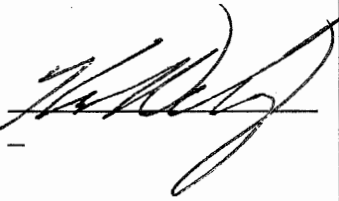
## LANDOWNER CONSENT / PETITION TO ANNEXATION

Name/Title of Proposal: Jacoby Creek School Annexation

Project Number: \_\_\_\_\_

Name of Applicant: City of ArcataI/We, the undersigned, constitute all the owners of the following parcel(s)  
of land:Assessor's Parcel No. 501-011-006I/We, the undersigned, hereby make Application for Annexation of the  
above referenced parcels into:City of Arcata

and, furthermore, hereby agree not to protest this annexation.

Name of Property Owner (Please print or type)	Signature of Property Owner	Date Signed	Parcel No.
<u>Kiriki Delany</u>		<u>4.10.7</u>	<u>501-011-006</u>

RECEIVED

APR 10 2007

City of Arcata  
Planning & Building Dept.

RECORDING REQUESTED BY:

City of Arcata

WHEN RECORDED MAIL TO:

City of Arcata, City Clerk  
736 F Street  
Arcata, CA 95521

Clerk: LH Total: \$19.00  
Oct 23, 2013 at 10:19:59  
**CONFORMED COPY**

(This space for Recorder's use only)

**DECLARATION OF CONDITION**  
**REGARDING PENDING PROPERTY ANNEXATION**

**THIS DECLARATION** is made on the date hereafter set forth by Ao Kiriki Ben Tut Malik Silkiss, hereinafter referred to as "Declarant."

1. Declarant owns real property located within the jurisdiction of the unincorporated County of Humboldt with the mailing address of at 2212 Jacoby Creek Road, Arcata, California, identified by APN 501-011-006, more particularly described in Exhibit "A," attached hereto and incorporated herein ("Property").
2. The Property is the subject of City of Arcata Resolution No. 123-20, duly adopted by the City Council of the City of Arcata on January 16, 2013, requesting the Humboldt County Local Agency Formation Commission to authorize an emergency sewer connection and subsequent single parcel annexation.
3. Resolution No. 123-20, in part, agrees to annex the Property into the City of Arcata within 18 months from the date an emergency sewer connection is provided.
4. Resolution No. 123-20 additionally adopts those specific Conditions of Approval of the City of Arcata Planning Commission including without limitation Condition B-2 which requires that the owner of the Property cause to be recorded in the official records of the County of Humboldt a notice of pending change of organization for the stated purpose of providing property owners constructive notice regarding the pending annexation.
5. Upon completion of the single parcel annexation proceedings, the Property will be located within the territorial jurisdiction of the City of Arcata.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has signed this Declaration this 22 day of October, 2013.

**DECLARANT:**

By: \_\_\_\_\_

Ao Kiriki Ben Tut Malik Silkiss

CHRIS JOHNSON HAMER  
ERIC V. KIRK  
JASON J. EADS

STOKES, HAMER, KAUFMAN & KIRK, LLP  
ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

AREA CODE 707

JOSHUA KAUFMAN \*OF COUNSEL  
JOHN R. STOKES, III \*RETIRED

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ARCATA, CALIFORNIA  
95521

TELEPHONE  
822-1771

THOMAS D. ROWE (1948-2011)  
JOHN R. STOKES (1917-2001)  
DOROTHY L. STEEVES (1926-1996)

FAX 822-1901

September 1, 2015

**Via Facsimile (707) 825-9181**  
**and First Class Mail**

Humboldt Local Agency Formation Commission  
1125 16th Street, Suite 202  
Arcata, CA 95521

**PROTEST BY OWNER OF 100% OF ASSESSED VALUE OF LAND WITHIN THE**  
**TERRITORY OF LAND PROPOSED TO BE ANNEXED (UNINHABITED TERRITORY)**

**Re: Proposed Annexation of 2212 Jacoby Creek Road**  
**to the City of Arcata, APN: 501-011-006**  
**PROTEST HEARING DATE: 9/16/15**

Dear Commissioners:

By law, LAFCO must terminate proceedings to annex 2212 Jacoby Creek Road to the City of Arcata because this Protest is being filed by a majority of the owners of the land in the affected territory.

The City of Arcata submitted a Resolution of Application for annexation of approximately 1.04 acres of land at 2212 Jacoby Creek Road, APN 511-011-006. As stated in LAFCO's "Notice of Filing," **the subject property is uninhabited** (less than 12 registered voters.)

Pursuant to *Government Code* § 57075(b) (a portion of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, pursuant to which LAFCO was created):

"In the case of registered voter districts or cities, where a change of organization or reorganization consists solely of annexations. . . , the commission . . . shall make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions . . .

. . .



September 1, 2015

Humboldt Local Agency Formation Commission

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"(b) In the case of uninhabited territory, take either of the following actions:"

"(1) Terminate proceedings if a majority protest exists in accordance with Section 57078."

"(2) Order the change of organization or reorganization if written protests have been filed and not withdrawn by owners of land who own less than 50 percent of the total assessed value of land within the affected territory."

*Government Code* § 57078 provides, in pertinent part:

"In the case of any reorganization or change of organization, a majority protest shall be deemed to exist and the proposed change of organization or reorganization shall be terminated if the commission finds that written protests filed and not withdrawn prior to the conclusion of the hearing represent any of the following:

"(a) In the case of uninhabited territory, landowners owning 50 percent or more of the assessed value of the land within the territory."

This Protest is being filed and submitted by Ao Kiriki Ben Tut Malik Silkiss, also known as Kiriki Delany (hereinafter referred to as "Kiriki"), who is the owner of 100% of the assessed value of the land within the territory proposed to be annexed. Because, with this Protest, LAFCO has received protests from a majority of the landowners in the affected area, *Government Code* §57075(b)(1) requires LAFCO to terminate all proceedings to annex the affected property.

In addition, Kiriki did not sign the Application for Annexation which the City of Arcata submitted to LAFCO. By law, the City could not submit its Application to LAFCO without Kiriki's signature to the Application. *Government Code* §56767 provides:

"A petition for annexation of territory to a city shall be signed by either of the following:

September 1, 2015

Humboldt Local Agency Formation Commission

Page 3

"(a) Not less than 5 percent of the number of registered voters residing within the territory proposed to be annexed as shown on the county register of voters."

"(b) Not less than 5 percent of the number of owners of land within the territory proposed to be annexed who also own 5 percent of the assessed value of land within the territory as shown on the last equalized assessment roll."

Kiriki is the owner of all of the land within the territory proposed to be annexed and the sole registered voter within the territory proposed to be annexed. Kiriki did not sign the Application by the City of Arcata to annex his real property, located at 2212 Jacoby Creek Road.

Kiriki also did not agree to the Annexation for which the City of Arcata is applying. The Annexation for which the City of Arcata is applying would change the land use designation of Kiriki's Property from the County land use designation of R-4 to the City of Arcata land use designation of: Commercial Mixed Use with a "Special Considerations Combining Zone." A "Special Considerations Combining Zone" allows the City of Arcata to limit and restrict development and use of Kiriki's property as it sees fit.

On January 21, 2015, the City decided to zone Kiriki's property as Commercial Mixed Use with Special Considerations Combining Zone if it was annexed, by Resolution 145-13.

It was on April 10, 2007--eight years ago--that--as a condition to connecting his property to the City of Arcata sewer system after his on site system had failed and had been condemned by the County--the City of Arcata required Kiriki to sign a document stating that he made application for annexation and agreed not to protest it. (A copy is attached as Exhibit "A.")

Kiriki's "agreement" was not actual agreement as it was given under economic duress and without full disclosure of facts by the City. His agreement was under economic duress because he had no other choice than to sign the document. He has and had three apartments and five commercial/retail spaces in the building on his property, all of which were and are occupied.



September 1, 2015

Humboldt Local Agency Formation Commission

Page 4

The onsite septic system had failed and had been condemned by the County. Unless he connected to the City's sewer system, his property--and the eight (8) residential/commercial/retail tenants--would have no septic facilities and his property would become completely without value.

The City of Arcata's requirement that Kiriki sign a document applying for annexation and agreeing not to protest annexation is in violation of law as the State has occupied the field of annexation and preempted all such local requirements.

No local government is permitted to take any action or to make any law, ordinance or regulation concerning annexation--including requiring a landowner to apply for annexation and not to protest annexation if they connect to the City sewer. The State has occupied the field and LAFCO alone is supposed to have all control of every aspect of annexation. (Ferrini v. City of San Luis Obispo (1983) 150 Cal.App.3d 239; L.I.F.E. V. City of Lodi (1989) 213 Cal.App.3d 1139.)

This requirement by the City directly conflicts with LAFCO's policies and procedures. LAFCO's Policies and Procedures (a copy of which are attached), provide that, in situations such as Kiriki's, where the leach lines and septic tank have failed, LAFCO will approve the City providing the landowner with sewer service and will not require that the City to annex the property to the City.

