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April 9, 2008 (Agenda)

Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553

CEQA and Spheres of Influence

Dear Members of the Commission:

RECOMMENDATION
Accept the report.

DISCUSSION
In December 2007, the Commission was asked to consider and accept the Municipal Services Review (MSR) report covering East County Water/Wastewater Services, make the required determinations per Government Code §56430, and update the spheres of influence (SOIs) for some of the agencies covered in the report (i.e., special districts). The Commission took the required actions, with one exception – it deferred the SOI update for the Delta Diablo Sanitation District (DDSD) pending further review of environmental issues.

In February and March 2008, the Commission was asked to consider and accept the MSR report covering Central County Water/Wastewater Services and update the SOIs for some of the agencies covered in the report (i.e., special districts). The Commission deferred all actions pending further review of environmental issues.

The reason for the deferrals is primarily related to SOI options identified in the MSR report involving possible expansions of the SOIs for DDSD, Contra Costa Water District (CCWD) and Central Contra Costa Sanitary District (CCCSD) to correspond to voter approved urban limit lines (ULLs).

In March 2008, the Commission requested a legal opinion regarding whether a proposed expansion of a special district's SOI requires compliance with the California Environmental Quality Act (CEQA).

As detailed in the attached memo, the LAFCO Legal Counsel has determined that the proposed SOI expansions before the Commission constitute projects under CEQA, and are probably not exempt from its requirements. Further, an initial study would need to be conducted prior to expanding the SOIs to determine the appropriate environmental review.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

Attachment

Office of the County Counsel
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Contra Costa County
Phone: (925) 335-1800
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Date: March 25, 2008

To: Commissioners and Alternates,
Contra Costa Local Agency Formation Commission

From: Silvano B. Marchesi, Legal Counsel SBM

Re: Sphere of Influence Revisions Can Be Subject to CEQA

SUMMARY

Although sphere of influence revisions are not always subject to the California Environmental Quality Act, the proposed revisions before the Commission constitute projects under CEQA, and probably are not exempt from its requirements. An initial study should be conducted before the proposed revisions are adopted, to determine whether a negative declaration or environmental impact study is required, or whether a previously-approved EIR can be used by LAFCO.

BACKGROUND

On March 12 2008, the Commission asked for an opinion regarding whether a proposed expansion of a special district's sphere of influence (SOI) requires compliance with the California Environmental Quality Act (CEQA). In November 2005, the voters of Pittsburg and Antioch approved ballot measures that moved the urban limit line[1] beyond the boundaries and spheres of influence of several affected special districts[2] and beyond the existing SOI of the City of Pittsburg. The ballot measures had been initiated by circulation of petitions rather than by resolutions adopted by the city councils. In November 2006, the County Board of Supervisors amended its urban limit line to be consistent with the line approved by the cities' voters. As explained below, LAFCO is now considering whether to expand the SOI of one or more of those districts to be coterminous with the "new" urban limit line.

Each county's LAFCO is directed by the Legislature to develop and determine the "sphere of influence" of most local governmental agencies within the county so that the Commission can use the "sphere of influence" plan in carrying out its purposes and duties for planning and shaping the logical and orderly development of local government agencies.[3] It is the express intent of the Legislature that LAFCO establish policies and exercise its powers in a manner to encourage and provide planned, well-ordered, efficient urban development patterns with

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1 The urban limit line had been established by the County Board of Supervisors in 1991.

2 Central Costa Costa Sanitary District, Contra Costa Water District, and Delta Diablo Sanitation District.

3 Gov. Code, § 56001.

appropriate consideration of preserving open-space lands within such patterns.[4] To establish the mandated policies and standards and in order to exercise its broad powers in an informed matter, LAFCO is directed to initiate and make studies of existing government agencies based in part upon the proposed land use policies and designations within the respective jurisdiction of the agencies, the availability of services and the impact of proposed changes on neighboring communities.[5]

As required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000[6] (CKH), the Commission is conducting a number of municipal services reviews[7] (MSR) in connection with updating the spheres of influence of districts and cities in the County.[8] Regarding the SOIs of the affected special districts, the consultant preparing the water and wastewater MSRs has presented several options for consideration by the Commission. Generally, those options include (1) retaining the status quo and (2) adjusting the SOI to be consistent with the urban limit line, which means expanding the SOI. Some of the areas outside the SOIs but inside the urban limit line are slated for development, although applications for entitlements and requests for general plan amendments, specific plans, rezoning, and annexations may or may not have been submitted to the appropriate land use jurisdiction. Some of the areas identified for potential development are known as the Sky Ranch II, Faria, Montreaux, and San Marcos properties or areas.

