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July 8, 2009 (Agenda)

July 8, 2009  
Agenda Item 11

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

**Consideration of an Initial Study/Negative Declaration Relating to the Proposed Sphere of Influence Expansions – City of Pittsburg, Contra Costa Water District and Delta Diablo Sanitation District**

Dear Members of the Commission:

**BACKGROUND**

In conjunction with the East County Water/Wastewater and Sub-Regional Municipal Service Reviews (MSRs)/Sphere of Influence (SOI) Updates, the Commission authorized an environmental study relating to the proposed expansion of the SOIs of Contra Costa Water District and Delta Diablo Sanitation District to coincide with the voter approved Urban Limit Lines (ULLs) for the cities of Pittsburg and Antioch.

In July 2008, the Commission approved a service contract with PMC to prepare the Initial Study (IS) relating to the proposed SOI expansions. Also, the Commission approved a fee agreement with the City of Pittsburg to fund the study. The City is serving as the funding agent for the purposes of the fee agreement, and is coordinating payments from the respective funding parties (DDSD and Discovery Builders, Inc).

In December 2008, the Commission requested that the scope of work for the environmental study be expanded to include a review of the proposed expansion of the City of Pittsburg’s SOI to coincide with the City’s voter approved ULL.

PMC prepared the Initial Study, Negative Declaration (ND) and supporting documents relating to the proposed SOI expansions. On April 13, 2009, LAFCO released a Notice of Intent to Adopt an ND for a 30-day public comment period.

Written comments were received from the following parties:

- City of Pittsburg
- Greenbelt Alliance
- Kathy Gleason - CNWS Neighborhood Alliance
- Raymond O'Brien (Bay Point resident)
- East Bay Regional Park District (EBRPD)
- Save Mount Diablo
- Delta Diablo Sanitation District (DDSD)
- Louis Parsons - Discovery Builders, Inc.

Copies of these letters are available on the LAFCO website at [www.contracostalafco.org](http://www.contracostalafco.org). PMC has prepared responses to these comments (Attachment 1) as well as options which are summarized below.

## **DISCUSSION**

The discussion below addresses the CEQA and LAFCO policy issues.

### CEQA Issues

PMC prepared an IS/ND to evaluate the proposed SOI expansions for CCWD, DDSO and the City of Pittsburg (“project”). The IS identified no potentially significant effects on the environment associated with the project.

A number of comments were received in response to the public circulation of the IS/ND. The consultant has prepared responses to the major issues raised in the comment letters (attached). In addition, the consultant has identified three options for the Commission to consider, as summarized below.

#### ***1. Adopt the IS/ND and approve the project***

The Commission can adopt the CEQA document as prepared and determine that the ND and responses to comments are adequate and that no changes to the document or further analysis are required.

Briefly, the consultant’s response to comments addresses LAFCO policy and precedent issues, questions pertaining to tiering from previously prepared environmental documents, and effects of the proposed SOI expansions (i.e., growth inducement, land use, impact to agricultural land, etc.). In addition, the response to comments provides additional information relating to greenhouse gas emissions (GHG) and climate change within the project area to address recent changes in the law, as well as recently released Attorney General’s guidance, and the recently released report by the Bay Conservation and Development Commission (BCDC) outlining potential sea level rise issues within the project area.

As noted, any future proposal to annex the SOI expansion areas should adequately address the State’s GHG and climate change requirements.

#### ***2. Development of a focused EIR***

The Commission can direct the consultant to prepare a focused EIR to further consider cumulative impacts, project alternatives and related policy issues.

#### ***3. Reject the IS/ND and deny the project***

The Commission can reject the CEQA document and deny the project for reasons specified.

### LAFCO Policy and Related Issues

*Policies* - In addition to the CEQA options and issues presented above and in the attached, there are a number of LAFCO policy issues relating to the project, as summarized below. It should be noted that the Commission has discretion with regard to its local policies.

The IS identifies potential conflicts with LAFCO policy. In addition, some of the comment letters raise similar policy issues. It should be noted that most of the policy issues are addressed in the IS, as summarized below.

- *The goals of the Contra Costa LAFCO 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)]. (LAFCO Policy)*

As indicated in the IS, the SOI expansion areas include approximately 185 acres of open space and 1,708 acres of Agricultural Lands pursuant to the Contra Costa County General Plan. There is no land designated as Prime Agricultural Land. Further, the County and the cities of Antioch and Pittsburg have General Plan policies which provide for the preservation of open space and agricultural lands. The consultant concludes that the LAFCO policies and CKH provisions are adequately addressed through the local agency General Plans, and there is no policy conflict.

- *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. (LAFCO Policy)*

PMC indicates that annexation of the proposed SOI expansion areas, although speculative, is anticipated within the horizons of the Antioch (through 2025) and Pittsburg (through 2020) General Plans, and there is no policy conflict.

Concerns relating to the City of Pittsburg's consideration of alternative land uses, including rezoning some of the SOI expansion areas to Open Space, were considered. It is noted that if the City rezones these areas to open space, then no development will be permitted and the extension of public services, including water and wastewater, will not be needed. However, at this time, it is uncertain as to whether the City of Pittsburg will pursue rezoning of the properties.

- *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 Policy)*

Future development and the extension of municipal service within the proposed SOI expansion areas was anticipated as part of the General Plan buildout for both the City of Pittsburg and the City of Antioch, and was analyzed at the program level as part of the environmental review process for those respective General Plans. The factors pursuant to Government Code §§56668, 56001, 56059, 56064, and 56377 were generally considered as part of the General Plan process. Additional analysis of these and other factors will be required in conjunction with any future annexation proposal.

A related issue is that pursuant to Government Code §56668.5, the Commission may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis. Any future application to annex the SOI expansion areas should adequately address regional growth goals and policies per Government Code §56668.5.

- *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]. (LAFCO Policy)*

MSRs covering CCWD, DDS and the cities of Antioch and Pittsburg were previously approved by LAFCO. PMC notes that the proposed SOI expansions (CCWD and City of Pittsburg) are not consistent with the MSR reports and recommendations as discussed below.

- *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. (LAFCO Policy)*

Given the impacts of the economic downturn, decline in new housing starts, decrease in property values, and substantial increase in foreclosures, it is uncertain as to the timeframe of potential development within the City of Pittsburg's existing boundary/SOI as well as development within the proposed SOI expansion areas. Consequently, it appears that this LAFCO policy is not satisfied.

*Precedent* – As noted by PMC and commenters, the typical process for an SOI expansion has been for an affected agency or landowner to request an SOI amendment via an application to LAFCO. While LAFCO-initiated SOI expansions have not been the practice, they are not explicitly prohibited. However, LAFCO-initiated SOI amendments pose certain challenges as compared to the more traditional application-driven approach in that there are no specific project details (e.g., demand for service) to evaluate.

*MSR Findings* – PMC and commenters note that the proposed SOI expansions for CCWD and the City of Pittsburg are not consistent with the MSR reports and this places an additional burden on LAFCO. The proposed SOI expansion for DDSO is consistent with the MSR.

In December 2007, LAFCO adopted the MSR and required determinations for the East County water and wastewater services providers. In its review of the SOI of DDSO, the MSR identified two options for consideration by LAFCO: 1) retain the existing DDSO SOI; or 2) adjust (i.e., expand) the DDSO SOI to be consistent with the voter approved Urban Limit Lines (ULL) in the vicinity of the cities of Antioch and Pittsburg. The MSR recommended that the SOI for DDSO be adjusted to coincide with the Antioch and Pittsburg ULLs, following appropriate CEQA review.

