



County Executive Office
Memorandum

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2011 FEB 25 PM 12:10
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

5510

February 25, 2011

To: Chairman, Supervisor Bill Campbell, Board of Supervisors
From: *for* Thomas G. Mauk, County Executive Officer
Subject: Exception to the Rule 21

The County Executive Office is requesting a supplemental for the March 1, 2011 Board Hearing Meeting.

Agency: County Executive Office
Subject: Garden Grove Sanitary District Detachment
District: 2nd

Reason for supplemental: At the request of Supervisor John Moorlach's Office - 2nd District

Concur:

Bill Campbell

Chairman, Bill Campbell, Board of Supervisors

cc: Rob Richardson, Assistant County Executive Officer



SUPPLEMENTAL AGENDA STAFF REPORT

Agenda Item

MEETING DATE: 03/01/11
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2nd District
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Pending)
DEPARTMENT CONTACT PERSON(S): Steve Dunivent 834-3028
Jay Wong 834-2009

SUBJECT: Garden Grove Sanitary District Detachment

CEO CONCUR

OK SD

COUNTY COUNSEL REVIEW

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

Prior Board Action: N/A

RECOMMENDED ACTION(S):

1. Adopt Resolution for a property tax exchange, on behalf of the Garden Grove Sanitary District (GGSD), where:
 - a. 100% of the GGSD property taxes will transfer to the City of Fountain Valley for the detached territory within the City of Fountain Valley; and
 - b. 100% of the GGSD property taxes will transfer to the County of Orange for the detached territory within unincorporated Orange County.
2. Approve Out-of-Area Service Agreement with the City of Fountain Valley and the Orange County Local Agency Formation Commission Office (LAFCO)

SUMMARY:

The GGSD has filed an application with the Local Agency Formation Commission to consider the detachment of approximately 71 acres of inhabited territory from the district.

The purpose of the proposal is to provide more effective and efficient delivery of retail sewer services to the residents of the affected territory. Pursuant to Section 99 of the Revenue and Taxation Code, changes

of organization, which includes detachment of territory, that affect the service boundaries of special districts require the County Board of Supervisors to negotiate and adopt resolutions for the exchange of property tax revenues on behalf of the affected special district, with consultation from the District.

In conjunction with the detachment, the City of Fountain Valley will provide sanitary sewer services to a 21 acre unincorporated area via an Out-of-Area Service Agreement between the the City of Fountain Valley, LAFCO, and the County.

BACKGROUND INFORMATION:

The GGSD wishes to detach approximately 71 acres of territory from its service area that is in the City of Fountain Valley and unincorporated areas within the Fountain Valley sphere of influence. The proposal includes three non-contiguous areas which serve residents of the City of Fountain Valley, as well as unincorporated neighborhoods within Fountain Valley's sphere of influence.

Once the detachment is approved, the City of Fountain Valley will provide retail sewer services to the residents of the areas to be detached from the GGSD including unincorporated residents through an Out-of-Area Service Agreement (Agreement). The proposal is an initial step towards establishing coterminous boundaries for the GGSD and the City of Garden Grove.

For the detached GGSD territory within the City of Fountain Valley, 100% of GGSD property tax from the affected areas (Tax Rate Areas 11-066, 21-011, 21-014, 21-027 and 21-001) to the City of Fountain Valley. For the detached GGSD territory within unincorporated Orange County, 100% of GGSD property tax from the affected areas (Tax Rate Areas 62-015 and 62-022) will transfer to the County of Orange.

Both GGSD and City of Fountain Valley are in concurrence with this detachment and support the transfer of property taxes from GGSD to Fountain Valley and the County upon detachment. The City of Fountain Valley will be considering the property tax exchange resolution and Out-of-Area Service Agreement at its March 1, 2011 City Council meeting.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

EXHIBIT(S):

Area Map

ATTACHMENT(S):

1. Out-of-Area Service Agreement
2. Resolution regarding Property Tax Exchange

**OUT-OF-AREA SERVICE AGREEMENT
FOR PROVISION OF SEWER SERVICES**

OASA 09-14

This Agreement (“Agreement”) is made and entered into to be effective as of the _____ day of _____, 2011 (the “Effective Date”) by and among the City of Fountain Valley (“City”), a municipal corporation, and the County of Orange (“County”), a political subdivision of the State of California, and the Orange County Local Agency Formation Commission (“LAFCO”). The City and County and LAFCO may sometimes be referred to individually as “Party” or collectively as “Parties” throughout this Agreement.

