Policy: Outside Service Area Agreements for Parcels within a City's Sphere of Influence

Policy

The Commission encourages development in cities rather than in unincorporated territory. The Commission recognizes that there may be efficiencies of scale and opportunities to encourage well-planned and phased development by permitting interim Outside Service Area Agreements for existing development, rather than requiring immediate annexation, when a documented threat to the public health or safety exists.

Where existing development is within a city's sphere of influence, and public services, such as water or sewer, are required to respond to an existing or impending threat to the public health or safety of the residents of the affected territory, the Commission will consider approval of an Outside Service Area Agreement.

The Commission, or by direction, the Executive Officer, will consider authorization of an Outside Service Area Agreement for existing development within a city's sphere of influence under the following conditions only:

A. There is a documented existing or potential threat to public health or safety;
B. The property owner and city have entered into a recordable agreement that runs with the land, limiting development to existing levels;
C. A covenant is recorded against the property prohibiting the current and future property owners from protesting annexation to the city; and
D. The existing development has been determined to be either legal or legally non-conforming by the Sonoma County Permit and Resource Management Department.

The Commission, or by direction, the Executive Officer will not consider authorization of an Outside Service Area Agreement for new development within a city's sphere of influence, unless the new development meets the following criteria:

A. The new development is a 100 percent affordable project as defined in Section 50079.5 of the Health and Safety code,
B. The proposed new development is consistent with the City and County General Plans, and
C. Annexation to the city is not feasible at the time of application

Legal Authority

The Government Code §56133 states in part:

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the Commission in the affected county.

(b) 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.

The Government Code authorizes a city to extend its services beyond its boundaries but clearly indicates that such action would be taken in anticipation of a later change of organization (i.e., annexation).

Background and Discussion

The Commission recognizes that cities are the logical service providers for urban-level development. In those instances where a property with existing development has a failed or failing septic system or well, the Commission will permit an Outside Service Area Agreement, provided that there is adequate assurance that the extension of services is not for new development. The Commission expects the property to be eventually annexed into the city, and the use of an Outside Service Area Agreement is an intermediate step towards annexation.

From a LAFCO perspective, an Outside Service Area Agreement can:

- Protect the public from impending threats to health and safety
- Impose restrictions that limit development to existing intensities
- Permit a city to plan for future development in an orderly manner though the use of traditional zoning or specific plans
- Discourage premature development of fringe properties

The Commission acknowledges that the annexation of individual parcels within a city sphere may be premature and may require more resources than a larger annexation of multiple parcels. In these instances, the use of an Outside Service Area Agreement would provide services to meet the immediate needs of the property owners while allowing the city sufficient time to develop a more comprehensive and beneficial plan of annexation for the entire territory.

Adopted: August 5, 2009
Amended: October 7, 2009, with technical changes
Amended: March 3, 2010

Policy: Outside Service Area Agreements (OSAA)

Policy

It is the policy of the Commission:

A. The Executive Officer shall have the authority to (1) consult with cities and districts to determine whether their outside service area agreements are subject to Commission review, and (2) review, process, and approve outside service area agreements not exempt under the provisions of Section 56133 of the Government Code to ensure that such agreements comply with those provisions and do not promote growth opportunities without appropriate oversight. The Executive Officer, at his or her discretion, may refer any outside service area agreement to the Commission for approval.

B. Applications for Commission approval of outside service area agreements shall be filed with the Executive Officer by the city or district wishing to provide the service, on forms provided by the Executive Officer. Each application shall indicate the parties to the agreement for which approval is requested, and shall include the required filing fee and any and all other information and materials necessary to process the application.

C. Within 30 days after receipt of an application for Commission approval of an outside service area agreement, the Executive Officer shall:

1) Determine whether the agreement is exempt from Commission approval. 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 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.

2) For agreements that are not exempt from Commission approval, determine whether the application is complete and acceptable for filing or whether the application is incomplete.

3) If the application is determined not to be complete, immediately notify the city or district applicant of that determination. The notice shall specify those parts of the application that are incomplete and the manner in which they can be made complete.