In April 2008, LAFCO adopted the MSR and required determinations for the Central County water and wastewater services providers. This MSR included the following SOI options for CCWD: 1) retain the existing CCWD SOI; 2) remove the Veale Tract from the CCWD SOI; and/or 3) expand the CCWD SOI to be consistent with local agency adopted ULLs within Contra Costa County. The MSR recommended removing the Veale Tract from CCWD's SOI. The MSR did not support adjusting CCWD's SOI to coincide with the Antioch and Pittsburg ULLs for a number of reasons, including potential future water demands within those areas; availability of long-term, reliable water supplies from CCWD to serve the areas; impacts to existing customers; and compliance with additional requirements and review by various state and federal agencies in accordance with the contract between CCWD and the U.S. Bureau of Reclamation (USBR). CCWD's primary source of water supply is the USBR Central Valley Project, and water deliveries are limited per the terms and conditions of CCWD's contract with USBR.

In December 2008, LAFCO adopted the MSR and determinations relating to the East County Sub-regional services providers, which included the four east County cities and several special districts. The MSR identified the following SOI options for the City of Pittsburg: 1) retain the existing SOI; 2) reduce the SOI (i.e., open water areas, permanent open space areas, Concord Naval Weapons Station blast easement area); and 3) adjust the SOI to be consistent with Pittsburg's voter approved ULL. The MSR recommended retaining the existing SOI for the City of Pittsburg. The MSR did not support expanding the City's SOI for a number of reasons including the following: LAFCO encourages cities to annex lands that have been developed to urban levels, particularly areas that already receive municipal services. The Pittsburg SOI currently includes the community of Bay Point, which is an urbanized area. Bay Point was placed in the City's SOI as Pittsburg is considered the most appropriate service provider for Bay Point and in anticipation of annexation in the foreseeable future. Further, the City has 14± square miles within its existing SOI, some of which could be annexed/developed. The City has 1,820 acres of vacant land and an undetermined amount of underutilized land within its existing city limits which could be developed. Finally, the City has experienced budget deficits in the past several years and will likely continue to experience fiscal challenges in the near future given the economy, housing market slump, and declining property taxes. These fiscal challenges will likely impact services.

The Commission should consider the issues of policy, precedent and the MSR process in the context of the overall project.

## **OPTIONS**

### **1. Adopt the Negative Declaration and approve the project**

- a. Find that, before approving this project, LAFCO has considered the proposed Negative Declaration, together with any comments received during the public review process;
- b. Adopt the Negative Declaration for the project, finding that it is adequate and complete and was prepared consistent with the California Environmental Quality Act (CEQA) and State CEQA Guidelines, and specify that the LAFCO Office (located at 651 Pine Street, Sixth Floor, Martinez, CA) is the custodian of the documents and other materials which constitute the record of the proceedings upon which this decision is based;
- c. Find that, on the basis of the whole record, there is no substantial evidence that the project will have a significant effect on the environment, and the Negative Declaration reflects LAFCO's independent judgment and analysis; and
- d. Direct the LAFCO Executive Officer to file a Notice of Determination with the County Clerk.
- e. Direct the LAFCO Executive Officer to prepare the LAFCO resolutions expanding the SOIs for CCWD, DDS and the City of Pittsburg in accordance with the project.

### **2. *Defer action and direct the project consultant to develop a focused EIR to consider cumulative impacts, project alternatives and related policy issues.***

The consultant indicates that preparation/circulation of a focused EIR would take approximately seven months and would cost an additional \$45,000.

### **3. *Reject the IS/ND and deny the project.***

The Commission can reject the CEQA document and deny the project for reasons specified.

### **4. *Continue the matter to a future meeting if the Commission needs more information.***

## **RECOMMENDATION**

Consider the options presented.

Sincerely,

LOU ANN TEXEIRA  
EXECUTIVE OFFICER

Attachment 1 – Response to Comments

- c: Michael McCormick, PMC  
Jerry Brown, CCWD  
Gary Darling, DDS  
Marc Grisham, City of Pittsburg  
Jim Jakel, City of Antioch  
Louis Parsons, Discovery Builders, Inc.



July 1, 2009

Lou Ann Texeira, Executive Officer

**CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION**

651 Pine Street, 6<sup>th</sup> Floor  
Martinez, CA 94553

**RE: CITY OF PITTSBURG, DDSD, CCWD SOI PROJECT CEQA RESPONSE TO COMMENTS**

Dear Lou Ann:

We reviewed the comments received in response to the public circulation of the Initial Study/Negative Declaration for the City of Pittsburg, DDSD, CCWD SOI Amendment project. Although not required by the California Environmental Quality Act (CEQA) for Initial Studies and Mitigated Negative Declarations, we have responded to the primary comments received to date for the project via the attached master responses for those comments warranting additional explanation. The format of these responses outlines general topics addressed in the letters and the response to the comments. The comments were primarily focused on Areas A and D of the proposed project area (Pittsburg's Southwest Hills and the Thomas Ranch area south of Pittsburg) and adequacy of the City of Pittsburg's General Plan EIR as a tiering document. For this reason, the responses primarily focus on these areas as well.

Since inception of the project, there have been changes (reductions) in the background buildout assumptions as a result of the economic downturn, LAFCO policy conflicts have become more pronounced, proposed land use changes in the vicinity of project, new science and analysis not previously included in the programmatic documents that were relied upon for tiering (policy and mitigation in regards to climate change). As a result of these issues, we are recommending one of the following approaches:

1. Denial of the project based on conflicts with LAFCO policy and MSR recommendations.

This is primarily a staff report discussion that would establish the evidence to support denial of the project. Conflicts with MSR determinations regarding SOI amendments and conflicts with LAFCO policies regarding buildout estimated for SOI areas are both policy areas that should be discussed.

2. Adoption of the CEQA document as currently prepared, acknowledging the response to comments.

This option would utilize the attached response to comments to form a determination that the determinations included in the Initial Study, as further explained in the attached response to comments, are adequate for the purposed of CEQA in regards to this project. LAFCO would need to make a determination that appropriate evidence has been provided that the project is appropriate and that no further detail is required for the Initial Study.

3. Development of a focused EIR to further consider alternatives, policy conflicts, and public input.

This option would further expand the analysis currently in the Initial Study and include a section on alternatives to the project. The cumulative impacts discussion in an EIR would be more robust and the public process would be more participatory with the inclusion of a scoping meeting and other public meetings as appropriate.

Regardless of the CEQA direction LAFCO chooses, further discussion regarding LAFCO policy precedents related to process and conflict with MSR recommendations is warranted in the executive officer's report. As we have discussed, the typical process for an SOI amendment recently is for an agency to request an SOI via an application to LAFCO. In this case, the process was initiated through the LAFCO MSR process, counter to MSR recommendations, by direction of the Commission without a formal application to LAFCO by the agencies affected by the SOI amendments. Although this process is not explicitly prohibited, it does pose challenges in relation to the more traditional application driven approach to project processing. The MSR initiated approach, especially when the project is in conflict with the MSR, places the burden of full disclosure of potential environmental effects of the project on LAFCO rather than the agency whose SOI is proposed for amendment. For the purposes of CEQA, the proposed SOI Project IS/ND does not include analysis for what precedents may or may not occur as a result of this unique procedural circumstance as it is not an environmental issue to be addressed through the CEQA process.

Another LAFCO policy related issue deals with the timeline of buildout within the City of Pittsburg's GP SOI area. Since the project was initiated, a significant decline in new housing starts, decrease in property values, and a substantial increase in foreclosures, as a result of the economic downturn has occurred. This may affect the City of Pittsburg's ability to build out the existing vacant land within the City limits as encouraged by Contra Costa LAFCO policy and Government Code §56377(b).