LAFCO will approve a City connecting a property outside its borders to the City's sewer without annexing that property--if there is a public health and safety emergency. A public health and safety emergency is defined as the failure of a disposal field or septic tank to accept, treat and dispose of wastewater in quantities discharged by the structure served. There was a public health and safety emergency on Kiriki's property.

Kiriki's April "agreement" (Exhibit "A") was not, in fact, agreement to the annexation for which the City of Arcata has applied, because the City of Arcata has applied for annexation which adds many conditions and restrictions to the use of Kiriki's property by downzoning it from the County designation of R-4 to the City designation of Commercial Mixed Use with Special Considerations Combining Zone, which the City only

September 1, 2015

Humboldt Local Agency Formation Commission

Page 5

decided to include on January 21, 2015, eight (8) years after Kiriki's so-called "agreement to annexation."

The building on Kiriki's property has three residential units and 5 commercial/retail units, and is used and has been used by his own company, StreamGuys, by 4 other businesses and by 3 residential tenants. The uses are Residential, Office-Professional, Studio-Art, dance, martial arts, music, fitness/health facility; meeting facility, public and private school, and theater/auditorium. All these uses are consistent with the County R-4 zone in which the property is located.

However, under the Commercial Mixed Use with Special Considerations Combining Zone the property would have under the City Annexation Application, Kiriki would have to obtain conditional use permits, renewed every year, for many of these long existing uses, at considerable effort and expense. The City could also deny him these conditional use permits in the City's discretion. In addition, because of the "Special Considerations Combining Zone" addition to the Commercial Mixed Use zoning, the City of Arcata could also limit the development and use of Kiriki's property in virtually any manner it chose, at its own discretion. Kiriki would never have voluntarily agreed to this if the City had disclosed it to him-which it did not.

In addition, the City did not disclose to LAFCO that Kiriki subsequently **withdrew his consent** to annexation once the City disclosed how annexation would restrict the use of his property, as well as its various conditions and fees. A copy of Kiriki's withdrawal of consent is attached to this Protest as Exhibit "B." A copy of Kiriki's counsel's previous letter of protest to LAFCO is enclosed as Exhibit "C."

Finally, the annexation for which the City of Arcata applies is contrary to LAFCO's mandated goal of promoting planned, well-ordered urban development plan. The Application is to annex and re-zone a single parcel of land, such that its zoning and use restrictions are different than virtually all of the properties surrounding it. This is not a well-ordered urban development.



September 1, 2015

Humboldt Local Agency Formation Commission

Page 6

Kiriki sincerely requests that LAFCO terminate proceedings to approve the annexation of his property, 2212 Jacoby Creek Road, by the City of Arcata.

Thank you for your attention to my client's very serious concerns.

Very truly yours,

STOKES, HAMER, KAUFMAN & KIRK, LLP

By: 

Chris Johnson Hamer,  
Attorneys for Ao Kiriki Ben  
Tut Malik Silkiss, aka  
Kiriki Delany

100% Landowner of Affected Property  
and Protestor:

By: 

Ao Kiriki Ben Tut Silkiss, aka  
Kiriki Delaney, 2212 Jacoby Creek  
Road, Bayside, CA

**SIGN  
HERE**

CJH/ja  
Encls.

- Landowner Consent to Annexation Form

Local Agency Formation Commission of Humboldt County

**LANDOWNER CONSENT / PETITION TO ANNEXATION**

Name/Title of Proposal: Jacoby Creek School Annexation

Project Number:                                 

Name of Applicant: City of Arcata

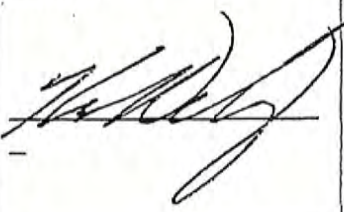
I/We, the undersigned, constitute all the owners of the following parcel(s) of land:

Assessor's Parcel No. 501-011-006

I/We, the undersigned, hereby make Application for Annexation of the above referenced parcels into:

City of Arcata

and, furthermore, hereby agree not to protest this annexation.

Name of Property Owner (Please print or type)	Signature of Property Owner	Date Signed	Parcel No.
<u>Kiriki Delany</u>		<u>4.10.7</u>	<u>501-011-006</u>

RECEIVED

APR 10 2007

City of Arcata  
Planning & Building Dept.

EXHIBIT

"A"

STOKES, HAMER, KAUFMAN & KIRK, LLP

JOHN R. STOKES, III  
CHRIS JOHNSON HAMER  
JOSHUA KAUFMAN  
ERIC V. KIRK

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

AREA CODE 707

TELEPHONE  
822-1771

THOMAS D. ROWE (1948-2011)  
JOHN R. STOKES (1917-2001)  
DOROTHY L. STEEVES (1926-1996)

381 BAYSIDE ROAD  
ARCATA, CALIFORNIA  
95521

FAX 822-1901

May 15, 2015

RECEIVED

MAY 15 2015

CITY OF ARCATA  
CITY MANAGER'S OFFICE

Arcata City Council:

Michael Winkler, Mayor  
Paul Pitino, Vice-Mayor  
Susan Ornelas, Council Member  
Sofia Pereira, Council Member  
Mark Wheatley, Council Member

Re: May 20 2015 Public Hearing concerning proposed  
Ordinance 1458 Rezoning the 2212 Jacoby Creek Road  
property Commercial Mixed with Special Consideration  
Commercial; Waive Reading of Text and Consent to Read  
by Title Only

WITHDRAWAL OF "LANDOWNER CONSENT/PETITION TO ANNEXATION"

Dear Members of the Arcata City Council:

Our client, the owner of Assessor's Parcel No. 501-011-006, also known as 2212 Jacoby Creek Road, which is the subject of the above-referenced proposed Ordinance 1458 and of Ordinance 145-13 authorizing an annexation application to the Humboldt County Local Agency Formation Commission of said parcel, Ao Kiriki Ben Tut Malik Silkiss, also known as Kiriki Delany (hereinafter referred to as "Kiriki"), hereby withdraws his "Landowner Consent/Petition to Annexation" a copy of which is attached hereto as Exhibit "A" and withdraws his Application for Annexation into the City of Arcata.

Kiriki's signature to the attached "Landowner Consent/Petition to Annexation" was obtained by duress and is therefore legally void. The City refused to allow his existing property with its ongoing business establishments and occupied residential apartments (after its onsite sewage system was condemned by the county) to have City sewer service unless he first signed the "Landowner Consent/Petition to Annexation." This legally constitutes economic duress. Economic coercion is a wrongful act that is sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to the perpetrator's pressure. (Crosstalk Productions Inc. v. Jacobson (1998) 65 Cal.App.4<sup>th</sup> 631, 644-645; Phillipine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d

EXHIBIT

"B"



May 15, 2015  
Arcata City Council  
Page 2

1058, 1077.) Duress vitiates and destroys true legal consent and voids any alleged agreement. To be valid, consent must be free, mutual and communicated by each party to the other. (Civ. Code § 1565.) An apparent consent is not real or free when obtained through duress. (Civ. Code § 1567.)

The City of Arcata Land Use Code, §9.94.100(A)(1)(f) requires only that the property owner submit an application for annexation to the City ***within 18 months from the date that sanitary sewer service was provided.***

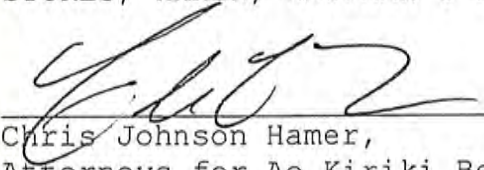
This means *after* the sewer connection is made--not before and as a condition to the property being connected to the sewer--the application for annexation is required. There is a reason that the Code does not require an application for annexation before the sewer connection is made. That is because if the application was required before the connection was made, it would amount to business coercion and duress, because it would be sufficiently coercive as to cause a reasonably prudent person faced with no reasonable alternative but to succumb to the perpetrator's pressure.

Because Kiriki has withdrawn his "Landowner Consent/Petition to Annexation" and his prior agreement thereto was void as obtained by business coercion and duress, this is not an owner-initiated annexation and should not be treated as such by the City of Arcata or by LAFCO.

Very truly yours,

STOKES, HAMER, KAUFMAN & KIRK, LLP

By:

  
Chris Johnson Hamer,  
Attorneys for Ao Kiriki Ben  
Tut Malik Silkiss, aka  
Kiriki Delany

CJH/ja  
Enclosure



## EXHIBIT "C" - Landowner Consent to Annexation Form

Local Agency Formation Commission of Humboldt County

## LANDOWNER CONSENT / PETITION TO ANNEXATION

Name/Title of Proposal: Jacoby Creek School Annexation

Project Number: \_\_\_\_\_

Name of Applicant: City of Arcata


I/We, the undersigned, constitute all the owners of the following parcel(s) of land:

Assessor's Parcel No. 501-011-006

I/We, the undersigned, hereby make Application for Annexation of the above referenced parcels into:

City of Arcata

and, furthermore, hereby agree not to protest this annexation.

