



San Luis Obispo Local Agency Formation Commission

TO: MEMBERS OF THE COMMISSION

FROM: ROB FITZROY, EXECUTIVE OFFICER

DATE: JULY 21, 2022

SUBJECT: SHANDON SAN JUAN WATER DISTRICT ANNEXATION & SPHERE OF INFLUENCE APPLICATION STATUS; LAFCO NO. 4-R-21

RECOMMENDATION

It is respectfully recommended that the Commission receive and file this application status update on LAFCO File 4-R-21.

DISCUSSION

Background

On December 27, 2021, LAFCO received an application for a sphere of influence (SOI) amendment and annexation to Shandon-San Juan Water District (SSJWD). On January 20, 2022, the Commission received notice of the application at its regularly scheduled meeting to fulfill the requirements of government code section 56857.

As required by law, LAFCO provided a response to the application within 30 days. On January 26, 2022, LAFCO staff provided a letter to the applicant that identified a number of items that needed to be resolved in order to continue processing the application. LAFCO received responses in two parts on February 24, 2022, and March 25, 2022. LAFCO staff reviewed the information provided and provided another response on May 11, 2022, see Attachment A.

Shandon-San Juan Water District

SSJWD was established as a water district in 2016/2017 primarily for the purposes of becoming a Groundwater Sustainability Agency (GSA) under the Sustainable Groundwater Management Act (SGMA). The District was authorized by LAFCO to exercise powers listed in Water Code 34000 et al - California Water District. LAFCO activated all powers under the Water Code with the exception of being able to provide sewer services and transfer/move/export water outside of the Basin. The District was approved by the State of California to become a GSA in 2017. Currently, the District

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primarily functions as a GSA. On July 20, 2021, SSJWD established the following fees in order to represent landowner interests in implementing the Groundwater Sustainability Plan (GSP), which is a key responsibility of any GSA under SGMA.

- Irrigated Land - \$26.00 per acre
- Non-Irrigated Land - \$0.11 per acre
- Residences - \$7.50 per residence
- De minimis level for single landowner - \$25.00

Proposed Annexation and SOI Amendment

The proposed project includes an annexation of approximately 2,494 acres of property into the Shandon-San Juan Water District. The property is located in the unincorporated area of the County near Shandon on Shell Canyon Road (APN 037-321-016, 037-331-014). A map of the proposed annexation area is included in Attachment B. The annexation area is currently vacant and does not support any active agricultural operation, and no development is proposed at this time.

Status Update

LAFCO's January 26, 2022, and May 11, 2022, letters identified an issue related to the annexation and expansion into an area in which the County of San Luis Obispo is the exclusive GSA per Water Code Section 10723.8. Our letter noted that at a minimum, LAFCO would need written confirmation from the County GSA that they would agree to a boundary change and relinquish their GSA authority overlying the proposed annexation area, preferably an agreement/resolution document to support such a change. This is necessary for several reasons, the primary reason however is because SSJWD is a GSA, and under SGMA (Section 10723.8), GSA boundaries cannot overlap.

LAFCO staff has coordinated with County staff on this matter. Based on past actions of the Board of Supervisors, County staff are of the position that the County GSA will not withdraw from serving as the GSA within the proposed annexation area at this time. Until County GSA and SSJWD come to an agreement about GSA authority in the subject area, LAFCO cannot continue to process an application because the proposal would conflict with state law (SGMA) due to the overlapping issue.

In terms of LAFCO processing requirements, the Cortese, Knox, Hertzberg Act, specific actions and items must be completed and provided prior to an application being presented to the Commission for action. At this point in time, this application is not ready for Commission consideration due to the aforementioned. This situation is much like when there is an application for annexation to a district or city for services, LAFCO is required to consult with the affected agencies to ensure they support the request. Affected agencies' support for an annexation or other action is required. If a district does not support a request, application processing may be terminated or placed on hold until an issue is resolved. Another aspect of affected agency support relates to tax negotiations. LAFCO is required to commence a tax exchange negotiation between an affected agency (in this case SSJWD) and the County prior to deeming the application complete (as noted in LAFCO's

January 26, 2022, letter). In this circumstance, a prerequisite to initiating a tax exchange, would be to obtain confirmation from the County GSA as to whether they are willing to relinquish authority in the proposed annexation area, as they are the directly affected agency of this proposal. As noted above, we have consulted with County staff and there does not appear to be support for this request at this point in time.