D. Within 60 days after determining that an application for Commission approval of an outside service area agreement is complete, the Executive Officer shall either approve, disapprove, approve with conditions, or refer the agreement to the Commission for approval. The Executive Officer, or the Commission on referral, shall approve or approve with conditions any such agreement only under the following conditions:

1) The affected territory is outside the applicant city's or district's jurisdictional boundaries but within its sphere of influence, and the new or extended services to be provided under the agreement are in anticipation of a later change of organization; or

2) The affected territory is outside the applicant city's or district's jurisdictional boundaries and outside its sphere of influence, the new or extended services to be provided under the agreement are to respond to an existing or impending threat to the public health or safety of the residents of the affected territory, and the following requirements are met:

a. The applicant city or district has provided the Commission with documentation of a threat to the health and safety of the public or the affected residents.

i. 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 County of Sonoma Permit and Resource Management Department Environmental Health Specialist:

(a) There is ponding or accumulation of wastewater or septic tank effluent at or above the surface of the ground.

(b) There is a lack of an unsaturated vertical soil separation between the bottom of a disposal field and seasonal high groundwater.

(c) 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.

(d) The on-site septic system is within 50 feet of a well or other water source.

(e) 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.

ii. 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 County of Sonoma environmental health specialist:

(a) 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.

(b) 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.

(c) Any other condition in which the continued use of an existing water supply could result in negative impacts to human health.

b. The Commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code that has filed a map and a statement of its service capabilities with the Commission.

3) The applicant city or district 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, and the applicant city or district has approved the agreement.

4) The agreement is the preferred method of providing the new or extended services to be provided under the agreement.

5) The County of Sonoma has determined that the agreement is consistent with the Sonoma County General Plan.

E. Within ten days after the Executive officer approves, disapproves, or approves with conditions an outside service area agreement, any interested person or affected agency may appeal the decision to the Commission by filing a written notice of appeal with the Executive Officer. The notice of appeal shall include the required appeal fee and shall state the reasons for the appeal. The Executive Officer shall set the appeal for hearing at the next meeting of the Commission for which notice can be given pursuant to Sections 56153, 56154, 56158, and 56159 of the Government Code. At the hearing, the Commission shall consider the appeal and receive any oral or written testimony. After the conclusion of the hearing, the Commission may affirm, reverse, or modify the decision of the Executive Officer.

F. Within ten days after the Executive officer approves, disapproves, or approves with conditions an outside service area agreement, any member of the Commission may request the Commission to review the decision by filing a written request with the Executive Officer. The request for review need not state the reasons for the review. The Executive Officer shall set the request for review for hearing at the next meeting of the Commission for which notice can be given pursuant to Sections 56153, 56154, 56158, and 56159 of the Government Code. At the hearing, the Commission shall consider the request for review and receive any oral or written testimony. After the conclusion of the hearing, the Commission may affirm, reverse, or modify the decision of the Executive Officer. A request for review shall not be deemed to be an allegation of any flaw in or a pre-judgment of the Executive Officer's decision, nor shall the fact that a member

of the Commission has filed a request for review affect that member's right to participate in the hearing and to affirm, reverse, or modify the decision of the Executive Officer, unless actual bias or prejudice is otherwise shown.

G. 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.

Legal Authority

The Government Code §56133 states in part:

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the Commission in the affected county.

(b) 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.

The Government Code authorizes a city to extend its services beyond its boundaries but clearly indicates that such action would be taken in anticipation of a later change of organization (i.e., annexation).

Background and Discussion

From a LAFCO perspective, an OSAA can:

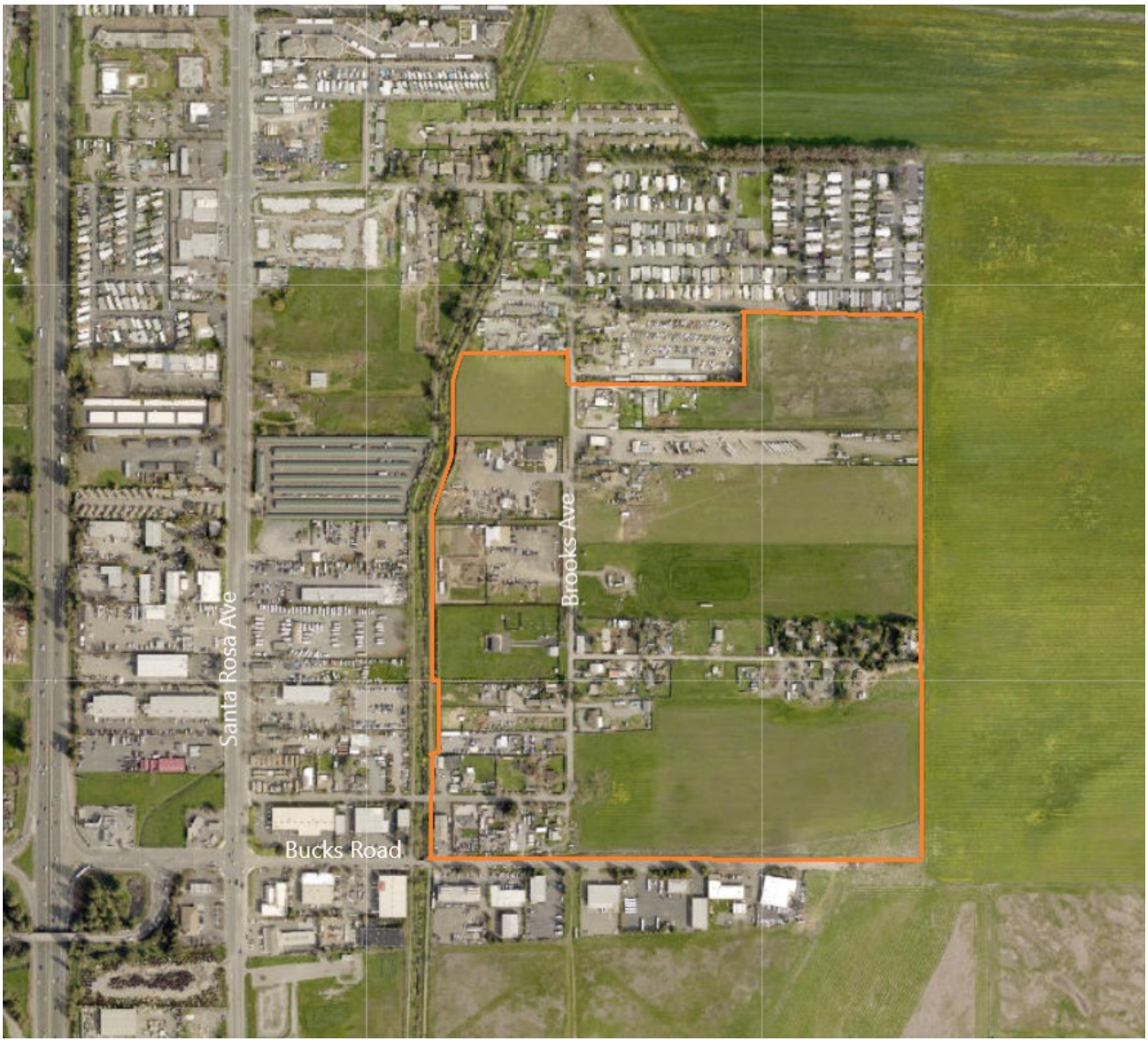
- Protect the public from impending threats to health and safety
- Impose restrictions that limit development to existing intensities
- Discourage premature development of fringe properties

In many instances, use of an OSAA would provide services to meet the immediate needs of the property owners while allowing the agency sufficient time to develop a more comprehensive and beneficial plan of annexation for the entire territory.