An issue has arisen whether the Commission can or should approve any SOI expansions at this time. In particular, LAFCO staff is concerned that such an approval may be in violation of CEQA, since no environmental review was conducted in connection with the change in the urban limit line.[9] On the other hand, counsel for property owners and Pittsburg conclude either that the proposed changes do not constitute a project that would be subject to CEQA or that CEQA requirements have been satisfied in earlier environmental impact reports (e.g., EIRs prepared to support general plan amendments).

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4 *Ibid.*

5 Gov. Code, § 56434 provides in part as follows: "(a) The commission may review and comment upon both of the following: (1) The extension of services into previously unserved territory within unincorporated areas. (2) The creation of new service providers to extend urban type development into previously unserved territory within unincorporated areas. (b) The purpose of the review authorized by this section shall be to ensure that the proposed extension of services or creation of new service providers is consistent with the policies of Sections 56001, 56300, 56301, and the adopted policies of the commission implementing these sections, including promoting orderly development, discouraging urban sprawl, preserving open space and prime agricultural lands, providing housing for persons and families of all incomes, and the efficient extension of governmental services...."

6 Gov. Code, § 56000 et seq.

7 Gov. Code, § 56430.

8 Gov. Code, § 56425.

9 There may be other considerations that may persuade the Commission to approve or not to approve changes in the SOI, such as the criteria set forth in the CKH Act (Gov. Code, § 56425). These considerations are beyond the scope of this opinion, which is limited to the requirements of CEQA.

DISCUSSION

The Supreme Court has held that LAFCO duties must be read in conjunction—and harmonized—with CEQA: "[Knox-Nisbet] dovetails with CEQA.... We...enforce the legislative mandate that before acting, LAFCO was bound to address itself to environmental considerations in accordance with the procedures set forth in CEQA." [10]

CEQA involves a three-tiered process. First, the lead agency determines whether the proposed action is a project subject to CEQA.[11] Second, if it is, the agency determines whether the proposed action is exempt from CEQA's requirements. Exemptions are found both in the statute itself and in the State CEQA Guidelines.[12] If the project is exempt, no further environmental review is required. Third, if it is not exempt, the agency conducts an initial study.[13] If the initial study determines that the project will not result in any significant environmental impacts, the agency prepares a negative declaration.[14] On the other hand, if the initial study reveals that the project might have a significant effect on the environment, an EIR is required.[15]

Is the Proposed SOI Expansion a Project?

At issue here is whether the SOI expansions identified in the MSR constitute projects under CEQA. CEQA's concept of a project is broad. "Project" is defined for CEQA purposes as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: "(a) An activity directly undertaken by any public agency...."[16] LAFCO is a local agency whose actions may be subject to CEQA's requirements.[17] Our Supreme Court has stated that when a court determines whether an activity is a project, the statute is "to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[18]

The case law has been less than crystal clear about whether an SOI is a project under CEQA. In *City of Agoura Hills v. Local Agency Formation Commission of Los Angeles County* (1988) 198 Cal.App.3d 480, the court held that CEQA was not applicable to LAFCO's adoption of the City's SOI. This case is distinguishable, however, on its facts. The City had requested LAFCO to expand its SOI "considerably" beyond its boundaries. Instead, LAFCO approved an SOI

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10 *Bozung v. Local Agency Formation Com.* (1975)13 Cal.3d 263, 282.
11 State CEQA Guidelines, § 15060(c).
12 State CEQA Guidelines, § 15061.
13 State CEQA Guidelines, § 15063.
14 State CEQA Guidelines, § 15070.
15 State CEQA Guidelines, § 15063(b).
16 Pub. Resources Code, § 21065
17 State CEQA Guidelines, § 15368.
18 *Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist. (Tuolumne Band of Me-Wuk Indians)* (2007)147 Cal.App.4th 643, 654 citing *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259, disapproved on other grounds by *Kowis v. Howard* (1992) 3 Cal.4th 888, 896-897.