Conclusions for File 4-R-21

LAFCO must place the application on hold until the above matter is resolved between SSJWD and the County. LAFCO cannot process a proposal that conflicts with state law or the Cortese, Knox, Hertzberg Act. Our May 11, 2022, identified two options for the applicant to move forward with:

1. Coordinate with the County GSA to identify possible solutions. If there is a favorable outcome, the applicant may reengage LAFCO to continue processing the application.
2. Withdraw the application and re-submit at a later date when the GSA issue has been resolved.

Implications for Future Applications

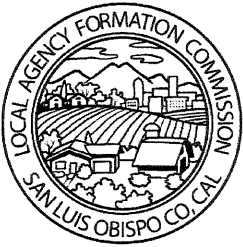
Regarding future annexation applications, it is expected that similar circumstances would result for any other applications received for annexation wherein the annexation area would expand into County GSA authority. There is a total of four GSAs in the Paso Robles Groundwater Basin, and those include SSJWD, City of Paso Robles, San Miguel Community Services District, and County of San Luis Obispo. Should any additional annexation applications be submitted, it may result in a similar situation. Nonetheless, LAFCO will process any annexation applications on a case-by-case basis and coordinate with affected agencies as required.

Attachment A: LAFCO Response Letter Dated May 11, 2022

Attachment B: Location Map

Attachment A


LAFCO Response Letter Dated May 11, 2022



LAFCO - San Luis Obispo - Local Agency Formation Commission
SLO LAFCO - Serving the Area of San Luis Obispo County

DATE: May 11, 2022

TO: Kylix Vineyards California, LP
Attn: Matthew Newhall and Matt Turrentine
P.O. Box 12958
San Luis Obispo CA 93406
805-952-3096

FROM: Rob Fitzroy, Executive Officer 

CC: LAFCO Commissioners
Brian Pierik, LAFCO Legal Counsel

SUBJECT: Sphere of Influence & Annexation #1 to the Shandon San Juan Water District, LAFCO File No. 4-R-21

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Analyst

Mr. Newhall and Mr. Turrentine,

Thank you for your responses to our information request letter sent on January 26, 2022. We received your response in two parts, the first of which was provided via email on February 24, 2022, and the second of which was a Plan for Services provided on March 28, 2022. For ease of reference, we provided the original requests from our January 26, 2022 letter, and our response to the information provided for that request, those responses are further below. However, we would first like to bring your attention to a critical path issue that was previously raised in our January 26, 2022, letter.

Item #8 in our January 26, 2022, letter identified a potential issue related to the annexation and expansion into an area in which the County of San Luis Obispo is the presumed exclusive Groundwater Sustainability Agency (GSA) under the Sustainable Groundwater Management Act (SGMA) as per Water Code Section 10723.8(d). Our comment noted that at a minimum, LAFCO would need written confirmation from the County GSA that they would agree to a boundary change and relinquish their authority overlying the proposed annexation area, preferably an agreement/resolution document to support such a change. As per standard protocol, LAFCO referred this application to the County of San Luis Obispo (and other affected agencies) and LAFCO staff has coordinated with County staff on this matter. Based on past actions of the Board of Supervisors, County staff are of the position that the County GSA will not withdraw from serving as the GSA within the proposed annexation area.

In your response letter dated February 24, 2022, two comments were presented on this matter.

1. First, it was requested that LAFCO provide the agreement used in the prior detachment approved by LAFCO in 2019. We can provide information related to the detachment, however, there was no formal agreement (see Board of Supervisors item for November 19, 2019). Please note that detachments are distinctly different than annexations. When a detachment is approved from the District, the County is permitted to presume authority as per Water Code Section 10723.8, no formal agreement is necessary. It should also be noted that this same Water Code section directs that GSA boundaries shall not overlap. The District participated in this detachment and can also provide any documentation as well as the forms submitted to the State. Annexations are different in several ways, but the key difference in this circumstance is that when annexing into the authority of another GSA, that GSA must agree to a boundary change.
2. The second comment in your February 24, 2022, response stated that the “primary purpose of the annexation benefit of the District’s services related to groundwater monitoring, modeling, management, and protection. Representation by the District as a GSA is important, but the lack of this would not negate the ongoing critical services provided by the District.” Please note that your application specifically states the reason for the proposed annexation is that “the water district provides landowner representation with the groundwater sustainability agency and may provide additional water benefits in the future.” As such, it is important to distinguish between the two separate authorities of the District under its powers as a water district and its powers as a GSA. The District’s powers as a water district as specified in Water Code Section 35401, in part state that a district “may acquire, plan, construct, maintain, improve, operate, and keep in repair the necessary works for the production, storage, transmission, and distribution of water for irrigation, domestic, industrial, and municipal purposes”. In other words, the District’s powers as a water district are intended for conveyance of water and maintenance of infrastructure. Currently, the District has no infrastructure nor conveys any water.