RECITALS

- A. The Garden Grove Sanitary District (GGSD) is a sanitary district created pursuant to Health & Safety Code sections 6400, et seq., that provides sanitary sewer service to approximately 71 acres of inhabited property described in *Exhibit A* hereto (“Pump Station Service Area”).
- B. A significant portion of the Pump Station Service Area is within the City’s corporate limits (“City Service Area”), but a smaller portion lies outside the City’s corporate limits (“Extra-territorial Service Area”), both as depicted on the attached *Exhibit B*.
- C. GGSD owns and operates certain sewer collection facilities that serve the Pump Station Service Area, including those facilities that serve the Extra-territorial Service Area.
- D. The County does not own, operate or maintain sanitary sewer facilities or provide sanitary sewer services within the Extra-territorial Service Area.
- E. The City and GGSD have entered into an Agreement for Construction of Harbor and Heil Gravity Sewer, Removal of Harbor-Edinger Sewer Pump Station, and Transfer of Sewer Collection Facilities and Sewer Service Area from Garden Grove Sanitary District to the City of Fountain Valley (the “Service Transfer Agreement”). The Service Transfer Agreement is to be recorded and effective in conjunction with this agreement.
- F. Under the Service Transfer Agreement, the City agrees, upon GGSD’s performance of certain obligations set forth therein, to assume sewer service responsibility in the City Service Area and the Extra-Territorial Service Area, and GGSD agrees to transfer its ownership of the sewer collection facilities described therein to the City.

- G. GGSD applied to the Orange County Local Agency Formation Commission (“LAFCO”) to detach the Pump Station Service Area from GGSD. LAFCO approved this detachment (hereinafter “Detachment DD 09-14”) on March 9, 2011, subject to the terms and conditions of LAFCO Resolution DD 09-14. LAFCO Resolution DD 09-14 is attached hereto and incorporated by reference as *Exhibit C*.
- H. Condition 2.c. of LAFCO Resolution DD 09-14 requires the City assume sewer service responsibility within the Extra-Territorial Service Area upon recordation of the Certificate of Completion.
- I. Condition 2.d. of LAFCO Resolution DD 09-14 requires that “The County of Orange and the City of Fountain Valley shall provide the LAFCO Executive Officer with signed copies of the Out-of-Area Service Agreement attached as “Exhibit A” prior to recordation.” LAFCO policy and Government Code Section 56133 authorize LAFCO to approve the City’s provision of sewer service to the Extra-territorial Service Area in anticipation of the City’s later annexation of the area to the City.
- J. The City and County desire to fulfill conditions 2.c and 2.d of LAFCO Resolution DD 09-14, and are hereby entering into this Agreement, subject to the terms and conditions noted herein.
- K. The Parties desire to ensure that no interruption in the services that GGSD currently provides to the Extra-territorial Service Area results from the detachment of the Extra-territorial Service Area from GGSD.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, it is hereby agreed by and between the City and County as follows:

1 Recitals

The Recitals herein are expressly made part of this Agreement.

2 Sewer Service in the Extra-territorial Service Area

2.1 City Shall Provide Sewer to the Extra-territorial Service Area

The Parties desire to provide for a process to verify and determine future sewer capacity for the Extra-territorial Service Area in the event that changes of use or new development occur in the area depicted in *Exhibit B*.

2.2 Term of Service

Until such time as the City annexes the Extra-territorial Service Area, the City shall provide sanitary sewer service to the Extra-territorial Service Area as if it was within the City's corporate boundaries.

2.3 Level of Service

The City shall maintain the same level of service to the Extra-territorial Service Area the City maintains in its overall service area in accordance with Federal, State and regional laws, regulations and permits.