Sincerely,



Michael McCormick  
Project Manager

Encl: Response to Comments  
LAFCO Legal Counsel's Opinion memo (March 25, 2008)  
CAG Letter: Frequently Asked Questions

## Response to Comments – July 1, 2009

### **PROPOSED SPHERE OF INFLUENCE (SOI) EXPANSIONS FOR THE CITY OF PITTSBURG, DELTA DIABLO SANITATION DISTRICT (DDSD) AND CONTRA COSTA WATER DISTRICT (CCWD)**

Although providing official responses to public comments received on the Initial Study (IS) and negative declaration (ND) is not required by the California Environmental Quality Act (CEQA) for Initial Studies and Mitigated Negative Declarations, we are providing responses to the primary comments received to date for the project via the below master responses. The format of these responses outlines general topics addressed in the letters and the response to the comments. The comments were primarily focused on Areas A and D of the proposed project area (Pittsburg's Southwest Hills and the Thomas Ranch area south of Pittsburg) and adequacy of the City of Pittsburg's General Plan EIR as a tiering document. For this reason, the responses primarily focus on these areas as well.

On March 25, 2008, Legal Counsel for LAFCO issued a legal opinion concerning the proposed SOI amendments and how CEQA might apply. The opinion stated that although sphere of influence revisions are not always subject to CEQA, that the proposal was a project under CEQA and not exempt from its requirements. The legal opinion further went on to state that an Initial Study should be completed to determine whether a negative declaration or environmental impact report is required, or whether a previously approved EIR can be used by LAFCO. This legal opinion is attached as it responds to several comments related to the proposed SOI amendments being a project under CEQA. As a result, the Commission directed staff to prepare an Initial Study. The Initial Study relied on previous environmental documentation to create the basis for many of the discussions and statements that resulted in a negative declaration as the appropriate level of documentation.

Pursuant to §15367 of the State CEQA Guidelines, the Contra Costa Local Agency Formation Commission (LAFCO) is the Lead Agency for this project. The Lead Agency is the public agency that has the principal responsibility for carrying out or approving the project. LAFCO, as the Lead Agency, has authority for project approval and certification of the accompanying environmental documentation.

The proposed project does not involve any new development, or physical alterations of the existing conditions. However, it does anticipate the potential provision of new services, which would indirectly foster population growth by expanding the area that would be eligible for water, wastewater services and other municipal services. The expansion of an agency's SOI may remove legal or procedural obstacles from undeveloped land and may serve as a catalyst to future development, which may trigger subsequent growth-related impacts. However, since all of the SOI areas are located within the General Plan planning area boundaries for the cities of Pittsburg and Antioch, the environmental impacts resulting from potential growth and development within the proposed SOI areas have already been analyzed at a program level during the environmental review process for those General Plans.

Public Resources Code Section 21100(a)(5) requires that the growth-inducing impacts of a project be addressed. A project may be growth-inducing if it directly or indirectly fosters economic or population growth; the construction of additional housing, either directly or indirectly, in the surrounding environment; and/or projects that remove obstacles to growth (i.e. major expansion of a water treatment plant), which could encourage or facilitate other activities that cause significant environmental effects (CEQA Guidelines Section 15126.2(d)).

Direct growth-inducing impacts result when the development associated with a project directly induces population growth or the construction of additional developments within the same geographic area. These impacts may impose burdens on a community or encourage new local development, thereby triggering subsequent growth-related impacts. CEQA provides no criteria for determining if induced growth is detrimental or beneficial. Induced growth is considered a significant impact only if it directly or indirectly affects the ability of agencies to provide needed public services, requiring construction or expansion of existing facilities or would have a significant impact on the environment or if it can be demonstrated that the potential growth could significantly affect the environment in some other way. (CEQA Guideline Section 15064(d)).

As outlined in the IS and CEQA Guidelines Section 15070, it is appropriate to prepare an ND for the proposed project because there is no substantial evidence that expanding the SOIs for wastewater and water service districts and for the City of Pittsburg would have the potential to cause significant direct or indirect impacts to the environment beyond what was already analyzed in previously adopted programmatic environmental documentation on which this review tiers.

Responses to the major topic areas of discussion in the comment letters received during the public review period are outlined below.

1. Comment: *Project Sets Precedent for SOI Amendment Initiated by MSR and May Have Long Term Policy Implications and Therefore Requires the Completion of an EIR.*

Response: Although the proposed SOI expansions under consideration by LAFCO may be precedent setting procedurally, the issue of precedence is outside of the environmental review process as required by CEQA. The typical process for an SOI amendment (i.e., expansion) is for an agency to request an SOI amendment via an application to LAFCO. In this case, the proposed amendment was initiated through the LAFCO MSR process by direction of the Commission without a formal application to LAFCO by the agencies affected by the SOI amendments. Although this process is not explicitly prohibited, it does pose challenges in relation to the more traditional application driven approach to project processing. The MSR initiated approach places the burden of full disclosure of potential environmental effects of the project on LAFCO rather than the agency whose SOI is proposed for amendment. For the purposes of CEQA, the proposed SOI Project IS/ND does not include analysis for what precedents may or may not occur as a result of this unique procedural process as it is not an environmental issue addressed through CEQA.

2. Comment: *Project is Counter to LAFCO Policy.*

Response: CEQA Guidelines §15063(d)(5) states that the Initial Study shall examine whether the project would be consistent with existing zoning, plans, and other applicable land use controls. This section includes a discussion of the proposed project's consistency (or inconsistency) with the following:

- Contra Costa General Plan (2005-2020) and Zoning Ordinance (Title 8)
- City of Pittsburg General Plan and Zoning Ordinance
- City of Antioch General Plan and Zoning Ordinance
- Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (Updated 2008)
- Regional Plans

A thorough LAFCO policy analysis was included in the Initial Study to identify potential conflicts with LAFCO policy. The Initial Study tiers from existing programmatic environmental documentation covering the proposed project areas, which addressed such issues as aesthetics, agriculture and open space, air quality, biological resources, geology and soils, land use and planning, recreation, transportation and traffic, and utilities and service systems. Through the LAFCO policy analysis included in the Initial Study (see page 31 of the Initial Study), it was determined that LAFCO policies were satisfied, however since circulation of the Initial Study, potential LAFCO policy conflicts related to estimated timeline of buildout and conflicts with the recommendations included in the MSR have become more pronounced. As outlined above and in the response to comment number one, these specific policy conflicts are not CEQA issues, therefore an Initial Study is the appropriate level of environmental review has been attained. Additional information regarding potential policy conflicts can be found in the Executive Officer's staff report.

3. Comment: *Initial Study Improperly Tiers from the Pittsburg General Plan EIR.*

Response: The City of Pittsburg General Plan EIR analyzed environmental impacts associated with buildout beyond the proposed SOI boundary. Implementation of the proposed SOI amendments would be expected to have less environmental impacts than those identified in the General Plan EIR under the General Plan buildout scenario because they involve less area than delineated in the City's General Plan planning area. The City of Pittsburg has not modified its General Plan or General Plan EIR to assume a lesser impact or to reduce mitigation/policy associated with General Plan buildout. As such, the proposed SOI expansion would have less of an impact on the environment than what was analyzed in the General Plan EIR. Assertions that the General Plan EIR analysis is invalid because specific policies have not been implemented at this time are not applicable to the project. Policies are implemented over time, not necessarily immediately following adoption of the General Plan. In the case of the City of Pittsburg's proposed SOI amendments, no new physical development or changes to any existing policy or regulation are proposed, only changes to their SOI that are consistent with the General Plan.