"virtually coextensive with the City's existing boundaries...,"[19] and the City challenged that approval on several grounds, including CEQA. Thus, it was relatively easy for the Court to hold that the "adoption of the sphere *in this case* is not subject to the requirements of CEQA,"[20] since the record supported "LAFCO's position that its sphere decision could not have a 'significant effect on the environment....'"[21]

On the other hand, the proposed SOI action before your Commission is to *expand* the districts' SOIs beyond their current service areas. This difference is critical, and reliance on the *Agoura* holding is misplaced because of the difference.

A second LAFCO case also arose in Southern California. In *Simi Valley Recreation and Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, LAFCO authorized the detachment of 10,000 acres from the District, at the request of the property owner and the County Board of Supervisors and over the objection of the District. The District sued, alleging that LAFCO and the Board had failed to comply with CEQA. The Court of Appeal held that the detachment from the District was not a project within the meaning of CEQA. The Court was persuaded by the fact that development of the property did not depend on the detachment–the property was under the zoning jurisdiction of the County both before and after the detachment. The detachment did not make any change in the uses of the land.[22]

A third case, arising in our own appellate district, is instructive. In *City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, LAFCO revised its guidelines governing spheres of influence. Among other things, the revisions deleted the statement, "'Existing and future urban development areas belong in cities.'" (*Livermore, supra,* 184 Cal.App.3d at 536.) The effect of the revisions was to place future development under the jurisdiction of the County rather than the City. The City wanted a development proposal to be included within its sphere, but the new guideline would prevent that. In considering the sphere guideline change, LAFCO conducted an initial study under CEQA, and prepared a negative declaration that the guideline change would not have a significant effect on the environment. The City argued that an EIR was necessary. During subsequent litigation LAFCO argued that the guideline revisions did not constitute a project under CEQA, and that LAFCO had prepared the negative declaration only in an "abundance of caution."[23]

The Court of Appeal held that the guideline revisions constituted a "project" subject to CEQA requirements. The Court stated:

> "The sphere of influence guidelines influence LAFCO decisions about development plans and future growth of cities and service areas. The

19 *Agoura Hills, supra*, 198 Cal.App.3d at 483.
20 *Agoura Hills, supra*, 198 Cal.App.3d at 496 (emphasis added).
21 *Agoura Hills, supra*, 198 Cal.App.3d at 494.
22 *Simi Valley, supra*, 51 Cal.App.3d at 666.
23 *Livermore, supra,* 184 Cal.App.3d at 538.

> guidelines play a part in determining whether growth will occur in unincorporated areas and whether agricultural land will be preserved or developed....It is true that the precise effects are difficult to assess at this stage, but it is because impact is so easily foreseen that the revisions must be considered a project under CEQA.
>
> "To hold that the revisions are not a project, despite the fact that they will have a significant environmental impact, would result in an overly strict definition of CEQA which neither the language nor intent of the statute supports...."[24]

The Court went on to rule that the revisions were not exempted from CEQA, likening them to a general plan amendment. The Court further held that the record supported the conclusion that the revisions may have a significant impact on the environment, and that an EIR was required. (*Livermore, supra,* 184 Cal.App.3d at 539-543.)

The Court distinguished the *Simi Valley* decision, on the basis of different situations in the two cases. The Court pointed out that in *Livermore*, the LAFCO action "was not one plan, nor a slight reorganization in administration, but a major policy shift that would affect land use throughout the entire region."[25]

Finally, a very recent California Supreme Court decision sheds some light on the question. In *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 51 Cal.4th 372, the Court considered whether the ALUC's adoption of an airport land use compatibility plan was subject to CEQA. The plan restricted residential development in a certain zone close to Travis Air Force Base (Zone C) to levels currently permitted under existing general plans and zoning regulations. The ALUC adopted the plan without environmental processing, on the basis that adoption of the plan was not a project under CEQA or, in the alternative, was exempt under the "commonsense" exemption (described below). The owner of over 1,000 acres within Zone C challenged the adoption of the plan.