The District’s powers as a GSA are identified in Water Code Section 10725 et. seq. and those powers are furthered by adoption of a state-approved groundwater sustainability plan (GSP). Generally, the powers allow for the District to determine the need for management, prepare and adopt a GSP, adopt rules and regulations, propose fees, monitor and enforce compliance, and other powers. The application as submitted, and the provided Plan for Services indicate that the annexation’s purpose is for the benefit of receiving services of the District as they relate to it’s powers as a GSA. As noted above, your application states that the purpose is to obtain benefits of the GSA. In addition, the provided Plan for Services lists various services that would be provided. The vast majority of those services relate and would stem from the District’s powers as GSA. Because the vast majority of requested services as noted in the application and in the submitted Plan for Services relate to the District’s powers as a GSA, it seems infeasible to obtain those services at this time from the District because of the County GSA issue. And as noted above, the District has no infrastructure and does not convey water under its powers as a Water District. As such, it would not be possible for the proposed annexation to benefit from any powers of the District as a Water District at this point in time.

The key issue with this scenario is that under the Cortese, Knox, Hertzberg Act, specific actions / items must be completed /provided prior to an application being presented to the Commission for action. See Government Code Section 56652. At this point in time, this application is not ready for Commission consideration due to the aforementioned. This situation is much like when an application for annexation to a District requests, for example, sewer service, LAFCO is required to consult with the affected District to ensure they support the request. Affected agencies support for an annexation or other action is required. If a district does not support a request, application processing may be terminated. Another aspect of affected agency support relates to tax negotiations. LAFCO is required to commence a tax exchange negotiation between an affected agency and the County prior to deeming the application complete (as noted in item #9 in our January 26, 2022 letter). Also see Section 99 of the Revenue and Taxation Code. In this circumstance, a prerequisite to initiating a tax exchange, would be to obtain confirmation from the County GSA as to whether they are willing to relinquish authority in the proposed annexation area, as they are directly affected agency of this proposal. As noted above, we have consulted with County staff and there does not appear to be support for this request. The result of this situation is that LAFCO cannot continue processing the application until the County GSA agrees to a boundary change or another resolution is identified. And because the GSA issue must be resolved first, we also cannot move forward with the tax negotiation agreement process at this time. As noted above, tax negotiations must be completed prior to deeming an application complete as per Section 99 of the Revenue and Taxation Code.

In conclusion, LAFCO must pause processing the application until the above matter has been resolved. Options to moving forward are as follows:

1. Coordinate with the County to discuss the GSA issue and identify possible solutions to this matter. If there is a favorable outcome for your purposes with those discussions, coordinate with LAFCO to continue processing the application and bring this item to the Commission for consideration; or,
2. Withdraw the application and re-submit at a later date when the GSA issue has been resolved.

Original Request from LAFCO

1. A plan for providing services, prepared by or agreeable to the District, needs to be submitted. The plan shall include the information outlined under gov code section 56653.

LAFCO Response to Information Provided by Applicant

On March 25, a Plan for Services was provided by the applicant. The transmittal indicated that the District has reviewed the document. However, we need a letter or some form of confirmation that the District is in agreement with the Plan for Services. Please also note as per the discussion above, this item may be irrelevant until the GSA issue is resolved.

Original Request from LAFCO

2. Please submit a LAFCO Cost Accounting Agreement form (available on the LAFCO website at www.slolafco.com) signed by the landowner. The form provided in the submitted application is outdated.

LAFCO Response to Information Provided by Applicant

This item is complete, no additional information is necessary.

Original Request from LAFCO

3. Please submit page 32 of the LAFCO Application with all the petitioner's signatures as required on the form.

LAFCO Response to Information Provided by Applicant

This item is complete, no additional information is necessary.

Original Request from LAFCO

4. Please address and respond to LAFCO's policies and procedures 2.4 and 2.6 (available on the LAFCO website at www.slolafco.com) related to an annexation to a special district and a sphere of influence amendment Goals-Policies-Guidelines. Brief analysis is needed for LAFCO use and reference when processing the project proposal.

LAFCO Response to Information Provided by Applicant

No additional information in needed at this time.