The environmental discussion for the proposed SOI expansions tiers from these environmental review documents in order to evaluate impacts associated with potential future development and to eliminate repetitive discussions of the same issues. Mitigation measures required in these environmental review documents would be applicable future development proposed within the project area.

An EIR for the *City of Pittsburg General Plan* was prepared by the City of Pittsburg in January 2001 (SCH# 1999072109). This document is available for review upon request at the City of Pittsburg, City Hall, 65 Civic Avenue, Pittsburg, California. Potentially significant impacts were identified for Land Use; Community Character; Transportation; Air Quality; Parks, Open Space and Recreation; Public Schools; Fire Safety and Emergency; Water, Wastewater and Solid Waste; Biological Resources; Historical and Cultural Resources; Hazardous Materials; Geology and Seismicity; Drainage, Flooding, and Water Quality; Noise; and Telephone, Cable and Energy. Policies provided in the General Plan reduce most impacts to a less than significant level. However, the EIR identified significant and unavoidable impacts to Transportation and Air Quality; significant and irreversible changes to Open Space, Air Quality, Energy Sources and Construction-related impacts; growth inducing impacts associated with increase in regional housing demand and jobs/housing balance; cumulative impacts to Transportation, and Air Quality.

As part of the process for the voter approved Urban Limit Line (ULL) for the City of Pittsburg (Measure P), the City prepared an Initial Study and Negative Declaration and filed a Notice of Determination in January 2007, for the *General Plan Amendments Related Primarily to Measure P and MOUs*. These documents

are available for review at the City of Pittsburg. The Initial Study determined that there were no potentially significant impacts and no mitigation measures required for Measure P.

An EIR for the *City of Antioch General Plan* was prepared by LSA Associates, Inc. in October 2003 (Draft EIR dated July 2003) (SCH# 2003072140) for the City of Antioch, Community Development Department. This document is available for review upon request at the City of Antioch, City Hall, Department of Community Development, Third and "H" Streets, Post Office Box 5007, Antioch, California. Potentially significant impacts were identified for Aesthetics and Visual Resources; Air Quality; Biology; Cultural Resources; Geology, Soils and Seismicity; Hazards; Hydrology and Water Quality; Land Use; Noise; Population and Housing; Public Services; Utilities; and Transportation and Circulation. Policies providing in the General Plan and nine mitigation measures reduced most impacts to a less than significant level. However, the EIR identified significant and unavoidable impacts to Air Quality and Transportation/Traffic. The Antioch General Plan would have a significant growth inducing impact in that its projected build out would result in significantly more employment than is accounted for in ABAG projections. Irreversible environmental changes that would result from such development would include potential degradation of existing biological and cultural resources, loss of aesthetic resources, and the installation of utility and roadway infrastructure.

As part of the process for the voter approved ULL for Contra Costa County (Measure L), Contra Costa County Community Development Department prepared an Initial Study and Negative Declaration and filed a Notice of Determination in January 2006. These documents are available for review at Contra Costa County, County Administration Building, Community Development Department, 651 Pine Street, 4<sup>th</sup> Floor, North Wing, Martinez, California. The Initial Study determined that there were no potentially significant impacts and no mitigation measure required for Measure L.

This Initial Study is intended to serve as the primary environmental review document for the proposed expansion of the City of Pittsburg, DDSD and CCWD SOIs. All future proposed projects in the SOI areas, including annexation, are subject to CEQA review.

4. Comment: *SOI Amendments Will Have Significant Growth Inducing Impacts in SOI Project, and in particular, Areas A and D.*

Response: SOI Expansion Areas A and D are located within the planning area of the City of Pittsburg General Plan, and the City's General Plan EIR acknowledges that buildout of the General Plan will result in significant and irreversible growth inducing impacts associated the regional housing demand and housing/job ratio. This Initial Study tiers from the previous analysis and relies on the determinations in the City's General Plan EIR to determine that the project does not change existing policy or regulations, and is consistent with the direction of the policies and analysis in the Pittsburg General Plan and General Plan EIR. Further, that the project would not result in additional growth inducing impacts other than what was already identified in the previous environmental review as noted on page 5 of the Initial Study.

As further outlined on page 73 of the Initial Study, the proposed project would not expand or intensify existing land uses and would not introduce any new land uses beyond those allowed under the General Plans, as shown in Figures 6a, 7a and 8 of the Initial Study. The proposed SOI expansion areas (Areas A and D) are not currently served by or located within the boundaries of any water or sewer service agency. The project would expand the SOI boundaries for the City of Pittsburg, DDSD and CCWD, which could be seen as removing a potential obstacle for these areas to be annexed by the City and/or service districts

and eventually developed. This could be considered as growth inducing according to CEQA Guidelines Section 15126.2(d).

In general, future development within all of the SOI areas was anticipated as part of the General Plan buildout for both the City of Pittsburg and the City of Antioch and was analyzed as part of the environmental review process for those respective General Plans. Measures P and K further limit the amount of development allowed within these areas from what was analyzed under the General Plans. The proposed SOI expansion is a necessary step to accommodate future development within the voter approved ULL. The proposed project does not involve any physical expansion of wastewater or water treatment/service facilities or new uses that would require expansion of municipal services at this time. Any future development proposed within the proposed SOI expansion areas that is not allowed under existing land use restrictions, would require a General Plan amendment and verification from CCWD and DDSD that service can and will be supplied to the proposed development. The General Plan policies combined with those restrictions provided in Measures P and K limit development in these areas. For these reasons, expanding the SOIs for the City of Pittsburg, DDSD and CCWD as noted in Figures 3a, 3b and 3c of the Initial Study would not be considered growth inducing, and would be considered consistent with the applicable General Plan and voter approved ULL. All adopted policies, ordinances and regulations would remain in place. All future development and/or annexation of these areas area would be subject to subsequent project-specific environmental review. The proposed project does not involve changes in land use or propose any development; therefore, there would be no conflict with any land use plan, policy, regulation, or habitat conservation plan.

5. Comment: *Initial Study Defers Analysis of the Effects of the SOI Amendments.*

Response: The Initial Study for the proposed SOI expansions tiers from the previous analysis as outlined in #3 and #4 above, and relies on the determinations in the General Plan EIRs to determine that the project does not change existing policy or regulations, and is consistent with the policies and analyses in the General Plans. Any future annexations and development proposed within the proposed SOI expansion areas would have to be consistent with the applicable General Plan, would be required to implement applicable mitigation measures set forth in the applicable General Plan EIR, and would be subject to subsequent environmental review to assess project-specific impacts. It would be speculative to analyze future development in these areas without a development proposal. In all areas, including those within the City of Pittsburg's planning area, the project proposes no new physical development or changes to any existing policy or regulation, only SOI modifications consistent with the applicable General Plan.

Since the underlying assumption of this Initial Study is that future development will someday follow from LAFCO's expansion of the SOIs, then for the purposes of the environmental analysis, the potential future land use and density of development has been estimated quantitatively based on existing General Plan and zoning designations of the relevant jurisdiction and such estimates are shown in Tables 2, 3 and 4 of the Initial Study; and the environmental analysis in the IS considers the effects that such development would have.

