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May 12, 2009

Re: Proposed Sphere of Influence Expansion for the City of Pittsburg, Delta Diablo Sanitation District and Contra Costa Water District

Dear Ms. Texeira,

Greenbelt Alliance, the Bay Area's land conservation and urban planning non-profit, writes with grave concern about the proposed Sphere of Influence (SOI) Expansion for the City of Pittsburg, Delta Diablo Sanitation District (DDSD) and Contra Costa Water District (CCWD). Greenbelt Alliance testified at several LAFCO meetings expressing the precedent setting nature of expanding the City of Pittsburg's SOI and CCWD and DDSD's SOI during the Municipal Service Review Process (MSR). Additionally the proposed changes will result in significant environmental impacts that are not properly analyzed in the Initial Study. Thus, the spheres of influence for the City of Pittsburg, Delta Diablo Sanitation District (DDSD) and Contra Costa Water District (CCWD) should not be expanded and a full Environmental Impact Report (EIR) must be conducted.

Precedent setting

The spheres of influence for the City of Pittsburg, DDSD and CCWD should not be expanded because it sets a negative precedent that is beyond the purview of LAFCO. Expanding the SOI beyond the current city limits is premature. The municipal service review process (MSR) is not the proper process to expand the SOI. Cities should apply directly to LAFCO for expansion instead of through the MSR process, which is the typical process. Expanding the SOI for cities through the MSR process is not the proper forum because it does not allow for adequate public engagement. The implications of allowing significant SOI expansions through the MSR process is precedent setting and these impacts need to be reviewed through an EIR.

The expansion of the SOI goes against LAFCO policies to promote orderly formation of local agencies, and to preserve open space and prime agricultural land.

Contra Costa LAFCO policies relating to SOIs specify that requests for SOI amendments should address all relevant factors of Government Code §56668. Such requests should also specify how the policies of the Cortese-Knox-Hertzberg 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).

Expanding the SOI of the cities of Pittsburg destroys open space and prime agricultural land. The land proposed for the SOI expansion in the City of Pittsburg is prime open space that is adjacent to the

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proposed regional park open space at the Concord Naval Weapons Station. The land is also a key wildlife corridor that connects to Mount Diablo. The SOI expansion goes against LAFCO's policies to preserve open space.

The SOI expansion also does not promote the orderly formation of local agencies because according to the MSR for the City of Pittsburg, there is 1,820 acres of vacant land within the existing City limits that are adequate to accommodate the city's project growth.¹ The MSR actually recommends retaining the existing SOI because the City of Pittsburg can accommodate growth within its existing boundaries. According to the MSR:

*"There is however, sufficient residentially designated land within the General Plan Planning Area to accommodate residential growth at the projected 1.1% annual growth rate to the end of the planning period in 2020 and beyond. In addition, sufficient commercial and industrial land is available to accommodate projected commercial and industrial development until the end of the planning period in 2020."*²

It is recommended that the existing Sphere of Influence for the City of Pittsburg be retained. The City is providing adequate services within the City boundaries given the current and planned land uses, and has the ability to expand these services to accommodate new development within the established SOI. A number of large residential, commercial, and industrial projects are currently underway within the City. In addition, three annexation/reorganization proposals have just been completed by LAFCO. An expansion of the City's SOI cannot be supported by the MSR at this time, as explained below.

*The intent of an SOI is to identify the most appropriate areas for an agency's extension of services in the foreseeable future. Pursuant to the Contra Costa LAFCO policies relating to SOIs, 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. Accordingly, territory included in an agency's sphere is an indication that the probable need for service has been established, and that the subject agency has been determined by LAFCO to be the most logical service provider for the area. In determining the SOI for an agency, LAFCO must consider and prepare written determinations with respect to four factors [Government Code §56425(e)]. These factors relate to the present and planned land uses including agricultural and open-space lands, the present and probable need for public facilities and services, the present capacity of public facilities and adequacy of public services, and the existence of any social or economic communities of interest in the area."*³

Thus, expanding the SOI of Pittsburg does not promote the orderly formation of local agencies. In fact, expansion creates leap-frog development, which LAFCO is supposed to prevent. Thus, the proposed project is not aligned with LAFCO policies and the proposed project should be denied.

The mitigated negative declaration is inadequate and a full Environmental Impact Report must be conducted to comply with CEQA

The proposed expansion of the SOI is considered a project under CEQA

¹Contra Costa LAFCO: East County Sub-Regional Municipal Services Review: Final Adopted Municipal Service Review. December 10, 2008. Page VI-13.

²Contra Costa LAFCO: East County Sub-Regional Municipal Services Review: Final Adopted Municipal Service Review. December 10, 2008. Page VI-13.

³Contra Costa LAFCO: East County Sub-Regional Municipal Services Review: Final Adopted Municipal Service Review. December 10, 2008. Page VI-29.

The change in the SOI constitutes the beginning of a “project” as defined by CEQA; thus, the proposed Negative Declaration is inadequate and a full EIR must be conducted. CEQA Guidelines Sec. 15378 (a) states that a “project” shall include the “whole of an action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...”. A “project” as defined by CEQA includes “an activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one for more public agencies.” (CEQA Guidelines Sec. 15378(a)(3)).