Name of Property Owner (Please print or type)	Signature of Property Owner	Date Signed	Parcel No.
<u>Kiriki Delany</u>		<u>4.10.7</u>	<u>501-011-006</u>

RECEIVED

APR 10 2007

City of Arcata  
Planning & Building Dept.

STOKES, HAMER, KAUFMAN & KIRK, LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

JOHN R. STOKES, III  
CHRIS JOHNSON HAMER  
JOSHUA KAUFMAN  
ERIC V. KIRK

THOMAS D. ROWE (1948-2011)  
JOHN R. STOKES (1917-2001)  
DOROTHY L. STEEVES (1926-1996)

381 BAYSIDE ROAD  
ARCATA, CALIFORNIA  
95521

AREA CODE 707

TELEPHONE  
822-1771

FAX 822-1901

April 15, 2015

Via Email [execofficer@humboldtlaftco.org](mailto:execofficer@humboldtlaftco.org)  
and First Class Mail

George Williamson,  
Executive Officer  
Humboldt County LAFCO  
1125 16th Street, Suite 202  
Arcata, CA 95521

Re: Proposed Single-Parcel Annexation of  
2212 Jacoby Creek Road, Arcata, CA

Dear Mr. Williamson:

The City of Arcata is requesting that only a single parcel, 2212 Jacoby Creek Road, be annexed to the City of Arcata. We are the attorneys for the owner of 2212 Jacoby Creek Road, who strongly opposes and never requested that his parcel be annexed. Our client is Ao Kiriki Ben Tut Malik Silkiss, also known as Kiriki Delany (hereinafter referred to as "Kiriki").

Kiriki is strongly opposed to the proposed single parcel annexation of his parcel. He signed the "agreement to annexation" only because he was under duress--he would have no sewer service to his property unless he signed. The City of Arcata was unwilling to process the emergency connection of his property to the City sewer unless he signed their form agreement to annexation. They effectively "had a gun to his head." His property would have no sewer service unless he signed. He never requested or wanted his parcel annexed.

In addition to forcing Kiriki to sign an "agreement to annexation" under duress, as part of the proposed single parcel annexation, the City also plans to down-zone Kiriki's parcel, to which he never agreed and which will greatly reduce the value of his property. The building on Kiriki's property has three residential units and five commercial/retail units, and is used and has been used by his own company, StreamGuys, by four other businesses and by three residential tenants. This is consistent with the County R-4 zone in which the property is located.

EXHIBIT "C"



April 15, 2015  
George Williamson,  
Executive Officer  
Humboldt County LAFCO  
Page 2

After many repairs, the onsite sewage disposal system for Kiriki's building failed and could not be fixed. The County of Humboldt condemned his sewage disposal system. It was clearly a crisis. Nevertheless, the City of Arcata refused to process an emergency connection to the City sewer until Kiriki signed an agreement to annexation form it had prepared. They effectively "had a gun to his head," as I said before. He signed because he had no other choice. Without a sewage disposal system, his property would be entirely without value and all his tenants would have to immediately move and would suffer damages. He signed only under duress and did not in fact consent to annexation. He certainly did not consent to his property being down-zoned as the City Council is now proposing in its resolution.

In refusing to connect his property to the sewer unless he signed an agreement to annexation they had prepared, the City was acting illegally. The City Code states that a request for annexation should be made within eighteen (18) months *after* the emergency sewer connection is made--not that the *owner must agree to annexation as a precondition* before the City will allow the emergency connection to the sewer. This request for annexation is required of the City, not of the property owner. A property owner cannot legally petition for annexation of his property to the City. Only the City can petition for annexation.

The requirement of Kiriki's signing the City's form "agreement" was the City's idea, is not required by the Code and was calculated to make it look like Kiriki requested annexation--which is completely false.

Before the City Council Meeting at which the proposed resolution was adopted, Kiriki had assurances from Larry Oetker that he would recommend that Kiriki's property be prezoned simply Commercial Mixed Use if it were annexed. However, at the City Council Meeting, after public comment had been closed, the City added to its resolution that it would be a Commercial Mixed with a "Special Considerations Combining Zone."

Zoning Kiriki's property with a "Special Considerations Combining Zone" is down-zoning Kiriki's property, depriving him of its full value, and is unfair and illegal, particularly being

April 15, 2015  
George Williamson,  
Executive Officer  
Humboldt County LAFCO  
Page 3

imposed as part of an annexation he strongly opposes and never requested.

It is illegal because there was no prior notice to Kiriki or to the public that that City Council intended to propose that his property be subject to a "Special Considerations Combining Zone." The law requires that Kiriki and the public be given notice that the City Council intended to vote on such restrictive zoning before the meeting.

It is also illegal because other similarly situated property owners have not been forced to agree to annex their parcels to the City of Arcata before an emergency connection to the City sewer would be processed and have not had their properties down-zoned because they connected to the City sewer.

It is also illegal because it deprives Kiriki of a substantial portion of the value of his property for a public use and is, to that extent, an unconstitutional "taking" of private property without just compensation.

There is no justification for the "Special Considerations Combining Zone" or the many restrictions such a designation entails: cultural/historic resources and site coverage. The Tribes noted in their attached letter that after exploration, they are no longer interested in 2212 Jacoby Creek as a primary property in the area and that 2212 Jacoby Creek needs no special designations on archeological findings or potential findings. The EIR for the main sewer in that area noted that there were no archeological or cultural concerns. As for historic concerns, the property is already listed on the National Register of Historic Places which contains its own restrictions, so there is no justification for imposing further historic or cultural restrictions on this property.

Kiriki sincerely requests that LAFCO **not** approve the proposed single parcel annexation of his property, 2212 Jacoby Creek Road, by the City of Arcata. The annexation is a City-initiated request which he strongly opposes.



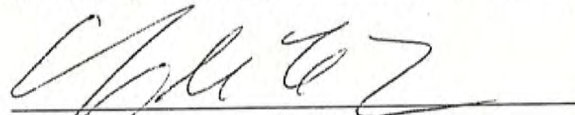
April 15, 2015  
George Williamson,  
Executive Officer  
Humboldt County LAFCO  
Page 4

Thank you for your attention to my client's very serious concerns.

Very truly yours,

STOKES, HAMER, KAUFMAN & KIRK, LLP

By:



Chris Johnson Hamer,  
Attorneys for Ao Kiriki Ben  
Tut Malik Silkiss, aka  
Kiriki Delany

CJH/ja



## **POLICIES AND PROCEDURES FOR CITIES AND DISTRICTS TO PROVIDE SERVICES OUTSIDE AGENCY BOUNDARIES**

**Adopted November 14, 2012**

**Amended July 17, 2013**

### **1.0 Authority**

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 authorizes a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundaries if the city or district requests and receives approval from the Commission. 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, or outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory, under specified circumstances.

### **2.0 Purpose**

To establish policy and procedural guidelines by which the Commission considers requests for the extension of services by cities and districts outside their jurisdictional boundaries pursuant to Government Code Section 56133.

### **3.0 Objective**

To ensure the extension of services by cities and special districts outside their jurisdictional boundaries are logical and consistent with supporting orderly growth and development in Humboldt County. The Commission recognizes the importance of considering local conditions and circumstances when implementing these policies.

### **4.0 Definitions**

The following definition of terms are provided to assist in the implementation of Government Code Section 56133 since its terminology, in some areas, is not reflective of current statutory definitions or has no statutory definition within the Cortese-Knox-Hertzberg Act:

- A. "New or extended services" shall mean the actual delivery of services or the intensification of services to a specific property. New or extended services



established before January 1, 2001 are specifically exempt and are not within the purview of the Commission.

- B. "Contract or agreement" shall mean a contract, agreement, or other legal instrument, which requires or agrees to the delivery of service to property.
- C. "Written approval of the Commission" shall mean for development related contracts, the adoption of a resolution of the Commission approving the service agreement/contract at a noticed public hearing; for non-development related contracts written approval of the Commission shall mean the document signed by the Executive Officer authorizing the completion of the contract.
- D. "Anticipation of a later change of organization." The inclusion of an area to be served within the sphere of influence of the serving agency shall be sufficient to comply with this provision.
- E. "Public Agency" means the statutory definition of Public Agency is "the state or any state agency, board or commission, any city, county, city and county, special district or other political subdivision, or any agency, board or commission of the city, county, city and county, special district, or other political subdivision" (Government Code Section 56070).

The definition of public agency does not include a private or mutual water company. Any contract by a city or district to extend service to these types of service companies would require approval from the Commission prior to contract execution.

- F. "Public health and safety threat" shall mean the extension of service to alleviate an immediate health and/or safety problem. Such connections would be limited to the provision of water and/or sewer service to an existing structure, the connection to a failing mutual or private water system requiring auxiliary service, the provision of fire protection and/or paramedic services as supplemental or alternative source for service, and other similar threats related to health and safety.
- G. "Sufficient Service Capacity" shall mean the affected agency has the ability to provide the new or extended services to be provided under the agreement without adversely affecting current service levels within its jurisdictional boundaries.