6. Comment: *Initial Study Fails to Identify Reasonably Foreseeable Effects*

Response: The Initial Study relies on the analysis contained in the documents from which it tiers as outlined in #5 above. Potential land use changes in the vicinity of the project areas may impact the analysis and ultimately LAFCO's determination of whether a modification to the City of Pittsburg, CCWD, and DDSD SOIs are appropriate in the specific areas. It is anticipated that if the proposed SOI

changes occur, that potential environmental effects would be less than what was analyzed in this Initial Study and less than what was analyzed in the Pittsburg General Plan EIR, since development would be relocated from the hillsides to an area with existing public services. Since there is currently no specificity publicly available about the proposed changes, the Initial Study was unable to analyze this as a reasonably foreseeable change in the project description.

On June 9, 2009 the Pittsburg Planning Commission approved amendments to its General Plan (Growth Management Element) in order to comply with CCTA Measure J Growth Management Program. The amendments focus on supporting infill and redevelopment in existing urban and Brownfield areas, encouraging cooperation between land use and transportation, traffic LOS standards, etc. The City Council is expected to take action on these General Plan amendments in July.

*7. Comment: No Development Proposal Received as a Component of the SOI Amendment.*

A development proposal is not required as a part of the SOI amendment process. There is no statutory requirement that an SOI amendment be accompanied by a development project.

*8. Comment: City of Pittsburg is Considering Alternative Land Use Proposals in the SOI Project Areas A and D.*

Response: Concerns relating to the City's of Pittsburg consideration of alternative land uses, including rezoning some of the SOI expansion areas to Open Space were considered. It is noted that if the City rezones these areas to open space, then no development will be permitted and the extension of public services, including water and wastewater, will not be needed. The IS/ND takes into account the current land use designations and maximum development potential. Any proposal by the City of Pittsburg to rezone the properties is speculative at this time.

*9. Comment: Impacts to agriculture and Williamson Act properties would occur as a result of the project.*

Response: The concerns related to potential impacts to agricultural lands were outlined on pages 29 and 30 of the Initial Study. According to the Contra Costa County Important Farmland Map 2006 (California Department of Conservation, Division of Land Resource Protection, 2007), the proposed SOI expansion areas consists of approximately 1,707 acres designated as 'Grazing Land'; and approximately 275 acres are designated as 'Farmland of Local Importance'. According to the Contra Costa County Williamson Act Lands 2007 Map (California Department of Conservation, Division of Land Resource Protection, 2006) approximately 876 acres of the proposed SOI expansion area is designated as 'Williamson Act -Non-Prime Agricultural Land', with approximately 190 acres within SOI Area M and approximately 686 acres located within SOI Area D, as shown in Figure 5 of the Initial Study, Williamson Act Land. Approximately 351 acres of this land is designated as 'Williamson Act - Non Prime Agricultural Land in Non-Renewal', including all 190 acres of SOI Area M and approximately 161 acres of SOI Area D. According to the Contra Costa County Zoning Map, all of the non-prime agriculture land under Williamson Act Contract is zoned as 'A-4' (Agricultural Preserve-Parcel 20 acre minimum) and is located within the ULLs as defined by Measures P and L.

As outlined in the Initial Study, specific policies are in place, and would remain in place, to protect these agricultural resources within Contra Costa County and the City of Pittsburg. Any proposed development not allowed under the agricultural preserve zoning designation would require an amendment to the Contra Costa General Plan. Land proposed to be annexed by a city would be subject to the existing land

use restrictions established by Measures P and K, and all required amendments would be subject to further environmental review under CEQA.

Expanding the SOI for CCWD and DDSD within SOI Areas D and M could potentially extend service to the voter approved ULL. Such extension of services would be consistent with planned growth and adjacent to existing developed areas. Furthermore, if the City of Pittsburg were to annex SOI Area D, existing pre-zoning of this area restricts development to hillside low density residential land uses on approximately 63 of the 686 acres of non prime agricultural land, the remaining non prime agricultural land would remain as open space in accordance with current zoning. According to the City of Pittsburg's zoning, potential hillside low density residential development within SOI Area D would occur on land designated as in 'Non-Renewal'. According to the City of Antioch General Plan FEIR, urban development would not be permitted on that portion of the Ginocchio property (SOI Area M) that is currently subject to a Williamson Act contract until that contract has expired.

Future annexation of these areas into the service districts would facilitate planned growth as defined by the voters. Furthermore, existing policies would minimize development of agricultural lands under Williamson Act Contract until they are in non-renewal. Therefore, the proposed project would be consistent with Section 56426.5 of the Government Code.

10. Comment: *The project does not adequately address greenhouse gases or climate change.*

Response: The proposed project, itself, would not expand or intensify existing uses or introduce any new uses or new sources of greenhouse gases (GHGs), pollutants or odors, and all future development proposed within the SOI areas would be subject to subsequent project-specific environmental review during the annexation process. Sources of mobile and stationary pollutants, including greenhouse gases, would remain unchanged following expansion of the SOIs for the City of Pittsburg, CCWD and DDSD. Since there is no specific development currently proposed as a part of the project, and development potential of the 13 SOI areas is less than what was analyzed in the documents from which this Initial Study tiers, the project is expected to have reduced potential impacts on climate change and reduced emissions compared with existing conditions.

Climate change, specifically greenhouse gas emissions, has become a major concern to the State of California and is required to be included in CEQA analyses as outlined in SB97 and related proposed changes to the CEQA checklist (Appendix G of the CEQA Guidelines). The California Attorney General has recently issued a set of frequently asked questions (attached) to better define how climate change should be addressed in programmatic environmental documents, which is the ideal approach to addressing greenhouse gas emissions. None of the documents from which the project Initial Study tiers included an analysis or quantitative estimates of GHG emissions because such analysis was not required at the time they were prepared. It is necessary to include an assessment of potential GHG as part of the environmental review of this SOI expansion project, and such analysis is provided below.

The incremental increases in GHG emissions associated with traffic increases, residential and commercial space heating, and other increased energy demands in addition to emissions related to waste production would contribute to cumulative (regional and global) increases in GHG emissions and associated climate change effects. Although the environmental documents from which this Initial Study tiers did not include a specific discussion of the project's anticipated cumulative contribution to GHGs and global climate change (the other environmental documents preceded this requirement), these documents did analyze at a programmatic level the potential air quality impacts that would result from the project areas being built

out. In the absence of specific development proposals for any of the proposed SOI expansion areas, the current proposed project was analyzed at maximum buildout as to consider the “worse case” scenario.

The following tables provide an estimate of GHG emissions that would result from the maximum buildout scenario assumed emissions for the 13 SOI areas analyzed in the Initial Study. These figures were derived from the June 2008 Contra Costa County Greenhouse Gas Emissions Inventory Report, which can be found at <http://www.cccounty.us/DocumentView.aspx?DID=2253>, and which is based on information provided in the County’s 2006 Comprehensive Annual Financial Report (population and household data).

Table A: GHG Aggregated Emissions from All SOI Areas

<b>Emission Source</b>	<b>Annual MTCO2e*</b>
Residential Energy Use, per household	4.31
Transportation, per household	12.33
Landfilled Waste, per household	0.48

Table B: GHG Emissions from SOI Areas

<b>SOI Area</b>	<b># of dwelling units</b>	<b>MTCO2e from Residential Energy Use</b>	<b>MTCO2e from Transportation</b>	<b>MTCO2e from Waste</b>	<b>Total</b>
A	1500	6,466	18,498	714	25,679
B	0	0	0	0	0
C	0	0	0	0	0
D	1775	7,651	21,890	845	30,386
E	0	0	0	0	0
F	0	0	0	0	0
G	240	1,035	2,960	114	4,109
H	0	0	0	0	0
I	4	17	49	2	68
J	0	0	0	0	0
K	0	0	0	0	0
L	0	0	0	0	0
M	400	1,724	4,933	190	6,848
				<b>Total MTCO2e</b>	<b>67,089</b>

*\*MTCO2e stands for Metric Tons of Carbon Dioxide Equivalent emissions.*

*Totals for estimated emissions in Table B were obtained by multiplying emissions source MTCO2e per unit in Table A with the number of dwelling units proposed at buildout as outlined in the Initial Study.*

There are currently no established thresholds of significance to measure the project’s impact on climate change as a result of the GHG emissions calculated above. However, as previously indicated, these estimates are based on assumed maximum buildout scenarios that most likely, overstate what will occur.