The LAFCO approval of the expansion of the SOI is subject to CEQA (*Pistoresi v. City of Madera* (1982) 138 Cal. App.3d 284). The expansion of water and wastewater also constitutes at the beginning of the development process and a “project” under CEQA (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282). Therefore, the negative declaration is inadequate because the expansion of SOI for the City of Pittsburg, CCSD and CCWD constitutes as a “project” under CEQA and the environmental impacts must be analyzed through an EIR. According to case law established by *Bozung v. Local Agency Formation Com.* the inclusion of the 3,161.41 acres land into the SOI is the first step toward the conversion of the land into developed uses; thus, a full EIR is required.

An Environmental Impact Report is required according to CEQA “fair argument” standard

In addition, the Negative Declaration does not comply with the basic requirements of the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.*, because under the well-established “fair argument” standard, an EIR is required whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. LAFCO is making critical decisions *now* about the location of future development allowable in the project and therefore cannot defer environmental analysis to the individual project level.

An Environmental Impact Report is required according to Appendix G of the CEQA guidelines.

Appendix G of the CEQA Guidelines requires an EIR to analyze impacts to agricultural resources when a project has the potential to convert prime farmland, unique farmland, or farmland of statewide significance to non-agricultural uses, potentially conflicts with existing zoning for agricultural use or with a Williamson Act contract, or involves other changes in the existing environment which, due to their location or nature, would result in the conversion of certain farmland to non-agricultural use. According to the Initial Study, 876 acres of the proposed SOI expansion area is designated as Williamson Act.⁴ The Thomas Ranch property in SOI Area D is eligible for the National Register of historic places. The initial study failed to analyze the environmental impacts that the SOI expansion would pose to the Williamson Act contacts. Instead, a full EIR should be conducted and should include a detailed summary and analysis of the specific effects the SOI expansion will have on the Thomas property and whether the ranch will remain a viable, profitable, and productive property for the Thomas family to continue with their business.

A water reliability study must be conducted pursuant to California Water Code § 10910.

Because the proposed project constitutes as a “project” under CEQA for the reasons set forth above, and the City of Pittsburg’s General Plan indicates over 500 dwelling units in the proposed project area, a water reliability study must be conducted pursuant to California Water Code §10910.

The Negative Declaration improperly tiered off of the City of Pittsburg’s General Plan. A full environmental impact report is required because the environmental impacts were not fully analyzed in the Negative Declaration.

The initial study heavily relies on tiering off of the City of Pittsburg’s General Plan (General Plan) Environmental Impact Report as basis for the Negative Declaration that the environmental impacts to the project are less than significant. CEQA law clearly states that “tiering does not excuse the lead agency

⁴ Contra Costa County LAFCO Initial Study on the Proposed Sphere of Influence Expansions for the City of Pittsburg, Delta Diablo Sanitation District and Contra Costa Water District. April 2009. Page 41.

from adequately analyzing reasonably foreseeable significant environmental effects of the project...” (CEQA Guidelines § 15152(b).) To that end, a lead agency wishing to exclude from an EIR must make a determination that either those impacts (1) were “mitigated or avoided...as a result of the prior environmental impact report, or (2) [were] examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revision, the imposition of conditions, or by other means in connection with the approval of the later project.” (CEQA § 21094 (a))

Clearly, the General Plan is an inadequate document to tier off of because the General Plan stated that before development in the hillsides can be approved, a hillside ordinance needed to be in place. The City of Pittsburg General Plan indicates that a hillside ordinance needs to be in place for development in the southwest hills and the Buchanan area. Because there is not a hillside ordinance in place, the environmental impacts of the development are not mitigated or avoided. Thus, an EIR is necessary to examine the environmental impacts of future development and municipal services within the area without the expected hillside ordinance. Additionally, the proposed project will expand services and the SOI to areas that are designated as protected or rangeland in the City of Pittsburg’s General Plan and Contra Costa County’s General Plan. The expansion of the City of Pittsburg, CCWD and DDSD’s SOI must be analyzed in an EIR.

The Negative Declaration inadequately analyzes the cumulative and/or growth inducing environmental effects

Under CEQA, the responsible agency must consider the cumulative environmental effects of its action before a project gains irreversible momentum. (Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 282 [118 Cal.Rptr. 249, 529 P.2d 1017]; City of Carmel-by-the-Sea v. Board of Supervisors (1986) 183 Cal.App.3d 229, 242 [227 Cal.Rptr. 899].) The proposed expansion of services and Pittsburg’s SOI covers areas that the City of Pittsburg’s General Plan designates as open space; thus, extending municipal services to areas designated as open space is growth inducing. In particular the ridgelines of the City of Pittsburg’s southwest hills are designated as open space; thus, an EIR needs to evaluate the growth inducing impacts of the proposed expansion has on designated open space areas.

Thank you for your consideration of these comments. Our review and investigation are ongoing. If you have any questions please feel free to contact me by e-mail at cwong@greenbelt.org or by telephone at (925) 932-7776.

Sincerely,



Christina Wong
East Bay-Solano Field Representative