2.4 Coordination between County and City

The process outlined in this agreement is not intended to conflict with the County's current notification process in other areas of the County as defined within the Orange County Board of Supervisor's Resolution 99-301.

2.5 New or Additional Service Connections

In the event that an applicant submits to the County a development application, which requires a new or augmented sewer service connection, the County shall require the developer to request the City review and approve service to the applicant as long as the operating sewer capacity, in terms of the volume of sewer flow or character of sewer discharge as established by the City in its procedures (*Exhibit D*), of the sewer system serving the Extra-territorial Area is not exceeded. County will have such requirement on its development approval check-off list given to developers/owners seeking to develop within the extra-territorial area. County agrees not to approve discretionary land use applications, which require a new or additional sewer service connection, without City concurrence that adequate sewer service capacity exists. The City's concurrence shall be in the form of a "will serve" letter which states that the City has available sewer service capacity to accommodate the proposed development. Such "will serve" letter will be granted if the City's sewer facilities have capacity and the character of the wastewater is consistent with laws regulating the same. In the event that the request requires improvements to provide additional system capacity, City shall request developer to complete a study and determination of improvements required to provide such service capacity, in accordance with Section 2.6. The City agrees that it will only base its decisions on whether to grant or deny applications for new sanitary sewer service connections on determination of adequate capacity of the City's sanitary sewer system and accommodation of the type of wastewater. The City shall not unreasonably withhold such concurrence if all applicable City Ordinances, Resolutions and procedures are complied with by an applicant for sewer capacity and service.

2.6 New or Additional Service Connections Exceeding Current Demand

If a developer's request proposes an increased sewer service requirement over the current demand of the property, the City shall review and determine if system capacity can accommodate the proposed sewer flows. The City shall be entitled to require project proponents to design and construct improvements to the sewer system if required to accommodate increased sewer flows at the proponent's expense.

2.7 Due Process for Applicants Denied "Will Serve" Letter

The City agrees to make determinations based on sewer and wastewater standards that are related to the City's system and City's ability to convey such type of wastewater. The City agrees to provide a written determination if an applicant is denied a will serve letter, which will be based on stated facts and will contain findings supporting the conclusion. The City agrees to provide such persons aggrieved by such a determination a right of appeal to the City Council or such officer as has been delegated the responsibility to hear such appeals as provided in the Fountain Valley Municipal Code.

2.8 System Maintenance

The City (by means of its contractors, agents or employees) shall own, operate, rehabilitate, replace and maintain the facilities transferred to it under the Service Transfer Agreement that service the Extra-territorial Service Area.

3 Compensation for Service

3.1 City Bears All Costs Of Providing Sewer Service

Any cost associated with owning, operating, and maintaining the facilities transferred to it under the Service Transfer Agreement and providing sewer service in the Extra-territorial Service Area shall be borne by the City, except as provided in Section 3.2

3.2 GGSD's Former Share Of Property Tax for Extra-territorial Service Area

After the recordation of the detachment of the Pump Station Service Area from the GGSD, the County shall make annual payments to the City in an amount equal to GGSD's former share of *ad valorem* property taxes for the Extra-territorial Service Area as compensation to the City for providing sewer service in the Extra-territorial Service Area.

3.3 City May Collect Sewer Fees and Charges In Extra-territorial Service Area

3.3.1 The City shall be entitled to charge fees and other charges to the extent permitted by law to provide sewer services to the Extra-territorial Service Area consistent with fees and others charges to provide services to the overall service area of the City.

3.3.2 The City shall bear any costs or attorneys' fees associated with the imposition or collection of sewer fees and charges on customers in the Extra-territorial Service Area, including but not limited to the costs associated with any notices, elections or analyses required by law as a condition to imposing such fees.

4 Sanitary Sewer Regulations

4.1 Compliance With Laws

The City shall operate the sanitary sewer system facilities and provide sanitary sewer service in the Extra-territorial Service Area in a manner consistent with all applicable governmental laws, ordinances and regulations, including permits, or orders including but not limited to any applicable Waste Discharge Requirements issued by the State Water Resources Control Board.