## **5.0 Policies**

### **5.1 Commission Approval Required for New or Extended Services**

Except for the specific situations exempted by Government Code Section 56133, a city or district shall not provide new or extended services to any party or property outside its jurisdictional boundaries unless it has obtained written approval from LAFCo consistent with all the policies and procedures described herein.

### **5.2 Exemptions**

The Executive Officer shall consult with cities and districts to determine whether extended services agreements are subject to Commission review. The following agreements shall be exempt from Commission approval:

- A. Any agreement solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.
- B. Any agreement for the transfer of nonpotable or nontreated water.
- C. Any agreement solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, any agreement for the extension of surplus water service to a project that will support or induce development shall not be exempt from Commission approval.
- D. Any agreement for an extended service that a city or district was providing on or before January 1, 2001.
- E. Any agreement involving a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of its jurisdictional boundaries.

### **5.3 Executive Officer Authority to Approve Certain Requests**

The Executive Officer shall have the authority to approve or conditionally approve proposals to extend services outside jurisdictional boundaries in cases where the service extension is proposed to remedy a clear health and safety concern. In addition, the Executive Officer shall have the authority to approve or



conditionally approve service extensions where the services in question will not facilitate development.

#### **5.4 Filing Requirements**

The filing requirements for review of an out of agency service contract/agreement shall consist of:

- A. Official Request from Applying Agency. A written request signed by the City Manager/District Manager requesting approval for an out of agency service agreement/contract or an adopted resolution from the city/district proposing to serve outside its boundaries must be submitted.
- B. Payment of Appropriate Filing Fees. The applying agency must submit as part of the application the appropriate filing fees as outlined in the LAFCo Fee Schedule.
- C. A completed application form including the submission of a copy of the proposed agreement/contract that has been signed by the property owner(s) and, if necessary, the agency extending service(s), and maps showing the location of the property to be served, existing agency boundaries, the location of the existing infrastructure, and the proposed location of the infrastructure to be extended.
- D. Any other information deemed appropriate by the Executive Officer in order to review the service extension request based upon its special circumstances.

#### **5.5 Environmental Review**

All matters that involve discretionary action pursuant to these regulations are subject to the applicable provisions of the California Environmental Quality Act (CEQA). If there has been no environmental determination made by the applying agency, LAFCo will serve as the Lead Agency and shall prepare the required environmental analysis. Such a determination shall be required prior to authorization of a service extension.

#### **5.6 Annexations**

Annexations to cities and districts involving territory located within the affected agency's sphere of influence is generally preferred to outside service area agreements. The Commission recognizes, however, there may be instances when outside service area agreements are appropriate given local circumstances.

#### **5.7 Criteria for Authorizations for Outside Service Area Requests**

The Commission and the Executive Officer shall limit its outside service area authorizations to public health and safety emergencies and circumstances where:

- A. Sufficient service capacity exists;
- B. Annexation would not be practicable (in determining whether an annexation is practicable, the Commission shall consider the sphere of influence determinations for the affected territory in accordance with Government Code 56425(e); and
- C. The outside service area request is determined by the Commission to be consistent with the policies adopted in and pursuant to the Cortese-Knox-Hertzberg Act.

#### **5.8 Public Health and Safety Criteria for Water and Sewer Services**

The Commission recognizes the importance of proactively addressing impending threats to public health and safety in considering requests for outside water and sewer services. Accordingly, the affected agency or landowners shall provide the Commission with documentation of the public health and safety threat, consistent with the criteria below.

- A. An existing on-site sewage disposal system may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by a Humboldt County Division of Environmental Health Specialist or other qualified professional:
  - (1) There is ponding or accumulation of wastewater or septic tank effluent at or above the surface of the ground.
  - (2) There is a lack of an unsaturated vertical soil separation between the bottom of a disposal field and seasonal high groundwater.
  - (3) There is a failure of the disposal field or septic tank to accept, treat, and dispose of wastewater in quantities discharged by the structure served.
  - (4) The on-site septic system is within 50 feet of a well or other water source.
  - (5) Any other condition associated with the operation or use of an on-site sewage system that could permit the exposure, either directly or indirectly, of individuals or domestic animals to inadequately treated wastewater.
- B. An existing water source used for domestic purposes may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by a Humboldt County Division of Environmental Health Specialist or other qualified professional:



- (1) The water supply is impacted by biological, chemical, or radiological constituents that cannot be adequately or reasonably treated or removed to levels deemed safe for human consumption or contact.
- (2) The quantity of the water supply is constantly or periodically inadequate (less than one gallon per minute) to meet the domestic needs for which its use is intended, and additional quantities cannot adequately or reasonably be developed.
- (3) Any other condition in which the continued use of an existing water supply could result in negative impacts to human health.

## **6.0 Application Procedures**

For all development-related applications for service, the item shall be considered by the Commission at a noticed public meeting. The authority for action for nondevelopment-related agreements/contracts has been delegated to the LAFCo Executive Officer by the Commission.

### **6.1 Development-Related Applications**

Development-related agreements/contracts associated with the development of tracts, subdivisions, a single-family dwelling unit, a commercial/industrial development on a parcel, or other types of development-related projects shall require the following review and approval by the Commission:

- A. The city or district proposing to provide service(s) outside its boundaries shall submit to LAFCo an application for review and consideration. Within 30 days after receipt of an application, the Executive Officer shall determine whether the application is complete and acceptable for filing. If the request is deemed incomplete, the Executive Officer shall immediately notify the applying agency of that determination, specifying those parts of the application that are incomplete and an explanation of the manner in which the deficiencies may be made complete.
- B. The Executive Officer shall provide a referral regarding the request to the Humboldt County Public Works, Planning and Building, and Environmental Health Departments and affected and nearby public agencies and utilities providing the service type that is proposed to be extended.
- C. If necessary, a meeting with the applying agency and/or the various departments may be held dependent upon the circumstances and/or issues related to the service agreement/contract. The determination of whether or not to hold the meeting shall be made by the LAFCo Executive Officer.

- D. Once these required elements have been completed, the item shall be placed on a Commission Agenda within 90 days. At a noticed public meeting, the Commission will consider the staff's presentation and presentations, if any, by interested and affected parties, and make a determination.
- E. The Commission has the authority to approve, approve with conditions, or deny the service extension request. The Commission's determination and any required findings will be set out in a resolution which specifies the area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.
- F. Within 30 days after the Commission disapproves or approves with conditions an outside service area agreement, the applicants may request reconsideration of the decision by filing a written request with the Executive Officer. In all other cases, the decision of the Commission on an outside service area agreement shall be final and conclusive. The request for reconsideration shall include the required reconsideration fee and shall state the reasons for the reconsideration. Reconsideration by the Commission shall be noticed and conducted pursuant to Section 56895 of the Government Code. The determinations of the Commission on reconsideration shall be final and conclusive.

## **6.2 Nondevelopment-Related Applications**

Nondevelopment-related agreements/contracts that are related to providing service to existing residential, commercial or industrial development shall include the following review and approval by the LAFCo Executive Officer:

- A. Prior to the execution of an agreement/contract for service outside their boundaries, the city/district proposing to provide the service shall submit to LAFCo a completed application, with all its component parts as previously defined, for review and consideration.
- B. The Executive Officer's administrative review shall include the following determinations:
  - (1) The proposed service extension is either nondevelopment-related and/or involves health and safety concerns as defined by Commission policy.
  - (2) Sufficient service capacity exists.
  - (3) The request is consistent with the Cortese-Knox-Hertzberg Act.
- C. The Executive Officer can approve, approve with conditions, or deny the request for service extension. Should the Executive Officer decide, for any



CHRIS JOHNSON HAMER  
ERIC V. KIRK  
JASON J. EADS

STOKES, HAMER, KAUFMAN & KIRK, LLP  
ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

AREA CODE 707

JOSHUA KAUFMAN \*OF COUNSEL  
JOHN R. STOKES, III \*RETIRED

381 BAYSIDE ROAD, STE. A  
ARCATA, CALIFORNIA  
95521

TELEPHONE  
822-1771

THOMAS D. ROWE (1948-2011)  
JOHN R. STOKES (1917-2001)  
DOROTHY L. STEEVES (1926-1996)

FAX 822-1901

September 2, 2015

**Via Facsimile (707) 825-9181**  
**and First Class Mail**

Humboldt Local Agency Formation Commission  
1125 16th Street, Suite 202  
Arcata, CA 95521

**ADDENDUM 1 TO:**  
**PROTEST BY OWNER OF 100% OF ASSESSED VALUE OF LAND WITHIN THE**  
**TERRITORY OF LAND PROPOSED TO BE ANNEXED (UNINHABITED TERRITORY)**

**Re: Proposed Annexation of 2212 Jacoby Creek Road  
to the City of Arcata, APN: 501-011-006  
PROTEST HEARING DATE: 9/16/15**

Dear Commissioners:

This supplements the Protest to Resolution for Annexation of 2212 Jacoby Creek Road to the City of Arcata submitted on September 1, 2015 to LAFCo by Kiriki Delany, the owner of 100% of the property proposed to be annexed.