On appeal the ALUC argued that, although its land use compatibility plan froze residential densities in Zone C, the ALUC had no obligation to consider any displacement of development caused by the freeze, because such displacement is too speculative to be considered reasonably foreseeable. It also argued that the ALUC is merely advisory, so its adoption of the plan cannot be considered the legal cause of environmental changes. The Supreme Court rejected both arguments. Significantly, it held that, depending on the circumstances, a government agency may reasonably expect that banning development in one area may lead to moving such development to another area.[26] The Court further stated that the fact that other decisions need to be made before environmental impacts can be determined precisely does not necessarily take this decision

24 *Livermore, supra,* 184 Cal.App.3d at 538.
25 *Livermore, supra,* 184 Cal.App.3d at 540.
26 *Muzzy Ranch Co., supra,* at 51 Cal.4th 383.

out of the definition of a project.[27] Referring to an earlier decision that a county board of education's plan to form a new school district constituted a project,[28] the Court the following statement :

> "That the board's approval of the plan was an essential step leading to potential environmental impacts, including construction of a new high school, was sufficient.'" [29]

Second, the Court rejected the ALUC's argument that its adoption of the plan was merely advisory and so did not constitute a project. The Court pointed out that by statute a city or county's general plan must be made and kept consistent with an ALUC's plan, so that the two plans are analogous.[30] There is no question that a general plan or general plan amendment is a project under CEQA. [31] Thus, the Court concluded that the ALUC's adoption of its land use compatibility plan was a project subject to CEQA.

This review of the case law brings us to the proposed SOI revisions before the Commission. There does not appear to be a case that is squarely on point. In fact, there are factors in our situation that are similar to those in cases that had opposite results. Thus, a conclusion is necessarily a prediction of what a court might decide, and such a prediction carries some uncertainty.

Briefly, *Agoura Hills* (SOI not a project) involved an SOI that was kept at the city's boundary. As indicated earlier, this is a qualitatively different action from the proposed expansion of SOIs, and there is a substantial question whether the Court there would have made the same decision under our factual situation.

Simi Valley (detachment from Park District not a project) did not involve an SOI, and the Court relied heavily on the fact that the detachment made no difference in what development could take place and that the detachment was not a necessary step in development. Despite the difference in actions, however, the first factor appears to make our situation similar to that in *Simi Valley*: after the voters approved the expansion of the urban limit line in 2005, the Board of Supervisors took action in 2006 to make the County's urban limit line consistent with the voter-approved line. If both the County's general plan and the cities' general plans for the newly-expanded areas allow for the same development, then one could argue that expanding the SOI would, as in *Simi Valley*, not make any difference. Whether this assumption is correct requires analysis of the respective general plans and zoning regulations.

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27 *Ibid.*
28 *Fullerton Joint Union High School Dist. v. State Bd. Of Education* (1982) 32 Cal.3d 779, 795.
29 *Muzzy Ranch Co., supra,* 51 Cal.4th at 383.
30 *Muzzy Ranch Co., supra,* 51 Cal.4th at 384-385.
31 *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 793-795.

On the other side of the coin, the *Livermore* case involved SOI guidelines rather than an SOI and held that the revisions to the guidelines did constitute a project. Although the Court distinguished *Simi Valley*, one can see a closer comparison between the SOI guidelines and an SOI than with a detachment from a non-land-use agency such as the Park District in *Simi Valley*.

Considerable weight should be given to the decision in *Muzzy Ranch Co.* It is the latest discussion on the scope of CEQA's definition of a project, and it comes from our highest court. The language quoted above would seem to apply to the proposed SOI expansions: before future actions can be taken, such as annexation to the cities or the special districts, the spheres must be expanded. Although a sphere change can be viewed as merely a planning tool, the proposed sphere expansion is an "essential step" in the development or service process.