4.2 County Cooperation

The County shall reasonably cooperate with the City's adoption and enforcement of ordinances or regulations governing sanitary sewer services or facilities within the Extra-territorial Service Area. County agrees not to approve discretionary development applications within the Extra-territorial Service Area, which require a new or additional sanitary sewer service connection, unless the applicant provides evidence that it has obtained a "will serve" letter from the City. The standards for issuing such letter are set forth in Section 2.5.

5 Indemnification

5.1 Definition

As used in this Section 5, "Proceeding" means any threatened, pending, or completed claim, cause of action, civil liability, action, suit, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal or any other proceeding, whether civil, criminal, administrative, investigative or any other type whatsoever, whether formal or informal, including a proceeding initiated by County to enforce the County's rights hereunder.

5.2 By the City of the County

The City shall indemnify and defend the County, its officers, employees and agents (County Indemnitees), against and hold the County Indemnitees harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursements, arising from or related to:

- 5.2.1 Any Proceedings alleging that the County has a duty to dispose of sewage accumulating within the Extra-territorial Service Area.
- 5.2.2 Any Proceedings arising from sanitary sewer overflows from sanitary sewer systems owned or operated by the City in the Extra-territorial Service Area except those caused by County discharges or that arise from a failure to obtain a "will serve" letter before new development is approved.
- 5.2.3 Any breach of any of the representations or warranties made by the City in Section 6 of this Agreement.

This Section 5 shall survive the termination of this Agreement with respect to any claims, demands, liabilities, damages, injury, losses, costs and expenses arising or occurring prior to such termination.

5.3 By the County of the City

The County shall indemnify and defend the City, its officers, employees and agents (City Indemnitees), against and hold the City Indemnitees harmless from all claims, demands, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and disbursements, arising from or related to:

- 5.3.1 Any County discharge of sewage that violates City's sewer regulations, County Sanitation District sewage regulations or any liability imposed by the State WDR or federal Clean Water Act.
- 5.3.2 Any claims against the City arising from the County's approval of any discretionary land use applications after the Effective Date of this Agreement in violation of Sections 2.5 or 2.6 that overburdens the system by volume of sewer flow or by character of sewer discharge. County shall not be liable for such indemnification if the developer has obtained the City's approval in the form of a "will serve" letter pursuant to Section 2.5 or 2.6.
- 5.3.3 Any breach of any of the representations or warranties made by the County in Section 6 of this Agreement.

6 Representation and Warranties

The City represents and warrants that it owns and operates all sanitary sewer facilities, which were previously owned and operated by GGSD, that are located in or serve the Extra-territorial Service Area. County represents that there are no approved developments for the Extra-territorial Service Area that have not yet been built as of the Effective Date of this Agreement. County represents that it will approve development in the Extra-territorial Service Area after the Effective Date consistent with the terms and conditions of this Agreement.

7 Term

This Agreement shall remain in effect in perpetuity until the City has annexed the entirety of the Extra-territorial Service Area

8 Injunctive Relief

It is agreed that the City's performance of Section 2 is unique and affects the health and safety of the public in and around the Extra-territorial Service Area and that no adequate remedy exists at law if the City fails to perform, or breaches, its obligations thereunder, that it would be difficult to determine the amount of damages resulting therefrom, and that such breach would cause irreparable injury to the County. Therefore, in addition to all other rights and remedies provided by law or in this Agreement, the County shall be entitled to injunctive relief, including specific performance, to prevent or restrain any breach of this Agreement.