In order for this Initial Study to include consideration of the latest rapidly evolving issues regarding climate change that are to be considered in an environmental document, it is important to point out that

the Bay Conservation and Development Commission (BCDC) recently released a report with updated projections regarding sea level rise that could be relevant to this project. The BCDC report estimates that sea level in the San Francisco Bay Area could rise by 16 inches by 2050 and 55 inches by 2100 as a result of global climate change. Without a specific development proposal to review against the project sea level rise or other effects of climate change on future projects within the proposed project areas, there is no mitigation that could reduce the potential impacts to the project from sea level rise. Any assumptions regarding buildout scenarios would be speculative for the purposes of CEQA.

Given these factors the proposed project would not conflict with the State's goals of reducing GHG emissions to 1990 levels by 2020, and the project's contribution to cumulative impacts on GHG emissions is considered **no impact**. All future development proposals will be required to consider existing State, regional, local and other appropriate guidance regarding the potential effects of climate change on the proposed development and of the development's impact on climate change through the emission of greenhouse gases.

11. Comment: *There is a Fair Argument that Significant Effects May Occur.*

Response: State CEQA Guidelines section 15004 (b) states that "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." As outlined in the Initial Study, this response to comments and CEQA Guidelines Section 15070, it is appropriate to prepare a Negative Declaration for the proposed project because there is no substantial evidence that expanding the SOIs for wastewater and water service districts and for the City of Pittsburg would have the potential to cause significant direct or indirect impacts to the environment beyond what was already analyzed in previously adopted programmatic environmental documentation from which this review tiers.

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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

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### 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<sup>1</sup> beyond the boundaries and spheres of influence of several affected special districts<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

As required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000<sup>6</sup> (CKH), the Commission is conducting a number of municipal services reviews<sup>7</sup> (MSR) in connection with updating the spheres of influence of districts and cities in the County.<sup>8</sup> 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.<sup>9</sup> 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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<sup>4</sup> *Ibid.*

<sup>5</sup> 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...."

<sup>6</sup> Gov. Code, § 56000 et seq.

<sup>7</sup> Gov. Code, § 56430.

<sup>8</sup> Gov. Code, § 56425.

<sup>9</sup> 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.”<sup>10</sup>

CEQA involves a three-tiered process. First, the lead agency determines whether the proposed action is a project subject to CEQA.<sup>11</sup> 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.<sup>12</sup> If the project is exempt, no further environmental review is required. Third, if it is not exempt, the agency conducts an initial study.<sup>13</sup> If the initial study determines that the project will not result in any significant environmental impacts, the agency prepares a negative declaration.<sup>14</sup> On the other hand, if the initial study reveals that the project might have a significant effect on the environment, an EIR is required.<sup>15</sup>

### 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....”<sup>16</sup> LAFCO is a local agency whose actions may be subject to CEQA’s requirements.<sup>17</sup> 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.”<sup>18</sup>

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 *Kovis v. Howard* (1992) 3 Cal.4th 888, 896-897.

“virtually coextensive with the City’s existing boundaries...,”<sup>19</sup> 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,”<sup>20</sup> since the record supported “LAFCO’s position that its sphere decision could not have a ‘significant effect on the environment....’”<sup>21</sup>

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.<sup>22</sup>

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.”<sup>23</sup>

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

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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....”<sup>24</sup>

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.”<sup>25</sup>

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.<sup>26</sup> 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

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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.<sup>27</sup> Referring to an earlier decision that a county board of education's plan to form a new school district constituted a project,<sup>28</sup> 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.”<sup>29</sup>

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.<sup>30</sup> There is no question that a general plan or general plan amendment is a project under CEQA.<sup>31</sup> 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."<sup>32</sup>

#### **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.<sup>33</sup> 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."<sup>34</sup>

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.<sup>35</sup> First, the Court describes the standards for making that determination: the burden is on the agency invoking the exemption to demonstrate that it applies<sup>36</sup> by producing (and citing in its decision) substantial evidence from the record.<sup>37</sup>

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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.<sup>38</sup> 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).*)”<sup>39</sup>

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.<sup>40</sup>

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.

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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.<sup>41</sup> An initial study is conducted to determine whether the project may have a significant effect on the environment.<sup>42</sup> 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.<sup>43</sup> 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.”<sup>44</sup>

That determination is made only after an initial study is conducted.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

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....”<sup>48</sup>

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.”<sup>49</sup>

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.<sup>50</sup> 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.”<sup>51</sup>

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.<sup>52</sup>

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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.”<sup>53</sup>

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,<sup>54</sup> rezoning,<sup>55</sup> and certain actions that may be seen as catalysts for future development.<sup>56</sup>

cc: Lou Ann Texeira, Executive Officer

Attach.  
SBM:s

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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.

**Climate Change, the California Environmental Quality Act,  
and General Plan Updates:  
Straightforward Answers to Some Frequently Asked Questions  
California Attorney General's Office**

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At any given time in this State, well over one hundred California cities and counties are updating their general plans. These are complex, comprehensive, long-term planning documents that can be years in the making. Their preparation requires local governments to balance diverse and sometimes competing interests and, at the same time, comply with the Planning and Zoning Law and the California Environmental Quality Act (CEQA).

Local governments have decades of experience in applying state planning law and excellent resources to assist them – such as the “General Plan Guidelines” issued by The Governor’s Office of Planning and Research (OPR).<sup>1</sup> They are also practiced in assessing whether general plans may have significant localized environmental effects, such as degradation of air quality, reductions in the water supply, or growth inducing impacts. The impact of climate change, however, has only fairly recently shown up on the CEQA radar.

The fact that climate change presents a new challenge under CEQA has not stopped local governments from taking action. A substantial number of cities and counties already are addressing climate change in their general plan updates and accompanying CEQA documents. These agencies understand the substantial environmental and administrative benefits of a programmatic approach to climate change. Addressing the problem at the programmatic level allows local governments to consider the “big picture” and – provided it’s done right – allows for the streamlined review of individual projects.<sup>2</sup>

Guidance addressing CEQA, climate change, and general planning is emerging, for example, in the pending CEQA Guideline amendments,<sup>3</sup> comments and settlements by the Attorney General, and in the public discourse, for example, the 2008 series on CEQA and Global Warming organized by the Local Government Commission and sponsored by the Attorney General. In addition, the Attorney General’s staff has met informally with officials and planners from numerous jurisdictions to discuss CEQA requirements and to learn from those who are leading the fight against global warming at the local level.

Still, local governments and their planners have questions. In this document, we attempt to answer some of the most frequently asked of those questions. We hope this document will be useful, and we encourage cities and counties to contact us with any additional questions, concerns, or comments.

- **Can a lead agency find that a general plan update’s climate change-related impacts are too speculative, and therefore avoid determining whether the project’s impacts are significant?**

No. There is nothing speculative about climate change. It’s well understood that (1) greenhouse gas (GHG) emissions increase atmospheric concentrations of GHGs; (2) increased GHG concentrations in the atmosphere exacerbate global warming; (3) a project that adds to the atmospheric load of GHGs adds to the problem.