We are submitting this Addendum to the previous protest in order to make it clear that Kiriki Delany, the 100% owner of the property proposed to be annexed, *did not* agree in writing or otherwise at any time to the proposal before LAFCo, i.e. the Resolution of Application by the City of Arcata to Annex 2212 Jacoby Creek Road to the City of Arcata, of which LAFCo staff produced a "Notice of Filing" dated August 21, 2015.

Because Kiriki Delany did not agree in writing to the proposal before LAFCo, Kiriki Delany is entitled to a protest hearing and is entitled to protest the City of Arcata's Resolution of Application to Annex his land.

What the City of Arcata is incorrectly calling Kiriki Delany's "agreement" is attached as Exhibit "A." What is attached as Exhibit "A" Kiriki Delany signed on April 10, 2007, eight years ago. It is not agreement to the proposal for annexation which the City of Arcata is making in 2015.

September 2, 2015  
Humboldt Local Agency Formation Commission  
Page 2

The April 10, 2007 form states that Kiriki Delany was then making application for annexation of his property to the City of Arcata. It does not say that if annexation did not take place in 2007, that he would agree to any proposals for annexation which might be made at any time in the future, regardless of the restrictions or conditions which might be placed on his property as part of that annexation. Exhibit "A," the April 10, 2007 form Kiriki Delany signed states:

"I/We, the undersigned, constitute all the owners of the following parcel of land..."

"I/We, the undersigned, hereby make Application for Annexation of the above-referenced parcels into: City of Arcata and, furthermore, hereby agree not to protest this annexation."

"Name of Owner: Kiriki Delany Signature: Kiriki Delany  
Date: 4-10-7"

This is a consent/petition by Kiriki Delany for annexation in 2007, if it had occurred in 2007. This is not agreement to the proposal for annexation which the City of Arcata is now making in 2015, which includes the down-zoning of Kiriki Delany's property to commercial mixed use with a combining zone, with the accompanying restrictions on the use and development of his property such down-zoning entails.

Under *Government Code* §5662, only if **the owner of the property has agreed in writing to the specific proposal for annexation then before LAFCo** will the property owner be deemed to have agreed to the proposal and to have waived a protest hearing, allowing LAFCo to act without a hearing.

The property owner agreement to "annexation" of his property in April of 2007 is not property owner agreement to the proposal for annexation made to LAFCo in August of 2015.

*Government Code* § 56662 (a copy of which is attached) states, in pertinent part:

"(d) If a proposal for annexation . . . meeting all of the following criteria, the commission may make determinations upon the proposal and waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000):

September 2, 2015  
Humboldt Local Agency Formation Commission  
Page 3

"(1) The area is uninhabited."

"(2) The proposal is accompanied by proof, satisfactory to the commission, that all the owners of the land within the affected territory, exclusive of land owned by a private railroad company, have given their written consent to the proposal and a private railroad company that is an owner within the affected territory had not submitted written opposition to the waiver of protest proceedings prior to the conclusion of the subject hearing."

"(3) A subject agency has not submitted written opposition to a waiver of protest proceedings."

Kiriki Delany has not given his written consent to the proposal for annexation being made by the City of Arcata, which is before LAFCo. Protest hearings are not waived. Annexation proceedings should be terminated because a majority of the owners of the territory to be annexed have protested the annexation. (Gov. Code §57075(b).)

After discussions with LAFCo staff, there are two additional points we wish to address. First, the City of Arcata required Kiriki Delany to record a "Declaration of Condition Regarding Pending Property Annexation" against title to his property as a condition to making an emergency sewer connection to his property. The Declaration is also not agreement by Kiriki Delany to the proposal for annexation being made to LAFCo in 2015.

Finally, it was unconstitutional for the City of Arcata to have required Exhibit "A" and the Declaration as a condition to Kiriki Delany being permitted to connect to the City sewer when his onsite sewage disposal system failed and was condemned by the County.

No City or other municipality may enter the field of annexation in any manner. The State of California has completely occupied the field and all municipal rules, regulations or requirements in any manner concerning annexation are void as being unconstitutional. (Ferrini v. City of San Luis Obispo (1983)150 Cal.App.3d 239;L.I.F.E. v. City of Lod (1989) 213 Cal.App.3d 1139.)

September 2, 2015

Humboldt Local Agency Formation Commission

Page 4

Under State law, property owners are not required to agree to annexation of their property to a city as a condition to connecting to the city sewer or on any other basis. Property owners have a right to protest annexation of their property to a City. (Gov. Code §57075.) If majority of the owners of uninhabited land protest, the annexation proceedings must be terminated. (*Id.*)

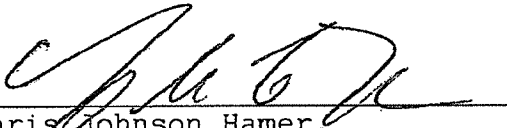
City of Arcata Land Use Code Section 9.94.100 requires the property owner to submit a complete application for annexation of his property to the City within 18 months of the owner receiving an emergency sanitary sewer connection to the City sewer. The City required recordation of the Declaration against Kiriki's property as part of this condition. These requirements are directly in conflict with state law. Any "agreement" obtained by reason of such requirement is void because it is not true agreement but is rather an agreement given because it was required by an invalid and unconstitutional Code provision.

We would request that annexation proceedings be terminated as Kiriki Delany, who owns 100% of the territory to be annexed, has protested the annexation.

Very truly yours,

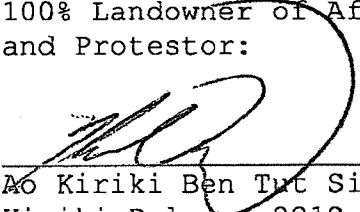
STOKES, HAMER, KAUFMAN & KIRK, LLP

By:

  
Chris Johnson Hamer,  
Attorneys for Ao Kiriki Ben  
Tut Malik Silkiss, aka  
Kiriki Delany

100% Landowner of Affected Property  
and Protestor:

By:

  
Ao Kiriki Ben Tut Silkiss, aka  
Kiriki Delany, 2212 Jacoby Creek  
Road, Bayside, CA

CJH/ja  
Encl.



#1

☐ - Landowner Consent to Annexation Form

Local Agency Formation Commission of Humboldt County

## LANDOWNER CONSENT / PETITION TO ANNEXATION

Name/Title of Proposal: Jacoby Creek School Annexation

Project Number: \_\_\_\_\_

Name of Applicant: City of Arcata

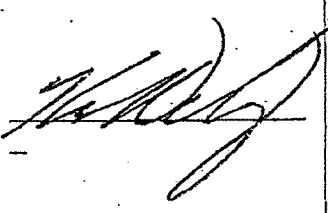
I/We, the undersigned, constitute all the owners of the following parcel(s) of land:

Assessor's Parcel No. 501-011-006

I/We, the undersigned, hereby make Application for Annexation of the above referenced parcels into:

City of Arcata

and, furthermore, hereby agree not to protest this annexation.

Name of Property Owner (Please print or type)	Signature of Property Owner	Date Signed	Parcel No.
Kiriki Delany		4.10.7	501-011-006

RECEIVED

APR 10 2007

City of Arcata  
Planning & Building Dept.

EXHIBIT "A"



Deering's California Codes Annotated  
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All rights reserved.

\*\*\* This document is current for urgency legislation through Chapter  
225 of the \*\*\*  
2015 Legislative Session, approved August 26, 2015.

GOVERNMENT CODE  
Title 5. Local Agencies  
Division 3. Cortese-Knox-Hertzberg Local Government Reorganization  
Act of 2000  
Part 3. Commission Proceedings for a Change of Organization or  
Reorganization  
Chapter 1. General

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Gov Code § 56662 (2015)*

**§ 56662. Proposal for annexation, detachment, or reorganization;  
Determinations without hearing; Waiver of protest proceedings**

(a) If a proposal for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or formation of a county service area meets all of the following criteria, the commission may make determinations upon the proposal without notice and hearing and may waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000):

(1) The territory is uninhabited.

(2) An affected local agency has not submitted a written demand for notice and hearing during the 10-day period as described in subdivision (c).

(3) The proposal meets either of the following criteria:

(A) The petition accompanying the proposal is signed by all of the owners of land within the affected territory.

## Cal Gov Code § 56662

(B) The proposal is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory have given their written consent to the proposal.

(b) Except for the determinations authorized to be made by subdivision (a), the commission shall not make any determinations upon any proposal, plan of reorganization, or report and recommendation of a reorganization committee until after public hearing by the commission on that proposal, plan of reorganization, or report and recommendation of a reorganization committee.

(c) The commission shall not take any action on the petition or resolution of application for 10 days following the mailed notice required under subdivision (b) of Section 56658. Upon written demand by an affected local agency, filed with the executive officer during that 10-day period, the commission shall make determinations upon the petition or resolution of application only after notice and hearing on the petition or resolution of application.

(d) If a proposal for an annexation, a detachment, or a reorganization consisting solely of annexations or detachments, or both, or formation of a county service area meets all of the following criteria, the commission may make determinations upon the proposal and waive protest proceedings entirely pursuant to Part 4 (commencing with Section 57000):

(1) The territory is uninhabited.