9 Notice

Any notice or other communication required or permitted hereunder shall be in writing, and shall conclusively be deemed to have been given upon the date it is (i) enclosed in a sealed envelope addressed to the Party to whom it is intended, and deposited in the United States Mail with adequate postage; (ii) delivered to the office of the intended Party; (iii) sent by telefacsimile or other telegraphic communication in the manner provided in this Section with confirmation by U.S. Mail sent no later than the following day, or (iv) sent through other commercially reasonable means, such as overnight delivery by a reputable courier company. The addresses of the respective parties for all notices shall be:

CITY: City of Fountain Valley
Attn: Director of Public Works
10200 Slater Avenue
Fountain Valley, CA 92708
Attn: Mark Lewis
Telefacsimile (714) 593-4554

and

City Attorney
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708
Telefacsimile (714) 593-4494

COUNTY: County Executive Officer
Attn.: Steve Dunivent, Deputy CEO
333 W. Santa Ana Blvd
Santa Ana, CA 92701
Telefacsimile (714) 834-4790

Any Party may, by written notice to the others, designate a different address, which shall be substituted for that specified above.

10 Miscellaneous

10.1 Entire Agreement

This Agreement (including the Exhibits hereto) constitutes the entire understanding and agreement of the Parties relating to the provision of sewer services for the Extra-Territorial Service Area.

10.2 Waiver

No waiver of any right or remedy by a Party with respect to any occurrence or event under this Agreement shall constitute a continuing waiver or be deemed a waiver of any right or remedy in respect to any other or subsequent occurrence or event.

10.3 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

10.4 Severability

If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished.

10.5 Amendments

All amendments to this Agreement shall be in writing and, if approved, must be signed by all Parties.

10.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first set forth above.

ATTEST:

“CITY”

CITY OF FOUNTAIN VALLEY

By: _____
City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

“COUNTY”

COUNTY OF ORANGE

ATTEST:

By: _____
County Counsel

By: _____
County Executive Officer

APPROVED PURSUANT TO GOVERNMENT CODE
SECTION 56133

By: _____
Orange County LAFCO Executive Officer

Exhibits:

- A. Map & Legal Description of Detachment DD 09-14
- B. Depiction of Extra-Territorial Service Area
- C. LAFCO Resolution DD 09-14
- D. City of Fountain Valley Sewer Service Standards

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF COUNTY OF ORANGE APPROVING THE PROPERTY TAX EXCHANGE
ON BEHALF OF THE GARDEN GROVE SANITARY DISTRICT**

MARCH 1, 2011

WHEREAS the Garden Grove Sanitary District (GGSD) filed an application with the Local Agency Formation Commission for the detachment of approximately 71 acres of inhabited territory from the GGSD; and

WHEREAS, the GGSD's application proposal includes three non-contiguous areas which serve residents of the City of Fountain Valley, as well as unincorporated neighborhoods within Fountain Valley's sphere of influence; and