Original Request from LAFCO

5. Please revise map and legal description discrepancies that the County Surveyor has identified; documents will be forwarded to the following emails cmckeever@wtjlaw.com & jsafarms@lightspeed.net or MBS Land Surveys. Map discrepancies will have to be continuously corrected until the County Surveyor determines the map and legal descriptions to be definite and certain. After it has been determined to be definite and certain; Four (4) copies of the maps and legal descriptions signed and stamped by Registered Civil Engineer or a Licensed Land Surveyor. The maps shall be sized at a maximum of 24" x 36" and a minimum of 18" x 26" with a minimum 1/2" border. For more information on the standards for the maps and legal descriptions, please refer to the LAFCO Proposal Application on the LAFCO website.

LAFCO Response to Information Provided by Applicant

No additional information in needed at this time.

Original Request from LAFCO

6. It appears that the two APN's wishing to annex into the District are currently owned by the William & Doris Land & Energy LLC company. The submitted letter of consent mentioned the property is currently in escrow, the purchaser being the Kylix Vineyards California LP with the signatory as Matt Turrentine. If the property is sold during the time of the annexation process and the William & Doris Land & Energy LLC company is no longer the owner, then the William & Doris Land & Energy LLC company would no longer have the authority to keep processing the application as their own. Please clarify how you intend to address this issue and the timing of escrow to ensure the application is transferred correctly when timing necessitates.

LAFCO Response to Information Provided by Applicant

No additional information in needed at this time.

Original Request from LAFCO

7. LAFCO is seeking to better understand the whole of the action and how it relates to other pertinent and known information. The submitted application states the intent of the annexation is for representation of the Shandon San Juan Groundwater Sustainability Agency (GSA) under the Sustainable Groundwater Management Act (SGMA), and "additional water benefits in the future". LAFCO is aware that the District recently applied to the State for allocations of Lake Nacimiento water. Given the timing of this annexation, LAFCO will need to acknowledge and understand how this annexation relates to District's request for this allocation, particularly with regard to the statement "water benefits in the future". It assumed at this point time that the annexation action request of LAFCO may be exempt from CEQA based on available information at the time of inquiry for submittal of the application. However, more understanding is needed about the intent of the District and foreseeable actions of the District with regard to obtaining water allocations, development of infrastructure to convey water, and future growth associated with such, etc. and how this relates to the proposed annexation. Depending on this information, the CEQA determination may need to change.

LAFCO Response to Information Provided by Applicant

No additional information in needed at this time.

Original Request from LAFCO

8. LAFCO understands that the District is a GSA under SGMA. One of the reasons the annexation has been requested, as per the application, is for representation under the GSA. Should the subject site be annexed into the District, it would not automatically change the boundary of the GSA, this would require a boundary change. For this to occur, the County would need to agree to a boundary change and submit such a request to the State. LAFCO needs to understand whether the District would seek to amend its GSA boundary to include the subject site. If so, the District would need to negotiate with the County GSA. At minimum, LAFCO

would need written confirmation from the County GSA that they would agree to a GSA boundary change, preferably a legal agreement/resolution document to support such a change.

LAFCO Response to Information Provided by Applicant

See discussion above commencing on the first page of this letter.

Original Request from LAFCO

9. Pursuant to state law and LAFCO policy, a Negotiated Property Tax Agreement is required to be approved by resolution by both the District Board and the Board of Supervisors even if it is a neutral exchange. This is a required step and involves the County Auditor/Assessor and the State Board of Equalization. This process adjusts the Tax Rate Areas due to the boundary changes of the District. This document must be submitted to LAFCO before the application can be considered by the Commission as required by gov code section 56810. LAFCO can provide you recent examples of this and discuss the process further.

LAFCO Response to Information Provided by Applicant

See discussion above commencing on the first page of this letter.

Original Request from LAFCO

10. As mentioned in the LAFCO proposal application, there is a fee associated with filing with the State Board of Equalization (BOE). This would require a separate check made out to the State Board of Equalization. For an area between 2,001.00 acres and above the fee would be \$3,500. A check would only be needed if the LAFCO Commission approves the proposal; the check should be submitted to LAFCO to be included with the BOE filing packet.

LAFCO Response to Information Provided by Applicant

No additional information is needed at this time.