On balance, I conclude that the more legally supportable position, and the safer legal position for LAFCO to take, is to decide that the proposed SOI expansions constitute projects under CEQA. This action is supported by the Attorney General, who came to the following conclusion:

> "On balance, we believe that the amendment of a sphere of influence may ultimately affect a physical change in the environment to the extent required for inclusion within CEQA."[32]

Even If the SOI Revisions Are Projects, Are They Exempt From CEQA's Requirements?

The second tier of the CEQA process is to determine whether a project is exempt from CEQA's requirements, either by statute or by guideline.[33] The one possible exemption that has been proposed (by property owners' counsel) is the "common sense" exemption. That exemption is as follows:

> "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."[34]

Significantly, the Supreme Court in the *Muzzy Ranch Co.* case, after holding that the ALUC's compatibility plan constituted a project, ruled that it was exempt under the commonsense exemption.[35] First, the Court describes the standards for making that determination: the burden is on the agency invoking the exemption to demonstrate that it applies[36] by producing (and citing in its decision) substantial evidence from the record.[37]

32 63 Ops.Cal.Atty.Gen. 758, 765 (1980).
33 State CEQA Guidelines, § 15061.
34 State CEQA Guidelines, § 15061(b)(3).
35 *Muzzy Ranch Co., supra*, 51 Cal.4th at 388-389.
36 Citing to *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 114.
37 *Muzzy Ranch Co., supra*, 51 Cal.4th at 386.

Although the ALUC failed to meet this requirement, the Court held that it had come to the correct result. In the Court's view, the most significant factor is that the CEQA Guidelines provide for streamlined review of projects that are consistent with existing general plans and zoning.[38] The Court stated,

> "When approving a project that is consistent with a community plan, general plan, or zoning ordinance for which an environmental impact report already has been certified, a public agency need examine only those environmental effects that are peculiar to the project and were not analyzed or were insufficiently analyzed in the prior environmental impact report. *(Pub. Resources Code, § 21083.3, subd. (b).)*"[39]

The Court found that the ALUC's plan basically incorporated existing county general plan and zoning provisions, which called for nearly all of the zone to remain in agricultural or open space.[40]

While the analysis in *Muzzy Ranch Co.* could be used to come to the same conclusion as to our proposed SOIs, there may be some significant differences that might prevent the use of the commonsense exemption. First, as in *Agoura Hills*, in Solano County the ALUC's action was to "freeze" development in Zone C to the currently existing level. Thus, it was clear to the Court that the plan was consistent with the general plan. To the contrary, the proposed SOI changes before your Commission potentially would expand service of water and wastewater into areas where they do not currently exist.

Second, the Commission needs to have substantial evidence in the record that the cities' and County's general plans already allow water and wastewater service in the areas sought to be included in the SOIs. If so, the record should demonstrate that the potential environmental impacts *resulting from those services* have already been analyzed sufficiently in a certified environmental document, e.g., a city's general plan EIR. If not, the commonsense exemption probably is not applicable, since it is widely known that in the wings there are proposals for development in those areas.

In my view, at this time the record does not support a determination that "it can be seen with certainty that there is no possibility" that the SOI revisions might lead to significant effects on the environment.

38 *Muzzy Ranch Co., supra*, 51 Cal.4th at 388; State CEQA Guidelines, § 15183.
39 *Muzzy Ranch Co., supra*, 51 Cal.4th at 388-389.
40 *Muzzy Ranch Co., supra*, 51 Cal.4th at 389.

If a Project is not Exempt, an Initial Study Must Be Conducted

The third tier of CEQA analysis is triggered if an activity is a project and is not exempt.[41] An initial study is conducted to determine whether the project may have a significant effect on the environment.[42] If not, a negative declaration, or mitigated negative declaration, may be prepared and approved. If substantial evidence in the record supports a fair argument that the project may have a significant effect on the environment, an EIR is required.[43] The determination of whether an EIR is required is heavily dependent on the facts of each project.