(2) The proposal is accompanied by proof, satisfactory to the commission, that all the owners of land within the affected territory, exclusive of land owned by a private railroad company, have given their written consent to the proposal and a private railroad company that is an owner of land within the affected territory has not submitted written opposition to the waiver of protest proceedings prior to the conclusion of the commission hearing.

(3) A subject agency has not submitted written opposition to a waiver of protest proceedings.

**HISTORY:**

Added Stats 2000 ch 761 § 93 (AB 2838). Amended Stats 2012 ch 62 § 4 (AB 2698), effective January 1, 2013.

**NOTES:****Amendments:****2012 Amendment:**

RECEIVED

NOV 9 1982

LAFCO

MEMORANDUM

October 28, 1982

ATTACHMENT D

TO: Rory Robinson, City Manager, City of Arcata  
FROM: Franklin R. Klopp, Director of Public Works  
SUBJECT: Jacoby Creek County Water District - David Grunsky Grant

The Local Agency Formation Commission in the formation of the Bayside Heights reorganization required two conditions. 1. That the parcels to be detached from the District remain liable for their share of the District's debt related to the installation of the water lines. And 2. That the City and the District reach a written agreement on the disposition of that portion of the District's water system affected by the reorganization prior to the issuance of the Certificate of Completion. I have finally been able to determine from Wayne Gentry, Chief of Planning, Northern District Department of Water Resources, who was responsible for David Grunsky Grants. These two conditions make the reorganization almost an impossibility. In one case where an agency did absorb a District responsible for a David Grunsky Grant, the agency was required to pay off the David Grunsky Grant in its entirety. In the case of Bayside, where only a portion of the district is being detached, computations would have to be made to determine what the value is of the detachment. Those costs would then have to be agreed upon by both the District and the Department of Water Resources. Parallel to that, a very small assessment district would have to be formed to pay off their three percent (3%) David Grunsky Grant and I'm sure the rate would be substantially higher than that currently being charged. In addition, the David Grunsky Grants run for long periods of time with the first twenty year's interest and premiums being deferred.

After talking to Mr. Gentry, he sees no problem if the City simply annexes the Bayside area leaving the District boundaries intact with an agreement worked out between the City and the District stating that the District's responsibility of that area being annexed is strictly for the purpose of paying off the David Grunsky loan and that they relinquish all other powers allowed them through a County Water District for the area being annexed. At this point I recommend that the City ask LAFCO to reconsider their action in the Bayside area and request that they contact the Northern District Department of Water Resources, P.O. Box 607, Red Bluff, CA 96080, Attention: Mr. Wayne Gentry, Chief of Planning, phone number 916-527-6530, to verify what I have been able to determine is the procedure that will allow for the eventual annexation of the Bayside area and hopefully sometime the installation of sewer lines which is the sole purpose for the annexation.

Very truly yours,

*Franklin R. Klopp*  
Franklin R. Klopp,  
Director of Public Works

FRK:jm

cc: Mark Leonard, Planning Director

*Cantorville  
paid loan*

*ax.3 20*





LOCAL AGENCY FORMATION COMMISSION  
**COUNTY OF HUMBOLDT**

3015 "H" STREET

EUREKA, CALIFORNIA 95501

PHONE (707) 445-7508

December 9, 1982

Mr. Rory Robinson, City Manager  
City of Arcata  
736 "F" Street  
Arcata, CA 95521

RE: Bayside Heights Annexation

Dear Mr. Robinson,

At their meeting of December 8, 1982, the Local Agency Formation Commission reviewed the City of Arcata's request for a reconsideration of the Commission's action approving the "Bayside Heights Reorganization". As a result of this review, and the financial burden resulting from the reorganization, the Commission rescinded their Resolution #82-5 and adopted Resolution #82-8 approving the "Bayside Heights Annexation" without detachment of the affected territory from the Jacoby Creek County Water District. A copy of the resolution is enclosed with this letter.

Because the project will no longer be a reorganization, the City of Arcata has been designated as the conducting authority. All further actions to complete the annexation will be taken in conformance with the provisions of the Municipal Organization Act of 1977. It will be necessary for the City to give notice and hold a public hearing on this proposal.

If you have any questions regarding LAFCo's action on this application, or questions regarding the procedures for completion of the annexation, please don't hesitate to contact me.

Sincerely,

Steven L. DeCamp  
Executive Officer

SLD/pla

encl.

cc: Donna Acosta, Jacoby Creek CWD

RESOLUTION NO. 82-8

RESOLUTION OF THE HUMBOLDT COUNTY  
LOCAL AGENCY FORMATION COMMISSION  
RESCINDING RESOLUTION NO. 82-5 AND APPROVING  
THE BAYSIDE HEIGHTS ANNEXATION TO CITY OF ARCATA

WHEREAS, on September 22, 1982, the Local Agency Formation Commission adopted Resolution No. 82-5 approving the Bayside Heights Reorganization; and

WHEREAS, on November 9, 1982, the City of Arcata, an affected agency, requested that the Local Agency Formation Commission reconsider the detachment of the subject territory from the Jacoby Creek County Water District; and

WHEREAS, the Local Agency Formation Commission considered said request at its meeting of December 8, 1982 without further notice and hearing; and

WHEREAS, the Commission received testimony concerning said application for amendment; and

WHEREAS, the Commission completed the reconsideration on December 7, 1982; and

WHEREAS, all the requirements of the California Environmental Quality Act have been complied with;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That all the foregoing recitations are true and correct.
2. That the Commission finds the previously certified environmental document to be adequate.

3. That the Commission finds the affected territory to be inhabited.

4. That the Commission finds the affected territory to be within the City of Arcata's Sphere of Influence.

BE IT FURTHER RESOLVED as follows:

1. That the Commission hereby rescindes Resolution No. 82-5.

2. That the Commission approves the annexation of the territory designated Bayside Heights Annexation to the City of Arcata without detachment of said territory from the Jacoby Creek County Water District.

3. That the City of Arcata is authorized, as conducting authority, to proceed with said annexation, after notice and hearing, in conformance with the provisions of the Municipal Organization Act of 1977.

PASSED, APPROVED AND ADOPTED this 8th day of December 1982, on the following vote to wit:

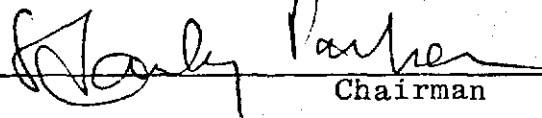
AYES: Commissioners: Corcoran, McCaddon(A), Pritchard, Parker,  
Rundell, Moore, Chesbro

NOES: Commissioners: None


ABSENT: Commissioners: Weese

LOCAL AGENCY FORMATION COMMISSION

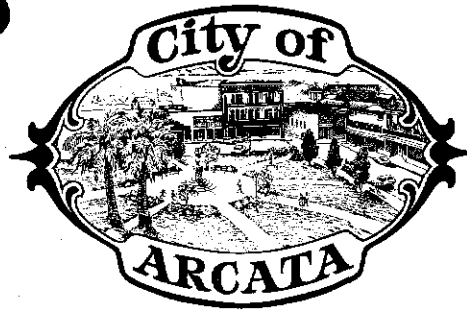
By

  
Chairman

ATTEST:

  
Steven L. DeCamp  
Executive Officer





RECEIVED  
DEC 06 1982  
LAFCO

January 4, 1983

LAFCO  
3015 H Street  
Eureka, CA 95501

Attention: Steve De Camp

Dear Steve:

Enclosed please find fully executed copies of the Second Amendment to Agreement between the City of Arcata and the Jacoby Creek County Water District for your records. As all of the parties have discussed, this agreement should now pave the way for the annexation to be approved. Hopefully, some person in one of our organizations will be around when the District's Davis-Grunsky loan is paid off so that the boundary maps can be redrawn and the area formally detached from the County Water District.

Very truly yours,

DAVID E. TRANBERG  
Arcata City Attorney

DET:mma  
cc: Donna Acosta  
Enclosure (1)

SECOND AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT is made this 28th day of December, 1982, between the CITY OF ARCATA, hereinafter referred to as CITY, and the JACOBY CREEK COUNTY WATER DISTRICT, hereinafter referred to as DISTRICT.

R E C I T A L S

This Amendment to Agreement is made with reference to the following facts:

A) The CITY is currently annexing into the CITY that area shown on the attached Exhibit A. The area is presently within the boundaries of the DISTRICT.

B) DISTRICT has broad powers pursuant to state laws, but is willing to relinquish some of its powers to CITY, in exchange for CITY assuming certain responsibilities for operation and maintenance of its water lines in the area described in Exhibit A.

C) DISTRICT has an outstanding Davis-Grunsky Loan with the State, being loan #D-GLC 40 for installation of water lines in the area to be annexed.