Making the significance determination plays a critical role in the CEQA process.<sup>4</sup> Where a project may have a significant effect on the environment, the lead agency must prepare an Environmental Impact Report (EIR).<sup>5</sup> Moreover, a finding of significance triggers the obligation to consider alternatives and to impose feasible mitigation.<sup>6</sup> For any project under CEQA, including a general plan update, a lead agency therefore has a fundamental obligation to determine whether the environmental effects of the project, including the project’s contribution to global warming, are significant.

- **In determining the significance of a general plan’s climate change-related effects, must a lead agency estimate GHG emissions?**

Yes. As OPR’s Technical Advisory states:

Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO<sub>2</sub> and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.<sup>7</sup>

In the context of a general plan update, relevant emissions include those from government operations, as well as from the local community as a whole. Emissions sources include, for example, transportation, industrial facilities and equipment, residential and commercial development, agriculture, and land conversion.

There are a number of resources available to assist local agencies in estimating their current and projected GHG emissions. For example, the California Air Resources Board (ARB) recently issued protocols for estimating emissions from local government operations, and the agency’s protocol for estimating community-wide emissions is forthcoming.<sup>8</sup> OPR’s Technical Advisory contains a list of modeling tools to estimate GHG emissions. Other sources of helpful information include the white paper issued by the California Air Pollution Control Officers Association (CAPCOA), “CEQA and Climate Change”<sup>9</sup> and the Attorney General’s website,<sup>10</sup> both of which provide information on currently available models for calculating emissions. In addition, many cities and counties are working with the International Council for Local Environmental Initiatives (ICLEI)<sup>11</sup> and tapping into the expertise of this State’s many colleges and universities.<sup>12</sup>

- **For climate change, what are the relevant “existing environmental conditions”?**

The CEQA Guidelines define a significant effect on the environment as “a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.”<sup>13</sup>

For local or regional air pollutants, existing physical conditions are often described in terms of air quality (how much pollutant is in the ambient air averaged over a given period of time), which is fairly directly tied to current emission levels in the relevant “area affected.” The “area affected,” in turn, often is defined by natural features that hold or trap the pollutant until it escapes or breaks down. So, for example, for particulate matter, a lead agency may describe existing physical conditions by discussing annual average PM10 levels, and high PM10 levels averaged over a 24-hour period, detected at various points in the air basin in the preceding years.

With GHGs, we’re dealing with a global pollutant. The “area affected” is both the atmosphere and every place that is affected by climate change, including not just the area immediately around the project, but the region and the State (and indeed the planet). The existing “physical conditions” that we care about are the current atmospheric concentrations of GHGs and the existing climate that reflects those concentrations.

Unlike more localized, ambient air pollutants which dissipate or break down over a relatively short period of time (hours, days or weeks), GHGs accumulate in the atmosphere, persisting for decades and in some cases millennia. The overwhelming scientific consensus is that in order to avoid disruptive and potentially catastrophic climate change, then it’s not enough simply to stabilize our annual GHG emissions. The science tells us that we must immediately and substantially reduce these emissions.

- **If a lead agency agrees to comply with AB 32 regulations when they become operative (in 2012), can the agency determine that the GHG-related impacts of its general plan will be less than significant?**

No. CEQA is not a mechanism merely to ensure compliance with other laws, and, in addition, it does not allow agencies to defer mitigation to a later date. CEQA requires lead agencies to consider the significant environmental effects of their actions and to mitigate them today, if feasible.

The decisions that we make today do matter. Putting off the problem will only increase the costs of any solution. Moreover, delay may put a solution out of reach at any price. The experts tell us that the later we put off taking real action to reduce our GHG emissions, the less likely we will be able to stabilize atmospheric concentrations at a level that will avoid dangerous climate change.

- **Since climate change is a global phenomenon, how can a lead agency determine whether the GHG emissions associated with its general plan are significant?**

The question for the lead agency is whether the GHG emissions from the project – the general plan update – are considerable when viewed in connection with the GHG emissions from past projects, other current projects, and probable future projects.<sup>14</sup> The effects of GHG emissions from past projects and from current projects to date are reflected in current atmospheric concentrations of GHGs and current climate, and the effects of future emissions of GHGs, whether from current projects or existing projects, can be predicted based on models showing future atmospheric GHG concentrations under different emissions scenarios, and different resulting climate effects.

A single local agency can't, of course, solve the climate problem. But that agency can do its fair share, making sure that the GHG emissions from projects in its jurisdiction and subject to its general plan are on an emissions trajectory that, if adopted on a larger scale, is consistent with avoiding dangerous climate change.

Governor Schwarzenegger's Executive Order S-3-05, which commits California to reducing its GHG emissions to 1990 levels by 2020 and to eighty percent below 1990 levels by 2050, is grounded in the science that tells us what we must do to achieve our long-term climate stabilization objective. The Global Warming Solutions Act of 2006 (AB 32), which codifies the 2020 target and tasks ARB with developing a plan to achieve this target, is a necessary step toward stabilization.<sup>15</sup> Accordingly, the targets set in AB 32 and Executive Order S-3-05 can inform the CEQA analysis .

One reasonable option for the lead agency is to create community-wide GHG emissions targets for the years governed by the general plan. The community-wide targets should align with an emissions trajectory that reflects aggressive GHG mitigation in the near term and California's interim (2020)<sup>16</sup> and long-term (2050) GHG emissions limits set forth in AB 32 and the Executive Order.

To illustrate, we can imagine a hypothetical city that has grown in a manner roughly proportional to the state and is updating its general plan through 2035. The city had emissions of 1,000,000 million metric tons (MMT) in 1990 and 1,150,000 MMT in 2008. The city could set an emission reduction target for 2014 of 1,075,000 MMT, for 2020 of 1,000,000 MMT, and for 2035 of 600,000 MMT, with appropriate emission benchmarks in between. Under these circumstances, the city could in its discretion determine that an alternative that achieves these targets would have less than significant climate change impacts.

- **Is a lead agency required to disclose and analyze the full development allowed under the general plan?**

Yes. The lead agency must disclose and analyze the full extent of the development allowed by the proposed amended general plan,<sup>17</sup> including associated GHG emissions.

This doesn't mean that the lead agency shouldn't discuss the range of development that is likely to occur as a practical matter, noting, for example, the probable effect of market forces. But the lead agency can't rely on the fact that full build out may not occur, or that its timing is uncertain, to avoid its obligation to disclose the impacts of the development that the general plan would permit. Any other approach would seriously underestimate the potential impact of the general plan update and is inconsistent with CEQA's purposes.

- **What types of alternatives should the lead agency consider?**

A city or county should, if feasible, evaluate at least one alternative that would ensure that the community contributes to a lower-carbon future. Such an alternative might include one or more of the following options:

- higher density development that focuses growth within existing urban areas;
- policies and programs to facilitate and increase biking, walking, and public transportation and reduce vehicle miles traveled;
- the creation of “complete neighborhoods” where local services, schools, and parks are within walking distance of residences;
- incentives for mixed-use development;
- in rural communities, creation of regional service centers to reduce vehicle miles traveled;
- energy efficiency and renewable energy financing (see, e.g., AB 811)<sup>18</sup>
- policies for preservation of agricultural and forested land serving as carbon sinks;
- requirements and ordinances that mandate energy and water conservation and green building practices; and
- requirements for carbon and nitrogen-efficient agricultural practices.

Each local government must use its own good judgment to select the suite of measures that best serves that community.