The Attorney General has stated the test, as to spheres of influence, as follows:

> "In summary, the amendment of a sphere of influence by LAFCO may require the filing of an EIR or negative declaration in compliance with CEQA. The key determination is whether such action *in a particular case* could *possibly* have a significant effect on the environment."[44]

That determination is made only after an initial study is conducted.[45] It is important to note that, even if the threshold for requiring an EIR is exceeded, it still is possible to use a previously-prepared EIR, such as a general plan EIR prepared by a city, if the Commission determines that it adequately analyzes the potential impacts.[46] Further, it may be possible to use the "tiering" approach to avoid unnecessary duplication as to particular impacts already identified and analyzed in a previously-prepared EIR.[47]

As can be seen, when a project is not clearly exempt from CEQA, decisions regarding the level of environmental review must await the outcome of an initial study, which is performed by those with planning expertise.

In conclusion, from the legal perspective I recommend that the Commission not expand a sphere of influence as proposed in Items 7 and 8 of the March 12, 2008 agenda until initial studies have been conducted and the appropriate environmental documents have been prepared for the Commission's consideration. This recommendation does not prevent the Commission from approving the municipal service reviews for those items.

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41 State CEQA Guidelines, § 15063.
42 *Ibid.*
43 Pub. Resources Code, § 21100, 21151; State CEQA Guidelines, § 15064(a)(1); *Laurel Heights Improvement Assn v. Regents of University of California* [1993] 6 Cal.4th 1112, 1123.
44 63 Ops.Cal.Atty.Gen. 758, 768 (1980) [emphasis added].
45 State CEQA Guidelines, § 15063.
46 State CEQA Guidelines, § 15063(b)(1)(B).
47 State CEQA Guidelines, § 15063(b)(1)(C).

Is a Project Required for a Sphere of Influence Revision?

LAFCO is required to "develop and determine" the sphere of influence of each local governmental agency within the County,

> "In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies to advantageously provide for the present future needs of the county and its communities...."[48]

A sphere is defined by CKH as follows:

> "'Sphere of influence' means a plan for the probable physical boundaries and service area of a local agency, as determined by the commission."[49]

When adopting or changing a sphere for a special district, the Commission must require the existing district to file written statements specifying the functions or classes of services provided by the district, and establish the nature of any functions or classes of services provided by the district.[50] In determining the sphere, the Commission must consider and make a written determination as to each of the following:

> "(1) The present and planned land uses in the area...,
>
> "(2) The present and probable need for public facilities and services in the area.
>
> "(3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.
>
> "(4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency."[51]

There is no statutory requirement that a sphere of influence be accompanied by a development project. However, this Commission has a local policy that requires information beyond these determinations.[52]

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48 Gov. Code, § 56425(a).
49 Gov. Code, § 56076.
50 Gov. Code, § 56425(I).
51 Gov. Code, § 56425(e).
52 Policy 2.1.D (copy attached).

When does Environmental Analysis Occur?

The State CEQA Guidelines declare:

> "EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment."[53]

We have seen some cases above regarding the relationship between CEQA and the CKH. Further, it is well-established that CEQA must be complied with before the adoption or amendment of a general plan,[54] rezoning,[55] and certain actions that may be seen as catalysts for future development.[56]

cc: Lou Ann Texeira, Executive Officer

Attach.
SBM:s

53 State CEQA Guidelines, § 15004(b).
54 State CEQA Guidelines, § 15078(a)(1); *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180 [EIR required for general plan amendment that for the first time would allow the construction of a "waste-to-energy" plant on the affected site].
55 *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229 [EIR required for rezoning of coastal property, although no specific development proposed had been submitted].
56 *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325 [EIR required before city could approve a site development permit for construction of sewer lines and road on undeveloped property, although development's form remained uncertain].

2.1. POLICIES AND STANDARDS (Excerpt)

D. Policy on Spheres of Influence and Annexations

The goals of the Contra Costa Local Agency Formation Commission include promotion of orderly growth and development by determining logical local agency boundaries [§56001], preservation of open space by encouraging development of vacant land within cities before annexation of vacant land adjacent to cities [§56377(b)], and the preservation of prime agricultural land by guiding development away from presently-undeveloped prime agricultural lands [§56377(a)].