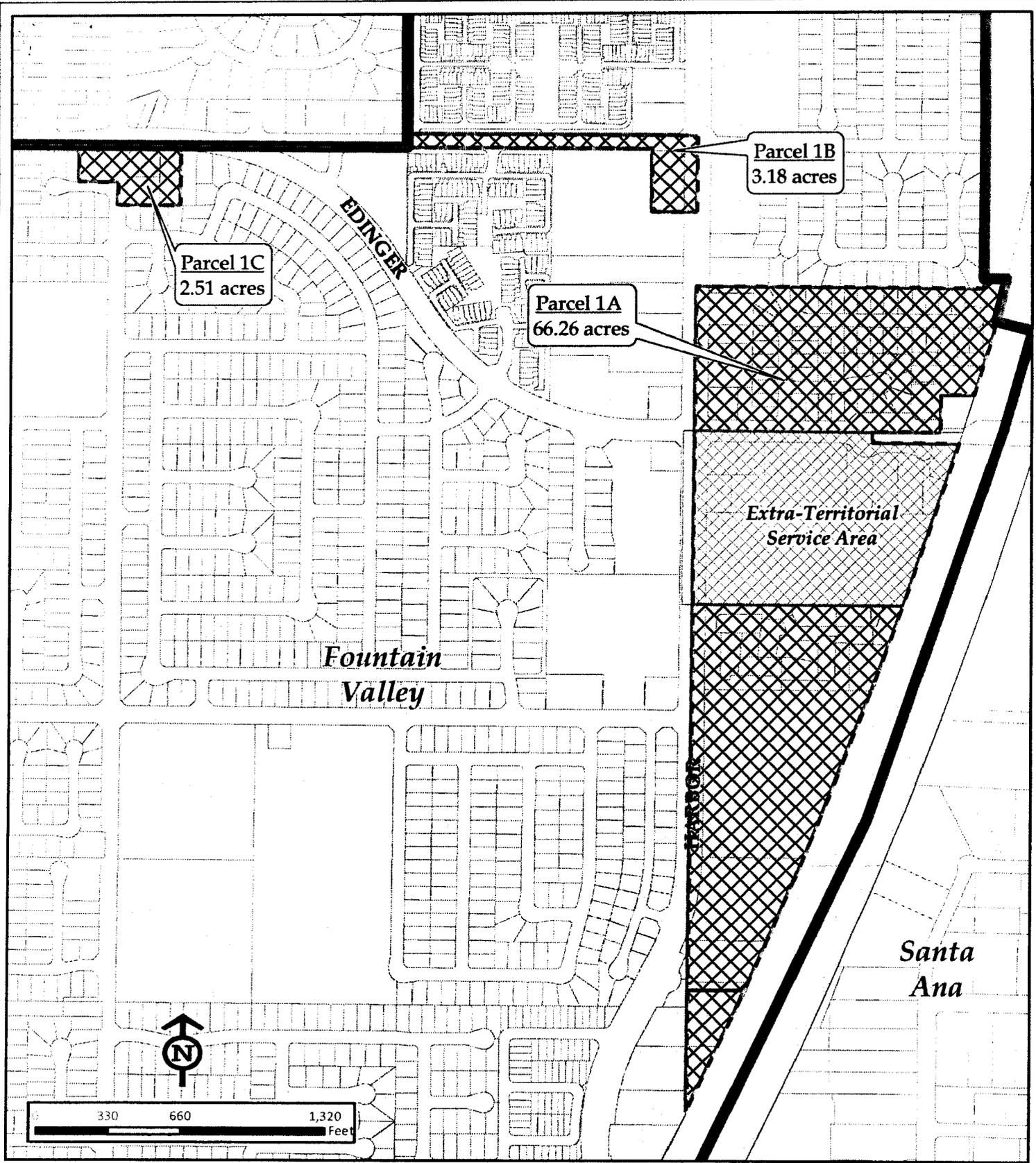
WHEREAS, City of Fountain Valley will provide retail sewer services to the residents of the area detached from the GGSD territories, including unincorporated residents through an Out-of-Area Service Agreement; and

WHEREAS, pursuant to Revenue and Taxation Code Section 99(b)(5), reorganizations that affect the service boundaries of special districts require the County Board of Supervisors to negotiate and adopt resolutions for the exchange of property tax revenues on behalf of those affected special districts; and

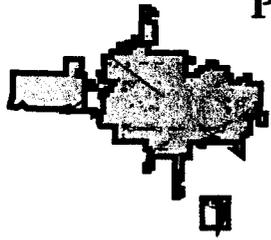
WHEREAS, GGSD and City of Fountain Valley have agreed upon recordation of the detachment that 100 percent of the GGSD property taxes will transfer to the Fountain Valley for the detached territory within the City of Fountain Valley and 100 percent of the GGSD property taxes will transfer to the County of Orange for the detached territory within unincorporated Orange County and Fountain Valley's sphere of influence.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors does hereby approve the property tax exchange reached between the GGSD and City of Fountain Valley, whereby, upon completion of the GGSD detachment, the City of Fountain Valley shall receive 100 percent of the GGSD's property taxes for the detached territory within the City of Fountain Valley; and

BE IT FURTHER RESOLVED that upon completion of the detachment, the County will receive 100 percent of the GGSD's property taxes for the detached territory in unincorporated Orange County and within Fountain Valley's sphere of influence.



**Proposed Detachment of Garden Grove Sanitary District
from the City of Fountain Valley
(DD 09-14)**



-  Garden Grove Sanitary District Sphere
-  GGSD Boundary (Fountain Valley)
-  GGSD Boundary (Extra-Territorial Service Area)