D) This is the second amendment to the Agreement dated September 24, 1973.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS  
HEREIN CONTAINED, IT IS AGREED AS FOLLOWS:

1. The Agreement between CITY and DISTRICT dated September 24, 1973, and the amendment to agreement dated July 20, 1976, shall remain in full force and effect except as specifically superseded by a provision of this agreement.
2. Ownership of the water lines, hydrants, meters, and associated equipment in the annexation area shall remain the property of DISTRICT until the final payment is made on its loan D-GLC 40 with the State of California. Upon repayment of said loan, the lines shall become the exclusive property of the CITY, with no charge to the CITY therefor.
3. Upon signing of this agreement, CITY shall assume full financial responsibility for the management, operation and maintenance of the existing water distribution system in the annexation area. CITY shall impose no charge upon the DISTRICT for said operation and maintenance.
4. At such time as the existing loan D-GLC 40 is fully paid, the annexation area shall be detached from the DISTRICT and the maps of the DISTRICT shall be redrawn to reflect said detachment.
5. Until the existing loan D-GLC 40 is fully paid, CITY will continue to bill all water consumers within the annexation area, as shown in Exhibit "A", both regular in-city water rates and a fee to retire the existing State loan owned by the DISTRICT. The amount of the fee billed by the CITY will be

determined by the DISTRICT. The DISTRICT will set this fee based upon the amount of money per customer (on a district-wide basis) that is necessary to retire the existing State loan. CITY will continue to receive from the DISTRICT fifteen (15) cents per month per customer to cover administrative costs in connection with servicing the loan. It is understood that the CITY shall have the right to vary this charge from time to time to recover its actual costs. In no event shall CITY be required to contribute any monies of its own to retire the existing loan.

6. There shall be no new mainline extensions within the annexation area without CITY approval. Any new lines approved by CITY shall be dedicated to CITY at the time they are approved for construction.

7. Any new residential services within the annexation area shall, during the term of the existing Davis-Grunsky Loan, be assessed a fee equal to that present district customers are charged.

IN WITNESS WHEREOF, the CITY and the DISTRICT have caused this SECOND AMENDMENT TO AGREEMENT to be executed by their duly authorized officers this 28th day of December, 1982.

ATTEST:

CITY OF ARCATA

  
CITY CLERK, City of Arcata

  
MAYOR, City of Arcata



DETACHMENT AREA  
JACOBY CREEK COUNTY WATER DISTRICT

Beginning at the intersection of the westerly rights-of-way of Old Arcata Road, Humboldt County Road No. 508 with the westerly extension of the northerly rights-of-way of Highland Street, Humboldt County Road No. 592;

Thence North 59 degrees 38 minutes 30 seconds East 463 feet more or less along said rights-of-way and extension thereof to the Easterly rights-of-way of Highland Street;

Thence Southerly along the Easterly rights-of-way of Highland Street to the Northwest corner of Assessor's Parcel No. 500-191-08;

Thence North 89 degrees 25 minutes 30 seconds East 565.64 feet;

Thence South 423.40 feet to the Northerly right-of-way of Golf Club Road, Humboldt County Road No. 577;

Thence Southerly crossing Golf Club Road to the Northeasterly most corner of Assessor's Parcel No. 500-221-09;

Thence Southerly along the Easterly side of said Assessor's Parcel No. 500-221-19 243.5 feet to the Southeast corner thereof;

Thence South 60 degrees West 245.6 feet;

Thence South 30 degrees East 100 feet;

Thence South 60 degrees West 5 feet more or less to the Northerly extension of the Easterly side of Assessor's Parcel No. 500-221-04;

Thence South 30 degrees East 73.9 feet more or less to the Easterly most corner of Assessor's Parcel No. 500-221-04;

Thence Southerly 225 feet more or less to the Northerly most corner of Assessor's Parcel No. 501-011-20;

Thence South 30 degrees East 231 feet more or less to the corner of that parcel of land described by survey in Book 14 of Surveys, Page 64, Humboldt County Recorder's Office;

Thence North 60 degrees East 77.75 feet;

Thence South 30 degrees East 229.5 feet;

Thence North 60 degrees East 14.4 feet;

Thence South 30 degrees East 122 feet;

Thence South 30 degrees West 2.4 feet;

Thence South 30 degrees East 241 feet;

Thence South 60 degrees West 342 feet more or less to the Easterly rights-of-way line of Jacoby Creek Road, Humboldt County Road No. 570;

Thence Southwest to the intersection of the westerly rights-of-way line of Road 508 with the South line of the Northeast quarter of the Southeast quarter of Section 4, Township 4 North, Range 1 East;

Thence Southerly along the Westerly line of Road 508 to the Southeast corner of that parcel of land described by Parcel Map No. 994 in Book 8 of Parcel Maps, Page 145, Humboldt County Recorder's Office;

Thence North 43 degrees 00 minutes West 436.92 feet;

Thence North 72 degrees 00 minutes West 285.12 feet;

Thence North 29 degrees 20 minutes West 875.82 feet;

Thence North 57 degrees 00 minutes West 277.86 feet;

Thence North 60 degrees East 901 feet to the Westerly rights-of-way of Road 508;

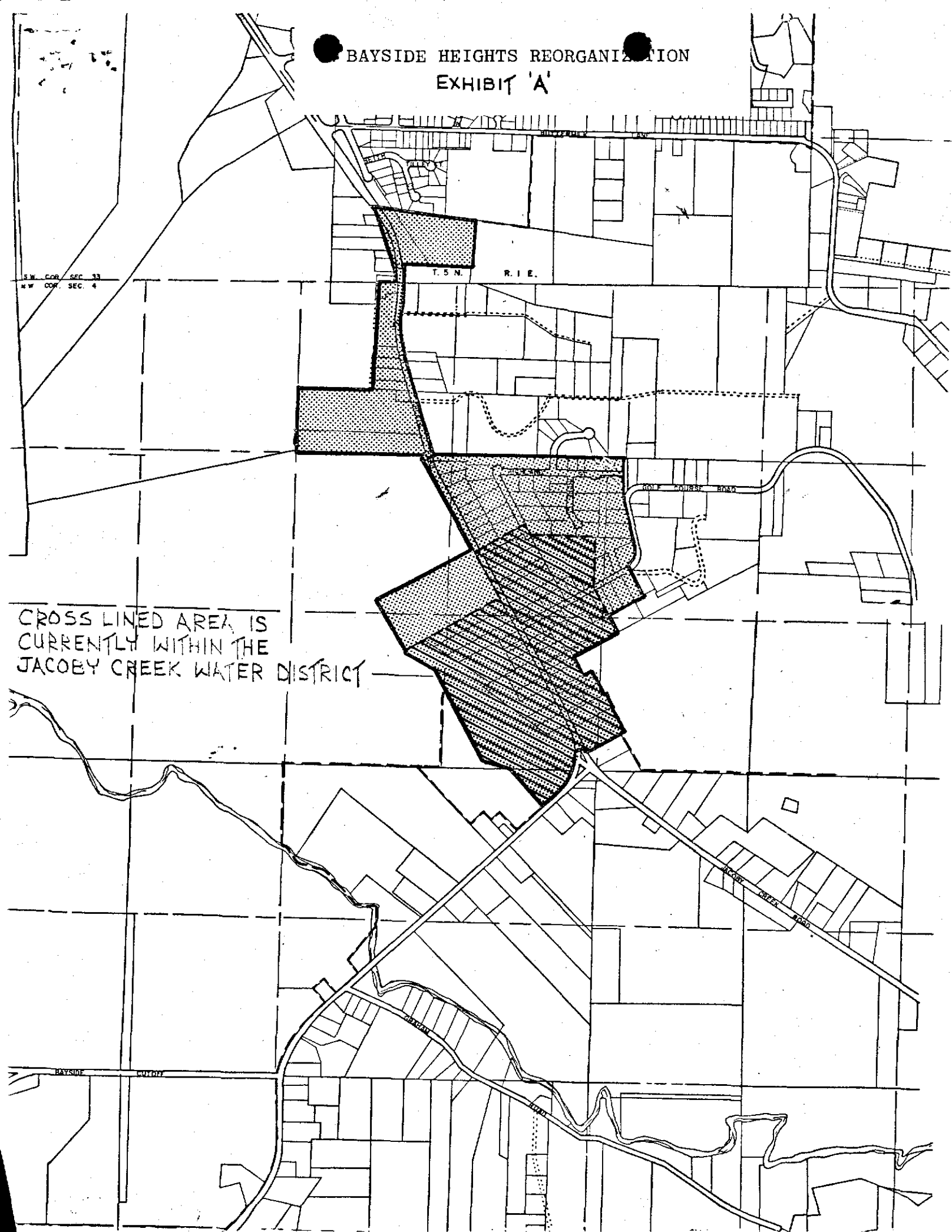
Thence Northerly along the Westerly rights-of-way of Road 508 to the point of beginning.

BAYSIDE HEIGHTS REORGANIZATION  
EXHIBIT 'A'

S.W. COR. SEC. 33  
N.W. COR. SEC. 4

T. 5 N. R. 1 E.

CROSS LINED AREA IS  
CURRENTLY WITHIN THE  
JACOBY CREEK WATER DISTRICT



## ATTACHMENT E ANALYSIS OF REQUIRED FACTORS

Government Code Section 56668 requires the Commission to consider 16 specific factors anytime it reviews proposals for a change of organization or reorganization involving cities. The purpose in considering these factors is to help inform the Commission in its decision-making process.