Original Request from LAFCO

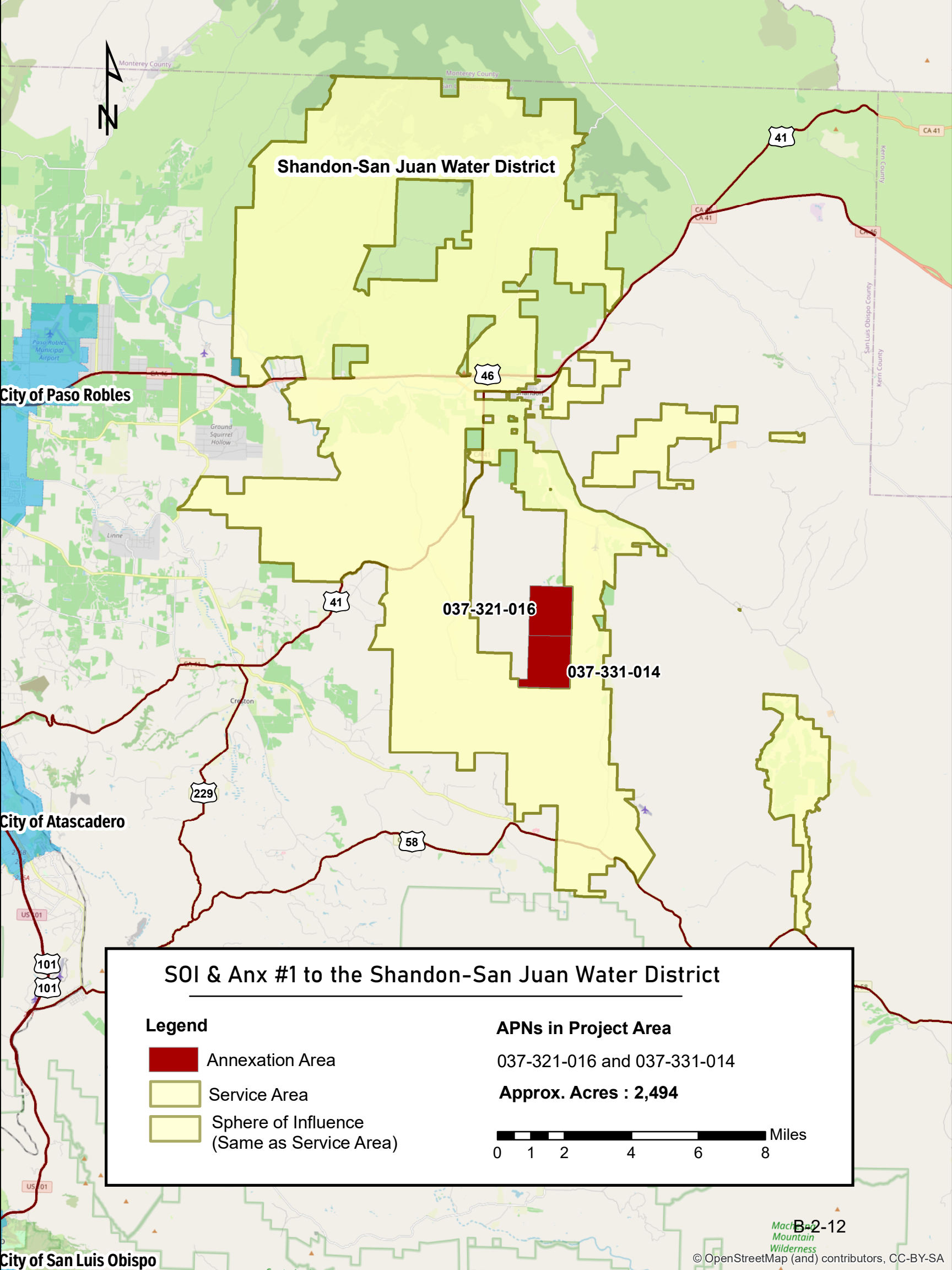
11. On January 20, 2022, at a public meeting of LAFCO, notice per government code section 56857 (b) was provided. The District will have 60 days to submit a resolution to LAFCO requesting the annexation application be terminated as set forth in the code section. If no resolution is received, LAFCO will continue to process the application.

LAFCO Response to Information Provided by Applicant

This item is complete, no further action is needed.

Attachment B

Location Map



SOI & Anx #1 to the Shandon-San Juan Water District

<p>Legend</p> <ul style="list-style-type: none"> Annexation Area Service Area Sphere of Influence (Same as Service Area) 	<p>APNs in Project Area</p> <p>037-321-016 and 037-331-014</p> <p>Approx. Acres : 2,494</p>
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