In order to accomplish these and other goals, LAFCO is required to review and update every five years the spheres of influence (SOIs) of local agencies in Contra Costa County [§56425].

An SOI is a plan for the probable physical boundaries and service area of a local agency [§56076] and includes policies for directing growth patterns. In accordance with State law, inclusion in an SOI makes land eligible for annexation but does not assure annexation. LAFCO must consider numerous other factors when considering an annexation, reorganization or change of organization.

SOIs may be amended by the Commission. When an SOI amendment is requested, the proponent shall submit documentation to support the determinations the Commission must make pursuant to §56425(a). For a city seeking an SOI amendment, particular attention should be paid to the current land uses in the county and city, the land uses planned for the city's present SOI and the land uses proposed for territory sought to be added to the SOI. Areas to remain in agricultural and open space should be clearly specified [§§56425(a), 56377].

As a precursor to boundary changes, requests for SOI amendments should address all relevant factors of §56668. Such requests should also specify how the policies of the CKH Act will be fostered with respect to the 1) orderly formation of local agencies [§56001] and 2) preservation of open space [§56059] and prime agricultural land [§56064], both within the existing boundaries of the agency and the proposed SOI of the agency [§56377].

LAFCO discourages inclusion of land in an agency's SOI if a need for services provided by that agency within a 5-10 year period cannot be demonstrated. To demonstrate that a proposed SOI amendment is timely, an applicant should indicate expected absorption and development rates for land already in the SOI, as well as land proposed to be added.

A request to expand an SOI should designate clearly the territory that may be sought for annexation and the anticipated timeframe. An agency should propose a reduction in its SOI to remove territory that the agency does not believe will be developed within 20 years.

Territory proposed to be annexed to an agency should be within the Urban Service Area [§56080] of the agency. Related infrastructure improvements should be included in the agency's 5-year Capital Improvement Program. Each agency expected to serve any portion of a city's SOI during the period should provide the city and LAFCO with an "intent to serve" statement. Such statements should demonstrate the reason, intent and capacity to serve the area by such evidence as resolutions of the governing boards establishing service area boundaries and ultimate service areas. The applicant shall also submit an adopted plan for financed infrastructure. [§56378].

Requests for changes of SOIs should be accompanied by summaries of the studies used to establish the SOI areas, copies of any 5-year Capital Improvement Program, and copies of any master service agreements, resolutions, or other such documentation for local agencies that may provide service to the area.

A Municipal Service review will be required prior to processing a substantial SOI amendment (§56430). LAFCO may find an SOI request inadvisable and/or premature if the Commission is unable to determine from the application that the goals of the CKH Act would be served by approving the request [§§56425, 56426, 56668, 56377, 56001].

Territory for which an annexation is proposed should be within the adopted SOI of the annexing agency. If not, an SOI amendment will be required prior to consideration of the annexation. Territory for which an annexation is proposed should be within the area shown as the 5-year SOI-Urban Service Area in the adopted SOI of the annexing agency. Annexations proposed for territory beyond the 5-year SOI-Urban Service Area usually will be denied unless overriding reasons demonstrate need for the annexation at the present time. Whenever feasible, annexation to all agencies that are expected to provide urban services to the area should be submitted at the same time.

SOIs generally will not be amended concurrently with an action on the related change of organization or reorganization. A change of organization or reorganization will not be approved solely because an area falls within the SOI of any agency.

Proponents of an annexation must demonstrate that the proposed development within the annexation area will meet the annexing jurisdiction's adopted performance standards for facilities, services and traffic and that an adopted Capital Improvement Plan will provide for these facilities.

Annexation proposals should avoid creation of "islands" or corridors of territory not served by the annexing agency, and boundaries that are not definite and certain or do not conform to lines of assessment or ownership. The Commission's approval of boundary change proposals containing split parcels will typically be subject to a condition requiring the recordation of a parcel map, lot line adjustment or other instrument to avoid creating remnants of legal lots.

Territory to be annexed by a city shall be pre-zoned by the city. A map submitted by the proponents should show all zoning designations for the territory to be annexed.