***1) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.***

The proposal includes annexation of 2212 Jacoby Creek Road (APN 511-011-006), generally located northeast of the intersection of Old Arcata Road and Jacoby Creek Road adjacent to the existing City boundary. The subject property is uninhabited (less than 12 registered voters) and is within both the City's Sphere of Influence (SOI) and its Urban Services Boundary (USB). The former Jacoby Creek School is the main structure on the property, which is on the National Registry of Historic Places. The property currently supports three residential units and several commercial businesses within the main historic structure.

***2) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.***

The subject parcel currently receives wastewater services from the City of Arcata provided under previous emergency action. Water service is currently provided by the Jacoby Creek County Water District (CWD) through a contract with the City of Arcata. As such, the City supplies water, maintains the infrastructure, and handles the entire monthly customer billing. Police services are currently provided by the Humboldt County Sheriff and would become the responsibility of the City once annexation occurs. There would be no change in fire protection services currently provided by the Arcata Fire Protection District.

***3) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.***

The proposal would recognize and strengthen existing social and economic ties between the City of Arcata and the affected territory. These ties were initially established when the Commission included the affected territory in City's SOI. The tie was further strengthened by the provision of wastewater service to the property via an emergency sewer connection which LAFCo approved on March 19, 2013. The property



owner signed a Landowner Consent/Petition to Annexation on April 10, 2007 marking an expectation the site would eventually be annexed to the City of Arcata.

***4) The conformity of the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in G.C. Section 56377.***

The proposal is consistent with the Commission's policies as codified under the CKH Act. This includes consistency with the City's adopted SOI and USB. The affected territory does not qualify as "open-space" under LAFCo law and therefore does not conflict with G.C. Section 56377.

***5) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by G.C. Section 56016.***

The affected territory does not qualify as "agricultural land" under LAFCo law. Specifically, the affected territory is not used for any of the following purposes: producing an agricultural commodity for commercial purposes; left fallow under a crop rotational program; or enrolled in an agricultural subsidy program.

***6) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.***

The proposal includes all of the property identified by Assessor's parcel number 511-011-006. The property is adjacent to the current boundary for the City of Arcata and within its SOI and USB. The annexation will not create any islands or corridors of unincorporated territory under LAFCo law.

***7) A regional transportation plan adopted pursuant to G.C. Section 65080.***

The Humboldt Regional Transportation Plan (RTP) was last updated in 2013/14 and is a long-range transportation planning document for Humboldt County. No specific projects are included in the RTP that would affect the proposed annexation.

***8) Consistency with city or county general and specific plans.***

Currently, there is a mix of residential and commercial uses within the main structure. The existing Humboldt County zoning is Apartment Professional (R-4) and the General Plan land use designation is Residential-Low Density (RL) within the Jacoby Creek Community Plan. According to the County's General Plan Update mapping, a Residential Estates (RE 2.5-5) land use designation is proposed for the subject parcel. The Arcata City Council Ordinance 1458 pre-zoned the subject property as Commercial Mixed (CM), with a Special Considerations-Commercial (:SCC) combining zone.

***9) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.***

The subject territory is within both the City's SOI and its USB. The existing SOI boundary was reaffirmed by LAFCo on March 17, 2010. A SOI is described as a plan for the probable ultimate physical boundary and service area of a local agency.

***10) The comments of any affected local agency or other public agency.***

The City of Arcata provided sufficient notice to interested and subject agencies of its intent to adopt a resolution of application, pursuant to GC Section 56654(c). LAFCo staff also provided a Notice of Filing to interested and subject agencies (see Notice of Filing, Attachment A). LAFCo received comments from the Humboldt County Department of Public Works requesting the adjacent ROW be included in the annexation.

***11) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.***

The subject parcel is currently receiving municipal water and sewer services. The proposed boundary change would utilize existing City services and would not affect the level of services provided.

***12) Timely availability of water supplies adequate for projected needs as specified in G.C. Section 65352.5.***

The proposed annexation would not generate a new water demand given that the main structure on the property already receives services water services.

***13) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.***

The annexation area is a single parcel and is designated by the City as Commercial Mixed (CM), with a Special Considerations-Commercial (:SCC) combining zone. The proposal would not impact any local agencies in accommodating their regional housing needs.

***14) Any information or comments from the landowner or owners, voters, or residents of the affected territory.***

Staff met with the property owner and representatives on September 1, 2015, and has received multiple emails concerning the proposed annexation. Comment letters were also received on September 1 and September 2 (see Attachment C).

***15) Any information relating to existing land use designations.***

See discussion under Factor 8 of this report.

***16) The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.***

The proposal would not result in inconsistencies with environmental justice safeguards considering the subject parcel is currently receiving municipal services.

**RESOLUTION NO. 15-12****APPROVING THE ANNEXATION OF  
2212 JACOBY CREEK ROAD TO THE CITY OF ARCATA**

WHEREAS, the Humboldt Local Agency Formation Commission, hereinafter referred to as the "Commission," is responsible for regulating boundary changes affecting cities and special districts pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

WHEREAS, the City of Arcata filed a proposal with the Commission by resolution of application; and

WHEREAS, the proposal seeks Commission approval for annexation of approximately 1.04 acres of land at 2212 Jacoby Creek Road (APN 511-011-006), generally located northeast of the intersection of Old Arcata Road and Jacoby Creek Road adjacent to the existing City boundary; and

WHEREAS, the Commission previously authorized an emergency sewer service connection to the subject property on March 5, 2013; and

WHEREAS, the City of Arcata Land Use Code Section 9.94.100 requires the property owner to apply for annexation within eighteen (18) months from the date sewer services is provided; and

WHEREAS, the property owner of the subject property requested annexation on April 10, 2007, and March 29, 2013; and

WHEREAS, the annexation request is a result of extension of services (City Sewer) outside the City boundary based on public and environmental health and safety concerns from documented failure of the on-site wastewater system; and

WHEREAS, the subject property is located within the City's Sphere of Influence and Urban Services Boundary; and

WHEREAS, the territory proposed for annexation is uninhabited as defined in Government Code Section 56046; and

WHEREAS, the territory proposed for annexation represents 100 percent landowner consent within the subject territory; and

WHEREAS, the Executive Officer's report and recommendations on the proposal were presented to the Commission in the manner provided by law; and



WHEREAS, the Commission heard and fully considered all the evidence presented at a public hearing on September 16, 2015; and

WHEREAS, the Commission considered all the factors required by law under Government Code Section 56668 and adopted local policies and procedures.

**NOW, THEREFORE, BE IT RESOLVED** by the Humboldt Local Agency Formation Commission as follows:

1. The Commission's determinations on the proposal incorporate the information and analysis provided in the Executive Officer's written report.
2. The City of Arcata, as lead agency, determined that the project is categorically exempt from further review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15319(a), Annexation of Existing Facilities, which exempts the annexation of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning (City Resolution No. 145-14). The Commission, as responsible agency, directs the Executive Officer to file a Notice of Determination with the Humboldt County Clerk.
3. The Commission approves the proposal, subject to terms and conditions stated herein.
4. The Commission hereby waives the protest hearing pursuant to Government Code Section 56662.
5. The proposal is assigned the following distinctive short-term designation:

ARCATA 2212 JACOBY CREEK ROAD ANNEXATION 2015

6. Recordation is contingent upon the satisfaction of following terms and conditions as determined by the Executive Officer:
  - a) Completion of the 30-day reconsideration period provided under G.C. Section 56895.
  - b) Submittal of a final map and geographic description of the affected territory conforming to the requirements of the State Board of Equalization. The boundary shall be adjusted as originally proposed to include the adjacent right-of-way in accordance with Government Code Section 57329.
  - c) Payment of any outstanding fees as identified in the Commission's adopted fee schedule.
  - d) The City shall coordinate with the Jacoby Creek County Water District to amend the agreement between the City and District dated September 24, 1973, and amended on July 20, 1976 and December 28, 1982, to include the

proposed annexation area. Once the District's loan is fully paid, the City will submit an application to LAFCo for detachment of the area within the City Limits from the Jacoby Creek County Water District.

7. The effective date shall be the date of recordation of the Certificate of Completion. The Certificate of Completion must be filed within one calendar year from the date of approval unless a time extension is approved by the Commission.
8. Upon effective date of the proposal, the affected territory will be subject to all previously authorized charges, fees, assessments, and taxes that were lawfully enacted by the City of Arcata. The affected territory will also be subject to all of the rates, rules, regulations, and ordinances of the City of Arcata.

**PASSED AND ADOPTED** at a meeting of the Humboldt Local Agency Formation Commission on the 16<sup>th</sup> day of September, 2015, by the following roll call vote:

AYES:	Commissioners:
NOES:	Commissioners:
ABSENT:	Commissioners:
ABSTAIN:	Commissioners:

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Virginia Bass, Chair  
Humboldt LAFCo

Attest:

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George Williamson, Executive Officer  
Humboldt LAFCo