- **Can a lead agency rely on policies and measures that simply “encourage” GHG efficiency and emissions reductions?**

No. Mitigation measures must be “fully enforceable.”<sup>19</sup> Adequate mitigation does not, for example, merely “encourage” or “support” carpools and transit options, green building practices, and development in urban centers. While a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented.

There are many concrete mitigation measures appropriate for inclusion in a general plan and EIR that can be enforced as conditions of approval or through ordinances. Examples are described in a variety of sources, including the CAPCOA's white paper,<sup>20</sup> OPR's Technical Advisory,<sup>21</sup> and the mitigation list on the Attorney General's website.<sup>22</sup> Lead agencies should also consider consulting with other cities and counties that have recently completed general plan updates or are working on Climate Action Plans.<sup>23</sup>

- **Is a “Climate Action Plan” reasonable mitigation?**

Yes. To allow for streamlined review of subsequent individual projects, we recommend that the Climate Action Plan include the following elements: an emissions inventory (to assist in developing appropriate emission targets and mitigation measures); emission targets that apply at reasonable intervals through the life of the plan; enforceable GHG control measures; monitoring and reporting (to ensure that targets are met); and mechanisms to allow for the revision of the plan, if necessary, to stay on target.<sup>24</sup>

If a city or county intends to rely on a Climate Action Plan as a centerpiece of its mitigation strategy, it should prepare the Climate Action Plan at the same time as its general plan update and EIR. This is consistent with CEQA’s mandate that a lead agency must conduct environmental review at the earliest stages in the planning process and that it not defer mitigation. In addition, we strongly urge agencies to incorporate any Climate Action Plans into their general plans to ensure that their provisions are applied to every relevant project.

- **Is a lead agency also required to analyze how future climate change may affect development under the general plan?**

Yes. CEQA requires a lead agency to consider the effects of bringing people and development into an area that may present hazards. The CEQA Guidelines note the very relevant example that “an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision.”<sup>25</sup>

Lead agencies should disclose any areas governed by the general plan that may be particularly affected by global warming, e.g.: coastal areas that may be subject to increased erosion, sea level rise, or flooding; areas adjacent to forested lands that may be at increased risk from wildfire; or communities that may suffer public health impacts caused or exacerbated by projected extreme heat events and increased temperatures. General plan policies should reflect these risks and minimize the hazards for current and future development.

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## **Endnotes**

<sup>1</sup>For a discussion of requirements under general planning law, see OPR’s General Plan Guidelines (2003). OPR is in the process of updating these Guidelines. For more information, visit OPR’s website at <http://www.opr.ca.gov/index.php?a=planning/gpg.html>.

<sup>2</sup>OPR has noted the environmental and administrative advantages of addressing GHG emissions at the plan level, rather than leaving the analysis to be done project-by-project. See OPR, Preliminary Draft CEQA Guideline Amendments, Introduction at p. 2

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(Jan. 8, 2009), available at [http://opr.ca.gov/download.php?dl=Workshop\\_Announcement.pdf](http://opr.ca.gov/download.php?dl=Workshop_Announcement.pdf).

<sup>3</sup> OPR issued its Preliminary Draft CEQA Guidelines Amendments on January 8, 2009. Pursuant to Health and Safety Code, § 21083.05 (SB 97), OPR must prepare its final proposed guidelines by July 1, 2009, and the Resources Agency must certify and adopt those guidelines by January 1, 2010.

<sup>4</sup> Cal. Code Regs., tit. 14 (hereinafter “CEQA Guidelines”), § 15064, subd. (a).

<sup>5</sup> CEQA Guidelines, § 15064, subd. (f)(1).

<sup>6</sup> CEQA Guidelines, § 15021, subd. (a).

<sup>7</sup> OPR, CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (June 2008), available at <http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>.

<sup>8</sup> ARB’s protocols for estimating the emissions from local government operations are available at <http://www.arb.ca.gov/cc/protocols/localgov/localgov.htm>.

<sup>9</sup> CAPCOA, CEQA and Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (January 2008) (hereinafter, “CAPCOA white paper”), available at <http://www.capcoa.org/>.

<sup>10</sup> [http://ag.ca.gov/globalwarming/ceqa/modeling\\_tools.php](http://ag.ca.gov/globalwarming/ceqa/modeling_tools.php)

<sup>11</sup> <http://www.iclei-usa.org>

<sup>12</sup> For example, U.C. Davis has made its modeling tool, UPlan, available at <http://ice.ucdavis.edu/doc/uplan>; San Diego School of Law’s Energy Policy Initiatives Center has prepared a GHG emissions inventory report for San Diego County <http://www.sandiego.edu/EPIC/news/frontnews.php?id=31>; and Cal Poly, San Luis Obispo City and Regional Planning Department is in the process of preparing a Climate Action Plan for the City of Benicia, see <http://www.beniciaclimateactionplan.com/files/about.html>.

<sup>13</sup> CEQA Guidelines, § 15002, subd. (g).

<sup>14</sup> CEQA Guidelines, § 15064(h)(1).

<sup>15</sup> See ARB, Scoping Plan at pp. 117-120, available at <http://www.arb.ca.gov/cc/scopingplan/document/psp.pdf>. (ARB approved the Proposed Scoping Plan on December 11, 2008.)

<sup>16</sup> In the Scoping Plan, ARB encourages local governments to adopt emissions reduction goals for 2020 “that parallel the State commitment to reduce greenhouse gas emissions by approximately 15 percent from current levels . . . .” Scoping Plan at p. 27; see *id.* at Appendix C, p. C-50. For the State, 15 percent below current levels is approximately equivalent to 1990 levels. *Id.* at p. ES-1. Where a city or county has grown roughly at

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the same rate as the State, its own 1990 emissions may be an appropriate 2020 benchmark. Moreover, since AB 32's 2020 target represents the State's *maximum* GHG emissions for 2020 (see Health & Safety Code, § 38505, subd. (n)), and since the 2050 target will require substantial changes in our carbon efficiency, local governments may consider whether they can set an even more aggressive target for 2020. See Scoping Plan, Appendix C, p. C-50 [noting that local governments that "meet or exceed" the equivalent of a 15 percent reduction in GHG emissions by 2020 should be recognized].

<sup>17</sup> *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194 [EIR must consider future development permitted by general plan amendment]; see also CEQA Guidelines, §§ 15126 [impact from all phases of the project], 15358, subd. (a) [direct and indirect impacts].

<sup>18</sup> See the City of Palm Desert's Energy Independence Loan Program at <http://www.ab811.org>.

<sup>19</sup> Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15091, subd. (d); see also *Federation of Hillside and Canyon Assocs.* (2000) 83 Cal.App.4th 1252, 1261 [general plan EIR defective where there was no substantial evidence that mitigation measures would "actually be implemented"].

<sup>20</sup> CAPCOA white paper at pp. 79-87 and Appendix B-1.

<sup>21</sup> OPR Technical Advisory, Attachment 3.

<sup>22</sup> See [http://ag.ca.gov/globalwarming/pdf/GW\\_mitigation\\_measures.pdf](http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf) [mitigation list]; [http://ag.ca.gov/globalwarming/pdf/green\\_building.pdf](http://ag.ca.gov/globalwarming/pdf/green_building.pdf) [list of local green building ordinances].

<sup>23</sup> See [http://opr.ca.gov/ceqa/pdfs/City\\_and\\_County\\_Plans\\_Addressing\\_Climate\\_Change.pdf](http://opr.ca.gov/ceqa/pdfs/City_and_County_Plans_Addressing_Climate_Change.pdf).

<sup>24</sup> See Scoping Plan, Appendix C, at p. C-49.

<sup>25</sup> CEQA Guidelines, § 15126.2, subd. (a).