Adopted: August 2006
Amended: February 3, 2010

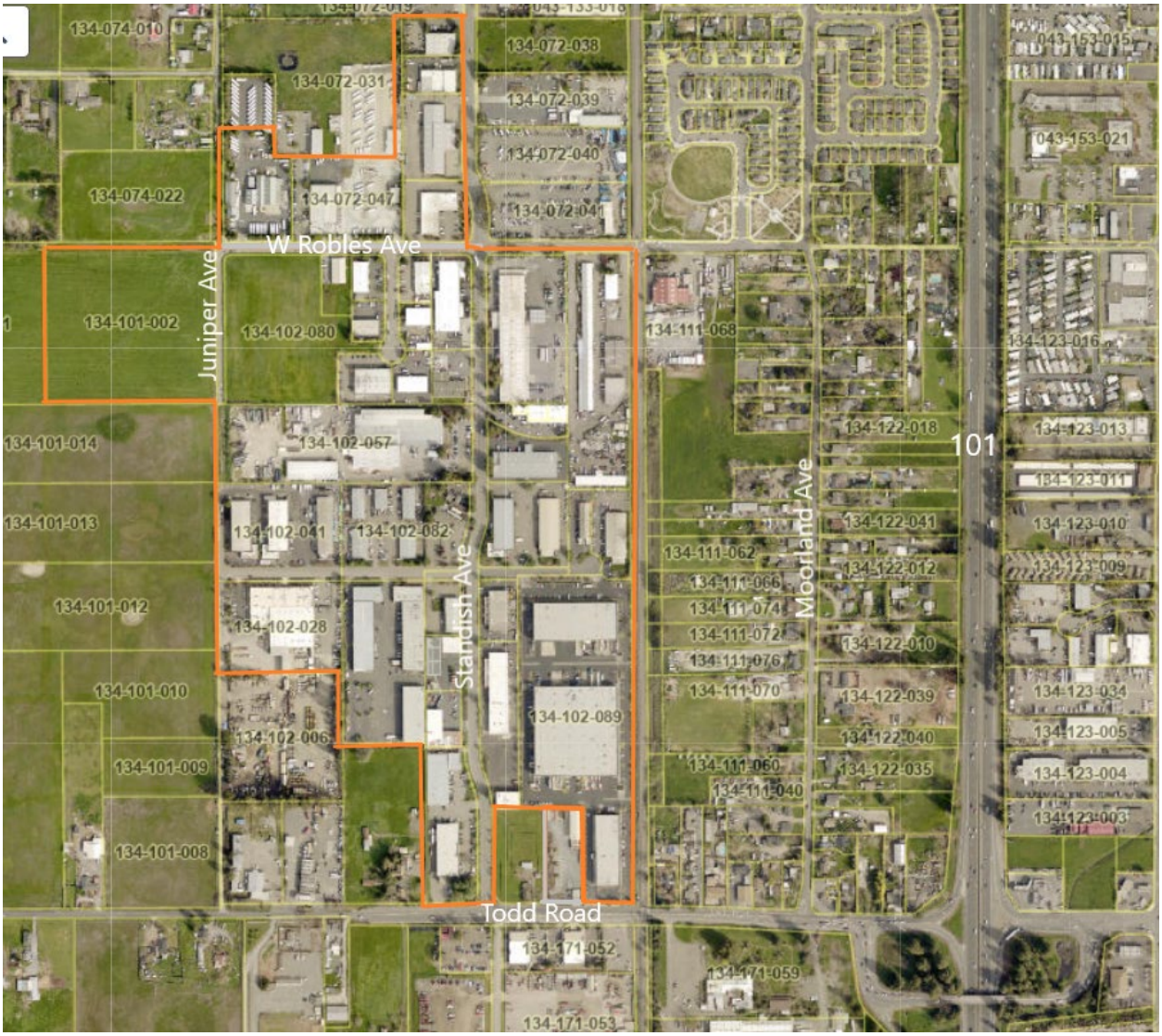
Brooks Ave / Bucks Road

In 1983, the County and City entered into an agreement to provide sanitary sewer service to the South Wright Road Area. In 1998, the County and City amended the Agreement to include sanitary sewer service to the Brooks Ave, Ward Road and Bucks Road area as shown on the map. The area is located south of E Robles Ave and east of Santa Rosa Ave. It is outside of the City's Sphere of Influence (SOI) but within its Urban Growth Boundary (UGB). The parcel sizes range from 0.22 to 19 acres and are zoned Rural Residential. Most parcels contain single-family dwellings but several are vacant.



Industry West Complex

In 1978, the City approved a Master Certificate of Compliance (now termed a Utility Certificate) to provide sewer and water services to the Industry West Complex. The parcels are zoned M1, M2 and M3. City Policy 300-02 sets forth the conditions of approval for the connection to services.



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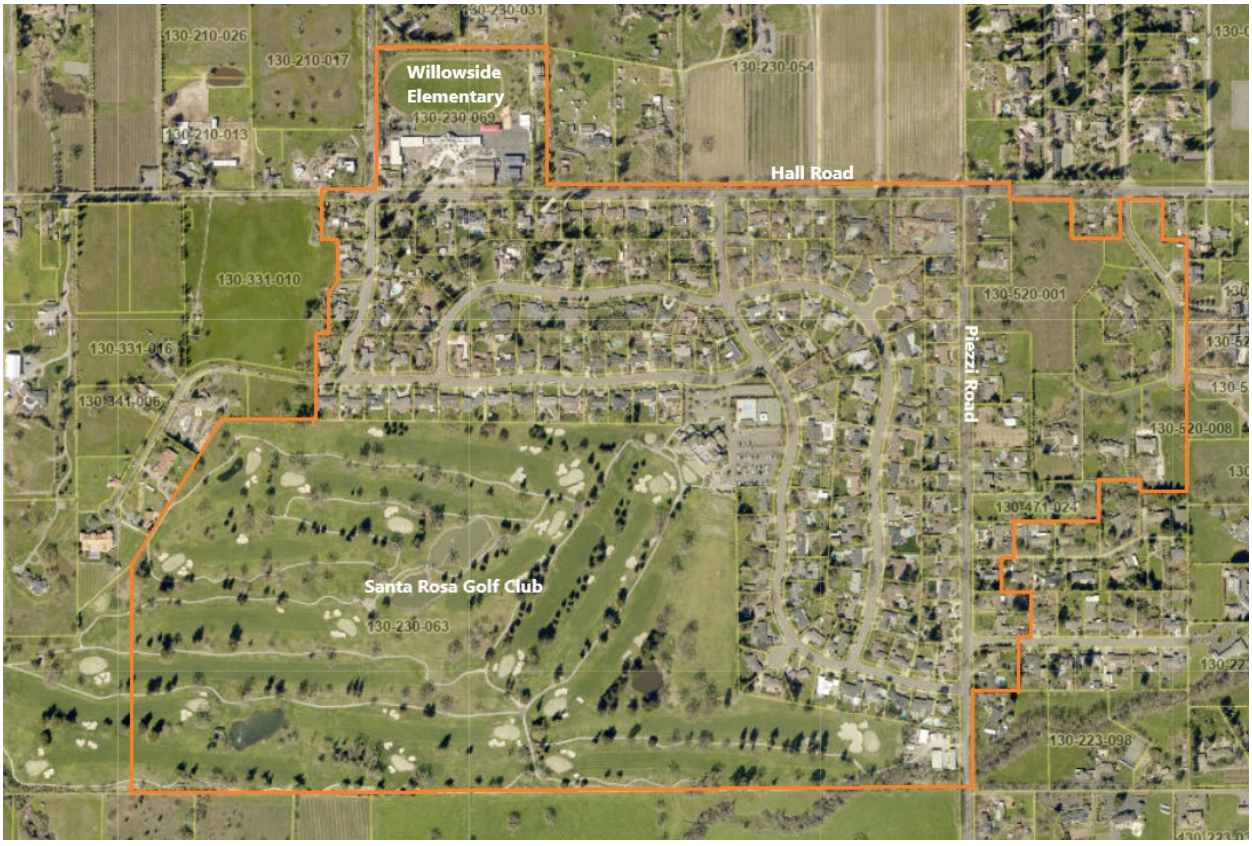
South Wright Road Sewer Areas 1, 2, 3 and a portion of 7

In 1983, the County and City entered into an agreement to provide sanitary sewer service to the South Wright Road Area 1. Subsequently, the parties agreed to amendments to provide sewer service to the other areas called out on the South Wright Road Sewer Master Plan. While much of the area covered by these agreements has been annexed to the City, a large area west of South Wright Road remains unincorporated.

The parcels shaded darker blue are within the City's SOI and UGB. These parcels are zoned Rural Residential, some of which have a Z Overlay prohibiting ADUs. This Overlay can be lifted if it can be proved that the conditions requiring the overly do not exist on a particular parcel. The parcels shaded in dark green are within the SOI but outside of the UGB and are zoned Agriculture and Residential. All of the parcels vary in size, development levels and use. Most requests for the extension of service to ADUs have come from this area.

Willowside Estates Sewer Assessment District

In 1984, the County and City entered into a joint agreement to install and maintain sewer mains in the area referred to as Willowside Estates. The area includes Willowside Elementary School and the Santa Rosa Golf Club. The area is generally developed with residential parcels containing single-family dwellings. Staff has not analyzed the number of second dwellings, if any, currently in place.



Yuba Drive Assessment District

In 1982, the County and City entered into a joint agreement to install and maintain sewer mains in the area referred to as Yuba Drive Assessment District. This area is zoned Agriculture and Residential which allows for a variety of uses in areas primarily designated for residential use. Staff has not analyzed the number of second dwellings currently in place but is aware that some exist.

Broadmoor Sewer Assessment District

In 1971, the County established the Broadmoor Sewer Assessment District. The District includes 49 parcels located immediately west of the Yuba Drive Assessment District. The parcels are mostly under 0.5 acres and developed with single family dwellings. The parcels are zoned Rural Residential. The area is served by the California American Water Company.

Middle Rincon Road Assessment District

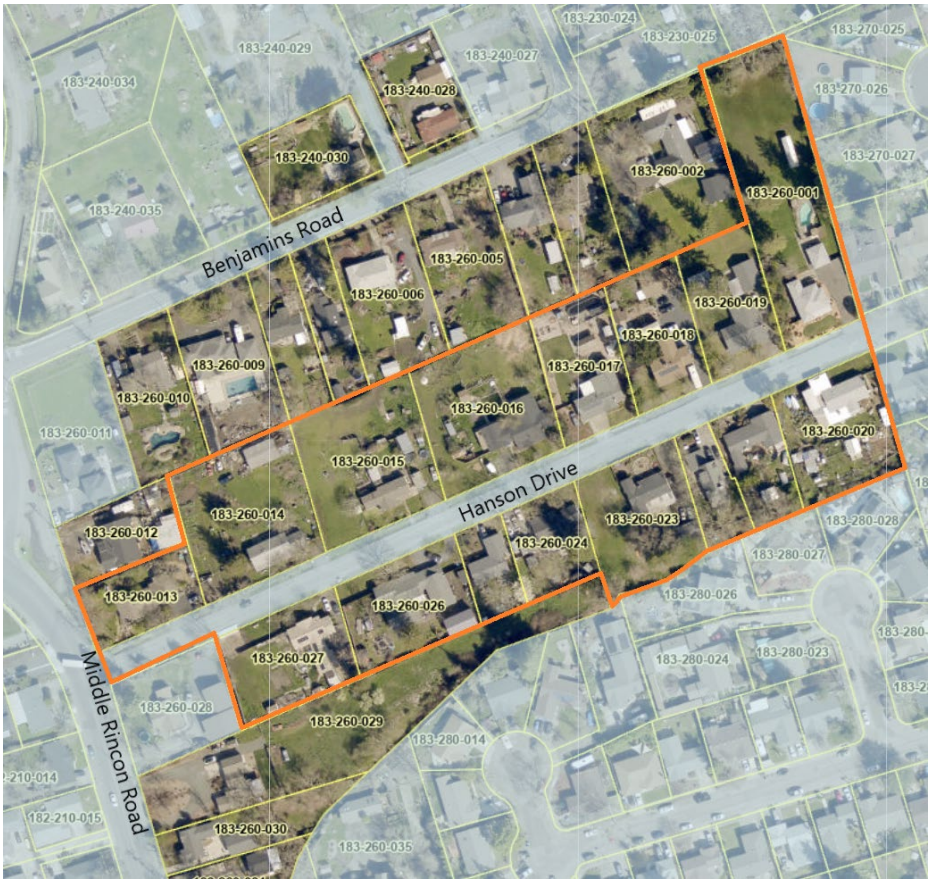
The assessment district was formed by the County in 1971 to address the issue of failing septic systems in the area. The County required all parcels to connect to sewer, but the owners had the choice of whether to connect to water.

Most of the parcels in the assessment district have been annexed into the City. There are 18 parcels remaining in unincorporated islands, almost half of which are connected to both sewer and water. The parcels range from 0.3 to 1.1 acres in size with an average of 0.7 acres.

All the parcels contain at least one single family dwelling, and several have second dwelling units.

Hansen Drive Sewer Assessment District

The assessment district was formed in 1965 by the County. There are 16 parcels in the District averaging 0.4 acres. All are currently connected to City sewer but not water. The sewer line runs down Hanson Drive from Middle Rincon Road to Jack London Road. The parcels are zoned rural residential and contain single family homes and accessory structures.



South of Todd Road Fire Assessment District

In 1994, property owners on Santa Rosa Ave formed the South of Todd Road Fire Protection Association and petitioned the City to form an assessment district to finance the installation of water mains and fire hydrants along Santa Rosa Ave to provide water for fire protection purposes. The mains extend from E Todd Road to south of Horn Ave.

City Council Policy 300-02 states that the extension of water is for fire protection only.